Enhanced Fishing Rights Under The United Nations Law of The Sea Convention 1982: The Challenges Confronting Developing Countries

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ABSTRACT

Before the adoption of the Law of the Sea Convention (LOSC) in 1982, the right of states to fish in the seas was in a remarkable state of flux. States unilaterally and arbitrarily declared for themselves preposterous breadths of the sea as coming under their exclusive fishing jurisdictions. Waters off the coast of developing countries also came under unregulated large scale fishing by the distant water fishing fleets of developed countries, giving rise to resource over-exploitation. The LOSC in a number of ways infused stability and certainty in the fishing rights of states and enhanced the chances for the optimum utilisation of world fisheries. This article examines the various ways the LOSC has stabilised and enhanced fishing rights among states. It argues that although the Convention creates opportunities for the protection and optimal utilisation of fishery resources among developing countries of the world, these countries have yet to take advantage of the Convention opportunities due to numerous challenges, endogenous and exogenous, confronting them.

Keywords: *Fishing rights, fishing zones, seas*

INTRODUCTION

The importance of the sea to mankind cannot be overstated. Comprising $^{3}/_{4}$ or 72% of the surface of the earth[1], it has, for ages, been a means of trade and transportation. In the modern age, the sea has become even more beneficial to mankind as its resources are progressively unbossomed by science and technology. While deep-sea oil exploration has proved a significant source of the energy need of the world[2], and the seas have been found to hold enormous quantities of metals,[3] there are not few countries whose foreign exchange earnings are connected substantially, if not totally, to deep-sea fishing. In fact, of all the

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[1] Essien E. E, *Essays in International Law of the Sea*, Uyo: Golden Educational Publishers, 1994, p. 108; Holmina E., 'Common Heritage of Mankind in the Law of the Sea', 1(2005) *ACTA SOCIETAS TIS MARTENSIS*, P. 187.

[2] Offshore oil production is about 18,600 barrels of oil per day (about 30% of world oil production per day) while offshore gas production accounts for approximately half of the total world gas production. *See*United Nations, 'Oceans: The Source of Life, The United Nations Convention on the Law of the Sea: 20th Anniversary (1982-2002)' <http:///www.un.org/Depts/los/convention_agreements/convention_20years/oceanssourceoflife.pdf> accessed 15 November 2014.

[3] The Icelandic and Norwegian economies depend much on earnings from fisheries. China, Peru and the U.S.A. also earn enormous foreign exchange from fishery resources.

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resources of the sea ever to be exploited by man, fishery resources remain the oldest. As technology developed, the exploitation of the fishery resources of the sea also developed. Technology took fishing from the immediate maritime belts of coastal states to the deep-sea following the manufacture of distance fishing vessels, the introduction of freezing technology, the development of railway networks, sonar, Global Positioning System (GPS), and the discovery of canning methods for the preservation of fish[4].

Given the continuously increasing capacities of states to embark on deep-sea fishing, and considering the foreign exchange earning profiles of fishery resources for the traditional distance fishing countries,[5] it would be natural to expect that states would exhibit tendencies of territoriality over the sea and try to appropriate parts of it for the purpose of exercising exclusivity of fishing rights. They did. History is, therefore, strewn with cases of disagreements over fishing rights between nations, a factor that may have prompted Professor Essien to assert, rather figuratively, that "ever since the Biblical Jonah and the whale, nations have been arguing over fishing rights"[6]. But since the capacities for deep-sea fishing has been and remains disparate among nations, some nations have benefited more from fisheries resources than others. While the developed nations have over the years exploited different parts of the sea with their distance fishing fleets and earned enormous resources there from, the developing ones which lack the technology and technical know-how to do so had watched helplessly from the sidelines.

It was indeed a case of the developed distance fishing countries fishing even in the very backyards of the developing ones to their own benefits, depleting as it were, the fishery resources of the coastal waters of the latter nations. The consequence of this unhealthy state of affairs was a rivalry between the developed nations, who, in furtherance of their economic interests, wanted a narrower territorial sea for coastal nations, and the developing nations, who, for the purpose of preserving the fisheries and other resources of their coastal waters, preferred a wider territorial sea. This state of affairs also left the issue of fisheries jurisdiction of states in a state of kaleidoscopic flux since states arbitrarily declared and appropriated to themselves variegated breadths of fishery zones. It was not until 1982 and through the instrumentality of the United Nations (UN) Convention on the Law of the Sea[7] of that year that certainty and innovatory changes were infused into the regime of fisheries jurisdiction in international law of the sea. The purpose of this paper is therefore to examine the various ways in which fishing rights have been enhanced and stabilised among states under the LOSC, and the challenges confronting developing countries in the maximisation of Convention benefits in this regard.

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[4] Troadec J. P., 'Havesting the Seas', 1 *Fisheries and Aquaculture* <http://www.E5-05-01.pdf> accessed 1 January 2014; Cullis-Suzuki S. and Pauly D., 'Failing the High Seas: A Global Evaluation of Regional Fisheries Management Organizations' 34 (2010) *Marine Policy* 1036.

[5] Iceland, Norway and Japan are examples.

[6] Essien (n 1), p. 12

[7] The Convention was the outcome of the third UN Conference on the Law of the Sea convened in 1973 pursuant to General Assembly Resolution 3067 (XXVIII). The Convention was signed on 10th December, 1982 at Montego Bay, Jamaica and adopted by 130 votes to 4 with 17 abstentions (Hereinafter, "LOSC").

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LAW AND PRACTICE BEFORE 1982

As earlier pointed out in this paper,[8] prior to the adoption of the LOSC the issue of fishing rights and fisheries jurisdiction was in a state of flux as states unilaterally determined and declared the extent of their fisheries jurisdictions. There were no commonly accepted yardsticks for determinations. The developed, distance fishing nations with sophisticated fishing fleets and equipment exploited the fisheries resources off the coasts of the less developed ones, unhindered. To prevent this, the developing coastal nations declared territorial seas wider than the customarily accepted 3 nautical miles. The problem of fishing zones was therefore one of the factors that prompted the International Law Commission (ILC) to prepare a set of rules of international law that would govern the use of the seas. In 1956, the ILC adopted its Report on the Law of the Sea at its Eighth Session. It was upon the report that the General Assembly of the UN convened the First UN Conference on the Law of the Sea. The Conference held from February 24 to April 29, 1958 and produced four separate conventions[9]. The fourth of the four conventions was the Convention on Fishing and Conservation of Living Resources of the High Seas[10]. The Convention focused on fishing and conservation of fisheries. It required coastal states to introduce conservation measures in areas of the high seas adjacent to their territorial seas[11]. The Convention, however, did not grant exclusive fishing rights to coastal states. Aside from this, the critical issue of fishing zones which would have introduced some semblance of limits to the exploitation of fishery resources in the coastal waters of the developing nations was also left unsettled under the Geneva Convention on the Territorial Sea[12].

