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Editor's Comments

Dear *JTMS* Readers,

Greetings again from Seoul. The leaves have changed and are gradually falling in the Korean autumn breeze. As per usual, that means we are putting together the Winter/Spring 2023 issue of *JTMS*. I am sure that readers saw the recent tragedy on the news in Seoul with many young people losing their lives during Halloween festivities in Seoul. This tragedy is a reminder that we should all be thankful for what we have and those we love as you never know when something so simple as a night of fun may turn tragic. Our hearts go out to all those affected by this terrible tragedy, and we hope our readers will send their thoughts as well.

Beyond everyday life, the issues that *JTMS* was founded to address via scholarly inquiry remain salient. The war in Ukraine is dragging on with no end in sight and Xi Jinping made a point of mentioning unification with Taiwan by peaceful or non-peaceful means during his address to the recent 20th National Congress of the Communist Party of China. Climate change also continues to threaten low-lying nations and islands, shifting shorelines and threatening a migrant crisis for those affected. The disputes that all these issues may foment should be resolved by the rules base system, including the governance of UNCLOS. On that note, we believe the Winter/Spring 2023 issue contributes to the literature on these topics and more.

First, Ricardo Abello-Galvis and Walter Arevalo-Ramirez present a commentary on the case *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia*), aiming to deliver a comprehensive summary of the case and general commentary on the most relevant claims and the procedural history. Their offering explains the principal factual and jurisdictional issues, the application presented by Nicaragua, the preliminary exceptions, and the counterclaims presented by Colombia during the jurisdictional phase of the case leading to the judgment on jurisdiction in 2016, and the decision on the merits rendered by the Court recently in 2022. The authors highlight the difficulties raised before the ICJ when entertaining the admissibility of counterclaims and study the factual pattern that led to Nicaragua's application as a manifestation of a conduct of resistance to international courts and tribunals.

Second, David Molina Coello shows how the Law of the Sea, guided by the flag system instituted by the United Nations Convention on the Law of the Sea (UNCLOS), presents challenges in regulating automated vessels and how the regulation of the seas should change to deal with the changes in vessels' technology. His article analyzes current regulations, confronting the RSE-MASS of the IMO with the reality of automated ships and determines whether UNCLOS should change to ensure the effective regulation of this new

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technology. Molina finds that the flag State system provided in UNCLOS is inefficient in regulating automated vessels. Reallocating the regulatory powers of the flag States to the IMO while constituting a worldwide regime over the high seas is a possible solution for successfully regulating automated vessels.

Third, Onyemaechi Christopher Ugwuibe, Cordelia Ozoemena Idoko, David C. Nwogbo and Paul Chukwudi Ezinna attempt to determine if the reintroduction of Cargo Tracking Note in Nigeria can successfully curb arms smuggling through the nation's ports. Data for the study were generated from secondary sources and structured questionnaires administered to the Nigerian Police and Customs Officers. The study is theoretically based on the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) and International Ship and Port Facility Security (ISPS) Code. The authors assess that unless Nigeria successfully deals with challenges to national unity, successful deployment of technology for national security, including CTN, will be a pipe dream.

Fourth V. Adefemi Isumonah examines the consequences of political leadership on physical space and human welfare. During his examination, the comparison by observation of Nigeria mostly in four spaces—PS, PPS, POS, and PIS—is used to show the connection between political thought and space. He finds that the relationship between built space and human life is no less consequential than the relationship between the system of government, group conflicts, and wars on the one hand and human life on the other. The interpretation and meaning conveyed by PS and PPS reveal that space is an idea (architectural idea), a concrete structural expression; furthermore, space impacts a people and is impacted, in turn, by a people. Isumonah hopes that the understanding of physical space provided by this article may sensitize political leaders to pay greater attention to the improvement of PS.

Fifth, Mariam Mgeladze examines the inquiry considering the applicability of UNCLOS 1982 in the 21st century has been launched by the UK House of Lords Select Committee on International Relations and Defense (Committee). Her article covers a wide range of matters, such as human rights protection at sea, human security at sea, concept, and challenges of maritime security, autonomous maritime systems, protection and preservation of the maritime environment, provisions of the enforcement of UNCLOS 1982 and its dispute resolution mechanisms. Mgeladze's article emphasizes key areas of oral speeches given by invited witnesses and opens a dialogue for readers to identify the consequences of such an inquiry as a matter of positive law development or as an act that will polarize the UK and challenge its current positions.

Last but not least, in our book review section, we first have an excellent assessment of a volume titled *Maritime Security and the Law of the Sea: Help or Hindrance?* edited by Sir Malcolm D. Evans and Sofia Galani. Then, to close out the issue, we have a review of Finn Laursen's *The Development of the European Union (EU) as a Sea-Policy Actor.*

In closing, I would like to thank our readers for their continued support, our authors for their great contributions, and our editorial board and staff for their hard work. I wish you all a healthy and happy 2023.

Jongyun Bae
Editor

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Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia, 2022): Commentary on the Case and the Judgment on the Merits by the International Court of Justice

Ricardo Abello-Galvis and *Walter Arevalo-Ramirez*

Structured Abstract

Article classification: Case Law Commentary—Case Study Based Research Article

Purpose—The article presents a commentary on the case *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia*), aiming to deliver a comprehensive summary of the case and general commentary on the most relevant claims and the procedural history.

Design, Methodology, Approach—The article comments on the case following a procedural structure, explaining the principal factual and jurisdictional issues, the application presented by Nicaragua, the preliminary exceptions, and the counterclaims presented by Colombia during the jurisdictional phase of the case leading to the judgment on jurisdiction in 2016, and the decision on the merits rendered by the Court in 2022.

Findings—The commentary highlights the difficulties raised before the ICJ when entertaining the admissibility of counterclaims, and studies the factual pattern that led to Nicaragua's application as a manifestation of a conduct of resistance to international courts and tribunals.

Practical Implications—The article may provide readers with in-depth knowledge of

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recent litigation that is relevant to the law of the sea but also the authority of the ICJ and the effectiveness of its judgments.

Originality, Value—The article is one of the few case commentaries on the procedural history and legal claims before the ICJ in this very recent case that was decided by the Court in 2022.

Keywords: counterclaims, customary fishing rights,
International Court of Justice, law of the sea

I. Introduction

The Judgment of April 21, 2022, of the International Court of Justice in the case *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*,[1] better known by the parties as NICOL 3, faced: once again with Nicaragua as applicant and Colombia as respondent. The case completes another piece in a long history of litigation between the parties over the maritime spaces and sovereign rights in the area of the Western Caribbean and the San Andres Archipelago. It is a history that was initiated with the 2001 application by Nicaragua that led to the 2012 judgment that established the final maritime delimitation between the parties. Issues surrounding the implementation of that decision, and the subsequent application by Nicaragua, initiated in 2013, are the core of the case analyzed in this commentary, and which will be continued by the case concerning the extended continental shelf, also initiated in 2013, shortly before Colombia's denunciation of the Pact of Bogota having effect, and currently on the docket of the Court.

Methodologically, this case commentary will, first, address the background and factual matters that led to the implementation issues that sparked Nicaragua's application in 2013, in particular, the denunciation of the Pact of Bogotá by Colombia, the Constitutional resistance to the Judgments in Colombia's domestic law and the enactment by Colombia of legislation allegedly contrary to the ICJ Judgment (Decree 1946 of 2003) accompanied by certain conducts in opposition taken at sea. Secondly, the commentary will address the most relevant issues during the procedural history of the case, including the application in 2013, the counterclaims, the judgment on jurisdiction in 2016, and the oral proceedings held during 2021, and thirdly, the commentary will address the decision on the merits, rendered by the Court in April 2022.

Following the framework set out above, in order to achieve a full understanding of this case, it is necessary to look back to the ruling on the merits in the earlier case of November 19, 2012, and the difficulties raised in the implementation of this decision. There are certain acts of resistance to the decision by Colombia that require brief explanation since they constitute the essence of Nicaragua's claims. First, as an aftermath of the 2012 ruling, Colombia denounced the Pact of Bogotá on November 27, 2012.[2] Secondly, the President of the Republic of Colombia issued Decree 1946 of 2013 regarding maritime spaces in the Western Caribbean which responded to the situation resulting from the decision of the Court[3] and, thirdly, the president filed a claim of unconstitutionality of the said treaty in order to delay the effects of the decision in domestic law based upon the constitutional territorial regime of Colombia.[4] These were in addition to many other manifestations of public opinion from

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different sectors in Colombia that shared their opinion on the ruling which, without necessarily officially representing the views of Colombia as a State, were used by Nicaragua in 2021 during the oral arguments[5] in The Hague.

1.1 Denunciation of the Pact of Bogotá

As a direct consequence of the ruling of the International Court of Justice (ICJ) of November 19, 2012, and the pressure exerted by different sectors of Colombian society, the Government of Colombia decided to denounce the American Treaty on Peaceful Settlement Mechanisms, better known as the Pact of Bogotá, which includes a broad International Court of Justice jurisdictional clause (Article XXXI). The letter of denunciation was sent to the Organization of American States on November 27, 2012. The letter stated that the denunciation would be effective immediately, despite the fact that paragraph 1 of Article LVI of the treaty states that the effect of the denunciation shall be delayed by one year,[6] a common formula in these kinds of treaties to deter States from abusing the denunciation clause in order to avoid the activation of the jurisdictional clause before a Court.

It must be noted that on December 5, 2001, Colombia withdrew the declaration of acceptance of the jurisdiction to the Court that had been presented by Ambassador Jesús María Yepes on October 30, 1937, made under Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice (Declarations made under the PCIJ Statute, that have not expired or been withdraw and inherited by the ICJ) and that amends the declaration presented by Ambassador Antonio José Restrepo on January 6, 1932; the declaration presented by Ambassador Yepes was retroactive only to the date of presentation of the first declaration, thus this acceptance of competence had a clear and specific *ratione temporis* limit.[7]

Consequently, with the withdrawal of the declaration in 2001 and the denunciation of the Pact of Bogotá in 2012, Colombia considered that it would be shielded *ipso facto* against applications that other States could submit before the International Court of Justice. This situation was clarified by the ICJ in its 2016 judgment on preliminary objections in the other concurrent case, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v Colombia)*,[8] where the ICJ upheld the rationale set in Article LVI of the Pact of Bogotá regarding the one year's notice before the denunciation is effective, in a judgment rendered in the face of threats of non-appearance by the State, that were later retracted.[9] In addition, Colombian public opinion allegedly believed that the denunciation had been used to affect the binding effect of the 2012 judgment to some extent. In addition, while there are still specific treaties, ratified by Colombia, which give the ICJ the jurisdiction to settle differences that may arise within the context of those treaties, the denunciation of the Pact of Bogota deprives Colombia of the possibility to present applications against other Latin-American States.

1.2 Decree 1946 of 2013

The former president of the Republic of Colombia, Juan Manuel Santos, issued Decree 1946 of 2013 on September 9, 2013, which sought to clarify the different maritime spaces

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generated by the Colombian islands located in the western Caribbean,[10] thereby expanded the domestic laws regulating maritime spaces prior to the ICJ judgments, namely, Law 10 of 1978 and Law 47 of 1993.

In general terms the Decree identifies, *ex post* the ICJ judgment of 2012, all the Colombian islands and maritime formations located in the Western Caribbean. It describes their territorial sea and their contiguous zone, and establishes that the respective baselines must be drawn for each of the ten islands found in the western Caribbean in addition to the islands, islets, cays, headlands, banks, low-tide elevations, shoals, and reefs adjacent to each of these islands. Likewise, it indicates that in no case will the Decree affect the rights of third States.[11]

Nicaragua has opposed the Decree since projecting that the different alleged Colombian contiguous zones included in the Decree produces an overlap with the Exclusive Economic Zone that the 2012 ICJ ruling granted to Nicaragua. Although these different zones produce different rights (relevant for different activities, ranging from fishing to the fight against drug trafficking) Nicaragua considers that the Decree does not conform to general customary international law and its claims against it were part of the application filed by Nicaragua before the ICJ in "NICOL 3." The ruling of the Court in 2022 established that the "Zona Contigua Integral" (Integral Contiguous Zone) designed by Colombia in the Decree is not contrary to customary law regarding the activities allowed by the law of the sea to States in the EEZ, but the Court also found that the overlaps with Nicaragua's maritime spaces found in the Decree must be corrected, as will be explained below.

1.3 Judicial Review of the Pact of Bogota Before the Colombian Constitutional Court

As additional acts of Colombian resistance to the 2012 ICJ judgment, three judicial review actions were filed before the Constitutional Court, requesting that the Court declare the unconstitutionality of several Articles of Law 37 of 1961, which incorporates the Pact of Bogotá into Colombian domestic law. The first two actions were presented by a group of private citizens and the third one by the former President of Colombia, Juan Manuel Santos. In general, all the actions base their arguments upon the idea that the Pact of Bogota, and subsequently the 2012 ICJ ruling, violate the Colombian Constitution, specifically, Article 101, which defines the national boundaries and established that existing boundaries can only be modified by Congress. Naturally, this argument collides with basic principles of international law, including *pacta sunt servanda*, the impossibility of using domestic law to detract from international obligations, whether they come from treaties or international judgments,[12] and the effect of jurisdictional clauses ratified by the State as international binding obligations that allow an international Court to settle an international dispute.[13] Also, the rationale of the claims presented before the Constitutional Court collides with the fact-finding activity of the ICJ in the 2012 *Nicaragua v. Colombia* judgment (merits), where it found that there was no existing boundary between the two States in the relevant zone in the Caribbean and that the Court was within its jurisdiction to settle it (in the end, creating a boundary is different than modifying a boundary).[14]

In its decision of 2014, the Constitutional Court declared that the Law incorporating the Pact of Bogota and all of its provisions were constitutional and binding domestically,

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which *a priori* was a decision that was consistent with international law. However, the Constitutional Court declared that further steps needed to be taken in order to fully implement the ICJ judgment of 2012, an unprecedented condition that formed part of Nicaragua's claims: "The Constitutional Court (…) Declares Article XXXI of Law 37 of 1961 as CONSTITUTIONAL 'by which the American Treaty on Peaceful Settlement (Pact of Bogotá) is approved,' on the understanding that the decisions of the International Court of Justice adopted regarding border disputes, must be incorporated into domestic law through a duly approved and ratified treaty, under the terms of Article 101 of the Political Constitution."[15]

This paragraph of the judgment of the Constitutional Court left Colombia in a complex international situation to the extent that the ICJ did not modify any treaty in its 2012 judgment. According to the ICJ, the Esguerra-Bárcenas Treaty of 1928 is not a boundary treaty, as was clearly stated in the judgment of December 13, 2007 (jurisdiction): "the Court concludes that the 1928 Treaty and 1930 Protocol did not effect a general delimitation of the maritime boundary between Colombia and Nicaragua. It is therefore not necessary for the Court to consider the arguments advanced by the Parties regarding the effect on this question on changes in the law of the sea since 1930. Since the dispute concerning maritime delimitation has not been settled by the 1928 Treaty and 1930 Protocol within the meaning of Article VI of the Pact of Bogotá, the Court has jurisdiction under Article XXXI of the Pact."[16]

II. Presidential Declarations

Contextually, presidential declarations have taken on a role of particular relevance in this case. Presidential declarations from the head of state of Colombia, Juan Manuel Santos, originally led to acts of Colombian non-appearance during the early stages of the application and as a reaction to the ICJ judgment on jurisdiction of 2016. This position was rapidly retracted by Colombia when it decided to return to proceedings on the merits.[17] On the other hand, a number of Colombian presidential declarations were taken into account by Nicaragua during the early stages of the proceedings, as the president of Colombia, following the judicial review judgment of the Constitutional Court in 2014, adhered to the position that a negotiated treaty was a requirement imposed by the Constitution to make any modification to the boundaries. These declarations, besides being relevant to the case, as understood under the doctrine of unilateral acts of the State, were taken into the account by the ICJ in the judgment on jurisdiction of 2016 in its rejection of Colombia's third preliminary objection regarding a possible prerequisite of negotiation before referring the case to the ICJ. Colombia argued that its declaration, accompanied by several declarations of the President of Nicaragua opening the door to negotiation on fishing rights,[18] implied that the Court had no jurisdiction since attempted negotiations existed. The Court took note that the subject of the declarations was different and rejected this position.

Having examined the factual situation that represents Colombia´s resistance to the 2012 judgment and which serves as the base for Nicaragua's claims, we can now delve into the analysis of the proceedings and the judgments on jurisdictions and merits.

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III. The Application in the NICOL 3 Case and the Judgment on the Merits of 2016

On November 26, 2013, the Republic of Nicaragua filed what would be a third application against the Republic of Colombia before the International Court of Justice. This application was presented one day before the year had passed following the denunciation of the Pact of Bogotá by Colombia, a denunciation made by Colombia in an effort to resist the effects of the ICJ, both internationally and domestically, as explained in section I. This third application referred to Colombia's alleged non-compliance, according to Nicaragua, with the Judgment of November 19, 2012. In the initial application, Nicaragua recounts the facts that allegedly establish Colombia's non-compliance with the 2012 judgment. The claims presented by Nicaragua before the Court, requested it to declare that Colombia: (1) fails to comply with its obligation under Article 2, paragraph 4, of the Charter of the United Nations and customary international law to refrain from the threat and use of force; (2) fails to comply with its obligation not to violate the maritime spaces of Nicaragua as defined by the Court in paragraph 251 of the judgment of November 19, 2012, as well as the sovereign rights and jurisdiction of Nicaragua over said spaces, (3) fails to comply with its obligation not to violate the rights of Nicaragua under customary international law as reflected in Sections V and VI of the UNCLOS (United Nations Convention on the Law of the Sea), and (4) must comply with the ruling of November 19, 2012, erase the legal and material consequences of its internationally wrongful acts, and fully repair the damage caused by these acts.[19]

The claims of Nicaragua included several complex elements. The first of these is to submit that Colombia has threatened to resort to the use of force, or has used such force; secondly, it asserts that Colombia has not complied with the Judgment of November 19, 2012, when it has also been contended by Colombia that the Nicaraguan Fishing Authority has issued fishing permits and exercised rights in zones that do not conform with the zones established by the ICJ in 2012,[20] and, thirdly, the claim asserts that Colombia has violated Nicaragua's rights in the exclusive economic zone as well as on the continental shelf.

3.1 Preliminary Exceptions in the "Alleged Violations" Case

Within the rules of the Court, Colombia presented preliminary exceptions (also known as preliminary objections), an incidental procedure intended to argue the absence of jurisdiction of the Court, for which Colombia presented the following arguments: (1) Lack of competence *ratione temporis* due to the supposed immediate effect of the denunciation of the Pact of Bogotá on November 27, 2012, (2) Absence of effective dispute at the date of the application and the absence of a dispute regarding the use of force (3) The fact that the conditions devised in the Pact of Bogotá in order to resort to the ICJ have not been met (exhaustion of other peaceful settlement of disputes mechanisms), (4) The fact that there is no "inherent power" of the ICJ to settle the case without jurisdiction, and (5) The fact that the ICJ has no jurisdiction over the implementation of its own judgments (no post-adjudicative jurisdiction). The complex and diverse nature of the preliminary exceptions raised by Colombia, in this case, must also be understood within the context of the

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preliminary exceptions raised in the concurrent case *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v Colombia)* (2016), where Colombia raised the preliminary exception of res judicata, that was rejected by the Court.[21] In this concurrent case, Colombia accompanied its collection of preliminary objections, similar to those presented in the "Alleged violations" case, with objections related to the ongoing debate of the effects of UNCLOS proceedings (such as the role of the Commission on the Limits of the Continental Shelf in the establishment of the outer limits of Nicaragua's continental shelf), on States such as Colombia, not bound by UNCLOS.[22] The combination of rejected objections of res judicata in both cases, together with the overall rejection of the objections in the "Alleged violations" case and its decision on merits which we analyze below, added to the possibility of an unfavorable judgment in the "Question of the delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaragua Coast" case, could resurrect the complex political background and behaviors of resistance that haunted the previously discussed 2012 judgment.

In its decision on jurisdiction, the Court only accepted, unanimously, Colombia's second exception, and only in regard to the use of force.[23] The ICJ held that there were no grounds to entertain a claim regarding the threat or use of force by Colombia, a result that, at least politically, was very favorable for Colombia, since the State has continuously expressed its status as a law-abiding country and as a State respectful of the peaceful settlement of disputes.

Regarding the other exceptions, these were rejected by the Court. The first and the fourth unanimously; while the third and fifth by a vote of fifteen-to-one, and by fourteen-to-two, concluding that the Court was competent to proceed to the merits stage of the case in accordance with Article XXXI of the Pact from Bogota.[24]

Regarding the first exception (and in consequence, the fourth) the Court held that in Article LVI, paragraph 1 of the Pact of Bogotá, is clear that the jurisdiction of the Court ceases only one year after the denunciation of the treaty has been filed. Unfortunately, the ICJ did not make a more profound analysis of the second paragraph "The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification"[25]—a paragraph that, according to Colombia, should be interpreted *a contrario*, a position that was very complex to accept and that the Court rejected given the clarity of the first paragraph. Consequently, as Nicaragua filed the application one day before the expiration of the first year since the denunciation, the ICJ declared it had jurisdiction to hear the case. The third exception, as explained above in the background of the presidential declarations surrounding the case, was rejected by the Court as the declarations of both presidents in different senses, did not amount to an ongoing negotiation.

