

**INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTION OF THE MARINE ENVIRONMENT: THE WAY FORWARD FOR NIGERIA\***

**Abstract**

*The birth of international environmental law as a distinct branch of international law has been a fairly recent one. It is generally believed that it came to its present prominence since the Stockholm Conference of 1972, when the famous Stockholm Declaration on the Human Environment was adopted. Needless to say, however, this does not mean that there had been no rules of international law in the field of environment. A marine area covers around 71% of the earth's surface, although most of the ocean's depth remains unexplored. It is the habitat of a significant part of the world's biodiversity that plays a key role in global climate change. It is globally recognized that marine biodiversity constituted a fundamental component of life in the oceans and on the earth. In order to effectively secure the marine environment, treaties have been enacted to regulate man's activities in the ocean. It is against this backdrop that this paper seeks to appraise international legal framework for the protection of the marine environment. The study appraises the effectiveness of the international legal framework on the protection of the marine environment in Nigeria. The doctrinal research method is adopted as both the primary and secondary sources of law were relied upon. This paper finds that sufficient legal frameworks exist for the protection of the marine environment but the enforcement mechanism is a challenge as most of these treaties are yet to be domesticated in Nigeria. This paper recommends among others that Ecological funds should be strictly monitored and used to remediate or restore damaged environment to its status quo ante as obtainable in civilized economies.*

**Keywords:** Marine Environment, International Law, Protection, Nigeria

**1. Introduction**

Efforts have been made in the past and are still being made in a bid to address international environmental issues. While international efforts aimed at combating the pollution of the marine environment began in the 1920s, the first conference was held in Washington in 1928. It sought to establish an international convention that prevents pollution of navigable waters. In 1935, the League of Nations made great efforts to convince some governments of the necessity of fighting marine pollution through executing international conventions protecting the marine environment from oil pollution. However, these early international efforts were unsuccessful. The efforts of the League of Nations in 1935 did not achieve any progress to execute any convention. As for the Washington Convention of 1928, no nation ratified it. Nevertheless, these conferences paved the way later to execute several distinguished international conventions to protect the marine environment. It is obvious that individual States could no longer contend with these environmental problems alone without a healthy and coherent cooperation amongst each other, hence the reason for the evolution of international legal instruments for the protection of the global environment from degradation. This work examines some of the existing international environmental legal instruments, criticizes their adequacy or inadequacy and makes recommendations for their effectiveness.

**2. Delineating the Legal Framework**

**United Nation Convention on the Law of the Sea (UNCLOS) 1982**

The UNCLOS III of 1982,<sup>1</sup> which is described as the Constitution of the marine environment due to its comprehensive nature, represents an attempt to codify International Law of the Ocean Environment. In other words, the Convention lays down the regime of law and order in the world maritime environment, establishing rules governing all uses of the sea and their resources and also providing framework for further development of specific areas of marine protection laws when the need arises. The 1982 UNCLOS was signed on 10<sup>th</sup> December, 1982 at Montego Bay, Jamaica<sup>2</sup> and came into force on 16<sup>th</sup> November, 1994 after ratification by the 60 requisite countries; by early 21<sup>st</sup> century over 150 countries of the world have ratified it. The sole purpose of the Convention is for the protection and conservation of the marine environment. It deals with the control of pollution of the marine environment and protection of marine biodiversity. It delineates Four (4) zones, that is,

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<sup>1</sup> UNCLOS (n16) art 12.

<sup>2</sup> Ibid

the Territorial Sea, Exclusive Economic Zone (EEZ), the Continental Shelf and the High Sea with different regimes for the protection and conservation of its marine resources.<sup>3</sup> The Convention recognizes the sovereign rights of States to their territorial waters which extend to 12 Nautical miles maximum (22 km) beyond its coast though foreign vessels are granted the right of innocent passage through this zone. It is important to note that passage is viewed as innocent as long as a ship refrains from engaging in certain prohibited activities; including; weapons testing, spying, smuggling, serious pollution, Fishing or scientific research etc.<sup>4</sup> One of the main achievements of the UNCLOS III is the provision of legal order for the usage of the marine environment. For the purpose of clarity, it is important to reiterate that environment as intermittently used here relates to sea or ocean navigation environments. Marine life refers to plants, animals, and other organisms that live in the water of the sea or ocean or the blackish water of coastal estuaries.<sup>5</sup> It also referred to all the living things that are found in the sea.<sup>6</sup> Being the first codification of the soft law principles on marine pollution on the Human Environment as exposed by the Stockholm conference 1972,<sup>7</sup> majority of its provisions dealing on protection and preservation of the marine environment can be found in Part XII of The Law of the Sea Convention 1982, while other can also be seen in pockets of other extant treaties and conventions.