Like the 1958 UN Conference, the Second UN Conference on the Law of the Sea failed to reach an agreement on the issue of the limit of the territorial sea. The question of fishery zones was thus not resolved by participating States. From 1958, the majority view became that "in the absence of agreement to the contrary, fishing beyond the limit of a lawful territorial sea was open to all states in accordance with 'freedom of fishing' on the high seas"[13]. Various states therefore unilaterally extended their territorial seas while some others did so through bilateral and multilateral agreements. Iceland, for example, unilaterally declared a 12-mile exclusive fishing zone, which was recognised in the *Fisheries Jurisdiction* cases[14]. A survey conducted by the Food and Agricultural Organisation (FAO) in 1967 showed that 33 States including the U.K had unilaterally declared exclusive fishing zones,

[8] *See* INTRODUCTION above.

[9] The 1958 Convention on the Territorial Sea and the Contiguous Zone which entered into force in 1964; The 1958 Convention on the High Seas which entered into force in 1962; The 1958 Convention on Fishing and Conservation of Living Resources of the High Seas that entered into force in 1966; and the 1958 Convention on the Continental Shelf which entered into force in 1964.

[10] The Convention entered into force in 1966.

[11] Arts. 1-4, LOSC

[12] Shaw M. N., *International Law*, 5th edn., Cambridge: University Press, 2003, p. 157; Harris D. J., *Cases and Materials on International Law*, 6th edn, London: Sweet & Maxwell, 2004, P. 467

[13] Harris, ibid.

[14] I.C.J. Rep. 1974, p. 3 (*U.K. v Iceland*); I.C.J. Rep. 1994, p. 175 (*F.R.G v Iceland*). But Iceland's claim of 50-mile exclusive fishing zone was to be illegal.

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mostly for 12 nautical miles[15]. Britain and Norway on November 17, 1960 signed an agreement which would allow them, among other things, to claim exclusive fishing rights in a fishing zone between 6 and 12 miles off their coasts, provided that states whose vessels had been fishing in the outer 6 miles of the fishing zone for five years immediately preceding January 1, 1958 would continue to do so for a period of ten years from October 31, 1960[16]. Based on this agreement, Norway on April 1, 1961 extended her fishing zone from 4 miles to 6 miles and in September of the same year further extended it to 12 miles, allowing, however, British vessels to fish in the outer 6 miles until October 31, 1970.

A similar agreement was signed between Britain and Iceland under which Britain recognised Iceland's 12-mile exclusive fishing zone subject to the right of British vessels to fish in the outer 6 miles till march 11, 1964. In 1962, a similar agreement was also entered into between Norway and the Soviet Union. Since a trend appeared to have emerged among the traditional European fishing states through those agreements, European nations in 1964 adopted the European Fisheries Convention of that year which adopted the arrangements in the 1961 Anglo-Norwegian agreement and others that followed it. The Convention recognised the right of States Parties to fish in the outer 6 miles of the 12-mile fishing zones of other State Parties if such States Parties had been fishing in the zone between January 1, 1953 and December 1, 1962. In the Americas, Canada passed the Territorial Sea and Fishing Zone Act, 1964. Like the European Fisheries Convention, Canada asserted a 12-mile fishing zone, allowing, however, limited fishing rights to the U.S, France, Great Britain, Spain, Portugal, Italy, Norway and Denmark in certain parts of the coast of Canada.[17] The U.S followed suit in 1966 by claiming exclusive fishing rights in a 9-mile zone, additional to her original 3-mile territorial sea. It deserves pointing out that despite the agreements between these European states, and notwithstanding the European Fisheries Convention of 1964, conflicts over fishing rights could still not be held at bay among European coastal states. Iceland, for example, whose chief foreign exchange earner was fishery resources, later unilaterally declared a 50-mile fishing zone and excluded other states from fishing within that limit. This particular declaration was, however, declared illegal by the International Court of Justice (ICJ) in the *Fisheries Jurisdiction* cases.[18] Among the developing states, the trust of legislation and policy was for extended territorial seas for security, political and economic considerations. In that line, Nigeria, for example, in 1967 extended her territorial sea from 3 to 12 nautical miles. In 1971, it was further extended to an expansive 30 nautical miles.[19] Nigeria also enacted the Sea Fisheries Act

[15] *See* FAO, *Limits and Status of the Territorial Sea, Exclusive Economic Zone, Fisheries Conservation Zones and the Continental Shelf*, FAO Legislative Series, No. 8, as revised.

[16] The agreement incorporated the provision of a United States-Canadian proposal at the second 1960 UN Conference on the Law of the Sea. The Conference did not adopt the proposal as it failed by one vote.

[17] Essien (n 1) p.16

[18] *See* note 16 above.

[19] Decree No. 38 of 1971. Notice that the 30-mile Territorial Sea is still contained in section 18 of the Interpretation Act in the interpretation of "territorial waters", but is to be substituted for "twelve nautical miles" under section 3(1)(a) of the Territorial Waters Act.

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of 1971[20] for the regulation of fishing within Nigeria's territorial waters. Under the Act, it is prohibited for any person to operate or navigate any fishing boat for the purpose of fishing or a reefer vessel for the purpose of discharging frozen fish within the territorial waters of Nigeria or its Exclusive Economic Zone (EEZ) unless the boat or reefer vessel has been duly registered and licenced[21]. Also with the objective of conserving and protecting the fishery resources of its coastal waters, Nigeria made the Sea Fisheries (Fishing) Regulations of 1972. The Regulations prohibit vessels other than canoes from fishing within the first five nautical miles of the waters of the Nigerian Continental shelf.[24] With the insistence of the developed coastal states on having exclusive fishing rights over fishing zones declared by themselves and for themselves, and the unrelenting inclination of the developing ones, for varied reasons,[22] to have a wider breadth of territorial sea, a global, comprehensive regime for the exploitation, conservation and management of fishery resources by states became a desideratum.

