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International Law and the Prevention and Control of Oil and Gas Pollution

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Abstract
The threat of environmental problem concerns the whole world at the global level. This is because the global environment is one while the national boundaries, which have demarcated the world into distinct nations, are manmade. The features of the world's environment, ie land, air and water, and their susceptibilities are no respecter of those national boundaries made by man in his enterprise of building sovereign States. The implication of the exploitation of oil in both onshore and offshore locations is that pollution may occur in such a way as to affect shared water resources beyond national boundaries. When this happens, it becomes an international law concern. This is why the world environment has come to be regarded as common resource. There are international conventions on the environment relevant to the control of oil and gas pollution, to which Nigeria is a signatory. The researcher aims at appraising the usefulness of these conventions in the control of oil and gas pollution in Nigeria. The study depicts that the applicability of these conventions in Nigeria is limited by the fact that they are not binding on Nigerian courts but merely persuasive in that the Constitution of the Federal Republic of Nigeria, 1999 excludes the enforceability of such Conventions in Nigeria except they have been domesticated as national laws. The study makes a case for enforceability and bindingness of international conventions in Nigeria by their being enacted as Acts of the National Assembly in line with the provisions of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

1.1 Introduction[1]

Pollution has been defined as man made or aided alteration of chemical, physical[2] or biological quality of the environment to the extent that is detrimental to that environment or beyond acceptable limits. Pollution is therefore a phenomenon that is adverse to the environment. Oil and gas Pollution describes the pollution of the environment occasioned by oil and gas prospecting and production.

Environmental issues have taken a front burner in global affairs as a result of the negative impact of pollution on the human environment. It is apparent that action is needed at the global level if the human environment is not to be rendered uninhabitable by pollution in the not too distant future. The beginning of global concern with the environment dates back to 1972 when the Stockholm Conference on the Human Environment was held. This has been followed by a series of other conferences where concerns about the human environment were the burning issue. The United Nations Security Council subsequently declared that non-military sources of instability in the social, economic, humanitarian and ecological spheres had become a threat to global peace and security. The Rio Declaration on the Environment [3]was the product of the United Nation's Conference on Environment and Development (UNCED). The Conference aimed at devising means of setting environmental disputes while respecting existing international bilateral agreements for disputes settlement generally. The new wave of environmental disputes was occasioned by increase demands for and access to natural resources in the environment.

For instance, the Falkland Law of 1976 was occasioned by rival claims over the ownership of territory and natural resources of the Falkland Islands by Britain and Argentina. It was therefore necessary for the survival of the human environment that there must be ways of balancing natural economic interest with the obligation of nations under multilateral and bilateral treaties.

International Environmental law generally suffers from the same problem confronting international law generally, i.e. whether any law that does not possess the means of coercion can rightly be regarded as law. It is however appropriate to view international environmental law from the viewpoint of the statist definition as the rule of law biodiversity upon nation states as a result of having emanated from their freewill and is expressed in conventions, treaties or usages. The attitude to regulation of the environment by the global community is ridden with politics. The question of what attitude to adopt in regulating global environmental of the environment is not a settled one because the issue of the North-South dichotomy will likely influence the way people believe to be

[1] Email address: tedama7@yahoo.com
[2] section 41 of the FEPA Act, Cap F 10, LFN,2004
[3] This was the product of the United Nation's Conference on the Environment held in Rio D' Janeiro between 3rd to 4th June, 1992

the proper regulated manner for the global environment. For developing countries of the world view economic development as paramount and environmental regulating system.

Three ways have been suggested out of the problem. The first envisions incremental change approach which assumes that global environmental challenges can be met within the parameters of existing global political institutions and diplomatic practice. In other words no specified radical agreements are needed to meet global environmental challenges.

The second approach is the global partnership approach. The major thrust of this approach is the reasoning that global environmental challenges can be met where the developed countries assist the developing ones economically in the fulfillment of global environmental targets.[1] The developed countries have criticized this method since it is at a cost to them.

Janet Porter and Gerald Brown have however contended that criticizing the global partnership approach is like begging the question. This is because the developed nations cannot solve environmental problems without the co-operating of the developing nations. Similarly, the developing countries cannot pursue the goals of sustainable development without the collaboration of the industrialized countries.

