The International Seabed Authority and the Common Heritage of Mankind: An African Perspective

Introduction

For a long time, humankind thought of the sea as something inexhaustible given the sheer size of the oceans, it seemed inconceivable that human might be able to exert any appreciable influence on the "blue continent." The sea is a place of myth and mystery filled with weird and wonderful life items that is vital for the survival of our planet (Wertenbaker, 1983:38). After the surface of the earth, man seeks to conquer the seabed. Humankind has exploited the sea for centuries and this has frequently led to conflict. With the adoption of the United Nations Law of the Sea (UNILOS) in 1982, the International community created a comprehensive framework for legal governance of the seas which overtime has evolved into a powerful body of law (see World in transition governing the heritage). Prior to this, the question of legal rights to exploration and mining of the seabed has generated huge debates, starting in the 60s on whether the deep seabed was to be considered as Res nullius or Res Communis. Res Nullius meant that the seabed was a no man's land which could be appropriated through occupation. Res Communis, on the other hand, meant that the seabed was part of the high seas and as such could be used freely by any state. Both approaches, however, opened the seabed for unilateral exploitation by those States which had the financial and technological capability to do so (Kumar; 2004:784).

For thousands of years the sea was simply a source of food and was only of interest to people to that extend but with rise of the great sea faring nations such as the Netherlands, Portugal and Spain from the 18th century onwards, this kingdoms increasingly sought to expand their spheres of influence on the sea. Subsequently, access to mineral resources and other new commodities are used ambitions and triggered a race to conquer the oceans, faraway Islands and Coastlines, the quest to achieved dominance in the world led to numerous wars and sea battles (Beckman 200:62). In the late 1960s and the 1970s, the new regime for the deep seabed mining then under negotiation was seen by some as a source of untold wealth and an inspirational precedent for the New International Economic order. Other more sceptical i.e. the developing States doubted the tales of great riches and feared the precedent of domination by the developed states (Wood, 1999: 174) therefore the growing fear among the developing countries that the technologically advanced Nations would soon expose the seabed and ocean floor to competitive national appropriation and use, led former Ambassador Arvid Pardo of the permanent mission of Malta to the United Nations to propose that the seabed and its resources beyond the limits of National jurisdiction should be declared the "Common Heritage of Mankind (CHM) and must therefore be reserved exclusively for peaceful purposes. Since 1967, the deep seabed polymetallic nodules has become the CHM (kamar 2004 785). Essentially, Amb Pardo's concept is now enshrined in Article 136 of the 1982 UNCLOS).

This paper is an attempt to interrogate the principle of the International Seabed Authority and the Common Heritage of Mankind and situate it with Africa situation while also ascertaining its practicability. It should be stated clearly from the onset that the paper is strictly the writer's opinion on the subject which does not reflect Africa's view or position on the issue.

Who owns the Sea/who does the Sea belongs to?

The quest for answer to this question has been dominated by the tension between the concept of the freedom of the Sea or mare Liberum (the free sea) as formulated by Dutch philosophes and jurist Hugo Grotius (1583 to 1645) and the concept of Mare clausum (closed sea) developed by English scholar and Polymath John Selden (1584-1654). The front burner issue was whether the sea is international territory and all nations are free to use it or whether it can be claimed by industrial States. Until date neither of these two positions has prevailed and the conflict is still prevalent (see the law of the sea). However, the primary instrument for the governance of the sea is the United Nations Convention on the law is the Sea (UNCLOS as adopted in 1982. The UNCLOS comprises all the legal norms pertains to the sea and applicable to relations between States. It contents rules on the domination as well as provision on the protections and exploration of the oceans (Guntrip, 2003:4).

Conceptual Clarification

Aside legal concepts there is need to clarify concept such as North which refers to the capitalist core of industrialised countries of United States, United kingdom, France, Canada, Italy, Germany, Japan, Netherland and Belgium mostly referred to as G10 pioneer investors and potential applicants. They were among those that abstained from (Wood 1991:178) the negotiation of the Area at UNCLOS III. While the South are the developing countries of Africa, Asia, and Latin America. In the UN they constitute a bloc referred to as G77 + China. They were the once that negotiated the New International Economic Order. For the purpose of this paper, it is imperative to provide a precise definition of Area. The principle governing the Area is Articles 133-499 of UNCLOS.

