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## **Evolution of Subnational Foreign Economic Relations in Nigeria**

### **ABSTRACT**

In the current dispensation of civilian rule in Nigeria (1999- present), her subnational governments (SNGs) have increasingly been engaging in economic activities which impact how Nigeria conducts her international economic interactions. This emerging trend is at variance with the existing legal provisions under the 1999 Nigerian constitution, which preclude SNGs from this policy space. This paper examines the evolution of the constitutional framework for SNG involvement in Nigeria's foreign economic relations since independence. It is the argument in this paper that the exclusion of SNGs from foreign affairs under the 1999 constitution is a departure from the original configuration at independence. It is further argued that the recent episodes of SNG involvement in international economic activities are occurring despite the constitutional restrictions due to external factors such as globalization and internal factors such the growing need among SNGs to find alternative ways to fund their economic development objectives.

**Keywords:** foreign affairs federalism; constitutionalism; subnational governments; globalization; military rule.

## INTRODUCTION

Since Nigeria returned to democratic rule in 1999, there has been a noticeable flurry of economic activities by her sub-national governments (SNGs)<sup>1</sup> which have a direct and indirect impact on how Nigeria conducts her foreign economic interactions.<sup>2</sup> For example, in the period between 1999 and 2018, some of Nigeria's SNGs have actively engaged in foreign direct investment (FDI) related activities which have attracted the attention of international private investors and foreign envoys alike.<sup>3</sup> However, this emerging trend contradicts the existing constitutional framework for foreign economic relations under the 1999 Constitution which expressly precludes Nigerian subnational actors from acting in this policy space and entrenches central exclusivity in Nigeria's international economic landscape.<sup>4</sup> Interestingly, this has not always been the case. Focusing on the pre-1999 constitutional position in Nigeria, this paper examines the origin and evolution of the constitutional position on SNG participation in Nigeria's foreign economic relations from 1960 to date.

Three main arguments are presented in this paper. First, it is argued that the current constitutional exclusion of SNGs from the conduct of foreign economic relations in Nigeria, under the 1999 Constitution was not the original intention of the founding fathers of Nigeria. To substantiate this argument, the paper will examine some constitutional and institutional provisions during the first republic (1960-1966) which demonstrate that a shared policy space was provided for the central and SNGs in this regard. The paper also attributes the centralization of foreign economic powers in the current dispensation of civilian democratic rule to the years of military rule in Nigeria. Second, it is emphasized in the analysis that the Regions were given constitutional powers to contribute to foreign economic policy in the First Republic because revenue accruing from external economic activities, especially from the Commodity Marketing Boards, was pivotal to the economic development objectives of the regions. Third, it is further argued that the recent episodes of SNG involvement in foreign economic activities in the fourth republic (1999- till present) are occurring despite constitutional restrictions, because these actors crave access to foreign investment to meet their pressing economic development needs, as was obtainable during the First Republic. It is emphasized in this regard that two main factors are acting as catalysts for the new expressions of SNG foreign relations emerging in the Fourth Republic (despite the constitutional restrictions

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<sup>1</sup> Subnational governments for this paper refers to the 36 state governments which constitute the constitutionally recognized second tier of government.

<sup>2</sup> Since the start of the 4<sup>th</sup> democratic republic in 1999, there have been increased levels of participation by Nigeria's SNGs on the international scene. SNGs in Nigeria are actively engaging with international actors to attract Foreign Direct Investment (FDI) and to obtain international funding for their development projects.

<sup>3</sup> For examples of recorded SNG participation in external economic activities, see the discussions in section E of the paper.

<sup>4</sup> The provisions of the 1999 Constitution which entrenched central exclusivity in Nigeria's foreign economic regime is discussed in detail in section D of the paper.

on their participation). These two factors are the centrifugal force of federalism<sup>5</sup> and the exogenous impact of globalization.<sup>6</sup>

### **Methodology and scope of analysis**

In order to achieve the aim and objectives of this paper, a content analysis methodology is utilized to draw conclusions and inferences from the analyses of textual data. In the context of this paper, the relevant textual data includes provisions of the constitutions of Nigeria from 1960 to 1999 and literature on the historical evolution of federalism and foreign economic relations in Nigeria. These documents are analyzed to identify patterns, characteristics or relationships<sup>7</sup> which explain the antecedents of SNG foreign economic relations in Nigeria, as well as shed light on recent episodes of SNG forays into the international scene.

The scope of analysis encompasses a review of the constitutional and institutional frameworks which supports Nigeria's international economic policy and the capacity of the national government (i.e., the federal government (FG)) and the subnational governments (i.e., the second level of government) to participate in international economic relations. The scope of analysis in this paper covers the period from 1960 to date; a period when the evolution of Nigeria's federalism can be categorized into five periods:

- a. 1960 – 1966 (first civilian Republic) during which Nigeria had four subnational levels referred to as regions;<sup>8</sup>
- b. 1967 – 1979 (military interregnum) the high point of which was the promulgation of the *States (Creation and Transitional Provisions) Decree No. 14 of 1967* and the *States (Creation and Transitional Provisions) Decree No. 12 of 1976* which further divided Nigeria into twelve<sup>9</sup> and nineteen<sup>10</sup> subnational units respectively
- c. 1979 – 1983 (second civilian Republic)

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<sup>5</sup> Nwabueze describes federalism as a political system where power is divided between a minimum of two levels of government under a treaty (foedus) which prescribes and delineates the scope of powers to be exercised by each level of government. See Ben Nwabueze, *The Presidential Constitution of Nigeria* (Hurst & Company 1982) 37. However, in this paper federalism is conceptualized using the dynamic process approach developed by . See section e *infra* for discussions on federalism as a dynamic process.

<sup>6</sup> In this paper, Globalisation is conceptualized as a process of expansion in the interactions between peoples in all spheres of human endeavor due to a contraction of geographical boundaries in international relations. It is a significant phenomenon which has reshaped the dynamics of the international system because it has facilitated a reduction in the barriers to transnational relations between actors located in different jurisdictions. See J Isawa Elaigwu, 'Federalism, Regionalisation and Globalisation Africa' (1998) 1 *The Federalist* 72 <[http://www.thefederalist.eu/site/index.php?option=com\\_content&view=art&id=219&lang=en&Itemid=27](http://www.thefederalist.eu/site/index.php?option=com_content&view=art&id=219&lang=en&Itemid=27)> accessed 26 May 2014.

<sup>7</sup> See C Kothari *Research Methodology: Methods and Techniques* (2<sup>nd</sup> ed, 2004, New Age International) at 110; L Given (ed) *The Sage Encyclopaedia of Qualitative Research Methods* (2008, Sage Publication Incorporated) at 120.

<sup>8</sup> These were Eastern, Northern and Western Region (October 1960 – January 1966) and the Midwestern Region which was created from the Western Region (August 1963 – January 1966).

<sup>9</sup> They were North-West, North-Central, Kano, North-Eastern, Benue-Plateau, Central-West, Lagos, Western, Mid-Western, Central-Eastern, South-Eastern, and Rivers. See sec 1, *Decree No. 14 of 1967*.

<sup>10</sup> They were Anambra, Bauchi, Bendel, Benue, Borno, Cross River, Gongola, Imo, Kaduna, Kano, Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Plateau, Rivers, and Sokoto. See sec 1, *Decree No. 12 of 1976*.

- d. 1983 – 1998 (military interregnum) in the course of which Nigeria was further divided into twenty-one subnational units<sup>11</sup> in 1987, thirty subnational units<sup>12</sup> in 1991 and thirty-six subnational units<sup>13</sup> in 1996.
- e. 1999 – to date (fourth civilian republic).

With the preceding as background, this paper focuses primarily on the first and fourth civilian Republics. The selection of these two periods is because they represent two different positions in the federalism-international economic relations nexus and hence best illustrate the evolution which has occurred in the constitutional/institutional framework of SNG international economic participation in Nigeria. In this paper, it is argued more subsequently that there is a correlation between these periods of military interruption and the involvement of Nigeria's SNGs in foreign economic activities from 1960 till present. However, due to the limited scope of this paper, the twenty-eight years of intermittent military rule would also be reviewed, albeit in a condensed form.

## a. THE POST INDEPENDENCE SNG PARTICIPATION IN NIGERIA'S FOREIGN ECONOMIC RELATIONS

### 1. Constitutional Framework

Before analyzing the constitutional framework for foreign economic relations in Nigeria at independence, this section will start with a brief background of the origins of federalism in Nigeria. Nigeria's federalism pre-dates her independence.<sup>14</sup> The Richard and Macpherson Constitutions of 1945 and 1951 catalyzed the adoption of a federal structure as they introduced the regional system into pre-independence Nigeria.<sup>15</sup> Lyttleton Constitution of 1954 built on this by introducing a quasi-federal structure and provided for a loose federation where each region was granted some form of autonomy.<sup>16</sup> The 1960 and 1963 (Republican) Constitutions only further entrenched federalism in Nigeria by providing for multiple constitutions in one

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<sup>11</sup> Katsina and Akwa Ibom states were created via the *States (Creation and Transitional Provisions) Decree No. 24 of 1987*.

<sup>12</sup> See *States (Creation and Transitional Provisions) Decree No. 37 of 1991*.

<sup>13</sup> See *States (Creation and Transitional Provisions) Decree No. 36 of 1996*.

<sup>14</sup> I Gambari "Federalism and the Management of External Relations in Nigeria: Lessons from the Past and Challenges for the Future" (1990) 21/4 *Publius* 113 at 115. See also W Wali "The Development of Federalism in Nigeria: A Historical Perspective" in A Gana and S Egwu (eds) *Federalism in Africa: Framing the National Question* (2003, Africa Research and Publications) at 74 – 75. Wali avers that the foundation of federalism in Nigeria was initiated under the Richard Constitution of 1945 on the recommendations of Sir Bernard Bourdillon (Colonial Governor of Nigeria 1935-1943).

<sup>15</sup> Wali *The Development of Federalism in Nigeria*, above at note 12 at 77.

<sup>16</sup> *Id* at 74.

single document (one for the FG and one for each of the regions);<sup>17</sup> with that of the FG being *primus inter pares* only to the extent of inconsistencies between it and that of the offending region.<sup>18</sup>

In this period in the evolution of the Nigerian state, the regional governments had a significant degree of constitutionally guaranteed autonomy to determine the direction and pace of their economic development. This also made it possible for regional governments to participate in foreign interactions directly and indirectly to facilitate their economic development objectives.<sup>19</sup> The autonomy of the regional governments in this regard was facilitated to a large extent by a revenue sharing formula based on derivation which ensured each region got as much as it contributed to the earnings of the country.<sup>20</sup> This arrangement inspired each region to focus on developing and harnessing resources where each had a comparative advantage. For the West and East, their major agricultural export commodity was cocoa and palm oil respectively; while the North was mainly known for the production of hides and skin, groundnut and cotton.<sup>21</sup> More so, each of the regions took over marketing boards which had been set up by the departing British colonial government, first as commodity marketing boards in 1947 and subsequently reorganized as regional marketing board in 1954.<sup>22</sup> The regional marketing boards purchased export crops peculiar to each of the regions from farmers at stabilized prices for sale abroad. The funds, especially the surpluses in reserve, accruing from these sales by the regional marketing boards were a significant source of revenue for economic development in the respective regions.<sup>23</sup> As such it came as no surprise that the constitutional arrangements under the 1960/63 constitutions formalized this status quo.