The third approach suggested for global environmental regulation in the global governance approach. This envisions the establishment of a global environmental legislative body with powers to impose environmental regulations on the nation states within the framework of existing national and international institutions and international law.[2]

This positivist approach entails the establishment of a worldwide system of centralized enforcement and policing as well as the power to invoke economic sanctions against countries violating global environmental regulations. This approach has been criticized for being unwieldy and impracticable especially in the face of the fact that most compliance with international legal regimes is mostly not because of any fear of sanctions but rather as a result of voluntary submission of most national states to international legal framework as a necessity for a peaceful and secured world.

There are various institutional arrangements in place for global environmental security. These can be broadly categorized into three, ie the United Nations (UN) Other International Organizations established by the United Nations Conference on Environment and Development (UNCED) and earlier bilateral agreements, and Regional bodies. The United Nations does not possess any inherent mechanism for dealing with environmental problems probably because environmental problems were not in the front burner at the time it was born. None of its seven specialized organs was created for the purposes of dealing with Environmental problems. It merely made a vague reference to "global neighborliness" in its Charter. However, it has affiliates that are semi-autonomous who have environmental responsibilities. These specialized organs include:

> Food and Agricultural Organization (FAO); World Health Organization (WHO); World Meteorological Organization (WMO); International Maritime Organization (IMO); United Nations Educational Scientific and Cultural Organization (UNESCO); International Atomic Energy Agency (IAEA); United Nations Development Program (UNDP); United Nations Conference on the Environment, and Development (UNCED); The Commission on Sustainable Development (CSD); United Nations Institute for Training and Research (UNITAR); United Nations Conference for Trade and Development (UNCTAD); United Nations Environmental Program (UNEP).

All the above semi-autonomous UN bodies have specialized Agency status with the exception of the (IAEA). In one way or the other, the above agencies play one role or the other in the enhancement of environmental protection at the global level. The UNEP is the most important UN organization with respect to environmental protection and was created by the United Nations General Assembly for the purpose of co-coordinating environmental action and initiatives within the United Nations. Although its activities are directly financed by the mentor States of the United Nations, it has no formal or executed authority but can only use "soft law" instruments for consensus building on environmental issues among member States of the United Nations. The Agency has achieved some success over the years in its mandate but has been criticized for being an inadequate international organization for the protection of the World's environment.

It has been recommended that the program and budgets of all United Nation's Organization should focus on sustainable Development. This means that all the organizations and not just the UNEP should be involved in environmental actions initiatives.

The World Bank Group comprising of the International Bank for Reconstruction and Development (IBRD), the International Development Finance Corporation have also been proactive in the evolution of International Environmental law. The World Bank has been encouraging environmental friend developments through its financial instruments and innovative initiatives. The Global Environmental Facility (GEF),a product

[1] Porter B and Brown J.W. Global Environmental Policies 143, 144-159 (1991)
[2] ibid

of the World Bank has been providing technical and financial assistance to developing countries in carrying on projects that are environmental protection sensitive. The Fund was established in 1990 and became restructured on a permanent basis in 1994 and has been acknowledged as a potential source of green funds for Agenda 21, the United Nation's Framework Convention on Climate Change (Climate Change Convertor) and the Convention on Biological Diversity (Biodiversity Convention).

The International Court of Justice (ICJ) at the Hague in the exercise of its jurisdiction as the principal judicial organ of the United Nation's, has an environmental Chamber [1] through which environmental disputes [2] are addressed. The International Law Commission in the course of the fulfillment of its mandate for the codification and development of International law has also influenced International Environmental Law. It was the establishment of the seven man member Environmental Chamber that pressured Australia into an out of court settlement in the case of *Naura v. Australia*,[3] over certain phosphate land in Naura.

Other regional organizations also exist which have been actively involved in the development of international environmental law. These include the European Union (EU); the European Economic Community (EEC); the Organization for Economic Co-operation and Development (OECD), the Council of Europe, the South Pacific Regional Organization, the Organization of American States (OAS) and the African Union (AU).

The European Union has been in the forefront as the most effective regional organization in the area of International Environmental Law. The EU has an environmental jurisdiction which it exercises through its law making organs such as the European parliament and its law interpreting and enforcement agencies. It also has a court that operates a compulsory jurisdiction. Apart from the formal regional organizations, there are also specific bodies set up in the form of institutional arrangements for the implementation of treaties. Some of these institutional bodies are ad hoc conferences while some have more permanent institutional structures. There are for instance the sporadic conferences of the parties under the 1986 Vienna Convention for the Protection of the Ozone Layer.

There is also the regular meeting of the parties under the Montreal Protocol on Substances that Deplete the Ozone Layer and the 1974 Paris Convention for the Prevention of Marine Pollution from Land Based Sources which require regular meetings of the Paris Commission.