#### **International Convention on Safety of Life at Sea 1974 and its Protocols of 1978 and 1988 (SOLAS)**

The SOLAS Convention was originally adopted in 1914 following the sinking of the *Titanic*, which subsequent versions being adopted in 1929, 1948 and 1960.<sup>8</sup> The 1974 Convention entered into force in May 1980 and, at June 2010, had 159 Contracting Parties. SOLAS 1974, together with its 1978 and 1988 Protocols, was developed specifically so that it could be kept up to date in light of new technological developments, and uses a system of ‘tacit acceptance’. Under this system, any amendments will automatically enter into force by a specified date unless sufficient objections have been received from an agreed number of states to prevent this from occurring. Amendments to SOLAS can come from meetings of the Maritime Safety Committee or following a Conference of Contracting Governments of the International Maritime Organisation. Amendments normally come into force in as little as 24 months from the original proposal being circulated to all Contracting Governments to entry into force. However, this timeframe can be accelerated to 18 months in exceptional circumstances such as in the example of a 1988 Amendment of April 1988 which entered into force in October 1989 and which came about as a result of the sinking of the car ferry *Herald of Free Enterprise* in March 1987. In this incident, which resulted in the loss of 193 lives, the car ferry capsized while leaving its berth in Zeebrugge harbour in Belgium as a result of its cargo loading doors not being correctly closed. The 1988 Amendment included measures to improve monitoring of doors and cargo areas to ensure that these were correctly closed and made water-tight and also for improvements in emergency lighting to aid evacuation of a vessel. Five-yearly surveys of passenger vessels were also introduced to ensure that such vessels remained stable, particularly if there had been any change in weight or stability in the intervening period. SOLAS is designed to ensure the safety of vessels, through a system of certification and inspection. Vessels are required to meet minimum standards in the areas of construction, equipment on board and in their operations. Ships are registered to sail under the flag of a specific state (flag state) but can be inspected by other states if there are grounds to believe that a ship is not meeting the requirements of SOLAS. Customarily, a state which controls the territorial waters through which a ship is sailing is known as a Coastal State while a state into whose port a vessel calls is known as a Port State.

#### **International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL Convention) 1954<sup>9</sup>**

This convention was subsequently amended in 1962, 1969 and 1971.<sup>10</sup> It basically deals with Intentional discharge of oil, lubricating oil, fuel, diesel oil, and any other kinds of oil into the sea environment.<sup>11</sup> This treaty convention penalizes intentional discharge of oil into the marine environment. But there was no mention of what happens when such discharge was not intentional or accidentally discharge. The aim of this treaty is to protect

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<sup>3</sup>United Nations Convention on Law of the Sea by International Maritime Organization. Available at <<http://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawof-the-sea.aspx>> accessed 3 March 2018.

<sup>4</sup> UNCLOS (n16) art 2.

<sup>5</sup>Marine life. Available at <<http://www.en.m.wikipedia.org/wkik/partialmarine-life>> accessed 1 April 2021.

<sup>6</sup>H Collins, Collins English Dictionary. (New York: Harper Collins Publisher 2015) Available at <<https://www.collinsdictionary.com/dictionary/english/marine-life>> accessed 1 April 2020.

<sup>7</sup>Article 138, Stockholm Declaration on the Human Environment Report of the United Nations Stockholm Conference on Human Environment, UN Doc.A/Conf.48/14(1972).

<sup>8</sup>A summary of the SOLAS Convention. Available at

<[https://www.imo.org/Conventions/contents.asp?topic\\_id=257&doc\\_id=647](https://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647)> accessed 17 August 2020.

<sup>9</sup> International Convention for the Protection of Pollution of the Sea by Oil 1954.

<sup>10</sup> P Oguemoh, ‘*The Marine News Letter*’ Vol. 2 Olisa Agbakoba & Associate 1999-2000.

<sup>11</sup> *Ibid.*

the marine environment and preserve marine life and it forms part of the basis upon which ICJ determines matters before it, touching on pollution of the marine environment where parties are signatories to this treaty.

**London Dumping Convention 1972 As Amended In 1978 And 1980.**<sup>12</sup>

The convention which came into force in 1975 is known as the convention on the prevention of marine pollution by dumping of wastes and other materials on the sea environment. The convention prohibited the dumping of hazardous wastes listed in the Convention.<sup>13</sup> In other words, other wastes other than those listed in the extant treaty are to be dumped by grant of permission of the State under its jurisdiction such wastes are to be dumped. Regrettably, this prohibition provided by the convention does not extend to vessels generated wastes or garbage. It is submitted, that a mischievous vessel owner can hide other that cloak to contract and be dumping wastes in the sea environment under pretence that it is vessel generated wastes.

