

DELIMITED MARITIME ZONES AND THE RESPONSIBILITY OF STATES IN MARINE ENVIRONMENTAL PROTECTION UNDER THE 1982 CONVENTION ON THE LAW OF THE SEA

BY

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ABSTRACT

The importance of the world oceans cannot be underestimated. This accounted for the enactment of conventions including the Third United Nations Convention on the Law of the Sea 1982 to regulate the activities of States in the Use of the world ocean. The Convention divided the oceans into maritime zones and clothed states with rights, duties and obligations in their use of these zones including the duties of protecting the zones from environmental degradation. This paper examines in a holistic manner, the rights open to states under the 1982 Convention in protecting marine pollution in these zones in their respective states and appraised the adequacy or otherwise of the laws. The paper concluded that the problem was not with the adequacy or otherwise of the laws but the problem lies with the enforcement of those laws put in their respective jurisdictions.

1.0 INTRODUCTION

The oceans and seas cover about 71.4 percent¹ of the earth surface. They comprise nine-tenths (9/10) of our water resources and are home to over 97 percent of life in our planet. They are an essential part of our biosphere; they power our climate and affect our health and well-being, indeed without the ocean, there would be no life on our planet². This ocean is what Hugo Grotius in 1608 described in eloquent terms as:

That expanse of water which antiquity describes as the immense, the infinite, bounded only by the heavens, parent of

¹ It is important to note that the issue of the exact size of the ocean and seas is far from being settled. For instance, some insist that the oceans and seas constitute 71% of the earth surface. See Elias T.O. (1992) *New Horizons in International Law*, 2nd Revised edition; Martinus Nijhoff Publishers, London, p.65; Mero J.L.et al (1977) "Oceans and Seas" *Encyclopedia Britannica (knowledge in depth)* 15th ed. P. 482. See also Friedheim L. R. (1977) "Toward a Treaty for the Oceans" in Don Walsh (ed.) *The Law of the Sea: Issues in Ocean Resource Management*. 1st ed. Praeger Publishers, New York page 1; Anand. R.P. (2007) "Law of the Sea in Historical Perspectives" *Conference Proceedings of Indian Society of International Law; Fifth International Conference on International Environmental Law*, Vol. II, p.1023. See also Fig. 1 in the appendix.

² (2004) "The Oceans, Our Heritage: Towards Sustainable Management of the Nigerian Marine Environment". <http://www.lead.org.ng/the%20Oceans,%20our%heritage.htm>. Assessed 11/5/2014.

all things; the ocean which the ancients believed was perpetually supplied with water not only by fountains, rivers and seas, but by the clouds, and by the very stars of heaven themselves; the ocean which although surrounding this earth, the home of human race, with the ebb and flow of its tides, can be neither seized nay inclosed; nay, which rather possesses the earth than is by it possessed³.

Today, a realistic view of the ocean is almost diametrically opposed to that of Grotius. The ocean is very finite indeed; it constitutes a complex and delicate ecosystem facing injury from many sources.⁴ The ocean and the other parts of the environment are interconnected and intertwined to the extent that where one part is adversely affected, it automatically have a reverberating effect on the others. For easy administration of the world oceans, they are divided into zones; known as maritime zones with different rights and obligations from states in the respective zones they are operating.

Ocean Zoning is a term and concept devised to guide human uses of the ocean and to optimize utilization of marine resources and to provide protection of marine ecosystems. Zoning is a way of reducing user conflicts by separating incompatible activities, and allocating or distributing uses based on a determination of an area's suitability for those uses, in relation to specific planning goals⁵. As a result of the activities of states in these delimited zones, polluting activities do occur and it is imperative for states to know the degree of pollution permissible in these zones and the degree of their involvement whenever the polluting activities is a result of third parties. This paper will holistically examine these delimited zones viz-a-viz the right of states and their responsibility in protecting the marine environment.

2.0 The Environment

It is important to note that none of the major treaties, declarations, code of conducts, guidelines, legal instruments and statutes that have something to do with the issue of the environment care to define the word **environment**⁶. Many scholars have therefore attempted to define the term in ways which express the full extent of its role and purpose in environmental

³ Grotius, Hugo (1916); *The Freedom of the Seas* translated by Ralph Van Deman Magoffin. Oxford University Press for the Garnegie Endowment for International Peace p.37, cited by D'Amato A and Hargrove J.L (1975); "An Overview of the Problem" in (Hargrove J.L eds.) *Who Protects the Ocean? Environment and the Development of the Law of the Sea*; West Publishing Co. USA p.1.

⁴ D'Amato A and Hargrove J.L (1975) "An Overview of the Problem"; *op. cit.* p.1.

⁵ Courtney F. and Wiggin J. (2003) "Ocean Zoning for the Gulf of Maine: A Background Paper" prepared for the Gulf of Maine Council for the Marine Environment. Available at <http://www.mass.gov/czm/oceanzoningreport.pdf> Accessed on 6/5/2014.

⁶ Bernie P. and Boyle A. (2002) *International Law and the Environment*, Oxford, 2nd ed. p.2.

management⁷. This is because it is difficult to identify and restrict the scope of such an ambiguous term, which could be used to encompass anything from the whole biosphere to the habitat of the smallest creature or organism.

The Environment was defined in these terms:

“Something that environs” to the whole complex of climatic, edaphic, and biotic factors that act upon an organism or an ecological community and ultimately determine its form or survival; the aggregate of social or cultural conditions that influence the life of an individual or a community⁸.

What make up the environment is more than the living being. In fact membership of the environment include both living and non-living things including but not limited to plant, rock, trees and other micro-scopic organisms.

The United Nations Stockholm Conference on Human Development did not bother to define what an environment is but merely asserts that:

Man is both creature and moulders of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth⁹.

The United Nations General Assembly, in adopting the environment ideals in world Charter for Nature¹⁰ emphasized the centrality of man in environment. It declares that man is part of nature and its life depends on the uninterrupted functioning of natural system which ensures the supply of energy and nutrients¹¹. The above assertions have been criticized in that they tend to relegate other inhabitants of the environment to the background¹².

In Nigeria, The National Environmental Standard and Regulations Enforcement Agency (Establishment) Act ¹³ defines Environment to:

Include water, air land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them¹⁴.

⁷ Amokaye G.O. (2004) *Environmental Law and Practice in Nigeria*, 1st ed., University of Lagos Press, Lagos . p.3.

⁸ Webster (1988) *New World Dictionary* 3rd College edn. Cleveland p.454.

⁹ Preamble, para. 1 *Report of the United Nations Conference on Human Development and Environment*, Stockholm 1972 A/CONF.48/Rev.1 (New York 1972) 3.