The greatest limitation of these regional bodies in the advancement of international environmental law is that they are restricted to their regions of operation and some of the lofty environmental objectives they aim to achieve may be viewed with suspicion by other regions for either being too advanced for their region or economically disadvantageous to them. For example, a country like Nigeria that depends on crude oil exportation for over 80 percent of its foreign exchange earnings may view environmental regulations prescribed by the European Union which tends to limit crude oil production with suspicion no matter how important such prescription may be for sustainable development.

There are certain challenges to the enforcement of international environmental law. This has to do with whether or not a State has been able to fulfill its environmental obligations as recognized under customary international law or as codified in an international treaty obligation or declaration. The fulfillment of a State's environmental obligation begins with the adoption of a national enabling legislation and programmes to ensure compliance with such adopted legislation within its sovereign territory. It will also include the fulfillment of necessary obligations to the appropriate international institutions by for instance making a report to the international institution on the steps taken to give effect to the obligations of such a nation State.

Thus, there may be many international agreements without a corresponding number of ratifications. Many of the developing countries may not want to be signatories to international agreements where there are no incentives for them to sign up such agreements.

Again, there may be no incentives for compliance even after ratification. Thus, ratification may be one thing while compliance is a different kettle of fish. Monitoring compliance is also not easy. It has also been pointed out that the rule of unanimous consent makes it possible for a single nation to resist the development of a common position and demand concessions as the price for securing its consent.[4]

This situation renders the existing technologies for fashioning new instruments of international law incapable of meeting with the challenges of global environmental problems. There are no mechanisms for the enforcement of political remedies. However, international treaties have provisions which allow private individuals to prosecute claims anchored on the violation of treaty obligation within national courts.[5]

The Nigerian case of *Fawehmni V Abacha*[6] was anchored on the violation of the African Charter on

[1] The Chamber was established by Communiqué 93/20 issued by the World Court on July 19, 1993
[2] B.H Weston "Nuclear Weapon and the World Court: Antiquity's Consensus". 7 *Transnational and Contemporary Problems* ,1997 , p.371
[3] ICJ Communiqué, 93/20
[4] ibid
[5] op. cit
[6] (2000) 6NWLR (pt.660) 228

Human and Peoples Rights to which Nigeria is signatory. Another example is Article III of the International Convention on Civil Liability for Oil Pollution Damage. There are however, common judicial remedies pursued before International Courts or Tribunals through Inter-State litigation based on International tort law or on the principles of State responsibility. Mention must also be made of the arbitral jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID) which is operated as an agency of the United Nations. This centre has the jurisdiction to settle investment disputes between the national of a member State that has ratified the Convention setting up the centre and a State party to the Convention.

1.2 International Law and Oil and Gas Pollution

Oil and gas pollution is regulated at the global level by customary international law and international agreements. In *Chorzow Factory (Indemnity) case,*[1] the ICJ held that the obligation to restore the environment and make reparation as well restitute and compensate victims of oil pollution is a cardinal principle of international law. Again in *Kuwait v. Iran*,[2] The United Nation's Compensation Commission per its "F4" panel held that environmental loss of a country occasioned by the act of another country was compensable if it can be shown that the loss was directly due to that other country's action.

Other principles of international law applicable in international environmental disputes in the oil and gas sector include the precautionary principle of sustainable development, the source principle, the principle of common but differentiated responsibility, the principle of international and inter generational equity, environmental procedural rights, common concern of human kind, common heritage and the principle of stakeholder's participation and partnership, the principle of conducting a comprehensive environmental impact assessment and the duty to warn other states promptly about environmental emergencies and the environmental damages to which they may be exposed.

There are also several treaties at the global level that are relevant to oil and gas pollution. These among others include: the international convention on the prevention of pollution of the sea by Oil, (OILPOL), 1954 as amended in 1962; the international convention on oil pollution preparedness, Response and co-operation (OPRC), 1990, International Convention on the Establishment of an International Fund for Compensation For Oil Pollution Damages (Fund convention), 1971, International Convention for the Prevention of Marine Pollution by the Dumping of wastes and other matters (London Convention) 1972; e.t.c

2.1 International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) 1954 as amended in 1962.

The Convention aims at preventing the pollution of the sea by discharges of oil from ships and other vessels and has been domesticated in Nigeria as the Oil in Navigable Waters Act. The Convention prohibits the discharge of oil from ships and other water transportation systems [3]except for securing the safety of the ship, or cargo, saving life at sea, or the escape of oil or any oil mixture as a result of damage due to unavoidable leakage.[4]

The Convention was further modified by the amendments adopted by the Sixth Assembly of the Inter Governmental Maritime Consultative Organization which took place on October 21, 1969.[5] The amendment took effect on 20th January, 1978.