**International Convention on the Prevention of Pollution from Ships 1973 and its Protocol of 1978 (MARPOL 73/78)**

The MARPOL Convention was originally introduced in 1973 and a Protocol was introduced in 1978.<sup>14</sup> These two elements now make up a main international convention which covers prevention of pollution of the marine environment from ships, either as a result of operational activities such as the cleaning out of tanks, or resulting from accidents, and the Convention also contains regulations aimed specifically at reducing pollution from oil platforms and drilling rigs. There were 150 contracting states to MARPOL Annexes I and II by June 2010, representing 99.14% of world tonnage (with smaller numbers for Annexes III to VI which entered into force between 1988 and 2005, and which are discussed later in this section). The Convention which its main aim was to protect the marine environment regrettably did not cover accidental and operational oil pollution. It only covered pollutions, chemicals and packed goods, sewage and garbage. Arguably, the provisions of this convention appears to be an opposite of the provisions of London Dumping convention but whether that was the intendment of the draftsmen of these conventions is left for ICJ's Interpretation on an event of any dispute emanating from them. It also prohibits dumping of plastic wastes<sup>15</sup>. Ship owners are liable for both accidental and intentional discharge of oil and other noxious and hazardous wastes from their ship and the punishment of flouting any provision of the convention is under the laws of the flag State. There are some discharges not punishment under MARPOL; Discharge from land, warships or vessels owned by State parties to the Convention are all exempted.<sup>16</sup>

**International Convention on Civil Liability for Oil Pollution Damages 1969 (As Amended 1971)**<sup>17</sup>

The 1969 convention was not a comprehensive treaty document hence the subsequent amendments. It came as a result of the accidental discharge of massive amount of oil from a vessel known as Torrey Canyon near the cost of England in 1967 similarly, in 1968 there was another incident of breakup of the Oil Tanker Ocean Eagle near Porto Rica, and in 1909 the blow out of our offshore oil drilling operation near Santa Barbara California all gave rise for immediate concerns about oil spills on the western world and its possible effects on the marine environment<sup>18</sup>. This incident led to the convocation of London Conference where countries met to decide on remedies in respect of accidental discharge of oil on the marine environment since it was not covered by the previous treaty. The principle of strict liability was imposed on ship owners for both intentionally or accidental discharge. However, the 1971 subsequent amendment created an international standards, uniform rules and procedures for accessing the liability of offenders. It also specifies remediation measures for victims of the sea pollution from vessels and their owners, establishment of International compensation fund for oil pollution victims, compulsory insurance etc.<sup>19</sup> Article III provides exceptions as to when ship owners cannot be held liable where he provide the following:

- a. The discharge occurred as a result of an act of war, hostilities, civil war insurrection, etc.
- b. Was caused wholly by act of omission done with the intent to cause damage by a third party.
- c. Negligence or wrongful act of any government or authority.
- d. Resulted by an act or omission of the person who suffered the damage or form his negligence.
- e. Caused by a natural phenomenon or contributory liability.
- f. It also provides for joint liability where pollution damage was caused by two ship owners.<sup>20</sup>

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<sup>12</sup> The London Dumping Convention 1972 Amended in 1978 and 1980 Respectively.

<sup>13</sup> *Ibid*.

<sup>14</sup> International Convention for the Prevention of Pollution from Ships 1973 Modified by its 1978 Protocol (Marpol).

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

<sup>17</sup>International Convention on Civil Liability for Oil Pollution Damages 1969 (as Amended in1971).

<sup>18</sup> Omaka.

<sup>19</sup> *Ibid* 319.

<sup>20</sup> *Ibid*

**Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (1971) (Ramsar Convention)**<sup>21</sup>

The Ramsar Convention is an International Treaty for the Protection of Wetlands.<sup>22</sup> Its main objective is to conserve and wise use of the wetland and their flora and fauna by combining far-sighted national policies with coordinated International action<sup>23</sup>. It is a regulatory Instruments to check the adverse enrichment on and loss of wetlands now and in future with respect to its ecological functions and their economic, cultural, scientific and recreational value.<sup>24</sup> The Convention which was subsequently amended in 1982 provides that the contracting parties shall:

