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EAST AFRICA AND THE INDIAN OCEAN : AN INQUIRY ABOUT INTERNATIONAL JURISPRUDENCE AND LEGAL CONVENTIONS OF THE SEA PRIOR TO 1980's

by

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Historian and political scientists give much emphasis on the zonal concepts of "nuclear free zones" and "zones of peace"[1], which is applicable more to the non-nuclear and developing countries for diffusing tensions and conflict. But if there was a disarmament treaty, there is sufficient room for exchange of views and agreements, for which Africa has often stressed for its continent, a need for 'nuclear free zone", besides Indian Ocean being a 'zone of peace'. The latter is being confirmed by the following statement :

"[s]olemnly, declares that the Indian Ocean, within the limits to be determined, together with the airspace above and the Ocean floor subjacent thereto, is hereby designated for all times as a Zone of peace"[2].

It would be important if the superpowers respect the Ocean as a Zone of peace and the seabed and high seas can be used for peaceful purposes[3], apart from the legal autonomy of the Coastal states on their territorial sea and continental shelf. Several talks of cooperation with Africa and the rest of the World are noticeable during the past decades although the interests of the littoral states are divergent[4]. The Mediterranean region has also been declared

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1. *International Legal Materials* (ILM) 10 (1971) : 145 ; Brown : 1973, "The Demilitarization of Hydrospace", *Annals of International Studies*, 4, 71 ; Malita, M. : 1976, "The Concepts of "Zones of peace" in International Law", *Revue roumaine d'Etudes Internationales* , 10, 193-202.
2. *UN General Assembly Resolution* 1652 (XVI), 2033 (XX) and 2832 (XXVI).
3. *UN Document.* A/Conf. 62/wp.10, article, 114 and article 138.
4. *UN General Assembly Resolution*, 2332, XXVI.

as an "ecological Zone" so as to reduce the level of pollution and density of navigation[5] and the same has been applicable to the Horn of Africa, Gulf of Guinea and Archipelagic states. These are substantial advances in subregional cooperation for the implementation of an effective Law of the Sea. In spite of the Weakness of the organization of African Unity, the latter can be made as an vital instrument in the decision making process of marine policies like shipping, oceanography and various other forms of marine science and technology. Some of the bordering states of the Red sea which includes Egypt, Somalia, Djibouti, Ethiopia, Jordan, Saudi Arabia and the two Yemens under a joint declaration has figured the Red Sea as a'Zone of peace' and asserted that all its adjacent African an Arab nations shall scrutinise the region's security problems and cooperation for using the natural resources of the Red Sea region[6]. As a result of the growing relationship among the littoral states of Africa, the Economic Community for West African States has come into existence for giving a fillip to the Sea affairs [7].

Subregional and regional cooperative initiatives can boost the marine institutions of Africa and above all several international organizations like General Fisheries Council for the Mediterranean (GFCM), the Indian Ocean Fishery Commission (IOFC) and the Fisheries Committee for the Eastern Central Atlantic (CECAF)[8] can fruitfully enhance the African states as parties. Obviously the intimate association of the developing and developed countries is essential for combating the weakness and promoting the relevant interest of the African states in Ocean matters.

Now it is necessary to bring out the proclamations regarding the maritime boundaries of Tanzania, Kenya, Somalia Republic and Mozambique[9].

About the territorial sea of Tanzania, the president Julius K. Nyerere proclaimed[10]:

"Notwithstanding any rule of law or any practice which may hitherto have been observed in relation to the territory of Tanganyika or the territories formerly subject to the sovereignty of the Sultan of Zanzibar or the territorial

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5. Dupuy, R., 1974, *The Law of the sea : Current Legal Problems*, Alphen aan den Rijn : A.W. Sijthoff, p. 20.
6. Keesings : 1977, 13th May, *contemporary Archives*, p. 28348 A.
7. *Africa : An International Business, Economic and Political monthly*, Feb. 1977, No. 66, p. 31, London ; James Bridgeman : "African Regionalism" - cited by Pardo and Borgese : 1967, The New International Economic Order and the Law of the sea, *Occasional Paper*, No 5, Malta, p. 444.
8. For the African membership to Fisheries Organizations, See *FAO*, *Fisheries Circular*, No 331, FID/C/331, (Rome, 1975), Annex II, pp. 43-46.
9. McEwen, A.C., 1971, *International Boundaries of East Africa*, Oxford, pp. 302-304.
10. *Tanzania Gazette*, Govt. Notice, No 137, on 14th April 1967.

waters thereof except as hereinbelow provided, the territorial waters of the United Republic of Tanzania extend across the sea at a distance of twelve nautical miles measured from the mean low water line along the Coasts and adjacent islands as marked on charts number 1 to 4 issued by the Survey Division of the Ministry of Lands, settlement and water development, Dar es Salaam on 30th March 1967 and registered with the Secretary General of the United Nations :

Provided that in respect of the island of Pemba where the distance between the base line measured on Pemba and the Mainland of Kenya is less than twenty-four nautical miles, the territorial waters of the United Republic of Tanzania extend up to the median line every point of which is equidistant from the nearest point on the base-line between Pemba and the mainland of Kenya as marked on the aforesaid charts".

The President of Kenya, Jomo Kenyatta, declared[11] as follows :

"1. That notwithstanding any rule or practice to the contrary which may have been observed in the past relating to Republic of Kenya or the territorial Sea of the Republic of Kenya, the territorial waters of Kenya shall extend accross the sea to a distance of twelve nautical miles, measured from the appropriate baselines.