THE POSITION UNDER LOSC

LOSC in a number ways introduced innovations in the law of the sea aimed at ensuring certainty in the rights of states to use the sea and exploit the resources thereof. As pointed out earlier in this paper, prior to 1982, there was no universally accepted limit of the territorial sea and fishing zone of coastal states. LOSC succeeded in establishing a 12-mile territorial sea measured from baselines for coastal states,[23] putting to rest, the uncertainties that characterised the unilateral, arbitrary declarations by states of preposterous breadths of territorial seas and fishing zones. But the greatest developments under LOSC through which fishing rights have been enhanced and stabilised are to be found in the introduction of the novel Exclusive Economic Zone (EEZ) and its conservatory bent;[24] the concept of Allowable Catch;[25] management of migratory fish species; and provisions on the protection and preservation of the marine environment.[26]

THE EXCLUSIVE ECONOMIC ZONE

Akin to the interest of developing countries to have wide territorial seas for security and economic reasons was their interest to prevent the distant-water fishing vessels of the technologically advanced countries from unrestricted fishing in the waters adjacent to their territorial seas. This part of the sea has proved to be rich in hydrocarbons and fisheries.

[20] Cap S4 Laws of the Federation, 2004(Revised Edition)

[21] Ibid, Section 1.

[22] Essien is of the view, for example, that in the case of Nigeria both fishing interests and the desire to bring more of the oil deposits of the coast within the country actuated the extension of the territorial sea. *See* Essien (n 1) p. 17.

[23] Article 3, LOSC

[24] Ibid arts. 55 and 56

[25] Ibid art. 61(1)

[26] *See* generally Part X11, ibid

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Because developing countries lacked the technology for deep-sea fishing, the developed, technologically advanced countries with the requisite capabilities harvested fisheries in that part of the sea prior to the 1982 Convention. The developing countries, therefore, wanted exclusive fishing rights in those waters adjacent to their territorial seas.

The idea of exclusive fishing zone has been traced to President Truman's twin proclamations of September 28, 1945. The first of the proclamations[27] announced that the United States would regulate fisheries in those areas of the high sea contiguous to her coast. Following this proclamation of an exclusive fishing zone by the U.S., a number of other states made their respective claims of exclusive fishing zones in the waters contiguous to their coasts. This resulted in some states making outrageously expansive claims of up to 2000 miles.[28] The prevailing situation was not helped by the failure of participating states at the First and Second UN Law of the Sea Conferences to reach an agreement on the issue. But the traditional maritime states such as Britain and Japan, who were distant water fishing states baulked at the idea of exclusive fishing zones, preferring rather a 3-mile territorial sea and no exclusive fishing zones at all. This of course was because the establishment of exclusive fishing zones would circumscribe their distance fishing fleets with undesirable economic implications. The U.S. (which was the first to proclaim an exclusive fishing zone) also wanted narrow territorial seas for coastal states in order to preserve the freedom of navigation of her warships in offshore areas of other coastal states. Effort was made by the U.S. during the First and Second Conferences on the Law of the Sea in 1958 and 1960 respectively to achieve that purpose to no avail. When after the 1960 Law of the Sea Conference it became obvious that the developing countries would not accept a diminished territorial sea, the U.S. became disposed to a compromise deal that would ensure its naval freedom in critical areas of the sea.

During the Third UN Conference on the Law of the Sea, the emergent exclusive fishing zone translated to Exclusive Economic Zone (EEZ). The idea of EEZ had been born earlier in 1971 by a Kenyan ambassador, Njenga when he advanced the concept for the first time at the Asian-African Legal Consultative Committee (AALCC) Session in Colombia.[29] The EEZ concept was resource-oriented and was believed by the developing countries to hold the prospects of economic prosperity as it would allow them control of the resources of the waters adjacent to their coasts, particularly fish stocks. A compromise

[27] The other proclamation declared that the sea–bed and subsoil adjacent to the United States territorial sea was within the jurisdiction and control of the United States. This marked the beginning of continental shelf claims by coastal states.

[28] Essien (n 1) p.7

[29] The concept was later in 1992 presented again by Kenya at the Lagos Session of the Committee. The country also submitted a draft article of the concept at the 1972 Geneva Session of the UN Sea-bed Committee. About the same time, Latin American states conceived the idea of "patrimonial sea" which was also resource motivated and complemented the EEZ concept in both form and substance. Venezuela popularised the patrimonial sea concept when in August 1971 it submitted a proposal on the concept to the UN Sea-bed Committee. The concept was later contained in the Santo Domingo Declaration of June 7, 1972 which was approved by ten Central and South American states. *See* Essien (n 1), pp. 22-23. During the third UN Conference, however, the expression "Exclusive Economic Zone" was preferred to "patrimonial sea".

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was struck at the Conference whereby the developing states (some of which had claimed up to 200 miles territorial seas) accepted a narrower 12-mile territorial sea while the developed states conceded to a 200-mile EEZ, provided that the area designated as EEZ would not come under the sovereignty of coastal states. Under article 57 of LOSC an EEZ is established to the extent of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. A significant aspect of the EEZ under LOSC is the sovereign rights given to coastal states for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the waters of that zone and of the sea-bed and sub-soil thereof.[30] In accordance with the deal struck at the Conference, while coastal states are to exercise sovereign rights in the EEZ, all other states, whether coastal or landlocked are to enjoy the freedoms of navigation and over-flight and of the laying of submarine cables and pipelines.[31]

The extent to which this provision of LOSC has been beneficial to coastal States is ascertainable from the huge fisheries earnings from that sea zone for the traditional fishing nations of the world such as Iceland[32] and Norway.[33] On the part of the developing nations, it has drastically reduced the incidences of over-fishing and fish stock depletion in their coastal waters by the developed, distance fishing nations and offered opportunities for the redistribution of fishery resources and a new international economic order.[34] Following the adoption of LOSC, between 1982 and 2002, the net exports of fisheries commodities by developing countries (i.e. deducting their imports from the total value of their exports) increased from US$4.0 billion to $17.4 billion.[35]

Another respect in which the EEZ concept has proved invaluable to coastal states, particularly those of the developing world, is in the effort made under the Convention to redistribute fisheries resources.[36] The redistribution was aimed, largely, to be from developed distant water fishing nations to developing coastal states off whose coasts the former used to carry out large-scale fishing. As observed by Wikjman back in 1982, a total of about 1.2 billion dollars would be redistributed to coastal states as fisheries resources under LOSC.[37] Coastal states are accordingly in a position to make the best of fisheries in that

[30] Art.57 (1) (9), LOSC

[31] Ibid Art. 58 (1),

[32] 75% of Iceland's export comprises fish products. Her annual fish harvest in recent years has fluctuated around 1.7 million tones, with a landed value of US$ 8000 million. *See* Runolfsson B., 'ITSQs in ICELANDIC FISHERIES: A Rights Based Approach to Fisheries Management', Paper presented at a workshop on The Definition and Allocation of Use Rights in European Fisheries, May 5-7, Brest, France.

