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THE LAW OF THE SEA AND NIGERIA'S MARINE POLICY : A CRITICAL EVALUATION

JULY 1999

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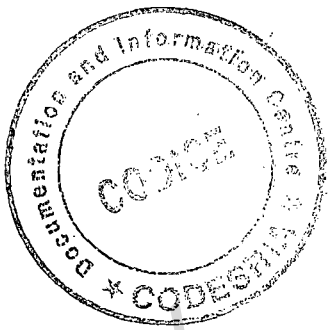

BY

WONOTANZOKAN NZEDA TAGOWA

A DISSERTATION SUBMITTED TO THE POSTGRADUATE SCHOOL, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY IN POLITICAL SCIENCE (INTERNATIONAL RELATIONS)

DEPARTMENT OF POLITICAL SCIENCE,
FACULTY OF SOCIAL SCIENCES,
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ZARIA, NIGERIA

JULY, 1999

DEDICATION

To

The Bwatiye Struggle for a Political Space in Nigeria

And

Dong Community in Their Search for Unity and Progress

DECLARATION

I, Wonotanzokan Nzeda Tagowa, with Reg. No. Ph.D. FASS/9631/1992-93, do hereby declare that this dissertation has been prepared by me and it is a product of my research work. It has not been accepted in any previous application for a degree. All quotations are indicated by quotation marks or by indentation and acknowledged by means of notes and references.

Wonotanzokan Nzeda Tagowa

30/9/88

Date

CERTIFICATION

This dissertation entitled "The Law of the Sea and Nigeria's Marine Policy: A Critical Evaluation" meets the regulations governing the award of Doctor of Philosophy in Political Science (International Studies) of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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Finally, while I acknowledge the contributions of the authors of the large body of literature cited in the body of this study for which I have given a pride of space in the notes and references and for which I owe intellectual gratitude, all errors of facts and logic found in the work are personal to me and me alone.

Zaria, July 1999 **Wonotanzokan Nzeda Tagowa**

ABSTRACT

The importance of the sea not only as a source of food and means of transport but also as a potential source of finding solutions to many of man's social, economic, political and ecological problems has created the impetus for the legal division of the world's oceans into national and international jurisdictions. This legal regime evolved historically through state practices beginning from the Spanish and Portuguese control of the world oceans in 1493 to the signing of a broad-based and comprehensive treaty, the Third United Nations Convention on the Law of the Sea (UNCLOS III), in 1982. This treaty is not only a comprehensive legal instrument that embodies one of the latest codification and progressive development of international law, but is also a legal base for national ocean policies of nation-states. Nigeria participated in the negotiations that led to the signing of the treaty in 1982. She also ratified the convention on August 14, 1986, eight years before it came into force on November 16, 1994. This study undertakes a critical evaluation of the influence of the law of the sea on the emergence of a comprehensive marine policy in Nigeria. Having done this, our general conclusion is that the evolution and development of marine policy depend on the politics and global legislations on the sea as nations struggle for share of the mass resources of the sea. This suggests that national ocean policies must be part of national planning which have been found to be absent in Nigeria. Besides, the complexity of the ocean medium itself requires integrative structures of various dimensions for effective ocean policy.

Ocean policy, therefore, requires integration at the local, state and national

levels as well as national development planning. There must also be integration of international ocean relations at the regional and global levels. The most significant specific conclusions reached from our analysis, evaluation and findings are that (I) sectoral approach and lack of co-ordination and harmonization between institutions of policy formulation and implementation are the major factors which impaired the emergence of a comprehensive ocean policy in Nigeria; (ii) there is institutional inadequacy as the country does not have a central authority that oversees ocean affairs; (iii) there still exists a legislative vacuum as far as maritime laws are concerned: while some existing maritime legislations are outdated and conflict with current international practices, there are areas in which laws have not yet been enacted; and (iv) although there is some degree of awareness as to the need for a comprehensive ocean policy in Nigeria, there is complete lack of political will on the part of governmental authorities to include ocean policy into national development plans. On the basis of these conclusions, we have made some recommendations which centre on new national legislations for institutional restructuring in order to enhance the evolution of an integrated ocean policy in Nigeria.

LIST OF ABBREVIATIONS

AFRC	-	Armed Forces Ruling Council
BSL	-	Brawal Shipping Line
BNL	-	Bulkship Nigeria Limited
CBN	-	Central Bank of Nigeria
CON	-	Control
COWAC	-	Continental West African Conference
CS	-	Continental Shelf
DIM	-	Disjointed Incrementalism
ECOWAS	-	Economic Community of West African States
ECOMOG	-	ECOWAS Monitoring Group
EEZ	-	Exclusive Economic Zone
EU	-	European Union
EGP	-	Escravo Gas Project
FAO	-	Food and Agriculture Organization
FEWAC	-	Far East West African Conference
GGCP	-	Gas Gathering and Compression Platform
GIS	-	Government Inspector of Shipping
GEF	-	Global Environmental Facility
ICAAT	-	International Commission for the Conservation of Atlantic Tuna
ISA	-	International Seabed Authority
IPCC	-	Inter-governmental Panel on Climatic Change
ITLS	-	International Tribunal for the Law of the Sea
KIL	-	Kashim Ibrahim Library
LGP	-	Liquified Gas Project
LPG-FSO	-	Liquified Petroleum Gas Floating, Storage and Off-loading Platform
MSC	-	Mixed Scanning Model
MON	-	Monitoring
MEWA	-	Mediterranean West African Conference

MINCOMAR	-	Ministerial Conference of Transport Ministers of West and Central Africa
NB	-	Nigerbras
NGL	-	Nigeria Green Lines
NIIA	-	Nigerian Institute of International Affairs
NIOMR	-	National Institute for Oceanographic and Marine Research
NN	-	Nigerian Navy
NNPC	-	Nigerian National Petroleum Corporation
NLNG	-	Nigerian Liquified Natural Gas
NOAA	-	National Oceanic and Atmospheric Agency
NNSL	-	Nigeria National Shipping Line
OM	-	Optional Model
PKL	-	President Kennedy Library
PRC	-	Provisional Ruling Council
SMC	-	Surveillance, Monitoring and Control
SLC	-	Sealanes of Communication and also Successive Limited Comparism
SUR	-	Surveillance
UKWAL	-	United Kingdom West African Conference
MSY	-	Maximum Sustainable Yield
OY	-	Optimum Yield
S	-	Surplus
TAC	-	Total Allowable Catch
CSD	-	Commission for Sustainable Development
UNCLOS	-	United Nations Convention on the Law of the Sea
UNCED	-	United Nations Convention on Environment and Development
UNCTAD	-	United Nations Conference on Trade and Development

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CHAPTER ONE

INTRODUCTION, RESEARCH PROBLEM, METHODOLOGY AND THEORETICAL FRAMEWORK

1.1 Introduction

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 sees and oceans.[1] This sea water has been fascinating and challenging to the human race for centuries. For example, 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, economic and ecological problems. As a result, 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.[2]

This division of legal regimes 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 (UNICLOS 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 product of more than 14 years of negotiation, was adopted by more than 130 states in 1982. It was formally ratified or accented 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."[3] 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.[4] 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.[5] 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.[6] 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.

1.2 The Research Problem

As a coastal and developing state, Nigeria has a lot at stake in an ordered and harmonious internationalization and utilization of ocean space. Nigeria has more important oil wells offshore than onshore. Our 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 interests. 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 interest.

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 1998), 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 sets out to undertake a critical evaluation of 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:

(i) Why has there been no comprehensive marine policy in Nigeria?

(ii) To what extent do current policy strategies conform to international principles on various uses of the sea?

(iii) What should be the goals and objectives of Nigeria's Ocean Policy?

(iv) Why have current policy strategies, including the National shipping policy, failed to adequately protect Nigeria's marine policy interests?

(v) How does the evolution of the Nigerian state affect her ocean policy?

(vi) How can the country maximize her expected benefits as a maritime nation?

(vii) Does Nigeria require an integrated marine policy? If yes, what character should it take and what should be its integrative policy option?

1.3. Propositions

The major propositions in this study are that:

(i) Nigeria's marine policy is most likely to be effective where policy

directions, actions and intentions conform with international principles on various uses of the sea;

(ii) Nigeria's marine policy is most likely to be efficient where there is one institutional authority to oversee the country's ocean activities in an integrated form;

(iii) A coastal state's marine policy is most likely to be efficient where appropriate institutional machineries are established for policy formulation and implementation; and

(iv) Marine policy is most likely to be efficient where policy directives, goals and intentions are harmonized and co-ordinated in an integrated form.

1.4.0 Methodology and Theoretical Framework

1.4.1 Types, Sources and Methods of Data Collection and Analysis

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 Kashim Ibrahim Library (KIL) and President

Kennedy Library (PKL) of Ahmadu Bello University, Zaria, National Institute for Oceanographic 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, Kuru, Jos, Command and Staff College Library, Jaji, and the Lady Kiliam and Law School Libraries of the Dalhousie University. Halifax, Canada. Substantial data were also obtained from materials and papers provided and presented, 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 and Canada), staff of the NMA, NIOMR, Nigerian Ports Authority (NPA), Nigerian Shippers' Council (NSC), Federal Department of Fisheries, Lagos, and the Nigerian National Petroleum Corporation (NNPC) and Oil Companies. A number of site strips were undertaken to observe coastal and near shore activities in Lagos, Calabar, Oron and Port Harcourt and a number of places in Nova Scotia, Canada.

The method of analysis in this study is mainly systematic content and aggregate data analysis. The data obtained from various sources were collected and analysed, using a model of marine policy network analysis which views marine

policy in terms of input - output interactions which assume that a set of input characteristics lay the foundation of a policy. These inputs thus undergo a process of filtering to produce outputs. 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) was 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.

1.4.2 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."[8] 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 it 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."[9]

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 pays 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."[11]

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 judgements but strive to maintain the purity of science by detaching themselves from value-laden judgements. 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 between few alternatives. But the DIM has been widely criticized for its inherent conservatism 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 policies. It was against this background that Yehezel Dror suggested that the model can only be valid if: (i) the results of the present policies are satisfactory; (ii) the nature of the problem to be solved by the policy is stable;

and (iii) the means of dealing with the problem are continuously available.[12] 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 prepares 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).[13] The strength of the MSM is that its 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 ocean environment itself, but also by international principles. For ocean policy to be effective, it requires co-ordinating 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 judgements. And since public policy means decisions taken in the face of uncertainties, innovation and creativity are required to maximize the risk of such conditions. But this Model has no answer to the question of how we can handle such creativity and innovation in order to reduce the risk of uncertainty in normativism or choices of preferences. This makes the OM unphilosophical and, therefore, unable to prescribe what 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 unapplicable 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."[14]

This is expressed as follows:-

$$\text{Efficiency (E)} = \frac{\text{Output}}{\text{Input}}$$

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 Henkins-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.[15] In this style of the rational decision-maker, the policy analyst uses a range of 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-measurable matrix to those effects; and (6) choosing the `best' policy alternative according to explicit decision rule (6).[16] The purpose of these steps is to discover, among other options available, the option which best serves society's interests. The criterion that determines the best optional choice 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.[17]

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 policy 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."[18] 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 policies. Etienne Dumont argues that differences in character are inscrutable and that diversity of circumstances is such that they are never the same for any two individuals.[19] 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.[20]

Based on this utility calculus, therefore, the state is to employ legislation that will produce the greatest 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 is made up of individual groups, each with ordinarily ranked preferences. In this case, the normative core of efficiency centres 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 overall want satisfaction".[21]

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 it is most appropriate "...in a routine or technical decision-making where actions of executives are prescribed through precise guidance."[22] 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 efficacy 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.[23] 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' provide more benefit than outcome `B' for actor `X'. Then for a given institutional constraint, the study can investigate the most efficient strategy for achieving 'A'.[24] 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.

1.5 Objective of the Study

The general aim of this study is to undertake a critical evaluation of Nigeria's marine policy with a view to ascertaining the extent to which the policy conforms with international principles on various uses of ocean spaces. Specifically, the study is aimed at achieving the following objectives:

i) To identify and highlight the factors which have influenced and may continue to influence the design,formulation and implementation of a comprehensive and integrated marine policy in Nigeria;

ii) To highlight the importance of the sea to the overall socio-political, economic and strategic development of Nigeria;

iii) To identify the factors which have impaired the emergence of a comprehensive ocean policy in Nigeria;

iv) To proffer policy alternative for a comprehensive and integrated marine policy in Nigeria.

1.6 Rationale for 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, a critical evaluation of the existing policy strategies in Nigeria is provided to 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 a policy and assess its immediate and future implication within the geopolitical interest of Africa in general and West Africa in particular.

1.7 Scope and Limitations 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 and/or listed in Appendices VII and VIII.

There is no doubt that some difficulties and problems which have some implications were encountered during the course of this study. In the first place, there was difficulty in reaching out to some places and interviewers due to limited financial resources available to the researcher. Secondly, there was the difficulty in selecting relevant materials for the study from a large number of relevant books and materials on the subject matter during an international training programme on the law of the sea in Canada, which the researcher was opportuned to participate in. Attempt was made to overcome this problem through a careful and rational selection of relevant documents and materials that would best suit the Nigerian situation. There was also the problem in obtaining the needed aggregate data because government agencies hardly keep records on particular cases considered negative or embarrassing to them. For this reason, certain records which ought to have been kept were actually not kept. There were even some records which were listed available that were found incomplete or turned out not available at all. Our strategy was to focus our attention on available and complete data and this to some extent denied this study up-to-date information that would have been covered by this study.

The other limitation had to do with the fact that some matters of ocean policy deal with not only organizational secrets but also defense and security issues. As such the organizations concerned were not open enough to provide some of the required information or data. In some cases, the information or data were shown and withdrawn with the warning that they were not for public consumption and so cannot be quoted. This problem was partially overcome by close/open discussions with some personnel and staff of such organizations and complemented by site visits and interviews in maritime and naval bases and training institutions in Halifax, Canada. Despite these limitation, the relatively large sources of materials available and the selection techniques we have employed, still give us the hope that our analysis have some decree of consistency and that the conclusions and inferences made from them would be of great value in the design and implementation of marine policy in Nigeria.

