Nature of Human Rights and Problems Confronting Nigeria on International Maritime Obligations

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Abstract
The study examined the nature of human rights and problems confronting Nigeria on international maritime obligations. The study made use of the Neorealism theory as the intellectual framework and adopted the qualitative synthesis of the scientific method as it relies on secondary data collected from documentation through published and unpublished books, journals, articles, and other publications on Human Rights and maritime/Environmental treaties. It was equally revealed that the lack of capacity or laxity on the part of the National Assembly to domesticate the treaties of the law to which Nigeria is a party, has undermined the enforceability of most international treaties. Based on these findings and the conclusion arising thereof, the following recommendations are hereby outlined among others. First, the Treaties Act of 2004 should immediately be amended to make consultation with the relevant committees of the National Assembly a mandatory treaties-making procedure and in the same view capacity building and training should be carried out for the bureaucracy and other relevant agencies to ensure effective implementation of the various international legal instruments that Nigeria is a signatory to.

Keyword: Human Rights, Problems Confronting Nigeria, International Maritime Obligations

1. INTRODUCTION

Human rights enforcement takes place at two levels - national and international. As stated earlier, the national level, by the very nature of its organization, is better equipped and placed to ensure that human rights are effectively enforced. However, the need for international (or regional) enforcement arises because the existing agencies, policies, and laws in many states have often proved inadequate or the state authorities have altogether abandoned their roles as defenders or protectors of human rights (Mahalu, 2005). The failure of African states to enforce or even respect human rights in their respective national jurisdictions was the cause for the search for international human rights mechanisms on the continent. With the liberation of Sub-Saharan Africa, there were high hopes for the development and promotion of human rights and the restoration of African dignity; however, the hopes never materialized. As human rights protection at the national level worsened, counterforces emerged to instigate their enforcement at the regional level. These efforts could be traced to the early 1960s when the first inter-African lawyers meeting took place to discuss the possibility of evolving a workable regional human rights system for the continent Kunig, (2003). Similarly, in the opinion of Eide and Gudmundur, (2002), it also undermines and weakens the stability of the international judicial proceedings as a whole and potentially international peace and security. One of the fundamental principles relating to compliance with existing commitments in international relations is the principle of 'pactasundservanda' and the related bonafide (compliance with obligations in good faith). They are outlined in several international documents such as Article 26 of the Vienna Convention, which was adopted on the 6th of May 1969. To this article, any effective agreement that is binding between the parties and obligations arising from it must be done in good faith. Nigeria's maritime and environmental policies lack capacity to meet global human rights, environmental, and maritime treaties and conventions. Despite being active participants in the United Nations and numerous international laws, Nigeria's current practices and policies differ from global standards and expectations. This is particularly relevant when implementing treaties concerning environmental and marine issues and human rights in Nigeria. According to Koch (2001),

the regime seems to lack or is unwilling to use its political will for efficient incorporation and implementation of the standard required as it relates to International Human Rights treaties and maritime and environmental issues.

2. RESEARCH METHODOLOGY

The study is a descriptive research design that involves the usage of historical research method involving the analysis of secondary data. The study utilizes the qualitative and synthesis of scientific method as it relies on secondary data collected from documentations through published and unpublished books, journal articles and other publications on Human Rights and Maritime/Environmental treaties That is, a systematic review of literature on the politics and the challenges of international law and Treaties enforcement in post-colonial Nigeria. This involves examining documents already dealing with the research issue; those documents include several forms of written materials. The researcher reason for choosing an historical approach is due to its ability to interpret the situation and not only focus on numbers as in a quantitative approach, but would allow us to show a deeper and more precise picture hidden behind the numbers. The analytical procedure was done through the qualitative analysis of secondary data. Since the objective of this study is not to make statistical inferences. The secondary data extracted from sources stated above, was used to support or question theoretical assertions of the challenges of enforcing international legal treaties. This analytical procedure is not however without limitation, because it does not provide room for statistical inferences that would have enable inter-subjectivity, generalization and prediction to be made.

3. RESULT AND DISCUSSION

This part of the study is dedicated to analyzing the nature of human rights and problems confronting Nigeria on international maritime with particular emphasis to answering the following questions:

Research Question 1: What is the nature of International Human Rights law and Maritime/Environmental Protection laws in Nigeria?