In keeping with the conventional norm on centralized control of foreign relations by a nation-state, the 1960 constitution and subsequently the 1963 republican constitution (which replaced the former) gave the FG a

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<sup>17</sup> Note that under the 1960 Constitution there were three regions: the Eastern Northern and Western regions. The 1963 Constitution increased the regions to four with the addition of the Mid-Western region. See the Nigeria (Constitution) Order in Council 1960 <[http://www.legislation.gov.uk/ukpga/1960/55/pdfs/ukpga\\_19600055\\_en.pdf](http://www.legislation.gov.uk/ukpga/1960/55/pdfs/ukpga_19600055_en.pdf)> (Last accessed 02 March 2018). Hereafter referred to as the 1960 Constitution.

<sup>18</sup> See sec 3(1) the Constitution of the Federation 1963. Hereafter referred to as the 1963 Constitution. <<http://www.lawnigeria.com/CONSTITUTIONHUB/Constitution/1963ConstitutionofNigeria.html>> (Last accessed 03 March 2018).

<sup>19</sup> R Akindele and O Oyediran "Federalism and Foreign Policy in Nigeria" (1985) 41 *International Journal* 600 at 604; E Awa *Federal Government in Nigeria* (1964, University of California Press) at 273 ff 280.

<sup>20</sup> Secs 123-139 1963 Constitution. For an excellent account of the evolution of derivation principle in Nigeria, see C Uche and O Uche "Oil and the Politics of Revenue Allocation in Nigeria" ASC Working Paper 54/2004 African Studies Centre Leiden, Netherlands <<http://www.ascleiden.nl/publications/oil-and-politics-revenue-allocation-nigeria>> (Last accessed 02 March 2018).

<sup>21</sup> The importance of these agricultural products to the respective regions is reflected in the fact that the regional marketing boards were heavily dependent on the crops mentioned above for over 50% of their revenue. Helleiner corroborates this assertion stating that: "Each Regional Marketing Board handled all the relevant exportable produce of its region of jurisdiction. ...the Eastern Region Marketing Board did the bulk of its business in palm oil and palm kernels, the Northern Region in groundnuts and cotton and the Western Region in cocoa and palm kernels. These were not the only commodities handled by the Marketing Boards, but the remainder were of small relative importance." See G K Helleiner "The Fiscal Role of the Marketing Boards in Nigerian Economic Development, 1947-61" (1964) 74/295 *The Economic Journal* 582 at 585.

<sup>22</sup> G Williams "Marketing without and with Marketing Boards: The origins of State Marketing Boards in Nigeria" (1985) 34 *Review of African Political Economy*. 4 at 5-6. See also E K Hawkins "Marketing Boards and Economic Development in Nigeria and Ghana." (1958) 26/1 *The Review of Economic Studies* 51 at 51.

<sup>23</sup> R Sklar "Contradictions in the Nigerian Political System" (1965) 3/2 *The Journal of Modern African Studies* 201 at 203-204. See also Williams *Marketing without and with Marketing Boards: The origins of State Marketing Boards in Nigeria*, above at note 27 at 6; and E K Hawkins *Marketing Boards and Economic Development in Nigeria and Ghana*, above at note 27 at 54-56.

lead role in foreign affairs.<sup>24</sup> However, in the specific context of trade and commerce, under the 1963 constitution, the FG and the regions had shared responsibility. This shared constitutional responsibility was reflected in the control of the processes relating to the export of commodities sourced from the respective regions.<sup>25</sup> Specifically, section 77 of the 1963 Constitution (which is *pari materia* with section 71 of the 1960 Constitution) provided that:

1. Parliament may make laws for Nigeria or any part thereof with respect to trade and commerce between Nigeria and other countries and trade and commerce among the territories, including (without prejudice to the generality of the foregoing power) the export of commodities from Nigeria, the import of commodities into Nigeria, the establishment and enforcement of grades and standards of quality for commodities to be exported from Nigeria and the preservation of freedom of trade and commerce among territories.
2. For the purpose of this section Parliament may:
  - a. Confer on any person or authority exclusive power to acquire from a purchasing authority established for a region by the legislature of that region any commodity for export from Nigeria, to export any commodity from Nigeria or to sell any commodity outside Nigeria;
  - b. Make provision for the inspection of commodities to be exported from Nigeria at the port of shipment from Nigeria and for the enforcement of grades and standards of quality in respect of commodities so inspected."
3. The power conferred upon Parliament by this section shall not include powers:
  - a. To establish a purchasing authority for a region;
  - b. To confer on any person or authority power to acquire in a region any commodity for export from Nigeria from any person or authority in that region other than a purchasing authority established for that region by the legislature of a region;
  - c. To regulate the prices to be paid by a purchasing authority established by the legislature of a region for commodities for export;
  - d. To regulate or prohibit in a region any processing of a commodity to be exported or any dealing with such a commodity other than its export from Nigeria; or
  - e. To make provision for the enforcement in a region of any grades or standards of quality for commodities to be exported from Nigeria that may be established by Parliament.
4. Nothing in this section shall be construed as precluding the legislature of a region:
  - a. From making provision for any of the matters referred to in subsection (3) of this section; or
  - b. From conferring upon any purchasing authority of the region power to acquire any commodity in the region for purposes other than export from Nigeria.
5. In this Section "purchasing authority" means, in relation to a region any person or authority empowered to purchase commodities for export in that region.

From the above section, it is evident that the processes relating to export were constitutionally a joint responsibility of both the FG and the regions. See Table 1 below for a summary of the scope of responsibilities allocated to the FG and regional governments.

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<sup>24</sup> Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 12 at 115. See U Inamete *Foreign Policy Decision-Making in Nigeria* (2001, Associated Press). See also item 15 Exclusive Legislative List (ELL) 1960 (Independence) and 1963 (Republican) Constitutions; Akindele and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 17 at 607.

<sup>25</sup> A Hay "Crop Marketing Boards and Transport Policy in Nigeria 1950-64" (1970) 4/2 *Journal of Transport Economics and Policy* 171 at 171.

<b>Table 1: Areas of Responsibilities of FG and SNGs in relation to Trade and Commerce</b>	
<b>FG</b>	<b>SNG</b>
Legislation relating to trade and commerce between Nigeria and other countries as well as among the regions	Establishment of purchasing authority or making of provisions related thereto
Legislation relating to export or import	Conferment of power to source commodity for export in the region or making of provisions related thereto
Legislation relating to the establishment and enforcement of grades and standards of quality for commodities to be exported from Nigeria	Regulation of price paid by purchasing authorities or making of provisions related thereto
Conferment of power: <ul style="list-style-type: none"> <li>I. to acquire commodity from regional purchasing authority for export</li> <li>II. to export commodity</li> <li>III. to sell commodity outside Nigeria</li> </ul>	Regulation/prohibition of processing of commodity for export within region or making of provisions related thereto
Make provision for the inspection of export commodities at port for enforcement of grades and standards of quality	Making of provision for the enforcement of grades and standards of qualities for commodities to be exported as legislated by the FG

Source: *Authors*

From the preceding provision, the following inferences could be drawn concerning the allocation of powers regarding international economic participation in Nigeria under the 1960 and 1963 constitutions. First, by virtue of the respective provisions, the FG was exclusively responsible for the actual process of export and import (at the ports) and not the processes in-between.<sup>26</sup> Thus, the FG could not dictate how the regions handled matters relating to the pricing, procurement, and processing of commodities for export as well as enforcement of legislation on standards made by Parliament before the products reaching the port of export. In essence, the regions had significant responsibilities for the processes before the final export of commodities from Nigeria.

As it was pointed out previously, this constitutional arrangement described above did not come as a surprise, considering the importance of the revenue surplus accruing from the commodity boards to the regional governments. It is, however, important to point out that the shared responsibilities between the FG and SNGs in this regard was not always efficient. For example, within the specific context of the dual control of export processes, there was a need for the regional authorities to work in conjunction with federal level agencies such as the Nigerian Ports Authority (NPA) and the Nigerian Railway Corporation (NRC) to coordinate logistics. Cooperation between these agencies was vital because as Hays points out the traffic of agricultural commodities to the seaports was correlated with the demand for and development of transportation networks in Nigeria.<sup>27</sup> However, Hays argues that there were schisms which curtailed the effectiveness of the process because both the SNG controlled Marketing Boards and Federal government

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<sup>26</sup> See sec 77 (1) and (2), cf: sec 77 (3) (a) – (e), (4) and (5) of 1963 Constitution.

<sup>27</sup> A Hay *Crop Marketing Boards and Transport Policy in Nigeria 1950-64*, above at note 31 at 172.



controlled transport agencies considered their roles as separate, rather than working together to achieve a common purpose.<sup>28</sup>

It is also arguable that the contributions of the regions within the context of export processes discussed above did not entail direct involvement by Nigerian SNGs with foreign entities and as such would have been classed as solely domestic interactions. This is not surprising because, under the prevailing understanding of international relations in the early 60s, there was an apparent dichotomy between foreign and domestic interactions. However, things have changed significantly over the years, and as Hockings points out, globalization has eroded erstwhile rigid conceptual boundaries between domestic and foreign policy environments.<sup>29</sup> Habegger speaking in the same vein also points out that:

Contrary to the traditional notion of foreign policy, today's political realities do not correspond any longer with the conventional wisdom of a clear division between a domestic and a foreign policy sphere of governance. While the historic nation-state is supposed to behave as a unitary actor, the domestic political structure provides sub-national units with competencies to influence the foreign policy of the federation<sup>30</sup>

As such compared to the present day, the activities of Nigeria's SNGs under the 1960/63 Constitutions would have been given less consideration as direct foreign relations. Be that as it may, the impact of these constitutional provisions under the 1960/63 constitutions, even at that time in question had an indirect effect on the direction of Nigeria's overall foreign economic policy. For example, a reading of section 77(2) (b) and (3) (e) above indicates that: standards of products for exports was a shared prerogative for both the FG and the SNGs. In effect, the FG was not constitutionally empowered to determine standards of goods until they reached the ports for shipment. As such, the determination of policies on standards of exports was dependent on the regional authorities being effective. More so, Helleiner argues that the levies on commodity producers (i.e. the farmers) by the Regional marketing boards constituted an export tax/levies which determined the pricing of Nigeria's export to her external trading partners.<sup>31</sup>

Other provisions in the 1960 and 1963 Constitutions which point to the fact that the regions had shared responsibilities with the FG in matters relating to Nigeria's foreign economic interactions include: section 65(1) of the respective regional constitutions which provided that:

Power to appoint persons to hold or act in the office of the Agent-General of the region in the United Kingdom (including the power to make appointments on promotion and transfer) and to remove persons so appointed from that office, shall vest in the Governor, acting in accordance with the advice of the Premier.

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<sup>28</sup> Id at 178-179. Furthermore, it has been pointed out severally by scholars such as Sklar, Helleiner, and Williams that the funds from the Regional Marketing boards which were meant for developmental purposes were not always adequately managed. However, it is not the aim of this paper to appraise the propriety or otherwise of the Regional Marketing Boards during the first republic. For detailed discussions on this point see generally Sklar *Contradictions in the Nigerian Political System*, above at note 21; Helleiner *The Fiscal Role of the Marketing Boards in Nigerian Economic Development, 1947-61*, above at note 19 and Williams *Marketing without and with Marketing Boards: The origins of State Marketing Boards in Nigeria*, above at note 21.

