LEGAL FRAMEWORK FOR TREATY MAKING AND MANAGEMENT IN NIGERIA

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Abstract

Treaties are the bedrock of international relations. Nigeria has signed on to several treaties that have given her a voice in global governance but have also raised concerns on their implications for the country. The paper interrogates the extant legal framework on treaty management in Nigeria and highlights the international legislative processes involved in making treaties. The paper examines the practice in other jurisdictions as well. The discussion inter-alia finds the Treaties (Making Procedure, etc) Act, 2004 inadequate and recommends its replacement with a robust law that will provide a legal and institutional framework for effective treaty management in Nigeria.

***Keywords**: International Relations; Legislative Process; Treaty Making; Treaty Management.*

INTRODUCTION

Treaties constitute the major means of entering an agreement in international law. It is not only a source of international law, but it is also one of the laws that the International Court of Justice is enjoined to apply.[1] In the evolution of modern states, treaties have served as the organizing principle of world affairs. The Treaty of Westphalia 1648 for all purposes altered the order in the relationship among nations from a vertical relationship of might was right to horizontal one of equality of sovereigns and the principle of non-interference. This horizontal relationship of equals makes the case for co-operation in matters of mutual interest resulting in the signing of a number of treaties by countries.[2] Practically all issues in national security and well-being have escalated to the international sphere requiring a code of global good governance crafted in treaties and agreements. International agreements bear significant implications for national law, national institutions and the nationals of states[3].

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1. Article 38(2) ICJ Statute.
2. Earlier the concern was on foreign affairs and boundary determinations but much later to other critical areas of interest. In our contemporary world the subject of treaties have continue to expand, spanning shipping, social security, health arrangements, defence and security, nuclear non-proliferation, environment preservation, civil aviation and maritime transport, technological exchanges and agreements designed to set humane standards at times of conflict.
3. Giving effect to treaty obligations often requires passage of implementing legislation; parliament is necessarily involved in the enactment of legislation that implements the treaty regime, any such legislation then become the rule of governance for individual conduct. The practical effect of international agreements is often the imposition of

With the widening terrain for global cooperation and collaboration, global interdependence will continue to intensify thus mainstreaming the need for deftness in treaty-making. Countries that have capacity can leverage the immense opportunities of such collaboration and cooperation through treaties. This underscores the importance of this discourse for which considerable kinds of literature have been devoted.[4]

Nigeria is a sovereign member of the international community following her independence in 1960 and republican status in 1963. The country was admitted as the 99th member of the United Nations on October, 7th, 1960. It signed and ratified the 1969 Vienna Convention on the Law of Treaties[5]. She has entered into several binding bilateral and multilateral treaties[6] at global and regional levels with individual and select nations as well as international and regional bodies spanning the protection and promotion of human rights[7],

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obligations and the conferral of rights on citizens. In this way, treaties restrict or empower individuals to act in the national as well as international spheres. Thus citizens may be directly affected by international agreements as, for example, where human rights are recognised together with the procedural mechanism capacity available to the individual to vindicate those rights, or where environmental obligations require that a particular polluter pay for environmental harm caused by his actions. Treaties frequently involve considerable financial, administrative and technical commitments on the part of the consenting state. Such commitments result in a drain on public resources and the public purse- Winston Anderson 'Treaty making in Caribbean Law and Practice: The Question of Parliamentary Participation, <https://www.cavehill.uwi.edu>law>...:: p 75-76. accessed> accessed 14 December 2018.

