MODERN INTERNATIONAL LAW OF THE SEA AND THE POSITION OF COASTAL STATES

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INTRODUCTION

A coastal state is a state which has one or more sea boundaries to its land territory. Therefore Nigeria which is bounded in the south by the Atlantic Ocean is a coastal state.

Certain sections of the sea along the coasts of these states are universally accepted as the extension of their land territory of the coastal state and it is generally recognized that the coastal state possesses jurisdiction over such areas of the sea.

According to the 1958 Geneva Convention on the Territorial sea and contiguous zone, the coastal waters of a maritime state fall in to three categories: 1

1. Internal waters, for example, ports, harboures, roadsteeds, closed-in bays and gulfs, and waters on the shoreward side of the straight baselines from which territorial sea may be measured. Over such waters, the coastal state as sovereignty as complete as over its

own territory, and may deny access to foreign vessels, except when in distress, or except when access to ports must be allowed by treaty by or except when the passage of foreign vessels must be permitted under article 5 of the convention.

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(1) Stark, J. G. Introduction to International Law London 1977 page 227.

2. The territory sea, or maritime belt, being a belt of coastal waters to a width of at least three miles, measured from the law-waters mark, or from selected straight baselines drawn at a distance from the coast.

   Subject to the right of innocent passage of foreign vessels, Subject to the duty of the coastal state to warn passing vessels Against known dangers of navigation, that state has sovereignty Over the territorial sea.

3. The contiguous zone, being a belt contiguous to the territorial sea, but not extending beyond twelve miles from the low-water mark or Other selected straight baselines. The littoral state does not have Sovereignty over this zone, but may exercise control therein for the purpose of enforcing compliance in its territory and territorial sea with certain of its laws and regulations.

International law classifies the sea into four major areas, namely the territorial sea and contiguous zone, the continental shelf, the exclusive economic zone and the high seas.

The delineation of these areas of sea arose from the practices of states and was recognised as part of international customary Law.

The major reason why coaster states claim territorial sovereignty over sections of the close to their territories were:

(a) The security of a coaster state demands that it should have exclusive control over its coaster area to be able to protect its land territory.

(B) A state must be able to monitor and control all activities in its coastal areas, such as ships entering its harbours or foreigners exploiting its natural resources e.g. Fishing.

(c) To promote its economic well being, the costal state usually exploits the marine resources of its coast and protects it against pollution[2].

International customary law recognised the rights of coastal states to an area of the sea extending to a 3 miles limit from the land territory, this area was known as the territorial sea.

The coastal state has exclusive right to its territorial sea and this right was recognized by other states.

Around the early 19th Century, the practices of states changed because of improvements in technology, coastal states found it necessary to increase the limit of the territorial sea from 3 miles to 12 miles. This trend was discovered by the survey of several states conducted by the preparatory committee of the league of Nations Hague Codification Conference of 1930.

Also in 1958, the geneva Conference on the territorial sea and contiguous zone provided in article 1 of its convention that the sovereignty of a coastal state extends beyond its land territory and internal water to an adjacent area of the sea known as the territorial waters.

This shows that the sea has always been an object of international law ever since the advent of international relationship.

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(2) International court of justice. North sea continental shelf cases, judgement of February 20 1969, the Hague 1969 page 93.

International law ever since the advent of international relations.

By the early 20th century states had discovered that various resources having reported of the Hague codification conference of 1930 and the Geneva Convention on the law of the sea 1958.

Great economic resources such crude oil and natural gas could be recovered from the sea bed. Most coastal states especially the less developed countries of Africa, Asia and Latin America became interested in exploiting these natural resources, therefore it became the practice for state to claim sovereignty over areas of the sea far beyond their territorial water, in order to preserve those natural resources against the industrialised states of Europe which had technological advantage with the tendency to violate the sovereignty of the third world coastal states.

This practices by coastal states claiming sovereignty rights problem such as:

(a) What are the criteria for determining those areas of the sea over which coastal states claim sovereignty.
(b) what are the outward sea limits to those states? And
(c) what is the nature of the sovereignty which costal states have over those demarcated areas of the sea?

