MODERN INTERNATIONAL LAW OF THE SEA AND THE NIGERIAN MARITIME COASTAL WATERS*

Abstract
Maritime law is one of the oldest branches of international law. Even before the emergence of the current state system and what we may call modern international law, the sea has been under the search-light of earlier international lawyers. Authentic schools of thought were developed in the area of the law of the sea, some of whom actually laid the foundations of present-day international law. Ott summed up the situation of the law of the sea throughout history when he wrote: '*From its beginnings the law of the sea has been strongly influenced by the interplay of technology and politics, or to put it another way, by the ability (or lack of ability) to exercise physical control over the oceans coupled with the political determination to pursue national interests there. The law of the sea has therefore often reflected the limits which technology has placed on the exercise of state power, and ,as one might expect ,technological progress has confronted the law with the problem of state authority continually expanding into areas that were once thought beyond national control'.*

Keywords: The Sea, International law, Maritime Coastal Waters, Nigeria

1. Introduction

The contemporary law of the sea could be analysed as a compromise between the free sea and the closed sea, since the sea is now divided into zones of variable intensity of state jurisdiction, with the fundamental question being: up to what point closed, and, as from what point free? A contrary solution would indeed have proved unsatisfactory. This is so because of the division of the modern world INTO TERRITORIALLY BASED Nation-States, some coastal, some land-locked. Should the thesis of the full appropriation of the seas be upheld, land-locked countries would suffer unlimited injustice on the part of the international community. But similarly, an unrestricted application of the principle of freedom of the seas would result in coastal states incurring liabilities originating from the activities of other states without the possibility of having recourse against same. They would also be vulnerable to all sorts of attacks on the part of those other states. A further point which ought to be made at this stage concerns the relative character of maritime boundaries. As has just been said indeed, these boundaries delimit zones of variable intensity of state jurisdiction in competence. But their relative character also proceeds from the fact that these boundaries and the regime of each of the zones which they determine follow the evolution of international law. Thus, the cannon shot rule according to which the breadth of the territorial seas cannot extend beyond three miles from its shores, and which was justified by the Dutch jurist Bynkershoek saying that territorial control could not extend farther because *'The dominion of the land ends where the point of weapons ends'* held sway for many centuries but has now ceased to be accepted in international law. Similarly, there was no mention of an exclusive economic zone in maritime law prior to the third United Nations Convention on the Law of the Sea 1982 (UNCLOS III), nor were the internal waters (hitherto called inland waters) the object of any international regulation before the Convention. In consequence of the foregoing, there is no guarantee that the current zoning of the sea will remain permanent. In fact, it certainly will not. It is the light of all these considerations we shall try to examine the Nigerian perspectives as respects the delimitation of maritime zones. As a country that signed and ratified the UNCLOS III, Nigeria is bound by the Convention and each of the zones recognised by it thus has a regime in Nigeria. We shall therefore devote this paper to Nigeria's internal waters, territorial sea, contiguous zone, continental shelf, and exclusive economic zone.

2. The Legal Regimes of Nigerian Maritime Zones

Internal Waters of Nigeria

Internal waters appertain to the land territory of the coastal state. They consist of harbours, lakes, rivers, canals and other such waters as are to be found on the landward side of the baselines from which the width of the territorial sea and other zones is measured[1]. There is obvious wisdom in the 1982 Convention's decision to make provisions respecting the internal waters, contrary to what was the case with the 1958 Convention. This is because since the fixing of baselines is the primary responsibility of the coastal state, it may be tempted to establish same in such a way as to enclose part of its territorial sea, the result being an enlargement of its overall maritime jurisdiction and a corresponding shrinking of the *res communis* domain. If therefore the delimitation of maritime areas has always assumed an international dimension as the ICJ put it in the (Anglo-Norwegian Fisheries Case (1951), then there would necessarily exist a need for the determination of baselines (and therefore the outer limits of internal waters) to be regulated by international law. As just said, internal waters are part and parcel of the territory of the coastal state and their legal regime[2] is now fully determined by customary international law. As such that regime is binding on Nigeria, and it would have been so even if the country did not sign and ratify the 1982 UNCLOS III.

***By Lateef OGBOYE, PhD, LLB (Hons), BL, LLM**, Department of Jurisprudence & International Law, Faculty of Law, Lagos State University, Lagos, Nigeria.

[1] Article 5(1) of the 1958 Convention on the Territorial Sea, and Article 8(1) of the 1982 Convention (also referred to in this paper as UNCLOS III.)

[2] Ajomo, M. A. 'Protecting Nigeria's Sea Zones'. Note 4, Supra, p. 1033.

