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NIGERIA AND INTERNATIONAL LAW TODAY AND TOMORROW

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INTRODUCTION

IN MY VIEW, an inaugural lecture can be described as an intellectual reaction to the problems of a particular community which may be within a municipality or state or the international community. This definition is a subtle legislation on this special occasion which confers on me that rare power and privilege to profess that branch of the law in which I am expected to have some measure of competence. If I am allowed to define what I understand by an inaugural lecture, then it follows *mutatis mutandis* that I should be capable of expatiating on my definition. My stand and claim are supported by a general principle of law recognised by civilized nations better put in Latin as *ejus est interpretari legem cujus est condere.*[1]

Turning to the topic of my lecture, I wish to state that what has a "today" has a "tomorrow" but the happenings of today and tomorrow will soon become things of the past by gradually creeping into the limbo of "yesterday"; but progressive and civilized nations continue to strive for a better tomorrow in the fields of human endeavour. In the words of Dr. T.O. Elias:

> the truth is that modern international law, for all its lack of enforceability, has developed and will continue to develop to meet the constantly changing needs of the world of today and tomorrow, a world of growing interdependence and indivisibility that is also committed to the achievement of peace and happiness for all mankind.[2]

In the belief that an inaugural lecture is an intellectual reaction to the problems of the community, and on the understanding that my immediate community for this purpose is Nigeria, I will be touching on the Nigerian Draft Constitution and International Law, Nigerian *Coup d'etat* and International Law, Internal Law and the Nigerian Civil War, the International posture of Nigeria in Africa and finally my recommendations for the future effective application of international law in Nigeria.

A. THE DRAFT CONSTITUTION AND INTERNATIONAL LAW

Nigeria became independent as a Federal State in 1960[3] and from that time on, the Nigerian Constitution has been the supreme law in

the country, although since the army take-over of 1966 some aspects of the constitution have been suspended by decrees. Now that the country is getting closer to 1979 when it will hopefully return to civilian rule, it may be a good starting point to examine the Draft Constitution in order to see to what extent this new Draft has catered for the application of International Law.

(i) **foreign Policy: Section 14 of the draft constitution**

A new Nigeria was born in 1960 into a world that was sharply divided into the two ideological camps of Communism and Capitalism. Nigeria succeeded in resisting the temptation of joining any of these existing groups by adopting the policy of non-alignment. This bold and independent attitude helped Nigeria to survive the furnace of the Nigerian Civil War which would have driven a lesser nation to becoming a satellite of one of these ideological groups. Nigeria avoided the temptation but in the process she became somewhat polygamous in the conduct of her foreign affairs by befriending either block depending on the dictates of the time. It is this policy of **non-alignment** that has made it possible for Nigeria to champion the cause of African Unity and fight relentlessly against colonialism and the inhuman treatment being meted out to millions of Africans especially in Southern Africa.

It is not surprising therefore that in the spirit of the Charter of the O.A.U., **Section 14** of the Nigerian Draft Constitution provides as follows:

> The State shall promote African unity, as well as the total political, economic, social and cultural liberation of Africa and people of African birth or descent throughout the world and all other forms of *international cooperation conducive to the consideration of universal peace and mutual respect and friendship among all peoples and states* and shall combat racial discrimination in all its ramifications.

It is gratifying to note that since the attainment of independence in 1960, Nigeria has, in the spirit of the above provision, endeavoured to seek closer cooperation on matters which touch delicately on the daily lives of the African people. The Chad Basin Commission in which Nigeria and her neighbours seek to promote greater co-operation in the common utilization of the resources of the Chad Basin is an example of the type of cooperation which I have in mind. The African Groundnut Council, the River Niger Basin Commission and several other such institutions and enterprises are part of the effort to seek closer ties through practical economic cooperation. These efforts have recently culminated in the signing of the treaty establishing the Economic Community of West African

States (ECOWAS) by the heads of state of fifteen African countries and their representatives. ECOWAS represents the most concrete and far reaching step taken so far to put real meaning into the concept of West African unity.[4]

Nigeria also believes in the positive and functional nature of the Commonwealth, free from all the imperial overtone of the past but cooperating with other members on the basis of complete equality in tackling the urgent political, social and economic problems of our age.[5]

It is worthy of note that the Nigerian Army has been an effective instrument for the pursuit and execution of Nigeria's foreign policy in Africa. For example, the Nigerian Army has a proud record of service and operation in the then Congo. Under the auspices of the U.N., contingents of the Nigerian Army played an active role in safeguarding and guaranteeing the independence of the new nation when it was threatened by external forces. Nigeria has also contributed effectively to the liberation movements in Africa. The course of the history of decolonisation would have been different today but for the awareness on the part of the enemies of Africa that Nigeria and the other African nations are capable of mounting effective defence and offensive operations if the need arose.[6]

(ii) Dual Nationality: Section 22 (1) of the Draft Constitution

Due to the conflict of nationality laws and their lack of uniformity, it often arises that certain individuals possess double nationality.[7] Questions of dual nationality frequently arise in cases where the *jus soli* and the *jus sanguinis* co-exist as generally recognised methods of conferring nationality. *Jus soli* is the principle through which nationality by birth is determined by the territory where the birth takes place; whilst *jus sanguinis* is the principle through which nationality by birth is determined by parentage.[8] Dual nationality therefore very easily occurs where a person acquires nationality by virtue of being born in a particular country and at the same time becomes the national of his parents.

Dual nationality can also arise where a person becomes naturalised in a particular place and his original nationality does not lapse *ipso facto*. A frequent example is the case of a woman who marries a foreigner and retains her nationality according to the law of the state of which she is a national and acquires the nationality of her husband according to the law of the state of which her husband is a national.

Persons possessing double nationality bear, in the language of diplomats, *sujets mixes* (mixed subjects). The position of such mixed subjects may be awkward on account of the fact that two different

states claim them as subjects and therefore demand their allegiance. In cases of war between these two states, an irreconcilable conflict of duties is created for the individuals concerned. In *Tomoya Kawakita v. U.S.*,[10] the United States Court of Appeals (9th Circuit) sentenced for high treason the accused who was of both American and Japanese nationality. His treasonable activities consisted in the commission of brutalities upon United State prisoners of war in Japanese prison war camp.

The inconveniences resulting from double nationality prompted the Hague Convention of 1930 to provide some solutions to this international problem. **Article 4** provides that "a State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses."[11] Of particular importance is **Article 5** which provides that within a third state, a person of more than one nationality shall be treated as if he only had one nationality and such third state shall recognise exclusively in its territory either:

(a) the nationality of the country in which he is habitually and principally resident, or

(b) the nationality of the country with which in the circumstances he appears to be in fact, most closely connected.[12]

The Hague Convention, although not ratified by all nations, expresses a *communis opinio juris* by reason of the near unanimity with which the principles referring to dual nationality were accepted. Hence in the *Nottebohm case (Second Phase)*,[13] the International Court of Justice gave effect to the latter criterion as a principle of real and effective nationality, holding that in the case of conflict, a person should be deemed to be a national of that state with which he is mostly and genuinely connected.

