
BY

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DISSERTATION
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IMPLICATIONS OF THE LAW OF THE SEA FOR AFRICAN
TERRITORIAL WATERS AND HIGH SEAS

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Nwanegbo Ikenna Joseph, a Postgraduate Student in the Department of Political Science, University of Nigeria, Nsukka with Registration Number: PG/M.Sc./12/63278 has satisfactorily completed his research requirements for the award of Master of Science (M.Sc.) in Political Science (International Relations). This work, “Implications of the Law of the Sea for African Territorial Waters and the High Seas” is original and has never been submitted in part of in full to this or any other university, to the best of our knowledge.

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External Exam
DEDICATION

This work is dedicated to my late father Chief Nwanegbo Peter for his fatherly love to me since I was born and who is not here again to see me a Master degree holder. Daddy I have become what you wish me to be, I do not know what my fate could have been without you. Like I normally say,

“I am what I am today because you have been whom you are to me”
ACKNOWLEDGEMENT

“No man takes the glory upon himself…” (Heb 5:4). The completion of this work would not have been possible without the efforts of many people who in one way or the other contributed to its success.

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Above all, I thank the Supreme Deity, the Almighty God, who is the author of my being, for giving me the grace to complete this work despite the enormous challenges. Blessed be your name oh! Lord.
ABSTRACT

The sea by its very nature is international and has remained an object of intense competition and scramble among maritime nations at different epochs in history. The Third United Nations Convention on the Law of the Sea (UNCLOSIII), in 1982 is not only a comprehensive legal instrument that embodies one of the latest codifications and progressive development of international law, but is also a legal base for the Ocean policies of nation-states. This study examines the implications of the law of the sea for African Territorial Waters and High Seas; the aim of the study is to examine why there is no comprehensive marine policy in Nigeria. Secondly, the study aims to ascertain why current policy strategies, including the national shipping policy, have failed to adequately protect Nigeria’s marine policy interest. The study adopted the Rational Comprehensive Model (RCM) as a theoretical framework. Data were collected and analysed using the qualitative descriptive method. Specifically, data were generated from secondary sources such as books, journals, internet publications etc. The study reveals among other things that: (i) There is institutional inadequacy as Nigeria does not have a central authority that oversees ocean affairs; (ii) There still exists a legislative vacuum as far as maritime laws are concerned; while some existing maritime legislations are outdated and in conflict with current international practices, there are areas in which laws have not yet been enacted. The study therefore recommends that the Federal Government of Nigeria should create a Ministry of Ocean Affairs, and make a clear statement or declaration on the implementation of an integrated ocean policy in the country; secondly, the Federal Government should establish an inter-ministerial, agency, board or council under the new Minister of Ocean Affairs, to take charge as the a lead marine affairs agency (preferably an enhanced Nigeria Maritime Agency), this body should be responsible for bringing together governmental and non-governmental organizations involved in ocean affairs and to provide necessary leadership and the opportunity for policy prioritization in ocean matters.
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<td>Total Allowable Catch</td>
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CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Legal rules, whether municipal or international, usually grow as a result of political, economic, and geographical circumstances that shape their emergence. This is apparent with the law of the sea which emerged from a laissez-faire regime of freedom, openness and unrestricted use to the present state of an expanded ocean enclosure. The traditional openness and freedom of the high seas survived the early period because it reflected the interests of the dominant maritime powers of the time as it adequately served their domination of navigation and fishing. As ships were relatively smaller and fewer than what is obtainable today, nobody talked about depletion of fish stocks, as ocean resources were generally considered inexhaustible. This traditional hegemony of the world’s ocean and seas by the west European maritime powers was first challenged by the emergence of the super powers in the 20th century. The super powers came in not only to challenge the European dominance of the seas but were also interested in maximizing the freedom of marine communication. The second challenge came as a result of growing nationalism and demands for economic freedom by the developing states, majority of which had gained independence after the Second World War. Thirdly, the technological breakthrough and increased demand for sea resources created more grounds for conflicts on the seas. (Tagow, 2010).

The threat of pollution from supertankers after the Suez coastal states of tightly monitor vessels passing near their coasts, the threat of over-fishing and the control over continental shelf resources intensified and increased the possibilities of conflicts as a result or renewed interest of states in the sea.

States thus faced one another with different kinds of interest in the seas. These interests ranged from those of the superpowers such as the United States and the Former Soviet Union to Landlocked states. There are also traditional distant-water fishing fleets to exclusive coastal fishing states, states with broad and extended continental shelves rich in mineral resources and those states without continental shelves. All these maritime interests reflected divergent maritime policies that came to bear on modern law of the sea as the compromise instrument.
However, if we cast our minds back, we will discover that the development of the law of the sea in particular is a product of the development of international law in general. This could be dated back to the pre and post West Phalia state system. International law thus took its root from the Roman Canon Law as a result of the intellectual influences of the renaissance and the reformation periods by jurists in their early works. The greatest of these was the Dutch jurist, Hugo Grotius (1583-1645). Grotius is today regarded as the father of international law even though his predecessors from Spain and Italy such as Victoria (1480-1546) and Suarez (1548-1617) and Gentiles (1552-1608) had impacted more on international law than Grotius (Churchill, R. and Lowe, A.V. (1988).

These writers particularly addressed specific subjects of international law in the time of positivist and naturalist sources of law. For example, Grotius (1909) book was written in defence of the Dutch India company which was engaged in trade with the Far East despite the Portuguese monopoly of that trade route. Grotius was the first to uphold the doctrine of freedom of the seas and so his ideas were seen “As threatening contemporary British claims to control the seas around Great Britain (Churchill and Lowe, 1988). Grotius’ book was greeted with spirited responses from a number of European writers such as Wildwood (1613), Selden (1635), Wolff (1679-1754), Vattell (1714, 1767), Zouche (1590-1660), Bynkershock (1673-1743) and Martins (1756-1821).

The most critical challenge to Grotius’ idea was Selden’s advocacy of the open sea system in his book, mare clausum. But the central debate of these writers that persisted throughout the 18th century was the supreme arguments between naturalism and positivism. The positivists have emerged to challenge the traditional naturalists. The positivist approach emphasized that the basis of international law should be what states actually did by their own will rather than what the Romans and the Greeks situated on reasoning. This idea thus became traceable to Zouche and later Bynkershock and Martins who were regarded as the 19th century positivists. It is therefore, important to note that the growth of modern international law is built on the works of these intellectuals which have continued to remain the factory for the manufacture of modern law of the sea, which have developed through a continuing process of modifications and refinements from the past foundations as found in defined sources.

About 71% of the earth’s surface is covered by large bodies of seas water while the remaining 29% (land) is further drained by rivers and streams whose waters drain into the
seas and oceans (Wang, J.C, 1992). This sea water has been fascinating and challenging to the human race for centuries. For examples apart from being a source of food and means of transport, this water has also the potentials to offer solutions to many of man’s social, political life, the modern state system has, out of a growing concern embarked on harnessing the opportunities provided by the seas and oceans. This concern has led to the division of the world oceans among littoral states such that, by the end of the 1980s, countries of the world had claimed legal jurisdictions over some 37.7 million square nautical miles (about 100 million square kilometers) of ocean floor adjacent to their nation boundaries (ROSS,1980).

This division of legal regime evolved historically from customary practices, beginning from the Spanish and Portuguese control of the world’s oceans from 1493 to the signing, in 1982, of a broad-based treaty, the Third United Nations Convention on the law of the sea (UNCLOS III). UNCLOS III is a comprehensive instrument which embodies both the latest codification and progressive development of international law in respect of the use of ocean space. The convention, which is a producer of more than 14 years of negotiation, was adopted by more than 130 states in 1982; it was formally ratified or accepted to by 60 countries on November 16, 1993. By this ratification, according to Article 308 of the convention, it had come into force on November 16, 1994.

The 1982 convention is seen as the last chance given to the world community “to avoid mounting oceanic conflicts through the harmonization of competing practices and claims. Morel, J.B. (1992), Nigeria did not only participate in the process of negotiating the convention and signing it when it was presented for adoption in 1982, but she was also one of the first states to ratify or deposit instrument of accession to it on August 14, 1986.

With a coastline of about 415 nautical miles (853 kilometers), the new law of the sea gives Nigeria a potential claim of political/economic jurisdiction of sea area of over 80,000 square nautical miles (Waya, A, 1989). Similarly, the doctrine of continental shelf (CF) and the Exclusive Economic Zone (EEZ) in both the 1958 and 1982 conventions further provide Nigeria with more area of authority over the economic resources of the two zones. In addition, the principle of Common Heritage of mankind, ‘embodied in the 1982 convention, has given Nigeria an added advantage to share the enormous benefits to be derived from the new law as far as the exploration and exploitation of economic resources of sea areas beyond national jurisdiction are concerned (Parts V and VI of the Third United Nations Convention on the Law of the Sea and Nigeria’s EEZ Decree of 1978). Against this background Nigeria
is expected to evolve a comprehensive marine policy to enable her achieve a number of ocean interests as a coastal and developing state (The United Nations General Assembly Adopted a Resolution (2749 (xxx) December 17, 1970).

### 1.2 Statement of the Problem

As a coastal and developing state, Nigeria has a lot of stake in an ordered and harmonious internationalization and utilization of ocean space. Nigeria has more important oil wells offshore than onshore, and her coastal waters are not only recognized internationally as an important fishery ground, but also the entire gulf of Guinea has been and will continue to be an important gateway in terms of international merchant shipping, military maneuvers, environmental as well as other strategic interest. Besides, as a newly independent nation-state with circumscribed Land borders, Nigeria ocean frontier becomes of even greater strategic relevance for her future foreign policy interests.

Yet, in spite of the above, Nigeria today does not have a comprehensive marine policy which clearly defines her various interests in the sea. There are, however, a number of separate and narrow pieces of legislation on matters of maritime interests such as the Territorial waters Decree of 1967 (amended in 1971 and 1993), the petroleum Decree of 1969, offshore oils Revenues Decree of 1971, Sea fisheries Decree of 1971, EEZ Decree of 1978, the National shipping policy decree of 1987, which established the national maritime Authority, the federal Environmental Protection Agency Decree of 1988, the Harmful Waste Decree of 1988, etc. These together do not amount to a comprehensive marine policy. This study set out to understand the influence of the law of the sea on the evolution of a marine policy for Nigeria and to attempt to find out the factors and forces which have impeded the emergence of a comprehensive marine policy in Nigeria, the need for such a policy and the extent to which the policy conforms to major provisions of the law of the sea, among others, the study intends to answer the following questions:

1. Does the non-conformity with international principles account for the ineffectiveness of Nigeria’s marine policy?
2. Does lack of harmonization and integration of Nigeria’s maritime policy account for the inefficiency in its implementation?

### 1.3 Objective of the Study

The general aim of the study is to examine weather non-conformity with international principles account for the ineffectiveness of Nigeria’s marine policy and weather lack of harmonization and integration of Nigeria’s maritime policy account for the inefficiency in its
implementation. Specifically, the study will help us to identify and highlight the factors which have influenced and may continue to influence the design, formulation and implementation of comprehensive and integrated marine policy in Nigeria; and to identify the factors which have impaired the emergence of a comprehensive ocean policy in Nigeria. Finally this study will also proffer policy alternative for comprehensive and integrated marine policy in Nigeria.

1.4 Significance of the Study

This study is germane in the sense that it provides an understanding of international principles governing ocean affairs and the elements that must be taken into account in formulating and executing marine policy in Nigeria. Secondly, it will serve as a basis for considering new policy options that would help in making better policy decisions for more efficient administration of the country’s ocean space. Put in another way, the study enables us to understand the importance of the sea in the overall development of Nigeria as a coastal and developing state and provides a direction for successive ocean policy programmes that would enhance effective and rational management of the country’s marine environment. Given the importance of the sea to Nigeria as a developing, coastal state, it is important to define her overall interest in the sea which would lead to the formulation of a comprehensive marine policy. It is equally important to define the nature and character of such policy and assess its immediate and future implication within the geopolitical interest of Africa in general and West African in particular. Finally, the study will contribute to existing knowledge and open up academic debate for further inquiry.

1.5 Scope of the Study

At independence in 1960, Nigeria became a party to the four Geneva conventions which the first United Nations Conference on the law of the sea (UNCLOS I) had produced in 1958. Similarly, since negotiations on UNCLOS III began in the United Nations following the famous Pardo memorandum in 1967, Nigeria actively participated in the conference that led to the adoption, ratification and entry into force of the convention, and she signed and ratified it on December 10, 1982, and August 14, 1986, respectively. This study covers the period 1960 to 1998. It places emphasis on post-independence policy strategies, goals, and intentions as contained in international maritime conventions and Nigerian maritime legislations as cited in section 1.2.
1.6 Operational Definitions

Marine or ocean policy is considered within the context of public policy in this study. In the words of Lasswell and Kaplan, public policy can be defined as “a projected programme of goals, values and practices” (Lasswell, and Kaptan, 1979) it can also be referred to as actions taken by governments to achieve specific objective. Dye also argues that public policy is concerned with the policy pursued by Governments, the forces shaping such policies, as well as the impacts of the polices on the society (Dye, 1975). It is in this perception that some people argue that public policy can be studied both as dependent and independent variables. As a dependent variable, public policy can be studied by examining the various forces and processes which throw up the policy; however as an independent variable, it can be studied by analyzing the impact of the environment (Ohwona, 1991). As a dependent variable, public policy is contextually multi-dimensional, including a variety of policies such as defence, foreign affairs, education welfare, economics, social security, etc (Ohwona, 1991) marine policy is, therefore, one category of public policy which encompasses the variegated nature of public policy. More specifically, it has both a domestic and foreign policy significance because of the multilateral dimension of law of the sea.

Therefore, marine policy as a branch of public policy entails the development of institutional machinery with the aim of promoting a variety of marine interests and/or achieving a set of goals and objectives in relation to the sea. In Nigeria, these interests, goals and objectives cover several areas, including the nation’s security interests, merchant trade and fishing, acquisition of marine technology, tourism, mineral resources exploration and exploitation. Others are energy development and utilization, effective and rational management of the jurisdictional areas of the sea, and the protection and perseverance, for peaceful uses, of the marine environment in line with international obligations imposed on all members of the International Community by the Law of the sea. Mangone (1977) argues that marine or ocean policy.

…can hardly be narrowed to simplistic slogans that will obscure the complexity of the issues involved. A variety of needs and motivations affecting different public and private interests, has always produced redundancies and even paradoxes in the marking of policy. Leaders associated with the marine environment will not be immune from that political process. But an analysis and understanding of the elements that must be taken into account in formulating ocean policy can be helpful in considering the options and may prove helpful in making it better, if not perfect, public decisions. (Mangone,1977:42).
The above proportion may be relevant to Nigeria as the socio-political exigencies of Nigeria are likely to affect the formulation and execution of a national marine policy and even the effect of such policy on the interest being sought by the policy. Thus, a critical understanding and analysis of the elements that have been take or must be taken into consideration in the formulation of Nigeria’s marine policy may help in considering other options that can improve public decisions, Mangone commenting further believe that it will enable Nigeria to maximize the benefits of being a maritime nation.

Throughout this study, the terms “marine”, “maritime” and “sea” are used interchangeably except there the term “sea” is used in the text of a convention, treaty or municipal law to refer to an enclosed or semi-enclosed body of salt water.

International law: law is that element which binds the member of the community together in their adherence to recognized values and standards. It is both permissive in allowing individuals to establish their own legal relations with rights and duties, as in the creation of contracts, and coercive, as it punishes those who infringe its regulations. Law consists of a series of rules regulating behaviour, and reflecting, to some extent, the ideas and preoccupations of the society within which it functions.

And so it is with what is termed international law, with the important difference that the principal subjects of international law are nation-states, not individual citizens. There are many contrasts between the law within a country (municipal law) and the law that operates outside and between states, international organizations and, in certain cases, individuals.

Interactional law itself is divided into conflict of laws (or private international law as it is sometimes called) and public international law usually just termed international law). The former deals with those cases, within particular legal system, in which foreign elements obtrude, raising questions as to the application of foreign law or the role of foreign courts (Shaw, 2008).

**Territorial sea:** Internal water are defined to be such parts of the seas as are not either the high seas or relevant zones or the territorial sea, and are accordingly classed as appertaining to the land territory of the coastal state. Interval water, whether harbours, Lakes or rivers, are such water as are to be found on the landward side of the baselines from which the width of the territorial and other zones is measured and are assimilated with the territory of the state.
The right of innocent passage

The right of foreign merchant ships (as distinct from warships) to pass unhindered through the territorial sea of a coast has long been an accepted principle in customary international law, the sovereignty of the coast state notwithstanding. However, the precise extent of the doctrine is blurred and opens to contrary interpretation, particularly with respect to the requirement that the passage must be “innocent” (Churchill and Lowe, 1988). Article 17 of the 1982 convention lays down the following principle: ships of all states, whether coastal or land-locked enjoy the right of innocent passage through the territorial sea.

The doctrine was elaborated in article 14 of the convention on the territorial sea, 1958, which emphasized that the coastal state must not hamper innocent passage and must publicize any dangers to navigation in the territorial sea of which it is aware. Passage is defined as navigation through the territorial sea for the purpose of crossing that sea without entering internal waters of proceeding to or from internal waters. It may include temporary stoppages, but only if they are incidental to ordinary navigation or necessitated by distress or force majeure.

The Contiguous Zone

Historically some states have claimed to exercise certain rights over particular zones of the high seas. This has involved some diminution of the principle of the freedom of the high seas as the jurisdiction of the coastal state has been extended into areas of the high seas contiguous to the territorial sea, albeit for defined purposes only. Such restricted jurisdiction zones have been established or asserted for a number of reason: for instance, to prevent infringement of customs, immigration or sanitary law of the coastal state, or to conserve fishing stocks in a particular area, or to enable to coastal state to have exclusive or principal rights to the resource of the proclaimed zone.

In each case they enable the coastal state to protect what it regards as it vital or important interests without having to extend the boundaries of its territorial sea further into the high seas. It is thus a compromise between the interests of the coastal state and the interests of other maritime nations seeking to maintain the status of the high sea; and it marks a balance of competing claims. The extension of rights beyond the territorial sea has, however, been seen not only in the context of preventing the infringement of particular dimension laws, but also increasingly as a method of maintaining and developing the
economic interests of the coastal state regarding maritime resources. The idea of a contiguous zone (i.e. a zone bordering upon the territorial sea) was virtually formulated as an authoritative and consistent doctrine in the 1930s by the French writer Gidel, and it appeared in the convention on the Territorial sea.

**The Exclusive Economic Zone**

This zone has developed out of earlier, more tentative claims, particularly relating to fishing zone, and as a result of developments in the negotiating processes leading to the 1982 convention. It marks a compromise between those states seeking a 200-mile territorial sea and those wishing a more restricted system of coastal state power.

One of the major reasons for the all for a 200-mile exclusions economic zone has been the controversy over fishing zones. The 1958 Geneva Convention on the Territorial sea did not reach agreement on the creation of fishing zones and article 24 of the convention does not give exclusive fishing right in the contiguous zone. However, increasing numbers of states have claimed fishing zones of widely varying widths. Article 55 of the 1982 convention provides that the exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established under the convention.

a. Sovereign rights for the purpose of exploring and exploiting conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

b. Jurisdiction with regard to (i) the architecture and use of artificial is lands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment.

Article 55 provides that the zone starts from the Outer Limit of the territorial sea, but by article 57 shall not extend beyond 200 nautical mile from the baseline from which the breadth of the territorial sea is measured.

**The Continental Shelf**

The continental shelf is a geological expression referring to the ledges that project from the continental landmass into the seas and which are covered with only a relatively shallow layer of water (some 150-200 metres) and which eventually fall away into the ocean.
depths (some thousands of metres deep). These ledges or shelves take up some 7 to 8 percent of the total area of ocean and their extent varies considerably from place to place. Off the western coast of the United States, for instance, it is less than 5 miles wide, while, on the other hand, the whole of the underwater area of the North Sea and Persian Gulf consists of shelf.

**The High Sea**

The high seas were defined in article 1 of the Geneva convention on the high seas, 1958 as all part of the sea that were not included in the territorial sea or in the internal waters of a state. This reflected customary international law, although as a result of developments the definition in article 86 of the 1982 convention includes: all parts of the sea 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.

Article 87 of the 1982 convention (developing article 2 of the 1958 Geneva Convention on the High Seas) provided that the high seas are open to all states and that the freedom of the high seas is exercised under the conditions laid down in the convention and by other rules of international law. It includes inter alia the freedoms of navigation, over flight, the laying of submarine cables and pipelines, the construction of artificial islands and other installations permitted under international law, fishing, and the conduct of scientific research. Such freedoms are to be exercised with due regard for the interests of other states in their exercise of the freedom of the high seas, and also with due regard to the rights under the convention regarding activities in the international seabed Area. Throughout the study all this concepts were used. (Shaw,2008).

Offshore refers to a mechanical process where a wellbore is drilled through the seabed. It is typically carried out in order to explore for an subsequently extract petroleum which lies in rock formations beneath the seabed. Most commonly, the term is used to describe drilling activities on the continental shelf, though the term can also be applied to drilling in lakes inshore waters and inland seas.

Offshore drilling presents environmental challenges, both from the produced hydrocarbons and the materials used during the drilling operation. While *onshore* denote the jurisdiction in which a state is domiciled and in which it pays a significant rate of tax. It is the opposite of offshore.
CHAPTER TWO

LITERATURE REVIEW

2.1 Theoretical Literature

The purpose of this review is to examine the existing body of literature as it relate to marine or ocean studies in general and Nigeria’s marine affairs in particular. Unlike dry land which has been totally divided up among sovereign states and falls under the jurisdiction of one state or the other, the sea had remained a common human frontier with little international regulation for quite a long time. Competition over exclusive control of the sea by Spain and Portugal and the challenges by other European maritime powers, such as the Dutch and the English, led to the evolution of the law of the sea principles around the 15th and 16th Centuries. Later, rapid advancement in ocean technology, the emergence of new nations from the old colonial empires, as well as the increased demand for ocean resources created the need to re-evaluate traditional law of the sea principles and the development of new rules to govern new uses of the oceans. Thus, between 1930 and 1960, four conventions (being the product of the 1930 Hague Codification Conference, the first (1958) and the second (1960) law of the sea conferences), were adopted. The inadequacies of these conventions led to the third one which was concluded in 1982.

But the past 38 years following the 1958 and 1960 Geneva Conventions on the Law of the Sea (UNCLOS I and II) have witnessed the growth and expansion of literature on the evolution of the 1982 law of the sea (UNCLOS III) and the multifarious uses of ocean space by the seabed debate in the United Nations General Assembly in the late 1960s. Similarly, the seabed debate later led to the convening of UNCLOS III between 1974 and 1982. The adoption of the convention and its subsequent entry into force further invigorated studies on various subject matters in relation to ocean affairs at the global, regional and national levels.

Marine Policy Studies

Some of these studies focused attention on ocean policy. This implies the understanding of the elements that must be taken into account in formulating national ocean policies and considering the options that may help in making effective public decisions (Mangone, 1977). The nature and character of the law of the sea and the convergent interests
of the world communicate in the world’s oceans mean that national ocean policies of individual countries must relate to the rest of the world. A number of scholars, focusing their attention on ocean policy, have emerged in this respect.

(John K. Gamble, 1977) stressed that the evolution of national ocean policy is central to any state’s use of its ocean space. According to him, national ocean policy involves “a set of goals, directives and intentions formulated by authoritative persons and having some relationship to marine environment.” (Robert Friedheim 1981). Shares a similar view with Gamble when he hold that ocean policy includes all activities relating to the substance of nation states’ using of oceans, how they make such decisions and how they organize themselves to make their decisions. Thus, the focus of national ocean policy centres on decisions regarding the use and management of ocean space and, as Friedheim puts it, includes “how and why decisions are made as well as the evaluation of costs, benefits and aspects of ocean decision particularly those that affects and are affected by new knowledge of the natural world.

This new knowledge of the natural world requires that national marine polices of individual countries must be inter-connected with the rest of the world. Edward Wenk argues that within the past years, new social and economic network of human activities crisscross the sea binding people, nations and oceans together in one functional political work such that new commerce, communication, individuals, knowledge, ideas, culture and pollutants traverse national boundaries and are constrained by political geography:

…Yet individual tended mentioned to generate domestic marine policy as though the implementation would be achieved without connections to the rest of the world…such provisional views could well lead to the policy assumptions, policy, design or implementation strategies that in the long run may be counterproductive to a nations own interest (Wenk, 1981:4)

For this reason, Wenk, therefore believes that absolute methods of finding solutions to marine problems may become part of the problems rather than part of the solution. If anything, he strongly contends, marine policy should be linked to other domestic policies because marine policy often deals with means rather than ends and such means must have some elements of national security policy, economic policy, energy policy, environmental policy, etc. Against this background, Wenk calls for common principles to guide initiatives by individual nations which should cover both national and collective security interests. He
opines that such security interest should invariably contain a “doctrine of anticipation” and argues that:

If marine policy is to succeed, it is essential to condition our entire policy design to face future on a far more sophisticated basis than simply working within the narrow boundaries of marine policy. Most important is the need for a holistic, unparochial future-oriented approach that accords with the dynamics of a modern technological society. (Wenk 1981:15)

In this connection, it can be understood that marine policy should be designed in such a way that it would achieve the dual objectives of satisfying the social and economic goals of the society and as well evolve with a conscious contribution to the new efforts of nations at restraining their unilateral initiatives, and give opportunities for oceans to serve as a rehearsal stage for the world community in order to meet the challenges and survivals of time.

Despite the lack of theoretical basis for these marine policy studies, they have not only provided a direction for this study, but they have also identified the various sectors of ocean policy. Among such writers is Friedhein who has explicably identified the following sectors of national ocean policy:

(i) Organization and structure;

(ii) Ocean research and engineering (to this, must be added acquisition of marine technology);

(iii) Ocean defence and policing;

(iv) Sea fisheries;

(v) Mineral exploration and exploitation;

(vi) Ocean environment and coastal zone management;

(vii) Transport and communication, shipping, port and harbour development.

Of these sectors, the highest common factor is the organization and structure national ocean policy, which can be termed the manager of all other sectors. This is also related to issues concerning the development of institutional machinery for administration and
management of National Ocean polices. This leads us to another set of writers who emphasized multilaterization of ocean affaire.

**Multilateralization and Futuristic Ocean Policy**

Writers such as Albert Koers, Lawrence Juda and Lewis Alexander closely intertwine globalization and future-orientedness of national marine policies to joint management policies based on consensual approach as a common denominator of acceptable policy strategy (Koers, 1973). The thrust of this position is that the package of rights and jurisdictions granted to coastal states by the law of the sea extends coastal states’ authority further from the coast and cuts across functional divisions of the seas, such as Territorial Sea, Contiguous Zone, EEZ and Continental Shelf. Coastal state power extends to different uses and concerns, for example, living and non-living resources and environmental protection. A possible policy framework for multi-use approach may provide a comprehensive national management, but this can best be achieved through regional cooperation and special arrangements with neighbouring states which have contiguous jurisdictional zones (Juda, 1979).

Lawrence Juda specifically argues that ocean policy may provide distinct advantages for ocean management as opposed to the legal divisions of ocean space, but the greatest problem is that the legal division of the sea does not tally with the natural and ecological divisions of ocean space. For example, it is a common fact that political and legal boundaries of the world’s oceans are indignant as far as living resources and the protection of ocean environment are concerned. This is because migration and movement of marine life are determined by natural forces and patterns of water temperature, food supplies, and currents, etc. In many places, the division of coastal waters into jurisdictional zones cuts across relevant ecosystems; this invariably results in the sharing of responsibility by different states within the same ecosystem. It is for this reason that Juda insists that without fatter-state co-operation, the goal of effective management of trans-boundary species may become difficult, if not impossible. As a result, both Juda and Alexander conclude that the national objectives of ocean policy can host be achieved through regionalization of ocean policies (Juda, L. & Alexander, L. 1979).
Sectoral/Integrative Approach to Marine Policy

Advocates of regionalization of ocean policies also believe that the potential for effective national ocean policy could be enhanced by the establishment of appropriate institutional machinery for co-ordination and administration of that policy. Indeed, the practice in most countries is that management authorities for ocean space have been dispersed into different ministries, agencies and bureaus.

According to Juda, the negative consequence of this is the absence of one governmental authority which oversees the whole policy and decisions are made on the basis of particular functional needs without significant and sufficient concern being given to impacts outside other functional responsibilities. (Juda, 1987). Juda’s criticism of sectoral approach took root from Arild Underdal and John Norton Moore. While Moore called for a reversal of this sectoral approach to ocean policy, (Moore, 1976) Underdal, advocated “the need for an ‘integrated’ marine policy,

In the 1960s, these criticisms waxed strong in the United States, leading to the establishment of the Stratton Presidential Commission in 1969. The report of the Commission Culminated in the creation of National Oceanic and Atmospheric Agency (NOAA) in 1970. Yet, Juda argues that ocean affairs have no separate department of their own in the United States despite the continuing doubts about the effectiveness of the existing institutional arrangements for marine policy (Juda, 1987). In France, however, many criticisms led to the creation of a cabinet ministry of sea for the integration of french ocean policy even though “it was subsequently downgraded.” Thus, critics of the sectoral approach to ocean policy believe that though there may be no one institutional structure that must necessarily be replicated in all states, institutional is needed in most states; adaptation is needed in most state if ocean management is to be conducted on a rational basis and its benefits are to be maximized.

Gerard Mangone (1977) also seems to think along this line when he advocates a better focus on ocean policy to reduce duplication of efforts and, at best, ensure coherent policies that could be effectively transmitted into political decisions. Mangone is of the view that though this institutional change may not necessarily concentrate on one department or agency, there is need for an adaptation transcending into a council or commission which could concentrate on the exigencies of marine affairs, investigate the
capacities and performance of the multiple agencies involved in the formulation and implementation of marine policy.

Such ‘integrationist’ perspectives of ocean policy have been enhanced by the sectoral study on adjustments to the impacts of sea level rise to coasts commissioned by the Intergovernmental Panel on Climatic change (IPCC). In this study, A.C. Ibe opine that policy proposals in response to impacts on sea level rise the West and Central African coasts should be embedded in co-ordinate and enforceable development plans (Ibe, 1990). While James (1990) Titus prefers “integrated strategies, David Freestone and John Pethick (1990) assets that state must marshal their obligations to co-operate in planning their responses to sea level rise because such policies require a high degree of co-ordination and co-operation which negates unilateral actions as policy reaction to coastal problems cannot entirely fall within a single state’s jurisdiction. But the seminal contribution by L.F. Awosika, A.C. Ibe and N.A. Udo-Uka (1990) is probably the most comprehensive description of marine policy in Nigeria.

Despite the identification of the need for Nigeria to take “retreat” and/or “no retreat” measures to mitigate the impact of sea level rise on the Nigerian coastal zone, the authors conclude that Nigeria does not have “a well articulated, concrete and enforceable coastal zone management policy. As a result, they call for national policy with adequate local provisions for a coastwide, co-ordinated and efficient management and control mechanism of the Nigerian coastal zone. But before the IPCC conference, A.C. Ibe, (1990) had earlier, on his own, made a similar conclusion in his study on the vulnerability of the Nigerian coastal zone to accelerated sea level rise. However, these studies fall within the same problematic of sectoral approach to marine affairs. Moreover, their analysis is one dimensional and centres only on the effect of changing climate to ocean management in Nigeria.

Nigeria’s Marine Affairs

Nevertheless, the 1980s marked a watershed in the emergence of literature on Nigeria’s marine affairs when much attention was drawn to the security of Nigerian waters. The first wave of studies began in the wake of the growing concern over the entire Nigerian maritime establishment which “was notoriously considered to be one of the most insecure for international shipping operations (Bolaji, 1983). The concern followed constant reports of acts of smuggling and armed robbery in Nigerian ports, waters, and off-shore areas with increased sophistication of such
crimes; this also led to high tempo on the effects of such acts on security of life, the economy and the international reputation of Nigeria. The whole affair motivated the Nigerian Navy and the Nigerian Institute of International Affairs (NIIA) to organize a workshop to examine and devise strategies on how to find solutions the security problems of the Nigerian coastal waters. The workshop, which held February 22nd - 23rd, 1983, examined, among other things, the problems of smuggling and coastal ‘piracy’ in Nigeria and how to combat them, geographical perspectives of the security of the Nigerian waters, security of oil installations in Nigerian territorial waters, and other problems concerning the existence of multiplicity of organizational agencies concerned with the security of the Nigerian waters. Among the views expressed at the workshop was the view of A.C. Oladimeji. Oladimeji, (1983) opines “an Integrated Maritime Guard System,” as a security arrangement for policing inland waters, harbours and coastal approaches.

The general consensus of the conference was that national security cannot be narrowed and that any factor that affected the economic life of the country was a national security concern which required the mobilization of all forces to deal effectively with the problem. The various organizational positions at the conference exposed the fluidity of Nigeria’s maritime security which was blamed on the inability of some of the agencies to effectively address the problem. Ad hoc arrangements, it was argued, could not operate integrated security command due to the existence of varieties of commands and control. The workshop, therefore, concluded that there was necessity for an integrated organization, comprising all agencies under one command, to guard the security of Nigerian ocean space and installations, and also to “prevent the illegal infiltration of aliens into the country through the ports and creeks (Akindele & Vogt, 1983). While the establishment of a Coast Guard was desirable though not feasible at that time, the Nigerian Navy was given the mandate of operational command and control of a ‘Joint Maritime Security Force,’ to be composed of all units of security agencies, so as to clarify the confusion that may arise from a conglomeration of different security agencies. This feat, the workshop noted, could not be effectively achieved without a well conceived maritime defence strategy. Perhaps that was why the years following the NIIA/Nigerian Navy workshop also witnessed the emergence of a plethora of literature on various aspects of maritime defence and security, most of which centred on the increasing strength and role of the navy in maritime affairs. This crop of writers this focused much attention on the development and growth of maritime defence strategy in Nigeria. Oladimeji, who seems to maintain a lead among this breed of writers, a
consistent position that Nigeria’s maritime policy must exert weight on growth, development and increased strength of Nigeria’s sea power. Against background, he stresses the indispensable policing role of the Nigerian Navy in terms of protection of off-shore oil and gas installations, anti-smuggling and anti-piracy, fisheries protection and anti-pollution, oceanographic research, search and rescue missions, etc. According to Oladimeji (1988) although there is evidence that Nigeria had a considerable indigenous tradition of sea usage for transport and communication, trade and defence in the immediate post-independence years, a comprehensive marine policy articulation and implementation which was emerging the years, a comprehensive marine policy articulation and implementation which was emerging over the year lacks co-ordination and coherence. Oladimeji sees the evolution of such marine policy in terms of the growing role of the Nigerian Navy in the area of effective co-ordination and mutualisation of the entire maritime security not only in Nigeria but also in the West and Central African sub-regions. In this connection, he believes that even though the Economic Community of West African States’ (ECOWAS) “Dump Watch” Agreement had, to some extent, succeeded in providing the necessary information and alertness, there was hardly any alternative to having naval ships to monitor the antics of ships’ movement suspected to be carrying toxic goods if sighted on the high seas.

It is, therefore, likely that such a proposition must have informed Oladimeji’s conceptualization of a maritime defence strategy for Nigeria in another separate study. Along Michael Morris’s paradigm, Oladimeji conceptualized Nigeria’s maritime defence on three overlapping parameters, covering: (a) Coastal defence and in-store operations;

1) Policing of EEZ and regional co-ordination of policing non-military activities such as control of poaching, dump watch, etc; (c) The third world level perspective of what he calls defence-in-depth which characterizes intelligence surveillance, occasional independent and joint military exercises, training exercises and facilitating alliance formation (Oladimeji, 1990). A credible maritime defence system of a developing country like Nigeria, he stresses, requires co-ordination between policing, combative and functional development of forces. Oladimeji concludes that a comprehensive maritime defence policy will involve the extension of all parameters of defence as far as possible even though this may mean drastic expansion of the navy in all dimensions of platforms, maintenance, personnel and logistics back-up. Thus, Oladimeji’s study does not only expose the need for a
comprehensive marine policy in Nigeria, but it also seems to suggest that sectoral approach to marine affairs is one of the problematics of ocean policy in the country.

Though some of these studies, as we have earlier argued, have identified the basic structures of ocean policy, none of the authors has presented his study in a specific analytical framework that would enhance an in-depth understanding required for the formulation of an effective ocean policy for Nigeria, let alone situating the analysis within the purview of the policy analysis paradigm as a basic tool for understanding marine policy formulation and implementation generally. This study therefore, seeks to fill this gap by providing a critical evaluation of the country’s ocean policy strategy and by undertaking a holistic approach for the purpose of identifying and designing a policy alternative in respect of complex ocean policy issues within the normative conception of policy analysis. The central focus is to gear the evaluation towards an integrative approach to marine policy in the country. This, of course, bears in mind the United Nations view that ‘the problems of the ocean are closely inter-related and need to be considered as a whole. This, in our view, can only be achieved within the normative perspective of the policy analysis theory as routed in the RCM.

The RCM, as we have earlier pointed out, focuses on rationality in the selection of policy variables whose consequences had been surveyed to obtain the most efficient net value. It derives its source from the conception of the rational individual who rank-orders a variety of policy decisions to harmonize their purpose in order to maximize net benefits. This is achieved through the choice of the best alternative policy out of two or more options which the decision-maker considers according to some explicit decision criteria, as the option that best serves the society’s interest. The RCM, as rooted in the utility theory, assures that the state had to apply legislation to make policies that are not only efficient but policies that produce the greatest good for the largest section of the society. The central normative standard of RCM in the policy analysis paradigm is to make decision criteria revolve around cost-benefit analysis and to produce a rational and logical argument as to whether a policy generates more social costs than social benefits as guided by specific standards or resources. That is why the RCM is regarded as the most appropriate model to apply in situations where the actions of executives or decision-makers are prescribed by precise guidance as in the dialectical relationship between ocean policy and the law of the sea. This makes the application of the RCM the most fitting model in the study. This is more so that we live in a
world of inter-dependence. Weaker and technologically backward nations have to use their resources judiciously and rationally to drive maximum benefits.

2.2 Empirical Literature

In order to appreciate the importance of the law of the sea in the determination of the course and direction of marine policy, there is need to review international conferences during which the international legal principles and that govern access to and common uses of the oceans were produced. This section therefore provides a brief sketch of multilateral conference on various uses sea and a historical account of the development of the principles of the law sea. The objective is to provide a basis for this study’s thesis that the law of sea and specifically UNCLOS III has relevance for national ocean policies in 1 and Nigeria’s marine policy in particular.

International Conferences on Uses of the Oceans

Prior to the United Nations law of the sea conferences of 1958, 1960, 1974 – 1982 and The Hague codification conferences of 1930, more than 60 international conferences on various uses of the sea had been held. These conferences produced 64 multilateral conventions dealing with specific and technical aspects of affairs ranging from the protection of submarine cables to salvage at sea. By 1983, a total of 162 multilateral conventions and protocols (63 between 1884, 1944, 28 between 1964 and 1957, 36 between 1958 and 1966 and 62 between ‘and 1982) had been adopted (See Appendixes I-IV). Before the end of the Second World War, multilateral conferences on the sea d common problems that dealt with the technical aspects of seamen’s welfare (employment, age, sickness and wages), free navigation in the Suez Canal other navigable waterways, and international shipping (bills of lading, collision salvage, immunity and tonnage, etc). The oldest multilateral treaty was the 1884 convention on the protection of sub-mars cables. Specific conventions were concluded to prohibit slavery and slave trade and transport of opium and other dangerous drug substances.

However, a major development in the law of the sea was the 1930 Hague codification conference of International Law. The importance of the conference was that it was the first most organized multilateral conference that addressed the question of Territorial Sea among the two other subjects of law (nationality and state responsibility) that were discussed at the conference. Wang (1992) argues that the action appeared to have been “particularly necessary
because of the tension that had built up between those nations that adhered to the concept of free use of the sea and that wanted to expand further the enclosure or division of the ocean”. When League of Nation’s Preparatory Commission prepared a draft document as the basis of discussion”, delegates from 48 nations met at The Hague from March 13 to April 13, 1930.

The discussions of the conference were on Territorial Sea and Contiguous Zone. Delegates agreed on the proposition for delimiting the Territorial Sea but there was a strong opposition to the establishment of a contiguous zone beyond the three-mile Territorial Sea. However, the bane of the conference was the question regarding the specific width of the Territorial Sea. Seventeen nations preferred limit, four wanted four-mile limit while eleven opted for six-mile zone. The conference thus failed to codify the divergent views on the width of the Territorial and the purpose of the Contiguous Zone. It has been argued that the conference failed because of Great Britain’s opposition to the concept of a Territorial Sea with a Contiguous Zone; especially as the world’s major maritime powers wanted narrow Territorial Seas beyond which the traditional principle of freedom of the sea should prevail (Swartrauber, 1972). Freedom of the sea thus remained unchallenged until the later part of the 20th Century when the combined forces of technological, economic and increased human uses of the resources of the sea necessitated new efforts at delimiting or controlling the ever expanding movement for enclosure of the oceans by coastal states. This notwithstanding, the Final Act of the conference produced article on the legal status of the Territorial Sea as a belt of sea which formed part of the coastal state’s territory including its air space above and the seabed and subsoil (but with innocent passage) without defining its seaward extent.

After The language codification conference more multilateral agreements were made to the extent that from the end of the Second World War to the eve of 1958, a total of 28 multilateral negotiations were concluded on fisheries conservation and management, seamen’s welfare sanitary regulation, oil pollution, etc, (See Appendix II). And by 1958 and 1960 when the first and second United Nations Conferences on the Law of the Sea (UNCLOS I and II) were held, it had become clear that the major international concern was fisheries conservation and management, including regional fishery organizations, seamen’s welfare and shipping (Wang, 1992). Prominent among the multilateral agreements concluded at that time were the 1946 Convention for the Regulation of Whaling (the Netherlands, Norway, United States, United Kingdom and the defunct USSR); the Tripartite Fisheries Conference of Tokyo known as the convention for the High Seas Fisheries of the North Pacific Ocean; the Brussels Convention on the Liability of Operation of Nuclear Ships (1962)
and the 1963 Vienna Convention on Liability for Nuclear Damage (See Appendix III). Similarly, by the time the seabed debate began in the United Nations General Assembly in the mid-1960s, more international conferences were convened to address the new problems of exploration and exploitation of the seabed and a host of others (See Appendix IV). While fisheries concerns dominated the discussions, marine environment protection and pollution of the sea by oil (trans-boundary) issues influenced the conclusion of not less than 24 international conventions, for example the 1969 Agreement on the Pollution of the North Sea by Oil; the 1971 Agreement by Denmark, Finland, Norway and Sweden on Pollution by Oil; the 1971 Agreement on International Fund for Compensation for Oil Damage, the 1973 International Convention for the Prevention of Pollution from Ships of equal importance (and for Nigeria’s ocean Policy) this period coincided with concern for disposal of nuclear waste and placement of nuclear weapons on the seabed. Two international conventions were concluded on prohibition of emplacement of nuclear weapons on the seabed and civil liability in the field of maritime carriage of nuclear materials in 1971.

However, the scope and direction of the law of the sea after World War II took a new dimension after the Truman Proclamation of 1945, which triggered a chain of unilateral claims by coastal states for a new ocean enclosure (Ross, 1979). The Truman Proclamation necessitated the call for a new international conference on the law of the sea to address mounting controversies among coastal states on the meaning, limits an legal status of the continental shelf doctrine embodied in the Proclamation. By 1952 when some Latin American States (Chile, Ecuador and Peru) signed and made a declaration in Santiago claiming what was termed as 200 nautical miles territorial seas for fisheries and other resources purposes, it was clear that the world needed a new international agreement not only on the continental shelf, but also on a host of other related law of the sea issues, for example, the delimitation of territorial seas and contiguous zone, fisheries controversies, and the preservation of freedom of the sea in the high seas and other areas beyond national jurisdictions. It was against this background that the United Nations convened the first ever Law of the Sea Conference (UNCLOS I) between February 24 and April 28, 1958, which was attended by 87 nations. The conference produced four separate conventions: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of Living Resources of the High Seas, and the Convention on the Continental Shelf, which variously entered into force between 1962 and 1966.
Like the 1930 Hague Codification Conference, although the conference adopted a Convention on Territorial Sea and Contiguous Zone, it was unable to reach an agreement on the specific breadth or extent of the territorial sea and the contiguous zone. This necessitated the second conference (UNCLOS II), convened from March 17 to April 26, 1960 and attended by delegates of 88 nations. Various proposals were made to resolve the issue of the breadth of territorial sea. Prominent among them were the joint United States - Canada and Icelandic proposals which also failed to be adopted by one vote short of the required two-thirds majority (Hollick, 1981). Thus for the second time, nations failed to agree on the breadth of the territorial sea and the extent of contiguous zone, as such claims by coastal states continued to differ until the third conference (UNCLOS III) was held between 1974 and 1982.