¹⁰ UNGA Resolution 7 XXXVII of 28th October 1982.

¹¹ *Ibid.*

¹² See Generally Amokaye G.O. (2004) *supra*.

¹³ The National Environmental Standard and Regulations Enforcement Agency (Establishment) Act. Act No 25 of 2007. For a detailed examination of the Act, see Ladan M.T (2012) " Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria." 8/1 *Law, Environment and Development Journal*, p 116 available at <http://www.lead-journal.org/content/12116.pdf>. Accessed 10/02/2014.

Notwithstanding the variants in the above definitions, they are talking about the planet earth and all what is contained therein and their interrelationship among them¹⁵.

3.0 The Marine Ecosystem

The hydrosphere is the liquid portion of the Earth and it is the word used to describe the total free water of the earth whether solid, liquid or gas and encompasses the oceans, the seas, the rivers, and lakes that gouge the continents, the polar ice packs and the subterranean aquifers¹⁶. Any observer from the outer space would quickly detect that the oceans and seas cover about 71 per cent of the Earth's surface¹⁷ and constitute its most conspicuous feature. These waters, together with the relatively small amount that occurs in the form of rivers, lakes, ice, and groundwater, are called the Earth's hydrosphere while the other physical spheres of the earth are the atmosphere and the lithosphere¹⁸. The combinations of the above integrated units are called the world ocean.

Quite often, a restricted view limiting consideration of the hydrosphere to large water bodies like oceans and seas is usually adopted. The reason for this is that such large bodies of water made up the bulk of the hydrosphere.¹⁹ The world oceans comprise of interconnected water bodies. However, it is common to recognize five oceans which are Atlantic,²⁰ Pacific,²¹ Indian,²² Arctic,²³ and the southern oceans.²⁴

The topography of the world ocean is irregular forming certain continents and their political configurations while some are disadvantaged²⁵. The depths, shallow or deep, vary considerably, affecting navigation, plant, animal life and mineral extraction, large marginal seas and bays occur in the North Atlantic Ocean while the South Atlantic and the eastern rim of the Pacific Ocean tend

¹⁴ Section 38 of the Decree/Law.

¹⁵ See generally Caldwell (1980) *International Environmental Policy and Law*; 1st edn., Durham, NC. Pp 170 where he remarked that "the environment is a term that everyone understands and no one is able to define".

¹⁶ *Ibid*.

¹⁷ Elias T.O. (1992) *New Horizons in International Law*; 2nd Rev edn; Martinus Nijhoff Publishers, London, p.65; Friedheim, L.R. (1977) "Toward a Treaty for the Oceans" in Don Walsh (ed.) *The Law of the Sea: Issues in Ocean Resource Management*, 1st edn., Praeger Publishers, New York, p.1.

¹⁸ Mero J.L. (1977) "Oceans and Seas" in *Encyclopedia Britannica (knowledge in depth)* pp. 482-504.

¹⁹ Jeje L.K. and Adesina F.A. (1996) *Man and Environment-An Introductory Note*. RERDC Publisher, Ede, Nigeria. p. 143.

²⁰ The Atlantic Ocean separates the continents of Africa and Europe to the east from the American to the west. The name is thought to be connected with the Atlas Mountain in north-west Africa and with the islands of Atlantis. Its natural boundaries include the Arctic Ocean and part of the southern Antarctic Ocean.

²¹ Pacific Ocean is the largest of all the oceans. It covers about one third of the earth's surface and represents nearly half the water of the earth. **It is larger than all the continents together**. Its total area is 180 million km². See Jeje and Adesina *supra* p. 144

²² The Indian ocean unlike the Atlantic and the Pacific does not extend into the Northern hemisphere beyond the Tropic of cancer except through the Persian Gulf and the Red sea. In size, it is about 40 million square kilometer. It has no obvious physical boundary to the south.

²³ The Arctic Ocean, also called the North Polar sea lies around the North Pole. It is 14 million square kilometer in area. Sea ice forms throughout the Arctic basin in most months of the year.

²⁴ The southern of Antarctic Ocean surrounds the continent of Antarctica. It is separated from other oceans by the line of latitude 40°s. For most part of the year, pack icebergs cover most of the water, moving with the winds and currents. See Jeje and Adesina *Supra* at p.145

²⁵ These are Landlocked and Geographically disadvantaged States. See Andreyev P. *et al* (1988) *The International Law of the Sea* Progress Publishers, Moscow; p.130. See also Ibler V. (1971) "The Interest of Shelf Locked States and the Proposed Development of the Law of the Sea" 11 *India J. Int. Law* p.389.

to be regular. The Red Sea, the Persian Gulf, the Arabian Sea, and the Bay of Bengal Mark the northern circle of the Indian Ocean, but the East African coast has a relatively smooth line, while the Western Pacific Coasts are greatly indented with contiguous seas and the ocean is pockmarked by Islands and archipelagos. Irregular coastlines, natural parts, and deep rivers cutting into the shorelines have all played important roles in the development of human communities and the transfer of cultures²⁶.

Coastal wetlands, covering some 6 per cent of the world's surface, divide the dry land from the sea. They play an important role not only in fish-spawning, but as a buffer for the land against seawater floods and cyclones, and a buffer for the sea against sediment and pollution from the land²⁷. Since 1900, the world may have lost half its wetlands to drainage for agriculture, clearance for forestry, urban and tourist development. Asia is thought to have lost as much as 60 per cent of its original wetlands area, Africa almost 30 per cent²⁸.

The volume of the world ocean is eleven times the volume of land that lies above the sea level. In Mariana Trench, the bottom of the sea is almost 11,000 metres, a depth exceeding the height of Mount Everest²⁹ but most of the world ocean has a depth of three to six thousand metres. About seven and half per cent of the surface of the ocean lies over waters no deeper than 200 metres. This is where most of the plant and animal life of the ocean is found, and the seabed is formed of sedimentary rocks and mud that are geomorphically a part of the continental land mass³⁰.

4.0 Protection of the Marine Environment

Although it has not been possible to define the notion of environmental protection in any international agreement, such a notion may be discerned upon consideration of various international measures which have been taken to control pollution. Considerations of these measures reveal that it has been possible to define the term "pollution", so there is at least some common understanding in the field of environmental protection that deals with abatement of pollution³¹. From the above, any definition given on the subject is ad-hoc and far from being settled.

²⁶ Mangone, G.J. *supra* p.3.

²⁷ Harrison P. (1993) *The Third Revolution; Population, Environment and a Sustainable World*, Penguin Books, London, p.199.