1. Designate such lands as wetlands with precise boundaries which have international significance in terms of ecology, botany, limnology or hydrology.<sup>25</sup>
2. Formulate and implement planning to promote the conservation of the wetlands and their wise use.<sup>26</sup>
3. Establish 'nature reserves' on wetlands and to compensate for any loss of wetland resources, increase waterfront population through management, promote training of personal competent in the wetland research ....<sup>27</sup>
4. Consult each other about implementing obligations arising out of the convention especially when wetland extends over territories of more than one contracting parties.<sup>28</sup>

It is against this background that Vembanad Lake in the State of Kerala was declared as a 'Ramsar site in the year 2002 in line with the provisions of Article 2 (1) of this 1971 Convention.'<sup>29</sup>

**Stockholm Declaration 1972**<sup>30</sup>

The 1972 Stockholm Declaration on Human Environment was adopted which was the turning point in the international environmental protection laws. It was the first in history that the world nations under the auspices of United Nations came together to chat a common strategy to combat environmental degradation, pollution and ecological imbalances.<sup>31</sup> Twenty-six principles which were described as the Magna Carta on Human Environment were declared in the conference. The conference opted for a non building declaration of these principles and as observed, it contain the principles embodying the aspirations of the world for a better environment, but in spite of the nonbinding principles of this Declarations, it has been described to be the foundation of modern International environmental protection and conservation law.<sup>32</sup> It is important to note some of the followings provisions: Principle 1 Provides that man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality, that permits a life of dignity and well being and that man bears the solemn responsibility to protect and improve the environment for the present use and the further generation unborn.<sup>33</sup> That the natural resources of the earth which includes the air, water, land, fauna and flora must be safeguarded for both the present and future generations through careful planning and management.<sup>34</sup> That states shall cooperate to develop the International law relating to liability and compensation for the victims of pollution and other environmental damage<sup>35</sup>. Apart from these, the Declaration covered a wild area of protection ranging from renewable and non renewable resources, toxic substances, sea population, use of scientific and technology policies, international cooperation, nuclear weapon etc.<sup>36</sup> The principle that a State has the right to exploit its natural resources within its environmental policy as and responsibility that no damage is caused to other States, received judicial blessings in a number of International courts and tribunals decision. The International Arbitral Tribunal in Span V France<sup>37</sup>, held that France was entitled to exercise her right to divert her International River but must take cognizance of the right of Spain. Similarly decision was equality reached

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<sup>21</sup>Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (1971) (Ramsar Convention).

<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*

<sup>24</sup> Omaka.

<sup>25</sup> art 2.

<sup>26</sup> art 3.

<sup>27</sup> *Ibid*, art 4.

<sup>28</sup> *Ibid*, art 5.

<sup>29</sup>*Vaamika Island (Green Resort) v Union of India* (2013) 8SCC 760; S C Shastri, *Environmental Law* (5<sup>th</sup> edn Eastern Book Company 2015) 459.

<sup>30</sup> Stockholm Declaration 1972.

<sup>31</sup>Shastri, 448.

<sup>32</sup> Shastri

<sup>33</sup> *Ibid*.

<sup>34</sup> *Ibid*.

<sup>35</sup> *Ibid*.

<sup>36</sup> *Ibid*.

<sup>37</sup>*Lac Lanoux case (Spain v France)* (1956) 24 I.L.R. 101.

by International Tribunal in *Trial Smelter* case. Where it was held that Canada is liable and states that no State has the right to use or permit the use of its territory in such manner as to cause injury by fume in or to the territory of another State – US in this situation<sup>38</sup>.

### **Rio Declaration 1992**<sup>39</sup>

In *Mox Plant* case,<sup>40</sup> the Republic of Ireland brought an application against the United Kingdom for failing to co-operate as required by Articles 123 and 97 of the UNCLOS.<sup>41</sup> They argued that the United Kingdom failed in their responsibility to reply communication and request put across to them on time, the International Tribunal on the Law of the Sea (ITLOS) reinstated the duty of States to co-operation as essential to prevent pollution of the environment. The Tribunal ordered exchange of information based on the consequences that might arise from the installation of Mox plant, monitor same and fund the effect of the plant on Irish Sea and adopt appropriate measures to avert pollution resulting from the test.<sup>42</sup> The Declaration also provides for prevention any approach to be taken by States and Environmental Impact Assessment should be undertaken for purposes of activities that are likely to have a detrimental effect on the environment.<sup>43</sup> Disputes are to be resolved according to UN Charter<sup>44</sup> Hence the conference set the scene for international environmental protection activities both at the regional and global level and institutional development up to and beyond the UN Conference on Environment and Development 1992 (UNCED).<sup>45</sup> Developments in this period are of two types those directly related to Stockholm by a proliferation of International environmental originations inclusive efforts by existing institutions to address environmental issue; the development of new sources of international environmental obligations from acts of such organizations and the new environmental norms established by treaty.<sup>46</sup>