As at this period international law of the sea existed mainly as a part of international customary law, therefore in order to resolve these problems, there was need for its codification. This function was assumed by international

and Kuwait[3].

It is to enter into force upon being ratified by 160 states. International law of the sea as a branch of International law regulates expanses and their use by subject of International law - state and intergovernmental organisations - in connection with their activities in the world ocean.[4]

Like all laws International law is an instrument of social control. It may be expressed In a formal treaty or implied by way of generally accepted conduct. Such conduct may be the basis for customary International law which is as building as express law.

Through Customary International law, practices which at an earlier time were followed only for practical and moral reasons evolved into building legal-and-duty relationships gradually. this is the case with the International law of the sea, whereby the practices of coastal states and other maritime nations gradually achieved legal standing.

Under classical International law, the principle of res-nullius was the basic rule of law of the sea. This principle made the sea the common property of all nations whereby every nation had the freedom to explore, use and exploit any part of the sea and its natural resources, but unlike land, no nation could acquire or claim sovereignly over any part of the sea.

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(3) Law of the sea Bulletin. Office for Ocean Affairs and the law of the sea, No 10, November 1987 PP 1 - 7.

(4) Volkov, F. M. International law. Progress Publisher Moscow 1990 page 221.

This was because at this period, the main activities carried on by nations were navigation and fishing. Therefore a stage could exploit fisheries on any party of the sea without being liable for violating the territory of another state. The legal position of the seabed and its natural resources were however left undermined.

The arrived of the era of technology has enable nations to pursue a large number of different activities on the sea, such as the exploitation of petroleum and natural gas deposits on the seabed, the laying of cable and pipelines, generation of electricity deposition of industrial waste, military manouvres and scientific resources e.t.c.

The major issue which arose was, could a state pursue any of these activities in any part of the sea?

International law gradually evolved to resolve this issue and relect the legal position brought about by social, political and technological changes. Therefore in modern International law, the sea is classified into six main divisions, namely:

The territorial sea, contiguous zone, continental shelf, the exclusive economic zone, the high sea and the deep-seabed, with each having different legal status.

THE TERRITORIAL SEA AND CONTIGUOUS ZONE

The origin of the concept of territorial sea could be traced to a proposition exposed by the Dutch jurist, Conerlius Van Bynkeershok (1673 - 1743) in his book written in “1702 De dominio mark dissertation” meaning “ Essay on sovereignty over the “sea” that the dominion of a state extends beyond its land territory as far out to sea as its canons would reach.

As the approximate range of the canons of that period was 3 miles, most coastal states were thus influenced to claim sovereignty over areas of sea extending 3 miles seaward from their coastlines, it then became known as the cannon-shot rule.

This rule was first recognised in state practice in 1793 during the Anglo-French war, the United States was forced, by that war, to define its neutral waters and requested the belligerent states to respect its neutral waters and requested belligerent states to respect its neutrality up to the utmost range of Cannon-ball which is 3 miles. The 3 miles rule was subsequently applied in both British and United States prize courts.

By the 19th Century, the 3 mile limit of territorial sea had assumed the status of a rule of international customary law because it had become the general practice of coastal states 5. A few states such as Spain, Portugal and the Scandinavian countries however claim wider limits ranging from 4 to 6 miles.

In 1930, the League of Nations convened the Hague codification conference with the object of ascertaining and codifying the various rules of law recognized and observed by coastal states in respect of their practices on the sea.

The preparatory Committee of the conference conducted a survey of the practices of coastal states and discovered that majority of the coastal states favoured an increase of the 3 mile limit. Therefore the conference was unable to reach an agreement on the width of the territorial sea.

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(5) Eq. By Lord stowell in the Anna, (1805), 5 ch. Rob 373.

However in 1951, the United Nations General Assembly (U.N.G.A) mandated its specialized agency, the International law commission (I.L.C) to examine, codify and make recommendations on the existing customary law of the sea.

The commission prepared draft articles stating the position of international law on the territorial sea, the continental shelf; the High seas and on fishing and conversation of the living resources of the sea.