Members of the Constitution Drafting Committee of Nigeria were recently faced with this international law problem and they demonstrated Nigeria's determination to prevent its incidence when they stated *inter alia* that "we have been specially concerned to prevent dual nationality."[14] This special concern has been sufficiently reflected in Section 22 of the Draft Constitution titled 'Avoidance of Dual Citizenship' which provides as follows:

(1) Subject to the other provisions of this section a person shall automatically forfeit his Nigerian citizenship if he acquires or retains the citizenship or nationality of a country other than Nigeria and accordingly any registration as a Nigerian citizen or grant of a certificate of naturalisation to a person who is a citizen of a country other than Nigeria at the time of such registration or grant shall be automatically null and void and

and of no effect whatsoever.

(2) any registration of a Nigerian citizen or grant of a certificate of naturalization to a person who is a citizen of a country other than Nigeria at the time of such registration or grant shall be conditional upon effective renunciation of the citizenship or nationality of that other country within a period of not more than twelve months.

(3) A Nigerian citizen by birth shall not forfeit his Nigerian citizenship if within twelve months of the coming into force of this Constitution or of his *attaining full age* (whichever is the later) he renounces the citizenship or nationality of any other country which he may possess.

Of particular significance is section 22 (3) which deals with those who have acquired their Nigerian citizenship by birth. The problem involved may be illustrated as follows. A person born in England to a Nigerian father acquires two citizenships at birth. He acquires the Nigerian citizenship through his father and by the laws of Great Britain, he acquires British citizenship by virtue of his being born in England. If at the time this child attains full age he fails to renounce his British citizenship, he automatically forfeits his Nigerian citizenship and from that time onwards he becomes an alien in his own country and suffers all the disabilities of an alien; for example, he can be deported.

There is one problem yet to be resolved. The Draft Constitution has failed to define what it means by full age. Section 63 (b) of the Draft Constitution provides that a person shall be qualified for election as a member of any Legislative House (apart from Senate)[15] if he is a citizen of Nigeria and has attained the age of 21 years.

On the other hand, Section 77 (2) of the Draft Constitution provides that every Nigerian citizen who has attained the age of 18 years is entitled to be registered as a voter for the purposes of election to any Legislative House provided he was resident in Nigeria at the time of registration of voters. The guidelines recently issued by the Federal Military Government have already given effect to the above provision for the purposes of the current registration of voters for the 1979 elections.

It is submitted that voting right is one of the most important rights which any country can bestow on its nationals. A person considered responsible enough to participate in the selection of members of the government of his country ought to be considered to be of full age. I therefore strongly submit that "full age" should be interpreted to mean 18 years, but since the Constituent Assembly is still considering the Draft Constitution, it should, for the avoidance of doubt, define

the meaning of full age for the purposes of Section 22 (3) of the Draft Constitution. Any law that will deprive a Nigerian of his citizenship should be definite and unambiguous.

(iii) Fundamental Human Rights: Sections 26-41 of the Draft Constitution:

Chapter III of the 1963 Constitution and Chapter IV of the Draft Constitution deal with the questions of fundamental human rights particularly the following: the right of life, freedom from inhuman and degrading treatment, the right to personal liberty, the right to private and family life, the right to freedom of expression, the right to freedom from arbitary arrest, the right to freedom of peaceful assembly and association and the right to a fair trial in criminal proceedings. These rights are enshrined in our constitution and they derive their validity from this sacred document, but it must not be forgotten that these rights have been inspired by the injunctions of international law which bind all civilized nations.

The Charter of the United Nations indicates, in numerous provisions, the wide possibilities of the international recognition of human rights. In the preamble to the Charter of the United Nations, the members have expressed *inter alia*, their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human persons, and in the equal rights of men and women." The Charter also lays down in Article 1 (3), as one of the purposes of the United Nations, the achievement of international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."[16]

With the formulation of the Universal Declaration of Human Rights as the expression of the legal conscience of manking,[17]the entry into force of the European Convention for the Protection of Human Rights and Fundamental Freedoms,[18] and the inclusion of guarantees for the protection of human rights in a substantial number of other international instruments including a number of other international labour conventions,[19] matters have now reached the stage of development at which international guarantees of human rights must be regarded as one of the main substantive divisions of international law.[20] As a matter of fact, it can now be said that questions of human rights have now formed part and parcel of *jus cogens*. In the recent World Court's Advisory opinion on the legal consequences for states of the continued presence of South Africa in Namibia, a judge considered human right to be "peremptory rights endowed with effective sanction, or in other

words, that they are part and parcel of positive international law."[21] It follows from the above that the human rights provisions in our Constitution are mere derivatives of international law.

(vi) Implementation of Treaties: Section 104 of the Draft Constitution

International customary law does not know of any specific procedure for obtaining consent to a treaty by a subject of international law. All that matters is that such a consent has been given. The entirely optional procedure of initiating an agreement (*ne verietur*) serves to confirm the authenticity of a text. In the absence of such a separate stage of verification, signature of a treaty fulfils this function. If the treaty is not subject to ratification, the signature necessarily also serves the additional purpose of expressing the consent of the parties to be bound by the treaty. Whether a treaty requires ratification depends entirely on the intention of the parties. Ratification of a treaty under international law must be distinguished from the approval which, under municipal laws of the contracting parties, may have to be given by specified constitutional organs such as Parliament or Senate before the Executive may proceed to ratification of the treaty on the international plane.[22]

The Nigerian Draft Constitutin deals with the implementation of treaties in **Section 104** which provides as follows:

> "104. No treaty between Nigeria and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly.
>
> (2) The National Assembly may make laws for Nigeria or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
>
> (3) A bill for an Act of the National Assembly passed pursuant to the provisions of Section (2) of this section shall not be presented to the President and shall not become law until it has been ratified by a majority of all the State Assemblies within the Federation.[23]

The above provision deals merely with the procedure for the *approval* of treaties at the municipal level. Once the necessary approval has been given by the Nigerian National Assembly, then the Executive can proceed to ratification on the international plane.

(v) International Law and the Nigerian Courts

Unlike the practice in other countries, neither the current 1963 Nigerian Constitution nor the Draft Constitution has provided for the relationship of international law and Nigeria municipal law. It is therefore not clear what attitude the Nigerian courts will adopt when faced with a conflict between international law and municipal law. It is however most likely, under the law as it stands today, that the Nigerian courts will give effect to the provisions of the municipal law. This assertion is fortified by the views expressed by academic writers and by some decisions of municipal courts. In dealing with this problem Oppenheim remarks:

> If a state does... possess such rules of municipal law as it is prohibited from having; by the law of Nations... it violates an international legal duty, but its courts cannot by themselves alter the municipal law to meet the requirements of the law of nations.[24]

Fawcett has put the same point in another way. Speaking of the practice amongst members of the Commonwealth, he observes:

> It is constitutional rule that a statute is supreme law and neither the executive nor courts can invoke any rule of international law as permitting non-observance of the statute. Conversely, however, the executive cannot towards other countries invoke a statute as an excuse for failure to perform an international obligation.[25]

In the Scottish case of *Mortensen v. Peters,*[26] the judges said that it was not their function to decide whether an Act of Parliament was *ultra vires* as being in contravention of generally acknowledged principles of international law. They emphasised that for them an Act of Parliament was supreme and they were bound by its terms. Also in *Polites v. The Commonwealth of Australia,* it was held by the High Court of Australia that an Act of Parliament imposing upon aliens the obligation of military service was to be applied although its provisions were contrary to international law.[27]