Nigeria, as a state in the global community, has been active in ratifying human convention treaties. Undoubtedly the influence of the International Declaration of people's and Human Rights and protocol as its relates to National civil and economic rights have permeated difference Nigerian statute right from independence, have always devoted a chapter guaranteeing basic human rights within the Country Jurisdiction due to military intervention into Nigeria politics and their practices and polies of automatically suspending the constitution that provide for fundamental human rights obligation (as well as posing decrees to be more superior than the constitution), has necessitated to the fore the conflict of the domestic applicability of human rights instrument ratification in Nigeria. As a result of this circumstance several ruling of different court in the country and that of the Supreme Court which have had important bearing on the domestic promulgation and incorporation of human rights instruments in the Country. As should be noted, Nigeria operates a dualist system, whereby treaties, including those dealing with human rights, cannot be applied domestically unless they have been incorporated through domestic enactment. Although not categorically stated in the provision however, the United Kingdom has the same similar approach and practice like that of Nigeria which gives rights to the central government to enter into any international instruments. However, for it to have force of law it must be in accordance with section 12(1) of the 1999 constitution, it must be promulgated into law by the National Assemble. Section 12(1) provides that: ''No instruments between Nigeria and any other Nation State shall have the effect of law unless to the extent to which any such instruments have been integrated into law through the Federal legislative arm of government.'' The upper legislative chamber is empowered to promulgate enactment for the aim of implementing instruments, even in regard to issue not stated in the Exclusive Legislative List.

The criteria that international instruments must be incorporated as a domestical law before it can have effect of law in the country proved to be merely a historical formulation and a relic of colonialism. This is because over the years the country has being under the control and domination of the Britain Government, the country, on independence, automatically incorporated the British approach and practice requiring an instrument to be domesticated into law before it could apply locally. In the Nigeria case Ibidapovs Lufthansa Airlines, Wali JSC review further Nigeria like any other British colonies inherited the common law doctrine governing the domestic application of universal law. The apex Court of the country view section 12 (1) as it relates to the African charter on people's and human rights as was in the case of Abacha vs Fawehinmi. In

hearing the argument by the trial judge on the preliminary objection held that the suit was ousted and struck out of the jurisdiction of the Court. The case was brought to the Court of Appeal. The court held among other issues that the African charter have been incorporated into domestic law in Nigeria, its presumed to be superior to all other domestic or local laws. The Charter is protected by means of international law, and the federal military regime is not legally allowed to enact its obligations. This ruling of the Court of Appeal was followed in several other Court of Appeal cases dealing with the African Charter. These Court of Appeal decisions appear to have been motivated by the intentioned desire, not only to protect citizens from human rights abuses by the then military government, but also to ensure that Nigeria honors its international obligations in the human rights treaties it has ratified. The respondents, not honour with the ruling of the Court of Appeal in the Abacha case, appealed to the Supreme Court. The Supreme Court, like the trial court and the Court of Appeal, had to examine section 12(1) of the 1979 constitution, which is identical to section 12(1) of the 1999 constitution. As a result of the provisional issue involved in this case, the Supreme Court was constituted by seven justices. The court was unanimous in confirming the dualist effect of section 12(1) of the constitution. The exclusion from domestic application of human rights instrument to which Country has become a party by succession, accession or ratification by the deliberate (or perhaps inadvertent) failure by the legislature to enact them into law appears to be unwarranted. The inequity of section 12(1) is highlighted by the rather blunt and disturbing statement of one of the Supreme Court justices in the Abacha case when he said, ‘‘It is in this light that despite the important or interest that a county may have gain from international treaties in respective of whether it has sign or not shall not be enforceable unless such agreement must had been domestic into our law by the upper legislative ’’ What this indicates is that human rights treaties to which the Country is a party, which are actually meant for the ultimate benefit of the citizenry, have no effect except at the instance of the legislature.

Research Question 2: What are the challenges confronting Nigeria in successfully implementing standards, policies, and structures required to meet the expectations of various international maritime obligations?