The failure of UNCLOS I and II to agree on the breadth of the territorial sea and contiguous zone meant that unilateral claims over fishing grounds and other resources of the sea were the order of the day. This led to tension and conflict over the traditional use of the oceans. The unilateral extensions of the oceans enclosure movement merely represented what Wang describes as “simplistic and chauvinistic solutions to global problems that demanded international cooperation (Wang, 1992). The issue of territorial sea then came to be linked with the desire of the maritime powers to secure uninterrupted transit through focal points crucial to international navigation. Similarly, there was bitter concern about the exercise of naval power as national claims over territorial seas expanded ranging from 3 and 6 to 12 and then to 200 nautical miles (by Latin American States).

But more importantly, the increase in the number of sovereign nation-states in the United Nations also increased the numerical strength of the Afro-Asian-Latin American States. Unlike the period before the 1970s, the number of the Afro-Asian and Latin American nations in the law of the sea conference has increased to about 59 percent (Table 3.1) This numerical strength even totaled more than two-thirds majority needed for decision-making in the United Nations proceedings. They now became ideologically united in demanding a share in the distribution of the world’s wealth and resources.
Table 3.1: Increased Membership of Afro-Asian and Latin American Nations at UNCLOS

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<td>West and Others</td>
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When Ambassador Arvid A. Pardo made his famous speech at the United Nations General Assembly calling for a declaration and treaty on the peaceful use, in the interest of mankind, of the seabed resources beyond national jurisdiction, undersea technology had made seabed mineral resources accessible. And for the majority of the third world nations, “the seabed was the last frontier for mankind to tap the rich resources found there (Wang, 1992). But they also were keenly aware that without the technology:

Or the sharing of advanced undersea technology for deep seabed exploration and exploitation, they would be deprived of the economic benefits. The concern of the developing world about the uses and ownership of the sea was basically motivated by the acceptance of the view that technology was a panacea for their economic ills (14) (Wang, 1992:27)

That was perhaps why the debates over the seabed at the United Nations in the late 1960s were a top priority on the agenda of developing nations’ multilateral diplomacy regarding the oceans. Also important on the agenda of UNCLOS III was that after 1960 the world was getting more conscious about the problems of ocean pollution from land and from vessels. For example, the 1972 Stockholm Conference on Human Environment raised the question of the ocean’s vulnerability to the endless amount of toxic and non biodegradable waste being dumped into the oceans. The question of who was legally responsible for damage done to the coast and shorelines by spillage of crude oil from supertankers, and the need to adopt acceptable uniform standards for marine environment protection, as the sources of pollution of the oceans multiplied in the 1970s and also became matters of grave concern to the world community.
It was against this background that the Seabed committee of the United Nations General Assembly adopted Resolution 2750 (xxx) on December 17, 1970, calling for the convening of UNCLOS III. The resolution identified a broad range of issues to be discussed at the conference:

including those concerning the regimes of the High Seas) the Continental Shelf) the Territorial Sea (including the question of international straits and contiguous zone, fishing and conservation of living resources of the high seas (including the question of the preferential rights of coastal state), the preservation of marine environment (including inter alia, the N prevention of pollution and scientific research. (United Nation DOC. 18097, 1970:46)

As a result, the Seabed Committee was designated as a Preparatory Committee for UNCLOS III and later subdivided into three sub-committees and working groups which worked for three years between 1971 and 1973 to produce draft articles on the international regime of the seabed. Issues related to marine environment protection and scientific research, and also produced a list of agenda items for the conference. Thus, at its 28th Session on November 16, 1973, the General Assembly again adopted Resolution 3067 authorizing the convening of UNCLOS III. The conference held eleven official sessions culminating into the adoption of the Final Act of the convention and the signing, by 119 nations. The first day it was opened for signature on December 10, 1982, at the Montego Bay, Jamaica. The convention was a product of over nine years of continuous negotiations, consultations and bargaining between nations with varied concerns for uses of the ocean. Described variously as “a new legal order for ocean space”, constitution for the oceans”, the convention establishes a comprehensive framework for the regulation of all parts of ocean space covering 25 subjects and sub-issues.

UNCLOS III which, according to Article 311, prevails over the 1958 and 1960 conventions on the law of the sea came into force on November 16, 1994, having received the 60th instrument of ratification or accession on November 16, 1993 (United Nation Law Bulletin No. 24 December 1993). In accordance with Article 308 of the Convention, Nigeria ratified or accented to the convention on August 14, 1986.
The Development of the Law of the Sea Principles

Having considered the international Conferences that built the law of the sea, there is need to provide a brief sketch of the historical development of the law of the sea principles in order to relate them to their current status, as reflected in UNCLOS III, and how such principles can shape national ocean policies. Indeed, the idea of the sea as a common property for all to use is an age-long affair. It had its origin from the judicial writings of Marcianus. From the 2nd Century, a Roman jurist advanced the view that the sea was *communis omniun naturali jure* - a common property for all to use as part of Roman law. In the 6th Century, the Roman Empire however declared, theoretically, that it exercised effective control, but not outright ownership, over the Mediterranean Sea, in order to extend Emperor Caesar’s power into the sea to suppress piracy (Wang, 1992).

As commerce and trade began to develop in the Mediterranean world, the extension of state Sovereignty from land to sea became an accepted norm and practice during the middle Ages. By the 12th and 13th Centuries, the Italian city states such as Venice and Genoa were competing for domination of the Adriatic waters which provided the linking routes to the Far East. For example, by 1269, Venice was in a position to impose levies on vessels which sailed the Adriatic; Genoa claimed sovereignty over the Lugurian Sea until the 17th Century when its warships started stopping Spanish vessels bound for Nápoles. This development sparked off series of control measures of adjacent waters by the Scandinavian state: Denmark over the Baltic sea, Norway over Iceland and Greenland sea routes, and Sweden claimed the Gulf of Genoa. England followed suit with claim over the English Channel and parts of the North Sea.

This period also coincided with the voyages of discovery when Prince Henry the Navigator led Portuguese explorers to explore the Coast of West Africa and through a Papal Pope Nicholas V granted Portugal the “exclusive and permanent rights” to that part of Africa. This extended Portuguese jurisdiction over the parts of Africa and the sea routes to the Arabian sea, especially after Diaz and Vasco Da Gama sailed around the Cape of Good Hope. This opened up a new all ocean routes to the lucrative trade with the Orient areas.

However, state extension of sovereign control over the ocean and areas beyond reached a new turn when Christopher Columbs discovered the New World in 1492 as the Spanish domination of the sea was challenged (immediately after the discovery of America),
by king John II of Portugal with Pope Alexander VI’s intervention in the conflict between Spain and Portugal, a line of demarcation was drawn which granted each state exclusive possessions of overseas land in the southern hemisphere through a series of Papal Bulls. In 1494, the Treaty of Tordesillas was signed to legitimize the longitudinal line drawn to award overseas land possessions West of Cape Verde Island to Spain (Central and South America, most of the Pacific and the Philippines) and all overseas land east of the Island to Portugal (Brazil, Africa, India and the East Indies). The Treaty of Tordesillas thus became the first formal treaty drawn by the two most powerful European maritime powers dividing the oceans and land lying beyond into exclusive jurisdictions. More importantly, the treaty granted exclusive navigational rights and privileges covering an enormous span of ocean space to Spain and Portugal with each nation enjoying navigational rights in each other’s jurisdiction. Thus, the post-Tordesillas treaty saw exclusive control of the Southern Hemisphere by Spain and Portugal. Spain was exploiting the rich resources of the new world while Portugal was monopolizing the lucrative trade in spices, sugar and tobacco in the East Indies. It was an open air of “opportunity” and “abundance” which had to be challenged by other European maritime powers particularly the Dutch and the English who wanted a share in the lucrative trade. These nations thus rushed to the sea to seek trade and hence questioned the doctrine of mare clausum (closed sea) imposed by Spain and Portugal to keep them out. This challenge ushered in a new era that gave birth to the evolution of the law of the sea principles.

In 1581, the Dutch took over Portuguese Possessions in the East Indies after becoming independent. The defeat of the Spanish Armada in 1588 by England gave the British and the French an upper hand in the exploration of the east coast of North America which was hitherto under Spanish rule. From 1598, the English and the Dutch replaced the Portuguese and the Spanish as the new rulers of the sea.

It was during that time that early 17th Century writers and jurists such as Hugo De Groot (Hugo Grotius), John Selden and Cornelius Van Bynkershoek came up with important treatises on the law of the sea. Thus, a new concept of Mare liberum (open sea) and freedom of the high seas emerged to challenge the concept of mare Clausum (closed sea), imposed by Spain and Portugal. Guillo Pontecorvo pointed out that the English and the Dutch strategy of open sea was motivated more by economic considerations than anything else: as in the Grotiusian sense, every nation had the natural God-given right to travel by the use of the
oceans. The oceans were the property of no one (*res nullius*), but the common property of all (*res communis*). According to Grotius, no one, whether a nation or an individual possessed the private ownership right over the oceans but “in a competitive world, freedom of access was cheaper than the cost of ownership and protection of a wide array of distant assets (Bontecorvo (ed), 1986).

As time went on, Grotius’ doctrine gained recognition and was defended by the combined sea power of the British, Dutch, French and Germans in their contest for power against the Spanish and Portuguese. Thus, there developed a body of international principles on uses of the sea which were accepted in state practice out of the economic, political and military contest among European powers. The first was the Grotiusian open sea and freedom of the high seas which prevailed along with the right of coastal states to claim exclusive sovereignty and control over narrow belt of water with varying distances along their coasts. The exclusive sovereign right thus became the concept of Territorial Sea which was later expanded to Contiguous Zone for regulation of customs, immigration and sanitation purposes. The concept of Territorial Sea became pervasive and was defended by John Seiden and Cornelius Van Bynkershoek when they argued that coastal states could control and own a small zone of three to four nautical miles beyond its land area (Selden, 1923). In effect, freedom of the sea and coastal state jurisdiction over territorial seas became a well established state practice from the 17th to 19th Centuries. As the period was dominated by traditional open sea and national claims to territorial sea, state practice shifted to the type of rights and duties of states on the high seas as well as within the limited boundary or zonal arrangements.

Before the Second World War, states focused attention on the codification of the existing practices on uses of sea as well as delimitation of maritime boundaries through bilateral agreements. After the War, however, the rapid advancement in ocean technology, the emergence of new nations from colonial empires and the increased demand for ocean resources led to the developments which did not only call for the need to re-evaluate traditional principles of the law of the sea but also new rules to govern the new ocean uses. The high point of this was the Truman Proclamation of 1945 which introduced the new concept of continental shelf. The development of new technology to explore sea resources, such as oil and gas lying off-shore underneath water made the new doctrine essential. The Truman Proclamation triggered a series of unilateral claims from a number of Latin
American states and the newly independent African and Asian States. This was because new advancement in fishing technology made off-shore fishing possible for a lengthy period of time and also to over-fish stocks to depletion levels. Living resources of the sea could no longer be considered inexhaustible as they were in the Grotiusian period. Similarly, worldwide population pressure and the need for increased protein intake reinforced the desire for expanded ocean enclosures as shown by claims of coastal states to keep others out of the unilaterally established zone (Akinsanya, 1980). These new states also demanded technological transfer from the advanced maritime nations. In the same vein, the entire Third World nations then began to consist not only on transfer of marine technology but also on the sharing of the wealth obtained from exploration and exploitation of the continental shelf and the deep seabed. Exploration and exploitation of both living and non-living resources of the sea as well as new advanced sea transport technology, such as super oil tankers, created serious concerns for marine environment protection in case of oil spills and for rational management of the living resources of the sea.

These concerns became more apparent during the 1960s and 1970s such that new principles to deal with continental shelf and deep-sea resources led to the need to re-evaluate Grotius’ 17th century concept of open sea. The product of this was the emergence of 20th Century concepts such as the ‘Common Heritage of Mankind’, the ‘Area’, ‘Exclusive Economic Zone (EEZ)’ etc. Thus, from the 1960s, the main emphasis in the development of the principles of the law of the sea was on how to gain access to explore and exploit ocean resources of the sea beyond national jurisdiction, conservation and management of the living resources, and distribution of ocean wealth which lie beyond national jurisdictions.

This chapter now continues with a more detailed examination of the conceptual nature of the law of the sea principles under two broad headings, viz, (a) the traditional ‘open sea system” and (b) the new principles which stress an expanded enclosure of ocean space with agreed limits.

**The Traditional Open Sea System**

### i. Territorial Sea

The Territorial Sea, also variously referred to as “territorial waters”, “marginal sea” or “littoral waters”, is one of the oldest concepts in the law of the sea. It was first codified at the
1930 Hague Codification Conference. The concept evolved from the idea that the sovereignty of a coastal state extends to an adjacent belt of water beyond the internal waters and land territory. It is traceable to the theory of the Glassiators of the ancient Roman Empire for the suppression of piracy at sea and the extension of the Caesari jurisdiction over the sea earlier noted.

Between the 14th and 17th Centuries, writers such as Barlotus and Gentili advocated coastal state’s ownership of sea water adjoining the land. Even Grotius’ conception of res communis (freedom of the sea) accommodated the view that it was possible for a coastal state to control, but not own, a small zone of water beyond its land territory. By the 18th Century, the idea of sovereignty over the territorial sea had become an established state practice just as the freedom of the high seas. The controversy, however, was not so much on the concept itself as on the inconsistent national claims over the breadth of the territorial sea even after the discovery of the “cannon shot” rule. That was why the 1930 Hague Conference could not reach an agreement on claims by states although it defined and provided a legal status for the territorial sea.

As the controversy over the appropriate breadth of territorial sea continued, state also continued to extend their national claims to ever-greater distance from the shore to exercise jurisdictions over increasing scarce ocean resources, the growth of shipping and its traffic, and sea pollution which posed a threat to coastal states’ marine environment. The major maritime powers of the world insisted on a narrow territorial sea of the cannon-shot rule (three nautical miles) although with some modifications by the Scandinavian states. Prior to 1958 and 1960, national security needs made some states claim territorial seas of twelve nautical miles while a few Latin American states claimed up to 200 nautical miles. At UNCLOS I meeting in 1958, no fewer than thirteen proposals on a variety of limits of territorial sea, ranging from the traditional three to 12 nautical miles, were introduced. Some states also demanded a fishery zone of six to not more than twelve nautical miles, none of these proposals was accepted at the conference, hence the resurrection of the issue at UNCLOS II in 1960. In addition, various formulae for territorial sea and a fishing zone were also debated upon: a joint proposal for a 12-nautical - mile limit came close to adoption but could not get the required 2/3 majority and was thrown out. States thus resorted to unilateral claims from 1960.
However, between 1967 and 1975, territorial sea claim of 12 nautical miles took a dramatic turn as it increased from 26 to 56 even though more states also claimed more than 12 nautical miles. By the time the Caracas session of UNCLOS III was convened between 1973-74, there was a general consensus in favour of 12 nautical miles territorial sea, although the traditional ‘territorialists’ of Latin America (Brazil, Ecuador, Panama, Peru and Uruguay) and some African states adhered to extended claims from more than 12 to 200-nautical-mile territorial sea boundary. These countries wanted to bring more waters under their control to keep off foreign fishermen and to control pollution. By the time UNCLOS I was adopted in 1982, a compromise of 12 nautical miles breadth of territorial sea had been reached; every State has the right to establish the breadth of its territorial sea up to a limit not ding 12 nautical miles.

UNCLOS III also provided directive/method for measuring the breadth of territorial sea and the rules for delimiting the boundaries between opposite or adjacent coastline as provided for in Articles 7(6), 8, 14 and 15. But the territorial sea retains the right of innocent passage as passage as per Articles 17 - 32. However, it is not clear whether coastal states can apply laws to foreign vessels in transit in exercise the right of innocent passage as different state practices show. Presently, views differ as to whether coastal state jurisdiction over specific matters, such as customs, sanitation and security, can be imposed on all vessels in transit. Others still argue that there is no limit imposed on a state in exercise of its sovereign right in the territorial sea including applying rules on foreign vessels as an instrument of exercise of sovereignty. The latter argument seems to be strengthened by Article 21(1) which requires coastal states to adopt laws and regulations in matters of navigational safety, protection of navigational facilities, cables and pipe lines, conservation and prevention and control of pollution, etc. Article 21(4) also requires all foreign ships to comply with all such laws and regulations and all generally accepted international rules on the prevention of collision at sea.

More importantly, UNCLOS III categorically spells out the specific meaning of “passage” and “innocent passage”. According to Article 18, passage means navigation through the territorial sea without entering internal waters or calling at a roadstead or port facility outside internal waters or call at such roadstead or port facility. Such passage must be continuous and expeditious even though it may include stopping and anchoring in so far as it is incidental to ordinary navigation or be made necessary by duress or for rendering
assistance to ships or aircraft in danger or distress. But where passage is prejudicial to peace, good order or security of the coastal state or anathemic to the convention and other rules of international law, it is no longer innocent (Article 19(2)). Right of innocent passage and transit passage is also extended to straits under conditions laid down in Articles 38 and 45.

The significance of UNCLOS III as far as the concept of territorial sea is concerned is that it has been able to achieve a consensus on the breadth of the territorial sea where previous conferences have failed. It also produced a compromise method of measuring the baseline of the territorial sea in order to resolve maritime boundary disputes and provide direction for resolving problems which may rise from delimitation of territorial a boundaries between opposite or adjacent states. Similarly, it provides detailed criteria for the determination of innocent passage or uninnocent passage, either through the territorial sea or an international strait. It permits coastal states to enact rules and regulations for navigational safety, traffic, conservation of fisheries and for pollution control. The provisions which require “prior authorization” or prior notice “for war ships” right of innocent passage in the territorial sea and also the surfacing of underwater vessels have tried to allay the fears of the much security conscious coastal states of Latin America and Africa, especially Nigeria which pressed for wider territorial sea at UNCLOS III.

ii. Contiguous Zone

A contiguous zone is a belt of water adjacent to, but extending Seward beyond, the territorial sea within which a coastal state exercises special jurisdiction for the purpose of enforcement of its customs, fiscal, immigration and sanitary laws. State practice has also shown that coastal states also declare contiguous zones for the purpose of defence and security.

The concept is traceable to the 19th Hovering Acts of Great Britain which were to prevent smugglers from hovering off the British coast. Under the acts, customs officers were empowered to visit and search vessels at various distances from the shore as determined by port authorities. These distances first varied between three, five, thirty and twenty-four authorities. This distances first varied between three, five, thirty and twenty-four miles but were extended to a flat distance of 100 leagues (about 300 miles) in 1802 (Wang, 1992). When the Hovering Acts were repealed in 1876, the British Parliament limited customs jurisdiction in the customs Consolidation Act to a nine-mile-zone for British vessels and a
three-mile-zone for foreign vessels because Great Britain wanted to adhere to freedom of navigation.

Between the two World Wars, the United States adopted a number of legislations using the concept of contiguous zone to enforce fiscal measures and for defence in the Pacific after the Pearl Harbour attack. For example, prior to the Second World War, the United States established the ‘Defensive Sea Areas’ extending to about 1,000 miles the sea and declared a contiguous zone known as “the Maritime Control Areas’ for self-defence. The 1992 Tariff Act also provided the United States with a twelve mile zone which permitted customs agents to inspect, search and examine any vessel for violating the United States’ Volstead (lithe sale and transportation of intoxicating liquor. Similarly, in 1935, the States Congress passed the Anti-smuggling Act which established Mobile ms Enforcement Areas of varying distances within which the United States customs agents could search and seize vessels hovering 50 to 60 miles off the of United States.

The term “Contiguous zone” first appeared in the 1930 Hague codification conference as a zone within which coastal states may exercise control necessary prevent infringement of customs and sanitary regulations, and security interference by foreign ships within their territory or territorial waters; such control must not be exercised more than 12 nautical miles from the coast. The ten years that followed. The Hague codification conference witnessed unilateral declarations of contiguous zones to meet a variety of special needs by many coastal states. Thus, the debate over the question of the breadth of territorial sea in UNCLOS I was dominated by issues of security and fishing rights. The proposal for a special fishing zone ranging from six to 12 nautical miles was not adopted. However, following strong bargaining at the conference, an agreement for the establishment of a contiguous zone was reached which became Article 24 of the 1958 Convention on Territorial Sea and Contiguous Zone. Accordingly, a state may exercise the control necessary to (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; and (b) Punish infringement of the above regulations within its territory or territorial sea.

UNCLOS III adopted virtually the same language in the 1958 convention, except that the breadth of the contiguous zone was increased from 12 to 24 nautical miles as adopted in Article 33. Apart from the exercise of special rights prescribed by this article in UNCLOS III, State practice has shown that the establishment of the contiguous zone for defence and
security has become part of customary international law. The acceptance of this zone and its delimitation by UNCLOS I and III thus affirmed coastal states’ special rights to enforce the violation of the prescribed regulations within their territories or territorial seas. Since 1982, a large number of states have claimed contiguous zones of 24 or less nautical miles to conform to the convention. (National Legislation relevant the United Nations convention on the Law of Sea, 1985)

However, the contiguous zone is still considered as part of the High Seas by these conventions. Therefore, coastal states have no jurisdiction to take action against other offences within the zone (except those prescribed by the convention). Controversies which might arise may have to be solved under customary rules of international law such as “reasonableness” and “equity”, for example. But despite the fact that the, existence of a contiguous zone might be rendered redundant and absolute by the establishment of an Exclusive Economic Zone, the concept is very important in the law of the sea and it still serves as a legal framework for a coastal state to take anti-pollution measures and control the ocean environment in that part 4the High Seas.

iii. The High Seas

The high seas are one of the oldest and most fundamental concepts of all the principles of the law of the sea. It evolved and developed from the idea of Marcianus who was a Roman Jurist in the 2nd Century A.D. In the Digest of Justinian, Marcianus stated that ‘all men had the right use the sea for commercial and navigation purposes’24 However, several hundred years after Marcianus’ statement, the sea has been subjected to various kinds of control by various sea-faring powers right from the time of the Roman Empire, the Middle Ages to the Tordesilles Treaty in 1494. After the discovery of America, Spain and Portugal divided the entire ocean between them and denied other European nations the freedom to use the trading routes and Sealanes to the West Indies and China. When Spain protested to England in 1580 about Sir Francis Araki’s exploit in the pacific, Marcianus’ idea regained currency with the Queen of England’s reply that the sea was common property and no one should have title to the ocean (Lauterpatcht, 1953).

Twenty-nine years later, Hugo Grotius published his treatise De Mere Leberum (1609) and advanced the thesis that the sea was too immense for anyone to effectively occupy, so no one should claim sovereignty over it. Grotius was of the view that there was
plenty of room in the ocean for navigation and fishing for all users of the oceans, hence, there is no need to appropriate the high seas into sovereign claims. Since that time, Grotius' conception of free and open access to the sea (res communis) dominated the maritime world until John Selden's counter argument in the Mere Clausurn (1635) for coastal states' right to enclose a portion of the sea to the exclusion of others from fishing from as England has done with parts of the North Atlantic. The basis of Selden's rejection of the Grotian thesis that the resources of the seas were inexhaustible was that nations had the right to enclose and "regulate" the ocean.

Although Selden's idea of closed sea received the blessings of Britain, the British Government soon abandoned it as Britain became a maritime power which epitomized the strongest supporter of the Grotian idea of open sea. Thus, by the middle of the 19th Century, the concept of freedom of the high seas, different from the newly discovered 'cannon shot' distance where a coastal state exercises territorial sovereignty, was well established with many court decisions upholding the principle in the United Kingdom and the United States. The freedom of the high seas, however, worked well so long as the major maritime powers adhered to it with the support of other states. However, there was a radical change in favour of ocean enclosure by coastal states between the two World Wars. This followed the development in ocean technology and the emergence of a multiplicity of new states especially after the Second World War. This created a confusion which was summarized by Wang as (i) the definition of the high seas, (ii) the meaning and extent of the freedom of the high seas, and (iii) the responsibilities of a flag state on the high seas (Wang, 1992).

Subsequently, UNCLOS I and III tried to solve the problems arising from this confusion. UNCLOS I defined the high seas as "all parts of the sea not included in the territorial sea or in the internal waters of a state". But, by 1970, this definition had become absolute as a new concept called Exclusive Economic Zone (EEZ) or preferential fishing zone had emerged. UNCLOS III therefore modified the definition of high seas in Article 86 as "all parts of the sea that are not included in the EEZ or in the archipelagic state". This definition had significantly reduced the size of the high seas to the extent that today EEZ claim have reduced ocean space by more than 40 percent. Similarly, apart from the largest areas of the Atlantic, Pacific and Arctic Oceans, the remaining high seas of the world are "enclaves" by natural waters and there are virtually no high seas of the world. As regards the
extent and meaning of freedom of the high seas, UNCLOS I did specify four freedoms which states enjoy in the high sea - navigation, fishing, over-flight and laying of submarine cables and pipelines. UNCLOS III added two more freedoms: freedom to construct artificial island and freedom of scientific search. All states, whether coastal or landlocked, are also free to have access to the high seas as per Article 82 of UNCLOS III. While the high seas should be served for peaceful purposes (Article 88), testing and naval maneuvers on the high seas are generally acceptable as long as they are not considered as acts of aggression by other states. State practices simply call for notification to sea-farers to keep away from areas designated for military exercises. Although Article 95 grants war ships on the high seas complete immunity from the flag state, governments of the ships conducting tests on the high seas may be liable to damages to civilian ships or aircraft resulting from military exercise. UNCLOS III also sets out limit to freedom of the high seas by specifying unlawful activities that are prohibited in the high seas. These include transport of and trade in illicit drugs and slaves (Articles 99 and 108), unauthorized broadcasting from the high seas (Article 109) and piracy (Article 101). A warship of any state is empowered to board a foreign ship in the high seas if there are reasonable grounds to suspect unlawful acts of piracy, slave trade and trade in and transport of illicit drugs as well as unauthorized broadcasting in the high seas.

In addition to these, coastal states have the right to customary rule of international law of hot pursuit. This is a right to apprehend a foreign vessel that is believed to have committed a crime within the territorial sea or contiguous zone but which has sailed away into the high seas. Once there is good reason to believe that a coastal state’s law has been violated, hot pursuit can commence from the territorial sea or contiguous zone and can continue into the high seas without interruption. UNCLOS III cts1ds the coast tight of hot pursuit to commence; in addition to the territorial sea and contiguous zone, from archipelagic waters and the continental shelf installations and special economic zones (Article 3), The right of hot pursuit in UNCLOS I)) thus appears the only example in which coastal states can exercise national jurisdictions in the high seas and this could be seen as an “enforcement tool” for coastal states to enforce fisheries conservation and management laws as well as national and international measures for regulating pollution against ocean environment.
The New Principles of Expanded Ocean Enclosure

Continental Shelf

Although claims to seabed resources beneath the high seas date back to the 19th Century (Churchill & Lowe, 1988) the Grotian concept of freedom of the high seas dominated the maritime world until the middle of the 1940s. This was principally because of Grotius’ basic assumption of unimpeded navigation of the high seas and the exhaustibility of the resources of the sea, by the middle of the 1940s, such assumptions was no longer tenable and had to be challenged. The most serious challenge to the Grotian concept was the 1945 Truman Proclamation which claimed mineral exploration and exploitation rights over the United States Continental Shelf and establishment of conservation zones in certain areas of the high seas. The Truman action was motivated by the need of the United States Government to own and control energy resources such as oil and gas. The claim did not only mark the evolution of a new doctrine of continental shelf in the law of the sea but also triggered a chain of reactions and unprecedented unilateral claims of similar parts of the sea the world over. Unfortunately, however, the Truman claim did not define the extent or limit of the continental shelf but simply referred to it as the submerged land contiguous to the continental shelf of the United States covering 100 fathoms or 200 metres. Subsequent unilateral claims made by other coastal states between 1945 and 1957 created a number of jurisdictions beyond the traditional territorial sea limit some Latin American State, for example, made unilateral claim ranging from security zone of various breadths and jurisdictional control over territorial waters of up to 200 nautical miles, which were later endorsed at a regional declaration at Santiago in 1952 By 1958, the doctrine of continental shelf had become a legal norm in the law of the sea but what was not clear was the mounting controversy over its meaning, limits and legal status (Ross, 1979). UNCLOS I therefore, sought to limit its depth to 200 metres (600 feet) when it came with its first definition in Article I of the Geneva Convention on Continental Shelf:

The seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea to a depth 200 metres, or beyond the limit to where the super adjacent water admits of the exploitation of the natural resources of the said area; (and) to the subsoil of similar submarine areas adjacent to the coast of islands. (Wang, 1992:58)
This means that a coastal state’s claim of continental shelf could extend beyond the 200 metres limit to any depth that the technological capability of such state can reach. This definition was not only imprecise but it simply favoured the technologically advanced nations at the expense of the developing nations which could not even afford the technology to reach the depth limit of 200 metres at the time the developed nations were already exploring to about 4,000 metres (12,000 feet). (Wang, 1992)

The 1958 Convention on Continental Shelf did not only introduce a high degree of controversy and uncertainty over the exploitability criterion but also the legal meaning of the continental shelf. UNCLOS III attempts to resolve the problem by incorporating a new definition in Article 76(1):

The seabed and subsoil of the submarine area that extends beyond its territorial sea throughout the natural prolongation of its territory to the outer edge of the continental margin, or to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured (Murray, 1970:480).

The new definition considers the continental shelf to comprise the entire continental margin, that is, the shelf proper, the slope and the rise descending to the seabed level at about 3,500 to 5,000 metres. The definition also formalized the concept of submerged natural prolongation of the landmark of the coastal state as contained in the International Court of Justice (ICJ) decision in the North Sea continental shelf cases. The court defined the Continental Shelf as “a natural prolongation of island territory into and under the sea... the seabed and subsoil of the shelf, slope and the rise, but to exclude the deep ocean floor (Murray, 1970) Article 76 elaborates the limit of the continental shelf and provides that coastal states can extend their claims of continental shelf beyond the outer edge of the continental margin, but not beyond 350 nautical miles from the shore or can define the outer edge of the continental shelf, either by drawing a line connecting the outermost fixed points of which the thickness of the sedimentary rock is at least one percent of the shortest distance from the foot of the continental slope or by a line connecting fixed point, which may not extend beyond 360 nautical miles from the baseline or 100 nautical miles from the 2,500 metre isobaths. The outer limit of the continental shelf shall not exceed 250 nautical miles on the submarine ridges. Coastal state jurisdiction in the continental shelf is only limited to sovereign rights for the purpose of exploring and exploiting the natural resources of the shelf. The right also extends to the exclusive right to prevent any other state to undertake such activities of exploration and exploitation without the express consent of the coastal state.
These rights cover the construction and operation of installations and structures, such as drilling platforms, for exploiting the shelf, and also the establishment of “safety zones’ of not more than 500 metres radius which should not interfere with recognized Sealanes essential to international navigation or prevent other states from laying submarine cables and pipelines on the shelf.

In conclusion, the doctrine of continental shelf is very crucial to coastal states far s exploration and exploitation of its resources is concerned. For one thing, it has opened up, in a geological sense, the entire continental margin to the abyssal plains in the deep seabed for accessibility and acquisition by coastal states of parts of the high seas. And for developing states, with continental margins, the doctrine of continental shelf in UNCLOS III can be both politically and economically important for ocean policy as would be seen in the next chapter.

(ii) Exclusive Economic Zone (EEZ)

The EEZ is a Third-World concept which evolved as a result of a number of factors, In the first place, technological breakthrough in the middle of the 1940s made it possible for people to exploit energy (oil and gas) and mineral resources (manganese nodules) on the continental shelf and the seabed extending beyond traditional territorial seas. Secondly, improved fishing technology has expanded distant fishing making me fish stock, which were hitherto considered inexhaustible depleted to almost extinction due to overfishing. Thirdly, there has been mounting pressure on the establishment of legal fisheries regimes for economic development following unilateral national claims by developing Third World Nations over vast expanse of part of the high seas. These were encouraged and strengthened by the 1945 Truman Proclamation on Continental Shelf. For instance, many Latin American and African states considered the Truman claim over the resources of the United States’ continental shelf as an opportunity for them to redress the “injustices” inherent in the traditional concepts of the law of the sea, especially the unrestricted freedom of the high seas. Freedom of the sea was seen by them as a license used to deplete the resource - poor Third-World nations. It was against this background that they ganged up and developed the idea of special legal ocean regime to serve as a political, ideological and an economic counter weight to the developed nations’ control of the resources of the sea and the United States’ claims in the Truman Proclamation. The first straws came from Mexico and Argentina in 1945 and 1946 with national claims over the resources of their respective continental shelves. Chile and
Peru followed with a 200 - nautical-mile claim for protection of fisheries operations and security zones. The claims were stamped by a tripartite declaration at Santiago in 1952 by Chile, Ecuador and Peru. Their argument was that such action would give their citizens access to necessary protein food in addition to enhancement of their economic development.

Generally, African and Latin American States were very uncomfortable with the 1958 convention on continental shelf which was primarily concerned about mineral and energy resources but little concern about fisheries of the shelf super adjacent waters. Moreover, the exploitability criterion in the convention was biased in favour of the technologically advanced nations. Even more disturbing for African and Latin American states was that the convention granted only “preferential rights” to coastal states in regulating fisheries in super adjacent waters of the shelf as the licensing system made it possible for increasing number of big distant-water fishing fleets to operate in other nations’ coastal and off-shore waters. These factors encouraged them to evolve two separate ideas for a special economic sea area. The Latin American and Caribbean states evolved the idea of a ‘patrimonial Sea”, with sovereign rights of coastal states over all resources found in the waters and on the seabed and subsoil in the areas adjacent to the territorial sea. On the Afro-Asian front, the idea of a special ocean zone came up, being the product of a Kenyan delegate’s proposal for the formulation of “a possible basis for a just and equitable accommodation of competing interests of developing coastal states and maritime powers” (Njang, 1986). The proposal argued for the recognition of a wider belt of water measuring 200 nautical miles so as to include all the continental shelf to a depth of 200 metres for an exclusive fishery conservation zone beyond the territorial waters of a coastal state. At the African Experts’ Seminar on law of the Sea in Yaounde (Cameroon) in 1972, the Kenyan proposal was amended with the term ‘economic zone” and was later endorsed by the O.A.U. in Addis Ababa in 1973. When the seabed debate began, the African “economic zone” was preferred against the Latin American and Caribbean “patrimonial sea” at the Caracas session in 1974.

The concept and idea of “economic’ zone” received wider support by majority of Third-World nations, but the developed nations led by the United States, Japan and the former USSR, initially opposed the zone’s over-extension of coastal states’ rights beyond the traditional territorial sea. However, the deadlock was broken after the Evensen Group produced a compromise package which combined the key provisions of competing interest groups at the conference. The Evensen Group Produced a draft proposal for an economic
zone of not more than 200 nautical miles from the territorial sea within which the coastal state would enjoy sovereign rights for purposes of exploration, exploitation and for management of all the natural resources, coastal jurisdiction over scientific research and the right of pollution control. All other states would enjoy the traditional high sea rights characterized by freedom of navigation over flight, and laying of submarine cables and pipelines. The Evensen draft has, thus, become part of the informal single negotiating text (ISNT) which was used for negotiation in the Geneva Session in 1975. It was then that the word “exclusive” was inserted to create the Exclusive Economic Zone (EEZ). During further deliberations at the conference, the negotiating groups considered, among other things, the legal status of the EEZ and the rights and duties of other states in respect of the living resources of the zone and concluded that the EEZ should become a distinct zone of its own.

Thus, the EEZ was adopted in Part V of the convention covering 21 articles (55-75) as a *suis generis* ocean space, a “specific legal regime” that is neither territorial sea nor high seas. It is also seen as a “transitional zone” between the territorial sea and the high seas or a “halfway house between the high seas regime and “an ecosystem management area” for international co-operation (juda, 1986). In spite of this, however, the EEZ provides a legal justification for coastal states to lay claim over living and non-living resources off the shorelines. The zone enables coastal states to claim a part of the high seas for economic activities and widen their claims of 200 nautical miles from the baseline of their territorial sea which was once reserved for maritime powers which had sufficient capital and technology to exploit the resources therein.

### iii. Common Heritage of Mankind

The principle of Common Heritage of Mankind is perhaps the most novel and most controversial concept incorporated in UNCLOS II. It is traceable to the Maltase Permanent Representative to the United Nations, Dr. Arvid Pardo’s memorandum to the 22nd Regular Session of the United Nations General Assembly in November, 1967. Dr. Pardo’s memorandum called for a declaration and treaty concerning the reservation exclusively, for peaceful purposes, of the seabed, the ocean floor, underlying the seas beyond national jurisdictions, and the use of the sources therein in the interest of mankind. Dr. Pardo’s memorandum specifically asserted that
(i) The seabed and ocean floor beyond national jurisdictions were not to be allowed for national appropriation;

(ii) The exploration and exploitation of the seabed and ocean floor shall be undertaken in a manner consistent with the principles and purposes of the United Nations;

(iii) The exploration of the seabed and ocean floor beyond national jurisdictions shall be carried out in such a manner that the benefits which accrue from it should be used to promote the development of poor countries; and

(iv) The seabed and ocean floor beyond the limit of national jurisdiction shall be reserved perpetually for peaceful purposes (Akinsanya, 1980). When this concept was introduced in 1967, the International Community, especially the developing nations was beginning to be aware of the possibilities of explaining and exploiting the non-living resources of the deep seabed and its implication for mankind.

Indeed, Pardo’s agenda received more attention after three years of extensive debate in the United Nations General Assembly Seabed Committee. On December 17, 1970, the Assembly adopted a Declaration of Principles Governing the exploration and exploitation of the resources of the seabed beyond national jurisdiction. The declaration emphasized that “the seabed and ocean floor, and the subsoil thereof, beyond the limit of national jurisdiction, as well as the resources of the area, are the Common Heritage of Mankind”. This resolution generated much debate as to the precise meaning of “Common Heritage of Mankind” (United Nations Year book, vol 24, 1970). Some representatives saw it more as an ideological, moral and political expression than a legal doctrine; others argued that the seabed has long been accepted as part of the high seas (under the principles of res nullius) and so common to all as it is no one’s property. Under res nullius, whichever state captured and controlled the sea or part of it also acquired its ownership as a matter of “first come, first served”. Proponents of “common heritage,” however, counter-argued that the purpose of the doctrine is to prevent the total division of ocean space among states, ensure nondiscriminatory resource management and to promote equitable distribution of benefits from the seabed to all states. States thus felt that the new concept has strategically filled a “jurisdiction vacuum” in the high sea of the “discover takes all. That is why the concept gained acceptance and was
incorporated into UNCLOS III as Articles 1, 133 and subsequent other provisions containing specific principles that govern the seabed beyond national jurisdiction as outlined in the 1970 Declaration of principles of Common Heritage of Mankind.

The significance of the principles in the law of the sea is that it has annulled or revoked the traditionally accepted principle of open and free access to the sources of the seabed on the basis of “first come, first served”, in as much as it does not impede freedom of navigation. Seabed resources under the common heritage principle are to be regulated and developed by an International Seabed Authority (Article 136 and 137) for the benefit of mankind and be shared to the less developed nation of the world. State is called upon to cooperate in the national ocean resources management, conservation and protection of ocean pollution. Analysts believe that the acceptance of common heritage as a general principle by the major maritime power of the world in 1970 was a concession given to the third world nation in exchange for guarantee of freedom of transit over major international water (John, and Christopher, 1982).

Archipelagic principle

Generally, an archipelago is geographically defined as a large body of water with many Islands. The concepts have found its way as a new legal doctrine and principle in the law of the sea. Although the concept attracted attention during the 1930 Hague codification conference, it did not gain a legal status, not even in UNCLOS I in which Islands were conceded to territorial waters. The failure of the 1930 Hague conference to delimit waters between island groups made room for unilateral claims by two mid-oceanic states, the Philippines and Indonesia. In 1955, for example the Philippine declared that all water around, between and connecting the different islands of the Philippines Archipelago irrespective of their width were necessary appurtenances of the Philippines land territory subject to the exclusive sovereignty of the Philippines. Similarly, on December 13, 1957, Indonesia made a similar statement that “its land, waters, and people” were inseparably linked together, so the survival of the three elements “cannot be pockets of the so-called ‘high seas’ open to activities which might endanger the country’s unity, security and territorial integrity”.

These two states confronted the 1958 law of the sea conference with a common position which was opposed on the ground that such claims would result in expansion of internal waters into the high seas and erode or impede on traditional navigational rights to
shipping on the high seas and through many international waterways. Though the 1958 Convention on Territorial sea and Contiguous Zone avoided giving legal status to the regime of archipelago, it, however, recognized that a coastal archipelago may draw a straight baseline around its outermost points to allow it “tie” to the mainland in line with the International Court of Justice’s judgment in the Anglo-Norwegian Case of 1951. (Wang, 1992). During the Seabed debate in the 1960s, the Philippines and Indonesia were joined by three Indian ocean/Caribbean mid-ocean archipelagic states (Fiji, Tonga and Mauritius) demanding a fundamental principle applicable to an archipelagic state. The demand coincided with the concern of the world’s maritime powers for rights of innocent passage through some international straits such as Gibraltar, Hormiz and Malacca. This coincidence led to trade-offs and subsequent consensus that gave birth to a special regime of “Archipelagic state” embodied in Article 46(b) of UNCLOS II and defined as “a state constituted wholly by one or more archipelagos and may include other Islands (Carcas Sesión, June 20 August, 1974). All archipelago thus got a definition in line with the original contention by Philippines and Indonesia “a group of Islands or part of Island, interconnecting waters and other natural features which are closely inter-related to form an intrinsic geographical, economic and political entity or which historically has been regarded as such” (Article 46(b).

The significance of the concept of archipelagic state or archipelago is that it has further eroded the traditional high seas principle since it allowed the archipelagic state to draw straight baseline joining the outermost parts of the outermost Islands and dry reefs to serve as reference point from where the breadth of territorial sea and hence all other jurisdictional zones of the archipelagic state are measured. Archipelagic states are, however, obliged to guarantee traditional navigational and air routes rights such as innocent passage subject to designated archipelagic sealanes of up to 50 nautical miles.

**UNCLOS III as Guide to National Ocean Policies**

The above enumerated principles have been articulated and embedded in UNCLOS III to provide a comprehensive framework for the regulation of the entire ocean space. The convention is divided into seventeen parts (of 320 Articles) and nine annexes. It elaborates on 25 subjects and issues and it contains provisions governing, inter alia, limits of national jurisdictions over ocean space, navigation, protection and preservation of marine environment, scientific research and transfer of technology, seabed mining, exploitation of
living and non-living resources, and settlement of disputes which may arise from such activities. It also establishes new International bodies such as the International Seabed Authority (ISA), the Enterprise and the International Tribunal for the Law of the Sea (ITLS) to carry out functions for the realization of specific objectives. The first parts of the convention deal with areas of national jurisdiction while the remaining parts and annexes cover all rules and principles governing the use of ocean space (Appendices V and VI). The developing countries which dominated the convention have something to gain as I the developed countries. The provisions, which were intended to foster the development and facilitate the transfer of all kinds of marine technology and encourage the conduct of marine scientific achievement for developing countries even though the convention did not make such transfer mandatory.