It can be clearly seen from the authorities cited above that most municipal courts will give effect to municipal laws which run counter to international law. This attitude reflects the weakness of international law which is often given an inferior status in most municipal courts. It is, however, gratifying to note that some countries have gone so far as to put international law and municipal law on the same footing. Thus both laws will be of equal weight in municipal courts so that in case of conflict, the later in time prevails. A good example is the U.S.A. In the United States, the principle that

international law is part of the law of the land has been clearly adopted. Such customary international law as is universally recognised, and all international conventions (i.e. treaties) ratified by the United States, are binding upon American Courts even if in conflict with previous American statutory law; for according to the practice of the U.S.A., customary as well as conventional international law overrule previous municipal law. On the other hand, American statutory law is binding upon the courts of the U.S.A. if in conflict with previous customary or conventional international law for a statute passed by Congress overrules previous international law although, in doubtful cases, there is the presumption that Congress did not intend to overrule international law.[28]

Some countries have, however, expressly provided in their constitutions the supremacy of international law, including that established by treaty. 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. A striking affirmation of the superiority of a treaty over municipal legislation is the decision of the French Court of Appeal in *Lambert v. Jourdan*.[29] But Article 55 of the French Constitution of 1958 modified the 1946 provisions slightly by providing that "treaties or agreements duly ratified or approved shall upon their application, have an authority superior to that of laws, subject for each agreement or treaty to its application by the other party."[31] In Holland, a constitutional amendment adopted in 1953 obliges the courts to judge the validity of legislation by reference to treaties binding upon Holland.[32] Article 62 of the Constitution of Congo (Brazzaville) provides that treaties and agreements which are duly ratified shall, upon their publication, have an authority superior to that of laws, subject to their application by the other party.[33] And the Netherlands Constitution, as amended in 1952, provides in Article 60(e) that the legal provisions in force within the kingdom shall not apply if the application should be incompatible with international agreements which have been published in accordance with Article 60 (f) either before or after the enactment of the provisions.[34]

Until recently, the application of international law in the English courts has been somewhat nebulous in that there has always been two competing doctrines governing the matter. It will now appear that a final solution has been found in the most recent decision of *Trendtex Corporation v. Central Bank of Nigeria*.[35] In this case, the English Court of Appeal examined carefully the two doctrines before coming

to a decision. One school of thought holds to the doctrine of *incorporation* which says that rules of international law are incorporated into English law automatically and considered to be part of English law unless they are in conflict with an Act of Parliament. The other school of thought holds to the doctrine of *transformation*. It says that the rules of international law are not to be considered as part of English law except in so far as they have been already adopted and made part of that law by the decisions of the judges, or by Act of Parliament, or long established custom. The difference is vital when a court is faced with a change in the rules of international law. Under the doctrine of incorporation, when the rules of international law change the English law changes with them. But under the doctrine of transformation the English law does not change. It is bound by precedent. It is bound down to those rules of international law which have been accepted and adopted in the past. It cannot develop as international law develops.[36]

After carefully examining both approaches, the court decided to favour the incorporation doctrine and in so doing, rejected the doctrine of absolute immunity accorded sovereign states in the British courts especially in relation to trading activities. In reaching this conclusion, the court took into account the fact that majority of the states of the world now favour the principles of restrictive immunity since they now distinguish pragmatically between foreign state activities *jure imperii* and *jure gestionis*. For the former they grant immunity, for the latter, they refuse it. The distinction between these two types of state activity rests on the assumption that an adequate distinction between public and private activities can always be made.

It follows from the sensible decision handed down by the British Court of Appeal in *Trendtex Corporation v. Central Bank of Nigeria*[37] that from henceforth, all that the English Court has to do in any given case, is to discover (where appropriate) what the prevailing international law is and to apply this as law.

Since the Nigerian approach to this problem has not been defined, it is suggested that the English approach recently formulated by the Court of Appeal in *Trendtex Corporation v. Central Bank of Nigeria* should represent the Nigerian law on the matter and this should be clearly formulated and included in the Draft Constitution now being considered by the Constituent Assembly in Lagos. Section 14 of the present Draft Constitution deals with "Foreign Policy." It is *suggested* that this should be followed immediately by a new Section 15 titled "*Application of International Law*,, which should provide as follows:

> International Law is an integral part of Nigerian Law and for this purpose, the "Incorporation doctrine" shall apply; therefore when an existing international law changes, Nigerian law will change *mutatis mutandis* and the function of the Nigerian Courts will be to discover what international law is at a particular time and to apply this as law.

Fortunately, changes in internatinal law do not come about abruptly and any change in existing international law will not be recognised in any Nigerian Court without convincing support. Nigeria cannot be insensible to the incidence of changes in international law which usually take place over many years. It will of course be absurd, unreasonable and ridiculous if international rules, regulations and precepts discarded outside Nigeria by a majority of civilized nations are still religiously preserved as effective by the Nigerian courts.[38]

B. NIGERIAN *COUP D'ETAT* AND INTERNATIONAL LAW

One of the most significant developments in constitutional and international laws in Africa in recent years has been the occurrence of a series of *coups d'état* in the continent and Nigeria has not been an exception.[39] On January 15, 1966, there was the first Nigerian military *coup d'état* which claimed the lives of some leading politicians including Alhaji Tafawa Balewa, the former Prime Minister of Nigeria. The January 1966 *coup* was swiftly followed by another *coup* in July, 1966. The third *coup* did not come until 29th July, 1975.

All the three *coup d'état* mentioned above were *prima facie* illegal under the Nigerian Constitution; but it would appear that this apparent illegality can be rationalized through the modern doctrine of 'natural rights' which is an offspring of the doctrine of natural law of which international law is a part. On the eve of the American and French Revolutions, the theory of natural law was turned into a theory of natural rights. This old notion which lawyers, philosophers and political writers had used down the ages had become a liberating principle, ready to hand for the use of the modern man in the challenge of existing institutions.[40] This new doctrine of natural rights is evident in the opening paragraphs of the American Declaration of Independence in 1776 which reads *inter alia:*

> We hold these truths to be self-evident, that all men are created equal; that they are endowed by their creators with certain unalienable rights, that amongst these are life, liberty, and the

pursuit of happiness. That to secure these rights, governments are instituted amongst men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and to institute a new government.[41]

Another eminent writer has formulated the above justification in a different way:

> Mad men have occupied thrones and have done mad things but it is a familiar lesson of history that a government which is itself ungoverned cannot long endure and its law — for it is law — however wicked or unwise will eventually be cast into the furnace.[42]

Although *prima facie*, a *coup d'état* is unconstitutional and illegal vis-a-vis the constitution of the country, but once it succeeds its illegality evaporates. In fact, it has been stated that illegality of origin has no relevance in the recognition of a government under international law.[43] Hence T.O. Elias in his recent book *Africa and the Development of International Law* devotes a chapter to what he calls "The legality of illegal regimes in Africa."[44] In examining this problem, Dr. Elias has pointed out that international law recognises a *coup détat* as a proper and effective legal means of changing a government provided the following basic requirements of customary international law are fulfilled:

(a) There must have been an abrupt political change, i.e. a *coup d'état* or a revolution. It does not matter whether the change has been effected directly by a military junta or by a civilian or group of civilians subverting the existing legal order with or without the aid of the military. There can be a *coup* without the use of the armed force.