<sup>29</sup> B Hocking "Bridging Boundaries: Creating Linkages: Non-Central Governments and Multilayered Policy Environments" (1996) 11 *WeltTrends* Nr 36 at 38.

<sup>30</sup> Habegger B "Participation of Sub-national Units in the Foreign Policy of the Federation" 274 at 274 <<http://www.forumfed.org/libdocs/IntConfFed02/StG-ws-Habegger.pdf>> (Last accessed 10 February 2018).

<sup>31</sup> See Helleiner *The Fiscal Role of the Marketing Boards in Nigerian Economic Development, 1947-61*, above at note 26 at

The Agent-General was a conduit through which the economic, educational, cultural interests of the respective regions were pursued<sup>32</sup> According to Teniola: "Agents General were like ambassadors for their respective countries, and they were to promote tourism and investments for their countries [regions]. They also acted as liaison officers for the regional marketing boards..."<sup>33</sup> From Teniola's description, it is evident that these diplomatic officers played an essential function in the foreign policy formulation of the regions. Also, Gambari argued that this provision held the door ajar for regional participation in foreign affairs because even though the FG:

[c]ontrolled the key instruments and agencies for formulating and executing foreign policy such as the foreign ministry and overseas diplomatic missions, regional governments were allowed to maintain quasi-diplomatic offices to represent their interests in the United Kingdom.<sup>34</sup>

However, the operations of the regions abroad were limited to only the United Kingdom, as such the scope of their influence via these quasi-diplomatic offices was limited.

Furthermore, the regions had powers under section 74 of the 1963 Constitution to determine whether or not to opt out of international treaties entered into by the federal parliament. The section provided that:

Parliament may make laws for Nigeria or any part thereof with respect to matters not included in the Legislative Lists for the purpose of implementing any treaty, convention or agreement between the Federation and any other country or any arrangement with or decision of an international organization of which the Federation with or decision of an international organization of which the Federation is a member; provided that any provisions of law enacted in pursuance of this section shall not come into operation in a region *unless the Governor of that region has consented to its having effect* (emphasis added).<sup>35</sup>

This provision above related to treaties of which the subject matter(s) were not constitutionally allocated to either level of government under the Legislative Lists. This provision was inserted into the constitution presumably to safeguard the contributions of Nigeria's SNGs in the treaty-making process.<sup>36</sup> It is however interesting that the power to determine implementation of such treaties was not allocated to the regional parliaments but was vested solely in the Governor of the region. More so, the Regional Governor's prerogative to decline implementation of treaties within a region was not subject to scrutiny by the Premier

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<sup>32</sup>. See Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 19 at 115ff, 123.

<sup>33</sup> See also E Teniola "The beauty in regionalism" *Sunday Trust*, 15 April 2018 <https://www.pressreader.com/nigeria/sunday-trust/20180415/282406989936676> (Last accessed 07 September 2018).

<sup>34</sup> See Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 19 at

<sup>35</sup> Noteworthy is the fact that these constitutional provisions existed at a point in the development of international law when SNGs were not recognized as stakeholders in the negotiation of international treaties. See generally R Gosh *Treaties and Federal Constitutions: Their Mutual Impact* (1961, World Press) at 84 cited in I Bernier *International Legal Aspects of Federalism* (1973, Longman) at 14.

<sup>36</sup> A similar arrangement is found in older federal systems such as the US by art II s 2 of the US Constitution. See <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm> > 08 July 2013. See also R Schütze *From Dual to Cooperative Federalism: The Changing Structure of European Law* (2009, Oxford University Press) at 112.

or the Regional Parliament. This points to the level of influence that the regional leaders wielded during the first republic. It also points to the power dynamics at play between the active regions and the relatively weak central government. There is no evidence available to the authors whether this provision was ever used by a Regional Governor. However, it can be inferred that the existence of this provision would have given the Regional Governors a strong influence in the decision-making process of the central government when it sought to ratify international agreements. Gambari, commenting on the effect of this particular provision under the 1963 Constitution, argued that during this period the Nigerian state was polarised along ethnic and religious lines and as such, "It was clearly possible for implementation of a treaty in a region to be held up by the governor's refusal to grant consent due to any of the aforementioned differences [ethnic and religious difference]."<sup>37</sup>

With regard to accessing foreign capital. There was also some level of autonomy for the regions during the first republic as they did not need the approval of the FG to negotiate and obtain short-term foreign loans for durations of 12 months (tenure of 12 months or less) on the assets of the regions as well as technical assistance.<sup>38</sup>

Furthermore, although external affairs were under the Exclusive Legislative List (ELL), the regions capitalized on the freedom accorded them by the Concurrent Legislative List (CLL) of the 1960 and 1963 Constitutions to propagate foreign policy which had a direct and indirect impact on international economic relations of the federation. For example, arms and ammunition, bankruptcy and insolvency, census, commercial and industrial monopolies, combines and trusts, higher education, industrial development, the regulation of professions, maintaining and securing of public safety and public order, registration of business names and statistics fell under the CLL.<sup>39</sup> The ability of the regions to propagate foreign policy within these subject areas under the CLL created the potential for variance in foreign policy direction between the regional governments on the one hand and between the regional governments and the federal government on the other side.<sup>40</sup> A notable example in this regard occurred in the context of Nigeria's relations with the state of Israel. The Northern region led by Sir Ahmadu Bello was opposed to Nigeria establishing diplomatic ties with the state of Israel due to close ties with the Muslim Gulf States, long-running enemies of Israel. The West and Eastern Regions, on the other hand, were indifferent to the complications that came with associating with Israel. These two regions before independence and during the first republic were reported to have had dealings with Israel in the area of agricultural development and education.<sup>41</sup> Although the government of Sir Abubakar Tafawa Balewa at the federal level tried to maintain

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<sup>37</sup> Gambari (n 45) 115; Awa (n 9) 263. Awa writing earlier in respect of a similar provision as contained in s 53 of the Nigeria Constitution (order in council) 1954, expressed similar fears held by Gambari about the effect of s 74 on ratification of treaties.

<sup>38</sup> See Item 5 ELL 1963 Constitutions. See also Akindele and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 19 at 608.

<sup>39</sup> *Id* at 607-608.

<sup>40</sup> *Id* at 618-619.

<sup>41</sup> J Danfulani and A Buba "Nigeria-Israeli relations: From the realm of African' solidarity to the realm of Nigeria's national interest" *LAPAI International Journal of Politics* 1 at 1-2 [https://www.academia.edu/27078297/NIGERIA-ISRAELI\\_RELATIONS\\_FROM\\_THE\\_REALM\\_OF\\_AFRICANSOLIDARITY\\_TO\\_THE\\_REALM\\_OF\\_NIGERIAS\\_NATIONAL](https://www.academia.edu/27078297/NIGERIA-ISRAELI_RELATIONS_FROM_THE_REALM_OF_AFRICANSOLIDARITY_TO_THE_REALM_OF_NIGERIAS_NATIONAL) (Last accessed 08 September 2018).

a pragmatic stance, the division among the regions on the topic of Nigeria-Israeli relations made life difficult for the central government. For example, It is reported by Danfulani and Buba that:

When the Federal Government under the leadership of Sir Abubakar Tafawa Balewa sourced a loan from Israel in the early sixties. The Premier of Northern Nigeria Sir Ahmadu Bello rejected his region's share of the facility and piqued when we want aid/help they know which direction to look at...<sup>42</sup>

The divisive nature of Nigeria-Israeli relations was and remains a reflection of the ethno-religious divide of the Nigerian state till date. It also demonstrates the volatility which came with the regions having entrenched constitutional powers to forge their foreign policy direction during the first republic.<sup>43</sup>

## 2. Institutional Framework

During the First Republic, international economic relations was subsumed under the broader institutional framework for foreign policy<sup>44</sup> and this provided a premise for Inamete's conclusion that foreign policy was controlled by the FG during that era. Although Inamete situates the opening of representative offices by the regions in the United Kingdom during the First Republic within the context of foreign policy,<sup>45</sup> His conceptualization of the general structure of foreign policy in *Figure 1* below did not take cognizance of the role played by the regional governments during the era as it limited foreign policy decision-making to the realm of the FG and its relevant ministries, agencies and departments.

Another weakness of the conceptualization is that it did not take into consideration the fact that the role of the regions in Nigeria's foreign policy was not restricted to the opening of representative offices abroad. His analysis does not consider the fact that the National Economic Council, constituted by equal representation from both levels of government, was a forum for FG-regional cooperation on international economic issues;<sup>46</sup> which at that time was considered a subset of foreign policy.<sup>47</sup> Hence, the conclusion is that Inamete's framework is not a complete reflection of Nigeria's foreign policy regime as it then was. More specific to foreign economic policy and in the context of the contribution of the regions to the process of international trade and commerce during this era, it is argued that Inamete's framework represented below could be modified as presented in *Figure 2*. On the premise of the revised structure, the conclusion is that

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<sup>42</sup> Id at 1.

<sup>43</sup> This contention over relations with Israel has persisted till date. Even the dictatorial military governments which ruled Nigeria for long spells between 1966 and 1999 struggled to solve the polarised views between the Christian dominated south and Muslim dominated north on the topic of Nigeria-Israeli relations. The Gowon military regime severed ties with Israel in 1973, and diplomatic ties were finally restored in 1992 by the Babangida military regime. For in-depth discussions on these developments generally see J Danfulani and Buba *Nigeria-Israeli relations: From the realm of African' solidarity to the realm of Nigeria's national interest*, above at note 37.

<sup>44</sup> See Inamete *Foreign Policy Decision-Making in Nigeria*, above at note 20 at 26-40.

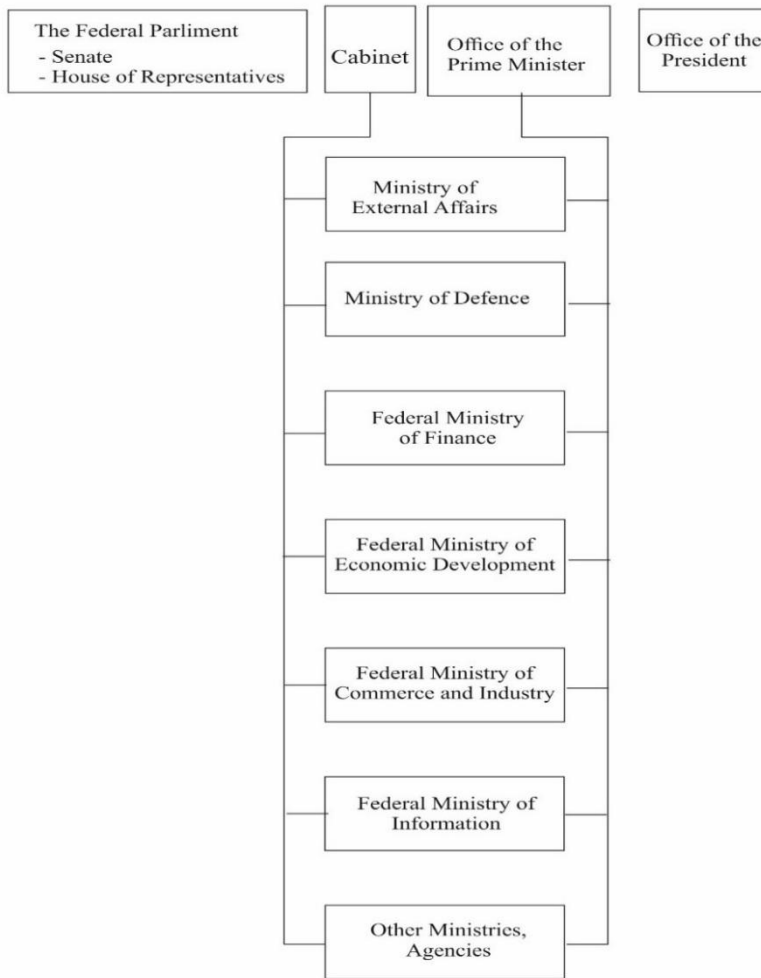
<sup>45</sup> Id at 39-40.