A close look at the convention shows that it virtually covers the maritime interests of all states, coastal or landlocked. States could make policies in line with the convention to realize such interests. The character and nature of the convention is such that it provides the guidelines and direction of national ocean policies. Coastal states, especially developing states, having acquired all necessary rights and responsibilities covering the use of ocean space and its resources, are now confronted with the problem of adopting proper legal and institutional framework to establish high level policy in line with their overall development objectives. Thus, UNCLOS III has a special effect on states in terms of creating national consciousness at governmental level for the need to adopt some kind of national posture towards ocean space and its resources. In fact, the concept of a national ocean policy has a broad advocacy within the United Nations system with various programs devoted to assisting states in this area. The Ocean Affairs Office at the United Nations headquarters, for example, has a specie’ mandate and responsibility to assist and advise states on issues related to their national ocean policy, its institutional implication, marine affairs management and adoption of national law in conformity with UNLCLOS III and practical implementation of the convention. In view of the multiplicity of interests and of uses and resources “involved planning and execution of marine policy, the policy has to be judged in the context of the priorities of a state to the various objectives it needs to achieve in relation to the Sea. (Levy, 1998) Nigeria’s marine policy should take this pattern.
2.3 Gap in Literature

Incidentally, despite the volume of scholarly writings in the area of international law, very little has been documented about the contribution of developing countries, particularly Nigeria towards the development of international law of the sea. This study has been designed to fill this gap in the literature.

African scholars have deliberately avoided any discussion about marine policy and the contribution of Nigeria towards the progressive development of international law of the sea. This area cannot be ignored any longer due to the prospects of harvesting enormous natural resources embedded in the seas, particularly at the seabed and subsoil.
CHAPTER THREE

METHODOLOGY

3.1 Theoretical Framework

This study was carried out within the broad theoretical framework of the policy analysis paradigm as narrowed down to the normative conception of the Rational Comprehensive Model (RCM). This is informed by the recent evolution of what analysts call “dominant paradigm” in the field of Policy Analysis. A dominant paradigm is defined as a set of characteristics that underlie the themes of policy analysis owing to their force, clarity and deep grounding as predicated on the existence of a primary analytical technique derived from the simple definitions of terms such as “public interest”, “values” and “Decision criteria (Jenkins-Smith, 1989).” These terms, of course, refer to the normative and logical conception of policy analysis as rooted in the primary analytical technique. This does not only make policy analysis a field of study in policy sciences, but is also a theory, approach and methodology. It is in this connection that Yehezel Dror defines policy analysis “as an approach and methodology for design and identification of preferable alternatives in respect of complex policy issues (Dror, Yahezel in Egonawan, 1991).

This definition, in effect, deals with the invention or construction of new policy alternatives and policy selections which also focus on the identification of preferable policies among available ones. This analytical model provides a heuristic basis to better policy making and promotes creativity or innovation in seeking policy alternatives. In this sense, analysts have argued that policy analysis should be designed in such a way that plays adequate attention to the political aspects of policy decision-making, covering political feasibility, recruitment of support, accommodation of contradictory goals, diversity of values and the evolution of multi-dimensional approach to decision-making. This, therefore, places the core of policy analysis theory in the concept of “choice grounded in the utility theory and employing the criterion of economic efficiency” (Jenkins-Smith, 1989).

In policy sciences, there are two broad theories- behavioural and normative theories. Behavioural theories are empirical and are based on experience and observation. They seek to explain policy decision-making process with a view to facilitating the understanding of the complexity of each process. They are less concerned with value judgments but strive to
maintain the purity of science by detaching themselves from value-laden judgments. In most cases, they are purely academic and are not directed towards applying knowledge to finding solutions to practical problems of the society. On the other hand, normative theories are concerned with the use of scientific knowledge in finding solutions to practical problems of the society. Examples of normative theories include: Disjointed Incrementalism Model (DIM), the mixed Scanning Model (MSM), the Optimal Model (OM) and the Rational Comprehensive Model (RCM).

(i) Disjointed Incrementalism Model (DIM)

The Muddling Through or Disjointed Incrementalism Model (DIM) argues that policy making is a rough process. Therefore, public policy decision-making should involve small, gradual and marginal changes on current policies, and should be continuously redefined, serialized and be means-oriented. In other words, decision-making should be disjointed because a number of individuals and groups have access to it at different points and so have to interact to accommodate each other. This process gives rise to successive limited comparisons (SLC) as it narrows down the range of possibilities in decision-making so that selection is made only few alternatives. But the DIM has been widely criticized for its inherent connection because it deals with only remedial and short-term changes in policy. Secondly, it is considered as an unjust system of decision-making because good decisions are not simply assessed by their objective criterion but by their acceptability or proximity to decision-makers. Thirdly, it has been argued that the DIM is costly to apply because it does not allow for the exploration of radical alternatives to existing polices. It was against this background that Yehezel Dror suggested that the model can only be valid if: (i) the results of the present polices are satisfactory; (ii) the nature of the problem to be solve by the policy is stable; and (iii) the means of dealing with the problem are continuously available (Dror, 1971). These and the other factors, therefore, make this model unsuitable for application in this case study.

(ii) Mixed Scanning Model (MSM)

This model assumes that societal problems require first, an ordered fundamental policy process which determines the basic directions of a policy and, second, an incremental process which prepared the operationalization of fundamental decisions when they have been taken. According to Amitai Etzioni, to achieve this, the analyst had to scan through the subject area
in great detail and make a broad sweep of policy issues which are assessed against stated general values to enable him familiarize himself with “those aspects (of the policy) revealed as needing more in-depth analysis” (emphasis added) (Etzioni, 1967). The strength of the MSM is that it proponents argue that it helps in reducing the effects of particular shortcomings and provides an evaluation strategy and, therefore, exclude hidden structural assumptions in decision-making. This model cannot be applied in this study because it does not explicitly specify the institutional framework necessary for operationalizing as in the case of ocean policy which is guided not only by the specific situation of the case of ocean policy which is guided not only by the specific situation of the ocean environment itself, but also by international principles. For ocean policy to be effective, it requires co-ordination mechanisms which would cement together all units of ocean activities and gear them towards set goals.

(iii) Optimal Model (OM)

This model focuses on the optimization of decision-making and assumes that public policy deals with choice of values in conditions of uncertainty. As there are no clear cut answers in uncertain situations, it is, therefore, necessary for decision-makers to resort to the use of intuitions and judgments. And since public policy means decisions taken in the face of uncertainties, innovation and creativity are required to maximize the risk of uncertainty in normativism or choices of preference. This makes the OM unphilosophical and, therefore, unable to prescribe that values are required for optimal decision-making process. For this reason, this Model becomes ineffective to the point of being susceptible to the use of wrong purposes in decision-making and hence inapplicable in the study of marine policy.

(iv) The Rational Comprehensive Model (RCM)

This Model emphasizes reasoning where decision-makers use a variety of variables of alternatives in which the consequences of alternative actions are surveyed with the purpose of obtaining the most efficient result of net value, as in the theory of efficiency or the efficiency criterion. Thomas Dye argues that “a policy is rational when it is most efficient, that is, if the ratio between the values it sacrifices is positive and higher than any other policy alternatives”.

This is expressed as follows (Dye, Thomas, in Egonawan 1991).
This calculation is more in terms of social, political and economic values sacrificed or achieved by the policy.

The logic of analysis here is to impose some order in a variety of activities involved on policy analysis in order to harmonize their purpose. According to Jenkins-Smith, this Model is derived from the rational individual who, given a set of preferences, limited resources, and using the knowledge at his disposal, takes the action likely to maximize his utility (Jenkins-Smith, 1989). In this style of the ration decision-maker, the policy analyst uses a range or analytical techniques and fields of knowledge to engage in a number of distinct procedures or steps, including: (1) identifying the ‘problem’ to be solved; (2) specifying the goal(s) to be sought through public policy; (3) identifying or inventing the available policy alternatives; (4) estimating the effects of each of the alternatives, both favourable and unfavourable; (5) imputing values in a single, co-measureable matrix to those effects; and (6) choosing the ‘best’ policy alternative according to explicit decision rule (6).

The purpose of these steps is to discover, among other options available, the option which best serves as both the normative and logical core of policy analysis; it is logical because it indicates what knowledge is required and what techniques are applicable and normative because it prescribes the best policy.

Efficiency, as an analytical concept, is said to have taken root from the utility theory conceived by Jeremy Bentham in the 19th Century. Bentham called for an enlightened analytical concept of public based on the principles of utility and argued that “an experience provides utility when it produces ‘benefit,’ ‘advantages’, ‘pleasure’, ‘good’ or ‘happiness, ‘or when it prevents ‘mischief,’ ‘pains,’ ‘evil,’ or ‘unhappiness” . In this respect, all individual actions could be understood as the pursuit of utility based on the hedonistic calculus designed to maximize pleasure and minimize pain.

Utility, as an analytical concept, is a comparable device; that is, it is used for comparing the gains and losses of utility of any two or more alternative polices. Etineene Dumont argues that differences in character are inscrutable and what diversity of circumstances is such that they are never the same for any two individual (Dumont,1914). Therefore, the fact that a proposition applied in a given case may be found false or exact
should cause no doubt in the theoretical accuracy of practical utility. This can simply be justified by the analyst’s propositions if: a) they approach more nearly to the truth than others that can be substituted for them and b) they can be employed more conveniently than any others as the basis of legislation.

Based on this utility, therefore, the state is to employ legislation that will produce the great good for the greatest number of people. That is why the theory of utility remained central in the concept of economic efficiency in policy analysis.

Efficiency analysis applies to a situation where the analyst regards a system in which individuals collectively seek to satisfy their interest. This is equally applicable to political and economic systems where, at the beginning, the system made of individual groups, each with ordinarily ranked preferences. In this case, the normative core of efficiency centre’s on Bentham’s maximization theory which states that: “a social system or policy ought to be designed to maximize the satisfaction of individual wants subject to limitations on the analyst’s ability to specify what constitutes an ‘improvement’ in several want satisfaction (Jenkins-Smith 1989).

To this end, the central normative standard in the policy analysis paradigm is most widely applied as the decision rule for benefit-cost analysis which is conceived on whether a policy generates more social benefits than social costs; and if so, what level of programme expenditure provides optimal results.

Although the rational model has been widely criticized as being utopian and narrow in scope, because it tends to neglect certain political factors which influence the decision-making process, it has also been pointed out that is most appropriate “… in a routine or technical decision-making where actions of executives are prescribed through precise guidance” (MaCleary, 1964). Thus, for any study that deals with marine or ocean policy, the guide provided by the law of the sea is not in doubt. This explains the adoption and application of the RCM in this study. Similarly, the efficiency of rational choice is further strengthened by the fact that the more the analyst identified the fundamental societal goals, the more powerful the rational model in policy analysis (Blair and Maser, 1978). Therefore, since this study is geared towards achieving a general applicability of a marine policy for the entire country, we have set up the specific objectives that are relevant to the general spheres of life in the country. That is why we have specified in our theoretical postulations what
actions provide benefit through the simple assumption that outcome ‘A’ provides more benefit than outcome ‘B’ for actor ‘X’. Then for a given institutional constraint, the study can investigate the most efficiency strategy for achieving ‘A’ (Tullock and Wagner, 1978). It is the RCM that is most convenient for this type of analysis, most especially if viewed from the fact that matters of ocean policy are guided and directed by the law of the sea.

### 3.2 Hypotheses

The major proposition in this study is that:

1. Nigeria’s marine policy is most likely to be effective where policy directions, actions and intentions conform to international principles on various uses of the sea.
2. Marine policy is most likely to be efficient where policy directives, goals and intentions are harmonized and co-ordinate in an integrated form.

### 3.3 Research Design

Research design according to Igwe (2007: 383) involves “the methodological and related processes employed in research, especially with regard to the theoretical framework, and the collection and manipulation of data”. Asika (2009) research design involves the structuring of investigation aimed at identifying variables and relationship to one another. It is used for the purposes of obtaining data to be used in the test of hypothesis or in answering research questions. it is also an outline or a scheme that serves as a useful guide in the generation of data.

According to Leege and Francis (1974), a research design is a like a blueprint that tells us how to reach plausible answers to research problems. According to Leege and Francis (1974), a research design is a like a blueprint that tells us how to reach plausible answers to research problems. Frankfort-Nachmias and Nachmias (1996) observed that before testing a hypothesis, a researcher faces some fundamental problems that must be solved before the project can be started. Such questions, according to them include: whom shall we study? The research design therefore, “is the ‘blueprint’ that enables the investigator to come up with solutions to these problems and guides him or her in the various stages of the research”. (Frankfort-Nachmias and Nachias (1996:99). Asika (2009) sees research design as an outline of a scheme that serves as a useful guide in the generation of data.
Following from the above scholarly definitions of research design, the study creates a design that will help the researcher gather and analyze data which will help us investigate law of sea or ocean policy in Nigerian

This research is basically qualitative and non-experimental. Qualitative research according to Igwe (2007) relates to aspects of enquiry that are more philosophical and argumentative. It also deals with logical facts. McQueen and Knussen (2002) observed that the most important feature of qualitative and non experimental research is that it “relies on the skill and abilities of the researcher in a way that is not normally acknowledged or expected in quantitative research”. Writing earlier, Parker (1994) defines qualitative research as “the interpretative study of a specified issue or problem in which the researcher is central to the sense that is made”.

According to Igwe (2007), the essence of research, being to solve a problem, the proposal must include the research design to be used by the enquirer, showing whether the research is experimental or non-experimental, quantitative or qualitative, logical or empirical etc. This study is therefore based on time-series design. Time-series design according to Frankfort-Nachmias and Nachmias (1996) is a research design in which pretest and posttest measures are available on a number of occasions before and after the activation of an independent variable. It calls for a lengthy series of repeated measurements before a presumed casual event occur, followed by another lengthy series of measurement (Leege and Francis, 1974). In time-series design, the researcher usually attempts to obtain at least three sets of measure before the three sets after the introduction of the independent variable (F-Nachmias and Nachmias 1996).

Time-series design helps researchers to separate reactive measurement effect from the effects of an independent variable. It also enables the researcher to see whether an independent variable has an effect over and above the reactive effects.

The sea by its very nature is international and has remained an object of intense competition and scramble among maritime nations at different epochs in history (Onuoha, 2008). Time-series design will help us to measure the level of ocean protection before and after the introduction of the Third United Nations Convention on the law of the sea (UNCLOS III).
3.4 Method of Data Collection

Most of the data used in this study were collected from secondary sources, such as books, official reports, dispatches, government official gazettes, monographs, periodicals, journals, magazines and newspapers, United Nations official records, treaties/ conventions and Nigerian national legislations. The data were obtained through intensive library research in a number of libraries both within and outside the country. These include President Kennedy Library (PKL) of Ahmadu Bellow University Zaria, National Institute for Oceanograhic and Marine Research (NIOMR) Library, Lagos, Nigerian Institute of International Affairs (NIIA) Library, Lagos National Maritime Authority (NMA) Library, Lagos, Nigerian Institute of Advanced Legal Studies (University of Lagos) Library, Lagos, and Institute of Oceanography, University of Calabar Library. Others are the Nigerian Navy (NN) Library, Lagos, National Institute for Policy and Strategic Studies (NIPSS) Library, and Substantial data were also obtained from materials and papers provided and presented in University of Nigeria Nsukka and out the school, respectively, to the B.98 Class of the International Ocean Institute Training Programmes on the United Nations Convention on the Law of the Sea, its implementation and Agenda 21, which took place from June 8 to August 14, 1998 at Dalhousie University, Halifax, Canada. These secondary data were supplemented by primary sources from opinion surveys through oral interviews with experts and scholars, naval personnel (within Nigeria. These secondary data were supplemented by primary sources from opinion surveys through oral interviews with experts and scholars, naval personnel (within Nigeria), staff of the NMA NIOMR, Nigerian ports Authority (NPA), Nigerian Chippers’ Council (NSC), Federal Department of Fisheries, Lagos, and the Nigerian National Petroleum Corporation (NNPC) and Oil Companies (through browsing). A number of site stripes were undertaken to observe coastal and near shore activities in, Calabar, Oron.

3.5 Method of Data Analysis

The method of analysis in this study is mainly systematic content and aggregate data analysis. The data obtained from various sources were collected and analyzed, using a model of marine policy network analysis which views marine policy in terms of input-output interactions which assumes that a set of input characteristics laid the foundation of a policy. These inputs thus undergo a process of filtering to produce output. Similarly, a model of integrated maritime enforcement system which identified five key maritime activities for coastal state to respond to series of responsibilities, challenges and threats in the application
of surveillance, monitoring and control (SMC) were also applied in respect of Nigeria’s requirements and capabilities. This was done through completion of two matrices in which the country’s requirements/capabilities for SMC are quantified in numbers ranging from 0, 1, 2 and 3 representing no requirement/capability, partial requirement/capability, full requirement/capability and excess requirement/capability, respectively.
CHAPTER FOUR
ESSENTIALS OF THE LAW OF THE SEA ON TERRITORIAL WATERS AND HIGH SEAS

The purpose of this chapter is to provide the importance of the law of sea on territorial waters and high seas, and also to provide highlights of the evolution of Nigeria as a maritime nation and the problems associated with her legal space as a developing African state. It recaptures the country’s ocean interests which policy directives should seek to achieve. This lays the foundation for an analysis and evaluation of the entire ocean policy, According to Article 5(1) of the 1958 Convention on the Territorial Sea and article 8(1) of the 1982 Convention.

Internal waters are deemed to be such parts of the seas as are not either the high seas or relevant zones or the territorial sea, and are accordingly classed as appertaining to the land territory of the coastal state. Internal waters, whether harbours, lakes or rivers, as such waters as are to be found on the landward side of the baselines from which the width of the territorial and other zones is measured, and are assimilated with the territory of the state. They differ from the territorial sea primarily that there does not exist any right of innocent passage from which the shipping of other states may benefit. There is an exception to this rule where the straight baselines enclose as internal waters what had been territorial water (Article 5 (2) of the 1958 Convention on the Territorial sea and article 8 (2) of the 1982 Convention).

In general, a coastal state may exercise its jurisdiction over foreign ships within its internal waters to enforce its laws, although the judicial authorities of the flag state (i.e. the state whose flag the particular ship flies) may also act where crimes have occurred on board ship. This concurrent jurisdiction may be seen in two cases.

In R v. Anderson, (cox’s criminal case) in 1868, the Court of Criminal Appeal in the UK declared that an American national who had committed manslaughter on board a British vessel in French internal waters was subject to the jurisdiction of the British courts, even though he was also within the sovereignty of French justice (and American justice by reason of his nationality), and thus could be correctly convicted under English law. The US Supreme Court held in Wildenhus case that the American courts had jurisdiction to try a crew member of a Belgian vessel for the murder of another Belgian national when the ship was docked in the port of Jersey City in New York (Shaw, 2008).
A merchant ship in a foreign port or in foreign internal waters is automatically subject to the local jurisdiction (unless there is an express agreement to the contrary), although where purely disciplinarian issues related to the ship’s crew are involved, which do not concern the maintenance of peace within the territory of the coastal state, then such matters would by courtesy be left to the authorities of the flag state to regulate (NNB v trade company 87 ILR.P.96). Although some writers have pointed to theoretical differences between the common law and French approaches, in practice the same fundamental proposition applies (Churchill and Iowe, 1988).

However, a completely different situation operates where the foreign vessel involved is a war ship. In such cases, the authorization of the captain or of the flag state is necessary before the coastal state may exercise its jurisdiction over the ship and its crew. This is due to the Status of the warship as a direct arm of the sovereign of the flag state (The Exchange v Mcfaddon 7 cranch116 (1812).

4.1 The Historical Evolution of the Law of the Sea and the Concepts of Territorial Waters and High Seas

The name ‘Nigeria’ was originally coined by the British colonialists to describe the Royal Niger Company’s territories in today’s Northern Nigeria, as a distinguishing area from the a number of British and other European colonial possessions in Africa(Okolo,1970). With time, the name was later applied to the entire country.

Prior to British colonialism, the vast area constituting the present day Nigeria was composed of over 400 ethnic groups organized into state systems, city-states, chiefdoms and village republics with few large empires such as Borno, Oyo, Benin and the Sokoto Caliphate. Trade relations and other forms of exchanges bound these generally self-governing territories. Although there were evidences of inter-communal rivalries between some groups, the historical voyages of discovery open up vistas of unholy relations between the people of the West Coast of Africa and Europe. For instance, when the Portuguese ships berthed at the Delta State area of the Sight of Bonny as ‘safe harbor & trade in ivory and pepper was replaced by trade in human beings. The mercantile era in Europe helped to exacerbate slave trade which claimed over 10 million Africans in captivity by the end of the 19th Century.

By the middle of the 18th Century, the Industrial Revolution had rendered slave trade obsolete. Thus, slave trade had to be substituted not only by the so-called ‘legitimate trade’
in agricultural produce, but also by the imposition of a new order of direct conquest and colonialism. And following the activities of explorers, the Royal Niger Company was given a Royal Charter to acquire territories in West Africa and run them. The territories which the company acquired in piecemeal manner were soon taken over for direct colonization after the ‘infamous’ Berlin Conference of 1884 to 1885.

In 1906, the Lagos Colony and the Protectorate of Southern Nigeria were incorporated into one Protectorate (Southern Nigeria). Then, came the amalgamation of the Protectorate of Southern and Northern Nigeria as Nigeria in 1914. The Colonial Government adopted separate development policies intended to keep various peoples apart in artificial boundaries with different systems of indirect rule. The first 30 years of colonial administration did not allow political participation of Nigerians. Separate colonial policies groomed regionally based political associations among Nigerians during the nationalist movements. This phenomenon bred the formation of ethnically based political parties and attested to the nature of the struggle and attainment of independence in 1960.

Since political independence in 1960, Nigeria has witnessed series of political instability caused by tribal and ethnic in-fighting deeply rooted in the colonial history of the country. This tended to obviate the emergence of a viable and strong nation. The fragile federal system that ushered in independence operated very strong powerful regions that were run almost like a confederal system to the extent that regions at times took unilateral decisions on foreign policy issues without reference to the central government despite the exclusivity of legislative powers of the former on foreign policy.

When the military took over power in civilians from 1966, the federal compact started undergoing series of structural transformation from four large regions in 1964 to 12 states in 1967. More states were created in 1976, 1987, 1989 and 1996 bringing the total number of states to 36, a Federal Capital Territory and a new Federal Capital, Abuja (Figure 4. 1). The 1976 Local Government Reforms did not only also introduce a form local government administration throughout the country but they also recognize local government as a third tier of government in Nigeria. By 1996, the country had been divided into 697 local government areas. These transformations were made to decimate political squabbles which have caused political crises first, between 1962-63 and second, during the Western Region general elections in 1964. These crises consequently led to the first military coup in January, 1966 and a counter-coup in July, 1966. A spin-off of the military coups of 1966 was a 30-
month Civil War from 1967 to 1970. Although the country had a spell of civil rule between 1979 and 1983, the country narrowly escaped another major political crisis of the Civil War-type after the 1993 presidential election.

### 4.2 Baselines

The width of the territorial sea is defined from the low-water mark around the coasts of the state. This is the traditional principle under customary international law and was reiterated in article 3 of the Geneva Convention on the Territorial Sea and the Contiguous Zone in 1958 and article 5 of the 1982 Convention, and the low-water line along the coast is defined ‘as marked on large-scale charts officially recognized by the coastal state (Qatar v Bahrain, ICJ RORTS, 2001, PP.40, 97).

In the majority of cases, it will not be very difficult to locate the low-water line which is to act as the baseline for measuring the width of the territorial sea (Dubai/Sharjah Border Award 91 ILR, PP.543, 660-3). By virtue of the 1958 Convention on the Territorial Sea and the 1982 Law of the Sea Convention, the low-water line of a low-tide elevation (Article 11 (1) Convention on the Territorial sea, 1958 and article 13 (1) of the 1982 Convention) may now be used as a baseline for measuring the breadth of the territorial sea if it is situated wholly or partly within the territorial sea measured from the mainland or an island. However, a low-tide elevation wholly situated beyond the territorial sea will generate no territorial sea of its own (Article 13(2) of the law of sea convention, 1982) When a low-tide elevation is situated in the overlapping area of the territorial sea of two states, both are in principle entitled to use this as part of the relevant low-water line in measuring their respective territorial sea (Qatar v Bahrain, ICJ, Reports,2001). However, the International Court has taken the view that low-tide elevations may not be regarded as part of the territory of the state concerned and thus cannot be fully assimilated with islands (Nicaragua v Honduras, ICJ, Reports 2007). A low-tide elevation with a lighthouse or similar installation built upon it may be used for the purpose of drawing a straight baseline (Article 7(4) of the law of sea convention, 1982).

Sometimes, however, the geography of the state’s coasts will be such as to cause certain problems: for instance, where the coastline is deeply indented or there are numerous islands running parallel to the coasts, or where there exist bays cutting into the coastlines. Special rules have evolved to deal with this issue, which is of importance to coastal states, particularly where foreign vessels regularly fish close to the limits of the territorial sea. A
more rational method of drawing baselines might have the effect of enclosing larger areas of the sea within the state’s internal waters, and thus extend the boundaries of the territorial sea further than the traditional method might envisage.

This point was raised in the Anglo-Norwegian Fisheries case, (ICJ Report 1951) before the international Court of justice. The case concerned a Norwegian decree delimiting its territorial sea along some 1,000 miles of its coastline. However, instead of measuring the territorial sea from the low-water line, the Norwegians constructed a series of straight baselines linking the outermost parts of the land running along the skjaergaard (or fringe of islands and rocks) which parallels the Norwegian coastline. This had the effect of enclosing within its territorial limits parts of what would normally have been the high seas if the traditional method had been utilized. As a result, certain disputes involving British fishing boats arose, and the United Kingdom challenged the legality of the Norwegian method of baselines under international law. The Court held that it was the outer line of the skjaergaard that was relevant in establishing the baselines, and not the low-water line of the mainland. This was dictated by geographic realities. The Court noted that the normal method of drawing baselines that are parallel to the coast (the trace parallele) was not applicable in this case because it would necessitate complex geometrical constructions in view of the extreme indentations of the coastline and the existence of the series of islands fringing the coasts.

Since the usual methods did not apply, and taking into account the principle that the territorial sea must follow the general direction of the coasts, the concept of straight baselines drawn from the outer rocks could be considered. The Court also made the point that the Norwegian system had been applied consistently over many years and had met no objections from other states, and that the UK had not protested until many years after it had first been introduced. In other words, the method of straight baselines operated by Norway:

Had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law (ICJ Reports 1951:36).

Thus, although noting that Norwegian rights had been established through actual practice coupled with acquiescence, the Court regarded the straight baseline system itself as a valid principle of international law in view of the special geographic conditions of the area. The Court provided criteria for determining the acceptability of any such delimitation. The
drawing of the baselines had not to depart from the general direction of the coast, in view of the close dependence of the territorial sea upon the land domain; the baselines had to be drawn so that the sea area lying within them had to be sufficiently closely linked to the land domain to be subject to the regime of internal waters, and it was permissible to consider in the process ‘certain economic interests peculiar to a region, the reality and importance of which are evidenced by long usage.

These principles emerging from the Fisheries case were accepted by states as part of international law within a comparatively short period.

Article 4 of the Geneva Convention on the Territorial Sea, 1958 declared that the straight baseline system could be used in cases of indented coastlines or where there existed a skjaergaard, provided that the general direction of the coast was followed and that there were sufficiently close links between the sea areas within the lines and the land domain to be subject to the regime of internal waters. In addition, particular regional economic interests of long standing may be considered where necessary (Article 7 of the 1982 convention). A number of states now use the system, including, it should be mentioned, the United Kingdom as regards areas on the west coast of Scotland (Churchill and Lowe 1988). However, there is evidence that, perhaps in view of the broad criteria lay down; many states have used this system in circumstances that are not strictly justifiable in law. However, the Court made it clear in Qatar v. Bahrain that:

the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in its immediate vicinity (ICJ Reports 2001:40,130)

Further, the Court emphasized that the fact that a state considers itself a multiple-island state or a de facto archipelago does not allow it to deviate from the normal rules for the determination of baselines unless the relevant conditions are met.

Where the result of the straight baseline method is to enclose as internal waters areas previously regarded as part of the territorial sea or high seas, a right of innocent passage shall be deemed to exist in such waters by virtue of article 5 (2) of the 1958 Convention.
4.3 The Width of the Territorial Sea

There has historically been considerable disagreement as to how far the territorial sea may extend from the baselines. Originally, the ‘cannon-shot’ rule defined the width required in terms of the range of shore-based artillery, but at the turn of the nineteenth century, this was transmuted into the 3-mile rule. This was especially supported by the United States and the United Kingdom, and any detraction had to be justified by virtue of historic rights and general acquiescence as, for example, the Scandinavian claim to 4 miles (H.S.K. Kent 1954).

However, the issue was much confused by the claims of many coastal states to exercise certain jurisdictional rights for particular purposes: for example, fisheries, customs and immigration controls. It was not until after the First World War that a clear distinction was made between claims to enlarge the width of the territorial sea and claims over particular zones.

Recently the 3-mile rule has been discarded as a rule of general application to be superseded by contending assertions. The 1958 Geneva Convention on the Territorial Sea did not include an article on the subject because of disagreements among the states, while the 1960 Geneva Conference failed to accept a United States—Canadian proposal for a 6-mile territorial sea coupled with an exclusive fisheries zone for a further 6 miles by only one vote (see O’Connell, vol.1, pp.163-4).

Article 3 of the 1982 Convention, however, notes that all states have the right to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles from the baselines. This clearly accords with the evolving practice of states (A/56/58 AND www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/). The UK adopted a 12-mile limit in the Territorial Sea Act 1987, for instance, as did the US by virtue of Proclamation No. 5928 in December 1988.

4.4 The Juridical Nature of the Territorial Sea

The territorial sea appertains to the territorial sovereignty of the coastal state and thus belongs to it automatically. For example, all newly independent states (with a coast) come to independence with an entitlement to a territorial sea (Nicaragua v Honduras ICJ Reports 2007). There have been a number of theories as to the precise legal character of the territorial sea of the coastal state, ranging from treating the territorial sea as part of the res communis, but subject to certain rights exercisable by the coastal state, to regarding the territorial sea as...
part of the coastal state’s territorial domain subject to a right of innocent passage by foreign vessels (O’Connel, 1971). Nevertheless, it cannot be disputed that the coastal state enjoys sovereign rights over its maritime belt and extensive jurisdictional control, having regard to the relevant rules of international law. The fundamental restriction upon the sovereignty of the coastal state is the right of other nations to innocent passage through the territorial sea, and this distinguishes the territorial sea from the internal waters of the state, which are fully within the unrestricted jurisdiction of the coastal nation.

Articles 1 and 2 of the Convention on the Territorial Sea, 1958 provide that the coastal state’s sovereignty extends over its territorial sea and to the airspace and seabed and subsoil thereof, subject to the provisions of the Convention and of international law. The territorial sea forms an undeniable part of the land territory to which it is bound, so that a cession of land will automatically include any band of territorial waters (Grisbadarna case, 11 RIAA, P147, 1909)

The coastal state may, if it so desires, exclude foreign nationals and vessels from fishing within its territorial sea and (subject to agreements to the contrary) from coastal trading (known as cabotage), and reserve these activities for its own citizens.

Similarly the coastal state has extensive powers of control relating to, amongst others, security and customs matters. It should be noted, however, that how far a state chooses to exercise the jurisdiction and sovereignty to which it may lay claim under the principles of international law will depend upon the terms of its own municipal legislation, and some states will not wish to take advantage of the full extent of the powers permitted them within the international legal system (R.v. Keyn, 1876)

4.5 The Right of Innocent Passage

The right of foreign merchant ships (as distinct from warships) to pass unhindered through the territorial sea of a coast has long been an accepted principle in customary international law, the sovereignty of the coast state notwithstanding. However, the precise extent of the doctrine is blurred and opens to contrary interpretation, particularly with respect to the requirement that the passage must be ‘innocent’ (Churchill and Lowe, 1988). Article 17 of the 1982 Convention lays down the following principle: ‘ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea’.
The doctrine was elaborated in article 14 of the Convention on the Territorial Sea, 1958, which emphasized that the coastal state must not hamper innocent passage and must publicize any dangers to navigation in the territorial sea of which it is aware. Passage is defined as navigation through the territorial sea for the purpose of crossing that Sea without entering internal waters or of proceeding to or from that sea without entering internal waters or of proceeding to or from internal waters. It may include temporary stoppages, but only if they are incidental to ordinary navigation or necessitated by distress or force majeure (Article 18 of the 1982 convention).

The coastal state may not impose charges for such passage unless they are in payment for specific services (Article 26 of the 1982 convention), and ships engaged in passage are required to comply with the coastal state’s regulations covering, for example, navigation in so far as they are consistent with international law (article 21 (4) of the 1982 convention).

Passage ceases to be innocent under article 14(4) of the 1958 Convention where it is ‘prejudicial to the peace, good order or security of the coastal state’ and in the case of foreign fishing vessels when they do not observe such laws and regulations as the coastal state may make and publish to prevent these ships from fishing in the territorial sea. In addition, submarines must navigate on the surface and show their flag.

Where passage is not innocent, the coastal state may take steps to prevent it in its territorial sea and, where ships are proceeding to internal waters; it may act to forestall any breach of the conditions to which admission of such ships to internal waters is subject. Coastal states have the power temporarily to suspend innocent passage of foreign vessels where it is essential for security reasons, provided such suspension has been published and provided it does not cover international straits.

Article 19(2) of the 1982 Convention has developed the notion of innocent passage contained in article 14(4) of the 1958 Convention by the provision of examples of prejudicial passage such as the threat or use of force; weapons practice; spying; propaganda; breach of customs, fiscal, immigration or sanitary regulations; willful and serious pollution; fishing; research or survey activities and interference with coastal communications or other facilities. In addition, a wide-ranging clause includes ‘any activity not having a direct bearing on passage’. This would appear to have altered the burden of proof from the coastal state to the other party with regard to innocent passage, as well as being somewhat difficult to define. By virtue of article 24 of the 1982 Convention, coastal states must not hamper the innocent
passage of foreign ships, either by imposing requirements upon them which should have the practical effect of denying or impairing the right or by discrimination. Article 17 of the Geneva Convention on the Territorial Sea, 1958 provided that foreign ships exercising the right of innocent passage were to comply with the laws and regulations enacted by the coastal state, in particular those relating to transport and navigation. This was developed in article 21(1) of the 1982 Convention which expressly provided that the coastal state could adopt laws and regulations concerning innocent passage with regard to:

(a) The safety of navigation and the regulation of maritime traffic;
(b) The protection of navigational aids and facilities and other facilities or installations;
(c) The protection of cables and pipelines;
(d) The conservation of the living resources of the sea;
(e) The prevention of infringement of the fisheries laws and regulations of the coastal state;
(f) The preservation of the environment of the coastal state and the prevention, reduction and control of pollution thereof,
(g) Marine scientific research and hydrographic surveys;
(h) The prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal state.

Breach of such laws and regulations will render the offender liable to prosecution, but will not make the passage non-innocent as such, unless article 19 has been infringed (Article 22 of the 1982 convention).

One major controversy of considerable importance revolves around the issue of whether the passage of warships in peacetime is or is not innocent (O’Connel, 1971). The question was further complicated by the omission of an article on the problem in the 1958 Convention on the Territorial Sea, and the discussion of innocent passage in a series of articles headed ‘Rules applicable to all ships This has led some writers to assert that this includes warships by inference, but other authorities maintain that such an important issue could not be resolved purely by omission and inference, especially in view of the reservations by many states to the Convention rejecting the principle of innocent passage for warships and in the light of comments in the various preparatory materials to the 1958 Geneva Convention.
It was primarily the Western states, with their preponderant naval power that historically maintained the existence of a right of innocent passage for warships, to the opposition of the then communist and Third World nations. However, having regard to the rapid growth in their naval capacity and the ending of the Cold War, Soviet attitudes underwent a change (Churchill and Lowe 1988).

In September 1989, the US and the USSR issued a joint ‘Uniform Interpretation of the Rules of International Law Governing Innocent Passage. This reaffirmed that the relevant rules of international law were stated in the 1982 Convention. It then provided that:

All ships, including warships, regardless of cargo, armament or means of propulsion enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required (AJIL, 1990:239).

The statement rioted that where a ship in passage through the territorial sea was not engaged in any of the activities laid down in article 19(2), it was ‘in innocent passage’ since that provision was exhaustive. Ships in passage were under an obligation to comply with the laws and regulations of the coastal state adopted in conformity with articles 21, 22, 23 and 25 of the 1982 Convention, provided such laws and regulations did not have the effect of denying or impairing the exercise of the right of innocent passage.

This important statement underlines the view that the list of activities laid down in article 19(2) is exhaustive so that a ship passing through the territorial sea not engaging in any of these activities is in innocent passage. It also lends considerable weight to the view that warships have indeed a right of innocent passage’ through the territorial sea and one that does not necessitate prior notification or authorization (UKMIL, 65 BYIL, 1994).

4.6 Jurisdiction over Foreign Ships

Where foreign ships are in passage through the territorial sea, the coastal state may only exercise its criminal jurisdiction as regards the arrest of any person or the investigation of any matter connected with a crime committed on board ship in defined situations. These are enumerated in article 27(1) of the 1982 Convention, reaffirming article 19(1) of the 1958 Convention on the Territorial Sea, as follows:
(a) If the consequences of the crime extend to the coastal state; or
(b) If the crime is of a kind likely to disturb the peace of the country or the good order of the territorial sea; or (c) if the assistance of the local authorities has been requested by the master of the ship or a diplomatic agent or consular officer of the country of the flag state or if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances (Article 27 (1) of the 1982 convention) in (Shaw,2008:574).

However, if the ship is passing through the territorial sea having left the internal waters of the coastal state, then the coastal state may act in any manner prescribed by its laws as regards arrest or investigation on board ship not restricted by the terms of article 27(1). But the authorities the coastal state cannot act where the crime was committed before the ship entered the territorial sea, providing the ship is not entering or has not entered internal waters.

Under article 28 of the 1982 Convention, the coastal state should not stop or divert a foreign ship passing through its territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board ship, nor levy execution against or arrest the ship, unless obligations are involved which were assumed by the ship itself in the course of, or for the purpose of, its voyage through waters of the coastal state, or unless the ship is passing through the territorial sea on its way from internal waters. The above rules do not, however, prejudice the right of a state to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal waters (Article 20 of the 1958 convention).

Warships-and other government ships operated for non-commercial purposes are immune from the jurisdiction of the coastal state, although they may be required to leave the territorial sea immediately for breach of rules governing passage and the flag state will bear international responsibility in cases of loss or damage suffered as a result (Article 29-32 of the 1982 convention)

4.7 The Exclusive Economic Zone

This zone has developed out of earlier, more tentative claims, particularly relating to fishing zones (O’Connel, 1971) and as a result of developments in the negotiating processes leading to the 1982 Convention. It marks a compromise between those states seeking a 200-mile territorial sea and those wishing a more restricted system of coastal state power.
One of the major reasons for the call for a 200-mile exclusive economic zone has been the controversy over fishing zones. The 1958 Geneva Convention on the Territorial Sea did not reach agreement on the creation of fishing zones and article 24 of the Convention does not give exclusive fishing rights in the contiguous zone. However, increasing numbers of states have claimed fishing zones of widely varying widths. The European fisheries Convention, 1964, which was implemented in the UK by the Fishing Limits Act 1964, provided that the coastal state has the exclusive right to fish and exclusive jurisdiction in matters of fisheries in a 6-mile belt from the baseline of the territorial sea; while within the belt between 6 and 12 miles from the baseline, other parties to the Convention have the right to fish, provided they had habitually fished in that belt between January 1953 and December 1962. This was an attempt to reconcile the interests of the coastal state with those of other states who could prove customary fishing operations in the relevant area. In view of the practice of many states in accepting at one time or another a 12-mile exclusive fishing zone, either for themselves or for some other states, it seems clear that there has already emerged an international rule to that effect. Indeed, the International Court in the *Fisheries Jurisdiction cases* (ICJ Reports, 1974) stated that the concept of the fishing zone, the area in which a state may claim exclusive jurisdiction independently of its territorial sea for this purpose, had crystallized as customary law in recent years and especially since the 1960 Geneva Conference, and that “the extension of that fishing zone up to a twelve mile limit from the baselines appears now to be generally accepted.” That much is clear, but the question was whether international law recognized such a zone in excess of 12 miles.

In 1972, concerned at the proposals regarding the long-term effect of the depletion of fishing stocks around her coasts, Iceland proclaimed unilaterally a 50-mile exclusive fishing zone. The UK and the Federal Republic of Germany referred the issue to the ICJ and specifically requested the Court to decide whether or not Iceland’s claim was contrary to international law.

The Court did not answer that question, but rather held that Iceland’s fishing regulations extending the zone were not binding upon the UK and West Germany, since they had in no way acquiesced in them. However, by implication the ICJ based its judgment on the fact that there did not exist, any rule of international law permitting the establishment of a 50-mile fishing zone. Similarly, it appeared that there was no rule prohibiting claims beyond 12 miles and that the validity of such claims would depend upon all relevant facts of the case and the degree of recognition by other states.
The Court emphasized instead the notion of preferential rights, which customary international law regarded as a principle of customary international law, such rights arise where the coastal state was ‘in a situation of special dependence on coastal fisheries’ (ICJ Reports 1974). However, this concept was overtaken by developments at the UN Conference and the 1982 Convention. Article 55 of the 1982 Convention provides that the exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established under the Convention. Under article 56, the coastal state in the economic zone has inter alia:

(a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction with regard to (i) the architecture and use of artificial islands, installations and structures; (u) marine scientific research; (iii) the protection and preservation of the marine environment. (Churchill and Lowe 1988:590).

Article 55 provides that the zone starts from the outer limit of the territorial sea, but by article 57 shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Accordingly, in reality, the zone itself would be no more than 188 nautical miles where the territorial sea was 12 nautical miles, but rather more where the territorial sea of the coastal state was less than 12 miles. Where the relevant waters between neighbouring states are less than 400 miles, delimitation becomes necessary. Islands generate economic zones, unless they consist of no more than rocks which cannot sustain human habitation (Qatar v Bahrain, ICJ Reports 2001).

Article 58 lays down the rights and duties of other states in the exclusive economic zone. These are basically the high seas freedom of navigation, over flight and laying of submarine cables and pipelines. It is also provided that it exercising their rights and performing their duties, states should have due regard to the rights, duties and laws of the coastal state.

In cases of conflict over the attribution of rights and jurisdiction in the ‘one, the resolution is to be on the basis of equity and in the light of all the relevant circumstances (Article 59). Article 60(2) provides that in the exclusive economic zone, the coastal state has
jurisdiction to apply customs laws and regulations in respect of artificial islands, installations and structures. The International Tribunal for the Law of the Sea took the view in *M/V Saiga* (No 2) (*Admissibility and Merits*) that a coastal state was not competent to apply its customs laws in respect of other parts of the economic zone. Accordingly, by applying its customs laws to a customs radius which included parts of the economic zone, Guinea had acted contrary to the Law of the Sea Convention.

A wide variety of states have in the last two decades claimed exclusive economic zones of 200 miles (Shaw, 2008). A number of states that have not made such a claim have proclaimed fishing zones.” It would appear that such is the number and distribution of states claiming economic zones, that the existence of the exclusive economic zone as a rule of customary law is firmly established. This is underlined by the comment of the international Court of Justice in the Libya/Malta Continental Shelf case that ‘the institution of the exclusive economic zone. .. is shown by the practice of states to have become a part of customary law (ICJ Reports 1985).

In addition to such zones, some other zones have been announced by states over areas of the seas. Canada has, for example, claimed a 100-mile- wide zone along her Arctic coastline as a special, pollution-free. Zone (O’Connel, 1971).

Certain states have also asserted rights over what have been termed Security or Neutrality Zones, but these have never been particularly well received and are rare.

In an unusual arrangement, pursuant to a US—USSR Maritime Boundary Agreement of 1 June 1990, it was provided that each party would exercise sovereign rights and jurisdiction derived from the exclusive economic zone jurisdiction of the other party in a ‘special area’ on the other party’s side of the maritime boundary in order to ensure that all areas within 200 miles of either party’s coast would fall within the resource jurisdiction of one party or the other. It would appear that jurisdiction over three special areas within the USSR’s 200-mile.economic zone and one special area within the US’s 200-mile economic zone were so transferred.