The rejection of the fifth exception raises some questions since the Court answered, in a rather obscure way, that the ICJ was not being summoned to study the role of the Security Council, or the application of paragraph 2 of Article 94 of the UN Charter to the behavior of Colombia, or to entertain the post-adjudicative powers of any other involved international organizations (i.e., The Meeting of Ministers of Foreign Affairs of the OAS) and therefore it was not being asked to enforce the judgment. The question raised by Nicaragua, in the sense that it only referred to the breach of recently declared maritime zones and rights, could not be understood as a non-compliance claim[26] which would be outside the

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scope of the jurisdiction of the Court; however, the request could lead to a Colombian duty to uphold its obligations and make reparations, which would still be under the scope of the jurisdiction of the Court.[27]

3.2 Counterclaims

In accordance with Article 80 of the Rules of Procedure of the International Court of Justice, "The Court may entertain a counter-claim only if it comes within the jurisdiction of the Court and is directly connected with the subject-matter of the claim of the other party."[28] Furthermore, paragraph 2 of Article 80 establishes that "A counter-claim shall be made in the Counter-Memorial and shall appear as part of the submissions contained therein.."[29] Article 80 contains a series of broad concepts, so the interpretation of the judges plays a fundamental role when deciding whether or not to accept a counterclaim filed by the respondent State. The breadth of interpretation that can be given to the requirements has meant that historically, the ICJ has admitted counterclaims on only a very few occasions.[30]

In this sense, authors such as Yves Nouvel consider that the Rules do not define what should be understood as "directly connected," and it is up to the Court to assess the link "aussi bien en fait que en droit"[31] (considering both facts and law). For Nouvel, every application at the end is based on circumstances that are historically linked, and the facts invoked by both parties can be linked together to be sufficient to meet this requirement if it is clear they have the "same nature"; on the other hand, a former member of the office of the Greffier of the ICJ, Hugh Thirlway, emphasizes the direct connection of the nature of the counterclaim and its relation with the original submission, and not only on the association of facts. He states that "the concept of a counter-claim implies some relationship between the claims made by one State and those made by the other."[32]

In the same sense, Tania Elena Pacheco considers that "there are gray areas regarding the application of Article 80 of the Rules of Procedure, not only regarding the scope of the notion of 'directly connected,' which seem to leave the Court with a wide level of discretion, but also of a procedural nature, since both parties will have to state their opinion, in writing, on the admissibility of the counterclaim. On the other hand, a State must never underestimate a counterclaim, no matter how extravagant it may seem, since, if it is not admitted, there is always the possibility that it will become the basis of a future claim."[33]

As Juan José Quintana Aranguren affirms, the meeting of two elements is a *sine qua non* requirement for a counterclaim to be accepted. These elements are: (1) that there is jurisdiction of the Court and, (2) that there is a full relationship between the counterclaims and the claim. This means that in some cases, the Court can reject a counterclaim, in which there are clearly allegations of a factual situation running contrary to international law that constitutes a real dispute, simply because that fact does not have a direct link with the claims of the application. Nonetheless, that particular issue could comprise the center of a different dispute.

In the present case, Colombia submitted four counterclaims: the first counterclaim related to "Nicaragua's violation of its duty of due diligence to protect and preserve the marine environment of the Southwestern Caribbean Sea."[34] The Court, by fifteen votes to one, held that this counterclaim filed by the Republic of Colombia was inadmissible and

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that, consequently, it will not be taken into account in the following proceedings.[35] The second counterclaim related to "Nicaragua's violation of its duty of due diligence to protect the rights of the inhabitants of the San Andrés Archipelago, in particular the Raizales, to benefit from a healthy, sound and sustainable environment,"[36] this counterclaim being a direct continuation of the first counterclaim.[37]

The third counterclaim raised by Colombia is related to alleged infringements of the recognized customary artisanal fishing rights of the inhabitants of the Archipelago attributable to Nicaragua.[38] The Court, by eleven votes to five, held that this counterclaim filed by the Republic of Colombia was admissible.[39] The fourth and final counterclaim filled by Colombia stated that Nicaragua, "by adopting Decree No. 33-2013 of August 19, 2013, has extended its internal waters, its territorial sea, its contiguous zone, its EEZ and its continental shelf, in violation of international law, and, in so doing, has violated Colombia's sovereign rights and jurisdiction."[40] The Court, by nine votes to seven, held that this counterclaim filed by the Republic of Colombia was admissible and will be taken into account in the proceedings. The admitted counterclaims show a closer relation to the maritime space issues and the rights and activities allowed within the spaces allocated to each State in the 2012 judgment and show that the Court has adopted an approach that places a strong emphasis on the relationship between the original claims and the counterclaim. It does not extend to a general overview of facts that can be tangentially related to the behavior of the States involved in the disputed area, such as issues related to the environment and human rights, which certainly will see further episodes in regional courts.[41]

IV. "Raizal" Representation and the Oral Pleadings on the Merits (September–October 2021)

From September 20 to October 1, 2021, the oral proceedings in the case took place. The oral hearings are a fundamental step in litigation before the ICJ to the extent that they constitute the closing presentation of the States before the Court. From that moment forward, the parties may no longer present any additional documents and, from the moment the oral hearings end, all the documents presented by the parties become public. The oral hearings are the moment in which the agents and the team of legal counsel present the main arguments. Two rounds are advanced so that the parties can refute and counter-argue what has been raised by their counterparts,[42] and this is the last image that the judges will have before their deliberation begins. Normally, this stage lasts about six months and ends with the reading of the final judgment. Both the claims from Nicaragua and the counterclaims from Colombia were entertained. During the hearings, one of the highlights was the intervention of Mr. Kent Francis James, former Ambassador and member of the Colombian Academy of Jurisprudence, and member of the Raizal community, who, on behalf of the Raizales, presented before the ICJ its origins and its special relationship with the sea, explained in a more-than-legal fashion, how fishing and environmental rights are fundamental for the community, and constitute traditional customary fishing rights. This particular participation (available in the Verbatim record)[43] is relevant for the ICJ's legitimacy in general since it constitutes a progressive approach to litigation in the ICJ which is usually regarded as conservative and reserved for experts and Governmental agents.

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V. The 2022 *"Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea"* Judgment on the Merits

Considering the discovery of evidence advanced by both States, the available audio, video, and cartographical evidence presented both by Nicaragua and Colombia, and the admission of the counterclaims, the final decision was expected to be as divided as it proved to be in the judgment rendered by the Court on April 21, 2022. The Court faced the task of taking special measures not to appear to be deciding under a non-existent post adjudicatory power (ordering, supervising or sanctioning the implementation of its 2012 judgment, a power reserved for the Security Council),[44] and was called on to take a delicate approach to the establishment of international State responsibility for internationally wrongful acts allegedly committed by both States. This was an exercise in which the ICJ needed to apply the same legal standards to the allegations of both States to not only strengthen the legitimacy of its decision, but also to provide its judgment on the merits of a road map for peaceful relations of both Nicaragua and Colombia in their corresponding neighboring maritime areas. In this final section, we will summarize, analytically, the judgments on the merits.

5.1 Applicable Law and Ratione Temporis Clarifications by the Court

In both the public sittings held on April 21, 2022, to deliver the judgment on the merits and in the decision itself,[45] the Court needed the clarify the scope of the current proceedings and the background formed by the 2012 judgment. The Court recalls that the fact that the eastern endpoints of the delimitation were not determined in 2012, since Nicaragua at the moment had not notified its baselines to the Court, does not affect the subject matter of the case and that the current case related specifically to the alleged violations of sovereign rights by Colombia, including the obstruction of Nicaragua's rights in the EEZ, its exploitation and navigation, along with Nicaragua's claims against the Colombian "Integral Contiguous Zone" and the counterclaims presented by Colombia regarding fishing rights (paras. 1–32).

The judgment continues with a clarification of the scope of the jurisdiction in light of *ratione temporis*. The Court recognizes the need to answer the jurisdictional question that could be raised by entertaining facts presented by Nicaragua and Colombia in the judgment, which occurred after the entry into force of the denunciation of the Pact of Bogotá by Colombia. As the first argument in para. 42 the ICJ recalls its case law regarding the lapse of the jurisdictional title, citing several cases in which it held that "according to its established jurisprudence, if a title of jurisdiction is shown to have existed at the date of the institution of proceedings, any subsequent lapse or withdrawal of the jurisdictional instrument is without effect on the jurisdiction of the Court." Regarding additional incidents that have occurred after the lapse of jurisdiction (the entry into force of the denunciation of the Pact of Bogota), the Court describes these facts as generally including alleged issues with vessels at sea, policing operations, and interferences in the EEZ and concludes that these acts, which occurred after November 27, 2013, arise directly from the subject-matter of the application and fall within the jurisdiction (para. 47).

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Then, the Court, before entertaining the merits of the claims and counterclaims, proceeds to specify the applicable law, taking note that Colombia is not part of UNCLOS. This led the Court to note that the parties have acknowledged several provisions of UNCLOS as a reflection of customary international law (Articles 56, 58, 61, 62, and 73) and will discuss them each in the different relevant sections of the judgment (paras. 49–50).

5.2 Claims Regarding Incidents at Sea

The first section of claims entertained by the judgment corresponds to the incidents alleged by Nicaragua in the southwestern Caribbean Sea. Regarding the burden of proof, the Court recognizes that, following its jurisprudence on questions of proof, since several of those fifty or more incidents attributed to Colombia are logged, documented, or recorded solely by Nicaragua in reports prepared for the case, the Court will treat said evidence with reservations (para. 67). Regarding Colombia's evidence, the Court highlights its maritime travel reports and navigation logs to have probative value, as contemporaneous and direct sources. Additionally, the Court considered several pieces of evidence involving private owners of fishers as unclear and uncorroborated (paras. 66–70).

Beginning with the alleged incidents of November 17, 2013, involving the ARC Almirante Padilla and following with other alleged interferences up to 2018 and taking into account the different types of evidence mentioned above and its differentiated value, the Court finds that on several occasions Colombian Military Vessels (Fragatas) were present within Nicaragua's EEZ performing acts of jurisdiction. The Court addressed then the Colombian justifications (para. 93) regarding that said actions are linked to the freedoms of overflight, navigation, the Cartagena Regime, and environmental concerns. For the Court, the freedoms of navigation and overflight enjoyed by other States, as reflected in Article 58 of UNCLOS, do not include the enforcement and jurisdictional activities conducted by Colombia, and that the Cartagena Regime only allows Colombia to exercise said activities in waters where it has sovereignty (para. 99). For these reasons, the Court found that Colombia has violated its international obligation to "respect Nicaragua's sovereign rights and jurisdiction in the latter's exclusive economic zone by interfering with fishing activities and marine scientific research by Nicaraguan-flagged or Nicaraguan-licensed vessels and with the operations of Nicaragua's naval vessels, and by purporting to enforce conservation measures in that zone" (para. 101).

5.3 Claims Related to Fishing Authorizations

The Court then turns to the claims regarding Colombia's alleged authorization of fishing activities and marine scientific research in Nicaragua's exclusive economic zone, which includes both measures and resolutions as well as incidents at sea. The Court analyzed the evidentiary claims raised by both parties and concludes that several vessels engaged in fishing activities in Nicaragua's EEZ under the protection of Colombian naval ships and authorities, such as the incident of January 6, 2017, involving the Honduran flagged ship *Capitan Geovanie*, allegedly authorized to fish in Nicaraguan spaces under Colombian authorization. Colombia furthermore contended that there was no direct evidence that Colombia had authorized scientific research in Nicaragua's EEZ, and the Court concluded

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that the evidence is insufficient in that matter. The Court concluded that Colombia violated Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone by authorizing vessels to conduct fishing activities in Nicaragua's exclusive economic zone (paras. 111–134).

To finish entertaining the claims relating to the contested activities in Nicaragua's maritime zones, the Court turned its attention to the alleged oil exploration licensing by Colombia. This claim arose from the reply of Nicaragua and shows developments up to 2017 by the Colombian National Hydrocarbon Agency that showed exploration blocks available in Nicaraguan spaces. The Court considered the claim admissible because it follows facts that originally arose in 2011 but rejected the merits of the claim because the evidence was insufficient (paras. 135–144).

5.4 Claims Related to Colombia's "Integral Contiguous Zone" Decree

The Court then continued with the other section of the alleged violations of Colombia, namely, Colombia's "integral contiguous zone" in Decree 1946. Nicaragua considers that the geographical extent and the scope of the powers that Colombia claims to exercise, collide with customary law, and violate Nicaragua's EEZ; the parties disagreed on whether Article 33 of UNCLOS reflects custom. The Court recognizes the complex development of the codification history regarding the CZ and although neither the ILC nor UNCLOS include security, policy, and control powers in the CZ, several States have included them in their powers in the zone (paras. 148–160). The Court notes that in the judgment of 2012 the CZ was not discussed in depth and that the CZ and EEZ are governed by different regimes, and both regimes imply the obligation to respect the rights of third States. The Court finds that Colombia has the right to establish a CZ in the Archipelago and finds that Articles 33 and 58 of UNCLOS do not necessarily encompass all the rights that Colombia has within its contiguous zone. The Court considered that despite the right of Colombia to establish a CZ in the Archipelago, the zone set in the Decree is not in accordance with the geographical extent allowed by international law because it overlaps in certain spaces with the EEZ of Nicaragua, and certain powers exercised under the Decree regarding environmental protection and cultural heritage are beyond the scope of customary law. The court ordered Colombia to bring the decree into conformity with international law by the means of its own choosing (paras 170–196). In this same sense, the Court rejects additional reparations or compensations claimed by Nicaragua, along with its request for the Court to remain seized of the claims until Colombia complies.

5.5 Counterclaim Regarding Artisanal Fishing Rights

Finally, the Court entertained Colombia's counterclaims, beginning with the counterclaim related to Nicaragua's alleged infringement of the artisanal fishing rights of the inhabitants of the San Andrés Archipelago to access and exploit the traditional banks. The Court recalls that in general, the onus is on Colombia to prove the historical practices of the Raizales in areas that now fall within Nicaragua's EEZ. The affidavits presented by Colombia were entertained by the Court despite it considering the evidence to have lower weight and probative value since it was created for the specific purpose of the case and did not reflect a long-standing history of a local customary norm and offered no certainty

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of the periods of said practices. The Court also considered the Presidential Declarations from Nicaragua in which President Ortega referred to said fishing rights in order to analyze if it recognized the existence of these rights or was just an expression of political will (paras. 201–221). Consequently, the Court did not waive the possibility of historical or artisanal fishing rights from Colombian Raizales co-existing with the Nicaraguan EEZ of Nicaragua but decided that Colombia had failed to prove that Raizales enjoy artisanal fishing rights in Nicaragua's EEZ or that Nicaragua has recognized them by declarations or unilateral statements (para 231). As an innovative element in the longstanding litigation between the parties, the Court recognized, expressly, the willingness of the parties to negotiate an agreement regarding the access of members of the Raizal community to fisheries located in Nicaragua's EEZ and suggests it as the most appropriate solution (para 232).

5.6 Counterclaim Regarding Nicaragua's Straight Baselines

The Court dedicates the final pages of the judgment to Colombia's counterclaims regarding the legality of and use by Nicaragua of straight baselines, established by Decree 33 of August 27, 2013, and their alleged violation of Colombia's sovereign rights and maritime spaces. It begins by clarifying that articles 5 and 7 of UNCLOS are considered by the parties to reflect customary international law. This includes the use of straight baselines instead of coastal baselines under special circumstances or geographical preconditions such as the presence of islands in the vicinity of coastal indentations (para. 241–244). Nicaragua invokes said conditions in two of the points described in Decree 33.

First, recalling its *Fisheries*, *Delimitation in the Black Sea and Maritime Delimitation and Territorial Questions between Qatar and Bahrain* cases, the Court pointed out that although there is not a single test for determining the indentation of the coast, the coastal State must refer to international law when establishing its baselines and a mere indentation is not sufficient. The Court considers that the curve inward described by points 8 and 9 of Decree 33 is not sufficient. Secondly, in the section of the baselines referring to several cays and the Corn Islands, the Court debated whether these mentioned formations constitute a "fringe of islands" with sufficient proximity, and decided that they do not form a coherent cluster along the coast, sufficiently linked to the land to be considered an outer edge of the coast or to produce a masking effect and that the straight baselines convert certain spaces that should be territorial sea or EEZ into internal waters, thereby limiting Colombia's rights such as innocent passage. Therefore, the Court decides that Nicaragua must amend the straight baselines set by Decree 33 in accordance with international law and finishes the judgment with the *dispositif* (para. 256–260).

VI. Conclusion

In conclusion, the judgment presented a balanced result for both parties in the sense that both Colombia and Nicaragua were ordered to amend their current national legislation in accordance with international law, and both claims and counterclaims gave partial positive results to both parties. Finally, the invitation of the Court for the parties to negotiate the exercise of artisanal fishing rights was received by Colombia as the second-best

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solution since the Court did not rule out the existence of these rights. It only declared that Colombia had not proved them in the process and that the parties should produce a negotiated regime. This suggestion has had recent consequences for the parties, since the new government of Colombia, which came into office in August 2022, has begun negotiations on the matter with Nicaragua which, to date, have been maintained under secrecy.

Notes

1. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, March 17, 2016, ICJ Reports 2016.

2. Pact of Bogota, Status of Ratifications, Organization of American States, April 30, 1948, http://www.oas.org/juridico/spanish/firmas/a-42.html#10, accessed January 22, 2022.

3. Presidency of the Republic of Colombia, Decree 1946 of September 9, 2013, http://wsp.presidencia.gov.co/Normativa/Decretos/2013/Documents/SEPTIEMBRE/09/DECRETO%201946%20DEL%2009%20DE%20SEPTIEMBRE%20DE%202013.pdf, accessed January 22, 2022.

4. Constitutional Court of Colombia, Judgment C-269/14 of May 2, 2014, M.P.: Mauricio González Cuervo.

5. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia*),* Public sitting held on Monday September 20, 2021, at 3 p.m., at the Peace Palace, VERBATIM RECORD, pp. 19–21, https://www.icj-cij.org/public/files/case-related/155/155-20210920-ORA-01-00-BI.pdf, accessed October 26, 2022.

6. Maria Teresa Infante, "The Pact of Bogota: Cases and Practice" *Anuario Colombiano de Derecho Internacional* 10 (2017), p. 85, https://doi.org/10.12804/revistas.urosario.edu.co/acdi/a.5294.

7. *Collection of Texts Governing the Jurisdiction of the Court*, ICJ, Series D. Nº 4, 4ª ed., 1932, p. 54

8. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, March 17, 2016, ICJ Reports 2016.

9. Walter Arévalo Ramírez and Andres Sarmiento Lamus, "Non-Appearance Before the International Court of Justice and the Role and Function of Judges *ad hoc*" *The Law & Practice of International Courts and Tribunals* 16(3) (2017), pp. 398–412, https://doi.org/10.1163/15718034-12341358.

10. (1) San Andrés; (2) Providencia; (3) Santa Catalina; (4) Cayos de Alburquerque; (5) Cayos de East Southeast (Este Sudeste); (6) Cayos de Roncador; (7) Cayos de Serrana; (8) Cayos de Quitasueño; (9) Cayos de Serranilla; (10) Cayos de Bajo Nuevo. It is a curious finding that Decree 1946 of 2013 does not mentions Banco Alicia (ocean bank), which is mentioned in Law 47 of 1993 and is located in the joint fishing zone with Jamaica, very close to the maritime border between the two States.

11. Presidency of the Republic of Colombia (2013), Articles 1, 7.

12. Virdzhiniya Petrova Georgieva, "Hierarchy Between Domestic and International Tribunals: Utopia or Near Future?" *Anuario Colombiano de Derecho Internacional* 14 (2021), p. 21, https://doi.org/10.12804/revistas.urosario.edu.co/acdi/a.10114.

13. Walter Arévalo-Ramírez, "Resistance to Territorial and Maritime Delimitation Judgments of the International Court of Justice and Clashes with 'Territory Clauses' in the Constitutions of Latin American States" *Leiden Journal of International Law* (2021), pp. 1–24, https://doi.org/10.1017/S0922156521000522.

14. Walter Arévalo-Ramírez, "Resistance to Territorial and Maritime Delimitation Judgments of the International Court of Justice and Clashes with 'Territory Clauses' in the Constitutions of Latin American States" *Leiden Journal of International Law* (2021), p. 5, https://doi.org/10.1017/S0922156521000522.

15. Constitutional Court of Colombia (2014).

16. *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2007, p. 869.

17. Presidency of the Republic of Colombia, "Declaración del presidente de Colombia, Juan Manuel Santos, sobre decisions de la Corte Internacional de Justicia de La Haya [Statement by the President of Colombia, Juan Manuel Santos, on the Decisions of the International Court of Justice in the Hague]," March 17, 2016, https://www.cancilleria.gov.co/newsroom/news/declaracion-presidente-colombia-juan-manuel-santos-decisiones-corte-internacional, accessed October 26, 2022.

