

Re-Examining the Compulsory Conflict Resolution Mechanisms Provided Under the 1982 United Nations Convention on the Law of the Sea

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Abstract.

Nature endowed the world with large expanse of water otherwise known as the oceans. It covers almost 71.4 percent of the entire earth surface. Laws are put in place to regulate the activities of states in dealing with the exploration and exploitation of its living and non-living resources. At times, in making attempts to use the ocean for peaceful purposes, conflicts do arise and in such situations, mechanisms are put in place to ensure that they do not escalate beyond manageable proportion so as not to endanger world peace and security. This paper holistically appraised the various mechanisms, (particularly the compulsory dispute resolution mechanisms) put in place to address the resolution of disputes arising from states' activities under the 1982 Convention on the Law of the Sea and evaluated its adequacy or otherwise.

1.0 Introduction.

There is no one who has not gazed upon the ocean with amazement-the intensity of its surface rolling beyond an endless horizon, the thunder of waves upon rocks, the spumming white surf surging upon a beach, and the wind blowing a wet, salt, invigorating air.¹ Nature has endowed the oceans with enormous riches. The chemical and mineral contents of the oceans water mass, which encompasses approximately 71 percent² of the earth surface, is about 300 times greater in volume than the living space on and over land.³ The seabed and ocean floor are now a recognised sources of oil and gas, sand and gravel, tin ores, and a variety of mineral wealth⁴. The output of the oceans in terms of food is indeed immense⁵. Above all, the contribution of the oceans to the oxygen content of the earth is crucially significant⁶. As important as this portion of the earth is, laws are put in place to regulate the activities of states in dealing with the exploration and exploitation of the living and non-living resources of the world oceans. While some states are coastal, others are land-locked⁷ and the rest are geographically

¹ See Mangone, G.J. (1981) *The Law for the World Ocean*. London, Stevens & Sons. P 1

² The exact size of the ocean and seas is far from being settled. For instance, some insist that the oceans and seas constitute 71% of the earth surface. See Elias T.O. (1992) *New Horizons in International Law*, 2nd Revised edition; Martinus Nijhoff Publishers, London, p.65; Mero J.L. et al (1977) "Oceans and Seas" *Encyclopedia Britannica (knowledge in depth)* 15th ed. P. 482. See also Friedheim L. R. (1977) "Toward a Treaty for the Oceans" in Don Walsh (ed.) *The Law of the Sea: Issues in Ocean Resource Management*. 1st ed. Praeger Publishers, New York page 1; Anand. R.P. (2007) "Law of the Sea in Historical Perspectives" *Conference Proceedings of Indian Society of International Law; Fifth International Conference on International Environmental Law*, Vol. II, p.1023.

³ For example, it is estimated that a cubic mile of sea-water contains in solution up to 25 tons of gold and 45 tons of silver; 10-30 tons of copper, manganese, zinc and lead; 7 tons of uranium; 50 to 350 tons of arsenic; 4 million tons of potassium sulphate; 18 million tons of manganese chloride; 120 million tons of sodium chloride (salt) and a host of minerals. If one multiplies this with the 329 million cubic miles of sea water found in the world's oceans, the results would indeed stagger the imagination. For a full account see Spangler M.B (1970) *New Technology and marine Resource Development* New York, P.109. See also Khan R. (1971) "Marine Pollution and International Legal Controls" Vol.13 *Indian Journal of International Law*, P.389 footnote 1.

⁴ According to US Geological Survey, the potential recoverable reserves on the US Continental Margin are an estimated 200 billion barrels of oil and 900 trillion cubic feet of gas. See Ketchum B.H (1972) *The Water's Edge-Critical Problem of the Coastal Zone* Cambridge, p.12.

⁵ As estimated in 1969 the world output in fisheries is about 59 million tons per year. See Iselin C.O.D (1969). *The Encyclopaedia of Marine Resources* (New York) p.454. The US fishermen were reported to have harvested nearly 5 billion pounds of fish in 1971. See Ketchum *op. cit.* p.11.

⁶ It was confirmed that the microscopic plankton in the ocean are responsible for regenerating three-fourths (3/4) of the total oxygen supply from carbon dioxide in the atmosphere. See D'Amato. A and Hargrove J.L 'An Overview of the Problem' *op. cit.* p.10.

⁷ Landlocked states are states which have no coast. They are 30 in numbers. They are: Afghanistan, Andorra, Austria, Bhutan, Bolivia, Botswana, Burkina Faso, Burundi, The Central African Republic, Chad, Czechoslovakia, Hungary, Laos, Lesotho, Liechtenstein, Luxembourg, Malawi, Mali, Mongolia, Nepal, Niger, Paraguay, Rwanda, San Marino, Swaziland, Switzerland, Uganda, The Vatican, Zambia and Zimbabwe.

disadvantaged.¹ All of them are to relate peacefully in their intercourse with each other while participating in the activities of the world ocean. While engaging in the activities on the sea, states are enjoined to use the place for peaceful purposes.² At times, in making attempts to use the ocean for peaceful purposes, conflicts do arise. And in such situations, mechanisms are put in place to ensure that they do not escalate beyond manageable proportion so as not to endanger world peace and security. This paper will holistically appraise the various mechanisms put in place to address the resolution of disputes arising from states' activities under the 1982 Convention on the Law of the Sea and evaluate its adequacy or otherwise. Emphasis will be placed on the compulsory dispute resolution mechanism provided for by the Convention.

2.0 Legal framework for Ocean Law

Ocean law, otherwise called International Law of the Sea comprises the principles and rules of treaty and customary international law between States³ relating to the uses of the sea and the exploitation of its resources, among them in particular the principles and rules relating to the exercise of jurisdiction over maritime spaces and over ships, installations and activities within the different maritime spaces⁴. Andreyev,⁵ on the other hand defines the international law of the sea as a branch of general international law comprising the agreed principles and norms that determine the legal status of sea areas and govern the relations, subjects of international law entered into, when using the world ocean, its seabed and subsoil thereof for various purposes.

The development of the law of the sea formed proper shape between 19th to 20th centuries. This view was corroborated by Andreyev et al⁶ when they said that the mere existence of the codes cannot justify the view that the international law of the sea already existed at that time as a branch of general international law. For long, before classical times, sympathetic magic, religion and law have regulated man's uses of the sea. Today, however, as never before, science, engineering and available capital are permitting new exploitations of the maritime environment and new means of gaining wealth, respect, knowledge, adventure and power⁷. Although some writers have posited that traditionally, up to the mid-twentieth century, the oceans were used for navigation and fishing⁸, a close examination of the traditional uses of the world ocean had revealed the contrary.

3.0 Attempts at Codification of the Law of the Sea

Notwithstanding the fact that freedom of the seas has always been limited by a customary law of territorial seas, it attained some reasonable degree of stability⁹. The stability attained in the Law of the Sea, in the second half of the nineteenth century warranted codifications of its rules¹⁰. It was not until the 1930s that an initial attempt was made by the League of Nations to codify the Law of the Sea¹¹. Yet, the Hague Conference, which was called by the Assembly of the League to codify the law relating to territorial waters failed for a political reason, namely, the fact that insufficient countries were prepared to commit themselves indefinitely to a three-mile limit for fisheries¹².