### 4.8 The Continental Shelf

The continental shelf is a geological expression referring to the ledges that project from the continental landmass into the seas and which are covered with only a relatively shallow layer of water (some 150—200 metres) and which eventually fall away into the
ocean depths (some thousands of metres deep). These ledges or shelves take up some 7 to 8 per cent of the total area of ocean and their extent varies considerably from place to place. Off the western coast of the United States, for instance, it is less than 5 miles wide, while, on the other hand, the whole of the underwater area of the North Sea and Persian Gulf consists of shelf.

The vital fact about the continental shelves is that they are rich in oil and gas resources and quite often are host to extensive fishing grounds. This stimulated a round of appropriations by coastal states in the years following the Second World War, which gradually altered the legal status of the continental shelf from being part of the high seas and available for exploitation by all states until its current recognition as exclusive to the coastal state.

The first move- in this direction, and the one that led to a series of similar and more extensive claims, was the Truman Proclamation of 1945. This pointed to the technological capacity to exploit the riches of the shelf and the need to establish a recognized jurisdiction over such resources, and declared that the coastal state was entitled to such jurisdiction for a number of reasons; first, because utilization or conservation of the resources of the subsoil and seabed of the continental shelf depended upon co-operation from the shore; secondly, because the shelf itself could be regarded as an extension of the land mass of the coastal state, and its resources were often merely an extension into the sea of deposits lying within the territory; and finally, because the coastal state, for reasons of security, was profoundly interested in activities off its shores which would be necessary to utilize the resources of the shelf (shaw, 1988).

Accordingly, the US government proclaimed that it regarded the ‘natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. However, this would in no way affect the status of the waters above the continental shelf as high seas.

This proclamation precipitated a whole series of claims by states to their continental shelves, some in similar terms to the US assertions, and others in substantially wider terms. Argentina and El Salvador, for example, claimed not only the shelf but also the waters above and the airspace. Chile and Peru, having no continental shelf to speak of, claimed sovereignty over the seabed, subsoil and waters around their coasts to a limit of 200 miles, although this
occasioned vigorous protests by many states. The problems were discussed over many years, leading to the 1958 Geneva Convention on the Continental Shelf. In the North Sea Continental Shelf cases, the Court noted that:

the rights of the coastal state in respect of the area of continental shelf that constitute a natural prolongation of its land territory into and under the sea exist ipso factor and ab initio, by virtue of its sovereignty over the land, and as extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short there share an inherent right (Shaw, 1988:586).

The development of the concept of the exclusive economic zone has to some extent confused the issue, since under article 56 of the 1982 Convention the coastal state has sovereign rights over all the natural resources its exclusive economic zone, including the seabed resources. Accordingly, states possess two sources of rights with regard to the seabed, although claims with regard to the economic zone, in contrast to the continental shelf, need to be specifically made. It is also possible, as will be seen, that the geographical extent of the shelf may be different from that the 200-mile economic zone (Libya/Malta Continental Shelf case, ICJ Report 1985).

Definition

Article 1 of the 1958 Convention on the Continental Shelf defined the shelf in terms of its exploitability rather than relying upon the accepted geological definition, noting that the expression referred to the seabed and subsoil of the submarine areas adjacent to the coast but outside the territorial sea to a depth of 200 metres or ‘beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

This provision caused problems, since developing technology rapidly reached a position to extract resources to a much greater depth than 200 metres, and this meant that the outer limits of the shelf, subject to the jurisdiction of the coastal state, were consequently very unclear. Article was, however, regarded as reflecting customary law by the Court in the North Sea Continental Shelf case (ICJ Report 1969). It is also important to note that the basis of title to continental shelf is now accepted as the geographical criterion, and not reliance upon, for example, occupation or effective control. The Court emphasized this and declared that:
The submarine areas concerned may be deemed to be actually part of the territory over which the coastal state already has dominion in the sense that although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea (ICJ Reports, 1969:25).

This approach has, however, been somewhat modified. Article 76(1) of the 1982 Convention provides as to the outer limit of the continental shelf that:

The continental shelf of a coastal state comprises 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 continental margin does not extend up to that distance (Byil, 1985:133).

Thus, an arbitrary, legal and non-geographical definition is provided. Where the continental margin actually extends beyond 200 miles, geographical factors are to be taken into account in establishing the limit, which in any event shall not exceed either 350 miles from the baselines or 100 miles from the 2,500-metre isobaths (Article 76(4),(5),(6),(7),(8) and (9)). Where the shelf does not extend as far as 200 miles from the coast, natural prolongation is complemented as a guiding principle by that of distance (Libya/Malta Continental Shelf case, ICJ Report 1985). Not surprisingly, this complex formulation has caused difficulty and, in an attempt to provide a mechanism to resolve problems, the Convention established a Commission on the Limits of the Continental Shelf, consisting of twenty-one experts elected by the states parties (Churchill and Lowe,1988). Article 4 of Annex II to the Convention provides that a coastal state intending to establish the outer limits to its continental shelf beyond 200 nautical miles is obliged to submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible hut in any case within ten years of the entry into force of the Convention for that state. The limits of the shelf established by a coastal state on the basis of these recommendations are final and binding (Article 76(8) of the convention of 1982). The first submission to the Commission was made by the Russian Federation on 21 December 2001 (Press Release 21 Dec, 2001). In support of this claim, Russian explorers planted the national flag on the seabed below the North Pole on 2 August 2007, arguing that parts of underwater mountains underneath the Pole were extensions of the Eurasian continent. A joint submission in respect of the area of the Celtic Sea and the Bay of Biscay was made by France, Ireland,
Spain and the UK on 19 May 2006, while on 21 April 2008, the Commission confirmed Australia’s continental shelf claim made in 2004 (UN Press Release 21 April, 2008). Islands generate continental shelves, unless they consist of no more than rocks which cannot sustain human habitation (Article 121 (3))

4.9 The rights and duties of the coastal state

The coastal state may exercise ‘sovereign rights’ over the continental shelf for the purposes of exploring it and exploiting its natural resources under article 77 of the 1982 Convention. Such rights are exclusive in that no other state may undertake such activities without the express consent of the coastal state. These sovereign rights (and thus not territorial title as such since the Convention does not talk in terms of ‘sovereignty’) do not depend upon occupation or express proclamation (Article 2 of the Continental Shelf Convention 1958). The Truman concept of resources, which referred only to mineral resources, has been extended to include organisms belonging to the sedentary species (Article 77(4) of the 1982 convention and Article 2(4) of the 1958 Convention). However, this vague description did lead to disputes between France and Brazil over lobster and between the USA and Japan over the Alaskan King Crab in the early 1960s (O’Connel, 1971). The sovereign rights recognized as part of the continental shelf regime specifically relate to natural resources, so that, for example, wrecks lying on the shelf are not included (Churchill and Lowe 1988). The Convention expressly states that the rights of the coastal state do not affect the status of the superjacent waters as high seas, or that of the airspace above the waters (Article 78 of the 1982 Convention and Article 3 of the 1958 Continental Shelf Convention). This is stressed in succeeding articles which note that, subject to its right to take reasonable measures for exploration and exploitation of the continental shelf, the coastal state may not impede the laying or maintenance of cables or pipelines on the shelf. In addition, such exploration and exploitation must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea (Article 78 and 79 of the 1982 Convention and Article 4 and 5 of the 1958 Continental Shelf Convention).

The coastal state may, under article 80 of the 1982 Convention, construct and maintain installations and other devices necessary for exploration on the continental shelf and is entitled to establish safety zones around such installations to a limit of 500 metres, which must be respected by ships of all nationalities (Article 5 of the 1958 Continental Shelf Convention). Within such zones, the state may take such measures as are necessary for their
protection. But although under the jurisdiction of the coastal state, these installations are not to be considered as islands. This means that they have no territorial sea of their own and their presence in no way affects the delimitation of the territorial waters of the coastal state. Such provisions are, of course, extremely important when considering the status of oil rigs situated, for example, in the North Sea. To treat them as islands for legal purposes would cause difficulties (N. Papadakis, 1977).

Where the continental shelf of a state extends beyond 200 miles, article 82 of the 1982 Convention provides that the coastal state must make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf-beyond the 200-mile limit. The payments are to be made annually after the first five years of production at the site in question on a sliding scale up to the twelfth year, after which they are to remain at 7 per cent. These payments and contributions are to be made to the International Seabed Authority, which shall distribute them amongst state parties on the basis of ‘equitable sharing criteria, taking into account the interests and needs of developing states particularly the least developed and the landlocked among them’.

4.10 Maritime delimitation

While delimitation is in principle an aspect of territorial sovereignty, where other states are involved, agreement is required. However valid in domestic law, unilateral delimitations will not be binding upon third state (Anglo-Norwegian Fisheries Case, ICJ Reports, 1951). The International Court noted in Nicaragua v. Honduras that the establishment of a permanent maritime boundary was ‘a matter of grave importance and agreement is not easily to be presumed’. It was also pointed out that the principle of uti possidetis applied in principle to maritime spaces.

In so far as the delimitation of the territorial sea between states with opposite or adjacent coasts is concerned, (Churchill and Lowe, 1988) article 15 of the 1982 Convention, following basically article 12 of the Geneva Convention on the Territorial Sea, 1958, provides that where no agreement has been reached, neither state may extend its territorial sea beyond the median line every point of which is equidistant from the nearest point on the baselines from which the territorial sea is measured (Qatar v. Bahrain, ICJ Report 2001). However, particular geographical circumstances may take it difficult to establish clear baselines and this may make it therefore impossible to draw an equidistance line. (Nicaragua,
V. Honduras, ICJ reports, 2007). In such an exception case, the Court would consider alternative lines drawn by the states, for example bisector lines.

The provision as to the median line, however, does not apply where it is necessary by reason of historic title or other special circumstances to delimit the territorial sea of the two states in a different way. The Court in Qatar v. Bahrain noted that article 15 was to be regarded as having a customary law character and may be referred to as the ‘equidistance/special customary law character (Dubai/Sharjah case, 91 ILR) and may be referred to as the ‘equidistance/special circumstances’ principle. The court went on to declare that, ‘the most logical and widely practiced approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances (ICJ Reports, 2001).

This was underlined in the arbitration award in Guyana v. Suriname, which emphasized that article 15 placed ‘primacy on the median line as the delimitation line between the territorial seas of opposite or adjacent states’ (Award of 17 September, 2007). The tribunal noted that international courts were not constrained by a finite list of special circumstances, but need to assess on a case-by-case basis with reference to international case-law and state practice. Navigational interests, for example, could constitute such special circumstances. The tribunal also held that a 3-mile territorial sea delimitation line did not automatically extend outwards in situations where the territorial sea was extended to 12 miles, but rather that a principled method had to be found that took into account any special circumstances, including historical arrangements made.

Separate from the question of the delimitation of the territorial sea, but increasingly convergent with it, is the question of the delimitation of the continental shelf and of the exclusive economic zone between opposite or adjacent states. The starting point of any delimitation of these areas is the entitlement of the state to a given maritime area. Such entitlement in the case of the continental shelf was originally founded upon the concept of natural prolongation of the land territory into the sea (ICJ Reports 1969), but with the emergence of the exclusive economic zone a new approach was introduced based upon distance from the coast (Barbados v Trinidad and Tobago, Award of 11 April 2006). The two concepts in fact became close.

Article 6 of the Continental Shelf Convention, 1958 declared that in the absence of agreement and unless another boundary line was justified by special circumstances, the
continental shelf boundary should be determined ‘by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured’, that is to say by the introduction of the equidistance or median line which would operate in relation to the sinuosity’s of the particular coastlines.

This provision was considered in the *North Sea Continental Shelf cases*’ between the Federal Republic of Germany on the one side and Holland and Denmark on the other. The problem was that the application of the equidistance principle of article 6 would give Germany only a small share of the North Sea continental shelf, in view of its concave northern shore line between Holland and Denmark. The question arose as to whether the article was binding upon the Federal Republic of Germany at all, since it had not ratified the 1958 Continental Shelf Convention.

The Court held that the principles enumerated in article 6 did not constitute rules of international customary law and therefore Germany was not bound by them. The Court declared that the relevant rule was that:

> delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the others (ICJ Reports 1969:3).

The Court, therefore, took the view that delimitation was based upon a consideration and weighing of relevant factors in order to produce an equitable result. Included amongst the range of factors was the element of a reasonable degree of proportionality between the lengths of the coastline and the extent of the Continental Shelf case. In the Anglo-French Continental Shelf case, both states were parties to the 1958 Convention, so that article 6 applied. It was held that article 6 contained one overall rule, ‘a combined equidistance-special circumstances rule’, which in effect:

> Gives particular expression to a general norm that, falling agreement, the boundary between states abutting on the same continental shelf is to be determined on equitable principles (D.W. Bowett,1978:1).

The choice of method of delimitation, whether equidistance or any other method, depends upon the pertinent circumstances of the case. The fundamental norm under both
customary law and the 1958 Convention was that the delimitation had to be in accordance with equitable principles. The Court took into account ‘special circumstances’ in relation to the situation of the Channel Islands which justified delimitation other than the median line proposed by the UK. In addition, the situation of the Scaly Isles was considered and they were given only ‘half-effect’ in the delimitation in the Atlantic area since what equity calls for is an appropriate abatement of the disproportionate effects of a considerable projection on the Atlantic continental shelf of a somewhat attenuated projection of the coast of the United Kingdom (D.W. Bowett,1978:123).

In the *Tunisia/Libya Continental Shelf case*, the Court, deciding on the basis of custom as neither State was a party to the 1958 Convention, emphasized that ‘the satisfaction of equitable principles is, in the delimitation process, of cardinal importance’. The concept of natural prolongation was of some importance depending upon the circumstances, but not on the same plane as the satisfaction of equitable principles. The Court also employed the ‘half-effect’ principle for the Kerkennah Islands, and emphasized that each continental shelf dispute had to be considered on its own merits having regard to its peculiar circumstances, while no attempt should be made to ‘over conceptualize the application of the principles and rules relating to the continental shelf’ (ICJ Reports,1982). The view of the Court that ‘the principles are subordinate to the goal’ and that ‘the principles to be indicated... have to be selected according to their appropriateness for reaching an equitable result’ led to criticism that the carefully drawn restriction on equity in the *North Sea Continental Shelf cases* had been overturned and the element of predictability minimized (ICJ Reports,1969). The dangers of an equitable solution based upon subjective assessments of the facts, regardless of the law of delimitation, were pointed out by Judge Gros in his Dissenting Opinion ((ICJ Reports,1982).

The Court in the North Sea Continental Shelf cases in general discussed the relevance of the use of equitable principles in Inc context of the difficulty of applying the equidistance rule in specific geographical situations where inequity might result (ICJ Reports,1969). In such a case, recourse may be had to equitable principles, provided a reasonable result was reached.
In the Anglo-French Continental Shelf case, it was emphasized that:

The appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case (ICJ Reports, 1982:4).

The methodological aspect here is particularly important, based as it is upon the requisite geographical framework.

Article 83 of the 1982 Convention provides simply that delimitation ‘shall be effected by agreement on the basis of international law... in order to achieve an equitable solution. This was emphasized by the Court in Tunisia/Libya, where it was stated that the ‘principles and rules applicable to the delimitation of the continental shelf areas are those which are appropriate to bring about an equitable result’. In the Gulf of Maine case, which dealt with the delimitation of both the continental shelf and fisheries zones of Canada and the United States, the Chamber of the ICJ produced two principles reflecting what general international law prescribed in every maritime delimitation (ICJ Reports, 1984). First, there could be no unilateral delimitations. Delimitations had to be sought and effected by agreement between the parties or, if necessary, with the aid of third parties. Secondly, it held that ‘delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result (ICJ Reports, 1984). The Court took as its starting point the criterion of the equal division of the areas of convergence and overlapping of the maritime projections of the coastlines of the states concerned, a criterion regarded as intrinsically equitable. This, however, had to be combined with the appropriate auxiliary criteria in the light of the relevant circumstances of the area itself. As regards the practical methods necessary to give effect to the above criteria, like the criteria themselves these had to be based upon geography and the suitability for the delimitation of both the seabed and the superjacent waters. Thus, it was concluded, geometrical methods would serve (ICJ Reports, 1984). It will be noted that the basic rule for delimitation of the continental shelf is the same as that for the exclusive economic zone, (Article 74 of the 1982 Convention) but the same boundary need not necessarily result (Churchill and Lowe 1988). The Chamber in the Gulf of Maine case indeed strongly emphasized ‘the unprecedented aspect of the case which lends it its special character in that a single line delimiting both the shelf and fisheries zone was called for by the parties.
Criteria found equitable with regard to a continental shelf delimitation need not necessarily possess the same properties with regard to a dual delimitation (ICJ Reports, 1984). The above principles were reflected in the arbitral award in the Guinea/Guinea-Bissau Maritime Delimitation case in 1985. The Tribunal emphasized that the aim of any delimitation process was to achieve an equitable solution having regard to the relevant circumstances. In the instant case, the concepts of natural prolongation and economic factors were in the circumstances of little assistance. In the Libya/Malta Continental Shelf case, the International Court, in deciding the case according to customary law since Libya was not a party to the 1958 Convention on the Continental Shelf, emphasized the distance criterion (ICJ Reports, 1985). This arose because of the relevance of the economic zone concept, which was now held to be part of customary law, and the fact that an economic zone could not exist without rights over the seabed and subsoil similar to those enjoyed over a continental shelf. Thus the 200-mile limit of the zone had to be taken into account with regard to the delimitation of the continental shelf. The fact that the law now permitted a state to claim a shelf of up to 200 miles from its coast, irrespective of geological characteristics, also meant that there was no reason to ascribe any role to geological or geographical factors within that distance.

Since the basis of title to the shelf up to the 200-mile limit is recognized as the distance criterion, the Court felt that the drawing of a median line between opposite states was the most judicious manner of proceeding with a view to the eventual achievement of an equitable result. This provisional step had to be tested in the light of equitable principles in the context of the relevant circumstances. The Court also followed the example of the Tunisia/Libya case in examining the role of proportionality and in treating it as a test of the equitableness of any line.

However, the Court did consider the comparability of coastal lengths in the case as part of the process of reaching an equitable boundary, and used the disparity of coastal lengths of the parties as a reason for adjusting the median line so as to attribute a larger shelf area to Libya. The general geographical context in which the islands of Malta exist as a relatively small feature in a semi-enclosed sea was also taken into account in this context.

The Court in its analysis also referred to a variety of well-known examples of equitable principles, including abstention from refashioning nature, non-encroachment by one party on areas appertaining to the other, respect due to all relevant circumstances and the
notions that equity did not necessarily mean equality and that there could be no question of distributive justice. The Court, however, rejected Libya’s argument that a state with a greater landmass would have a greater claim to the shelf and dismissed Malta’s view that the relative economic position of the two states was of relevance.

In conclusion, the Court reiterated in the operative provisions of its judgment, the following circumstances and factors that needed to be taken into account in the case:

1. The general configuration of the coasts to the parties, their oppositeness, and their relationship to each other within the general context;
2. The disparity in the lengths of the relevant coasts of the parties and the distance between them;
3. The need to avoid in the delimitation any excessive disproportion between the extent of the continental shelf areas appertaining to the coastal state and the length of the relevant part of its coast, measured in the general direction of the coastlines (ICJ Reports, 1985).

In the *St Pierre and Miquelon* case, the Court of Arbitration emphasized that the delimitation process commenced with the identification of the geographical context of the dispute in question and indeed pointed out that geographical features were at the heart of delimitation. The identification of the relevant coastlines in each particular case, however, generates specific problems. Accordingly, the way in which the geographical situation is described may suggest particular solutions, so that the seemingly objective process of geographical identification may indeed constitute a crucial element in the adoption of any particular juridical answer. In the *St Pierre and Miquelori case*, the Court divided the area into two zones, the southern and western zones. In the latter case, any seaward extension of the islands beyond their territorial sea would cause some degree of encroachment and cut-off to the seaward projection towards the south from points located on the southern shore of Newfoundland. The Court felt here that any enslaving of the islands within their territorial sea would be inequitable and the solution proposed was to grant the islands an additional 12 miles from the limits of the territorial sea as an exclusive economic zone. In the case of the southern zone, where the islands had a coastal opening seawards unobstructed by any opposite or laterally aligned Canadian coast, the Court held that France was entitled to an outer limit of 200 nautical miles, provided that such a projection was not to encroach upon or cut off a parallel frontal protection of the adjacent segments of the Newfoundland southern coast. In order to achieve this, the Court emphasized the importance of the breadth of the
coastal opening of the islands towards the south, thus resulting in a 200-mile, but narrow, corridor southwards from the islands as their economic zone.” Having decided upon the basis of geographical considerations, the Court felt it necessary to assure itself that the delimitation proposed was not ‘radically inequitable’ (31 ILM,1992). This it was able to do on the basis of facts submitted by the parties. The Court also considered the criterion of proportionality and satisfied itself that there was no disproportion in the areas appertaining to each of the parties.

In the Jan Mayen (Denmark v. Norway) case, the question of the delimitation of the continental shelf between the islands of Greenland and Jan Mayen was governed in the circumstances by article 6 of the 1958 Convention, accepted as substantially identical to customary law in requiring an equitable delimitation. The International Court noted that since delimitation between opposite Coasts was in question, one needed to begin by taking provisionally the median line and then enquiring whether ‘special circumstances’ required another boundary line. In particular, one needed to take into account the disparity between the respective coastal lengths of the relevant area and, since in this case that of Greenland was more than nine times that of Jan Mayen, an unqualified use of equidistance would produce a manifestly disproportionate result. In addition, the question of equitable access to fish stocks for vulnerable fishing communities needed to be considered. Since the principal resource in the area was capelin, which was centered on the southern part of the area of overlapping claims, the adoption of a median line would mean that Denmark could not be assured of equitable access to the capelin. This was a further reason for adjusting the median line towards the Norwegian island of Jan Mayen. However, there was no need to consider the presence of ice as this did not materially affect access to fishery resources, or the limited population of Jan Mayen, socio-economic factors or security matters in the circumstances. (ICJ Reports,1993).

In discussing the variety of applicable principles, a distinction has traditionally been drawn between opposite and adjacent states for the purposes of delimitation. In the former case, the Court has noted that there is less difficulty in applying the equidistance method than in the latter, since the distorting effect of an individual geographical feature in the case of adjacent states is more likely to result in an inequitable delimitation. Accordingly, greater weight is to be placed upon equidistance in a delimitation of the shelf between opposite states in the context of equitable considerations, than in the case of adjacent states where the range of applicable equitable principles may be more extensive and the relative importance of each particular principle less clear Article 83 of the 1982 Convention, however, makes no
distinction between delimitations on the basis of whether the states are in an opposite or adjacent relationship. The same need to achieve an equitable solution on the basis of international law is all that is apparent and recent moves to a presumption in favour of equidistance in the case of opposite coasts may well apply also to adjacent states.

The weight to be given to the criterion of proportionality between the length of the coastline and the area of continental shelf has also been the subject of some consideration and opinions have varied. It is a factor that must be cautiously applied (ICJ Reports, 1969).

Article 74 of the 1982 Convention provides that delimitation of the exclusive economic zone between states with opposite or adjacent coasts are to be effected by agreement on the basis of international law, ‘in order to achieve an equitable solution’. Since this phrase is identical to the provision on delimitation of the continental shelf, it is not surprising that cases have arisen in which states have sought a single maritime boundary, applying both to the continental shelf and the economic zone.

In the Gulf of Maine case, the Chamber of the International Court took the view that the criteria for a single maritime boundary (ICJ Reports, 2001), were those that would apply to both the continental shelf and economic zones (in this case a fisheries zone) and not criteria that relate to only one of these areas (ICJ Reports, 1984). Nevertheless, the overall requirement for the establishment of such a boundary is the need to achieve an equitable solution and this brings into consideration a range of factors that may or may not be deemed relevant or decisive by the Court. It is in the elucidation of such factors that difficulties have been encountered and it would be over-optimistic to assert that the situation is clear, although very recent cases have moved towards a degree of predictability. In the Gulf of Maine case, the Court emphasized that the relevant criteria had to be essentially determined ‘in relation to what may be properly called the geographical features of the area but what these are is subject to some controversy and did not appear to cover scientific and other facts relating to fish stocks, oil exploration, scientific research or common defence arrangements (ICJ Reports, 1984). In the Guinea/Guinea-Bissau Maritime Delimitation case, the Tribunal was called upon to draw a single line dividing the territorial sea, economic zone and continental shelf of the two states concerned. In the case of the latter two zones, the Tribunal noted that the use of the equidistance method was unsatisfactory since it exaggerated the importance of insignificant coastal features. Rather one had to consider the whole coastline of West Africa. The Tribunal also considered that the evidence with regard to the geological and
geomorphological features of the continental shelf was unsatisfactory, while general economic factors were rejected as being unjust and inequitable, since they were based upon an evaluation of data that was constantly changing. The question of a single maritime boundary arose again in the *St Pierre arid Miquelon (Canada/France)* case where the Tribunal was asked to establish a single delimitation as between the parties governing all rights and jurisdiction that the parties may exercise under international law in these maritime areas. In such cases, the Tribunal, following the *Gulf of Maine* decision, took the view that in a single or all-purpose delimitation, article 6 of the Geneva Convention on the Continental Shelf, 1958, which governed the delimitation of the continental shelf, did not have mandatory force as regards the establishment of that single maritime line.

However, where there did not exist a special agreement between the parties asking the Court to determine a single maritime boundary applicable both to the continental shelf and the economic zone, the Court declared in the *Jan Mayen Maritime Delimitation (Denmark v. Norway)* case that the two strands of the applicable law had to be examined separately (*ICJ Reports*, 1993). These strands related to the effect of article 6 of the Geneva Convention on the Continental Shelf, 1958 upon the continental Shelf and the rules of customary international law with regard to the fishery zone.

Recent cases have seen further moves towards clarity and simplicity. *Eritrea/Yemen (Phase Two: Maritime Delimitation)*, the Tribunal noted that it was a generally accepted view that between coasts that are opposite to each other, the median or equidistance line normally provided equitable boundary in accordance with the requirements of the 1982 Convention. It also reaffirmed earlier case-law to the effect that proportionality was not an independent mode or principle of delimitation, but test of the equitableness of a delimitation arrived at by other means. The Tribunal also considered the role of mid-sea islands in delimitation between opposite states and noted that to give them full effect would produce a disproportionate effect. Indeed, no effect was given to some of the islands in question.

In *Qatar v. Bahrain*, the Court emphasized the close relationship between continental shelf and economic zone delimitations and held that the appropriate methodology was first to provisionally draw an equidistance line and then to consider whether circumstances existed which must lead to an adjustment of that line (*ICJ Reports*, 2001). Further, it was noted that ‘the equidistance/special circumstances’ rule, applicable to territorial sea delimitation, and the ‘equidistance/relevant circumstances’ rule as developed since 1958 in case-law and practice.
regarding the delimitation of the continental shelf and the exclusive economic zone were ‘closely related, The Court did not consider the existence of pearling banks to be a circumstance justifying a shift in the equidistance line nor was the disparity in length of the coastal fronts of the states. It was also considered that for reasons of equity in order to avoid disproportion, no effect could be given to Fasht al Jarim, a remote projection of Bahrain’s coastline in the Gulf area, which constituted a maritime feature located well out to sea and most of which was below water at high tide (ICJ Reports, 2002).

This approach was reaffirmed by the Court in *Cameroon v. Nigeria*, where it was noted that ‘the applicable criteria, principles and rules of delimitation’ concerning a line ‘covering several zones of coincident jurisdiction’ could be expressed in ‘the so-called equitable principles/relevant circumstances method’. This method, ‘which is very similar to the equidistance/special circumstances method’ concerning territorial sea delimitation, ‘involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an “equitable result. Such a line had to be constructed on the basis of the relevant coastlines of the states in question and excluded taking into account the coastlines of third states and the coastlines of the parties not facing each other. Further, the Court emphasized that ‘equity is not a method of delimitation, but solely an aim that should be borne in mind in effecting the delimitation’, thus putting an end to a certain trend in previous decades to put the whole emphasis in delimitation upon an equitable solution, leaving substantially open the question of what factors to take into account and how to rank them. The geographical configuration of the maritime area in question was an important element in this case and the Court stressed that while certain geographical peculiarities of maritime areas could be taken into account, this would be solely as relevant circumstances for the purpose, if necessary, of shifting the provisional delimitation line. In the present case, the Court did not consider the configuration of the coastline a relevant circumstance justifying altering the equidistance line. Similarly the Court did not feel it necessary to take into account the existence of Bioko, an island off the coast of Cameroon hut belonging to a third state, Equatorial Guinea, nor was it concluded that there existed a substantial difference in the lengths of the parties’ respective coastlines’ so as to make it a factor to be considered in order to adjust the provisional delimitation line.

In the *Barbados v. Trinidad and Tobago* arbitration award of 11 April 2006, it was noted that equitable considerations per se constituted an imprecise concept in the light of the need for stability and certainty in the outcome of the legal process and it was emphasized that
the search for predictable objectively determined criteria for delimitation underlined that the role of equity lies within and not beyond the law (Award of 11 April 2006). The process of achieving an equitable result was constrained by legal principle, as both equity and stability were integral parts of the delimitation process. The tribunal concluded that the determination of the line of delimitation followed a two-step approach. First, a provisional line of equidistance is constructed and this constitutes the practical starting point. Secondly, this line is examined in the light of relevant circumstances, which are case specific, so as to determine whether it is necessary to adjust the provisional equidistance line in order to achieve an equitable result. This approach was termed the ‘equidistance/relevant circumstances’ principle so that certainty would thus be combined with the need for an equitable result.

Conclusion

Accordingly, there is now a substantial convergence of applicable principles concerning maritime delimitation, whether derived from customary law or treaty. In all cases, whether the delimitation is of the territorial sea, continental shelf or economic zone (or of the latter two together), the appropriate methodology to be applied is to draw a provisional equidistance line as the starting position and then see whether any relevant or special circumstances exist which may warrant a change in that line.

4.11 The High Seas

The closed seas concept proclaimed by Spain and Portugal in the fifteenth and sixteenth centuries, and supported by the Papal Bulls of 1493 and 1506 dividing the seas of the world between the two powers: was replaced by the notion of the open seas and the concomitant freedom of the high seas during the eighteenth century.

The essence of the freedom of the high seas is that no state may acquire sovereignty over parts of them. This is the general rule, but it is subject to the operation of the doctrines of recognition, acquiescence and prescription, where, by long usage accepted by other nations, certain areas of the high seas bounding on the territorial waters of coastal states may be rendered subject to that state’s sovereignty (Article 2 of the 1958 High Sea Convention and Article 89 of the 1982 convention). This was emphasized in the Anglo-Norwegian Fisheries case (ICJ Reports, 1951).

The high seas were defined in Article I of the Geneva Convention on the High Seas, 1958 as all parts of the sea that were not included in the territorial sea or in the internal waters
of a state. This reflected customary international law, although as a result of developments the definition in article 86 of the 1982 Convention includes: all parts of the sea 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.

Article 87 of the 1982 Convention (developing article 2 of the 1958 Geneva Convention on the High Seas) provides that the high seas are open to all states and that the freedom of the high seas is exercised under the conditions laid down in the Convention and by other rules of international law. It includes *inter alia* the freedoms of navigation, over flight, the laying of submarine cables and pipelines, the construction of artificial islands and other installations permitted under international law, fishing, hand the conduct of scientific research. Such freedoms are to be exercised with due regard for the interests of other states in their exercise of the freedom of the high seas, and also with due regard for the rights under the Convention regarding activities in the International Seabed Area.

Australia and New Zealand alleged before the ICJ, in the Nuclear Tests case, that French nuclear testing in the Pacific infringed the principle of the freedom of the seas, but this point was not decided by the Court (ICJ Reports, 1974). The 1963 Nuclear Test Ban Treaty prohibited the testing of nuclear weapons - on the high seas as well as on land, but France was not a party to the treaty, and it appears not to constitute a customary rule binding all states, irrespective of the treaty. Nevertheless, article 88 of the 1982 Convention provides that the high seas shall be reserved for peaceful purposes. Principles that are generally acknowledged to come within article 2 include the freedom to conduct naval exercises to the high seas and the freedom to carry out research studies.

The freedom of navigation is a traditional and well-recognized facet of the doctrine of the high seas, as is the freedom of fishing (ICJ Reports, 1949). (ICJ Reports, 1951) This was reinforced by the declaration by the Court in the *Fisheries Jurisdiction* cases (ICJ Reports, 1974) that Iceland’s unilateral extension of its fishing zones from 1t 50 miles constituted a violation’ of article 2 of the High Seas Convention, which is, as the preamble states, ‘generally declaratory of established principles of international law’. The freedom of the high seas applies not only to coastal states but also to states that is landlocked.

The question of freedom of navigation on the high seas in times armed conflict was raised during the Iran-Iraq war, which during its later stages involved attacks upon civilian shipping by both belligerents. Rather than rely on the classical and somewhat out-of-date
rules of the laws of war at sea, the UK in particular analyzed the issue in terms of the UN Charter (Churchill and Lowe 1988). The following statement was made

The UK upholds the principle of freedom of navigation on the high seas and condemns all violations of the law of armed conflict including attacks on merchant shipping. Under article 51 of the UN Charter, a state actively engaged in armed conflict (as in the case of Iran and Iraq) is entitled in exercise of its inherent right of self-defence to stop and search a foreign merchant ship on the high seas if there is reasonable ground for suspecting that the ship is taking arms to the other side for use in the conflict. This is an exceptional right if the suspicion proves to be unfounded and if the ship’s not committed acts calculated to give rise to suspicion, then the ship’s owners have a good claim for compensation for loss caused by the delay. This right would not, however, extend to the Imposition of a maritime blockade or other forms of economic warfare (parliamentary papers 1988:581)

4.12 Jurisdiction on the High Seas

The foundation of the maintenance of order on the high seas has rested upon the concept of the nationality of the ship, and the consequent jurisdiction of the flag state over the ship. It is, basically, the flag state that will enforce the rules and regulations not only of its own municipal law but of international law as well. A ship without a flag will be deprived of many of the benefits and rights available under the legal regime of the high seas.

Each state is required to elaborate the conditions necessary for the grant of its nationality to ships, for the registration of ships in its territory and for the right to fly its flag. The nationality of the ship will depend upon the flag flies, but article 91 of the 1982 Convention also stipulates that there must be a genuine link between the state and the ship (shaw,2008). This provision, which reflects ‘a well-established rule of general international law’, was intended to check the use of flags of convenience operated by states such as Liberia and Panama which would grant their nationality to ships requesting such because of low taxation and the lack of application of most wage and social security agreements. This enabled the ships to operate at very low costs indeed. However, what precisely the ‘genuine link’ consists of and how one may regulate any abuse of the provisions of article 5 are unresolved questions. Some countries, for example the United States, maintain that the requirement of a ‘genuine link’ really only amounts to a duty to exercise jurisdiction over the ship in an efficacious manner, and is not a pre-condition for the grant, or the acceptance by other states of the grant, of nationality (Churchill and Lowe 1988).
An opportunity did arise in 1960 to discuss the meaning of the provision in the IMCO case (ICJ Reports, 1960). The International Court was called upon to define the ‘largest ship-owning nations’ for the purposes of the constitution of a committee of the Inter-Governmental Maritime Consultative Organization. It was held that the term referred only to registered tonnage so as to enable Liberia and Panama to be elected to the committee. Unfortunately, the opportunity was not taken of considering the problems of flags of convenience or the meaning of the ‘genuine link’ in the light of the true ownership of the ships involved, and so the doubts and ambiguities remain.

The UN Conference on Conditions of Registration of Ships, held under the auspices of the UN Conference on Trade and Development, convened in July 1984 and an agreement was signed in 1986. It attempts to deal with the flags of convenience issue, bearing in mind that nearly one-third of the world’s merchant fleet by early 1985 flew such flags. It specifies that flag states should provide in their laws and regulations for the ownership of ships flying their flags and that those should include appropriate provision for participation by nationals as owners of such ships, and that such provisions should be sufficient to permit the flag state to exercise effectively its jurisdiction and control over ships flying its flag.

The issue of the genuine link arose in the context of the Iran-Iraq war and in particular Iranian attacks upon Kuwaiti shipping. This prompted Kuwait to ask the UK and the USA to reflag Kuwaiti tankers. The USA agreed in early 1987 to reflag eleven such tankers under the US flag and to protect them as it did other US-flagged ships in the Gulf (26 ILM, 1987). The UK also agreed to reflag some Kuwaiti tankers, arguing that only satisfaction of Department of Trade and Industry requirements was necessary (119 HC Deb, 17 July 1987). Both states argued that the genuine link requirement was satisfied and, in view of the ambiguity of state practice as to the definition of genuine link in such instances, it is hard to argue that the US and UK acted unlawfully. The International Tribunal for the Law of the Sea in M/V Saiga (No. 2) has underlined that determination of the criteria and establishment of the procedures for granting and withdrawing nationality to ships are matters. Within the exclusive jurisdiction of the flag State, disputes concerning such matters may be subject to the dispute settlement procedures of the 1982 Convention. The question of the nationality of a ship was a question of fact to be determined on the basis of evidence adduced by the parties (Grand Prince Case, 2001). The conduct of the flag state’ at all times material to the dispute was an important consideration in determining the nationality or registration of a ship. The Tribunal has also confirmed that the requirement of a genuine link was in order to secure effective
implementation of the duties of the flag state and not, to establish criteria by reference to which the validity of the registration of ships in a flag state may be challenged by other states.

Ships are required to sail under the flag of one state only and are subject to its exclusive jurisdiction (save in exceptional cases). Where a ship does sail under the flags of more than one state, according to convenience, it may be treated as a ship without nationality and will not be able to claim any of the nationalities concerned (Article 6 of the 1958 convention and article 92 of the 1982 convention). A ship that is stateless and does not fly a flag, may be boarded and seized on the high seas. This point was accepted by the Privy Council in the case of *Naim Molvan v. Attorney-General for Palestine*, which concerned the seizure by the British Navy of a stateless ship attempting to convey immigrants into Palestine (*US v Marino-Garcia 1982*).

The basic principle relating to jurisdiction on the high seas is that the flag state alone may exercise such rights over the ship (Article 6 of the 1958 convention and article 92 of the 1982 convention). This was elaborated in the *Lotus case*, *(Sellers v Maritime, 1999)* where it was held that ‘vessels on the high seas are subject to no authority except that of the state whose flag they fly’ (Article 94, 97, 98, 99, 113 and 115 of the 1982 convention). This exclusivity is without exception regarding warships and ships owned or operated by a state where they are used only on governmental non-commercial service. Such ships have, according to articles 95 and 96 of the 1982 Convention, ‘complete immunity from the jurisdiction of any state other than the flag state’ (Article 8 and 9 of the high sea convention, 1958).

### 4.13 Exceptions to the Exclusivity of Flag-state Jurisdiction

However, this basic principle is subject to exceptions regarding other vessels, and the concept of the freedom of the high seas is similarly limited by the existence of a series of exceptions.

**Right of visit**

Since the law of the sea depends to such an extent upon the nationality of the ship, it is well recognized in customary international law that warships have a right of approach to ascertain the nationality of ships. However, this right of approach to identify vessels does not incorporate the right to board or visit ships. This may only be undertaken, in the absence of hostilities between the flag states of the warship and a merchant vessel and in the absence of
special treaty provisions to the contrary, where the ship is engaged in piracy or the slave trade, or, though flying a foreign flag or no flag at all, is in reality of the same nationality as the warship or of no nationality. But the warship has to operate carefully in such circumstances, since it may be liable to pay compensation for any loss or damage sustained if its suspicions are unfounded and the ship boarded has not committed any act justifying them. Thus, international law has settled for a narrow exposition of the right of approach, in spite of earlier tendencies to expand this right, and the above provisions were incorporated into article 22 of the High Seas Convention. Article 110 of the 1982 Convention added to this list a right of visit where the ship is engaged in unauthorized broadcasting and the flag state of the warship has under article 109 of the Convention jurisdiction to prosecute the offender.

4.14 Piracy

Brown (1979) the most formidable of the exceptions to the exclusive jurisdiction of the flag state and to the principle of the freedom of the high seas is the concept of piracy. Piracy is strictly defined in international law and was declared in article 101 of the 1982 Convention to consist of any of the following acts:

(a) Any illegal acts of violence detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state; (h) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b) (Brown 1979:299)

The essence of piracy under international law is that it must be committed for private ends. In other words, any hijacking or takeover for political reasons is automatically excluded from the definition of piracy. Similarly, any acts committed on the ship by the crew and aimed at the ship itself or property or persons on the ship do not fall within this category.

Any and every state may seize a pirate ship or aircraft whether on the high seas or on terra nullius and arrest the persons and seize the property on board. In addition, the courts of the state carrying out the seizure have jurisdiction to impose penalties, and may decide what action to take regarding the ship or aircraft and property, subject to the rights of third parties that have acted in good faith (Article 19 of the 1958 convention and article 105 of the 1982
convention). The fact that every state may arrest and try persons accused of piracy makes that crime quite exceptional under international law, where so much emphasis is placed upon the sovereignty and jurisdiction of each particular state within its own territory. The first multilateral treaty concerning the regional implementation of the Convention's provisions on piracy was the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia in 2005, which calls for the establishment of an information-sharing centre in Singapore and extends the regulation of piracy beyond the high seas to events taking place in internal waters, territorial seas and archipelagic waters.

4.15 The Slave Trade

Brown (1979) Although piracy may be suppressed by all states, most offences on the high seas can only be punished in accordance with regulations prescribed by the municipal legislation of states, even where international law requires such rules to be established. Article 99 of the 1982 Convention provides that every state shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free (Article 13 of the high seas convention, 1958). Under article 110, warships may board foreign merchant ships where they are reasonably suspected of engaging in the slave trade; offenders must be handed over to the flag state for trial (Churchill and Lowe 1988).

Authorized broadcasting

Woodliffe J.C (1986) under article 109 of the 1982 Convention, all states are to cooperate in the suppression of unauthorized broadcasting from the high seas. This is defined to mean transmission of sound or TV from a ship or installation on the high seas intended for reception by the general public, contrary to international regulations but excluding the transmission of distress calls. Any person engaged in such broadcasting may be prosecuted by the flag state of the ship, the state of registry of the installation, the state of which the person is a national, any state where the transmission can be received or any state where authorized radio communication is suffering interference.

Any of the above states having jurisdiction may arrest any person or ship engaging in unauthorized broadcasting on the high seas and seize the broadcasting apparatus (Article 110 of the 1982 convention).
4.16 Hot Pursuit

Poulantzas, N. (2002) The right of hot pursuit of a foreign ship is a principle designed to ensure that a vessel which has infringed the rules of a coastal state cannot escape punishment by fleeing to the high seas. In reality it means that in certain defined circumstances a coastal state may extend its jurisdiction onto the high seas in order to pursue and seize a ship which is suspected of infringing its laws. The right, which has been developing in one form or another since the nineteenth century, was comprehensively elaborated in article 111 of the 1982 Convention, building upon article 23 of the High Seas Convention, 1958.

It notes that such pursuit may commence when the authorities of the coastal state have good reason to believe that the foreign ship has violated its laws. The pursuit must start while the ship, or one of its boats, is within the internal waters, territorial sea or contiguous zone of the coastal state and may only continue outside the territorial sea or contiguous zone if it is uninterrupted. However, if the pursuit commences while the foreign ship is in the contiguous zone, then it may only be undertaken if there has been a violation of the rights for the protection of which the Zone was established. The right may similarly commence from the archipelagic waters. In addition, the right will apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf (including safety zones around continental shelf installations) of the relevant rules and regulations applicable to such areas.

Hot pursuit only begins when the pursuing ship has satisfied itself that the ship pursued or one of its boats is within the limits of the territorial sea or, as the case may be, in the contiguous zone or economic zone or on the continental shelf. It is essential that prior to the chase a visual or auditory signal to stop has been given at a distance enabling it to be seen or heard by the foreign ship and pursuit may only be exercised by warships or military aircraft or by specially authorized government ships or planes. The right of hot pursuit ceases as soon as the ship pursued has entered the territorial waters of its own or a third state. The International Tribunal for the Law of the Sea has emphasized that the conditions laid down in article 111 are cumulative, each one of them having to be satisfied in order for the pursuit to be lawful. In stopping and arresting a ship in such circumstances, the use of force must be avoided if at all possible and, where it is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances (I’m Alone case, 3RIAA, p.1609, 1936).
Collisions

Where ships are involved in collisions on the high seas, article II of the High Seas Convention declares, overruling the decision in the *Lotus* case, that penal or disciplinary proceedings may only be taken against the master or other persons in the service of the ship by the authorities of either the flag state or the state of which the particular person is a national. It also provides that no arrest or detention of the ship, even for investigation purposes, can be ordered by other than the authorities of the flag state. This was reaffirmed in article 97 of the 1982 Convention (Shaw, 2008).

