THE INFLUENCE OF INTERNATIONAL LAW OF THE SEA ON THE DEVELOPMENT OF MARITIME LAW IN NIGERIA

By

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1.0 INTRODUCTION

The seas have two significant functions, to wit as a medium of transportation and also as a vast reservoir of resources, both living and non-living. These functions have necessitated and engendered the development of legal rules to govern the exploitation and use of the sea. It is true that in all human endeavours whenever human beings interact — laws are necessary to provide sanctions, guideline and a framework for the resolution of disputes. From time immemorial human activities traversing large expanse of water in vessels of increasing sophistication in pursuit of trade and commerce, acquisition of new territories, exchange of ideas, military adventures etc have required comprehensive regulation.

Maritime law comprises of the municipal law of the sea and the international aspect of it. The national aspect deals with the internal regulations of each particular state in which foreign elements prompt raising questions as to the application of foreign law or the role of foreign courts. This is mostly concerned with admiralty matters. By contrast international maritime law covers relations between states in all their myriad forms as to the use and exploitation of the sea. It must be conceded that much of the national legislation on shipping promulgated by state is derived from rules of international application.

The paper shall therefore exponent maritime law with international elements and consider its impact on the Nigerian maritime law, its applicability and enforcement on the Nigerian state.

1.2 THE MAKING OF INTERNATIONAL MARITIME LAW

In the context of the topic, international maritime law refers to the law governing the use and exploitation of the sea among nations. As maritime traffic increased and ships became sturdier and faster, it became equally necessary to accentuate international regulation of traffic and affairs. This situation prompted the holding of more conferences which were attended by

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delegates from the major shipping nations, these usually ended in adoption of a Convention which is analogous to an Act of parliament.[1]

The international community has been experiencing emergence of various international agencies, which convene regular conferences for the purpose of making conventions. Such agencies include International Maritime Organization (IMO), The United Nations Conferences on Trade and Development (UNCTAD), the United Nations Commission on International Trade Law (UNICTRAL).

Apart from those conventions which came into existence for the first time, there are a considerable number of amending conventions, protocols, regulations, recommendations etc, which cover practically every area of international maritime law. For instance, the International Sea- bed Authority was first established under part XI of the 1982 convention on the law of the sea but its functions were materially modified by an agreement in 1994. Such conventions are bound to continue to be held regularly as existing conventions become obsolete in part requiring updating to affect development in technology or a new world order. For example, the most important convention dealing with maritime safety is the Safety of Life at Sea Convention (SOLAS), 1974. This convention has been substantially amended several times since 1948 approximately at twelve years intervals.[2]

The Law of the SEA (LOS), concluded under the auspices of the United Nations in 1982 produced a comprehensive agreement on ocean law. The convention itself is a product of diverse interests in the subject matter.[3] By the convention, the rights and obligations of states were set forth in offshore zones as: the Internal waters, a territorial sea of up to 12 nautical miles, a contiguous zone of up 24 nautical miles, an Exclusive Economic Zone (EEZ) of up to 200 nautical miles and the continental shelf which may extend beyond 200 nautical miles but not beyond 350 depending on the configuration of the sea bed.[4] The 1982 convention referred to as the United

[1] Mbanefo L.N. (SAN), Maritime Law and Admiralty Jurisdiction. in Nigeria, in New Law of the Sea and the Nigerian Maritime Sector, Issues and Prospects for the Next Millennium, edited by Ayua A.I and Yagba TAT, Nigerian Institute of Advanced Legal Studies, Lagos 1998 p. 88

[2] Ibid, p. 90

[3] Philip Allot, Power Sharing in the Law of the Sea, AJIL Vol. 77 (1983) p. 6

[4] Owusanoye. B. International Jurisdiction over Shipping and Navigation. In the New Law of the Sea and the Nigerian Maritime Sector, Issues and Prospects for the Next Millenium. op cit p. 101

Nations Convention on the Law of the Sea (UNCLOS) is the main international legal instrument, around which nation states, parties to the convention are enjoined to fashion their municipal laws.