(b) The change must not have been within the contemplation of an existing constitution. If it were, then the change would be merely evolutionary, i.e constitutional; it would not have been revolutionary.

(c) The change must destroy the entire legal order except what is preserved. In order for the *coup d'état* to be complete, the new regime need not have abrogated the entire existing constitution. It is sufficient that what remains of it has been permitted by the revolutionary regime.

(d) The new constitution and government must be effective. There must not be a concurrent rival regime or authority functioning within or in respect of the same territory.[45]

These principles are of particular relevance to the controversial Nigerian case of *Lakanmi & Another v. Attorney-General (Western State)*[46] where the Supreme Court held that the military take-over of January 15, 1966 was not a revolution but a voluntary transfer of power by the remnants of the preceding civilian government of Abubakar Tafawa Balewa. If the above principles are accepted and applied, then the military take-over in Nigeria on 15th January, 1966 was a *coup d'état*. It was therefore legitimate for the Federal Government of Nigeria to have passed the famous Decree No. 26 of 1970 which reaffirmed that what had happened on January 15, 1966 and also on July 29, 1966 were revolutions which brought into power two successive military regimes whose legality can no longer be denied. The legality of the present military regime which took over power on 29th July, 1975 follows *mutatis mutandis*.

C. INTERNATIONAL LAW AND THE NIGERIAN CIVIL WAR

The Nigerian Civil War raised some fundamental issues of contemporary relevance in international law and is therefore worthy of note and examination in this lecture.

(i) Recognition of States

Recognition of states is an important priciple in international law and this principle came under close scrutiny during the Nigerian civil war.

On 30th May, 1967, the former Eastern Nigeria seceded from the Federation of Nigeria and proclaimed itself the "Independent "Republic of Biafra" [47] The first country to recognize Biafra as a state was Tanzania. On 13th April, 1968, Tanzania recognized Biafra ss "an independent sovereign entity and a member of the community of nations."[48] Tanzania's recognition of Biafra was quickly followed by that of Gabon on May 8, 1968, that of the Ivory Coast, on May 14, 1968 and that of Zambia on May 20, 1968. The fifth country to recognize Biafra during her short existence was Haiti.[49] These five recognitions had and still have great implications for international law.

Although the Nigerian Civil War came to an end on Monday, January 12, 1970 and the " Republic of Biafra " ceased to exist from that date,[50] there still remains up till today a great divergence of opinion as to whether or not "Biafra" was a state between her coming into existence on 30th May, 1967 and her demise on 12th January, 1970. The question therefore arises as to whether two independent states were at war during this period. In resolving this issue, there has to be recourse to the two competing theories of recognition in international law. According to the *declaratory theory*, "statehood" or the authority of a new government exists as such prior to, and independently of, recognition. Brierly remarks:

> [Recognition] does not bring into legal existence a state which did not exist before! A state may exist without being recognized, and if it does exist in fact, then, whether or not it has been formally recognized by other states, it has a right to be treated by them as a state. The primary function of recognition is to acknowledge as fact something which has hitherto been uncertain, namely the independence of the body claiming to be a state.[51]

The act of recognition is thus a formal acknowledgement of an established situation. Lauterpacht expressed the view that when a political community has fulfilled the conditions for statehood prescribed by international law, states are under a duty to recognize the community as a state and that this duty obliges states to base their recognition policy upon the requirements of international law, rather than upon their own national interests.[42] It follows from this view that the validity of any declaration of recognition depends on whether or not the entity has fulfilled the requirements of statehood in international law. Schwarzenberger states that "The purpose of recognition is to endow the new entity with capacity, vis-a-vis the recognising state, to be a bearer of rights and duties under international law and participate in international relations on the footing of international law."[53] If an entity does not fulfil all the factual conditions of statehood as required by international law a declaration of recognition by a state is invalid, and any consequential participation by the new entity in international relations cannot be on the footing of international law. A clear example of an illegal and thus invalid recognition is where the act of recognition is premature and thus an unwarranted interference in the affairs of another state.[54] In this connection, Brierly has laid down these guiding principles:

> It is impossible to determine by fixed rules the moment at which other states may justly grant recognition of independence to a

> new state. It can only be said that so long as a real struggle is proceeding, recognition is premature, whilst, on the other hand, mere persistence by the old state in a struggle which has obviously become hopeless is not a sufficient cause for withholding it.[55]

In an attempt to solve this important problem, Lauterpacht offers the following suggestions:

> In the case of communities aspiring to independent statehood subsequent to secession from the parent state, the sovereignty of the mother country is a legally relevant factor so long as it is not abundantly clear that the lawful government has lost all hope or abandoned all effort to reassert its dominion.[56]

Judged by these rough but by no means infallible tests, the recognition of Biafra by Tanzania, Gabon, Ivory Coast, Zambia, and Haiti would appear to be unjustifiable and illegal in that at the time of recognition "a real struggle" was still proceeding,[57] and it was not "abundantly clear that the Federal Military Government had lost all hope or abandoned all effort to assert its dominion.[58] In other words, the recognition given to Biafra was, in the circumstances, premature thus "constituting a tortious act against the lawful government [of Nigeria] and thus a breach of international law."[59]

According to *the constitutive theory,* it is the act of recognition alone which creates statehood. This theory has some inherent difficulties. First, it is capable of creating an international monster in that "the status of a state recognized by State A, but not recognized by State B, and therefore apparently both 'an international person' and 'not an international person' at the same time would be a legal curiosity."[60] The second difficulty is more substantial. How many recognitions will be sufficient to constitute an entity into a state in international law? There are at present over 120 independent states in the world. Should all these states recognize an entity before it becomes a state? Or will fifty percent or more of the number be sufficient? It may even appear that certain weight may have to be given to the recognition by the super powers, such as the United States, the Soviet Union, Great Britain, China and France. As a result of these formidable difficulties, it would be difficult under this theory to conclude that recognition by only five small states was sufficient to have constituted Biafra into an independent nation.

As it has been shown above, it is very difficult to justify the existence of Biafra as a state under either theory, as it would appear that it received only premature recognition which an international tribunal would declare not only to constitute a wrong but probably also be in itself invalid. It is conceded that there are no clearly

established customary or conventional rules of international law governing premature recognition but, as shown above, it seems that the preponderance of juristic opinion is that premature recognition is wrong and illegal in international law. This juristic opinion cannot be lightly dismissed in view of Article 38 (d) of the Statute of the International Court of Justice, which enjoins the court to apply as a secondary source of law "the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." In the circumstances, it is difficult to establish the Biafra was ever a state in international law.[61]

(ii) The Geneva Convention 1949 and the Nigerian Civil War

Nigeria was party to the Geneva Conventions of 1949 by accession and later followed this up with the passage of the Geneva Conventions Acts 1960[62] which incorporates the first, second, third and fourth Geneva Conventions concluded in each case in Geneva on 12th Ausust, 1949. The objects and reasons of the 1960 Act are given at the end of the Act as follows:

> Consequent upon the accession by Nigeria to the four Conventions signed at Geneva on 12th August, 1949, dealing respectively with wounded and sick members of the armed forces in the field, with wounded, sick and shipwrecked members of the armed forces at sea, with treatment of prisoners of war and with protection of civilian persons in time of war, this Act seeks to enable effect to be given in Nigeria to those conventions.[63]

The four Geneva Conventions of 1949 provide uniformly that in the case of an armed conflict not of an international character occuring in the territory of one of the parties to the convention, each party to the convention shall be bound to apply, as a minimum, certain humanitarian provisions of a fundamental character. Thus it is laid down that persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms or are incapacitated by sickness, wounds, detention or any other cause "shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria."[64]

In particular, the Conventions prohibit, with respect to such persons mentioned above, murder, mutilation, cruel treatment, torture, and generally violence to life and person; and outrages upon personal dignity.[65]

'Biafra' had throughout the conflict claimed that the Nigerian armed forces had indulged in the indiscriminate killing of her citizens; that they had bombed churches, hospitals and market-

places and thus violated the principles laid down in the Geneva Conventions of 1949. On the other hand, there were indications to show in the civil war that the Nigerian authorities had demonstrated the desire and willingness to act in accordance with the spirit of the Geneva Conventions.[66] The first indications was that on 29th June, 1967 the Federal Government issued to members of the armed forces operational code of conduct which draws inspiration from the Geneva Conventions. Addressing the World Press early in July 1967 for the first time since the civil war started, Major-General Gowon (as he then was)

> explained that the Federal troops had been keeping the operational code of conduct issued to them recently. But he said there was a mishap around Ogoja where a whole unit of the rebel army was wiped out. The incident, he explained, was caused when a member of the unit rounded up by the federal men drew out his gun and shot a federal officer. This enraged the opposing troops and they retaliated. Apart from this incident, the Federal troops, he went on, have been keeping to the code which forbids troops to kill youths, pregnant women... except those who engage in war.[67]

The second indication is to be found in the report of John Young, of the Times of London who reported *inter alia* from the war front on May 19, 1968:

> Colonel Benjamin Adekunle, Commander of the 3rd Nigerian Division.... explains to journalists his plan to isolate Port Harcourt by enclosing it on three sides, leaving only inaccessible creeks and swamps to the south. But he intends to keep an escape corridor, for Ibo citizens fleeing towards their homelands farther north."

John Young then concluded his report in this vein:

> "This again confirms the view that the (Nigerian) Government was determined to minimize casualities.[68]"

The third indication is that on June, 27, 1968 two officers of the Nigerian Army were publicly executed by a firing squad before a crowd of 100,000 people at King's Square, Benin City in Mid-Western Nigeria for the murder of four civilians near Asaba.[69] There was a fourth indication. A Nigerian Field Commissioned Officer in the rank of Lieutenant was courtmartialled, sentenced to death and executed by a firing squad at Port-Harcourt on Tuesday, 3rd September, 1968 for shooting dead a "Biafran" soldier who had surrendered unarmed to Federal troops near Aba. His conduct was said to be grossly unbecoming of an officer of the Nigerian Army which had been given a "military code of conduct which enjoins all

soldiers to accept and treat with dignity all rebel troops who surrender to them."[70] It is therefore clear that the Nigerian Government and its army officers did their utmost not only to minimize casualties in the civil war but also to ensure that civilians and soldiers who had surrendered were humanely treated in accordance with the principles of International Law.

(iii) Genocide and the Nigerian Civil War

Throughout the civil war, there was the allegation of genocide made by 'Biafra' against the Federal Military Government. This allegation of genocide has continued to linger on even till today, and during the war Ojukwu had also appealed to the United Nations asking the world body to stop the Nigerian Government from committing genocide against the Ibos.

The word genocide has often been used in relation to Nigeria's war with little realization of its meaning. According to the 1948 Geneva Convention on the Prevention and Punishment of Genocide, acts of genocide are those committed with intent to destroy, in whole or part, a national, ethnic, racial, or religious group, to cause serious bodily or mental harm to members of the group, deliberately to inflict on the group conditions of life calculated to bring about its total or partial destruction, to impose measures intended to prevent briths within the group, or forcibly to transfer children of one group to another.[71]

The repeated allegation of genocide by Nigeria against the Ibo prompted Nigeria to invite a team of international observers to make necessary investigations. Members of the Team included Major-General Arthur Raab of Sweden, Major-General Henry T. Alexander of Britain, Major-General W. A. Milroy of Canada and Mr Nils-Goran of the United Nations. After visiting some of the war-affected areas, from 25th to 30th September, 1968, they submitted a report which stated *inter alia:* "there is no evidence of any intent by the Federal troops to destroy the Ibo people or their property, and the use of the term "genocide" is in no way justified."[72]

But it cannot however be denied that the military operations had resulted in a lot of physical destruction and loss of lives. But it is my submission that these were the inevitable consequences of a shooting war.[73]

D. THE INTERNATIONAL POSTURE OF NIGERIA IN AFRICA

With the attainment of independence by many African states and the consequent withdrawal of the European powers from most

parts of Africa, a power vacuum was created. The independent countries in Africa were in no doubt that this power vacuum must be filled by the peoples of the African continent themselves. This quest for leadership soon found concrete expression in the establishment of the Organisation of African Unity (O.A.U.) on 25th May, 1963; but the O.A.U. can only fill this power vacuum if it has effective leadership. In the Organisation of American States (O.A.S.) the United States provides this needed leadership largely in the form of financing the O.A.S., providing financial assistance to the other member states and also giving loans for carrying out some of the Organisation's development programmes.[74]

Ghana once appeared to provide the required leadership for the O.A.U. through the efforts of its late President, Kwame Nkrumah. Apart from the fact that Ghana was not rich enough to provide the leadership required, Nkrumah's plan for Africa was too ambitious and unrealistic as he was dreaming of an African Parliament.

It is my considered opinion that the only country at present which is likely to provide the required leadership is Nigeria. As the most populous African country, with the biggest black army in the world,[75] Nigeria clearly has a major role to play in international affairs. Despite the stern warning recently given by Professor Ojetunji Aboyade, Vice-Chancellor of the University of Ife, that Nigeria's reliance on oil money will be particularly gloomy in the early 1980's,[76] I still feel that Nigeria is not a poor country especially when compared with other African States. She still has some funds to spare to help her poor neighbours and it can be said that her financial strength is beginning to match her physical size and importance. In a continent of mini-states and of sparsely populated and desperately poor nations, Nigeria stands out apparent as the leader of Africa. Nigeria has in fact accepted the challenge of leadership in three main areas.