2.2 The Continental Shelf Convention of 1958

This treaty came into force to regulate the use of the continental shelf by members of the international community. It was ratified by Nigeria in 1964. The background to this treaty was the declaration by the American President, Harry Truman in 1945 that the continental shelf contiguous to the United States belonged to it and was not considered by it as international waters.[6] The Convention enjoins the coastal state laying claim to a continental shelf, which has been defined as the seaward area of a coastal sate up to a depth of 200 metres, to take measures to protect the living resources of the sea from harmful agents. Petroleum activities off shore may actually harm the living resources of the sea if carried on in an unregulated manner. Apart from this inference, the convention is scanty on the prevention and control of oil and gas pollution in the continental shelf area.

2.3Convention on the Prevention of Marine Pollution and Dumping of Wastes and Other Matters, 1992.

The Convention was embarked on to prohibit the use of the sea as a dumping ground for wastes and other allied matters. This is to prevent the sea from becoming non-navigable. The Convention requires each party to designate an appropriate authority in its territory for the issuance of permits, keeping of records and the

[1] P.C.I.J. (Ser. A) No. 17 at 29
[2] The UNCC is a quasi judicial body established after Gulf war of 1990-1991
[3] article III of the OilPol Convention, 1954
[4] article IV *ibid*
[5] Resolution A. 175 (vi) Int. Gov. Mavi Assembly
[6] article I of the Convention.

monitoring of the condition of the sea to ensure that it is dumping and pollution free.[1]

The Convention encourages parties to collaborate in research and training of personnel, supplying of equipment for research and monitoring of wastes and their disposal.[2] The parties to the convention pledged a common commitment to the protection of the marine environment against pollution caused "inter alia" by hydrocarbons, including oil and its wastes.

2.4 Convention for the Prevention of Marine Pollution by Dumping from Ship and Aircraft, 1972.

The Convention classified wastes into those that should not be dumped at sea as well as the areas of the sea not permissible for the dumping of any waste. The Convention further provides for methods of dumping of approved wastes so as not to pollute the sea irreparably, endanger the navigation of the sea by ships as well as infringe the biodiversity of the sea. The convention makes it unlawful for any party to it to violate any of its provision.

2.5 Convention for the Prevention of Marine Pollution from Land Based Sources (The Paris Convention), 1974.

The major object of this Convention is to encourage parties to discourage discharges of oil into the marine environment from land based sources. It also aims at encouraging parties to number the toxicity level of substances discharged into the marine environment from off shore installations and platforms.

2.6 Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Costal African Region, 1981.

This is a regional treaty which aims at protecting the marine environment of the costal zones and related internal waters that are in the West and Central African Region. The Convention aims at dealing with pollution emergencies in the convention area and promoting the exchange of data and other scientific information and guidelines regarding environment impact assessment for their developmental projects.

Furthermore, the convention establishes rules for the compensation for pollution damage in the convention area. It further provides for co-operation by the contracting states in the protection of their respective coastlines from the threat and effect of pollution as a result of marine emergencies such as the spill of oil from ships and other oil installations.

2.7 United Nations Convention on the Law of the Sea (UNCLOS), 1982.

This Convention came into force in 1974 and was ratified by Nigeria in 1984. Member states of the United Nations under the convention have an obligation to protect the environment. The convention is a codification of the customary international law norm which imposes an obligation on all United Nation members not to degrade the environment.[3]

The Convention recognizes the right of members to exploit the natural resources of the sea subject however to the obligation not to degrade the environment.[4] The Convention requires members to take individually or jointly all measures using the best practicable means at their disposal to reduce, prevent and control the pollution of the marine environment.[5] States are required under the convention to adopt laws to prevent, minimize and control pollution of the marine environment from land based sources including estuaries, rivers, pipelines, and other structures taking into account internationally agreed rules and standards.[6]

States are also required under the convention to adopt and enforce laws and measures necessary for the reduction, prevention and control of marine pollution.[7] The Convention has been described as the strongest comprehensive environmental treaty now in existence or likely to emerge for quite sometime and can be the foundation of a constitution for the oceans.[8]

The greatest challenge currently facing the convention is the unwillingness of developing countries to enact more exacting measures on marine pollution that are likely to clash with their quest for unbridled exploitation of natural resources for development: Nevertheless, UNCLOS is of great relevance to oil and gas pollution in view of the massive off shore activities going on in the sector.