1.8 Definition of Concepts/Terms

i) Marine/Ocean Policy

Marine or ocean policy is considered within the context of public policy in this study. In the words of Laswell and Kaplan, public policy can be defined as "a projected programme of goals, values and practices."[25] It can also be referred to as actions taken by governments to achieve specific objectives. Dye also argues that public policy is concerned with the policies pursued by governments, the forces shaping such policies, as well as the impacts of the policies on the society.[26] 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 a given policy objective on the society or environment.[27] 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.[28] 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 the 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 resource exploration and exploitation. Others are energy development and utilization, effective and rational management of the jurisdictional areas of the sea, and the protection and preservation, 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. Gerard Mangone 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 making of public 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 better, if not perfect, public decisions."[29]

The above proposition 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 taken or must be taken into consideration in the formulation of Nigeria's marine policy may help in considering other options that can improve public decision[30] that will enable Nigeria to maximize the benefits of being a maritime nation.

ii) Throughout this study, the terms "marine," "maritime" and"sea" are used interchangeably except where 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.

iii) Policy Analysis Network refers to the morphological breakdown of policy issues into a set of inter-related sub-issues for conductive decision-making in order to present a logical sequence in the analysis, explicate the various

assumptions and expose the full complexities of policy issue.

iv) Inputs are defined as objective, quantifiable characteristics from which policies are evolved. These may include coastline length, continental shelf area, offshore reserves, etc.

v) Processing is the stage where inputs are transformed into actual policy: they cover value systems, bureaucratic structures and decision-making processes.

vi) Outputs are policy goals, directives and intentions as expressed in actions taken and decisional choices of people and government. They are the actual elements of a policy.

1.9 Summary of Chapters

This study is presented in seven chapters. The first chapter is the introduction in which the research problem, methodology, theoretical framework, objectives and rationale for the study are spelt out. The second chapter is the review of related literature. In the third chapter we review the law of the sea as a guide to ocean policy, while chapter four examines the historical evolution of Nigeria as a maritime nation. Chapter five is the core of the study, in it, we undertake a critical evaluation of Nigeria's marine policy in relation to the United Nations Convention on the Law of the Sea. In chapter six, we explore the nature, characteristics and direction of an integrated ocean policy as a policy option for Nigeria. Chapter seven contains the summary, conclusions and recommendations of the study.

Notes and References

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4. See Waya, A.D., (1989), The South Atlantic and its Implication for Nigeria's Security. A paper presented at "Oceanography 89," A.B.U., Zaria, May 29, 1989, P.2.

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30. See Ibid.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Introduction

The purpose of this review is to examine the existing body of literature as it relates 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[1] further invigorated studies on various subject matters in relation to ocean affairs at the global, regional and national levels.

2.2 **Marine Policy Studies**

Some of these studies focussed 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.[2] The nature and character of the law of the sea and the convergent interests of the world community 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[3] 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."[4] Robert Friedhein shares a similar view with Gamble when he hold that ocean policy includes all

activities relating to the substance of nation states' uses of oceans, how they make such decisions and how they organize themselves to make their decisions.[5] Thus, the focus of national ocean policy centres on decisions regarding the use and management of ocean space and, as Friedhein puts it, includes "how and why decisions are made as well as the evaluation of costs, benefits and aspects of ocean decisions particularly those that affect and are affected by new knowledge of the natural world."[6]

This new knowledge of the natural world requires that national marine policies 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 world 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 nation's own interest.[7]

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.[8] 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"[9] 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.[10]

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.[11]

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.[12]

Of these sectors, the highest common factor is the organization and structure of 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 policies. This leads us to another set of writers who emphasized multilaterization of ocean affairs.

2.3 **Multilaterization and Futuristic Ocean Policy**

Writers such as Albert Koers, Lawrence Juda and Lewis Alexander closely knit globalization and future-orientedness of national marine policies to joint management policies based on consensual approach as a common denominator of acceptable policy strategies.[13] 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 co-operation and special arrangements with neighbouring states which have contiguous jurisdictional zones.[14]

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 insignificant 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, 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 inter-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 best be achieved through regionalization of ocean policies.[15]

2.4 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 an 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.[16] 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,[17] Underdal advocated "the need for an `integrated' marine policy."[18] 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.[19] 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."[20] 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 adaptation is needed in most states if ocean management is to be conducted on a

rational basis and its benefits are to be maximized.

Gerard Mangone 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.[21]

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 Inter-governmental Panel on Climatic change (IPCC). In this study, A.C. Ibe opines that policy proposals in response to impacts on sea level rise of the West and Central African coasts should be embedded in co-ordinated and enforceable development plans.[22] While James G. Titus prefers "integrated strategies."[23] David Freestone and John Pethick assert that states 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.[24] But the seminal contribution by L.F. Awosika, A.C. Ibe and N.A. Udo-Uka 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.[25] 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, 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.[26] However, these studies fall within the same problematic of sectoral approach to marine affairs. Moreover, their analysis is one dimensional and centres only around the effect of changing climate to ocean management in Nigeria.

2.5 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."[27] 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,

property, 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 to the security problems of the Nigerian coastal waters. The workshop, which held from 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 opines "an Integrated Maritime Guard System,"[28] 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."[29] 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.[30] 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[31] 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 focussed much attention on the development and growth of maritime defence strategy in Nigeria. A.C. Oladimeji, who seems to maintain a lead among this breed of writers, maintains a consistent position that Nigeria's maritime policy must exert weight on the growth, development and increased strength of Nigeria's sea power. Against this 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, 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 over the years lacks co-ordination and coherence.[32] 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.[33]

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,[34] Oladimeji conceptualized Nigeria's maritime defence on three overlapping parameters, covering: (a) Coastal defence and in-shore operations;

b) 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.[35]

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.[36] 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, focusses 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 moreso that we live in a world of inter-dependence. Weaker and technologically backward nations have to use their resources judiciously and rationally to derive maximum benefits.

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31. Among these literatures are Akhigbe, M.C., "The Feasibility of a Nigerian Navy Submarine Services," Eagle 1983 O. Abegunde, "A Case for an Airship in Nigeria," Eagle, 1984: Akindele, R. A. and Vogt, M. A. "Territorial Defence as a Feasible Option for Nigerian Armed Forces: An Appraisal," Defence Strategy Review Vol. 3, No. 7, 1986; Imobighe, T. A. The Nigerian Navy: Evolution and Modernization," Nigerian Defence and Security: Issues and Options for Policy, T. A. Imobighe (ed), NIPSS, Kuru, 1987; Adisa, J. "Modern Concept of Sea Power" a Paper presented at Naval Training Command (NAVTRAC), May, 1988; Nzewunwah, C. O., "The Economic Necessity for a Maritime Force in Nigeria," The Airman, No. 7. April, 1988; Oladimeji, O. A., "Modern Concept of Sea Power,"

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32. See Oladimeji, A. O., "The Nigeria Navy and Maritime Security," Ibid., P. 34.

33. Ibid., P. 36.

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35. For a detailed analysis of the concept of maritime `defence in-depth', see Oladimeji, A. O. (1990), "Maritime Defence Strategy: An Overview of its Evolution, Concepts, Issues, Problems and Prospects," in A. E. Ekoko and M. A. Vogt.

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CHAPTER THREE

LAW OF THE SEA AND OCEAN POLICY

3.1 Introduction

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 the international conferences during which the international legal principles and rules that govern access to and common uses of the oceans were produced. This chapter therefore provides a brief sketch of multilateral conference on various uses of the sea and a historical account of the development of the principles of the law of the sea. The objective is to provide a basis for this study's thesis that the law of the sea and specifically UNCLOS III has relevance for national ocean policies in general and Nigeria's marine policy in particular.

3.2 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.[1] These conferences produced 64 multilateral conventions dealing with specific and technical aspects of marine 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

and 1944, 28 between 1964 and 1957, 36 between 1958 and 1966 and 62 between 1967 and 1983) had been adopted (See Appendixes I-IV).

Before the end of the Second World War, multilateral conferences on the sea addressed common problems that dealt with the technical aspects of seamen's welfare (employment, age, sickness and wages), free navigation in the Suez Canal and other navigable waterways, and international shipping (bills of lading, collision at sea, salvage, immunity and tonnage, etc). The oldest multilateral treaty was the 1884 convention on the protection of sub-marine cables. Specific conventions were also 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 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 those that wanted to expand further the enclosure or division of the ocean"[2]. When the 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 three-mile 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 Sea and the purpose of the Contiguous Zone. It has been argued that the conference failed because of Great Britian'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.[3] 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 articles 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 Hague 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.[4] 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 (transboundary) issues influenced the conclusion of not less than 24 international conventions,[5] 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,[6] which triggered a chain of unilateral claims by coastal states for a new ocean enclosure. 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 and 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.[7] 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[6]. 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 totalled 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

Region	1958 -1960	1973-1974
Asia	34	41
Africa	6	41
Latin	20	24
Communist Bloc	10	12
West and Others	26	29

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: [9].

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)[10].

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 nonbiodegradable 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 prevention of pollution and scientific research.[11]

As a result, the Seabed Committee was designnated 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.[12]

in accordance with Article 308 of the convention. Nigeria ratified or accented to the convention on August 14, 1986.

3.3.1 The Development of the Law of the Sea Principles

Having considered the international conferences that built the law of the sea, it is important 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 ommiun 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[13].

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 Napales[14]. This development sparked off series of control measures of adjacent waters by the Scandinavian states: 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 Bull, 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 route 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 Columbus 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 Tordessilles 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 Tordessilles 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-Tordessilles 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"[15] 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. Guilio 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[17]. 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."[17]

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 Selden 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[18]. 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 focussed 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, world-wide 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 zones[19]. These new states also demanded technological transfer from the advanced

maritime nations. In the same vein, the entire Third World nations then began to insist 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-valuate 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.

3.3.2 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, states also continued to extend their national claims to ever-greater distances 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 III 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 exceeding 12 nautical miles[20].

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 per Articles 17 - 32. However, it is not clear whether coastal states can apply laws to foreign vessels in transit in exercise of 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 arise from delimitation of territorial sea 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 seaward 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 Century 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 miles but were extended to a flat distance of 100 leagues (about 300 miles) in 1802.[21] 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.[22]

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 into the sea and declared a contiguous zone known as 'the Maritime Control Areas' for self-defence. The 1922 Tarriff 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' Violstead Act in the sale and transportation of intoxicating liquor. Similarly, in 1935, the United States Congress passed the Anti-smuggling Act which established Mobile Customs Enforcement Areas of varying distances within which the United States customs agents could search and seize vessels hovering 50 to 60 miles off the coast 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 to 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 with the convention.[23]

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 obsolete 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 of the High Seas.

iii. The High Seas

The high seas is 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 to 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 oceans.[25]

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 Clausum (1635) for coastal states' right to enclose a portion of the sea to the exclusion of others from fishing from it as England had 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 oceans.

Although Selden's idea of closed sea received the blessings of Britain, the British Government soon abandoned it as Britain became a major 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.[26]

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 obsolete 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 waters of an archipelagic state". This definition has significantly reduced the size of the high seas to the extent that today's EEZ claims

have reduced ocean space by more than 40 percent. Similarly, apart from the largest areas of the Atlantic, Pacific and Artic 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 islands and freedom of scientific research. 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 reserved for peaceful purposes (Article 88), testing and naval manouvres 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.[27] 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 seas or contiguous zone and can continue into the high seas without interruption. UNCLOS III extends the coastal states' right 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 III 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.

3.3.3. The New Principles of Expanded Ocean Enclosure

(i) Continental Shelf

Although claims to seabed resources beneath the high seas date back to the 19th Century,[28] 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 inexhaustibility of the resources of the sea. By the middle of the 1940s, such assumptions were 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 States, for example, made unilateral claims ranging from security zones of various breadths and jurisdictional control over territorial waters of up to 200 nautical miles,[29] 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. UNCLOS I therefore, sought to limit its depth to 200 metres (600 feet) when it came with its first definition in Article 1 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.

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).[30]

The 1958 Convention on Continental Shelf did not only introduced 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.

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."[31] 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 insobath. 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 rights also extend 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 as far as exploration and exploitation of its resources are 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 some 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".[32] 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 overflight, 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.[33] 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 III. 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 resources 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.[34] When this concept was introduced in 1967, the International Community, especially the developing Third-World nations, was beginning to be aware of the possibilities of exploring 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".[35] This resolution generated much debate as to the precise meaning of "Common Heritage of Mankind". 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 non-discriminatory 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 "jurisdictional vacuum" in the high seas 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 resources 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 (Articles 136 and 137) for the benefit of mankind and be shared to the less developed nations of the world. States are called upon to co-operate 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 powers of the world in 1970 was a concession given to the third world nations in exchange for guarantee of freedom of transit over major international waters.[36]

iv. Archipelagic Principle

Generally, an archipelago is geographically defined as a large body of water with many Islands. The concept has 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 waters 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.[37] 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".[38]

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 judgement in the Anglo-Norwegian Case of 1951.[39] 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 "Archpelagic 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."[40] An archipelago thus got a definition in line with the original contention by Philippines and Indonesia:" a group of islands or part of islands, inter-connecting 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.

3.4 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 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 research, could be a master

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 special mandate and responsibility to assist and advise states on issues related to their national ocean policies, its institutional implication, marine affairs management and adoption of national laws in conformity with UNLCLOS III and practical implementation of the convention. In view of the multiplicity of interests and of uses and resources involved in 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.[41] Nigeria's marine policy should take this pattern.

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CHAPTER FOUR

NIGERIA AS A MARITIME NATION

4.1 Introduction

This chapter provides highlights of the evolution of Nigeria as a maritime nation and the problems associated with her legal ocean 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.

4.2 The Historical Evolution of Nigeria

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 a number of British and other European colonial possessions in Africa.[1] 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 opened 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 Bight of Bonny as `safe harbours', 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.[2] 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 introduce a uniform local government administration throughout the country but they also recognized 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.