1.3 STATE CONTROL OF GEOGRAPHICAL LIMITATIONS OF THE SEA

The division of the sea into zones for the purpose of state control and exercise of some rights has been provided under the LOS to regulate activities on the seas and even provides for matters of domestic jurisdiction like territorial seas.

1.3.1 Territorial Sea

The sovereignty of the coastal state extends over its territorial seas.[5] The territorial sea is not more than 12 nautical miles from the baseline determined in accordance with the convention. The Nigerian law, however, provided for 30 nautical miles as the limit of Nigerian Territorial Sea.[6] The obvious conflict between UNCLOS and the Nigerian Territorial Waters (Amendment) Act, 1971 was nevertheless resolved upon the promulgation of the Nigerian Territorial Waters (Amendment) Act 1998.[7] The Act amends section 1 by stipulating 12 nautical miles for the Nigerian territorial sea, thus making it conform to UNCLOS.

For practical purpose the coastal states have inherent in their sovereignty over the territorial sea the following rights:

a) Exclusive right to fishery and exploitation of the resources of the sea bed and subsoil.
b) Exclusive right to coastal trading e.g to transport goods and passengers from one part of the coastal state to another, otherwise known as cabotage.
c) Exclusive right to the air space above the territorial sea.
d) General power of police in matters of security, customs, immigration, fiscal regulation, sanitary and health controls, and powers of arrest over merchant vessel exercising a right of innocent passage and over person on board such vessels.

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[5] Art. 2 UNCLOS, 1982

[6] Section 1 Territorial Waters Act, 1967 as amended in 1971

[7] Cap T. 5 Laws of the Federation of Nigeria, 2004.

Despite these rights, the coastal state's sovereignty over the territorial sea is subject to a very important limitation, that is, the right of innocent passage by foreign ship through the territorial sea.[8] Passage is said to be "innocent" so long as it is not prejudicial to the peace, good order to or security of the coastal state and conducted in conformity with the convention and other rules of international law.[9] Article 19(2) prescribes circumstances which make passage to cease to be innocent. In general passage ceases to be innocent, where it constitutes a threat to the security of the coastal state as well as breach of its laws and regulations.

In the exercise of these rights, the coastal state is empowered to make laws and regulations relating to innocent passage through the territorial sea, which laws must not be discriminatory in nature against ship of any state or ship carrying cargo to or from or on behalf of any state.[10]

1.3.2 Contiguous Zone

This is a zone contiguous to the territorial sea extending to 24 nautical miles from the territorial sea. The coastal state shall in this area, exercise control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulation within its territory, to have exclusive or principal right to the resources of the zone and punish infringement of these provisions. From the provision of Article 55 of the convention, the contiguous zone, if claimed will be superimposed upon the exclusive economic zone (if such zone is claimed). Consequently, while the territorial sea forms part of the contiguous zone (if claimed) and shares the same baseline with it, the contiguous zone forms part of the exclusive economic zone. The contiguous zone may therefore be described as the area extending 12 nautical miles from the seaward limit of the territorial sea and encompassed by the exclusive economic zone. In other words, it extends to 24 nautical miles from the baseline i.e from where the territorial sea is measured.

The permissible types of zones recognized within the contiguous zone include: customs zone, immigration zone, zones for sanitary purposes and prevention of pollution of the sea.

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[8] Art 17 UNCLOS 1982
[9] Ibid
[10] Art 24(1) Ibid

1.3.3 Exclusive Economic Zone (EEZ)

This is not more than 200 nautical miles from the base line where the territorial sea is measured.[11] The coastal state has sovereign right of exploration etc. Nigeria has adopted the 200 nautical miles for its EEZ.[12] Consequently, apart from endorsing the provision of the convention, Nigeria is entitled to the right and bound by the obligations in its EEZ as guaranteed by the convention.