3.1 The First and Second United Nations Conferences on the Law of the Sea

Following the Second World War, the scope and direction of the laws of the sea took a new dimension and there was a great realization that the customary international law on the subject needed to be upgraded and codified¹³, as United States, the new superpower, dramatically challenged the traditional freedom of the seas doctrine¹⁴. The Truman Proclamations¹ extended American coastal jurisdictions and control to the natural

¹ Geographically disadvantaged State are states with very short coastline.

² See Article 87 of UNCLOS [].

³ Traditionally, States and entities proximate to States are subjects of International Law once the provisions of Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States are satisfied. See Lauterpacht (1975) *International Law: Collected Papers*, Cambridge, Vol. 11 at p.489. However at Contemporary International Law, individuals and entities *sui generis* have been accorded legal personality. See the advisory opinion of the Inter-American Court of Human Rights in the *Re Introduction of the Death Penalty in the Peruvian Constitution Case* [1995] 16 HRLJ p.9, See also Shaw M.W. (*supra*) at p.232-241.

⁴ Jaenicke G. (1989) "Law of the Sea" in Rudolf Bernhard's (eds.) *Encyclopedia of Public International Law*, Vol. 11, p.175.

⁵ Andreyev, E.P. et al (1988) *The International Law of the Sea* Progress Publishers, Moscow, p.8.

⁶ *Supra* at p.8.

⁷ See Goldie, LFE (1972 "The Management of Ocean Resources: Regimes for Structuring the Maritime Environment" in Black, C.E. and Falk, R.A. (eds.) *The Future of the International Legal Order*, Volume IV, 1st ed., Princeton University Press, Princeton, New Jersey p.135.

⁸ See Shaw M.N. (2005) *op. cit.* p.12; Andreyev E.P. (1988) at p.8; Churchill, R.R. and Lowe, A.V. (1985) at p.2.

⁹ Hunter et. al., *op. cit.* p.658.

¹⁰ O'Connell, *op. cit.* p.20.

¹¹ Hunter et. al., *op. cit.* p.658.

¹² LON Doc. C.74, M.39, 1929, VC, 351(b) M.145(b), (Spec Suppl.) 62.

¹³ Tetley W. *op. cit.* p.631.

¹⁴ Hunted, *ibid.*

resources and seabed of its contiguous continental shelf as well as to the fisheries in the coastal waters². The claim of sovereign authority over high seas resources directly off the coast eliminated the traditional three mile limit of the territorial sea. This precedent was quickly adopted by other nations, laying similar claims, led by Latin American countries, and by 1958, almost 20 countries had declared legal control of their continental shelves³.

Under the leadership of the International Law Commission, the First United Nations Conference on the Law of the Sea was convened in Geneva in 1958, between February 24 to April 28, and it was attended by 87 nations.⁴ The Conference produced four remarkable and comprehensive conventions generally referred to as the “Geneva Conventions 1958”. They were: The Convention on the Territorial Sea and Contiguous Zone⁵, the Convention on the High Seas⁶, the Convention on Fishing and Conservation of the Living Resources of the High Seas⁷, and the Convention on the Continental Shelf⁸.

All the four conventions entered into force and were widely ratified. Even States such as Canada, which did not ratify them, in many cases, considered that the basic principles enunciated at least in the Territorial Sea, High Seas and Continental Shelf Conventions merited compliance as Customary International Law⁹ The fisheries convention encountered greater resistance, as it diminished the jurisdiction of coastal States to the benefit of some distant water States¹⁰.

Although the conference adopted the Convention on Territorial Sea and Contiguous Zone, like the 1930 Hague Codification Conference, it was unable to reach agreement on the specific breadth of the territorial sea and contiguous zone¹¹. The issues of landlocked States with respect to access to the seas were raised but not finally resolved, as the Convention did not pretend to grant such right, and the enjoyment of such right depended on “common agreement” between the parties¹².

The above and other related issues necessitated the convening of another Conference to address matters which were hitherto left unattended to in the first and second United Nations Convention on the Law of the Sea.

3.2 The Third United Nations Convention on the Law of the Sea (UNCLOS III)

Several factors combined together that necessitated the need to call for another Conference where a comprehensive work on the regulation of the affairs of the world ocean would be achieved. Firstly, the 1958 and 1960 Conventions on the Law of the Sea failed to achieve the desired results. This is evidenced by some coastal States’ lack of concern for the indirectly agreed width of the territorial sea. They did not ratify the Convention

¹ Many Latin American and African states considered the Truman claim over the resources of the United States continental shelf as an opportunity for them to redress the “injustice” inherent in the traditional law of the sea concepts especially the unrestricted freedom of the high seas. See Njanga F.X (1986) “Historical background of the Evolution of Exclusive Economic Zone” in Pontocorvo. G. (ed) *The New Order of the Ocean: The Advent of a managed Environment*. Columbia University Press, New York pp.324. The first straw came from Mexico and Argentina in 1945 and 1946 respectively, with national claims over the resources of their continental shelves. Chile and Peru followed suit with 200 nautical mile claim for protection of fisheries operations and security Zones. The claims were stamped by tripartite declaration at Santiago in 1952 by Chile, Ecuador and Peru. Their argument was that such actions will give their citizens access to necessary proteinous food in addition to enhancement of their economic development. See Tagowa .W.N (2006) “The Law of The Sea and World Security: Lessons and Implications for Africa.” vol 32 No 1 *Nigerian Journal of International Affairs* pp 75 at 76-77. See further, Whiteman, M.M. (1965) *Digest of International Law*, Vol. 4, Department of State Publications, USA, Publications 7825, page 756.

² 10 Fed. Reg., 12304, 12305, September 28, 1945.

³ See Anand, R.P., *op. cit.*, p.78-79; See also Harris, D.J. (1998) *Cases and Materials on International Law*, 5th edn., London, Sweet and Maxwell, p.456; Churchill and Lowe, *op. cit.* See also Tagowa, W.N. (1998) “Political Economy of Ocean Law and Prospects for Integrated Marine Policy in Nigeria” in Ayua, I.A. and Yagba, T.A.T. (eds.) *The New Law of the Sea and the Nigerian Maritime Sector* NIALS, 186 at p.190.

⁴ Tagowa *op. cit.*, p.190.

⁵ Adopted at Geneva, April 29, 1958, 516, UNTS 205 which came into force on 10th September, 1965.

⁶ Adopted at Geneva, April 29, 1958, 450, UNTS 82 which came into force on 30th September, 1962.

⁷ Adopted at Geneva, April 29, 1958, 599, UNTS 285 which came into force on 20th March.1966

⁸ Adopted at Geneva, April 29, 1958, 499, UNTS 311 which came into force on 10th June, 1964.