### **Convention on International Trade in Endangered Species of Wild Fauna And Flora (CITES) 1973.**<sup>47</sup>

CITES is one of the first global species conservation agreements. It was signed in 1973 event through its creation dates back to 1960s when pressure was mounted on International communities to create the agreement when there was indiscriminate trade in species, which led to a call on international union for the conservation of Nature and Natural Resources to restrict the trade.<sup>48</sup> This is due to expansive international market for animals which has led to a drastic decline of the number animal species including Rhino, leopard, tiger, whale and African Elephant<sup>49</sup>. The CITES which is also known as Washington Convention entered into force after its 10<sup>th</sup> ratification on July 1975 presently 199 countries are signatories and parties to the convention. CITES being an international legal framework for the protection of trade in endangered species and for effective regulation of trade in them gives both producer and consumer countries their share of the joint responsibility and provides the necessary tools for an international cooperation.<sup>50</sup> It categorized plants and animals into three appendices:

1. Endangered species at risk of extinction of which there is outright prohibition of commercial trade on this category.<sup>51</sup>
2. Not threatened with extinction but might suffer a decline if restriction is not imposed on trade on them. In other word, trading on this category of species is regulated by permits and licenses.<sup>52</sup>
3. Species protected in at least on country that is a party to CITES.<sup>53</sup>

It was observed that since after the advent of CITES, no species listed under it have gone extinct in the past four decades. The use of Science based criteria to consider listings is also another landmark achievement of CITES.<sup>54</sup> In 1989 CITES placed a ban on international trading in Ivory which was a major cause of decline in Elephant population. This ban led to the internationally closed of Ivory markets which gave rise to the reduction in

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<sup>38</sup>*Trial Smelter case (USA v Canada)* (1941) 3 Rep. Int'l Arb. Award ('R.I.A.A.') 1905 at 1963; 3 RIAA 1907 (1941).

<sup>39</sup> Rio Declaration 1992.

<sup>40</sup> *Mox Plant Case (Republic of Ireland v United Kingdom)*(2001)ITLOS Case No3, (2003); 126 ILR 310 (2003).

<sup>41</sup> UNCLOS, arts 97 & 123.

<sup>42</sup> *Mox Plant case*.

<sup>43</sup> Rio, Principle 7.

<sup>44</sup> *Ibid*.

<sup>45</sup>*Ibid* principle 26.

<sup>46</sup> Omaka, 65.

<sup>47</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973.

<sup>48</sup> *Ibid*.

<sup>49</sup>B Padgett, 'The African Elephant, African and Cities: The Next Step' (1995) 2(2) *JJGLS* 529.

<sup>50</sup> W Wijnters, 'The Evolution of CITES (9<sup>th</sup> edn. International Council for Game and Wild Life Conservation, 2011)32.

<sup>51</sup> CITES, Appendix 1.

<sup>52</sup> *Ibid* Appendix 2.

<sup>53</sup> *Ibid* Appendix 3.

<sup>54</sup> Shastri, 448.

poaching and improvement in population of elephant. In the same vein in April 30<sup>th</sup> 2016, Kenya President set fire on 105 tons of Elephant tusk and 1 ton of Rhino horn judged to be the largest ever destroyed.<sup>55</sup>

#### **Vienna Convention on the Protection of the Ozone Layer 1985<sup>56</sup>**

This convention was adopted and opened for signatures at Vienna from 22<sup>nd</sup> March, 1985 to 21<sup>st</sup> September 1985.<sup>57</sup> The major objective of this convention is to enjoin parties to co-operate in finding lasting solution to the continued depletion of the ozone layer in other to its adverse effect on human environment. Parties are to co-operate in formulating measures to control activities that cause adverse effect on the ozone layer particularly in developing protocols for such purpose. That state shall adopt appropriate legislative and administrative measures and co-operate to control, limit, reduce and prevent human activities under their jurisdiction...capable of having adverse effect on the ozone layer and that member States shall exchange the legal, scientific and technical information amongst them and provide help in these fields.<sup>58</sup> Adverse changes on the ozone layer was described in the convention as changes in the physical environment which includes climate change that has negative and deleterious effect on human health, environment and the entire ecosystem.<sup>59</sup> Carbon substances, carbon monoxide, carbon dioxide methane), nitrogen substances (nitrous oxide, nitrogen oxide), chlorine substances (CFC, CF, CI, CFCI, CFC) fully halogenated alkenes, partially halogenated alkenes (CFC, CH – CCl, CFC) bromine substances Anthropogenic CBr), hydrogen substances hydrogen H) source – anthropogenic or natural have been identified as the main chemical substances with the potential to modify chemical and physical properties of the ozone layer<sup>60</sup>. It is submitted that the same effect all these chemical substances are capable to cause on the ozone that depletes its layer cause a more deleterious effect on both human and marine life of which if not checked may cause more damages in time to come. But regrettably the convention did not bother to take proactive action in controlling of these substances that deplete the ozone layer.

