LEGAL CONCEPTION OF THE FREEDOM OF THE SEA: WHAT HAS THE LAW GOT TO DO?*

Abstract
Nothing created by God in this world is free except air, and that is what we breathe in to live without paying for it. We pay for air conditioners in our cars and in our houses, but we do not pay for the air that keeps us alive daily. Ninety percent of the earth's surface is covered by water, seas and oceans. Some scientists say the seas and oceans are not owned by anybody therefore, are classified as res-nullius, ownerless property, while some say the oceans are owned by everybody (res communes). This paper explains to some extent the truism about the above conceptions and tries to illustrate why the propositions are not entirely true by using secondary source materials to unravel the truth behind the aphorism, freedom of the sea, whether it is clothed with any garment of legality. It also answered the question, what has law got to do with the sea by citing example of nations who have fought wars trying to expand their territorial and jurisdictional boundaries to defend the scope of their sovereignty but were restricted by instrumentality of law, and that gave birth to claims over territorial waters, contiguous zone, nautical miles, exclusive economic zone, internal waters of states, and territorial boundaries of nations in international law. It also explains the benefits derived from the sea which makes it attractive not only for commercial purposes, but also for freedom of navigation, freedom over flight, space, and scientific research.

Keywords: Legal, Conception, Freedom, Sea, Law, Territory, Boundary.

1. Introduction

Freedom of the sea as early as the Roman Empire has been the dominant guiding principle and force on the development of international maritime law, vis-à-vis the law of the sea, until the beginning of the twentieth century. Following the Second World War, rapid technological developments and increasing awareness of the finite nature of the oceans' resources aggravated the need for the harmonization of the law of the sea, and an updated codification of the law of the sea. The high sea as defined by UNCLOS extends to the sea-bed, ocean floor and sub-soil thereof, all of which is beyond any state's territorial jurisdiction. All states whether coastal or landlocked have equal rights in the resources from these areas and also equal lack of territorial jurisdiction. Within the high sea, all states subject to relevant international law provisions have equal rights to enjoy freedom of navigation over flight fishing, commercial navigation, sporting activities and scientific research, but no state can exercise absolute sovereignty over the high sea in consonance with international law. Under the concept, freedom of the sea, there has been a constant struggle between states that asserted special rights with respect to areas of the sea and the state insisting upon the freedom to use all ocean spaces. There has been in the era of the Roman Empire, some basic, but unwritten principle of freedom of the sea, which provided unrestricted access for common activity of navigation and fishing. Today, the situation has changed, a nation now has rights over their fishing boundaries and no nation can violate the rights of any nation without permit. In 1608, a Dutch Scholar Hugo Grotius an employee of the Dutch, East Indies company published a document known as, '*Mare liberum'* meaning freedom of the sea in which he codified a generally accepted principle of freedom of the sea, giving nations unrestricted and equal access to the oceans and the resources therein; and since then it remained the dominant guiding principle and force on the development of international law.[1] The recognition of the need for a uniform international maritime regulatory regime led to the first UNCLOS Convention in 1958, UNCLOS II, in 1960, and then UNCLOS III in 1970. The most recent UNCLOS Convention was adopted by the United Nations General Assembly in 1982 and it became the Premier International agreement regulating the maritime industry. UNCLOS entry into force in 1994 reflected the continuing evolution of the rules and regulations governing international maritime trade and commercial navigation.

2. States' Territorial Jurisdiction

Within its territory, a state exercises sovereign powers or control and such territory include, land and water. The airspace above such land and water is also subject as a general rule to the jurisdiction of a subjacent state. When a state has a seaboard, certain portion of the sea adjacent to its coasts is also subject to its jurisdiction. The extent of this area and the legal nature of the state's rights require careful considerations. The sea beyond the limit of territorial jurisdiction is called the High Sea and it forms no part of the territory of any state. It is open to the

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[1] Hugo Grotius, Maritime Navigation: Freedom of the Seas, (Raph Van Deman Magoffin, trans, Oxford University press, 1633) available http://www.navis.gr/marima/freeseas accessed on 28th December 2018 (quoting Grotius books, as saying that since the sea cannot be occupied like the land, it is free to all nations and subject to control by none. See also, D.J. Mitchell, P.A. Collier, F.J. Leahy & B.A. Murphy. The United Nations Convention on the law of the sea and the Delimitation of Australia's Maritime Boundaries, Marzone at 1.