⁹ Canada did however; ultimately ratify the Convention on the Continental Shelf on February 6, 1970. See CTS 19704.

¹⁰ See kindred *et al* (2000) *International Law Chiefly as Interpreted and Applied to Canada*, 6 edn., Edmund Montgomery, Toronto at pp. 4-9.

¹¹ Tagowa, *op. cit.* p.190.

¹² Article 3(1)(a), e(b). See generally Eze, O.C. (1998) “Historical Overview of the 1982 UN Convention on the Law of the Sea: Fifteen Years after Signature” in Ayua, I.A. and Yagba, T.A.T. (eds.) *The New Law of the Sea and the Nigerian Maritime Sector*, NIALS, Lagos 1 and 7.

and pushed their territorial sea, which had, been as a rule, 3 nautical miles in width far out into the sea. As early as 1961, there were claims of up to 100 nautical miles¹.

Secondly, scientific and political development necessitated the need for another conference. Scientifically the development of new techniques for exploration and exploitation of seabed resources which required new guidelines and governmental principles had to be attended to. Politically and economically, newly-independent States, which were not represented at the 1958 and 1960 Conferences and which had stake in the ocean resources pressed for participatory role in the exploitation and use of resources outside the confines of national jurisdiction².

What finally fast tracked the 1982 Convention could be attributed to the work of Arvid Pardo (1914-1999), a diplomat, International civil servant, scholar and professor who was then the Maltese ambassador at the United Nations from 1964 to 1971³. On November 1 1967, Arvid Pardo delivered a celebrated speech at the United Nations and called for the recognition of the area beyond the limits of national jurisdiction and its resources as the “common heritage of mankind”⁴. The 1958 conference had not made any special provision for the legal regime of the seabed, because at the time its great mineral wealth was not appreciated, nor did the technology necessary for its exploration exist⁵. All these factors argued for yet more deliberative effort to harmonise positions and interests and to take decisive action on vital issues. By General Assembly Resolution 3067 XXVIII of 1973⁶, a third United Nations Conference on the Law of the Sea was convened.

The task of the negotiations was to prepare a new, comprehensive legal order for the oceans which would accommodate and reconcile the many varied interests in the ocean. They included the interests of the major powers in unrestricted passage through the territorial sea, straits and archipelagic waters, the interests of coastal States in the exclusive economic exploitation of a wide band of offshore waters and the interests of the Group of 77 developing States in creating a regime to give reality to the new doctrine of “the common heritage of mankind”⁷.

After a series of sessions in New York⁸, Geneva⁹, and Caracas¹⁰, a convention drafted on the basis of a “packaged deal”¹¹ and the Final Act were adopted at Montego Bay in Jamaica on December 10 1982¹² and came

¹ Eitel T. (1995) “A Convention for the Peaceful Use of the Seas; The United Nations Convention on the Law of the Sea” Vol. 51 *Law and State*, Institut Fur Wissenschaftliche Zusammenavbelt, Germany, page 76.

² For example, Nigeria became independent on October 1 1960 and by the time the 1958 and 1960 Conventions took place; it was still an overseas territory of the British following the annexation of the country in 1863 during the reign of King Docemo of Lagos.

³ See Tetley, W. *op. cit.* p.632.

⁴ See Oeter S. *op. cit.* p.195.

⁵ Churchill R.R. and Lowe A.V., *op. cit.* p.15.

⁶ United Nations General Assembly Resolution 3067XXVIII of November 16, 1973.

⁷ Oeter S., *Ibid.*. See also Adede A.O. (1975) “The System for Exploitation of the Common Heritage of Mankind at the Caracas Conference” Vol. 69, *AJIL* 31.

⁸ See Oxman, H.B. (1980) “The Third United Nations Conference on the Law of the Sea: The North Session” Vol. 75, *AJIL* 211; Oxman, H.B. (1981), “The Third United Nations Conference on the Law of the Sea: The Tenth Session” Vol. 76, *AJIL* 1.

⁹ Stephenson and Oxman (1975) “The Third United Nations Conference on The Law of The Sea, The Geneva Session” Vol. 69, *AJIL* 763.

¹⁰ Stephenson J.R. and Oxman B.H. (1974) “The Preparations for the Law of the Sea Conference”, Vol. 68, *AJIL* p.1, Stephenson J.R. and Oxman B.H. (1975), “The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Sesssion” Vol. 69 *AJIL* p.1; Adede, A.O. (1975) “The System for Exploitation of the Common Heritage of Mankind of the Caracas Conference” Vol. 69 *AJIL* 31.

¹¹ Package deal theory was regarded as one procedural innovation of UNCLOS III that perhaps had the greatest effect upon negotiating techniques. See Eutis (1977) “Procedures and Techniques of Multinational Negotiations: The LOS Model” 17 *Va. J. Int’L law* 217 at 228. It means in negotiating and adopting the Law of the Sea, Convention, the conference had borne in mind that the problems of ocean space were closely interrelated and had to be dealt with as a whole. The “package deal” approach ruled out any selective application of the Convention. According to the understanding reached by the Conference, from outset and inconformity with international law, no State or group of states could lawfully claim rights or invoke the obligations of third States by reference to individual provisions of the Convention unless that State or group of States were themselves parties to the Convention. States which decided to become parties to the Convention would likewise be under no obligation to apply its provisions vis-à-vis states that were not parties. See the Statement of Ambassador Arias-Schreiber (Peru) at the 183rd plenary meeting of the resumed 11th session on September 22 1982 as summarized in UN DOC.A/CONF.62/SR.183, at 3-4 (Prov. 1982).

¹² The United Nations Convention on the Law of the Sea, UN.DOC.A/CONF.62/122 (Oct, 7 1982), reprinted in (1982) 21 *ILM* 1261. The Convention was signed by 119 delegations when it was opened for signature on December 10, 1982. See UN Press Release SEA/MB/14.Dec. 10, 1982. The text of the treaty was adopted by the Third united Nations Conference on the Law of the Sea in New York on April 30, 1982 by a Vote of 130 in favour, 4

into force on November 16 1994¹ and now applies in nearly 166 nations. Nigeria signed the convention on 10 December, 1982 and ratified it on 11, October, 1986 but it is yet to be domesticated².

The Convention is a document of considerable length, consisting of 320 Articles and 9 Annexes³. Parts I to X deal with the general aspects of the law of the sea, thus essentially covering the traditional uses of the sea such as navigation and over-flight, fishing and the exploration of the Continental Shelf. Part XI regulates the deep sea bed⁴, Part XII is devoted to the protection and preservation of the marine environment and Part XIII to marine Scientific Research. Part XIV regulates the development and transfer of marine technology. Part XV contains a comprehensive, and in part compulsory, system for the settlement of disputes and provides for the establishment of the International Tribunal for the law of the Sea in Hamburg. General and final provisions complete the convention.