²⁸ Maltby (1986) "Wetlands extent and Global Loss in *Waterlogged Wealth*; Edward (ed.), Earth Scan, London pp. 10, 90, see also Meckinnon (1986), Asian Losses in *Review of Protected Areas System in the Afrotropical Realm*, IUCN (Gland) Document.

²⁹ Myers N. (ed.) (1993) *GAIA: An Atlas of Planet Management* pp. 64-93

³⁰ See Magone, G.J. *supra* p.4.

³¹ Gundling L. (1992) "Environment, International Protection" *op. cit.* p.97.

The international legal protection of the environment is a relatively new one but rapidly developing part of modern international law³². This must have accounted for the inability of Brownlie³³ to have in his earlier editions a chapter that discusses the issue of the protection of the Environment. However in his latest edition³⁴, a new chapter was dedicated to discussion on the issue of the environment. At the present time, there are numbers of international treaties of different kind governing various aspects of the protection of the environment and the utilization of natural resources.

Andreyev³⁵ although did not define protection of the marine environment he merely described it. He said that the concept comprises of two aspects – prevention of marine pollution and protection of marine living resources. In many international instruments³⁶ protection of the marine environment refers exclusively to its protection from pollution, while conservation of marine living resources is regulated separately.

Environmental protection entails protection of the whole basis of life on earth. In actual fact, it extends beyond the mere protection of the basis of life on earth and should be viewed as a policy designed to provide the conditions required for the continuation of life and survival of species³⁷. According to Popoola³⁸, environmental protection comprises the protection of the air, waters (including internal waters, groundurats, ocean sand and soil) against pollution. Also included are the protection of nature against destructive and unreasonable use, the protection of cultural monuments against destruction, the protection of people and animals against noise, the protection of plants and animals against radiation and the protection of natural resources, both living and non-living, against uncontrolled use and depletion.

5.0 Rationale for Protection of the Marine Environment

Many times when people seek to justify environmental protection, they do so using a story told by Garrett Harding entitled "The Tragedy of the Commons"³⁹. The tragedy develops this way:

³² Tunkin G.I. (1986) *International Law* (English Translation 1st edn. Progress Publishers, Moscow, p.476.

³³ Brownlie Ian (1990) *Principles of Public International Law*, 4th edition, Oxford.

³⁴ Brownlie Ian (2003) *Principles of Public International Law* 6th ed. Oxford. Chapter 13 titled "Legal Aspects of the Environment" Although the discussion of the issue of the environment was not detailed.

³⁵ *Op. cit.*

³⁶ See for example the 1982 UN Convention on the law of the Sea; Part XII titled 'Protection and Preservation of the Marine Environment'.

³⁷ See Gundling L. *op. cit.*

³⁸ Popoola A. O. (1998) "International Law and the Protection of the Marine Environment: Problems and Challenges for Africa in the 21st Century" *op cit* p.413.

³⁹ Harding G. (1968) *The Tragedy of the Commons*. Science 162, p.1243. For an abridged version of the story see Kubasek J.D. and Silverman G.S. (2000) *Environmental Law* 3rd ed., Prentice Hall, New Jersey USA p.115.

Picture a huge, lush pasture open to everyone. Many people survive by raising cattle; they take their cattle as to the common pasture to graze. Each herdsman keeps as many cattle as possible. For a while, disease, famine and tribal wars keep the number of cattle down to a reasonable level. Eventually, however, the day of reckoning comes. There is just enough land to support all of the cattle.

The rational herdsman, however ask himself "What is the utility of adding more animal to my heard"? Because the herdsman receives all the proceeds from the sale of the animal, he has powerful incentive to add to his herd. The negative effect of adding one more animal is the harm that results to the other herdsman from resultant overgrazing. Because all herdsman share in this negative effect, the negative consequences to the individual herdsman are minimal. Consequently herdsman tend to keep adding to their herds. As the same conclusion is reached by each herdsman, each continues to increase his herd without limit. But the space for the herd is limited. Herein lies the tragedy. They are locked into a system that guarantees the destruction of the commons and thus their own ruin. Hardin thus concludes 'Ruin is the destination to which all men rush, each pursuing his own interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all'⁴⁰.

One may then ask **(1) how is the tragedy of the commons related to environmental protection? Would the same have happened to the oceans had they been divided and parceled out under national ownership?**

The answer to this question was proffered by D'Amato and Hargrove⁴¹ in the affirmative. Their argument was premised on the fact that if the ocean had been divided like an international lake or enclosed sea, with riparian states owning slices extending to the centre's, the ownership principle might have operated as Hardin suggested it did when there were sole proprietors of meadows fields. Each owner might have felt the responsibility to use the political and legal power of ownership to preserve his domain, to conserve the resources therein prudently, and perhaps to monitor ships that pass through the area to make sure that they did not discharge pollutants in unacceptable quantities.

Unfortunately, the world oceans were not partitioned. So everyone was free to use the sea including the right to pollute. **Since the world ocean does not belong to anyone but a common heritage of mankind why then are we interested in protecting the Environment?** D'Amato and Handgrove⁴² submitted that by protecting the oceans, we are protecting our heirs, for what we do to the environment today will have a multiplied effect upon the

⁴⁰ *Ibid.*

⁴¹ D'Amato A. and Hargrove J.L. (1975) "An Overview of the Problem" in Hargrove J.L. (ed.) *Who Protects the Ocean? Environment and the Development of the Law of the Sea*, West Publisher, USA, p.1 at 22.

⁴² *Ibid.*

survivability of the human species in the next generations⁴³. Future generations have no voice in the present day calculations and it cannot be simply assumed that environmental interests will take care of themselves through economic calculations or that cost-benefit estimations will themselves take fully into account the needs of persons yet unborn⁴⁴.

Apart from the above that people are interested in protecting the marine environment is better captured in the words of Jacques-Yves Cousteau⁴⁵ put thus;

In publications, in conferences, in international units, the matters are divided into air pollution, land pollution and water pollution. In fact there is only one pollution because every single thing, every chemical whether in the air or on land will end up in the ocean.

Nature has endowed the oceans with enormous riches, the Chemical and mineral content of the oceans water mass, encompasses approximately 71 per cent of the earth surface. Man therefore has been attracted to the oceans for variety of reasons – adventure, food, commerce, navigation, recreation etc. Additionally, this ocean serves as reservoir of waste dump. Although a river renews itself annually and lakes are flushed in matters of years or decades, the seas retain materials for centuries to millions of years⁴⁶. The ocean must be protected because of the possibility that materials dispersed to the oceans can return to man in fish or shellfish at potentially dangerous levels.