#### **Montreal Protocol on Substances that Depletes the Ozone Layer 1987<sup>61</sup>**

This protocol is an improvement on the provision of the 1985 Vienna Convention. It reflects a uniform interest of scientists who warned of a growing threat to the ozone layer. It controls production and consumption of specific chemical, which does not occur naturally. The gases are the chlorofluorocarbon, halos, fully halogenated CFCs (HCFCs) methyl bromide and similar chemicals. It provides for platform for specific targets for reduction. The interesting thing about this protocol and in a bid to making it effective, States placed restrictions on import and export of controlled substance with parties which are not parties to the protocol<sup>62</sup>.

It was observed that there have been four amendments to the (protocol); the London, Copenhagen, Montreal and Beijing amendments.<sup>63</sup> The 1990 London amendment provided for a short term multilateral fund as a form of assistance for qualifying developing countries, for non compliance procedures and for adding new chemical to the list of controlled chemicals. The 1992 Copenhagen amendment made the short term multilateral fund permanent and added new chemicals to the list including the methyl bromide and halogenated chlorofluorocarbon gases (HCs). The 1997 Montreal amendment obligated parties to put a license on import and export of new, used, recycled and reclaimed controlled substances and to control trade in banned substances by parties not in compliance with the protocol. The Beijing amendment of 1999 added bromochloromethane to the list of substance.<sup>64</sup> Perhaps, there were great improvements to the principal treaty.

#### **Basel Convention on the Control of Trans Boundary Movement of Hazardous Wastes and the Disposal 1989<sup>65</sup>**

Being one of the most comprehensive global environmental treaty on hazardous and other trans-boundary waste, it was adopt on 22<sup>nd</sup> March 1989 by the conference of plenipotentiaries in Basel, Switzerland but came into force in 1992.<sup>66</sup> This Convention came into place due to outcry by African countries and other 3<sup>rd</sup> world

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<sup>55</sup> *Ibid.*

<sup>56</sup> Vienna Convention for the Protection of the Ozone Layer 1985

<sup>57</sup> T Okonkwo, *The Law of Environmental Liability* (3<sup>rd</sup> edn, Afrique Environmental Development and Education 2014)3.

<sup>58</sup> Vienna Convention for the Protection of the Ozone Layer 1985

<sup>59</sup> United Nations Treaty Collections <http://www.treaties.un.org/pagags/riew.....sre=TREATY&.....no=xxvii-28chapter=27&clang=en> accessed 20 March 2021.

<sup>60</sup> Shastri, 448.

<sup>61</sup> Montreal Protocol on Substances that Depletes the Ozone Layer 1987.

<sup>62</sup> *Ibid*

<sup>63</sup> E B Weiss, and F. C. Brown, *The Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer* (20019) 2 *George Town University Law Journal* <[http://www.Legal.un.org.arl/ha/environmental law.htm](http://www.Legal.un.org.arl/ha/environmental%20law.htm)> accessed 8 April 2021.

<sup>64</sup> *Ibid*

<sup>65</sup> Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and their Disposal 1989.

<sup>66</sup> Okonkwo.

developing States in the 1980s due to incessant deposit of toxic and hazardous waste imported overseas into their sea environment or soil.<sup>67</sup> Recall that one of such incidences that necessitated the convocation of this convention was the Khian sea waste disposal: an incident where a shipload of incinerator ash from Philadelphia in the United State of America dumped half of its load on the beach of Haiti. The Koko incident saga of 1988 is another case in time which may not be erased quickly in the minds of Nigerians. A situation where a ship transported hazardous wastes from Italy to a village called Koko in the present day Delta State of Nigeria and dumped same for a paltry sum of one Hundred Dollars monthly, paid to the local.<sup>68</sup> The main objectives of this convention is to ensure reduced trans-boundary movement of hazardous and other waste, consistent with their environmentally sound and efficient management, and this being conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement.<sup>69</sup> It mandated States to reduce shipping and dumping of dangerous wastes across border to reduce the amount of toxicity generated by those waste in other to protect the environment. It made provisions for many principles with the aim of minimizing the level of generation of hazardous waste from their sources, to prohibit the export of hazardous waste or other waste of parties that have prohibited its imports or not given written consent, and to ensure availability of adequate disposal facilities and no import or export from non party to this convention.<sup>70</sup> It is important to note that there were subsequent amendments to this convention in 1998 and 2019 at the meetings of conference of parties and there is an ongoing arrangement to further amend the Basel Conventions which will be known as Ban Amendment. It was adopted by the decisions of the 3<sup>rd</sup> Meeting of the Conference of Parties,<sup>71</sup> but this subsequent Ban Amendment is yet to enter into force.<sup>72</sup>

