TOPIC:

AN OVERVIEW OF THE IMPACTS OF INTERNATIONAL LAW ON PETROLEUM DEVELOPMENT AND REGULATION IN NIGERIA

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Abstract:

Nigeria without doubt has experienced a considerable amount of development in its petroleum sector since the inception of its exploration activities by foreign oil companies from 1908 till date. International law of cause played a significant role in the said development by providing the requisite legal framework to regulate the oil industry at inception to establish the sovereignty of Nigeria over its natural resources; ensure stability within states and peaceful co-existence. This paper will therefore critically trace and examine the influence international law on the development of Nigerian oil sector and how such influence has affected our local legislation on regulation of the oil and gas sector in Nigeria.

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INTRODUCTION

The Nigerian economy despite the recent shortfall in the international oil price is heavily dependent on the petroleum industry. Nigeria as a country cannot survive without the foreign exchange earnings from its oil export. In other words the petroleum industry in Nigeria accounts for about 90% foreign exchange earnings and consequently a major cause of strife and political intrigues arising from appropriate sharing formula. International law has brought immense contribution to develop and as well regulate the petroleum industry, thus, making Nigeria a signatory to various international bodies and conventions on pollution, resource control and respect to human rights.

In describing the impact of international law on the development and regulation of the petroleum industry in Nigeria, it necessary to understand what international law is in order to fully appreciate its impact to this topic.

Traditionally, international law consists of rules and principles governing the relations and dealings of nations with each other, though recently, the scope of international law has been redefined to include relations between states and individuals, and relations between international organizations.

Under Nigerian law, an international law or treaty becomes binding when it has been incorporated as forming part of the municipal law by an Act of the National Assembly. Also, such International Law principles become enforceable in Nigeria, only to the extent that it has been incorporated by a local legislation or locally enacted. Until passed into law, such treaties or principles have no force of law and their provisions are not justiciable in Nigerian courts.

CHAPTER 2

PETROLEUM DEVELOPMENT IN NIGERIA

The development of the Nigerian petroleum scene opened as far back as 1908, when a German company, the Nigerian Bitumen Corporation, was attracted to what is now known as the south-western Nigerian Tar Sand deposit. After World War 1, Shell-D'Arcy, a consortium of Shell and Royal Dutch, resumed oil exploration in 1937, this time in Owerri, on the northern frame of the Niger Delta. On June 5, 1956, after drilling 28 wells and 25 core holes, all dry, the new operator, Shell-BP, struck oil at Oloibiri in what is now Bayelsa State.

Thenceforth, the Niger Delta became Nigeria's bumper scene of feverish exploration and production. From an initial output of 5,100 barrels per day in 1956, the nation steadily rose to the sixth position on the production chart of the Organisation of Petroleum Exporting Countries. By the mid-1970s Shell, the leading producer had exceeded the one million barrels a day production mark.

After over three decades during which the oil industry was dominated by foreign companies, a private indigenous oil company, Consolidated Oil, recorded its first discovery, Bella - 1, in 1991. Since 1992, following the release of new concessions in the Niger Delta to indigenous exploration and production companies, the number of indigenous companies has increased to 12. So far, out of some 870 oil fields discovered in Nigeria, only 120 fields are currently producing. Most of the fields are not producing because the country has to abide by OPEC's production quota of 1.8 million barrels per day to Nigeria. Violence in the oil-producing communities has also disrupted production, causing the shut-up of most land and swamp wells. Production is sustained by offshore fields.

A major boost in crude production was the coming on stream of Mobil's Oso Condensate Project. Discovered in 1967 by the then Mobil Exploration Nigeria Inc., the predecessor of Mobil Producing Nigeria Unlimited. The Oso field holds a gigantic reserve of 500 million barrels of recoverable condensate, the Oso field is located in the NNPC/Mobil Joint Venture Oil Mining Lease No. 70, some 35 km offshore of Akwa lbom State in the eastern delta. Joint venture finance agreement to develop the Oso in field was concluded in April 1991, after long and complex negotiations and detailed investigation.