Article 58 of the convention provides for the rights and duties of other states in the EEZ. These include the basic high sea freedom of navigation, over flight and laying of submarine cables and pipelines. It also provides that in exercising their right and performing their duties, states should have due regard to the rights, duties and laws of the coastal state. The long title to the EEZ Act provides

> *An Act to determine the exclusive economic zone of Nigeria being an area extending up to 200 nautical miles seawards from the cost of Nigeria within this zone and subject to universally recognized rights of other states (including land locked states). Nigeria would exercise certain sovereign rights especially in relation to the conservation or exploitation of the natural resources (minerals, living species etc) of the sea-bed, its sub soil and superjacent water and the right to regulate by law the establishment of artificial structures and installation and marine scientific research amongst other things.*

The delimitation of the EEZ as above has been given judicial approval in the case of AG Federation v A.G Abia State (No.2)[13]

1.3.4 Continental Shelf

This is the seabed and sub – soil of the submarine areas-that extend beyond its territorial sea throughout the natural prolongation of the land territory but

[11] Art 57 Ibid
[12] Section 1 Exclusive Economic Zone Act Cap E17 Laws of the Federation of Nigeria, 2004.
[13] (2002) 6 NWLR Pt. 764, p. 542 at p. 891

not beyond 200 nautical miles from the base line.[14] The above definition of continental shelf has been approved and endorsed by the Nigerian Supreme Court in AG Federation V A.G Abia State (No.2)[15] So the accepted new standard of customary law for measuring the continental shelf is 200 nautical miles or continental margin which ever is greater. Article 74(3) states what constitutes the 'continental margin' as comprising the submerged prolongation of the landmass of the coastal state and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the sub — soil thereof. Nigeria can avail itself of this opportunity through enabling legislation to enlarge its continental shelf beyond the current provision of 200 nautical miles in section 15(1) of the Petroleum Act.[16]

1.3.5 High Seas

According to Article 86, 1982 convention, the high seas refer to 'all part of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal water of a state or in the arch pelagic waters of an arch pelagic state. The legal status of the high seas is that it is open to all nations, therefore, no state may validly subject any part of them to its sovereignty.[17]

The freedom of high seas is for both coastal and landlocked states. Article 88 limits the use of the high seas to peaceful purposes. The guaranteed freedoms of the high sea being open to all nations for the purpose of navigation, fishing and the laying of submarine cables and pipelines, freedom to fly over high seas and other freedoms recognized by the general principle of international law" shall be exercised with reasonable regard to the interests of other states. Such other freedoms include freedom to conduct naval exercise on the high sea and freedom to carry out research studies.

The need to maintain law and order on the high sea is very essential. The general principle relating to jurisdiction on the high seas is the flag state alone may exercise such rights over the ship. This right is absolute and

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[14] Art 76 UNCLOS, 1982

[15] Op cit

[16] Cap P. 10 Vol 13, Laws of the Federation of Nigeria, 2004

[17] Art 86 UNCLOS, 1982

admits of no exception with respect to warships and ships owned or operated by a state where they are used only on government, non – commercial/service. By virtue of Article 8 and 9 of the 1958 High Seas Convention, such ships have complete immunity from the jurisdiction of any state other than the flag state. There are however exceptional circumstances where the warship of one state could interfere with a merchant ship of another state. These situations include exclusive fishery zone, exclusive economic zone, the contiguous zone, hot pursuit, piracy, self – defence, slave trade, unauthorized broadcasting, pollution and right to visit.

Thus the freedom to enjoy the high seas is accompanied by reciprocal duties among nation states in the protection of their general interests on the high seas.

1.4 APPLICATION OF INTERNATIONAL MARITIME LAW IN NIGERIA

One of the greatest problems in legislating for different countries is that consent of every country is required in order to make any particular legislation applicable to it. Consent of states is given or obtained in different modes as follows:

1. 4.1 Signatory States

When a convention is made through a conference those countries, which sent a delegation to the conference, become signatories to it. Others will sign it but may refuse to be bound by some of its clauses (this is known as "making reservations"). For example, the United Kingdom, the United States and Germany declined to sign the 1982 convention on the grounds that the regime established by Part XI (which created the international sea-bed authority to organize and control activities in the seabed area) was unacceptable, principally because it failed sufficiently to promote market forces and incentives for private sector involvement.[18] Consequently, negotiations began to amend the regime proposed by the 1982 convention. In 1994 an agreement relating to the implementation of part XI of the 1982