2. This declaration shall not extend to the waters lying between the Republic of Kenya and the Republic of Tanzania in the Pemba channel, where the width of such waters measured from the appropriate baselines is less than twenty-four miles but the extent of the territorial waters shall be taken as a median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of the two states is measured.

3. In order to safeguard the vital economic interests of the inhabitants of the Coastal region and to confirm the practice which has always existed, Ungwana Bay otherwise known as Formosa Bay is declared a historic bay constituting internal waters of the Republic of Kenya".

The Somali Republic which got its independence in 1960 refers to the former Italian Somaliland proclamation[12] as :

11. *Kenya Gazette*, Legal Notice, No 147 dated 13th June 1969.
12. Maritime Code (*Codice Marittimo*), April 1, 1959.

"The Sovereignty of the Territory embraces the Zones of the Sea to the distance of six nautical miles along the continent and insular coasts. The above distance is measured from the Coastline marked by the low tide.

The different provisions which might be established by laws, regulations, or international agreements for definite purposes are hereby excluded"

About the territorial seas and contiguous zone of Mozambique, the following is the relevant part about the maritime zone of the Portuguese State and its boundaries are determined by the Portuguese law[13].

Basis I

The normal base line from which the extent of the territorial sea is measured is defined by the low water mark along the Coast as indicated on the maritime charts officially recognized for this purpose by the Portuguese State.

Basis III

The Portuguese State exercises in the high seas contiguous to its territorial sea, upto a distance of twelve miles from the baseline, the powers accorded by International Law...

Basis IV

When there exists no agreement to the contrary with a state whose Coasts are adjacent to or facing those of the Portuguese state, the delimitation of the territorial sea or contiguous zone shall not go beyond the median line, all points of which are equidistant from the nearest points on the base lines from which the extent of the territorial sea of each of the two states is measured.

Basis V

1. Without prejudice to historic rights, conventions and other international agreements, the Portuguese state exercises fishing rights, and exclusive control over fishing activities in the high sea zones adjacent to its territorial sea, upto twelve miles measured from the base line of said sea.

2. Within the Zone comprised between the sixth and twelfth miles measured from the base lines of its territorial sea, the Portuguese state has

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13. *Diario do Governo*, Series I, No. 194, Law No. 2130, Government of the Republic of Portugal, 22 Aug. 1966 ; *Political Constitution of the Portuguese Republic Arts*, I and 150 ; Helen, L. Claggett, 1968, *International legal Materials*, vol. V, pp. 1094-1095.

authority to regulate fishing and to enforce such regulations, provided there is no discrimination against foreign vessels having a right to fish in this Zone.

3. The outer limits of the fishing Zones established in this basis shall be delineated pursuant to the provisions of the preceding basis IV".

The Sultan of Zanzibar who was a African ruler was internationally regarded as the head of a sovereign state with full treaty-making capacity and in his capacity as head of state, attended the Brussels Slave Trade Conference of 1890. He aligned himself with the European powers, for finding out whether there was binding agreement in the element of treaty-making. Thus the claim of the Germans to the island of Lamu was pulled down, which can be seen from the Lamu Arbitration of 1889[14]*. The arbitrator wen to say that no law prescribed any special form of treaty : "the adoption of the written form is particularly necessary in dealings with the governments of but little-civilized nations, wich often only attache binding force to promises made in a solemn form or in writing".*

Even when we look at the colonial view for the international validity of agreements between states and local rulers of territories was "not recognized as members of the community of Nations"[15] has been found mentioned in the *Island of Palmas Case* where the arbitrator Judge Huber, said in 1928 that such contracts :

"are not, in the international law sense, treaties or conventions capable of creating rights and obligations such as may, in international law, arise out of treaties. But on the other hand, contracts of this nature are not wholly void of indirect effects on situations governed by international law ; if they do not constitute titles in international law they are none the less facts of which that law must in certain circumstances take account". Judge Mareno Quintana in his refuting views objected to the map and citing the views of the arbitrator in the Island of Palmas Case, he referred to, the very relative value... which international law attaches to geographical maps"[16].

The island of Mussa on the Somaly Coast was transferred in 1840 by the Sultan of Tajura to the British East India Company just for ten bags of rice[17].

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14. Hertslet Sir, E. : 1909, *The Map of Africa by Treaty*, 3rd ed., 3 vols with Portfolio of maps, H.M.S.O., London : *Island of Lamu Award*, vol. III, pp. 891-895.
15. *Reports of International Arbitral Awards (RIAA)*, United Nations, 858.
16. *Ibid.*
17. Herslet, *op. cit.*, I, p. 408.

Here the ruler had the power to dispose of communal teritory without the consent of the tribe[18].