6.0 The Maritime Zones

Ocean zoning refers to a scheme for dividing a marine area into districts and within those districts regulating uses to achieve specific purposes. It has two components: One, a map that depicts the zones and two, a set of regulations or standards applicable to each type of zone created. For some Zones, the regulations might be very protective of marine resources or habitat by allowing a very few compatible uses⁴⁷, and excluding any use that would undermine the goal of resource protection.

⁴³ For a comprehensive understanding, See Weiss E.B. (1989), *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity*; 1st ed. United Nations University, Weiss E.B. (1984) 'The Planetary Trust; Conservation and Intergenerational Equity' 11 *Ecology L.Q.* 495; Parfit (1982). "Future Generations, Further Problems" 11 *Phil & Pub Aff* p.113. Parfit (1976) "On Doing the Best for Our Children" in M. Bales (ed.) *Ethics and Population* p.100.

⁴⁴ This issue of the "Future generations" was given prominence by the United Nations in the several conferences it called on Environmental protection especially that of Stockholm, Rio, Johannesburg, India just to mention a few.

⁴⁵ Cousteau J. (1971): *Our Oceans are Dying*, N.Y. Times, 14 November 1971 as quoted by Gavoneli M. (1995) *Pollution from Offshore Installations* 1st ed. Graham & Trotman Publisher, London, p.29 footnote 1.

⁴⁶ Goldberg E.D and Menzel D (1975) "Oceanic Pollution" in Hargrove J.L. (ed.) *Who Protects the Ocean*. P. 38

⁴⁷ See Vidas D. (2006) "Particularly Sensitive Sea Areas: The Need for Regional Cooperation in the Adriatic Sea" in Ott K. (ed.) *Croatian Accession to The European Union: The Challenges of Participation*; 4th Volume, Institute of Public Finance, Zagreb, p.347, on Marine protected Areas, see Schgal R. (2006) "Legal Regime Towards Protecting Coral Reefs: An International Perspective and Indian Scenario" 2/2 *Law, Environment and Development Journal* p.183 at p.189. Available at <http://www.lead-journal.org/content/O6183.pdf> Accessed 24/4/2014.

In other zones where resource protection is less of a priority, more intensive use might be allowed based, presumably, on the suitability of the area for such uses⁴⁸.

7.0 The 1982 United Nations Convention On The Law Of The Sea on Maritime Delimitation

The Law of the Sea, 1982 is the foundational legal instruments which provides the starting point for any discussion of the rights and responsibilities of States with respect to the oceans and its resources, whether within national jurisdiction or beyond the limit of natural jurisdictions⁴⁹. It came into force in 1994, and at 2008,⁵⁰ 157 States and other entities are parties – an extraordinarily high rate of participation. While some of its provisions may be seen as “mere” treaty obligations, binding only on States parties to the Convention⁵¹, much of its content (particularly with respect to zones of jurisdiction and issues such as high seas navigational rights) is accepted as the best available statement of customary international law, binding on States in general. In this sense, it has come to be regarded as the “Constitution for the Oceans”⁵².

This 1982 law established with due regard to the sovereignty of all States, a legal order for the sea and oceans which facilitated international communication and promote the peaceful uses of the sea and the oceans⁵³. This legal order effected an equitable and efficient utilization of and conservation of the oceans resources, and also promotes the study, protection and preservation of the marine environment⁵⁴. Nigeria is one of the worlds 120 Coastal States, and as such, the Convention is of great significance in the

⁴⁸ Courtney F. and Wiggin J., *supra*.

⁴⁹ Breide C. and Saunders P. (2005) *Legal Challenges for the Conservation and Management of the High Seas and Areas of National Jurisdiction*, WWF International, Gland, Switzerland p.5.

⁵⁰ Dyke, J.M.V. (2006), *The Evolution of the Law of the Sea and the Challenges of Allocating the Living Resources of the High Seas: A Plenary Lecture*. Available at <http://www.10inst.org/templates/10inst/docs/PIM31/Top1/vandyke.pdf> Accessed on 27/3/2014.

⁵¹ Some countries for example USA, Israel, Turkey and Venezuela refused to ratify the 1982 law but were parties to the 1958 and 1960 Convention. So as between States that are parties to the 1958 and 1960 Conventions but which are not parties to the 1982 Convention, the 1958 and 1960 Conventions are the laws that would govern their relationship on ocean matters. See Rabkin J. (2006) *The Law of the Sea Treaty: A Bad Deal for America*, Competitive Enterprise Institute, Washington DC, Monograph No. 3, p.1 available at www.cel.org.

⁵² See Churchill R.R. and Lowe A.V. (1985) *The Law of the Sea* 1st edn, Manchester University Press, Manchester, Chapter 1; See also de Fontaubert, S.C. (2001). “Legal and Political Considerations” in WWF/IUCN (eds.) *The Status of Natural Resources on the High Seas* WWF/IUCN, Gland, Switzerland, p.77.

⁵³ See Aluko, A.F. (1998) “Maritime Zones within the Limits of National Jurisdiction” in Ayua, I.A. and Yagba, T.A.T. (eds.). *The New Law of the Sea and the Nigerian Maritime Sector*, NIALS, Lagos, p.22.

⁵⁴ See Preamble to the LOS Convention 1982.

attainment of her rights and obligation in maritime zones that fall within the limits of her jurisdiction⁵⁵.

The Convention establishes a Zonal system which stipulates the scope and limits of the rights and obligations of coastal states. It makes provisions in respect of zones out of which two are entirely new regimes – the Exclusive Economic Zone and the Area (The Deep Seabed).⁵⁶ The Zones could be broadly divided into two camps – The Zones within the limit of national jurisdiction and the Zones beyond the limit of national jurisdictions.

7.1 Internal Waters

According to O'Connell⁵⁷, the expression "internal waters" or inland waters is used in international law to refer to all areas of sea which lie within (or on the coastal side of) the baseline from which the territorial sea is measured. It thus covers a group of cognate but separable legal areas namely: Bays, gulfs, estuaries, and creeks; ports and roadsteads; and waters inside straight baselines linking the coast with offshore features⁵⁸. Marine waters which are landward of the baselines from which the territorial sea is measured are considered to be within the territory of the State, and subject to its sovereignty in the same manner as the landmass⁵⁹. They are classed as appertaining to the land territory of the coastal State and are assimilated with the territory of the State⁶⁰. Shaw however posited that internal waters differ from the territorial sea primarily in that there does not exist any right of innocent passage from which the shipping of other States may benefit⁶¹. This rule is however not without an exception⁶² particularly where the straight baselines enclose as internal waters what had been territorial waters.

