The On-Shore and Off-Shore Oil Dichotomy Conflict and Nigerian Federalism: 1971-2005

Uwem Jonah Akpan, (PhD)
Department of History & International Studies
University of Uyo,
Nigeria
uwemjakpan@gmail.com

Abstract
The introduction of the obnoxious On-shore and Off-shore oil dichotomy via Decree No. 9 of 1971, which vested all on-shore and off-shore oil revenue, ownership of the territorial waters and the continental shelf in the Federal Military Government, went a long way to upset the states contiguous to the sea from where oil resources were located off-shore. Prior to the period, the continental shelf was constitutionally regarded as part of the constituent Regions, accordingly revenues derived from off-shore were credited as derived from the Region contiguous to that area of the sea and derivation principle was used as the criterion of sharing between the existing arms of governments. This was in the era when petroleum and gas were not at the forefront of national economic mainstay. With the discovery of oil in the minority areas, the emergence of military government with a strong centre, and the outbreak of the Nigerian Civil War, the Federal Government introduced the dichotomy. The scenario resulted in many years of conflict between the Federal Government and the oil producing states and got to the Supreme Court. The National Assembly eventually professed the "political solution" to assuage the feelings of the oil producing states. These contending issues beginning from 1971 when the dichotomy decree was introduced to 2005 when the Supreme Court dismissed the suit filed by the 19 Northern Governors in conjunction with three South West states seeking the continuation of dichotomy form the thesis of this study. It adopts a historical narrative methodology.

Introduction

Two significant post-Civil War developments propelled the emergence of a strong central government, aside from the military's intrusion into political governance. These were the sudden pre-eminence of petroleum in the Nigerian political economy and apparent federal efforts to promote national cohesion and stability as a panacea to parochial separatist inclination. In the first place, structural and spatial shifts in the centre of gravity in the national economy concomitantly fostered both centrifugal and centripetal tendencies in the country. Historically, a major agricultural export economy, Nigeria began to export oil in the late 1950s, and by 1985 it constituted 97.1 per cent of total export earnings (Eteng, 1997).

More significantly, oil was produced mainly in the Southern minority states of the country. Arguably, the great oil wealth potentials of these minority states probably accounted for General Yakubu Gowon's creation of these states in 1967 and also engendered the Biafran secessionist bid of 1967-1970. With the enormous wealth and buoyant national treasury under its control, the central government virtually appropriated the civil domain, and thus, unrestrainedly intervened economically through polices enabling it to control the commanding heights of the national economy in collaboration with foreign and local interest (Eteng, 1997). One crucial area that was seriously affected was the revenue allocation. To achieve its aim, the ruling military

government introduced some oppressive enactments; these legislations, like the obnoxious On-shore and Off-shore oil dichotomy and the mode of implementation of its provisions were bound to trigger strong resentments and protests from the littoral states.

For more than two decades feeble attempts were made by the Federal Government to resolve the conflict, but these did not yield sufficient results. Eventually, Decree No. 106 of 1992 abolished the dichotomy. Also, the problem was addressed to some extent in section 162 of the 1999 Constitution which provided that "the principle of derivation should be constantly reflected in any approved formula as being not less than 13 per cent of the revenue accruing to the Federation Account directly from any natural resources". Yet, despite the clarity of the constitutional provision abolishing any dichotomy as to on-shore and off-shore oil revenue, the Federal Government in 2001 filed a suit in the Supreme Court seeking to deny littoral oil producing states of the right to benefit from the proceeds of oil produced from off-shore. The Federal Government argued that the "seaward boundary of a littoral state in Nigeria is the low water mark of the land surface thereof". In the final analysis, the Supreme Court declared as claimed by the Federal Government that the seaward boundary of a littoral state was the low water mark, thus effectively excluding oil producing states whose wells were located off-shore far beyond the low water mark. Such states like Akwa Ibom whose oil production was exclusively from off-shore, immediately became insolvent (Okpong, 2002). As a result of tension generated from this judgement, the Federal Government bowed to intense pressure and accepted a "political solution" which resulted in the enactment of the Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 by the National Assembly.