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18. ICJ Reports, *Alleged Violations*. . . (March 17, 2016), paras. 80–100.
19. ICJ Reports, *Alleged Violations*. . . (March 17, 2016), paras. 11–13.
20. Maria Otero, "Problems in the Caribbean: The Absence of Finality to the Territorial Dispute in Nicaragua v. Colombia Will Have Negative Impacts in the Region" *University of Toledo Law Review* 46 (2014), p. 617.
21. Diego Mejía-Lemos, "The Principle of Res Judicata, Determination by 'Necessary Implication,' and the Settlement of Maritime Delimitation Disputes by the International Court of Justice" *The Journal of Territorial and Maritime Studies* 5(2) (2018), p. 46–74.
22. Massimo Lando "Delimiting the Continental Shelf Beyond 200 Nautical Miles at the International Court of Justice: The Nicaragua v. Colombia cases" *Chinese Journal of International Law* 16(2) (2017), pp. 137–173, https://doi.org/10.1093/chinesejil/jmx014.
23. ICJ Reports, *Alleged Violations*. . . (March 17, 2016), paras. 67–79.
24. *Ibid*., para.111.
25. Pact of Bogota (1948).
26. Edgardo Sobenes Obregon, "Non-Compliance of Judgments and the Inherent Jurisdiction of the ICJ" *The Journal of Territorial and Maritime Studies* 7(1) (2020), p. 53–67.
27. ICJ Reports, *Alleged Violations*. . . (March 17, 2016), para. 109.
28. ICJ, Rules of Court. Adopted on April 14, 1978, entered into force on July 1, 1978, https://www.icj-cij.org/en/rules, accessed January 23, 2022.
29. *Ibid*.
30. Juan José Quintana, *Litigation at the International Court of Justice—Practice and Procedure* (Leiden/Boston: Brill / Nijhoff, 2015), p. 808, https://doi.org/10.1163/9789004297517.
31. Yves Nouvel, "La recevabilité des demandes reconventionnelles devant la Cour Internationale de Justice à la lumière de deux ordonnances récentes [The Admissibility of Counterclaims Before the International Court of Justice in Light of Two Recent (Legislative) Orders]," *Annuaire Français de Droit International* 44 (1998) CNRS, París, p. 330, https://doi.org/10.3406/afdi.1998.3518.
32. Hugh Thirlway, *The International Court of Justice* (Oxford: Oxford University Press, 2016), p. 94; See also, Ricardo Abello-Galvis, *Introduction to the International Court of Justice—ICJ* (Bogota: Ediciones Rosaristas, 2013).
33. Tania Elena Pacheco Blandino, "La demanda reconvencional o reconvención en la CIJ [counterclaims in the ICJ]," *in.omnem.terram,* https://inomnemterram.wordpress.com/2017/01/11/la-demanda-reconvencional-o-reconvencion-en-la-c-i-j/, accessed January 23, 2022.
34. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Counter-Memorial of the Republic of Colombia, Vol. 1, November 17, 2016, pp. 243–286, https://www.icj-cij.org/public/files/case-related/155/155-20161117-WRI-01-00-EN.pdf, accessed January 23, 2022.
35. *Ibid*., p. 314.
36. *Ibid*., pp. 243–286.
37. *Ibid*., p. 314.
38. *Ibid*., p. 289.
39. *Ibid*., p. 314.
40. *Ibid*., p.303.
41. Ricardo Abello-Galvis and Walter Arevalo-Ramirez, "Inter-American Court of Human Rights Advisory Opinion OC-23/17: Jurisdictional, Procedural and Substantive Implications of Human Rights Duties in the Context of Environmental Protection," *Review of European, Comparative & International Environmental Law* 28(2) (2019), pp. 217–222, https://doi.org/10.1111/reel.12290.
42. Hugh Thirlway, *The International Court of Justice* (Oxford: Oxford University Press, 2016) p. 97, https://doi.org/10.1093/obo/9780199796953-0125.
43. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Public sitting held on Wednesday September 22, 2021, at 11 a.m., at the Peace Palace, VERBATIM RECORD, pp. 18–22, https://www.icj-cij.org/public/files/case-related/155/155-20210922-ORA-01-00-BI.pdf, accessed January 23, 2022.
44. Dapo Akande, "The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?," *International & Comparative Law Quarterly* 46(2) (1997), pp. 309–343, https://doi.org/10.1017/S0020589300060450.
45. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean* Sea (Nicaragua v. Colombia), Merits, Judgment, April 21, 2022, paras. 1–47.

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Is UNCLOS Ready for the Era of Seafaring Autonomous Vessels?

David Molina Coello

Structured Abstract

Article Type: Research Paper

Purpose—This paper aims to show how the Law of the Sea, guided by the flag system instituted by the United Nations Convention on the Law of the Sea (UNCLOS), presents challenges in regulating automated vessels and how the regulation of the seas should change to deal with the changes in vessels' technology.

Design, Methodology, Approach—The work uses descriptive and analytical research. It builds on existing projects regarding automated vessels to determine their current development. It also analyzes current regulations, confronting the RSE-MASS of the IMO with the reality of automated ships. Finally, it determines whether UNCLOS should change to ensure the effective regulation of this new technology.

Findings—The flag State system provided in UNCLOS is inefficient in regulating automated vessels. Reallocating the regulatory powers of the flag States to the IMO while constituting a worldwide regime over the high seas is a possible solution for successfully regulating automated vessels.

Practical Implications—The proposal of substituting the flag system, one of the baselines of the Law of the Sea, due to the imminent creation of automated vessels.

Originality, Value—This paper shows that UNCLOS was created assuming that the technology involving operations on the high seas will never change. This work deals with the change in vessels' technology to become automated and the issues surrounding their regulation.

Keywords: automated vessels, flag system, *lege ferenda*, UNCLOS

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I. Introduction

The first World's Expo occurred in London in 1851 and became a tradition. The idea was to give the public a peek at what the future of humanity will look like.[1] Isaac Asimov, one of history's crucial sci-fi exponents, wrote a piece on the 1964 World's Expo in the New York Times. He highlighted the current developments while guessing how the Expo will be in 50 years (2014 CE). One of his guesses was that "Much effort will be put into the designing of vehicles with 'Robot-brains' (vehicles that can be set for particular destinations and that will then proceed there without interference by the slow reflexes of a human driver)."[2] Asimov was right in his prediction. Nonetheless, he missed the date by six years. The Expo Dubai 2020, which opened to the public from 1 October 2021 to 31 March 2022, had a whole district where visitors could spot the latest developments in mobility technologies, especially autonomous vehicles.[3]

Also, Asimov's prediction was limited. There are developments in autonomous vessels as well. Multiple companies, States, and organizations are developing technology to build autonomous ships for commercial, transport, and defense purposes.[4]

The legal framework is one of the main concerns regarding technological developments, especially in cases where the regulation was created with the assumption that machinery will not change. This could be the case with autonomous vessels. The Law of the Sea works under the logic of the United Nations Convention on the Law of the Sea (UNCLOS), also called the "Constitution of the Sea," with the assumption that vessels will always need a captain, a flag, and a crew. In other words, they would never be completely automated.

How to face this new challenge? Is UNCLOS ready for the era of seafaring autonomous vessels? This paper states that the regulation based on the current flag State system will not be efficient in regulating autonomous ships. It will do so in three steps. First, it will explain how AI works on autonomous vessels, the current developments in the area, and the challenges of its regulation through the International Maritime Organization (IMO) regulatory exercise on the matter. Second, it will present the inconsistencies between the flag State system and completely autonomous vessels' regulation, concluding that its logic should change. Finally, it will propose a modification to UNCLOS by replacing its flag system with a unified worldwide legal framework, including dispute resolution provisions applicable to both States and enterprises.

II. Autonomous Seafaring Vessels: Technology, Developments, and the Current Approach to Regulation

This section will describe the developments in autonomous vessel technology and the IMO's proposal on how to regulate them. First, it will explain the functioning of AI and deep learning in ships, and it will give examples of the efforts made by States and enterprises to develop completely autonomous vessels. Then, it will comment on the IMO regulatory scoping exercise on Maritime Autonomous Surface Ships (RSE-MASS), which

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classified ships depending on their level of automation, deciding not to address possible regulations for completely autonomous vessels.

2.1 The Use of AI and Data Science in the Worldwide Race to Develop Autonomous Vessels

New computer devices work through data science and AI. Data science combines multiple disciplines. First, it employs big data, consisting of all the data stored in an information network fed daily by electronic devices interacting with reality. Second, it uses computer science to develop binary code (sequences of "1" and "0") to unify the information in a single computational language. Finally, it relies on statics to identify the dynamic of the data and make inferences from it.[5] With its application, a computer system can organize data, classify it, and even make predictions after running millions of different statistical scenarios to find the most repetitive occurrence. Furthermore, AI refers to machine learning, which uses data science to allow systems to make decisions while dealing with reality.

For example, the word prediction tool on the keyboards of every smartphone is an application of data science in AI.[6] The tool gathers the rules and words of a specific language, expressed in binary code to predict user preferences. Eventually, the device learns them by repetition and makes better suggestions.

Data science and AI could be applied in as many fields as computational science.[7] Thus, they have become the primary instrument to improve businesses, including the maritime industry. Their broad application simplifies or eliminates human activities in ports and ships. Therefore, the uses of AI and data science range from creating autonomous tools incorporated into a non-autonomous vessel (a boat in its current conception, with a captain and a crew) to developing completely autonomous ships. Several efforts to build this technology could be identified in the private sector, States agendas, and scientific research.

An example in the private sector is Rolls Royce's Advanced Autonomous Waterborne Applications Initiative (AWWA), released in 2016. Its initial schedule is to develop "autonomous unmanned ocean-going ships" by 2035.[8]

Autonomous vessels are on the agenda of the European Union (EU), the United States of America (USA), and China. First, the EU founded the Maritime Unmanned Navigation through Intelligence in Networks (MUNIN) project to research the use of autonomous vessels for commercial purposes.[9] This initiative maintains that autonomous ships will lower the risk of collisions at sea by ten times, besides its apparent profitability compared to the current system.[10] Second, the US Congress approved a budget of 125 million dollars for research on: "long-duration autonomous ship operations" in January 2021. As a result, the US Navy engaged in a 20-year plan with a private enterprise to create a fleet of 120 autonomous vessels and has a project to develop autonomous undersea vehicles for shipment.[11] Lastly, China's technology for crewless ships was already at a stage where it could identify potential risks using cameras, radars, and sensors to assist seafarers in decision-making in 2019.[12]

Finally, there are initiatives to create autonomous vessels to do research at sea. For example, the "Mayflower" is an AI-based ship developed by Promare and IBM. It went through an attempt to cross the Atlantic Ocean from the United Kingdom to the USA in

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June 2021. After its first failure to cross the ocean, it was relaunched on 7 September 2021, to resume its testing and scientific research schedule.[13] Finally, on its second attempt, it reached the USA on 5 June 2022, completing the first transatlantic voyage ever made by an automated and crewless vessel.[14]

In sum, machine learning is the primary tool used to improve the maritime industry nowadays. The developments where it is focused could go from creating automated tools for seafarers to completely automated vessels. There are multiple efforts worldwide to change the industry toward the general use of completely autonomous vessels. Thus, regulation is needed.

2.2 RSE-MASS Failure to Recommend a Regulatory Framework for Completely Autonomous Vessels

Given the application of AI and data science in the maritime industry, the Maritime Safety Committee (MSC) of the IMO started the RSE-MASS in 2017 to analyze the effect that the existing regulatory framework would have when facing autonomous vessels. The outcome was passed to the Member States of the organization three years later by circular number 1638 of June 3, 2021.[15] The RSE-MASS classified autonomous vessels depending on their level of automation, identified which will be the main obstacles towards regulation, and analyzed options to amend the IMO Conventions. The findings will be summarized in order.

First, the RSE-MASS identified four degrees of automated vessels: one, ships with some automated operations but that overall seafarers fully control on board; two, remotely controlled ships with seafarers on board; three, remotely controlled ships without seafarers on board; and four, fully autonomous ships.[16] The difference between every degree is the human interference in the ship's voyage since the primary assumption of IMO Conventions, like UNCLOS, is that every boat has a flag, a master, and seafarers on board.[17] Hence, the RSE-MASS relied on this classification for its analysis.

Second, the RSE-MASS indicated three common gaps to be regulated in the IMO Conventions. First, the clarification of the meanings of the terms master and crew, especially for degrees three and four of automation since the Conventions understand that the master and its crew will always be on board the ship. On this matter, it asserts a need to extend or amend the role of the master in the higher degrees of automation.[18] Second, the lack of existence of the term remote-control station in the IMO Conventions and the need to specify its functional and operational requirements for degrees two, three, and four of automation.[19] Third, the role of remote operators as seafarers since they would be in the remote-control station and not in the ship.[20]

The RSE-MASS findings are based on certain assumptions about the future operation of autonomous vessels.[21] There are two which are especially important for the scope of the MSC analysis. First, a human being will supervise the voyage of a degree four autonomous vessel.[22] Second, if the ship is not fully autonomous, it will need a master.[23]

These assumptions catch a glimpse of the scope of the RSE-MASS, which is the understanding that humankind's interference will always be needed for seafaring. Nonetheless, if a ship becomes completely autonomous, there will be no master or preventive human intervention. In this scenario, the machine learning process (software) will use the ship's

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technological tools (hardware), such as high-definition cameras, sensors systems, and radars, to determine the decision to be taken in a particular circumstance.[24] Thus, the assumptions limited the RSE-MASS task to the lower degrees of automation in vessel operations from the beginning. In this same line, the RSE-MASS is emphatical to affirm that, regarding the regulation of the higher levels of autonomous vessels, "it seems difficult to determine the most appropriate way at this stage because it might only be found during the discussion on the actual amendments."[25]

Finally, the RSE-MASS recommended developing a new instrument specialized in autonomous vessels.[26] This new instrument would change the common gaps in multiple IMO instruments without the risk of creating more openings or contradictions.[27] In addition to this option, the MSC recommended creating guidelines for an organized transition before the technology is ready.[28]

Nevertheless, if the Member States do not find the first recommendation feasible, the RSE-MASS proposed the amendment of the existing instruments in a high, middle, and low priority order as a second option.[29] For this case, the RSE-MASS classified the current IMO Conventions into four categories. First, those which apply to MASS and prevent their operations. Second, those which apply to MASS and do not prevent their operations. Third, those which apply to MASS and should not prevent their operations but might contain gaps or need to be amended or clarified. Fourth, those which do not apply to MASS operations.[30] So, the MSC suggested that the individualized amendments could start in the first category, excelling the SOLAS Convention, and end in the fourth one by simply making an express statement that the application of these group of regulations will not be affected by autonomous vessel operations.[31]

The MSC clarifies in the Annex of the RSE-MASS that any option for regulation should only address the gaps in IMO Conventions for the lower levels of automation. For the higher levels of automated vessels, it said:

> Autonomously operated MASS certainly will appear in the future. However, for a very long period, the large majority of the world's fleet will still be conventional ships. Therefore, large scale amendments of current regulations only to accommodate MASS operation seem to be unwise, which will also cause confusion and potential barriers for the application of existing provisions to conventional ships.[32]

Thus, the RSE-MASS position is that regulation for completely autonomous vessels will not be needed in the foreseeable future.

This belief might not be accurate for two reasons. First, the efforts made by States, organizations, and enterprises to develop completely autonomous vessels, which were addressed in the last section, could conclude in a jump in the available technology sooner than expected. As exposed in the previous section, the Mayflower already had a successful transatlantic voyage to the USA. Second, regulation for entirely autonomous operations in vessels is already needed because, as the RSE-MASS admitted, a single journey could have different levels of automation.[33]

A voyage at the earliest stages of implementation of degrees three and four autonomous vessels will need three stages: departure, ocean passage, and arrival. The ship will operate autonomously during its course through the ocean, but it will need to be boarded by seafarers before the departure and arrival stages to ensure it comes to port.[34] Strictly

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speaking, this scenario will imply that the same vessel could have several degrees of automation depending on the voyage stage. Likewise, the RSE-MASS did not consider questions like the liability in case of a collision between two vessels equipped with a system that will allow them to make an automated voyage on the high seas. This is problematic since, as the example shows, the legal challenges faced by completely automated vessels are the same for vessels with ships passing through the ocean in an unmanned mode, but with the need for assistance in departure and arrival, which are more likely to become a reality in the short run.[35] Furthermore, any recommendation to regulate autonomous vessels should consider full automation.[36]

In conclusion, applying AI and data science in the maritime industry inspired the RSE-MASS. It classified vessels in four degrees depending on their level of automation. It identified three gaps in applying the current IMO Convention to autonomous vessels: the role of the master, the lack of regulation of remote-control stations, and the regime applicable to remote operators. Nonetheless, the RSE-MASS assumed that completely autonomous vessels will always need human supervision, limiting its findings. It also recommended the creation of an international instrument specialized in autonomous vessels under the framework of the IMO to deal with the gaps or an amendment of the IMO Conventions as a second option. To do so, it partially approached the automation of vessels, underestimating the need to regulate completely autonomous vessels, even when it comes to unmanned stages of a voyage, which are likely to be implemented in the short term.

III. Behind the Scenes of the RSE-MASS Limitations: The UNCLOS Flag State System

This section will address the impossibility of effectively regulating automated vessels under the flag State system provided in UNCLOS, using the RSE-MASS of the IMO as an illustrative example. First, it will summarize the current regime. Then, it will highlight the problems it faces in regulating autonomous vessels.

3.1 The Flag State Regulatory Power and the Current Regime of the Law of the Sea

The current regulations on the Law of the Sea will be summarized in two general topics. First are the IMO Conventions' objectives and the relation between the IMO and UNCLOS. Second is the logic behind the flag State system.

The IMO was created in the 1948 "Convention on the Inter-Governmental Maritime Consultative Organization" (IMCO). The IMCO became operational in 1959. However, the Member States decided to change the institution's name in Resolution number A.358 (IX)-IMO in 1975. The change was effective from 1982.[37] This also meant the shift in the 1948 Convention's name, which now goes by the "Convention on the International Maritime Organization."[38] The purpose of the IMO is to provide regulations to be adopted by the cooperation of the Member States regarding international shipping, the efficiency of navigation, maritime safety, and the prevention of pollution.[39]

On the other hand, UNCLOS was adopted in 1982 and entered into force in 1994. The creation process of UNCLOS started with the first United Nations (UN) Conference on the

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Law of the Sea, held in 1958. Hence, it took thirty-six years to develop. The IMO was already part of the maritime international regulatory framework when States initiated negotiations to create UNCLOS. Furthermore, the IMO attended the third UN Conference on the Law of the Sea, from which UNCLOS was finally drafted, signed, and ratified.[40]

UNCLOS is understood as the "Constitution of the Sea." It codified the generally applicable rules for States in sea affairs. As part of the constitutional approach to UNCLOS, the IMO has an essential role as a quasi-legislative body that works to implement its provisions, indirectly referred to by the Convention as the "competent international organization" to create regulations.[41] Also, more than thirty-five provisions in UNCLOS refer to rules and standards previously established by the IMO.[42] Thus, the IMO Conventions and regulations work under the frame and logic of UNCLOS.

UNCLOS is divided into XVII parts and IX annexes. Each part contains provisions on specific topics about the treatment of the seas under Public International Law. It provides rules for the territorial sea, contiguous zone, exclusive economic zone (EEZ), and continental shelf as part of the coastal States' sovereignty. Also, it gives common rules for the high seas, such as the principle of freedom of navigation. Finally, it approaches topics such as protecting and preserving the marine environment by creating international obligations for the coastal States in their territories and the high seas.[43] In other words, UNCLOS deals with the jurisdiction of coastal States within their territories and, for specific scenarios, on the high seas.

States must implement specific regulations to fulfill the international obligations they acquired by signing and ratifying UNCLOS. They adopt the minimum requirements developed by the IMO as the competent international organization for the implementation of UNCLOS to do so.[44] Since the IMO Conventions, regulations, and recommendations serve this purpose, they can only work under UNCLOS but not change it.

UNCLOS serves the logic of the classic conception of sovereignty of States under Public International Law. The notions given in the convention rely on the power of States to enforce rules within their territories, the relation between ships from one State in another State's territory, and the relation between ships flying different States' flags on the high seas. It will depend on where the alleged violation of UNCLOS occurred to determine the applicable rules. Therefore, the rule of sovereignty over the territorial sea in Article 2 of UNCLOS is the basis for the whole system. It assumes the coastal States have prescriptive and enforceable jurisdiction for the acts committed in their territories and could control the operations at its sea. Additionally, the rule of territoriality is extended with the flag system to deal with navigation on the high seas.

According to Article 92 of UNCLOS, every ship should fly the flag of a State with which it has a link. The link has been understood as the relationship between the ship and the flag State provided in the national law of the said State. As affirmed by the International Tribunal for the Law of the Sea (ITLOS) in the M/V "Virginia G" case: "The Convention provides in article 91, paragraph 1, that 'every State shall fix the conditions for the grant of its nationality to ships' and does not impose in this regard any limitations on the nationality of ship-owners or crew."[45]

Every ship must comply with its flag State's laws and regulations. In exchange, the flag State should support the boat in case of any situation arising in other States' territorial waters or the high seas. This is how UNCLOS regulates the high seas, which cannot be

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considered the territory of any State[46] and are governed by the principle of freedom of navigation.[47] The rule is that a ship should observe the regulations of its flag State anywhere, even on the high seas, since the right of navigation towards them is reserved for States.[48] Thus, the link between a vessel and its flag State prevents other States from acting against that vessel on the high seas. As indicated by ITLOS in the M/V "Norstar" case:

> […] any act of interference with navigation of foreign ships or any exercise of jurisdiction over such ships on the high seas constitutes a breach of the freedom of navigation, unless justified by the Convention or other international treaties. [Also,] […] any act which subjects' activities of a foreign ship on the high seas to the jurisdiction of States other than the flag State constitutes a breach of the freedom of navigation, save in exceptional cases expressly provided for in the Convention or other international treaties.[49]

To ensure uniform legislation for situations arising on the high seas, UNCLOS imposes an obligation on the Member States to meet the international standards set by the IMO by adopting national laws on concerns, like prevention of pollution or safety at sea. The failure to implement the IMO standards implies the international responsibility of the States members to the Convention.

Article 94 provides the duties of flag States under UNCLOS. Their primary and general duty is to "effectively exercise […] jurisdiction and control in administrative, technical and social matters over ships flying its flag." Then, the provision specifies scenarios where the flag State is expected to exercise its control. It should maintain a register of ships flying its flag; exercise jurisdiction over each vessel flying its flag in respect of administrative, technical, and social matters; take measures to ensure the safety at sea of the ships flying its flag and ensure that the master of every vessel is qualified for the task. Number 6 of the referred provision also ratifies the logic behind the UNCLOS framework. Under it, if a State has grounds to believe that the flag State has failed to exercise jurisdiction over a boat flying its flag, the only measure it can take is to report the facts to the flag State, which is supposed to start an investigation on the matter.

In sum, the current Law of the Sea system implements UNCLOS by the Conventions and regulations passed in the IMO framework. Therefore, the IMO works under the same logic as UNCLOS, which system is based on the classic rule of territorial sovereignty, extended to ships by the flag system to ensure their compliance with the Convention regarding activities on the high seas.