Nigerian Territorial Sea

The territorial sea has been the most controversial of all maritime zones. Not that the notion that there be a territorial sea has been hard to come by, but the real question has always centred on its breadth. This is the battlefield par excellence between the adherents of *Mare Liberum* and those of *Mare Clausum*. The Nigerian law of the territorial sea has properly reflected these historical developments: here, the width of the territorial sea has changed four times. Indeed, as a colony of Britain, Nigeria inherited the cannon-shot rule of 3 nautical miles at independence and adhered to it until 1967 when it promulgated the Territorial Waters Decree which enlarged the breadth of the territorial sea to 12 nautical miles, and accordingly amended Section 18 (1) of the Interpretation Act 1964 by substituting 12 nautical miles for 3. As we have observed earlier, the bitter experience of the civil war led to a rethink of the issue, as the blockade mounted by the military administration against Biafra was not proving effective, with runners breaking it constantly to supply arms and ammunitions to secessionist Biafra. Ajomo in his earlier mentioned article cites *The M. V. Jozina* incident as an instance proving the determination of these blockade runners.[3] In consequence of this, a Territorial Waters Amendment Decree was passed in 1971 which extended the width of the Nigerian territorial sea from 12 to 30 nautical miles.

It should be remembered that the 1958 Convention did not fix any breadth for the territorial sea and that the states who kept to their 3 nautical mile rule refused to recognize widths greater than theirs.[4] Hence the International Law Commission decided that this matter should be settled finally at a later conference. This uncertainty in the law might explain the liberty taken by the Nigerian Military to extend the width to 12 and then to 30 nautical miles. Finally, in 1998 occurred yet another change in the law. This came in circumstances where the Nigerian military administration having been tagged as a pariah government (consequent upon the judicial murder of Ken Saro Wiwa and eight of his Ogoni militants) many observers opined that the change was effected by General Sani Abacha only in order to please the international community. All at events, a Territorial Waters (Amendment) Decree was promulgated that year to bring Nigerian law to comply with the UNCLOS III provision fixing the territorial sea breadth at 12 nautical miles.

Contiguous Zone

As we know, under the UNCLOSS III, a coastal state may establish a zone contiguous to its territorial sea but which cannot extend beyond a width of 24 nautical miles from the baselines where from the breadth of the territorial sea is measure. This area is known as the contiguous zone. As far back as the 1930s, Gidel, the French maritime law expert had formulated a consistent and authoritative doctrine respecting the concept of a contiguous zone.[5] What is important to note is the fact that the contiguous zone was then viewed as part of the high seas, so that the question of whether the coastal state could exercise full sovereignty over it did not even arise. What is more, contiguous zones were limited to a maximum width of 12 nautical miles from the baselines, from which the territorial sea was measured, so that a coastal state already claiming a 12 miles territorial sea breadth could not at the same time pretend to any contiguous zone. Article 24 of the 1958 Convention on the Territorial Sea and Contiguous Zone still reflected this position. This is why the concept of contiguous zone fell out of relevance. However, with NCLOSS III which under Article 33 now allows a coastal state to claim a contiguous zone of up to 24 miles from the baselines, States have once more renewed their interest in the contiguous zone. And also, contrary to the 1958 Geneva Convention system which made the contiguous zone part of the high seas, this zone now forms part of the exclusive economic zone complex.[6] Considering the kind of competence which the coastal state may display in the contiguous zone, it is evident that Nigeria derives a lot of benefits from the international legal regime of this zone. In the contiguous zone indeed, the coastal state may exercise the control necessary to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
(b) Punish infringement of the above regulations committed within its territory or territorial sea.[7]

What is more, the coastal state will has the traditional right of 'hot pursuit' through the territorial sea and the contiguous zone as now elaborated in Article 111 of the 1982 Convention. This is of great appeal to the Nigerian maritime authorities, confronted as they are with frequent cases of armed attack on vessels on the Nigerian shores by gangs with fast boats who in no time can cruise beyond the 12 mile-wide territorial waters, to the chagrin of the Nigerian Navy engaged in anti-smuggling and anti-piracy operations.