An interesting example in East Africa of a boundary line beaing placed at a constant distance from an irregular topographical feature is the former Coastal strip forming part of the mainland territories of the Sultan of Zanzibar which was stated as having, "an internal depth of 10 sea miles measured from the Coast direct into the interior from high-water mark"[19]. The Western limit of part of the Sultan's territory formed the boundary between what later became Kenya Colony and the kenya protectorate[20]. In 1898 a provisional demarcation of the Coastal strip's Western limit was carried out but it was specifically stated that, "The boundary which was agreed to was not measured according to any hard and fast rule, but for mutual convenience in order that no changes might be made which could affect localities hitherto recognized as lying either within or without the Zanzibar dominions"[21]. Britain and Germany delimited their spheres of influence on the East African Coast by an agreement made in between October 21 and November 1, 1886 but both respected the Sultanate of Zanzibar and the opposite East African Mainland and their spheres of influence[22]. The port of Vanga (Wanga) was found to stand not on a river but on a salt water creek about two miles to the North of the mouth of the River Umba. Both the opponents, German and British claims were in a dilemma about the Coastal concession granted in 1887 by the Sultan of Zanzibar to the British East African Association extended northward from Vanga[23] whereas the concession granted in 1888 by the Sultan's successor to the German East African Association ran Southward from the Umba[24], but ultimately the British took possession of it in January 1889[25]. By 1893 there was another agreement between Germany and Britain settling to redefine the boundary from the Coast to Laitokitok on the Northern slopes of Kilimanjaro : *"on the Coast, the line shall start from the high water mark on Ras Jimbo and shall run from thence in a straight line to the point where parallel of 3°40′ 40″ 3s (astronomically determined) cuts the Eastern bank of Lake Jipe. But on the Coast the boundary shall be deflected as follows : It shall run from the Indian Ocean along the Northern bank of the Jimbo creek, making the foreshore in the British sphere as far as the Eastern mouth of the ngobwe Ndogo. It shall then follow the*

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18. Le Njogo V.A.G. : 1913, "The Masai Case", 5 *East Africa Protectorate Law Reports (E.A.L.R.)*, 70.
19. Hertslet, *op. cit.*, vol. III, p. 882.
20. *Statutory Rules and Orders* (S.R. & O.), 1920/2342 and 1920/2343 - For the transfer of sovereignty of the Coastal strip of modern Kenya see *Command Papers* (British) No. 1701, 1971 and 2161.
21. Hertslet, *op. cit.*, vol. I, p. 384.
22. *Ibid.*, vol. III, p. 882.
23. *Ibid.*, I, p. 339 & 350.
24. *Ibid.*, II, p. 695.
25. McDermott, P.L., 1895, *British East Africa*, 2nd ed., Chapman and Hall, London, p. 82.

Eastern bank of the Ngobwe Creek to its end and then run to the point where the above described straight line from Ras Jimbo to Lake Jipe meets the rising ground on which the Village of Jasini stands".

McEwen[26] says : *"As result of this agreement the boundary on the Coast was shifted Southward from the Umba to the mouth of the Jimbo Creek, thereby placing vanga clearly within the British sphere. Despite the title of the 1893. Agreement, the Umba itself is nowhere referred to in the description, though a contemporary map shows the river to flow into the Ngobwe Creek whose left bank forms part of the boundary. The Umba crosses the straight line from Ras Jimbo to Lake Jipe at a point about 15 miles from the Coast. Below this crossing the river runs North of the boundary in a sweeping curve to the sea, so that an area of approximately 30 square miles of Kenya lies to the South of the river".* Mention should be made about the demarcation carried out in 1956-1957 by the governments of Kenya and Tanzania between Lake Jipe and the Coast[27].

Article 1 of the Anglo-Italian treaty of 15th July 1924, defined the Coastal boundary between Kenya and Somali as[28] :

"... along that provincial boundary to a point due north of the point on the Coast due West of the Southernmost of the four islets in the immediate Vicinity of Ras Kiambone (Dick's Head) ; then due Southwards to such point on the Coast. Ras Kiambone (Dick's Head) and the four islets above mentioned shall fall within the territory to be transferred to italy"

On the coast, "Ras Chiamboni (Ras Kiambone) was found to consist of the headland comprising a series of coral eminence, of which the highest was selected as the terminal of the directional line for the boundary towards the interior. The four islets in the immediate Vicinity of Ras Kiambone proved to be six in number five of which lie to the South of the headland and form a group known collectiviely as Diua Damasciaca. The parallel of latitude passing through the Southern extremity of the most Southerly islet of this group was chosen and from this parallel at a point 15 meters inland from high water mark the boundary was made to follow the meridian Northward as far as its intersection with the line running from Ras Chiamboni to Zero Cinquanta"[29].

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26. LcEwen, A.C., 1971, *International Boundaries of East Africa*, Oxford, pp. 140-141 ; Smith, C.S., 1894, "The Anglo-German Boundary in East Equatorial Africa Proceedings of the British Commission, 1892", - *Geographical Journal*, 4, p. 424.
27. *Report on Cartographic activity in Kenya*, United Nations Regional Cartographic Conference for Africa, 1963. E/CN. 14/cart/4, E/coNF. 43/4. p.3.
28. *League of Nations Treaty Series*, 379 ; Anglo-Italian Treaty Act of 1925, 15 & 16 Geo. Cap.9 ; Also see articles 4 of this treaty ; Hertslet., *op. cit*, I, p. 382.
29. McEwen., *op.cit.*, p.121.

Coming to the South-Eastern part of German East Africa, Salisbury on 16th February 1887 stated that Ruvuma lake and Bay separated the German and Portuguese spheres of influence. But the Germans demanded from the Sultan the territory to the North of the Minengani, with the result diplomatic relations ensued in January 1887, but Portugal cut relations with Zanzibar and sent gunboats to Tungi bay. Later it pounded and destroyed the villages of Tungi and Minengani and annexed it[30]. Once again by 1894, Germans despatched a squadron of five ships to Kionga Bay[31] and occupied the latter for it offered better harbour facilities than the main mouth of the Ruvuma and that it was also the only really navigable entrance to the river[32]. Portugal criticised German's actions by saying that it was the German who first proposed to choose Ruvuma as their common boundary[33]. Moreover Portugal attack on Tungi Bay in 1887 was resented by Britain but the latter accepted the Ruvuma as the Northern limit of Portuguese territory by the Treaty of Lisbon, 11th June 1891[34].