This paper is divided into eight sections. Section one is the introduction. Section two is the theoretical clarification, section three examines the colonial antecedents of oil mineral expropriatory laws, section four discusses post-independence constitutional provisions and the basis of the Federal Government's ownership of petroleum deposits, section five deals with the introduction of the on-shore and off-shore oil dichotomy by the military, section six considers the dichotomy controversy and the Federal Government's intervention schemes, section seven examines the resurgence of the conflict between 1999 to 2005 while section eight is the conclusion

Theoretical Clarification

The concept of conflict has its root or draws its original meaning from the Latin word "configure" which means, "to strike together". This suggests that conflict has to do with the clashing or jamming of one or more things. These two things can be physical, but in this context it refers more to non-physical or non-tangible things (e.g. ideas, feelings, interest, goals objectives etc.) reduced or projected to the level of human behaviour, relationships or interactions within a society or nation. Conflict can be defined as "behaviour between parties whose interest are, or appear to be, incompatible or clashing (Action Aid, 1994). Appelbaum (1999) conceptualize conflict as "a process of social interaction involving a struggle over claims to resources, power and status, beliefs and often preferences and desires". Robbins (1998) prefers to define conflict as "a process that begins when one party perceives that another party has negatively affected, or is about to negatively affect something that first party cares about".

From the above points, it would appear that there are indeed only two dominant conceptual perspectives on conflict, that is the negative and bad perspective and the positive and good perspective. But an in-depth review of the literature on conflict management or conflict and peace literature will show that there is indeed a third perspective, the interactionist perspective. The first and earliest perspective that conflict is always evil which prevailed in the 1930s and 1940s and which was known as the Traditional View of Conflict, has generally been abandoned. It was based on early research efforts and conclusions like the ones by Hawthorn in which most conflicts among individuals and groups were seen as resulting mainly from poor or inadequate communication, lack of openness and trust among people and the failure of managers to respond positively to the needs, wants and expectations of their staff or employees (Nwosu, 2004).
The crisis-can-be positive perspective is also known as the Behavioral View of Conflict. It portrays conflict as inevitable, rationalize the existence of conflict among human groups, holds that conflict can have positive influence on performance and group's survival and so should not only be expected and accepted but sometimes even induced. This perspective of conflict held sway from the 1940s to the mid-1970s.

The interactionist perspective of conflict which is also known as the contemporary perspectives which emerged in the mid-1970s, holds – that conflict can have both positive and negative impacts depending on its nature and intensity, and so while excessive conflicts should be discouraged, moderate degrees of focused conflict which can stimulate positive change, new ideas, promote healthy competition and behaviours should be encouraged (Nwosu, 2004). Robbins (1998) notes that "leaders are actually encouraged by this perspective to generate and sustain minimal conflict levels that encourage to keep their groups alive, self critical, creative and change-oriented". The minimal conflict level generation and sustenance line of thought under the interactionist school perspective is usually given support in the conflict management literature by the following points:
(a) That minimal conflict tends to bring problems into the open
(b) That minimal conflict tends to increase our understanding of the views, feelings, interests and expectations of the other side.
(c) That minimal conflict tends to facilitate change
(d) That some level of conflict tends to bring about better decision
(e) That minimal conflict tends to enhance group loyalty
(f) That minimal conflict tends to increase group commitment.

This study aligns with the interactionist conflict approach which holds that conflict can have both negative and positive effects. The On-shore and Off-shore oil dichotomy conflict eventually moved the parties (i.e. the Federal Government and the littoral States) toward positive understanding despite the fact that initially, the affected states were strangulated because the Federal Government withheld the allocation accruable to them. The then Governor of Akwa Ibom State, Arc. (Obong) Victor Attah who championed the struggle from year 2001, managed the conflict within the framework of fiscal federalism. When the legal option failed at the Supreme Court, he resorted to extensive negotiation and consultation of various stakeholders for a peaceful resolution and the National Assembly eventually intervened with the enactment of the appropriate legislation. The fall-out of the struggle has been the increased federal allocation to the littoral states and the recognition of Akwa Ibom State as the leading oil producing state in the country.

Oil Mineral Expropriatory Laws in Nigeria: The Colonial Antecedent

The origins of the Nigerian petroleum industry goes back to 1908 when, following the observation of surface indications of oil seepage at Araromi in the present Ogun State, a German Company called, Nigerian Bitumen Corporation sourced exploration licence and commenced oil exploration. Prior to 1908, the colonial government had commenced regulation of mining activities. The first of such regulations was the Proclamation No. 18 0f 1902 enacted as the Law of the Protectorate of Southern Nigeria. This Ordinance did not deal with petroleum exploration and exploitation as the knowledge of its availability in Nigeria was not yet gained by this period. The 1902 Mineral Ordinance and its addendum of 1905 empowered the government to appropriate the sole right of final arbiter in matters of land ownership. In 1908, the colonial government enacted the Oil Mineral Ordinance and by its provisions established its monopoly of petroleum and allied products in Nigeria (Udeke-Onwusiri, 1995).

Following the amalgamation of the Northern and Southern Protectorates into a single political entity, the 1914 Oil Mineral Ordinance constituted Nigeria into a single concession area. Coming in the course of World War 1, the Ordinance was carefully worded to secure effective monopoly of Nigerian petroleum resources for the United Kingdom and her subjects.