⁵⁵ See FEPA (1997) "Coastal Profile of Nigeria", Centre for Environment and Development in Africa, p.1. Available at <http://www.globaloceans.org/icm/profiles/nigeria/nigeria.pdf> Accessed 28/04/2014. See also Okeke, C.I. "Coastal Challenges and the Challenges of Coastal Education in Nigeria". Available at <http://www.gisig.it/coastgis/programma/abstract/okeke.htm> Accessed on 26/4/2014 and Osanwuta D.A. and Nwilo P.C., "Capacity Building for Integrated Coastal Areas Management (ICZM) in Nigeria". Available at <http://www.gisig.it/coastgis/papers/osanwuta.htm> Accessed on 28/04/2014.

⁵⁶ See Anderson.D.H (1995) "Legal Implications of the Entry into Force of the UN Convention on the Law of the Sea" *ICLQ* vol 44, No 2 pp 313-326; de Mafry-Mantuno. A (1995) "The Procedural Framework of the Agreement Implementing the 1982 United Nations Convention on the Law of the Sea" vol 89 *AJIL* pp 814-824.

⁵⁷ O'Connell, D.P. (1984) *The International Law of the Sea* Vol. 1 Shearer I.A. (ed.), Clarendon Press Oxford, p.338.

⁵⁸ *Ibid.*

⁵⁹ Art 8(1), LOS, 1982

⁶⁰ Shaw M.N. (2005) *International Law*, 5th edn., Manchester, p.493.

⁶¹ *Ibid.*

⁶² Art 8(2) of the Convention.

Under the 1982 Convention, internal waters also comprise bays and gulfs with the entrance no wider than 24 miles, the so called historic bays, even if the entrance is wider, harbours and the waters between the territorial sea baselines and the coast line⁶³. Historic bays include Peter the Great Bay and Penzhina Bay in the Soviet Far East, Bristol Bay (Alaska), Firth of Forth and Moray Firth (Scotland) Hudson Bay (Canada) Chesapeake Bay, Delaware bay, Monterey Bay (US) and some others⁶⁴.

7.2 Territorial Sea

The concept of territorial waters emerged and was formalized under international law due to the historically justified and logical desire of nations to extend their sovereignty to the parts of the sea adjacent to their shores in order to safeguard their economic and security interests⁶⁵. This principle took several centuries to become established and it became particularly acute in the latter half of the 19th century, when advances in naval architecture and increase in maritime traffic rapidly expanded the opportunities for large-scale uses of the seas⁶⁶.

For international purposes, the territorial sea refers to the maritime belt around the coastline of the littoral State which is adjacent to the coast and seaward of baseline⁶⁷. It is treated as an indivisible part of the territory of the Coastal State⁶⁸. Every State has the right to establish a territorial sea not exceeding a width of 12 nautical miles from the baseline⁶⁹.

This belt includes internal waters that are, harbours, lakes, bays, and Gulfs and in the case of an archipelagic States (Island), archipelagic waters.⁷⁰ Within the territorial sea, the coastal State exercises sovereignty over the seabed, subsoil, water column and airspace⁷¹, with one exception – ships of other States may exercise right of innocent passage through the waters of the territorial sea to and from adjacent areas of high seas or EEZ, when engaged in continuous and expeditious passage⁷².

7.3 Contiguous Zone

Beginning in the 18th century, when most countries territorial waters were no more than three miles wide, some nations began to unilaterally claim special zones beyond the territorial sea limits. These Zones, which came to be known as contiguous were

⁶³ Andreyev, E.P. *et al* (1988) *The International Law of the Sea* Progress Publishers, USSR, p.26.

⁶⁴ *Ibid.* See also Whiteman, *Digest*, Vol. IV pp. 250-7.

⁶⁵ Andreyev E.P. *et al supra* at p.35.

⁶⁶ *Ibid.*

⁶⁷ Courtney F. and Wiggin J., *supra* at p.24.

⁶⁸ *Ibid.*, See also Aluko, A.F. *supra* at p.25.

⁶⁹ See Article 3. See also Kumar, B.V. (2007) "Oceans and the Regulatory Framework: A techno-legal perspective" obtained on <http://drs.nio.org/drs/bitstream/2264/780/2/refresher-course-mar-geol-geophys-2007-lecture-notes-14.pdf> Accessed 8/5/2014.

⁷⁰ Art 2 1982 Law.

⁷¹ Art 2(2) 1982 Law.

⁷² See Breide C. and Saunders, P. (*supra*) at p.7.

established for the exercise of the Coastal states jurisdiction with regard to foreign vessels, mainly to combat smuggling⁷³. In previous centuries, revenue control was regarded as one of the powers inherent in the possessor of the sea, and it was rationalized on the same principles as other exercises of State authority over Coastal Waters⁷⁴.

The Contiguous Zone is the belt Contiguous or neighbouring the territorial sea⁷⁵. This zone is part of the high seas and therefore not an indivisible part of the *terra firma* of the Coastal State⁷⁶. At the 1958 Geneva Convention, Article 24 provides that the contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured⁷⁷. This breadth was however extended to 24 nautical miles by the 1982 Law⁷⁸.

7.4 The Exclusive Economic Zone

With the scramble to appropriate large areas of the sea for the purpose of exploiting natural resources, the notion of an exclusive economic zone or the patrimonial sea was conceived. The increase in claims to exclusive rights in respect of the fisheries in an adjacent maritime zone, described, led eventually to claims encompassing all natural resources in and of the seabed and superjacent waters in a zone 200 miles in breadth⁷⁹.

By 1972, this development was presented in more or less pragmatic form, as a "patrimonial sea"⁸⁰, or economic zone⁸¹. According to Andreyev⁸², the term "**exclusive economic zone**" was questioned at the Third United Nations Conference on the Law of the Sea because it did not accurately reflect the legal content of this category. Lexicographically, the word "exclusive" was defined as:

*Excluding or intending to exclude many from participation or consideration*⁸³.

While Exclusive Economic Zone is defined as

⁷³ Andreyev, E.P. *supra* at p.41.

⁷⁴ See O'Connell Vol. II, p.1034. See Opehnhelm L. (1966) *International Law: A Treatise*; Lauterpacht H. (ed.) Hazell Watson and Liney Ltd., Great Britain, p 497.

⁷⁵ See Article 33 of 1982 Convention.

⁷⁶ See Brownlie I., (1990) *Principles of Public International Law, supra* at 201. Article 1, see further Shaw, M.N., *op. cit.* p.516.

⁷⁷ Article 24(2) 1958 Geneva Convention.