The Convention, although described as a hydra-headed monster,⁵ Akinsanya⁶ however identified the following as the innovations/achievements of the 1982 Law of the Sea Convention:

- Fundamental change in the definition of the Legal Continental Shelf.
- Introduction of new concepts of International Law, transit passage, archipelagic State, exclusive economic zone, mandatory conciliation in addition to creating an international law of cooperation which makes regional and international cooperation mandatory in such areas as marine scientific research, management of living resources and environment.
- Substantial change in the concept of innocent passage.
- Introduction of the first comprehensive framework of environmental law of the sea, based on the obligation of all States to protect and preserve the marine environment and to control all sources of marine pollution.
- Establishment of a comprehensive regime for marine scientific research and development of marine technology as the basis of resource exploration and as creation of the obligation to cooperate in the development and transfer of marine science and technology.
- Recognition that the problems of the oceans are closely inter-related and need to be considered as a whole, thus heralding a holistic rather than a fragmentary and sectionalized approach to world affairs.
- Codification and articulation of the principle of the “common heritage of mankind” as a norm of international law of the universal validity of a jus cogens.
- Establishment of the International Seabed Authority with powers to impose international taxation and bring multinational corporations into a structured relationship deep seabed mining.
- Recognition of the right to conduct marine scientific research and construct artificial islands as additional freedoms of the high seas together with significant developments of traditional law relating to the high seas.
- Updating and codification of the traditional and customary law of the sea balancing the interests of coastal and maritime states, and assuring at least minimum rights to the landlocked and geographically disadvantaged States.

against (including the United States), and 17 abstentions. President Reagan announced his decision not to sign the treaty on July 9, 1982. See statement of by the president, released by the Department of State on July 9, 1992, 18 weekly Comp. Press. DOC.887 (July 12 1982).

¹ November 16, 1994 was twelve months following the date of deposit of the Sixtieth (60th) instrument of ratification as provided for by Art 308 of the Convention.

² See http://www.un.org/depts/10s/reference-files/chronological-lists-of-ratifications.htm#_The_United_Nations_Convention_on_Law_of_the_Sea indicating that as at 27th May, 2014, 157 States signed and 166 countries ratified the Law of the Sea Convention 1982. However, a treaty that is yet to be domesticated has no place before the Nigerian court. See Babatunde I O (2014) “Treaty Making and its Application Under the Nigerian Law: The Journey so Far.” Vol.3 Issue 3 *IJBMI* p 1.

³ Vitzthum, W.G. and Platzoder R. (1983) “The United Nations Convention on the Law of the Sea: The Pros and Cons” Vol. 28 *Law and State* p.32; Popoola A.O. (1998). “The 1982 United Nations Convention on the Law of the Sea and the New World Order” in Ayua, I.A. and Yagba T.A.T. (eds.) *The New Law of the Sea and The Nigerian Maritime Sector*, NIALS, Lagos 256 at 271.

⁴ This is the area that gave the United States problem and as such prevented them from signing the Convention. It was stated that the regime for deep-sea bed mining, was at variance with the interest of the United States. See Richardson, E.L. (1983) “The United States Posture Towards the Law of the Sea Convention: Awkward but not Irreparable” 20 *San Diego Law Review*, 505-519; Sohn, L.B. (1994) “International Law Implications of the 1994 Agreement” Vol. 88 *AJIL*: 696.

⁵ Friedheim, R.L. (1977) “Toward a Treaty for the Oceans” in Dan Walsh (ed.) *The Law of the Sea: Issues in ocean Resource Management*, 1st edn., Praeger Publishers, New York, p.1.

⁶ Akinsanya, A. (1998) “The 1982 Law of the Sea Convention and Marine Pollution” in Simpson S., and Fagbohun O. (eds.) *Environmental Law and Policy*, LASU Law Centre, Lagos, p.357.

- Establishment of the most comprehensive and binding system for the peaceful settlement of disputes ever designed for mankind in the use of the seas and oceans¹.

4.0 Settlement of Disputes

It is fair to say that international law has always considered its fundamental purpose to be the maintenance of peace². Although ethical pre-occupations stimulated its development and informed its growth, international law has historically been regarded by the international community primarily as a means to ensure the establishment and preservation of world peace and security³. In the long march of mankind from cave to the Computer, a Central role has always been played by the idea of law – the idea that order is necessary and chaos inimical to a just and stable existence. Every society, whether it is large or small, powerful or weak, has created for itself a framework of principles within which to develop. What can be done, what cannot be done, permissible acts, forbidden acts, have all been spelt out within the consciousness of that community⁴. The observance of law and the establishment of a stable international legal order are a necessary preliminary to universal peace⁵.

Basically, the method of conflict resolution within the international plane falls into two distinct categories – diplomatic procedures and adjudication. It is in respect of the latter that attention will be focused in this work. As a further means of narrowing the scope of this study, discussion will be restricted to settlement of dispute provided by the United Nations Convention on the Law of the sea with respect to resolution of the Law of the Sea disputes.

Article 308(1) of the United Nations Convention on the Law of the Sea of 1982 provides that the Convention shall enter into force twelve months after the date of deposit of the Sixtieth Instrument of ratification or accession⁶ on November 16 1993, Guyana deposited the Sixtieth instrument with the Secretary-General⁷. That set in motion series of activities required to ensure the smooth entry into force of the Convention on November 16 1994⁸.

The entry into force of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), on 16 November 1994 is probably the most important development of international disputes since the adoption of the UN Charter and the Statute of the International Court of Justice. Many of the earliest environmental treaties did not provide for any dispute settlement mechanisms whether for a diplomatic or legal nature, or of a voluntary or mandatory character⁹. Not only does the Convention create a new International Court, the International Tribunal for the Law of the Sea (ITLOS), it also makes extensive provisions for compulsory dispute-settlement procedures involving States, the International Seabed Authority (ISBA), Seabed mining contractors and potentially, a range of other entities¹⁰.

The 1982 Convention contains detailed and complex provisions regarding the resolution of the law of the Sea disputes¹¹. Part XV deals with the settlement of disputes concerning the interpretation or application of UNCLOS¹². The first section of Part XV begins with a recitation of the general obligation on States to settle

¹ *Ibid.* See also the address of Zuleta B., the under Secretary General, special Representative of the Secretary-General for the law of the Sea titled “Introduction” in *The Law of the Sea; official text of the United Nations Convention on the law of the Sea with Annexes and Index*, United Nations, New York, 1983, pp. xix to xxviii.

² Merrills, J.G. (1998) *International Dispute Settlement*, 3rd edn., Cambridge.

³ See Shaw M.N. (2004) *International Law*, *supra* at p.914.

⁴ Shaw M.N. *International Law*, *op. cit.* p.1.

⁵ Karovin Y. (1962) “International Law Through the Pentagons Prisons” *International Affairs*, Moscow VIII p.7. See generally Falk A.R. (1968) *Legal Order in a Violent World* 1st ed. Princeton New Jersey p.1.