[1] article 8 of the Dumping Convention
[2] article 9 *ibid*
[3] article 9 *ibid*
[4] article 193 *ibid*
[5] article 194 *ibid*
[6] article 197 *ibid*
[7] article 207 and 213 *ibid*
[8] A.E.Boyle, "Marine Pollution under the Law of the Sea Convention" 79 A.M.J Int'L Vol. 79 pp.342-349

2.8 International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention), 1996.

The legal regime of this Convention which came into force in 1972 was developed by the International Maritime Organization (IMO). The Convention entered into force on 30th May, 1996. The Civil Liability Convention laid down a regime of strict liability by ship owners for oil pollution damage subject to insurable limits based on the tonnage of the ship.

Under the Convention, a ship owner shall be liable for any pollution damage caused by the ship unless he is able to show that the incident was caused by war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable or irresistible character or the act or omission of a third party done with an intent to cause damage or was caused by government negligence or other authority responsible for navigational aids.[1] Under this article, no claim can be brought against the servants, agents, or independent contractors of the ship owner except it can be shown that the damage occurred through the deliberate intentional or recklessly negligent conduct of such servant, agent or independent contractor.

The Convention permits a ship owner to limit his liability to 4,510,00 units of account for a ship not exceeding 5000 tons and 631 unit of account for each additional tonnage for a ship that is more than 5000 tonnes.[2] To qualify for this limitation of liability, a ship owner must deposit the total sum representing the limit of his liability with the court or any competent authority in any of the contracting states where an action for damages for oil pollution is brought under Article IX of the convention. In the event of success of claims emanating from an incident, it shall be distributed among the claimants in proportion to the amount of their established claims.[3] A person who pays compensation outside the fund is entitled to a refund to the tune of the amount that would have been paid from the deposited funds.[4]

The aggregate amount of compensation to be paid by a ship owner shall not however exceed 89,700,000 units of account except that liability cannot however be limited if it can be shown that the pollution damage or loss resulted from the ship owner's own act committed with an intent to cause damage or recklessly with knowledge that such damage will likely occur. [5]

A ship owner is exempted from liability once he has constituted a fund as in Article V and the claimant has access to the court whore the fund is kept.[6] The Convention makes it mandatory for all ships of contracting states carrying more than 200,000 tons of oil to be covered by insurance or other financial security in the sums fixed by applying the limits of liability prescribed in Article V(1) to cover the liability for pollution damage under the convention,[7] and a certificate of compliance shall be issued by a contracting state in case of ship registered by it or by any contracting state in case of a ship registered in a non-contracting state.[8]

The contracting states must put in place laws to enforce compliance with the insurance requirements.[9] Where a ship is directly owned by a contracting state, it must issue to such a ship a certificate stating that such a ship is owned by the government and that liability is covered within the limits prescribed in Article V.[10] Actions under the convention are brought in courts of contracting states where a damage occurred or is threatening to occur including damages or threat of damage in the territorial waters of such states and contracting state are to ensure that their national courts have the jurisdiction to entertain such cases and where a fund has been constituted in a court of contracting state in line with Article V, such a court shall have exclusive jurisdiction over the case.[11] The right to compensation under the convention shall lapse after three years from the date of the pollution incident or not later than six years in respect of other matters.[12]

Any judgment given by the court of a contracting state in-respect of matters covered by the convention is enforceable in all contracting states and shall not be subject to review in any contracting state except for formalities for enforcement of foreign judgment unless it is shown that such a judgment was obtained by fraud or that the defendant was not given fair hearing.[13] Warships and state owned ships used for non-commercial purposes are excluded from the application of the convention.[14] However ships owned by the government and

[1] article III of the Civil Liability Convention
[2] article V *ibid*
[3] article V(ii) *ibid*
[4] article V (5) (b) *ibid*
[5] article V(2) *ibid*
[6] article VI *ibid*
[7] article VII(1) *ibid*
[8] article VII (2) *ibid*
[9] article VII *ibid*
[10] article VII(12) *ibid*
[11] article IX *ibid*
[12] article X *ibid*
[13] *ibid*
[14] article XI *ibid*

used for commercial purposes are within the force of the convention and are deemed to have waived all pleas of sovereign immunity in respect of actions in connection with such ships.[1]

The Convention supersedes all other conventions in respect of its subject matter concerning contracting states but shall not affect the obligations of contracting states to non-contracting states even over the same subject matter.[2] This convention is intricately related to the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention), 1971.