common use of all men.[2] There must exist some rules governing the acts of those who go down the sea in ships and do business on great waters. These rules are the legal principles of international law which regulate the use of the sea. Such principles form the starting point of international maritime law generally acknowledged as the law of the sea.[3] For example, where a foreign vessel violates the law of a state's territorial waters and flee from being apprehended or arrested by the state's military or naval personnel or vessel, the delinquent ship has to be chased or pursued vigorously until apprehended and in some cases, until it enters into the territorial waters of another state. It is also worthy to observe that as a rule, it is only a vessel assigned for that purpose that can do the pursuit. Similarly, the UNCLOS III[4], authorizes a coastal state to pursue a ship no matter the flag state in order to arrest and deal with the violators of the coastal state's laws. The doctrine of hot pursuit is geared towards curtailing the activities of criminals on the high sea, which is meant to be ordinarily free for all and belong to none in line with the findings and writings of Hugo Grotius in his book.[5] Where the ship is caught, the law of the state which did the arrest is invoked upon the arrested ship, and where the arrested ship carries no flag, UNCLOS III will apply to sanction the ship.[6]

The High Sea

The UNCLOS defines the High sea as the area of the ocean that falls beyond any one country's Exclusive Economic Zone (EEZ), the limit of a country's jurisdiction.[7] The (EEZ) is the area beyond and adjacent to the territorial sea which does not extend more than 200 miles from the territorial sea baseline (TSB). Within the High Sea, all states, subject to the relevant international provisions have equal right to enjoy freedom of navigation over flight, fishing and scientific research. The high sea as defined by UNCLOS extends to the seabed, ocean floor and sub-soil thereof, all of which is beyond any states territorial jurisdiction.[8] The High Sea is generally described as the ocean and it is exterior to a line running parallel with the shore and some distance therefrom. Within the High sea, in between the land and the high sea, there is a portion of water called, territorial waters, the marginal or territorial sea or the maritime belt. Adjacent states may appropriate this belt to the extent that they may exercise jurisdiction over persons and property therein. There is no universally recognized rule of international law in existence as to the extent of territorial waters, but the limit must be generally accepted as the marine league. Today, it is universally recognized that the open sea is not susceptible of appropriation and that no state can obtain such possession of it as would legally be necessary to entitle it to claim of property over it. The High sea cannot be subject to a right of sovereignty for it is the necessary means of communication between nations and its free use, thus constituting an indispensable element for international trade and navigation. The Convention on the High seas,[9] and the law of the Sea Convention[10], affirms the general principle enunciated by the Permanent Court in the Lotus case[11] as follows:

> Vessels on the high seas are subject to no authority except that of the state whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no state may exercise any kind of jurisdiction over foreign vessels upon their sea.[12]

Article 11, paragraph 1, of the Convention of 1958 and Article 97 Par. 1 of the 1982 Convention[13];provides that in the event of a collision or of any other incident of navigation of a ship on the high seas, involving the penalty or disciplinary responsibility of the master or of any other person in the service of a ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag state or of the state of which such person is a national. It is worthy to note that this statutory provision of the convention is against the decision of the Permanent Court in the Lotus case, but it reflects the view of the International Law Commission. In its report on the relevant draft Article of the commission, it observed the Lotus case as follows:

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[2]Art.92, UNCLOs, whish read as follows: ships shall sail under the flag of one state only, and save in exceptional cases expressly provided for in international treaties or in this convention shall be subject to its exclusive jurisdiction on the high seas.

[3] Part 5 of Restatement 3rd on Foreign Relations Law of the United States (1987) the Introductory Note.

[4] 1982.

[5] See, Foot Note (2) Op.cit.

[6] See Foot Note 5, (Ibid).

[7] Art. 86 of UNCLOS 1982.

[8] Art. 86 of UNCLOS 1982 (ibid).

[9] 1958.

[10] 1982.

[11] Lotus case I

[12]Ibid.

[13]Law of the Sea Convention.

> This judgment, which was carried by the President's casting vote after an equal vote of six to six, was very strongly criticized and caused serious disquiet in international maritime circle. At a diplomatic conference held in Brussels in 1952, this aspect of the judgment faced serious objections and disagreement.[14]

The Commission concurred with the decision of the conference which were embodied in the International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions and other Incidents of Navigation. It did so with the object of protecting ships and their crews from the risk of penal proceedings before foreign courts in the event of collision on the high seas, since such proceedings may constitute an intolerable interference with international navigation.[15] Also, section 2, Article 116,[16] of the UN Convention, on the right to fish on the high seas provides, that all states shall have the right for their nationals to engage in fishing on the high seas subject to:

(a) Their treaty obligation
(b) The rights and duties as well as the interests of coastal states provided for, inter alia, in article 63, par. 2 and articles 64 to 67 and,
(c) The provisions of this section.