⁶ United Nations Convention on the Law of the Sea, opened for signature Dec. 10 1982 UN.DOC.A/CONF.62/122 (1982), reprinted in *United Nations, official Text of the United Nations Convention on the Law of the Sea with Annexes and Index*, UN Sales No. E.83.v5 (1983); (1982) 21 *ILM*, 1261.

⁷ See Rosenne S. (1995) “Establishing the International Tribunal for the law of the Sea” *AJIL*, Vol. 89 No. 4 pp. 806 – 814. Available at <http://www.jstor.org/stable/2203941>; Accessed on 19/3/2014.

⁸ Multilateral Treaties deposited with the Secretary-General: Status as at 31 December 1994 at 850, UN DOC.ST/LEG/SER.E/13, UN Sales No. E.95.v.5 (1995).

⁹ See for example 1940 Western Hemisphere Convention; 1946 International Whaling Convention.

¹⁰ See Boyle, A.E. (1997) “Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction” *ICLQ* Vol. 46 No. 1 pp. 37-54. Available online at <http://www.jstor.org/stable/760513>. Accessed on 19/3/2014.

¹¹ Shaw M.N. *supra* p.568.

¹² For more detailed discussion, see Rayfuse R. (2005) “The Future of Compulsory Dispute Settlement under the Law of the Sea Convention” 36 *VUWLR* p.683. Available at <http://www.nzlii.org/nz/journals/VUWLRRev/2005/30.html>. Accessed 15/4/2014; Serdy A. (2005) “The Paradoxical Success of UNCLOS Part XV: A Half-hearted Reply to Rosemary Rayfuse” 36 *VUWLR*. Available at <http://www.nzlii.org/nz/journals/VUWLRRev/2005/31.html>. Accessed on 15/4/2014; Boyle A. (2007) “The

their disputes by agreement and to do so peacefully¹. It preserves the right Of States to agree at any time to settle their disputes by a means of their choice, in which case, the disputes is exempted from part XV procedures except where no settlement has been reached and the agreement does not exclude further procedure². Dispute settlement procedures in other general, regional or bilateral agreements which entail binding decisions are to apply in lieu of part XV procedures³. In all cases, when disputes arise, States are to expeditiously exchange views regarding their settlement and may elect to proceed to voluntary conciliation⁴.

Where, however, States have been unable to peacefully resolve their disputes and no other procedure for resolution of the dispute has otherwise been agreed upon then Section 2 of Part XV applies. Article 287(1) of UNCLOS III provides:

When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

4.1 Disputes Envisaged by the 1982 Convention

Since dispute cannot be ruled out among the comity of nations, the underlisted are some of the disputes that can give rise to a cause of action to warrant the invocation of the compulsory dispute settlement mechanism of the Law of the Sea Convention. They are as follows:

- 1 Disputes concerning the interpretation or application of the Convention.⁵
- 2 Disputes with regard to the freedom and rights of navigation, overflight or laying of submarine cables and pipelines or other internationally lawful uses of the Sea.⁶
- 3 Disputes relating to the alleged contravention by a coastal state of specified international rules and standards for the protection or preservation of the marine environment.⁷
- 4 Disputes relating to decision by the coastal state to order suspension or cessation of a research project.⁸
- 5 Disputes relating to the sovereign rights with respect to the living resources in the Exclusive Economic Zone.⁹
- 6 Disputes relating to the delimitation of maritime boundaries or areas.¹⁰
- 7 Disputes involving scientific or technical matters.¹¹
- 8 Deep seabed mining disputes¹

Environmental Jurisprudence of the International Tribunal for the Law of the sea” *The International Journal of Marine and Coastal Law*, Vol. 22, No. 3, p.369. Available online at http://www.law.ed.ac.uk/file_download/publications/o_1082_theenvironmentaljurisprudenceoftheHlos.pdf. Accessed 11/11/2013; Roberts K. (1998) “The International Tribunal for the Law of the Sea: Some Comments on the *M/V Saiga Case (Saint Vincent and the Grenadines v. Guinea)*” Vol. 10 part 3 *RADIC*, p.407; Peel J. (2002) “A Paper Umbrella which Dissolves in the Rain? The Future for Resolving Fisheries Disputes under UNCLOS in the Aftermath of the Southern Bluefin Tuna Arbitration” *MelbJIL*, Vol. 3. Available online at <http://www.austlii.edu.au/au/journals/MelbJIL/2002/3.html>. Accessed 15/4/2014; Odede, A. (1982) “The Basic Structure of the Dispute Settlement Part of the Law of the Sea Convention” 11 *Ocean Dev and Int’l Law*, p.125, Leary D. and Chakraborty A. (2005) “New Horizons in the Law of the Sea” *VUWLRev.29*; (2005) 36 *VUWLR*, p.675. Available online at <http://www.nzlii.org/nz/journals/VUWLRev/2005/29.html>. Accessed 17/4/2014.

¹ Art 279.

² Art 280 and 281.

³ Art 282.

⁴ Arts 283 and 284. Disputes relating to the Area are to be submitted only to the Seabed Disputes Chamber of ITLOS pursuant to Part XI (Art 287(2)). While they, too, are subject to compulsory settlement procedures, those procedures are found in Part XI of UNCLOS and not Part XV. This is however outside the scope of this Thesis.

⁵ Art. 279,281-284 UNCLOS 1982.

⁶ Art 58 and 297 (1) (a) and (b).

⁷ Art 297(1)(c).

⁸ Art. 253, 297 (2)(a)(ii).

⁹ Art 298(1)(a).

¹⁰ Art. 15, 74 and 83.

¹¹ Art 289.

The organs saddled with the responsibility of settling disputes as provided by the Law of the Sea Convention will be discussed below in seriatim.

4.2 The International Tribunal for the Law of the Sea (ITLOS)

The International Tribunal for the Law of the Sea (ITLOS) is one of the judicial bodies created by the United Nations Convention on the Law of the Sea². The tribunal, based in Hamburg in 1996 is open to State parties to the Convention³ and to entities other than State parties in accordance with Part XI of the Convention, concerning the International seabed Area, thereby including the International Seabed Authority, State enterprises and natural and juridical persons in certain circumstances⁴ or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all parties to that case⁵.

Commenting on the establishment of ITLOS, Alan Boyle⁶ observed that the initiation of the ITLOS not only opens up new possibilities for settling these disputes but it also has implications for the future role of the International Court and ad hoc arbitration in the Law of the Sea and more generally. It contributes to the proliferation of international tribunals and add to the potential for fragmentation both of the substantive law and of the procedures for settling disputes.

Commenting further, Judges Oda and Guillaume argued that the ITLOS is a futile institution, that the UNCLOS negotiations were misguided in depriving the International Court of its central role in ocean disputes and that the creation of a specialized tribunal may destroy the unity of international law⁷. They were not alone in this criticism⁸.

The Convention establishes a legal framework to regulate all ocean space, its uses and resources. An action can be initiated through an application to the tribunal or through submission of a special agreement⁹. The judgment of the tribunal is final and binding. The tribunal may also interpret a previous judgment upon request¹⁰ or issue provisional measures in order to preserve the rights of the parties to the dispute¹¹, or to prevent serious harm to the marine environment, pending the final decision¹².