<sup>46</sup> *Awa Federal Government in Nigeria*, above at note 17 at 246-247.

<sup>47</sup> See Inamete *Foreign Policy Decision-Making in Nigeria*, above at note 39 at 26-40.

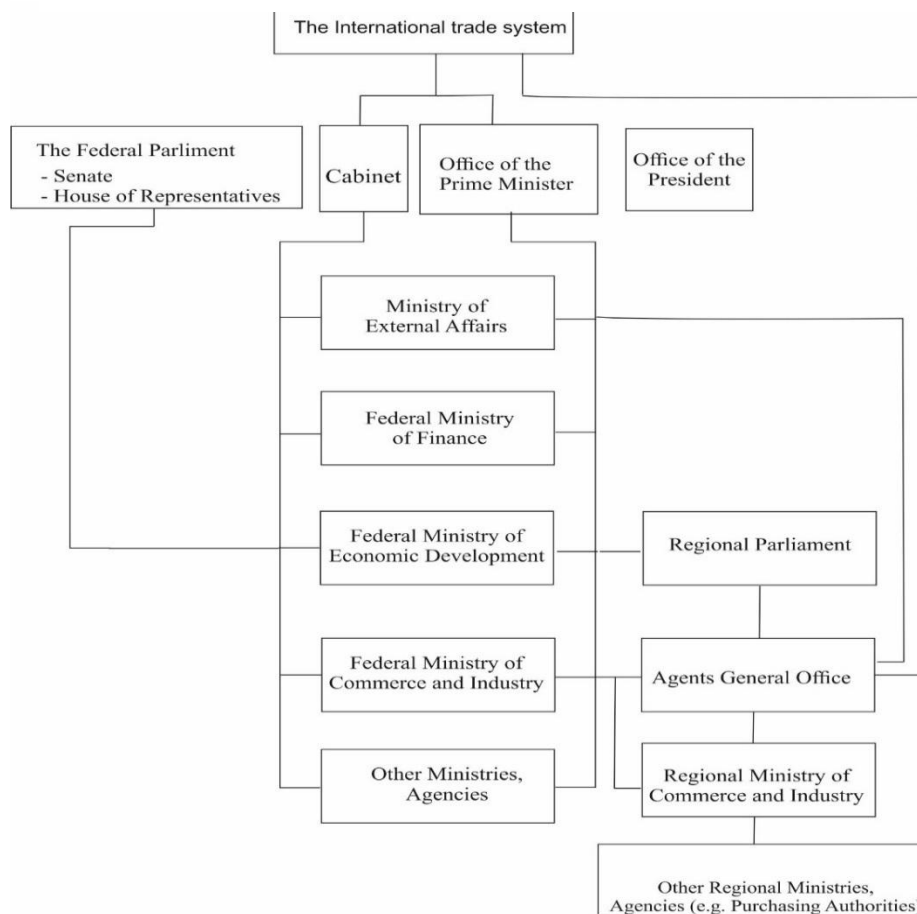
in the First Republic, federal and regional institutions were constitutionally mandated to cooperate on matters relating to Nigeria's international economic relations.

**Foreign policy decision-making structure during the First Republic (1960 - 1966).**



Source: Foreign Policy Decision-making in Nigeria (London: Associated Press, 2001).

Figure 1: Inamete's Conceptualisation of Foreign Policy Decision-making in Nigeria under the 1960/63  
 ( Figure 2: Authors' Conceptualisation of Foreign Policy Decision-making in Nigeria under the 1960/63  
 Constitutions



Modified from original source: Foreign Policy Decision-making in Nigeria (London: Associated Press, 2001).

From the preceding analysis, it is evident that the original formulation of Nigeria's constitutional federal system at independence provided for the SNGs to participate in foreign economic relations. Although the effectiveness of this constitutional model at that time is not within the scope of this paper, however, explaining how the system changed over time gives some insight into why subnational foreign economic relations was discarded under subsequent constitutions. It also provides us with an insight into why Nigeria's SNGs have rekindled their interests in international economic activities since 1999.

The period of the first civilian republic after Nigeria attained independence was shortlived. This is because Nigeria as a young republic experienced some political upheavals which destabilized the civilian government and cumulated in a military takeover in January 1966.<sup>48</sup> This coup d'état was the beginning of military intervention in Nigerian politics which continued intermittently from 1966 to 1979 and then again from 1983 – 1999. During this period, three military governments succeeded each other during the first spell (i.e., 1966 to 1979) and four military governments ruled Nigeria between 1983 and 1999.

<sup>48</sup> For example, the western region was enmeshed in partisan bickering from 1962 upon till the 1964 general elections. The declaration of a state of emergency in the region due to the regional crisis was one of the catalysts for the first and second military coup d'état in 1966. See L Adamolekun "Federalism in Nigeria: Toward Federal Democracy" (1991) 21/4 *Publius* 1 at 1-11.

**a. SNG PARTICIPATION IN NIGERIA'S FOREIGN ECONOMIC RELATIONS DURING THE PERIOD OF MILITARY INTERREGNA**

Federalism in Nigeria has a history checkered by military interregna.<sup>49</sup> This makes any discussion on Nigeria's federal system incomplete without a review of these periods of military rule; as they had a variety of effects on the polity. More so, it is of particular interest to this discourse to consider the consequence of the military incursion into Nigerian politics on SNG participation in Nigeria's foreign economic relations.

The legal framework during the periods of military rule in Nigeria was formal and not martial. The fact that the military administration had a structured legal order driven by the promulgation of decrees at the center and edicts at the state level accounted for the formality of the legal framework of the military junta. The foundation of the legal framework for foreign economic relations during the military era was the *Constitution (Suspension and Modification) Decree No 1 of 1966*. Concerning the restructuring of SNG participation in Nigeria's foreign affairs, the *Suspension and Modification* decree was used in 1966 by the administration of Aguyi Ironsi to suspend the 1963 Republican Constitution and the regional constitutions. This suspension of the constitutions paved the way for the disbanding of the Agents-General offices in the United Kingdom which the regions operated during the first republic.<sup>50</sup>

Furthermore, *Decree No. 1 of 1966* conferred on the federal military government (FMG) unlimited legislative power. This is because under section 3 of the decree; the FMG was seised with the power to legislate for the whole country or any part thereof concerning any matter whatsoever. The Gowon administration that took over the reins of power in July 1966 maintained the status quo introduced by Ironsi's administration and further entrenched the supremacy of the FMG by promulgating the *Federal Military Government (Supremacy and Enforcement of Powers) Decree 28 of 1970*.<sup>51</sup> This decree was introduced in response to the Supreme Court decision in *Lakanmi & Kikelomo Ola v Attorney-General (Western State) & Others*<sup>52</sup> which declared a military decree invalid. *Decree No 28* asserted that the first and second military coups were revolutions that effectively abrogated the whole of the pre-existing legal order in Nigeria except what was explicitly preserved by *Decree No. 1 of 1966*.<sup>53</sup> This consolidated the supremacy of military decrees over the Nigerian constitution during this era.<sup>54</sup>

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<sup>49</sup> Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 30 at 123. See also D Bach "Managing a Plural Society: The Boomerang Effects of Nigerian Federalism" (1989) 27/2 *The Journal of Commonwealth & Comparative Politics* 218-245.

<sup>50</sup> See sec 2, *Decree No. 1 of 1966*. See also Akindede and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 34 at 608.

<sup>51</sup> D Chima "The Dawn of Constitutionalism in Nigeria" in M Mbondenyi and T Ojienda (eds) *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* (2013, Pretoria University Law Press) at 142.

<sup>52</sup> SC 58/69 FN 80, reported as (1971) UILR 201.

<sup>53</sup> Chima *The Dawn of Constitutionalism in Nigeria*, above at note 45 at 142.

<sup>54</sup> *Id.*



Another significant development relating to SNG participation in foreign economic related activities during the military rule was the use of state creation to weaken the political and economic powers of SNGs in this sphere. The first significant restructuring occurred in 1967 with the introduction of a 12-state structure by the Gowon Administration. The primary reason for abolishing the regional structure was to deal with the rising ethnic-regional consciousness and heterogeneity as well as the political power of the SNGs which eventually culminated in the civil war.<sup>55</sup> Dickovick corroborated the preceding when he stated that: "The looming prospect of the Biafra War in 1967 first gave the Nigerian central government incentives to subdivide the Yoruba, Igbo and Hausa-Fulani regions into more fragmented units that would complicate ethnic mobilization and temper violence".<sup>56</sup> It created the opportunity for what LeVan refers to as 'ethnic patrimonialism' (i.e., a situation where political and sundry serve their ethnic-regional communities at the expense of others);<sup>57</sup> availed ethnic minorities with a route for self-determination as well as opened up the federal government to them.<sup>58</sup> It further provided an opportunity for courting and expression of political patronage.<sup>59</sup> This means that the proliferation of states (i.e., SNGs) was also driven by economics in the form of resource allocation and capture.<sup>60</sup> Suberu captured the preceding sentiment from an ethnic perspective thus:

Because the states have become the structural means through which a considerable proportion of national wealth is made available to groups and individuals, in the form of state-controlled opportunities and amenities, the feeling is very strong among ethnic communities, especially those in the more ethnically-mixed states, that only by having states of their own can they achieve modernization or benefit equitably from the 'national cake'.<sup>61</sup>

Although the fragmentation of the erstwhile regional structure was not directly targeted at curtailing foreign economic powers of the SNGs, it had that incidental effect. The legal and political re-structuring of the SNG structure by the military government had a significant implication on foreign economic relations because with the suspension of the republican constitution, the FMG had unfettered powers to negotiate, sign and implement international agreements on behalf of Nigeria without requiring ratification from the subnational governments, which at this point were nothing more than administrative sub-divisions of a centralized

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<sup>55</sup> AO Oluwatobi "The Politics of States and Local Governments Creation in Nigeria: An Appraisal" (2013) Vol. 2(3) *European Journal of Sustainable Development* 155, 161.

<sup>56</sup> JT Dickovick "Federalism in Africa: Origins, Operation, and (In)Significance" (2014) Vol. 24 (5) *Regional & Federal Studies* 553, 556.

<sup>57</sup> See AC LeVan, *Dictators and Democracy in African Development: the Political Economy of Good Governance in Nigeria* (2015, CUP) 13-15.

<sup>58</sup> T Wuam, "Nigeria Since 1960: A Comparative Study in Nation-Building and Development" (2012) Vol. 21 *Journal of the Historical Society of Nigeria* 99, 108.

<sup>59</sup> Oluwatobi "The Politics of States and Local Governments Creation in Nigeria," above at note 12, 160. Also see Dickovick "Federalism in Africa: Origins, Operation and (In)Significance," above at note

<sup>60</sup> Oluwatobi "The Politics of States and Local Governments Creation in Nigeria" 159, above at note 12.