Nigeria became a member of the Organization of Petroleum Exporting Countries (OPEC) in 1971. And according to its statute, the principal goal is the determination of the best means for safeguarding their interests, individually and collectively; devising ways and means of ensuring the stabilization of prices in international oil markets with a view to eliminating harmful and unnecessary fluctuations; giving due regard at all times to the interests of the producing nations and to the necessity of securing a steady income to the producing countries; an efficient, economic and regular supply of petroleum to consuming nations, and a fair return on their capital to those investing in the petroleum industry

It was at this point that Nigeria began to take a firmer control of its oil and gas resources in line with the practice of the other members of OPEC.

This period witnessed the emergence of National Oil Companies (NOCs) across OPEC member countries, with the sole objective of monitoring the stake of the oil-producing countries in the exploitation of the resource. Whereas in some OPEC member countries the NOCs took direct control of production operations, in Nigeria, the Multinational Oil Companies (MNOCs) were allowed to continue with such operations under Joint Operating Agreements (JOA) which clearly specified the respective stakes of the companies and the Government of Nigeria in the ventures.

The JOA takes the form of a partnership between the joint venture partners. The Agreement states the participatory interest of each of the partners and also it designates one of the partners as the operator of the venture. In Nigeria, the NNPC represents the interest of the government in the joint ventures, whereas the respective MNOCs operate the different ventures with varying participatory interests. The JOA oversees the relationship between the parties, including budget approval and supervision, crude oil lifting and sale in proportion to equity, and funding by the partners. In addition to the JOA, a Memorandum of Understanding (MOU) is also incorporated. The MOU governs the manner in which revenues from the venture are shared between the partners, including payment of taxes, royalties and industry margin. The income derived from the operation is also shared in proportion to the equity interests of the parties to the venture, with each party bearing the cost of its royalty and tax obligations in the same proportion. Allocations are also made from the revenue to take care of operating and technical costs.

This period also witnessed the arrival on the scene of other MNOCs such as Gulf Oil and Texaco (now ChevronTexaco), Elf Petroleum (now Total), Mobil (now ExxonMobil), and Agip in addition to Shell, which was already playing a dominant role in the industry. These other companies were also operating under JOAs with NNPC, with varying percentages of stakes in their respective acreages. To date, the above companies constitute the major players in Nigeria's oil industry, with Shell accounting for a just little less than 50% of Nigeria's total daily production, which currently stands at about 2.4 million barrels of oil per day. JOAs are also still dominant in the oil industry in Nigeria, accounting for over 90% of total oil and gas production in Nigeria today.

Some of the constraints associated with the JOA include poor funding, due mainly to the imbalance in the financial capacity of the different joint venture partners, especially the government which has other pressures on its resources, leading often to reduction in operations and consequential loss in revenue. JOA is also constrained by allegations of gold plating of operating costs by the non-operators of the venture, which often leads to mutual suspicion between the parties, and the rather unfair distribution of revenues, especially in the situation of upsides from high oil prices. Additionally, the Operator also faces peculiar challenges in Nigeria such as the need to meet the incessant demands by oil producing communities for development programmes in their areas; demands which could lead to disruptions in operations from time to time. With the expansion of the Nigerian oil and gas industry, acreages started being allocated in the shallow and deep offshore areas, and this introduced the need for a different regime, as it brought its own unique challenges in terms of

funding and technical complexity. This led to the introduction of PSCs in the new offshore and inland basin acreages, which is gradually assuming prominence in the entire industry.

The emergence of offshore oil and gas operations and the granting of deep water acreages to the oil producing companies have however witnessed a shift from JOA regimes to Production Sharing Contracts (PSCs), with implications for the operation and regulation of the oil industry in Nigeria. This shift is attributable to a number of factors ranging from the complexity of operations in the offshore terrain, (which makes regulation under a JOA more difficult), to dwindling resources of the country, (which makes funding under the JOAs precarious for the government). At a time when the Nigerian government is intent on increasing oil and gas reserves and the country's production capacity without the necessary funds to back it up, a funding arrangement which achieves those objectives without having a negative impact on the scarce resources available for investment in other sectors of the economy is imperative.

The PSCs focus on the sharing of the output of oil and gas operations in agreed proportions between the Oil Company, as a contractor to the government, and the NOC, as the representative of government interests in the venture. Under a PSC, the contractor, usually a foreign oil company bears the entire cost and risk of exploration activities, and only reaps the rewards after a commercial find. In the event of a commercial discovery, the contractor recovers its costs fully from allocation of oil, referred to as 'Cost Oil'. Allowance is also made from production for royalties, after which the remainder of the production, called 'Profit Oil', is shared in agreed proportions between the company and the government as represented by the NOC. The Oil Company thereafter pays income tax on its profits from the venture. The oil and all the installations remain the property of Nigeria throughout the duration of the contract.