The Convention is limited to providing compensation for oil pollution damage caused by sea going vessels carrying oil as its major cargo. It does not expressly provide for environmental restoration. Second, natural gas pollution is excluded from the convention's definition of oil pollution. Furthermore, the convention did not target oil pollution from on shore facilities or of shore facilities other than ships. It is suggested that the convention's jurisdiction should be expanded to include oil pollution on land and gas related pollution. Nevertheless, it remains the boldest international step to enforce compensation for oil damage by sea going vessels.

2.9 International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (The Fund Convention)

This Fund was set up to meet the compensation claims of people who have been unable to receive adequate compensation under the civil liability convention. The Fund shall apply to cases of pollution damage in the territory, territorial waters and exclusive economic zone of all contracting states that shall also recognize the Director of the fund.[3] The Fund shall not incur liability where pollution damage is due to an act of war, hostilities or insurrection or was caused by oil which escaped or is discharged from a warship or other ships being used for non-commercial government purposes.[4]

The fund is also exonerated from paying compensation if pollution damage did not result from incident from one or more ships [5] or if damage resulted from the act or negligence of the party who suffers the damage.[6] Apart from preventive measures, the same exemptions from liability available to a ship owner under Article III, paragraph 3 of the Civil Liability Convention is also applicable to the fund.[7] The aggregate amount payable by the fund shall not exceed 205,000,000 units of accounts as in Article 3 of the Liability Convention[8] and shall not exceed 203,000,000 in the case of a natural phenomenon of exceptional and inevitable characters.[9]

Where the parties to the convention whose nationals have received oil that is equal to or in excess of 600 million tons, compensation for any one incident or natural phenomenon shall be 300,740,000 units of accounts.[10] Claimants shall be paid on pro rata basis where their established claims exceed the maximum payable by the fund and claims shall be paid in exceptional cases even where the ship owner fails to constitute a fund as provided for under the Civil Liability Convention.[11]

The limitation period for claims under the Fund Convention is same as under the Civil Liability Convention [12]and the same provisions made for proceedings under the Civil Liability Convention are applicable under this convention.[13] The fund shall not be bound by the judgments in proceedings in which it was not made a party except it can be shown that it was put on notice by the parties. Judgments given under the convention are enforceable in the state of origin of the liable party without any review as provided for under Article X of the CLC of 1992.[14] The fund shall acquire rights of subrogation over the entitlement of claimants under the 1992 CLC after paying compensation to such claimants and a contracting state or its agency which has paid compensation to a claimant shall also acquire rights of subrogation over claimant's entitlement under the fund.[15] A protocol of 2003 provides for supplementary compensation to a limit of 750 million units of accounts for any established claim that is in excess of the limit laid down in Article 4, paragraph 4 of the Fund Convention.[16]

The Fund Convention failed to provide for compensation for gas flaring and oil pollution damage from

[1] article XII *ibid*
[2] article XII *ibid*
[3] article 2(2) of the Fund Convention
[4] article 4(2) (a) *ibid*
[5] **a**rticle 4(2) (b) *ibid*
[6] article 4(3) *ibid*
[7] *ibid*
[8] *ibid*
[9] article 4 (4) (4) (a) Fund Convention
[10] article 4 (4) © *ibid*
[11] article 4 (b) *ibid*
[12] *ibid*
[13] article 6 *ibid*
[14] article 7(5) (b) *ibid*
[15] article 8 *ibid*
[16] article 4 of the 2003 Protocol to the Fund Convention.

spills from on shore facilities and platforms/fixed oil installation at sea. It is thought that the ambit of the convention should be expanded to include those other sources of oil pollution damage. Oil pollution from vessels not carrying oil should also be included in the application of the convention.