Article 136

The Area is defined as the seabed and ocean florae end subsoil thereof, beyond the limits of national jurisdiction. In essence, it consists of the entire ocean fluvial which is not subject to sovereign rights of coastal states in or exclusive element zones or the continental shelff (the outer shelf) the water surface above the Area is the high seas. While the later is governed by the principles of the freedom of the seas, the Area has been declared CHM. The declaration of CHM puts into effects the following principles:

Article 133

1. All rights to the resources which means all solid, liquid, or gaseous minerals, including polymetallic nodules in situ in the Area and Archaeological and historic objects are vested in mankind as a whole. An international organisation, the Seabed Authority is to act on behalf of mankind.

Article 140

2. All activities of exploration for and exploiting the resources from the Area are to be carried out for the benefit of mankind and the benefits shared on a non-discriminatory basis which is to provide for the equitable sharing of financial and other economic benefits.

Article 130

3. The area is open to use by all states, exclusively for peaceful purposes. The States are to adhere to the Convention and the principles of the Charter in the interest of maintaining peace and security.

4. All States are to be given the opportunity to participate in activities in the Area and monopolization must be avoided.

5. In particular special attention is to be paid to developing countries.

6. The Authority has the power necessary to exercise its functions as set forth in Part XI and is to adopt all rules and regulations required for this purpose.

Article 143 (2)

The Seabed Authority is responsible for promoting and encouraging the conduct of marine scientific in the Area and the acquisition and plans for the developing countries of technology and scientific knowledge. The Authority must with respect to activates in the Area adopt outs for the protection of the marine environment and human life, the use of installations. States parties may in accordance with their obligations to act according to the Convention and International law, conduct marine scientific research in the Area, and are in any case obligated to act and promote intentional cooperation in such research. States are responsible for ensuring that any activities in the Area, whether they themselves or natural or juridical person of their nationality carry them out are effectively controlled and that any such undertaking are carried out in conformity with Part XI.

The Importance of Seabed

'Taken as whole, the quantities of metals available from the sea are so gigantic that they can hardly be computed. Thus one cubic mile of the sea water is estimated to contain 125 million tons of sodium chloride, about 6.5 million tons of magnesium, 3000,000 million tons of bromide, I million tons of silver and 14 million tons of Uranium. Multiply this figure by 324 million cubic miles of sea water found in the world's ocean and current market prices of these chemicals and metals and you get a staggering figure'(Chamlor,1962 in Anand 1975;14)

The minerals and metals they contain are essential components of modern day high-tech world, because as global stocks of raw minerals resources continue to dwindle due to increasing material consumption. Intense demand for valuable metals has pushed up global prices and this development now provides means of making deep sea miming appealing to many countries as a means of economic development and a new source of revenue generation (Beaudem,2014: 50) the fear among the developing countries is that technologically advanced nations would soon expose the sea bed and ocean floor to competitive national appropriation and use. The resultant effect is that manufacturing industries are now seeking access to previously unattainable mineral deposit in the ocean depth (Benson, 1988:56). More so, economists are afraid that world population has been outgrowing food and other human

necessities as the land cannot single-handedly sustain the growing populations' needs. Therefore since World War II the significance of the resources of the sea has attracted attention of individuals and nations. It is believed that half of the oceans, conserve and hold a vast reservoir of deposit of numerous resources; nonliving as well as living resources are available in the ocean floor (kamar 2004:786). The deep ocean is predicted to hold large quantities of untapped energy resources, pralines metals and mineral resources. These resources includes 3 types of potentially economically massive mineral resources. These are:

a. Sea floor massive sulphides (SMS)
b. Cobalt with ferromanganese crusts.
c. Polymetallic (Manganese) nodules (nautilus mineral, 2014).

The contention over Seabed Authority and CHM is an interplay between the developed rich countries of North and the developing poor countries of the South. There were concerns for regulations and conservation of ocean resources because the freedom of the Seas which was professed by Hugo believing that the resources of the seas were in exhaustible is now fast in retreat because it has been found that those resources in nature are indeed exhaustible. But Stakeholders are different in their approaches. Theses difference are manifested in the various claims, rights and duties which states have enunciated on the sea.(Noyes,2002:459) The developed and developing nations have their interests on the oceans and these are divergence. Such divergence in the last frontier of mankind ahead of chaos (Ajomo, 1973) In order to avert the chaos, the UN became a forum for debating and negotiating these differences because it attempted this position in two previous occasions with minimal success. The need for such peace and order on the ocean has therefore continued to worry the international conscience political changes.