These draft articles formed the basis of the deliberations of the 1st United Nations conference on the law of the sea, which was held in Geneva 1958. The conference adopted four International conventions, but failed to agree on a definite limit for the territorial sea.

However, the conference agreed on a definite limit for the contiguous zone 6, an area of sea outside, but contiguous to the territorial sea Article 24 of the Geneva convention on the territorial sea and contiguous zone of 1958 provides Interalia that, the contiguous zone may not extend beyond 12 miles from the baselines from which the territorial sea is measured.

The practice of most coastal states did not however reflect these implication as varying degrees of claims ranging from 3 miles to 12 mile limits were still being maintained. This chaotic situation motivated the decision to convene another conference, the second United Nations Conference on the law of the sea in 1960.

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(6) The doctrine of contiguous zones was first enunciated by a noted French jurist, M. Louis Renault.

Two coastal states, Canada and the United States submitted a joint proposal that a maximum limit of 6 miles for the territorial sea plus another limit of 6 miles for the contiguous zone be adopted by the conference, but the Soviet Union and the Middle East states voted against this proposal therefore it failed to obtain the required support of two-thirds of the member states. Hence the conference also failed to produce any substantive agreement on the limit of the territorial sea.

Since the three International conferences, namely: the Hague Codification Conference of 1930; the first and second United Nations Conference on the law of the sea of 1958 and 1960 respectively failed to agree on a definite limit for the breadth of the territorial sea, Coastal states considered themselves free to adopt any limit which they consider necessary for the adequate protection of their national Interests[7].

Therefore between the late 1960s and early 1970s, many states enacted laws to unilaterally fix various limits for their territorial sea. The newly emerged states of Africa, Asia and Latin America were more involved in this practice in order to protect their national security and economic interests against exploitation by the more advanced states of Europe. It was at this period that Nigeria enacted the Territorial waters Decree No5 of 1967 which extended the breadth of Nigeria's territorial waters from 3 nautical miles to 12 miles. Subsection 1 of section 1 of that decree provides that the territorial waters of Nigeria shall for all purposes include every part of the

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(7) L. C. Green - The Green Convention and the Freedom of the seas (1959) C. L. P.

Open sea within 12 nautical miles of the coast of Nigeria measured from the low water mark of the seaward limits of inland waters[8].

Four years later on August 1971, that decree was amended by the Nigerian Territorial waters (Amendment) Decree which was promulgated to extend the breadth of the territorial from 12 miles to 30 miles section 1, subsection 1 states that, "The territorial waters of Nigeria shall for all purposes include every part of the open sea within 30 nautical miles of the coast of Nigeria (measured from the low water mark) or of the seaward limits of internal waters[9].

Ijalaiye, D.A. Contends that as Nigeria had acceded to the 1958 Geneva Convention on the territorial sea in 1961, she was bound by the provisions of the convention, therefore the territorial waters Decree which extends Nigeria's territorial waters to 30 miles is illegal in International Law because it is a contravention of the Geneva Convention.[10]

But another jurist Agomo, M.A. Noted that the 1967 Decree might no doubt have been motivated by the technocrat ic society in which we live and which has devised the instruments of whole sale exploitation of the resources of the sea like petroleum and gas and fish. The great maritime powers who have technology on their side would still, if practicable, like to regard a

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(8) Decree No5 of 1967

(9) Decree No38 of 1971

(10) D.A. Ijalaiye, The Nigerian Territorial waters Amendment decree (1972) NJ. CL Vol.3.

Large part of the sea as possible as res communis as did the Roman lawyers of the 17th century. To them it was a matter of interest to sacrifice one's own maritime domain in order to exploit another's. Whereas with developing countries which lack technology of the scales enjoyed by advanced states, emphasis is on the sea as a researvoir must of economic resources whose exploitation and reservation must be jealously protected.

The conflict in respect of the limit of the breadth of the territorial sea was finally resolved by the 3rd United Nations Conference on the law of the sea held at montego bay Jamaica in 1982 Article of the convention provides the every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles measured from baselines determined in accordance with this convention. By this provision, the breadth of the territorial sea now has a definite limit of 12 nautical miles, which all states in the International community are bound to observe.