In Nigeria, this form of contractual arrangement is relatively new, and covers mostly acreages in the shallow and deep offshore areas and the inland basins. The major operators in Nigeria are still largely the holders of the PSCs but there have also been new entrants, made up of independent foreign oil companies, which enter into partnerships with indigenous companies to bid for oil blocks, and thereafter operate it in line with predetermined contractual arrangements. In addition to royalties, taxes and its share of profit oil, the government also earns revenue from signature bonuses paid by the oil companies upon successful bids. Most forms of payments under PSCs operating in Nigeria are made in oil, as the law provides for cost oil, tax oil, royalty oil and profit oil. Investment Tax Credits and Allowances are also available to the investors at the rate of 50% of the value of such investments.

Some of the advantages associated with PSCs include the relative flexibility in the management of the operations, and the fact that there is no financial burden on the host government, and even after a commercial find, the payment to the contractor is in oil, which does not attract any direct financial cost. Leveraging on the technical

know-how and experience of the companies in such operations, the government can focus its energies in other areas of the economy while trusting that the oil and gas industry will develop at an acceptable pace without the usual trappings of cash call constraints.

In any event, the PSCs were not without some drawbacks such as the risky nature of the operation. For instance, in the event of an unsuccessful operation, millions of dollars could be completely lost, unless the local laws allow for costs from one acreage to be transferred to another, which is not always the case, and would depend on the provisions of the PSC entered into by the parties. Also, the fact that the contractor is usually allowed a relatively unfettered hand to draw up and execute its programme could lead to allegations of gold plaiting of costs.

The long term nature of transactions in the oil industry however usually mitigates some of these difficulties. The tendency is usually for both parties to strive to make room for flexibility in drawing up the terms, and also make provisions for renegotiation in the event that particular provisions are later found to be causing undue hardship.

Recently, there has been a conscious shift in the contractual structure in the oil and gas operation arrangement from the traditional JOA to PSC[2].

CHAPTER 3

THE INFLUENCE OF INTERNATIONAL LAW ON THE SOURCE AND GROWTH OF NIGERIAN PETROLEUM LAW

It is appropriate at this point to briefly address the issue of how the practice in international law relating to the exploration of the natural resources beneath the high seas has come to have a bearing or influence on Nigerian municipal law on petroleum. It is important to note that two important amendments were introduced to the scope of mineral oils Act 1914, in 1950[3] and 1959 respectively. By the 1950 amendment, the submarine areas of whatever constituted Nigeria's territorial waters at that time were to be regarded as "land" within its usage in the 1914 Act. As for the 1959 legislation, it empowered the Nigerian federal legislature to extend its future

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[2] http://pengassan.org/pdf/History%20of%20Nigerian%20Oil%20and%20Gas%20Industry.pdf

[3] For a legislation of an earlier date in which reference to Territorial waters was made, see Territorial Waters Jurisdiction Act 1878, repealed by Section 4 of the Territorial Waters Act 1967 (Now contained in Cap 428 Laws of the federation of Nigeria (LFN) 1990 as amended by 1998 No 1)

legislative competence on mines and minerals, to cover the areas beneath other waters.

The 1959 amendments had the effect of extending the areas of the waters in in respect of which the Nigerian law on mining and minerals would apply, which naturally brought into purview of the Nigerian law on the subject, Nigeria's continental shelf areas. It is significant to observe that before the 1959 amendments, the Geneva international convention on the territorial sea, the contiguous zone and the Continental shelf had just been concluded in the spring of 1958[4] Under Article 2 of the Geneva Convention of the continental shelf 1958, the right of a sovereign coastal state to exercise control over exploration and exploitation of the natural resource of its continental shelf was recognized.

It is instructive to note that a number of United Nations' Conventions and Resolution have greatly assisted in the determination or issues relating to ownership of natural resources and the development of municipal law. For instance, the United Nations Convention on the Law of the Sea, the General Conventions on the Territorial Sea, the Contiguous zone and the Continental Shelf of 1958 had bearing on our Territorial waters Act 1967, thee Oil in Navigable Waters Act 1968 and the Exclusive Economic zone Act 1978

As indicated earlier, treaties create binding legal obligations only as between States and not individuals; hence treaties which will impact on the Nigerian Petroleum Industry are those which have been incorporated either wholly or in an amended form into municipal law by an Act of the National Assembly.