As regards the protection of the marine environment, according to Article 20 of the statute of the Tribunal, the “State parties” to the Law of the Sea Convention can submit disputes concerning interpretation and implementation of the regulations to the Tribunal. Pursuant to paragraph 2 of Article 29 the Tribunal is also open to entities other than States, in cases provided for in Part XI of the Convention. This concerns the competence of the Special Seabed Disputes Chamber with regard to Seabed activities¹³.

The Chamber can hear cases brought by or against the International Seabed Authority, parties – including non-State parties – to a contract and prospective contractors¹⁴. The same provision extends further the jurisdiction *ratione personae* of the Tribunal in “any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case”.¹⁵ According to Article 187(c) read in conjunction with Art 153, private natural persons can present the dispute to the Chamber only with the consent

¹ Part XI

² United Nations Convention on the Law of the Sea, Part XV, Dec. 12 1982, 21 ILM 1261, 1833 UNTS.3. The Statute to the International tribunal for the Law of the Sea is attached to the Convention as Annex VI ITLOS Statute; Dec. 10, 1982. 1833 UNTS 397,561. See further Granger, C.L. (2007) “The Role of International Tribunals in Natural Resource Disputes in Latin America” Vol. 34; *Ecology Law Quarterly* pp. 1297 – 1348.

³ Art 292(1) of the Convention (1982) and Art 20(1) of the Statute. This would include the European Community (now Union): See Art 1(2) of the Convention.

⁴ See in particular articles 153 and 187 of the Convention.

⁵ Article 20(2) of the Statute.

⁶ Boyle, A.E. (1997) “Dispute Settlement” *supra* at p.37.

⁷ Oda S. (1993) “The ICJ Viewed from the Bench” 244-11 Rec 127-155; Oda S. (1995) “Dispute Settlement Prospects in the Law of the Sea” 44 *ICLQ* 863; Guillaume G. (1995) “The Future of International Judicial Institutions” Vol 44 *ICLQ* 848.

⁸ See Rayfuse R. (2005) “The future of Compulsory Dispute Settlement under the Law of the Sea Convention” *supra* and note specifically the defence at the Convention put up spiritually by Serdy A. (2005) “The Paradoxical Success of UNCLOS Part XV: A Half-hearted Reply to Rosemary Rayfuse” *supra*.

⁹ Art 24. Once the tribunals’ jurisdiction has been established, the parties make written submissions and then there are oral proceedings. See Art 26.

¹⁰ See Granger, C.L. (2007) *supra* at p.1321.

¹¹ See Rabkin J. (2003) *supra* at p.4.

¹² Arts 25, 33; UNCLOS, Art 290.

¹³ See Rest A. (2004) “Enhanced Implementation ...” *supra* 1 at p.13.

¹⁴ See Treves T. (1995) “The Law of the Sea Tribunal: Its Status and Scope of Jurisdiction after November 16, 1994” 55 *ZaoRv* 421 at p.428.

¹⁵ Cf Article 20, Second Sentence and also Article 21; (1982) 21, ILM 1348.

of a State. In general, Arts 20 et seq of the Statute only enable a limited jurisdiction in the field of the Area, and do not go beyond¹. It is however doubtful whether comprehensive protection of the marine environment is actually granted as evidenced, inter alia when UNCLOS imposes ambiguous restriction which direct ITLOS not to “pronounce itself ... on whether any rules, regulations and procedures of the Authority are in conformity” with UNCLOS “provisions” but only to judge “applications” of “rules” in “individual cases”².

ITLOS is composed of 21 independent Members/judges who are elected on the basis of their reputation for fairness, integrity and competence in maritime law³. It is split into three Chambers. The Chambers for Summary Procedure, Fisheries Dispute and Marine Environment Disputes, hear actions between States. In addition, a fourth Chamber comprising II Members, the Seabed Disputes Chamber, unlike the other Chambers can hear matters between States and non State actors⁴. It deals specifically with disputes concerning the exploration and exploitation of the seabed⁵.

On the success so far recorded by ITLOS, the tribunal has rendered some important judgments, notable of which are *M v. Saiga*⁶ and *Camouco*⁷ which concern the arrest of ships, (which is not related to environmental matters), the Southern Bluefin Tuna Case⁸ concerned the protection of marine mammals. Marine pollution was however the subject of *Mox Plant Dispute*⁹. Viewed differently, Boyle¹⁰ commented that of the decades environmental cases, only three have been decisions of ITLOS dealing directly with protection of the marine environment¹¹ and this he held was not a healthy record compared to other Courts and tribunals in its first ten years of operation¹².

4.3 The International Court of Justice (ICJ)

The International Court of Justice (ICJ) is the Principal judicial organ of the United Nations.¹³ It was established as a successor to the Permanent Court of International Justice in 1945¹⁴ and became operational in 1946. It is organized as a court of general jurisdiction settling disputes between member States and giving advisory opinions to authorized UN agencies and organs¹⁵.

The purpose of the ICJ as the judicial arm of the United Nations is to bring about the settlement of disputes by peaceful means and in conformity with the principles of justice and international law¹⁶. While the courts final judgment in a particular case is only binding on the parties to the dispute, decisions have significant precedential impact and are considered highly relevant and persuasive in future international tribunal adjudications¹⁷.

¹ Rest A., *ibid*.

² Art 189; See also Rabkin J. (2006) “The Law of the Sea Treaty: A Bad Deal for America” *Issue Analysis*, No. 3, Competitive Enterprise Institute, page 1 at p.9.

³ Art 2(1), Statute of ITLOS.

⁴ An *ad hoc* Chamber of three members can be formed upon request.

⁵ ITLOS “General Overview” Available online at <http://www.itlos.org/start>. See further Salama R. (2004) “Fragmentation of International Law: Procedural Issues Arising in the Law of the Sea Disputes” 19, *MLAANZ journal*, p.24 at p.27.

⁶ For the judgments and order of provisional measures in the litigation between Saint Vincent and the Grenadines, Guinea in 1997, 1998 and 1999. See (1998) 37 ILM 362; (1999) 21 ILM 1348.

⁷ For the judgment of February 2000, in this case (*Panama v. France*) cf: Press Release ITLOS Press 35 under <http://www.un.org/depts/los/press/ITLOS-35.htm>. Accessed 15/05/2014

⁸ For the details of the order of 27 August 1999, See list of Cases Nos. 3 and 4; <http://www.un.org/Depts/los/ITLOS/order-tuna34htm>. See further Peel J. (2002) “A paper umbrella ...” *supra*.

⁹ [2001] ITLOS No.10.

¹⁰ Boyle A. (2007) “Environmental Jurisprudence” *supra* at p.371.