The German-Portuguese agreement signed on September 1894 drew the boundary line from Cape Delgado on the Coast, Westward to the Ruvuma, thus leaving Kionga as German territory but Portugal retained Tungi Bay[35]. But in 1885 it is evident that Portugal proposed to the Sultan that Cap Delgado should remain as her Northern territorial limit rather than Ruvuma[36]. Subsequently with an agreement in 1913, Germany obtained the islands in the Upper Ruvuma above its confluence with the Domoni[37]. The 1913 agreement was amplified once again in 1938 between Germany and Portugal and that all the islands situated between the mouth of the Ruvuma and its confluence with the Domoni belong to Portugal and all the islands above the confluence form part of Tanganyika[38].

Two cases about the disposal of communal territory arose were the island of Bulama (1870) and the Delagoa Bay (1875). The first case, "involved disagreement between Britain and Portugal as to the ownership of the island of Bolama (Bulama) and a portion of the mainland in what is now Portuguese

30. Lyne, R.N : 1905, *Zanzibar in Contemporary Times*, Hurst and Blackett, London, pp. 137-141.
31. Sir H. MacDonell to the Earl of Kimberley, *Africa*, n°48, 21st July 1894. F.O. 179/311.
32. Editors note to H.B. Thomas, "The Kionga Triangle", *Tanganyika Notes and Records*, N31, 1951, pp. 49-50.
33. The Question of Kionga, a memorandum by L. Thornton, Africa, N°53, 10th Aug.1894, F.O. 179/311.
34. Hertslet., *op.cit*, III, p. 1016.
35. *Deutsches Kolonialblatt*, vol.5, 1894, p. 486.
36. Couplantd, R : 1939, *The Exploitation fo East Africa, 1856-1890*, Faber & Faber, London, pp. 446-447.
37. *Amticher Anzeiger fur Deutsch-Ostafrika*, vol.14, 28 May 1913.
38. 185, *League of Nations Treaty Series*, 205, Art, I (1).

Guinea. Britain claimed sovereignty by virtue of an alleged cession in 1792 to a British naval officer Captain Beaver, who established on the hitherto uninhabited island a colony which lasted for about eighteen months". Even the United States President Ulysses S. Grant said that the island was found by the Portuguese in 1446. But the Kings of Niobana and Matchora ceded the island and mainland territory to capt. Beaver and hence there was no question of island transfer to Portugal[39]. In the Delagoa Bay Award, the arbitrator Marshal McMahon of France noticed that some territories adjacent to the Portuguese Coastal mainland of Mozambique had been ceded by a treaty made in 1823 between Great Britain and the Chiefs of Tembe and Maputo. He thought that the, "attempted cession was void since it violated the rights of Portugal to whom the Chiefs were subject and who had since acnowledged their dependence in the presence of Portuguese authorities. Moreover, even had the parties been capable of contracting, the failure to undertake certain essential conditions prescribed by the 1823 treaty made the transaction null and void"[40].

It should be borne in mind that the African Kingdoms had no powers to play an active role in international relations, law and agreement, on the contrary it was the colonial powers who dominated their influence on international affaires as can be seen from the words of T.O. Elias [41] :

"... In technical, economic and cultural matters the African dependencies were mere spectators. Their contribution, if any lay in the fact that it was their territories and their resources that supplied the raw materials for evolving rules and practices of international relations during the height of colonialization, 1885-1945".

Many African countries have included international law in their municipal and national laws but they always supported the progressive development and codification of international law[42]. In the case of R.V. Charles Okunda Mushiyi and another, the kenyan High Court observed in an *obitum dictum* that :

"[i]f we did have to decide a question involving a conflict between Kenyan Law on the one hand and the principles or usages of international law on the other - and we found it impossible to reconcile the two, we as a municipal court,

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39. Island of Bulama Award, Hertslet, *op.cit.*, III, p. 988.
40. Delagoa Bay Award - Hertslet., *op.cit.*, III, p. 996.
41. Elias, T.O : 1975, "International Relations in Africa : A Historical Survey", Mensah-Brown (ed.), *African International Legal History*, New York, UNITAR, pp. 87-103.
42. Nasila S. Rembe : 1980, *Africa and the International Law of the sea : A Study of the Contribution of the African States to the Third United Nations Conference on the Law of the sea*, Sijthoff and Noordhoff, USA, p.12.

we would be bound to say that Kenya Law prevailed"[43]. *Walter Rodney*[44] *also says that at the time of independence several African States noticed the domination of foreign investors and that the major economic and political concessions, privileges and facilities were offered during the European ruel, largely on the basis of inequality and against the interests of the inhabitants".*

To point out the Belbase agreement of 1921 and 1951 which was signed between Britain and Belgium, the latter was granted a lease in perpetuity of port sites in Dar es Salaam and Kigoma in Tanzania. The nominal rent was one franc per annum but for certain reasons Tanganyika rejected the agreement[45] :

"A lease in perpetuity of land in the territory of Tanganyika is not something which is compatible with the sovereignty of Tanganyika when made by an authority whose own rights in Tanganyika were of a limited duration. (The statement underscors the limitations of the mandate and continues) : it is clear therefore, that in appearing to bind the territory of Tanganyika for all time, the United Kingdom was trying to do something which it dit not have the power to do".