4.3 Nigeria as a Maritime Nation

Nigeria attained independence in 1960 with a land mass of 923,770km^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^{0}16' - 13^{0}52'N and longitude 2^{0}49' - 14^{0}37'E. An EEZ of 200 nautical miles adjacent to the territorial sea gives Nigeria a sea area of about 210,900km^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 and super adjacent waters. Nigeria's continental shelf of approximately 41,000km^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 80-100 metres.[3] 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 ridge.[4]

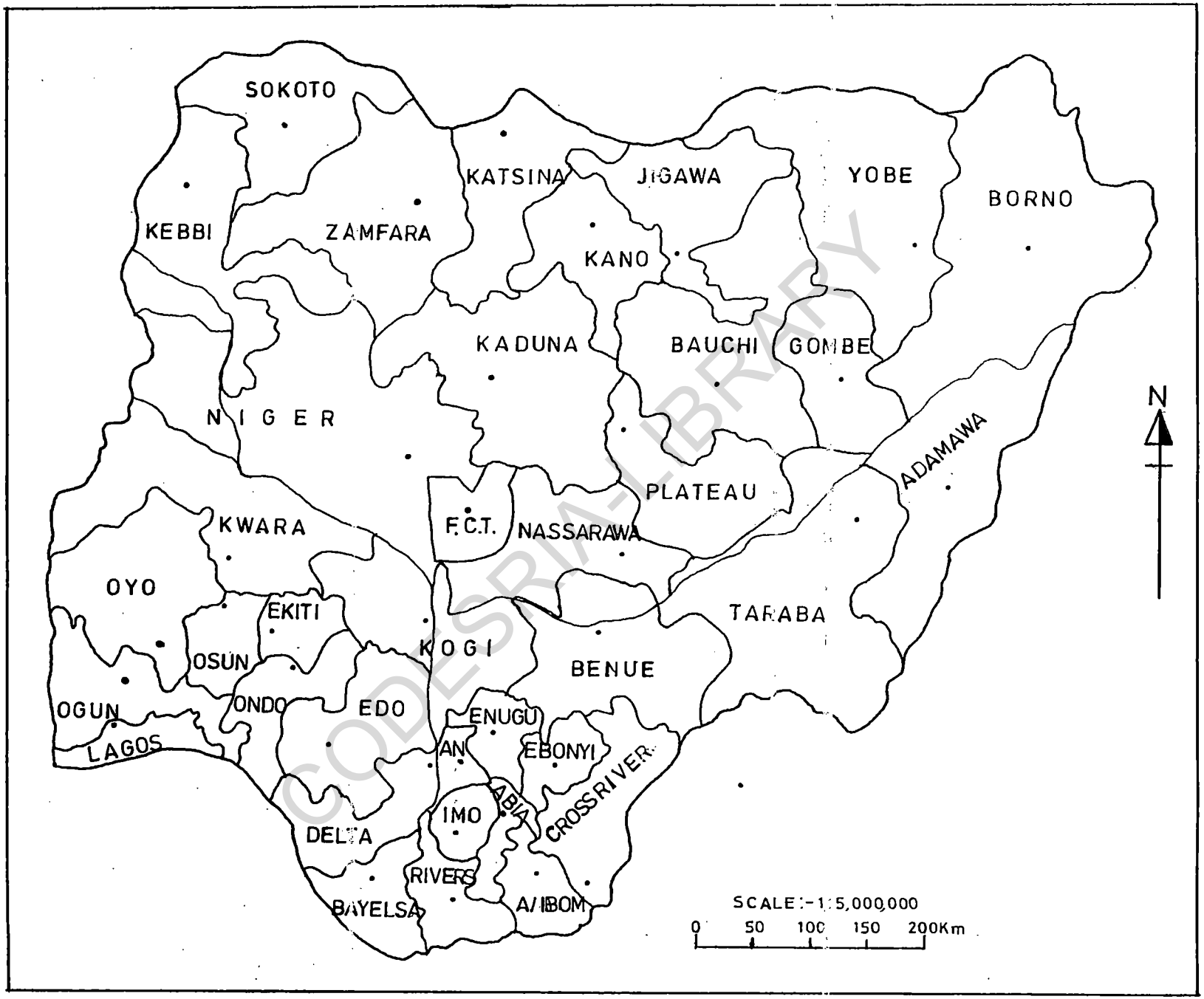

FIG. 4·1 NIGERIA SHOWING 36 STATES AND THE FEDERAL CAPITAL TERRITORY

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 shows that Nigeria's leading position not only in West and Central Africa sub-regions but in the entire African continent is not in doubt. Thus, Nigeria could rightly be described as a sub-regional or continental maritime power.

4.4 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 210,900km^2 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 resources 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.

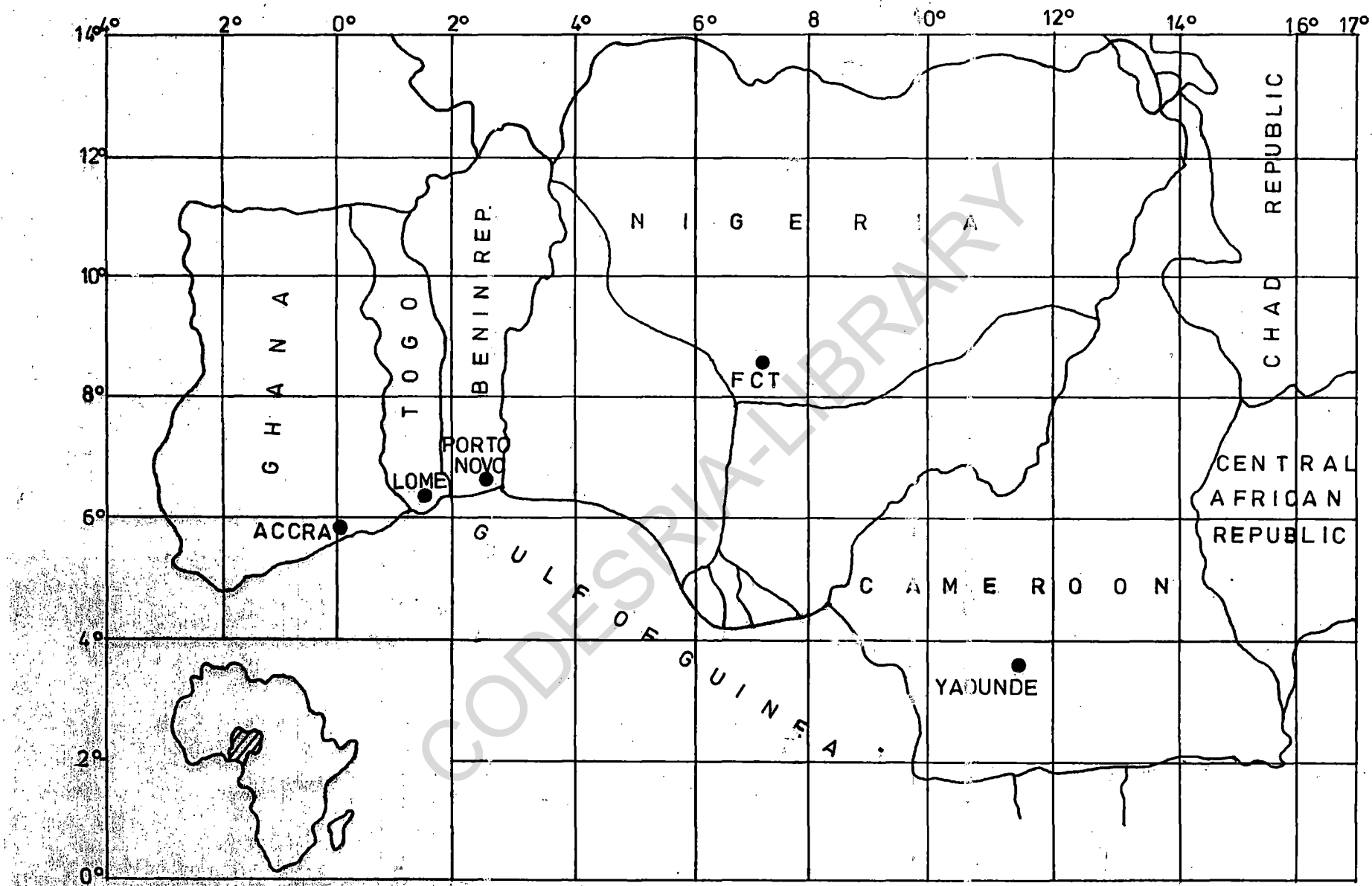

FIG. 4·2 NIGERIA'S STRATEGIC LOCATION IN THE GULF OF GUINEA INDICATING BOUNDARIES IN LONGITUDES AND LATITUDES

Besides, Equatorial Guinea is separated from Nigeria by a 55-nautical-mile (100 kilometres) 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 kilometres off Lagos to 56 kilometres off Cape Formoso and increases to about 64 kilometres 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 zone.

Table 4.1

Nigeria's Economic Indicators	
Population	108.5 (1992)
GDP	$28 billion
National Budget	$10 billion
Exports	$13 billion
Imports	$9.5 billion
Per Capital Income	$230 billion per head
Foreign Reserve	$966 million
Gold Reserve	$689 million

Source: A Book of Facts Almanac (1994).