[18] Philippe Sands and Pierre Klein, Bowett's Law of International Institutions, 5th Edition, Thomson Sweet and Maxwell, London 2001 p. 137-138

convention was adopted under the auspices of UN General Assembly Resolution 48/263.[19]

1.4.2 Ratification by States:

On the other hand those countries, which did not attend the conference or take part in the preparation of the convention, are also entitled to become parties to that convention by acceding to or ratifying it. Thus it can be seen that whilst some conventions are acceptable by a large number of states (for example, the Hague Convention) others are acceptable to only a handful of nations.[20]

1.4.3 Acceptance of Alternative

Sometimes there may exist two or more conventions on the same subject, which are accepted by different countries for example, the Hague convention on Carriage of Goods by Sea was followed by the Hamburg convention in 1978 on the same subject.[21]

One surprising aspect is that even if a country has signed, ratified or acceded to a convention, that convention still does not, in many countries become part of the legal regime of the country until an enabling Act is passed by the legislature of that country. Such is the case in Nigeria. Nigeria maintains the theory of dualism which postulates the stand point that international and municipal laws are quite different both in their character, nature and sphere of function. The dualists contend that international law cannot apply directly within municipal courts. It must first of all undergo a process of specific adoption by or a specific incorporation into municipal laws before its rules and principles can operate in a domestic sphere. For example, under section 12 of the 1999 Nigerian Constitution, a treaty has to be enacted into law by the National Assembly for it to be applicable domestically.[22]

From the above standpoint, it follows that in order to enforce the rules of international law inside a state, it is necessary to incorporate them in to the

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[19] Ibid

[20] An Overview of the Maritime Law in Nigeria, Development and Reforms. Nigeria's Commercial Laws, Essay in Honour of Chief (Dr.) Christopher O. Ogunbanjo OFR 1998 p. 330

[21] Ibid

[22] See also Fawehinmi v. Abacha (1996) 9 NWLR pt 475 p. 747 and Abacha v. Fawehinmi (2000) 6 NWLR pt 660. p. 228

national legislation. This is done in two ways. It is either the National Assembly enacts a law adopting the international legal instrument as part of National Law or an Act is promulgated containing verbatim or with some modifications the provisions of the international legal instrument. In 1988, the Nigerian government ratified the Hamburg convention,[23] but up till date the author of this paper is not aware of the Hamburg rules been incorporated into the laws of Nigeria and are therefore not yet applicable in this country.

The Law of the Sea (LOS) entered into force on November 16th 1994. Nigeria ratified the convention on July 11th 1996.[24] There has not been an enabling legislation making the LOS wholly part of Nigerian law. However, arising from the nature of treaty obligations and from customary law, there is a general duty to bring internal law into conformity with obligations under international law. This is especially so in view of the international nature of shipping, so that Nigerian ships enjoy smooth passage from port to port without being exposed to the risk of frequent arrests and or fines. Nigeria currently applies the Hague rules in their original form. Section 2 of the Carriage of Goods by Sea Act provides that the Hague rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Nigeria to any other port whether in or outside Nigeria. The Hague rules are reproduced in full in the schedule to the Act.

1.5 ENFORCEMENT MECHANISM OF THE LAW OF THE SEA

The United Nations Conference on the Law of the Sea (UNCLOS) 1982 has become international legal framework and regime from which most nations derive inspiration and guidance for enacting their laws. The division of the sea into zones in Nigeria has been done in conformity to the 1982 convention. On the international arena, Nigeria becomes bound by the provisions of UNCLOS as a result of her ratification of the convention in 1996. It therefore means that Nigeria is subject to the activities of the United Nations and specialized agencies on matters relating to the Law of the Sea.