[33] In 2013 alone, Norwegian vessels delivered 2.1 million tons of fish, crustaceans and molluscs with a landed value of NOK 12.5 billion. This was still 3% less than catches and earnings for 2012. *See* "Fisheries, 2013, preliminary figures" <http://www.ssb.no/en/fiskeri> accessed February 2, 2014.

[34] *See* Harris (n12) p. 475, para. 8.

[35] Eggert H. and Graeker M., 'Effects of Fisheries on Developing Countries: Possibilities for Income and Threat of Depletion' 2009 *Environment for Development*, p. 1

[36] *See* generally, Juda L., 'World Marine Fish Catch in the age of Exclusive Economic Zones and Exclusive Fisheries Zones' 22 (1991) *O.D.I.L* 1-32; Pontecorvo G., 'The Enclosure of the Marine Commons: Adjustment and Redistribution in World Fisheries', 12 (1988) *Marine Policy* 361-372.

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area of the sea not only by exploiting them but also by conserving and managing them to their own economic benefit. A coastal state with a robust fisheries management policy can therefore conserve, manage and exploit the fishery resources of her EEZ and maximise the economic benefits therefrom. It is for these considerations that '[t]he EEZ regime was seen as one of the vehicles in the 1982 Convention for achieving a new international economic order that would redress the economic balance in the interest of developing States.'[38]

THE CONCEPT OF 'ALLOWABLE CATCH'

As shown above, the concept of EEZ under LOSC has afforded developing coastal states the legal backing to exclude the distance fishing fleet of the developed nations from exploiting the fisheries of the waters adjacent to their territorial seas. They are now in a position to conserve, manage, and exploit the fisheries of the EEZ in manners suitable to their economic interests. But with this right of exclusive fishing in the EEZ comes the responsibility of ensuring that the fisheries resources of that zone of the sea are optimally exploited by the coastal nation exercising that right of exclusivity. The Convention enjoins coastal states to promote the objective of optimum utilization of the living resources in the EEZ.[39] Since some nations (especially the developing ones) lack the financial resources and technological capabilities to engage in the magnitude of deep-sea fishing carried out by the developed, distant-water fishing ones, there exists the possibility that they may not optimally exploit the fishery resources of their EEZs, resulting in resource under-utilisation. It is for reasons of this possibility that LOSC has provided for the concept of 'allowable catch'. Under article 61 of the Convention, each coastal state shall determine the allowable catch of the living resources in their EEZ. Allowable catch refers to the quantities of various species of the living resources of the EEZ a coastal state has considered appropriate for exploitation without endangering the living resources of the zone by over-exploitation. Having determined her allowable catch, the coastal state shall then determine its capacity to harvest the living resources of the zone.[40] Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements give other states access to the surplus of the allowable catch.[41] Those provisions of the Convention are intended to address the problem of possible under-utilisation of the living resources of the EEZ, especially fish stocks. So where a state for any reason is unable to meet her allowable catch, such state is required under the EEZ provisions of LOSC to enter into arrangements or agreements with other states allowing such other states access to catch the surplus of the allowable catch.

These provisions that allow other states to enter and harvest the surplus of a coastal state's allowable catch having been intended to address the problem of possible under-utilisation

[37] Wijkman P. M., 'UNCLOS and the Redistribution of Ocean Wealth' 16(1982) *Journal of World Trade Law*, pp. 31-32.
[38] Harris (n 12) p. 475.
[39] Art. 62, LOSC
[40] Ibid art. 62(2)
[41] Ibid

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of fisheries resources, pose yet another problem. This problem is the tendency for such other states to over-exploit the fishery resources beyond the surplus of the allowable catch or exploit in the process, fish species that are not within the allowable catch and thus reduce their populations below the maximum sustainable yield. For the purpose of enhancing and stabilizing fishing rights, the Third UN Conference on the Law of the Sea anticipated this possibility and included provisions in LOSC that encourage states to make laws and regulations that stipulate terms and conditions which the other states must comply with in harvesting the surplus of allowable catch[42]. Such laws and regulations should relate, *inter alia*, to the various measures[43] contained in article 62(4) of the Convention intended to prevent abuse in harvesting the surplus of the allowable catch.

MANAGEMENT OF MIGRATORY FISH SPECIES

Fish recognize and respect no Convention maritime boundaries.[44] In fact some species[45] move inconveniently across maritime boundaries,[46] the attractions being mainly food and breeding sites.[47] Such species live different stages of their life cycle in different marine habitats. By their nature, such species may grow in one habitat and when mature and harvestable migrate to another. Such migration may be from one EEZ to another or from an EEZ to the high sea where they become amenable to exploitation by all states in consonance with the freedom of fishing in the high seas. The migratory nature of such species tend to negate the Convention idea that coastal states should conserve, manage and exploit the living resources of their EEZ to the exclusion of other states. The pre-LOSC era left the issue of migratory fish species and their management unaddressed and there was nothing states could do about that. This lacuna was envisioned during the Third

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[42] Ibid

[43] Such measures include the licencing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry; determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period; regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used; fixing the age and size of fish and other species that may be caught; specifying information required of fishing vessels, including catch and effort statistics and vessel position reports; requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data; the placing of observers or trainees on board such vessels by the coastal State; the landing of all or any part of the catch by such vessels in the ports of the coastal State; terms and conditions relating to joint ventures or other cooperative arrangements; requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research; and enforcement procedures.

[44] Wijkman P. M., 'UNCLOS and the Redistribution of Ocean Wealth', 16 (1982) *Journal of World Trade Law*, p. 27

[45] *See* Annex 1, LOSC for a list of highly migratory fish species.

[46] Juda L., 'The Exclusive Economic Zone Management', 18 (1987) *O.D.I.L.*, p. 305.

[47] *See*'Fish Migration *Science Daily*, <http://www.sciencedaily.com/articles/f/fish_migration.htm> accessed 1 February 2014.