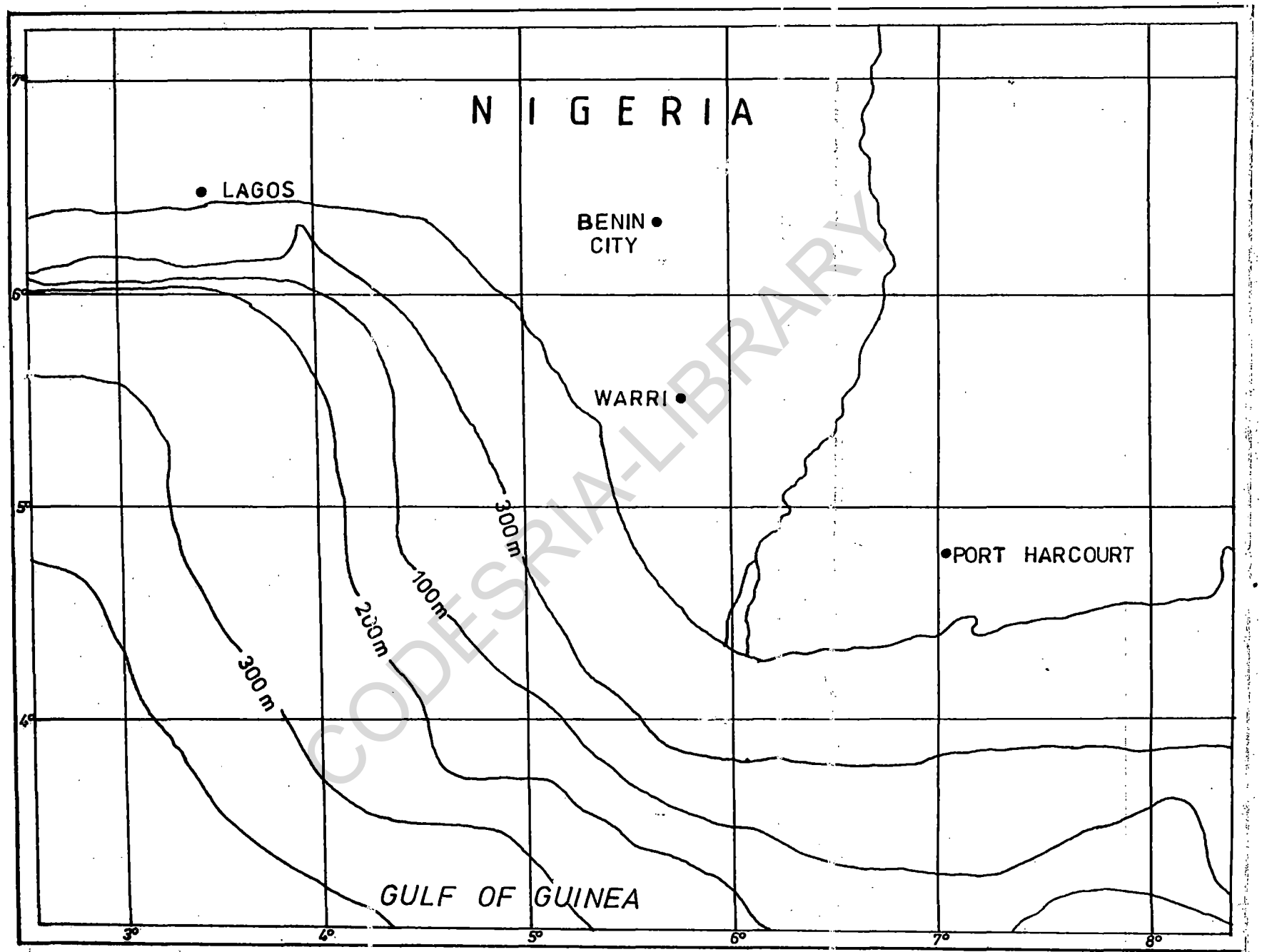

FIG. 4.3 THE NIGERIAN CONTINENTAL SHELF AND THE HIGH SEAS

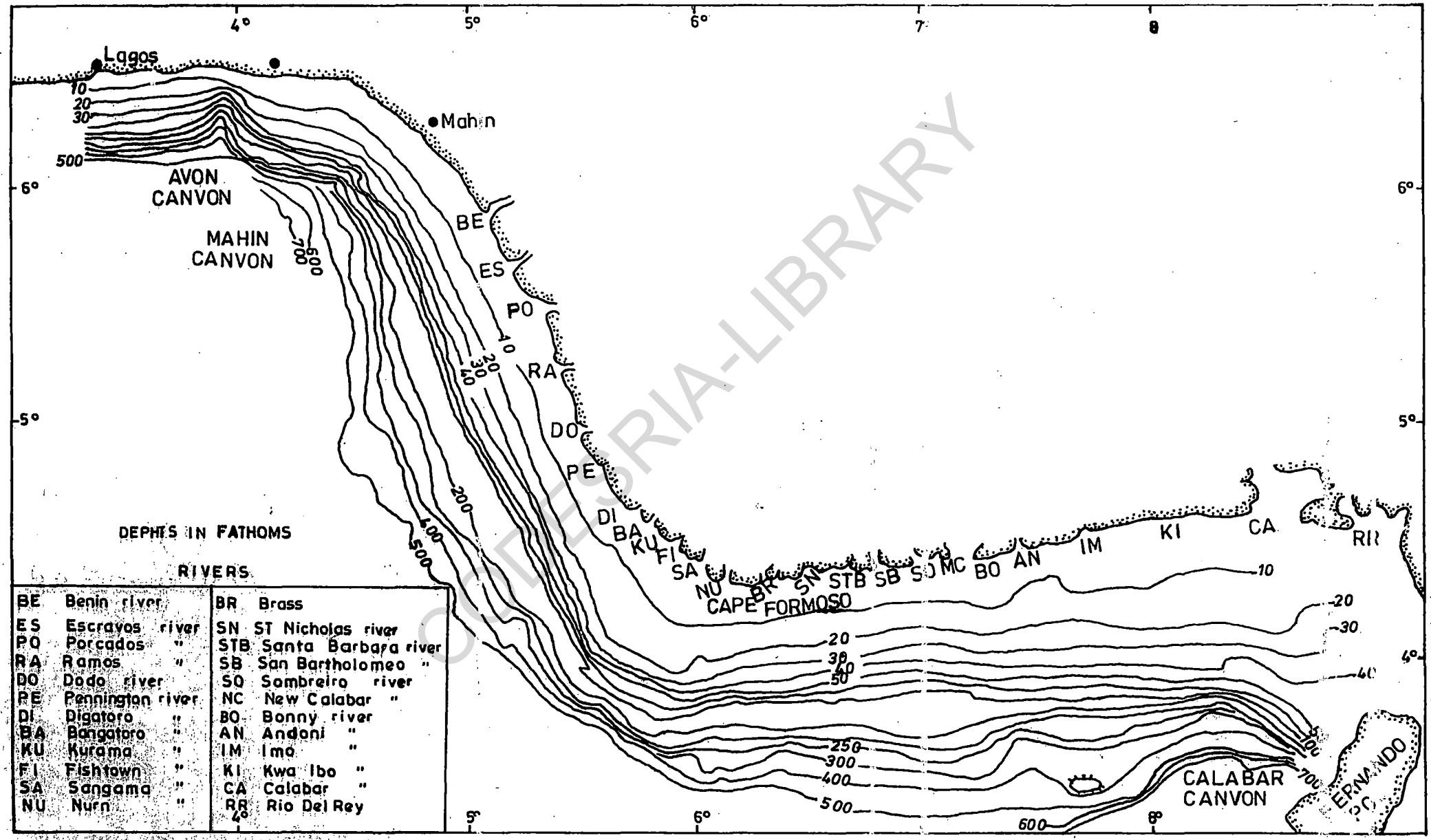

FIG.4.4 MAJOR GEOMORPHIC FEATURES OF NIGERIA'S CONTINENTAL SHELF (After Dublin-Green

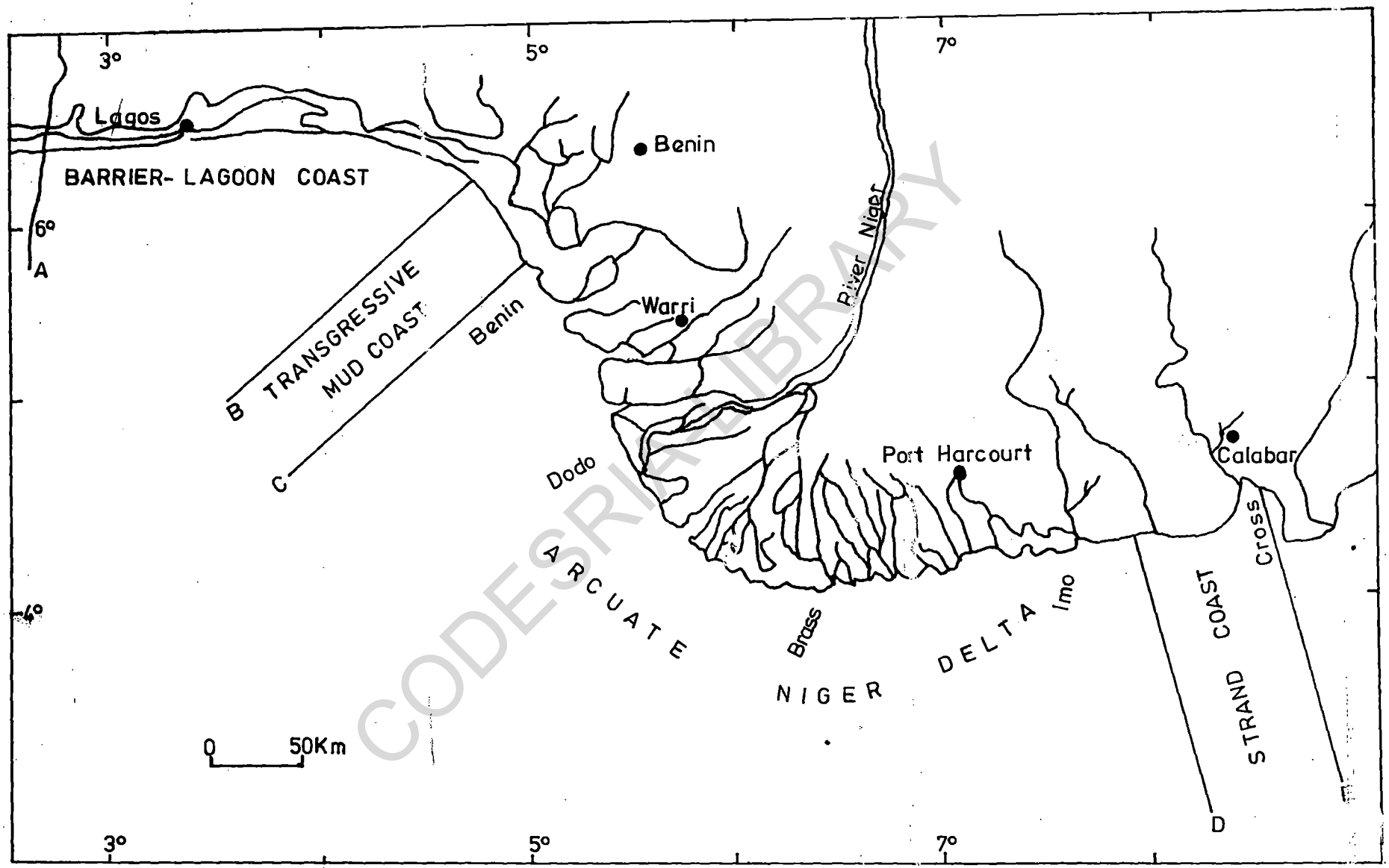

FIG. 4.5 NIGERIA SHOWING THE MAIN GEOMORPHIC UNITS (after Ibe, 1988)

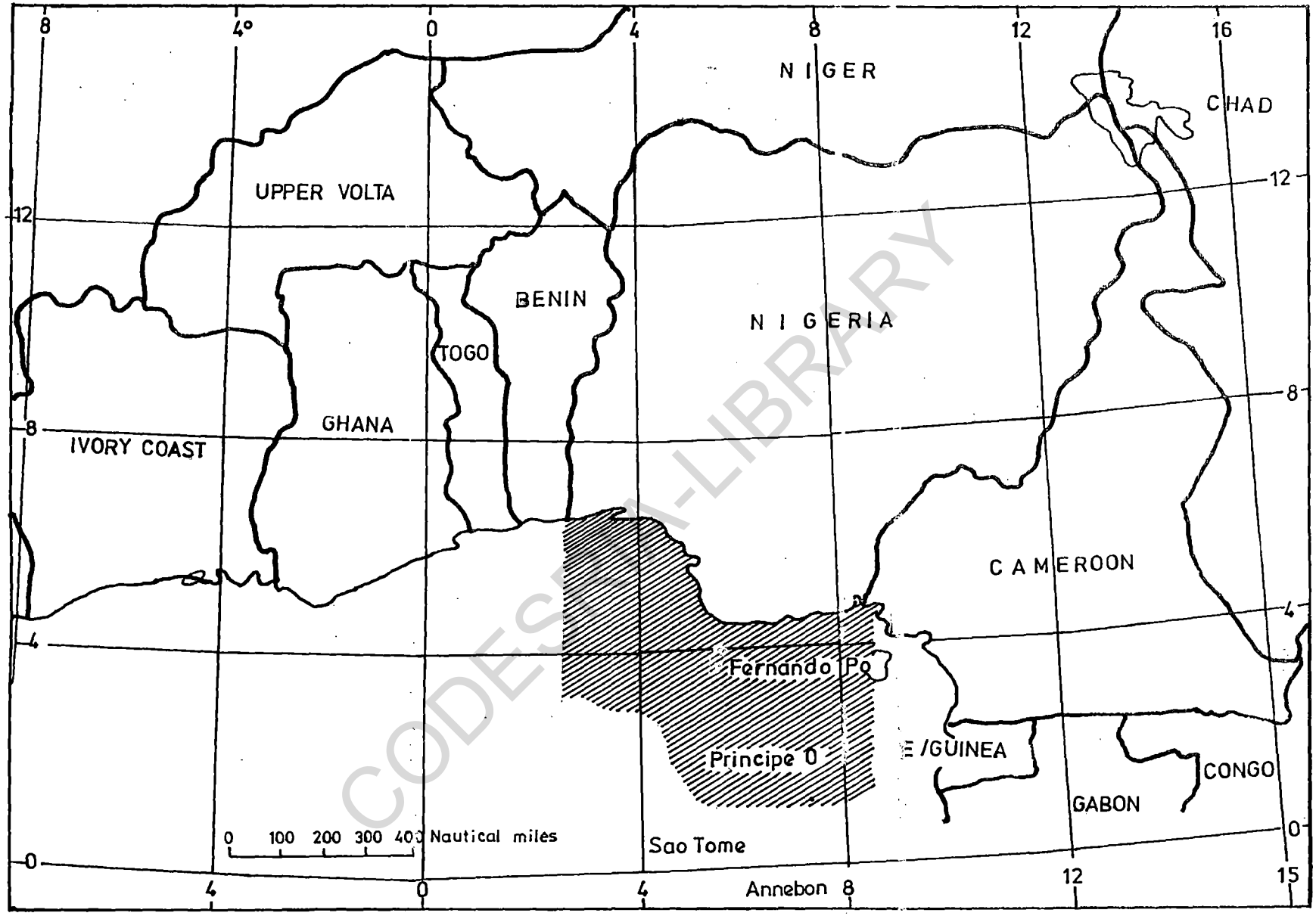

FIG. 4·6 MAP OF PARTS OF WEST AFRICA SHOWING UNDELIMITED MARITIME ZONES OF NIGERIA

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 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.[5]

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

Offshore Area	Distance in Nautical Miles	Depth in Metres at edge of shelf
Rivers St. Barthlomew	49	280
River Opobo	44	200
River Calabar	40	90
River Num	39	150
River Dodo	36	220
River Escravos	31	270
Off Lagos	15	120

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 derive 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 land boundaries. A number of articles[6] 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 admirality 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.

4.5 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 co-operation (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 fiscal measures; and

(viii) Tourism and recreation.

(i) **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 mad 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 exploitation 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 fin fish and marine mammals and reptiles. Shell fish such as shrimps, lobsters, crabs and molluscs 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).[7] Nigeria's average fish import per annum is about 292,748 metric tons[8] and with increased population of the country, Nigeria's fish demand will increase to about two million metric tons before the year 2020 (See Table 4.4). The current fish and fishery product deficit of about 750,000 metric tons[9] 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 EEZ's 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

Source	Annual Yield Potentials (mt)
Rivers and Flood plains	226,550
Lake Chad	24,500
Kainji Lake	8,500
Other National Lakes and Reservoirs	35,000
Coastal and Brackish waters	190,000
Inshore Waters (0-50m)	
offshore Waters:-	16,000
(a) Demersal Resources 50 - 200m	6,730
(b) Pelagic Resources	9,640
TOTAL	512,360mt

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 chart fisheries

Table 4.4

Nigeria's Fish Demand Projections 1998-2015

YEAR	Estimated Population (Millions)	Field Demand (mt)
1998	102.513	1.20459
1999	104.689	1.25626
2000	106.91	1.28291
2001	109.178	1.10014
2002	111.495	1.33794
2003	113.861	1.36633
2004	116.277	1.39532
2005	118.744	1.42493
2006	121.264	1.45517
2007	123.837	1.48605
2008	126.465	1.51758
2009	129.149	1.54978
2010	131.889	1.56267
2011	134.688	1.61625
2012	137.546	1.65055
2013	140.464	1.68557
2014	143.445	1.72134
2015	146.489	1.75787

Source: Adopted from Tobor, 1992 and 1993.

resources offshore Nigeria since the 1980s[10] the exact sustainable yields have not been determined.

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 Nigeria 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, over 26 offshore production platforms have been constructed with as many as 500 oil and gas wells tied for production.[11] Current reserves of Nigeria's oil is 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 totalling 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.[12] 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 Liquified Petroleum Gas Floating Storage and Off-loading Platform (LPG - FSO) located offshore about 12 kiometres in six metres of water and 32 kilometres in about 42 metres of water respectively.[13] 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.[14]

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 ₦2.2 billion exists offshore the area between Badagry and Lagos.[15] Salt production from sea water in coastal settlements along the entire coastlines of Nigeria is also an important economic activity. Research also suggests the occurrences of economically viable deposits of placer 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, coupled with the geology of continental Nigeria, indicate the presence of similar minerals in marine beaches and continental Nigeria.[16] 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 to the economic development of Nigeria, it is one of Nigeria's ocean interests 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 trade dates back to the 15th century after the Portuguese explorers had established shipping 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 Indies 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 century 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.[17]

With direct colonization, sea-borne trade nursed and weaned the colonial economy. At independence Nigeria maintains a non-discriminatory trade relations with all nations of the world and has entered into bilateral and multilateral trade agreements 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 ports 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.[18] During the colonial era of port concentration, there was a reduction in the absolute number of ports and a considerable alteration in the relative status of functioning ports. By 1950, for example, there were only seven ports 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 ports. 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 ports. 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 Niger Delta, which, at times, provide the only communication links between areas and settlements on the one hand, on the other hand between them and the hinterland. 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 disruption to Nigeria's seaborne trade and communication would undoubtedly lead to the collapse of her economy and would also affect the economies of other countries in the West and Central African subregions.

Nigeria has a comprehensive national shipping policy and an implementation agency, the National Maritime Authority (NMA). The major activities of the authority include: (i) alocation 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.[19]

The enactment of the shipping policy decree and the consequent

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".[20] 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.[21]

(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 become critical for survival. A naval fleet of the future, should, therefore, be 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.[22]

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's desire to project her image in the West and Central African sub-regions or any international assignment also depends on how she is able to acquire a sea-faring 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 of the sea. Marine scientific research is any study of the sea "whose objectives is to increase knowledge about the marine environment".[23] Marine scientific research

has assumed increasing role since the Second World War along with a better appreciation 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 most of the non-living resources (oil and gas) are 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 UNCLOS I. According to Article 246 of UNCLOS III, all research in the EEZ and continental shelf requires the consent of coastal states who also have discretionary power to withhold such consent for a research to be conducted by another state. Freedom to engage in marine scientific research 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 recognised the importance of 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 New 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, 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 maine technology requires states to cooperate, directly or indirectly, through international organisations 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'.[24] Thus, having recognised 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'.[25]

Therefore, Nigeria is not only interested in marine scientific research and transfer of marine technology but would also like to authorise 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 organisations to enable her acquire appropriate technology.

Presently, different sorts of research in Nigeria's ocean space are going on as authorised 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 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 industrialised cities where only 20% of the population lives. Micropolutants observed by researchers from NIOMR in Nigerian inshore and offshore waters include organic waste, trace heavy metals and chlorinated hydrocarbons.[26] Preliminary data on these conterminants will form a good basis for further monitoring by continuous standard measurement and observation of the

ocean environment in the entire West African subregion. Various environmental degradation in Nigeria has been estimated at about US$5110 million per year with contamination accounting for US$1000 million.[27]

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 harzadous 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 seem 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"[28]. 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^{0}C will give a corresponding sea level rise of 20-140cm before the end of the 20th century.[29] 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.[30] 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,[31] and the general shoreline retreat across the coastal plane shoreline of Nigeria is alarming. 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 Adeyinka 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".[32] 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.[33] 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 a 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's 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',[34] 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. 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 immigrations, 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 "police" 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 tourists 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 explorer, 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 in these beaches are very poor and dilapidated. With proper planning and good management the present level of facilities in the beaches could be expanded to

encourage more recreational activities.

Table 4.5

Distribution of Mangrove Vegetation in Nigeria

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

Source: FAO (1981), Land Use Area Data for Nigeria in Amadi (1991), P.8.

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.