The United Nations Convention on the Law of the Sea (UNCLOS) serves as the international legal framework, but it lacks specifics on what states are expected to do. The UNCLOS provides a general obligation for states to cooperate in repression of piracy, with Article 100 stating that all nations shall unite to the fullest extent. The UNCLOS relies heavily on domestic laws to combat environmental hazards in maritime areas. The major international legal framework for Nigeria’s maritime activities is the UNCLOS which the Country signed on 10 December 1982 and ratified on14 August 1986. Nigeria is also a member of the International Maritime Organisation (IMO) and the UN. Some elements of international maritime law presently ascribed to by her include:

i. 1974 Safety of Life at Sea (SOLAS) Convention.
ii. 1979 Conference on Maritime Search and Rescue (SAR Convention).
iii. Global protocol for the Protection of Pollution from Ship, 1973 (modified by the Protocol of 1978 known as MARPOL).
iv. In Nigeria, there is no act to effectively criminalize most anti-maritime activities at sea and there is also no National law which specifically incorporates the provisions of UNCLOS and the SUA Convention and Protocol. State parties must incorporate the rights and obligations provided by the conventions into their national legal and policy frameworks to effectively suppress the offence.
v. There is a rather vague provision in Part XII of the Merchant Shipping Act Laws of the Federation of Nigeria (LFN) 2007 (LFN, 2016) which deals with safety of life at sea.

Article 216 (h) of the Merchant Shipping Act provides that “As from the appointment of this Act, the following Conventions, Protocol and their amendments relating to maritime safety shall apply that is; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and Although there are no precise laws criminalizing unlawful environmental act in offshore in Nigeria, there are some laws such as the Criminal Code Act and the Penal Code (LFN, 2016) that criminalize the constituent components of piracy and armed robbery at sea; however, they apply only to offences carried out in Nigeria’s territory and territorial waters. Article 100 UNCLOS provides for the interrelated obligations in respect of unlawful environmental act in maritime sector. The first obligation is for nations to repress all unlawful maritime activities at the national level. The second obligation is for nations to cooperate in repressing unlawful maritime activities at regional and international levels (Ali, 2015). To achieve this, legal

frameworks must be established for information sharing and strategies. The Economic Community for West African States (ECOWAS) Treaty of 1975 is the first criminal framework for regional cooperation, revised in 1992 to enhance security, and adopted in 1999 to establish peace and protection mechanisms (Ali, 2014).

The discussion in this section of the thesis showed that there are number of regional institutions which Nigeria is part of. Despite their existence, their efforts so far have proved insufficient to deter illegal maritime activities because of certain limitations. Some of these limitations include differences in cooperative agenda, sovereignty limitations, financial limitations, and internal politics in the organization. The next paragraph will, therefore, look into the challenges of implementing maritime laws in Nigeria with a view to proffering solutions. Despite the codification of universal jurisdiction and the push for regional cooperation to combat illicit maritime activities customary international law still requires domestic legislation to prosecute the crime Chang (2010). In Nigeria, the mode for domestication of international treaties is provided for in the constitution (Rotimi, 2016). Conventions on maritime crime cannot be used in Nigeria's prosecution, and violators cannot be held accountable. The absence of domestic legislation undermines the efficacy of Nigeria's enforcement procedures, leading to catch and release situations. Effective law enforcement against unlawful maritime activities requires robust capacity in surveillance, response, and enforcement (Osinowo, 2015). The FALCON EYE surveillance system has improved surveillance, but inadequate vessels for patrols and rescue duties affect response time and enforcement measures (Wertheim, 2017). The Nigerian Navy struggles to navigate into creeks and areas where pirate vessels are not built for such waters, resulting in hot pursuits (Salau, 2017). One of the contributing factors to Nigeria's position is the challenge associated with the use of armed guards on board vessels. There has been a case where Nigerian Navy personnel accompanying a commercial vessel were killed by pirates and the crew taken hostage Anyimadu,(2013). Nigeria's armed guards on commercial vessels have been involved in incidents such as firing at a boarding party vessel. This is due to territorial sovereignty concerns and concerns about unregistered weapons being brought into the country (Steffen, 2015). The case of MV MyreSeadiver, where the ship owners claimed a license to carry weapons, highlights Nigeria's measures against armed guards (Anyimadu, 2013). Limited inter-agency cooperation in the maritime sector has led to a culture of rivalry, with some agencies engaging in practices to outsmart others. This has led to illegal activities such as gun trafficking and illegal possession of arms and ammunition (Odoma and Aerinto, 2013). The differences in culture of states within the Gulf of Guinea region was also identified by Mandanda and Ping (2016) as hindering cooperation between states to ensuring effective implementation of maritime laws. The analysis reveals that maritime law enforcement in Nigeria faces challenges due to inadequate measures, resulting in gaps in enforcement and allowing illicit maritime activities to flourish. This is due to the diverse languages, governance approaches, and equipment of the nations, which hinder effective cooperation among states.