Also, Article 33 provides for a zone contiguous to the territorial sea, described as the contiguous zone.Article 33(2) state that the contiguous zone may not extend beyond 24 nautical miles from the baselines from which the baselines of the territorial sea measured.

By this Article 33 extends the breadth of the contiguous zone by an additional 12 miles beyond that set by Article of 24 of the 1958 Geneva Convention. In respect to the surface and subsoil of the maritime belt and also the Superincumbent air space, Article 2 of the Geneva Convention of 1958 on the Territorial sea and contiguous zone remove any doubt 11 by

(11) ef. Bonser vla Macchia (1969) A. LR. Re ownership of off-shore Mineral rights (1967) 65. DLR (2d) 353 at pp 365-367.

Providing that the coastal state has sovereignty over all these.

THE CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONE

The continental shelf doctrine and the concept of exclusive economic zone both appeared on the International plane as products of the technological progress achieved by the advanced nations of Europe and United states in the early 20th Century, which enabled these states to explore and exploit valuable sub-marine resources and minerals located on the seabed e.g. Petroleum reverses located far beyond the limits of their territorial waters.

Upon realizing the tremendous economic potentials of the resources of the seabed, most coastal states declared a right of jurisdiction and control over areas of the high beyond the limits of their national jurisdiction in order to preserve those areas for their sole benefit.

Those unilateral claims raised a number of issues in International law in respect of:

A. The legality of these declarations.

B. The legal status of those areas of the sea over which jurisdiction is claimed.

C. The nature of the rights and duties of the coastal states in those areas of sea.

These issues were finally resolved by the 1958 Geneva Convention on the continental shelf and the convention of the 3rd United Nations Conference on the law of the sea 12.

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(12) See Report on the work of the Commission's eight session.

CONTINENTAL SHELF

Article 76(1) of convention of the 3rd United Nations conference on the law of the sea provides that, the continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas which extend beyond its territorial sea throughout the natural prolongation of its territory... To a distance of 200 nautical miles from the baselines from which the breath of the territorial sea is measured.

According to Briefly, J. L., Continental shelf is a name which international law adopted from geology and refers to the extension of the land territory of the coastal state into the sea where it is submerged by relatively shallow waters.

The united states was the first coastal state to make a formal claim of sovereignty over its continental shelf when on the 28th of September, 1945 President Harry Truman made a presidential proclamation entitled, “The Policy of the United state with respect to the Natural Resources of the seabed and subsoil of the continental shelf which provided that “the Government of the United states regards the natural resources of the seabed and subsoil of the continental shelf beneath the high seas but contiguous to the coasts of the united states as appertaining to itself and its subject to its jurisdiction and control[13]

This unilateral action of the United states created a precendent which may states followed in the years after 1945 particularly the latin American states, for instance a month after the Truman proclamation, President Avila Camacho of

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(13) Annual Report of United State secretary of the interior for 1945 at pp. 9-10.

Mexico declared Mexico's sovereignty over the water and resources of its continental shelf. Argentina in 1946 as well as Chile and Peru in 1947 also made similar declarations.

The practice of states in this respect raised the question of the legal status of the continental shelf. Does the coastal state have jurisdiction and control over the continental shelf or does it still constitute part of the High seas by which the principle of res-nullius still applies to it?

In 1951, to resolve this conflict, the United Nation General Assembly referred the question to the international law commission for clarification of the legal position.

The commission prepared draft articles and reports on these issues where it state that, "Although numerous proclamations have been issued in respect of the continental shelf, it can hardly be said that such unilateral actions are sufficient to establish a new international Customary Law".

However, it recommended that once the seabed and subsoil of the continental shelf had become an object of active interest to coastal states it was impossible to continue to regard them as res nullius and therefore the jurisdiction of the coastal state for the purpose of exploring its natural resources should be recognized.

In 1957, the General Assembly voted to convince a full conference on the law of the sea and this culminated in the 1958 Geneva Conference on the law of the sea. At this conference, the draft articles of the international law commission on the continental shelf were adopted as the Geneva Convention on the continental shelf.