4.17 Treaty Rights and Agreements

Churchill and Lowe (1988) In many cases, states may by treaty permit each other’s warships to exercise certain powers of visit and search as regards vessels flying the flags of the signatories to the treaty. For example, most of the agreements in the nineteenth century relating to the suppression of the slave trade provided that warships of the parties to the agreements could search and sometimes detain vessels suspected of being involved in the trade, where such vessels were flying the flags of the treaty states. The Convention for the Protection of Submarine Cables of 1884 gave the war ships of contracting states the right to stop and ascertain the nationality of merchant ships that were suspected of infringing the terms of the Convention, and other agreements dealing with matters as diverse as arms trading and liquor smuggling contained like powers. Until recently, the primary focus of such activities in fact concerned drug trafficking. However, the question of the proliferation of weapons of mass destruction (WMD) is today of great importance (Byers, M. 2004). This issue has been tackled by a mix of international treaties, bilateral treaties, international cooperation and Security Council action. Building on the Security Council statement in 1992 identifying the proliferation of WMD as a threat to international peace and security, the US announced the Proliferation Security Initiative in May 2003 (S/23500, 31 January, 1992). A statement of Interdiction Principles agreed by participants in the initiative in September 2003 provided for the undertaking of effective measures to interdict the transfer or transport of WMD, their delivery systems and related materials to and from states and non-state actors of proliferation concern. Such measures were to include the boarding and search of any vessel flying the flag of one of the participants, with their consent, in internal waters, territorial seas or beyond the territorial seas, where such vessel is reasonably suspected of carrying WMD materials to or from states or non-state actors of proliferation concern. In addition, the US has
signed a number of bilateral WMD interdiction agreements, providing for consensual boarding of vessels.

In a further development, Security Council resolution 1540 (2004) required all states inter alia to prohibit and criminalize the transfer of WMD and delivery systems to non-state actors, although there is no direct reference to interdiction. In addition, a Protocol adopted in 2005 to the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation provides essentially for the criminalization of knowingly transporting WMD and related materials by sea and provides for enforcement by interdiction on the high seas.

4.18 Pollution

Brown (1979), Churchill and Lowe (1988), O’Connel (1971) Article 24 of the 1958 Convention on the High Seas called on states to draw up regulations to prevent the pollution of the seas by the discharge of oil or the dumping of radioactive waste, while article I of the Convention on the Fishing and Conservation of the Living Resources of the High Seas, of the same year, declared that all states had the duty to adopt, or cooperate with other states in adopting, such measures as may be necessary for the conservation of the living resources of the high seas. Although these provisions have not proved an unqualified success, they have been reinforced by an interlocking series of additional agreements covering the environmental protection of the seas.

The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, signed in 1969 and in force as of June 1975, provides that the parties to the Convention may take such measures on the high seas:

as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences (Shaw, 2008:621).

This provision came as a result of the Torrey Canyon incident in 1967 in which a Liberian tanker foundered off the Cornish coast, spilling massive quantities of oil and polluting large stretches of the UK and French coastlines (Churchill and Lowe 1988). As a last resort to prevent further pollution, British aircraft bombed the tanker and set it ablaze. The Convention on intervention on the High Seas provided for action to be taken to end threats to the coasts of states, while the Convention on Civil Liability for Oil Pollution
Damage, also signed in 1969 and which came into effect in June 1975, stipulated that the owners of ships causing oil pollution damage were to be liable to pay compensation.

The latter agreement was supplemented in 1971 by the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage which sought to provide for compensation in circumstances not covered by the 1969 Convention and aid ship owners in their additional financial obligations.

These agreements are only a small part of the web of treaties covering the preservation of the sea environment. Other examples include the 1954 Convention for the Prevention of Pollution of the Seas by Oil, with its series of amendments designed to ban offensive discharges; the 1972 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft and the subsequent London Convention on the Dumping of Wastes at Sea later the same year; the 1973 Convention for the Prevention of Pollution from Ships; and the 1974 Paris Convention for the Prevention of Marine Pollution from Land-Based Sources.

Under the 1982 Convention nearly fifty articles are devoted to the protection of the marine environment. Flag states still retain the competence to legislate for their ships, but certain minimum standards are imposed upon them (Article 211). It is also provided that states are responsible for the fulfillment of their international obligations concerning the protection and preservation the marine environment and are liable in accordance with international law. States must also ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief regarding damage caused by pollution of the marine environment by persons under their jurisdiction (Article 235).

States are under a basic obligation to protect and preserve the marine environment (Article 192). Article 194 of the 1982 Convention also provides that:

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or
control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

(a) the release of toxic, harmful, or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;

(b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;

(c) pollution from installations and devices used in exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;

(d) pollution from other installations and devices operating in the marine environment, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

4. In taking measures to prevent, reduce or control pollution of the marine environment, states shall refrain from unjustifiable interference with activities carried out by other states in the exercise of their rights and in pursuance of their duties in conformity with this Convention (Case 459/03, Commission v Ireland, 45 ILM, 2006:1074).

4.19 Straddling stocks

Churchill and Lowe 1988 the freedom to fish on the high seas is one of the fundamental freedoms of the high seas, but it is not total or absolute. The development of exclusive economic zones has meant that the area of high seas has Shrunk appreciably, so that the bulk of fish stocks are now to be found within the economic zones of coastal states. In addition, the interests of such coastal states have extended to impinge more clearly upon the regulation of the high seas.

Article 56(1) of the 1982 Convention provides that coastal states have sovereign rights over their economic zones for the purpose of exploring and exploiting, conserving and managing the fish stocks of the zones concerned. Such rights are accompanied by duties as to
conservation and management measures in order to ensure that the fish stocks in exclusive
economic zones are not endangered by over-exploitation and that such stocks are maintained
at, or restored to, levels which can produce the maximum sustainable yield. Where the same
stock or stocks of associated species occur within the exclusive economic zones of two or
more coastal states, these states shall seek either directly or through appropriate sub-regional
or regional organizations to agree upon the measures necessary to co-ordinate and ensure the
conservation and development of such stocks. Article 116(b) of the 1982 Convention states
that the freedom to fish on the high seas is subject to the rights and duties as well as the
interests of coastal states as detailed above, while the 1982 Convention lays down a general
obligation upon states to co-operate in taking such measures for their respective nationals as
may be necessary for the conservation of the living resources of the high seas and a variety of
criteria are laid down for the purpose of determining the allowable catch and establishing
other conservation measures (Shaw 2008).

A particular problem is raised with regard to straddling stocks, that is stocks of fish that
straddle both exclusive economic zones and high seas, for if the latter were not in some way
regulated, fishery stocks regularly present in the exclusive economic zone could be depleted
by virtue of unrestricted fishing of those stocks while they were present on the high seas.
Article 63(2) of the 1982 Convention stipulates that where the same stock or stocks of
associated species occur both within the exclusive economic zone and in an area beyond and
adjacent to the zone (i.e. the high seas), the coastal state and the states fishing for such stocks
in the adjacent area shall seek, either directly or through appropriate sub-regional or regional
organizations to agree upon the measures necessary for the conservation of these stocks in the
adjacent area.

The provisions in the 1982 Convention, however, were not deemed to be fully
comprehensive (Burke 1993) and, as problems of straddling stocks grew more apparent, a
Straddling Stocks Conference was set up in 1993 and produced an agreement two years later.
The Agreement emphasizes the need to conserve and manage straddling fish stocks and
highly migratory species and calls in particular for the application of the precautionary
approach (Article 5 and 6 of the Straddling Stocks Agreement). Coastal states and states
fishing on the high seas shall pursue co-operation in relation to straddling and highly
migratory fish stocks either directly or through appropriate sub-regional or regional
organizations and shall enter into consultations in good faith and without delay at the request
of any interested state with a view to establishing appropriate arrangements to ensure
conservation and management of the stocks. Much emphasis is placed upon sub-regional and regional organizations and article 10 provides that in fulfilling their obligation to co-operate through such organizations or arrangements, states shall inter alia agree on measures to ensure the long-term sustainability of straddling and highly migratory fish stocks and agree as appropriate upon participatory rights such as allocations of allowable catch or levels of fishing effort. In particular, the establishment of co-operative mechanisms for effective monitoring control, surveillance and enforcement, decision-making procedures facilitating the adoption of such measures of conservation and management, and the promotion of the peaceful settlement of disputes are called for. The focus in terms of implementation is upon the flag state. Article 18 provides that flag states shall take such measures as may be necessary to ensure that their vessels comply with sub-regional and regional conservation and management measures, while article 19 provides that flag states must enforce such measures irrespective of where violations occur and investigate immediately any alleged violation. Article 21 deals specifically with sub-regional and regional co-operative in enforcement and provides that in any area of the high seas covered by such an organization or arrangement, a state party which is also a member of participation in such an organization or arrangement may board and inspect fishing vessels flying the flag of another state party to the Agreement. This applies whether that state party is or is not a member of or a participant in such a sub-regional or regional organization or arrangement. The boarding and visiting powers are for the purpose of ensuring compliance with the conservation and management measures established by the organization or arrangement. Where, following a boarding and inspection there are clear ground for believing that a vessel has engaged in activities contrary to the relevant conservation and management measures, the inspecting state shall secure evidence and promptly notify the flag state. The flag state must respond with three working and either fulfill its investigation and enforcement obligations under article 19 or authorize the inspecting state to investigate. In the later case, the flag state must then take enforcement action or authorize the inspecting state to take such action. Where there are clear grounds for believing that the vessel has committed a serious violation and the flag state has failed to respond or take action as required, the inspectors may remain on board and secure evidence and may required, the inspectors may remain on board and secure evidence and may require the master to bring the vessel into the nearest appropriate port (Article 22). Article 23 provides that a port state has the right and duty to take measures in accordance with international law to promote the effectiveness of sub-regional, regional and global conservation and management measures. One of the major regional organizations existing
in this area is the North Atlantic Fisheries Organization (NAFO), which came into being following the Northwest Atlantic Fisheries Convention, 1978. The organization has established a Fisheries Commission with responsibility for conservation measures, in the area covered by this Convention. The European Community is a party to the Convention, although it has objected on occasions to NAFO’s total catch quotas and the share-out of such quotas among state parties. In particular, a dispute developed with regard to the share-out of Greenland halibut, following upon a decision by NAFO to reduce the EC share of this fishery in 1995 (Davies, P.G 1995). The EC formally objected to this decision using NAFO procedures and established its own halibut quota, which was in excess of the NAFO quota. In May 1994, Canada had amended its Coastal Fisheries Protection Act 1985 in order to enable it to take action to prevent further destruction of straddling stocks and by virtue of which any vessel from any non fishing at variance with good conservation rules could be rendered subject to Canadian action. In early 1995, regulations were issued in order to protect Greenland halibut outside Canada’s 200-mile limit from overfishing. On 9 March 1995, Canadian officers boarded a Spanish vessel fishing on the high seas on the Grand Banks some 245 miles off the Canadian coast. The captain was arrested and the vessel seized and towed to a Canadian harbour. Spain commenced an application before the International Court, but this failed on jurisdictional grounds (ICJ Reports 1998). In April 1995, an agreement between the EC and Canada was reached, under which the EC obtained an increased quota for Greenland halibut and Canada stayed charges against the vessel and agreed to repeal the provisions of the regulation banning Spanish and Portuguese vessels from fishing in the NAFO regulatory area. Improved control and enforcement procedures were also agreed (European Commission Press Release, WE/15/95;20 April 1995). Problems have also risen in other areas: for example, the ‘Donut Hole’, a part of the high seas in the Bering Sea surrounded by the exclusive economic zones of Russia and the US, (The convention on the Conservation and Management of Pollock Resources in the Central Bering sea, 1994 ) and the ‘Peanut Hole’, a part of the high seas in the Sea of Okhotsk surrounded by Russia’s economic zone. In 2001, the Convention on the Conservation and Management of Highly Migratory Fish St9.cks. in the Western and Central Pacific Ocean was signed. This agreement establishes a Commission to determine inter alia the total allowable catch within the area and to adopt standards for fishing operations (International Convention for the Conservation Atlantic Tuna, 1966; the Convention for the Conservation of Southern Bluefin Tuna, 1993 and Indian Ocean Tuna Commission Agreement,1993).
4.20 Nigeria as a Maritime

Nigeria attained independence in 1960 with a land mass of 923,770 km$^2$ which is about four times the size of the United Kingdom. Her estimated population in 1992 was 108.5 million, more than all the sixteen member states of ECOWAS.

Nigeria is centrally and strategically located on the Gulf of Guinea, that part of the Atlantic Ocean indenting the West Coast of Africa between Cape Palmas in Liberia and Cape Lepez in Gabon (Figure 4.2).

Nigeria occupies the area between latitude 4°16’-152’N and longitude 2°49’-14°37’E. An EEZ of 200 nautical miles adjacent to the territorial sea gives Nigeria a sea area of about 210,900 km$^2$ in exercise of sovereign rights for the purpose of exploring and exploiting protecting and managing the natural resources (Living and non-living) of the seabed super adjacent waters. Nigeria’s continental shift of approximately 41000 km$^2$ is narrow in the West (8-15 nautical miles) and relatively broad off the Niger Delta and the eastern flank at about 43 nautical miles. The 200-metre contour line of the submarine extension of the shelf marks the outer edge of the continental shelf (Figure 4.3).

The major geomorphic features of Nigeria’s continental shelf are typical of the Avon, Mahin and Calabar Cayons (Figure 4.4) and are found within four main geomorphic units (Figure 4.5) with dead holocene coral banks running parallel to the coastline occurring in water depths of between 80-1 00 metres (Dublin-Green & Tabor, 1992) Sand bars also occur in the inner shelf especially off river mouths and the deep seated faults of the Romanche chain and charot feature which originate in the Mid-Atlantic edge.
The marine environment and its resources have invaluable implications for Nigeria’s economy and military strategy. With a naval strength of about 6,000 men in addition to an amphibious wing of the army, Nigeria is perhaps the biggest naval power in black Africa in terms of manpower. Apart from this, other socio-economic indicators show that Nigeria’s leading position not only in West and Central Africa Sub-regions but in the entire African continent are not in doubt. Thus, Nigeria could rightly be described as a sub-regional or continental maritime power.

4.21 Nigeria’s Ocean Space

As pointed out earlier, a coastline of 415 nautical miles provides Nigeria with potential claim of political and economic jurisdiction of sea area of 4,980 square nautical miles as far as the provisions of UNCLOS III are concerned. This area, it has been argued, can also be extended to about 80,000 square nautical miles or 210,900km² in terms of functional jurisdiction as per the doctrines of continental shelf and EEZ which provide an additional area of sea for the purpose of exploration and exploitation of the resource of the seabed and subsoil of the submarine area of the zones. However, this description of Nigeria’s ocean space appears more hypothetical than real, going by the enclosed nature of the Gulf of Guinea and the number of countries sharing the sea area of the Gulf (Figure 4.6). Apparently, there is no clear delimitation of maritime boundaries among the countries sharing the Gulf of Guinea. Thus, Nigeria’s ocean space from a superficial view may extend to include not only that of Sao Tome and Principe but may also cover the Island of Fernando Po and hence Equatorial Guinea’s EEZ and CS.
FIG. 4.2 NIGERIA'S STRATEGIC LOCATION IN THE GULF OF GUINEA INDICATING BOUNDARIES IN LONGITUDES AND LATITUDES

Source: http://geography.about.com/library/cia/blcnigeria.htm
Besides, Equatorial Guinea is separated from Nigeria by a 55-nautical-mile (100 kilometers) sea distance, presupposing that the delimitation of both EEZ and CS will apply in the territorial seas of both countries. While there are no records to show the extent of the CS of Fernando Po, Nigeria’s CS along the Calabar River (the closest part of Nigeria’s territory to Fernando Po) is 40 nautical miles towards the sea. Generally, Nigeria’s CS ranges from 26 kilometers off Lagos to 56 kilometers off Cape Formoso and increases to about 64 kilometers off Calabar (Table 4.2). Therefore, its limit of 40 nautical miles towards Fernando Po appears very close to the territorial sea of Equatorial Guinea and much within her contiguous

Table 4.1

<table>
<thead>
<tr>
<th>Nigerian’s Economic Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
</tr>
<tr>
<td>GDP</td>
</tr>
<tr>
<td>National Budget</td>
</tr>
<tr>
<td>Exports</td>
</tr>
<tr>
<td>Imports</td>
</tr>
<tr>
<td>Per Capital Income</td>
</tr>
<tr>
<td>Foreign Reserve</td>
</tr>
<tr>
<td>Gold Reserve</td>
</tr>
</tbody>
</table>

FIG 4.4: MAJOR GEOMORPHIC FEATURES OF NIGERIA'S CONTINENTAL SHELF (AFTER DUBLIN GREEN)

Source: http://www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf
FIG 4.6: MAP OF PARTS OF WEST AFRICA SHOWING UNDELIMITED MARITIME ZONE IN NIGERIA

The same goes with the issue of overlapping claims of EEZ which each country is entitled to claim, especially considering the fact that Equatorial Guinea is divided into two portions (mainland and island) which are separated at the nearest point of a 90 - nautical-mile sea distance. According to Article 46 of UNCLOS III, the two portions are not only entitled to territorial seas but also to other zones. This means that the territorial sea of Equatorial Guinea, putting the two portions (mainland and island) together, will extend 90 nautical miles seaward in the gulf more than if the mainland alone were to claim a similar territorial sea.

Secondly, an appropriate limit of Nigeria’s EEZ and CS will pass midway between the two islands of Sao Tome and Principe (which form an independent state and separated by a sea distance of 120 nautical miles from the west coast of Rio Muni, mainland Equatorial Guinea), thus creating another overlapping claim.

Deliberations on maritime boundary delimitation between Nigeria and Benin Republic which started over the years have not been concluded and so the boundary has not been marked by bouys controversies may manifest over the application of median or equidistance principles in the delimitation of maritime of maritime boundaries as it is said that Nigeria may lose an estimated sea area of the size of Lagos state if the equidistance principle is applied but may gain if the median line is applied (Langaraar, 1985).

Table 4.2: Limits of Nigeria’s Continental Shelf (slope deeper than 1:10)

<table>
<thead>
<tr>
<th>Offshore Area</th>
<th>Distance in Nautical Miles</th>
<th>Depth in Metres at edge of shelf</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rivers St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bartholomew</td>
<td>49</td>
<td>280</td>
</tr>
<tr>
<td><strong>River Qpobo</strong></td>
<td>44</td>
<td>200</td>
</tr>
<tr>
<td>River Calabar</td>
<td>40</td>
<td>90</td>
</tr>
<tr>
<td>River Num</td>
<td>39</td>
<td>150</td>
</tr>
<tr>
<td>River Dodo</td>
<td>36</td>
<td>220</td>
</tr>
<tr>
<td>River Escravos</td>
<td>31</td>
<td>270</td>
</tr>
<tr>
<td>Off Lagos</td>
<td>15</td>
<td>120</td>
</tr>
</tbody>
</table>

Source: After Davies, 1985
Generally, maritime boundary delimitation between adjacent or opposite states originate from land, coastlines and especially baselines. Thus, the maritime boundaries between two or more states usually derived from the history of land boundaries or some points of convergence on a body of water. This makes it possible to explain the existing maritime boundary between states from the existing and boundaries. A number of articles of UNCLOS III explains the modalities for establishing baselines for boundary delimitation. Indeed, the baselines from which the breadth of territorial seas of the countries along the Gulf of Guinea are measured are not controversial except that a dispute of principle exists between Nigeria and Cameroon over the division of the land and estuarine waters and islands of the Cross River and the associated territorial seas in the Bakassi Peninsula. This dispute and the problems which might arise from overlapping claims between Nigeria and other maritime neighbours are serious issues which the country’s marine policy must seek to address.

It goes without saying that neither Nigeria nor any of her maritime neighbours has charted and publish charts of her sea waters. African states, therefore, rely on colonial admiralty charts which are not only inadequate but do not reflect current legislations and navigational needs let alone being consistent with national policy objectives. UNCLOS III demands that lines of delimitation of national maritime zones should be shown on charts drawn in accordance with the rules governing maritime boundaries as provided for in the convention. This makes it easier for mariners to know their positions when they are approaching any coastal state, archipelago or island. Delimitation and charting provide the physical description of the area over which a coastal state lays claims. On the other hand they mark the boundaries between national regimes of sea and the high seas for other states and, on the other hand, the boundaries between national zones of opposite and/or adjacent states.

4.22 Nigeria’s Maritime Interests

As we have seen in Chapter Three UNCLOS III provides a comprehensive guide for virtually all ocean uses and activities including conflicts which may arise from such uses and activities. Despite the overemphasis on international cooperation (bilateral, regional and global), national efforts provide the major building blocks for all other linkages in respect of achieving optimum utilization of the opportunities provided by the sea and its attendant legal instrument. In the remaining part of this Chapter we shall identify and review Nigeria’s ocean interests which her policy strategies should seek to achieve.
Like most coastal states, Nigeria’s maritime interests cover a variety of ocean needs including:

(i) Exploration and exploitation of the resources of the sea

(ii) Transport and Communication;

(iii) Military and Strategic interests;

(iv) Marine Scientific Research and transfer of marine technology;

(v) Waste disposal, marine environment protection and management;

(vi) Coastal zone management;

(vii) Enforcement of measurement and

(viii) Tourism and recreation

**Exploration and Exploitation of the Resources of the Sea**

The exploration and Exploitation of the Resources of the Sea The exploration and exploitation of ocean resources is one of the major reasons for the growing demands for national appropriation of parts of the sea and the rush for the expanded ocean enclosure. No country wants to be left out of the share of world’s ocean resources which are estimated to worth billions of dollars. This informs the struggle over national claims by territorialists, continental shelf and EEZ, and all sorts of struggles over powers and functions in the International Seabed Authority (ISA), the Council and the Enterprise. Nigeria’s continental shelf which narrows in the West between 8-15 nautical miles but relatively widens off the Niger Delta to the eastern flank to about 43 nautical miles and its geomorphic features mentioned in section 4.3 of this chapter (Figure 4.4) have vast implication for the country’s economic and military strategy, most especially the exploration and exploration of living and non-living resources of the area.

The living resources of the sea cover a variety of algae, phytoplankton and several animal life that feed on them. These comprise fish and marine mammals and reptiles. Shell fish such as shrimps, lobsters, crabs and mollusks are major sources of protein in Nigeria. The annual fish yield potentials in Nigeria is 512,360 metric tons whereas fish demand is over one million metric tons (Tables 4.3 and 4.4) (Tobor, 1993). Nigeria’s average fish import per annum is about 292,748 metric tons and with increased population of the
country, Nigeria’s fish demand will increase to about two million metric tons before the year 2C20 (See Table 4.4). The current fish and fishery product deficit of about 750,000 metric tons indicates that Nigeria is the biggest fish market in Africa and additional efforts through bilateral or regional agreements with other African coastal states for access into fish resources of their EEZs may be a viable option. UNCLS III provides that coastal states without the capacity to harvest the living resources of their EEZ shall, through agreements or other arrangements, give other states access to the surplus of the allowable catch.
Table 4.3: Annual Fish Potentials in Nigerian Waters

<table>
<thead>
<tr>
<th>Source</th>
<th>Annual yield potentials (mt)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rivers and flood plain</td>
<td>226,550</td>
</tr>
<tr>
<td>Lake Chad</td>
<td>24,500</td>
</tr>
<tr>
<td>Kainji Lake</td>
<td>8,500</td>
</tr>
<tr>
<td>Other National Lakes and Reservoirs</td>
<td>35,000</td>
</tr>
<tr>
<td>Coastal and Brackish waters</td>
<td>190,000</td>
</tr>
<tr>
<td>inshore Waters (0-50m) offshore waters</td>
<td>16,000</td>
</tr>
<tr>
<td>(a) Demersal Resources 50-200m</td>
<td>6,730</td>
</tr>
<tr>
<td>(b) Pelagic resources</td>
<td>9,640</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>512,360MT</strong></td>
</tr>
</tbody>
</table>

Source: After Tobor, 1993

To maintain renewability of living resources of the sea UNCLOS III also provides that coastal states shall take adequate conservation and management measures to avoid overfishing through the scientific determination of maximum sustainable yield (MSY), optimum yield (OY), surplus (S), total allowable catch (TAC) as well as other regulatory measures in the EEZ. These measures are only meaningful and effective if they take account of the biological factors of fish stocks. Fisheries renewability and their biological environment provide a balance between natural mortality and reproduction to allow a stable fish population. Therefore, open access to fishery resources, without regulation can lead to overfishing, biological disequilibrium and economic waste. Although it is generally believed that Nigerian waters are relatively disadvantaged in some fish stocks (for example, tuna), a lot of offshore fishes are said to be unexploited despite attempts by the National Institute for Oceanographic and Marine Research (NIOMR) to survey and chapter fisheries.
Table 4.4: Nigeria’s Fish Demand Projections 1998-2015

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Estimated Population (Millions)</th>
<th>Field Demand(mt)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>102.513</td>
<td>1.20459</td>
</tr>
<tr>
<td>1999</td>
<td>104.689</td>
<td>1.25626</td>
</tr>
<tr>
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</tr>
<tr>
<td>2001</td>
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<td>1.10014</td>
</tr>
<tr>
<td>2002</td>
<td>111.495</td>
<td>1.33794</td>
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<tr>
<td>2003</td>
<td>113.861</td>
<td>1.36633</td>
</tr>
<tr>
<td>2004</td>
<td>116.277</td>
<td>1.39532</td>
</tr>
<tr>
<td>2005</td>
<td>118.744</td>
<td>1.42493</td>
</tr>
<tr>
<td>2006</td>
<td>121.264</td>
<td>1.45517</td>
</tr>
<tr>
<td>2007</td>
<td>123.837</td>
<td>1.48605</td>
</tr>
<tr>
<td>2008</td>
<td>126.465</td>
<td>1.51758</td>
</tr>
<tr>
<td>2009</td>
<td>129.149</td>
<td>1.54978</td>
</tr>
<tr>
<td>2010</td>
<td>131.889</td>
<td>1.56267</td>
</tr>
<tr>
<td>2011</td>
<td>134.688</td>
<td>1.61625</td>
</tr>
<tr>
<td>2012</td>
<td>137.546</td>
<td>1.65055</td>
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<tr>
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<td>140.464</td>
<td>1.68557</td>
</tr>
<tr>
<td>2014</td>
<td>143.445</td>
<td>1.72134</td>
</tr>
<tr>
<td>2015</td>
<td>146.489</td>
<td>1.75787</td>
</tr>
</tbody>
</table>

Source: Adopted from Tobor, 1992 and 1993

Resources offshore Nigeria since the 1980s the exact sustainable yields have not been determined (Amadi, 1982).

The seabed and subsoil beneath Nigerian coastal waters are laden with numerous minerals that are crucial to the country’s economic development. These minerals include petroleum and gas, sand and gravel, limestone, manganese nodules, phosphorate, glauconite, etc. Of these minerals, however, only petroleum and gas, sand and gravel are being exploited in substantial quantities. The oil industry is the mainstream of Nigeria’s economy as it accounts for over 90% of the country’s foreign earnings. As mentioned earlier, the Nigerian
CS where exploration and exploitation of various kinds of minerals are possible ranges in width from about 15 to 49 nautical miles off Lagos and Calabar, respectively (See Table 4.2).

Since the first successful oil rig (Okan 1) was dug in 1963, 1963 offshore production platforms have been constructed with as many as 500 oil and gas wells tied for production. (Petroleum Economist Vol III, 1985) Current reserves of Nigeria’s oil are estimated at about three billion tons or over 19 billion barrels and its gas reserves are in excess of 110 trillion cubic feet. Nigeria is already noted as a substantial gas producer with output from oil fields totaling up to 8.14 billion cubic metres. Of this volume, however, only 157 million cubic metres is used commercially while 6.57 billion cubic metres (about 80.2%) is flared (Newswatch November, 10, 1997). To reduce gas flaring, the first major associated gas utilization project (the Escravos Gas Project (EGP)) was commissioned on November 5, 1997. In addition to the onshore components this project has a Gas Gathering and compression Platform (GGCP) and a Liquefied Petroleum Gas Floating Storage and off-loading Platform (LPG - FSO) located offshore about 12 kilometers in six metres of water and 32 kilometers in about 42 metres of water respectively. It is expected that by the end of 1999 the project will reduce gas flaring in Nigeria by about 50% and a corresponding production of greenhouse gases by nearly 100,000 tons.

In addition to petroleum and gas the commercial mining of sand and gravel along the submerged beaches of Nigeria is a major economic activity. It is estimated that about 1.33 billion tons of sand worth over N2.2 billion exist offshore the area between Badagry and Lagos. Salt production from sea water in coastal settlement along the entire coastlines of Nigeria is also an important economic activity. Research also suggests the occurrences of economically viable deposits of place minerals such as phosphorites, gluconite, gold, platinum, monozite, tatinum, etc, in, off-shore areas of Nigeria. However, the exact analysis and commercial estimates of these minerals have not been determined even though geological analysis of the occurrences of such minerals in other parts of Africa, couple with the geology of continental Nigeria, indicate the presence of similar minerals in marine beaches and continental Nigeria (Durblin-Green & Tobor, 1990). These minerals are associated with the mechanical weathering of various igneous, sedimentary and metamorphic rocks of continental Nigeria.
Therefore, considering the importance of the living and non-living resources of the
sea economic development of Nigeria, it is one of Nigeria’s ocean interest to evolve
strategies that would enhance optimum utilization of such resources.

**ii. Transport and Communication**

Transport and communication are the traditional uses of the sea. Modern international
trade highly depends on transport. Nigeria’s participation in maritime dated back to the 15th
century after the Portuguese explorers had established contacts between West Africa and
Europe. Initially the Portuguese trading interests was in exotic products such as ivory, pepper,
gold and some locally manufactured textile materials. This was shifted to the infamous
slave/triangular trade whereby human captives were transported from West Africa to the
West Indians and United States to work on plantations and the products of these farms (sugar
and cotton) were transported to Europe. Dike characterized Nigeria’s pre-twentieth trade into
three:

- (a) Initial period of trade in commodities from 15th to the 16th century;
- (b) The long-age slave trade to the early 19th century, and;
- (c) The immediate pre-colonial re-establishment of commodity trade, especially in forest
  products, palm oil, rubber and gum (Ogundana, 1983).

With direct colonization, sea-borne trade nursed and weaned the colonial economy.
At independence Nigeria maintains non-discriminatory trade relations among all nations of
the world and has entered into bilateral and multilateral trade agreement with several
countries of Europe, Americas, Asia, the Far East and Africa. The volume of this trade has to
be accompanied by the establishment of sea pots through which it is channeled. The period
between 1910 and 1950 was considered as the era of port concentration in Nigeria while the
period after 1950 is one of diffusion of ports. During the colonial era of port concentration,
there was a reduction in the absolute number of ports and a considerable alteration in the
status of functioning ports. By 1950, for example, there were only seven compared to
fourteen in 1910. As a number of traditional ports ceased to function, there was a
preponderant concentration of traffic in Lagos and Port-Harcourt. Today, Nigeria has one
inland functioning port at Onitsha, and the remaining functioning ones, including the Lagos
ports (Apapa, Tin Can and Pan Atlantic) Warri, Port Harcourt Calabar, Bonny, Burutu, Onne
and Koko, are sea port. An Export Promotion Processing Zone (EPZ) was recently established at the port of Calabar. These ports support the country’s flourishing import-export trade and are access points to Niger and Chad’s seaborne trade.

There are many canals, creeks and rivers in the coastal zone, particularly in the Delta, which, at times, provide the only communication links between areas and settlements on the one hand. This water transport system is vital to the country’s economy in terms of national and international passenger traffic and goods haulage. Nigerian ports handle not less than 60% of the total maritime trade of West and Central Africa. Therefore, maintaining sealanes of communication is very essential because any dispute to Nigeria’s seaborne trade and communication would undoubtedly lead the collapse of her economy and would also affect the economies of other countries in the West and Central African sub regions.

Nigeria has a comprehensive national shipping policy and an implementation agency, the National Maritime Authority (NMA). The major activities of the authority include:

(i) Allocation of routes and cargo (cargo control and monitoring) in Nigeria’s import-export trade;

(ii) Training and provision of technical support for seafarers;

(iii) Direct financial assistance for ship building and acquisition;

(iv) Generation of foreign exchange for the economy (Osholowu, 1994)

The enactment of the shipping policy decree an establishment of the NMA as an implementation agency has been considered as “a reflection of government resolve to close the gap in maritime development in Nigeria as a developing country and the developed countries”. It also shows the recognition by government of the importance of the shipping industry to the Nigerian economy, especially in terms of outflow and inflow of foreign exchange. Nigeria’s maritime trade carries an annual tonnage of between 4-5 million registered tons with crude oil shipment covering the bulk. As would be seen in the next chapter, although the National Shipping Policy seeks to ensure that national carriers lift up to 40% of cargoes registered in Nigeria’s external trade, it is still believed that only 10% of such cargoes are handled by national carriers (Amadi, 1991).
(iii) **Military and Strategic Interests**

A coastal state relies on its seapower to obtain access to the sea, to protect navigation essential for commerce and protect exploration and exploitation equipment. In short, seapower provides national security from the maritime perspective.

Nigeria’s Continental shelf and EEZ contain over 80% of her oil and natural gas. Nigeria exports over 85% of her crude oil and import more than 90% of strategic minerals and other needs essential to national development.

It is the responsibility of the Navy to protect the country’s territorial waters, EEZ and offshore assets; sealanes of trade and communication and strategic installations and to safeguard the country’s interests in the contiguous waters; protect the mainland and island; and generally guard the state against gunboat diplomacy.

The increasing roles of the navy in non-military operations such as anti-bunkering, anti-piracy and antipollution operations are no longer debatable. According to U. Roy Ogwu, the political and strategic need to address Nigeria’s maritime security issues in broader terms has become an imperative and any review of the country’s naval strategy must necessarily include her strategic environments. As she puts it:

“For a country that relies on Seaborne trade for its economic health, the security of the South Atlantic becomes critical for survival. A naval fleet of the future, should, therefore a strategic tool for exerting both military and political influence in the region. It should be a vital part of the balance of naval power in the South Atlantic Ocean, an especially integral part of our national economy. (Ogwu, 1997:61)

Nigeria’s ability to achieve military and strategic objectives in the sea therefore depends on the state of preparedness of the military and how the navy has been able to keep surveillance over the country’s ocean jurisdictional zones. Similarly, the country desire to project her image in the West and Center African sub-regions or any international assignment also depends on how she is able to acquire a sea – facing capability. This has continued to pre-occupy Nigeria’s defence analysts in recent years leading to reconceptualization of her maritime defence strategy.
(iv) Marine Scientific Research and Transfer of Technology

UNCLOS III provides a comprehensive opportunity for regulation of marine scientific research, both in coastal states’ jurisdictional and non-jurisdictional areas the sea. Marine scientific research is any study of the sea “whose objectives to be increase knowledge about the marine environment (Wang, 1992). Marine scientific research has assumed increasing role since the Second World War along with a better of its practical application in both resource utilization and military purposes. A great deal of marine scientific research takes place on the continental shelf and the EEZ where the largest quantity of the ocean’s living resources and of the non-living resources (oil and gas) is found.

This made coastal states to insist on consent for conduct of marine scientific research in the continental shelf and the EEZ if the research is non-national. This has become an international legal norm since UNLOS I. According to Article 246 of UNCLOS III, all research in the EEZ and continental shelf requires the consent of coastal states that also have discretionary power to withhold such consent for an arch to be conducted by another state. Freedom to engage in marine scientific search in the high seas is restricted to the water column beyond the limits of the EEZ and thus the seabed and the subsoil thereof where the shelf extends beyond the EEZ. States can conditionally engage in research in this area provided that such research is undertaken “exclusively for peaceful purposes and for the benefit of mankind as a whole”. If the research reaches the stage of ‘prospecting’ or exploring’ the Area, it must be subject to the provisions guiding the exploration and exploitation of the sea (Annex III). States are however called upon to promote international cooperation in marine scientific research in the area by effective dissemination of the results of the research and analysis, through the International seabed Authority (ISA) or other international mechanisms when appropriate (Article 143 (3).

Related to the question of marine scientific research is the issue of transfer of marine technology. The developing nations have fully recognized the importance marine scientific technology to their economic development. Marine technology can serve as an efficient and effective means of bridging the technological gap between the industrialized and less developed nations. That was why the demand for transfer of marine technology to the developing states featured prominently at the negotiation sessions of UNCLOS III as in the agenda of UNCTAD and the World Intellectual Property Organization (WIPO), especially as part of the demand for the international Economic Order (NIEO). The provisions of
UNCLOS III (Articles 4, and Annex II) require anyone engaged in international seabed mining to transfer seabed technology to the enterprise and/or developing countries. In addition, the ISA is expected to train nationals of developing countries in marine technology, technical make technical documentation on seabed mining available, and assist such countries to acquire seabed mining technology.

Part XIV (article 266-728) which deals with the development and transfer of marine technology requires states to cooperate, directly or indirectly, through international organizations in promoting the development of marine science and technology on fair and reasonable terms and conditions. Developing states (like Nigeria) are to negotiate through bilateral and multilateral arrangements for access to marine technology information and data. UNCLOS III also emphasize the need to establish national and regional scientific and technical centers by developing states to stimulate marine scientific research in their states and human resources development through training and education of nationals of technologically poor states to develop the needed human resources (Article 268).

Marine scientific research and technology has vast implication for global economy, the environment, military strategy and politics, both national and internationally (Appendix VII). It therefore has three dimensions: national, regional and global. At the national level, which is our concern in this research, it fundamentally hinges on the strengthening of national infrastructure to foster national and international cooperation. Without national efforts the importation of foreign technology would be a sheer waste as modern high technology cannot be “bought” but can only be “learned”. That is why people argue that considering the amount of service, maintenance, training and upgrading involved in its transfer, each transfer of technology should be a joint venture with the donor and the recipient - the ‘producer’ and the ‘consumer’ (Bourgese, 1996). Thus, having recognized the fundamental importance of marine scientific research and technology, UNCLOS III makes co-operation mandatory and this imposes a source of ‘New International Law of Co-operation’.

Therefore, Nigeria is not only interested in marine scientific research and transfer of marine technology but would also like to authorize and regulate such activities in line with the provisions of the convention. The country is fully aware that she does not possess the know-how to fully explore and exploit the resources of her jurisdictional zones and therefore has to strive for that through the promotion of marine scientific research with foreigners and international or regional organizations to enable her acquire appropriate technology.
Presently, different sorts of research in Nigeria’s ocean space are going on as authorized and regulated by the Federal Ministry of Science and Technology.

There is only one marine scientific research institute, the National Institute for Oceanographic and Marine Research (NIOMR). This institute is grossly underfunded. Similarly, there is only one source of funding to marine scientific research and technology, that of the NMA manpower training, technical support and ship acquisition and building fund which is to be assisted by a proposed Maritime Bank when fully operational. But these programmes are not only at their evolutionary stages but have all been suspended.

(v) Waste Disposal, Marine Environment Protection and Preservation

The oceans are still being used for waste disposals even though modern development has proved the limitation of the sea to absorb waste. As a result authorities have to turn attention to the control of waste-dump into the sea. Coastal states are therefore under national and international obligations in the context of the law of the sea to preserve, conserve and protect the marine environment. In this in context every coastal state is to make laws to discourage all kinds of waste disposal that can be harmful not only to the waters under its jurisdiction but the entire ocean space.

Data on the level of distribution of pollutants in coastal waters of Nigeria is limited to urban industrialized cities where only 20% of the population lives. Micro pollutants observed by researchers from NIOMR in Nigerian inshore and offshore waters include organic waste, trace heavy metals and chlorinated hydrocarbons (Sadik, 1990). Preliminary data on these contaminants will form a good basis for further monitoring by continuous standard measurement and observation of the ocean environment in the entire West African sub region. Various environmental degradations in Nigeria has been estimated at about US$51 10 million per year with contamination accounting for US$1000 million. (World Bank, 1990).

Apart from signing international protocols which deal with marine environment protection, Nigerian laws before the late 1980s did not pay attention to dumping of waste into the sea until the wake of the 1988 incident of dumping of toxic waste at Koko in Delta State. The incidence led to the promulgation of two twin decrees, the Federal Environmental Protection Agency and the Harmful Waste (Special Criminal Provisions) decrees of 1988.
The decrees thus defined Nigerian waters as including any area of sea under the jurisdiction of the Federal Government of Nigeria and prescribe punishment for the discharge of any quantity of hazardous substances into the waters of Nigeria or into the adjoining shorelines.

(vi) Coastal Zone Management

Tropical coastlines are characterized by crushing sandy crashing waves in extensive lagoons. Changes constantly occur in these coasts as a result of the effect of adoption to the biota causing salinity fluctuation of the estuarine waters as well as submergence and exposure to low and high tides. Every organism of marine origin seems to be affected by these changes.

Interestingly, the coastal zone of Nigeria is an open ecosystem linked to the land and sea and hence man in his role as “an epical predator as a factor in environmental degradation and management (Amadi, 1991). Global studies of climatic changes have predicted acceleration of eustatic rise in sea level with disastrous consequences on coastal zones. For example, it was estimated that an increased temperatures of 1.5-4.5°C will give a corresponding sea level rise of 20-140cm before the end of the 20th century.(Awosika et al, 1990). Experts undoubtedly believe that a sea level rise of about one milimetre per year would aggravate the existing ecological problem in Nigeria through accelerated coastal erosion, more persistent flooding, loss of ecologically significant wetlands, increased salination of rivers and ground water aquifers as well as a greater influx of diverse pollutants. The obvious socio-economic impacts of this include:

- The washing away of human settlements;
- Disruption of oil and gas production;
- Dislocation of ports and navigational structures;
- Upsetting the rich fisheries;
- Forcing businesses to relocate; and
- Wiping out of Nigeria’s fledgling coast-based tourism.

Already widespread erosion is occurring along all Nigeria’s coastlines. The annual rate of erosion recorded on Victoria Island, for example, is between 20-30 metres and the
general shoreline retreat across the coastal plain shoreline of Nigeria is alarming (Ibe and Antia, 1983). This has threatened coastal settlements, recreational grounds and oil and gas handling facilities in coastal towns.

Although the Atlantic incursion onto land has been an age-long phenomenon in Nigeria, increased awareness as a result of the concentration of development and population in most coastal towns of Nigeria has led to its recognition as an annual national disaster. Since the 1950s such disasters have been reported in most coastal states with the one in Lagos State occurring more frequent than usual. Sunday Adenike Okude states that despite various government efforts to control and mitigate the impacts the Atlantic upsurge in Nigeria since 1958, the ocean “seems to be winning the battle for ownership of the coastal inhabitants and lands (Okude, 1997) A United Nations Population Fund (UNPF) studies revealed that over 100 villages along the Niger Delta and the mud section of Nigeria’s coastline may be lost to sea level rise with consequent displacement of over 600,000 inhabitants if effective control measures are not taken. The social cost of this human displacement cannot therefore be overlooked.

Unfortunately, the National Policy on Environment and its implementation agency, the Federal Environmental Protection Agency (FEPA) and its state counterparts which were established since 1988, and whose responsibility is to oversee the state of the Nigerian environment, do not consider coastal erosion and the Atlantic upsurge as one of its priorities. Indeed, there is no where the issue of the Atlantic incursion is specifically mentioned in the decree establishing FEPA (as serious national environmental problem). This means that Nigeria is yet to evolve a comprehensive coastal zone management system despite various measures taken to curtail the incursion of the Atlantic in some coastal areas, especially along the Barbeach section of Victoria Island in Lagos since 1958. It is therefore one of Nigeria ocean interests to have such a system which, preferably, should be part and parcel of marine and environmental policy.