<sup>61</sup> RT Suberu "Federalism and Nigeria's Political Future" (1988) Vol. 87 (No. 348) *African Affairs* 431, 434.

command system.<sup>62</sup> The role played by SNGs in this era was a sharp contrast to that of the first republic. During the Gowon administration when state military governors were members of the Supreme Military Council (SMC),<sup>63</sup> The state military governors could not contribute to foreign policy. This is because the nature of military hierarchy made it impossible for the Governors of subnational divisions to challenge the central command of the FMG headed by superior military officers.<sup>64</sup> Even if the state administrators had a voice in the SMC, the powers and institutions of the FMG made it impossible for them to have any impact on the international scene. This was because the institutional framework during this era was structured in line with the military centralized command system. This made the central command of the FMG the determinant of foreign policy and the Head of State became the propagator of Nigeria's foreign policy objectives.<sup>65</sup>

Under each military administration, the SMC and the Federal Executive Council (FEC) were the highest levels of government involved in the making of foreign policy in Nigeria.<sup>66</sup> According to Inamete, the FEC handled foreign policy issues which "required the coordination of policy design, development, implementation, and evaluation, by various ministries - e.g., national security, immigration, international border disputes, and international trade issues."<sup>67</sup> However, Inamete further points out that "the FEC was subordinated to the SMC. As the highest decision-making body, the SMC could change, or nullify any FEC decision."<sup>68</sup> Although each administration had military governors (with each having a cabinet constituted of commissioners) at the state levels, these SNGs did not exercise powers similar to that of their counterparts during the civilian administration of the first republic.

It has been argued that the incursion of the military into Nigerian politics significantly altered the course of federalism in Nigeria because it was during the era of successive military governments that the federalism arrangement negotiated by the nation's founding fathers were eroded in favor of the centralized federalism format currently obtainable in the fourth republic. Regarding SNG engagement in international economic relations, this was the case. The centralized command system of military rule determined the distribution of powers. As such, the structure of foreign policy during each military administration was similar in that little room was allowed for SNGs to express themselves on the international scene.<sup>69</sup> For example,

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<sup>62</sup> Inamete *Foreign Policy Decision-Making in Nigeria*, above at note 41 at 64-65.

<sup>63</sup> O Aluko "The "New" Nigerian Foreign Policy: Developments since the downfall of General Gowon" (1976) 66/264 *Commonwealth Journal of International Affairs* 405 at 412.

<sup>64</sup> Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 43 at 114.

<sup>65</sup> C Daddieh and T Shaw "The Political Economy of Decision-Making in African Foreign Policy: Recognition of Biafra and the Popular Movement for the Liberation of Angola (MPLA)" (1984) 5/1 *International Political Science Review* 21 at 26-35.

<sup>66</sup> For example, see sec 6, *Decree No. 8 of 1967*.

<sup>67</sup> U Inamete "Foreign Policy Decision-Making System during the Buhari Administration" (1990) 314/1 *Round Table* 202 at 202.

<sup>68</sup> *Id.* See also sec 6, *Decree No. 8 of 1967*.

<sup>69</sup> See Akindele and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 44 at 608.

early in the course of Gen Gowon's tenure, the SMC promulgated the *Nigerian Produce Marketing Board Decree of 1968* and the *Central Bank of Nigeria (Amendment) Decree No. 50 of 1968*. These two decrees established agencies which in the execution of their mandate among other things effectively prevented the SNGs from foreign economic participation.<sup>70</sup> Specifically, the introduction of these two agencies reduced the powers of the state marketing boards which had been a major source of funds for the regional governments during the first republic. The introduction of the above-mentioned decrees had the following implications:

1. The Nigerian Produce Marketing Board was no longer accountable to the states but only to the Federal Ministry of Trade.<sup>71</sup>
2. The state commodity boards were stopped from sourcing commercial loans and could only get loans from the Central Bank.<sup>72</sup>
3. State marketing boards could only fix prices on commodities after consulting the Central Bank.
4. Export duties which the state marketing boards levied on commodities originating from the states were abolished.<sup>73</sup>

As such, the involvement of SNGs in foreign policy was little or non-existent at this point in Nigeria's history.<sup>74</sup>

However, there were still instances where some SNGs devised ways to still maintain a connection with the outside world. A good example is the use of state-owned incorporated companies to pursue investment objectives. For instance, the Odu'a Investment Company Limited was floated in July 1976 by the three states (Oyo, Ondo and Ogun) carved out of the former Western Region to oversee the investment portfolio of the new states.<sup>75</sup> Also in 1989, Lagos State incorporated Ibile Holdings to carry out similar functions as Odu'a Investment Company Limited.<sup>76</sup> The use of state-owned corporations was a clever way for SNGs to circumvent constitutional restrictions on their ability to engage with foreign entities for investment purposes. According to the website of The Odu'a Investment Company Limited "...since inception, has been operating as a conglomerate with over 70% of her business as investment/joint ventures with reputable multinationals."<sup>77</sup>

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<sup>70</sup> See A Akinsanya "Federalism and Military Rule in Nigeria: 1966-76" (1978) 20/3 *Journal of the Indian Law Institute* 387 at 395-396 for an exposition of the how the Decrees stifled the engagement of SNGs in Nigeria's foreign economic interactions.

<sup>71</sup> J I Elaigwu *Gowon the biography of a Soldier-Statesman* (London: Adonis & Abbey Publishers Ltd, 2009) 213

<sup>72</sup> Id

<sup>73</sup> Id.

<sup>74</sup> Gambari is of the view that military administrations in Nigeria have had a better record of checking state forays into foreign affairs than have civilian governments. See Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 51 at 122-124.

<sup>75</sup> <http://www.oduainvestment.com.ng/historical-background/>

<sup>76</sup> <http://ibileholdings.com/about-us/>

<sup>77</sup> <http://www.oduainvestment.com.ng/historical-background/>

## **b. SNG PARTICIPATION IN NIGERIA'S FOREIGN ECONOMIC RELATIONS DURING THE SECOND CIVILIAN REPUBLIC**

The Obasanjo administration paved the way for a return to civilian rule in Nigeria in 1979. This time, Nigeria departed from the parliamentary system of government which had operated during the first republic and adopted a presidential system of government built on the model of the United States America.<sup>78</sup> A new constitution was also adopted in 1979 to restore the federal system of government.<sup>79</sup> The second republic lasted until December 1983 when the military took over power again.

The constitutional and institutional framework for foreign economic participation in this era is similar to what is currently obtainable in the fourth republic. In the context of SNG participation in Nigeria's foreign economic relations, the 1979 constitution put beyond the reach of the SNGs, areas wherein they were hitherto active in the course of the first republic. The legislative competence of the FG was extended to cover all aspects of:

“...trade representation; external affairs; implementation of treaties relating to matters on the exclusive legislative list, trade, and commerce between Nigeria and other countries, and borrowing of money within or outside Nigeria for the Federation or of any state.”<sup>80</sup>

Other areas formerly within the competence of SNGs which the 1979 Constitution exclusively reserved for the FG included the powers to set up purchasing authorities, inspection of commodities, standards, and control of prices for products.<sup>81</sup> The only aspect of SNG participation in foreign policy which was carried over from the 1963 constitution was the safeguard requirement (legislative domestication of international treaties) which was retained as section 12 of the 1979 Constitution.<sup>82</sup> This development under the 1979 Constitution gave the FG during the second civilian republic broad and unfettered powers over Nigeria's foreign policy. Gambari attributes the centralization of the constitutional and institutional structures for foreign policy in Nigeria under the 1979 Constitution to the Report of the Adebayo Adedeji Committee which was set up in 1975 by the Obasanjo administration to carry out a comprehensive review of Nigeria's foreign policy regime.<sup>83</sup> According to Gambari: “...the Adedeji Committee did not foresee a formal role for subnational political entities in foreign affairs..”<sup>84</sup> He further argues that: “...it [the Adedeji Committee

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<sup>78</sup> See B Nwabueze *The Presidential Constitution of Nigeria* (1982, Hurst & Company).

<sup>79</sup> Akindele and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 57 at 605.

<sup>80</sup> *Id.*

<sup>81</sup> See Item 61 ELL 1979 Constitution. See also Nwabueze *The Presidential Constitution of Nigeria*, above at note 59 at 63-64.

<sup>82</sup> Although this provision provided a basis for SNGs to challenge policies of the FG on matters foreign economic relations taken by the FG, it was limited to just international treaties, and there is no record that this provision was ever used. See Akindele and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 65 at 608.

<sup>83</sup> The recommendations of the Adedeji Committee were the foundation for the constitutional arrangement on foreign policy under the 1979 Constitution and subsequently the current 1999 Constitution. Inamete *Foreign Policy Decision-Making in Nigeria*, above at note 49 at 39-40. See also Aluko *The “New” Nigerian Foreign Policy*, above at note 50 at 405.

<sup>84</sup> Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 58 at 117.

formally excluding Nigerian SNGs from the foreign policy arena] was a significant omission..." which "...perhaps [was done] in keeping with constitutional provisions or the prevailing tendencies of the time..."<sup>85</sup> Gambari's reference to 'prevailing tendencies of the time' is not further expounded on but it can be inferred that he was referring to the prevailing theories in international relations at the time which favored a unified voice in foreign affairs.<sup>86</sup> This assertion is corroborated by Akindele and Oyediran who opined that:

There is abundant evidence in the record of the Constitution Drafting Committee and in the provisions of the 1979 constitution itself of the determination of the authors of the constitution to make the federal government the sole Nigerian actor and spokesman in international affairs.<sup>87</sup>

Furthermore, Professor Ben Nwabueze a leading Nigerian constitutional scholar who played a prominent role in the drafting of the 1979 Constitution argued in 1981 that it was right for SNGs to be excluded from Nigeria's foreign policy arena because the leadership of the FG was needed to articulate a coherent foreign policy for Nigeria.<sup>88</sup> It is the view of the authors that the omission of SNG's in Nigeria's foreign policy review by the Adedeji Committee was not surprising because the states at this period in Nigeria's history were a weak reflection of the erstwhile strong and active regions which has existed during the first republic before successive military interventions and a civil war. More so with the control over their resources curtailed by years of military rule, there was no impetus for the states to demand similar access to the foreign scene as was the case under the first republic.

Although the operations of the 1979 Constitution was shortlived due to the interference of the military in 1983, it laid the foundation for the formal constitutional position on SNG participation in foreign affairs till present.

### **c. SNG PARTICIPATION IN NIGERIA'S FOREIGN ECONOMIC RELATIONS DURING THE FOURTH CIVILIAN REPUBLIC**

#### **1. Constitutional Framework**

Nigeria returned to civilian rule on May 29, 1999. Olusegun Obasanjo was elected the first civilian President of the Fourth Republic.<sup>89</sup> Part of the structures put in place to ensure the transition to civilian rule and the commencement of the Fourth Republic was the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999).<sup>90</sup> The CFRN 1999 which was drafted during Abacha's military rule restored a federal system of

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<sup>85</sup> *Id.*

<sup>86</sup> Gambari *Federalism and the Management of External Relations in Nigeria*, above at note 58 at 117.

<sup>87</sup> Akindele and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 60 at 608-609.

<sup>88</sup> Nwabueze *The Presidential Constitution of Nigeria*, above at note 60 at 53-63.

<sup>89</sup> The presidents of the Fourth Republic are Olusegun Obasanjo (May 29, 1999 – May 29, 2007), Umaru Yar'Adua (May 29, 2007 – May 5, 2010), Goodluck Jonathan (May 6, 2010 – May 29, 2015), Muhammadu Buhari (May 29, 2015 - ).