4. Chris C Wigwe, *International Law Practice: The World Bank, IMF and State Sovereignty*, (Mounterest University Press, 2011): Babatunde Isaac Olutoyin [2014] (3)(3) 'Treaty Making and Its Application Under Nigerian Law: The Journey So Far', *International Journal Of Business and Management Invention*, <www.ijbmi.org> 14 December 2018: Neha Susan and Ashwaty M N, 'Implementation of Treatise And the Role of Judiciary' International Journal Of Socio-Legal Analysis and Rural Development, Volume 2, Issue 1.: Winston Anderson 'Treaty making in Caribbean Law And Practice: Opcit: Edwin E Egede (2008) " Bakassi: The Green Tree Agreement (GTA) and Section 12 of the Nigerian 1999 Constitution, <https://works.bepress.com/edwin_egede/8/> accessed on 14 December 2018.
5. Submitted the instrument of ratification to the UN on the 26th May,1969
6. See Appendix A.
7. The Banjul Charter.

protection of the environment[8], promotion of trade and investments[9], crime prevention and prosecution[10] and exploitation of her natural resources.[11] There are profound concerns on some of the treaties that Nigeria has entered into or about to sign. The Green Tree Agreement[12] was intended to implement the judgment of the International Court of Justice in the land and maritime boundary between Cameroon and Nigeria.[13] This bilateral treaty between the Federal Republic of Nigeria and the Republic of Cameroon concerned the withdrawal and transfer of authority in the Bakassi Peninsula to the latter. In the 8 articles and 1 annexure of 6 clauses, no form of compensation was contemplated for the vast resources Nigeria committed to the development of Bakassi. The Kyoto Protocol is an amendment of the Agreement on the United Nations Framework Convention on Climate Change[14]to reduce the level of greenhouse gas emission implicated in global warming to a safe and tolerable limit. The challenge Nigeria faces in its implementation include the country's overdependence on fossil fuel and natural gas as major sources of foreign exchange. The African Continental Free Trade Agreement is intended to bring together 54 African countries with a combined population of more than one billion people and a combined gross domestic product of more than US$3.4 trillion. When it comes into full effect after signing and ratification by members, the treaty would result in the largest free trade area in terms of participating countries since the formation of the World Trade Organisation. The agreement requires members to remove tariffs from 90% of goods allowing free access to commodities, goods and services across the continent. With the state of our industries and population size, Nigeria may provide the market for other countries and do more damage to her ailing manufacturing and industrial sector.

This paper interrogates the extant regime for treaties making in Nigeria with the view of having an enabling framework that can drive and deliver the very essence of international cooperation on the back of treaties. For building

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8. Kyoto Protocol.
9. ICSID Agreement.
10. Several Mutual Legal Assistance Treaties.
11. United Nations Convention on the Law of the Sea. (UNCLOS).
12. Signed at Green tree New York on the 26//6/2019.
13. (2002) ICJ Reports, 303 delivered on October, 10, 2002.
14. Signed in the Japanese city of Kyoto in December, 1997. Signed and ratified by Nigeria in the year 2004.

capacity, the paper highlights some of the processes and international best practice involved in treaty-making. The task is undertaken under the five headings of introduction, nature of treaties, the legal framework for making treaties in Nigeria, processes and techniques in making treaties; and conclusion draws the curtain on the discussion.

NATURE OF TREATIES

The term "treaty" denotes an agreement entered into by two or more sovereigns and which is binding at international law. According to Article 1, of the 1969 Vienna Convention on the Law of Treaties, a treaty is defined as an international agreement between states in written form and governed by international law, whether embodied in a single document or in two or more related instruments and whatever its particular designation.[15]

There is a distinction between a law making treaty and a treaty contract. While the former is normative and source of international law, the later may create joint venture agreement between constituent parts of a federation with international organization for the provision of financial accommodation or rendition of certain services. A protocol proper speaking amends or modifies a treaty. Treaties by their nature may be bilateral[16] or multilateral.[17]

By Article 2, Vienna Convention 1969, States and entities proximate to States are accorded treaty-making capacity. Individuals lack the capacity to make a treaty[18]. Thus every state is competent to enter into a treaty with respect to

