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NIGERIAN FOREIGN POLICY UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1979)

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I. INTRODUCTION

It is proposed to divide this paper into two main parts. The first part will be concerned with a review of the philosophies that formerly underlined Nigeria's international activities, in other words, the foreign policy objectives enunciated by the country's leaders on the eve of independence in 1960.¹ By so doing, it is intended to ascertain to what extent there has been a shift from old practices in the foreign policy of the country. The second part will attempt to analyze the statements and/or provisions concerning Nigerian foreign policy contained in the 1979 Presidential Constitution. Finally, an attempt will be made to recommend some positive measures which will help Nigeria seize and maintain the initiative in African affairs as well as make a significant impact on world affairs.

The initial question remains whether the 1979 Presidential Constitution has made newer and clearer provisions on the country's foreign policy than the ones we are familiar with. Can one, on the basis of the emergence of a new Presidential Con-

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1. The question of Nigerian foreign policy has received critical examination by both Nigerian and non-Nigerian scholars. Having attained political independence on October 1, 1960, Nigeria became a republic in 1963. Barely three years later, the Nigerian Army carried out a coup d'etat in 1966, and held power until October 1, 1979, when they handed power over to a democratically-elected civilian government under a presidential constitution which was more or less copied from the American constitution. For an insight into the old philosophies of Nigerian foreign policy, see M. Ofoegbu & C. Ogbuagu, *Towards a New Philosophy of Foreign Policy for Nigeria* (Jan. 27 - Jan. 30, 1976) (presented at the Nigerian Institute of International Affairs, Conference on Nigeria and the World).

stitution, really expect to have new trends in the foreign policy of the country if the drafters of this supreme legal instrument failed to provide adequate opportunity for the building of a foreign policymaking process which takes modern conditions of international politics into serious consideration? These two basic questions naturally call to mind others such as: What is foreign policy? Who makes foreign policy? Is foreign policy of the same nature as domestic policy with respect to the way it is formulated?²

Some observers, politicians, and scholars hold the view that the foreign policy of a nation is a limited, well-defined statement of one nation's attitudes toward the external world.³ On the other hand, some believe that there is no real foreign policy for a nation, nor is there any clear distinction between the foreign and domestic phases of national policy. It is our view that essentially there are numerous policies for different issues. Any distinction between domestic and foreign policies of a nation is largely imaginary, for what a state does at home and what it does abroad will invariably be dictated by its paramount concern for domestic interests.

Even in peacetime, states commonly conduct their international relations in the same spirit as their military operations in war. That point of view was clearly set forth by Clausewitz in his definition of war as "the pursuit of policy by other means."⁴ What he had in mind was that the vital interests of state, which include all elements contributing to national security and economic and military strength, are essentially competitive. Whether the methods of national policy are peaceful or aggressive, their objectives are the same. As to the question regarding who makes foreign policy, it is submitted that this important task is no longer the exclusive concern of the Ministry of External Affairs or State Department of individual countries. This is because the relations between states of the world

2. These crucial questions, which are the main concern of the Constitution drafters, were ably tackled in M. Delancy, *The Draft Constitution and Nigerian Foreign Policy* (delivered in a Workshop on Nigerian Draft Constitution organized by the Department of Political Science, University of Nigeria) (Jan. 20 - Jan. 21, 1977).

3. W. WALLACE, *FOREIGN POLICY AND THE POLITICAL PROCESS* (1971).

4. 3 K. CLAUZEWITZ, *ON WAR* 121-23 (2d ed. J. Graham trans. 1911).

have assumed a complex nature, and thereby have created situations where many aspects of political, social, economic, and cultural life may have crucial effects on a country's foreign policy. Consequently, decisions made by various ministries as well as legislative houses will certainly have their international ramifications.

II. CHARACTERISTICS OF THE OLD NIGERIAN FOREIGN POLICY

The distinguishing features of Nigerian foreign policy enunciated on the eve of the country's political independence included:

(A) *Passionate Concern for World Peace*

The reason that the philosophers of Nigerian foreign policy stressed world peace was that they believed that peace within Nigeria would be strengthened by world peace.