[23] Ibid. see also Papers on Maritime Seminar for Judges, 1998 (MIJ Professional Publishers Limited. Lagos) p. 187

[24] Fap. O The Regulation of Navigation and Shipping: Local and International, In the New Law of the Sea and the Nigerian Maritime Sector, Issues and Prospects for the Next Millenium. Op cit p 115

From an international perspective, it is important to bear in mind the fact that international law is binding on all states. The state is held responsible if international law is violated by one of its agents or institutions. The responsibility of states also extends to ensuring that their government, their constitution and their laws enable them to carry out their international obligations. Significantly, a state cannot invoke provisions in its constitution or national law as an excuse for failure to discharge its obligations under international law.[25]

There are four recognized principles that states invoke to exercise jurisdiction particularly in criminal matters.

1. Nationality Principle.

The competence of a state to prosecute and punish its nationals on the sole basis of their nationality is based upon the allegiance which the person charged with crime owes to the state of which he is a national.[26] If international law permits a state to regard the accused as its national, its competence is not impaired or limited by the fact that he is also a national of another state.

2. Territorial Principle.

This principle has universal acceptance. It is admitted that, where a crime is committed in the territorial jurisdiction of one state as the direct result of the act of a person at the time corporeally present in another state, international law, by reason of the principle of constructive presence of the offender at the place where his act took effect, does not forbid the prosecution of the offender by the former state, should he come within its territorial jurisdiction.[27] Similarly, an offence committed on a ship or aircraft is treated as part of a state's territory for jurisdiction purposes.

3. Protective Principle.

The use of the protective principle was justifiable as a basis for jurisdiction because of the inadequacy of most national legislation punishing offences committed within the territory against the security, integrity and

[25] (According to Article 27 of the Vienna Convention on the Law of Treaties, 1969).
[26] Brownlie, I Principles of Public International Law, 4th Edition, Oxford University Press, 1990 p 303.
[27] Ibid, p 300

independence of foreign states.[28] The protective principle determines jurisdiction by reference to the national interest injured by the offence.

4. **Universality Principle**

According to both the UN War Crimes Commission of 1949 and the four Geneva Conventions of 1949, the right to punish war crimes committed by persons of any nationality, is possessed by any independent state whatsoever. Other offences like drug trafficking, hijacking, taking of hostage and torture are also covered by many treaties.[29] In Yunis v. Yunis[30] the defendant and another hijacked a Jordian airliner at Bernit Airport, with two US nationals and other passengers on board, ultimately blowing it up there. The defendant was arrested by FBI agents on board a yatch in international waters in the Mediterranean. He was convicted by a US court of, inter-alia hostage taking etc. On appeal, it was held that the US courts had jurisdiction under the clear wording of Hostage Taking Act and Anti-Hijacking Act.

The 1982 UNCLOS has continued to establish new international institutions to handle specific aspects of the law of the sea. These institutions have jurisdiction over nations including Nigeria in one area and one form or the other. These institutions are;

- International Tribunal for the Law of the Sea[31] (ITLOS)
- Commission on the Limits of the Continental Shelf.[32]
- International Seabed Authority[33]

ITLOS became operational in 1996 as an integral part of the regime established under part XV of UNCLOS for the peaceful settlement of disputes concerning the interpretation or application of the convention.[35] This regime is remarkable in the sense that it sanctions a system of compulsory adjudication with limited jurisdiction over certain intergovernmental organizations and non – state actors.[36] The parties to UNCLOS may elect, upon ratification one or more dispute settlement

[28] Ibid, p. 304 wherein also the case of Joyce v. DPP (1946) AC 347 was cited.
[29] Ibid, Pp. 304-305
[30] (1990) 30 ILM, 403
[31] Philippe Sands & Pierre Klein, Bowett's Law of International Institutions. Op cit p. 137
[32] Ibid
[33] Ibid
[35] Art 288 UNCLOS
[36] Philippe Sands & Pierre Klein. op cit Pp.375-376

mechanisms from the four procedures enumerated in Article 286 of UNCLOS:

- International Court of Justice (ICJ),
- International Tribunal for the Law of the Seas (ITLOS)
- General arbitration
- Special arbitration

If two states select the same procedure, it will apply in disputes between them. In the absence of agreement over an adjudication forum, a dispute is to go to arbitration. A separate Sea – Bed Dispute Chamber (SBDC) has exclusive and compulsory jurisdiction over disputes with respect to activities in the sea-bed area.