Exclusive Economic Zone (EEZ)

The Exclusive Economic Zone is an outcome of the tensions which arose in respect of claims to fishing rights and the disputes that resulted from these claims. At the 1958 Geneva Conference, no agreement could be reached on the creation of fishing zones, and Article 24 of the 1958 Convention did not give exclusive fishing rights in the contiguous zone. As happens in such situations, countries started unilaterally to grant themselves Exclusive fishing rights over expanses of the

[3] See Akintola-Arikiwe, J. A. 'Offshore Boundaries and Jurisdictional Zones in Relation to ECOWAS Countries: Existing Structural Diversities and New Opportunities for Cooperation', in Asiwaju and Adeniyi,
[4] See Malcolm, N. Shaw, *International Law*, Fourth Edition, Cambridge University Press, 1997, p. 410.
[5] Ibid., p. 411.
[6] See Article 24 of the Convention on the Territorial Sea.
[7] ICJ Report, 1985, p. 33.

seas far wider than what would have been agreed. Thus, Iceland for instance, proclaimed unilaterally a 50 miles exclusive fishing zone in 1972, as a means to protect its fishing stocks from depletion - Iceland derives some 90% of its foreign earnings from fishing. When West Germany and the U. K. dragged Iceland before the ICJ to get an answer to the question of whether Iceland's unilateral decision was lawful, the Court simply held that the extension was not binding on the U. K. and West Germany. But at the same time it appeared in the reasoning of the Court that there was no rule of International law prohibiting claims beyond the 12 miles as respects fishing rights. These views could not have gone unnoticed by participants at the then on-going third UN Conference on the Law of the Sea which kicked off in 1973. The stage was thus set for the creation of the EEZ. It was therefore little surprise when Nigeria promulgated an Exclusive Economic Zone Decree on 2nd October 1978 which defied the EEZ as an area extending up to 200 nautical miles seaward miles seaward from the coasts of Nigeria, and within which 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 the exploitation of the natural resources of the seabed, its subsoil and superjacent waters, and the right to regulate the establishment of artificial structures and installations and marine scientific research, etc.

Many other countries had also unilaterally fixed an EEZ breadth for themselves before the matter was discussed at the UN third law of the sea conference. The mood in fact was in favour of an extension as wide as possible of economic sovereignty over natural resources for this was the beginning of the New International Economic Order era (1974). It did not therefore come as a surprise (for the wary) that the Conference adopted under Article 57 an exclusive economic zone of 200 nautical miles from the coastal state's baselines. Under Article 56 of the Convention the coastal state has the following rights, inter olio, within the EEZ: (a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the waters superjacent to the seabed and of the seabed and its subsoil and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents ad winds; (b) Jurisdiction with regard to (i) the architecture and use of artificial islands, installations and structures; (ii) marine scientific research; (ii) the protection and preservation of the marine environment. So well was the ground prepared to accept the 200 miles EEZ rule, that in 1985, that is, barely three years after the Convention hallowed it, the ICJ in the Libya/Malta Continental Shelf Case (1985)[8] was already of the opinion that the EEZ as an institution is shown by the practice of states to have become part of customary international law.

Nigerian Continental Shelf

Initially a purely geological expression, the continental shelf was defined in Article 1 of the 1958 Convention in terms of its exploitability as the seabed and subsoil of the submarine areas Adjacent to the coast but outside the territorial sea to the depth of 200 metres or 'beyond that limit to where the depth of the superjacent waters admits of the explanation of the natural resources of the said areas'. Quite understandably, this definition which the ICJ accepted in the North Sea Continental Shelf Case, (1969)[9] as reflecting customary international law, proves difficult to operate, because of the influence of technological developments on the exploitability of the seabed and its subsoil. The 1982 Convention has somehow corrected this deficiency. Its Article 76(1) now provides that: '… (the continental shelf of a coastal sate comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to hat distance'. What the 'continental margin' consists of has been defined in Article 76(3). Unlike what happened regarding the territorial waters, there has not been so far any specific Nigerian legislation about the breadth of the country's continental shelf. However, the Nigeria Petroleum Decree of 51 of 1969 provides a comprehensive definition of the term, by saying:

> … Continental shelf' means the seabed and subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth no greater than 200 metres (or, where it natural resources are capable of exploitation, at any depth) below the surface of the sea, excluding so much of those areas as lies below the territorial waters of Nigeria.

Obviously, this definition of the continental shelf is a carbon copy of the one provided in Article 1 of the 1958 Convention.

3. Conclusions

The objective of this short paper was not to present the legal regime of the various maritime zones recognized by the UNCLOS III. Its actual thrust was, at the title suggests, to sketch the various considerations which have informed successive Nigeria policies in the delimitation of its maritime zones whenever this has been unilaterally carried out. Though some writers insist that the country shows expansionist tendencies, such considerations are however obvious and to the extent that they actually exist, do not seem to have had any special bearing on the way Nigeria has fixed its maritime zones, for its claims have never been out of proportion to those of other countries in comparative situations.

[8] ICJ Report, 1969, pp. 3:39

[9] See Krauthammer, C, 'The unipolar moment' in *Foreign Affairs*, p. 1991, p34.