3.2 The Obsolescence of the Flag System Due to the New Allocation of Risks on Sea Affairs in the Era of Autonomous Vessels

Since the IMO can only work under the logic established by UNCLOS, the RSE-MASS refusal to make recommendations regarding completely autonomous vessels is not a surprise. Despite the clever but unrealistic statement of not finding it helpful to regulate the degree four automated vessels yet, the MSC emphasis on the difficulties to do it is a hint that the current system is not suitable for this new kind of technology.

As indicated in the last section, the current system works under the rule of territoriality and the assumption that States exercise prescriptive jurisdiction over vessels flying their flags on the high seas. That way, the flag States assure compliance with international minimum standards, as prescribed by UNCLOS, by creating national laws applicable to the

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ships flying their flags. This could be better illustrated with an example of the system as it is conceived, leaving aside the challenge of the threshold for the genuine link between a vessel and the State of its flag.[50] The example will assume that the connection between a ship and its flag State is the ability of the State to exercise its jurisdiction after the registry, which has been the threshold used by ITLOS.[51] In more practical words, the flag State law also applies to the owner of the ship, which is commonly an enterprise constituted in its territory.

An Ecuadorian company called "Condor Ltd." buys a cargo ship named "Sweet Mary." After, it registers the vessel in the Ecuadorian registry. Thus, the boat starts flying an Ecuadorian flag. In the meanwhile, the company hires a master and a crew. In the end, Condor Ltd. has everything it needs to start sailing to distant destinations after complying with Ecuadorian national legislation. The company decides to send "Sweet Mary" on its first voyage to China, sailing from the port of Guayaquil, also in Ecuador, with the previously hired Ecuadorian master and crew. Ecuadorian law is applicable at the port and within the territorial sea, given the territoriality principle. Since it flies an Ecuadorian flag, Ecuadorian law will still apply inside the ship when it reaches the high seas.

As it is evident, the most crucial factor of this example is the fact that the owner of the ship needs to meet the requirements to sail under the national legislation of the flag State. Furthermore, it will be liable if anything happens during the voyage since it owns the vessel, it decides when to perform maintenance, and the master and its crew are its employees. At the same time, the flag State will be internationally responsible if the vessel does not comply with minimum international standards or if the State has not pass national laws to make them mandatory. From a Public International Law perspective, the flag system seems natural to human-crewed sailing operations. The State accepts international regulation and then will bind its citizens by passing laws as it finds feasible.

Nonetheless, swapping the "Sweet Mary" for a degree three or four autonomous vessels might also change this conclusion. An example of each will be provided. On one hand, the example for degree three of automation will assume that the IMO adopted the RSE-MASS and there is a convention regulating the matter. On the other hand, the example for degree number four will consider that the convention does not regulate completely autonomous vessels.

In 2025, Condor Ltd. decides to sell the "Sweet Mary" to buy a degree three autonomous vessel, newly offered in the maritime market. The ship was built entirely in the UK, in compliance with the IMO guidelines. Therefore, it has sensors and radars that allow intercontinental voyages without a crew on board, and it was built considering all the regulations on safety and security at sea. Since Condor Ltd. is not a tech company, it hires the services of Wizard Ltd., a company providing services for ships using remote-control centers in States that have adopted the IMO convention on the matter. Hence, Wizard Ltd. will control the ship and its voyage at sea without the owner's intervention. Wizard Ltd. employees will be the ones making the decisions. Condor Ltd. registers the vessel under the name "Drone" in Ecuador, which has no national rules about autonomous vessels.

In this case, Ecuadorian law will apply to the ship within Ecuador's territorial sea and on the high seas. Nonetheless, as the RSE-MASS predicted, it is not clear if the States in which the remote-control centers are located will be substantially interested in the case of an accident on the high seas.[52] In case of an accident, Ecuador could be held responsible for not having assured the proficiency of the decision-makers of the vessel under Article 94 of

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UNCLOS, even though the remote-control centers are not in its territory, they have no link with Ecuador, and there could be dozens of them around the world, connecting to the ship depending on its location. Also, the State where Wizard Ltd. is constituted or the States where it has its remote-control centers would be in a better position to assure compliance with the IMO regulations. Nonetheless, they will have no obligation to exercise their jurisdiction under Article 94 of UNCLOS, since the "Drone" is not flying their flags. This will be the first big issue regarding the flag system. However, the example with degree four of automation will present even greater complications for the application of the current system.

In 2035, Condor Ltd. decides to sell the "Drone" to buy a fully autonomous vessel, recently introduced in the maritime market by Rolls Royce. This new type of ship is notoriously more efficient than the degree three autonomous ships and has lower costs for use and implementation, which is why Condor Ltd. sold the "Sweet Mary" from the beginning. The services provided by Wizard Ltd. with its remote-control centers are replaced by machine learning-based software. Also, the ship operates without the need for any supervision. The only foreseeable sunk cost is contracting a person to supervise the ship's operations, according to the assumption of the RSE-MASS that a human being will always supervise autonomous vessels. However, this will not be a realistic scenario since the software will handle the voyage.

On the one hand, the ship is built entirely in the USA, including its hardware. On the other hand, the software installed on the boat is in sync with multiple servers worldwide. It is also being developed and upgraded by machine learning going through all the data and decision-making processes stored in every vessel with the same technology. However, Condor Ltd. will still have to register its fully automated ship in Ecuador under Article 92 of UNCLOS. This time, under the name "The Robot." Other companies worldwide will have to go through the same registration process in many other States.

On its first voyage, now to Korea, "The Robot" is involved in a collision of three completely automated ships. One is a wholly automated oil tanker flying a Swiss flag. The other one is a Korean-flagged shipping vessel. All the ships have the same software installed. After the collision, the oil spills into the ocean, and there is a massive environmental crisis. The reason for the crash is that the software went down worldwide, which at that point in time was a one-in-a-million occurrence.[53]

Using the flag system, the same problem of delocalization of the operations of the ship arises with four-degree automated vessels, but worse. Now, the software operates several automated vessels always interconnected between them at the same time, even though every single one of them might fly a different flag. Also, the software uses different servers distributed worldwide, in connection with satellites.

At this point, the factual matrix seems too complicated to solve using the current logic of UNCLOS. A simplistic response to the given problem could be another assumption. If the current system assumes that when the flag State has a link to a ship flying its flag, it exercises its jurisdiction regardless of the delocalization of the ship's operations and the building of its hardware, the system could keep working as it is.

But then the problem will be the efficiency of the assumptions. To fill the possible gaps in the flag State jurisdiction, as well as in the other possible States involved in a single voyage, the owners of the ship would have to obtain several administrative qualifications and permits, changing as fast as national law changes to add new provisions for the system's

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updates. This possible scenario would lower the development of a technology that is likely to change the maritime industry for good, in terms of efficiency and environmental impact. Therefore, it would be against Arts. 192 and 196 of UNCLOS, which provide an obligation of the Member States to ensure the use of the best technological tools available and decrease the environmental impact of the maritime industry.

When completely autonomous vessels are operational, they are expected to become the primary way to sail on the high seas, given their low cost and efficiency.[54] Nonetheless, it is unreasonable to maintain that human-crewed vessels will completely disappear. What is expected is that autonomous vessels change "shipbuilding, equipment, and device, and shipping and port industries […] [and that] [e]specially shipping and port industries form a dynamic ecosystem,"[55] involving autonomous vessels and regular ships.

In this context, commentators have already identified several issues regarding the regulation of autonomous seafaring vessels, as a response to the RSE-MASS but with the flag system remaining unchallenged. One of the most important considerations when addressing the rules that will surround autonomous vessels, and which was already identified in the previous lines, is the apparently inevitable dualism between national and international regulation and the challenges for autonomous vessels regulation arising from their dynamic. Ikroh Yoon has identified the problem and said that it: "would be difficult to secure the effectiveness of enforcement when coastal states exercise jurisdiction [over autonomous vessels.] […] [Likewise,] global society will […] need to review the scope of domestic laws alongside the RSE."[56] In other words, he stated that the regulation of autonomous vessels will always be addressed from the national and international law perspectives. However, as already identified with the example raised in this section, this implicates the overcomplication of the system for autonomous and classic vessels.

To summarize, the current system works under the assumption that a vessel should fly a flag of a State to ensure its compliance with international minimum standards on issues like the operational characteristics of the ship, its safety, and its environmental impact. Therefore, its second assumption is that flag States will fulfill their obligation to adopt IMO regulations. This system is likely to face the problem of delocalization of the operations of automated vessels, which goes against its logic. In this scenario, the way the flag State would exercise jurisdiction over its ships' operations has been accepted as an issue by commentators. In this sense, a reform to the Law of the Sea logic might be needed to regulate autonomous vessels.

IV. UNCLOS in the Era of Completely Autonomous Vessels: Towards a Unified Jurisdiction for Public and Private Sea Affairs

This section will argue for abolishing the flag State system as a possible way to deal with the problem of delocalization of the operations in autonomous vessels. First, it will make a *lege ferenda*[57] consideration about the current system and its efficiency in regulating autonomous vessels. Second, it will propose a general reform to UNCLOS to create a worldwide regime for sea affairs through the IMO.

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4.1 How the Law of the Sea Should Be? The Practical Utility of Lege Ferenda *Considerations*

The flag State system seems unfit for autonomous vessels because the jurisdictional power of States is distorted in multiple delocalized operations. The question of what to do is solved depending on what the decision-makers find more worthwhile. In this case, there is a tension between any reform towards efficiency and the prevalence of the principles of autonomy and sovereignty of States instrumented in the flag system.

As it is not shocking, autonomy and sovereignty will prevail against any other goal or value of the international community most of the time. Therefore, considerations of *lege ferenda* are often made when a proposal to change the system might not be suitable under international politics. The complexities of the game of power amongst States make the belief in common goals desirable for the creation of new treaties and regulations. Thus, these considerations are needed in the treaty-making process where the law is a guest in the territory of politics, especially in a specific situation forcing States to provide a solution outside their common framework and rules. This is the case with autonomous vessels. The *lege ferenda* consideration, in this case, would be that the law governing activities at sea should be whatever is efficient, rather than one which ratifies the traditional sovereign power of States.

If States decide their goal is to address the regulation of autonomous vessels efficiently, the system might change. This paper proposes that one way to do it would be to give up on the flag system and constitute a unitary worldwide regime, with dispute resolution and enforcement means, reachable to States or enterprises. This significant change would imply the loss of prescriptive jurisdiction of the States in operations on the high seas in exchange for a more efficient approach.

4.2 UNCLOS and a Worldwide Regime on the Seas

Unlike the current comments on the regulation of autonomous vessels, this paper considers that there should not be different regimes—national and international—for automated and regular vessels. With exceptions for specific scenarios also provided in the applicable rules, all ships should have the same regulation at the international level, regardless of their level of automation. Therefore, the UNCLOS flag system and any other relevant provision in the Convention should be reformed to institute a worldwide regime over the activities of all ships on the high seas. As already stated in the last section, a plea of efficiency over the States exercise of prescriptive jurisdiction.

This work proposes three main ideas for the implementation of a worldwide regime for activities at sea. First, the allocation of prescriptive jurisdiction to the IMO. Second, the creation of a global registry for vessels. Third, the design of a dispute resolution system is to be used by private and public persons to bring claims in sea affairs. These proposals will be addressed in order.

First, the IMO should create unified applicable rules for activities at sea. The decision-making process in the IMO should change by eliminating the provisions that rely on tonnage to give States with bigger fleets a more significant power of decision to pass regulations. Every state should have one vote. Nonetheless, the rest of the IMO decision-making process is already helpful for the constitution of a worldwide regime for two reasons. First,

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regulations are approved by member States. Thus, it is a politically viable proposal. Second, the technicalities of new rules are agreed upon in annexes. The approval process works with tacit acceptance, which means that a new set of regulations passes unless one-third of the member states vote against it. Hence, the decision-making process will be efficient. The IMO will create rules regarding activities at sea relating to State-State, State-enterprise, or enterprise-enterprise matters.

Second, a worldwide registry for vessels should be created. This public registry will have information regarding the ship, its owner, builder, and software developer. That way, there will be information about all the enterprises involved in maritime activities. As part of this proposal, the IMO could create rules regarding the activities at sea to simplify the way claims against a ship will be made. At least two ideas could be implemented. First is creating a fund to pay for liability arising from an accident at sea, which is filled by the payments made by all the enterprises involved in sea activities when they contract mandatory insurance. Second is creating a rule providing for joint responsibility of the vessels' owners, builders, and software developers in case of an accident. That way, even in the statistically unreasonable scenario of the occurrence of an accident at sea, the allocation of risks will be efficient.

The creation of worldwide registries is not rare in international affairs. There is one example in Chapter IV of the Convention on International Interest in Mobile Equipment,[58] which provides for the creation of an International Registry for international interests in mobile equipment. There is also one example of national registration that is supervised internationally, which reveals that States might be willing to cooperate in the international arena for registry purposes. Article 2 of the Convention on Registration of Objects Launched into Outer Space (Registration Convention or UNOOSA)[59] provides for the register of every space object launched into Earth's orbit or beyond in the State doing the launch and the duty to inform the Secretary-General of the United Nations of the establishment of said registry. Therefore, the creation of a worldwide register of vessels is feasible.

Third, a new dispute resolution system should be created, allowing the participation of States and enterprises, and covering any possible dispute at sea. This system could be a permanent Court, with specialized chambers located worldwide, or a mixture between judicial bodies and arbitration. All members of UNCLOS will accept the decisions rendered in the use of this mechanism, which will be enforceable in any of them, with provisions for that matter. That way, any dispute regarding sea activities will be efficiently solved. To go deeper into the proposal of a new dispute resolution system, the reform could provide rules for implementing technological tools to go through the proceedings and enforcement. For example, enforcement should be automatic in case of a dispute covered by the found constituted for accidents at sea.

In sum, UNCLOS reform should allocate prescriptive jurisdiction over the seas in the IMO. The IMO would create rules for States and enterprises, regarding activities at sea. A worldwide registry for vessels should be made to ensure complete information on the enterprises involved in activities at sea. Finally, a dispute resolution and enforcement system should be designed to solve disputes between States, enterprises, and States and enterprises.

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V. Conclusions

AI and data science are used to automate industries. They are already employed by the maritime industry to automate some of the activities during a vessel's voyage, reducing the crew's workload. Also, they are being applied to build automated vessels. There are efforts worldwide to develop the technology to make completely automated ships operational. For example, Rolls Royce announced its first "autonomous unmanned ocean-going ship" for 2035.

In response to this reality, the IMO started the RSE-MASS in 2017 to make suggestions on regulating automated vessels. The result was rendered to the Member States of the IMO in June 2021. The RSE-MASS classified ships in four degrees according to their level of automation and recommended the creation of a Convention specialized in the matter. It suggested implementing remote-control centers for ships that will be controlled from the coast, extending the definition of the master, and homologating remote operators to seafarers. It also specified that it is not clear if the State where the remote-control center is located will have any substantial interest in an accident at sea and that regulation for uncrewed vessels is at least complex. Finally, it decided to assume that there would be no need to regulate completely automated vessels in the foreseeable future. Thus, it did not make any suggestions for the highest level of automation.

The IMO works as a quasi-legislative body to implement the provisions in UNCLOS, also referred to as the Constitution of the seas. Thus, it cannot go against it when making recommendations or passing new conventions. It will also have to follow its logic, for that matter.

The reason behind the difficulties faced by the RSE-MASS in recommending regulations is the logic of the UNCLOS flag system. The flag system is an extension of the territorial sovereignty of States to vessels flying their flags. It works down the normative pyramid. First, the IMO passes rules to be implemented by flag States, according to Article 94 of UNCLOS. Second, the States implement the IMO rules in their national laws to comply with their international obligations acquired by the ratification of the Convention. Finally, the national law will apply to the vessels flying a State's flag. That way, the system works with the assumption that States effectively exercise their jurisdiction over ships flying their flag.

The flag system might not be compatible when effectively regulating autonomous vessels because of the delocalization of activities at sea that comes with implementing automated technology. In the case of a completely automated ship, it will be owned by the company which made the registration in each country, but it will be software-controlled using machine learning. It is likely that this software would be developed by a third company and connected simultaneously with other vessels using the same system but flying different flags. To regulate this matter under the current system, States will need to pass an overwhelming amount of legislation to assure that all activities at sea comply with IMO rules. Hence, questions about the link between the flag States and the other actors in the delocalization of the activities at sea will be ignored by creating more assumptions to maintain the extension of States' sovereignty over ships on the high seas. Reform will be needed.

To address a possible reform of the UNCLOS flag system, the approach to States should be made using a *lege ferenda* statement: The Law of the Sea should prefer efficiency over the

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extension of the principle of territorial sovereignty. In that sense, the flag system should be abolished. States should allocate their prescriptive jurisdiction in the IMO. Therefore, the IMO will create uniform laws for public and private matters at sea. Also, the creation of an international registry will be needed. This registry will contain the information of the ship and every actor involved in delocalizing its activities at sea. Rules like the joint liability of the actors and the creation of an international fund administrated by the IMO in case of an accident at sea will ensure the system's efficiency when addressing claims. Finally, the dispute resolution system of UNCLOS should change to allow State v. State, State v. enterprise, and enterprise v. enterprise disputes. It will also need provisions for the enforcement of decisions in the jurisdiction of the Member States. A change of UNCLOS in this direction, pushed by technological developments, could lead to the evolution of other international law instruments in different matters towards the institution of worldwide systems seeking efficiency in creating and implementing the law.

Notes

1. Bureau International des Expositions, "About World Expos," *bie-paris,* https://www.bie-paris.org/site/en/about-world-expos, accessed August 26, 2022.
2. Isaac Asimov, "Visit to the World's Fair of 2014," *New York Times*, August 16, 1964, https://archive.nytimes.com/www.nytimes.com/books/97/03/23/lifetimes/asi-v-fair.html?honnan=Nemzeti_Hirhalo, accessed August 26, 2022.
3. Expo 2020 Dubai UAE, "Mobility District," https://www.expo2020dubai.com/en/understanding-expo/mobility-district, accessed August 26, 2022.
4. Infra § 2.2.
5. John D. Kelleher, *Machine Learning: The New AI* (The MIT Press Essential Knowledge series) (Boston: The MIT Press, 2018).
6. Marc Deisenroth, Aldo Faisal, and Cheng Soon Ong, *Mathematics for Machine Learning* (Cambridge: Cambridge University Press, 2019), https://doi.org/10.1017/9781108679930.
7. Longbing Cao, *Data Science Thinking: The Next Scientific, Technological, and Economic Revolution* (Sydney: Springer, 2019).
8. Rolls-Royce, "Autonomous Ships: The Next step," *Rolls-Royce Marine, 2016,* https://www.rolls-royce.com/~/media/Files/R/Rolls-Royce/documents/%20customers/marine/ship-intel/rr-ship-intel-aawa-8pg.pdf, accessed August 26, 2022, p. 7.
9. MUNIN is also the name of Odin's raven in Norse mythology. The project chose the name to make a comparison between the technology on unmanned autonomous vessels and the raven, which used to travel around the world without guidance, to deliver its cargo to Odin. See Maritime Unmanned Navigation through Intelligence in Networks. "MUNIN Results," http://www.unmanned-ship.org/munin/about/munin-results-2/, accessed August 26, 2022.
10. *Ibid.*
11. Andy Pasztor, "Forget Self-Driving Cars—The Pentagon Wants Autonomous Ships, Choppers, and Jets," *The Wall Street Journal*, February 13, 2021, https://www.wsj.com/articles/forget-self-driving-carsthe-pentagon-wants-autonomous-ships-choppers-and-jets-11613212200, accessed August 26, 2022.
12. Rui Li, "On the Legal Status of Unmanned Ships," *China Oceans Law Review* 165 (2019), p.185.
13. Live updates on the vessel status could be found in Mayflower Autonomous Ship, "Vessel Status," https://mas400.com/dashboard#live, accessed August 26, 2022.
14. Rob Hig, "The Mayflower Autonomous Ship Has Reached North America: Why This Pioneering Transatlantic Voyage Matters for the Advancement of AI and Automation Technology Across Every Industry," *IBM*, June 6, 2022, https://newsroom.ibm.com/The-Mayflower-Autonomous-Ship-Has-Reached-North-America, accessed August 26, 2022.
15. Maritime Safety Committee of the International Maritime Organization, "Outcome of the Regulatory Scoping Exercise on Maritime Autonomous Surface Ships (MASS)," Circular No. 1638, June 3, 2021 (hereafter RSE-MASS).
16. *Ibid.*, § 3.9.

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17. The key IMO Conventions are: (i) the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended; (ii) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL); (iii) and, the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW) as amended, including the 1995 and 2010 Manila Amendments. To access the complete list of the IMO Conventions see International Maritime Organization, "List of IMO Conventions," https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx, *IMO,* accessed August 26, 2022.

18. RSE-MASS (2021), § 5.5.

19. *Ibid*., § 5.6.

20. *Ibid*., § 5.7.

21. *Ibid*., § 4.2.

22. *Ibid*., § 4.2, assumption No. 8.

23. *Ibid*., § 4.2, assumption No. 10.

24. Stephen Li and K.S. Fung, "Maritime Autonomous Surface Ships (MASS): Implementation and Legal Issues," *Maritime Business Review* 4(4) (2019), p. 333 (hereafter Li, S., & Fung, K.S.), https://doi.org/10.1108/MABR-01-2019-0006.

25. The exact phrase is repeated thirty-three times over Appendix 2 of the RSE-MASS, which contains the Results of the Regulatory Scoping Exercise at the Instrument Level.

26. RSE- MASS (2021), § 6.2.

27. *Ibid*., Appendix 2, p. 33.

28. *Ibid*., § 6.2

29. *Ibid*., § 6.

30. *Ibid*., Appendix 2.

31. *Ibid*. § 6.6.

32. *Ibid.* Appendix 2, p. 23.

33. *Ibid.* § 3.5.