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15. As used in the Treaties (Making Procedure etc) Act, CAP T20, Laws of the Federation of Nigeria, Treaties and Agreements "mean instruments whereby an obligation under international law is undertaken between the federation and any other country and includes "conventions" "Act" "general acts" "protocols" "agreements" and "*modi Vivendi*", whether they are bilateral or multi-lateral in nature."
16. Between two nations-Mutual Assistance on Criminal Matters, Extradition treaties and Aviation Agreements.
17. Between three or more nations and generally developed under the auspices of international (intergovernmental) organisations like the United Nations, International Labour Organisation.
18. Article 1.The Anglo-Iranian oil case (1952) ICJ Rep 93.

matters that fall within its sovereignty.[19] Treaties making is a subject in the realm of public international law. A treaty is binding at international law on the customary principle of *pacta sunt servanda.*[20]

There are two important stages in treaties making; signature and ratification. The signing of a treaty is a symbolic assent of the state to the instrument. Ratification is the process by which a state establishes its consent to be bound by the treaty.[21] The implementation of domestication is the process by which a treaty validly entered into is enacted as legislation so it can have an effect in the domestic environment. The first two stages are executive acts while the third involves the legislature.[22]

Generally, there are two known models for treaty-making and enforcement. Some countries operate on the Monist model; here once the parliament ratifies a treaty, it is in principle enforceable. Ghana[23] USA and Kenya are proximate examples.[24] On the other hand, there are countries that adopt the Dualist model; under this system, a treaty signed and ratified by the executive requires

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19. See the Wimbledon case [1923] PCIJ Series A No 1.
20. See Article 26, Vienna convention on the Law of treaties. Shaw, Malcolm N (2008) International Law, 6th edn Cambridge University Press.
21. See Article 1, Vienna Convention on the Law of Treaties, 1969.
22. Stating the UK practice (similar to Nigeria's), in the case of *J H Rayner Ltd v Department of Trade & Industry* [1990] 2 AC, 418,476, the court stated "The government may negotiate, conclude, construe, observe, breach, repudiate or terminate a treaty. Parliament may alter the laws of the United Kingdom" Putting it graphically, the Privy Council in *Attorney General for Canada v Attorney-General for Ontario* [1937] AC 326,347-348 stated: "It will be essential to keep in mind the distinction between (1) formation and (2) the performance of the obligations constituted by a treaty… Within the British empire there is a well establish rule that the making of a treaty is an Executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action…Parliament, no doubt, has constitutional control over the Executive; but it cannot be disputed the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the Executive alone. Once they are created, while they bind the state as against the other contracting parties. Parliament may refuse to perform them and so leave the State in default.
23. Section 75, Constitution of the Republic of Ghana.
24. The executive negotiate the treaty, debated by the legislature and voted on, the executive proceed to ratify the treaty and it automatically becomes the laws of the land. Section 2(6) Constitution of Kenya.

incorporation in domestic law to be enforceable. Nigeria, India[25] and Australian have this practice. However, lately, on human rights issues, Nigeria inclines to the Monist model. The Fundamental Rights (Enforcement Procedure) Rules 2009 enjoins the courts to have respect for municipal, regional and international bills of rights cited to it without any insistence that such an instrument must have been domesticated. In *Koloindi Aniso & 4 Ors v The President and Commander-in-Chief and 3 Ors*[26] the Federal High Court held the Federal Government culpable for the invasion of Odi in Bayelsa State contrary *inter-alia*, to Article 5, United Nations Code of Conduct for Law Enforcement Officers even when there was no evidence that the instrument had been domesticated.

LEGAL FRAMEWORK FOR TREATY MAKING IN NIGERIA

Generally, the Constitution of the Federal Republic of Nigeria, 1999[27], the Treaties (Making Procedure, etc) Act[28], 2004 and case law[29] provide the main regulatory framework on treaties management in Nigeria.[30]

Under Chapter 2, Constitution of the Federal Republic of Nigeria, 1999[31], the foreign policy objective of the Nigerian State is the promotion of African integration and support for African unity. It shall promote international co-operation for the consolidation of universal peace and mutual respect among all nations and elimination of discrimination in all its manifestations. Importantly, its foreign policy objective shall include respect for international