¹¹ *Southern Bluefin Tuna (Provisional Measures)*[1999] ITLOS Nos. 3 and 4; *Mox Plant (Provisional Measures)* [2001] ITLOS No. 10; *Land Reclamation (Provisional Measures)* [2003](No.1).

¹² After all, in its first ten years, the International Court of Justice (ICJ) decided only one case with even tangential relevant to environmental matters – *Corfu Channel Case (UK v. Albania)(Merits)* [1949] ICJ Report 1 – which Boyle said that quite what the case decides is uncertain even today.

¹³ Article 92 of the U N Charter.

¹⁴ See generally Shaw, M.N. (2004) *International Law supra* p.959; Brownlie I. (1990) *Principles of Public International Law, supra*, p.714.

¹⁵ ICJ Statute arts 34-38, June 26, 1945, 59 Stat 1031.

¹⁶ UN Charter, Art 1, 59 Stat, 1031. The Court can make recommendation to the Security Council upon conclusion of a case. ICJ statute *supra* Art 41. The Court is composed of 15 members, who are elected to nine-year terms by the General Assembly and the Security Council of the United Nations, Arts 2 – 15. Judges must satisfy the requirements of their home State for service in the highest judicial position of their country or be widely recognized as particularly competent in international law. Generally, the court seeks to have jurists representing the main forms of civilization and the major legal systems of the world.

¹⁷ Granger, C.L. (2007) “The Role of International Tribunals in Natural Resource Disputes in Latin America” Vol.

In July 1993, the ICJ established a seven-member Chamber for environmental matters¹. A learned writer² has posited that the International Court cannot be the right forum because States alone have direct access. This he said is regrettable because by its very function, the ICJ could be the proper institution to control the implementation of environmental treaty obligations – as shown in the *Gabcikovo-Nagymaros Case*³ - to develop further and improve international environmental law and to concentrate on the urgent problems of protecting the global commons by applying the concept of *erga omnes* obligations.

This is possible because many environmental treaties provide for possible recourse to the ICJ to settle disputes. Occasionally, they recognize compulsory jurisdiction but more usually, the reference of a dispute to the ICJ requires the consent in each case, of all parties to the dispute⁴.

Unlike its predecessor, the PCIJ, the ICJ has now been presented with opportunities to address international environmental disputes – raising matters concerning environment and conservation – and has given judgments which establish important general principles⁵. Some of them are *Certain Phosphate Lands in Nauru*⁶ *Gabcikovo-Nagymaros Project (Hungary v. Slovakia) Case*⁷. Although no legal question on an environmental issue has been the subject of a request for an advisory opinion, Philippe Sands⁸ averred that this route could provide a useful non-contentious way of obtaining independent international legal advice on environmental matters. Justifying his assertion, he went further to say that in July 1996, the ICJ gave an advisory opinion on the legality of the use of nuclear weapons in the context of their effects on human health and the environment, arguably the most significant of the ICJ's pronouncement on international environmental law. The ICJ has the power to indicate interim measures of protection to preserve the rights of the parties to a dispute.⁹

4.4 Arbitral Tribunal Constituted in Accordance with Annex VII

In its modern form, arbitration emerged with the Jay Treaty of 1794 between Britain and America, which provided for the establishment of mixed Commissions to solve legal disputes between parties¹⁰. International arbitration is the process of settlement of disputes between States by judges of their own choice and on the basis of respect for the law¹¹. This procedure was successfully used in the *Alabama Claims Arbitration*¹², *Behring Sea*¹³ and *British Guiana Venezuela Boundary*¹⁴. Recourse to arbitration implies an engagement to submit in good faith to the award¹⁵. In recent years, States negotiating environmental treaties have favoured the inclusion of specific provisions for the establishment of an arbitration tribunal with the power to adopt binding and final decisions¹⁶.

The *Pacific Fur Seals Arbitration (1893)*¹⁷, *The Trail Smelter Case (1935/41)*¹⁸ and the *Lac Lannoux Case (1957)*¹⁹ reflect the historical importance played by arbitration in the development of international environmental law. More recently, within the past few years, the 1982 UNCLOS Annex VII arbitration

34 *Ecology Law Quarterly*, p.1297 at 1314.

¹ See Sands P. (2004) *Principles of International Environmental Law supra* p.215.

² Rest A. (2004) "Enhanced Implementation ..." *supra* p.12.

³ See the judgment of 25 September, 1997 which has conciliation character. *Case concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)* [1997] ICJ Report No. 92.

⁴ See 1959 Antarctic Treaty, Art XI(2); 1974 Baltic Convention; Art 18(2).

⁵ Sands P. (2004) *supra* p.216.

⁶ *Case Concerning Nauru v. Australia (Preliminary objection)* [1992] ICJ Rep. 240 where the Court laid down *inter alia* the following principles:

- (a) the waiver of any claim, including an environmental claim to be effective, it will need to be made in clear and express form;
- (b) acts of international institutions which have definitive legal effects will not discharge rights which might exist in regard to environmental and other claims in the face of clearly expressed differences of opinion which exist between States supporting such an act.

⁷ [1997] ICJ Rep. p.7 the judgment affirms the importance of environmental considerations in addressing the rights and obligations of riparian States in an international water course.

⁸ *Ibid.*

⁹ Statute of the ICJ, Art 41. The ICJ ruled that its provisional measures are legally binding. See *Lagrand Case (Germany v. United States)* [2001] ICJ Reports 1040; [2001] 40 ILM, 1069.

¹⁰ See Shaw M.W., *op. cit.*, p.952.

¹¹ See Sands P. (2004) *supra*, p.212.

¹² Moore J.B. (1898) *International Arbitration*, Washington D.C., Vol. 1, p.495.

¹³ *Ibid.*, p.755.

¹⁴ 92 BFSP, p.970.

¹⁵ 1907 Hague Convention on the Pacific Settlement of International Dispute, Art 37.

¹⁶ See 1982 United Nations Convention on the Law of the Sea, Art 287.

¹⁷ *Supra*.

¹⁸ *United States v. Canada* [1941] 3 RIAA p.1907.

¹⁹ *France v. Spain* [1957] 24 ILR 101.

procedure has been invoked on two occasions: In 1998 by Australia and New Zealand against Japan in relation to a dispute concerning the conservation of Southern Bluefin Tuna¹ and in 2001 by Ireland against the United Kingdom in the dispute concerning the authorization of the Mox Plant.²

4.5 Special Arbitral Tribunal Constituted in Accordance with Annex VIII

Pursuant to the provisions of Article 287(1)(d) of UNCLOS III, any party to a dispute concerning the interpretation or application of the 1982 Convention relating to (1) fisheries; (2) protection and preservation of the marine environment; (3) marine scientific research and (4) navigation, including pollution from vessel and by dumping, may submit the dispute to the special arbitration procedure provided for in Annex VIII by notification addressed to the other party or parties to the dispute³. The notification shall be accompanied by a statement of claim and the grounds on which it is based.

A list of experts from FAO, UNEP, Inter-Governmental Oceanographic Commission and the IMO shall be established and maintained in each of the fields so identified in Article 1 of Annex VIII⁴.