We shall now examine only treaties that have been passed into law by an Act of the National Assembly and these treaties will be reviewed in the overall context of oil exploration, production, and evacuation and transportation operations.

a Convention on the Continental Shelf, 1958

This convention defines the rights of States to explore and exploit the natural resources of the continental shelf. To this end, the contracting parties agree that the Coastal States have sovereign and exclusive rights over the continental shelf for the purpose of exploration and exploitation of its natural resources.

[4] The conventions were signed on the 29th of April 1958 and Nigeria became party to them by virtue of British colony at the time. Upon gaining independence in 1960, these among other certain conventions and treaties earlier acceded to by Britain, were resubmitted to the United Nations Organization as conventions to which Nigeria as an independent nation would be party. The conventions on the Territorial sae and the Contiguous Zone came to force on the 10th of September 1964 upon ratification by the required number of States

Article 1 of the convention defines continental shelf as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

However, Article 5 (1) places a limit on the right to explore and exploit by providing that the exploratory and exploitative right over the continental shelf shall not cause unjustifiable interference with navigation, fishing or the conservation of the living resources of the seas, or with oceanographic or other scientific research.

Some provisions of this convention have been incorporated into our laws in an amended form. Section 1(1) of the Petroleum Act[5] vests the entire ownership and control of all petroleum in, under or upon any lands to which this section applies in the Federal Government of Nigeria. Sub-section 2 defines 'land' as used in section 1(1) of the Act to include the continental shelfs.

Also, the interpretation section of the act in section 15 defines "continental shelf' to mean "the seabed and subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth no greater than 200 metres (or, where its natural resources are capable of exploitation, at any depth) below the surface of the sea, excluding so much of those areas as lies below the territorial waters of Nigeria".

b International Convention for the prevention of pollution of the Sea by Oil, 1954 (as amended in 1962): Incorporated under the Oil in Navigable Waters Act 1968

This is an Act enacted to implement the terms of the International Convention for the prevention of pollution of the Sea by Oil, 1954 (as amended in 1962) ('OILPOL') and to make provisions for such prevention in the navigable waters of Nigeria. Section 1 makes it an offence for any ship to discharge oil or any mixture containing not less than 100 parts of oil in to a part of the sea known as the 'prohibited sea area' which are enumerated in the schedule to the Act and renders the owner or master of such infringing ship liable for the offence.

Furthermore, the Act makes it an offence for the discharge of oil into Nigerian waters. For the purpose of the Act, Nigerian waters will mean the territorial waters of Nigeria and all other waters (including the inland waters) which are within the limits and are navigable by sea-going ships. Also, where the discharge emanates from a vessel, owner or master of the vessel will be held liable; where the discharge

[5] *(Op. Cit)*

is from a place on land, the occupier of that place will be held liable and where the discharge is from an apparatus used for transferring oil from or to a vessel, the person in charge of the apparatus will be rendered liable.[6]

Also, the Act permits the discharge of ballast water of vessels in which a cargo of dangerous petroleum has been carried provided the permission of the harbor authority was obtained. In such instance, the discharge of ballast water from such a vessel shall not constitute an offence provided that the conditions for discharge set by the habour authority are met and the ballast water contains no oil other than dangerous petroleum.[7]

The Act further empowers the Minister to make regulations requiring Nigerian ships to be fitted with equipments for the purpose of preventing or reducing the discharge of oil or oil mixtures in to the sea. There are also certain defences available to an accused person under the Act.

c International Convention for the prevention of pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act, 2007[8]

This Act came into force on April 11, 2007 and it was enacted to enable effect to be given in the Federal Republic of Nigeria to the International Convention for the Prevention of Pollution from Ships 1973 and the Protocol and for other related matters.

d Convention of the High Seas, 1958 (Geneva)

The goal of this convention which entered into force in 1962 is to codify rules of international law relating to the High Seas. The obligation on every contracting party to the convention is to draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from exploitation and exploration of the sea and its subsoil, taking into account existing treaty provisions on the subject.[9]

