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 percent\(^1\) of the earth surface. They comprise ninetenths (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 planet\(^2\). This ocean is what Hugo Grotius in 1608 described in eloquent terms as:

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\text{That expanse of water which antiquity describes as the immense, the infinite, bounded only by the heavens, parent of}
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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 possessed.\(^3\)

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 goals. 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. Many scholars have therefore attempted to define the term in ways which express the full extent of its role and purpose in environmental

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management. 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 community.

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 growth.

The United Nations General Assembly, in adopting the environment ideals in world Charter for Nature 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 nutrients. The above assertions have been criticized in that they tend to relegate other inhabitants of the environment to the background.

In Nigeria, The National Environmental Standard and Regulations Enforcement Agency (Establishment) Act 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 them.

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10 UNGA Resolution 7 XXXVII of 28th October 1982.
11 Ibid.
Notwithstanding the variants in the above definitions, they are talking about the planet earth and all what is contained therein and their interrelationship among them.\(^{15}\)

### 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 aquifers.\(^{16}\) Any observer from the outer space would quickly detect that the oceans and seas cover about 71 per cent of the Earth’s surface\(^{17}\) 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 lithosphere\(^{18}\). 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 disadvantaged.\(^{25}\) 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
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 cultures\textsuperscript{26}.

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 land\textsuperscript{27}. 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 cent\textsuperscript{28}.

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 Everest\textsuperscript{29} 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 mass\textsuperscript{30}.

\subsection*{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 pollution\textsuperscript{31}. From the above, any definition given on the subject is ad-hoc and far from being settled.

\begin{thebibliography}{9}
\item Mangone, G.J. \textit{supra} p.3.
\item See Mangone, G.J. \textit{supra} p.4.
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The international legal protection of the environment is a relatively new one but rapidly developing part of modern international law. This must have accounted for the inability of Brownlie to have in his earlier editions a chapter that discusses the issue of the protection of the Environment. However in his latest edition, 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.

Andreyev 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 instruments 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 species. According to Popoola, environmental protection comprises the protection of the air, waters (including internal waters, groundurat, 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”. The tragedy develops this way:

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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.
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 herdsmen from resultant overgrazing. Because all herdsmen share in this negative effect, the negative consequences to the individual herdsman are minimal. Consequently herdsmen 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. Harding thus concludes 'Ruin is the destination to which all men rush, each pursing his own interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all'.

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 parcelled out under national ownership?

The answer to this question was proffered by D’Amato and Hargrove 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 Handgrove 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

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40 Ibid.
42 Ibid.
survivability of the human species in the next generations. 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 unborn.

Apart from the above that people are interested in protecting the marine environment is better captured in the words of Jacques-Yves Cousteau 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 years. 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 uses, and excluding any use that would undermine the goal of resource protection.

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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.


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 uses.48

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 jurisdictions.49 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 Convention, 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 oceans.53 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 environment.54 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.
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.
54 See Preamble to the LOS Convention 1982.
attainment of her rights and obligation in maritime zones that fall within the limits of her jurisdiction.\textsuperscript{55}

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).\textsuperscript{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'Connell\textsuperscript{57}, 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 features.\textsuperscript{58} 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 landmass.\textsuperscript{59} They are classed as appertaining to the land territory of the coastal State and are assimilated with the territory of the State.\textsuperscript{60} 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 benefit.\textsuperscript{61} This rule is however not without an exception particularly where the straight baselines enclose as internal waters what had been territorial waters.


\textsuperscript{58} Ibid.

\textsuperscript{59} Art 8(1), LOS, 1982


\textsuperscript{61} Ibid.

\textsuperscript{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 line. 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 others.

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 interests. 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 seas.

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 baseline. It is treated as an indivisible part of the territory of the Coastal State. Every State has the right to establish a territorial sea not exceeding a width of 12 nautical miles from the baseline.

This belt includes internal waters that are, harbours, lakes, bays, and Gulfs and in the case of an archipelagic States (Island), archipelagic waters. Within the territorial sea, the coastal State exercises sovereignty over the seabed, subsoil, water column and airspace, 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 passage.

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

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64 Ibid. See also Whiteman, Digest, Vol. IV pp. 250-7.
65 Andreyev E.P. et al supra at p.35.
66 Ibid.
67 Ibid., supra at p.24.
68 Ibid., See also Aluko, A.F. supra at p.25.
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 smuggling. 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 Waters.

The Contiguous Zone is the belt contiguous or neighbouring the territorial sea. This zone is part of the high seas and therefore not an indivisible part of the terra firma of the Coastal State. 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 measured. This breadth was however extended to 24 nautical miles by the 1982 Law.

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 breadth.