It is also evident that by 1960's the United Nations and its agencies have been striving for progressive perpectives so as to coordinate marine research and the UNESCO asked the global scientists to study the :

"Possible future development of the law of the sea from the point of view of scientific interests involved and on assisting in the acquisition and distribution of scientific knowledge as necessary for the optimum use of the sea in the interest of mankind"[46]. Even president Johnson[47] of America commented on the political pronouncement on the Seabed area : "... We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings".

It is estimated that the Indian, Pacific and Atlantic Oceans contain 920 million tons of aluminium, 72 trillion tons of titanium, 650 trillion tons of iron and 1.5 trillion tons of vanadium, copper, lead and Zirconium[48].

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43. Constitutional Reference N° 2/1969 of the High Court of Kenya at Nairobi *International Legal Materials*, 9, (1970) : 556-566 ; Also see *Molefi V.* Principal Legal Adviser and others, (Lesotho) ; *International Law Reports*, 1970, p. 415.
44. *How Europe Underdeveloped Africa*, 1972, Tanzania Publishing House, p. 168.
45. *Yearbook of International Law Commission*, 1974, Vol.2, p. 43, para. 23.
46. UNESCO, A/C, 1/pv. 1528, p.53 and A/C. 1/1952.
47. Speech delivered by Mr. Golberg, Doc. A/C.1/pv.1524. p.17 ; quoted in S.oda, (ed), 1972, *International Law of the Sea : Basic Documents*, Vol.I (Leyden : Sijthoff), p. 342.
48. Anand : 1975, *Legal Regime of the Seabed and the Developing Countries*, Ramson Press, Bombay, p.14.

Anand[49] opines that the Red sea which is hemmed in by the Horn of Africa and the Arabian Peninsula contains muds and oozes of hot brine, which are rich in iron, manganese, lead, silver and gold.

In 1968, the Crawford Marine specialists, in corporated and applied to the UN, for, "a protected and exclusive exploration licence covering 38.5 square miles of international floor in the Red seas" but the UN refused[50].

Subsequently in 1970, the United Nations General Assembly evolved with the concept of common heritage of mankind for a new law of the sea and to quote the words of Somali delegate :

"The aim of the General Assembly in using the expression" common heritage of mankind was clear and embodied the notion that the resources fo the Seabed and ocean floor beyond the limits of national jurisdiction belonged to all peoples and should be used for the benefit of all"[51]. Further to bring out the comments of the Madagascar diplomat :

"The concept of common heritage of mankind was not really new, since even the previous Law of the Sea had recognized the principle of rescommunis. What was really new was the proposed application of that principale for the benefit of all mankind"[52]. The African states were now fearing the presence of advanced nations and hence they formed their own regime or international body for protecting the sea floor. Fifteen developing nations came out with a working paper on the draft declaration of General principles and it was supported by Tanzania, Kenya, Somalia, Liberia, and Egypt[53]. K. Opoku[54] has brougth out the analogous features of African Land Law and the law of the sea :

"... For those who may be surprised by the rather unexpected rapprochment between African Land law concepts and classical international concepts on the law of the sea, it is well to remember that much international Law in this area was derived from Roman Private Law... The Grotian conception and the African conception of property are in full accord. Both are based on the

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49. *Ibid.*, pp. 24-28 ; Also see Mero, J : 1965, *Mineral Resources of the Sea*, Amsterdam : Elsevier, pp. 127, 139-151.
50. Auburn, F.M : 1972, "The 1973 Conference on the Law of the Sea in the Light of Current trends in State practice"; *Canadian Bar Review*, Vol. 50, N°1-14, p. 99 ; Anand., "New States and International Law", p. 180.
51. *The Third United Nations Conference on the Law of Sea, Official Records*, vol.I, Plenary meeting, 42nd meeting, 15th July 1974, p. 186, para. 52.
52. *Ibid*, vol.III, First Committee, 5th meeting, 16th July 1974, p. 20, para.36.
53. *UN Doc.* A/AC 135/36 and *Lusaka Manifesto*, Doc. NAC/CONF. 3/Res.II - Statement on the Seabed by non-aligned countries.
54. Opoku, K : 1973, "The Law of the sea and the Developing Countries",*Revue de Droit International et Sciences Diplomatique et Politique*, part. I, Les Editions Internationales, Paris, pp. 28-48.

assumption of abundance, that the resources of the sea and land are inexhaustible. They recognise limited rights, authorizing the exercise of imperium, but not dominium. Both views have their own dynamism and under changed circumstances would be amenable to various modifications".

Tanzania was the first developing country to frame a draft statue for an International Seabed Authority and the same was followed in the organization of African Unity Declaration[55]. In article 8 of the Tanzania proposal it is noted that, *"[a]ll activites regarding exploration and exploitation for the resources of the International Seabed Area and other related activities shall be subject to regulation by the International Seabed Authority...".*

The African states have rejected weak machinery made to pass messages or to serve as a registry office for claims and issuing licences in the matters of Seabed Area[56]. Regarding Seabed mining, some of the African countries insisted strongly on the legitimate management of Seabed resources which can reduce the adverse economic implications of the land producers. To quote the chairman of the African delegation from Zaire :

"The African continent, where most of the least developed countries were situated, would feel the harmful effects of Seabed exploitation most severely... If the technology of the extraction of minerals from the Seabed brought about low production costs, the economics of the African countries would immediately be adversely affected. The reports of the Secretary General and of UNCTAD demonstrated that the producers of land based minerals would suffer... The point was that the effects of such exploitation were potentially harmful for the developing countries... a point brought out clearly at the seminar"[57].