(vii) Enforcement of Fiscal Measures and Other Regulations

A number of nefarious activities, some of them often described as ‘piratical’, do occur along Nigerian coasts, territorial waters and the contiguous zone, have grave consequences for the country’s economy, social life, security and its image as a maritime nation. (Akindele and Vogt (ed) 1983). Apart from the constitutional role of the Nigerian Navy in overseeing the security of Nigerian waters, a number of civil security agents have established marine
wings to protect specific interests in their areas of operation. These include the police, customs and in migrations, among others.

Article 33 of UNCLOS III empowers a coastal state to exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations and also to punish infringements of such laws and regulations within the territorial sea and the 24 nautical miles contiguous zone. Analytically, this implies powers of “poke” jurisdiction over both nationals and foreigners operating in the two zones. It is therefore one of Nigeria’s ocean interests to enforce such rules, laws and regulations hence one of the reasons behind the establishment of marine police marine customs and immigration.

(viii) Recreation and Tourism

Coastal zones, the world over, have histories that are linked to the peoples and coastal nations. It is in the coastal towns that important cultural exchanges took place between peoples over centuries, where voyages have began and terminated, treaties and trade agreements signed and sealed, and in short, both good and bad international relations were conducted.

A number of Nigeria coastal towns are culturally, historically and ecologically fascinating. With good management Nigeria can establish a number of recreation or tourist paradises to attract tourists the world over. For example, there is the Karamo waters in Victoria Island where the first Europeans led by a Portuguese exporter, Sequeira, landed in 1472; Badagry in Lagos State and other coastal towns remain the relics of the obnoxious slave trade in Nigeria; Calabar has once held the seat of Government of the Protectorate of Southern Nigeria, and Mary Slessor’s grave is in Calabar; while Opobo and Koko have the monumental palaces of Kings Jaja and Nana, respectively. With proper management and foresight most coastal towns of Nigeria and such historical attractions can enhance Nigeria’s tourism capability.

Added to these is the Nigerian strand natural vegetation of halophyllons, coastal thickets in the areas immediately adjacent the beaches. This is followed by mangrove forests towards the western flank of the Niger Delta. The forests covering about 10,000 square kilometers (Table 4.6) are punctuated by barrier islands between the estuaries of rivers Benin and Forcados and east of the estuary of the Cross River. The forests have wild life and are a home of biologically diverse fauna and flora that can be attractive to tourism. Some of the
well known beaches are those of Badagry, Tarkwa Bay, Victoria Island, Brass, Lekki, Bonny and Qua Iboe beaches. The Lekki Beach, for example, has been developed into a tourist paradise with the construction of private beach holiday resorts. However, the level of facilities these beaches are very poor and dilapidated. With proper planning and good management the present level of facilities in the beach could be expanded to encourage more recreational activities.

Table 4.5: Distribution of Mangrove Vegetation in Nigeria

<table>
<thead>
<tr>
<th>States</th>
<th>Area of mangrove (Sg.Km)</th>
<th>Mangrove in Forest Reserves (Sg.Km)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bendel and Edo</td>
<td>3,470.32</td>
<td>143.75</td>
</tr>
<tr>
<td>Cross River and A/Ibom</td>
<td>721.86</td>
<td>57.19</td>
</tr>
<tr>
<td>Lagos</td>
<td>42.20</td>
<td>3.13</td>
</tr>
<tr>
<td>Ogun</td>
<td>12.18</td>
<td>-</td>
</tr>
<tr>
<td>Ondo and Ekiti</td>
<td>40.62</td>
<td>-</td>
</tr>
<tr>
<td>Rivers and Bayelsa</td>
<td>5,435.96</td>
<td>90.62</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9,723.14</strong></td>
<td><strong>304.69</strong></td>
</tr>
</tbody>
</table>


In this chapter we have tried to give a brief historical account of the evolution of Nigeria as a maritime nation and the problems associated with her ocean space as a developing coastal state. In addition to this, the chapter recaptures the country’s maritime interests which policy directives should seek to achieve and if optimum utilization of ocean space is to be achieved in Nigeria. The list of these interests recounted here is not exhaustive. However, we fervently conceive that any omission would have convenient accommodation in subsequent discussions in chapter five where a critical evaluation of the entire marine policy of the country is undertaken.
CHAPTER FIVE

CONSEQUENCES OF THE LAW OF THE SEA FOR AFRICAN TERRITORIAL WATERS AND HIGH SEAS

5.1 Introduction

Marine policy, as defined earlier, covers a set of goals, directives and intentions formulated by authoritative persons in relation to the marine environment. In this perspective, the analysis of Nigeria’s marine policy should be geared towards establishing the extent to which such directives and intentions achieve desired goals and objectives. There is virtually no coastal state whose government has not officially advocated the desire for full utilization and control of marine resource so that future generation can enjoy the benefits of the oceans. This chapter undertakes a critical evaluation of Nigeria’s marine policy vis-a-vis the guide provided by the law of the sea. It begins with an identification of a model of marine policy analysis which revolves around input-output interactions, the policy analysis network and ends with a critical evaluation and conclusion.

5.2.1 A Model of Analysis

Our model of analysis is one which views marine policy in terms of input-output interactions which assume that a group of input characteristics sets the basis or the policy (Figure 5.1). As defined earlier, inputs are objective quantifiable characteristics from which a policy is developed. These characteristics or attributes are derived from the geographical situation of a country in the formulation of marine policy. They include both marine and non-marine variables such as land, sea, coastline length, seabed area, marine resource, etc (Gamble, 1977).

![Figure 5.1: Marine Policy Model](image-url)
Decisions about the use of marine resources are made by government and they incorporate both government interests and those of other stakeholders. The way policy is made in the ‘processing’ process in the model. This is the way inputs are transformed into actual policy. In the processing section, inputs are moulded, modified, shaped and or even distorted. According to Gamble, the processing section contains, "among other elements, the value system within which the country operates, the bureaucratic structures by which policy is set and implemented, and the decision making processes used in the country". These can be called processing filters. Outputs in this model are elements of public policy. In other words, they are actions and decisional choices or policy goals, directives and intentions of government and the people are expressed in treaties and national legislations. They range from elements such as population, seaborne trade, status and number of marine treaties a country has entered into as well as national laws and regulations. Some of these reflect the relevant aspects of public policy and marine policy in particular.

5.2.2 Marine Policy Network Analysis

In the previous chapter, the major input-output characteristics of Nigeria’s marine policy have been discussed. This section refocuses on some of these characteristics for the purpose of the application of our marine policy analysis model. The significance of this approach is that it allows us to consider some fundamental national characteristics from the inputs through the processing processes of the outputs-marine policy goals, and directives as found in maritime legislations.

5.2.3 Inputs

Nigeria is the largest maritime state in West Africa and the most populous country in Africa. As noted earlier, she has a total land area of 923,770km$^2$ of which about 70% is arable. A coastline of about 850km gives her a potential jurisdictional sea area of about 210,900km$^2$ and a seabed sea area of 42,900km$^2$ in the Gulf of Guinea as far as the principles of 200 nautical miles EEZ and Continental Shelf, respectively, are concerned. The average length and depth of Nigeria’s continental shelf off Lagos to St. Bartholomew is 36 nautical miles and 190 meters, respectively (Table 4.2). The major geomorphic feature (see Figures 4.2 and 4.3) supports a variety of marine economic activities. This makes Nigeria’s marine environment and its resources (see also Chapter Four) of great strategic importance for marine policy planning and implementation.
Like many developing nations, Nigeria faces enormous problems which tend to undermine her chances of economic development. Even though the country has, of recent, come to depend much on international seaborne trade, marine matters compete with other socio-economic problems. The development of the petroleum and manufacturing industries had, over the years, generated the needed capital to attack other economic problems.

The country has many natural resources and a varied climate that support a broad agricultural base. Nigeria’s active participation in the West African sub-regional, African and world affairs has led to "the growth of Nigerian nationalism" in the world, as someone noted.

The above background to input characteristics and the multiplicity of marine resources and the coastal state opportunities, national and international responsibilities as referred to in Chapter Four and the preceding chapters form the inputs which have laid the foundation for marine policy in Nigeria.

5.2.4 Processing

Although Nigeria attained political independence and adopted a republican federal constitution, the country has witnessed less civil rule and has, therefore, been governed through military decrees for most of her 38 years of self government. Legislative and executive powers are vested in the Armed Forces ruling body such as the Armed Forces Ruling Council (AFRC) or the Provisional Ruling Council (PRC) with the Head of State and Commander in Chief of the Armed Forces as Chairman. In addition to the federal ministries, there are a number of statutory corporations and parastatals of importance to the running of administration of the economy. Relevant to marine affairs are the ministries of Defence, Agriculture, Petroleum, Science and Technology, Solid Minerals, Transport, Communications, and Justice; Nigerian Ports Authority (NPA), National Maritime Authority (NMA), Nigerian Shippers’ Council, Nigerian National Petroleum Corporation (NNPC) and a couple of others.

Policy-making begins from a ministry which prepares a memorandum to the Head of State. The task of preparing draft legislation lies with the Federal Ministry of Justice which works closely with the concerned ministry. Once the legislation is agreed upon, the draft law is sent to the military ruling body for ratification after which the Head of State signs it into law. International treaties are merely presented to the body for ratification before they become operational in Nigeria.
As a multi-ethnic country, the transformation of the federal compact into a 36-state structure is designed to achieve a balance of power between the central government and the diverse regional interests in the country. The federal government has exclusive power over such matters as defence, foreign affairs and foreign trade. Concurrent powers of the federal and state governments do exist on education, health, agriculture, public order, and public works and industrial development even though federal authority prevails over that of states in case of conflict. The influence of the federal government over states is exhibited in the overwhelming control of national revenues and the appointment of military governors/administrators for the states.

The central value system in Nigeria since independence is the promotion of national unity and economic development. In the context of the sea and ocean matters, the developments in the United Nations show the importance of the sea as a basic connecting link between nations and continents and also the fact that the sea has the enormous capacity to provide food, scientific data, economic development, and ultimately great security and peace for Nigeria is to focus on a number of clusters. The first is the strategic doctrine which bears on how Nigeria can best promote its national security interest in the sea. Joy Ogwu puts the second imperative in terms of geo-political foci of Nigeria’s regional and global involvement "which pertains to the manner in which Nigeria should pursue its national interests." These clusters involve interplay among naval strategies, economic policies and the larger issue of protecting sea lanes of communication and navigation in the South Atlantic.

The South Atlantic Sea thus constitutes Nigeria’s most strategic security interest:

"First, it is an area that impinges on several vital aspects of our national security because it is open to hostile incursion by sea, particularly on the open high seas beyond our territorial waters. Second, from the economic viewpoint, most of Nigeria’s oil resources which account for over 90% of our exploited offshore. Third, it is vital artery to Nigeria’s trade with the world, particularly with North and South America. Fourth, it is Nigeria’s key to the enormous resources of the ocean bordering its territory and its security should be a priority concern to us. The vital national security interests must be protected by the full use of national power..."(Ogwu,1998:230).

To sum up, therefore, Nigeria’s national security interest which can revolve around the protection of the country’s human, mineral, animal and other resources within the country’s land and maritime boundaries as recognized by international law, constitute one of the core value systems that should shape our maritime policy (political Bureau
Report,Paragraph19(iv)). In this perspective, Nigeria requires a policy that establishes a comprehensive system of maritime enforcement to ensure effective surveillance monitoring and control of her jurisdictional ocean space.

Also central to Nigeria’s goal of independence is the desire for economic development. In recent years, emphasis has been shifted to the need to lay a foundation for a "truly developed" Nigeria based on developing the country’s productive capacity to effectively or efficiently produce and distribute goods and services, as well as the acquisition of the relevant knowledge and skills to face the challenges of the 21st Century. This surrounds the nation of the Vision 2010.

Development efforts were attempted before independence. The two colonial development plans (1946-1955 and 1955-1962) were initiated to achieve this goal of development. The first independence National Development Plan (1962-1968) failed because of the failure of foreign donor agencies to honour their commitments and the political vicissitude leading to the civil war resurrected the need for a second plan (1970-1974) which was devoted to the three R’S (Reconstruction, Rehabilitation and Reintegration). The third and fourth development plans (1975-1980 and 1981-1985, respectively) landed the country into chaotic economic problems due to poor planning, implementation and management. The situation was aggravated by gross mismanagement and the deep slump in the international oil market. As a result, the Structural Adjustment Programme (SAP) was introduced in 1986 to achieve both internal and external balance which was to be guided the market forces.

SAP failed to achieve the desired objectives hence a change to a new economic management approach based on what a former Nigeria Finance Minister called "a policy of guided deregulation". The objective of the new approach is to achieve.

- Stable micro-economic environment to ensure planning;
- The stimulation of private investment so that the gains are translated into continued expansion of production, economic growth and national development;
- Intensification of rural development and enhancement of agricultural productivity and food sufficiency;
- Attainment of price stability;
- Fiscal balance, consistent and realistic monetary policy;
- External balance;
• Creation of job opportunities and
• Transparency, accountability and comprehensiveness in government activities (Ani. A, 1988).

The imperative for this "guided deregulation" is to move the economy gradually and steadily from state-directed to market-oriented economy and finally to a systematic liberalization. Primary to the goal of liberalization is to desire to develop and industrialize the economy with participation of Nigerians and foreign investors.

Marine-related activities thus assume great strategic importance. By virtue of Nigeria’s long frontier and coastline in the Gulf of Guinea, it must be said that the country has interest in asserting domestic jurisdiction and enforcement of right over its coastal waters. The contiguity of her waters to Equatorial Guinea is significant, the strategic location of the island of Bakassi and its political significance for Nigeria are vital to the country’s survival. Moreover, Nigeria’s EEZ provides over 80% of her crude oil and gas. Nigeria ships over 85% of her crude oil and imports more than 90% of critical strategic minerals and goods. Nigeria’s ocean space from where these activities take place is significant and potentially vast and contains not only the resources but installations that are vital to the country’s economy. The area needs adequate protection in terms of surveillance, monitoring and control, as earlier noted. The nature of the Gulf of Guinea as a semi-enclosed sea means that there may be cases of overlapping claims of jurisdictional zones. There is need to properly delimit and/or jointly manage the maritime boundaries between Nigeria and her neighbours. As far as Nigeria and Equatorial Guinea, Sao Tome and Principle are concerned, delimitation procedure may not result in conflicts because the baselines from where the territorial areas of all the countries are measured are not in dispute. Even though a dispute on Principle does exist over the estuarine waters and land areas in the Bakassi Peninsula, there is much hope in the resolution of the crisis if both countries sink their differences to accept a common stand.

Finally, industrial fisheries which constitutes less than 5% of Nigeria’s GNP due to long period of neglect is growing steadily in the eight coastal states of Nigeria and, therefore, needs further enhancement.

5.2.5 Outputs

Most of the major marine policy goals, objectives and intentions have been highlighted in Chapter Four (Section 4.4) where we discussed Nigeria’s maritime interests.
This output section complements that discussion with a focus on the legal parameters that direct ocean policy in the country. Ocean affairs are generally guided by international legal instruments as well as nation legislations.

On the international scene, there are dozens of legal instruments in the form of treaties and protocols that guide not only the relations among nations on matters of ocean affairs but also their national legislation as they try to achieve the best from their national efforts to exploit the opportunities provided by the sea. Since the adoption of UNCLOS III in 1982, a number of such treaties and protocols have found convenient accommodation in this broad-based and all-encompassing treaty. Yet, some have continued to remain intrinsically even as more are being developed by the international community in areas where the 1982 law of the sea remains silent.

A summary of 145 selected international maritime conventions shows that Nigeria has been a party to 45 of them which relate to the law of the sea (Table 5.1). Only seven of such conventions are yet to come into force while the rest are fully operational Nigeria is a party to 7 international convention in the area of public international law; 5 conventions in the area of jurisdiction arbitration and enforcement, 14 on maritime Safety and navigation, 2 in property transactions and rights, 7 on carriage of goods and passengers; 6 on employment; and 4 in the area of marine environment protection and preservation. This has raised the intriguing question of to whether or not the existing international instruments are adequate enough to protect Nigeria’s maritime interests.
Table 5.1: Summary of Selected International Maritime Conventions

<table>
<thead>
<tr>
<th>S/n</th>
<th>Area covered by the convention</th>
<th>Number of conventions</th>
<th>Number of conventions to which Nigeria is a party</th>
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<td>Public International law jurisdiction, Arbitration and</td>
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<td>7</td>
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<td>2</td>
<td>Enforcement</td>
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<td>5</td>
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<td>6</td>
</tr>
<tr>
<td>7</td>
<td>Protection and preservation of Marine environment</td>
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<td>4</td>
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<tr>
<td></td>
<td>Total</td>
<td>145</td>
<td>45</td>
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</table>

Source: Tagowa 1999

At the national level, Nigeria has made a number of legislations in relation to the sea along with the existing international instruments. Today, there are more than 30 national legislations or laws in addition to other rules and regulations addressing matters of the law of the sea in Nigeria (Appendix VIII). Some of the earliest maritime legislations were made by the British as the country’s colonial masters. These include the minerals Oils Ordinances of 1914, 1925 and 1946; the Petroleum Profit Tax Act of 1959. These legislations which defined the territory of Nigeria as including the submarine areas beneath the traditional 3-nautical-mile limit emphasized the legislative competence of the colonial government in respect of sea fisheries and minerals in Nigerian waters. They also serve as an eye opener to Nigerian nationalist who enshrined in the republican and independence constitutions the powers the federal government was to exercise on petroleum and other resources of the sea. It was for this reason, that subsequent independence governments have enacted more laws to address the country’s economic and strategic interests.
The first major maritime legislation in Nigeria at independence was the Territorial Water Decree of 1967 which declared a territorial sea of 12 nautical miles. This decree was amended in 1971 with an extension of Nigeria’s territorial waters from 12 to 30-nautical miles. This 30-nautical-mile limit of territorial sea was maintained even after she signed the ratified the 1982 law of the sea which pegged territorial seas of state parties to 12 nautical miles. However, four years after UNCLOS III came into force, the Territorial Waters (Amendment) Decree of 1971 were amended by another decree on January 1, 1998, reverting to 12 nautical miles as provided for in Article 3 UNCLOS III.

The second major legislation is the Petroleum Decree of 1969 which vested on the federal government the ownership and control of petroleum resources found under Nigeria’s territorial waters. This decree thus defined Nigeria’s continental shelf in line with the definition in the provisions of the Geneva Convention on Continental Shelf of 1958 (Article 14(1) of the Petroleum Decree of 1969).

The petroleum decree was subsequently followed by two related decrees on off-shore oil. The first was the Off-shore Oils Revenue Decree of 1971 which confers on the Federal Government title to territorial waters and continental shelf and all the revenue and royalties that accrue as a result of the exploration and exploitation of non-living resources of the area. This necessitated the promulgation of the Off-shore Oil Revenue (Registration) Decree in 1972 which sought to regulate and make easier the processing the registration documents, licenses, leases, permits or rights for the purpose of prospecting, exploring the exploiting mineral oil in Nigeria.

Another decree is the Sea Fisheries Decree of 1971 which made provisions for the control, regulation and protection of types of fishing in Nigeria territorial waters and banned the operation or navigation of motor fishing boats without appropriate licenses. The decree empowers the Minister of Agriculture to make regulations regarding sea fisheries thereby reducing, in principles, the dangers of plundering and over-exploitation or injudicious or abusive harvesting practices as well as the disturbance of ecological conditions by modern techniques in the exploitation of living resources of the sea. This decree, in effect, repealed all regional legislations on sea fisheries and empowered the Federal Department of Fisheries to issue not only licenses but letters of assurance to prospecting fishing companies and enterprises which would like to fish in Nigeria’s territorial waters and the EEZ under specified conditions.
As regards the safety of life at sea, Nigeria became a member of the Inter-Governmental Maritime Consultative Organization (IMCO) in 1982 and so made a considerable number of rules which made it mandatory for all shops registered in Nigeria to have ‘life-saving appliances’ as demanded by the International Convention for the Safety of Life at Sea (ICSLS) (Article 153 of the Merchant Shipping Act of 1962). The IMCO and the ICSLS made maritime safety an international responsibility to which all states should ensure compliance.

Two other decrees underscore Nigeria’s maritime interests in the area of shipping. While the Nigerian Shippers’ Council Decree established a council to provide a forum for the protection of Nigerian shippers in matters affecting shipment of imports and exports to and from Nigeria, the National Shipping Policy Decree of 1987 clearly spells out a National Shipping Policy for Nigeria. This resulted in the establishment of the National Maritime Authority (NMA) as the main implementation agency of the policy. While the shippers’ Council came as a forerunner to the NMA, the activities and functions of the latter more or less symbolized the consciousness and concern of the Nigerian Government about the problems of shipping in developing countries, and the desire of Nigeria not only to participate in international shipping but also to acquire and develop marine technology. Over the years the functions of this authority have expanded to include functions other than shipping.

The right of access of landlocked states to and from the sea and freedom of transit as contained in the 1958 convention on the High Seas and Article 125 or UNCLOS III have become a matter of concern to Nigeria as a sub-regional maritime nation. That was why she became a party to the convention on the Transit of Trade of Landlocked States of 1965 on May 6, 1966. In order to demonstrate the principles of free access to the sea by landlocked states Nigeria signed trade agreements with Niger and Chad in 1969 and 1971, respectively, to give each contracting state the freedom of transit of commercial goods through Nigerian ports.

As negotiations at the primary stages of UNCLOS III reached top gear in 1978, it became clear that the concept of EEZ was becoming more or less an international norm as more states were declaring EEZs. So, Nigeria promulgated an EEZ decree in 1978. But related to the EEZ decree, there was a growing concern over environmental protection at the wake of the dumping of toxic waste at Koko in Delta State. The growing tempo, therefore, led to the promulgation of two related decrees in 1988, namely, the Federal Environmental
Protection Agency Decree and the Harmful Waste (Special Criminal Provision) Decree. These decrees thus provided effective legal instruments for maritime enforcement in terms of surveillance, monitoring and control. The Environmental Protection Agency Decree defines Nigerian waters as including the territorial waters, the EEZ or any other area under the jurisdiction of the Federal Government of Nigeria. It makes rules to protect the Nigerian environment and spells out offenses and penalties for such offences. Section 20, for example, prohibits the discharge of hazardous substances into the air or upon the land and the waters of Nigeria or at the joining shorelines” except where the discharge is legally authorized. The decree provides that the owner or operator of a vessel or a shore facility from which the hazardous discharge is made should bear the cost of removal and of restoring the natural resources destroyed or damaged as well as payment of compensation. It also authorizes the responsible security officers, who have reasonable grounds for believing that an offence has been committed, to enter without warrant and search any vessel believing to have committed the offence under the decree.

The Harmful Waste (Special Criminal Provisions) Decree stipulates that any person who, without lawful authority, conveys, deposits, dumps, or causes to be conveyed, deposited or dumped or in possession of harmful waste for the purpose of carrying, depositing or is dumping it on land or in the territorial waters or contiguous zone or EEZ of Nigeria, or transports or causes to be transported or sells or deals with any harmful wastes, shall be guilty of an offence under the decree. Any officer may, without warrant, enter and search any carrier or container which he has reason to believe is related to the commission of a crime under the decree.

These decrees adopted the definition of the territorial waters and EEZ as stated in the Territorial Waters Decree and the EEZ Decree of 1978, respectively. The two related decrees thus appear to be in consonance with Article 21(1)(f) of UNCLOS III which permits coastal states to make laws in conformity with the convention and other rules of international law relating to innocent passage through the territorial area in respect of the preservation of the environment of coastal states and the prevention and reduction of pollution. Following these decrees, therefore, an offending ship may be boarded, searched arrested in any of Nigeria’s jurisdictional areas as far as the law of the sea to concerned.

The most recent maritime legislations in Nigeria are the Admiralty Jurisdiction Decree of 1991, its associated Admiralty Jurisdiction Procedure Rules (1993), the Sea
Fisheries Decree and the Environmental Impact Assessment Decree of 1992. The Admiralty Jurisdiction Decree spelt out the circumstances under which a foreign ship may be arrested for an Admiralty action to be brought against it in Nigeria while the Admiralty Jurisdiction Procedure Rules provides the rules and legal procedure governing such arrests. The Sea Fisheries Decree of 1992 repeals the Sea Fisheries Decree of 1971 and make additional rules for the regulation of sea fishing in Nigeria’s territorial waters and the EEZ. The Environmental Impact Assessment Decree makes provisions for restriction of both public and private sectors of the Nigeria economy to undertake any project without prior consideration of the environmental impact in any federal lands. Section 62 of the decree defines federal lands as including, among others:

(i) The internal waters of Nigeria within the meaning of Sea Fisheries Decree of 1992, including the seabed and subsoil below the airspace above that sea;
(ii) The territorial sea of Nigeria as determined in the Nigeria Territorial Waters Acts, including the seabed and subsoil below and the airspace above that sea;
(iii) Any fishing zone of Nigeria prescribed under the Sea Fisheries Decree of 1992;
(iv) An Exclusive Economic Zone (EEZ) that may be created by the Government of Nigeria.
(v) The Continental Shelf, consisting of the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Nigeria to the outer edge of the continental margin or to a distance two hundred nautical miles from the inner as may be prescribed pursuant to a decree or an Act (Supplement of Official Gazette Extraordinary No.73,Vol 79 of Dec,1992).

5.3 Analysis and Conclusions

The essence of setting policy goals, directives and intentions is to achieve specific interests. Let us now make some analysis with the hope of drawing some conclusions in respect of Nigeria’s maritime interests which we have identified in chapter four and the preceding discussions. As it is well known, the traditional uses of the sea are for transport and communication. Nigeria’s sea trade dates back to the 15th Century Portuguese exploration contracts with West Africa. As we earlier noted too, sea-borne trade nursed and waned the colonial economy. Sea-borne trade, accompanied by ports development, went what Nigeria inherited at independence and has developed further in her 38 year of independence. So,
maintaining sealanes of communication by Nigeria will ensure her effective participation in international shipping industry which produces an annual world income of over 200 billion US dollars (UNCTAD, 1996).

However, the participation of developing countries in shipping has been that of inherent weakness and national frustration. This is because the world shipping industry is being controlled by developed maritime powers who group themselves into powerful monopolists of liner conferences. Behnan recaptures the frustration of developing countries in respect of shipping of goods to and from their respective countries as ranging from complete dependence on foreign flag ships to those partly dependent on foreign liners and struggling to expand national merchant marine characterized into three related problems; first.

The problem relating to developing countries with no merchant fleets which had the following consequences: (i) the payment of the entire freight bill of the country would be in foreign exchange; (ii) there would be total dependence on foreign flag for sea transport of the country’s trade with the result that: (a) export promotion of certain sensitive articles needing assistance would be difficult or at least totally dependent on foreign flag; (b) there would be an inherent weakness in negotiating with liner conferences the problem of reduction of freight rates or fighting an increase in freight rates announced by the conferences; (c) there would be feeling of helplessness in relation to one’s overseas trade policies which may rise to a feeling of national frustration; (iii) loss of employment opportunities in the absence of national shipping industry having shipbuilding, ship repairing activity apart from the manning of ships; (iv) if the state is a maritime one, there would be a political feeling of frustration in addition to the economic aspect on it on account of the total dependence on foreign sea transport to obtain supplies in an emergency (Bhenan, 1988: 103).

Secondly, infant national fleets of developing countries have the problem relating to adequate guarantee of foreign exchange needed to purchase vessels, appropriate technical and commercial know-how, adequate training facilities, adequate repair and maintenance facilities. Thirdly, the monolithic conference system of the traditional ship owner of developed countries dominated every major trade routes by the 1960s the exclusion of national shipping lines of developing countries from conferences. The consequence of this was unilateral fixing of freight rates, discriminatory practices, the stifling of competition by trying shippers and the refusal of the conferences to hold meaningful consultation with shippers from developing countries. These objectives include: (a) influencing the structure
and level of freight rates in order to lessen the impact of high rates on their traditional and non-traditional exports; (b) establishing and expanding their own national merchant fleets and their rights to assist such fleets in their infant state; (c) re-writing international shipping legislation and the basic framework for regulation; and (d) creating an environment conducive to the improvement of their human and physical infrastructure.

Mounted pressure led to the establishment of the Committee on shipping in UNCTAD in April 1965. The committee’s terms of reference was, among other things, to study and make recommendations on variety of shipping matters, including how to secure participation of developing countries in shipping conferences on equitable terms and promoting cooperation between shippers and conferences as well as encouraging developing countries to form shippers’ councils or other suitable bodies for hearing and remedying complaints on a national and regional basis. By 1974, the committee had recommended a code of conduct for liner conferences which was adopted by UNCTAD. In Article 2 (Section 4(a) and (b), it is asserted that national shipping lines of each of two countries shall have equal rights to participate in the freight and volume of traffic generated by their foreign trade while the third country shipping lines shall have the right to acquire 20% of the freight and volume of traffic generated by that trade.

Prior to UNCTAD, two schools of thought had emerged on shipping services. The first school held that shipping services should be provided by private enterprises on the basis of ‘free market’ competition while the second maintained that governments must take the ultimate responsibility to regulate shipping, had emerged. Nigeria adopted that latter position. This informed the adoption of the Merchant Shipping Act in 1962, the promulgation of the Nigeria Shippers’ Council Decree of 1978 and the National Shipping Policy Decree of 1987 and a host of other rules and regulations to provide a detailed set of shipping laws.

The Merchant Shipping Act of 1962 comprises 100 chapters and 433 sections as well as 48 subsidiary laws regulating registration of shipping in Nigeria, safety measures at sea, welfare of seafarers and passengers, goods and liabilities, etc, in conformity with relevant international conventions. The associated Port Act and the Port Regulations and other subsidiary laws were made to support the subject, objectives and goals of the Merchant Shipping Act. But a critical overview of the Merchant Shipping Act shows that some of its provisions as related to Admiralty Jurisdiction Decree on liability are replications of the British Shipping Act of 1894. The Merchant shipping Act provides that where a ship causes
damage to goods, the liability of her owners may ("where the damage is caused without their actual fault or privity") be limited to a sum equal approximately to ₦47 per ton of the ship’s weight. This means, for example, that a 1,000-ton ship would be liable to only ₦47,000 even if the damage caused in a particular incident may amount to millions of Naira. Even more disturbing is that “where a claim is filled against the show owner in circumstances where limitation may be applicable, the ship-owners may file a limitation action” (Mbanefo, 1997). This enables the shipowner to ask the court to declare that he is entitled to a liability calculated on the basis of ₦47 with reference to the ship’s tonnage. He can then go further to deposit the limitation figure (the limitation fund) in a court which would later administer the fund if the shipowner is found liable in respect of the case. In this example, the shipowner gains the advantage of first short-circuiting a lengthy trial procedure and secondly avoiding a protracted and costly trial on the issue of liability. Once the court accepts the shipowner’s limitation fund, he can pay the amount and go about his business. The limitation figure of ₦47 was fixed by the minister of transport in 1964 and despite considerable inflationary trends over 30 year; the figure has remained the same. The IMO Convention on Limitation of Liability of maritime Claims of 1976, which came into force in 1986 amended old international legislations on such matters to the effect of increasing the figure from ₦47 to almost hundred fold. But Nigeria is yet to acceded to the 1976 convention to enable her increase the liability figure.

The Nigeria Shipper’s council Decree of 1978 which has been incorporated into the laws of the Federation as Cap. 327 of 1990 sets up a council which serves as a forum for the protection of the interest of Nigeria Shippers. The councils, along with the activities of other security and the Government Inspector of Shipping (GLS) under the Pre-shipment inspection of Imports Act (Cap. 363 of the 1990 laws of the Federation), is important to a cargo owing nation like Nigeria. Despite criticisms and the inherent problems found in the implementation of the two laws, maritime experts believe that they have been able to minimize frauds in Nigeria imports.

The National Shipping policy Decree of 1987 clearly spells out a national Shipping Policy for the country. The National Maritime authority (NMA) was established as the main implementing agency of the policy. The aims and objective, functions and operational conditions of the authority are stated in section 3, 4 and 5 of the Decree. According to Section 3, the objective of the Authority is to:
a) Correct any imbalance in the Nigeria shipping trade for the purpose of implementing the provisions of UNCTAD Code of Conduct for Liner conference, especially to observe the ratio of 40:20 in respect of carriage of goods to Nigeria ports:

b) Improve Nigeria’s imbalance of payment position by enhancing the earning and conservation of foreign exchange from the shipping industry.

c) Use of national shipping policy as instrument of promoting the export trade of Nigeria and accelerate the rate of growth of national economy;

d) Ensure the greater participation of indigenous shipping lines in liner conference thereby influencing the decision-making process of such liner conference serving Nigeria international sea-borne trade;

e) Promote the acquisition of shipping technology by creating and diversifying employment opportunities in the industry, through the stimulation and protection of indigenous shipping companies;

f) Assist in the economic integration of the West African sub-region;

g) Offer protection to Nigeria vessels flying the nation’s flag on the high seas and world seaports.

h) Increasing the participation by indigenous Nigeria shipping lines in ocean shipping through the application of the provisions of UNCTAD Code of Conduct on general cargo and by entering into bilateral agreement, or other suitable arrangements;

i) Encourage the increase ownership of ships and achievement of indigenous skills in maritime transport technology;

j) Achieve a systematic control of the mechanics of sea transportation; and

k) Promote the training of Nigeria in maritime transport technology and as seafarers.

In addition to other special functions provide in section 5, Section 4 empowers the authority to co-ordinate the implementation of the national shipping policy as may be formulated by the Federal Government of Nigeria and to ensure that National carriers exercise the full right of carrying, at least, 40 percent of the freight in revenue and volume of the total trade to and from Nigeria. Furthermore, the authority has the powers to grant national carrier status to shipping lines if they fulfill certain conditions provided in Section 7, monitor the activities of vessels and shipping companies granted national carrier status, give assistance to indigenous shipping companies to expand their fleets and ships, regulate liner conferences and national carriers and to perform other functions to achieve the objectives of the decree or any national shipping policy as may be formulate by the Federal Government.
Legal experts have identified some conflictual dispositions in terms of the power of the Minister of Transport and those of the NMA in relation to the Merchant Shipping Act of 1962 and the National Shipping Policy Decree of 1987. The Merchant Shipping Act gives power to the Minister of Transport to make regulations on all aspects of shipping (except the contractual aspect of carriage by ships). It is the Minister that sets the standards to be maintained by vessels within Nigeria waters such as their construction, safety standards, equipment, crew certification, arrest, detention and prosecution of substandard vessels or those which infringe of the merchant shipping legislation. The practice under the Merchant Shipping Act of 1962 is that the Minister exercises such power as delegated to the Government Inspector of Shipping (GLS) in the Inspectorate Division of the Federal Ministry of Transport. The GLS is responsible for maritime safety administration, the issuance of certificates to vessels and all categories of seafaring personal. The conflict arises because the aims and objectives clauses of the NMA do not confer on the Authority the power to carry out the aspirations because they are descriptive or are a mere statement of intent while the functions are substantive powers. According to Justice Louis Mbanefo Section 3(j) of the National Shipping Policy Decree which says that the Authority shall achieve a systematic control of the mechanics of sea transportation, is “somewhat misleading” in the sense that the shipping policy decree does not remove the comprehensive powers of the Minister of Transport in the Merchant Shipping Act and confer them on the NMA (Mbanefor, 1997). To achieve that effect it was thought that it would have been necessary for the shipping policy decree to contain a provision amending the Merchant Shipping Act. Unless this is done, the object of Section 3 would mean that the National Shipping Policy Decree stands to indicate that the government intended to confer on the NMA the powers of the Minister under the Merchant Shipping Act. Otherwise it seems somewhat unusual to enact a law which merely expresses and intention. The recent transfer of the Inspectorate Division of the Federal Ministry of Transport and invariable, the GLS to the NMA, without any legal backing, is a pointer to this effect. Even before the transfer, it was clear that the Authority had been exercising those powers systematically.

Now let us examine the shipping policy in the context of how the NMA has tried to achieve its objective as defined in Section 3 and in other section of the decree. Generally, the Nigeria Shippers’ councils is concerned with Articles 7, 8, 9, 10, 12, 13, 14 and 15 of the UNCTAD Code of Conduct for liner conferences while the NMA cover Articles 1, 2, 3, 4, 5 and 6 of the Code.
The major responsibility assigned to the NMA under the National Shipping Policy Decree is to address the low level of participation of Nigerians in ocean shipping. The object, therefore, is to promote the shipping industry in Nigeria through encouraging the experiences and establishment of indigenous shipping lines. By 1988, there were six indigenous shipping companies and 24 shipping vessels (table 5.2). Most of these shipping lines did not join any of the various liner conferences. With the promulgation of the shipping policy decree and the establishment of the NMA, these companies were encouraged to acquire more vessels and join liner conference. There was also an unprecedented rise in the number of new shipping companies. Today, there are about 129 registered shipping companies in Nigeria. However, the number of shipping companies which have gained national carrier status remains low (six), while only five other indigenous carriers have ocean-going vessels, the remaining 118 fall into category ‘C’ shipping lines that have no sea-going vessels. It is even more disappointing that in spite of the NMA’s effort to assist indigenous shipping companies to expand through the Ship Acquisition and Building Fund, there has been a sharp decline in the national fleet. For example, since 1988, the number of sea-going vessels owned by national carriers has dropped from 24 vessels with 357,858 dwt to 3 with 61,770 dwt in 1995 (Table 5.2).
Table 5.2: the number of sea-going vessels owned by national carriers has dropped from 24 vessels with 357,858 dwt to 3 with 61,770 dwt in 1995

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<tr>
<td>NIGERIA GREEN LINE</td>
<td>2</td>
<td>39304</td>
<td>2</td>
<td>39304</td>
<td>1</td>
<td>11808</td>
<td>1</td>
<td>11808</td>
</tr>
<tr>
<td>TOTAL</td>
<td>24</td>
<td>357858</td>
<td>18</td>
<td>225118</td>
<td>17</td>
<td>265578</td>
<td>17</td>
<td>265578</td>
</tr>
</tbody>
</table>

Source: National Maritime Authority (NMA) Official Records
Apart from the problems associated with international shipping such specially trained manpower, sophisticated and complex technology, heavy overhead and running costs, the ship industry has an enormous capital outlay. For example the Shipping intelligence Weekly reported in 1994 an average price of a new 40,000 dwt tanker was about US $30 million; that of 40,000 dwt bulk carrier was about US $23 million; the costs of dry cargo vessels with 1,000 Teus and 3.5 Teus would be about US $20 million and US $52 million, respectively. In line with Section 13 of the National Shipping Policy Decree, the NMA has established a Ship Acquisition and Ship Building Fund and has also proposed to set up a Maritime Bank. The Ship Acquisition and Ship Building Assistance Scheme were suspended in 1996.

Before the suspension of the Ship Acquisition and Ship Building Assistance Scheme in 1996, the NMA disbursed about N1.563 billion (US $19.45 million and N7.05 million) to nine indigenous shipping companies which purchases 13 vessels of a total deadweight of 46,660.91. Of these vessels, only 3 with a total deadweight of about 36,800 can be said to have added to the national fleet as the rest were mere coastal and fishing vessels judging by their sizes (Table 5.3). A maritime correspondent of the Guardian Newspaper reported in January 1998 that beneficiaries of the NMA Ship Acquisition and Ship Building Fund may not be able to pay back their loan because of their bad operational states as the loans granted were less than what was initially agreed upon and therefore cannot meet their effective operational capacities (Osholowu M, 1995).
Table 5.3: Loans Disbursed and vessels purchased and their tonnage (dwt) under the NMA Ship building and Ship Acquisition Fund before Suspension 1995-1996.

<table>
<thead>
<tr>
<th>Beneficiary Co</th>
<th>Amount US$</th>
<th>Name of Vessel Pur’d with Loan</th>
<th>No of vessels</th>
<th>Tonnage in dwt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cibra Marine</td>
<td>0.55m</td>
<td>MV Blessed Mama</td>
<td>1</td>
<td>499</td>
</tr>
<tr>
<td>Cibra Marine</td>
<td></td>
<td>MV Humu</td>
<td>1</td>
<td>499</td>
</tr>
<tr>
<td>East-West Coast</td>
<td>2.25m</td>
<td>MV ECOWAS Trader II</td>
<td>1</td>
<td>3,650</td>
</tr>
<tr>
<td>Faget Nig. Ltd</td>
<td>1.25m</td>
<td>MV Panda Faget</td>
<td>1</td>
<td>15,000</td>
</tr>
<tr>
<td>Skolar Shipping</td>
<td>0.5m</td>
<td>MV Abebi</td>
<td>1</td>
<td>3,579</td>
</tr>
<tr>
<td>Genesis Worldwide</td>
<td>2.5m</td>
<td>MV Genesis Pioneer</td>
<td>1</td>
<td>15,000</td>
</tr>
<tr>
<td>A&amp;C Engineering</td>
<td>7.05m</td>
<td>MV Abebi Pride</td>
<td>1</td>
<td>459.63</td>
</tr>
<tr>
<td>Tarabaroz</td>
<td>1.4m</td>
<td>MV Lady Sarah</td>
<td>1</td>
<td>140.57</td>
</tr>
<tr>
<td>Tarabaroz</td>
<td></td>
<td>MV Lady Man</td>
<td>1</td>
<td>143.57</td>
</tr>
<tr>
<td>Tarabaroz</td>
<td></td>
<td>MV Lady Nikky</td>
<td>1</td>
<td>143.57</td>
</tr>
<tr>
<td>Tarabaroz</td>
<td></td>
<td>MV Lady Pat</td>
<td>1</td>
<td>143.57</td>
</tr>
<tr>
<td>Bulkship</td>
<td>6m</td>
<td>MV Yola</td>
<td>1</td>
<td>600</td>
</tr>
<tr>
<td>NUL</td>
<td>5m</td>
<td>MV Abuja</td>
<td>1</td>
<td>6,800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>19.45m</strong></td>
<td><strong>7.05m</strong></td>
<td><strong>13</strong></td>
<td><strong>46,660.91</strong></td>
</tr>
</tbody>
</table>

Source: NMA Official Records

(b) Their country Shipping lines, if any, shall have the right to acquire a significant part such as 20% in the freight and volume of traffic generated by the trade (The Guardian Newspaper of January 26, 1998:17).

Section 3(a) of the Shipping Policy Decree states that the NMA shall correct the imbalance in Nigeria shipping trade for the purpose of implementing the provision of the UNCTAD Code especially in observing the ratio of 40:40:20 in respect of carriage of goods to and from Nigeria port. As quoted above, it is pertinent to note that there is not where the UNCTAD Code specifies a ratio such as 40:40:20 apart from the easily dedicated 20% base
for conciliatory third party, so noting forbids a 10% or more for constituting’ a significant part of the trade depending on its nature and volume. That is why the Nigerian shipping policy Decree has made additional provision that at least 50% of all bulk cargo (Section 9(2)) and 100% of government generated cargo (Section 14(1)) should be carried by Nigerian shipping lines. It is the interpretation of the equal rights participation in the lifting of trade in freight and volume that resulted in the so called 40:40:20 ratios which is being referred to as UNCTAD Code world-wide.

The NMA thus commenced cargo allocation and sharing in 1988 to achieve the 40% UNCTAD Code as well as 50% and 100% bulk trade and government cargo, respectively, through the form C-series which distinguished a variety of cargoes. The forms were issued through the Central Bank (CBN) and authorized dealers to importers and exporter with specific guidelines. Between 1988 and 1990, the exercise did not make any meaningful impact due to resistance by the international community, lack of overseas booking offices, poor co-operation from government arms in Nigeria, internal sabotage and failure of the NMA to apply sanctions under the decree. From 1999, the cargo sharing and allocation exercise was revised with centralization of cargo sharing and signing of form C. Issuance of sailing certificates and reclassification of certain group of cargoes. With these changes, a limited success was recorded in the sense that the NMA was able to establish a pool of cargo sharing and allocation for certain categories of cargoes generated in Nigeria.

However as can be observed from Tables 5.2 and 5.3, there is almost total lack of ownership of vessels by Nigeria carriers let alone other indigenous shipping lines, so the authority had to fall back on Section 8 Article 2 (11) of the National Shipping Policy Decree and Code of conduct for liner conferences, respectively, which allowed for the use of chartered vessels. The sad story still remains that Nigerian lines lift less than 10% share of their cargo, albeit through chartered vessels. Table 5.4 that the NMA allocated to indigenous carriers 55%, 51% and 53% of gross freight of imports during the years 1991, 1992 and 1993, respectively.
Table 5.4 Freight Allocations by NMA for the years 1991, 1992 and 1993.