This Ordinance provided thus:

No licence or lease should be granted under the provisions of the Ordinance to any firm, syndicate or company which would not at all times be and remain a British Colony, and having its principal place of business within His Majesty's Dominions (Mineral Oils Ordinance No. 17 of 1914: 5).

It also provided that the Chairman of the said company and all the remaining Directors should at all times be British subjects, and the company should not at any time be or become a corporation directly or indirectly controlled by a foreign organization. As a result of intensified exploration activities during the colonial period, it was discovered that the most favourable oil yielding structures in the country lay in the Southern Nigerian Sedimentary Basin (The Story of Shell, 1982). Following this revelation, the British Colonial Government became certain that Nigeria has great potentials as an oil producing colony. Consequently, the colonialist enacted the 1946 Oil Mineral Ordinance which stated that:

The entire property in and control of all mineral oils, on, under or upon any lands in Nigeria, and of all rivers, streams and water courses throughout Nigeria, is and shall be vested in the Crown save in so far as such rights may in any case have been limited by any express grant made before the commencement of this Act (Mudiaga, 2003: 69).

The 1946 Oil Mineral Ordinance completed a process begun by the 1914 Ordinance by presenting a situation whereby the Nigerian petroleum resources became British owned, to be produced by British petroleum companies in the interest of British industry and commerce (Udeke-Onwusiri, 1995). However, the Ordinance was followed by some amendments and two other Petroleum Acts before the end of the colonial period. The 1950 amendment conferred the right of ownership of mineral oil in the submarine areas of Nigeria's territorial waters on the colonial government, while the 1956 Oil Pipeline Act gave legal backing to pipeline transportation of crude oil from well the point of exportation (Udeke-Onwusiri, 1995).

It should be noted that an Anglo-Dutch Consortium named Shell-B.P. discovered crude oil in Nigeria after several years of intensive exploration, shortly before the end of the colonial period and commenced production and export marketing of the product in 1958 (Akpan, 2004). In the same year, the colonial government repealed the 1914 Oil Mineral Ordinance which earlier barred non-British companies from participating in petroleum exploration and exploitation

thereby making it possible for non-British owned companies to participate in petroleum prospecting in Nigeria (Etikerentse, 1985).
The vesting of the ownership of petroleum resources in the British government engendered not only suspicions but opposition from the Nigerian political class and the masses. Since the 1946 Oil Mineral Ordinance was a product of the Arthur Richards Constitution which also vested publicly purchased lands and the powers to appoint and depose chiefs in the Crown, politicians capitalized on it to mount opposition on the constitution. For instance, Dr. Nnamdi Azikiwe was quoted as having warned Nigerians that their lands and traditional rulers were threatened by the British Colonial Government (Crowder, 1965). The Nigeria's immediate post-colonial government did not introduce any major changes in the petroleum industry, until the 1969 Petroleum Decree which by its provisions made the Federal Government to play active role in the country's oil industry.

Post-Independence Constitutional Provisions and the Basis of the Federal Government's Ownership of Petroleum Deposits

The 1960 Independence Constitution made no distinction in on-shore and off-shore revenue for the purpose of mineral derivation. The Regions and later States were entitled to 50 per cent of mineral derivation from both on-shore and off-shore revenue. Accordingly, Section 134(1) of the constitution provided that:
There shall be paid by the Federation to each Region a sum equal to 50 per cent of:
1 (a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in the Region; and
(b) Any mining rents derived by the Federation during that year from within that Region.
(2) The Federation shall credit to the Distributable Pool Account a sum equal to 30 per cent of-
(a) The proceeds of any royalty received by the Federation in respect of minerals in any Region; and
(b) Any mining rents derived by the federation from within any Region…
(5) In this section "minerals" include mineral oil (cited Akpan, 2004: 76).
The germane portion of these sections was subsection (6) which provided that: "for the purpose of this section the continental shelf of a Region shall be deemed to be part of that Region". Based on these constitutional provisions, the Regions were entitled to benefit for the purpose of 50 per cent derivation from the continental shelf contiguous to same. It is also noteworthy that under subsection (2) that such Regions/were further entitled to participate in the sharing of the 30 per cent in the common pool after collecting their 50 per cent derivation. The Federal Government was exclusively entitled to 20 per cent (Akpan, 2006).
The 1963, the Federal Republican Constitution vested the Federal Government with the exclusive authority to legislate on mines and mineral oils, including oil fields, oil mining, geological survey and natural gas. Section 158 of the 1963 Constitution provided that:
All property which immediately before the date of the commencement of the constitution was held by the Crown or on behalf of the Crown should be vested in the President of the Government of the Federation (Udeke-Onwusiri, 1995:43).
Through this provision of Section 158 of the 1963 Constitution, it became abundantly clear that since ownership of natural resources including petroleum deposits was among the rights held by and on behalf of the Crown, it automatically became vested in the President of Nigeria. However, despite the fact that ownership of mineral deposits had been vested in the Federal Government and the 1960 and 1963 Constitutions did not make any provision for dichotomy in