As an English writer, Fulton[17], puts it; the ocean is common to all nations for purposes of commerce and as a means of intercourse amongst mankind. It follows that no state is entitled to occupy it, to prescribe its use to other states. However, these ideals or rules have not however been reached without considerable difficulty. Up to the end of the 18th century, there was no part of the seas surrounding Europe that has been totally free from claims of proprietary rights by individual powers nor were there any seas over which such rights were not exercised in dimensions all over the world. For example, king Edward III in the 10th century, took a salute from all foreign vessels as being due to him as king of the seas. Also, Denmark and Sweden claimed sovereignty over the Baltic Sea.

3. What has the law got to do with the sea?

It was Rose[18] who wrote that laws are fundamental and unique resource of government. Without Acts of parliament, force, personal preferences or momentary whims would justify the actions of government of powerful individuals. The distinctive feature of law is that it is an expression of authority. Statute laws establish parameters within which individuals and organizations may carry out their activities and the extent of discretion that can be exercised within legal parameters. It is also observed in line with Rose's description that when a law sets parameters upon behavior in any society, it neither commands nor compels. Rules tend to remain constant while facts of specific circumstances vary. Therefore, most contemporary laws are best conceived as route maps, laying down conditions by which one may proceed in any area of activity. The relevance is therefore contingent upon the circumstances of each activity or situation.[19] We therefore contend that just as the law set parameters upon which individuals may base their actions, so would the inherent loopholes created by the informal norms and routine of every society impose constraints or expand the latitude of what a particular law can achieve. The above may be used to designate a whole body of jurisprudence applicable to the rights, intercourse and relationship of persons engaged in commerce, trade or mercantile pursuits.

The above analogy is to enable us delve into the question of what law has got to do with the sea. When we consider the truism that most parts of the earth's planet is covered with seas and oceans and also understand that to get from one place to another has to be most times along the sea across other nations in search of trade and commerce and in vessels of increased technology and speed. When it is not trade and commerce, it may be navigation for exchange of ideas, conferences, diplomatic relations, sporting activities, academic pursuit etc. The list is endless. All these activities relating to the sea need directions, principles and regulations which will come through the instrumentality of law for guidance and for sanctions. Also, problems may arise from the above pursuits which require detailed regulations to settle. For a voyage on the sea, a ship has to comply with two sets of laws those applicable in their states of origin and those applicable in their state of destination. To stay afloat legally, they must be identified as belonging to a particular country through registration.[20] They have to be seaworthy to be

[14] A. Omaka: *Fundamentals of Maritime, Admiralty and International Water Law* (Princeton & Associates Publishing Company Ltd, Ikeja, Lagos, 2018) p.80-81.
[15] See, A.Omaka, op.cit p.81.
[16] United Nations Convention on the Law of the Sea, 1982.
[17] The sovereignty of the sea, (1911), p.365.
[18] B. Rose 'Law as a Resource of Public Policy' (1986)39 *Parliamentary Affairs* pp. 297, 302-305.
[19] Ibid.
[20] See L. Mbanefo; paper presented at a seminar of the National Judicial Institute and the Nigerian Shippers Council at the Hilton Hotel, Abuja on December 7, 1995.

able to withstand the buffeting of the waves and the winds, and a host of dangers experienced on the oceans. To this respect, there is the need to comply with rules and regulations governing the construction of the ships, equipment, maintenance and for the high scale communications required with the outside world.

It should also be noted that ships are manned by trained personnel, therefore it becomes necessary to have rules and regulations governing the training of competent crew, seafarers, their condition of service and welfare, and since the ships carry goods and passengers, there must be rules on welfare of passengers and the storage, safe carriage of goods to their destination, sometimes on charter party. As expected from a commercial enterprise, settlement of disputes which arise in the course of the trading activities has to be done using applicable laws by the owners of the ship and owners of the cargo and this require a detailed network of laws. It is also necessary to state that marine life as well as the environment have to be protected from pollution from hazardous or unnatural substances carried in ships and likely to be discharged into the seas either deliberately or during collision of vessels on the sea. One can then understand that through these detailed processes involved in maritime trade, potential problems and conflicts especially legal problems arise. These problems require statutory provisions.