34. Li, S., & Fung, K.S. (2019), p. 334.

35. Henrik Ringbom, "Regulating Autonomous Ships- Concepts, Challenges, and Precedents," *Ocean Development & International Law* 50(2–3) (2019), p. 163, https://doi.org/10.1080/00908320.2019.1582593.

36. This is without considering the criticism of the RSE-MASS proposals regarding the lack of clarity of its concepts in, for example, the definition of master and crew or the requirements for remote control centers. See: M.C Jo, A.R Lee, Y.D Kim, and J.S Seo, "Study on the Potential Gaps and Themes Identified by the IMO Regulatory Scoping Exercise (RSE) for the Use of Maritime Autonomous Surface Ships (MASS)," *IOP Conference Series: Materials Science and Engineering* 929 (2020). See also: Shiokari, M. and Ota, S. "Considerations on the Common Regulatory Issues Among the IMO Instruments for Realization of Maritime Autonomous Surface Ships," *IOP Conference Series: Materials Science and Engineering* 929 (2020), pp. 5–9, https://doi.org/10.1088/1757-899X/929/1/012014.

37. Robert Beckman and Zhen Sun, "The Relationship Between UNCLOS and IMO Instruments," *Asia-Pacific Journal of Ocean Law and Policy* 2(2) (2017), p. 203 (hereafter Beckman, R., & Sun, Z.), https://doi.org/10.1163/24519391-00202003.

38. International Maritime Organization, "Convention on the International Maritime Organization: Background and Summary," *IMO,* https://www.imo.org/en/About/Conventions/Pages/Convention-on-the-International-Maritime-Organization.aspx, accessed August 26, 2022.

39. Convention on the International Maritime Organization (1948), Art. 1.

40. Beckman, R., & Sun, Z. (2017), p. 217.

41. *Ibid*., p. 235.

42. *Ibid*., p 221.

43. United Nations, "United Nations Convention on the Law of the Sea," https://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm, 1982, accessed August 26, 2022 (hereinafter "UNCLOS").

44. Beckman, R., & Sun, Z. (2017), p. 228

45. International Tribunal for the Law of the Sea, "M/V "Virginia G" case (Panama/Guinea-Bissau)," Judgment, *ITLOS Reports 2014*, p. 93, para. 323.

46. UNCLOS, Art. 89.

47. *Ibid*., Art. 87.

48. *Ibid*., Art. 90.

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49. International Tribunal for the Law of the Sea, "M/V "Norstar" case *(Panama v. Italy)*, Judgment, *ITLOS Reports 2018–2019*, p. 75, paras. 222 and 224.

50. UNCLOS, Art. 91.

51. Referring to the definition of genuine link, ITLOS stated in the "M/V "Virginia G" case (Panama/Guinea-Bissau)," Judgment, *ITLOS Reports 2014*, p. 45, para. 113: "[…] once a ship is registered, the flag State is required, under article 94 of the Convention, to exercise effective jurisdiction and control over that ship in order to ensure that it operates in accordance with generally accepted international regulations, procedures, and practices. This is the meaning of 'genuine link.'"

52. RSE-MASS (2021), "Instrument Casualty Investigation Code," p. 68.

53. For estimations on how autonomous seafaring vessels are likely to impact the risk factor of voyages at the seas in the short term See: Ikroh Yoon, "Technology Assessment on the Astonomous [sic] Ships: Key Findings and Recommendations," *OIP Conference Series: Materials Science and Engineering* 929 (2020), § 3.2 (hereafter Ikroh Yoon), https://doi.org/10.1088/1757-899X/929/1/012015.

54. Damilola Osinuga, "Unmanned Ships: Coping in the Murky Waters of Traditional Maritime Law," *Poredbeno Pomorsko Pravo* 174 (2020), p. 79, https://doi.org/10.21857/y26kec4qd9.

55. Ikroh Yoon (2020), § 3.1.

56. Ikroh Yoon (2020), § 3.3.

57. A consideration of what international law should be, not what it is.

58. International Institute for the Unification of Private Law, "UNIDROIT (2001) Convention on International Interests in Mobile Equipment," https://www.unidroit.org/instruments/security-interests/cape-town-convention/, accessed August 26, 2022.

59. United Nations, "1976 Convention on Registration of Objects Launched into Outer Space," https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introregistration-convention.html, *UNOOSA*, accessed August 26, 2022.

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Nigeria Ports and Arms Smuggling: Evaluation of Cargo Tracking Note Amidst Growing Insecurity

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Structured Abstract

Article Type: Research Paper

Purpose—Smuggling of arms poses a grave danger and risk to the human community and threatens a country's internal security. In 2017, 2,671 pump-action rifles were intercepted at Nigerian seaports. Given the proliferation of arms and worsening insecurity in Nigeria, the federal government, in March 2021, re-introduced Cargo Tracking Note (CTN) to halt arms smuggling through the seaports. The quest of this study, therefore, is to determine if the reintroduction of Cargo Tracking Note can successfully curb arms smuggling through the ports.

Design, Methodology, Approach—Data for the study were generated from secondary sources and structured questionnaires administered to the Nigerian Police and Customs Officers. The study is theoretically based on the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) and International Ship and Port Facility Security (ISPS) Code.

Findings—The result of the study indicated mixed motivation of those engaged in arms smuggling.

Practical Implications—Unless Nigeria successfully deals with the issues that threaten its national unity, deployment of technology for national security, including CTN, will be a pipe dream.

Keywords: cargo, insecurity, Nigeria, port, smuggling

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I. Introduction

A port, a sensitive economic gateway of a country, can also be a gateway of exploitation and insecurity for a country if it is poorly managed. Properly managing the port involves adequate technology deployment and human resource capacity to match. "Nigeria has six functional ports. Apapa and Tin Can Island Ports in Lagos are the main hub of maritime business in Nigeria and the main ports through which arms are smuggled into the country."[1] Nigerian ports are further categorized into two, i.e., Western and Eastern ports. The Western ports are Apapa and Tin Can Island ports in Lagos while the Eastern ports include Rivers Port, Onne Port, Calabar Port and Delta port.

Cargo Tracking Note (CTN) is a security document with economic significance for managing of cargo from port of origin to port of destination. According to Abiodun, "CTN or Electronic Cargo Tracking Note (ECTN) is a system for collecting documents and processing information when exporting by sea to obtain prior information, to participate in security measures, statistics and generally to participate in the World Trade Organization (WTO) and the World Customs Organization (WCO) recommendations on trade facilitation and security."[2] Cargo Tracking Note is used in many countries but became popular after the USA's September 11, 2001, terrorist attack. For advanced countries, "it is needed for safety and security and in accordance with the International Ship and Port Facility Security (ISPS) Code."[3] "The CTN was first introduced in Nigeria on December 9, 2009 by the approval of the Federal Executive Council (FEC), under the management of the Nigeria Port Authority (NPA), but was administered by a private firm known as Transport and Ports Management Systems Ltd."[4] The scheme's implementation did not last beyond 2011 due to the controversy over who should bear the cost between the government and shippers. On this note, Quadri further stated that:

> Before its initial introduction, there were assurances that the scheme would not attract additional charges to shippers, namely importers and exporters, but it soon dawned on all that the assertion was far from the truth. CTN attracted various sums ranging from a minimum of 150 Euros to as much as 450 Euros depending on the type and size of cargo. Maritime industry stakeholders and the organized private sector condemned the implementation of the controversial scheme at the time leading to its hurried suspension on November 9, 2011 by the Federal Government.[5]

The attempts to reactivate the implementation of CTN between 2015 and 2020 were not successful until April 2021, when President Buhari through the Minister of Transportation, directed the Nigeria Shippers Council (NSC) to reintroduce CTN in the seaports. However, "to dispel the fear of a repeat of the past failures, Nigerian Shippers Council was directed to ensure that the introduction of the new phase of CTN is done in such a way that should not add to the cost of doing business at the ports but reduce importation of arms."[6] According to Agha, "Buhari directed the Nigerian Shippers' Council (NSC) to reintroduce Cargo Tracking Notes (CTN) in a bid to curb the proliferation of arms and increase in banditry across the nation. The government is convinced that CTN could play a crucial role in enabling the nation to address the growing spate of banditry, kidnappings and killings fueled by easy access to guns and ammunition."[7] But the question is, can the re-introduction of Cargo Tracking Note successfully halt arms smuggling through the ports which fuel insecurity in Nigeria?

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Globally in 2017, "it was estimated that there were at least one billion small arms in circulation and about 87.5% (875 million) of those arms are in the hands of civilians, while law enforcement agencies around the world accounted for a meagre 2%."[8] According to Agha, "it is estimated that 70 percent of over 10 million illegal weapons in circulation in West Africa are in Nigeria. In 2017 alone, 2,671 pump-action rifles were intercepted at Nigeria's seaports. The guns were legally registered for export in Turkey as pump-action rifles for hunting, but the manifests were changed in Morocco to become steel doors to enable the container to gain entry into Nigeria."[9] "The number of small arms in circulation in Nigeria and in the hands of civilian non-state actors is estimated at 6,145,000, while the armed forces and law enforcement collectively account for 586,600 firearms."[10] Abdulsalami, further reiterated "that the over 6 million illegal weapons are currently traced to civilians, many of whom are jobless, hungry and angry. Consequently, 80,000 Nigerians have died, and about three million Internally Displaced Persons (IDPs) spread across the country are all due to growing insecurity in the country."[11]

Most seaports across the country and the Federal Operations Unit (FOU) are an eye-opener to the fraud in the system where hundreds of billions of goods are seized and detained.[12, 13] Perhaps, "worse still is that even contraband could be cleared at the ports with the right connection and cash."[14] This could be part of the reasons for the proliferation of arms and ammunition in many parts of the country now used freely by kidnappers, terrorists or bandits. The reality is that "the current port system has failed, and a new approach with CTN should be a welcome development."[15, 16] Therefore, the concern of this study is to ascertain how and why arms are increasingly smuggled through Nigeria's seaports into the country and determine if the reintroduction of Cargo Tracking Note can successfully curb the trend and reduce the spiraling insecurity in Nigeria.

II. Theoretical Foundation

This study is theoretically based on the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (SAWL) in All Its Aspects (PoA) and International Ship and Port Facility Security (ISPS) Code.

The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (PoA) is a "globally agreed framework for activities to counter the illicit trade in small arms and light weapons and control the negative consequences of Small Arms and Light Weapons. All UN member states adopted it in 2001. Since then, the UN has worked to support the implementation of the PoA at national, regional, and international levels."[17] Although not legally binding, "the PoA is intended to prod national governments into imposing tough controls on the export and import of small arms to prevent their diversion into black market channels."[18] The PoA is rather a global political framework in which participation and implementation by member states are based on voluntarism and the discretion of the states. That notwithstanding, the PoA represents a significant turning point in international efforts to curb the flow of guns and ammunition into areas of conflict and instability. For the first time, "it was clearly stated that governments have an obligation to put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production

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of small arms and light weapons within their areas of jurisdiction and over the export, import, transit and retransfer of such weapons, and to take all necessary steps to apprehend and prosecute those of their citizens who choose to violate such measures."[19] In this respect, the success of the implementation of PoA by member states depends on the availability of financial, technical and human resources. Otherwise, the lack of these resources were constraints to member states' implementation of PoA. As succinctly captured by Maze & Parker:

> Considerable resources have been mobilized and financial and technical assistance have[sic] been provided. However, it has not been clear what level of assistance is being provided, where resources are being mobilized from and where technical and financial assistance to implement the PoA is flowing to. It is not clear if there are specific issues that are receiving more assistance than others, or if some important issues are being neglected. There is no overall awareness of the degree of coordination and coherence in technical and financial assistance. Thus, we do not know whether needs are being met by the resources that exist. [20]

Despite these obvious limitations of PoA, Krause, maintained that:

i. "If taken at face value and as a set of normative standards for states, the document presents an ambitious and far-reaching programme.

ii. If compared to the multilateral 'state of play' … it is also evident that a relatively large consensus (geographically and politically) has emerged that the unconstrained availability of small arms and light weapons ought to be addressed as a problem in itself, and that small arms represent, in a sense, 'independent variables' susceptible to concrete policy measures that will help achieve broader peace and security goals."[21]

The broader security aspect of PoA qualifies it to be used as a theoretical framework for evaluating the implementation of CTN that equally serves the purpose of preventing illicit trade through the ports, including arms smuggling. CTN is a maritime technology for documentation and information processing, with security and economic significance for seaports, especially in countries where it is implemented. "The European Union, Asia, the Middle East, the United States and some African countries have made CTN compulsory."[22] It is also important to stress that it is not only Nigeria that has introduced the technology. Twenty-four African countries currently use CTN. They include, "Angola, Benin Republic, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, Ghana and Guinea. Others include Guinea-Bissau, Ivory Coast, Liberia, Libya, Madagascar, Mali, Niger, Senegal, Sierra Leone, South Sudan and Togo."[23] Nigeria is currently battling the consequences of the avalanche of small and light weapons within the country of which a significant quantity had been intercepted at the seaports.

Similarly, International Ship and Port Facility Security (ISPS) Code came into force in 2004. It is an offshoot of "Safety of Life at Sea (SOLAS) Convention of (1974/1988) on minimum security arrangements for ships, ports and government agencies." It prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade.[24] According to Maritime and Port Authority of Singapore, "the ISPS Code is part of the Safety of Life at Sea

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Convention (SOLAS) and compliance is mandatory for the 148 Contracting Parties to SOLAS."[25] For International Maritime Organization, "International Ship and Port Facility Security (ISPS) Code is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States."[26]

Significantly, both PoA and ISPS Code were born out of similar security circumstances. While PoA is normative in principle and approach, the ISPS Code demands mandatory compliance. In common, both frameworks are detective, preventive and designed against illicit trade on arms and security threat and prescribes government responsibility for their effectiveness. Therefore, both frameworks are very applicable as building blocks of interpretation for this study.

The urgency to address the security situation in Nigeria through the reintroduction of CTN has now more than ever made Nigeria Port Authority to step up security measures in line with ISPS Code to detect, prevent and stop arms smuggling through the seaports both for maritime and national safety and frustrate the antics of those who want Nigeria destabilized violently. According to Special Agent in Charge for Homeland Security Investigations Los Angeles David Prince, "the transnational criminal organizations involved with maritime smuggling are a continuing threat to border security, public safety and national security."[27]

2.1 Arms Smuggling: The Nigerian Scenario

Small arms and light weapons are easy for criminals to conceal and transport, so trafficking in firearms is a lucrative business that fuels and funds other types of serious crimes.[28] No nation or region of the world is immune from the devasting effect of the proliferation and illicit trade in arms. But Nigeria currently attracts global attention due to its massive circulation, associated internal conflicts and growing insecurity. "The illicit proliferation of small arms and light weapons has dramatically impacted peace and security in Africa, threatening not only the existence of countries but also the livelihoods of millions of people across the continent."[29] The market for illegal arms thrives in West Africa as the sub-region cannot produce weapons. As the UN noted, "most of the guns in circulation originated from outside the sub-region, and 69 Warsaw Pact weaponry dominates its market."[30] Recently, "the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) estimated that 70 percent (i.e. 350 million) of the 500 million illicit small arms and light weapons in circulation in West Africa were domiciled in Nigeria."[31] According to the Director of UNREC, "Nigeria is awash with illicit weapons in the hands of non-state actors threatening the country's existence, as well as the lives and property of citizens." Consequently, "the country is battling insurgents, killer herders, robbers, kidnappers and bandits using sophisticated weapons to cause mayhem across states in the country."[32] Besides porous land borders, Nigeria's ports and waterways are also easy routes to smuggle in arms. As such:

> There is a presumed attempt to make Nigeria a destination country for SALW (Small Arms and Light Weapons), and the signs are ominous. Currently, criminals (terrorists, killer Fulani-herders, bandits, and cultists) who have access to guns have made life "brutish, nasty, and short" in Nigeria. They are killing, raping, abducting, and destroying on a colossal scale.[33]

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More worrisome is that survivors of Fulani militia attacks and rescued/released kidnap victims report that "the criminals also have grenade launchers and machine guns. The so-called 'bandits' recently shot down a Nigerian Air Force jet."[34] To curtail the menace of SALW, President Buhari ordered the military to shoot-on-sight any civilian bearing an AK-47 rifle. According to Punch Editorial Board, "the order has not achieved any substantial result. Rather insecurity has worsened and profiteers in illegal arms trading and smuggling continue laughing all the way to the bank while the security agents appear overwhelmed."[35] Experts have argued that if the situation is not successfully checked, the scourge of arms smuggling will jeopardize the developmental gains achieved over the last 50 years and impede Nigeria's capacity to achieve its developmental targets.

2.2 National Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (NPoA)

As part of the efforts to curb the menace of arms smuggling, Buhari's administration on May 3, 2021, *established* the National Centre for the Control of Small Arms and Light Weapons (NCCSALW). This is the local variant of the United Nations PoA. The Centre replaced the defunct Presidential Committee on Small Arms and Light Weapons and serves as the institutional mechanism for policy guidance, research and monitoring of all aspects of Small Arms and Light Weapons (SALW) in Nigeria.[36] According to Akinpelu,

> The centre will provide the strategic framework for containing the proliferation of small arms and light weapons especially those coming from across our borders within the West Africa sub-region and through the maritime environment. The decision to establish the centre is part of an ongoing restructuring of the country's defence structure to address the threats of Small Arms and Light Weapons in Nigeria.[37]

The rise in the smuggling of Small Arms and Light Weapons into the country and border areas has worsened terrorism, human trafficking, organized crime and insurrections in West Africa and Nigeria.[38, 39] As one of the measures in tackling the scourge of arms smuggling, "the new Centre will be fulfilling the requirements of the ECOWAS Moratorium on Import, Export, and Manufacture of Light Weapons as well as the UN Plan of Action to prevent, combat, and eradicate the illicit trade in SALW."[40] Being the national focal point on SALW in Nigeria, the NCCSALW is expected to:

i. Lead a multi-stakeholder process involving Government Ministries, Departments, Agencies and the Civil Society in implementing all national, UN and ECOWAS Plans of Action on the control of SALW.

ii. Maintain international cooperation and also operate zonal offices in the Six Geopolitical Zones of Nigeria to ensure quick response and effective mobilization of resources.[41]

However, Kabir has argued that "since after the establishment of the National Centre for the Control of Small Arms and Light Weapons (NCCSALW), nothing much has been heard of the body."[42] For Punch Editorial Board, "a single feat of the Centre is yet to be seen in the light of arms smuggling into Nigeria, especially from countries in the Sahel region such as Mauritania, Mali, Niger, Burkina Faso and Chad due to their long history of political instability."[43] In line with the United Nations Programme of Action to Prevent,

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Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, NCCSALW requires resources: technical, financial, human and the political will of the government on saddle to be effectively implemented. The menace of arms smuggling can only be curtailed when leaders demonstrate strong political will towards its eradication.

2.3 Cargo Tracking Note

Generally, Cargo Tracking Note (CTN) is an official shipping document that conveys detailed information of cargo, its origin and destination and the vessel transporting the cargo for economic but more importantly security reasons. According to Anagor, "Cargo Tracking Note is a system for collecting documents and processing information of shipment. It helps for controlling, supervising and managing import and export, contains details of the exporter or importer, shipment value, method and type of shipment, freight cost, and the name of the vessel."[44] For Oritse, "the Cargo Tracking Note is a system for collecting documents and processing information, when exporting by sea in order to obtain prior information, to participate in security measures, statistics, and generally in order to participate in the World Trade Organization (WTO) and the World Customs Organization (WCO) recommendations on trade facilitation and security."[45] CTN has equally been viewed as a source of data that would enable governments to know everything that is coming into their territory through the seaport. In other words, "it is an official marine document that contains information relating to the cargo and its movement between ports."[46] Below is a tabulated illustration of illegal arms shipment to Nigeria between 2010 and 2020.

Table 2.1: Arms Shipment to Nigeria intercepted at Apapa and Tin Can Island ports between 2010 and 2020

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Dec	Apapa												
	Tin Can												
Nov	Apapa	21,441,995											
	Tin Can							7505					
Oct	Apapa												
	Tin Can												
Sep	Apapa												
	Tin Can				143				1575				
Aug	Apapa												
	Tin Can												
July	Apapa												
	Tin Can									432			
June	Apapa												
	Tin Can	516											
May	Apapa												
	Tin Can								440				

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		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
April	Apapa												
	Tin Can												
March	Apapa												
	Tin Can												
Feb	Apapa												
	Tin Can		46										
Jan	Apapa								661				
	Tin Can												
Total		**21,442,511**	**46**		**143**			**7505**	**2676**	**432**			**21,453,313**

Sources: Adenubi,[47] Bivbere,[48] Foyeku,[49] Oyedeji,[50] Elumoye,[51]

The above table shows the quantity of illegally imported arms intercepted by the Nigeria Customs Service (NCS) within the precincts of the Apapa and Tin can Island ports. It did not take into consideration other arms intercepted by NCS outside the port premises. The table equally indicates that most of the interceptions were in Tin Can Island Port but over 90% of the arms impounded were at Apapa port. The reasons could be that the arms trafficking syndicates have more compliant and compromised officers or port agents' staff in Apapa than Tin Can Island Port. It could as well be as a result of inefficiency and porosity of the port system. The few data on intercepted arms do not in any way indicate that there were no arms that successfully passed through the ports; rather it is a pointer to the massive importation of illegal arms into Nigeria. Table 2.1 also shows that over 90% of the arms intercepted were in 2010 and the other years were less than 1%. According to Adenubi, "a total of 21,548,608 arms and ammunition were shipped into Nigeria illegally between 2010 and 2017."[52] The period signifies the rising inclination of Jihad in Nigeria expressed through Boko Haram terrorism.