(B) *The Nonalignment Policy*

This philosophy originated as a result of Cold War rivalries that existed between the two main ideological camps of socialism and capitalism. These rivalries were characterized by hostile propaganda, establishment of foreign military bases and blocs, restrictions on trade, especially raw materials, restrictions on social, scientific, and intellectual contacts between Eastern and Western countries, and the development of destructive weapons such as the atomic and hydrogen bombs. The authorities in these camps exerted pressure on Nigeria to take sides in the world conflict created by the Cold War. In response to these pressures, Nigeria opted for a foreign policy of nonalignment. An important aspect of this philosophy is that it emphasized first, that Nigeria must avoid identifying with any of the power blocs in the then-prevailing world system, and second, that the country must maintain an independent posture

and judgment on all issues which come before the United Nations and the world community, particularly, issues affecting human rights and freedoms.⁵

(C) *Cooperation*

The element of cooperation was vaguely defined to sustain the Balewa government's decision to stand by Nigeria's colonial friends, particularly Great Britain and the Commonwealth. It was cautious of breaking new ground in the Americas, the socialist states of Eastern Europe, or the African and Asian states. However, the Nigerian Civil War exposed the nakedness of the Balewa government's interpretation of friendship. When Nigeria was faced with the hard reality of securing arms, military aircraft, and diplomatic support, it was forced to face the socialist bloc as well as the Afro-Asian groups of states in search of friends, weapons, and diplomatic support.⁶

(D) *Respect for the Sovereign Equality of All Nations*

This philosophy stemmed from the fact that Nigeria did not want the other African countries to feel that it wished to dominate them because of the relative size and wealth of the country vis-a-vis other African states. This consideration, it is submitted, should no longer be seen as a constraint against action on the international scene, as certainly other African countries, if endowed with similar qualities, will use them in the service and leadership of Africa.

(E) *Non-Intervention in the Internal Affairs
of Other States*

The inclusion of this element in Nigerian foreign policy was essentially due to the pluralistic and multi-ethnic nature of

5. Prime Minister Balewa's address to Parliament (August and October 1960). Balewa was the first Nigerian Prime Minister, assassinated in a military coup in 1966. See also KALU EZERA, *CONSTITUTIONAL DEVELOPMENTS OF NIGERIA* (2d ed. 1964).

6. J. DE ST. JORRE, *THE BROTHERS' WAR: NIGERIA AND BIAFRA 180-85* (1972).

Nigerian society. This called for avoiding any civil war or internal instability likely to inhibit the process of national integration. Another factor is that Nigeria undertook to abide by the Charter of the United Nations, and this principle forms part of that charter. Furthermore, Nigeria was one of the states that pressed for and secured the inclusion of this principle in the Charter of the Organization for African Unity. However, Nigeria's rather blind and uncritical adoption of non-intervention has made it difficult to justify any Nigerian action likely to be deemed an interference in the internal affairs of other African states. This is so even when issues of excessive violation of human rights, foreign intervention in neighboring African states, and senseless economic warfare by neighbors of Nigeria seriously hurt the Nigerian economy and required limited intervention on the part of Nigeria.

(F) *Decolonization*

This constitutes an important element in Nigerian foreign policy. This is so because Nigeria recognizes the fact that all people of the world under colonial, alien, or minority rule are entitled to self-determination, as expressed freely by themselves through popular elections and referenda.

So far we have tried to review briefly what has constituted the key elements of Nigerian foreign policy for the past two decades. It is submitted that the above-named elements of the old philosophy of Nigerian foreign policy have failed in the past to sustain a dynamic foreign policy based on action. There arises a great need for a review of the elements with a view toward discarding the obsolete concepts. It is only by incorporating action-oriented elements into our foreign policy that we can infuse it with the dynamism which we consider the hallmark of contemporary international relations.

III. THE 1979 NIGERIAN CONSTITUTION

The elements enumerated above constituted the major marks of the old philosophy of Nigerian foreign policy which we submit still form the parameters of the country's foreign policy in the 1980's. These elements have failed in the past twenty years to

sustain a dynamic foreign policy. Against this background, let us turn to the 1979 Constitution as it concerns foreign policy.

The writing of a new (1979) constitution for Nigeria, constituting the formation of operational rules for the new system of government, a presidential system, provided an opportunity to build a foreign policymaking process that takes modern conditions of international politics into consideration.⁷

The formation of the new constitution provided an opportunity for the existing and ever-increasing interest and involvement of the masses in foreign policymaking to become an integral part of the foreign policy process. The most critical consideration concerns Nigeria's present and future role in international politics under the Presidential system of administration. What role does Nigeria hope to play in contemporary international relations? Does Nigeria wish to be an object of international relations rather than a subject? A perusal of recent scholarly comments on this crucial question point to the fact that Nigerians see their country as being an influential or leading power in West African or continental affairs, or perhaps serving as a spokesman for Africa or the Third World in the international arena.⁸

The 1979 Constitution, which ushered in the presidential system of government in Nigeria, contains some statements on the country's foreign policy. What this author considers the clearest of the statements on this important issue provides, *inter alia*:

The State shall promote African unity, as well as total political, economic, social, and cultural liberation of Africa and all other forms of international cooperation conducive