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UN Conference on Law of the Sea. The LOSC, therefore, laid the foundation upon which states are enjoined to build on for the purpose of developing arrangements for the management of migratory fish stocks. Under the Convention, three migratory fish categories are identified depending on the extent and direction of migration. These are highly migratory species,[48] anadromous stocks,[49] and catadromous stocks.[50] Highly migratory species are fish species that regularly migrate long distances across international waters.[51] They are also called straddling fish stocks. Anadromous stocks are those that migrate from salt water habitats to freshwater habitats or those that migrate shoreward from the sea;[52] while catadromous stocks refer to fish stocks that migrate seaward or from freshwater to salt water habitats.[53]

As regards highly migratory species, the Convention enjoins states in the same region to "cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone."[54] States of origin of anadromous stocks are required under the Convention to ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of their EEZ as well as fishing of such stocks by other states outside the EEZ.[55] Fishing for anadromous stocks are to be conducted only in waters landward of the outer limits of the EEZ, except in cases where that would result in economic dislocation for a state other than the state of origin.[56] With respect to fishing beyond the outer limits of the exclusive EEZ, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing, giving due regard to the conservation requirements and the needs of the state of origin in respect of the anadromous stocks.[57]

In the case of catadromous fish stocks, the Convention provides that a coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for their management and shall ensure the free ingress and egress of migrating fish.[58] Since catadromous stocks migrate seawards, the possibility exists that they may migrate from the EEZ of the state of origin to that of another state. If there were

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[48] Art.64 LOSC

[49] Ibid art. 66

[50] Ibid art. 67

[51] R. P. Khodorevskaya, G. I. Ruban, D. S. Pavlov and G. J. Ruban, *Behaviour, Migrations, Distribution, and Stocks of Sturgeons in the Volgan-Caspian Basin*,<http://www.books.google.com.ng books?id=4yYNoouGzUCpg=PA13&dq=anadromous+stocks&source=bl&ots9nwlokLK 1_&sig=adviaZ52WnOclvRRuCAt=zbKE&hl=en&sa=X&ei=3azsUo77Iamg0QWs5YDQBA&redir_esc=y> (accessed 30/01/14).

[52] Ibid

[53] Ibid

[54] Art. 64 (1)- LOSC

[55] Ibid art. 66 (2)

[56] Ibid art. 66 (3)

[57] Ibid art. 66 (3) (a)

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no regulations, such stocks having been managed and maintained by the state of origin will end up being harvested by the other state. LOSC envisaged and took care of such situation. Where such species migrate in this way, whether as juvenile or maturing fish, the management, including harvesting of such fish shall be regulated by agreement between the state of origin and the other state concerned, taking into account, however, the responsibility of the state of origin in the maintenance of the species.[59]

In respect of migratory fish stocks, therefore, LOSC set up a platform for states to ensure, through agreements between them, effective management of migratory species to their mutual economic benefit. This is something, which, before the Convention, was left to the untrammeled whims of states. Despite these efforts under the Convention to make states reach agreements on the modalities for managing migratory fish species between them, conflicts still arose between them as far as the exploitation of those trans-boundary fish stocks are concerned. Such conflicts arose due to the threat of overfishing and the prevalence of 'Illegal, Unreported and Unregulated' (IUU) fishing in respect of those stocks, and inconsistencies within the LOSC itself.[60] It was in response to such conflicts that the UN in 1995 convened the United Nations Conference on Straddling Fish Stock and Highly Migratory Fish Stocks.[61] The Conference adopted the United Nations Fish Stocks Agreement (UNFSA).[62] The Agreement, according to Nandan, "gives [the world] a tool for winning the battle to save the world's fish ...it confers on States both the right to fish and the obligation to manage fish stocks sustainably."[63]

The UNFSA requires the management of straddling/highly migratory fish stocks on a sub-region by sub-region basis through Regional Fisheries Management Organizations (RFMOs).[64] Following the UNFSA, various RFMOs have been established on sub-regional basis,[65] with the objective, among others, to 'agree, as appropriate, on participatory rights [of States Parties] such as allocations of allowable catch or levels of fishing effort.'[66] Although existing RFMOs have been shown to have their imperfections,[67] they have succeeded in curbing the problem of incessant fisheries crises, especially those pertaining

[58] Ibid art. 67 (1)

[59] Ibid art. 67 (3)

[60] *See* FACTSHEET <http://www.factsheet_8.pdf> accessed 1 January 2014.

[61] The Conference held in New York from July 24 to August 4, 1995.

[62] The full title of the agreement is "Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of the Straddling Fish Stocks and Highly Migratory Fish Stocks". The Agreement was adopted in 1995 and entered into force in 2001. Seventy-eight states and entities have ratified the Agreement till date.

[63] Satya Nandan is Chairman of the Western and Central Pacific Fisheries Commission (WCPFC), one of the sub-regional organizations created pursuant to the UNFSA.

[64] *See* articles 7 and 8, UNFSA

[65] They include the South East Atlantic Fisheries Organisation (SEAFO), the Western and Central Pacific Fisheries Commission (WCPFC) otherwise called the Tuna Commission, the Inter-American Tropical Tuna Commission (IATTC), the North-East Atlantic Fisheries Commission (NEAFC) and the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR).

[66] Art. 10(b) UNFSA

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to allowable catch, in sub-regions where they have been established.

Protection and Preservation of The Marine Environment

For sea fisheries to be properly conserved, managed and profitably exploited, it is necessary for the marine environment to be protected and preserved since adverse changes in fish habitat are bound to alter fish populations, movement and yield. Unless the marine environment is protected whatever effort made by States whether through the UN, regional or sub-regional arrangements to enhance the development of fisheries resources and protect fishing rights would be effectively discounted by pollution of the marine environment.

As another way of stabilizing and enhancing fishing rights, under LOSC, States dedicated the whole of Part XII of the Convention to protection and preservation of the marine environment. The provisions are intended to enable states take measures to prevent, reduce and control pollution of the marine environment. Under article 1(4) of the Convention, "pollution of the marine environment" is defined as:

> *…the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.*

Under the Convention, States have a general obligation to protect and preserve the marine environment against pollution.[68] They are required to take measures individually or jointly to prevent, reduce, or control pollution of the marine environment from land-based sources,[69] the atmosphere,[70] through dumping;[71] by vessels plying the seas;[72] from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil within national jurisdiction;[73] and from activities in the Area.[74]

States are also to cooperate and directly or through international organizations carry out studies, researches and programmes for the prevention, reduction and control of pollution in the marine environment.[75] States act in concert in this regard mainly through the International Maritime Organisation (IMO)[76] and the United Nations Environmental Programme (UNEP).[77] The IMO within its environmental mandate has developed and

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[67] For a detailed study of the problems associated with RFMOs, see Cox A., 'Quota Allocation in International Fisheries' (OECD Food, Agriculture and Fisheries Papers, No. 22 OECD Publishing, 2009) <http://dx.doi.org/10.1787/218520326143> accessed 31 January 2014.