Among others, Cargo Tracking Note essentially serves the following purposes:

- **Security:** The general purpose of CTN is the detection and interception of illicit arms and products. By that, CTN contributes to the risk reduction and reliable auditing of imported goods.
- **Product profiling:** It improves security of the supply chain by revealing information about the origin and destination of cargoes. This involves being able to preemptively stop importation of illicit commodities whilst they are still in the country of origin. It serves as a greater assurance for the country's wellbeing and in government's fight against counterfeit products.[53]
- **Economic significance:** Economically, it is described as the best electronic platform in checking revenue leakages in import and export trades, in the form of under-invoicing, under-declaration and concealment of goods. According to GetCTN, "it was reported that up to 80% of imported goods are under-declared and Nigeria Customs Authority has promised that CTN documentation will end under-declared goods coming into Nigeria."[54]
- **Port traffic management:** the advance declaration system is widely believed to benefit port authorities especially ports that are inadequate and in poor condition.

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For instance; "the ports that are in poor condition are the ones to benefit the most out of this new requirement. Because it provides real-time monitoring of inbound and outbound flow of vessels and allows enough time for port managers to allocate necessary space for docking and equipment for unloading."[55]

2.4 Method of Study

The study adopted data triangulation method. It refers to the use of multiple approaches both qualitative and quantitative to analyze data to enhance the study's credibility. Qualitatively, the study used secondary sources of data. Empirically, the study used data generated from five structured questionnaires randomly administered to 150 officers of Nigerian Customs Service and Nigeria Police Force. Chi-square through the application of SPSS was used to determine if there were any significant differences between the responses of the customs and police officers at alpha (α) level of (0.05) significance. When the P-Value ≤ 0.05, there exists a significant difference in their responses but where the P-Value > 0.05, then there is no significant difference between their responses.

The questionnaires were purposively and randomly administered to the customs officers based on their central role in the export and import business and to the police officers based on their internal security role and arms recovery from criminals in the course of combating crime. E-mail and one-on-one contact were the medium of administration, from December 2020 to June 2021. Over 90 percent of the questionnaires were returned: Nigeria customs (90), police (50) and about 5% proxy response. Proxy response in the context of this study is responding to or answering questions with another person's comment on the subject of the question. Due to the current security situation in Nigeria, security officers are cautious of their public utterances and responses to security questions to avoid being quoted or making public comment that does not serve the interest of the government of the day.

III. Factors That Influence Arms Smuggling Through Nigeria Seaports

To ascertain the factors that influence the trend of arms smuggling through Nigeria seaports and determine if technological application can curb the menace, the five structured questionnaires were tabulated and statistically analyzed. Question 1 was administered to only the police officers and as such their responses were estimated based on percentage while questions 2 to 5 were estimated using chi-square. Questions 2 to 5 were administered to both the customs and police officers.

3.1 Questions and Responses of the Officers of Nigeria Customs and Police

Question 1: From your observation as a police officer, are most of the arms recovered from criminals locally made or foreign made?

While 70% of the Police Officers were of the view that most of the arms recovered

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from criminals are foreign made, 30% maintained that they were locally made. The fact remains that the illegal arms in circulation in Nigeria are both locally and foreign made but a significant quantity that is foreign made passes through the seaports as indicated in Table 2.1. According to Abiodun, "the extremist groups also use locally made arms. Their most sophisticated arms are usually imported, concealed and smuggled into the country via seaports and porous land borders."[56] The Cable & Punch, "reported the indictment of three Americans for illegally exporting arms and ammunition to Nigeria. According to the report, the three persons indicted were listed as Wilson Nuyila Tita of Owings Mills, Maryland, 45 years old; Eric Fru Nji of Fort Washington, Maryland, 40 years old; and Wilson Che Fonguh of Bowie, Maryland, 39 years old."[57, 58]

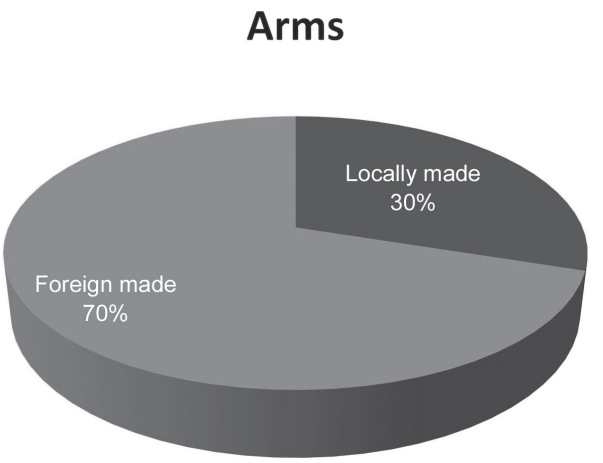

Figure 3.1: Pie chart of responses of the Police Officers. Source: Field survey, 2021.

> According to the indictment, on January 17, 2019, the defendants and their co-conspirators exported, attempted to export, or caused to be exported to Nigeria articles on the United States Munitions List (USML) the export of which was controlled under the Arms Export Control Act, without first having obtained the required license or written approval from the U.S. Department of State, specifically: 38 semi-automatic firearms; over 35,000 rounds of ammunition; and 44 magazines.[59]

Similarly, "the United States District Court for the Eastern District of California ordered the forfeiture of about $6.1 million belonging to Nigeria after Ara Dolarian pleaded guilty to charges including illegal dealing in military-grade weapons and money laundering."[60] Locally, "the Nigerian Police Force on June 2, 2021, uncovered a factory illegally manufacturing AK-47 rifles in Jos-South Local Government Area of the country. According to one of the suspects arrested in connection with the illegal factory, about 180 units of AK-47s were manufactured in the last three years and sold at N80,000 per unit."[61] Furthermore, the force public relations officer noted that it would require extra knowledge of an expert to differentiate between AK-47s made in Europe and locally-made ones. Specifically, in Ogun state, the western part of Nigeria, the Student Union representatives averred that "more than ever, the circulation of unregistered and unlicensed guns on the street has massively increased. If the trend is not checked, the state may start experiencing gunfights with heavy casualties across the campuses."[62] This development is attributed to the ineptitude and indifference of the Comptroller of Nigeria Customs Service (NCS) of Ogun 1 Area Command.[63] The trend of arms smuggling is on the rise between local and international collaborators in different countries and would require international synergy to curtail.

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Table 3.1: Cross-tabulation of responses of the officers to Questions 2 & 3		
Variables	**Officers**	
Question 2	Customs	Police
There are records of interceptions and seizures of arms imported into Nigeria, are you aware of the prosecution of any person in Nigeria between 2012 and 2021 for illegal arms importation?		
Yes	30 (60%)	20 (40%)
No	60 (66.7%)	30 (33.3%)
Total	**90 (100%)**	**50 (100%)**
$x^2 = 0.622$, df = 1, P-V = 0.430^{NS}		
Question 3		
Can deployment of Technology successfully stop arms smuggling through Nigeria seaports?		
Yes	75 (65.2%)	40 (34.8%)
No	15 (60%)	10 (40%)
Total	**90 (100%)**	**50 (100%)**
$x^2 = 0 .243$, df = 1, P-V = 0.622^{NS}		

Values = frequency (percentage), NS = Not Significant
Source: Field survey, 2021.

In total, 64.3% (90) of the 140 respondents to question 2 in Table 3.1 maintained that they have not heard, read or witnessed the prosecution of any person in Nigeria for illegal arms importation between 2012 and 2021. 35.7% (50) of the respondents admitted to have heard, read or witnessed such prosecution. At this point, it is difficult to decipher the objectivity in the responses of the officers given the sensitivity of the subject and ongoing security crisis in the country. However, the statistical result indicates that P-Value 0.430 > 0.05; therefore, there is insignificant difference between the responses of the customs and Police Officers with regard to awareness about the prosecution of any person in Nigeria between 2012 and 2021 for illegal arms importation.

Much as there are prosecutions of arms smugglers in Nigeria, two major factors that may have influenced the responses of the respondents were:

i. Lack of Diligent Prosecution: There have been various reports on the seizure of firearms by the NCS, but there is not much information in the public domain as to the prosecution of perpetrators.[64] Some of the attempted prosecutions are usually not publicized and representatives of government involved in such prosecutorial process show reluctance when perhaps someone highly placed in government circle is deemed to be involved. In such instances, "identities of the parties involved are usually concealed to the public and investigation continues without end."[65]

ii. Official indifference and corruption: According to Ayissi & Sall, "the vicious cycle of low salaries and corruption creates breeding grounds for the proliferation of small arms and light weapons among the civilian population. Customs officers are bribed by weapons dealers, while soldiers, police officers and security forces are known to have sold

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government weapons to criminals."[66] For instance, "it is on record that 88,078 AK-47 rifles and 3,907 assorted rifles and pistols were missing from Nigeria Police formations across the country."[67] Also due to corruption, Customs operates against its extant rules by stopping and re-checking containers on Nigeria highways that the same customs already cleared at the ports.[68] Furthermore, "students in Ogun state, Western area of Nigeria, accused the Comptroller of Nigeria Customs Service, Ogun 1 Area Command, of incompetence and visible indifference in securing the borders of Ogun state. This gave rise to smuggling activities and the influx of illegal firearms into Nigeria and further worsening insecurity in the country."[69]

Cumulatively, Table 3.1, Question 3 revealed that 17.9% of the Officers who responded "No" is insignificant compared to (82.1%) of the Officers who affirmed that deployment of technology in the ports can curtail arms smuggling through the ports. This is even more cogent when viewed in reflection of the current demand in port management where the order of the day is port automation for greater efficiency and productivity. Impliedly, the results showed insignificant difference between the responses of the and Police Officers in terms of whether the deployment of technology in the ports can successfully stop arms smuggling through Nigeria seaports as P-Value (0.622) > 0.05 level of significance.

Table 3.2: Cross-tabulation of responses of the officers to Questions 4 & 5

Variables	Officers	
Question 4	Customs	Police
What can Nigeria do to stop arms proliferation and growing insecurity?		
Good Governance	58 (64.4%)	32 (35.6%)
Proper Policing of the ports	12 (60%)	8 (40%)
Invest adequately in human resources deployed at the ports and purge bad eggs in port management	20 (66.7%)	10 (33.3%)
Total	**90 (100%)**	**50 (100%)**
x^2 = .235, df = 2, P-V = 0.889^{NS}		
Question 5		
What do you think is the motivation behind illegal importation of arms into Nigeria?		
Robbery and stealing	15 (75.0%)	5 (25.0%)
Hostile political atmosphere	13 (65%)	7 (35%)
The goldmine in kidnapping and banditry	12 (60.0%)	8 (40.0%)
Radical Islamic agenda	50 (62.5%)	30 (37.5%)
Total	**90 (100%)**	**50 (100%)**
x^2 = 1.276, df = 3, P-V = 0.735^{NS}		

Values = frequency (percentage), NS = Not Significant
Source: Field survey, 2021

Among the options in Table 3, question 4, the aggregate responses of the officers showed that 64.3% of them were of the view that good governance will curtail the

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proliferation of arms and growing insecurity in Nigeria while 14.3% and 21.4% of the officers respectively maintained that "proper policing of the ports" and "investing adequately in human resources deployed at the ports and purging bad eggs in port management" will arrest the trend of arms proliferation. Much as each of the options will make a positive contribution in addressing the problem, one of the respondents stated that a 64.3% response in favor of good governance is an indication that Nigeria has a governance problem which affects every other part of its system. Malam succinctly posits that:

> The proliferation of small arms and light weapons is adjudged as the most immediate security challenge to individuals, societies, and states worldwide, fueling civil wars, organized criminal violence, insurgency and terrorist activities posing great obstacles to sustainable security and development. This trend especially in Africa is attributed to the weakness and fragile nature of the states and their attendant failure to deliver in governance.[70]

Therefore, if the issue of governance is taken cognizance of, the rest of the problems will be concomitantly solved. In Nigeria's current circumstance, good governance is perceived as one-size fits all solution to the proliferation of arms through the seaports and the consequent growing insecurity. The cross-tabulation result showed that P-Value 0.889 > 0.05, and as such there is no significant difference between the responses of the Customs and Police Officers among the three options of what Nigeria can do to stop the proliferation of arms and growing insecurity.

In aggregation of the responses to question 5 in table 3.2, 14.3% of the officers respectively submitted that robbery and stealing, hostile political atmosphere, and the goldmine in kidnapping were the motivation behind the illegal importation of arms into Nigeria. 57.1% maintained that the motivation behind the illegal importation of arms into Nigeria is the radical Islamic agenda. The current administration in Nigeria led by the Islamic Fulani segment of the country had been accused of using the State apparatus to pursue the agenda of Islamization and "Fulanization" of Nigeria. The ethno-religious posture of the administration gives credence to the accusation. For instance, "the service chiefs and heads of other security agencies are predominantly Fulani Muslims from the Northern part of Nigeria."[71, 72] Secondly, "the failure of the administration to designate AK-47 Rifle–carrying Fulani herdsmen as terrorists even when they have been declared the fourth deadliest terror group in the world by Global Terrorism Index."[73] Thirdly, "the administration's intolerance of dissenting views from southern Nigeria that are dominantly Christians."[74] According to Kuwonu, "across different conflict situations in Africa, the impact of small arms and light weapons is so destructive. The AK-47 rifle has claimed a significant number of African lives."[75] For instance, "Boko Haram has, in the last decade, killed over 25,000 people in North-East of Nigeria. The group has sustained its attacks on the nation, brutally killing thousands of people including soldiers, women and children. All these armed activities continue unabated, partly because of unchecked arms proliferation in the country."[76] The illicit trafficking and diversion of small arms and light weapons, along with their retransfer to unauthorized end-users generates high levels of armed violence and foment crime and terrorism.[77]

As a result of the free reign of terror on Nigerians by the AK-47 wielding Fulani herdsmen that have metamorphosed into banditry, "a former Defence Chief, Governors, ethnic socio-cultural groups and other eminent citizens had called on Nigerians to defend

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themselves against herdsmen/bandits attacks and killings."[78, 79, 80, 81, 82] The situation has turned Nigeria into a hotbed of illegal arms and ammunition, such that there are more arms in the hands of non-state actors than state actors.

In summary, the statistical cross-tabulation output showed that the P-Value 0.735 > 0.05; therefore, there is insignificant difference between the responses of the Customs and Police Officers as to the motivation behind the illegal importation of arms into Nigeria.

3.2 Discussion of Factors That Influence Arms Smuggling Through Nigeria Seaports

The following factors influence arms smuggling through Nigerian ports.

i. Bad governance: Buhari's administration has been unable to cover its ethnic and religious bias in Nigeria's multi-ethnic Federalism. It has consistently bred suspicion of dominance and fierce competition for land and natural resources along ethnic and religious lines. It is the reason AK-47 rifle–carrying Fulani herdsmen in Nigeria are untouchable and that has exacerbated farmers and herders armed conflict in Nigeria. According to Amaize, "the Fulani herdsmen are above the law. They are untouchable, protected by those who are supposed to prosecute them. If the activities of the herdsmen remain unchecked, another civil war may erupt. This has led to the call for all ethnic nationalities in Nigeria to defend their territory from Fulani-herders invasion."[83] For instance, "many communities in North West and North Central areas of Nigeria as well as wealthy individuals who can afford it are contributing money to buy guns and other weapons to protect themselves against bandits, terrorists and other criminals."[84] This has resulted in the race for arms acquisition and smuggling both through the seaports and porous land borders.

ii. Official collaboration: As destructive as arms and ammunition are, it is a capital-intensive venture as well as money spinning when conducted illegally. As such, it is alluring and economically seductive, the reason many in official and private capacity have fallen to the temptation locally and globally. The statistical data on illegal arms in circulation and intercepted in Nigeria is far from accurate. Beyond the issue of poor documentation, official involvement in arms smuggling is also the reason for inaccurate data on illegal arms circulation. Also, "arms supplied by developed countries to neighboring West African nations find their way into Nigeria"[85] and there is no reliable data in that regard.

iii. Mixed motivation: Every human action, irrespective of how wrong or right it is, is dictated by motive. The motivation behind the massive arms smuggling into Nigeria by Nigerians and their external collaborators appears to be complex due to the enabling factors such as insurgence that has spiraled from the North to the South, endless herders-farmers conflict, militancy in the south-south, secessionist agitation in the Eastern and Western parts of the country, lucrative abduction and kidnapping, armed robbery, banditry, disunity and lack of transparency in governance, political intolerance and ethnicity, unemployment and above all corruption in governance. There is an ongoing internal war in Nigeria and illegal arms smuggling business is currently thriving.

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IV. Implementation of CTN and Security Implication

The attempts to implement CTN in Nigeria seaports from 2010 till date had always been constrained by corruption. The barrage of attacks and its subsequent suspension in 2010 was later justified when it was discovered that "the project was used to scam millions of people in the industry by some powerful individuals in the presidency at that time."[86] Currently, "Nigeria's ports are still locked in a congestion crisis caused by the various manual processes and 100 percent physical examinations involved in the cargo clearance chain as well as the high cargo dwell time and corruption due to human contacts, thereby costing the federal government N1.08 trillion yearly loss in revenue."[87] In this current attempt to reintroduce CTN for third time in Nigeria, "the process of appointing operators of the Cargo Tracking Note (CTN) has become a subject of litigation. In the suit marked FHC/ABJ/CS/1587/2021, CASER (Citizens Advocacy for Social and Economic Rights) alleged among others, that the Minister of Transportation manipulated the appointment process to the benefit of two local and inexperienced firms—Medtech Scientific Ltd and Rozi International Nigeria Ltd."[88] Usman, reiterated that:

> CASER filed the suit in the public interest, considering the dire security implications and serious economic consequences for the Federal Government of Nigeria and indeed all Nigerians, who would risk continuing to groan under the heavy weight of insecurity and dwindling financial resources in the event of appointing incompetent and compromised persons to operate the International Cargo Tracking Note in Nigeria which would be tragic.[89]

According to CASER, "Nigeria's current state of widespread insecurity is partly attributed to previously failed attempts to implement the CTN, both in 2010 and 2015, because of incompetent and corrupt agents recruited to operate the scheme at those times."[90] In 2022, the situation has not changed. In addition, the failure to implement the CTN appears to be the deliberate acts of some government officials to corruptly enrich themselves and their crony companies. It has aided the importation of illegal weapons freely into Nigeria; "making Nigeria the 3rd most terrorized country in the world, after Afghanistan and Iraq."[91] While it was estimated in 2017 that 70% of over 10 million illegal weapons in circulation in West Africa were in Nigeria, today, 350 million of over 500 million SALW in West Africa are circulating in Nigeria. The trend is on the rise, and that has resulted in the escalation of armed conflicts, insurrection and daily killings.

V. Can the Re-Introduction of Cargo Tracking Note Successfully Halt the Smuggling of Arms and Ammunition That Fuel Insecurity in Nigeria?

According to the cumulative response of the respondents in Table 3.1, Question 3, 82.1% of the Officers affirmed that deployment of technology in the ports can curtail arms smuggling through the ports. CTN as a type of port technology among others, such as cargo scanners, e-call up system, etc., serve different purposes and all come under the categorization known as "Port Automation." Port automation is a current trend in port

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management for greater efficiency and productivity. It is a global practice for Port-of-now and future without which it cannot be considered as Smart, Sustainable and Resilient. It involves digitization and digitalization of port operations. Therefore, CTN as a technology can curtail arms smuggling through the Nigerian ports.

However, making CTN work in Nigeria seaports is about human capital and their patriotic disposition in applying CTN correctly for its purpose. As such, that the CTN may not successfully curtail arms smuggling in Nigeria ports is not because of the technology itself but because of the human factor in managing it, taking note of the ethnic crisis and corruption in governance, official sabotage and the fact that it is an imported technology. Human resources aspect of managing the CTN in Nigeria is the problem.

Furthermore, the potential of CTN to curb arms smuggling in Nigerian ports depends on human capital because the technology is manipulated by individuals who could choose to operate it in the interest of the nation or personal ulterior motive, thereby scuttling organizational and national interests. "For a country like Nigeria that is bedeviled by public corruption, poverty, deep religious and ethnic divides, growing secessionist agitation and declining nationalism, scuttling national interest is sometimes an adaptive and survival strategy."[92] Beyond the prevention of illicit arms passage through the ports, Yakubu Abdulmumin, a superintendent of police, maintained that "adequate deployment of technology will help in the detection and prevention of crime in the country and advised government at all levels to adopt the approach."[93] Abdulmumin further explained that the use of technology would address the internal security challenges in Nigeria and can be used to locate the bases of bandits, terrorists and other criminals. Human capital support is pivotal to technological application for security and development because patriotism precedes technological development.

VI. Conclusion

Arms smuggling is a universal phenomenon but can only be potent in a country if the environment is favorable. Despite some successful interceptions, the Nigerian Customs Service's pattern of operations makes the environment conducive to the illegal enterprise of arms importation. For instance, Customs stopping container trucks on the highways already cleared at the ports by the same Customs for further checks shows distrust among personnel, lack of transparency and economic exploitation of importers. All that point to the fact, that instead of the internal security that CTN can offer through the prevention of illegal passage of illicit arms through the ports, corruption has limited the potentials of its application, hence the passage of illegal arms and ammunition and the spiraling armed violence and insecurity in Nigeria. Patriotism, trust, transparency and accountability precede technology in development. When these factors are lacking in government business, CTN cannot guarantee curtailment of illegal arms importation through the ports. It takes the human factor to make it effective and efficient. Until Nigeria successfully deals with the issues of bad governance and corruption which are the triggers of insecurity, technological deployment for national security, including CTN, will be a pipe dream.

From the whole discourse, the study recommended thus:

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i. **Good governance:** This is the antidote to corruption and poor governance and a sure way to de-escalate the growing armed violence and conflicts in Nigeria and discourage illegal arms smuggling into the country. CTN in Nigeria's context is tackling the symptom and not the disease. The disease is the failure of governance which, if addressed, will make the implementation of CTN effective and successfully curb arms smuggling into Nigeria and the consequent growing insecurity.

ii. **International synergy:** As Nigeria deals with customs officers and other parties locally involved in arms smuggling, the country should devise effective means of tracking and dealing with external collaborators through international collaboration. That will discourage international arms smugglers from focusing on Nigeria.

iii. **Patriotic zeal:** This should be the responsibility of the Nigerian government through its actions and inactions to rebuild and earn the faith and trust of the citizens, thereby inducing motivation for nationalism. If that is achieved, patriotic zeal should be a prerequisite for recruiting into Nigerian Customs Service or working with the Nigerian Port Agency. The onus of determining patriotic zeal shall be that of the government.