About the difficulties being faced by the land-locked states, the delegate of Lesotho mentions that :

"[t]he nationalization of the resources of the sea by Coastal states would have the effect fo retarding the economic progress of the land-locked states and making them subject to control by Coastal states. The ensuing relationship would be of one permanent dependence of land-locked states of their privileged Coastal neighbours. Thus the geographically disadvantaged states

55. Quoted from Aquilar : 1974, "How will the future Seabed Regime be organized ?" in *Law of the Sea : Emerging Regime fo the Oceans,* Gamble et al, eds., Cambridge, Mass : Balinger Publishing Co, pp. 44-46 ; *UN* Doc. A/CONF. 62/63.
56. *Docs.* A/AC. 138/12 of 18 June 1969 and A/AC 138/23 of May 1970.
57. *The Third United Nations Conference on the Law of the Sea, Official Records,* vol.2, 13th Meeting 8th Aug 1974, p.65, paras 15-17.

would be subordinated to the Coastal states and, as a consequence an inequality which would be unacceptable in the third world be created"[58].

There has been commendable work done by the African states to demilitarize and denuclearize the ocean floor for peaceful purposes and developement for which in 1968, Tanzania submitted amendments to both a Russian and American draft resolution. It states that :

"1. Declares that the Seabed and the ocean floor and the subsoil thereof, underlying the high seas beyond present national jurisdiction, should not be used by any state or states for any military purposes whatsoever.

2. Requests the Eighteen Nation Disarmament Committee, to consider as a matter of urgency, the question of (a) banning of the seabed and ocean floor beyond the limits of national jurisdiction by nuclear submarines ; (b) banning of military fortifications and missiles on the seabed and ocean floor"[59].

As the developing nations are militarily and economically weak the African community has always been in search of peace and tranquillity in international affairs and development[60] and often articulating their views into "positive neutralism" 'or non-alignment'[61].

The Geneva convention on the Territorial sea and Contiguous Zone codified the laws of the international sea[62] but has not been satisfactory and vague for the developing African countries. Article 14 declares the right of innocent passage of 'ships of all states' including warships and submarines, and its presence in a Zone of peace whose raison d'être is the security of the Coastal states will have some psychological and political implications on the Coastal regions. Although many African countries and the OAU declaration "recognizes modern shipping development and balancing these requirements against the security and environmental interests of the Coastal state"[63]. Most of the African representatives in the Geneva convention were having their own independent ideas, but some of the colonies were forced to receive law because of the international influence of the colonial regimes. Section 2 of the Kenyan Interpretation and General Clauses Ordinance of May 1948 means that "territorial waters" means "any part of the open sea within three nautical miles

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58. *Ibid.*, Vol. I, Plenary meetings, 42nd meeting, 15th July 1974, pp. 184-185, para. 27.
59. United Republic of Tanzania : amendement to the draft resolution found in Document A/AC. 135/20 (A/AC 135/26) and A/AC 135/24 (A/AC. 135/27).
60. *Asian-African Legal Consultative Committee, Brief of Documents, Fourteenth Session,* New-Delhi, 1973, p. 121 ; Rembe, S.N : *op.cit.*, p.76-79.
61. *Lusaka Manifesto* Doc. NAC/CONF. 3/Res.11., 1970 : Statement on the Seabed by Non-aligned countries.
62. *United Nations Treaty Series*, N°7477, vol.516, p.206.
63. Rembe, S.N : *op.cit*, p.90.

of the Coasts of the colony measured from the low-water mark and includes any inland waters of the colony"[64]. The Geneva convention was later rejected by the African states because it did not suit their interests and above all the developing African nations became technologically stagnant, only 12 out of 50 African states accepted the "territorial sea not extending beyond 12 miles [65].

Certain African countries even emphasized for "the identification of the economic zone with the territorial sea"[66] and it is clear to observe the comments of the Kenyan delegate at the second committee of the Third United Nations confernece on the Law of the sea .

"Were the economic Zone concept to be unduly diluted many delegations including his own, would have to ressort to claiming a broad territorial seas limit of 200 nautical miles in order to assert their justified concern over their resources [67].

The shortcomings of the Geneva convention and OAU has been aptly put by a Somalian representative :

"... More than half of the African Coastal states had declared territorial sea limits of more than 12 nautical miles, while certain Latin American states had claimed limits of 200 nautical miles. Neither the 1958 convention on the Territorial sea and the continguous zone, nor the organization of African Unity Declaration set a maximum breadth for the territorial sea"[68].

The strait of Bab el-Mandeb separating Africa from the Arabian peninsula, the Red Sea from the Indian Ocean, has always been the bone of contention for the superpowers. These straits have provided navigational routes connecting the West and East and above all Middle East is the largest producer of oil and petroleum products. There are other straits which include the Mozambique and Zanzibar channel, the latter remains unsuitable for navigation. But the Mozambique channel which is separated by the Madagascar island and Mozambique are broader and remains unaffected by the 12 mile territorial sea[69]. The African states supported the five points, made

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64. *Laws of Kenya*, Revised edition, 1968, Chap. 1, p.5.
65. *Third United Nations Conference on the Law of the Sea : Official records*, vol.I, plenary session, 25th Meeting, p.82, para. 42.
66. *Ibid.*, II, 28th Meeting, p.219, para.30 ; Ibid, vol.I, 21st Meeting p.63, para.59 ; *Ibid.*, Vol.II, 3rd, meeting, p.100, para.8 ; *Ibid.*, 26th meeting, p.177, para.101 ; *Ibid.*, 31st meeting, p.233, para.30.
67. *Ibid.*, vol.II, 23rd Meeting, p. 183, para.19.
68. *Ibid.*, *Official Records*, Vol.I, plenary session, 42nd meeting, p.168, para.47 ; *Ibid.*, vol.II, p.100, para.14.
69. Rembe., *op.cit*, p.98-99.