7. Nigeria celebrated the 20th anniversary of her political independence on October 1, 1980.

8. Akindele, *The Conduct of Nigeria's Foreign Relations*, 3/4 INTERNATIONAL PROBLEMS 12 (1973); Akindele, *On the Operational Linkage of External and Internal Dimensions of Balewa's Foreign Policy*, Odu, N.S. 12 (1975). In recent times Nigeria has shown increased leadership at the OAU in efforts to forge regional economic links among the countries of West Africa. This effort has found success in the Economic Commission for West Africa (ECOWAS). Although the link is yet in its infancy, it has a bright future. Recently, Nigeria hosted the first Economic Council of African and Asian States, which took place in Lagos. The role of Nigeria in the elimination of colonialism and racism in Southern Africa is well known. Furthermore, the tendency of Nigeria to

to the consolidation of universal peace and mutual respect and friendship among all peoples and states and shall combat racial discrimination in all its manifestations.⁹

Under the Constitution, the Executive is clearly the locus of foreign policymaking. It is the President who appoints his cabinet ministers.¹⁰ He also appoints most of the members of those councils which advise him regarding foreign affairs. One of such councils is the National Defense Council.¹¹ According to the Constitution, that council shall have power to advise the President on matters relating to the defense of the sovereignty and the territorial integrity of Nigeria.

The National Security Council shall have powers to advise the President on matters relating to any organization or agency established by law to ensure the security of the Federation.¹² The National Economic Council plays a significant role in the shaping of Nigerian foreign policy through its advice to the President on matters concerning the economic affairs of the Federation.¹³ In exercising his powers to appoint a person as chairman or member of the National Defense Council or National Security Council, the President shall not be required to obtain the confirmation of the Senate.¹⁴ Above all, the President is the Commander-in-Chief of the Armed Forces,¹⁵ and is responsible for the accreditation of diplomats.

The legislature has a role to play in foreign policymaking.¹⁶ "During any period in which the Federation is at war the National Assembly may make such laws for the peace, order, and good government of the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List

assume a dynamic international continental power appears to be gaining recognition as evidenced by the continuing stream of visits of international statesmen and presidents to Lagos.

9. NIGERIA CONST. of 1979 § 19.

10. *Id.* § 135.

11. *Id.* § 140(e).

12. *Id.* § 140(h).

13. *Id.* § 140(f).

14. *Id.* § 141(2).

15. *Id.* § 122(2).

16. Both the Senate and the House of Representatives, which make up the National Assembly, must sanction any declaration of war.

as may appear to it to be necessary or expedient for the defense of the Federation."¹⁷ Also notable is its power with respect to the budgetary process. Through its confirmation of executive appointments to foreign missions, the legislature will be able to influence foreign policy indirectly. Also, a potential for involvement in foreign policy exists in the "Powers of Investigation" of the legislature. It is submitted that, under the Constitution, the role of the legislature in foreign policy matters is indeed very limited.¹⁸ The Constitution, insofar as it affects foreign policy, clearly presents a traditional structure for the Nigerian foreign policy process. Foreign policy is an executive function with control centralized in the Presidency. But it is very doubtful that the President really has adequate means of directing or supervising the foreign policy activities of the departments of his government.

A major area of international affairs not yet commented upon is the making and enforcing of international agreements. The Constitution is silent regarding which organ of state has the power to bind the nation internationally. However, a specific provision on how treaties entered into may be implemented is adequately and clearly provided for.¹⁹ The Constitution provides as follows:

- (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

17. NIGERIA CONST. of 1979 § 11(3).

18. The legislature will certainly be a passive partner with regard to foreign policy matters if its function is to be limited to budgetary approval, confirmation of some personnel appointments, investigation, and treaty implementation. The legislature needs to be much more involved.

19. NIGERIA CONST. of 1979 § 12.

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.²⁰

The provisions of the Constitution with respect to treaty-making and its implementation are grossly inadequate and may create a source of major controversy in the future, considering the federalist structure of government and the possibility of the creation of more states.²¹ According to the Constitution, Nigeria is a federal state,²² that it is to say, it has in effect constitutional arrangements that provide for the allocation of governmental powers between the central and the other nineteen state authorities. As stated elsewhere in an earlier paper,²³ just like Australia, Austria, Canada, the Federal Republic of Germany, India, Malaysia, Switzerland, the United States, and the Union of Soviet Socialist Republics, to mention a few nations which have offered substantial evidence that treaty issues arise in a federal setup, Nigeria certainly shall not be an exception. The differences between *power to make* and *power to enforce* treaties in federal states remains a controversial problem under contemporary international law. There is the possibility that one, or even both, of these paradoxical situations may exist: 1) a federal state may be able to create an external international obligation that it does not have the power to enforce internally under its constitution; or 2) a federal state may have the power to enforce a treaty norm internally under its constitution, but as to an internal obligation must choose a) to reject the treaty entirely, rather than use its power, or b) to seek to

20. *Id.* §§ 12(1) - 12(3).