Notes

1. Ezinna C. Paul and Ogunlela I. Yemisi, "Nigeria Port Authority and Impact of COVID-19 Disruption on Port Operations," *Economics and Social Sciences Academic Journal* 2(12) (2020), pp. 23–25
2. E. Abiodun, "Tackling Insecurity with Cargo Tracking Note," Thisday, March 26, 2021, https://www.thisdaylive.com/index.php/2021/03/26/tackling-insecurity-with-cargo-tracking-note/, accessed April 10, 2021.
3. F. Ugwuoke, "Who Is Afraid of Cargo Tracking Note?," Thisday, March 17, 2020, https://www.thisdaylive.com/index.php/2020/03/17/who-is-afraid-of-cargo-tracking-note, accessed March 30, 2020.
4. O. Quadri, "Customs Moves to Return Controversial Cargo Tracking Note," Ships & Ports, November 22, 2018, https://shipsandports.com.ng/customs-moves-return-controversial-cargo-tracking note/, accessed March 30, 2020.
5. *Ibid*.
6. A. Anagor, "Presidency Approves Reintroduction of Cargo Tracking Note to Curb Insecurity," Businessday, March 24, 2021, https://businessday.ng/maritime/article/presidency-approves-reintroduction-of-cargo-tracking-note-to-curb-insecurity/, accessed April 10, 2021.
7. E. Agha, "Can Cargo Tracking Note Tame Insecurity, Arms Proliferation?," Dailytrust, April 5, 2021, https://dailytrust.com/can-cargo-tracking-note-tame-insecurity-arms-proliferation, accessed April 10, 2021.
8. G. Akinsanmi, "Non-state Actors Possess 6.145m Small Arms Nationwide," Thisday, February 28, 2021, https://www.thisdaylive.com/index.php/2021/02/28/non-state-actors-possess-6-145m-small-arms-nationwide/, accessed April 10, 2021.
9. See E. Agha, "Can Cargo Tracking Note Tame Insecurity, Arms Proliferation?," Dailytrust, April 5, 2021, https://dailytrust.com/can-cargo-tracking-note-tame-insecurity-arms-proliferation, accessed April 10, 2021.
10. A.O. Baje, "Gen. Abdulsalami's Alarm Over Arms Proliferation," Businessday, April 10, 2021, https://businessday.ng/opinion/article/gen-abdulsalamis-alarm-over-arms-proliferation/, accessed April 20, 2021.
11. *Ibid*.
12. A. UTULU, "How We Intercepted Smuggled Goods Worth N533.16m, Arrested 12 Suspects—Ejibunu," Independent, May 11, 2022, https://independent.ng/how-we-intercepted-smuggled-goods-worth-n533-16m-arrested-12-suspects-ejibunu/, accessed May 15, 2022.
13. P. Olugboyega, "Customs FOU Zone D, Bauchi Intercepts N157m Contraband," Vanguard, December 19, 2018, https://www.vanguardngr.com/2018/12/customs-fou-zone-d bauchi–intercepts-n157m-contraband/, accessed May 15, 2022.

동북아역사재단 NORTHEAST ASIAN HISTORY FOUNDATION

14. E. Agha, "Manual Operations Fuel Corruption at Seaports," Dailytrust, February 17, 2021, https://dailytrust.com/manual-operations-fuel-corruption-at-seaports, accessed April 10, 2021.

15. See E. Agha, "Can Cargo Tracking Note Tame Insecurity, Arms Proliferation?," Dailytrust, April 5, 2021, https://dailytrust.com/can-cargo-tracking-note-tame-insecurity-arms-proliferation, accessed April 10, 2021.

16. See F. Ugwuoke, "Who Is Afraid of Cargo Tracking Note?," Thisday, March 17, 2020, https://www.thisdaylive.com/index.php/2020/03/17/who-is-afraid-of-cargo-tracking-note, accessed March 30, 2020.

17. United Nations Regional Center for Peace and Disarmament, UN Programme of Action (2021), accessed May 31, 2022.

18. M.T. Klare, "UN Forges Program to Combat Illicit Trade in Small Arms," *Issues in Science and Technology* 18(1) (2001), accessed May 31, 2022.

19. *Ibid*.

20. K. Maze and S. Parker, "International Assistance for Implementing the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: Findings of a Global Survey," United Nations Institute for Disarmament Research (2006), pp. 1–70, ttps://unidir.org/sites/default/files/publication/pdfs/international-assistance-for-implementing-the-poa-to-prevent-combat-and-eradicate-the-illicit-trade-in-salw-in-all-its-aspects-findings-of-a-global-survey-327.pdf, accessed May 31, 2022.

21. K. Krause, "Review Essay: Multilateral Diplomacy, Norm Building, and UN Conferences: The Case of Small Arms and Light Weapons," *Global Governance*, 8 (2), pp. 247–263, https://doi.org/10.1163/19426720-00802009.

22. MARITIMEMAG, "Cargo Tracking Note: The Return of Misunderstood Good Project," Nigeriamaritime360, July 30, 2018, https://nigeriamaritime360.com/cargo-tracking-note-the-return-of-misunderstood-good-project/, accessed April 10, 2021.

23. See E. Abiodun, "Tackling Insecurity with Cargo Tracking Note," Thisday, March 26, 2021, accessed April 10, 2021.

24. Nigerian Maritime Administration and Safety Agency, "International Ship and Port Facility Security (ISPS)," NIMASA, 2020, https://nimasa.gov.ng/services/international-ship-and-port-facility-security-isps/, accessed April 10, 2021.

25. Maritime and Port Authority of Singapore, "International Ship and Port Facility Security (ISPS) Code," 2022, https://www.mpa.gov.sg/web/portal/home/port-of-singapore/security/port-security/isps-international-ship-and-port-facility-security-code, accessed May 31, 2022.

26. International Maritime Organization, "SOLASX1-2 and the ISPS Code," 2019, https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx, accessed May 31, 2022.

27. The Maritime Executive, "Record Level of Maritime Smuggling Moving North Along California Coast," August 24, 2021, https://www.maritime-executive.com/article/record-level-of-maritime-smuggling-moving-north-along-california-coast, accessed May 31, 2022.

28. INTERPOL, "Firearms Trafficking: The Issues," 2021, https://www.interpol.int/en/Crimes/Firearms-trafficking, accessed May 31, 2022.

29. H. Umoru, "67 Yrs After, Senate Moves to Repeal an Act to Stop Proliferation of Illegally Possessed Firearms," Vanguard, February 8, 2022, https://www.vanguardngr.com/2022/02/67yrs-after-senate-moves-to-repeal-an-act-to-stop-proliferation-of-illegally-possessed-firearms/, accessed May 31, 2022.

30. Punch Editorial Board, "Effective Control of Illegal Weapons," September 22, 2021, https://punchng.com/effective-control-of-illegal-weapons/, accessed May 31, 2022.

31. P. Ani, "Merchants of Death: Tactics Criminals Use to Smuggle Firearms into Nigeria," Punch, May 29, 2021, https://punchng.com/merchants-of-death-tactics-criminals-use-to-smuggle-firearms-into-nigeria/, accessed May 31, 2022.

32. *Ibid*.

33. See Punch Editorial Board, "Effective Control of Illegal Weapons," September 22, 2021, https://punchng.com/effective-control-of-illegal-weapons/, accessed May 31, 2022.

34. *Ibid*.

35. *Ibid*.

36. D. Elumoye, "Buhari Approves Establishment of National Centre for Control of Small Arms," Thisday, May 3, 2021, accessed June 6, 2021.

37. Y. Akinpelu, "Buhari Approves Establishment of Centre for Control of Arms.," Premium

동북아역사재단 NORTHEAST ASIAN HISTORY FOUNDATION

Times, August 28, 2020, https://www.premiumtimesng.com/news/more-news/411207-buhari-approves-establishment-of-centre-for-control-of-arms.html, accessed September 3, 2020.

38. See P. Ani, "Merchants of Death: Tactics Criminals Use to Smuggle Firearms into Nigeria," Punch, May 29, 2021, https://punchng.com/merchants-of-death-tactics-criminals-use-to-smuggle-firearms-into-nigeria/, accessed May 31, 2022.

39. See D. Elumoye, "Buhari Approves Establishment of National Centre for Control of Small Arms," Thisday, May 3, 2021, accessed June 6, 2021.

40. *Ibid.*

41. *Ibid.*

42. A. Kabir, "Merchants of Death: The Unending Firearms Smuggling in Nigeria," HumAngle, December 19, 2021, https://humanglemedia.com/merchants-of-death-the-unending-firearms-smuggling-in-nigeria/, accessed January 15, 2022.

43. See Punch Editorial Board, "Effective Control of Illegal Weapons," September 22, 2021, https://punchng.com/effective-control-of-illegal-weapons/, accessed May 31, 2022.

44. See A. Anagor, "Presidency Approves Reintroduction of Cargo Tracking Note to Curb Insecurity," Businessday, March 24, 2021, https://businessday.ng/maritime/article/presidency-approves-reintroduction-of-cargo-tracking-note-to-curb-insecurity/, accessed April 10, 2021.

45. G. Oritse, "Buhari Explores Cargo Tracking Note to Curb Insecurity," Vangurd, March 21, 2021, https://www.vanguardngr.com/2021/03/buhari-explores-cargo-tracking-note-to-curb-insecurity/, accessed April 10, 2021.

46. GETCTN Tech, "What Is CTN?," 2021, https://getctn.com/faq-items/what-is-ctn-certificate/?, accessed April 10, 2021.

47. T. Adenubi, "21-Million Arms, Ammunition Shipped into Nigeria in 7 Years Investigations," Tribune, January 13, 2018, https://tribuneonlineng.com/21-million-arms-ammunitions-shipped-nigeria-7-years-%E2%80%95investigations/, accessed January 20, 2020.

48. G. Bivbere, "Breaking: Again, Customs Impounds 475 Rifles at Tin Can Port," September 19, 2017, https://www.vanguardngr.com/2017/09/breaking-customs-impounds-475-rifles-tin-can-port/, accessed January 20, 2020.

49. S. Foyeku, "Customs Intercepts Live Ammunition at Tin Can Port," Ship & Port, July 12, 2018, https://shipsandports.com.ng/customs-intercepts-live-ammunition-tin-can-port/, accessed January 20, 2020.

50. O. Oyedeji, "Suspects Plead Guilty to Importing 661 Pump-Action Guns into Nigeria," Premium Times, September 25, 2017, https://www.premiumtimesng.com/news/headlines/244152-suspects-plead-guilty-importing-661-pump-action-guns-nigeria.html, accessed January 20, 2020.

51. See D. Elumoye, "Buhari Approves Establishment of National Centre for Control of Small Arms," Thisday, May 3, 2021, accessed June 6, 2021.

52. See T. Adenubi, "21-Million Arms, Ammunition Shipped into Nigeria in 7 Years—Investigations," Tribune, January 13, 2018, https://tribuneonlineng.com/21-million-arms-ammunitions-shipped-nigeria-7-years-%E2%80%95investigations/, accessed January 20, 2020.

53. GetCTN, "Nigeria Welcomes CTN (Cargo Tracking Note)," Universe, 2022, https://www.unvs.co.uk/post/nigeria-welcomes-ctn-cargo-tracking-note, accessed May 31, 2022.

54. *Ibid.*

55. *Ibid.*

56. See E. Abiodun, "Tackling Insecurity with Cargo Tracking Note," Thisday, March 26, 2021, https://www.thisdaylive.com/index.php/2021/03/26/tackling-insecurity-with-cargo-tracking-note/, accessed April 10, 2021.

57. Punch, "Three American Residents Indicted for Attempts to Illegally Export Arms to Nigeria," August 28, 2021, https://punchng.com/three-american-residents-indicted-for-attempts-to-illegally-export-arms-to-nigeria/, accessed September 9, 2021.

58. TheCable, "Three U.S. Residents Indicted Over Illegal Exportation of Arms to Nigeria," August 27, 2021, https://www.thecable.ng/three-us-residents-indicted-over-illegal-exportation-of-arms-to-nigeria, accessed September 29, 2021.

59. *Ibid.*

60. O. Olubajo, "Boko Haram: U.S. Seizes Nigeria's $6.1 Million as Illegal Arms Contractor Pleads Guilty," Peoples Gazette, September 21, 2021, https://gazettengr.com/boko-haram-us-seizes-nigerias-6-1-million-as-illegal-arms-contractor-pleads-guilty/, accessed September 29, 2021.

61. I. Isamotu, "Police Bust Illegal Manufacturers of AK-47 in Plateau," Dailytrust, June 2, 2021,

동북아역사재단 NORTHEAST ASIAN HISTORY FOUNDATION

https://dailytrust.com/police-bust-illegal-manufacturers-of-ak-47-in-platea, accessed September 29, 2021.

62. S. Fasasi, "Ogun NANS Tackle Customs Over Alleged Influx of Firearms," Independent, August 26, 2021, https://independent.ng/ogun-nans-tackle-customs-over-alleged-influx-of-firearms/, accessed September 29, 2021.

63. *Ibid*.

64. See A. Kabir, "Merchants of Death: The Unending Firearms Smuggling in Nigeria," HumAngle, December 19, 2021, https://humanglemedia.com/merchants-of-death-the-unending-firearms-smuggling-in-nigeria/, accessed January 15, 2022.

65. F. Nwabufo, "Matters Arising: What Happened to Previous Illegal Arms Seized by Customs?," September 11, 2021, TheCable, https://www.thecable.ng/matters-arising-happened-previous-illegal-arms-seized-customs, accessed January 15, 2022.

66. A. Ayissi and I. Sall (eds.), "Combating the Proliferation of Small Arms and Light Weapons in West Africa: Handbook for the Training of Armed and Security Forces," United Nations Institute for Disarmament Research, 2005, https://unidir.org/sites/default/files/publication/pdfs/combating-the-proliferation-of-small-arms-and-light-weapons-in-west-africa-handbook-for-the-training-of-armed-and-security-forces-en-528.pdf, accessed May 31, 2022.

67. Dailytrust Editorial, "Recover Missing Police Weapons," January 16, 2022, https://dailytrust.com/recover-missing-police-weapons, accessed May 31, 2022.

68. E. Odjegba, "Why Customs Stops Container Trucks on Highways, C-G," Vanguard, April 14, 2021, https://www.vanguardngr.com/2021/04/why-customs-stops-container-trucks-on-highways-c-g/, accessed May 20, 2021.

69. See S. Fasasi, "Ogun NANS Tackle Customs Over Alleged Influx of Firearms," Independent, August 26, 2021, https://independent.ng/ogun-nans-tackle-customs-over-alleged-influx-of-firearms/, accessed September 29, 2021.

70. B. Malam, "Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security," *International Journal of Humanities and Social Science* 4 (8) (2014), pp. 260–269.

71. O. Ajayi, "Christian Rights Agenda Calls for Review of Buhari's 'Lopsided Appointments,'" Vanguard, July 20, 2020, https://www.vanguardngr.com/2020/07/christian-rights-agenda-calls-for-review-of-buharis-lopsided-appointments/, accessed September 29, 2021.

72. O. Shehu and B. Otoibhi, "Buhari's Lopsided Appointments in Six Years Continue to Generate Controversy," ICIR, May 29, 2021, https://www.icirnigeria.org/buharis-lopsided-appointments-in-six-years-continue-to-generate-ontroversy/, accessed September 29, 2021.

73. P. Duru, "FG's Refusal to Declare Armed Fulani Herdsmen 'Terrorists' Encourages Killings in Benue, Other States," Vanguard, August 7, 2021, https://www.vanguardngr.com/2021/08/fgs-refusal-to-declare-armed-fulani-herdsmen-terrorists-encourages-killings-in-benue-other-states/,accessed September 29, 2021.

74. C. Asadu, "Nigeria's Twitter Blackout: What's Really Behind Buhari's Social Media Ban?," the africa report, June 7, 2021, https://www.theafricareport.com/95280/nigerias-twitter-blackout-whats-really-behind-buharis-social-media-ban/, accessed August 25, 2021.

75. F. Kuwonu, "We Must Tackle Illicit Weapons, Ammunition in Parts of Africa, Globally," African Renewal, September 1, 2021, https://www.un.org/africarenewal/magazine/september-2021/we-must-tackle-illicit-weapons-ammunition-parts-africa-globally, accessed May 31, 2022.

76. See E. Abiodun, "Tackling Insecurity with Cargo Tracking Note," Thisday, March 26, 2021, https://www.thisdaylive.com/index.php/2021/03/26/tackling-insecurity-with-cargo-tracking-note/, accessed April 10, 2021.

77. M.P. Devoto, "Political Will Along with Weapons-control Management Critical in Stemming Illicit Trafficking of Small Arms, Speakers Tell Security Council," United Nations, November 22, 2021, accessed May 31, 2022.

78. W. Eya, et al., "Arewa, Yoruba, Igbo, M'Belt Elders Support Masari's Self-defence Call," Sunnews, August 19, 2021, https://www.sunnewsonline.com/arewa-yoruba-igbo-mbelt-elders-support-masaris-self-defence-call/, accessed May 31, 2022.

79. D. Akinrefon, "State of the Nation: Nigerians Should Defend Themselves Against Bandits—Afenifere," Vanguard, September 1, 2021, https://www.vanguardngr.com/2021/09/state-of-the-nation-nigerians-should-defend-themselves-against-bandits-afenifere/, accessed May 31, 2022.

80. H. Umoru and L. Jannamike, "State of the Nation: Nigerians Can Defend Themselves

동북아역사재단 NORTHEAST ASIAN HISTORY FOUNDATION

Against Herdsmen, Bandits—Archbishop Kaigama," Vanguard, August 3, 2020, https:E2%80%95-archbishop-kaigama/, accessed May 31, 2022.

81. J. Oluwajuvitan, "In Defence of Masari's Call for Self-defence," Thenation, September 2, 2021, https://thenationonlineng.net/in-defence-of-masaris-call-for-self-defence/ accessed May 31, 2022.

82. S. Tukur, "Presidency Replies T.Y. Danjuma on Call for Nigerians to Defend Selves," Premiumtimes, May 31, 2018, https://www.premiumtimesng.com/news/headlines/263607-presidency-replies-t-y-danjuma-on-call-for-nigerians-to-defend-selves.html, accessed May 31, 2022.

83. E. Amaize, "Insecurity: Issue Order to Arrest Herdsmen with AK-47 Weapons, DESOPADEC Tells Buhari," Vanguard, February 8, 2021, https://www.vanguardngr.com/2021/02/insecurity-issue-order-to-arrest-herdsmen-with-ak-47-weapons-desopadec-tells-buhari/, accessed April 10, 2021.

84. Dailytrust Reporter, "Insecurity: Villagers Stockpile Arms for Self-defence," August 24, 2021, https://dailytrust.com/insecurity-villagers-stockpile-arms-for-self-defence, accessed May 31, 2022.

85. S. Akpan, "Chadian Soldiers Sell Arms When Broke—Nigerian Navy Laments Arms Proliferation," The Cable, September 27, 2021, https://www.thecable.ng/chadian-soldiers-sell-arms-when-broke-nigerian-navy-laments-arms-proliferation, accessed May 31, 2022.

86. See MARITIMEMAG, "Cargo Tracking Note: The Return of Misunderstood Good Project," Nigeriamaritime360, July 30, 2018, https://nigeriamaritime360.com/cargo-tracking-note-the-return-of-misunderstood-good-project/, accessed April 10, 2021.

87. A. Onyenucheya, "Another Year Passes Without Single Window Platform at Seaports," Guardian, October 27, 2021, https://guardian.ng/business-services/maritime/another-year-passes-without-single-window-platform-at-seaports/, accessed February 12, 2022.

88. K. Osasona, "Cargo Tracking Contract: Court Okays Contempt Charges Against Transport Minister, Amaechi," Blueprint, March 23, 2022, accessed April 10, 2022.

89. S.A. Usman, "ICTN: CASER Warns Amaechi for Allegedly Defying a Court Order," Dailypost, March 10, 2022, accessed April 10, 2022.

90. E. Eze, "CTN Implementation: CSO Calls for Stop in Corruption, Illegalities," Blueprint, November 25, 2021, https://www.blueprint.ng/ctn-implementation-cso-calls-for-stop-in-corruption-illegalities/, accessed April 10, 2022.

91. *Ibid.*

92. Ogbuka et.al, "Physical Cargo Examination and Imperative of Port Automation in Nigeria: The Emerging Realities of Post COVID-19 Pandemic," *International Journal of Academic Accounting, Finance & Management Research.* 6 (9) (2022), pp. 62–70

93. E. Ani, "Deploy Technology to Fight Insecurity—NSE to Government," Dailypost, September 25, 2022, https://dailypost.ng/2022/09/25/deploy-technology-to-fight-insecurity-nse-to-government/, accessed September 25, 2022.

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Political Development Narrative of Africa's Physical Space: The Case of Nigeria

V. Adefemi Isumonah

Structured Abstract

Article Type: Research Paper

Purpose—Space, particularly because of its contested nature, is discussed by political scientists as a feature of types of nationalism, mainly ethnic and sovereign state nationalisms (Hale 2016). It is discussed as nationalist and ethnic claims, not as the mutual impact that man and living space have on each other. Hence, there is evidently no effort put into examining the way in which one may influence or affect the other.

The story of the underdevelopment of sub–Saharan Africa has been narrated without the physical space narrative. If at all there is a reference to space, it is only in terms of the absence of infrastructure rather than as an artwork loaded with philosophical, physical, and indeed, political meaning. The comparison of Public Space (PS) on the one hand and Private Public Space (PPS), Personal Official Space (POS), and Personal Individual Space (PIS) on the other demonstrate the political narrative space embodies in Nigeria.