Research Question 3: What Are Possible Ways of Ensuring The Successful Implementation Of International Laws Within Nigeria?

International law is largely the creation of government this question has almost outline the devastating areas of activities in Nigeria, in which global law seems to play an indispensable role which therefore reflect the way global law is interpreted and perceive by Nigeria. In the formulation process different group of persons by virtue of their office duties and responsibility plays significant role in the formulation of international law, particularly those who research in the area of global law and also those who serve in the representative capacity as ambassadors in the country's foreign missions abroad. The forces that give right to international laws and global affairs are complex and many. But one significance record is that persons who advice the regime on the importance of international law and what it should reflect actually plays a paramount role in the formulation of international law. Given these constraints and problems, the situation in Nigeria must be carefully assessed. A plethora of challenges engendered international law development in Nigeria.

1. Nigeria has a strong educational structure, with numerous universities studying international law. However, the country faces challenges in implementing and developing international law. Governments, non-governmental organizations, and individuals need to provide financial support for progressive contributions. To ensure successful implementation of international laws, several methods should be considered, including redoubling efforts by current scholars, building upon the foundation, and addressing the needs of the younger generation as further highlighted below:
    a) **Legal Libraries**: Two main problems arise from the establishment of legal libraries: the

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

b) **Subsidies**: Direct subsidies to universities and institutions of higher studies are the traditional way to develop the study of international law. As a procedure in United States and Europe, the legacy of permanent members in global law-by which scholars devote sufficient time in research - as the best way to develop the study examine international law. This is one significant area that wealthy and spirited citizens and institution would be useful.

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

d) **Training and Refresher Courses**: The importance of training and refresher courses in the promotion of international law cannot be overemphasized. The purpose of such courses is to widen the knowledge of professors, post-graduate students, and junior officials by attending classes taught by eminent professors. This could readily be organized from time to time in Nigeria to accommodate the interest of scholars in international law. In order to accomplish all of the above, money is very much needed. In these times of serious economic crisis, funding becomes difficult. Ultimately, however, the government has the responsibility to solve these problems.

Therefore, for the aim of overcoming the hurdles against effective and successful implementation of international laws, the following recommendations were made. Effective management framework should be developed to allow flexibility in the Nigerian environmental governance. The planning strategy should consider the implementation time, policy responsibility, enforcement methods, and necessary resources. The government should increase budget allocation for environmental institutions, provide adequate funding and training, and share environmental duties among different institutions. This will help prevent overlapping duties and power struggles between institutions, ensuring effective governance and diplomacy in environmental governance.

4. CONCLUSION

The study reveals that Nigeria's failure to enforce international human rights laws is largely due to the lack of strong democratic institutions and contradictions in the country's constitution. The country domesticated the African Charter on Human and Peoples' Rights without respecting its internal legal structure, which is not yet suited to enforce all rights enshrined in the charter. The regime of civil and political rights in Nigeria is enforceable through a special provision in section 46 of the 1999 Constitution, which is a direct reflection of section 42 of the 1979 Constitution. The rules restrictively apply to civil and political rights, while Economic, Social and Cultural (ESC) rights and some solidarity rights are captured in Chapter II. This discriminatory disposition of the 1999 Constitution defeats the essence of the government of rights procured by the African Charter. The regulation of environmental enforcement is also a significant challenge, as the 1999 constitution places issues relating to environmental policies under the exclusive, concurrent, and residual list, revealing the capacity of inter-governmental influence in environmental issues.

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