The concern of newly independent states with their newly acquired sovereignitism believed that the existing law are not favourable to them as it only protected the interest of the western European states. The North i.e. developed industrialised countries insisted on the freedom of sea on the spheres of navigation (Commercial and Military) and exploitation of resources. while the South i.e. the developing countries of Africa, Asia and Latin America are more concerned with exclusive access to fish ,oil and gas (Gary,197:59) The south did not oppose the freedom of sea per se, but it wanted the seabed to be regulated strictly on a rational basis, in order to ensure achievement of their national objectives which include the avoidance of economic dominance by the technologically advanced nations and reserve some of the resources for its hungry and needy population (Benson ede,1978:15) African want to prevent the tragedy of the common (Pullar,2013:45) the concept posits that individual when given access to unregulated common resources , will act self interestedly by resulting in the depletion of these resources to the detriment of the whole groups long term best interest

The Africa and Seabed Mining

African States amount to some 30% of the total number of 178 states and to 40%of some 129 states of Group of 77. No Africa State except South Africa is a party to the Antarctic treaty system. No Africa states belong to the pioneer investors in deep sea bed mining because they require high technology and investment (kwiakwoska,2013:1).While developed states, have

an average of 285 scientist and engineers for each 10,000 members of the population, Africa has fewer than 10 scientists and engineers for every 10,000 person (Tolba,1990;109). Africa is the second largest Continents on earth consisting of 54 States of which 39 are coastal states with coastlines of varying lengths while 15 are landlocked countries (LLDCs). Of this in African, 34 are classified as least developed Countries (LDCs) while 6 are Small Island developing States (SIDs). The African continent is bounded by the North by the Mediterranean Sea, the west by the Atlantic Ocean, the North East by the Red sea and the South East by the India ocean. The Sea with its multifunctional use, is therefore of great significance to the continent. For example it provides a link for transportation and trade between coastal states, both within and outside the continent. Also through fishing, the Sea serves as a source of food, contributing greatly to the protein content of the diet of the various indigenous people of Africa. Also, the tremendous off shore mineral resources of certain Africa coastal states provide much needed income for the development of these states.

The sea also played a vital role in the two landmark events that defined the history of Africa - the slave trade and colonialism (Egede, 2010). The Sea was the trade route for the transatlantic slave trade, which provided a huge number of slaves to Europe, the Americans and the Caribbean. In addition, the sea served as a vital route through which European colonial powers in the scramble for and partition of Africa (the Berlin conference of 1884-1985) came to subjugate the continents.

These twin events of the slave trade and colonialism had radical effects on the African continent, as a whole with the impacts still being felt. The reaction of the African states to the initial attempt by the western developed states to expand the freedom of the sea to deep seabed mining was restricted because of their horrible past colonial history. Africa felt that it would lead to the scramble and partition of the Area and its resources by the developed countries in a manner similar to the scramble for Africa at the Berlin Conference of 1884/85. Cameroonian Bamela Engo who chaired the first committee of UNCLOS reiterated Africa's position when he pointed that "the race for the resources of the deep sea bed was seen as a maritime repeat of the despicable scramble for Africa land as such provocative of contemporary economic misgiving" (Egede, 2011:9).

Interestingly, African states along with other developing states have made significant contributions to the evolution and development of the in notable regime of the Area and the CHM as contained in Part VI of the UNCLOS 1982 of the New York Implementation Act of 1994, From the onset, it should be noted that the interest of all developing states in relations to the Area are not synonymous because no African state is currently involved in actual deep seabed mining activities there are present some developing states from the Asian region (China, India and South Korea as well as Cuba from Latin America and Caribbean origin. This African challenges are different from other developing countries (Beckman, 2010). Although Africa consists of different states, both coastal and sometimes distinguished as Africa North and South of the Sahara (Sub-Saharan Africa). These States located in the continent along with the fringe Island states have over the years since Independence from

colonial masters regarded themselves as bloc especially under the auspices of the African Union.
From the onset, the South did not oppose freedom of the sea per se, but it wanted to regulate them strictly on a national basis , in order to ensure achievement of their national objectives which include the avoidance of economic dominance by technologically advanced nations and also reserving some of the resources for its hungry and needy population. While the North on the other hand, seeks a legal regimes that will ensure economic efficiency in the exploitation of these ocean resources. The south is more interested in its own political participation in the legal order with efficiency being a secondary consideration.