on-shore/off-shore oil in the sharing of oil revenue by the existing tiers of government. Thus, the regions and later states were entitled to 50 per cent of mineral derivation from both on-shore and off-shore oil revenue. Accordingly, Section 134 (1) and (6) of the 1963 Constitution which is the same with Section 134(1) and (6) of the 1963 Constitution contained the same provisions for the sharing of revenue accruing from the on-shore and off-shore as well on the ownership of the continental shelf.

The Military and Introduction of the On-Shore and Off-Shore Oil Dichotomy

In January 1966 the military took over the reins of governance in Nigeria and Major General Aguyi-Ironsi emerged as the Head of State. In July of the same year, a counter coup plotted by the aggrieved Northern officers resulted in the emergence of then Lt. Col. Yakubu Gowon as the Head of State. Following the incursion of the military, the 1963 Republican Constitution was suspended (Odu, 2008). The Nigerian Civil War provided the historic occasion for the country's transformation from a centrifugal to centripetal (and ultimately, hyper centralized) federation. As noted earlier, the war-time developments that contributed to the ascendency of the Federal Government included the creation of new states, the centralized control of expanding revenue and the centre's appropriation of the constitutional powers of the defunct regional authorities. These policies provided the platform and the pathway for further consolidation of federal hegemony after the Civil War under a succession of federal military administrations up to 1999 (Suberu, 2002).

In establishing the twelve states in 1967, Gowon had promised to appoint a commission to "recommend an equitable formula for revenue allocation taking into account the desires of the states". The eight-member committee, appointed in July 1968 was the sixth of its kind but the first composed solely of Nigerians. Its Chairman was Chief I.O. Dina, an Economist who had been a senior public administrator (Panter-Brick, 1978).

The Dina's Committee began with a powerful indictment of the existing revenue allocation system and, taking into consideration "the overall national goals" of fiscal federalism. The Committee conceived fiscal federalism in Nigeria as a process of adjustment whereby the revenue of each unit of government was brought into line with its expenditure. It recommended that the Federal Government should assume responsibility for a number of matters on the Concurrent Legislative List of the Constitution. These recommendations were followed by a detailed critical review of the various sources of revenue. The Committee also recommended a number of "revolutionary and controversial measures" including a distinction between on-shore and off-shore oil revenue (Panter, Brick, 1978).

The Committee's report was rejected by the State Commissioners for Finance because it was obssrved that Committee "exceeded its powers and in many respects ignored its terms of reference". The States had all emphasized when submitting their views to the Committee that the principle of derivation was an essential and desirable feature of revenue allocation.

Obviously, the position under the 1960 and 1963 constitutions continued until 1971 when the erstwhile Head of State, Gen. Yakubu Gowon, who was barely 32 years old when he assumed office, vented an act which had the tinge of political inexperience by repealing Section 140(6) of the 1960 Constitution which hitherto provided for derivation from the continental shelf. The instrument used for this purpose was the On-Shore and Off-Shore Revenue Decree 9 of 1971. This was the first time this dichotomy was introduced into our chequered history (Mudiaga, 2003). According to Attah (2002) Gowon was yielded to the advice of Chief Obafemi Awolowo,

who was the Federal Commissioner for Finance and Deputy Chairman of the Federal Executive Council from 1967 to 1971.

The explanatory note of the promulgation states that: "this Decree vests all off-shore oil revenues and ownership to the territorial waters and the continental shelf in the Federal Military Government". The Decree had two sections and only section 1 is relevant to our discussion. Section 1 (1) thereof stated that:

Section 140(6) of the Constitution of the Federation (which provides that the Continental Shelf of a State shall be deemed to be part of that State) is hereby repealed. (2) Accordingly – (a) the ownership of and the title to the territorial waters and the continental shelf shall vest in the Federal Military Government; and (b) all royalties, rents and other revenues derived from or relating to the exploration, prospecting or searching for or the winning or working of petroleum (as defined in the Petroleum Decree 1969) in the territorial waters and the continental shelf shall accrue to the federal Military Government (Mudiaga, 2003**:**72).