Notes and References

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7. See Tobor, J.G. (1993), African Inter-Regional Trade in Fish and Fisheries Product and Access to Fish Resources in the Exclusive Economic Zones of Regional Coastal States: The Nigerian Experience, NIOMR, Lagos, pp 5-8.

8. These figures were arrived at using Nigeria's trade summary figures from various sources covering Nigeria's fish imports between 1973 and 1990 as well as Nigeria's fish import in 1993 and 1994.

9. Tobor, op.cit., p.8.

10. These attempts, among others, include: Amadi, A.A. (1982), Species Composition, Distribution and Resource Potentials Recorded in Bottom Trawling Between 50 - 200 Metre Depth Off Nigeria, NIOMR, Lagos; Ajayi, T.O. (1984), A Review of Tuna Activities Within Nigeria's EEZ, NIOMR, Lagos; Ajayi, T.O. and Talabi S.O. (1984), The Potentials and Strategies for Optimum Utilization of Fisheries in Nigeria, NIOMR, Lagos; Sadik, A.O. (1990), Some Nigerian Marine Fishes of Commercial Importance, NIOMR, Lagos.

11. See Petroleum Economist, Vol. III, March, 1985, p.83.

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13. Petroleum Economist, op.cit

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26. See for example, Sadik, O.A. (1990), Heavy Metal Conterminants in Some Nigerian Fishes of Commercial Importance, NIIA, Lagos, and AJAO, E.A. et al. (1996) A Review if Pollution of Coastal Waters in Nigeria, NIIA, Lagos.

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28. Amadi, op.cit., p.6.

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30. See Ibid., pp.57-59.

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CHAPTER FIVE

NIGERIA'S MARINE POLICY AND THE LAW OF THE SEA: A CRITICAL EVALUATION

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 process and 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 conclusions.

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 for 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 resources, etc.[1]

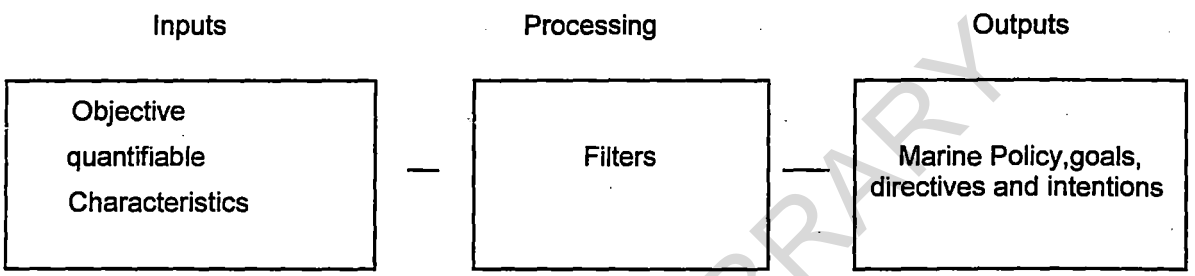

Figure 5.1: Marine Policy Model

Decisions about the use of marine resources are made by government and they incorporate both government interests and those of other stake holders. The way policy is made is the 'processing' process in the model. This is the way inputs are transformed into actual policy. In the proceessing 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".[2] 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 as 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 proceessing processes to 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 41,900km^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. The tropical climate is modulated by temperature, humidity and rainfall from the northern reaches to the southern extent of the country. Although agriculture still remains the backbone of the economy, the principal source of export earning and foreign exchange is oil and accounts for over 60% of the country's GDP. The country is nearly self-sufficient in food production even though less than half of its arable land is under cultivation.

The need for assistance during the civil war years and her oil wealth after the war forced Nigeria from an isolationist position and created a new image as an active and influential member of the non-allied movement during the cold war years.

Nigeria's active participation in the West African sub-regional, African and world affairs has led to "the growth of Nigerian nationalism"[3] 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 Proceessing

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 a 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 rulling 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, 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 all nations. The imperative 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."[4] These clusters involve an interplay among naval strategies, economic policies and the larger issue of protecting sealanes 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 external earnings, are 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....."[5]

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 recognised by international law[6], constitutes one of the core value systems that should shape our maritime policy. 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 Nigerian 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.[7]

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 the 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 frontiers 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 Principe 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 Principe 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 national 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 conventions 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

S/N	Area covered by the convention	Number of conventions	Number of conventions to which Nigeria is a party.
1.	Public International law	10	7
2.	Jurisdiction, Arbitration and Enforcement	21	5
3.	Safety of Navigation	22	14
4.	Property Transactions and Rights	6	2
5.	Carriage of goods and passengers	24	7
6.	Employment	38	6
7.	Protection and preservation of Marine environment	24	4
	Total	145	45

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 nationalists 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 Waters 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 and 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 of 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.[8]

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 of registration documents, licenses, leases, permits or rights for the purpose of prospecting, exploring and exploiting mineral oils 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 Nigerian 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 principle, 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 Organisation (IMCO) in 1982 and so made a considerable number of rules which made it mandatory for all ships registered in Nigeria to have `life-saving appliances' as demanded by the International Convention for the Safety of Life at Sea (ICSLS).[9] 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 of 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 preliminary 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 an on-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 believed 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 or arrested in any of Nigeria's jurisdictional areas as far as the law of the seas 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 make provisions for restriction of both public and private sectors of the Nigerian 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 Nigerian 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) any 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.[10]

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 contacts with West Africa. As we earlier noted too, sea-borne trade nursed and weaned the colonial economy. Sea-borne trade, accompanied by ports development, was 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.[11]

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 grouped themselves into powerful monopolists of liner conferences. Behman 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 problems 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 of it on account of the total dependence on foreign sea transport to obtain supplies in an emergency.[12]

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 shipowner of developed countries dominated every major trade routes by the 1960s to 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 tying shippers and the refusal of the conferences to hold meaningful consultation with shippers from developing countries.

The developing countries had to face the challenges and frustrations squarely during the United Nations Trade and Development (UNCTAD) negotiations from 1964. UNCTAD I to UNCTAD IV negotiations were based on the developing countries' attempt to achieve four basic policy objectives in respect of shipping.

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.[13]

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 co-operation 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 the latter position. This informed the adoption of the Merchant Shipping Act in 1962, the promulgation of the Nigerian 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 shipowner in circumstances where limitation may be applicable, the shipowner may file a `limitation action'".[14] 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 years, the figure has remained the same. The IMO Convention on Limitation of Liability of Maritime Claims of 1976, which came into force in 1986, has 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 accede to the 1976 convention to enable her increase the liability figure.

The Nigerian Shippers' 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 interests of Nigerian Shippers. The Council, along with the activities of other security agencies and the Government Inspector of Shipping (GIS) 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 Nigerian 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 objectives, functions and operational conditions of the authority are stated in

Sections 3,4 and 5 of the Decree. According to Section 3, the objective of the Authority is to:

a) correct any imbalance in the Nigerian shipping trade for the purpose of implementing the provisions of UNCTAD Code of Conduct for Liner conferences, especially to observe the ratio of 40: 40:20 in respect of carriage of goods to Nigerian ports;

b) improve Nigeria's imbalance of payment position by enhancing the earning and conservation of foreign exchange from the shipping industry;

c) use the 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 conferences thereby influencing the decision-making process of such liner conferences serving Nigerian 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 Nigerian vessels flying the nation's flag on the high seas and world seaports;

h) increased the participation by indigenous Nigerian 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 Nigerians in maritime transport technology and as seafarers.

In addition to other special functions provided 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 fulfil 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 own 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 formulated by the Federal Government.

Legal experts have identified some conflictual dispositions in terms of the powers 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 Nigerian waters such as their construction, safety standards, equipment, crew certification, arrest, detention and prosecution of substandard vessels or those which infringe on the merchant shipping legislation. The practice under the Merchant Shipping Act of 1962 is that the Minister exercises such powers as delegated to the Government Inspctor of Shipping (GIS) in the Inspectorate Division of the Federal Ministry of Transport. The GIS is responsible for maritime safety administration, the issuance of certificates to vessels and all categories of seafaring personnel. The conflict arises because the aims and objectives clauses of the NMA do not confer on the Authority the powers to carry out the aspirations because they are descriptive or are a mere statement of intent while the functions are substantive powers[15]. According to Justice Louis Mbanefor, 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"[16] 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. 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 an intention. The recent transfer of the Inspectorate Division of the Federal Ministry of Transport and, invariably, the GIS 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 objectives as defined in Section 3 and in other sections of the decree. Generally, the Nigerian Shippers' Council 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 covers 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 expansion 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 conferences. 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.[17] It is even more disappointing that in spite of the NMA's efforts 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 State of the Nigerian National Fleet 1988 - 1995

NAMES OF SHIPPING LINE	1988		1989		1990		1991		1992		1993		1994		1995	
	No. of ships	Total dwt	No. of ships	Total dwt	No. of ships	Total dwt	No. of ships	Total dwt	No. of ships	Total dwt	No. of ships	Total dwt	No. of ships	Total dwt	No. of ships	Total dwt
NNNSL	19	268000	13	192000	13	192000	13	192000	13	192000	13	192000	1	132000	-	-
AAFRICAN CEAN LINE	2	34740	-	-	-	-	-	-	-	-	-	-	-	-	-	-
BULKSHIP	-	-	1	16000	1	33770	1	33770	1	33770	1	33770	1	33770	1	33770
NIGERBRASS	1	15814	1	15814	1	16000	1	16000	1	160000	1	16000	1	16000	1	16000
BRAWAL SHIPPING LINE	-	-	1	12000	1	12000	1	12000	1	12000	1	12000	1	12000	1	12000
NIGERIA GREEN LINE	2	39304	2	39304	1	11808	1	11808	-	-	-	-	-	-	-	-
TOTAL	24	357858	18	225118	17	265578	17	265578	16	253770	12	193770	12	193770	3	61770

Source: National Maritime Authority (NMA) Official Records.

Apart from the problems associated with international shipping such as 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 that 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 3,500 Teus would be about US $20 million and US $52 million, respectively[18]. 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 was 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 purchased 13 vessels of a total deadweight of 46,660.91.[19] 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 loans 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. The highest amount received by a private company was US $6 million [20] which is not enough to buy a fairly used ship talk of less the

age and quality of such a ship "that would guarantee their operational regular clients in the international cargo market.[21] This has been a subject of controversy between the Nigerian Shipping Companies' Association (NSCA) and the NMA. The former had blamed the latter for using wrong criteria in judging the performance of loan beneficiaries. Since the ship acquisition business is highly capital intensive, the association believes that unless the embargo on the loan is lifted and more loans granted to the former beneficiaries, not to new applicants, the debtors would not be able to pay while the government's bid to facilitate the expansion of indigenous ships would remain a mirage. In this perspective it must be concluded that the NMA's efforts in achieving the objective of expanding the national fleet and indigenous ship ownership is far from being realized, given the importance attached to it by the National Shipping Policy Decree.

The UNCTAD Code for liner conferences is ambiguous as it does not define what a conference cargo is. It simply states that unless otherwise mutually agreed upon:

> a) The group of national shipping lines of each of two countries the trade between which is carried by the conference shall have rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference;

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.

S/No	Beneficiary Co.	Amount US$	Amount ₦	Name of Vessel Purc'd with Loan	No. of Vessel	Tonnage in dwt.
1.	Cibra Marine	0.550m		MV Blessed Mama	1	499
	" "			MV Humu	1	499
2.	East-West Coast	2.25m		MV ECOWAS Trader II	1	3,650
3.	Faget Nig. Ltd.	1.25m		MV Panda Faget	1	15,000
4.	Skolar Shipping	0.5m		MV Abebi	1	3,579
5.	Genesis Worldwide	2.5m		MV Genesis Pioneer	1	15,000
6.	A&C Engineering		7.05m	MV Abebi Pride	1	459.63
7.	Tarabaroz	1.4m		MV Lady Sarah	1	143.57
	"			MV Lady Man	1	143.57
	"			MV Lady Nikky	1	143.57
	"			MV Lady Pat	1	143.57
8.	Bulkship	6m		MV Yola	1	600
9.	NUL	5m		MV Abuja	1	6,800
Total		19.45m	7.05m		13	46,660.91

Source: NMA Official Records.

> (b) Third 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.[22]

Section 3(a) of the Shipping Policy Decree states that the NMA shall correct the imbalance in Nigerian shipping trade for the purpose of implementing the provisions of the UNCTAD Code especially in observing the ratio of 40:40:20 in respect of carriage of goods to and from Nigerian ports. As quoted above, it is pertinent to note that there is no where the UNCTAD Code specifies a ratio such as 40:40:20 apart from the easily deduced 20% base for conciliatory third party, so nothing 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 provisions 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 ratio 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 exporters 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 1990, 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 Nigerian 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 shows 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**

Year	Gross Freight asper Form C	Allocation to indigenous lines	Allocation to Foreign lines
1991	US $	US $	US $
	1,410,590,079	771,477,215	639,112,363
	(100%)	(54.7%)	(45.3%)
1992	1,532,177,485	781,384,405	750,793,079
	(100%)	(51%)	(49%)
1993	1,286,100,027	679,871,246	606,228,781
	(100%)	(53%)	(47%)

Source: National Maritime Authority (NMA) Records.

This freight value is too small if compared with the total of 16,573,901, 19,063,210 and 18,637,002 tons of cargo throughput handled at Nigerian Ports during 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(b) of the Shipping Policy Decree states that "the 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 Throughput Handled at Nigerian Ports 1991-1993 (Excluding Oil Terminals)

Year	Inward	Outward	Total
1991	9,754,521	6,819,380	16,573,901
1992	12,259,042	6,804,168	19,063,210
1993	12,897,955	5,739,047	18,637,002

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 owing 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 for continued liberalization of the international shipping industry thereby exposing shipping companies of developing countries to undue competition which they cannot withstand. This, to some extent, peripherally explains the dwindling nature of the national fleet 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 away leaving Nigerian shiping 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 croakers, snappers and the semi-abyssal fauna of small red and black fishes. 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.[23] The Food and Agriculture Organization (FAO) reported a predicted maximum yield of 2,500 tons capable of supporting 40-30 shrimpers of shelfish in the area off 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'ivoire work most of the year in the Niger Delta.[24] 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.[25]

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 Tuna (ICCAT) reported that tuna baitboat, purse seiners and longliners catch about 4,000 tons of tuna annually and most of the catches were taken along Nigeria/Benin maritime borders around longitude 5^0 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 of 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 Africa is still harvested by foreign

fleets.[26]

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 repealed 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 motor 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

Year	Marine Capture in Mt.
1990	195,529
1991	193,810
1992	164,364
1993	141,920
1994	160,700

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

transhipment 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 Stocks 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 research support all fisheries activities.[27]

(ii) Non-Living Resources

As already stated in Chapter four, seabed 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 estimated to be about 19 billion barrels and in excess of 110 trillion cubic feet. 66% of these comes from off-shore 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.[28] 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 Liguified Natural Gas (NLNG) - the Escravos Gas Project (EGP).