<sup>90</sup> The CFRN 1999 has been amended three times vide (1) *Constitution of the Federal Republic of Nigeria (First Alteration) Act 2010*; (2) *Constitution of the Federal Republic of Nigeria (Second Alteration) Act 2010*; (3) *Constitution of the Federal Republic of Nigeria*

government to Nigeria and retained the presidential style of the Second Republic. Under the new setup, Nigeria comprised three recognized levels of government (the FG, 36 states and local governments). Unsurprisingly, the CFRN 1999 maintained the central dominance of the FG in the area of foreign economic relations that had characterized the period of military rule and had been enshrined in the 1979 Constitution. More so, it is arguable that the circumstances surrounding the transition period to civilian rule, where Abacha until his death had made efforts to return as Nigeria's civilian ruler influenced the CFRN 1999 being crafted to reflect a centralized federal structure.<sup>91</sup>

Central dominance or exclusivity in the realm of foreign economic relations was achieved in the CFRN 1999 via:

- a. Item 20 which empowers the FG to send and receive diplomatic, consular and trade representation
- b. Item 26 which provides that external affairs are within the competency of the FG
- c. Item 31 which provides for the FG's powers to implement treaties relating to matters on the ELL.<sup>92</sup>
- d. Item 62 of the ELL which provides for "Trade and commerce, and in particular - (a) trade and commerce between Nigeria and other countries including import of commodities into and export of commodities from Nigeria, and trade and commerce between the states...."

Other provisions of the CFRN 1999 which consolidates powers for foreign economic relations with the FG include item 39 of the ELL. This provision of the CFRN 1999 puts the FG in charge of mines and minerals, including oil fields, oil mining, geological surveys, and natural gas; all being activities and resources that are of much interest to foreign entities. Also, section 16 of the CFRN 1999 identifies the national economy including foreign economic relations as an objective of the Nigerian state to be discharged by the FG.

## 2. Institutional Framework

The Nigerian Trade Policy Document (NTPD) 2002 is one of the components of the institutional framework for foreign economic relations in the Fourth Republic.<sup>93</sup> This is so, as the NTPD guides Nigeria's international trade and commerce interactions as well as guaranteeing active participation in trade

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*(Third Alteration) Act 2010*. Another attempt was made in 2015 vide the *Constitution of the Federal Republic of Nigeria (Fourth Alteration) Bill 2015*, but the then President (HE Goodluck Ebele Jonathan) withheld consent. In 2017, the National Assembly embarked upon a constitution-amendment project with the consideration and voting on 33 bills which sought to amend specific provisions of the CFRN 1999. See H Umoru "How the Senate Voted on Constitution Alteration" (July 30, 2017) *Vanguard* (Lagos, Nigeria) <<https://www.vanguardngr.com/2017/07/senate-voted-constitution-alteration/>> (Last accessed 17 February 2018)

<sup>91</sup> See N Inegbedion "Constitutional Implementation: The Nigerian Experience" in C. Fombad (ed) *The Implementation of Modern Constitutions: Challenges and Prospects* (2016, PULP) 25 at 26-27.

<sup>92</sup> Cf. sec 12 of the CFRN 1999 which provides a platform for SNGs to participate in the ratification of international treaties between Nigeria and other countries

<sup>93</sup> See Nigerian Trade Policy Document (NTPD) 2002. Trade Policy Strategy Document prepared by the Federal Ministry of Commerce and Industry (now renamed Federal Ministry of Trade and Investment (FMTI)). Available on file with the authors.

negotiations to enhance the achievement of national economic gains in the multilateral trading system or regional and bilateral arrangements.<sup>94</sup>

Flowing from the position in the CFRN 1999, the NTPD 2002 also consolidates the position of the FG as the primary institution responsible for international economic policy in Nigeria. To this end, under the institutional framework contained in the NTPD 2002, the Federal Executive Council (FEC) headed by the President is the highest decision making organ on matters of foreign economic policy. In the context of international trade, commerce and investment, the NTPD gives the Federal Ministry of Commerce and Industry (now renamed Federal Ministry of Trade and Investment (FMTI)) the overall responsibility for coordinating trade policy formulation in Nigeria.<sup>95</sup> On matters relating to foreign trade policy, the FMTI runs point and liaise with the FEC and the National Assembly (NA)<sup>96</sup> who are responsible for decision making on trade-related issues.

Specific forums which provide an avenue for SNG participation in Nigeria's foreign economic decisions include the National Council of State (NCS)<sup>97</sup> and the National Council on Commerce (NCC).<sup>98</sup> Although SNGs are part of NCS which also comprises members of the FEC, the remit of the forum does not include issues relating to foreign policy or foreign trade relations.<sup>99</sup>

The NCC, on the other hand, comprises of SNGs and non-state actors like the Manufacturers Association of Nigeria (MAN), Nigerian Association of Small Scale Industry (NASSI) and Nigerian Association of Chambers, Industry, Mines, and Agriculture (NACCIMA), etc. Unlike the NCS, the NCC has within its remit foreign trade. However, the NCC is only advisory, and as such it just acts as a:

- a. Soft law mechanism for incorporating the views of all stakeholders (including SNGs) on issues of trade and commerce;
- b. Knowledge sharing forum, where the FG obtains views and opinions from stakeholders on what Nigeria's international economic policy direction should be; and<sup>100</sup>
- c. A forum which gives the FG an avenue to keep stakeholders abreast of the policy direction which it is constitutionally empowered to handle, make laws and sign agreements on.

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<sup>94</sup> Id at 4.

<sup>95</sup> Id.

<sup>96</sup> The NA is responsible for passing into law trade policies that require legislative backing.

<sup>97</sup> The NCS is created by Schedule 3, Part 1 (B) of the CFRN 1999.

<sup>98</sup> J Afeikhena "Strengthening Research and Analytical Support for Trade Policy-Making in African Countries: The case for Nigeria" in E Ayuk and M Marouani (eds) *The Policy Paradox in Africa: Strengthening Links between Economic Research and Policymaking* (2007, Africa World Press).

<sup>99</sup> See sec 6 Schedule 3, Part 1 (B) of the CFRN 1999.

<sup>100</sup> See generally *Communique of the 8th National Council on Industry, Trade and Investment held at the June 12 Cultural Center, Kuto, Abeokuta – Ogun State from 24th -27th October, 2016* <<http://www.fmiti.gov.ng/images/nciti16.pdf>> (Last accessed 25 May 2017).

Against the background of the preceding constitutional and institutional framework for foreign economic participation under the CFRN 1999 and NTPD 2002 respectively, it is argued that the NCC presents itself as the most significant forum for the involvement of SNGs in Nigeria's international economic interactions in the Fourth Republic.

**e. SNG PARTICIPATION IN NIGERIA'S FOREIGN ECONOMIC RELATIONS: THE CURRENT REALITIES**

The prior review puts beyond conjecture the fact that the existing constitutional or institutional framework for foreign economic relations in Nigeria does not make formal provision for SNG participation in Nigeria's international economic interactions as was obtainable in the First Republic. It would have been expected that this would have brought about a closure. However, this is not the case. Currently, in the Fourth Republic, there has been an emergence of Nigeria's SNGs as actors in the foreign economic relations space. These recent forays by Nigeria's SNGs into the foreign plane are mainly focused on attracting foreign investment to meet their economic development needs. The authors have categorized these contemporary expressions into four categories of interactions (with examples). However, a detailed analysis and discussion of SNGs' foreign economic expressions since 1999 is beyond the scope of this paper.

**i. Engaging in trade promotion activities**

The participation of Nigeria's SNGs in trade promotion activities, especially involvement in international trade fairs is not unusual. In most cases, these external trips are facilitated by the Nigerian Investment Promotion Commission (NIPC).<sup>101</sup> However, these external engagements are sometimes arranged by the SNGs who are now developing their strategy for identifying which foreign entities to approach. This has the potential to affect the coordination of Nigeria's foreign investment interactions. For example, the OECD in a 2015 report on Nigeria's investment reforms commented on this trend as it relates to Lagos state's trade promotion activities.<sup>102</sup> It was advocated in the report that: "Investment promotion in Lagos State would benefit from defining an investment promotion programme and clarifying the division of labor among implementing agencies at federal and state levels."<sup>103</sup> The report also stated that: "the federal government has not yet defined a clear model of collaboration between federal and state institutions on promotional activities."<sup>104</sup>

**ii. Establishment of state-owned corporate entity focused on foreign trade and investment.**

Nigerian SNGs in the Fourth Republic have continued to float investment and trade focused corporate entities similar to the examples discussed in section 2 of this paper. A recent example is the Development

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<sup>101</sup> The NIPC established by the Nigerian Investment Promotion Commission Act Cap N117 LFN 2004 (NIPC Act).

<sup>102</sup> See OECD *OECD Investment Policy Reviews: Nigeria 2015* (OECD Publishing: Paris, 2015) <https://doi.org/10.1787/9789264208407-en>. (Last accessed 09 September 2018).

<sup>103</sup> Id at 15.

<sup>104</sup> Id at 37.



Agenda for Western Nigeria (DAWN) Commission. The DAWN Commission was set up by the governments of six states in the South-West of Nigeria (Lagos, Oyo, Ogun, Osun, Ekiti, and Ondo) to pursue a regional integration strategy for the South-Western region. As was noted previously, the use of corporate vehicles to pursue socio-economic objectives invariably leads to involvement with foreign entities. SNGs engaging with foreign entities via these route has not raised any reported constitutional issues with the FG. However, it is a trend which is a potential flashpoint which needs to be given more attention as it is replicated by states across other geopolitical regions of the country.

iii. **Establishment of specialized government agencies or executive institutions focused on foreign trade and investment**<sup>105</sup>

In addition to state-owned corporate entities discussed above, a new trend observable in the Fourth Republic is the proliferation of specialized government agencies or executive institutions focused on foreign trade and investment. In 2015, the governments of Kaduna and Lagos State established agencies modeled like the NIPC which is saddled with the exclusive constitutional responsibility for encouraging, promoting and coordinating investment in the Nigerian economy. The Kaduna version styled the Kaduna State Investment Promotion Agency (KADIPA) was established in compliance with a similarly named legislation enacted by the House of Assembly of Kaduna State and that of Lagos styled the Office of Overseas Affairs and Investment (Lagos Global) was mandated to create an enabling environment for global competitiveness promote liaison with embassies, chambers of commerce.<sup>106</sup> Also, in 2013, Bayelsa state introduced an investment corporation - the Bayelsa Development and Investment Corporation (BDIC) which opened foreign investment offices in strategic locations including New York, London, Dubai, and South Africa Bayelsa Development and Investment Corporation (BDIC).<sup>107</sup>

There is also evidence of SNGs in Nigeria expanding their institutional capacity for international investment promotion purposes. For example, in 2008, Cross Rivers state introduced the Cross Rivers State One Stop Investment Centre (OSIC) to cater for the specific needs of foreign investors in the state. This state agency runs parallel to a similar OSIC at the central level.

iv. **Engaging with foreign diplomats, dignitaries, and company executives.**

Between 2011 and 2013, the then Lagos state Governor - Mr. Babatunde Fashola - hosted trade delegations comprising of foreign high-ranking officials and diplomats. These include the former British Prime Minister - David Cameron who in 2011 during his first and only official visit to Nigeria led a business delegation to Lagos. In 2012, Fashola received the British Deputy High Commissioner to Nigeria - Mr. Peter West and their discussions centered on the improvement of economic relations between Lagos and the United Kingdom. Fashola also received the Vice Minister, Foreign Trade of the Kingdom of the Netherlands

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<sup>105</sup> . There is also evidence of SFGs in Nigeria expanding their institutional capacity for international investment promotion purposes. For example, in 2008, Cross Rivers state introduced the Cross Rivers State One Stop Investment Centre (OSIC) to cater for the specific needs of foreign investors in the state. This state agency runs parallel to a similar OSIC at the central level.