by the representative of Oman[70] regarding the straits, at the Third United Nations conference on the sea and the "adoption of a regime regulating different ships and their activities"[71]. Fortunately the Truman proclamation of 1945 asserts strongly about the Coastal state jurisdication over resource zones[72] and its souvereign rights were furthur confirmed by the 1958 continental shelf convention and the International Court of Justice. It provides :

"1. The Coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to (above) are exclusive in the sense that if the Coastal state does not explore the continental shelf or exploit its natural resources, no one may understand these activities, or make a claim to the continental shelf without the express consent of the Coastal state.

3. (...)

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species" [73].

The Kenyans have been pioneers in implementing the concept of economic Zone at the Third United Nations Conference on the law of the sea :

"Those ideas of the exclusive economic zone had originated within the Asian African legal Consultations Committee, meeting in Colombo in 1970 and in Lagos in 1971. They had furthur developed in the Declaration of Santo Domingo of 1972, which was similar to the conclusions of the Yaounde seminar and also recognized the existence of a continental shelf beyond 200 nautical miles "[74].

Some of the African states like Somalia pressed for the formation of a territorial sea, but not claiming 200 mile range. It stated that :

"The most logical regime for the national maritime zone was that of the territorial sea rather than that of the exclusive economic zones. The interests of

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70. *Ibid.*, p. 100.
71. *Ibid.*
72. Polard : 1975, "The Exclusive Economic Zone - The Exclusive Consensus" - San Diego, *Law Review*, 12 : 600 ; Brown : 1971, *The Legal Regime of Hydrospace*, London, pp. 23-30.
73. *UN Treaty Series*, Vol. 499, p. 312, article 2.
74. *IIIrd United Nations Conference on the Law of the Sea, Official Records*, vol.1, 25th Meeting, p.82, paras. 44-47 ; *Asian African Legal Consultative Committee Report of the 12th Session*, Colombo, 1971, *Ibid.*, Report of the 13th session, New-Delhi, 1973.

developing countries would best be served by a territorial sea of not more than 200 miles... It was not the exclusive economic zone idea but only the territorial sea doctrine that could effectively meet the serious challenge of distant water fleets" [75].

Apart from the concept of complete territorial sea, Kenya also insisted for full autonomy of the high seas :

"The economic zone is neither territorial waters, since freedoms of the hight seas in respect of navigation and freedoms to lay submarine cables is recognized, nor is it high sea since the Coastal state will have the right to exploit, regulate and controle fishery and other living resources, make and enforce pollution regulations and exploit the resources of sea-bed within the Zones and so on. Other states will only be able to engage in exploitation of the resources in the Zone if licensed to do so by the Coastal state provided they follow the procedure laid down thereof" [76].

Land-locked countries like Zambia and Uganda emphasized for the "establishment of region/subregional economic zones reserved for the 'exclusive use' of all states within the region or subregion in respect of the living resources" and also claimed to 'explore, exploit and manage the non-living resources under regional authorities" [77].

After the 1950's, many African Coastal states have raised concern about the protection and preservation of the marine environment and adequate measures should be taken to control pollution and enforced standard regulations for shipping, although the developed countries are not willing to cooperate with the international standards framed by the Coastal states. As one Tanzanian delegate stresses about national law to protect and enhance the environment :

"The Coastal state should be given effective control over a wide area. The most important thing is to prevent or at least to control pollution. It does not do much good to litigate over damages caused by pollution and receive compensation when oil pollution has done harm to beaches or killed the fish.

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75. *UN* : A/CONF. 62/C.2/L.69.
76. See Statement of Kenyan representative, *Asian-African Legal Consultative Committee : Brief of Documents on the Law of the Sea,* 13th Session, New-Delhi, p. 212.
77. *UN Doc.* A/AC.138/SC.11/L.41, A/CNF.62/C.2/L.13, A/CONF.62/C.2/L 39 ; A/AC. 138/SC.11/L.40 of July 16, 1972, article.IV.

Preserving the environment is much more important than compensation for its destruction" [78].

Many land-locked countries were discriminated in the wake of nationalization of resources of the continental shelf by the Coastal states. To quote the words of the Zambian delegate :

"... a significant number of land-locked states and other geographically disadvantaged states had not been independent when treaties and other conventions were negotiated on their behalf by Colonial powers and their interests had been completely ignored..., the history of the continental shelf had begun only in the 1940's" [79].

Subsequently OAU declaration favoured the disadvantaged countries[80] and said : they "are entitled to share in the exploitation of living resources of neighbouring economic zones on equal basis as nationals of Coastal states on basis of African solidarity and under such regional or bilateral agreements as may be worked out".