2.10 International Convention on Oil Pollution Preparedness Response and Co-operation, (OPRC, 90).

This Convention has been domesticated in Nigeria via the National Oil Spill Detection and Response Agency Act (NOSDRA) .The Convention requires every slip flying the flag of a contracting party to have on board an oil pollution emergency plan according to the International Maritime Organization (IMO) guidelines while off shore operators in a country are to have the same plan in place which are co-ordinate with the National Oil Pollution Emergency Plans and approved by the competent authority of the country. In addition, they are expected to make reports to the State of any discharge of oil.[1]

The state party on receiving such reports are expected to assess the situation and inform all states whose interest may be affected and further information until action to deal with the incident has been concluded or until a joint action has been decided on by the concerned states. In extreme cases, states who are affected by the report may report directly to the International Maritime Organization through established channels.[2]

Every contracting state is expected to set up a National Contingency Plan for combating oil pollution and also a certain minimum level of oil spill fighting equipment depending on the kind of risk such a contracting party is exposed to. [3]Parties to the convention also consent to assist themselves in varied ways and the cost is to be borne accordingly to the rules amended in the annex to the convention.[4] In line with the above, parties are expected to put in place the legal machinery for easing movement of equipment and personnel including aircrafts to deal with incidents.[5] Parties are to continually evaluate within the IMO, the effectiveness of the convention with respect to co-operation and assistance in oil spill incidents.[6]

The provisions of the Convention creates a mandatory impetus for the parties to have in place a National Oil Spill Contingency Plan either by executive policy or by legislation. In Nigeria, the National oil spill contingency plan is provided for under the NOSDRA Act. The Act also provides for installation based oil spill contingency plan. The Environment Guidelines (EGASPIN) issued by the DPR also provides for plant based oil contingency plans for oil operators.

One major drawback of this convention is that it does not have an independent fund for the reimbursement of parties who assist others in dealing with oil spill incidents. It falls back on the Civil Liability and the fund convention whereas the scope of both conventions is limited to ship based oil spills. The OPRC on the other hand deals with response activities in all types of oil spills whether or not they are tanker based. The implication is that the liability and fund conventions may not be able to reimburse funds expended on non ship based oil spill assistance.

It is suggested that the OPRC Convention should establish an independent fund to handle the issue of reimbursement, of funds for oil spill assistance by one contracting state to other contracting states.

2.11 United Nation's Framework Convention on Climate Change (UNFCCC), 1992.

This Convention is targeted at the threat to the human ecosystem posed by climate change. It aims at stabilizing the emission of Green House Gases (GHG) to a level tolerable by the human environment such as to prevent dangerous anthropogenic (Human induced) interference with the climate systems.[7] The major object of the convention is to prevent gas pollution especially that which arises from the emissions of carbon dioxide (CO_2).The parties to the Convention are to take the environment into consideration before embarking on any socio-economic or industrial development so as to minimize the adverse effect of projects on the economy, public health and the quality of the environment.[8] They are to take measures to mitigate or adapt to climate change.[9]

Convention countries are expected to periodically publish their national inventory of anthropogenic emission by sources to as evaluate the effectiveness of measures and policies to minimize and contain such emissions.[10] Financial provisions are made under the convention under the Global Environmental Facility (GEF)

[1] article 4, OPRC Convention, 1990
[2] article 5(2) (3) *ibid*
[3] article 6 *ibid*
[4] article 7 *ibid*
[5] article 7(3) (b) *ibid*
[6] article 8 *ibid*
[7] The Long Title to the UNFCCC, 1992.
[8] article 3, *ibid*
[9] article 3(3) *ibid*
[10] article 4(1) (b) *ibid*

created by the World Bank to assist developing countries with carbon reduction.[1]

The Convention divides parties to it into Annex I and Annex II countries. The Annex I which includes Nigeria consists of developing countries while Annex II Countries are the developed and industrialized countries.[2] More responsibilities for combating climate change under the convention are placed on the Annex II Countries. The Annex II Countries however has the responsibility to fulfill their obligation under the convention by not deliberately engaging in acts that encourage climate change such as gas planning. Nigeria therefore has an obligation under the convention to phase out gas planning.

The Convention was adopted as a world treaty for the protection of the environment at the 1992 United Nation's Conference on the Environment and Development (UNCOED) known as the Earth Summit held at Rio de Janeiro, Brazil. Nigeria ratified the convention in August 1994. The Kyoto Protocol of 1997 set out to expatiate on the provisions of the convention to make for ease of implementation.