First, Nigeria has been contributing substantial funds towards the running of the O.A.U. On the contribution to the O.A.U. Annual Regular Budget, Nigeria was one of the largest contributors in 1975-76, paying 6.9% amounting to $97,862 and coming third after Libya and Egypt which came first and second respectively. In the 1977/78 Budget, Nigeria became the second largest contributor, paying 7.63% amounting to $125,000.[77] It has also been providing financial assistance to some poorer nations of Africa. The ₦1,000,000 which Nigeria had donated in 1975 to the government of the Peoples Republic of Mozambique (led by Comrade Samora Machel) constituted a milestone in Nigeria's new foreign policy, and inter-African cooperation.[78]

The financial assistance to Mozambique was not the first occasion in which Nigeria has ably demonstrated *esprit de corps* to a sister African country. In April 1972, Nigeria gave Dahomey ₦2,000,000 interest-free loan repayable over a period of 30 years. Earlier on, Nigeria wholly financed the construction of the 25.7 kilometre road linking Nigeria's border town of Idiroko with Dahomey's Port Novo. This road was officially declared open to traffic on 24th March, 1973.[79]

In December, 1975, the government of late General Murtala Ramat Muhammed, after having carefully considered the problems usually associated with a country which had just passed through the ordeals of an excruciating war, donated the sun of ₦13.5m to the government of Angola led by Dr. Augustino Neto. The cheque covering the amount was immediately released and handed over to Angola's Prime Minister Mr. Lopo de Nascimento at Dodan Barracks. The Prime Minister had come to Nigeria as the head of a mission which brough to Nigeria two South African soldiers captured in the Angolan war.[80]

In Nigeria, some people have criticised the granting of economic aid to Angola. Such critics have not carefully examined the full strategic and political implications of this economic aid. Nigeria by virtue of her large population and abundant natural resources, happens to be one of Africa's most viable states both politically and economically. That being so, Nigeria potentially constitutes a threat to the continued existence of the white racist minority regimes in South Africa. A cursory look at the map of Africa shows that the only viable buffer state between Nigeria and South Africa is Angola; so that if Angola crumbles, Nigeria is likely to be next target of attack by South Africa and her Western allies. Thus, there are powerful strategic reasons which make it imperative for Nigeria to be committed on the side of the M.P.L.A. Government of Angola.[81]

Secondly, the acceptance of the challenge of leadership can be found in the way in which Nigeria had acted as a mediator in disputes involving sister African nations. Nigeria has mediated in several African disputes in an attempt to project through the councils of the Organisation the maintenance of international peace and security which is the key objective of the United Nations itself. Two recent examples are the mediation between Kenya and Uganda following the Israeli raid on Entebbe and between Kenya, Tanzania and Uganda, following the disagreement between these states over the future of the East African Community.[82]

Other attempts at mediation include the following: there were attempts by Nigeria to mediate in the long standing dispute between Angola and Zaire and in this attempt, Joseph Garba, Nigeria's

Commissioner for External Affairs played an important role.[83] Nigeria recently played a great part in mediating in the dispute between General Gnassingbe Eyedema of Togo and Lt. Col. Mathieu Kerekou of the Republic of Benin.[84] Recent months have also witnessed Nigeria's involvement in mediation efforts in the conflicts between Libya and Chad, Ethiopia and Somalia.[85]

Thirdly, Nigeria has shown leadership in the O.A.U.'s determined effort to eliminate apartheid in Africa. The urgent need to get Angola on its feet as well as the mounting evidence of the insulting intervention of the American and South African alliance to render Angolan independence meaningless, propelled Nigeria to recognize the M.P.L.A Government of Angola. This recognition which was followed by substantial economic aid ruled out nothing that might ultimately involve a direct Nigerian armed conflict with the forces of oppression and exploitation in South Africa.[86]

Recent development in Southern African have been of such importance that a World Conference For Action Against Apartheid took place in Lagos from 22nd August, 1977. This Conference was sponsored by the United Nations, the Organisation for African Unity (O.A.U.) and the Federal Government of Nigeria. More than 500 delegates from all over the World attended this Conference.

It is significant to note that Mr. Leslie Harriman, the current Nigerian permanent representative in the United Nations, who was Chairman of the United Nations Special Committee on Apartheid, played a dominant role at the Conference. The mere fact that Nigeria decided to host this Conference was not only a bold political action but was also a worthy contribution to the development of international law at a time when Human Rights, which has been seriously assaulted in South Africa, has become an international concern.

In a moving opening address at this Conference, General Obasanjo, the Nigerian Head of State and Commander-in-Chief of the Armed Forces said *inter alia*:

> We will not stand by and be satisfied with resolutions and prayers, or with acts of charity by men and women of goodwill who partake of the advantages of the system while pretending to sympathise with us. It will no longer help for our so-called friends to adopt pious postures and preach non-violence when our enemies are busy inflicting mental and physical violence on us. Africa would no longer just watch the racists of Pretoria improve on their machinery of terror and repression.[87]

The above examples amply demonstrate Nigeria's continuous leadership roles evident in her determination and commitment not

only to the success of the O.A.U. but also to the realisation of a true, legally ordered international society particularly in Africa. In the words of Dr. Jide Aluko: "In most of the activities of the Organisation (of African Unity) Nigeria has tended to give the lead."[88] It is my considered opinion that the time is not too far distant when Nigeria will fully emerge as the acknowledged leader of the Organisation of African Unity in the same way in which the U.S.A. has emerged as the acknowledge leader of the Organisation of American States.

It is worthy of note that Nigeria's international posture has again been enhanced particularly in relation to Africa when, for the second time since independence in 1960, she was recently elected to serve for another two years as a member of the Security Council which has the primary responsibility for maintenance of international peace and security and whose decisions are binding upon the member states of the United Nations which have agreed and accepted to carry them out in Article 25 of the Charter of the United Nations.

E. CONCLUSION

All that can be gathered from the above analysis is that Nigeria is not only steadily emerging as the leader of Africa, but has continued to be a law abinding nation under international law. This conclusion is supported by the fact that since independence in 1960, each successive government has always stated at the earliest opportunity that it would honour *all the country's* existing international *obligations*. In making this type of statement, the government has been observing the international law principle of *pacta sunt servanda;*[89] whereas it could have seized the advantage of the change of government itself to jettison some of her international obligations and justify her action by another principle of international law known as *clausula rebus sic stantibus*.[90] But as it has been shown in this lecture, Nigeria had striven to obey the injuctions of international law even during the cross fires of the civil war which took place between 1967 and 1970. Nigeria has always been willing to ratify treaties previously signed by her plenipotentiaries and it is worthy of note that Nigeria was the first to ratify the most important Convention on the Settlement of Investment Disputes.[91]

In Nigeria's determined effort to see that her international obligations are undisputed, the Federal Ministry of Justice has been publishing since 1971, *Nigeria's Treaties in Force:* Volume 1 of the first three volumes covering the period 1st October 1960 to 30th June, 1970 is classified into three parts. Part I contains the list of treaties and international agreements that have been recognized as clearly binding on Nigeria. Part II contains the list of treaties and

other international agreements which Nigeria has acceded to since independence in 1960. Each of these two parts is sub-divided into two categories - multilateral and bilateral treaties. Part III contains a list of international agreements concluded with International Organisations.

There is however one instance in which Nigeria might appear to have violated the tenets of international law. This is in the area of the law of the sea with particular reference to the territorial sea. At a time when most of the leading nations of the world were claiming three miles as the width of their territorial sea, Nigeria claimed twelve nautical miles.[92] She subsequently increased her claim to thirty nautical miles.[93]

But Nigeria is not alone in what might *prima facie* appear to be a breach of international law as there are at present several other nations claiming different widths as their territorial sea.