The convention[10] further requires parties to take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by competent international organizations. Although, the convention drew regulations concerning discharge of oil from ships or

[6] Section 3(1) & (2) of the Oil in Navigable Waters Act 1968
[7] Section 3(3) of the Oil in Navigable Waters Act 1968
[8] 2007 Act No 15
[9] O. Fagbohun, *"The Law of Oil Pollution and Environmental Restoration" (op. cit.)* pages 494 - 495
[10] Article 25

pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, its emphasis was more on ships and aircrafts.[11]

Though Nigeria is a party to this convention, the convention has not been enacted into our laws. However, the obligation imposed on parties by Article 24 of the convention led to the inclusion of certain provisions in the Petroleum Act and the Regulations made pursuant to the Act, such as the Oil Pipelines Act 1956 and the Oil Terminal Dues Act, 1965.[12]

CHAPTER 4

INTERNATIONAL LAW IN THE NIGERIAN PETROLEUM INDUSTRY

4.1. The Petroleum Act 1960

4.2. Organisation of Petroleum Exporting Countries.

4.3 Extent of Off-Shore Areas Covered by Nigerian Law

4.3.1 Exclusive Economic Zone Act

4.3.2 Territorial Waters Act

4.3.3 African Charter on Human and Peoples' Right

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations. In these respect, policies promoting or perpetuating apartheid, racial segregation, colonial discrimination and other forms of oppression and foreign domination stand condemned and must be eliminated."[13]

"State have, in accordance with the charter of the United Nations and the principles of International law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities

[11] Article 24; O. Fagbohun, *"The Law of Oil Pollution and Environmental Restoration" (op. cit.)* page 495

[12] Fagbohun, *"The Law of Oil Pollution and Environmental Restoration" (op. cit.)* page 495

[13] Principle 1 of the United Nations declaration on Human Environment "Stockholm Convention" 1972

within the jurisdiction or control do not cause damage to the environment of other states or area of beyond the limits of natural justice" [14]

To ensure peace and stability in the relationship between states as it relates to the exploitation of petroleum; various concepts on the international front evolved to guarantee the sovereignty of states and peaceful co-existence .The concepts have formed the basis for various legislations and regulations in the Nigeria petroleum legal frame work. Nigeria has further identified by the international community as a major concern with regards to human rights violations and environmental degradation during the military era.

Significant contributions in the Nigeria petroleum sector would not have been made possible but for the role of international law especially because at the time oil was discovered the requisite skill needed to effectively regulate the oil industry was lacking, resort was therefore made to international law.

The developments propagated by international law could be seen in areas like.

a. The Extension of the Right by a state to exercise exclusive permanent sovereignty over its natural resources.
b. The Extension of the offshore areas over which a state could exercise both political and economic sovereignty over its natural resources ;
c. Membership of OPEC;
d. Establishment of The Nigeria National Petroleum Corporation and
e. The enactment of the Nigeria Content Development Act 2010.

3.1 THE PETROLEUM ACT 1960.

In the 1960s, government interest in the oil industry was limited to collection of taxes, royalties and lease rentals. Many of the countries began to agitate for greater control over their natural resources in reaction to the control of their economies by the old colonial masters.

In 1962 the resolution of the permanent sovereignty over Natural Resource was adopted by majority of the General Assembly of the United Nations. The Resolution asserted that the right of the people to freely use exploit their natural resource is inherent in their sovereignty. In the spirit, the 1969 Petroleum Act was enacted which vested the entire ownership and control of all petroleum in, under or upon all land in Nigeria Territorial Waters in the Nigeria Government.[15]

> The developments propagated by international law could be seen in areas like the passage of the **United Nations resolution on Permanent Sovereignty**

[14] Principle 7 of the United Nations s declaration on Human Environment "Stockholm Convention" 1972

[15] Article written by O Akinjide,"Legal Framework of the Nigeria Petroleum l Industry ",April 1,2001 .Articles published by the Law firm of Akinjide & Co.

over Natural Resources.[16] ln 1962, the General Assembly disbanded the Old Economic Order and reinstated the sovereign rights of host countries of investor transnational corporations to their natural resources. This landmark resolution was adopted, reiterated and reaffirmed in a number of other resolutions. In resolution 88 (XIII) of 19 October 1972, the Trade and Development Board of the UN Conference on Trade and Development (UNCTAD) reaffirmed the sovereign right of all countries freely to dispose of their natural resources for the benefit of their national development.