2.12 Kyoto Protocol (KP), 1997

The major purpose of this Protocol to the UNFCCC is to set out a schedule for the reduction of GHG emissions by Annex I Countries by at least 5.2% below the 1990 levels over the period 2008 -2012.[3] The protocol requires Annex I Countries to perform the bulk of their emission reduction through their domestic policies. The protocol further developed international options that may be adopted by Annex I Countries beyond their domestic policies in the effort to reduce GHG emission.[4] These options include Emission Trading (ET), Joint Implementation / Fulfillment (JIF), and the Clean Development Mechanism (CDM). Under the CDM initiative which is not mandatory, Annex I Countries can collaborate with Annex II Countries to earn Carbon Credits from the developed Countries for reduction of emission to a certain level within a specified period.[5]

The value of the earned carbon credits is for the Annex II Countries to engage in clearly defined developmental projects in the Annex I countries as compensation for whatever the Annex I countries lost fore the period as a consequence of its carbon reduction efforts for the period. This is because some of the emission reduction efforts are carried out as a cost of certain production activities which are avoided in the effort to reduce GHG emissions.

Nigeria ratified the KP in 2004 but its failure to phase out gas flaring since it became its stated objective casts a lot aspersion on Nigeria's commitment to the tennets of the protocol. It is noteworthy that the United States of America refused to ratify the convention on the ground that it does not make any binding commitment on the developing Countries to reduce emissions while a heavy responsibility is placed on the developed countries towards the reduction of Green House Gas emissions.

It is submitted that this is patriotism upside down because the developed countries with their massive techno industrial infrastructure remain the greatest emitters of Green House Gases. For instance, apart from carbon dioxide emitted via gas flaring in Nigeria, other sources of Green House Gases emissions are limited. This is unlike the situation in the developed world. Further agreements required for the smooth implantation of the KP known as the "Marakesh Rules" were adopted in 2011. The KP has been applauded for giving teeth to the UNFCCC. The Protocol has however been criticized for being complicated and slow in coming.

3.0 Conclusions and Recommendations

The features of the global environment are one and the same and transcend man made national boundaries. This is why the world's environment has become regarded as a common resource. As a result of the exploitation of oil and gas resources both on shore and off shore, pollution usually occur in such a way as to affect shared water and air resources and thus become a concern of international law. The beginning of global concern for the environment started with the Stockholm Conference on the Human Environment of 1972. It became necessary to balance national economic interest with the obligation of nations under multilateral and bilateral treaties toward the survival of the global environment.

The three main bodies involved in global environmental regulation are the United Nations, other international institutions established under the United Nations Conference on the Environment and Development (UNCED) and regional bodies. The United Nations has no specialized organ for dealing with environmental problems except the vague reference to "global neighborliness" in its charter. It is its semi-autonomous affiliates such as the Food and Agricultural Organization (FAO), World Meteorological Organization (WMO), International Maritime Organization (IMO), United Nations Environmental Program (UNEP), the United Nations Conference on the Environment and Development (UNCED), e.t.c, that are imbued with environmental

[1] article 4(1) (a) *ibid*
[2] article 5 *ibid*
[3] available at http//europa. Eu.mt/comm./environment/climat/Kyoto.htm. (accessed 29th June, 2012)
[4] *ibid*
[5] *ibid*

responsibilities. The World Bank has also been providing financial support for developing countries in carrying out their environmental protection initiatives through the Global Environmental Facility (GEF).

The International Court of Justice (ICJ) at The Hague also has an Environmental Chamber[1] for redressing global / International environmental disputes.[2] It was the Environmental Chamber of the ICJ that pressured Australia into an out of court settlement in the case of Naura v. Australia.[3]

Other Regional Organizations such as the European Union (EU), the European Economic Community (EEC), the African Union (AU), the Organization of American States (OAS), have also all been actively involved in global environmental regulation.

The major problem with international environmental regulation is the lack of convergence of environmental aspirations between the developing countries and the developed ones. For example, a country like Nigeria which depends on crude oil for 80% of its foreign exchange earnings may view with suspicion environmental regulations favoured by the European union which tends to limit its crude oil production no matter how important such a prescription may be for global environmental stability unless of course it is offered some incentives by the developed countries to comply with such a global standard.

Another problem facing global environmental regulation is lack of ratification of extant treaties by members of the United Nations. Until such ratification is made, the non-ratifying country may not be bound by the provisions of such international treaties. In the case of Nigeria, an international treaty already ratified by it does not have the force of law within Nigeria until it is enacted by the National Assembly as an Act. Before the enactment, it will only be of persuasive authority to courts before which matters bordering on such a convention / treaty are brought for adjudication.

[1] The Chamber was established by Communiqué 93/20 issued by the World Court on 18th July, 1993
[2] B.H Weston, "Nuclear Weapon and the World Court: Antiquity's Consensus" 7 Transnational and Contemporary Problems, 1997, p. 371
[3] ICJ Communiqué 93/20

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