The result of this was that much revenue went into the Federal Government account and the Federal Government in consequence recorded budget surpluses. The states had insufficient revenue to use for their development initiatives and this resulted in the strong call for further review of the allocation system and the abrogation of the on-shore and off-shore oil dichotomy. The demands led to the promulgation of Decree No. 6 of 1975 with the title: Constitution (Financial Provisions etc.) Decree of 1975. Section 5(3) of the decree provided that:

The Federation shall credit to the Distributable Pool Account (a) the proceeds of any royalty received by the Federation Account in respect of mineral extracted from the territorial waters, the continental shelf of Nigeria, (b) any mining rents received by the Federation in respect of the territorial waters and continental shelf of Nigeria (Akpan, 2004**:** 66).

What is important about this decree for the purpose of this study is that although the Federal Government had in 1971, perhaps moved by the pressure which were mounted by non-oil producing states, created the dichotomy between on-shore and off-shore oil revenue, it nevertheless took the opportunity once again in 1975 in Decree No. 6 to abolish that dichotomy for in section 7 of Decree No. 6 of 1975, it was enacted thus: "the enactments set out in the first column of the schedule to this Decree are, to the extent set out in the third column of that schedule, consequentially repealed". One of the four enactments set out in the first and second columns of the Decree was the Off-Shore Oil Revenue Decree No. 9 of 1971 and the extent of its repeal was shown as "the whole Decree". The resultant position, however, was that although the Federal Government, by repealing the Decree had consequently denounced it pertaining to the territorial waters and the continental shelf, it did not return such proceeds to the states contiguous to the sea. It rather credited the entirety of such proceeds to the Distributable Pool Account (Bassey, 2006).

The position however remained for a long time whereas the Federal Government had established its title to the ownership of the territorial waters and the continental shelf; it did not appropriate to itself the revenue accruing from petroleum exploration within the territorial waters and the continental shelf. It made such revenues the common property of all Nigerians. Looked at the other way, it was clearly an unwarranted deprivation of the states bordering the continental shelf and the territorial waters. It was a case of the Federal Government bending backwards to accommodate the sentiments of the majority larger states which could not just live with the bigger economic opportunities then open to the oil producing coastal states (Bassey, 2006).

According to Oyovbaire:
The oil revenue transformed the situation in two ways. First the principle of derivation began to produce quite unprecedented disparities in state revenue. The two states producing oil (Mid-West and Rivers) began to accumulate huge surpluses and were the envy of all the other states….The two oil producing states were in no position to justify their anomalous situation. The principle of derivation had become indefensible (Oyovbaire, 1978**:**243).
The above assertion must have influenced the Federal Government to take the rather unfortunate decision of undermining the principle of derivation and unreasonably enacting into law the much dichotomy between on-shore and off-shore oil revenue.

The Dichotomy Controversy and the Federal Government's Attempts at Ameliorating the Problem
As noted earlier, the scenarion between 1971 and 1975 was that although the Constitution (Financial Provisions etc.) Decree No. 6 of 1975 had repealed the Off-Shore oil Revenue Decree No. 9 of 1971, revenue from oil derived from off-shore did not return to the states. rather, what happened was that the proceeds "of any royalty received by the Federation in respect of minerals extracted from the territorial waters and the continental shelf of Nigeria" were credited to the Distributable Pool Account which together with other proceeds so credited were shared to all the states of the Federation in the ration of (1) one-half divided equally among the states, and (2) the other half divided among the states proportionally to the population of each state. The Federal Government did not appropriate the oil revenue from the off-shore area to itself; the oil producing states nevertheless lost the revenue from off-shore wells totally (Bassey, 2006).
Expectedly, such oppressive government decision warranted intense resistance by states of the federation abuting the sea from where off-shore oil was drilled. There was extensive agitation for a return to the 1963 Constitutional provision which for the purpose of revenue sharing, the continental shelf of a region was deemed to be part of that region. Indeed, the agitation by the people of oil producing states in view of the huge revenue which they lost by the military decree was understandable. The peculiarity of the region had been recognized by the Willinks Commission's report more than a decade before the military era (Willinks Minorities Commission Report, 1958). The introduction of the on-shore and off-shore oil dichotomy was to further complicate the poverty and underdevelopment condition of the region. The people of the region have come to regard the discovery of petroleum oil in the region, whether on-shore or off-shore, as a special blessing from above considering the past political and economic neglect and the resultant deepening of poverty rate. The exploration of oil in the waters of the Niger Delta region has rather had tremendous adverse effect on the economic condition of the people.
In January 1986, the Federal Military Government set up a Political Bureau which was charged with the responsibility of reviewing Nigeria's political history and identifying the basic problems which have led to "our failure in the past and suggest ways of resolving and coping with these problems". One of the strong points addressed by the Political Bureau was revenue allocation. The Bureau noted that revenue allocation or the statutory distribution of revenue from the Federation Account among the different levels of government was one of the most contentious and controversial issues in the nation's political life. "So contentious has the matter been that none of the formulae evolved at various times by a commission or by decree under military regimes since 1946 has gained general acceptability among the component units of the country" (Political Bureau Report, 1986)