⁷⁸ Article 33(2) of the 1982 Convention

⁷⁹ Brownlie I. (1993) *Principles* p.209. See also Art 57. In reality however, the Zone itself would be no more than 188 nautical miles where the territorial sea was 13 nautical miles, but rather more, where the territorial sea is less than 12 nautical miles. See Shaw M.N. (2005) *supra* at p.519.

⁸⁰ See Castaneda, J. (1972) "The Concept of Patrimonial Sea in International Law" 12 *Indian Journal of International Law* p. 535.

⁸¹ See Andreyev E.P. *et al supra* at p.50.

⁸² *Ibid.*

⁸³ Encarta Dictionaries (2008) Microsoft 2008 DVD.

*Area of sea surrounding a country: an area of sea around a country's shoreline from which the country has the **exclusive**⁸⁴ right to extract natural resources.*

From the above, the word "exclusive" makes it possible to assume that an exclusive natural zone of the Coastal State in which it exercises exclusive rights or exclusive jurisdiction is being dealt with. As for the jurisdiction of the Coastal State in matters clearly defined in the convention, it is not, as a rule, exclusive. Far from all economic rights of the Coastal State in its economic zone are exclusive because under certain circumstances, other States retain the rights to fishing⁸⁵.

The description of this Zone is better captured in the word of Andreyev E.P. which was summed up as follows:

*The term 'exclusive' is not completely accurate also because the rights of the Coastal state are exclusive in certain spheres. The term may be used only if it implies that the zone in question has been established **exclusively** for the protection of the economic interests of the Coastal State i.e. the word is chosen to emphasize the functional character of this Zone. It therefore follows that the term "**economic zone**" is more accurate⁸⁶.*

Whether the nomenclature is exclusive economic zone or economic zone, what is of paramount importance is the establishment of a special zone for the carrying out of special purpose by the Coastal State in accordance with law.

The legal right to establish Exclusive Economic Zone extending up to 200 miles from the baselines used to measure the territorial sea, sanctified in the 1982 United Nations Convention on the Law of the Sea, has been institutionalized by extensive State practice⁸⁷. This development, creating a new juridical zone between the territorial sea and the high seas⁸⁸, marks a major change in ocean law and provides the Coastal State with management authority and responsibility over all the living or non-living resources found there⁸⁹.

The EEZ has been comprehensively defined as:

⁸⁴ *Ibid.* with emphasis added.

⁸⁵ See Articles 61, 62, 69 and 70 of the 1982 Convention.

⁸⁶ *Ibid.* with special emphasis added.

⁸⁷ See Juda L. (2001) *supra* at p.18.

⁸⁸ The EEZ's legal status is left *sui generis* (of its own kind) by the wording of the Convention since it is not clearly stated to be part of the high seas. Article 55 and 86 make it clear that the EEZ does not have a residual high seas – or a territorial sea character. See Kumar, B.V. (2007) "Oceans and the Regulatory framework ..." *supra* at p.14. See also Brownlie (1993) *Principles* at p.209. Harris D.J. (1999) *op. cit.*, p.452 submitted that this Zone is treated as an intermediate area of sea between the high seas and the territorial sea with a distinct regime of its own.

⁸⁹ Juda L. (2001) *supra* at p.18.

An area beyond and adjacent to the territorial sea that extends up to 200 miles from the baseline, in which the Coastal State has sovereign rights with respect to all natural resources and other activities for economic exploitation and exploration, as well as jurisdiction with regard to artificial islands, scientific research and the marine environment protection and other rights and duties provided for in the United Nations law of the sea Convention. All States enjoy the EEZ navigation and other geographical States specific rights of participation in fisheries and marine scientific research⁹⁰.

Article 55 of the LOS Convention 1982 has this to say on the Exclusive Economic Zone:

55. *The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the rights and jurisdiction of the Coastal state and the rights and freedoms of other States are governed by the relevant provisions of this Convention.*

7.5 The Continental Shelf

In a masterly rich package⁹¹, Article 76 of UNCLOS which combines geography, geology, geomorphology and jurisprudence⁹² codifies a legal Continental Shelf definition relying on scientific and technical determinations of distance⁹³ in a manner that can be confusing even to experts in the individual fields.⁹⁴ It provides a multi-tiered formula for the determination of the outer limit of the legal or juridical Continental Shelf⁹⁵. For the purpose of this work, much reliance will be placed on the legal definition of the subject so as to avoid the possible consequence that might befall a man swimming in an infested river by crocodiles and at a depth of about 2,500 metre isobaths.

⁹⁰ Kwiatkowska (1989): *The 200 Mile Exclusive Economic Zone in the New Law of the Sea*, p.4.

⁹¹ Prows P. (2007) "Tough Love: The Dramatic Birth and Looming Demise of UNCLOS Property Law (and what is to be done about it)" Vol. 42, *Texas International Law Journal* p.241 at 271.

⁹² See Johnston, D.M. (1998): *The Theory and History of Ocean-Boundary Making*, McGill-Queen's University Press, Montreal, Canada, pp.91.

⁹³ See Carrera G. (1999): "Wide Continental Margins of the World: A Survey of Marine Scientific Requirements Posed by the Implementation of Article 76 of the United Nations Convention on the Law of the Sea". *Paper presented at 1999 Advisory Board on the Law of the Sea [ABLOS] Conference*, Monaco, (Sept. 9, 1999) available at http://www.gmat.unsw.edu.au/ablos/ABLOS99Folder/ablos99_papers.htm. Accessed 13/5/2014. "Geomorphology" is the physical and quantitative study of the forms of the land's surface and of the processes that mould them. "Geology" is broader: the scientific study of the Earth, including its composition, structure, physical properties and history. See <http://www.britannica.com/ebc/article-9365437>. See generally Carrera *supra* at p.1.

⁹⁴ Symonds, P.O. *et al* (2000) "Characteristics of Continental Margin: Continental Shelf Limits" in Cook P.J. and Carleton C.M. (eds.) *The Scientific and Legal Interface*, Oxford University Press, Oxford, p.25-63.

⁹⁵ Monahan D. (2004): "Altimetry Applications to Continental Shelf Delineation under the United Nations Convention on the law of the Sea" *Oceanography*, Vol. 17, No. 1, pp. 75 at 77. Available at http://www.tos.org/oceanography/issues/issuearchive/issue.pdfs/171/171Monohan_etal.pdf Accessed on 13/5/2014.