ITLOS will primarily exercise jurisdiction over disputes between states that have selected it under Article 287. It may also entertain cases on the basis of international agreements other than UNCLOS.[37] In addition, ITLOS enjoys compulsory jurisdiction over all states parties to UNCLOS in three areas.

- In cases involving requests for "prompt release" of vessels and crews if the
  parties to the dispute fail to agree upon an alternative forum.[38] The flag state of the detained vessel makes the application.
- In disputes which are to be referred to an arbitration tribunal, ITLOS will have compulsory jurisdiction to hear requests for provisional measures if the parties fail to agree upon an alternative forum.[39]
- The SBDC (or at the request of both parties an adhoc ITLOS Chamber) exercises compulsory jurisdiction over sea bed area related disputes.[40] ITLOS is also open to state and non state entities, which are parties to agreements, other than UNCLOS (but related to the purpose of that convention) which confer jurisdiction to the tribunal.[41]

[37] Ibid. p. 376 and Art. 292
[38] Art. 292
[39] Art. 298(5)
[40] Art 290 (5)
[41] 288(2)

Despite the general jurisdiction of ITLOS, certain disputes involving the rights and obligations of coastal states are excluded. These include:

- Disputes over exercise of rights on the part of a coastal state pertaining to marine scientific research in the EEZ or continental shelf, and fisheries
- Disputes involving the sovereign rights of the coastal states over the living resources of the EEZ[42]

Parties may also upon ratification of UNCLOS, submit a declaration excluding from compulsory adjudication certain other categories of disputes (involving marine delimitation, military and law enforcement activities and measures taken by the security council), although disputes so exempted may be referred to compulsory conciliation.[43]

ITLOS may also render advisory opinions on legal questions in pursuance with an international agreement, related to the purposes of UNCLOS, which confers such jurisdiction to ITLOS.

The Commission on the limits of the continental shelf (the Commission) is established under Article 76 and Annexture of the 1982 UNCLOS. It is charged with making recommendations to coastal states concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles. It also provides scientific and technical advice to coastal states with regard to the preparation of materials relating to those recommendations. The limits of the shelf established by a coastal state on the basis of the recommendation of the Commission are to be binding viz a viz third states.[44]

The International Sea-bed Authority was first established under part XI of the 1982 UNCLOS, but its functions were materially modified by agreement in 1994. The area covered by the regime is as defined in the convention as the sea – bed and ocean floor and sub – soil beyond the limits of national jurisdiction. Article 136 states the area and its resources to be "the common heritage of mankind within which no state is entitled to claim

[42] Art 297
[43] Art 297 and 298
[44] Art. 76(8)

or exercise sovereignty or sovereign rights. All rights in resources in the Area are vested in mankind as a whole on whose behalf the Authority is to act.[45]

It must be noted however that the authority has not yet become operational in relation to activities within the area.

The International Court of Justice (ICJ) was established in 1946 with two – fold functions that is, to assist in the resolution of disputes between states and to provide advisory opinions to specified international organizations on certain legal questions. By virtue of Article 34(1) of the ICJ Statute, only states may be parties in cases before the court. These states fall under three categories

- All the 189 UN members who under Article 93(1) of the UN Charter are ipso facto parties to the statute of the Court .[46]
- Non - UN members who desire a permanent association with the court and under Article 93(2) become parties to the statute on conditions to be determined in each case by the General Assembly.
- Non -UN members who wish to appear before the court as parties in a particular dispute or class of dispute but without becoming parties to the statute.[47]

The jurisdiction of the court rests on the consent (agreement) of the state parties.[48] Consent can be express or tacit and can be deduced from one act or a series of successive acts.[49]

1.6 CONFLICT RESOLUTION IN THE DIVISION OF THE SEA THROUGH AGREEMENTS

There are situations where maritime boundary between coastal states with opposite or adjacent coasts or overlapping EEZ may become a serious borne of contention. Resolution of such dispute is based on equitable considerations. The affected states are at liberty to conclude agreements modifying, suspending the operation of provisions of conventions