The Bureau also noted that the British financed the administration of the country mainly with the proceeds from oil palm trade derived largely from the Eastern Region. At that time, basing the allocation of revenue mainly on derivation was not given serious consideration. However, with increasing importance of groundnuts and tin (from the North) and cocoa and rubber (from the West), derivation was catapulted into a major criterion for revenue allocation, thus underscoring the linkage between regional control of political process and the dominant criterion for revenue allocation at any given time. This linkage was further underscored when, following the increasing importance of petroleum derived mainly from the Eastern States as a revenue-yielding source, derivation was de-emphasize…the dichotomy between on-shore oil and off-shore introduced at the end of the Civil War represented yet another clever political device to deprive the oil producing states of additional revenue (Political Bureau Report, 1986).
The Bureau's recommended the following general principles:
(i) Revenue from the Federation Account should continue to be allocated to the states based on the existing principles.
(ii) The dichotomy between on-shore and off-shore in the allocation of revenue due to the oil producing states should be abolished, as it is oblivious of the tremendous hazards faced by the inhabitants of the areas, where oil is produced off-shore (Political Bureau Report, 1986: 46).
The recommendation of the Political Bureau for the abolition of the dichotomy between on-shore and off-shore revenue was accepted by the Federal Government without any qualification or reservation. Yet, for many more years no legal machinery was put in place to effect the abolition of the dichotomy. No changes were effected in the system of revenue allocation to address this issue. The high point of the recommendation was the fact that it was recognized by the Bureau that the system by which oil revenue is put into compartments of onshore and off-shore was "oblivious of the tremendous hazards faced by inhabitants of the areas, where oil is produced off-shore" (Political Bureau Report, 1986).
The conflict continued unabated till 1992, when the Federal Government enacted the Oil Mineral Producing Area Development Commission (OMPADEC) Decree No. 23 of 1992 which gave consideration to the agitation for the abolition of the on-shore and off-shore oil revenue dichotomy. It was spelt out in a section of the decree that in its application to the member-states of Oil Mineral Producing Areas Development Commission (OMPADEC), the dichotomy as to the on-shore and off-shore oil production would not apply. The actual provision was to the following effect:
The sums received by the Commission under the sub-section (1)(a) of this section shall (a) be used for the rehabilitation and development of the oil mineral producing areas on the basis of the ratio of the oil produced in the particular State, Local Government Area or community and not on the basis of the dichotomy of on-shore or off-shore oil production (cited Bassey, 2006:35).
According to Bassey (2006) the provisions of Decree No. 23 of 1992 which abolished the dichotomy within the context of the OMPADEC transactions did not in fact translate into abolition of the obnoxious dichotomy in its application to the principle of derivation in the revenue allocation system of the country. However, later in 1992, the Federal Military Government yielded to pressure by the affected states and amended the Allocation of Revenue (Federation Account, etc.) Act. The amended Act was styled Allocation of Revenue (Federation Account, etc.) (Amendment) Decree.
The amendment was purposeful, clear, straight to the point and unambiguous. It was , thus, provided:

For the purpose of subsection (2) of this section and for the avoidance of doubt, the distinction hitherto made between on-shore and off-shore oil mineral revenue for the purpose of revenue sharing and the administration of the fund for the development of the oil mineral producing areas is hereby abolished (cited Ekong, 2006:37).
With specific reference to the principle of derivation it was enacted thus:
An amount equivalent to 1 per cent of the Federation Account derived from mineral revenue shall be shared among the mineral producing States based on the amount of mineral produced from each State and in the application of this provision the dichotomy of onshore and off-shore oil production and mineral oil and non-mineral oil revenue is hereby abolished (cited Ekong, 2006: 37).
Indeed, Decree No. 106 of 1992 was a landmark legislation because even though the 1 per cent granted the states under derivation was comparatively negligible; yet it breathed life into their economy of the oil bearing states and created a sense of belonging in them. It appeared that the Federal Government recognized the tremendous hazards faced by the inhabitants of the region where oil is produced off-shore and attempted to address the hazards. This situation subsisted up to 1999 when the military handed over power to the civilian government headed by Chief Olusegun Obasanjo. The 1999 Constitution gave considerable impetus to the principle of derivation. Section 162(2) of the 1999 Constitution stipulates that “the principle of derivation shall be constantly reflected in any approved formula as being not less than 13 per cent of the revenue accruing to the Federation Account directly from any natural resources” (1999 Constitution of the Federal Republic of Nigeria).