### **Cartagena Protocol on Bio Safety 2000<sup>73</sup>**

This is a supplement to the Convention on Biological Diversity of 1992. The main objective is to provide adequate level of protection, safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may constitute adverse effects on the conservation and sustainable use of biological diversity taken into account the risks on human health and environment with focus on trans-boundary movements.<sup>74</sup> This protocol is based on the principles of common but differentiated responsibilities. States are by this protocol under duty to reduce current on developed countries areas on being that historically; they are responsible for the current levels of Greenhouse Gases GHGs in the atmosphere.<sup>75</sup> Comprehensively, the Protocol provides that parties as contained in Annex 1, shall individually or jointly ensure that their aggregate anthropogenic carbon dioxide emission equivalent of the GHGs listed in Annex A do not exceed their assigned amounts, calculated pinlire with their quantified emission limitation and reduction commitments prescribed in Annex B in accordance with the provisions of this articles, with a view of reducing their overall emission of such gases to at least 5% below 1990 levels in the commitment period of 2008-2012.<sup>76</sup> The reduction commitment under Articles 3 of the protocol could be achieved by adopting clean development mechanism (CDM and joint implementation (JI)).<sup>77</sup> CDM and JI are criteria for gas flaring reduction as shown in the cases in Russia, Asian and West Africa sub-region which clearly shows that learning by doing is vital if flaring reduction mechanism arrangement are to become reality or 'mainstream'.<sup>78</sup>

### **Bamako Convention Banning All Form of Toxic Wastes into Africa and the Management of Hazardous Waste within Africa 1991<sup>79</sup>**

This Convention came inform of a response to some inadequate previsions of the Basel Convention. African States are the susceptible and vulnerable victims of trans-boundary movements of hazardous wastes and their

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<sup>67</sup> *Ibid*

<sup>68</sup> Wikipedia, Basel Convention Available at <[www. En.m.wikipedia.org/wiki/basel\\_convention](http://www.En.m.wikipedia.org/wiki/basel_convention)> accessed on 2nd April 2020.

<sup>69</sup> Basel Convention, art 4 (d).

<sup>70</sup> Shastri, 448.

<sup>71</sup> Basel Convention: Text of the Convention available at <[http://www.basel.int./the\\_convention/overview/text\\_to\\_the\\_convention/.../1275/Default.asp](http://www.basel.int./the_convention/overview/text_to_the_convention/.../1275/Default.asp)> accessed 14 December, 2019.

<sup>72</sup> *Ibid*

<sup>73</sup> Cartagena Protocol on Bio Safety 2000.

<sup>74</sup> Shastri, 448.

<sup>75</sup> *Ibid*

<sup>76</sup> Cartagena Protocol, art 3.

<sup>77</sup> *Ibid* arts 6 and 12 respectively.

<sup>78</sup> T Haugland, D Stowell and L Arnaud, Environmental and Planning Law Review (2006) 3(3) *EPLR* 1.

<sup>79</sup> Bamako Convention Banning all Form of Toxic Wastes into Africa and the Management of Hazardous Waste Within Africa 1991.

disposal. These States felt that the Basel Convention did not provide for adequate protection of African environment since it could not encourage an outright ban of hazardous wastes.<sup>80</sup>

This Convention banned dumping of hazardous at the sea and internal water<sup>81</sup>. The convention has thirty articles and 5 Annexes. The scope of hazardous waste provided in this convention covers hazardous waste which have been banned, cancelled or refused registration by the government regulatory authorities or voluntary withdrawn from registration in the country of manufacture for human health or environmental reasons. Parties are also under duty and obligation to inform other parties to this convention of waste not listed amongst the categories of waste in annex 1 of the convention which they have as hazardous in their national laws.<sup>82</sup> The Convention criminalized dumping of hazardous waste in the marine environment when it provide, that all shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous waste into Africa from non contracting parties.<sup>83</sup> It is submitted therefore, that Bamako convention by every ramification is a wild improvement on the provision of Basel convention of which the reasons are not farfetched, other than that, it is the continent that suffers the major hazards of trans-boundary dumping of hazardous wastes and the likes. Khan incident in Haiti and Koko incident in Nigeria are still fresh in memory.