<table>
<thead>
<tr>
<th>Year</th>
<th>Gross freight as per form C (US $)</th>
<th>Allocation to indigenous Lines (US $)</th>
<th>Allocation to Foreign lines (US $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>1,410,590,079</td>
<td>771,477,215</td>
<td>639,112,853</td>
</tr>
<tr>
<td></td>
<td>(100%)</td>
<td>(54.7%)</td>
<td>(45.3%)</td>
</tr>
<tr>
<td>1992</td>
<td>1,532,117,485</td>
<td>781,384,405</td>
<td>750,793,079</td>
</tr>
<tr>
<td></td>
<td>(100%)</td>
<td>(51%)</td>
<td>(49%)</td>
</tr>
<tr>
<td>1993</td>
<td>1,286,100,027</td>
<td>679,871,246</td>
<td>606,228,781</td>
</tr>
<tr>
<td></td>
<td>(100%)</td>
<td>(53%)</td>
<td>(47%)</td>
</tr>
</tbody>
</table>

Source: National Maritime Authority (NMA) Records

This freight value is too small if compared with the total of 16,573,901, 9063,210 and 18,637,002 tons of cargo throughput handled at Nigerian Ports ensuring the corresponding years (Table 5.5). It should be understood that the allocated figures do not represent the actual freight of dry cargo (imports and exports) earned by indigenous carriers as brought to the common pool and actually allocated because a number of form Cs allocated at that time were never utilized. Secondly, a lot of foreign suppliers did not honour the NMA cargo allocation and, therefore, made separate arrangements for the carriage of their goods as usual. At the same time, government and externally funded import cargoes were not recorded in the NMA Form Cs and therefore did not pass through the authority allocation process.

The situation is even worse with the petroleum sector. Section 9 (6) of the Shipping Policy Decree states that "that authority shall determine ways and means of involving National Carriers in the carriage of crude petroleum in Nigerian vessels". Although the NMA had, in the past, supported applications by indigenous lines to the NNPC to participate in the lifting of petroleum through tanker chartering, the sea freighting of crude oil and petroleum products have remained the prerogative of oil companies and their international tanker clients.
Table 5.5: Cargo Throughout Handled at Nigerian Ports 1991-1993

(Excluding Oil Terminals)

<table>
<thead>
<tr>
<th>Year</th>
<th>Inward</th>
<th>Outward</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>9,754,521</td>
<td>6,819,380</td>
<td>16,573,901</td>
</tr>
<tr>
<td>1992</td>
<td>12,259,042</td>
<td>6,804,168</td>
<td>19,063,210</td>
</tr>
<tr>
<td>1993</td>
<td>12,897,955</td>
<td>5,739,047</td>
<td>18,637,002</td>
</tr>
</tbody>
</table>

Source: Nigerian Ports Authority

Besides, the NMA’s attempt at reducing aggressive international cargo marketing competition in favour of the so-called national carriers which were encouraged to join conference lines dealt a blow on liner conference system. At the inception of the Authority, it rationalized the major trading routes among the initial national carriers; Nigeria National Shipping Line (NNSL), Nigeria Green Lines (NGL), Nigerbrass (NB), African Ocean Lines (AOL), Brawal Shipping Line (BSL) and Bulkship Nigeria Limited (BNL), and a few non-ship owning indigenous shipping lines. The strong opposition to the Nigerian shipping Policy, coupled with the way and manner Nigeria had dragged other countries into shipping protectionism under the Ministerial Conference of the West and Central African Maritime Nations (MINCOMAR), led to the dissolution of African liner conferences. The dissolution started in the form of withdrawals by developed countries shipping lines (Economic community (EU) and United States) from liner conferences in a renewed effort to fight or continued liberalization of the international shipping industry thereby exposing shipping companies of developing countries to undue completion which they cannot withstand. This, to some extent, peripherally explains the dwindling nature of the national flags in Nigerian thus relegating the objectives of the Nigeria’s shipping Policy to mere desires and aspirations. Today, the more than a century old United Kingdom West African Conference Line (UNKWAL), Continental West Africa Conference (COWAC), Mediterranean West African Conference (MEWAC) and the Far East West Africa conference (FEWAC) have withered leaving Nigerian shipping policy managers to continue groping in the dark by trying to make the best out of what they can from the policy.
Nigeria’s second most important maritime interest is to ensure maximum utilization of the resources of the sea. The claim of an EEZ in 1978, continental shelf and other legislations were intended to give a legal backing to this objective. Resources of the sea as we know are classified into living and non-living.

(i) **The Living Resources of the Sea**

The living resources, otherwise known as renewable resources of the sea and found in Nigerian brackish and marine environments, identified, are the fish fauna and shell fish resources. The fish fauna include the croackers, snappers and the semi-abyssal fauna of small red and black fishers. The shell fish includes shrimps, crabs, lobsters, and molluscs. Some sea reptiles and marine mammals such as the dolphin whales have been found in Nigerian coastal and off-shore waters even though rarely exploited. The narrow continental shelf of the Gulf of Guinea which limits trawling, however, supports nutrient-rich debris brought down from the coast by rivers through the Niger Delta. Thus, the Nigerian coast has been made one of the richest shrimp grounds in the Gulf.

As can be observed from Table 4.3, of Nigeria’s potential yield of 512, 360 metric tons (mt) of fish, only 222,370 mt representing 43% comes from coastal and off-shore waters. The Nigerian fish industry lacks information about fisheries resources with consequent non-development of a comprehensive fish utilization strategy. Indeed, early researchers have expressed reservations about the validity of marine brackish fish, but recent surveys have produced some convincing results that of the over 500,000mt of fish caught in Nigerian waters annually, only one-third comes from the EEZ while the rest comes from inland waters and lagoons (The Guardian Newspaper, 1998). The Food and Agriculture Organisation (FAO) reported a predicted maximum yield of 2,500 tons capable of supporting 40-30 shrimpers of shellfish in the area of Lagos to the Western part of the Niger Delta. The report estimated a potential yield of 3,370 tons in the assumption that Nigeria shares her shrimp resources with Cameroon and Benin Republic even though Nigerian researchers believe that there is ample evidence that shrimpers from Cameroon, Benin and Cote D’ivor work most of the year in the Niger Delta (Section A and B of Article 2 of the 1974 UNCTAD Code of Conduct for Liner Conferences). Against this background, researchers at the Nigerian Institute of Oceanographic and Marine Research (NIOMR) estimated a maximum sustainable yield (MSY) of between 3,250-4,016 tons which is capable of supporting between 40-60 vessels.
and, concluded that the Nigerian shrimp fisheries has been under-exploited by about 40 percent (Ajayi T.O, and Talabi S.O, 1984).

Investigations have also revealed that the East Atlantic tuna fleets flying Japanese, Korean, Taiwanese, Panamanian, Ivorian, Senegalese, Spanish, Moroccan and Ghanaian flags have been exploiting tuna up into Nigeria’s EEZ for several years now. The International Commission for the Conservation of Atlantic Tune (ICCAT) reported that land built boat, purse seiners and foreigners catch about 4,000 tons of tuna annually and most of the catches were taken along Nigeria/Benin maritime borders around longitude 5°E. This suggests that the Western portion of Nigeria’s EEZ may be rich in tuna and that international fleets penetrate Nigerian EEZ when the tuna cannot be found nearer their Dakar, Abidjan and Tema operational bases. In spite of the sharp decrease the foreign fleets since the beginning of the 1990s the FAO reported in 1994 that a high proportion of up to 35% of total marine fish catches in sub-Saharan African is still harvested by foreign fleets.

Of Nigeria’s potential yield of 521,360mt (Table 4.4 Chapter Four), 43.4% (222,370mt) comes from marine capture. Average marine fish capture between 1990 and 1994 stood at 171,265mt (Table 5.6). This figure represents only landed fisheries from coastal and brackish water, in-shore and EEZ.

The Sea Fisheries Decree of 1992 which repeated the Sea Fisheries Act of 1971 and the Sea Fisheries (Fishing) Regulations contain provisions for the regulation of Fishing activities and conditions for licensing of all types of mote fishing boats and sea fishing vessels. Although Nigeria’s sea fish potential has not been exceeded based on available records, the growing fish deficit of about one million metric tones (Tables 4.3 and 4.4), the unabated poaching, unauthorized.
Table 5.6: Marine Fish Capture in Nigeria 1990 – 1994

<table>
<thead>
<tr>
<th>Year</th>
<th>Marine Capture in Mt.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>195,529</td>
</tr>
<tr>
<td>1991</td>
<td>193,810</td>
</tr>
<tr>
<td>1992</td>
<td>164,364</td>
</tr>
<tr>
<td>1993</td>
<td>141,920</td>
</tr>
<tr>
<td>1994</td>
<td>160,700</td>
</tr>
</tbody>
</table>

Source: Adopted from the Federal Department of Fisheries Records and FOA Fisheries Reports, 1996

Transshipment of catches in Nigerian waters and the associated problems of accelerated crisis facing the world’s marine resources mean that Nigeria had to adopt a system of monitoring, surveillance and control as an essential and integral component of fisheries management.

The scientific determination of MSY, OY and TAC of various species of fish resources are all at speculative levels in Nigeria due to the technological limitations of the country as a developing state. Indeed, Nigeria had to fall back on the 1995 Code of Conduct for Responsible Fishing and the provisions of the Convention on straddling Fish Stock and Highly Migratory Fish Stocks which called on states international organizations and all those involved in fisheries to collaborate to fulfil and implement the objectives and principles of the Code. The Code of Conduct for Responsible Fishing emphasizes the need for countries to evolve the national capacity to conserve and better manage their fisheries through appropriate policies and practices such as responsible development of aquaculture, fish operations, post-harvest practice and trade, the integration of fisheries into coastal area management, the implementation of the precautionary approach to fishing and ensure that appropriate fisheries support all fisheries activities.

(ii) Non-Living Resources

As already stated in Chapter four, sebed off Nigeria is a depository of various non-renewable mineral resources such as oil and gas, iron minerals in the continental shelf and
heavy minerals found in the sediments of submerged beaches. Of these, only oil and gas, sand
and gravel are being exploited while the economic exploitability of most of the minerals is
yet to be assessed even though they are important raw materials needed for industrialization
in Nigeria. As noted earlier, too, Nigeria has substantial oil and gas reserves which are
important raw materials needed for industrialization in Nigeria. As noted earlier, too, Nigeria
has substantial oil and gas reserves which are estimated to be about 19 billion barrels and in
excess of 110 trillion cubic feet 66% of these come from offshore and marine swamps.
Nigeria’s gas reserves is ranked 10th in the world and her production from oil fields is about
8.14 cubic feet even though she flares over 80% of it. This ranks Nigeria the highest gas
flaring nation among OPEC (Organization of Petroleum Exporting Countries) members.

Gas flaring in selected OPEC countries from 1992-1996 ranges between 0-20% while
that of Nigeria ranges between 75-80% (Table 5.7 and Table 5.8) which is almost as much as
the rest of OPEC member states and the highest flaring rate in the world as Nigeria alone is
said to be responsible for over 4% of the world’s flared gas (FAO,1996). That is why even
though Nigeria ranks 10th in the global list of gas reserves, she is not in the list of 20 top gas
producing and utilization countries.

To enhance optimum utilization of gas, government has adopted a number of
measures and also initiated projects aimed at gas conservation and utilization. This includes
the imposition of a 2.5 cents per thousand cubic feet of gas flared by oil companies and the
implementation of the Nigerian Liquefied Natural Gas (NLNG) – the Escravos Gas Project
(EGP)
Table 5.7: Percentage Gas Falling of OPEC Member Countries

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>5.60</td>
<td>5.00</td>
<td>5.10</td>
<td>5.70</td>
<td>4.90</td>
</tr>
<tr>
<td>Indonesia</td>
<td>8.30</td>
<td>8.60</td>
<td>6.10</td>
<td>5.80</td>
<td>5.60</td>
</tr>
<tr>
<td>Iran</td>
<td>17.40</td>
<td>15.50</td>
<td>14.20</td>
<td>14.60</td>
<td>14.00</td>
</tr>
<tr>
<td>Iraq</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Kuwait</td>
<td>19.20</td>
<td>7.20</td>
<td>6.50</td>
<td>4.60</td>
<td>4.60</td>
</tr>
<tr>
<td>Nigeria</td>
<td>76.60</td>
<td>76.60</td>
<td>76.80</td>
<td>76.90</td>
<td>75.90</td>
</tr>
<tr>
<td>Qater</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>S/Arabia</td>
<td>17.60</td>
<td>14.70</td>
<td>14.50</td>
<td>17.20</td>
<td>16.00</td>
</tr>
<tr>
<td>UAE</td>
<td>2.70</td>
<td>1.30</td>
<td>1.20</td>
<td>1.00</td>
<td>0.90</td>
</tr>
<tr>
<td>Venezuela</td>
<td>14.30</td>
<td>13.30</td>
<td>12.80</td>
<td>12.80</td>
<td>12.00</td>
</tr>
</tbody>
</table>

Table 5.8: Nigerian Gas Flaring by Oil Companies (In Cubic Feet)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chevron</td>
<td>131556</td>
<td>178275</td>
<td>202455</td>
<td>222822</td>
<td>200000</td>
<td>1769601</td>
</tr>
<tr>
<td>Mobil</td>
<td>153190</td>
<td>110117</td>
<td>85279</td>
<td>128412</td>
<td>92368</td>
<td>16465</td>
</tr>
<tr>
<td>Shell</td>
<td>330187</td>
<td>372586</td>
<td>371741</td>
<td>370296</td>
<td>371362</td>
<td>222013</td>
</tr>
<tr>
<td>Agip</td>
<td>138672</td>
<td>144468</td>
<td>166020</td>
<td>157065</td>
<td>141332</td>
<td>150690</td>
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<tr>
<td>Elf</td>
<td>14439</td>
<td>23080</td>
<td>23047</td>
<td>42558</td>
<td>40781</td>
<td>33804</td>
</tr>
<tr>
<td>Ashland</td>
<td>33506</td>
<td>32339</td>
<td>34230</td>
<td>54054</td>
<td>28412</td>
<td>32559</td>
</tr>
<tr>
<td>Texaco</td>
<td>29351</td>
<td>27140</td>
<td>23151</td>
<td>31584</td>
<td>34761</td>
<td>44770</td>
</tr>
<tr>
<td>Pan Ocean</td>
<td>2900</td>
<td>13676</td>
<td>11521</td>
<td>14124</td>
<td>17412</td>
<td>16576</td>
</tr>
<tr>
<td>Agin Energy</td>
<td>8967</td>
<td>7479</td>
<td>8384</td>
<td>7099</td>
<td>7748</td>
<td>7914</td>
</tr>
<tr>
<td>Total</td>
<td>845768</td>
<td>909158</td>
<td>925827</td>
<td>1028014</td>
<td>940871</td>
<td>2294392</td>
</tr>
</tbody>
</table>

Source: Vanguard, Friday October 16, 1998:19

The project, which has a number of off-shore gas floating storage and loading platforms, is expected to reduce gas flaring by about 50% and corresponding greenhouse gas emission by 1999 and finally an eventual elimination of gas flaring in Nigeria by 2010 when the major oil companies establish more LPG project.

The issue of marine environment protection and preservation, coastal and ocean management are fundamental in ocean policy. They relate to the ability of a coastal state to control research and other military strategic interests, enforce fiscal measures have a bearing on Nigeria’s ocean policy in addition to matters of sea transport and communication and ocean resources utilization analyzed above. The point which must be stressed here is that ocean activities are so closely related that the preamble of UNCLOS III states that “the problems of the ocean space are closely inter-related and need to be considered as a whole.” Ocean policy, therefore, calls for an integrated approach in any dimension. Since Nigeria has interest in all activities occurring in her maritime zones of jurisdiction and on the high seas, there is need for the evolve a system of maritime enforcement to meet the necessary challenges for optimum utilization of maritime enforcement to meet the necessary challenges.
for optimum utilization of maritime resources, environmental protection, maritime sovereignty and security for sustainable development. These enforcement measures should, therefore, be integrative. An integrated maritime enforcement model identified five areas of maritime activities within which a coastal state must address a series of responsibilities, challenges and threats in the application of monitoring, surveillance and control of areas of ocean activities. These challenges and threats include:

(i) **Management of Marine Resources**

This most important marine activity can be achieved through a comprehensive knowledge of the resource base, sound management practice and the integration of environment concern into economic development. In the cast of living (renewable) resources, surveillance entails the detection of areas of fishing efforts and general identification of vessels engaged (that is, nationality, license, type, etc). Monitoring may involve the boarding and inspection of fishing vessels and catches, either at sea or alongside, to ensure conformity with national and international regulations. It may also involve the physical bordering and/or inspection of exploitation sites. Control is the apprehension and prosecution of known offenders of fisheries and exploitation regulations. For non-living (non-renewable) resources, surveillance covers detection of ocean resource exploitation and initial indication of contravention of regulation.

(ii) **Protection and Preservation of Marine Environment**

Critical to this is the understanding of the country’s marine ecology and the impact of human activities on the ecosystem. The establishment, regulation and enforcement of environmental standards, as well as maintenance of emergency environmental response capability are also critical issues of concern to marine environment protection and preservation. In the case of pollution, surveillance is concerned with the detection of pollutants and/or polluting activity, monitoring with an inspection of potential polluters and/or polluting activity and control with the apprehension and prosecution of violators of environmental law, and the entertainment and clean-up of environmental incidents.

(iii) **Maintenance of Maritime Sovereignty**

Sovereignty is a fundamental right of states codified in international law effective surveillance patrol and responses are not only critical in maintaining sovereignty, but also serve as an effective deterrent. Surveillance in this area involves the detection of events or
objects or interests, while monitoring refers to the education, identification and checking of these events or objects. Control entails the protection of national interest through measures designed to control, limit or remove the threat and challenges posed by the objects or events.

(iv) Prevention of Illegal Activities

The enforcement of national and international law within a state’s maritime jurisdictional areas is a mark of the exercise of national sovereignty. Surveillance sterile presence in coastal waters as well as the detection of suspicious activities. Monitoring is the investigation, identification and tracking of objects and activities interest while control entails the apprehension and prosecution of violators, as well as confiscation of illegal goods, where applicable.

(v) Marine Safety

It is both an international and national responsibility for states to ensure the safety of life at sea as well as the safe conduct of shipping. This is achieved through the taking of preventive and responsive measures. To ensure safety at sea, the state should have the capability to detect potentially hazardous marine conditions and vessels as a surveillance method. To monitor, the state should also be able to track down or undertake a systematic observation of these conditions as well as provide information or advice to affected mariners. Control would involve the apprehension and prosecution of violators of safety standards (for example, through marine surveyors, port state control) and the exercise of control over the movements or actions of a vessel or aircraft within the state’s maritime jurisdiction area. This is called vessel traffic management.

There are four general responses available to a coastal state to enable her meet the challenges and threats to specific types of marine activities in terms of requirements and capabilities for surveillance, monitoring and control. They are: Operational/Technical, Legal, Political and Non-governmental. Operational/Technical responses comprise a wide range of technical platforms, equipment and personnel, as well as physical communications and control infrastructure which must be integrated by command and information systems. These comprise surface, underwater, aerial, space based or shore-based equipment required in the country or region for effective surveillance, monitoring and control of marine activities. Legal resources are supranational such as regional and international treaties as incorporated into national laws, regulations, standard and procedure applicable into national legislations.
The political arrangements can be national in nature— intra-governmental, inter-departmental and inter-agency, as well as regional and international. All these should seek to rationalize the methodology of achieving a harmonious sea use at a reasonable cost. What is the nature and extent of national, regional and international co-ordination required to manage the operation of marine activities in the region? The Non-governmental response involves the active participation of key players such as industry, user groups, coastal communities and non-governmental organization (NGOs). What is the nature and extent of compliance, cooperation and participation required from ocean resources, users, industry, communities and non-governmental organizations in the region for the establishment of an effective and efficient maritime enforcement regime (for example, coastal watch programmes)?

There are heightened international concerns about the need to achieve effective surveillance, monitoring and control (SMC) in view of the failure of many management regimes to achieve the desired objectives. This desire and need have been recognized in UNCLOS III, Agenda 21 (Chapter 17) of UNCED (1992), the 1995 Code of Conduct for Responsible Fisheries, the Agreement for the implementation of UNCLOS III Relating to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the Report of the 1996 Adhoc Inter-Sessional Working Group on Sectorial Issues of the Commission on Sustainable—Development and the Convention on Biodiversity. The determination of national SMC policy should be clearly based on the appropriate government authorities. In Nigeria, primary inputs to SMC are tasked to the Navy in addition to support from the marine police, customs and other agencies like the Ministries and the NMA. The response of industry and community-based stakeholders should be included or reflected in the SMC policy and strategy. The policy should be realistically framed in terms of financial resources available.

Table 5.9 and 5.10 provide a matrix of requirements and capabilities, respectively, for integrated maritime enforcement of SMC for Nigeria.

(i) Requirements

Table 5.9 shows that Nigeria needs a full capability in terms of Operational/Technical requirement to undertake SMC in the area of surface/underwater (Warships, submarines, patrol ships, boats, etc) are shore based infrastructures (radar, etc), whereas a partial capability is needed for air and space based facilities. Measures here need not be sufficient in themselves as they can be supplemented with other national (air force aircraft, police patrol
aircraft and boats, etc) and foreign (international satellites system resources, for example INMARSAT (International Maritime Satellite Organization) instruments to which Nigeria is a party. In the legal sphere-, it can be deduced that the existing international conventions and agreements are adequate in the area of marine resource management, environmental protection and the exercise of maritime sovereignty and safety response measures but in the area of suppression of illegal activities and preventive safety measures, the legal instruments need further incorporation into appropriate instruments to be effective. While there are adequate international laws and regulations for environmental protection and safety response measures, the existing national laws are inadequate in the area of resource management, maritime sovereignty, suppression of illegal activities and safety preventive measures. Politically, more co-ordination and integration are required between the multiple agencies concerned with all ocean activities, both nationally and internationally. Under the non-governmental requirements, full requirement is needed for maritime sovereignty, illegal activities and marine safety whereas only partial requirement is needed for resource management and environmental protection as interest groups in this respect need to be mobilized on issues of marine concern to increase their profile in other response categories.

(ii) **Capabilities**

In the matrix for capabilities (Table 5.10), there are shortfalls in the Operational/Technical capability of the country’s response in effective surveillance, monitoring and control as far as surface/underwater, air and shore-based
### Table 5.9: Matrix of Requirements for Integrated Maritime Enforcement in Nigeria

<table>
<thead>
<tr>
<th>MATRIX FOR REQUIREMENTS</th>
<th>RESOURCE MANAGEMENT</th>
<th>MARITIME SOVEREIGNTY</th>
<th>ENVIRONMENT PROTECTION</th>
<th>ILLEGAL ACTIVITY</th>
<th>MARINE SAFETY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Living</td>
<td>Non-Living</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>S</td>
<td>O</td>
<td>U</td>
<td>R</td>
<td>N</td>
</tr>
<tr>
<td></td>
<td>M</td>
<td>O</td>
<td>M</td>
<td>O</td>
<td>O</td>
</tr>
<tr>
<td></td>
<td>C</td>
<td>O</td>
<td>O</td>
<td>C</td>
<td>O</td>
</tr>
<tr>
<td>Operational technical</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface/underwater</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Air</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Shore Based (infrastructure)</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Space based</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Legal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>International</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Non governmental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry/user</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Community Based</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Political</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Key**

SUR= Surveillance  
MON=Monitoring  
CON=Control  
O= No requirement

**Source:** Tagowa 1999
Infrastructure in all maritime activities is concerned. There is a complete lack of capability in space based for some activities as Nigeria does not possess any space based facility for this purpose. In the legal sphere, there is full capability in environmental protection for international and national legislations and only the former (international) in living resources. For the remaining ocean activities, partial capabilities do exist as the current national law and regulations need further incorporation into appropriate instruments. This analysis can be further incorporated into appropriate instruments. This analysis can be further supported by Justice Louis Mbanefo’s views in which he expressed disappointment over the fact that a commissioned report which was aimed at full review and updating of old laws, regulation, etc. With the hope of bringing Nigeria’s maritime law in line with the most recent international developments and containing 53 new draft laws ended with only 2 new laws leaving a lacuna in Nigerian maritime laws (Vanguard, October 16, 1998, pp. 19 and 25). This is a limitation on the legal capability for SMC in Nigeria. Politically, there is full capability in the international and national spheres for SMC on living resources and maritime sovereignty, respectively, while the country has partial capability in dealing with the remaining activities. Finally, on non-governmental capability, whereas there is virtually no capability on marine resource management on which there is no specific, organized community-based focus, there are simply shortfalls in terms of industrial, user and community based interest groups as they need to be mobilized to partake fully in SMC of all marine activities.

Having quantified and analyzed the requirements and national capabilities of maritime enforcement of SMC, a comparison of the two matrices highlights a remarkable difference in Nigeria’s national capability which refocuses on the problem of integration. In our view, therefore, the similarity of requirement across the spectrum of marine activity apparently suggests that Nigeria needs a more integrated, functional approach to improving her Operational/Technical, legal, political, non-governmental/user means of control and management. This forms the basis of our intellectual construct in identifying the policy direction and nature of an integrated maritime enforcement strategy in Nigeria. Indeed, maritime enforcement is an aspect of ocean management which is directed by policy goals and objectives. The next task before us in this study, therefore, is to explore the policy direction of an integrated ocean policy for Nigeria.
5.4 Economic Consequences of the Law of the Sea for Africa

UNCLOS III provides a comprehensive and extensive regulation for the control of marine scientific research, both in jurisdictional and non-jurisdictional areas of the sea. Marine scientific research is any study of the sea ‘whose objective is to increase knowledge about the marine environment’ (Wang, 1992). It assumed an increasing role since the Second World War along with a better appreciation of its practical application in both resource utilization and military purposes. J.C. Wang underlines the importance of marine scientific research when he asserts that:

Without scientific understanding and knowledge of the geological formation of the continental shelf, there would probably be no discovery of offshore resources such as oil and gas. The study of the physical features of the seabed led to the discovery of mineral resources such as manganese modules. Scientific study and monitoring of the size of recruitment of fishery stocks made it possible to regulate the harvest of a particular stock at a level that would not lead to over fishing ...Scientific research is crucial to devising methods of controlling damage to marine environment caused by pollution from land-based and vessel source... Scientific research has contributed enormously to the uses of military weapons and highly advanced military technology on the ocean (Wang 1992:419).

Suffice it to mention that a great deal of marine scientific research depends on access to the continental shelf where 90% of the ocean’s living resources and most of the non-living resources (oil and gas) are found. For this reason coastal states’ consent for conduct of marine scientific research in the continental shelf is required. This has become an international legal norm since the adoption of the Convention on Continental Shelf in 1958 (Article 5) in UNCLOS I. Under UNCLOS I, marine scientific research in the areas beyond the Continental Shelf remain part of the traditional freedom of the high seas. During UNCLOS III negotiations, new regimes of EEZ (in addition to continental shelf) and archipelagic waters emerged with coastal states and Archipelagos and Archipelagic states wanting to have exclusive rights to grant or withhold access for conducting marine scientific research in their jurisdictional areas. This is because since 1945 (the end of the Second World War), marine scientific research and technological advancement have led to the rapid discovery of ocean resources. The Group of 77 therefore proliferated their demand for share of the benefits derived from the exploration and exploitation of the living and non-living resources of the seas. As they bargained at the UNCLOS III negotiations, concessions
and compromises were made by the world’s traditional maritime powers. One of the concessions and compromises is the adoption of Part XIII (Articles 238 – 265) covering provisions governing marine scientific research. The provisions of UNCLOS III on marine scientific research adopted the same basic approach as UNCLOS I by providing that all research in the EEZ and continental shelf require the consent of coastal states (Article 246(2), with discretionary power to withhold such consent for research conducted by others states.

Although Article 87 provides that the freedom to engage in marine scientific research in the high seas remains, such freedom is nonetheless restricted in the water column beyond the limits of the EEZ and thus the seabed and the subsoil thereof where the continental shelf extends beyond the EEZ (Article 257). Invariably, all states have the right to engage in research in the area provided that such research is carried out ‘exclusively for peaceful purposes and for the benefit of mankind as a whole’ and if the research reaches the stage of ‘prospecting’ or ‘exploring’ the Area, it must be subject to the provisions guiding the exploration and exploitation of the resources of the Sea (Annex III). However, states are called upon to promote international co-operation in marine scientific research in the area by effective dissemination of the results of the research and analysis when available through the ISA or other international mechanisms when appropriate (Article 143 (3) (Churchill and Lowe, 1988).

A significance feature of the new ocean law in respect of marine scientific research is the ‘consent regime’ it has established. Coastal states have the prerogative to decide whether or not to grant a request for marine scientific research project. This is considerable erosion of the rights and freedom for marine scientific research. Under Article 246(5), coastal states have a number of grounds on which as request for conducting marine scientific research may be granted or not. The consent regime thus potentially enhances co-operation between the researcher state and coastal state. Secondly, coastal states’ prerogative as regards to access for marine scientific research has been enlarged not only in the EEZ but also extended to the continental shelf beyond 200 nautical miles.

Related to the question of marine scientific research is the issue of transfer of marine technology in the law of the sea. The Third World nations have realized that marine technology is crucial to their economic development. It serves as the most efficient and effective means of bridging the technological gap between the industrialized and less developed nations. That was
why the demand for transfer of marine technology to the Third World States featured at the negotiation sessions of UNCLOS III as in the agenda of UNCTAD and the World Intellectual Property Organization (WIPO), especially as part of the demand for a New International Economic Order (NIECO).

Under UNCLOS III therefore, the provisions of articles 4 and 5 (Annex III) require anyone engaged in international seabed mining to transfer seabed mining technology to the Enterprise and/or developing countries. In addition to the Annex, the ISA is expected to train nationals of developing countries in marine technology, make technical documentation on seabed mining available, and assist such countries to acquire seabed-mining technology (Borgese, 1998) in (Tagowa, 2006). Similarly, Part XIV which contains a total of thirteen articles dealing with the development and transfer of marine technology calls on states to co-operate, directly or through international organizations, in promoting the development of marine science and technology on fair and reasonable terms and conditions. Accordingly, Third World nations are to negotiate, through bilateral and multilateral arrangements, for access to marine technology information and data. The convention also emphasized the establishment of national and regional marine scientific and technical centres by developing states to stimulate scientific research in their states, as well as human resources development through training and education of nationals of technologically poor states (Article 268).

Indeed, marine technology has vast implications for the global economy, the environment, military strategy and politics, at national, regional and global levels. Most fundamentally is the strengthening of national infrastructure to foster international co-operation, for without national efforts it is believed that the importation of high foreign technology would be sheer waste, as modern technology cannot be ‘bought’ but can only be ‘learned’. It has been argued that considering the amount of service, maintenance, training and upgrading involved, each ‘transfer of technology should be a ‘joint venture’ with the donor and the recipient – the procedure and the consumer – working together as what Alvin Toffler termed ‘Prosumers’ (Wang, 1992).

The second level of technology co-operation is the regional or sub-regional level. The convention prescribes the establishment of regional centres for the advancement of marine science and technology with specific functions. Such regional centres could serve as avenues for enhancing South-South, North-South co-operation for the advancement of joint technology
development and Regional Seas Programmes. At the global level too ‘competent international organizations’ such as the United Nations Industrial Development Organization (UNIDO) could be strengthened. The ISA and the Enterprise could be instruments for technology co-operation at the global level.

Finally, it is pertinent to re-emphasize that UNCLOS III has recognised the fundamental importance of modern science and technology on which life depends. The new regime of marine scientific research and technology has made co-operation mandatory and thereby imposed a source of ‘new international law of co-operation’. (Borgese, 1981). Secondly, although it is believed that any type of marine scientific research may have military, economic or purely scientific implications, the convention has at least tried to minimize the military purposes with the hope of reducing the chances and causes of warfare and in effect, imposed a new strategy in the management of security.

5.5 Socio cultural Consequences of the Law of the Sea for Africa

With increased human uses of the sea and rapid industrialization, the world over, marine pollution problems have become more acute with signs of the deterioration of marine environment appearing more frequently. This menace of ocean pollution and its environmental impact led to an increased development of global marine environmental principles in the evolution of the law of the sea, especially from the 1960s. In spite of the fact that marine pollution problems have become an extremely important and complex issue of international environmental law, several international attempts have failed to produce compulsory enforceable obligations for states to observe and comply with, an acceptable standard of control of dumping of solid toxic waste in the oceans. Enforcement powers and state practice have to a large extent, rested on the flag states, except in the territorial seas of coastal states. J.C. Wang argued that, since the vast majority of pollutants originate from land-based sources, an overall international control was seriously lacking and that even in UNCLOS III, enforcement powers seem to be stronger in the area of ocean commons in the International Seabed Area but weaker in the jurisdictional areas such as the EEZ (Wang, 1992).

Nevertheless, UNCLOS III provides a comprehensive treatment of marine environment protection, by drawing together in one international legal instrument, all the existing principles on
marine environment protection which have been formulated by a large number of multilateral agreements, to deal with such a specific and narrowly defined problem. But more importantly, by bringing together all these agreements in their totality, the international community has come to accept the shift from the traditional stance of regarding rules and standards for marine environment protection as a mere responsibility to be assumed, to the acceptance of an obligation for regulation (Borgese, 1998).

Under UNCLOS III, states now have a duty not only to protect and preserve the ocean commons beyond their national jurisdictions, but also the fact that their citizens and nationals could be held responsible for violations of marine environmental laws. Part XII of the convention which contains provisions for a comprehensive, binding and enforceable environmental law, covers all sources of pollution, whether oceanic, land based or atmospheric.

5.6 Political Consequences of the Law of the Sea for Africa

It is believed that one of the most remarkable achievements of UNCLOS III is its concrete provisions on peaceful settlement of disputes contained in Part XV of the Convention. A basic principle of this dispute settlement is that state parties are obliged to settle any dispute between them by peaceful means in accordance with Article 2(3) of the United Nations Charter (Article 279 of the Convention). This extends the obligation contained in the United Nations Charter to non-members once they become parties to the Convention and confirms for all states that disputes relating to the convention must be settled according to the principles of justice. According to Article 283(1), when disputes arise in connection with the Convention, state parties are under the obligation to move ‘expeditiously to exchange views’ as the means of disputes settlement to be adopted. This provision thus emphasized consultation between disputing parties and makes it obligatory that peaceful means under prescribed procedures must be followed to resolve disputes.

Indeed, dispute settlement under UNCLOS III is most comprehensive and most binding even though it is yet flexible as a result of provisions for exception to compulsory settlement. It offers a variety of dispute settlement procedures and freedom of choice among a number of procedures. It has been argued that since characteristically the convention forms an integral whole, the machinery for dispute settlement is a grand provision that cannot be considered in
isolation of the treaty. And since the machinery for dispute settlement is characteristically part of
the Convention, it remains a matter of ‘who, what, when and how’ in the choice of any type of
dispute settlement procedure to be used.

Put in another way, dispute settlement under UNCLOS III is a remarkable achievement
on whose influence the future arrangement of the international legal system may both
theoretically and practically depend, especially with the influence of the Third World states on
the Convention. This is because it has become a new paradigm worth adopting in other fields of
international law such as space and environmental law. The new paradigm represents an
advanced legal arrangement than UNCLOS I in the sense that a matter which was hitherto
‘optional protocol’ has now become an integral part of the Convention.

Dispute settlement under UNCLOS III relies much on free choice of method of
settlement, preferably through negotiation or conciliation (bilaterally or regionally). If such
method is not attainable, states are obliged to choose from a number of fora: International Court
of Justice (ICJ), Arbitration, International Tribunal for the Law of the Sea (ITLS) and Special
Arbitration. Special Arbitration specifically identified as ‘competent international organizations’
relating to specific matters like IMO, UNEP, IOC/UNESCO, or the Food and Agriculture
Organization of the United Nations (FAO), are drawn into dispute settlement under UNCLOS
III. Arbitration in this case is binding and final as it is only resorted to when the parties to the
dispute do not agree on any forum for settlement. Even though there are exceptions (Article 298)
to compulsory settlement, the provisions for variety of options create the possibility that parties
to a particular dispute will, by agreement, find a settlement procedure to which they would be
amenable, to enable them resolve the dispute peacefully and amicably. This is because such
exceptions must be submitted to mandatory conciliation even if the parties are not obliged to
accept the opinions of the conciliation forum. This provision is meant to apply a certain degree
of moral suasion and pressure on hard-line disputants. However, it can be shown that states have
been voluntarily resorting to the ICJ arbitration and binding settlements in cases of disputes over
maritime boundary delimitations, which are exempted from mandatory dispute settlement
(Tagowa, 2006).
5.7 Geo Strategic Consequences of the Law of the Sea for Africa

As Agubuzu (2004:17) observes:

...the African Union reflects strategic shift from a monocentric to polycentric notion of state sovereignty, from emphasis on the indivisibility of state sovereignty, to an acceptance of a limited and carefully guided derogation within the larger supra-national arrangement.

In the law of the sea, sovereignty has been disaggregated into a bundle of rights such as ‘sovereign rights’, ‘exclusive rights’, ‘jurisdiction’ which can even be shared. This has generated a lot of challenges in Africa’s international relations which requires maximization of cooperation and integration not only in the implication of NEPAD but also the Constitutive Act of the AU. This cooperation and integration can be extended to ensuring ‘peaceful purposes’. This can provide a legal basis for regional naval cooperation for peaceful purposes especially in the area of surveillance, monitoring and control (SMC) of the sea, disaster relief, search and rescue operations, abatement of piracy and drug trafficking and fight against terrorism. This cooperation can also strengthen the naval component of sub-regional peacekeeping like the ECOWAS (for example, ECOMOG) in the West Africa.

5.8 Other Consequences of the Law of the Sea for Africa

The first lesson to be derived from the law of the sea in relation to the EEZ as a management unit is that it has created a problem in the sense that no individual national management system can be effective in respect to the zone because drawing boundaries in the ocean environment cannot be an effective way of solving management problems. Consequently, the African states have to rely on joint management zones (JMZs) or joint development zones (JDZs). The idea of joint zones emphasise cooperation in the management and development of resources and other uses of the sea. The principal implication of this development for Africa is the strengthening of the regional seas programmes of the United Nations Environment Programme (UNEP), regional coastal zones management programmes and other forms of cross-border cooperation activities (Jagota, 1993).

The provision for peaceful settlement of disputes provided in Part XV of the UNCLOS III is a grand provision which has implications for Africa. In spite of numerous mechanisms for
conflict resolution in Africa, some conflicts in Africa are known to last longer than necessary. Dispute settlement under the changes brought about by the Convention is more or less compulsory. That is why the Convention provides that state parties are under obligation to act ‘expeditiously to exchange views’ as to the method of dispute settlement to be adopted. The reference to a variety of methods of dispute settlement is a grand provision for African disputants to be able to avail themselves of any suitable method. Parties to disputes are expected to declare or select the specific method of dispute settlement as outlined in Article 287 (McConnell, 2003) (eds).

The provision for marine scientific research and transfer of marine technology has a fundamental implication for Africa. By providing guidelines for such research and transfer, the law of the sea has recognized the unity of ocean space and the systemic interaction of all its sub-systems. This has created a New International Technological Order (NITO) which is founded on a new science paradigm. The science paradigm is that of high technology that is qualitatively different from the old technology. The engine room for this new science paradigm is the revitalization of regional seas programmes which can be taken advantage of in Africa. This calls for regionally decentralized capacity building in science and technology cooperation.

To this end, African states need to pay a great deal of attention to the United Nations Open-ended Informal Consultative Process on the Ocean and the Law of the Sea (UNICPOLOS). Since the consultative process started some years back, UNICPOLOS has been stressing the importance of marine science and technology and how best to implement the obligations of states and competent international organizations under Part XIII and XIV of UNCLOS III. Marine scientific research and transfer of marine technology cannot be separated because technology is ‘knowledge and information based’ and so cannot be ‘bought’ or ‘transferred’; it can only be ‘learned’ as noted earlier. It therefore depends on research and development (R and D) at the national, regional and global levels (Agbu, 2003).
CHAPTER SIX

ALTERNATIVE POLICY OPTIONS FOR AFRICAN STATES ON TERRITORIAL WATER AND HIGH SEAS

6.1 Introduction

If ocean policy as earlier defined is the relationship between government and the ocean environment or a set of goals, directives and intentions formulated by authoritative persons in relation to the ocean environment, then the attempts to achieve a diversity of ocean interests as per our analyses and conclusions in Chapter Four and Five, respectively, indicate the existence of an ocean policy in Nigeria. Having acquired the necessary rights, opportunities and responsibilities under the law of the sea, in relation to the uses of ocean space and its resources, coastal states are confronted with the problem of adoption proper legal and institutional framework to establish high level policy in line with their developmental objectives. The success of marine policy is therefore dependent on the adoption of legal and institutional framework in raising national capability to deal with ocean problems.

There is much awareness among coastal and archipelagic states, the world over of the need to have integrated marine policy but the problem is that the ways, manner and means to achieve such a policy may differ from country to country and region to region. It is difficult to point out a country with an ideal ocean policy in view of the multiplicity of ocean interests, users and resources involved. The traditional approach is that any policy should simply be judged in the context of the priorities given by the state in relation to its national objectives as far the state’s ocean space is concerned. This notwithstanding, the concept of policy had to be accepted and integrated into governmental planning so that the state can make the best use of its ocean space and resources.

Generally, ocean policy should be conceived on the basis of the complete knowledge of the ocean space, its resources, its interactions with the external environment and also take into account the interactions between individual sectors of ocean users or activities. This chapter therefore, focuses on the rational for, the nature and character of an integrated ocean policy as an option for Nigeria’s future policy directives.
6.2 Descriptive Analysis of Nigeria’s and African Territorial Waters and High Seas

The purpose of integration in ocean management is to achieve sustainable development of coastal and marine areas, reduce vulnerability of coastal areas and their inhabitants to natural hazards, and to maintain the ecological balance between life support systems, biological diversity and the coastal and marine areas. Integrated ocean management is, therefore, multipurpose: it analyses the implications of development, conflicting uses, and interactions among physical processes and human activities. It also promotes linkages and harmonization between sectoral coastal and ocean activities (Cicin-Sain, B, and Knecht, W.K, 1998).

According to Arild Anderdahl, the purpose of policy integration is internationalization of externalities’ because fragmented decisions often produce externalities: “consequences which are not adequately incorporated and decision premises because they fall outside the scope of attention or because of proper aggregation (Anderdahl, 1980). Thus, an integrated policy refers to a situation where the constitute elements of a policy are brought together and made subject to a single, unifying conception. Anderdahl, therefore, suggests that a policy quantifies as integrated when it meets the three basic requirements of integration, that is comprehensiveness, ‘aggregation’ and ‘consistency’ which respectively conjure the three successive stages of policy making process, for example comprehensiveness at input stage; aggregation at processing state and consistency at output stage (Table 6.1). The notion of integrated ocean policy requires that there should be an established management system that follows the steps of establishing a policy, planning procedures and programmes (Miles, 1989).

Table 6.1 Basic Requirements of Policy Integration

<table>
<thead>
<tr>
<th>Policy Requirement</th>
<th>Stage of Policy Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensiveness</td>
<td>Input Stage</td>
</tr>
<tr>
<td>Aggregation</td>
<td>Processing Stage</td>
</tr>
<tr>
<td>Consistency</td>
<td>Output Stage</td>
</tr>
</tbody>
</table>

Source: Adopted only from Anderdahl (1980)
With the fluidity of three dimensional character of the sea-mobility of its resources and activities, complexity of its interactive ecosystems and lack of relevant administrative boundaries to natural environment- if it management is to be integrative, it must have integrative mechanisms. Among this line, Miles though of operationalising the definition of management in the following contexts: ‘policy’ refers to a purposive course of action in response to a state of perceived problems; ‘implementation’ is the transformation of policy decision into actions; and ‘management’ is the control exercised over people, programmes and resources (Borgese, 1996). Therefore, ocean management can be considered as a methodology through which several activities such as navigation, fishing, mining, etc, and environmental quality are considered as a whole, and other uses optimized in order to achieve net benefit to a nation but without prejudicing local socio-economic interests or jeopardizing benefits to future generations.