Africa colonial experience made it to be wary of the attempt to put forward seabed mining in the Area as a freedom of the high seas by developed industrialized countries. African still relishing the experience of colonialism in sadness, was vehemently, against the industrialised states using the freedom of sea. Thus they unanimously precluded these developed states partitioning the Area and the resources amongst themselves as a result of their superior technology. Colonialism with its attendant effect left a rather deep-rooted scar in the psyche of African States. The result is that in any international sphere anything akin to colonialism or oppressiveness serve as a pull factor to unify these states.

Economically, with the widening economic and technological gap between developed and developing states, Africa along with other developing nations, were determined to make a concerted effort in international forum to push for pressures that could reduce this gap. African states remain the land-based producers of the minerals found in the seabed nodules while developed states generate the bulk of the world's demand to minerals. The developed states including Africa were concerned that if developed states were to mine the deep seabed, the demand for minerals would lessened consequently, mineral prices will fall. And as the economics of many developing states, rely heavily on mineral exports for their income. They perceived the sharing of financial benefits gained from deep seabed mining as a means of recovering any lost income from a fall in mineral prices (Guntrip, 2003:3).

In the same vein, the demand for change by developing states embodied in the New International Economic Order (NIEO). The NIEO aimed to establish a more equitable distribution of resources and income between developed and developing states by distributing economic benefit from the exploitation of the deep seabed between all parties, the advantages of these development is that the developed states with the technology at their disposal would be made to share the benefits of any exploration with developing states. As for as African States, affected by economic under-development were concerned, the resources of the Area provided a means to obtain additional resources to affect the NIEO. The idea of the area and its resources being CHM, Coupled with added requirement that special consideration should be given to the interests of developing states, were therefore widely canvassed and approved by the African states; all in need of extra income for development. Succinctly, the desire to correct the economic imbalance between the developed states of the North and undeveloped states including Africa influenced the arguments of the Africa States on the nature of the

regime of the Area. This was shown clearly by Africa stance on the issues of financing the mining activities of the enterprise and the transfer of technology (Herbert, 1991:223).

On the political front, the UNCLOS III provided an opportunity for the newly emergent African States to exercise their sovereign rights of legal equality as stated by the UN charter and to seek to establish themselves as a force to be reckoned with in the international community, hence that informed their insistence on one vote per State in the institution of the they regime of the seabed. They discovered that the existing international institutions were under the control and dominance of the more established nation-states of the developed states. The common desire to achieve some paradigm shifts in the control of the international regimes the negotiations and the success in pushing through a distinct regime for the Area at the UNCLOS III demonstrated that African States teaming up with other developing states were able to exert at least some significant influence in the international sphere. Subsequent upon this, the CHM was seen as a means of rectifying their economic situations (Boezek, 1984:1227).
The Tanzanian delegation at the committee on the peaceful use of the seabed and Ocean floor beyond national jurisdiction, Mr kambona asserted that “reference has frequently been made to the freedom of fishing in the high seas. If that freedom meant freedom to plunder the riches of the sea, it was a freedom that was not to anybody’s advantage”(Egede 2011:77). He also said that UNCLOS was meant to appraise the entire system and review the rules of the game because irreversible damage was done to the resources mankind has inherited. (Gary 1975,234)

The whole process of the formulation and development of the regime of the Area and the CHM was another arena for the complex interplay of interest in the sea bed committee. It is a Clash in International Law and politics between the developed and industrialised states of the North and other developing countries including Africa states of South. Again, Mr Engo of Cameroon declared: “We are not here merely to write a business arrangement to facilitate exploitation of seabed resources by the industrially rich and powerful nations,we are here to design a new relationship among states and between them and with the international seabed Authority we seek to establish and ensure that the declared Common Heritage benefits all mankind (see report of the plenary of the Chairmen of the first Committee).

On the other hand, the developed states rejected the CHM of principles on two grounds viz

1. They consider the concept devoid of any legal meaning.
2. They agreed that the deep seabed resources could not belong to the world community. By relying on the freedom of high seas outlined in 1958 Geneva Convention on the high seas.