### **African Convention for the Conservation of Nature and Natural Resources 1968<sup>84</sup> and 2003**

This regional treaty for African countries was adopted in 1968 in Algier while the reviewed version was adopted in July 2003 in Maputo.<sup>85</sup> The new amended version of this convention is more comprehensive in its provisions and tends to catch up with the modern realities on environmental and natural resources conservation and protection unlike the previous one that concentrated more on sustainable development.<sup>86</sup> The Convention covered issues bothering on both qualitative and quantitative management of Natural resources ranging from air, soil, water, land and biological resources. It also considered extensively processes that damages or has deleterious effects on natural resources. Even though the 1968 convention fails to provide the institutional structures that would have facilitated the effective implementation of the provisions by parties, its outline was retained.<sup>87</sup> Article 11 of the Convention spells out its three major objectives which are achievement of ecological rational, economic sound and socially acceptable development policies and programs. While Article 9 deals with species and genetic diversity, it compels Parties to eliminate factors that are capable to cause the loss of species, threatened species and those that may be threatened by calling for in situ conservation and ex situ conservation measure.<sup>88</sup>

### **3. Conclusion and Recommendations**

This work has critically examined the various International Conventions on environmental protection. These international instruments have indeed cushioned the negative impact of human activities on the marine environment even though some of its provisions are obsolete and does not match the current realities on ground and are long overdue for review more especially as regards to the enforcement procedure due to its operational difficulties. The International Conventions and Treaties on environmental protection were considered with a view to examining their legal regimes and applicability of same in our country. These laws on environmental degradation which have been applied to prevent and control the degradation appear to have inherent deficiencies which have worked against the aim of the laws. There is no doubt that some of these statutes and conventions made some laudable provisions for securing a healthy environment. However, they failed to address some of the environmental issues bedevilling marine environment Instead they appear to be preventive in nature. That is, prevention of marine pollution or abatement of same. No provision was made for compensation for victims or remediation of the marine environment by the agency from damage that had already occurred to the marine environment either through pollution from industries or from natural causes. The preservation of aquatic life and protection of some of her endangered species is in danger of extinction as a result of over-exploitation; Nigerian laws prohibit indiscriminate killing of fishes in the sea and hunting of wild animals stated in the first Schedule of the endangered species Act. But what are displayed in our markets are fishes of any sizes for sale in

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<sup>80</sup>Barmako Convention *ibid*; L. Widawsky, 'In my Backyard: How Enabling Hazardous Wastes Trade to Developing Nations can Improve the Basel Convention's Ability to Achieve Environmental Justice' (2009) 66(8) *EJIL* 577.

<sup>81</sup> Bamako Convention, art 2.

<sup>82</sup> *Ibid*, art 3.

<sup>83</sup> *Ibid*, art 4(1).

<sup>84</sup>African Convention for the Conservation of Nature and Natural Resources 1968.

<sup>85</sup>IUCN, An Introduction to the African Convention on the Conservation of Nature and Natural Resources (2004) IUCN Environmental Policy and Law Paper No.56.

<sup>86</sup> *Ibid*

<sup>87</sup> *Ibid*

<sup>88</sup> *Ibid*



contradiction of regulation as to size of fishes net. The obvious reason for this act is the lack of enforcement and implementation of our laws by the appropriate authority. Furthermore, some of these laws are archaic especially the penalty sections which cannot in any way deter an intending offender from committing the crime.

It is therefore recommended as follows:

1. That a comprehensive review of the country's existing legislations on marine environmental protection laws should be carried out, especially the penalty section which is now a mockery of the laws. Stringent and heavier penalties capable of deterring a polluter should be considered.
2. That the imposition of fines should be made proportionate to profits made by the polluter company.
3. That our laws should be amended to make provision for the remediation of damaged environment as part of the mandate of NESREA.
4. That ecological funds should be strictly monitored and used to remediate or restore damaged environment to its status quo ante as obtainable in civilized economies.
5. That government should set up special courts that will expeditiously dispense of cases of violation of environmental regulations. The purpose of this court is to ease pressure on the regular court and to ensure that cases are treated with dispatch free from evidential procedural challenges and agonies of evidence in the regular court.