6.3 Integrated Ocean Policy Option for Nigeria

Experts in ocean governance express some reservations as to whether there exists an ideal model of an integrated ocean policy (Peet, G, 1992). Some, for instance, opine that since a perfectly integrated policy had to meet the triple requirements of comprehensiveness, aggregation and consistency, apart from the fact that the more comprehensive a policy the more difficult to aggregate it for the purpose of evaluation, consistency itself can rarely be achieved in the circumstances of the ocean environment which is uncertain and ever-changing. Others yet questions as to whether integrated management could be achieved in a single integrated system of management considering the fluid and complex nature of the ocean environment. However, there is a consensus among these analysts that using the concepts of comprehensiveness of scope, coherence of elements, consistency over time, and cost-effectiveness of results as the key characteristics of ocean management, countries can move towards a system where the principles underlying the concept of integrated ocean management can be utilized in framing policies (NIOMR, 1993).

<table>
<thead>
<tr>
<th>Less Integrated</th>
<th>More Integrated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fragmented Approach Communication Co-ordination Harmonization Integration</td>
<td></td>
</tr>
</tbody>
</table>

Figure 6.1: Continuum of Policy Integration
Generally speaking, integrations of ocean policy cannot replace sectoral approach rather it supplements it. In this context, Clein-Sain views policy integration as a continuum, moving from left to right from less policy integration boards more integrated integration (Figure 6.1 and Table 6.2). In this perspective, it creates a policy network where integration can be achieved in a number of dimensions:

i) **Intersectoral Integration:** This is integration among different sectors such as coastal and marine sectors (for example, oil and gas development, fisheries, coastal tourism, marine mammal protection, port development) and integration between coastal and ocean environment such as agriculture, forestry and mining. Intersectoral integration also deals with conflicts among government agencies in different sectors.

ii) **Intergovernmental level,** or integration among different levels of government (national, state, local). National, state and local governments tend to play different roles, address different public needs and have difference perspectives in ocean management. These differences often pose problems in achieving harmonized policy development and implementation between national and subnational levels.

iii) **Spatial Integration:** This is integration between land and ocean side of the coastal zone. There should be a strong connection between land-based activities and what happens in the ocean such as water quality, fish productivity, etc. Similarly, all ocean activities are dependence on coastal area or land despite the fact that property ownership and government administration predominates on the land and ocean side of the coastal area and so do often complicate the pursuit of consistent goals and policies;

### Table 6.2: Characteristics of Policy Integration Continuum

<table>
<thead>
<tr>
<th>Network</th>
<th>Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fragmented Approach</td>
<td>Presence of independent units with little communication among them</td>
</tr>
<tr>
<td>Communication</td>
<td>The creation of a forum for periodic communication and meeting among independent units</td>
</tr>
</tbody>
</table>
Co-ordination | Independent units take certain actions to synchronize their work

Harmonization | Independent units take certain actions to synchronize their work guided by a set of explicit policy goals and directions generally set at a higher level

More integrated integration | More formal mechanisms to synchronize the work of various units who lose at least part of their independence as they must respond to explicit policy goals and directions, often involving institutional reorganization

(iv) Science Management Integration: This is the integration among the different disciplines important in ocean management (natural sciences, social sciences and engineering) and the management entities. Sciences are essential in providing information for ocean managers yet little communication exist between scientists and ocean managers;

(v) International Integration: Integration among nations is more especially needed for border enclosed or semi-enclosed seas like the Gulf of Guinea. Horizontal integration among nations in this respect would remove conflictual tendencies over fishing activities, transboundary pollution, establishing of maritime boundaries, passage of ships, etc. In many cases, coastal and ocean management questions fall within the purview of national and sub national governments and in many other cases, nations face ocean and coastal management problems vis-a-vis their neighbours and so had to seek internationally brokered solutions.

The task of managing these policy networks for integrated ocean policy lies on the need of strengthen the political and infrastructure planning for ocean development while improving the linkages among various components of the ocean administration system. The existing institutional structures must be strengthened making mechanisms to take account of the socio-economic and environmental linkages between the coastal and ocean areas in order to facilitate
the formulation attention can then be paid to institution building strategy which would ideally aim at achieving the following objectives:

i. elevating ocean affairs in public policy agenda with a view of formulating an integrated ocean policy;

ii. integrating national ocean policy into national development plans;

iii. Involving all levels of government and all agencies, whether in private or public life, in the formulation and execution of integrated ocean development plans.

These are challenges which require political will and government commitment at the highest level on the one hand, and capacity building and awareness within and outside government on the other hand. In this case, decision-makers should perceive that the marine sector can make effective contribution towards the attainment of interests and objectives of national development.

Once such contribution is recognized, conscientious efforts must then be made at trio levels of policy-making, policy-planning and policy implementation to ensure cost-effectiveness of the policy. At the policy-making level, ocean policy requires the highest level of political direction and oversight if it is to succeed. This goes with the establishment of inter-ministerial and inter-agency board or council at the highest ministry. However, since there is no ministry for ocean affairs in Nigeria, part of the new institution building could be the creation of a ministry that will co-ordinate all ocean affairs and implementation of ocean policy. At the planning level, a national ocean development planning committee should be established to carry out central planning with inputs from various levels of government and agencies concerned with ocean affairs. While the onus of implementation lies with the existing governmental organizations, the management should be fluid to provide for delegation of authority and responsibilities to specialized bodies and operational links for joint decision-making among the operational bodies. This gives room for maintenance of unity and consistency intended at the planning stage through the implementation stage. A programme of SMC system should be integrated into the policy making, planning and implementation scheme.

Priority should be given to human resource development and experience particularly in the area of inter-disciplinary approach to policy formulation and implementation. Without qualified staff
and a reasonable scientific basis, no planning and implementation will be effective, no matter the institutional arrangement. To develop the necessary integrated planning expertise, national ocean planning offices should create special staff development programmes to prepare personnel both within governmental and non-governmental organization to deal with ocean matters.

The establishment of the necessary information system to improve the information available to decision-makers can also enhance managerial responsibilities. This covers the establishment of appropriate information system, inventories, statistics, geographic and technical information. The prospects for such information system are high as there are already shipping and oceanographic data banks at the NMA and NIOMR, respectively. There is also need to develop effective integrated capabilities for SMC which depends much on the state of preparedness of the Nigerian Navy and other support military and paramilitary agencies dealing with maritime affairs.

Financial resources mobilization is a key aspect of institution building. While external assistance is very often relied upon by most developing countries, especially on specific projects domestic funds through increased budgeting of marine-related agencies as well as special funds like the suspended NMA ship Acquisition and Ship Building Fund should be enhanced. The private sector, especially those non-governmental organizations whose major economic activities had to do with the coastal or marine areas must be encouraged to finance more and more projects. There should be a political will to mobilize domestic sources of funds to support expanded commitment to ocean affairs in Nigeria.

At the point, it is pertinent to examine a possible model for institutional structure that can strengthen integrated policy making in Nigeria. Institution building at regional and sub regional levels have legislative requirements or constraints especially in the implementation of the law of the sea if considered in a broader context. As highlighted above, policy measures such as the formulation of management and development plans have to be taken; constitutive measures such as creation or upgrading of national institutions have to be taken; administrative measures such as reporting and implementation of enforcement measures have to be taken; technical measures such as research and monitoring activities must be done; judicial measures such as the prosecution of offenders should be a matter of concern; and, finally, steps must be taken in the area of education for participation of all affected interests. All these require strong and effective
legislative measures to make the law of the sea applicable within a state’s jurisdiction. As mentioned in Chapter Five too, it is unfortunate that 51 out of 53 draft laws meant to fine-tune Nigeria’s maritime laws with the current development in the law of the sea are yet to see the light of the day.

Although legislative process and outcome may vary widely depending on the type of legal system (especially as evidenced by the mixture of common law, Islamic Law and Traditional Law in Nigeria), Elisabeth Mann Borgese identified, in general terms, some steps in the legislative requirement for integrated ocean policy. These include:

(i) **Collation of Existing Municipal Law:** A coastal state should collect all existing laws on sea uses and arrange them hierarchically and chronologically to enable the state determine obsoleteness or gaps in such laws.

(ii) **Obsoleteness and Gaps:** Obsolete laws can then be repealed or amended to reflect new ocean uses which are not covered by the current instruments of law. In this case new ocean laws will have been made.

(iii) **Conflict between Laws:** By the time steps (i) and (ii) above have been taken, it would be discovered that most ocean laws have been conceived sectorally. All ocean laws, norms and regulations will have to be re-examined as a whole to make sure they do not conflict between different sectors and to minimize conflicts between ocean uses and users.

(iv) **Conflict between Municipal and International Laws:** At this stage, the entire body of laws, norms and regulations will have to be harmonized with the law of the sea and the emerging international conventions covering new ocean uses. All government departments involved in any kind of ocean activities should also be involved in the harmonization exercise. This process may be resisted or slowed down by civil servants who would want to think sectorally and jealously guard the “turf” of their own departments but the harmonization had to be done as it is the basis for implementing the law of the sea and integrated ocean policy (Vallejo, 1994).

These legislative essentials provide the basis for which the criteria for institution building can be derived. It is also the premise for determining constraints that affect organization requirements and the successes or limitations demonstrated by the old or new institution
building. The imperative for this is to first and foremost ensure that the existing institutional structures remain the foundation for performing new ocean related tasks. It is believed that most coastal states already have institutional structures in place which are capable of performing most of the functions required in ocean policy formulation and implementation. What is consequently needed is the strengthening of decision-making and communication processes rather than creating new institutions. Besides, all institutional structures are capable of performing effectively the functions demanded of them if they are supported and strengthened with the necessary means of performing their functions. Strengthening the infrastructure for ocean development involves not only operational/technical and structural adjustment but the provision of necessary means such as capital, technology, human resources and managerial capabilities. This is lacking in most countries, especially the developing countries and the story is not different in Nigeria. Thirdly, in designing institutional arrangements for integrated ocean policy, provisions should be made to incorporate decision-making mechanisms that take account of the environmental and socio-economic linkages between the coastal and marine areas to facilitate the formulation of policy strategies that reflect these linkages and integrated coastal (Land) and ocean (sea) management efforts (Vision 2010, 1997).

The Need for Integrated Ocean Policy in Nigeria

The multiplicity of ocean interests, uses and activities as we have discussed in the previous chapters ideally calls for rational management of ocean space and its resources. For example, before the 20th century the oceans were used for navigation and fishing and occasionally for military contests as conflicts between users were few. So traditional costal and marine resource management were characterized by sector by sector approach such that fisheries, for instance, have been managed separately from offshore oil and gas development which was similarly handled separately from navigation. Yet, these activities are now capable of affective one another with regular frequency. Secondly, jurisdictional authorities over various parts of the sea generally fall on different levels of government-local, state, federal, industry and the international community. Thirdly, the ocean itself is complex because of its fluid and dynamic nature and the intricate relationships of marine ecosystems and environments which support them. These factors make the traditional single sector management approach quote unsatisfactory in today’s multi-use management systems because ecological effects and multiple uses conflict.
Although Nigeria is one of the five African coastal states who profess integrated ocean management, marine affairs are handled by a number of different agencies such that there is no one government agency to oversee ocean activities (Cicin-Sain, B and Knecht, W.R., 1998). Decisions are consequently taken on the basis of particular functional needs without due considerations of impacts outside other functional responsibilities. For example, the Nigerian Navy (NN) generally policies the entire ocean space and principally perform defence related matters; the Nigerian Police and Customs checks crimes and fiscal regulations in ports and harbours; the Federal Ministry of Agricultural through the Federal Department of Fisheries regulates fishing activities; the Nigerian National Petroleum Corporation (NNPC) regulates the development, exploration, exploitation, transportation and marketing of petroleum related products; the Ministry of Science and Technology and the NIOMR are concerned with marine technology acquisition and research related matters; the NMA regulates shipping activities and matters relating to ship building and ship acquisition; the Federal Environmental Protection Agency (FEPA) and its related state agencies are concerned with environmental protection including marine environment. Jurisdictional powers of these ministries and extra-ministerial agencies are governed by a number of legislations enacted at different times. These agencies and legislations may have been relatively effective in their functions but they are not only constrained by inadequate marine technology but the lack of a central coordinating body hence the need for a coordinated management policy. Although such vertical, sectoral or fragmented approach in itself may not be all that bad as long as it leads to healthy competition for allocation of resources in favour of rational cost-effective management, it is generally believed that such approach frequently leads to development in one sector with little or no account of parallel or related developments in other sectors. As Jean-Pierre Levy observed:

> It may lead to conflicts or overlapping among sectoral activities and, more importantly, it may endanger a situation in which it will become increasingly difficult to pursue an overall marine policy that optimises the uses of ocean space and its resources (Levy, J., 1988:330).
6.4 Conclusions

In this chapter we have tried to capture the theoretical and practical need, goals and meaning of integrated ocean policy, as well as the nature and character of such policy as an option for Nigeria. Despite the expression of desire for an integrated marine policy in Nigeria the existence of autonomous agencies for policy planning and implementation does not warrant the integration of policy strategies. This gives room for conflicts or overlapping sectoral activities that endanger the pursuit of an overall marine policy that is integrative for optimum utilization of ocean space and its resources. Integrated ocean policy is multipurpose, covering all ocean activities and harmonization between constituent elements of the policy bringing them together to form a single unifying policy. An integrated policy therefore needs to be comprehensive at the input stage, aggregated at the processing stage and consistent in output. In this perspective, integrated ocean policy is considered as a methodology through which several activities are taken as a whole and a various uses of ocean space are optimized to achieve net benefits of meeting the needs of the present without jeopardizing the needs of future generations. Integrated ocean policy therefore has developmental and environmental dimensions since it tends to emphasize the link between the two elements thus giving birth to the issue of sustainable development.

As a policy option for Nigeria, integrated ocean policy does not actually replace sectoral approach, but supplements it. It is a continuum of intersectorial, intergovernmental and international integrations. It is also a spatial and inter-disciplinary integration which relies on a gradual movement from fragmented to a more integrated integration though the establishment machinery for communication, co-ordination and harmonization. It thus establishes a network of arrangement system based on complete knowledge of ocean uses and its resources challenging Nigeria not only to elevate ocean affairs in the public policy agenda but also integrating ocean policy into national development plans. Here then lies the bane of the legendary Vision 2010 Report of Nigeria which did not give ocean policy or ocean affairs a special attention in its visionary report and policy statements on “Where We Are”, “Where We Want to Be” and How To Get There”. Although the vision report realized the importance of integrated ecosystem and coastal resources management, the only ocean problems recognized by the report are coastal erosion, water hyacinth and weed infestation, and the constant overflow of Bar Beach in Lagos.
by the Atlantic wave upsurge. It is somewhat disappointing that Nigeria’s Vision 2010 obviated the need for the evolution of an integrated ocean policy which would not only enhance integrated ecosystem and marine resources management but capable of contributing positively to the socio-economic development of the country as a whole.

Finally, integrated ocean policy requires a realistic financing and institutional restricting founded on basic legislative requirements and steps whose key elements is not only the sea, but also the harmonization of various national laws, norms and regulations within the municipal system itself. It is this legislative requirement that would empower the government and all stakeholders to adjust to the tune of integrated ocean policy in the planning and implementation of the policy. It also strengthens the political will to provide the existing and new institutional structures with the necessary means and infrastructure to perform the functions they were established to perform.
CHAPTER SEVEN

SUMMARY, RECOMMENDATIONS AND CONCLUSION

In the preceding chapters, we have tried to evaluate Nigeria’s marine policy. We have viewed marine policy as a branch of public policy which is concerned with the development of institutional machinery for the promotion of a variety of ocean interests and/or achieving a set of developmental goals and objectives in relation in the uses of Nigeria’s ocean space and its resources. Our theoretical framework, which centres on the normative and logical conception of policy analysis, is rooted in the primary analytical model which considers policy analysis not only as an approach but as a methodology for identification of preferable alternative in respect of complete policy issues. This is more so with the multiplicity and complexity of ocean uses and environment, respectively.

Based on this premise, we have argued that the Rational Comprehensive Model (RCM) is our preferred theoretical model of analysis because it provides the rational basis for choices of alternatives for the maximization of results in the pursuit of efficient policies. In this perspective, the rational decision-maker can determine the best optional choice based on full knowledge of the factors that affect decision making so as to achieve the most efficient and co-effective responsible and argued that the rational model is most appropriate for this study because ocean affairs are so technical that actions of executives and decision-makers have to be guided by not only external factors but also by the circumstances of the ocean itself. The task before us in this last Chapter is to present a summary of the study and some conclusions, as well as make some broad recommendations that would enhance the planning and implementation of an integrated ocean policy option which we have proffered for Nigeria.

7.1 Summary

Generally, ocean policy covers a set of goals, directive and intentions as formulated by authoritative persons in relation to the ocean environment. Ocean policy thus includes all activities that link a nation to the uses of the coastal and marine areas, how such decisions are taken and how a state organizes itself to make the decisions. The focus of national ocean policy is on decisions and alternatives pursued by a state regarding the use and management of ocean space. We have argued that marine policy must have a link with domestic policy as it deals with
the means of finding solutions to national security, economic, energy, environmental, political problems, etc, as well as how a nation plans to face the future. The course and direction of marine policy is guided by international principles which set up rules that govern access to and common uses of the oceans. The root of this governance is the international community’s efforts to codify and develop principles which evolved from customary practices into specific rules of international law.

Although the uses of the sea were governed by unrestricted freedoms for several centuries, by 1982 when the most comprehensive international law of the sea (UNCLOS III) was adopted, more than 60 international conferences on various uses of the sea had been adopted. These conferences had also produced over 64 multilateral treaties and protocols dealing with some specific and technical aspects of ocean affairs. Two principles of ocean uses emerged, viz, the traditional open sea system and the 20th Century practice of the expanded ocean enclosure, albeit with agreed limits. The traditional open sea principles simply recognized only two zones of sea- the territorial sea and contiguous zone of the controversial 3 and 12 nautical miles limits, respectively, and upheld the unlimited freedoms of the high seas. The new principles of expanded ocean enclosure brought about a mad rush for the oceans such that by the fold of the 1980s, coastal states of the world had claimed legal jurisdiction over some 37.7 million square nautical miles (about 100 million square kilometres) of ocean floor adjacent to their land boundaries. The new concepts such as continental shelf, EEZ, Common Heritage of Mankind and archipelagic states provided the conduit pipes through which the world oceans were grabbed. But, more specifically, the adoption and coming into force of UNCLOS III in 1982 and 1994, respectively, further revolutionized the law of the sea and provided the international community, regional groupings and individual coastal states with the armour for establishing ocean policies not only for promotion of economic development, coastal and ocean planning, conflict resolution but also with stewardship for management, protection and preservation of the ocean environment in the interest of mankind as a whole.

It is in the light of the above that we undertake in this study to evaluate Nigeria’s ocean policy vis-a-vis the guidance provided by the law of the sea (UNCLOS III in particular). First, we highlighted the evolution of Nigeria as a maritime nation strategically located on the Gulf of Guinea. As the largest, most populous and richest nation in the West and Central African sub-
region, Nigeria’s leading role in the West African maritime areas is very crucial. Nigeria’s ocean space in the Gulf of Guinea is potentially large. A coastline of 415 nautical miles gives Nigeria a functional jurisdictional sea space of about 80,000 square nautical miles (about 210,000km²) as far as the doctrine of continental shelf and EEZ are concerned for the purpose of exploration and exploitation of living and non-living resources, marine environment protection, preservation and management. However, the reality of the Gulf of Guinea as a semi-enclosed sea area showed that Nigeria had to share this ocean space with her immediate maritime neighbours of Cameroon, Equatorial Guinea, Sao Tome and Principle and Benin Republic. Nigeria needs to confer with these countries for peaceful maritime claims. Data available show that the extent of Nigeria’s continental shelf ranges from 26 kilometres off Lagos to 56 kilometres off Cape Formoso and increases to about 64 kilometres towards the Island of Fernando Po. This is very close to the territorial sea claim of Equatorial Guinea and much within her contiguous zone. Deliberations of maritime boundary delimitations between Nigeria and some of her neighbours started some years ago but have not been concluded. Controversies may manifest even with the guidelines and modalities provided by UNCLOS III in establishing baselines for delimitating maritime boundaries. This study has established that the baselines from which the breadth of territorial seas of the countries along the Gulf of Guinea are measured are not controversial, except that a dispute of principle does exist between Nigeria and Cameroon over the division of the estuarine waters and islands of the Cross River and associated territorial seas of the Bakassi Peninsula.

As a maritime nation, Nigeria has a number of maritime interests which her ocean policy must strive to achieve. These cover a variety or ocean related activities as transport and communication, exploration and exploitation of living and non-living resources of the sea, waste disposal, marine environmental preservation, management and protection, beach and shoreline management, recreation and tourism, military and research activities. Some of these interests, uses and activities are supplementary, complementary and conflictual. Ocean policy, therefore, should be designed to achieve the best of these variegated interests. On this basis, we have attempted to critically evaluate Nigeria’s ocean policy and strategies for planning and implementation.

Our methodological model of analysis is based on input-output interactions which assumed that a set of inputs are derived from the geographical situation of a country in the
formation of marine policy. We see these inputs as objective quantifiable characteristics which interact and pass through processing filters before being transformed into an actual policy. The processing section contains the value system of the society, the bureaucratic structures and the decision-making process available in the country. Inputs are thus transformed into output which is the marine policy goals, directives and intentions. Inputs and outputs could be marine or non-marine as they influence how a country attempts to achieve her ocean interests in a situation of competition for scarce resources. In examining the inputs and processing in our marine policy network analysis, a Nigerian national value of using marine policy to achieve overall economic development based on the protection of national security interest and the country’s human, mineral, animal and other resources within her land and maritime boundaries, becomes illuminating. Ocean policy, therefore, ought to support all past development plans and forge the country as a strong, dynamic and self-reliant national as ocean affairs are generally guided by international legal instruments, Nigeria has been a party to over 45 international conventions on various uses of the sea (38 of which are in full force while seven are yet to come into force). Domestically, too, a number of national legislations have been made even though we urge that these legislations are still inadequate to protect Nigeria’s national interest in certain ocean activities.

The essence of setting policy goals, directives and intentions (outputs in our model) and legislations is to achieve specific maritime interests. Nigeria is thus not only interested in maintaining sea lanes of communication but also in participating in international shipping trade, especially that about 60% of the country’s GNP depends on international trade. Along with most developing countries, she had suffered discrimination and frustration from even the trade she generated. That is why Nigeria legislated and evolved a comprehensive national shipping policy which is aimed at correcting the imbalance in her shipping trade for the purpose of implementing UNCTAD Code of Conduct for Liner Conferences, encourage not only the participation of Nigeria shipping lines in liner conferences but also promote the acquisition of shipping technology in terms of training, purchasing, servicing and building of ships locally in the country. The National Shipping Policy Decree established the NMA as the main authority for the implementation and co-ordination of the policy. We have argued that elements of power conflict tend to exist between the NMA and the Minister of Transport as provided for in the Shipping policy decree and the Merchant Shipping Act of 1962 on matters related to regulation of
shipping activities, especially as regards the office of the GIS, which incidentally was recently transferred to the Authority. This happened because some of the aims and objectives of the NMA under the shipping policy decree appear to be mere statements of intent since the shipping policy decree neither repealed the Shipping Act nor transferred the powers of the Minster under the Act to the Authority under the shipping policy. Unless this is done, we have argued, even though the NMA has been performing such functions, it is somewhat misleading that the objectives of the NMA under the shipping policy decree remain mere expressions of intent.

However, a critical evaluation of the implementation of the National Shipping Policy by the NMA shows that the Authority has succeeded in establishing a common pool for some categories of cargo generated by internally raised shipping trade for the purpose of allocation, cargo sharing and issuing of sailing certificates. Only a modest achievement was made in this area as Nigerian national lines carry less than 10% share of cargo generated in Nigeria although mostly chartered vessels. Besides, a lot of foreign suppliers do not honour Nigeria’s cargo allocation system and, therefore, made separate arrangements, just as government and externally funded cargoes do not pass through NMA allocation system. Most strikingly, it was somewhat disappointing that the NMA’s attempt at implementing the UNCTAD Code of Conduct for Liner Conferences (the so called 40:40:20 formula) and allocation of trading routes as well as encouraging indigenous carriers to join conference lines was met with very strong opposition from the traditional conference liners of Europe and America to the extent that they withdrew from such liner conferences leading to total dissolution of all the West African liner conferences.

Secondly, the NMA’s attempt at encouraging the expansion of indigenous national fleet through the Ship Acquisition and Ship Building Fund yielded very little divided as the international shipping business was unfavourable to the internal situation in Nigeria. Shipping business is overburdened with sophisticated and highly complex technology, running cost and enormous capital outlay. So Nigeria’s ship building and ship acquisition funding was greeted with very low inputs and poor management to the extent that it was suspended in 1996 without any modest achievement. Since 1988, the national fleet has declined from about 24 (357, 858 dwt) sea-going vessels to only 3 (61, 770 dwt) vessels in 1995.
As regards the management of the living and non-living resources of the sea, Nigeria have made a number of efforts through legislations and establishment of institutions to promote some ocean interests in this respect. In the area of fisheries, for example, a number of sea fisheries laws and regulations have been made, the latest being the Sea Fisheries Decree and Sea Fisheries Regulations of 1992. These decrees and regulation rules guide the Federal Department of Fisheries in the regulation of sea fisheries in Nigeria. In spite of the fact that Nigeria’s coastal and off-shore waters have relatively large concentration of fish resources, only about 48% of potential yield comes from marine areas. Much evidence abounds that foreign bait boats, pursue seiners and long liners have been invading the western portion of Nigeria’s EEZ, carting away a lot of fish catches in contravention of Nigeria’s fishing laws and regulations. Technology limitation for the determination of MSY, OY and TAC of various species of fish resources does not help matters in the application of fisheries conservation, protection and management in Nigeria.

For non-living resources, Nigeria’s continental shelf contains substantial oil and gas in addition to other minerals of economic importance. Oil and gas have been the mainstream of Nigeria’s economy and are the country’s main sources of foreign exchange earnings. Nigeria’s oil reserves is about 19 billion barrels while the gas reserves is in excess of 110 trillion cubic feet ranking Nigeria the 10th in world gas reserves. About 86% of the oil and gas comes from off-shore and marine swamps. Nigeria’s gas production is about 8.14 million cubic feet even though 80% of it is flared making Nigeria the highest flaring nation in the world. To enhance optimum utilization of gas, government has introduced liquefied natural projects which are aimed at reducing gas flaring by about 50% in 1999 and its complete elimination of gas flaring by 2010.

In considering the issues of ocean resource management and protection, the linkages between the various types of ocean uses and interests generate concern for maritime enforcement. This inter-relationship crowns ocean policy with the need for integrated maritime enforcement. In this study, we identified most of integrated maritime enforcement in five coined maritime activities within which coastal state must address a series of responsibilities, challenges and threat in the application of enforcement measures in terms of surveillance, monitoring and control of ocean space. This includes management of marine resources, protection and preservation of marine environment, maintenance of maritime sovereign prevention of illegal
activities and marine safety. In this mode, four general responses are available to a coastal state to enable her meet the challenges and threats of specific types of marine activity in terms of requirements and capabilities for maritime surveillance, monitoring and control. These requirements and capabilities are operational/technical, legal, political and non-governmental. The study, therefore, undertook an evaluation of requirements and capabilities for integrated maritime enforcement in Nigeria using a matrix system of analysis providing quantum ranging from 0-3. The result shows a remarkable difference in Nigeria’s requirements and capabilities for integrated maritime enforcement. However the similarity of requirement across the spectrum suggests not only the need for more integration in terms of improvement of facilities of infrastructure for maritime enforcement, but also for more integration between the operational/technical, legal, political and non-governmental/user means of control and management. This calls for the need for an integrated approach to maritime policy. Chapter six thus examined the rationale, nature and character of integrated ocean policy as an option for future Nigeria marine policy.

The rationale for integrated ocean policy borders on the fact that traditional coastal and resource management was characterized by sectoral approach where separate institutions and authorities vary on activities leading to often conflictual, overlapping and sometimes neglect on other sectors of marine activities. This is the case in the current practice in Nigeria due to the existence of multiplicity of agencies and lack of not only co-ordination among them but also that of a central co-ordinating authority which makes it difficult for the country to pursue a marine policy that optimizes the use of ocean space and its resources.

The purpose of integration in ocean policy is to achieve sustainable development of the coastal and marine areas, reduce vulnerability and maintain the ecological balance between life support system, biologically diversity and the marine environment. In an integrated policy, constituent elements of a policy are linked together and are made the subject of a single unifying policy. We have argued that a policy is integrative when it is comprehensive, aggregative and consistent at input, processing and output stages, respectively. Integration in policy planning and implementation does not actually replace sectoral approach completely but it supplements it in the sense that integration towards a more integrated integration. It requires integration to the achieved intersectorally, intergovernmentally, spatially, internationally and interdisciplinary.
This creates a network of management which lies on the need of strengthen the political and infrastructural planning while enhancing linkages among all components of ocean administration and incorporation of decision-making apparatus to bring ocean policy in line with national socio-economic and environmental factors. Similarly, it requires institutional restructuring based on comprehensive step legislative requirements which we have identified. The purpose of these steps is to integrate municipal law with the law of the sea, strengthen existing institutions to come to grips with the emerging integration process. This can only be possible when ocean affairs are elevated to a high position in public policy agenda, integrated into national development plans and made to involve all levels of government and agencies, public or private.

These are challenges which require a high level of commitment on the part of the government.

This study has revealed that the evolution and development of marine policy generally depend on the politics and global legislation on the sea as nations struggle for share of the mass of resources endowed on man by the opportunities and challenges provided in the oceans. Nations simply acknowledge this and their commitment to it at the multilateral level is total. Having reviewed the historical evolution of the law of the sea and the salient features of the new ocean regime (UNCLOS III), the opportunities and challenges provided by this legal regime of the sea do suggest that national efforts at evolving strategies in order to enhance optimum utilization of ocean space and its resources must be a necessary part of national planning. The evaluation of Nigeria’s maritime sector indicates that there is some degree of political consciousness as regards the multifaceted uses of the sea even though it obviates national planning in the country. Nigeria, like most developing states, is constrained not only by lack of marine technology but also by inadequate funding of the marine sector. Indeed, the problems, experiences and challenges confronting nations in developing policy mechanisms and institutions for ocean management illustrate the complexity of the ocean itself. Marine policy, therefore, requires integrative structures of various dimensions. Its local looting starts from its integration into national development planning in order to harness maximum participation of all levels of government and all organizations involved in any type of ocean activity. There is also the integration of international ocean relations as the regional and global levels which, by the necessary links provided by ocean law, should from a basic part of ocean policy at the national level. The challenge of ocean development involves not only national efforts of addressing the complex issues and functions involve in ocean development, but more significantly, it involves
conscientious efforts at in-depth research in ocean governance, marine science and technology. It must be re-emphasized, however, that marine policy cannot be effective without a fundamental change of attitude towards science and technology are luxuries which can only be addressed when the basic problems of food, shelter, health and education have been resolved because, in today’s world, science and technology are prerequisites for the solution of basic problems as “about 85% of economic growth today does not depend on material inputs but on technological innovation based on research and development and science research.”

The study has also revealed that international principles provided the major guidelines the formulation and implementation of marine policies. These principles, which evolved customarily under the traditional open sea system and the new principles of expanded ocean enclosure, represent continuity and change, respectively, in international relations. These principles which has also be codified in various conventions and especially UNCLOS III which brought together principles governing traditional uses of the sea such as territorial sea and contiguous zone, high seas, shipping, etc, and the new changes which ushered in new principles such as limits to territorial sea and continental shelf, common heritage of mankind, new institutions such as the International Seabed Authority (ISA), International Tribunal for the Law of the Sea (ITLS), management of marine environment, settlement of disputes, etc, have provided concrete guidance in determining the design and direction of ocean policy at the national, regional and global levels. This convention has also created ways to accommodate post 1982 developments giving way to new conventions such as the Conventions on Climatic Change, Biodiversity and other United Nations Agreements, the UNCED process resulting in the adoption of the Principles of Action and Programmes to be performed in the 21st Century (Agenda 21, Chapter 17) in relation to the sea. This action programme emphasized the issues of integrated ocean policy or management protection and preservation of the marine environment, fisheries management in both the EEZ and the High Seas and most importantly the establishment of the Commission on Sustainable Development (CSD). These are post 1982 developments that have implications for present and future ocean governance.
7.2 Recommendations

From the foregoing, the following recommendations are being made with the hope that they would be useful in future planning and implementation of integrated ocean policy in Nigeria.

First, the Federal Government of Nigeria should create a Ministry of Ocean Affairs and make a clear statement of declaration on the implementation of an integrated ocean policy in the country. The Ministry should be responsible for coordinating all ocean affairs and activities. The NMA’s mandate and terms of reference should be expanded to cover all ocean-related activities and the Authority should be removed from the Ministry of Transport and transferred to the new Ministry of Ocean Affairs. All agencies concerned with different types of marine activities should have direct link with this new Ministry and an enhanced NMA to create room for coordination, aggregation and consistency of results of activities of these agencies. Similarly, a Nigerian Institute of Ocean Affairs should be created in place of the present Institute of Oceanographic and Marine Research as a subsidiary research institute to the new Ministry of Ocean Affairs to initiate not only research in all aspects of ocean affairs but also strategies for co-operation between Nigeria and the United Nations, states of the West and Central African Maritime region, non-governmental organizations and all competent international organizations that deal with ocean affairs the world over.

Secondly, Nigeria should step up negotiation for the establishment of a Gulf of Guinea Maritime Commission (with the Secretariat in Nigeria), using the Ministerial Conference of the Maritime Transport of West and Central Africa (MINCOMAR) to co-ordinate not only the maritime trade of the Gulf of Guinea area but of the entire ocean activities. This new commission can be used to enhance the co-operation already started under to ECOWAS dump-watch protocol and the Global Environmental Facility (GEF) – funded Gulf of Guinea Large Marine Ecosystem Project (GGLMEP). Nigeria should also consider, as an urgent matter, the issue of maritime boundary delimitations with her neighbours and state negotiations on the limits of maritime boundaries between her and Equatorial Guinea and Soa Tome and Principe. Our observation has revealed the boundary negotiations are currently going on between Nigeria and Benin Republic while it is already known that Nigeria’s boundary dispute with the Republic of Cameroon is awaiting arbitration at the International Court of Justice (ICJ) in the Hague. It is here
recommended that the two countries should consider withdrawing the case from the ICJ and seek mutual understanding to resolve the conflict in the spirit of good neighbourliness. At worse, the disputed areas should be jointly managed under specific agreements for establishing joint resources management zone under the United Nations Regional Seas Programmes.

Thirdly, the Federal Government should establish an inter-ministerial, inter-agency board or council under the new Minister of Ocean Affairs to take charge as a lead marine affairs agency (preferably an enhanced NMA). This body should be responsible for bringing together governmental and non-governmental organizations involved in ocean affairs and to provide the necessary leadership and the opportunity for policy prioritization in ocean matters. The board will also be in a good position to make concrete decisions and give policy advice on the county’s institutional requirements and arrangements, managerial requirements and capabilities, staffing, funding, scientific and technological needs as well as integrated maritime enforcement strategies.

Fourthly, in view of the legislative inadequacies inherent in Nigeria’s municipal laws in relation to the international developments in ocean affairs, there is need to reconsider the fine tune all Nigeria maritime laws to harmonize them not only nationally but also with the latest development in the law of the sea. Similarly, the incoming National Assembly should pass a resolution enacting a new ocean policy law, spelling out a new ocean regime which recognizes the active participation of local coastal communities, coastal state authorities and Federal Government in the planning and implementation of integrated ocean policy in Nigeria.

On this account, we hereby recommend a draft text of this new ocean policy in the following context:

The National Assembly of the Federal Republic of Nigeria, considering that a large section of the Nigerian population lives in coastal areas within less than 50 kilometres from the sea;

Nothing more than 60% of Nigeria’s GDP is generated by ocean-related activities such as fishing, off-shore oil and gas production, sea-borne trade, tourism etc.

Aware that this positive development may be jeopardized by pollution of land, air and water, coastal erosion, sea upsurge and the impairment of human health;
Convinced of the fundamental importance of the oceans for the economic, environmental, and military security of Nigeria and of the global community.

Bearing in mind that the coming into force of the United Nations Convention on the Law of the Sea has created a legal order for the seas and oceans which will promote the peaceful uses of the sea and oceans, the equitable and efficient utilization of the resources, the conservation of the living resources, and the steady protection and preservation of the marine environment, to which Nigeria is party;

Recalling the conventions and decisions of the United Nations Conference on Environment and Development, and in particular, Agenda 21 (chapter 17), which is devoted to the seas and oceans;

Promoted by the desire to enhance comprehensive security and sustainable development at the nation, regional and global levels,

Has decided to consolidate Nigeria’s ocean regime as follows:

7.3 Conclusion

Secondly, we can also concluded that marine policy is more likely to be efficient where appropriate institutional machineries are established for the formulation and implementation of policy as policy cannot be planned and implemented in a vacuum. Ministerial and agency institutions for ocean management often have problems of structure and function as the study has revealed. Structurally, institutions which are located within governmental bureaucratic hierarchy often compete with other organizations and agencies, with consequent reduction in the effectiveness of such agencies in the performance of their functions. This provides enormous political/administrative implications since there is no direct link between the level of government involvement among government agencies and the political structure of ocean affairs. This problem creates more fragmentation such as sectoral and functional differentiation, geographic and activity subdivisions. This creates delinkages between existing institutional arrangements and the and the land-sea interface translating into not only lack of continuity in jurisdiction but also in multiple jurisdictions and laws that apply to various geographical limits. Consequently, there will be a division of authority at governmental levels, creating difficulties in decision-
making, widening institutional gaps, overlaps and duplication of efforts. This study has found such lapses in the planning and implementation of marine policy in Nigeria as there seems to be no institutional linkage between, for example, NNPC, Federal Department of Fisheries, FEPA, NMA, etc, in terms of decision-making since all the agencies fall under different ministries even though their activities have one thing or the other to do with the ocean. Institutional problems of functional nature are associated with the basic functions of marine institutions in terms of policy formulation, planning and implementation. Like in most countries of the developing world, there is no overall ocean policy framework in Nigeria. Until the promulgation of the National Shipping Policy Decree of 1978, ocean policy took place silently, sectorally and on piecemeal basic, without inter-agency consultation. Appropriate institutions could be central boards to semi-autonomous organizations in specific fields, like the NMA, which could be converted into a central coordinating body for ocean policy and not limiting its functions to shipping as it is currently the case. One of the findings of this research, therefore, is that Nigeria’s marine policy is most likely to be efficient if there is one institutional authority that co-ordinates the administration of Nigeria’s ocean space.

From this study, there is no doubt that the evolution of the Nigerian State has a bearing with marine policy. In her first decade of independence, ocean policy was shielded under the country’s erstwhile colonial master (Britain, especially with the succession of treaties mandate. The post-Civil War efforts were patterned along the enormous problems of national development which ironically were thought not to have direct bearing with marine policy. Marine policy is concerned with and directly related to the problem of national development, for example, petroleum and gas, fisheries and shipping. With the current pressing problems of national development and the desire to marshal into the 21st Century and a planned vision for the year 2010, Nigeria is expected to have concerted approach to marine policy.

Besides, the current ocean policy strategies, including those adopted by the NMA, under the National Shipping Policy Decree, do not adequately protect Nigeria’s marine interests not only because of the existing low level of political will but also due to lack of an integrated marine policy in the country. Therefore, the country is likely to maximize her expected benefits as a maritime nation if she pursues an integrated marine policy. This will depend on the effectiveness of the country’s political will, the acceptability and convenient application of
integrate marine policy option under the current multiple sectoral arrangements. This requires legislative and institution building which would elevate ocean affairs to a top priority in national policy agenda so that ocean related policies are formulated under integrated fora. Secondly, it is expected that policy objectives and nation developmental priorities are integrated into the national ocean policy for effective integration into the national development planning in Nigeria. And thirdly, all level of government and interested parties, whether private or public, are involved in the formulation and execution of an integrated ocean development and EEZ plan. This requires new legislative orders, capacity building and awareness, within and outside the government, to increase the involvement of governmental and nongovernmental organizations, business and academic communities so that they can join efforts together in devising strategies on how best to channel the goals directions and intentions of integrated ocean policy in Nigeria.

**Article 1**

**Coastal Communities**

(i) There should be local councils of coastal villages or towns in all the coastal states of Nigeria, namely, Delta, Ondo, Ogun, Rivers, Bayelsa, Lagos, Akwa-Ibom and Cross-River;

(ii) The local council of a coastal village or town shall elect a Marine Resources Council to be Composed of not more than 15 representatives of the Nigerian Ports Authority, Ship-Owners, Fishing associations, marine industries, tourism board, research institutes, non-governmental organizations and consumer co-operatives;

(iii) The Marine Resource Council shall deliberate on all matters affecting the sustainable development of marine resources, the protection of the marine and coastal environment, research and training in ocean affairs, and shall prepare legislation thereon for the Local Government Council.

(iv) The Marine Resources Council shall prepare short-term (one year) and medium term (five year) plans for sustainable resources development and the protection of marine environment, and submit them through the local Government to the State Government;

(v) The Marine Resources Council shall be responsible for the local implementation of Chapter 17 of Agenda 21;
(vi) The Local Government Marine Resources Council shall meet as often as necessary;

(vii) Local Government Councils, through their Marine Resources Councils, shall co-operate, within their states and with the local government councils of neighbouring states as well as local authorities of neighbouring countries on matters affecting their common ecosystem. Appropriate state, national or international conferences shall be arranged for this purpose.

**Article 2**

**Coastal States**

(i) The state House of Assembly in all coastal states shall establish state Marine Resources Councils;

(ii) A State Marine Resources Council shall be composed of:

(a) Representatives of each Local Government Marine Resources Council

(b) Representatives of State Ministries of Agriculture (Fisheries Department), Transport, Oil and Gas, Tourism and Environment Industry, Education and others involved in one way or another in ocean affairs;

(c) Environmental and Professional and Scientific state organization and institutions

(iii) The Chairman of the State Marine Resources Council shall be the Governor of the State;

(iv) The State Marine Resources Council shall meet once a year for a period of not less than three weeks or as requested by the Ocean and Coastal Affairs Board of the Federation;

(v) The State Marine Resources Council shall co-ordinate, harmonize, and integrate the one year and five-year plans submitted by the coastal local government councils, return them to the local government councils with appropriate modifications and develop mid-term (five year) and long term (ten year) plans and on this basis, integrate them into state, Social and Economic Development Plans and Policies, and prepare the appropriate legislation;

(vi) The Governor of a State shall establish within his office an adequately staffed Ocean Management Secretariat to service the State marine Resource Council. He may also draw on the state research institutions for the needed research and policy advice;
(vii) The State Marine Resources Councils shall co-operate with neighbouring state Marine Resources Councils within Nigeria and across national boundaries on matters concerning the common ecosystem.

**Article 3**

**National Ocean Governance**


(ii) The Board shall meet regularly or at the request of the President of The Federal Republic of Nigeria;

(iii) The Board shall examine and harmonize the State Ocean Development Plans. It shall be a responsible for the implementation of Agenda 21 at the national level. It shall represent Nigeria, though the appropriate Minister, at the organs of the Regional Seas Programme of the United Nations.

(iv) The Minister for Science and Technology shall be the Vice-Chairman of the Board;

(v) Through its Vice-Chairman, the Board shall consult regularly with:

(a) The National Assembly Committee on Ocean Affairs;

(b) The National Council of Nongovernmental organizations and Institutions;

(vi) The National Assembly Committee for Ocean Affairs shall be composed of 15 members chosen by both the Senate and the House of Representatives. It shall be standing committee;

(vii) The Council of Non-governmental organizations and Institutions shall be composed of Representatives of State Marine Resources Councils, of Research Institutes and Universities, and national interest groups. It shall meet annually.

(viii) An Ocean Secretariat shall be established within the office of the President of the Federal Republic of Nigeria to service the meetings of the Board for Ocean and Coastal Management. The Secretariat shall be composed of staff seconded from all departments involved in one way or the other in ocean affairs.
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