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25. In India, the Treaty making power has been invested with the Union under Article 246 and entries 13 and 14 of List 1. Article 253(5) empowers the parliament to make any law for the whole or any part of the territory of India, for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body"
26. Suit No FHC/PH/CP/11/2000.
27. As Altered (CFRN) Sections 19,5,4 and 12.
28. CAP T.20, Laws of the Federation of Nigeria, 2004.
29. In *Oshevire v British Caledonia Airways Ltd*[29] : *UAC (Nig) Ltd v. Global Transport SA*[29] *Gani Fawehinmi v Sani Abacha.*[29]
30. See also Section 254(C) CFRN (Third Alteration Act. CFRN, Fundamental Rights (Enforcement Procedure) Rules, 2009.
31. CFRN, (as altered) section 19.

law and treaty obligations as well as the settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication. It shall seek the promotion of a just world economic order. These laudable objectives can be achieved on the back of treaties with other countries. Implementation of treaties is an item on the Exclusive Legislative List for which only the National assembly has the powers to make laws.[32] The often-cited legal provision on international treaties in Nigeria is section 12, CFRN. The section provides:

(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty.
(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the houses of Assembly in the Federation.[33]

Section 12 CFRN makes clear that they must be made part of our domestic law through the process of transformation. Transformation of treaties into municipal law entails clothing them with domestic legislative garb[34]. Until then, the treaty remains an executive initiative.[35] Transformation may be achieved either through re-enactment or by reference. Transformation by re-enactment is achieved when the implementing statute directly enacts specific

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32. Section 4, CFRN: item 31, Exclusive Legislative List.
33. Why should they not be involved in the making of the treaty? The jurisprudence has been fairly well developed by the Indian court over time.
34. In the case of *Registered Trustees of National Association of Community Health Practitioners of Nigeria v Medical and Health Workers Union of Nigeria* [2008] 2 NWLR (pt 1075) p 575, the Supreme Court of Nigeria held that the International Labour Organisation convention having not been domesticated in Nigeria had no binding effect in Nigeria.
35. South Africa has similar approach. In *Azanian Peoples Organisation (AZAPO) v President of the Republic of South Africa* [1996] 88 ECLR1015, the court held that international conventions and treaties do not become part of the country's municipal laws, enforceable at the instance of private individual, until and unless they are incorporated into the municipal law by legislative enactment.

provisions or the entire treaty usually in the form of a schedule to the statute[36]. Transformation by reference is usually contained either in the long and short titles of the statute or in the preamble or schedules.

The legislative intendment of section 12(2) of the CFRN is that the legislative competence of the States would be interfered with where the proposed legislation seeks to implement a treaty bearing on the concurrent legislative list. This would require the cooperation of State Houses of Assembly. From the provision of section 12 CFRN, the implementation of treaties can be divided into two major headings. First, are those that deal with matters in the exclusive legislative list governed by section 12(1) and the second, those that deal with concurrent legislative list governed by section 12(2) & (3) CFRN. While in the case of section 12(1), a law by the National Assembly is required, in the case of the second, ratification is required by the majority of all the State Houses of Assembly. In the process of making such treaties, carrying the States along[37] will facilitate the ratification at a later stage of implementation.

In effect section 12 prohibits executive lawmaking through the instrumentality of treating making. Since the making of the treaty is within the competence of the executive, the domestication procedure is a means of checking executive incursion into the exclusive preserve of the legislature.

As a major drawback, the Constitution has not laid out any process for making treaties. Section 12 is concerned with when a treaty comes into force[38]. This can be contrasted with the procedure in other climes where treaty-making is expressly provided for. Under section 11(2) of the Constitution of the United States of America 1789, the President has power by and with the advice and

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36. See the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, CAPA9, Laws of the Federation, 2004.
37. Under the Canadian Constitution, the States are carried along in the process of the treaty making where it affects them.
38. Even though they must be made before they are implemented. According to Oyebode most of the characteristics of commonwealth constitutions are the lack of clear cut provisions on treaty making powers. Instead the issue has been approached by way of treaty implementation. See Oyebode, A.(2003) note 46, at 119.

consent of the Senate to make treaties, provided two-thirds of the Senators present concur. Section 1, the Australian Constitution empowers the executive to enter into treaties. At first glance, the Treaties (Making Procedure, etc) Act[39], 2004 would appear to have been enacted to fill in the gap. The avowed objective of the Act is to provide among other things, for treaty-making procedure and the designation of a depository for all treaties entered into between Nigeria and any other country.