21. Presently, Nigeria has a total of nineteen states and there is increasing demand for the creation of more. Already, the appropriate Senate Committee on State Creation has been set in motion for this purpose. Discussions as to whether the constitution should be amended in order to bring about the creation of new states rage currently in the Nigerian press.

22. NIGERIA CONST. of 1979 § 2(2).

23. See C. Okeke, *The Nigeria Draft Constitution, Treaty Making and Treaty Implementation* (Jan. 20 - Jan. 21, 1977) (paper delivered at the Workshop on Nigerian Draft Constitution, organized by the Department of Political Science, University of Nigeria).

obligate itself by treaty only to the extent that it chooses to exercise its internal power to enforce it.²⁴

Overall, Africa has become the central piece of Nigeria's foreign policy. The present administration has left nobody in doubt of this intention. President Shagari made this clear in his address to the National Assembly when he said, *inter alia*, "In our foreign policy, Africa still remains Nigeria's priority interest. We renew our pledge of support to ECOWAS, the OAU, and the liberation movements in Africa. Let it be known that our commitment to the total liberation of our brothers in Zimbabwe, Namibia, and South Africa remains unshaken."²⁵

Also, in his inaugural address as the first Executive President of Nigeria, Alhaji Shahu Shagari declared: "We will extend our wholehearted cooperation to all African countries and organizations to bring about the unity of the African people and the rapid emancipation and development of all countries of Africa."²⁶

Nigeria's role in the settlement of international problems and conflicts has been quite remarkable. It is pertinent to observe in this regard that in the past year there has been an eruption of new international conflicts as well as significant progress in the settlement of a few old ones. There is no doubt that Nigeria's nonaligned stance which the present administration is upholding has earned her the respect of the international community as an influential mediator, particularly in resolving intra-African disputes. While we support the inclusion of non-alignment as an essential element of our foreign policy, a new reality which Nigeria cannot ignore or gloss over is that the Cold War has given way to tremendous forces of *detente* in East-West relations which consequently have led to the famous Strategic Arms Limitations Talks (SALT) between the two

24. C. OLIVER, THE ENFORCEMENT OF TREATIES BY A FEDERAL STATE.

25. F. Akinremi, *Continuing Nigeria's Pre-occupation with African Problems* IN THE PRESIDENCY IN NIGERIA (F. Davies ed. 1980).

26. President Shehu Shagari's first New Year's Day message to the Nation, *Sustenance of Democracy* (Jan. 1, 1980) (published by the Department of Information, Office of the President).

great powers, the United States of America and the Union of Soviet Socialist Republics.

IV. CONCLUSIONS AND PROPOSALS FOR THE FUTURE

The old philosophies of Nigeria's foreign policy have remained with very little modification. As we celebrate our twentieth anniversary of independence, it is strongly recommended that Nigeria should be able to seize and maintain the initiative in African affairs. For this to happen Nigeria must avoid vacillation and sell our decisions and postures on international issues as aggressively as possible, using all the diplomatic channels at our disposal. The need for using the instruments of mass communication available to us in this regard cannot be over-emphasized. The present era of international relations does not admit of a "low profile," provided we have done our homework well before embarking on any action.

In order that our homework is well done for an effective establishment of foreign policy, the following conditions must be satisfied:

1. There must be effective research and policy planning. Measured reactions on an *ad hoc* basis to events and situations cannot occur.
2. There must be a conscious and sincere effort to get information in determining and defining our interests, goals, and values.
3. There must be, as a matter of urgency, a data bank which would define on a country-by-country and region-by-region basis the interests, goals, and values of other nations in the African international system.
4. There must be effective use of the international law and international relations teachers of our universities.
5. There *must* be regular seminars for practicing Nigerian diplomats as well as Home and Cabinet office decision makers.
6. The role of the Nigerian Institute of International Affairs, whose main object, among others, is to encourage and facilitate the understanding of international affairs and circumstances, conditions, and attitudes of foreign countries and their people and to promote the scientific

study of international politics, *must* be reassessed and restructured to suit the new system.

7. Finally, there is great need for cooperation on foreign policy issues between the Executive and the Legislature. This is very important if Nigeria is to avoid a situation whereby the furtherance of some foreign policy measures crucial to the country are crippled by the refusal of the legislature to approve funds,²⁷ as happened when the United States of America was prosecuting the Vietnam War under the Nixon administration.

27. The need for this cordial relationship has recently been recognized by Dr. Jaja Nwachukwu in his lecture on Legislature and Foreign Policy; Nigeria's Experience Under the Presidential System (delivered at the Nigerian Institute of International Affairs, Lagos).