Table 5.7: Percentage Gas Falring of OPEC Member Countries

Country	1992	1993	1994	1995	1996
Algeria	5.60	5.00	5.10	5.70	4.90
Indonesia	8.30	8.60	6.10	5.80	5.60
Iran	17.40	15.50	14.20	14.60	14.00
Iraq	0.00	0.00	0.00	0.00	0.00
Kuwait	19.20	7.20	6.50	4.60	4.60
Libya	14.90	13.70	14.40	14.40	14.30
Nigeria	76.60	76.60	79.80	76.90	75.90
Qatar	0.00	0.00	0.00	0.00	0.00
S/Arabia	17.60	14.70	14.50	17.20	16.00
U.A.E	2.70	1.30	1.20	1.00	0.90
Venezuela	14.30	13.30	12.80	12.80	12.00

Source: Vanguard, Friday October 16, 1998, p.19.

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

Company	1992	1993	1994	1995	1996	1997
Chevon	134556	179375	202155	222822	200096	1769831
Mobil	153190	110117	85279	128412	92368	16465
Shell	330187	372586	371741	370296	371362	222013
Agip	138672	144468	166020	157065	141332	150690
Elf	14439	23080	23047	42558	40781	33804
Ashland	33506	32339	34230	54054	28412	32559
Texaco	29351	27140	23151	31584	34761	44770
Pan Ocean	2900	13676	11521	14124	17412	16576
Agin Energy	8967	7479	8384	7099	7748	7914
Total	845768	909158	925827	1028014	940871	801847

Source: Vanguard, Friday October 16, 1998, p.19.

The project, which has a number of off-shore gas floating storage and off-loading platforms, is expected to reduce gas flaring by about 50% and a 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 projects.

The issues 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, control waste disposal and tourist activities. These fundamental maritime interests 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 it is virtually impossible to talk about one without referring to others. That is why 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 to evolve a system 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 identifies 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 case 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 boarding 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

the inspection of potential polluters and/ or polluting activity and control with the apprehension and prosecution of violators of environmental law, and the containment 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 response 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 interest, while monitoring refers to the location, identification and checking of these events or objects. Control entails the protection of national interests 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 entails presence in coastal waters as well as the detection of suspicious activities. Monitoring is the investigation, identification and tracking of objects and activities of interest while control entails the apprehension and prosecution of violators, as well as the 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, spacebased 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 organisations (NGOs). What is the nature and extent of compliance, co-operation 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 Ad hoc Inter-Sessional Working Group on Sectorial Issues of the Commission on Sustainable Development and the Convention on Biodiversity.[29] 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 stake-holders 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) and shorebased infrastructures (radar, etc), whereas a partial capability is needed for air and spacebased 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 effecting 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

MATRIX FOR REQUIREMENTS	RESOURCE MANAGEMENT						MARITIME SOVEREIGNTY			ENVIRONMENT PROTECTION			ILLEGAL ACTIVITY			MARINE SAFETY					
	Living			Non-Living												Prevention			Response		
	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON
OPERATIONAL / TECHNICAL																					
Surface/underwater	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Air	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Shore Based (infrastructure)	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Space based	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
LEGAL																					
National	1		1	1		1	1		1	2		2	1		1	1		1	2		2
International	2		2	2		2	2		2	2		2	1		1	1		1	2		2
POLITICAL																					
National	1		1	1		1	1		1	1		1	1		1	1		1	1		1
International	1		1	1		1	1		1	1		1	1		1	1		1	1		1
NON GOVERNMENTAL																					
Industry/User	1		1	1		1	2		2	1		1	2		2	2		2	2		2
Community Based	1		1	1		1	2		2	1		1	2		2	2		2	2		2

KEY

SUR = Surveillance MON = Monitoring

CON = Control 0 = No requirement

1= Partial requirement 2 = Full requirement

3=Excess requirement

TABLE 5.10: Matrix of Capabilities for Integrated Maritime Enforcement in Nigeria

MATRIX for CAPABILITY	RESOURCE MANAGEMENT						MARITIME SOVEREIGNTY			ENVIRONMENT PROTECTION			ILLEGAL ACTIVITY			MARINE SAFETY					
	Living			Non-Living												Prevention			Response		
	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON	SUR	MON	CON
OPERATIONAL / TECHNICAL																					
Surface/Underwater	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Air	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Shore Based (Infrastructure)	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Spacebased	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LEGAL																					
National	1			1		1	1		1	2		2	1		1	1		1	1		1
International	2		2	1		1	1		1	2		2	1		1	1		1	1		1
POLITICAL																					
National	1			1		1	2		2	1		1	1		1	1		1	1		1
International	2		2	1		1	1		1	2		2	1		1	1		1	1		1
NON GOVERNMENTAL																					
Industry / User	1		1	1		1	1		1	1		1	1		1	1		1	1		1
Community Based	0		0	0		0	1		1	1		1	1		1	1		1	1		1

KEY

SUR = Surveillance MON = Monitoring
CON = Control 0 = No capability
1= Partial capability 2 = Full capability
3=Excess capability

infrastructure in all maritime activities are concerned. There is a complete lack of capability in spacebased for same activities as Nigeria does not possess any spacebased 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 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, regulations, 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.[30] 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 group 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 comparion 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.

NOTES AND REFERENCES

1. See Gamble, J.K. (1977), Marine Policy Lexington Heath and Company, Toronto, p.7.

2. Ibid.

3. Ibid., p.39.

4. Ogwu, J.U. (1998),"The Nigerian Navy and the South Atlantic: Strategic Maritime Opportunities and Foreign Policy Challenges", The Sailor, Nigerian Navy, Lagos, p.64.

5. Ibid, pp.64-67.

6. See Government's View on the Comments on the Findings and Recommendations of the Political Bureau Report, Paragraph 19(iv).

7. Ani, A. (1998), "Nigeria in the Third Millennium: The Road to Social and Economic Development" in Bolaji Owasanoye (ed), Nigeria's Economic Development in the Third Millennium, Nigerian Society of International Law, Lagos, p.17.

8 Article 14(1) of the petroleum Decree of 1969.

9. See, for example, Article 153 of the Merchant Shipping Act of 1962.

10. Supplement to Official Gazette Extraordinary No. 73, Vol. 79 of December, 1992, Part A, p. 1003-1004.

11. See UNCTAD (1996), Review of Maritime Transport 1996 United Nations, New York, p.27.

12. Bhenam, A. (1998), "Shipping and Ports in Developing Countries Perspectives", A Paper Delivered to the B.98 Class of the International Ocean Institute Training programme on the United Nations Convention on the Law of the Sea, Its Implementation and Agenda 21, Dalhousie University, Halifax, June 8-August 14, 1998, p.103.

13. See Ibid, p.3.

14. Mbanefo, N.L. (1997), "Maritime and Admiralty Jurisdiction in Nigeria", A Paper presented at the National Seminar on the New Law of the Sea and Nigeria's Maritime Sector, University of Lagos August 19-21, 1997, p.11.

15. Ibid., p.13.

16 Justice Mbanefor made this expression during a personal interview with the author in August, 1997. See also Ibid.

19. The NMA has classified indigenous shipping lines in Nigeria into three categories, Viz, class `A', `B' and `C'. Class `A' category are those shipping lines that have fulfilled the conditions for granting national Carrier Status (owing ocean-going vessels of not less than 5,000 deadweight, among other conditions); Class `B' shipping lines are those companies that own ocean-going vessels but have not fulfilled the conditions for granting National Carrier status, while class 'C' are registered shipping companies that do not have any ocean-going vessels but charterers.

20. See Osholowu, M.O. (1995), "The Development of Maritime Industry in Nigeria", A Paper presented at the International Symposium on Maritime, Trade, and Economic Reform and Restructuring, Lagos Sheraton Hotel, September 28-30, 1995.

21 NMA Official records.

22. The Guardian Newspaper of January 28, 1998 reported that the highest amount of NMA Ship Building and ship Acquisition loan received by a private shipping company was US $3 million but official records at the NMA (Table 3.4) showed that the Bulkship Shipping Line was granted up to US $6 million.

23. The Guardian Newspaper, Ibid.

24. Section (A and B of Article 2 of the 1974 UNCTAD Code of Conduct for Liner Conferences.

25. See, for example, Ajayi, T.O. and Talabi, S.O. (1984), The Potentials and Strategies for Optimum Utilization of Fisheries Resources in Nigeria, NIOMR, Lagos, p.2.

26. Ibid, p.7

27. Ibid.

28. See FAO (1996), Fisheries and Aquaculture in Sub-Saharan Africa: Situation and Outlook 1996, FAO Fisheries Circular No. 922, p.4.

29. Ibid.

30 Vanguard, October 16, 1998, pp. 19 and 25.

31. FAO (1997), "Essential Role of Monitoring, Control and Surveillance in Fisheries Management", Rome, Italy, March 17-20, 1997.

CHAPTER SIX

TOWARDS AN INTEGRATED OCEAN POLICY IN NIGERIA

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 Chapters 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 adopting 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 uses or activities. This chapter therefore, focuses on the rationale for, the nature and character of an integrated ocean policy as an option for Nigeria's future policy directives.

6.2 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 coastal 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 affecting 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 quite unsatisfactory in todays multi-use management systems because ecological effects and multiple uses conflict.

Although Nigeria is one of the five African coastal states[1] 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. 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; and 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 co-ordinating body hence the need for a co-ordinated 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.[2]

6.3 The Goals and Meaning of Integration in Ocean Policy

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.[3] 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.

According to Arild Anderdahl, the purpose of policy integration is the `internationalization of externalities' because fragmented decisions often produce externalities: "consequences which are not adequately incorporated as decision premises because they fall outside the scope of attention or because of poor aggregation."[4] Thus, an integrated policy refers to a situation where the constituent elements of a policy are brought together and made subject to a single, unifying conception. Anderdahl, therefore, suggests that a policy qualifies 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 stage and consistency at output stage (Table 6.1)[5]. 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.

TABLE 6.1: Basic Requirements of Policy Integration

Policy Requirement	Stage of Policy Process
Comprehensiveness	Input Stage
Aggregation	Processing Stage
Consistency	Output Stage

Source: Adopted only from Anderdahl (1980).

With the fluidity and 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 its management is to be integrative, it must have integrative mechanisms. Along this line, Miles thought 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.[6] 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 benefits to a nation but without prejudicing local socio-economic interests or jeopardizing benefits to future generations.

6.4 Integrated Ocean Policy: Policy Option for Nigeria

Experts in ocean governance express some reservations as to whether there exists an ideal model of an integrated ocean policy.[7] Some, for instance, opine that since a perfectly integrated policy had to meet the tripple 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.[8]

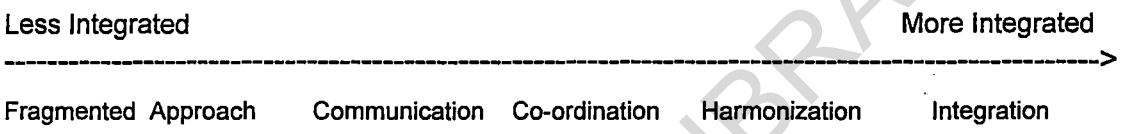

Figure 6.1: Continuum of Policy Integration

Generally speaking, integrations of ocean policy cannot replace sectoral approach, rather it supplements it. In this context, Cicin-Sain views policy integration as a continuum, moving from left to right from less policy integration towards 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 different 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 dependent 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**

Network	Characteristics
Fragmented Approach	Presence of independent units with little communication among them
Communication	The creation of a forum for periodic communication and meeting among independent units
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 loose at least part of their independence as they must respond to explicit policy goals and directions, often involving institutional reorganisation

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, establishment of maritime

boundaries, passage of ships, etc. In many cases, coastal and ocean management questions fall within the purview of national and subnational governments and in many other cases, nations face ocean and coastal management problems vis-a-vis their neighbours and so had to seek internationally brockered solutions.

The task of managing these policy networks for integrated ocean policy lies on the need to 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 to perform new ocean tasks. Provisions should be made to incorporate decision-making mechanisms to take account of the socio-economic and environmental linkages between the coastal and ocean areas in order to facilitate the formulation of management strategies which reflect these linkages. With a structure in place, 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 to 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.[11]

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 organisations, the management should be fluid to provide for delegation of authority and responsibilities to specialised 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 organisations 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 is high as there are already shipping and oceanographic data banks at the NMA and NIOMR, respectively.[9] 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 mobilisation 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 organisations 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 mobilise domestic sources of funds to support expanded commitment to ocean affairs in Nigeria.

At this 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 subregional 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 finetune 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 [10] 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 minimise 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.

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 organizational 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 integrate coastal (Land) and ocean (sea) management efforts. [11]

6.4 Conclusion

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 the 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 intersectoral, 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 through the establishment a machinery for communication, co-ordination and harmonization. It thus establishes a network of management 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.[11] 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 restructuring 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.

NOTES AND REFERENCES

1. Other African coastal states which claim to have integrated ocean management are Cote D'ivoire, Guinea Bissau, South African and Tunisia. See Cicin-Sain B. and Knecht, W. R. (1998), Integrated Coastal and Ocean Management: Concepts and Practices, Island Press, Washington D.C., P. 34.

2. Levy, J. P. (1988), "Towards an Integrated Marine Policy in Developing Countries", Marine Policy, October 1988, P. 330.

3. See Cicin-Sain and Knecht, Op.Cit., Pp. 40 - 41.

4. Anderdahl, A. (1980), "Integrated Marine Policy: What? Why? How?", Marine Policy, July 1980, P. 163.

5. Miles, E. L. (1989), "Concepts, Approaches in Sea Use Planning and Management", Ocean Development and International Law, Vol. 20, No.3, p. 230.

6. See, for example, Borgese, E.M. (1996), Ocean Governance and the United Nations, Centre for Ocean Policy Studies, Dalhousie University, Halifax, p. 105.

7. Peet, G. (1992), Ocean Management in Practice", in Paulo Fabri (ed), Ocean Management in Global change, Elsevier Applied Science, Pp. 39 - 56.

8. See NIOMR (1993), Annual Report, Pp. 1 - 5.

9. For a detailed discussion on the legislative requirements for integrated ocean policy, see Borgese's Ocean Governance and the United Nations, Op.cit., Pp. 153 - 154.

10. Vallejo, S.M. (1994), "New Structures for Decision Making in Integrated Ocean Policy", in Peter Bautista Payoyo (ed.), Ocean Governance: Sustainable Development of the Seas, United Nations Press, Tokyo, P. 88.

11. Vision 2010 (1997), Report of the Vision 2010 - Main Report, Abuja, Chapter 4, Section II 5 (b, c, d(i), 17(b), 19(v) and 30, Pp. 94 - 113.