By section 1(1), the treaty-making procedures specified by the Act shall be binding and applicable for the making of any treaty between the federation and any other country on any matter on the exclusive legislative list contained in the constitution.[40] According to section 1(2).

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

In the making of treaties, the Act[41] has classified all treaties to be made between the Government of the Federation and any other country into three classes and for implementation stipulates how they are to be dealt with. These are:

(a) Law-making treaties, being agreements constituting rules which govern interstate relationship and cooperation in any area of endeavour and which have the effect of altering or modifying the existing legislation or which affects the legislative powers of the National Assembly;
(b) Agreements which impose financial, political and social obligations on Nigeria or which are of scientific or technological import;
(c) Agreements which deal with mutual exchange of cultural and educational facilities.

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39. CAP T.20, Laws of the Federation of Nigeria, 2004 traceable to the Treaties(Making Procedure etc) Decree 16,1993
40. *Ibid*, section 1.
41. *Ibid*, section 2.

According to the Act, the first category of treaties requires the treaties to be enacted into law. Agreements in the second category require ratification while those in the third category may not need to be ratified.[42]

The Act constituted the Federal Ministry of Justice as the depository of all treaties entered into between the Federation and any other country. Accordingly, all treaties entered into between the Federation and any other country by any ministry, governmental agency, body or person shall be deposited with the Federal Ministry of Justice. The Ministry is obligated to prepare and maintain a register of all treaties which shall be opened at all reasonable time for inspection by members of the public on the payment of such token fee as may be prescribed from time to time.[43] The Act empowers the Ministry to the exclusion of any other ministry or authority to give notification on the conclusion of any new treaty to the Federal Government printer for purpose of publication.[44] This probably is to bring such an international instrument to public awareness.

Some quick comments can be made on this provision. Firstly, the provisions inadvertently nominated those who can negotiate and enter into a treaty for Nigeria. The Act does not appear to appreciate the exalted office of the President with regards to entering into treaties. The executive power of the federation, which extends to the execution of laws of the land, is vested on the President who may exercise such powers directly or through the Vice-President, Ministers or officers in the public service of the federation. Treaty making certainly falls into this ambit of the President's power. Nigeria is a federation headed by a President. The President as the Chief executive is designated the head of state and all his legally relevant international acts are considered to be acts of the state, including the conclusion of treaties and declaration of war[45]. In international law, heads of state and government,

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42 Section 3 (2) of the Act.

43 Section 5 of the Act.

44 Section 6 of the Act.

45 Nwabueze, B O *Federalism in Nigeria under the Presidential Constitution* (London, Sweet Maxwell 1983), p255-256. In Britain, treaty making power is part of the royal prerogative over foreign affairs which the queen may exercise without parliamentary

foreign ministers, heads of diplomatic missions and accredited representatives to international conferences have powers to represent their countries[46]. Outside this limited category, persons representing states must produce appropriate full powers to represent his country.[47] Ominously, in mentioning those who can enter into treaties, the President is not mentioned.

Secondly, while section 12 (2) CFRN authorized the National Assembly to legislate on treaties for the entire federation whether the subject is on the exclusive or concurrent legislative lists, section 1(1), Treaties Act limits treaties making to matters on the exclusive legislative list. Section 1(1), Treaties Act cannot limit section 12(2) CFRN. To the extent of its inconsistency with the constitution, the said section 1(1) will be vanquished by the force of section 1(3) CFRN.