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[45] Art. 137
[46] Philippe Sands and Pierre Klein, p. Op cit 354-355
[47] Art 35(2) of the Statute
[48] Art. 36(1) of the Statute
[49] Monetary Gold Case (1954) I CJ Rep. 19 so far as the UK, USA, France and Italy were concerned. See Philippe Sands and Pierre Klein. Op cit p. 356

applicable solely to the relations between them, provided that such agreements do not relate to provision derogation from which, it is incompatible with the effective execution of the object and purpose of the Convention[50]

Thus, international law encourages coastal states to negotiate with each other to arrive at mutually agreed maritime boundary delimitation.[51] A classical current case is the negotiation between Nigeria and Sao Tome and Principe (STP). This is a case of overlapping EEZ in an area that is rich in hydrocarbon deposit. Non of the two countries wanted to give any concession to the other. However, in attempt to resolve the conflict, an interim arrangement was made by establishing a Joint Development Zone' (JDZ). This was to be without prejudice to subsequent negotiations on a final delimitation of the maritime boundary between the two countries. The preamble to the Treaty creating the JDZ between Nigeria and Sao Tome and Principe underscored the basis of the agreement thus:

> *...acknowledging the existence of the overlapping maritime claims as to the exclusive economic zone lying between their respective territories ... mindful of the interests which their countries share as immediate neighbours, and in a spirit of cooperation, friendship and goodwill ... taking into account the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 and in particular Article 74(3) which requires states with opposite coasts in a spirit of understanding and cooperation, to make every effort, pending agreement on delimitation, to enter into provisional agreements of a practical nature which do not jeopardize or hamper the reaching of final agreement on the delimitation of their exclusive economic zones.*

Such development agreements are replete on the international scene. For example, Kuwait-Saudi Arabia 1965 (neutral zone) Japan-South Korean

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50 Art. 74(3)UNCLOS
51 Art 74(3)UNCLOS

agreement, 1974 (Continental Shelf) Malaysia-Thailand MOU, 1979 (Gulf of Thailand); Australia, Indonesia Treaty, 1989 (East Timor gap) etc.

When countries enter into such bilateral agreement, it is also expected that the treaty will provide for dispute resolution arising out of the agreement. Article 74 (4) further admonishes states that have entered into agreement of a practical nature to resolve whatever disputes that might arise in the realization of the agreement. This may involve amicable settlement or referring the dispute to an arbitration or judicial body for adjudication. When this is done the state parties would be bound by the decision of the adjudicating authority. It has earlier been noted that International Tribunal for the Law of the Sea (ITLOS) may also entertain cases on the basis of international agreements other than UNCLOS. Likewise, by virtue of the statute of International Court of Justice both UN and non- UN members may consent to refer their dispute to the court for adjudication.
The JDZ treaty between Nigeria and Sao Tome and Principe by all standard fall under International Maritime Law and accordingly enforceable as between them.

1.7 CONCLUSION

This paper has highlighted the relationship between international maritime law and municipal law of the sea. Mention has been made of how modern maritime law is promulgated most importantly, through international conventions, protocols, conferences etc. in original form and or by amendment. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) was a final resolution and improvement on the previous conventions. UNCLOS became the widely acceptable regime that influence both domestic and international maritime legislation. Local laws and bilateral intergovernmental treaties are now fashioned in a way not to contradict or abrogate the provisions of UNCLOS. Accordingly in Nigeria, international law is applied in two ways i.e by incorporating the provision of the international law in the body of local laws or by making an enabling legislation covering the international convention as part of Nigerian law. The geographical division of the sea has been shown as practical examples of harmonization of both international law of the sea and municipal maritime law. It must always be borne in mind that no country is an island of itself. Maritime law is largely in nature international, both in scope and concept. Nigeria is therefore subject to the legal instruments and institutions established by UNCLOS 1982. The enforcement process is mostly done at state level therefore accentuating nationals, agencies and institutions comply with the international law of the sea.