<sup>106</sup> See generally <http://kadipa.kdsg.gov.ng/> (Last accessed 29 August 2018) and <http://www.lagosglobal.org/> (Last accessed 29 August 2018).

<sup>107</sup> See generally <http://www.bdic.com.ng/about.html> (Last accessed 03 September 2018).

- Mr. Simon Smits - in 2012 to discuss ways to tackle the challenges posed by infrastructure deficit and coastal erosion in Lagos state and hosted the Russian Ambassador to Nigeria - Mr. Nickolay Udovichenko in 2013.<sup>108</sup>

In addition to meeting with foreign envoys and undertaking foreign trips, it is now becoming popular for SNGs to sign Memorandum of Understandings (MoUs) with foreign entities. For example, Cross Rivers state and Abia state among others had signed Memoranda of Understandings (MoUs) and entered into bilateral agreements with foreign actors. Interestingly, the international partners engaged by Nigerian SFGs include national governments, counterpart SFGs and multinational corporations', i.e., state-owned enterprises (SOEs) which wield strong state influence.<sup>109</sup>

From the preceding, it is hypothesized that notwithstanding the constitutional and institutional strictures in the way of the participation of Nigeria's SNGs in the realm of foreign economic relations, they would always be present therein. This assessment finds confirmation from Habegger's assessment of today's political realities. He seems to suggest that by virtue of today's realities, the traditional notion that in the realm of foreign policy (which encompasses foreign economic relations), the norm which recognizes a clear distinction between the spheres of operation and control of national and SNGs is counterinitiative.<sup>110</sup> In the light of the preceding, the logical course of action would be to identify the reason(s) for this state of affairs. For an answer, we point an endogenous factor - the lopsided fiscal federalism inherited from years of military rule and an exogenous factor - globalization.

### *Federalism*

Federalism characteristically is about shared power and rule among multiple tiers of government – whether each is constitutional recognized or not – but having autonomy from the other.<sup>111</sup> It provides an opportunity for self-determination as well as the formation of a union by people with ethnolinguistic, religious and socio-economic diversity without necessarily forming a unitary state.<sup>112</sup> For Elaigwu, federalism provides a

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<sup>108</sup> See generally "British PM, Cameron Visits Nigeria, Shuns Abuja!" (Ibadan, Nigeria) *The Street Journal* (19 July 2011) <<http://thestreetjournal.org/2011/07/british-pm-cameron-visits-nigeria-shuns-abuja/>> (Last accessed 4 April 2014); "Fashola, UK Envoy Discusses Better Business Ties" (Lagos, Nigeria) *PM News* (20 February 2012) <<http://www.pmnewsnigeria.com/2012/02/20/fashola-british-envoy-discuss-improvement-in-business-relations-fashola-british-envoy-discuss-improvement-in-business-relations/>> (Last accessed 4 April 2014); "Lagos, Netherlands Seek Partnership to Tackle Infrastructure, Environmental Challenges" Naira Land Forum, 8 March 2012 <<http://www.tundefashola.com/archives/news/2012/03/06/20120306N01.html>> (Last accessed 4 April 2014); "Fashola Makes a case for Nigeria-Russia Cooperation in Railway Development" <<http://www.lagosstate.gov.ng/news2.php?k=2902>> (Last accessed 4 April 2014).

<sup>109</sup> In 2011 Cross Rivers state and a Canadian firm, Canadian Pacific Consultant Services, CPCS Transcorp, signed an MoU for the development of a transportation master plan in the state. See Johnbosco Agbakwuru, 'C/River, Canadian Firm Sign Pact on Transportation' *Vanguard Newspaper* (Lagos, 31 August 2011) <<http://www.vanguardngr.com/2011/08/criver-canadian-firm-sign-pact-on-transportation/#sthash.PKF7BuMi.dpuf>> accessed 31 July 2013. Also, it has been reported that Abia state has sought bilateral investment opportunities with Thailand. See 'Abia to Partner with Thailand on Investment' *The Daily Post* (Lagos, 08 February 2013) <<http://dailypost.com.ng/2013/02/08/abia-to-partner-with-thailand-on-investment/>> accessed 31 July 2013.

<sup>110</sup> Habegger, *Participation of Sub-national Units in the Foreign Policy of the Federation*, above at note 28 at 274.

<sup>111</sup> G Anderson *Fiscal Federalism: A Comparative Introduction* (2010, Oxford University Press) at 1-2.

<sup>112</sup> I Elaigwu "Federalism, Regionalisation and Globalisation Africa" <[http://www.thefederalist.eu/site/index.php?option=com\\_content&view=article&id=219&lang=en](http://www.thefederalist.eu/site/index.php?option=com_content&view=article&id=219&lang=en)> (Last accessed 10 February 2018).

suitable medium for effecting appropriate compromises within a culturally plural milieu.<sup>113</sup> The Nigerian Federal structure in the First Republic which was discussed previously in this paper fit perfectly into the above mold. This is because then-prevailing constitutional and institutional frameworks recognized and provided for the development of strong autonomous regions with bespoke foreign economic powers. Hence, each region took a trajectory actuated by a combination of factors which included its natural resources, the religious and ideological leanings of leaders,<sup>114</sup> and its chosen path to economic self-determination, etc. As it was pointed out in the earlier sections of this paper, this arrangement was far from perfect. However, this was an arrangement which was negotiated by the founding fathers of the Nigerian state who presumably thought it wise to start off with a loose federation where each region had considerable autonomy to chart their economic development. There is no guarantee that the regions would have continued on this path if the military had not interfered with governance in Nigeria. However, we would never know.<sup>115</sup>

Federalism resurfaced in the Fourth Republic, albeit in a centralized form.<sup>116</sup> The variance can be seen in the difference between the pair of the 1960/63 and 1979/1999 Constitutions. In addition to replicating the centralization of power at the national level as was the case during military era; the latter pair did not have provision for regional constitutions and the shared responsibilities which characterized the former.<sup>117</sup> In essence, this centrist constitutional configuration has created a lopsided federation with a powerful FG and SNGs with whittled down powers.<sup>118</sup>

It is argued that this skewed federal constitutional arrangement has become a catalyst for the resurgence of SNG foreign economic relations in the Fourth Republic. This sounds contradictory considering that this paper considers the current federal arrangement as lopsided due to the military influence. However, there are different perspectives to understanding federalism which transcends its popular description as a political system where power is divided between a minimum of two levels of

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<sup>113</sup> Id.

<sup>114</sup> See E. Ota and C Ecoma "Nigerian Foreign Policy and the Democratic Experiment: The Lessons of History and Options for the 21<sup>st</sup> Century" (2016) 1/1 *International Journal of Applied and Advanced Scientific Research* 9 at 11-12 where the authors attribute reactions to Northern, Eastern and Western Regions to the Arab-Israeli crisis to the religious inclinations of the leaders of the respective Regions as well as that of the pressure groups operating therein.

<sup>115</sup> See Akindede and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 67 at 603. See also Oyovbaire, who argues that military rule was compatible with federalism in Nigeria S Oyovbaire (ed) *Federalism in Nigeria: A Study of the Development of the Nigerian State* (1983, Macmillan) at 273 cited in D Olowu "The Literature on Nigerian Federalism: A Critical Appraisal" (1991) 21/4 *Publius* 151 at 159. Those in support of the counter position (i.e., the federalism ceased to exist in Nigeria during the military era include A Phillips "Fiscal Goals and the Revenue Allocation System" in D Olowu (ed) *The Nigerian Federal System: Administrative Problems under Civilian and Military Governments* (1991, FACS Publications). Phillips is of the view that federalism died in Nigeria with the emergence of military rule in 1966.

<sup>116</sup> See G Williams (ed) *State and Society in Nigeria* (1980, Afrografika) at 100 where it was argued that military rule turned Nigeria into a unitary country in federal disguise.

<sup>117</sup> See sec 65 (1) of the regional constitutions as well as secs, 74 and 77 of 1963 Constitution.

<sup>118</sup> The former "is the body of fundamental rules and regulations that frame decision making in the area of fiscal policy," and it encompasses constitutional law, selected fiscal and financial laws as well as constitutional court rulings; while fiscal federalism is "the allocation of government resources and spending responsibilities to the tiers of government in a state." See OECD/KIPF *Fiscal Federalism 2016: Making Decentralisation Work*, (2016, OECD Publishing) 32 and See Uche and Uche "Oil and the Politics of Revenue Allocation in Nigeria" above at note 18, 1. Also, see A Shar (ed) *The Practice of Fiscal Federalism: Comparative Perspectives* (2007, McGill-Queen's University Press) were in the discussion of what the editor refers to as the theme of fiscal federalism, the respective chapter contributors reviewed some of the components of a fiscal constitution and fiscal federalism

government under a treaty (foedus).<sup>119</sup> There are other dimensions to understanding the concept of federalism which the description above does not capture. Birch<sup>120</sup> supports this view stating that the meaning of federalism in any particular study “is defined by the student in a manner which is determined by the approach which he wishes to make to his material.”<sup>121</sup> He identifies four different approaches to an understanding of federalism introduced by federalism scholars. These are Wheare’s<sup>122</sup> An institutional approach, Freidrich’s<sup>123</sup> dynamic process approach, Livingston’s<sup>124</sup> social organic approach and Riker’s<sup>125</sup> bargain approach. The existence of different approaches does not suppose that one is more appropriate than the other. Rather, each approach is just a different dimension to the same multifaceted concept of federalism.

Friedrich<sup>126</sup> views federalism as a dynamic process rather than a design because it represents a method by which “a number of separate political communities enter into arrangements for working out solutions, adopting joint policies; making joint decisions on joint problems and conversely the process by which a unitary political community becomes differentiated into [a] federally engaged whole.”<sup>127</sup> Watts<sup>128</sup> holds a similar view arguing that federalism is “not an abstract ideological model to which political society is to be brought into conformity, but rather a way or process of bringing people together through practical arrangements intended to meet both common and diverse preferences of people.”<sup>129</sup>

The significance of these perspectives to federalism to this paper is twofold. First, it means that the federal process is ideally meant to encourage joint participation and shared responsibility for the issues which are peculiar and common to the parties in the federal arrangement. Second, it supposes that the issues which necessitate joint participation in the federal process are never static and as a consequence, the political and constitutional response to the evolving issues faced by the components to a federal setup must evolve

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<sup>119</sup> Ben Nwabueze, *The Presidential Constitution of Nigeria* (Hurst & Company 1982) 37.

<sup>120</sup> AH Birch, ‘Approaches to the Study of Federalism’ [1966] *Pol Stud* 15.

<sup>121</sup> *ibid.*

<sup>122</sup> See generally KC Wheare, *Federal Government* (4th ed OUP 1963).

<sup>123</sup> Carl Freidrich, ‘New Tendencies in Federal Theory and Practice’ (6th World Conference of the International Political Science Association, Geneva, September 1964) 1-7.