4. Legal Conceptions of the Law of the Sea

In view of our expository research as highlighted above with respect to the importance and necessity of law on the sea, we pose this question, if the high sea is not subject to the ownership or to the sovereignty of any state, how then is its legal position going to be defined? Can one describe or redefine the legal regime of the sea?, without first of all giving the sea a legal capacity or character? This question according to Fulton[21], has been a subject of discussion in the earliest times. Ulpian also declares the sea to be open to everybody by nature;[22] Whilst Celsus refers to it as being the air, common to all men.[23] Again, some of the early Roman jurists also described the sea, as 'public' but expressed that it should not be understood as meaning that in Roman law the sea was state property; and that it was one of the things common to all and not the subject of property at all.[24] Again, Grotius work, *Mare Liberum*, written in 1602 in order to support the claim by the Dutch to navigation and commerce with the West Indies, inspite of the Portuguese claims to monopoly, contain a reasonable understanding of the reasons why the sea ought to be free, which mean that all property is grounded upon occupation which require that movables shall be seized and immovable thing shall be enclosed. Similarly, that whatever that cannot be so seized or enclosed is incapable of being made a subject of property. From this analogy as contained in the work of Hugo Grotius, the waters of the wide ocean are thus necessarily free; and the right of occupation rests upon the fact that most things become exhausted by promiscuous use and that appropriation. Consequently, is the condition of their utility to human beings. It was found out that this expression is not applicable to the sea, since it can be exhausted neither by navigation nor by fishing and that is to say that the assertion is inapplicable to the use of the sea. It is generally accepted that there exists no serious dispute at present over the freedom of the sea as submitted by Baughen, but it is on record too that international jurists are not agreed as to the legal-basis on which the doctrine of the freedom of the sea is found. The views expressed by the jurists are in twofold: (a) It has been said that the high sea is a thing which belong to nobody *(res-nullius*) , (b) Other writers, declare that it is a thing belonging to everybody (*res-communes*).

In favour of the first view, it is argued that sovereignty is absent on the high seas, and in the second view, it is contended that the sea is common, because it is a necessary instrument to international navigation and trade. Fauchille, adversely criticized the employment of both latin terms, '*res nullius'* and '*res-commuunes'*. He pointed out that if it is admitted that the sea is a '*res-nullius',* it means, the sea though unowned, was capable of ownership, which is not the case with the High seas, and that the whole history of the past three hundred years is against such a conclusion. On the other hand, if the sea is regarded as *res-communis*, it means that all the states are owners in common, that the sea is the property of a collectivity of states. This to our mind is the position of international law as postulated by Fauchille.[25] But community of ownership means the possibility of a partition for a separate ownership. In the opinion of Fauchille, the view is that it belongs to all nations and that the usage of the sea remains eternally given to all nations. The great Greek jurist, Nicholas POLITIS, above all considered that the doctrine of the high sea being a *res-communis* and belonging to all the states is more in accord with international law and the positive conception of the solidarity on which are grounded all modern international relations.[26] In our view, we agree that the legal position of the high sea is based on the conception that it is common and open to all nations and that no nation should lay claim to the world-wide oceans nor appropriate it to its jurisdiction. It is on record that England silently dropped her claim to jurisdiction over the high seas surrounding her coasts and

[21] Fulton: The sovereignty of the sea; Admiralty and Law, staire society publications, vol. I (1911) p. 365.
[22] See, Mari quod natura omnibus patet, lib. 13 pr. D, viii, 4.
[23] See Mari Communem usum omnibus hominibus at aeris lib 3 D-x/iii, 8.
[24] See, West Lake, I, p. 202 and Sandiford, Dirrito Maritino (1960) pp. 90-92.
[25] Fauchille vol. I (part ii) p.2. op.cit.
[26] Phillimore, Pitt-Colbert, Leading cases on International Law, 5th edition by F.T. Grey) vol.i p. 278.

strove for the right of her ships to sail freely over the seven seas. She has since then, consistently contended for the emancipation of all the oceans from the claim of any state to domination and has since then taken the leading part in making the freedom of the sea in time of peace, a very basic fact. In the North Atlantic region, both Denmark and Sweden had claimed sovereignty over the Baltic Sea and the Dannic claim over the Northern Seas between Norway, Iceland and Greenland on the principle of possession of the opposite shores carried the sovereignty of the intervening seas. In the South of the Atlantic, Venice claimed the sovereignty of the Adriatic Sea, Whilst Genoa and Pisa claimed the Liguria Sea. These claims of the Italian states, led to the loss of the freedom of the sea in the Mediterranean between the eleventh and sixth centuries.