Thirdly, a search at the Ministry of Justice reveals the absence of a comprehensive register of all treaties Nigeria has signed and or ratified with other countries. The Secretary to the Federal Government and the Ministry of External Affairs who could lay claim to being the legitimate or proper custodians of Nigeria's international treaties cannot boast of a comprehensive register of Nigeria's international instruments. This leaves so much to be desired.

Fourthly and fundamentally, the Act completely failed to deliver on its avowed objective; from the title[48] to its content. Analysis of the enactment shows that no procedure is laid out for the making of treaties in the law. It is at best, a classification of treaties and designation of the Ministry of Justice as a

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involvement. In Canada the power resides with the Governor-general. See *Attorney-General for Canada v Attorney-General for Ontario* (1937) AC 326,327. See also *Attorney-General of the Federation v. Attorney-General Abia State & 35 Ors* [2002] 16,1,WRN,1. The reason for this according to Oyebode includes avoidance of conflict and discordance in the area of foreign policy, the need for single identity, as a unified foreign policy forms part of the attractions of federalism. Oyebode, A *Treaty Making power in Nigeria* in (ed) *International Law and Politics: An African Perspective* (Bolaby Publishers 2003), 118.

46. Vienna Convention on the Law of Treaties, Article 7(2)

47. *Ibid*, Article 7(1).

48. "etc" in the title of the Act is not only meaningless but introduced more confusion as to what the word was intended to convey.

depository of treaties law, nothing more[49]. The law is simply grossly inadequate for a country the size and importance like Nigeria. There is a need for urgent law reform in this area.

The Processes and Techniques in Making Treaties

Treaty is akin to international legislation. The process is by no means as standardized as the municipal legislative regime. Where the treaty is bilateral, the processes would appear less complex than a multilateral agreement involving three or more parties. For the purpose of analysis, it is possible from an international best practice perspective, to distill a number of stages.

The international treaty formulation process is one that may take place often under the auspices of an Inter-Governmental Organisation (IGO).[50] The treaty may provide new tasks for an existing organization or provide for the creation of a new organization for the carrying out of some of the objectives of the new instrument or the establishment of a necessary group of experts.

A state party faced with a new phenomenon for which international action is desired makes efforts to build a wide consensus on the issue. This could lead to the adoption of a declaration expressing a consensus, making certain recommendations and perhaps taking the initial steps towards the formulation of a treaty.

Initiating the process, the proposal is then made by the representative(s) of one or more of the states concerned. In preparing the proposal, the initiator must decide if the perceived need for and anticipated value of the proposed instrument, and the likelihood of achieving it, justify the commitment of the resources expected to be required to formulate, adopt and bring the instrument into force. International best practice in techniques of treating making will contemplate the need that the new initiative is to meet; the existing legal regime, including the extent of its applicability to the perceived problem;

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49. It appears to be a piece of legislation hurried put together during the Military era in Nigeria.

50. Archive.unu.edu/unupress/unupbooks/uu25ee/uu25ee09.htm accessed on June, 26, 2019.

legislative effort in other jurisdiction; the likelihood of success in developing an instrument; the optimal form for the proposed agreement (Treaty, solemn declaration, model law, protocol); the likelihood that the proposed instrument will be accepted by a sufficient number of significant states; anticipated time schedule for the initiative; the expected cost of formulating and adopting the proposed instrument for the states participating in the process; in formulating treaties in relation to technical or scientific problems, the necessity to carry out extensive scientific studies or research to determine the scope of the problem and potential solutions.

To develop responses to these issues, various approaches may be adopted ranging from secretariat research carried out in a library, to surveys of member states and interested intergovernmental and non-governmental organizations, meetings of experts, etc. The initiator of the proposal may anticipate these likely directions and present a report addressing them. Convinced that the proposal is worth the while, the party concerned may escalate the proposal to the plenary of the organization of member countries.

The next stage is preparing an initial draft of the norm creating instrument. This can be carried out in so many different ways. Sometimes the draft may be prepared and submitted by the initiating state as part of its proposal on the project. It is a good technique that this is preceded by careful informal consultation with other stakeholders. Skilled and experienced draftsmen with knowledge of the nuances of international law will be relevant at this stage.