The Continental Shelf of a Coastal State, for legal purposes, is defined by Art 76(1) of the 1982 Convention as comprising:

... the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

8.0 Zones Beyond the Limit of National Jurisdiction

Apart from the Zones within the limits of national jurisdiction, the law of the Sea Convention, also addresses the status of ocean areas beyond the jurisdiction of any Coastal State under two categories – the water column beyond the EEZ, or beyond the territorial sea where no EEZ has been declared; called the “high seas”⁹⁶ and (ii) the seabed which lies beyond the limits of the Continental Shelf, established in conformity with article 76 of the Convention, designated the **Area**⁹⁷. Parts VII and XI of the Convention provide the legal framework for the high seas and the Area respectively.

8.1 The High Seas

Grotius wrote that in legal phraseology of the law of nations, the sea has been referred to indifferently as *res nullius*, *res communis* and *res publica*⁹⁸. His postulation was however criticized as inappropriate for what the sea stands for – Freedom of the seas – but was near to the correct position.

It is saddening to note that despite the years spent on the convening and ratification of the law of the sea Convention, the definition offered for the High Sea was far from being satisfactory. Article 86 of the 1982 Convention however defined the high sea **negatively** in the following terms⁹⁹:

86. *The provisions of this part apply to all parts of the seas that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any*

⁹⁶ Art 86.

⁹⁷ See Kimball L.A. (2005): *The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the Establishment of Marine Protected Areas (MPAS) in Marine Areas Beyond the Limits of National Jurisdiction*, Secretariat of the Convention of Biological Diversity, Montreal, p.1.

⁹⁸ O'Connell D.P. and Shearer I.A. (eds.) (1984): *The International Law of the Sea*, Vol. II, Oxford University Press, New York, p.792.

⁹⁹ Bouchez, L.J. (1973): “The Freedom of the High Seas: A Reappraisal.” in Bouchez, L.J. and Kayen L. (eds.) *The Future of the Law of the Sea*, Martinus Nijhoff, The Hague, p.24.

abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Under the equivalent Article 1, 1958 High Seas Convention, the High Seas begin where the territorial sea ends whereas under the 1982 Convention, concept of the high seas is a more limited one, applying only beyond the limit of the exclusive economic zone¹⁰⁰. The regime of the high seas does not apply to international lakes and land-locked seas and these are not open to free navigation except by special agreement¹⁰¹. However, by acquiescence and custom, perhaps reinforced by conventions on particular questions, seas which are virtually landlocked may acquire the status of high seas: this is the case of the Baltic and Black Seas of which such status is described as doubtful¹⁰².

8.2 The International Seabed

The "Area" is the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction¹⁰³. To define it negatively, the area is what is left after subtracting the EEZ, legal Continental Shelf, and superjacent waters¹⁰⁴. Part XI as modified by the 1994 ISA implementing Agreement moves from broad, peremptory principles to more specific rules governing just "mineral" resources. The peremptory¹⁰⁵ first principle of part XI is that: The Area and its resources are the "Common Heritage of Mankind"¹⁰⁶. To this end, Article 137(1) proscribes and denies recognition to claims or exercises of sovereignty or sovereign rights" and to unilateral or private "appropriation" over "any part" of the Area or its resources¹⁰⁷.

9.0 RIGHTS OF STATES IN ENVIRONMENTAL PROTECTION IN THE DELIMITED ZONES

The delimitation of the maritime zones in international law enables Coastal states some modicum of rights in protecting the marine environment adjacent to their states. It must be emphasized here that the rights differs from one maritime belt to another. These zones and the rights are as follows:

9.1 Internal Waters

The coastal state exercises full sovereignty over its internal maritime waters, and foreign ships, while in these waters are to observe the laws of this state – first and foremost, the

¹⁰⁰ Harris D.J. (*op. cit.*) p.420.

¹⁰¹ Brownlie J. (1992) *Principles op. cit.* p.232.

¹⁰² *Ibid.*

¹⁰³ Art 1(1) of 1982 Convention.

¹⁰⁴ Art 134(4), 135.

¹⁰⁵ Art 311(6) stating that State parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and they shall not be party to any agreement on derogation thereof.

¹⁰⁶ Art 136.

¹⁰⁷ Art 137(1).

radio communication, navigation, port use, customs, sanitary and other regulations established for application in these waters¹⁰⁸. Where a ship is voluntarily in port, a State acquires a degree of jurisdiction for purposes of enforcement of internationally agreed pollution prevention standards, even where the violations occurred outside of that States territory or maritime zones¹⁰⁹.

9.2 Territorial Sea

The UNCLOS territorial sea regime contains rights and responsibilities that are vested in the coastal State. In terms of rights, the regimes entities the coastal state to enforce applicable domestic laws, powers of arrest, the right to payment for access to its resources, and to seek compensation for environmental damage inflicted in the territorial sea¹¹⁰. In terms of responsibilities, the regime obliges the Coastal State to make provisions for the suppression of piracy, search and rescue, hydrographic survey, maintenance of navigational safety aids, and taking action in cases of environmental catastrophes (such as occurred with the *Torrey Canyon* oil spill where "action" included towing the offending vessel out to sea and sinking her)¹¹¹. If a discharge contrary to Coastal State laws occurs during (and assuming the ship is not voluntarily within a port), the ability of the Coastal State to enforce its laws respecting pollution incidents in territorial sea is limited with respect to foreign vessels, by Article 220(2) of the 1982 Convention.

9.3 Contiguous Zone

Within this Zone, a littoral State does not exercise sovereignty over the Contiguous Zone, she **may only** exercise control for the prevention of infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea and to punish infringement of these laws and regulations committed in the aforesaid zone¹¹². Where on the other hand, there is no infringement; the Coastal State has no further rights in the Contiguous Zone. The Convention also gives Coastal States the right to prevent and punish the removal of historical and archeological objects without its approval from the contiguous zone¹¹³.

¹⁰⁸ See Shaw M.N., *op. cit.*, p.493.

¹⁰⁹ Breide C. and Saunders P. *supra* at p.6.

¹¹⁰ See McLaughlin, R. (2003) "East Timor, Transnational Administration and The Status of The Territorial Sea" Vol. 4, *Melbourne Journal of International Law* p. See also Arts 21-22, 25-27, 31 and 220 1982 Law. See also Oxman B. (1997) "Human Rights and the United Nations Convention on the Law of the Sea" 36 *Columbia Journal of Trasnational Law*, 399, 420-2; Oxman B. (1984) "The Regime of Warships under the United Nations Convention on the Law of the Sea" 24 *Virginia Journal of International Law*, 809 at 854.

¹¹¹ See UNCLOS at Arts 24, 28, 198, 211, 221. See also Oxman (1997) Human Rights p.414.