It was not until the 1994 agreement that there a near universal support.
The United States of significant ejected part IX claiming it would deter future development of deep seabed mineral resources insisted that it gave too much power to the developing countries (see the statement of the foreign Relation law of the US 1987) p 52

The CHM principle was initially suggested as the regime to govern the deep seabed, the developed and developing countries took opposing positions. While thee developing including Africa supported the CHM principles as it favoured their economic interests. The developed countries had more to gain from utilizing pre-existing legal regimes and adapting them to the seabed. (Boezek, 1984). The tragedy of African perspective remains that Africa in the next decades, can never access the resources at the deep blue sea at best what the continent can appeal for is equitable moratorium and the need for the continent to be assisted in the area of research and development. Although the schedule of UNCLOS made specific demand that developing countries should be given special attention particular but in practicability Africa has not enjoyed such benefits even when Ambassador Wadibia Anyanwu of Nigeria in her address at the 64th plenary meeting of the 68th session of the UN General Assembly in 2003 affirmed on CHM and also stressed that "We would like to underscore the fact that the developing states are disadvantaged in terms of acquisition of technology and expertise relating to many aspects of activities in the oceans and seas particularly the seabed… There is no doubt that developing countries need help through cooperation, partnership and technical assistance in line with Article 140 of the UNCLOS which states that activities in the Area to be carried out for the benefits of mankind as a whole, taking consideration to the interest and needs of developing countries." (See UN Report, 2003). The Ambassador summed up the request of African and this was further reiterated by Michael Lodge, the deputy to the Secretary General and legal counsel of ISA at the SADC seminar on the ISA held in South Africa in 2015., enumerated the challenges of Africa, (except from the speech presented at the conference).

- These are constraint of finance for the capital-intensive deep seabed mining industry;
  - Lack of highly sophisticated marine technology required for deep seabed research and mining;
  - Lack of sufficient human resources (Young Scientists) engaging in deep seabed research and relative decision-making;
  - Lack of public awareness of the long term significance of deep seabed mining to the social economic development of Africa countries.

Also In 2004 Kenya on behalf of African States, appealed to the USA to conduct some of its training seminars and technical workshops in Africa as a way of exposing African scientists and researchers to issues related to the deep seabed. The status of the Area as CHM has been settled legally by the UNCLOS of 1982 but the exalt practicability is still in doubt that is the scope of the concept is unclear. For African states, this concept connotes common ownership of the Area and its resources and idea in line with Africa native conception of ownership of land under native law and custom it connotes joint management. To Opoku, there is basic concordance between Africa land law and the law of the sea. Therefore, once mankind is vested with title to, and ownership of the area and its resources, states cannot claim or exercise sovereign rights over the area or act in manner incompatible with the common heritage. The idea of common ownership and management of the seabed underscores international co-operation and peaceful uses of the area (Opoku, 1973:30)

Africa and Common Heritage Principle

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The CHM shared similar tenets with African land tenure system that is based on Communal ownership. Individual cannot claim ownership of community land, it was on the basis that CHM found wide acceptance in Africa. At best individual can only exercise usufructuary rights. (Rembe,1980:53) based on this, The Common heritage received an overwhelming support from Africa because it is in tune with their desire and modern conditions. It appeals directly to their basic problems and needs as it has its emphasis on development, peace and equality of treatment of all states. Subsequently, Africa took an active part in the search for legal principles that would govern the regime and machinery to be established to regulate the seabed area. Therefore Africa and other developing states became united for fear that the developed technologically advanced countries would parcel out the sea and its resources to the exclusion of many particularly, the deprived part of mankind.