The Resurgence of the On-Shore and Off-Shore Oil Dichotomy Conflict: 1999-2005

Despite the clear constitutional provisions, President Obasanjo refused to implement the 13 per cent derivation directive. In April 2000, during his state visit to Akwa Ibom State, the President succumbed to persistent persuasion by Governor Victor Attah of Akwa Ibom State and others Governors from the oil bearing states and promised to start the implementation of the derivation formula. However, when the payment came, it was not 13 per cent but 7.8 per cent cleverly packaged as 13 per cent of 60 per cent of the total revenues representing only on-shore component. This was rejected by the Governors of all the oil producing states. Similarly, in the supplementary Bill, the President introduced the on-shore and off-shore dichotomy. The National Assembly accepted the recommendation of the Appropriation Committee, under the chairmanship of Senator Ismaila Mamman and restored the full 13 per cent without dichotomy, but the President refused to pay. In 2001 Budget, the same thing repeated itself with Senator (Prof) Iya Abubakar chairing the Appropriation Committee. In 2001, after the National Assembly had again removed the dichotomy was decided to take the matter to court (Ajayi, 2004).
In February 2001 there were media reports that a group of senior citizens going by the name of the Committee of Patriots under the leadership of Nigeria’s eminent lawyer, Chief Rotimi Williams (SAN) had made written representations to the National Assembly on the proposed amendment of the 1999 Constitution. Topical among their proposal was the re-introduction of the on-shore and off-shore oil revenue dichotomy which had been painstakingly and comprehensively abolished by the Allocation of Revenue (Federation Account etc.) (Amendment) Decree. The basis of their argument was that off-shore oil production should not be taken as production within the contiguous state. Such production should be credited to the

Federal Government since the production is done within the Nigerian territorial waters of the Nigerian Continental Shelf or within the Exclusive Economic (Okpong, 2002).

Eventually, the Federal Government under Chief Obasanjo as President and Chief Bola Ige as the Attorney-General of the Federation and Minister of Justice filed a suit in February 2001 against the thirty six State Governors. The summary of the facts with reference to the objections was to the following effect that:

(a)The natural resources located within the boundaries of any State are deemed to be derived from that State;

(b) In the case of the littoral States comprised in the Federal Republic (i.e. the States of Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers) the seaward boundary of each of the said States is the low water mark of the land surface thereof or (if the case so requires) the seaward limits of inland waters within the State.

(c) The natural resources located within the territorial waters of Nigeria and the Federal Capital Territory are deemed to be derived from the Federation.

(d) The natural resources located within the Exclusive Economic Zone and the Continental Shelf of Nigeria are subject to the provisions of any treaty or other written agreement between Nigeria and any neighbouring littoral foreign State, derived from the Federation and not from any State.

In paragraph 10 of the statement of claim the Attorney-General of the Federation claimed that the States of Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers disputed the averments of the Federal Government of Nigeria and claimed that natural resources located off-shore ought to be treated or regarded as located within the respective States (cited Bassey, 2006: 47).

It should be noted that the defendants vigorously argued that since Nigeria was a federation of 36 states, Nigeria as such was the aggregate of the 36 states together with the area known as the Federal Capital Territory of Abuja. Accordingly, it was irregular to claim that natural resources located within the "territorial waters of Nigeria are deemed to be derived from the Federation and not from any State". The claim has doubtful rationale, because in the natural order of things if a thing could not just be derived from any of the 36 states and Abuja, such a thing could not just be derived from the federation since the federation did not have any land or water or space which was not located in a part of Nigeria (cited, Bassey, 2006).

The leading Counsel of Akwa Ibom State Akpan Ekong Bassey (SAN) critically observed that, based on the 1999 constitutional provisions, the principle of derivation was without qualification. According to him:

Derivation means that it does not discriminate between on-shore and off-shore derivation. "Nigeria is a federation of 36 states who have contracted to come together on the basis of equality. Nigeria as a geopolitical and constitutional unit is defined with reference to the component states that make up Nigeria. Nigeria is a coastal country by virtue only that the continental shelf is a natural prolongation of its coastal component states. If a person, for instance, working on the Exxon-Mobil platform off the coast of Ibeno Local Government Area of Akwa Ibom State killed another on the same platform; he would be apprehended for the offence of murder. Such offence would automatically be tried in the High Court of Akwa Ibom State (and not in the High Court of Enugu of Sokoto or Kaduna State) in accordance with the provisions of the Criminal Code of Akwa Ibom State. If that state is naturally, legally and constitutionally saddled with such obligation, it is unthinkable that it should be denied the benefit of oil revenue accruing from that same platform (Bassey, 2006: 67)

Eventually, the infamous Supreme Court judgement was delivered on the 5th of April 2002 and dispossessed the oil bearing states of their inalienable rights to littoral boundaries against international norms and legal practices it thereby vested ownership in the Federal Government. The judgement touched on a very sensitive area of national polity and accordingly attracted stern reactions. In the Niger Delta region, the judjement was poison and for the littoral states particularly Akwa Ibom whose 13 per cent derivation fund came exclusively from off-shore, the judgement was a catastrophe. President Obasanjo in realizing potential for disruption the ruling posed to the unity of the nation accepted a political solution, a situation canvassed prior to the institution of the Supreme Court suit in 2001 by Governor Attah and his compatriots.