Also, numerous instances were recorded of foreign warships being forced to salute the British flag in the Northern Sea. Even ships bearing from potentates were not exempt from submitting to this claim.[27] At present time, the right to a salute on the high sea is no longer treated as a matter of strict law, but merely as an act of courtesy, due to the mutual acknowledgement by sovereign states of the rank and dignity of each other with respect to freedom of the sea. Today, the right to salute is merely carried out by dipping the flag or firing a fixed number of guns to herald the ceremony.[28] Similarly, in the former Great Britain, the claims of the English kings to the sovereignty of the British seas were ably defended in 1613 by William Welwood in his Abridgement of all sea laws[29], but today even though the arguments of Grotius in his book were disregarded by the British Kings, they admitted the principle that the state could not forbid the navigation of its seas. It seems to us that with the remarkable publication of Grotius, his defence of liberty of the seas stands the test of time. Lord Stowell in the case of Le-Louis[30], decided that, "all nations have equal rights to the unappropriated parts of the ocean for their navigation. Again in the case of the Mirianna Flora, the American judge declared: 'Upon the ocean in time of peace, all possess an entire equality. It is the common highway of all appropriated to the use of all and no one can vindicate to himself a superior or exclusive prerogative there.'[31]

Finally, we sum up with the recent case of, *United States of America v. Louisana et al.*[32] this is worthy of note, because in this case, the same principle was expressed by the U.S. Supreme Court as follows: 'The high seas as distinguished from island waters are generally conceded by modern states to be subject to exclusive sovereignty of no single nation.'

5. The Maritime Zones and the Legal Regime of the Sea

The Low Water Mark

We choose to start with the low water mark of Nigeria because it is based on this issue that the Supreme Court of Nigeria based its decision on the suit filed by the Federal Government of Nigeria asking the Court to determine for it, the seaward boundaries of a littoral state in Nigeria. In the case[33], the Supreme Court per Ogundare JSC held and determined that the Federal Government of Nigeria for the purpose of calculating the amount of revenue accruing to the federal account directly from any natural resource derived from the state pursuant to s.162(2) of the Constitution is the lower water mark o f the land surface thereof, or if the case so requires, as in the Cross River state with an Archipelago of islands) the seaward limit of inland waters. For the purpose of this work, the lower water mark is the shoreline of a sea marking the edge of the water at the lowest point of its ordinary tide. For example, in an internal water, a river, the point at which the water resides, at its lowest stage at the coastline is it's lower water mark. In this case[34], the learned Supreme Court judge in his decision lamented the absence of an express provision in the 1999 constitution,[35] like its 1960 and 1963 counterparts which clearly provided that for the sake of 50 percent derivation; the Continental Shelf shall be deemed to be part of the region. Sadly, in the 1999 Constitution, there was no such provision which expressly provided or clearly implied that the Continental Shelf was to be included for the purpose of the 13 percent derivation. His words are so sacrosanct and clear enough:

[27]Article 1370 to 1374 of the Queens Regulations and Admiralty Instructions prescribed the salutes to be given by British warships on anchoring at a foreign port and the return salutes, to or from Her Majesty's ships and forts or shore batteries, whilst articles 1346 to 1349 prescribes the visits of ceremony to be observed by all naval officers in references to the interchange of visits with officers of commonwealth and friendly foreign warships in all ports, whether British or foreign.

[28] See, Phillimore: *Commentaries on International Law.* Vol.ii (3rd edition) 1882 pp 51-52. Oppenheim vol.1 285-493. See, also, J. Irving, *the Manual of Flag etiquette* (1934).

[29] In 1615, chapter 27 of Welwood's Abridgment was enlarged and Published in Latin under the De Dominio Maris.

[30] (1817)2 Dos 210, 243.

[31] (1826)1, Wheaton 1,43.

[32] (1960)363 US. 1, 33.

[33] *A.G. Federation v. A.G. Abia State & 35 Ors.* (2001) 11, NWLR (pt. 725) 689. See also, (2001)89 LRCN 2413.

[34] Ibid.

[35] Constitution of the Federal Republic of Nigeria, 1999.