<sup>124</sup> WS Livingston, *Federalism and Constitutional Change* (Clarendon Press 1956) 3.

<sup>125</sup> William H Riker, *Federalism: Origin, Operation, Significance* (Little Brown 1964) 11 cited in Ivan Bernier, *International Legal Aspects of Federalism* (Longman 1973) 3.

<sup>126</sup> Freidrich (n 13) 1.

<sup>127</sup> *ibid* 7.

<sup>128</sup> R Watts, ‘Contemporary Views on Federalism,’ in Bertus de Villiers (ed), *Evaluating Federal Systems* (Juta & Co 1994).

<sup>129</sup> *ibid* 7.

accordingly and organically.<sup>130</sup> In effect, changes in the constitutional and institutional definition of the federal structure as was the case in Nigeria is not always a true reflection of an evolving federal process. For example, Schütze argues that:

The relationship between a society and its constitutional law may, then, at times follow the relation between 'existence' and 'essence': the former precedes the latter. Social changes precede constitutional ones. These are moments when constitutionalism... ..fails to explain or justify the existing social order...<sup>131</sup>

More so as Akindele and Oyediran aver:

In the literature on federalism, there is an increasing awareness that the explanation for the vitality, decay, or death of a federal political arrangement is ultimately to be sought not in the dry bones of formal constitutional law but in the nature and character of the instrumentalities through which power is actually exercised in the political system.<sup>132</sup>

Based on the preceding it is argued that in the Fourth Republic, SNGs are getting involved in foreign economic relations despite the constitutional restriction on their participation in this sphere because organically, the true nature of Nigeria's federalism has risen above the structural confinements that years of military rule brought. It is argued that the need for SNGs to meet their economic development objectives was an imperative during the First Republic. This is most evident in the centrality of the Regional Marketing Boards to the development objectives of the defunct Regional Governments. This economic development imperative has not changed in the Fourth Republic, only the constitutional arrangement has. There is no doubt that the current constitutional arrangement under the CFRN 1999 has changed the mode of interactions by Nigeria's SNGs in the foreign economic sphere. This is because what is now obtainable is a curtailed version of what existed in the First Republic and this is due to the antecedents discussed in this paper. However, the resurgence of SNG foreign relations in the Fourth Republic demonstrates that the inclusion of powers for SNGs to access the foreign sphere in the First Republic was not a flaw in the original constitutional design but was necessary to facilitate economic development in the respective regions. Furthermore, it is argued that the gravitation of SNGs to the foreign economic sphere in the Fourth Republic is an organic reaction in the federalism process which was interrupted by years of military rule.

### *Globalisation*

In the 21<sup>st</sup> century, geopolitical forces popularly referred to as globalization has reshaped the dynamics of international relations, especially as it pertains to the concept of sovereignty and the conventional dichotomy between domestic and international policy environments.<sup>133</sup> As such, despite the central

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<sup>130</sup> Bernier (n 15) 3.

<sup>131</sup> Schütze (n 50) 1.

<sup>132</sup> Akindele and Oyediran *Federalism and Foreign Policy in Nigeria*, above at note 113 at

<sup>133</sup> See B Habegger, *Participation of Sub-national Units in the Foreign Policy of the Federation*, above at note 108 at 274 and E T Hayes "Changing Notions of Sovereignty and Federalism in the International Economic System: A Reassessment of WTO

exclusivity-propagating provisions contained in the CFRN 1999, SNGs in Nigeria now have unprecedented access to foreign entities even more than was possible during the First Republic. Today, Nigeria's SNGs are courted by foreign entities often without recourse to the FG. Recalling the four categories of increased SNG foreign interactions observable in the Fourth Republic, a re-occurring theme was FDI. In this regard, Nigeria's SNGs are now acting as 'gate keepers' to the Nigerian FDI framework. Hocking calls this 'relocation' and describes it thus:

The phenomenon of relocation is demonstrated as international regionalism and coincides with internal regionalism to produce increasingly complex patterns of relationships and activity. The new geopolitics with its emphasis on access has come to focus on this regarding the creation of what Cohen terms 'gateway states' and Ohmae 'region-states.' These are not necessarily territorial entities with separatist ambitions, but may be regions within nation-states whose characteristics equip them particularly well for, in Cohen's words, 'specialised manufacturing, trade, tourism and financial services functions.'<sup>134</sup>

This emerging trend described by Hocking is fueled by the fact that globalization has brought about a gradual erosion of national barriers which makes it logical for foreign entities (including powerful international financial institutions, financiers and transnational corporations) to directly court and interact with SNGs they intend to do business with.<sup>135</sup> This has introduced a centrifugalism despite the currently centralized federalism model in Nigeria.<sup>136</sup> It is the view of this paper that the attraction to foreign economic participation by Nigerian SNGs in this globalized world is bound to persist despite the CFRN 1999 not vesting them with powers to operate in this sphere. Furthermore, the development role of SNGs and financial capital nexus makes the foreign sphere attractive to SNGs. This reality cannot be down-played due to the perennial budget<sup>137</sup> and development deficit which the FG (and SNGs) grapples with. This situation is a function of the fact that as the tier of government closer to the governed,<sup>138</sup> SNGs are best

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Regulation of Federal States and the Regional and Local Governments within their Territories" (2004) 25/1 *North-Western Journal of International Law and Business* 1 at 20. See also Anne-Marie Slaughter, 'The Real New World Order' (1997) 76 (5) *Foreign Affairs* 183, 184; Jessica Matthews, 'Power Shift' (1997) 76 (1) *Foreign Affairs* 50.

<sup>134</sup> Hocking (n 117) 43. See also Paquin and Lachapelle (n 116) 78.

<sup>135</sup> See M Khor *Globalization and the South: Some Critical Issues* (2001, Spectrum Books Ltd) at 1-4.

<sup>136</sup> Centrifugalism represents the flow of foreign economic relations between SNGs in a federation and foreign entities without recourse to the national (or central) government. See R Suberu and L Diamond "Institutional Design, Ethnic Conflict Management, and Democracy in Nigeria" in A Reynolds (ed) *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy* (2002, Oxford University Press) at 400 ff 406, where the authors state that centrifugalism is a characteristic of Nigeria's federalism.

<sup>137</sup> For 2017, Nigeria's budget deficit stood at -2.18% of its GDP (approx. NGN 2,360 billion). See PwC, *Nigeria's 2017 Budget: Budget of Recovery and Growth* <[http://pwc-nigeria.typepad.com/files/pwc\\_nigerias-2017-budget-highlights.pdf](http://pwc-nigeria.typepad.com/files/pwc_nigerias-2017-budget-highlights.pdf)> (Last accessed 12 February 2018). For exposition on the myriad of socio-economic consequences of the perennial deficit budgeting on the nation, see F Asogwa and I Okeke "The Crowding Out Effect of Budget Deficits on Private Investment in Nigeria" *European Journal of Business and Management* 5/2 (2013) 161 at 161-165; J Odionye and K Uma "The Relationship Between Budget Deficit and Interest Rate: Evidence from Nigeria" *European Journal of Business and Social Science* 2/1 (2013) 158-167; A Maji and J Achegbulu "The Impact of Fiscal Deficits on Economic Growth in Nigeria" *International Business and Management* 4/2 (2012) 127-132.

<sup>138</sup> The argument that SNGs are closer to the people compared to the FG is a derivative of the theory that in federal systems where fiscal federalism holds sway, the jurisdictional design should be that vests the tier closest to the governed with fiscal control and responsibility. See A Shar "Introduction: Principles of Fiscal Federalism" in A Shar (ed) *The Practice of Fiscal Federalism: Comparative Perspectives*, above at note , 7-8.

equipped to make development-oriented decisions that would ensure that allocative efficiency is achieved with the limited resources available in the situation of a budget deficit. Thus, the current trend is the exploitation of opportunities by SNGs beyond the country line that presents the opportunity(ies) needed for the development of their jurisdiction.

Albeit the preceding, there is no unequivocal stand vis-à-vis SNGs' foreign economic relations involvement in the Fourth Republic. However, we summarise that in the light of current developments, the FG can only adopt a reactionary stance about the activities and ventures of the SNGs in the foreign economic relations space.

## **CONCLUSION**

It has been argued in this paper that the original position after independence on foreign economic interaction was that of shared competence between the FG and the SNGs. It was also argued that funds from foreign economic activities were used for actualizing economic development objectives of the regions. The analysis above also demonstrates that the disruptions to the operation of federalism in Nigeria from 1966 upwards played a significant role in the deviation from the position obtainable during the First Republic. In this regard, It has been argued that post-1966, the centralization of foreign economic relations in Nigeria was due to the disruption of Nigeria's federal political system by the military. Currently (i.e., in the fourth republic) the position with regard the subject of this paper is that of central exclusivity – a situation characterized by the FG being vested with all the constitutional powers and control over the institutions that drive/underpin foreign economic participation. It has been argued further that the centralized arrangement under the CFRN 1999 has not dissuaded Nigeria's SNGs from making forays into the international scene. More so, the current SNG forays into the international scene are spurred on by the economic development aspirations of these actors and the fact that the current dispensation of global international economic relations is very attractive and easily accessible to any SNG seeking to achieve economic and or political aims. In essence, even though the constitutional conditions under the 1960/1963 Constitutions were more conducive for direct participation in foreign economic policy as against the 1979 and 1999 Constitutions, the re-emergence of the use of side doors by SNGs is testament to the inability of the constitution to suppress these actors that are keen on engaging with foreign entities to meet their development objectives.

More so, these recent episodes raise questions about the legality of SNGs participating in Nigeria to international economic relations. Although some of the activities of Nigeria's SNGs are taking on an international dimension, the constraints of the extant constitutional stance on foreign policy under the CFRN 1999 still makes their actions *prima facie* questionable. In the Fourth Republic, the FG is yet to constitutionally challenge an SNG for overstepping their boundaries in the foreign sphere. However, the calls by the OECD in 2015 for more coordination between federal and subnational agencies in the area of international economic activities is a warning that more attention needs to be given to the evolving role of SNGs as foreign actors. Furthermore, the activities of Nigeria's SNGs in the fourth civilian republic represent a significant manifestation of the changing realities of international economic interactions in the 21<sup>st</sup> century. More so, the fact that the FG has not complained outwardly of SNG involvement in the foreign relations sphere could be regarded as tacit acceptance of an emerging phenomenon which is inevitable in a

globalized world economy. It could also indicate that the FG sees SNGs getting involved in foreign economic activities as a welcome development given the contribution of these SNG activities to economic growth and development in Nigeria. However, it is clear that these occurrences do not tally with the existing constitutional and institutional framework in place.

The above developments and analysis carried out in this paper pose further research questions which are worth considering in future studies. Primary among these are issues which relate to the effectiveness or otherwise of the current centralized approach to foreign economic participation in a multi-tiered state like Nigeria. Although the scope of the paper does not cover this question, in this regard, it is essential to point out that the historical analysis carried out in this paper clarifies the situation surrounding the current status quo in Nigeria. Having identified that the position under the CFRN 1999 is a significant departure from what was obtainable under the 1960/63 Constitutions, this paper has charted *how* this departure from the 1960/63 constitution occurred. More so, with the resurgence of non-constitutional forays into the foreign scene by Nigeria's SNGs, it is questionable if the centralized international economic relations regime under the CFRN 1999 is more efficient just because of the constitution and convention support such a position.



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