CHAPTER SEVEN

SUMMARY, CONCLUSION AND RECOMMENDATIONS

7.1 Introduction

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 to 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 alternatives 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 cost-effective results. It is here

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.

7.2 Summary and Conclusions

Generally, ocean policy covers a set of goals, directives 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 then 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 nauticasl 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 revolutionalized 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 area 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 210,000km^2) 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 Principe and Benin Republic. Nigeria needs to confer with these countries for peaceful maritime boundary delimitations as there is much evidence of overlapping 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 on 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 of 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 outputs which are 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 nation. 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 argue 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 Nigerian 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 Minister 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 through 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 dividend 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 has 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 baitboats, purse seiners and longliners 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. Technological 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 gas flaring nation in the world. To enhance optimum utilization of gas, government has introduced liquified natural gas 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 a model of integrated maritime enforcement in five coined maritime activities within which a coastal state must address a series of responsibilities, challenges and threats 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 sovereignty, 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 or 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 Nigerian 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 systems, biological 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 should be seen as a continuum of movement from less policy integration towards a more integrated integration. It requires integration to be achieved intersectorally, intergovernmentally, spatially, internationally and interdisciplinarily. This creates a network of management which lies on the need to 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 by 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 rooting 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 at the regional and global levels which, by the necessary links provided by ocean law, should form 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 involved 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 in developing countries. As Elizabeth Borgese has cautioned, the leadership in many countries have to wean themselves of the idea that 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 provide 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 have also been 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.

Secondly, we can also conclude 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 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 basis, 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 co-ordinating 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 march into the 21st Century and a planned vision for the year 2010, Nigeria is expected to have a 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 integrated 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 national developmental priorities are integrated into the national ocean policy for effective integration into the national development planning in Nigeria. And thirdly, all levels 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 non-governmental 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.

7.3 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 co-ordinating 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 co-ordination, 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 the 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 start negotiations on the limits of maritime boundaries between her and Equatorial Guinea and Sao Tome and Principe. Our field observation has revealed that 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 country'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 and finetune all Nigerian maritime laws to harmonize them not only nationally but also with the latest developments 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 the 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;

Noting that 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 seas 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;

Prompted by the desire to enhance comprehensive security and sustainable development at the national, regional and global levels,

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

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 a 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 Council 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 organizations 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 Resources Council. He may also draw on 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

(i) The President of the Federal Republic of Nigeria shall appoint a Board for Ocean and Coastal Affairs consisting of the Ministers of Foreign Affairs, Transport, Works and Housing, Agriculture, Petroleum Resources, Solid Mineral Resources, Tourism, Energy,

Science and Technology, Environment, Defence, Economic Planning and Justice;

(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, through 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 Non-governmental 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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APPENDICES

APPENDIX I

No of Multilateral Conventions/Protocols Adopted on the Uses of the Sea Between 1884 and 1983

Period	No. Of Instruments
1884-1944	36
1946-1957	28
1958-1966	36
1967-1983	62
Total	162

Source: Adopted from Multilateral Treaties Relevant to the United Nations Convention on the Law of the Sea, United Nations, 1985, and J.C.F. Wang, Handbook on Ocean Politics and Law,

APPENDIX II

International Conventions Concluded on Uses of the Oceans, 1946-1957

Subject Matter	Conventions	Protocols
Collision at Sea	2	1
EEC Formation	1	-
Fisheries conservation and Regional commissions on Whales Lobsters and seals	8	7
Oil Pollution at Sea	1	7
Safety of Life at Sea	1	-
Sanitary Regulations	2	-
Seaman's welfare	1	-
Ships: Arrest and Tonnage	2	-
Slavery	1	-
Stowaway	1	1
UN Organization Formation (IMO, WHO)	2	-
Total	28	9

Source: United Nations (1985) Multilateral Treaties Relevant to the Convention on the Law of the Sea

APPENDIX III

International Conventions Concluded on Uses of the Oceans, 1958-1965

Subject Matter	Conventions	Protocols
Antarctic	1	-
Broadcast	1	-
Carriage of Passengers by Sea		1
Collision	1	1
Fishermeen:Identity,Medical,Wages	6	-
Fisheries: Conservation and Management	4	-
Loadline	2	-
Narcotic Drugs	1	1
Navigation: Traffic	6	-
Nuclear Energy and Ships with test Liability	4	2
Safety at Sea	1	-
Satellite and Telecommunication	2	1
Transit Trade of Landlocked Countries	1	-
UNCLOS I (1958)	5	-
Total	36	5

Source: Multilateral Treaties Relevant to the United Nations Convention on the Law of the Sea

APPENDIX IV

International Conventions Concluded on the Uses of the Oceans, 1967-1968.

Subject Matter	Conventions	Protocols
Archeological and Cultural Heritage	3	-
Animal Protection	1	-
Collision at Sea	1	-
Endangered Species of Wild Flora and Fauna	1	-
Management	10	2
Health Regulations	1	-
International Organization	1	-
Maritime Claims of Liability	1	-
Marine Environment Protection	10	3
Marine Lien and Mortgage	1	-
Marine Search and Rescue	1	-
Narcotic Drugs	4	-
Nuclear Waste, etc	1	-
Passenger Luggage	1	-
Pollution by Oil and Air	12	10
Safety of Life at Sea	1	1
Seaman's Welfare	6	-
Shipping	1	-
Space Launch Rescue	1	-
Total	62	16

Source: Multilateral Treaties Relevant to the United Nations Convention on the Law of the Sea

APPENDIX V

List of Parts and Articles of UNCLOS III

Parts	Subjects	Articles
I	Introduction/Use of terms and scope of the Convention	1
II	Territorial Sea and Contiguous Zone	2-33
III	Straits Used for International Navigation	34-45
IV	Archipelagic States	46-54
V	Exclusive Economic Zone (EEZ)	55-75
VI	Continental Shelf	76-85
VII	High Seas	86-120
VIII	Regime of Island	120
IX	Enclosed or Semi-enclosed Seas	122-123
X	Rights of Access of Land-locked States to and from the sea	124-132
XI	The Area: The Seabed and Ocean floor and subsoil thereof Beyond National Jurisdiction	133-191
XII	Protection and Preservation of Marine Environment	192-232

XIII	Marine Scientific Research	238-265
XIV	Development and Transfer of Marine Technology	266-278
XV	Settlement of Disputes	279- 299
XVI	Some General Provision Governing State's Obligation to act in good faith and abuse of Rights, Peaceful uses of the Seas, Disclosure of information and Archeological and Historical objects found in the Sea.	300-304
XVII	Provisions Covering the Legal Status of the Convention	305-320

Source: Adopted from The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea, United Nations, New York, 1983.

APPENDIX VI

List of Annexes of UNCLOS III

Annex	Issues
I	Highly Migratory species of Sea Resources
II	Commission on the Limits of the Continental Shelf
III	Basic Conditions of Prospecting, Exploration and Exploitation of Resources of the Sea

IV Status of the Enterprise

V Conciliation Procedure Pursuant to Section I of Part XV

VI Status of the International Tribuna; for the Lar of the Sea (ITLS)

VII Arbitration

VIII Special Arbitration

IX Participation by International Organizations

Source: Official Text of the United Nations Convention on the Law of the Sea

APPENDIX VII

An Illustrative Marine Technology Development

Fish Technology

* Fish location and aggregation
* Fish harvesting
* Fish conservation
* Fish waste recycling
* Fish transportation
* Aquaculture and mariculture
* Bio-industrial processes and genetic engineering
*Marine-based pharmaceutical production.

Ship Building Technology	* Automated ship design
	* Tankers
	* Navigational aids
	* Loading, unloading and storage
	* Energy saving technologies
Offshore Mineral	* Platforms, tankers, pipelines
Exploration and Explo-	* Drilling equipment
itation Technology	* Blowout prevention equipment
	* Dredges and deep sea mining equipment
Environment Conservation	* Monitoring equip
Technology	* Chemical analysis equipment
	* Current metres
Ocean Energy Technology	* Wave Energy
	* Tidal Energy
	* Ocean Thermal Energy Conservation (Otec).

Remote Sensing,
Data Processing and
Retrieval Information
And Communication
Technologies.

Coastal Management and
Engineering Equipment.

Laser Technology

Marine Acoustics.

Appendix Viii

List of Maritime Legislation in Nigeria

1. Mineral Oils Ordinance of 1914
2. Mineral Oil Ordinances of 1925, 1946
3. Forestry Ordinance of 1937
4. Oil Pipeline Act of 1956
5. Petroleum Profit Tax Act of 1959
6. Merchant Shipping Act of 1962.
7. Nigerian Territorial Waters Decree of 1967
8. Petroleum Act of 1968
9. Flag of Nigerian Ship Act of 1968
10. Petroleum Drilling and Production Regulation Decree of 1969
11. Petroleum Decree of 1969
12. Nigerian National Petroleum Corporation (NNPC) Act of 1977
13. Nigerian Territorial Waters (Amendment) Decrees of 1971 and 1998, Respectively
14. Sea Fisheries (Licensing) Regulation of 1971
15. Sea Fisheries (Fishing Regulations) of 1972
16. Wild Animals Preservation Law of 1972
17. Forestry Amendment Edit of 1973
18. Exclusive Economic Zone (EEZ) Decree of 1978
19. Nigerian Shippers' Council Act of 1978
20. Pre-shipment Inspection of Import Act of 1979
21. Crude Oil Transportation and Shipment Regulations of 1984
22. Endangered Species Decree of 1985
23. Import (Prohibition) Decree of 1989
24. Federal Environmental Protection Agency Decree of 1988
25. Harmful Waste Special Criminal Provision Decree of 1988.
26. Associated Gas Re-Injection Act of 1990
27. Natural Resource Conservation Agency Council Decree of 1990
28. Admiralty Jurisdiction Decree of 1991
29. Sea Fisheries (Licensing) Regulation of 1971
30. Environmental Impact Assessment Decree of 1992
31. Admiralty Jurisdiction Procedure Rules of 1993

APPENDIX IX

List of International Maritime Conventions

1. Pulbic International Law

(I) Convention on the International Maritime Organization, 1948, Entered Into Force: March 17, 1958.

(ii) Convention on the High Seas, 1958 Entered Into Force: September 30, 1962.

(iii) Convention on Fishing and Conservation of the Living Resources of the Sea, 1958. Entered Into Force: March 20, 1966.

(iv) Convention on the Territorial Sea and the Continuous Zone, 1958. Entered Into Force: September 10, 1964.

(v) Convention on the Continental Shlef, 1958. Entered Into Force: July 10, 1964.

(vi) Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, 1958. Entered Into Force: September 30, 1962.

(vii) Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 1963. Entered Into Force: October 10, 1963.

(viii) Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, 1971. Entered Into Force: May 18, 1972.

(ix) United Nations Convention on the Law of the Sea, 1982 (UNCLOS III). Adopted: December 10, 1982.

(x) United Nations Conference on Environment and Development (Framework for Sustainable Ocean Management and Development), 1992.

(xi) United Nations Agreement on the Implementation of Part x of the United Nations Convention on the Law of the Sea, 1994.

(xii) United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995.

(xiii) FOA Code of Conduct for Responsible Fisheries, 1995

2. Jurisdiction, Arbitration and Enforcement

(I) International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships, 1926 and Additional Protocol, 1934. Entered Into Force, January 8, 1937.

(ii) International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952. Entered Into Force: February 24, 1956.

(iii) International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision, 1952. Entered Into Force: September 14, 1955.

(iv) International Convention for the Unification of Certain Rules to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, 1952. Entered Into Force: November 20, 1955.

(v) EEC Convention on Jurisdiction and the Enforcement of Judgement in Civil and Commercial Matters, and Annexed Protocols, 1968. Entered Into Force: February 1, 1973.

(vi) European Convention on State Immunity, 1972. Entered Into Force: June 11, 1976.

(vii) Convention on the Accession of the Kingdom of Denmark, Ireland, and the United Kingdom of Great Britain and Northern Ireland to the 1968 Convention on Jurisdiction and the Enforcement of Judgement in Civil and Commercial Matters and Annexed Protocols, 1978. Entered Into Force: November 1, 1986.

(viii) EFTA Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, 1968 and Protocols 1,2 and 3. Entered Into Force: Not Yet in force.

(ix) Protocols on Arbitration Clauses, 1923. Entered Into Force: July 28, 1924.

(x) Convention on the Execution of Foreign Arbitral Awards, 1927. Entered Into Force: July 25, 1929.

(xi) Convention on the Recognition and the Enforcement of Foreign Arbitral Awards, 1958. Entered Into Force: June 7, 1959.

(xii) European Convention on International Commercial Arbitration, 1962. Entered Into Force: January 7, 1964.

(xiii) Inter-American Convention on International Arbitration, 1975. Entered Into Force: June 16, 1976.

(xiv) Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 1965. Entered into Force: October 14, 1966.

(xv) Convention on Private International Law, 1928 (Bustamante Code). Entered into Force: November 25, 1928.

(xvi) Treaty on the Law of International Commercial Navigation 1940,. Adopted: March 19, 1940.

(xvii) Convention on the Law Applicable to Contractual Obligations, 1980 Adopted: June 19, 1980

(xviii) International convention for the Unification of Certain rules Relating to the Limitation of the Liability of Owners of Sea-going Vessels 1924 (Limitation of shipowners Liability, 1924) Entered Into Force June 2, 1931.

(xix) Limitation of shipowners Liability, 1957, Entered Into Force May 31, 1968.

(xx) Limitation of shipowners Liability, 1979. Entered Into Force, October 6. 1984.

(xxi) Convention on Limitation of Liability for Marine Claims 1976. Entered Into Force: December 1, 1986.

3. **Safety and Navigation:**

1. Construction and Safety:

(I) International Convention for the Safety of Life at Sea, 1960 (SOLAS 1960). Entered Into Force: May 26, 1965.

(ii) International Convention for the Safety of Life at Sea; as amended 1981, 1983 (SOLAS 1974). Entered Into Force: May 25, 1980.

(iii) International Convention on Load Lines, 1966. Entered Into Force July 21, 1968.

(iv) International Convention on Tonnage Measurement of Ships, 1969. Entered Into Force; July 18, 1982.

(v) Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (SFV 1977) Adopted April 2, 1977.

(vi) International Convention of Standards of Training, Certification and Watch keeping for Seafarers, 1978 STCW 1978. Entered Into Force: April 28, 1984.

(vii) Memorandum of Understanding on Port State Control in Implementing Agreements on Marine Safety and Protection of the Marine Environment, 1982 (MOU 1982). Entered Into Force: July 1, 1982.

(viii) Convention for the Suppression of Unlawful Acts and Against the Safety of Maritime Navigation, 1988) (SUA 1988). Adopted March 10, 1988.

(ix) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf, 1988 Adopted March 10, 1988.