The most tedious stage is the negotiation stage where parties will consider the terms and text of the instrument. The role of an adroit negotiator at this stage cannot be over-emphasized. This stage involves the mediation of various interests viewed from various prisms (scientific, legal, social, cultural, religious, resource committers and resource seekers, etc). International best practice requires negotiation as to substance and form to be started before the treaty formulation process was initiated and sustained even after the treaty has come into force. The negotiation is primarily a dialogue among governments carried out by their designated representatives. In the case of IGO, the body will normally report periodically to a plenary organ either on their work in general or by request on a particular aspect. The report may be in greater or lesser details ranging from a mere statement that work is continuing or transmission of the text of the latest draft indicating areas of challenges such

as disagreements. This may then be discussed at the plenary for the input of member states. The discussion at the plenary may culminate in a final resolution of outstanding issues or a direction to proceed in a particular manner.

Where the process of the treaty formulation is complete or at least has progressed as far as it can, a decision as to its adoption has to be taken. The forum for the adoption must be designated which may be the standing organ or ad-hoc conference for the purpose.

The adopting forum must at the end of its task be able to approve the texts of the instrument submitted for formal action by the states. The task of the forum includes the completion of the substantive negotiation, perfection of the texts, formulation of final clauses, consideration of potential reservations, to be regulated either by clauses in the instrument itself or in a final Act.
Decision making is a very crucial stage of treaty-making. The parties must make decisions in advancing the legislative process at every stage. In principle, the decision can be taken by votes cast; however international best practice in techniques of treaty-making favours seeking unanimity[51]. The search for consensus can make the preparation and implementation fluid and less rancorous.

In bringing treaties into force, the international legislative process differs from the municipal one in one fundamental way. Once a municipal legislation is passed by the legislature and assented to by the executive, it becomes law in force and binding on all, in contrast, the adoption of a treaty by an IGO or conference normally has no immediate legal effect. The individual states must take actions by having their representative sign it and have that signature ratified by the appropriate governmental action. There may be a need for domestication.

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[51]. The one nation one vote is increasingly recognised as unrealistic by pretending to equate states that differ drastically in population, size, military, economic power, and contribution to the international community.

An important determinant of the fate of any treaty is its specific provision concerning its entry into force[52]. There is no general rule about what such a provision should be; it must reflect the special nature of the instrument. If the substantive provisions are such that they can beneficially apply if only a few states are parties, then this can be provided. However, there may be no point in bringing a particular treaty into force without the participation of all or substantially all the states concerned or of particular states that are key to its successful implementation. States can accept the coming into force of a treaty with reservations that modify the obligations as between the reserving state and the other parties. The result is that there may be considerable variations in the respective obligations of the parties.

To a considerable extent, these challenges may be resolved through careful drafting of the reservation provisions in the proposed treaty which may range from absolutely prohibiting any reservations to permitting almost all. The policy issue in this reservation must be appreciated. In general, reservations and optional provisions will, on the one hand, facilitate the participation of states with different views as to some substantive provisions in the treaty and at the same time, they may permit variations in obligations that are damaging and possibly even fatal to the instrument. A restrictive provision will help preserve the unity of the instrument but may reduce the number of participants. The balance is a political decision that accommodates the substantive content of the treaty and the concerns of the parties.

The process of keeping international treaties up to date is an important phase in treaty-making. Treaty may be amended from time to time by additional treaty actions either by amending existing treaties by creating others to complement older texts or by entirely superseding those that cannot be adapted to serve the new purpose[53]. Generally, all these measures technically require full-scale treaty initiating, formulating adopting and entry into force procedures. This can be time-consuming and quite challenging. It is for this reason that a number of devices have been developed for simplifying the process of updating treaties. This includes the use of frameworks or umbrella

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52. The African Continental Free Trade Agreement is to come into effect with ratification by 22 member countries. On 2 April, 2019 submitted its ratification document to the African Union as the 22nd member country. .
53. See the Kyoto Protocol.

conventions that merely state general obligations and establish the machinery for improvement.