¹¹² Art 33(1)(a) and (b) of the 1982 Convention. See Faji O. (1998): "The Regulation of Navigation and Shipping – Local and International" in Ayua I.A and Yagba T.A.T. (eds.). *The New Law of the Sea and the Nigerian Maritime Sector*, NIALS, Lagos, p.115 at 117. It has been demonstrated that nothing in the Article precludes the establishment of such a Zone for other purposes, including the enforcement of domestic fisheries law. See *US v. Fishing Vessel Taiyo Maru* No. 28 [DMC 1975] 375 F. Supp, 413.

¹¹³ Art 303(2) of the 1982 Convention.

9.4 Exclusive Economic Zone

With respect to the living and non-living resources of the subsoil, seabed and the superjacent water column, the Coastal State has “sovereign rights for the purpose of exploring, exploiting, conserving and managing” those resources¹¹⁴. These sovereign rights are clearly not sovereignty¹¹⁵, but they do signify a general entitlement to regulate for the enumerated purposes, and that is where the Convention comes closest to a presumption in favour of Coastal states rights, in the event of any ambiguity¹¹⁶. Nonetheless, there are provisions which place duties on Coastal States as to the manner in which they exercise their management rights¹¹⁷ and according to certain limited rights respecting living resources to other States¹¹⁸.

In addition to control over natural resources, in the EEZ, for the matters referred to in Article 56(1)(b) in regard to the establishment of artificial islands, installations and structures, scientific research¹¹⁹ including the protection and preservation of the marine environment, the entitlement of the Coastal State is limited to lesser form of jurisdiction as provided for in the relevant provisions of the Convention. These relevant provisions are found in Part XII of the Convention and gave the Coastal State defined jurisdiction to legislate and enforce with respect to dumping, pollution resulting from exploration and exploitation of the seabed and pollution resulting from shipping¹²⁰.

9.5 Continental Shelf

With respect to the right of the Coastal State in respect of pollution control, I am of the view that opinion is divided. While Breide and Saunders¹²¹ were of the view that the Coastal State has duties respecting the environmental impacts of seabed activities; it has general jurisdiction over the preservation or conservation of the marine environment of the seabed and subsoil of the shelf. Andreyev *et al*¹²² however maintained that the competence of the Coastal State includes measures to prevent, reduce and control marine pollution connected with activities pursued on the Continental Shelf. It is submitted that the view expressed by Breide and Saunders cannot be correct and therefore the views canvassed by Andreyev is preferred in view of the provision of Article 79(2) of the Convention which provides as follows:

... subject to its right to take reasonable measures for the exploration of the Continental Shelf, the exploitation of its

¹¹⁴ See Aluko, A.F. *supra* at p.33.

¹¹⁵ See Breide C. and Saunders P. (2005) *supra* at p.8

¹¹⁶ *Ibid.* See also art 62(4) of the 1982 Convention.

¹¹⁷ See Art 61(2) of the 1982 Convention.

¹¹⁸ See Art 62(1) and 56(3) of the 1982 Convention.

¹¹⁹ See Juda L. (2001) *supra* at p.18

¹²⁰ See Articles 207 – 212 of the 1982 Convention.

¹²¹ Breide C. and Saunders P. (2005) *supra* at p.12 emphasis added.

¹²² *Supra* at p.73. See also Owen D. (2006) *supra* at p.32.

natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.

9.6 High Seas

A number of environmental duties provided by UNCLOS are of general effect regarding the activities of the coastal state on the High seas. These obligations include the duty to protect and preserve the marine environment,¹²³ and to take individually or jointly as appropriate, all measures consistent with the Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source.¹²⁴ Conservation of the living resources in the High seas are equally provided for by the Convention.¹²⁵

9.7 The Area (International Seabed)

Protection of the marine environment as a result of pollution from activities in the seabed (Area) beyond the limit of national jurisdiction is governed by Article 209 of UNCLOS III, and making reference to Part XI¹²⁶, Article 145 of the 1982 Convention. The principal responsibility for monitoring compliance and enforcing environmental protection standards for activities in the Area falls to state parties through their implementation legislation, the ISA has limited sanctioning powers under Part XI and Annex III of the LOSC.¹²⁷ The current issues of environmental protection and global concern regarding national security demonstrate that States are now adopting a more holistic approach to deep seabed¹²⁸. This is because environmental damage may occur from activities that States currently undertook on the deep seabed and many nations are still coming to terms with the consequences of terrorism on a large scale¹²⁹.

¹²³ See Art 192

¹²⁴ See Art 194. In fact, pollution of the marine environment can come through Six sources See Arts 207 - 212

¹²⁵ See Art 116 - 120

¹²⁶ See Art 209(1) of 1982 Convention.

¹²⁷ See Art 215..

¹²⁸ Guntrip E. (2003): "The Common Heritage of Mankind: An Adequate Regime for Managing the Deep Seabed?" *Melb JIL* 2. Available at <http://www.austlii.edu.au/au/journals/MelbJIL/2003/2.html>. Accessed 7th May, 2014.

¹²⁹ *Ibid.*

Article 145 of the Law of the Sea Convention provides that the International Seabed Authority (ISA) is to adopt rules to prevent pollution from deep seabed mining; particular attention being paid to the consequences of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities.

10.0 Conclusion

Attempts have been made in this paper to examine the legal regime of the delimited Zones under the 1982 Law of the Sea Convention. No doubt the economic importance of the world ocean cannot be underestimated so the activities going on there needed to be strictly monitored. While the activities in some area can be well monitored, some areas present a serious problem. This is experienced in the Area which is regarded as Common Heritage of Mankind. The activities in this delimited Sea area led a scholar to describe the place as " The deep Sea Bed is a museum. It contains more history than all of the museums of the world combined and yet there is no laws covering a vast majority of it...We need...international cooperation to preserve the cultural history of our cultures through the time"¹³⁰ The position taken by this scholar is because of the fluid nature of the laws meant for the operation within the zone. Activities within the zone is yet to take a definite shape. A lot will be achieved if the major stakeholders are able to fashion a way forward in ensuring that life is injected to the activities going on in the area. Without prejudice to these shortcomings, one can conclude from a detailed examination of the type of rights exercisable by Coastal States in these Zones showed that the international community meant well for adequate safeguard of these zones from environmental degradation. It was however observed that most of the problem lies in the enforcement mechanisms, which if well harnessed, would go a long way in strengthening coastal states jurisdiction when the protection of the marine environment is called into question.

¹³⁰ Ballard Robert NOAA Media briefing at G8 Summit, World Oceans Day, Savannah Georgia. Available online at <http://fpc/state.gov/33310pf.htm> cited by Kimball L A(2005) The International Legal Regime of the High Seas and The Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the Establishment of Marine Protected Areas (MPAs) in Marine Areas Beyond the Limits of National Jurisdiction. P 32.