Unless the parties otherwise agree, the findings of fact of the special arbitral tribunal acting in accordance with Article 5(1) shall be considered as conclusive as between the parties and the parties to the dispute if they so request, the arbitral tribunal may formulate recommendations which without having the force of a decision, shall only constitute the basis for a review by the parties of the questions giving rise to the dispute⁵.

5.0 GENERAL APPRAISAL

There are three categories of reactions to UNCLOS III. Those that signed and ratified the Convention⁶, those that signed but did not ratify the Convention⁷ and those that did not sign the Convention at all.⁸ Out of about 196 countries, 161 States have ratified it representing about 78%.

The United States of America refused to sign the agreement at a Conference which it facilitated because of its strong objection to the provisions of Part XI of the Convention on the ground that the treaty is unfavourable to America's economy and security because it contained fundamentally flawed provisions regarding deep seabed mining⁹. It also felt that the provisions of the treaty were not free-market friendly and were designed to favour the economic systems of the Communist States and that the International Seabed Authority might result in becoming a bloated and expensive bureaucracy due to a combination of large revenues and insufficient control over what the revenues could be used for¹⁰.

However, there are some States that ratified the Convention¹¹ but did not take any step to domesticate the Convention¹² as it affects the marine environment as provided by the Convention. In this situation, such countries would not be able to rely on the Convention in respect of any matter that springs up within its jurisdiction. Those that merely signed and did not ratify are not ready to be bound by the provisions of the Convention. Congo and Liberia have just moved out of this Class¹³. Those who did not sign are not prepared to

¹ [2000] 39 ILM 1359.

² *Supra*.

³ Annex VIII, Art 1

⁴ Annex VIII, Arts (2)(1) and (2)

⁵ Annex VIII, Art 5(2) and (3).

⁶ With Liberia ratifying on 25 September 2008, the number of countries that have signed and ratified the Convention now stand at 157.

⁷ They are 22 in number. Afghanistan, Bhutan, Burundi, Cambodia, Central African Republic, Chad, Colombia, Dominican Republic, El Salvador, Ethiopia, Iran, Democratic People's Republic of Korea, Libya, Liechtenstein, Malawi, Niger, Rwanda, Swaziland, Switzerland, Thailand, United Arab Emirates and The United States of America.

⁸ Andorra, Azerbaijan, Ecuador, Eritrea, Israel, Kazakhstan, Kyrgyzstan, Peru, San Marino, Syria, Tajikistan, Timor-Leste, Turkey, Turkmenistan, Uzbekistan, Vatican City and Venezuela. See United Nations Convention on the Law of the Sea – Wikipedia, the free encyclopedia. Available online at http://en.Wikipedia.org/wiki/United_Nations_Convention_on_the_Law_of_the_Sea. Accessed on 27-4-2014.

⁹ See generally Rabkin J. *supra*; NMA position paper *supra*.

¹⁰ See generally Wikipedia at p.5.

¹¹ As between State parties to the Convention, the basic rule of *Pacta Sunt Servanda* applies. See Art 26 of the Vienna Convention on the Law of Treaties. For a valuable Survey see Wolfrum (1994) "Entry into Force: Legal Effect for Parties and Non Parties" in *Proceedings of the 18th Annual Seminar of the Centre for Oceans Law and Policy* University of Virginia.

¹² Nigeria, ratified the Convention on 14th August 1986 and as required by Section 12(1) of the 1979 and S.12(1) of the 1999 Constitution such a Convention to become applicable in Nigeria has to be transformed by the National Assembly. Up till the time of writing of this thesis, Nigeria has NOT TAKEN ANY POSITIVE STEP to domesticate the law to make it applicable in Nigerian Courts.

¹³ Congo Republic ratified the Convention on 9 July 2008 and Liberia on 25 September 2008. See United Nations

be bound by the provision of the Convention¹. Since 1992, most parts of the Convention have been applied reasonably and consistently by States. Many provisions have been implemented or applied in legislation by States² in new Conventions adopted by international Conferences³, in decisions by International Courts⁴ and in guidelines adopted by international organizations⁵.

With about 78 per cent of world's State ratification of the Convention, the legal implication of this for the protection of the marine environment is that the principles embedded in UNCLOS could be conveniently said to have graduated to the status of customary International Law on ocean protection and ocean management. States that are not party to UNCLOS treaty (i.e. those that have not signed the Treaty) are however bound by the principle of Customary International law that it has developed into.

6.0 CONCLUSION

It is no longer in doubt that international disputes, especially those arising from the use of the world oceans are to be settled in a peaceful manner since the use of the world oceans must be for peaceful purposes. Bearing in mind that disputes among nations are inevitable, this paper has, to a large extent, examined the various mechanisms put in place by the international community in settling disputes arising from the use of the world ocean. As observed in the paper, the various decisions of the ITLOS have enhanced the jurisprudence of International Law. It is hoped that the analysis in this paper has thrown light on the grey areas hitherto beclouding this area of the law.

(2008) Chronological lists of ratification of, accessions and successions to the Convention and the Related Agreements as at 26 September 2008. Available online at

http://www.un.org/Depts/los/reference_files/Chronologicalists_of_ratifications.htm. Accessed on 25/5/2014.

¹ See Anderson, D.H. (1995) "Legal Implications of the Entry into force of the UN Convention on the Law of the Sea" *ICLQ* Vol. 44 No. 2, pp.313-326.

² Many States have extended their territorial sea to 12 nautical miles and established EEZs between 1982 and 1994. See Anderson, D.H. (1995) "Legal Implications of the Entry into Force of the UN Convention on the Law of the Sea" *supra*.

³ See for example Vienna Conference on Illicit Traffic in Narcotics Drugs 1989 and UN Conference on Environment and Development 1992.

⁴ The ICJ has found that provisions on the Continental Shelf and innocent passage were expressive of customary law; *Gulf of Maine Case* [1984] ICJ Rep 264, *Nicaragua Case* [1986] ICJ Rep 14, *Southern Bluefin Tuna* (2000) 39 ILM 1359, *Mox Plant Case (Ireland v. United Kingdom)(Provisional Measures)* [2002] 41 ILM 405. On April 11, 2006, the 5-member UNCLOS Annex VII Arbitral Tribunal rendered after two years, the landmark Barbados/Trinidad and Tobago Award. On September 20, 2007, on Arbitral Tribunal Constituted under UNCLOS issued a decision in dispute between Guyana and Suriname.

⁵ The IMO, ICAO and IOC have studied the implications of the Convention for their work. On the significance of the work of organizations, see Sohn, L.B. (1995) "International Law Implications of the 1994 Agreement" 88 *AJIL*, 696-705; Oxman B.H. (1995) "The 1994 Agreement and the Convention" 88 *AJIL*, 687-696; Charney, J.I. (1995) "US Provisional Application of the 1994 Deep Seabed Agreement" 88 *AJIL* 705 – 714.

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