2. Navigation and Communications:

(x) International Convention for the Unification of Laws with Respect to Collision between Vessels 1910 (Collision 1910). Entered Into Force: March 1, 1913.

(xi) Concentration for the Unification of Certain rules of Law Relating to Assistance and Salvage at Sea, 1910. Entered Into Force: March 1, 1913.

(xii) Concentration for the Unification of Certain rules Relating to Assistance and Salvage of Aircraft or by Aircraft at Sea, 1938. Adopted September 28, 1938.

(xiii) Protocol to amend the Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, 1967. Entered Into Force: August 15, 1977.

(xiv) Agreement concerning Manned Lightships Not on their Stations, 1930. Entered Into Force: January 21.1931.

(xv) Convention on the International Regulations for Prevention Collisions at Sea. 1972 (COLREG 1972) Entered Into Force: July 15. 1977.

(xvi) Convention on the International Maritime Satellite Organisation 1976 (IMMARSAT 1976). Entered Into Force: July 16, 1979.

(xvii) Operating Agreement of the International Maritime Satellite Organisation, 1976 (INMARSAT OA) Entered Into Force: July 16. 1979.

(xviii) International Convention On Maritime Search and Rescue 1979 (SAR 1979). Entered Into Force: June 22, 1985.

(xix) Agreement on the International Association of Lighthouse Authorities Maritime Buoyage System, 1982 (IALA 1982). Entered Into Force: April 15, 1982.

(xx) International Telecommunications Convention and Optional Protocol (ITU Convention). Entered Into Force: January 1, 1984.

(xxi) The International COSPAS-SARSAT Programme Agreement, 1988 (COPS-SAR 1988). Entered Into Force: August 30, 1988.

(xxii) International Convention on Salvage, 1989 (Salvage 1989) Adopted April 28. 1989.

3. Property Transactions and Rights

(I) International Convention for the Unification of Certain Rules Relating to

Maritime Liens and Mortgages, 1926. Entered Into Force: June 2, 1931.

(ii) International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967. Adopted May 27, 1967.

(iii) International Convention Relating to Registration of Rights in Respect of Vessels Under Construction, 1967. Adopted: May 27. 1967.

(iv) United Nations Convention on Conditions for Registration of Ships, 1986. Adopted: February 7. 1986.

(v) UNIDROIT Convention on International Financial Leasing 1988. Adopted: May 28, 1988.

(vi) UNIDROIT Convention on International Factoring, 1988. Adopted May 28, 1988.

4. Carriage of Goods and Passengers

(I) International Convention for the Unification of Certain rules Relating to Bills of /Lading, 1924 (Hague rules). Entered Into Force: June 2, 1931.

(ii) Protocol to Amen the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (Viisby Protocol, 1968). Entered Into Force: June 23, 1977.

(iii) Protocol of 1979 to Amend the International Convention for the Unification of Certain Rules of Law Relation to Bills of Lading 1924, as Amended by the Protocol of 1968)Sdr Protocol 1979). Entered Into Force: February 14, 1984.

(iv) Convention for the Unification of Certain Rules Relating to International Carriages by Air, 1929 (Warsaw Convention). Entered Into Force: February 13, 1933.

(V) Warsaw Convention, 1929 Montreal Additional Protocol No.1 1975. Adopted September 25, 1975.

(Vi) Warsaw Convention, 1929, the Hague Protocol, 1955. Entered Into Force: August1, 1963).

(Vii) Guadalajara Supplementary Convention, 1961. Entered Into Force: May 1, 1964.

(Viii) Warsaw-hague Convention, Montreal Additional Protocol No.2 1975. Adopted September 25, 1975.

(Ix) Warsaw-hagues Convention, Guatemala Protocol, 1971. Adopted: March 8, 1971.

(X) Warsaw-hague-Guatemala Convention, Montreal Additional Protocol No.3, 1975. Adopted: September 25, 1975.

(Xi) Warsaw_hague Convention, Montreal Additional Protocol No.4 1975. Adopted: September 25, 1975.

(Xii) Convention for the Contract for the International Carriage of Goods by Road, 1956 (Cmr, 1956). Entered Into Force: July 2, 1961.

(Xiii) Protocol to the Convention on the Contract for the International Carriage of Goods by Road, 1978. Entered Into Force December 28, 1980.

(Xiv) International Convention for the Unification of Certain Rules Relating to the Carriage of Passengers by Se and Protocol, 1961 Entered Into Force: June 4, 1965.

(Xv) Convention on Facilitation of International Maritime Traffic, 1965 (Fal, 1965). Entered Into Force: March 5, 1967.

(Xvi) International Convention for the Unification of Certain Rules Relating to Carriage of Passenger Luggage by Sea 1967. Adopted May 27, 1967.

(Xvii) Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971. Entered Into Force: July 15, 1975.

(Xviii) International Convention for Safe Containers, 1972 (Csc, 1972). Entered Into Force: September 6, 1977.

(Xix) Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974 (Pal, 1974). Entered Into Force April 28, 1987.

(Xx) Convention on a Code of Conduct for Liner Conferences, 1974. Entered Into Force: October 6. 1983.

(Xxi) United Nations Convention on the Carriage of Goods by Sea, 1978 (The Hambury Rules, 1978). Adopted: March 31, 1978.

(Xxii) United Nations Convention on Contracts for International Sale of Goods, 1980. Entered Into Force: January 1, 1988.

(Xxiv) Convention Concerning International Transport by Rail, 1980(Cotif, 1980). Entered Into Force: May 1, 1985.

5. Employment

(I) Minimum Age (Sea) Convention, 1920. Entered Into Force: September 27, 1921.

(ii) Placing of Seamen Convention, 1920. Entered Into Force: November 23, 1921.

(iii) Unemployment Indemnity (Shipwreck) Convention, 1920. Entered Into Force: March 16. 1923.

(iv) Minimum Age (Trimmers and Stokers) Convention, 1921. Entered Into Force: November 20, 1922.

(V) Medical Examination of Young Persons (Sea) Convention 1921. Entered Into Force: November 20, 1922.

(Vi) Seamen's Articles of Agreement Convention , 1926. Entered Into Force: April 4, 1928.

(Vii) Repatriation Of Seamen Convention, 1926. Entered Into Force: April 16, 1928.

(Viii) Officers' Competency Certificates Convention, 1936 (No. 53) Entered Into Force: March 29, 1939.

(Ix) Hours of Work and Manning (Sea) Convention, 1936. Adopted October 6, 1036.

(X) Minimum Age (Sea) Convention (Revised), 1936. Entered Into Force: April 11, 1939.

(Xi) Shipowners' Liability (Sick and Injured Seaman) Convention, 1936. Entered Into Force: October 29, 1939.

(Xii) Sickness Insurance (Sea) Convention (Revised), 1936. Entered Into Force: December 9, 1949.

(Xiii) Holiday with Pay (Sea) Convention, 1936. Adopted: June 4, 1936.

(Xiv) Certificate of Ships' Cooks Convention, 1946. Entered Into Force April 22, 1953.

(Xv) Paid Vacation (Seafarers) Convention, 1946. Adopted: June 6. 1946.

(Xvi) Wages, Hours of Work and Manning (Sea) Convention, 1946, Adopted: June 6, 1946.

(Xvi) Accommodation of Crews Convention, 1946. Adopted: June 6, 1946.

(Xviii) Social Security (Seafarers) Convention, 1946. Adopted: June 6, 1946.

(Xix) Seafarers' Pensions Convention, 1946. Entered Into Force: October 10, 1962.

(Xx) Certification of Able Seamen Convention, 1946. Entered Into Force: July 14, 1951.

(Xxi) Food And catering (Hships' Crew) Convention, 1946. Entered Into Force: March 24, 1957.

(Xxii) Medical Examination Convention,1946. Entered Into Force: August 17, 1955.

(Xxiii) Paid Vacations (Seafarers) Convention (Revised), 1949. Entered Into Force: September 14, 1967.

(Xxiv) Wages, Hours of Work and Manning (Sea), 1949. Adopted: June 8, 1949.

(Xxv) Accommodation of Grow's Convention (Revised), 1949. Entered Into Force: January 29, 1953.

(Xxvi) Seafarers' Identity Documents Convention, 1958. Entered Into Force: February 19, 1961.

(Xxvii) Wages, Hours of Work and Manning (Sea) Convention (Revised, 1958. Adopted: April 29, 1958.

(Xxviii) Medical Care and Sickness Benefits Convention, 1969. Entered Into Force: May 27, 1972.

(Xxix) Prevention of Accidents (Seafarers) Convention, 1970. Entered Into Force: February 17, 1973.

(Xxx) Accommodation of Crews (Supplementary Provisions) Convention, 1970. Adopted: October 14, 1970.

(Xxxi) Minimum Age Convention, 1973. Entered Into Force: June 19, 1976.

(Xxxii) Seafarers' Annual Leave with Pay Convention, 1976. Entered Into Force: June 13, 1979.

(Xxxiii) Continuity of Employment (Seafarers) Convention, 1976. Entered Into Force: May 3, 1979.

(Xxxiv) Merchant Shipping (Minimum Standards) Convention, 1976. Entered Into Force: November 28, 1981.

(Xxxv) Seafarers' Welfare Convention, 1987. Entered Into Force: October 3, 1990.

(Xxxvi) Health Protection and Medical Care (Seafarers) Convention, 1987. Adopted: September 24, 1987.

(Xxxvii) Social Security (Seafarers) Convention (Revised), 1987. Adopted: September 24, 1987.

(Xxxviii) Repatriation of Seafarers Convention (Revised), 1987. Adopted: September 24, 1987.

4. Protection and Preservation of the Marine Environment

(i) International Convention for the Prevention of Pollution of The Sea by Oil 1954 (Oilpol 1954). Entered Into Force July 26, 1958.

(ii) International Convention Relating to Interventions on the High Sea in Cases of Oil Pollution Causalities, 1969 (Intervention 1969). Entered Into Force: May 6, 1975.

(iii) Protocol on Substances Other than Oil, 1973 (Intervention Prot 1973). Entered Into Force; March 30, 1983.

(iv) Convention on Prevention on Marine Pollution by Dumping of Wastes and Other Matters 1971 (Loc 1072). Entered Into Force: August 30, 1975.

(v) International Convention for the Prevention of Pollution from Ships, 1973 (Marpol 1973) Entered Into Force: Not Yet in Force.

(vi) Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From ships, 1973 (Marpol Prot 1978). Entered Into Force: October 2, 1983.

(vii) Convention on the Liability of Operators of Nuclear Ships and Additional Protocol, 1962. Adopted: May 25, 1962.

(viii) International Convention on Civil Liability for Oil Pollution Damage, 1969 (Clc 1969). Entered Into Force: June 19, 1975.

(ix) Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1976 (Clc Prot 1976). Entered Into Force April 8, 1981.

(x) Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage (Clc Prot 1984). Entered Into Force. Not Yet in Force.

(xi) Offshore Pollution Liability Agreement, 1974 as Amended October 1986. (Opol 1974) (As Amend October, 1986). Entered Into Force May 1, 1975.

(xii) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Fund 1971). Entered Into Force: October 16, 1978.

(xiii) Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1976 (Fund Prot 1976). Entered Into Force: Not Yet in Force.

(xiv) Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Prot 1984). Entered Into Force: Not Yet in Force.

(xv) Convention on Civil Liability for Oil Pollution Damage Resulting from Exploitation and Exploitation of Seabed Mineral Resources, 1977 (Clee 1977). Adopted: May 1, 1977.

(xvi) Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil , 1969 (Bonn Agreement 1969). Entered Into Force: August 9, 1969.

(xvi) Agreement Between Denmark, Finland Norway, Sweden Concerning Co-operation in Measures to Deal with Pollution of the Sea by Oil, 1971 (Copenhagen Agreement 1971) Entered Into Force October 16, 1971.

(xviii) Convention on the Prevention of Marine Pollution by Dumping from Ships and Aircraft, 1972 (Oslo Convention on dumping 1972) Entered Into Force April 7, 1974

(xix) Convention for the Prevention of Marine Pollution from Land-based Sources, 1974 (Paris Convention 1974) Entered Into Force: May 6, 1978.

(xx) Convention of the Protection of the Environment Between Denmark, Finland, Norway and Sweden, 1974 (Stockholm Convention 1974) . Entered Into Force: October 5, 1976.

(xxi) Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1974 (Helsinki Convention 1974). Entered Into Force: May 3, 1980.

(xxii) Memorandum of Understanding on Port State Control. Entered Into Force: July 1, 1982.

(xxiii) Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, 1983 (Bonn Agreement, 1983) Adopted: September 13, 1983.

(xxiv) Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989. Adopted March 20-22 1989.

5. UNEP Regional Seas Conventions (Not Included in the List)

(i) Convention for the Protection of the Mediterranean Sea Against Pollution, 1976 and Annexed Protocols (Mediterranean Regional Seas). Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, 1976. Protocol Concerning Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency, 1976. Entered Into Force: February 12, 1978.

(ii) the Kuwait Regional Convention for Co-operation for the Protection of the Marine Environment From pollution, 1978 (Kuwait Regional Seas). Protocol Concerning Regional Co-operation Incombating Pollution by Oil and Other Harmful Substances in Cases of Emergency, 1978. Entered Into Force: July 1, 1979.

(iii) Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, 1981. Protocol Concerning Co-operation in Combating Pollution in Case of Emergency, 1981. Entered Into Force: August 5, 1984.

(iv) Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1983. Protocol Concerning Co-operation in Combating Oil Spills Incases of Emergency, 1983. Entered Into Force: October 11, 1986.

(v) Convention for the Protection of the Marine Environment and Coastal Areas of the South-east Pacific, 1981 (Lima Convention 1981) Agreement on Regional Co-operation in Combating Pollution of the South-east Pacific by Hydrocarbons and Other Harmful Substances in Cases of Emergency, 1981. Entered Into Force May 19, 1986.

(vi) Supplementary Protocol to the Agreement on Regional Co-operation in Combating Pollution in Cases of Emergency, 1983. Protocol for the Protection of the South-east Pacific Against Pollution From land-based Sources, 1983. Entered Into Force: May 19, 1986.

(vii) Regional Convention for the Conservation of the Red Sea and the Guld of Aden Environment, 1982 (Jeddah Regional Seas, 1982) Protocol Concerning Regional Co-operation in Combating Marine Pollution by Oil and Other Harmful Substances in Cases of Emergency, 1982. Entered Into Force August, 20, 1985.

(viii) Convention for the Protection and Development of Natural Resources and Environment of the South Pacific Region, 1986 (South Pacific Regional Environment Programme, 1986). Protocol for the Protection of the South Pacific Region by Dumping 1986. Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, 1986. Adopted November 24, 1986.

(ix) Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, 1985 (East African Action Plan, 1985). Adopted: June 21, 1985.

(x) Protocol Concerning Co-operation in Combating Marine Pollution in Cases of Emergency in Then eastern African Region, 1985. Not Yet In Force.