3.3 EXTENT OF OFFSHORE AREAS COVERED BY NIGERIA LAW.

IN 1969, the first major attempt at the comprehensive composition of a legal framework was formulated hence the promulgation of the Petroleum Decree (ACT) by the military government[17]. Section 1(2) of the Act could also be traced to the Geneva international conventions. The section reads thus:

"This section applies to all land (including land covered by water) which-

a. Is in Nigeria; or

b. Is under the territorial waters of Nigeria; or

c. Forms part of the continental shelf areas; or

d. Forms part of the exclusive economic zone of Nigeria"

This encapsulates onshore and offshore areas that are covered under the Nigerian law. Under Section 1(2)(b), **the Geneva International Convention on Territorial Sea and Contiguous Zone**[18] was followed. The Convention provides for a three mile coastal water belt measured from the low water mark or from selected baselines drawn at a distance from the coast. The convention provided for a twelve mile contiguous zone to the territorial sea over which the coastal state may not exercise sovereign rights but can nevertheless exercise control of its territorial sea rights and compliance with its municipal regulations from within that zone. Nigeria has adopted the twelve nautical miles by virtue of the **Territorial Waters Act**[19] as referred to by the act. By adoption of the convention, in the words of Etikerentse,

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[16] GA Res 1803, 17 UN GAOR. Supp (No 17) UN Doc A/5217 (1962)
[17] Now Petroleum Act Cap P10 Laws of the Federation 2004

[18] Geneva International Convention on Territorial Sea and Contiguous Zone Signed on the 29th of April 1958

[19] Cap 428 Laws of Nigeria 1990 as amended by Sections 2(a) and (b) of the Territorial Waters (Amendment) Act, 1998 No 1 now Chapter T5 of the Laws of the Federation 2004

"...a coastal state's local legislation is recognized by international law, to extend to its territorial sea with the same degree of enforcement..."[20]

Section **1(2)(c)** includes the continental shelf areas[21] which by the **Geneva Convention on the Continental shelf** 1958 recognizes the sovereign rights of a coastal state to exercise control over such an area for the purpose of exploring it and exploiting its natural resources. This was domesticated in Section 1 of the act and also by the **Offshore Oil Revenues Act of 1971 No 9.** This by implication meant that licences and leases given under the Act covers continental shelf areas under which the Minister of Petroleum through the Department of Petroleum Resources has the authority to make regulations.[22] Section 1(2)(d) is a product of the amendment made in 1998.

3.3.1 Exclusive Economic Zone Act

An Exclusive economic Zone (EEZ) is a seazone prescribed by the United Nations Convention on the Law of the Sea over which state has special rights over the exploration and use of marine resources, including energy production from water and wind.[23]. It stretches from the baseline out to 200 nautical miles from its coast. In colloquial usage, the term may include the Continental shelf. The difference between the territorial sea and exclusive economic zone is that the first full confers sovereignty over waters, whereas the second is merely a "Sovereign Right" which refers to the coastal state's right below the surface of the sea. The surface waters as can be seen in the map, are international waters[24].

Pursuant to this international Law, Nigeria enacted its Exclusive Economic Zone Act on the 2nd of October 1978 to preserve its rights under the United Nations convention on the Law of the sea.

The Exclusive Economic Zone[25] is a concept that resulted from the United Nations Conference on the law of the Sea, Nigeria began to legislate on the matter in line with the convention in 1978 with the Exclusive economic zone Act[26]. However this

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[20] Etikerentse G, *Nigerian Petroleum Law* (Dredew, Lagos:2004)P-15; See also Regulation 24 of the Petroleum (Drilling and Production) Regulations

[21] Portion of the sea bed or ocean floor which lies before the sea of a littoral country generally up to a depth of 200 meters and which forms a geographical and geological prolongation of the continental land mass;

[22] See Regulation 62(1) of the Petroleum (Drilling and Production) Regulations

[23] Part V-Exclusive Economic Zone, Article 56,Law of the Sea.United Nations .

[24] ibid

[25] Area of the sea extending from 370.65kilometres in respect of which a coastal state may exercise sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources whether renewable or non-renewable of the sea bed, the sub soil and the superjacent waters within such areas.