By 1972, this development was presented in more or less pragmatic form, as a “patrimonial sea” or economic zone. According to Andreyev, 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 world “exclusive” was defined as:

Excluding or intending to exclude many from participation or consideration.

While Exclusive Economic Zone is defined as

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73 Andreyev, E.P. supra at p.41.
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.
81 See Andreyev E.P. et al supra at p.50.
82 Ibid.
Area of sea surrounding a country: an area of sea around a country’s shoreline from which the country has the exclusive\textsuperscript{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 fishing\textsuperscript{85}.

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

\textit{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 \textit{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 accurate}\textsuperscript{86}.

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 practice\textsuperscript{87}. This development, creating a new juridical zone between the territorial sea and the high seas\textsuperscript{88}, 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 there\textsuperscript{89}.

The EEZ has been comprehensively defined as:

\textsuperscript{84} \textit{Ibid.} with emphasis added.
\textsuperscript{85} See Articles 61, 62, 69 and 70 of the 1982 Convention.
\textsuperscript{86} \textit{Ibid.} with special emphasis added.
\textsuperscript{87} See Juda L. (2001) \textit{supra} at p.18.
\textsuperscript{88} The EEZ’s legal status is left \textit{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 …” \textit{supra} at p.14. See also Brownlie (1993) \textit{Principles} at p.209. Harris D.J. (1999) \textit{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.
\textsuperscript{89} Juda L. (2001) \textit{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 research\textsuperscript{90}.

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 package\textsuperscript{91}, Article 76 of UNCLOS which combines geography, geology, geomorphology and jurisprudence\textsuperscript{92} codifies a legal Continental Shelf definition relying on scientific and technical determinations of distance\textsuperscript{93} in a manner that can be confusing even to experts in the individual fields.\textsuperscript{94} It provides a multi-tiered formula for the determination of the outer limit of the legal or juridical Continental Shelf\textsuperscript{95}. 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.

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 Area97. 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 publica98. 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.
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 zone. 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 agreement. 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 doubtful.

8.2 The International Seabed

The “Area” is the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. To define it negatively, the area is what is left after subtracting the EEZ, legal Continental Shelf, and superjacent waters. Part XI as modified by the 1994 ISA implementing Agreement moves from broad, peremptory principles to more specific rules governing just “mineral” resources. The peremptory first principle of part XI is that: The Area and its resources are the “Common Heritage of Mankind”. 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 resources.

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
radio communication, navigation, port use, customs, sanitary and other regulations established for application in these waters\textsuperscript{108}. 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 zones\textsuperscript{109}.

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 sea\textsuperscript{110}. 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 \textit{Torrey Canyon} oil spill where “action” included towing the offending vessel out to sea and sinking her)\textsuperscript{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 \textit{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 zone\textsuperscript{112}. 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 zone\textsuperscript{113}.

\begin{thebibliography}
\item[109] Breide C. and Saunders P. \textit{supra} at p.6.
\item[113] Art 303(2) of the 1982 Convention.
\end{thebibliography}
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 resources\textsuperscript{114}. These sovereign rights are clearly not sovereignty\textsuperscript{115}, 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 ambiguity\textsuperscript{116}. Nonetheless, there are provisions which place duties on Coastal States as to the manner in which they exercise their management rights\textsuperscript{117} and according to certain limited rights respecting living resources to other States\textsuperscript{118}.

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 research\textsuperscript{119} 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 shipping\textsuperscript{120}.

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 Saunders\textsuperscript{121} 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 \textit{et al}\textsuperscript{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:

\begin{quote}
... subject to its right to take reasonable measures for the exploration of the Continental Shelf, the exploitation of its
\end{quote}

\textsuperscript{114} See Aluko, A.F. \textit{supra} at p.33.
\textsuperscript{115} See Breide C. and Saunders P. (2005) \textit{supra} at p.8
\textsuperscript{116} \textit{Ibid.} See also art 62(4) of the 1982 Convention.
\textsuperscript{117} See Art 61(2) of the 1982 Convention.
\textsuperscript{118} See Art 62(1) and 56(3) of the 1982 Convention.
\textsuperscript{119} See Juda L. (2001) \textit{supra} at p.18
\textsuperscript{120} See Articles 207 – 212 of the 1982 Convention.
\textsuperscript{121} Breide C. and Saunders P. (2005) \textit{supra} at p.12 emphasis added.
\textsuperscript{122} \textit{Supra} at p.73. See also Owen D. (2006) \textit{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, 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. Conservation of the living resources in the High seas are equally provided for by the Convention.

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 XI, 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. The current issues of environmental protection and global concern regarding national security demonstrate that States are now adopting a more holistic approach to deep seabed. 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 scale.

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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.
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.