As a result of the claim by states to differing widths of the territorial sea, it would appear that the three-mile rule (as a general principle of law) has now disappeared since the I.C.J. cannot now apply it as a general practice accepted as law.[94] As there is no longer an accepted width of territorial sea which a state may claim under international law, all that we can say is that we are now in an era of international lawlessness in this regard; and that being so Nigeria cannot be guilty of a breach of any international law.

F. RECOMMENDATIONS FOR FUTURE EFFECTIVE APPLICATION OF INTERNATIONAL LAW IN NIGERIA

Finally, I wish to recommend as follows:

1. The Federal Ministry of Justice has an Internatinal Law Division which is actively engaged in matters connected with international law and international relations. This Division should be greatly strengthened.
2. The various Law Faculties in the country have not only given prominence to the teaching of international law but some of them have in fact created Departments of Internatinal Law, e.g. at Ife, we have the Department of International Law and at the University of Nigeria, Nsukka, we have the Department of International Law and Jurisprudence. The other Law Faculties in the country should create Departments of International Law.
3. The Institute of International Affairs has been greatly revitalized under the able and inspiring leadership of Dr. Bolaji Akinyemi. This Institute which has been hiring staff of high calibre should continue its programme of sponsoring, at regular intervals,

Conference, Symposia, Colloquia and Lectures in International Law and International Affairs.

4. The newly established Nigeria Institute of Advanced Legal Studies should have a virile International Law Division that will co-ordinate research work on International Law undertaken by the various Faculties and other International Law Institutions in in the country.
5. The practice so far is for the Federal Government to send civil servants from the Ministry of Justice to represent it at the various International Law Conference and to serve on delegation to the United Nations. The Government should change its policy with immediate effect in this regard. It is strongly recommended that from now on, Government delegation to the United Nations should include personnel from the Departments of International Law the Departments of International Relations and of Political Science and similar institutions in the various Universities in the country. It is worthy of note that in this connection, most advanced countries make use of the intellectual resources available at their universities.
6. At present, the Federal Military Government turns to the Civil Service each time it wants to appoint its Permanent Representative to the United Nations. The time is now ripe when it should also be turning to other sections of the public service particularly the Universities.
7. There is at present a Nigerian Society of International Law with Dr. T. O. Elias as its President. This Society sponsors annual Conferences in which papers are read in the various fields of International Law and in addition, it now publishes an International Law Journal known as the *Nigerian Annual of International Law*. This Society is an important one, but it should do everything possible to ensure that it commands the same respect as the American Society of International Law which brings together every year, International Law experts from all over the world.
8. International Law which is now an optional subject in most Nigerian Universities should be made a compulsory subject either in the penultimate or the final year of the LL.B. course.
9. Appointments to the Nigerian Supreme Court should take into account the expertise in international law of at least one of its members at any given time. In this way, Nigeria will ensure the gradual but steady development of international law which to many nations is now part and parcel of municipal law.

10. Individuals and Institutions, both public and private, within the country should begin to think of endowing chairs in international Law in the various Law Faculties in the country.
11. Most importantly, the Nigerian Constitution which will usher in the return to civilian rule should give international law a pride of place in its provisions by stipulating clearly that international law automatically becomes part of Nigerian law through the incorporation doctrine, i.e. the Nigerian courts must at any given time, discover what the prevailing international law is on a particular matter and apply that rule as appropriate.
12. Eminent Nigerians have been directly concerned with the application of international law. For example, Dr. T.O. Elias was elected a member of the International Law Commission in November, 1961 and in July 1970 he was elected the Chairman of the Commission. He is currently a judge of the International Court of Justice at the Hague. Mr. Justice Daddy Onyeama was the first Nigerian to be appointed a judge of the International Court of Justice, a post which he relinquished in 1975 after serving for nine years. In 1962, the late Mr. Justice Louis Mbanefo served as an ad-hoc judge of the International Court of Justice in the famous South West African cases.

    Chief S.O. Adebo and Mr. Edwin Ogbu former Nigerian Permanent Representatives at the United Nations gave distinguished services not only to the nation but to the world in the way they carried out their onerous duties. Other Nigerians who may be described as *dramatis personae* in the field of international law and international relations include Dr. Bayo Adedeji of the E.C.A., Dr. Bolaji Akinyemi, Director-General, Institute of International Affairs, Mr. Leslie Harriman, current Nigerian Permanent Representative to the United Nations and the last but not the least, Joseph Garba, our current Federal Commissioner for External Affairs.

All these men have made appreciable contributions to the development of international law and it is hoped that the Federal Government will encourage the younger generation of lawyers and political scientists to develop interest in the field of international law thereby providing appropriate intellectual support for the leading role which Nigeria has now acquired in the international community, particularly in the third world.

FOOT NOTES

1. He who has the power to make a law has the power to interpret it.
2. T.O. Elias, *Africa and the Development of International Law (1972), p.87.*
3. Nigeria was admitted to the U.N. on 7th October, 1960 and became one of the founding members of the O.A.U. on 25th May, 1963.
4. See generally Joseph Garba (Federal Commissioner for External Affairs) *Nigeria: Bulletin on Foreign Affairs*, Vol. 6, No. 1 (January, 1976), p.15.
5. Joseph Garba, *op. cit.* p. 16.
6. Joseph Garba, *op. cit.* p.20.
7. Starke, *Introduction to International Law*, 6th Edition (1967), p. 296.
8. Schwarzenberger, *A Manual of International Law* (1967), pp. 142-143.
9. Oppenheim, *International Law,* 8th Edition, (Vol. 1), p. 666.
10. (1951) 190 F(2d.) 506; 46 A.J.I.L. (1952) p. 147.
11. Friedmann, Lissitzyn and Pugh, *International Law: Cases and Materials* (1969) p. 510.
12. Starke, *op.cit.* pp. 296-297; Friedmann, Lissitzyn and Pugh, *loc. cit.* see also Max Sorensen, *Manual of Public International Law* (1968), p. 477.
13. (1955) I.C.J. Reports, p. 4.
14. *Report of the Constitution Drafting Committee* Vol. 1, p. XIX.
15. Section 63(a) provides that a person shall not be qualified for election as a Senator until he has attained the age of 35 years.
16. See also Article 13(1) of the Charter. See general, Oppenheim, *International Law,* 8th edition (Vol. 1), pp. 736-740.
17. Lauterpacht, "The Universal Declaration of Human Rights," The B.Y.I.L. 25 (1948), p. 354-381.
18. Robberton, "The European Convention for the Protection of Human Rights," B.Y.B.I.L. 27 (1950) pp. 145-163.
19. Jenks, *The International Protection of Trade Union Freedom* (1957).
20. See generally Wilfred Jenks, *The Common Law of Mankind* (1958), p. 45.
21. Advisory opinion on the Status of Namibia, (1971) I.C.J. Reports, p. 67 at p. 79 (Separate opinion of Justice Ammoun).
22. Schwarzenberger, *A Manual of International Law* (1967), p. 155.

23 Contrast this provision with Section 74 of the current 1963 Republican Constitution which empowers Parliament to legislate in respect of treaties but such treaties shall not be operative in a State unless the Governor of that State has consented to its having effect.

24. *Op.cit.* p. 45.

25. J.E. Fawcett, *The British Commonwealth in International Law* (1963), p. 74.

26. (1906) 14 S.L.R. 227.