[68] Art. 192 LOSC

[69] Ibid art. 207

[70] Ibid art. 212

[71] Ibid art. 210

[72] Ibid art. 211

[73] Ibid art. 214

[74] Ibid art. 215. The 'Area' under art. 1(1) of the Convention is used to refer to the seabed and ocean floor and subsoil beyond the outer edge of the continental break or margin of a coastal state.

[75] *See* arts. 200-202, LOSC

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adopted a range of international instruments[78] to address marine pollution arising from international shipping all of which have conduced to reduced marine pollution arising from activities of vessels plying the high seas. Recognising the obvious lack of resources and capacity among the developing nations to adequately confront the problem of marine pollution, the Convention requires that such countries be granted preference by international organizations in the allocation of appropriate funds and technical assistance; and the utilization of the specialized services of international organisations.[79] LOSC also contains copious provisions relating to enforcement of the Convention and local maritime laws and regulations for the purpose of ensuring compliance by persons carrying out activities that constitute potential threats to the marine environment. Flag states,[80] port states,[81] and all coastal states[82] are required to ensure the enforcement of maritime laws and regulations over vessels in order to prevent pollution of the marine environment.

The Challenges Confronting Developing Countries

The view is held by various scholars that LOSC holds lots of economic prospects for third world countries.[83] It is their thinking that the Convention brought with it the seed of a new international economic order under which developing countries stand to reap a lot of economic benefits. One of the areas in which they expected that developing countries would have advantage is in the exploitation of sea fisheries. As discussed above, the EEZ concept revolutionalised fishing rights globally, vesting the exclusive right to conserve, manage and exploit the living resources of the zone in coastal states for their own economic benefit. The EEZ concept proves beneficial to developing countries who before the Convention watched the distance fishing fleet of the developed countries exploit the fisheries of that zone as part of the high seas.[84] Today, developing countries can, through well thought-out conservation laws, regulations and policies, maximise the benefits of their fisheries resources within the expansive EEZ.[85] *A contrario*, over three decades since the

[76] The IMO is a UN specialised agency with a mandate to promote, secure, environmentally sound, efficient and sustainable shipping.

[77] UNEP is an agency of the UN that coordinates UN environmental activities and assists developing countries in implementing environmentally sound practices.

[78] Such instruments include the International Convention for the Prevention of Pollution from Ships; International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties; International convention on oil pollution Preparedness, Response and Cooperation; International Convention on Civil Liability for Oil Pollution Damage; Convention on Prevention of Pollution by Dumping of Wastes and other Matter; International Convention on the Control of Harmful Anti-fouling Systems on Ships; and International Convention for the Control and Management of Ships' Ballast Water and Sediments.

[79] Art. 203 LOSC.

[80] Ibid art. 217

[81] Ibid art 218

[82] Ibid art. 220

[83] *See* Harris, *Cases and Materials on International Law*, 6th edn. London: Sweet & Maxwell, 2004, p. 475, para. 8; Essien (n 1), pp. 108-116; Roberts K., 'Legal and Institutional Aspects of Fisheries in West Africa', 10 (1998) *RADIC* 88. *See* generally also the preamble to the Convention which aspires that the Convention should 'contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole, and *in particular, the special interests and needs of developing countries, whether coastal or land locked.'* (Emphasis supplied)

[84] *See* generally, Overseas Development Institute, 'Fisheries and the Third World' Briefing Paper 2, June 1984.

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adoption of the LOSC most developing countries have yet to develop effective fishing policies that cater to the needs of management, conservation and optimal utilization of fisheries resources. Although the problem of unsatisfactory fisheries management is a global one,[86] the situation is worse among the developing countries.[87] For developing countries (especially those in Africa), it has been either a case of overfishing without any plan for yield sustainability, or fisheries sub-optimal utilization as a result of lack of capacity resulting in low fishing effort.

Whether as overfishing or fisheries under-utilisation, poor fisheries management has serious adverse economic consequences for developing countries. The most obvious economic impact of poor fisheries management on developing countries is direct loss of the value of the catches that could be taken by developing coastal states if their fisheries were properly managed. Apart from the loss to GNP, 'actual revenue can accrue to the coastal state in the form of landing fees, licence fees, taxes and other levies which are payable by legal fishing operators.'[88] Aside from its direct macro-economic impacts on developing economies, there are also indirect and more subtle impacts on the global economy. These include the impacts resulting from loss of income and employment in other industries and activities in the supply chain, both upstream and downstream.[89]
A major cause of poor fisheries management among developing countries is the absence of clear fisheries policies and necessary political will to enforce regulations, cooperate with

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[85] In fact during the period 1989-2002, the net exports of fisheries commodities by developing countries (i.e., deducting their imports from the total value of their exports) increased from US$4.0 billion to US$ 17.4 billion. This was greater than the net exports of other agricultural commodities such as rice, cocoa, tobacco, and tea. See Eggert H. and Graeker M., 'Effects of Global Fisheries on Developing Countries: Possibilities for Income and Threat of Depletion', *Environment for Development*, research work commissioned by Environment and Trade in a World of Interdependence (ENTWINED) and Foundation for Strategic Environmental Research, 2009, p. 1

[86] For example, in the last decade, in the North Atlantic Region, commercial fish populations of species like cod, hake, haddock and flounder have fallen by as much as 95%, prompting calls for urgent measures. Despite also the high level of awareness and development among the developed countries of the world, marine area protection and conservation has not been impressive across the world. In fact it is estimated by UNEP that less than 1% of the world's oceans are currently in Marine Protected Areas (MPAs). And according to the FAO, over 70% of the world's fish species are either fully exploited or depleted. *See* United Nations, 'Overfishing: A Threat to Marine Biodiversity' <http://www.un.org/events/tenstories/06/story.asp?storyID=800> accessed 10 February 2014. According to Eggert and Graeker, more than 20% of fish stock has crashed across the world, 40% are overexploited and the remaining 35% are fully exploited, a trend that is bound to threaten ecosystems and lead to poor yield and low income. *See* Hakan Eggert and Mads Graeker, 'Effects of Global Fisheries on Developing Countries: Possibilities for Income and threat of Depletion' Environment for Development, Discussion Paper Series, 2009, p. 2; *See* also Pauly D., Christensen V., Guenette S., Pitcher T. J., Sumaila U. R., Walters C. J., and Zeller D., 'Towards Sustainability in World Fisheries', 418 (2002) *Nature*, pp. 689-95; Worm B., Barber E. B., Beaumont N., Duffy J. E., Folke C., Halpen B., Jackson J, Hotze H., Micheli F., Palumbi S. R., Sala E., Selkoe K. A., Stachowicz J. J. and Watson R., 'Impacts of Biodiversity Loss on Ocean Ecosystem Services', 314(2006) *Science,* pp. 789-90.