> There is however, no provision in S.162 or anywhere else in the 1999 Constitution, similar to sub-section (6) which made it possible for revenue derived from the continental shelf contiguous to a region to be payable to that region, but the sub-section did not make the continental shelf part of the region, but only deemed it to be part of the region, solely for the purpose of the section. Had there been the insertion of sub-section (6) revenue derived from mining operations in the continental shelf would not have been payable at that time to the region contiguous to the shelf. It is the absence in the 1999 Constitution of a provision similar to sub-section (6) of section 134 of the 1960 Constitution[36] that has given rise to the dispute n this case. I do not however see section 134(6)[37], as estopping the plaintiff from contending that the continental shelf is not part of the territory of a state contiguous to it.

The import of this judgment is that the Federal Government of Nigeria *suo motu* amended Act 106 of 1992 to reflect 13 percent derivation with effect from 29th March 1999, but still stands on the point of going to court, that the continental shelf is not part of the littoral states as it is nowhere found in the 1999 Constitution.[38] The Geneva Conventions on Territorial Sea and Contiguous Zone, continental shelf and the High Sea, and the United Nations Convention on the Law of the sea was adopted on 29 April 1958 and 10 December 1982 respectively, and were recognized as universal documents concerning the seas. The Conventions contain provisions on the recognition of maritime zones such as internal waters, territorial waters, contiguous zone, exclusive economic zone, continental shelf and archipelagic waters as those areas that can be developed by coastal states. The convention also states that coastal states has some rights and obligations in managing and governing their activities on these areas including protection and preservation of natural resources in the zones. The states also are to enjoy their national jurisdiction for the purpose of exploitation and exploration and in the enjoyment of their interests in those areas.

Territorial Waters

This is an area extending from internal waters to the seaward side. The coastal state enjoys its sovereignty over the area subject to the right of the ships of other states to engage in innocent passage. According to the 1958 convention on the law of the sea,[39] the territorial waters and the contiguous zone are the same area; but article 3 of the United Nations Convention on the law of the sea, states that every state has the right to establish the breadth of its territorial sea up to the limit not exceeding 12 nautical miles measured from the baseline determined in accordance to the convention.[40]

Contiguous Zone

In accordance with the 1982 United Nations Convention on the law of the sea, the coastal states have the right to establish their contiguous zone which is adjacent to the territorial sea. The contiguous zone is a zone that extends a further 12 nautical miles beyond the territorial waters, or 24 nautical miles from the coast. Within the contiguous zone, a state can continue to enforce laws with respect to pollution, taxation, customs and immigration. Article 33 par. I, of the convention[41], states categorically that in a contiguous zone, coastal states may exercise the control necessary to 'Punish infringement of its laws and regulations committed within its territorial sea'.

Continental Shelf

This is the natural prolongation of the land territory up to 350 nautical miles (648) km from the coastal baseline over which states also have the exclusive right to harvest mineral and non-living material in the subsoil. Extensions of the 'continental shelf' must be based on geological evaluations, but are usually underpinned by economic considerations such as the possibility of exclusively exploring mineral and oil reserves located beyond 200 nautical miles from the countries coastlines. For example, Nigeria's National Boundary commission has planned to extend the country's (EEZ) by 150 nautical miles. This would if actualized extend Nigeria's maritime boundary from its entitled 200 to 350 nautical miles, and then all ships coming through the area will come under Nigeria's authority, and the country will be in control of all mineral exploitations and fishery resources. Countries can make requests to extend their EEZ, to expand control and exploration of maritime economic opportunities such as

[36] Of the Federal Republic of Nigeria, 1960.
[37] Constitution of the Federal Republic of Nigeria, 1960.
[38] Of Nigeria.
[39] UNCLOS 1958.
[40] Ibid.
[41] UNCLOS 1982.

minerals and oil. Request for extension of EEZ must be submitted to the United Nations Commission on the limits of continental shelf.[42]

Exclusive Economic Zone

The concept of the Exclusive Economic Zone is the most important pillar of the United Nations Convention on the law of the sea. The convention contain the articles on the legal regime of the Exclusive Economic Zone, the limitation of the zone, sovereign rights of the coastal states to manage the zone in good faith, the regard for the economic interests of the third states, regulation of certain activities in the zone, such as marine, scientific research and protection and preservation of the marine environment; including the establishment and the use of artificial islands, freedom of navigation and over flight, freedom to lay submarine cables and pipelines, military and strategic use of the zone, and means of settling disputes.[43]