[26] Chapter E11, Laws of the Federation 2004

concept did not apply to exploration resources until the Petroleum (Amendment) Act 1998 No 2. The combined effect of section 1 as a whole encapsulates Nigeria's rights over these zones as part of the Nigerian state for the purposes of the Act.

3.3.2 TERRITORIAL WATERS ACT.

Territorial waters as defined by the 1982 United Nation Convention on the Law of the sea is a belt of coastal waters extending at most 09 nautical miles (16.7km, 10.4mi) from the baseline(usually the mean low water mark) of a coastal state. The territorial sea is regarded as the sovereign territory of the state ,although foreign ships both military and adjustment of theses boundaries is called in International Law "Maritime Delimitation".[27]

3.3.3 African Charter On Human And Peoples' Rights enacted into law and incorporated into Nigerian legal system by the African Charter on Human and People's Rights (Ratification and Enforcement) Act CAP A10 LFN, 2004 which sets out as a Schedule thereto, the full text of the African Charter on Human and Peoples' Rights. The provisions of this law are particularly relevant in appraising the case of the oil producing areas of the Niger Delta of Nigeria.

> **Article 21** states specifically with reference to natural resources that:
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> "1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
>
> 2. In case of spoliation the disposed people shall have the right to the lawful recovery of its property as well as to an adequate compensation…"

The Petroleum Act by virtue of Sec 2 (1) and (2) also provided for the grant of oil exploration licenses, oil prospecting licenses and the oil mining leases to companies incorporated in Nigeria.

The Petroleum Act of 1969 replaced the Mineral Oils Act and required that within ten years, any holder of an OML license should ensure that the number of citizens of Nigeria employed by him in connection with the lease in managerial, professional and supervisory grades shall reach at least 75% of the total number of persons employed by him in those grades. The lessee was to provide a report of compliance in June and December every year. However, there are no records showing regulatory actions against any of the international oil companies (IOCs).

The Act also introduced major changes especially in such matters as duration, rent and royalties, employment terms, training and transfer of technology. These changes in the legislation were necessary owing to the fact that by 1969, there were as many as fourteen Multi National Oil Companies (MNOCs) from six different countries

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[27] United Nation 1982 convention on Law of the Sea.United Nations

engaged in petroleum development activities in Nigerian either in partnerships or on their own. Besides, at that time, Nigeria had begun to feel the impact of oil proceeds on her economy and wanted more control and regulation of the operation of the industry. Even after independence, the Nigerian Government did not embark on or concern itself with making oil policies for the country until 1967. The first participation arrangement effected by Nigeria was SAFRAP (now) in 1971. Government acquired 35 percent participation interest in ELF's operations as a precondition for allowing the company to resume operations in Nigeria after the Civil War. In October of the same year, its options to acquire 33 1/3 percent in AGIP'S operations was implemented.

Another notable International concept that has been domesticated in Nigeria is Continental Shelves

Oil and gas regulations in Nigeria

Laws and regulations in the petroleum industry are aimed at guarding stakeholders against plausible risks and outlining the framework in which government policies and objectives are to be effected in the industry. In order to ensure smooth operation in the industry there must be Laws and Regulations.

The major legislation in the Nigerian petroleum industry are;

- the Petroleum Act Cap P10 LFN 2004 (the Petroleum Act),
- the Nigerian National Petroleum Corporation Act Cap N123 LFN 2004 (the NNPC Act),
- the Petroleum Profits Tax Act Cap P13 LFN 2004 (the PPTA)
- the Nigerian Oil & Gas Industry Content Development Act 2010 (the NCDA)
- the Associated Gas Reinjection Act 2004 and the Associated Gas Re-injection (Amendment Act) 2004 (the Associated Gas Acts),

There exist also some other legislations made to regulate specific aspect of the operations in the industry. For instance, the Deep Offshore and Inland Basin Production Sharing Contracts Act No. 9, Laws of the Federation of Nigeria, 1999. This law provides the general framework for the operation of PSCs in Nigeria. It also provides for the applicable royalties, tax regimes, and the manner in which costs and profits are allocated between the parties in the contract.

As a result of the impact of petroleum contamination and environmental degradation associated with exploitation and production of petroleum resources, the government has taken steps to regulate the operation of the petroleum operator for the safety of the citizenry. Many approaches have been developed for the safety and

management of environmental impact of oil and natural gas exploration and production operations in the country.