Aside the forgone, the growing awareness of ocean –related matters is closely related to the progressing pace of African economics and democratic change in the continent as testified by a growing transition from authoritarianism to multiparty democracy and economic pluralism in a number of African countries (kwiatkowska.2013, 2). More so, the promotion of balanced economic development in all parts of the continent obtained a firm basis in the 1991 Abuja treaty establishing the African Economic Treaty which became an integral part of the Organisation of African Unity which has now transformed to African Union. On the sea bed mining, the regional conference on the Development and utilization of mineral resources in Africa held under the auspices of ECA (Economic Commission for Africa) as a result of the 1980 Charter, Lagos Plan of Action. There were four conferences held in Arusha 1981, Lusaka 1985, Kampala 1988 and Zaire 1990. The aim of these conferences was to develop mechanism for making full use of African mineral resources including the deep sea bed deposits, so as to serve the needs of the region (kwiatkowska, 2013;3). In particular the 1988 Kampala Programme of action called on member States of the then OAU to join the regional Institutions in order to promote co-operation in the development and utilization of mineral resources and also set up such institutions in west and North Africa (see report of the third regional conference in Africa Kampala 6-15 June 1988 UN doc/scn/wp.5/add31989 (Assessed on 30th July 2016).

The lack of economic and technical power made Africa states to advocate for the establishment of an effective regime and machinery, democratic, representative and free from the control of any state or group of states. Accordingly, this international regime should be vested with sufficient and effective powers to exercise, as a representative of humanity, exclusive jurisdiction over the common heritage. The jurisdiction of the authority covers the whole of the seabed including all activities undertaken there (Rembe p 23). Before the adoption of the Declaration of principles, the UNGA adopted resolution (xxiv), a moratorium resolution, declaring that pending the establishment of a seabed regime; states should refrain from exploiting the resources of the Area. The adoption of this moratorium resolution was

triggered off by the signs of unilateral exploitation in defiance of International efforts to devise a regime for the Area.
Africa has always been faced with the problem of economic development because among other things, their economies are largely based on the production and export of mere primary commodities making them vulnerable to price fluctuations. As a further means of protecting the economic position of land based producers states producing minerals found in the deep sea bed Area, they Insisted That ISA be made to participate in commodity agreements and arrangements for the purpose of promoting the growth of the markets and stability of the seabed minerals.

The principle and moratorium resolution emphasized that there cannot be limited claims whether under the continental shelf doctrine or under the traditional Area that belongs to all mankind. Thus, Africa advocated that what should follow logically is a global structure, serving as an agent of mankind to undertake the exploitation of the area and distribution of benefits resulting there from (Egede:12) Africa ensured that the resolution was included in any future law of the sea treaty. The OAU in 1974, In accordance with the regional position adopted; declared that 'African states affirm that until the establishment of the International regime and international machinery the applicable regime in the Area is the Declaration of principles, resolution 2749 and the moratorium.

The key issues.

Within the framework of the law of the sea, the introduction of the CH principle has been characterised by many ups and downs. The up are rather in the field of theory, the down by contrast to be found in the area of practicability, at the time of its introduction, the principle stood at the right angles with the sacrosanct principle of freedom of the seas that governed the oceans ever since Grotius won the battle of books in the 17th century (Gustfafson, 2010: 1). The original part IX OF THE UNCLOS effectively preclude industrialised states from joining the convention for more than a decade, putting at risk the whole project for a modern constitution of the oceans(wood,199:174). However, the objection to Part XI has been overcome with the adoption of the 1994 part XI implementation Agreement. The international seabed authority came into being on 16 November 1994 with the entry into being on 16th November 1994 with the entry into force of the Convention. The Authority has an Assembly, Council, Secretariat headed by a secretary –General, as well as a legal and Technical Committee. The "enterprise" is to be set up as the mining arm of the Authority and would be conducting mining directly alongside other mining enterprises. The Authority is based in Kingston, Jamaica. All states parties to the convention are ipso facto members of the authority, the convention was adopted in 1982.
There was growing realisation that the part XI deep sea mining regime was unworkable. The fear that it would preclude participation in the convention by most industrialised countries, and based on wholesome optimism of the potential and time scale of deep sea-mining, that the common heritage would benefit mankind as a whole, making Martffy-Mantuano, to say "a zone without any foreseeable economic uses had held the whole convention hostage for a decade(quote from Wood,1991 ; 178) by early 1990s, the convention's deep sea mining

regime was radically revised as a result of consultation under the auspices of the Un Secretary General which led to the 1994 part XI implementation Agreement, it was at this time that cooperation intensified among the ten pioneer(G10) investors and potential applicants(Belgium ,Canada, France, Germany, Italy, Jap[an. Netherlands, Russia, United Kingdom and United States) and most interested countries like Brazil , Indonesia and Jamaica. The adoption of the 1994 agreement gingered the industrialised states to join the convention and eventually the sea bed authority was established. The main changes made by the agreements are:

1. Greatly reduced the cost for States parties;
2. Postponement in establishing the enterprise and enhanced provision for joint ventures with that organ;
3. New decision making procedures to safeguard special interests;
4. No mandatory transfer of knowledge;
5. No production limitation, but clear anti subsidy provision;
6. No compensation fund for land based producers;
7. Substantially reduced fees for miners and financial terms of contacts in due course, based on comparable terms of land based mining.