27. *Annual Digest and Reports of Public International Law Cases, 1943 - 45,* Case *No. 61.*

28. See generally Oppenheim, *International Law,* p. 42.

29. *Annual Digest and Reports of Public International Law Cases,* 1948 Case No. 111.

30. Bishop, *International Cases and Materials* (1962), p. 142.

31. Rice (1952), 46 A.J.I.L. 641-666.

32. Oppenheim, *op.cit.* p. 44, note 1.

33. Peaslee, *The Constitutions of Nations,* p. 93. This provision is now S. 68 of the New Constitution - See *African Law Digest,* Vol. 3, No. 2, (March 1968), p. 151, S.903.

34. Bishop, *op.cit., p. 142.*

35. (1977)2 W.L.R. 356.

36. (1977) 2 W.L.R. at 364 (Dictum of Lord Denning, M.R.).

37. (1977) 2 W.L.R. page 356.

38. See generally, Shaw, L.J. in *Trendtex Corporation v. Central Bank of Nigeria* (1977) 2 W. L. R. at page 388.

39. See generally, T.O. Elias, *Africa and the Development of International Law* (1972), p. 107.

40. A.P. D'Entreves, *Natural Law,* p. 60.

41. A.P. D'Entreves, *op.cit.* pp. 61-62.

42. C.K. Allen, *Aspects of Justice* (1958), p. 71.

43. Tinoco Arbitration (*Great Britain v. Costa Rica*) - A.J.I.L. (1924) p. 147.

44. T.O. Elias, *Africa and the Development of International Law* (1972), p. 107.

45. Elias, *op.cit.* pp. 108-109.

46. Unreported (1970) S.C. 58/59.

47. See D.A. Ijalaye, "Legal Implications of the Nigerian Civil War" *Annual of the Nigerian Society of International Law* (1969), p. 70.

48. See *New Nigerian,* April 15, 1968, p. 1; See also *New York Times* April 14, 1968, p. 5.

49. See generally - D.A. Ijalaye "Was Biafra at any time a state in International Law?" A.J.I.L. Vol. 65, No. 3 (1971) p. 551.

50. At least it ceased to exist whether it was a state or not.

51. Brierly, *op.cit.* note 26 above at 139.

52. Lauterpacht, *op.cit.* note 5 above at 6. This view is well summarized in Friedmann, Lissitzyn, and Pugh, *op.cit.* note 28 above, at 73.

53. Schwarzenberger, *op.cit* note 28 above, at 73.

54. Briggs, "Recognition of States" 43 A.J.I.L. 113-1221 (1949).

55. Brierly, *op.cit.* note 26 above, at 138.

56. Lauterpacht, *op.cit.* note 5 above, at 45-46.

57. Brierly, *op.cit.* note 26 above, at 138.

58. Lauterpacht, *op.cit.* note 5 above, at 46.

59. Higgins, *The Development of International Law Through the Political Organs of the United Nations 138* (1963). See also 1 Hyde, *International Law 153* (2nd ed., 1945); "The according of recognition to a country still in the throes of warfare against the parent state ... constitutes participation in the conflict. It makes the cause of independence a common one between the aspirant for it and the outside state. Participation must be regarded as intervention and therefore essentially antagonistic to that state."

60. Brierly, *op.cit.* note 26 above, at 138.

61. See generally D.A. Ijalaye, "Was Biafra at anytime a State in International Law?" A.J.I.L. Vol. 65 (1971), pp. 551-559.

62. See Nigeria Federal Gazette, 1960, Supplement No. C319-328.

63. *Loc.cit.* C328.

64. Article 3: this article forms part of chapter 1 which contains the general provisions and which is common to each of the four conventions.

65. See generally Oppenheim, *International Law*, Vol. II, 7th ed.; also Lauterpacht p. 210.

66. See D.A. Ijalaye, 'Legal Implications of the Nigerian Civil War' *Annual of the Nigerian Society of International Law*, (1969) p. 70.

67. *Op. cit.* p. 81.

68. *Times* (London), Monday, May 20, 1968, p. 4.

69. *New Nigerian*, Friday 28th June, 1968, page 1.

70. *Daily Times* (Nigeria), Tuesday, September 3, 1968, p. 1. See also the issue of Wednesday, September 4, 1968, p. 1.

71. See generally, Zdenek Cervenka, "The O.A.U. and the Nigerian Civil War" - being a Chapter in *The Organisation of African Unity After Ten Years*, edited by Yasin, El-Ayouty, p. 171.

72. *Daily Times* (Nigeria) Friday, October 4, 1968; Signatories to the report are the Canadian, Swedish and British observers. The United Nations Observer, Mr. Gussing was to submit his report directly to the United Nations Secretary-General, U. Thant.

73. See generally D.A. Ijalaye, *Annual of the Nigerian Society of International Law*, (1969), p. 70.

74. See generally Thomas & Thomas, *Organisation of American States*.

75. *West Africa*, 18th August, 1975, p. 954.

76. *Daily Times* (Nigeria) January 4, 1978, p. 1.

77. Assessment of O.A.U. Budgetary Contributions 1975/76 and 1977/78 - see Annual Budget O.A.U. Secretariat, Addis-Ababa.

78. *Nigeria: Bulletin on Foreign Affairs* Vol. 6 No. 5 (May 1976), p. 29.

79. Ibid, p. 30.

80. *West Africa,* 5th January, 1976 p. 22; See also, *Nigeria: Bulletin of Foreign Affairs* Vol. 6 No. 5 of May, 1976 at p. 30.

81. *Nigeria: Bulletin of Foreign Affairs*, Vol. 6 No. 1, (January, 1976), p. 38.

82. See the Address by Joseph Garba (Nigeria's Commissioner for External Affairs) to the Eighth Annual Conference of the Nigerian Society of International Law on March 18, 1977.

83. *West Africa*, 9th May, 1977, p. 593.

84. *West Africa*, 15th December, 1975, p. 510.

85. *West Africa,* 12th September, 1977, p. 1855.

86. See generally Lawrence Ekpebu, 'Angola: The Development of a New Nigerian Policy on Decolonization in Africa' Paper read at the Conference 'Nigeria and the World' held in Lagos from 28th to 30th January, 1976.

87. *Daily Times* (Nigeria) 23rd August, 1977, p. 32.

88. Olajide Aluko, "Nigeria's Role in Inter-African Relations; *African Affairs*, Vol. 72, No. 287 (1973), p. 155.

89. Agreement must be kept.

90. Basic changes in circumstances will entitle a state to denounce her international obligation.

91. See Broches, "The Convention on the Settlement of Investment Disputes: some observations and jurisdiction", *Columbia Journal of Transnational Law*, Vol 5 (1966), p. 263 at p. 264 f.n. 4. See also Sasson, 'Convention on the Settlement of Investment Disputes", *Journal of Business Law* (1965), p. 334.

92. The Nigerian Territorial Waters Decree 1967 - Decree No. 5, 1967; Nigeria Gazette, 1967, pp. A43 - A45.

93. The Territorial Water (Admendment) Decree No. 38, 1971 - Supplement to Federal Official Gazette No. 44 (Vol. 58) September, 1971 pages A177 - A178.

94. Article 38 (1)(b) of the Statute of the I.C.J. enjoins the World Court to apply *inter alia,* "international customs as evidence of general practice accepted as law."