Having explored the legal basis of the maritime zones exposing their economic and social benefits to nations, it is particularly necessary to state that where states are entitled to manage and control activities in their zones and may apply for extensions thereof through the United Nations secretariat, states cannot do so with the High seas. This is because the High seas are the sea water beyond the limit of national jurisdictions and excluded from the state's sovereignty. It is important to state that the high sea is not included in the territorial sea, contiguous zone, exclusive economic zone and archipelagic waters. For the purpose of this essay, the high sea is open to all states, whether coastal or land locked states and is an area reserved for peaceful purposes. All states have freedom to conduct all types of activities with due regard for the interest of the other states. Moreover, all states have duty to conserve and manage the living resources in the zone, and to prevent and combat international and national crimes that are inimical to the safety of lives at sea. It thus appears that the freedom of the sea as expressed in the conventions are free but not entirely free. This is because the freedom is limited to the high sea and not extended to the exclusive economic zone of nations. Article 87 of the United Nations Convention on the law of the sea,[44] stipulates that the freedom consists of:

(1) Freedom of navigation
(2) Freedom of over flight
(3) Freedom to lay submarine cables and pipelines.
(4) Freedom to construct artificial islands and other installations permitted under international law
(5) Freedom of scientific research.

It then mean that freedom of navigation is the most important for all merchant vessels as it accords them the right to sail flying the flag of their registered state on the high seas. And to participate in navigation by granting its nationality to vessels which are registered in their territory and which fly their flag. Warships in accordance with this convention have on the high seas complete immunity from jurisdiction of any state other than the flag state. In the case of *A.G. Federation v. A.G. Abia State and 35 ors*, with respect to the littoral states of Nigeria in the suit, Ogundare JSC who read the lead judgment said: 'One thing however is clear. If the boundary is with the sea, then, by logical reasoning, the sea cannot be part of the territory of any of the old Regions (out of which these littoral states emerged'.[45] The lesson from the above ruling of the apex court is to the effect that nations who in the past tried to appropriate part of the high sea as part of its jurisdiction and control should desist from doing so.

6. Economic opportunities derived from the sea

There are many valuable economic opportunities which are derived from the sea and which makes the high sea attractive and which lure some nations to attempt appropriation and claims as witnessed in the past.[46] The significant dependence of African countries on international trade made the sea and maritime trade a crucial factor in Africa's economic trade. Sea transport has provided and easy gateway from Africa to international markets for Africa's exports to foreign markets and international sea ports. Fishing and tourism are also important sources of income and employment to littoral states and island economics. The sea is also an important source of oil, gas and minerals and the sea has been used for connecting cables and pipes for data services and mobile telephone

[42] The underlisted countries have in 2018/2019 made applications to UN for the extension of their EEZ beyond 200 nautical miles. They include: Ghana, South Africa, Kenya Mauritius, Cote d'Ivoire, Namibia, and Mozambique including Nigeria; unfortunately, none of the submissions have been honoured.

[43] The case of the Bakassi Peninsula between Nigeria and Cameroon is an example. Nigeria used all diplomatic measures but ceded the peninsula to Cameroon.

[44] UNCLOS 1982.

[45] See, (2001)11 NWLR (pt. 725) 689.

[46] See, Sweden, Denmark who claimed sovereignty over the Baltic sea in the 10th century. See also, Edward III of the 10th century who took a salute from all foreign vessels as being due to him as king of the seas.

connectivity. According the (WTO) report in 2010[47], intra-Africa trade is about 11.5 percent of the total Africa trade. The bulk of Africa's international trade, oil, minerals and agricultural products is transported by sea.

Ports

Coastal countries earn foreign currency by providing transit services to landlocked countries. Countries such as Egypt, Kenya, Tanzania, Mozambique, South Africa, Namibia, Cameroon, Ghana and Nigeria are key international gateways to the continents exports. These coastal countries earn the much needed foreign currency from the port services they provide. Very recently, the Nigerian Maritime Administrative and Safety Agency (NIMASA) published a paper highlighting the vast opportunities in the Nigerian maritime sector to include, ship building, ship repairs, human capacity development, ship breaking and recycling facilities among others. Today, because of benefits derivable from the sea, Nigeria accounts for over 65 percent of the total maritime trade traffic in volume and value within the west and central African sub-region.[48]

Fishing

According to the FAO, Africa's Fishing Industry has earned about US $1.73 billion in (2007-2010)[49]. The industry also earns additional income through fishing licences to foreign operators. Besides being the main income earning activity for many nations and African countries, fish provides the most important source of protein to the majority of the African population, playing a vital role in nutrition and food security. Fish makes a vital contribution to the food and nutritional security of about 200 million Africans and provides income for over about 10 million.[50]

Tourism

Africa has a large untapped tourism potential and the industry has the capacity to drive the continents growth. Tourism is a major source of income to island economies such as, Seychelles and Mauritius, in addition to the income which accrue to these countries through stopovers, and refueling of ships.