Evidently from the above African countries were schemed out because they are mainly the land based producers and the no mandatory transfer of knowledge was a negation of art 144.
It is the opinion of this paper that Africa deserve a special consideration because developed and developing states are not alike ,hence they should be not be treated alike Wolfrum, a advocated for a legal form of discrimination.(wolfrum,1999:692.)The only problem with this is that even among the broad category of developing states, the African continent is replete with such extremely poor states as up to 34 African states are classified as highly indebted countries HIPCS (Egede,2011:16) There is need to distinguish between the special consideration given to extremely poor developing states, in contrast to other developing States, in respect to the benefits of the area seem appropriate and well clarified in the provision of the UNCLOS as it pertains to effective participation of developing countries in Art 148 requires that in promoting effective participation of developing states in the activities of the Area ,due regards should be given to Landlocked and geographically disadvantaged states. So far, the CHM can be considered at present as forming part and parcel of international law, the same is not necessary so with respect to the specific legal obligations ensuring from the principle in governing the actual utilization of the deep seabed (Wolfum,1999;6940 In summary, the 1994 implementation agreement radically revised part IX of the 1982 convention in Order to accommodate some basic concerns of the United States and some other western states possessing the technology to mine the deep sea (Anderson, 2008;352).
Amongst the weak points of CHM is the lack of clear content of the scope and content because CHM has diverse meanings. It can be argued that unilateral extraction of deep seabed minerals outside the conventional system is so imply illegal but such action may be legal in accordance with international law as long as some of the benefits derived from the exploitation are shared with others.(franckx,1982;564).mankind as a concept should be

distinguished from man in general. The former refers to the collection of body of people while the later stands for an individual making up that body.

Another lacuna is the use of the phrase 'peaceful purpose' in Art 141 of UNCLOS where it is stated that the area shall be open to use exclusively for peaceful purposes by all states., whether coastal or landlocked without dissemination and without prejudice to the other provisions of this part. This provision reflects one of the main purposes of the original proposal for the deep seabed, but application has resulted in ambiguity. On this issue, the developed and developing took opposite side. The developed states preferred the approach of United States that prohibits the emplacement of weapons of mass destruction on the seabed and ocean floor, beyond 3 nautical mile band, the US envisaged that complete demilitarisation is not possible, whilst the developing states including Africa supported the view of soviet Union that proposed a complete demilitarisation of the seabed beyond 12nautical miles.The compromise agreed to become Art 1(1) which provides that: "the states parties to this treaty undertake not to implant on the seabed and the ocean floor and in the subsoil thereof beyond the outer limit of the seabed zone , any nuclear weapon or any other types of weapon of mass destruction as well structures, launching installations or any other facilities specifically designed for strong ,testing or using such weapons"(see Un convention on Disarmament) This convention still did not put paid to what signifies peaceful use as the debate raged on to other treaties such as the Antarctic treaty and the moon treaty. In a nutshell, the article 1(1) of the emplacement treaty though it defined peaceful purposes, but the provision suffers from limited scope. This unclear scope creates difficulties for states wishing to undertake activities that could be interpreted as military in nature. Therefore, the narrow definition of peaceful purpose reduces the common heritage principle as a legal standard , especially in relation to intelligence gathering devices.(Guntrip,2003).

The third is that equitable sharing is yet to commence and there is no juridical consideration of the guidelines for the distribution. The element of time simply puts concerns the fact that mankind as a whole cannot wait ad aeternam to know what these limits are , the chequered history of common heritage concept in combination of with present day distribution of forces, the submission seems reasonable that the longer this boundary remains in a flux the higher the chances are that such a situation will become detrimental to the interest of mankind (Franckx, 2010:555)The working of equitable sharing of benefits , the original provision relating to distribution of the benefits of deep sea bed activities were contained in Art 160 (2) the principles are now contained in section 7 of the annexed to the 1994 Agreement. It will only become clearer when distribution commences on a case by case basis, dependent on the extent to which the distribution of benefits is to assist developing States, it may be limited to direct economic consequence or could extend to programs that have resultant effects due to the economic shortfall.