[87] United Nations, 'Overfishing: A Threat to Marine Biodiversity', http://www.un.org/events/tenstories/06/story.asp?storyID=800 (accessed on 17 October 2014).///

[88] Marine Resources Assessment Group, *Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries*, Synthesis Report, June 2005, p. 5

[89] Ibid.

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neighbours on surveillance, eliminate IUU activity in all its forms, and participate in regional and sub-regional fisheries agreements.[90] Since most developing countries are characterized by low governance level, fishery policies are not formulated with the importance they deserve, especially in countries among them where there are higher income earning resources. As a result, regulations are incomprehensive and enforcement perfunctory. Although some have legislation providing copious regulations for fishing activities in their waters, most developing countries are rather most lackadaisical about the enforcement of regulations.

Both artisanal and industrial fishing are, therefore, largely unregulated. As Eggert and Greaker have observed, 'management is often de facto open access, where vessels with or without permission to fish land as much as they can catch due to limited monitoring and enforcement activities'.[91] Monitoring,[92] Control[93] and Surveillance[94] (MSC) which are imperatives for effective fisheries management are either non-existent or ineffective where they exist. The consequence is a thriving IUU fishing in developing countries. It is estimated that 19 per cent of current landed value in sub-Saharan Africa is being caught by IUU fishing.[95] The elimination of IUU fishing among developing countries will conduce to improved foreign exchange earnings for the countries concerned where the IUU fish are export fish,[96] and contribute to food security of artisanal fishermen where the IUU fish are locally consumed fish.[97]

Resulting from overfishing, which is a consequence of poor fisheries management, South Africa, for example, is faced with a dire case of overfishing, a case so dire that the country is left with less than 5% of what her original fish populations used to be.[98] There, due to poor conservation and management, fisheries have been so over-exploited that it has become difficult to sustain yields. Such fish stock depletion not only poses danger to the ecosystem, it also 'poses a major threat to the food supply of millions of people'.[99] A study of illegal fishing in ten developing countries[100] between 2003 and 2004 showed that Guinea alone lost over US$100 million to illegal/pirate fishing within that period.[101]
At the other extreme are developing countries that suffer sub-optimal utilization of their fisheries resources. Ghana and Nigeria come handy in this regard. Ghana has rich fisheries

[90] Ibid., p. 13.
[91] Eggert and Graeker (n 85) p. 1
[92] 'Monitoring' is the continual measurement of fishing effort characteristics and catches.
[93] 'Control' refers to the whole legal framework within which fisheries resources may be exploited.
[94] 'Surveillance' embraces all measures required to ensure compliance with the established legal framework.
[95] Marine Resources Assessment Group (n 89) p. 11
[96] In Seychelles, for example, IUU fishing involves mainly export tuna. See ibid.
[97] In West Africa, IUU fishing is predominantly in respect of inshore shrimp and demersal fish consumed locally. See ibid.
[98] *See* Environment South Africa, 'Methods to Help South Africa's Overfishing Problem ' <http://www.environment.co.za/wildlife-endangered-species/methods-to-help-south-africas-overfishing- problem.htm> accessed 1st February 2014.
[99] Ibid
[100] Guinea, Somalia, Angola, Mozambique, Papua New Guinea, Sierra Leone, Liberia, Seychelles, Kenya and Namibia.
[101] *See* Marine Resources Assessment Group (n 87) p. 6

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but underutilization has necessitated fish importation. With an estimated annual fish requirement of 880, 000 tons, Ghana's production stands at an average of 420, 000 tons, leaving a deficit of 460, 000 tons which is made up for through fish imports.[102] Despite Nigeria's high potential for fish production, she still depends on fish imports to meet her domestic fish demands.[103] It is generally believed that if Nigeria's fishery resources are 'rationally managed and exploited, the country can attain sufficiency in fish production.'[104]

The result of fisheries underutilization has therefore been the legal or illegal harvesting of the surplus catch by the fishing vessels of the developed countries. It is in fact estimated that 50 per cent to 60 per cent of the world's catch is made by European fishermen and that a large part of that is from waters under the jurisdiction of the developing countries.[105] For the prevention of underutilization of fisheries resources owing to low fishing effort, article 61 of LOSC requires coastal states to determine their total allowable catch of the living resources of the EEZ and under article 62(2) thereof, they are then to determine their catch capabilities. The surplus is to be made available to other states for exploitation through agreements or other arrangements.[106] This provision of the LOSC as earlier pointed out, is intended to prevent fisheries resource under-exploitation. But the determination of both allowable catch and a country's catch capability requires the availability of accurate marine biodiversity data and information which are not readily available in developing countries. The result is an obvious inability of developing countries to accurately determine their total allowable catch and their harvesting capabilities. With the paucity of such data and information, it is difficult to determine and allocate surplus to states with the necessary capability and fishing effort. Developing countries are, therefore, deprived of revenues that ought to accrue from licencing fees, vessel registration fees, and landing fees. Even where allocations were possible and licences were granted to foreign fishers, bribery and corruption proved major obstacles to realising targets as vessel licencing was irregular, catches were not being reported, and permits were granted to fishers who did not meet required criteria.[107]

Modern fisheries management requires cooperation agreements among states on regional or sub-regional basis for the effective management of migratory/straddling fish stocks. It is for this reason that the LOSC enjoins states in the same region to 'cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone'. This is strengthened by

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[102] Kwadjosse T., 'The Law of The Sea: Impacts on the Conservation and Management of Fisheries Resources of Developing Coastal States – The Ghana Case Study' United Nations, Yew York, 2009, p. 3.

[103] Sikoki F. D., 'Fishes in Nigerian Waters: No Place to Hide' Inaugural Lecture Series, No. 100, University of Port Harcourt, 31 January 2013, p. 43

[104] Ibid, p. 13

[105] EUROPA,'Fisheries: Fisheries and Poverty Reduction' <http://www.europa.eu/legislation_summaries/defelopment/sectoral_development_policies/r12512_en.htm> accessed on 2nd February 2014.