When the text of a multilateral treaty is finalized, the common practice is to have the treaty 'open for signature' for a specified period. Countries may sign the treaty within that period but are not legally bound by its provisions until ratification. Where a country was not party to the treaty-making, it can nonetheless become a party to it through the act of accession.

A fundamental technique for obtaining the best from any treaty is engaging in a prior forensic national interest analysis. The need for a national interest analysis of treaties cannot be over-emphasized. This analysis notes the reason for becoming a party to a treaty, foreseeable economic, environmental, social and cultural effects of the treaty action, the obligation imposed by the treaty, its direct financial cost, how the treaty will be implemented domestically, and what consultation has occurred in relation to the treaty and whether the treaty provides for withdrawal or denunciation.

Australia presents a good example. The country has a Joint Standing Committee on Treaties (JSCOT) which carefully considers and analyses these concerns. An important mechanism for federal state consultation is the Commonwealth Ste-Territory Standing Committee on Treaties (SCOT) Which consists of representatives for the Premier's or Chief Minister's Department in every state and territory. SCOT is chaired by a senior official of the Prime Ministers Department and also has representatives from the department of foreign affairs and Trade and the Attorney-general's department. The Committee receives on a bi-annual basis a Treaties Schedule listing all international treaties that Australia is currently negotiating or which are under review. State and Territory representatives have the opportunity to seek further details, offer views and comments and flag those matters on which they wish to be consulted or to improve the consultative mechanism. The Department of Foreign Affairs and Trade (DFAT) regularly engages with professionals and

NGOs on international initiatives as the need arises and solicit experts for the state delegates[54]. There are good takeaways from this system.

CONCLUSION

Treaties are the bedrock of international relations. In the contemporary global context, no country can leverage the immense benefit of international relations without effective management of her international agreements. Nigeria has participated in a number of international conventions and treaties which has given it a voice in global governance. It has domesticated quite a number which are now enforceable in the Nigeria courts. The international legislative process involves the initiation, formulation and adoption of the treaty. Issues of human rights, economic, social and political matters will continue to dominate global discourse requiring a continuous international approach. Environmental issues have completely escaped national quarantine, global disruption occasion by information technology and the debut of artificial intelligence have upscale the need for more adroitness in treaties making and implementation by nations.

This paper finds the emphasis on treaty implementation in the CFRN without any serious consideration for the making of the treaty to be implemented, as inadequate. Unless a treaty is properly formulated, its implementation no matter how excellent will be of little benefit. The Treaty-Making (Procedure etc) Act, 2004 has not helped matters. It completely failed to provide any guidance on the processes and procedures for making treatise. The absence of an up-to-date depository for Nigeria's international treaties calls for serious concerns. The need for urgent action cannot be over-emphasized.

It is recommended that the Treaties Act, 2004 be repealed and in its place, a more robust treaties law should be enacted that will provide detail processes and procedures for making treaties in Nigeria. The proposed Act should create an independent body in the character of a Commission with members drawn from the Ministry of Justice, Ministry of Foreign Affairs, National Assembly, Nigerian Bar Association and academia. This body will assume the depository of all international treaties, continuously interrogate and track all treaties to which the country is party to and advise appropriately. The proposed

54. <https://dfat:gov.au/international-relations/treaties/treaty-making-process/> accessed on June, 26th 2019.

Commission must have and maintain a functional automated information system containing comprehensive information on the current status of treaties- list of signatories, ratification and other corresponding actions, date of entry into force, withdrawals, reservations, objections and terminations. It must maintain a virtual presence.

The need for capacity building cannot be overemphasized. The National Institute for Legislative and Democratic Studies, Nigerian Institute for Advanced Legal Studies and the various Sections of the Nigerian Bar Association can effectively collaborate with relevant stakeholders to build capacity in this area through periodic or well-structured highly impactful stakeholders' engagements on global best practice on treaties management.