The competency of International Seabed Authority (ISA)

ISA has received the competence to act on behalf of mankind as a whole, thus in principle it represents mankind therefore, it should not only be an organisation characterised by the broadest possible participation of states. And should also represents people living outside the context of present day states. Hence, the ISA has broad competence but few powers because the 1994 Agreement had altered the decision making system of ISA by making the individual

interest of States to override the interests of mankind. As usual, the United States on behalf of others opposed the original system of decision making as it unfairly and unnecessarily granted a disproportionate voice to the developing countries that have little or no investment in seabed mining operations (Benington, 2011:26) more so, compliance remains a sore grape in international law, the answer is not often found in law of treaties but rather in the law of state responsibility (Feichner, 1999:82)

Recommendations and conclusion

Though UNCLOS as a political bargain and legal regime may aspire to universality, it is undoubtedly The largest and most complex international negotiation ever held representing the culmination of a thousand years of international relations, conflict and now nearly universal adherence to an enduring order for ocean space (Prows, 2007:243) yet it is an imperfect and incomplete instrument as it has provided deficient in the following. In the deep sea bed, Sovereignty is an irrelevant consideration. The requirement that the deep sea bed be used only for peaceful purposes require elaboration because there seems to be a lacuna to what may be peaceful to the developed may be handful to Africa continent as a whole. The original decision making procedures of ISA was altered by the 1994 Agreement to favour the developed states as against the developing with Africa has a chunk. This paper therefore recommends the following as prescribed by Germany advisory council on global change published in world transition: governing the marine heritage, published in the autumn of 2013 page 5.

Adaptive management: aimed to continuously improve the knowledge base for governance and to promptly use it for improving the conservation and sustainable use of the oceans.
Transparent information: by ensuring that all players have access to the relevant data. This apparently relates to Research and development. The developed countries should share information and help Africa with same to help them benefit from the deep sea mining.
Fair distribution mechanism aimed to ensure an equitable distribution both of benefits and marine resources use and of costs. An example of conservation and monitoring surveillance and sanctions. This should apply to the sharing of costs and benefits between countries and between different levels of economic development. Africa should not be short-changed.
Participatory decision making Structures: by making it possible that all states reveal its interest that will lead to decision that all stake holders can understand.
A clear assignment on rights of use to prevent the over exploitation of the seas, which is a common good, this makes it possible to exclude certain users and thus to coordinate use either via markets or by negotiation. Sanction mechanism at different governance levels for the purpose of enforcing mechanism.

In summary what Africa needs is technology transfer which the 1994 implementation agreement altered and this underscores the dominant of power in international relations. While Africa seeks Justice the developed used their power to amend the most important part of the convention to Africa .The agreement watered down the provision of UNCLOS championed by Africa, Such as the mandatory transfer of technology, production limitation, compensation fund and an influential role for the ‘enterprise’ and a more democratic

institutional framework. The message that was sent to the world is that a justice based approach can only go as far as the powerful states members of the international community are prepared to accept. Hence Justice is the vehicle through which weaker members of a community are able to advance their claims in the face of power (Egede, 2011: 245. To sum it all, the late Nelson Mandela, African foremost statesman summarized Africa's situation during his statement at the first sensitization seminar of the Law of the Sea held in Abuja in September, 2011 when he said "our future as human being depends on our intelligent and prudent use of the oceans and in turn will depend on the determined efforts of dedicated women and men from all parts of our planet". This quote underscores the need for cooperation and interdependence to realize the Common Heritage Mankind principles.

Hence in a World of increasing interdependence akin to global village, both the developed and the developing countries need each other. According to former Nigerian president, President Olusegun Obasanjo to both president Bill Clinton and prime Minister Tony Blair , "the wishes of the developing world are simple" .... We are all living in the same house, whether you are developed and or not developed but some of us are living in super luxurious rooms, others are living in something not better than an unkempt kitchen where pipes are leaking and where there is no toilet. We in the south are saying, He continued, let those staying in the super luxurious rooms pay a bit of attention to those living where the pipes are leaking or we will all be badly affected"(Rouke, 2003:344).

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