It can be surmised that the law of the sea is not in the hands of the superpowers, although they boast of naval superiority, it should be seen that frequent cooperation among African states or association with international institutions can only standardize the future law of the sea convention. The participation of the developed and developing nations can give impetus to

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78. *Brief of Documents*, p. 286, *3rd United Nations Conference on Law of the Sea, Official records*, vol.II, 2nd Committee, 31st, Meeting, p.236, para.58 ; 3rd Committee, 4th Meeting, p.320, paras 64-65.
79. *3rd United Nations Conference on the Law of the Sea, Official Records*, 34th Meeting, p.258, para.66.
80. Refer Pardo and Borgese : 1976, The New International Economic Order and the Law of the Sea, *Occasional Paper*, N°5, Malta, International Ocean Institute, p. 15 ; Pinto : 1973, "Problems of Developing states and their effects on Decisions on the Law of the Sea" - In Alexander (ed), *Law of the Sea : Needs and Interests of Developing Countries*, 7th Annual Conference, Law of the Sea Institute, University of Rhode Island, Kingston, p.9-15 ; Brown : 1973, "Maritime Zone : A Survey of Claims" - In New Directions in the Law of the Sea, Vol.III, Dobbo Jerry, NY : Oceana ; Wooster (ed), 1970, *Freedom of Oceanic Research* ; Dixit : 1971, "Freedom of Scientific Research in and on the High Seas ", *Indian Journal of International Law*, vol.II ; Tabibi : "Working Paper on Right of Transit for Land-locked countries", *Asian-African Legal Consultative Committee, Report of 13th session*, Annex. IV, pp. 203-205 ; Ibler : 1973, "The Land-locked and the Shelf-locked states and the Development of the Law of the Sea". *Annals of Internationals Studies*, vol.IV.

scientific research, transfer of technology and trainining in marine affairs, thus respecting the peaceful uses of the Indian Ocean and the future of the littoral states for making the sea as a 'Zone of peace'[81]. The African Coastal states has always given importance to a system of dispute settlement of the oceans. For global peace and complete disarmament East Africa and other nations of this continent have adopted a regional philosophy of 'non-alignment. Also the uniform interpretation and application of the law of Oceans will protect the rights and obligations of the African states, Wherein the OAU gives full commendations.

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81. See Wagganer : 1975, *Transfer of Marine Science and Technology - Quid proquo for Freedom of Scientific Research ?* San Diego, Law Review 12 ; Cronje, S : 1973, "Indian Ocean Security" In *Africa* ; Karrim Essak : 12 March 1972, "Cold War comes to the Indian Ocean" - *Daily News*, Dar es Salaam, P.S ; O'Connor and Prokefieff : 1973, "The Soviet Navy in the Mediterranean Ocean" - *Virginia Quaterly*, 49, N°4, p.481, McWhinney : 1975, "International Law and the Judicial Process : The World Court and the French Nuclear Tests", *Syracuse Journal of International Law*, 3, N°1, 6-46, p. 13-15.

FAMINTINANA

Ny lalana iraisam-pirenena momba ny ranomasina dia midika zavatra betsaka ho an'ny firenena mahaleotena maro. Nanjary fitaovana manan-danja mantsy izy io, ho an'ny firenena samy firenena, eo amin'ny fifandraisana ara-diplomatika, ara-kolontsaina ary ara-piarian-karena.

Na dia nanjakàn'ny fanjanahana sy ny imperialisma aza io lalàna iraisam-pirenena io - raha ny lasa no jerena -, ankehitriny ny fitrandrahana ny ranomasina dia tsy vitan'ny hoe mipetraka ho loza mihantona ho an'ny zanak'olombelona, fa koa misakana ny fivoaran'ny tany sasantsasany eo amin'ny lafiny ara-piaraha-monina sy ara-toekarena.

Mandinika ny fandraisana anjaran'i Afrika atsinanana talohan'ny taona 80 ity famelabelaran-kevitra ity. Omena lanja misimisy anefa, tsy ny zava-nitranga eo anivon'ny ranomasimbe Indiana ihany, fa koa ny fihetsik'ireo firenena misy any Afrika atsinanana — toa an'i Kenya, oganda, Tanzania, Somalia, ary Etiopia — eo anatrehan'ny fitsipi-dalàna mipetraka. Navoitra indrindra ny fandraisan'izy ireo anjara ka ny tombontsoan'izy ireo eo amin'ny tontolon'ny ranomasina no natao jery kina, miaraka amin'ny adi-hevitra sy ny tolon-kevitra samihafa. Ity famelabelaran-kevitra ity dia maneho ihany koa ireo antony ara-tantara, ara-piaraha-monina, ara-toekarena ary ara-politika, izy misy fiantraikany amin'ny fanirian'ireo firenena afrikana tatsinanana ireo eo amin'ny fifandraharahana iraisam-pirenena.

RESUME

Le Droit maritime international a été très significatif pour un très grand nombre de nations indépendantes. C'est devenu un outil vital pour les relations diplomatiques, culturelles et économiques entre une nation et une autre. Bien que, de par le passé, le droit maritime international ait été teinté de colonialisme et d'impérialisme, l'exploitation actuelle de la mer, non seulement constitue une menace pour l'existence du genre humain, mais de plus empêche le développement socio-économique de cette région et du globe d'une manière générale.

Tout en considérant la contribution de l'Afrique orientale avant les années 80, nous donnons de l'importance, non seulement aux événements qui ont eu lieu dans l'océan Indien, mais encore aux attitudes des différents pays de l'Afrique orientale comme le Kenya, l'Ouganda, la Tanzanie, la Somalie et l'Ethiopie vis-à-vis des codes juridiques et leur participation a été mise en exergue dans cette communication. Les intérêts variés des pays de l'Afrique

orientale dans l'environnement marin et leur association avec les Nations Unies sont examinés de manière critique, avec des discussions et des propositions. Cette communication contient également les facteurs historiques, socio-économiques et politiques qui ont influencé les aspirations des Etats de l'Afrique orientale en ce qui concerne les affaires internationales et leur ont donné un coup de fouet.