Consequently, there has been institutionalization of several statutory laws and environmental regulations to regulate the Nigerian petroleum industry. Over the past years, the Government has promulgated laws and regulations so that oil and gas exploration and production operations, on both onshore and offshore oilfields, could be controlled by systems of limits which aim at minimizing the associated environmental impacts. Some of the related environmental laws and regulations in the oil and gas sector include;

- Oil Pipelines Act 1956 (amended in 1965);
- Mineral Oils (Safety) Regulations (1963);
- Oil in Navigable Waters acts (1968);
- Petroleum Acts (1969);
- Associated Gas Re–injection Act (1979);
- the Federal Environmental Protection Agency (FEPA) Act (1988);
- the National Policy on the Environment, 1989 (revised in 1999);
- National Environmental Protection (Effluent Limitations) Regulations (1991); Environmental Protection (Pollution Abatement in Industries Generating Wastes) Regulations (1991);
- Environmental Impact Assessment (EIA) Act (1992), and
- Department of Petroleum Resources (DPR) Environmental Guidelines and Standard for the Petroleum Industry in Nigeria (EGASPIN) (2002).

Most of these statutory laws and regulations provide the framework for petroleum resources exploration and exploitation in Nigeria and only some of these environmental regulations give guidelines on issues of petroleum pollution. Although the environmental laws and regulations in Nigeria have been poorly implemented, numerous environmental agencies have regulations that affect the exploration, development and production operations in the petroleum industry in Nigeria.[28]

The establishment of FEPA in 1988 significantly changed the legal status quo of environmental regulation in the Nigeria petroleum industry. Under the 1988 FEPA Act, penalties and enforcement mechanisms were imposed, multinational oil companies could be held liable for costs of clean–up, restoration and multinational

[28] Salu, A., "Securing environmental protection in the Nigerian oil industry. Modern Practice," Journal of Finance and Investment Law, 3 (2). 1782-1788, 1999.)

oil companies could pay compensation to parties injured by their illegal practices. However, the existing statutory laws and regulations for environmental protection applicable to the Nigerian petroleum industry appear to be grossly inadequate and ineffective.[29]

According to Doyle, the government's environmental regulations are often affected by the limitations of technology, the need to support industry and the influence of public opinion.[30]

The participation of communities in the environmental decision–making process is a relatively new process and often ineffective with little or no sustainable development goals.[31]

Unfortunately, the multinational oil companies operating in the Niger Delta region have failed to adopt sustainable exploration and production practices due to increased costs of complying with environmental regulations. Although comprehensive system of environmental regulations is now in place, environmental pollution associated with oil and gas exploration and production operations has continued to persist under these laws for several reasons.

Recently, Nigeria has sought to refurbish the legislative framework in the oil and gas industry. This can be seen in the draft of the Petroleum Industry Bill (PIB), which is presently before the parliament for necessary approval. The draft comprises amongst other things, changes to the taxation regimes, onshore developments and a revised royalty structure. Passage of PIB will have a significant impact on the Nigerian petroleum industry.

CHAPTER 5

CONCLUSION

It is trite to say that significant contribution in Nigerian petroleum industry would have not been made possible but for the role of international law. The essence of

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[29] Eaton, J. P., "The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment," Boston University International Law Journal, 15 261-571, 1997.)

[30] Doyle, A. B., S. S. R. Pappworth, and D. D. Caudle, "Drilling and Production Discharges in the Marine Environment," Environmental Technology in the Oil Industry, S. Orszulik, ed., pp. 155-187: Springer Netherlands, 2008.

[31] O Adomokai, R., and W. R. Sheate, "Community participation and environmental decision-making in the Niger Delta," Environmental Impact Assessment Review, 24 (5). 495-518, 2004.

international regulation is to improve the economy, the petroleum industry and the lives of the citizenry. However, corruption and inadequacy in the regulation enforcement machineries in the industry have made the objectives unachievable.

In order to attract investment in the petroleum sector, laws, regulations and policy governing the industry should be clear, complete, transparent, accessible, flexible and practical. A consultative process should be institutionalised to ensure periodic dialogue with the operators and to ensure that regulations are technically feasible and cost effective. The legal process must be quick and remedies efficient and effective. The law should further the national energy policy objective of the federal government.