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Articles 1(a) of the convention defined the continental shelf as, “the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea to a depth of 200 miles, or beyond that limit to where the superjacent wares admits of the exploitation of its natural resources.

According to scholars of international law, Articles 1(a) established two main criteria for determining whether an area of the sea is continental shelf.

a. Geographical position i.e. The seabed and subsoil of the submarine areas adjacent to the coast but outside the territorial sea to a depth of 200 miles.
b. Exploitability i.e to where the superjacent waters admits of the exploitation of natural resources. According to writers such as Nwogugu and Obinna Okere while the first criterion deprived some coastal states with steep coasts such as the latin American states of any meaningful continental shelf, the second criterion favoured only the developed technologically advanced states which possess the technology necessary to exploit submarine resources to “where the superjacent waters admits of exploitation of these resources.

The underdevelopment countries of latin America, Africa and Asia considered this as detrimental to their economic interests because they lacked the technology to exploit their submarine ocean resources in accordance with the provisions of Article 1 of the 1958 Geneva Convention on the continental shelf.

These developing countries of latin America, Africa and Asian reached to this development by declaring zones of exclusive jurisdiction over the seabed and subsoil of their continental shelf to a breadth of 200 nautical miles which they called ‘Patrimonial Sea’.

For example, on 8th May, 1970. Nine Latin American states namely: Argentina, Brazil, Chile, Ecuador, El-Salvdor, Nicaragua, Panama, Peru and Uruguay held a conference at montevideo, in Uruguay where the unianimously adopted the MONTEVIDEO DECLARATION ON THE LAW OF THE SEA 1970. Paragraph 2 of the declaration recognized the rights of states to establish maritime limits in accordance with their peculiar geographical and geological characteristics... And the need for the rational utilization of marine resources".

Similarly, African states held a similar conference in Yaunde, Cameroon to examine their position in the light of these developments on the international law of the law of the sea and take measures of conserving and protecting the natural resources of the seabed and subsoil adjacent to their coasts from being exploited by the advanced countries of Europe and the United states as well as to preserve exclusive of rights over those areas of the sea.

The practice of these developing countries originated the concept of the exclusive Economic zone.

The 3rd United Nation Conference on the law of the sea of 1982 held at Montego bay Jamaica settle these conflicts once and for all and provide uniform convention on the law of the sea building on all states.

Articles 76(1) provided two criteria for defining the continental shelf.

(i) The seabed and subsoil... that extends to a distance of 200 nautical miles from the baselines fro which the territorial sea is measured.

(ii) The seabed and subsoil ... To the outer edge of the continental margin but not exceeding 350 nautical miles (Paragraph 6).

The convention also provides for an exclusive economic zone for the coastal states. Articles 55 and 57 provides that "the Exclusives Economic Zone is an area beyond and adjacent to the territorial sea, the breadth of which shall extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Therefore, the continental shelf could not exceed but fall short of the exclusive economic zone.

In 1978, the military administration of Nigeria compiled with the provisions of Articles 55 to 58, by enacting the exclusive over an area extending up to 200 nautical miles seawards from the coast of Nigeria.

CONCLUSION

From the forgoing, it can be seen that the law of the sea has evolved from customary international law based on the principle of freedom and commonage whereby all states exercised a right of freedom of navigation and fishing.

Exceptions to the principle of freedom developed gradually in favour of coastal states in recognition of the fact that the coastal state has special interest in the areas of sea adjacent to its coast for security and economic reasons.

International law recognized in varying degrees of control and jurisdiction which the coastal state exercised over the various of sea and attached different legal status to each area. Thus, the territorial water, contiguous zone, the continental shelf and exclusive economic zone develop from the practice of states as exemplified by the Truman proclamation and cases as the Fisheries jurisdiction case between Britain and Iceland.

Under modern international law, the principle of freedom is now limited to the High seas and international seabed Area.

The 1982 United Nations Convention of the law of the sea concluded at Montego bay, Jamaica had succeeded in coding all aspect of the law of the sea.