[106] Art. 62(2) LOSC

[107] Eggert and Graeker, (n 85) p. 11

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article 8 of the UNFSA which imposes a duty to cooperate through RFMOs by providing that only members of RFMOs or non-Members which agree to apply the conservation and management measures adopted by RFMOS can have access to the particular fishery. This requires, not only the establishment of RFMOs among developing countries in the same region, but also ensuring the effectuality of such organisations. It has been estimated that highly migratory/straddling fish species account for as much as one-third of world marine capture fish harvests.[108] Although a couple of RFMOs or similar bodies have been established in various developing regions of the world for the management of trans-boundary fish stocks both within the EEZ and beyond,[109] numerous other such regions have yet to establish them. In most cases, cultural, linguistic, geographical and historical differences between countries in the same region militate against the establishment and efficient operation of RFMOs. In West Africa for example, these factors have made difficult the establishment and successful operation of RFMOs in the sub-region.

RFMOs play the significant role of gathering data on fisheries resources of the particular fisheries concerned and allocating allowable catch or fishing effort among members.[110] In regions where there are no RFMOs or where they exist but are ineffective, it is difficult to gather data and impossible to devise an acceptable allocation system that ensures yield sustainability. In other regions of Africa, there are still unclear maritime boundaries, making the operation of a RFMO difficult. For instance, despite the LOSC, Angola and Namibia have yet to finalise their EEZ and continental shelf boundaries.[111] So have Angola and South Africa yet to establish their maritime boundaries.[112] Aside from boundary uncertainties, some developing countries still, in practice, make extra-Convention claims of expansive territorial seas and sometimes undeclared breadths of EEZ. Benin and Sierra Leone, for example, maintain territorial seas of 200 miles; Nigeria claims one of over 12 miles; while Cameroon asserts a claim of 50 miles territorial sea without any declared EEZ.[113] All this can, in a lot of ways, hinder the use of MCS measures to protect fisheries jurisdiction and manage fisheries in those regions. Even where they exist among developing countries, most RFMOs have generally been adjudged ineffective as regards their abilities to conserve fish stocks.[114]

Akin to lack of political will in developing countries is the absence of subsidies for the fishing industry. In the developed countries of Japan, Russia, China and the Eastern and

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[108] *See* Munro M., Houtte V., and William R, 'The Conservation and Management of Shared Fish Stocks: Legal and Economic Aspects', FAO Fisheries Technical Paper, 2004, No. 465, p. 7.

[109] In Africa, for example, there the Commission for Eastern Central Atlantic Fisheries created in 1967; the Ministerial Conference on fisheries Cooperation Among States Bordering the Atlantic Ocean created in 1989 and the Sub- Regional Fisheries Commission created on 29 March 1985.

[110] *See* art. 10(b) UNFSA; Cox A., 'Quota Allocation in International Fisheries' *OECD Food, Agriculture and Fisheries Papers*, No. 22, (2009) OECD Publishing, p. 11

[111] Roberts K., 'Legal and Institutional Aspects of Fisheries in West Africa' 10 (1998) *RADIC* 88, 120

[112] Ibid

[113] Ibid

[114] *See* generally, Cullis-Suzuki S. and Pauly D., 'Failing the high seas: A global evaluation of regional fisheries management organizations' 34 (2010) *Marine Policy* 1036–1042; Roberts (n 106)p. 116.

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Western Europe, subsidies have long been provided, aimed at developing distant water fleets for the global catch race.[115] According to Sumaila and Pauly, in conservative terms, about US$30 - $34 billion worth of subsidies are provided by governments annually to the fishing industry.[116]

Subsidies could be internal or external. They are internal when they are provided by the domestic government and external when they are made available by foreign governments or organizations. Argentina's use of foreign capital, particularly those provided by the European Union (EU) is a ready example of external subsidy arrangement. In 1994 Argentina entered into agreement with the EU whereby subsidies were to be provided by the EU for the establishment of joint ventures with local firms in order that EU member-country vessels could have access to Argentina's EEZ. Under the agreement, the EU gave subsidies to Argentina to an estimated tune of US$ 230 million.[117] Due to such arrangements, between 1985 and 1995, Argentina's fishing effort increased with the aggregate motor power of fishing fleet rising from 25, 000 horsepower (hp) in 1990 to almost 200, 000 hp in 1995.[118] Correspondingly, fish export grew by almost 500 per cent over the same period.[119]

Due to poverty, corruption and oftentimes misplaced priorities, such subsidies are hardly available in most developing countries. This has perpetuated low fishing effort in most developing countries resulting in fisheries under-utilisation. Good subsidies do not only promote growth in fishing effort (where it is considered economically adviseable), but also attend to the need of stock conservation through the improvement of fisheries management, monitoring and enforcement.[120]

CONCLUSION

The 1982 UN LOSC is reputed, among others, to have greatly enhanced and stabilised fishing rights, and thus minimised the international fisheries-related maritime rows of the pre-LOSC era. With the wider fisheries jurisdictions granted coastal states under the Convention, and considering the economic importance of fish in today's world, it was reasonably expected that states would maximise fishing efforts in their waters, make laws and regulations as well as develop national fisheries policies for national economic growth. This has not been exactly the case in developing countries where the combined factors of policy shortages, poverty, corruption, ignorance, poor maritime law enforcement and a characteristic lack of political will to develop fisheries, enhance their management and thus

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[115] Eggert and Graeker (n 85) p. 15

[116] Sumaila U. R. and Pauly D., (eds), 'Catching More Baits: A Bottom-Up Re-estimatio n of Global Fisheries Subsidies' (2006) 14(6) *Fisheries Centre Research Reports*,1

[117] Eggert and Graeker (n 85) p. 10

[118] Ibid

[119] Abaza H. and Jha V., 'Integrated Assessment of Trade Liberalisation and Trade-Related Policies: A Country Study on the Fisheries Sector in Argentina' United Nations, 2002.

[120] Eggert and Graeker (n 85) p. 16

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optimise fisheries earnings have largely diminished earnings from fisheries. Developing coastal countries must take full advantage of their enlarged fisheries jurisdiction under the LOSC, not only to meet local fish demand, but also to boost foreign exchange earnings. In a globalised world of economic competition, diversification of national economies has become a survival strategy. The development of fishery resources (with which most developing coastal states are abundantly blessed) remains one of the best shots in any genuine effort in the diversification of developing coastal economies.

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