Oil, Gas and Minerals

The upstream oil industry in Africa is a key component in the continent's development. Africa holds an estimated 117 billion-barrel of oil reserve corresponding to about 9.5 percent of the world's reserves and produces about 12.6 percent of the world's output. About five countries through the sea dominate oil production in Africa, i.e. Nigeria, Angola, Libya, Algeria and Egypt account for about 85 percent of the continent's production.

Submarine Cables and Pipes

Africa has seen a surge in the installation of intercontinental submarine cables across the sea that aims to improve the region's connectivity. This has largely created various business opportunities ranging from the provision of data services and mobile telephony services, which has facilitated faster data transfer. For example, SEACOM's submarine cable is a fiber optic cable providing high capacity bandwidth to South Africa, East Africa, Europe and South Asia went into commercial operation in 2009 to produce high definition TV, peer to peer networks, IPTV and surging internet demand in Africa.

7. Conclusion

The importance of the sea and its economic benefits can never be sufficiently explained or enumerated completely on this type of paper. We have already given an array of illustration on the legal conceptions of the sea and the freedom attached to it. The sea has a legal regime through which diverse economic activities that occur on the high sea are organized and regulated by laws, and conventions some of which we have mentioned in the paper. Maritime economic activities take place both within a country's exclusive economic zone (EEZ) or beyond it and the activities are regulated under the law of the sea. A countries EEZ extends to a distance of about 200 nautical miles, from its coast. It includes territorial waters, contiguous zone and continental shelf and specific laws and rights apply to each situation. Under the law of the sea, an EEZ is a sea zone over which a state has a special and sole exploitation rights over all marine resources. The law of the sea also stated that land locked countries should be given the right of access to and from the sea, without taxation of traffic through transit states. Foreign countries also have freedom of navigation and over flight, subject to the regulation of the coastal states, and foreign states may also lay submarine pipes and cables. It is specific therefore to understand that the sea is not entirely free as its name sounds in the ear. It is the law of the sea that coastal nations obey and accord right of access to land locked nations. It is the law of the sea that specifies freedom of taxation on transit states ship, free navigation,

[47] World Trade Organization International Trade Statistics (2010).

[48] See. (NIMASA): Nigeria as an African Trade Hub; Highlighting the vast opportunities in the Nigerian maritime sector, to an audience of African, US and European partners during the maritime safety and security week. Oct. 13 2010, and published in the African Development Bank, Chief Economist Complex, vol. 2 issue (10-14) July, 2011.

[49] See, FAO, Fishery and Aquaculture, Year Book (2007).

[50] See, E. Nwencha: A keynote address on "The Geostrategic importance of Africa's Maritime Domain: Opportunities and Challenges Towards Economic prosperity conference, Oct. 13 2010 at the Millennium Hotel in Stuggart, Germany.

over flight an all that. Finally, the word 'may' used to say that foreign states may lay submarine pipes and cables mean that they could not and may not lay the cables if coastal states do not give permit or licenses to them to do so. The extent of the powers of the powers and of the rights and obligation of the coastal states rests within their exclusive economic zone so to say, since the powers or authority of the coastal states cannot be seen to transcend to the world wide, seas and oceans which are universally acclaimed as a *re-nullius, res-communes* and a gift from God. It is on record that hoodlums, armed attacks and piracy has in the recent past been on the increase to prevent freedom of access on the seas, particularly in the Gulf of Malacca and the Gulf of Aden and in Somalia and Nigeria. These are illegal and unwholesome acts which are inimical to the safety of lives at sea and cannot in any way be seen as a factor which can obviate the freedom of the sea which is a universal concept. Maritime nations through concerted efforts are mounting efforts towards addressing the issue of piracy and terrorism at the sea to put it to a halt. The IMO monitoring group through its agencies is fighting daily in Nigeria, Somalia and other nations in the diaspora to contain the insurgence of piracy in the East of Somalia, straits of Malacca, Gulf of Aden and in Nigeria. This is a welcome development which should be supported by governments and all stakeholders to make the high seas, a no-go area for pirates and armed attackers towards making the passage on the high seas and world's oceans free and safe.