In September 2002, President Obasanjo forwarded a Bill to the National Assembly seeking to abrogate the controversial onshore and off-shore dichotomy in the disbursement of revenue from the Federation Account. The Bill stated thus:

…as from the commencement of this Act, the contiguous zone of a state of the Federation shall be deemed to be part of the state for the purpose of computing the revenue accruing to the Federation Account from that state, pursuant to the provisions of sub-section (2), section 162 of the constitution of the Federal Republic of Nigeria….Accordingly, for the purpose of the application of the principle of derivation, it shall be immaterial whether the revenue accruing to the Federation Account from the state is derived from natural resources located on-shore or off-shore….This Act may be cited as the allocation of Revenue (Abolition of Dichotomy in the Application of the Principles of Derivation) Act 2002 and shall b deemed to have come into force on the 1st of April 2002 (cited Okpong, 2002: 134).

While the country was settling down in an atmosphere of relative peace following the abolition of the dichotomy in the application of the principle derivation and the littoral states trying to count their marginal gains resultant from the Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, another suit was filed in the Supreme Court in 2006 by the 19 Northern Governors in conjunction with three states from the South Western Nigeria seeking the nullification of the Act with the sole aim once again was to deprive littoral states of any share of funds from natural resources derived from off-shore contiguous to their coastline.

The claim was against the Attorney-General of the Federation together with the Attorney-General of the littoral states. Also sued was the Revenue Mobilization and Fiscal Commission. The plaintiff claimed for a declaration that “the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act 2004 was unconstitutional and null and void”. It also sought an order directing the defendants to forthwith stop the implementation of the abolition dichotomy among other points.

The plaintiffs’ action was received with uproar in many parts of the country, particularly the littoral states. Attempts to persuade the plaintiffs to appreciate the enormity of the economic and ecological plight of the coastal states were rebuffed. Attempts at political solution also failed, the plaintiffs appeared tough and irreconcilable to any offer for them to withdraw the suit. However, on the 29th of September 2005, after a careful and detailed examination of the issues canvassed and the legal submissions made, the Supreme Court unanimously dismissed the plaintiffs’ suit, the Chief Justice of the Federation, concluded: “finally, the plaintiffs action, as a whole, fails in its entity, and is hereby dismissed with no orders to costs” (Ekong, 2006).

Conclusion

Right from the inception of the country in 1914, revenue allocation or statutory distribution of revenue from the Federation Account, among different tiers of government had been one of the most controversial issues in the nation's political evolution. Before independence in 1960, the British colonial administration constituted commissions to recommend equitable revenue sharing formula for the country but none was acceptable to the people hence, the subsequent administrations became entangled with the issue.

After independence in 1960, regionalism became the basis for revenue allocation. The group in power and the regions which they represented became the greatest beneficiaries in the allocation process. Under the parliamentary system of the First Republic (1960-1966) there were three, later four regions. These were the Northern, Eastern, Western and Mid-Western Regions. The main economic products of the North were cotton, groundnuts, hides and skin. In the East were palm oil, kernel, the West had cocoa and rubber and the Mid-West timber. These products were largely exported to Britain for industrial use. During the period, the dominant principle of revenue allocation was that of derivation. Although some regions benefited more than others under this criterion, the major actors were satisfied with it. This position changed in the late 1960 when oil, which was being extracted from the minority areas for the country became the principal revenue earner (Onwioduokit, 2003).

The height of deprivation of the oil bearing states came with introduction of the on-shore and off-shore oil dichotomy in the sharing of oil revenue. Indeed, beginning from the military era Nigerian rulers because of improper economic motive failed to consider the devastation caused to the coastal areas by the impact of off-shore oil exploration; they failed to appreciate the damage to aquatic life, fishing being the traditional economic mainstay of these coastal people. They became insensitive to the sprawling neglect of the areas by successive administrations and pretended to be ignorant to the extensive degree of poverty in the oil bearing states and the want of essential infrastructure like roads, railways, portable water, electricity and so on.

The dichotomy was constructively and consistently resisted by the oil bearing states until from 1971 to 2005 and the 13 per cent derivation recommended by the 1999 Constitution is being enjoyed by the concerned states. However, the leaders of the oil bearing states and leaders from other sections of the country are calling for proper re-structuring of the polity and entrenchment of balanced federalism.

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