Design, Methodology, Approach—This article examines the consequences of political leadership on physical space and human welfare. In this examination, the comparison by observation of Nigeria mostly in four spaces—PS, PPS, POS, and PIS—will be used to show the connection between political thought and space.

Findings—The relationship between built space and human life is no less consequential than the relationship between the system of government, group conflicts, and wars on the one hand and human life on the other. The interpretation and meaning conveyed by PS and PPS reveal that space is an idea (architectural idea), a concrete structural expression; furthermore, space impacts a people and is impacted, in turn, by a people.

Practical Implications—If political leaders of developing countries realize that the

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condition of physical space as an artwork is a reflection of their thinking faculty, philosophy of life, and leadership which, in turn, affects their welfare especially when out of office and of those they govern, they might be more serious with the physical development of their countries. The understanding of physical space provided by this article may sensitize political leaders to pay greater attention to the improvement of PS.

Originality, Value—This article shows that physical space is a narrative of political thought/leadership and life in a given geopolitical space.

Keywords: development, narrative, physical space,
private public space, public space

I. Introduction

Nowhere is the modern state a negation of itself more than in many parts of sub–Saharan Africa. Hence, it has earned every kind of label from clientelist, prebendal, personalist, soft, neo-colonial, rentier to predatory.[1] With clear signs of loss of monopoly over the use of physical force and inability to provide services, Nigeria has been indexed as a failing or failed/weakened state.[2] South Africa, which showed so much promise after the Apartheid regime, has also been thrown into the failing state category for valid reasons.[3] Barring national pride, the labels accurately describe socioeconomic and political conditions in most African countries.[4] What is more important to note, then, is that the labels are products of the inability of the African state to prevent or arrest economic decay, efficiently provide services and security, foster hegemony and ensure that its authority is respected.

In the 1990s, it was popular to blame civil society for the deficiencies of the African state, especially for the poor performance of democratization and good governance in Africa.[5] There is, as indicated by the lack of collective action towards public welfare, good reason to believe that civil society is non-existent or weak in Africa (details later). Some observers and commentators have found this to be an accurate assessment. For example, there is little or no collective action toward solving social problems in sub–Saharan Africa as people in most other parts of the world have done by either getting the state to live up to expectations or self-independently getting things done.[6]

The area where collective action is palpably lacking in Nigeria is environmental sanitation. Even so, the state is most culpable given its comprehensive authority and authoritative rules.[7] As Bayart, Ellis & Hibou[8] as well as Chabal & Daloz[9] have separately shown, the political class of the African state deliberately fosters disorder in social relations. In such circumstances, civil society will be handicapped and unable to ensure good environmental sanitation.

Many past studies on the environment agree that poor political leadership has the primary responsibility for poor sanitation in Nigeria. For example, Michael A. Nwachukwu blames political leadership for not providing and implementing coherent policies.[10] In Ibadan, mapping and extending sanitary good practice "has been more often tutelary than comprehensive; it performs and demonstrates at key times and places rather than enforcing, covering, and reaching across the entirety of the urban domain."[11] This was more noticeable in Governor Adebayo Alao Akala's environmental sanitation project

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based on a desperate reelection campaign in 2011, which John Manton dubbed "Environmental Akalism."[12] As Yekeen A. Sanusi has argued, poor sanitation expresses public service deficiency.[13]

This article identifies with their conclusion but in addition argues, based on interviews and field observations of the contrasting sanitary condition between public space (PS) on the one hand and private-public space (PPS), private official space (POS) and private individual space (PIS) on the other, that physical space reflects political and social thought. It argues that the condition of living space is ultimately a reflection of the political and social thought of political elites because they have the power and influence for creating and implementing an ordered and orderly space. Practice mirrors thought just as public policy mirrors the mind and thinking of rulers and policymakers. Therefore, African political leadership's lackadaisical attitude to PS is a reflection of their political thought and philosophy of society. Consider that a capitalist system created by capitalist economic thought cannot produce full-blown socialist practice. It can only exhibit aspects of socialist practice. The challenge of practicing aspects of socialism in the capitalist economy is most exemplified in the United States of America where some elements mount fierce resistance to equalizing initiatives even if they are meant to address historical disadvantages.

As will be shown later, ordinary people, other kinds of elites, and non-elites may have to live in a deplorable living space in Africa not because they are incapable of espousing ideas for changing it but because they do not just have the power to do so. So, poor sanitation is not simply, the result of lack of awareness, as Foluke Ogunleye argues but the poverty of the philosophy of society of the political elites.[14]

Hence, this article interrogates the performance of statehood with a focus on waste management, providing evidence of the culpability of the state in poor environmental sanitation with a contrast of physical spaces in Nigeria. It focuses on space, not as a sphere of human relations but physical space of four types. These spaces are PS, PPS, POS, and PIS.[15] As used here, PS is government physical space including its school buildings and premises; military (Army, Navy, and Airforce) barracks, police and paramilitary barracks; airport grounds; post offices and other public buildings; secretariat complex; intra- and inter-city roads; roadsides; streets; city centers and squares; markets; motor parks, etc., while PPS is the third sector's space that includes bank buildings, cafeterias, and fast foods houses, event centers, hotels, business office buildings, shopping plazas, industrial houses, etc. On the other hand, POS and PIS are the official and personal residential spaces of the political elite.

While PPS, POS, and PIS are well-kept, clean, and attractive, PS is mostly neglected, filthy and decrepit and is more or less unclaimed from palpable neglect. Ironically, a government that claims the authority of regulation of PPS and other physical spaces and that should be setting standards for public good, has not only neglected its space but allowed "non-conforming structures" that degrade the environment and the value of conforming structures.[16]

Physical space has not been investigated by political scientists as a concrete structural expression to establish the way in which it impacts a people and is, in turn, impacted by the architectural idea of it by the people. It has featured in political discourse as a feature of ethnic and sovereign state nationalisms or as nationalist and ethnic claims not as a mutual impact that man and living space have on each other. If at all there is reference to space qua

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space, it is only in terms of the absence of infrastructure and regional distribution of the benefits of development rather than as an artwork loaded with philosophical, physical, and indeed, political meaning.[17] There is evidently no effort at examining the way in which one may influence or affect the other.

Consequently, this article examines the consequences of political leadership on physical space and people's welfare. In this examination, the comparison of four spaces—PS on the one hand, and PPS, POS, and PIS on the other—will be used to show the connection between political thought and the state of any given space. It is an original attempt at introducing physical space as an artwork and a reflection of the thinking faculty or philosophy of life of the leadership of a people or political community into political discourse. Granted, the dearth of material resources or the incapacity to harness them tells on the outlook of the geophysical space. If there is a philosophy or architectural design, it should reveal the limitation of the dearth of material resources or incapacity to harness them. For example, the clean simple old rural African settlement as well as the clean PPS, POS, and PIS can help us determine the precise role of the limitation of the dearth of material resources or the incapacity to harness them in the outlook of any space. The comparison of PS on the one hand and PPS, POS, and PIS on the other, is used to demonstrate the political narrative space embodies in Nigeria and elsewhere. How does the political thought of the elite/masses influence space and vice versa in Nigeria?

Nigeria—specifically, Ibadan—serves as the laboratory for the investigation of the relationship between the philosophy of space and what it looks or can look like. The field materials are interviews and public display signs simultaneously expressing a desire for clean surroundings and dismay over dirty surroundings caused by indiscriminate dumping of refuse by neighbors and members of the public. These interviews and public display signs expressing the opinions of ordinary people were collected and monitored over fifteen years in Ibadan, one of Nigeria's three oldest regional capitals. The secondary data were collected from books and journal articles. The data collected has been analyzed qualitatively to present the narrative of physical space through political thought and development.

The next section is devoted to space as an idea and consequence. This is followed by a discussion of PS as state failure and public service delivery in Nigeria. Another section presents individual, disparate and desperate responses to the reality of environmental filth in Nigeria's PS. This follows the view that space is not only a geographical expression but also a political narrative. The article ends with a brief comment on the challenge of civil society to initiate transformation or change in the context of structured privilege.

II. Space as an Idea and a Consequence

The relationship between physical space and human life/activity has been a subject of interest to people of various disciplines—philosophy, sociology, library science, and most certainly geography— because of its primary focus on the physical environment. For Francesco Patrizi, one of the Italian nature-philosophers of the 16th century, the fundamental importance of physical space is that without it nothing else exists.[18] Sir Halford Mackinder's famous declaration, "Who rules Eastern Europe commands the Heartland; who rules

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the Heartland commands the World Island; who rules the World Island commands the World," highlights the centrality of a certain geographical space to power relations among nations and peoples.[19] L.R. Vagale writes that "in the final analysis, environment [physical space] is the determinant of the survival and the quality of life."[20] The simplest way to recognize the impact of space on the welfare of people is a view from sanitation.[21] Poor sanitation can lead to contaminated water, in turn, to cholera, the greatest killer disease of the 19th century. The effective control of cholera, which gripped London city for about five years, with the building of a new sewage system to clean up the River Thames, its source of water supply, is good evidence of the correlation between environmental sanitation and good health.[22]

It is clear that there is widespread agreement that physical space and the socio-political organization of society impact each other. Feldman and Tilly put it specifically: "The city's spatial order, in this view, reflects and affects its social order; social changes can be located by accurately tracing their spoor."[23] Widespread disagreement about the factors that give rise to the intimacy between physical space and social order is beside the point. The many-faceted nature of space and the role of human activity in shaping it are articulately summarized by Jens Chr. Tonboe. According to him,

> Space, as a material-geographical structure, can be found as a product, object, mediator, resource, restriction, and symbol as well as latent ("stored") and inert power in many socio-political processes and conflicts. However, it is never active, never a motor by itself. It is created and recreated, moved, and adjusted only by human action, in the same way, that political, economic and, social structures are. (Its societal meaning and function are derived solely from its social setting in a specified time space.)[24]

In other words, political activity goes into the making of space as it is in the definition of space.

But space, particularly because of its contested nature, is discussed by political scientists as a feature of types of nationalism, mainly ethnic and sovereign state nationalisms.[25] It is a subject matter of political analysis in the analysis of territory—nationalist and ethnic claims—not as the mutual impact that humans and living space have on each other. Hence, there is evidently no effort to examine the way in which one may influence or affect the other. Specifically, no effort has been made to determine the quality of physical space's reflection of political philosophy and social outlook. Other things such as the type or system of government, group conflicts, and wars are thought to be more important for attention than the relationship between built space and political thought.

It is not surprising that the underdevelopment of sub–Saharan Africa has been narrated without the physical space narrative. Reference to space in the narrative of political development is only in terms of the absence of infrastructure rather than as an artwork loaded with philosophical, physical, and indeed, political meaning. By contrast, this article examines Nigeria's space to show the political narrative of PS transmitted by PPS, POS, and PIS. This is based on the premise that the examination of space will produce similar or the same conclusions for other political societies. The interpretation or meaning conveyed by PS on the one hand and PPS, POS, and PIS on the other reveals that space is an idea (architectural idea), a concrete structural expression; further, space impacts people and is impacted, in turn, by people. When space as an idea requiring thought in terms of its organization is missing, it will be reflected in a haphazard, unplanned expression, in turn,

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fail to inspire and contribute to the physical and mental well-being of those who inhabit and claim it in the particular context. Indigenous claimants of a neglected space are the worst affected because aliens and settlers are often able to choose the better part of the space or recreate a part of the existing space to their taste. Development is missed *ab initio* without an idea of space. The corollary of missed development in the absence of the idea of space is the perpetuation of a low lifestyle through disordered living space. Traffic chaos in the missed idea of space, that is, unplanned space, most succinctly illustrates this in Third World urban cities.

Herbert Werlin explains filthy Lagos, Nigeria's former political capital, which remains her commercial capital, as the result of political corruption rather than "municipal poverty or administrative ineptitude."[26] According to him, political corruption arises from inelastic political power, which lacks social energy that produces social relations for functional institutions. Drawing on Political Elasticity theory, he argues that Nigeria's approach to environmental sanitation has relied only on political hardware, which he defines as "'objective' forms of organization, regulation, procedure, technology."[27] Political software, he defines as "policies and practices that foster respectful relations between leaders and followers,"[28] which should enhance political hardware for the achievement of public objectives such as orderly disposal of waste for a clean environment, has been utterly lacking. Specifically, he explains Nigeria's inability to handle garbage responsibly and efficiently in terms of systemic or "secondary corruption"—"partisan behavior that goes unpunished" because of "the absence of viable statesmanship or governance."[29]

With his secondary corruption perspective, Werlin provides a great insight into Nigeria's poor political leadership and governance in respect of sanitation but falls short of identifying the fundamental problem because it is based on the secondary deficiency. The parlous state of a physical space cannot be explained by role plays but by underlying drivers as generic linkages between values and actions and/or products illustrate. The fundamental problem is the poverty of political thought of the Nigerian political leadership on PS. This political leadership cannot implement a developmental design because of self-centeredness and total contempt for society and its space, which is PS.

Democratic behavior is a product of the acceptance of the doctrine of equality of men just as social democracy is a product of the acceptance of the entitlement of all to a basic lifestyle. It is such values that generate political software manifest in policies and programs that impact people more positively in countries where life chances are much better. Werlin's perspective cannot explain the contrasting looks of the private and official residential quarters of top Nigerian political leaders with filthy and neglected, even abandoned, parts of PS. Indeed, these leaders give great care to their well-built private and official residences in routine maintenance. They also take a great chunk of the public annual budget for the renovation of their official residences and feasting. The federal government of Nigeria budgets a huge sum of money annually for the maintenance and/or renovation of State House, Abuja, despite a high budget deficit.[30] Similarly, the Kenyan government made provisions for a huge sum in the 2020/2021 budget for the renovation of the State House, Nairobi, and other government lodges.[31] In 2016, South Africa's 11-member constitutional court ruled that President Jacob Zuma "failed to uphold the constitution when he ignored a state order to repay some of the government funds used in an £11m upgrade to his private residence, including a swimming pool and amphitheater."[32]

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If they are not replicating this third type of physical space labeled personal official space (POS), which as noted earlier is as clean as the clean PS of foreign countries where they love vacationing, it is a good philosophy of society they lack. If change comes from an idea, the parlous state of PS of most African states can only be understood as a reflection of their leaders' ideas of society and PS. It is their idea of private homes or PIS and state houses/official residences (POS) that is reflected in the palatial estates down to the last detail. Without the right philosophy of society, the easy weapon of political leaders is political hardware. So, it is from a public good philosophy of society that political software is generated. The problem, then, is not simply a lack of political software but fundamentally a lack of a public good philosophy of society.

From Marxist theory of social change, class consciousness is the true knowledge of one's position in the capitalist mode of production and separates class-in-itself from class-for-itself. But class consciousness is meaningless without revolutionary action. In other words, all actions start with an idea. To prompt action, an idea must become active. An active idea is an operational concept. The condition of any state's PS cannot be different from the philosophy of society of its political elites. If they have a good idea or philosophy of society, it is meaningless if it is not operationalized. Thus, the philosophy of society of sub–Saharan Africa's political leaders should not be stretched to outweigh the existing condition of her PS. A remark of then Brigadier-General David Mark, 1987–1989 Nigeria's Minister of Communications on access to a telephone by the poor says just as much. He is quoted as saying that telephone services are not meant for the poor. Not surprisingly, there were only 500,000 (all land) telephone lines distributed 1 to 224 persons based on the Nigerian National Population Commission's 1987 estimated population of 112.3 million.[33] It is also not surprising that the Global Mobile System (GSM) was already in use for more than 10 years in 41 of the 52 African countries before Nigerian rulers allowed it into Nigeria in late 2001. So in all the years, actually decades, the Federal Government of Nigeria enjoyed a monopoly over the provision of telephone services. From the introduction of the telephone in Nigeria by the British colonial authority up until 2002 when the market was opened to private participation, there were only 700,000 telephone lines.[34] Eight years (2007–2015) of David Mark's Senate leadership of Nigeria did not positively impact public policy for a better lifestyle for ordinary Nigerians.

III. The Public Space as State Failure

Nigeria has consistently been reported among the top nations on the list of the highest number of deaths from road accidents.[35] Various causes of this unimpressive record are a disregard for danger warning signs and safety precautions, robbery attacks, dangerous overtaking, excessive speeding, and overloading. However, the common descriptions of Nigerian roads even by Nigeria's topmost political leaders as "death traps," "death chambers," "madness of Nigerian roads," and "unworthiness of the roads" because of potholes are clear pointers to bad roads as one of the greatest causes of road accident in Nigeria.[36] Yet, the responsibility of neglected physical space for the destruction of life and property remains unattended to by political leadership. The gory reports of road accidents on Nigerian roads month after month in 2001 led newspaper columnist Kingsley Osadolor to ask,

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"Does Obasanjo [President] use Nigerian roads?"[37] As the newly elected President, Muhammadu Buhari accurately put it in 2015, "The roads are dead. Those who drive between Lagos and Ibadan will have a lot of stories to tell you. Those who drive from Kaduna to Jebba may have more stories to tell. The same thing is applicable to the East-West roads."[38] Lagos-Ibadan expressway President Buhari cited as an example of "dead" Nigerian roads remained mostly impassable even in his sixth year in office in 2020. Indeed, most Nigerian roads are still very bad. From the perspective of this article, neglect of PS is not just an expression of incompetence but a measure of the political and social thought of Nigeria's political leaders.

The political leadership's poverty of the idea of PS seen in the neglect of street roads and highways is displayed in the atomistic approach to environmental sanitation. PPS, POS, and PIS continue to present a contrast to PS in attention to routine maintenance, sanitation, and attraction. They go through reconstruction, restructuring, and renovation to give them a facelift from time to time. If PS receives attention of any kind, it is piecemeal, haphazard, and transient. Thus, it soon suffers neglect and is left in decrepit condition as unclaimed space if evidence of ownership is the care it receives.

In 1984, the Buhari/Idiagbon Administration launched the War Against Indiscipline (WAI) with a cardinal focus on environmental sanitation. This was a response to the disgusting sights of Nigerian towns and cities because of indiscriminate dumping of refuse. Thus, the government required all Nigerians to spend three hours from 7 a.m. to 10 a.m. on the last Saturday of the month to clean their surroundings. During the period, there was to be no movement. The country was shut down! Any Nigerian found on the street was liable to manhandling and/or extortion by security agents who usually extend their command for egotistic and monetary gain. Only medical personnel and newspaper vendors in addition to government personnel, such as field workers of the government-owned Nigerian Electricity Power Authority (NEPA) now known as Power Holding Company of Nigeria (PHCN) promptly and scornfully referred to by Nigerians as both "Never Expect Power Always," "Power Withholding Company of Nigeria," or "Problem Has Not Changed in Nigeria" for their consistent inefficiency, and water corporations on so-called essential duty were later excluded from the restriction on movement after the protest.

But the arrangement contained no provision for the cleaning of non-residential areas. Nor did it contain a long-term objective of achieving routine orderly disposal of refuse that will result in clean towns and cities. Yet, the ritual of shutting down the country continued for years. The monthly order of restriction on movement became a useful time for most Nigerians to stay back home and rest and, if there is electricity, watch television or home videos while the cities' sanitation did not change with continued indiscriminate dumping of refuse. The military rulers were either unbothered or took no note of the futility of the monthly environmental sanitation exercise. It was a great relief for Nigerians with an artistic mind when the newly inaugurated President Olusegun Obasanjo, exercising the mandate of the Council of State, canceled the exercise in late 1999. However, some states of the federation have resumed the monthly exercise without a change in the physical cleanliness of their cities.[39] As Robert Guest wrote in his 2004 book, "In Lagos, I have seen piles of rubbish, some of them twenty feet high and three blocks long, festering in the middle of the road."[40] Such sights are still everywhere not only in Lagos but in numerous other Nigerian cities and towns.

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According to High Prince Ene Owoh, performance indicators from the studies of the National Technical Study Group of Clean Up Nigeria, which he coordinated, "show that over 172.7 million Nigerians in 2021 are living in unclean environments compared to 170 million in 2020" (interview, Abuja, 12th of December 2021). Mrs. Jadesola Surakat claimed that her company, Multi Pro Limited, makers of Hypo disinfectant, embarked on the "Team up to Clean-up" project in Ibadan to "sensitize the people on the need for environmental hygiene" (interview, 7th May 2017, Ibadan). However, the project was more like the national monthly Environmental Sanitation Exercise and not surprisingly, ended, leaving Ibadan dirty as ever because it was more, to borrow the words of Manton, "tutelary than comprehensive."[41]

Governor Abiola Ajimobi's Administration initially made efforts to keep Ibadan clean. But he "later played politics with governance" with the result that "you would think there were no sanitary inspectors" in Oyo State since filth could be seen as "an external décor for the entire span of many highways leading into and within the city of Ibadan" (interview with Mr. Segun Adeniran, Ibadan resident, 26th of April 2019). In the same vein, former Governor of Oyo State Adebayo Alao Akala expressed regrets over the uncleanness of Ibadan. He said that Governor Seyi Makinde "has refused to look in that direction lately by incapacitating the local government authorities and ignoring the stakeholders who have been calling for the removal of the filthy sites that have taken over the city" (interview, 15th of October 2021, Ibadan). A guest described the government-owned Premier Hotel as "dirty, unfriendly and overpriced" (interview 31st of July 2012). This was a hotel that was the best in Ibadan. Four years later, T. Feyisola dubbed it "zero-star hotel!!! Not worth the money!" (interview, December 2016, Ibadan).

The slums are thus a common part of Nigerian cities as it is in many cities of developing countries. Therefore, a slum's basic feature, filth, should not surprise anyone familiar with slums. But in Ibadan, one of Nigeria's largest cities, which typifies a slum city, private orders in the individual's struggle against filth are interesting narratives of ordinary people's political and social thought. Of particular interest is the desperation in the recent stages of their evolution. While the common sight of filth in Ibadan may appear as a normal condition for the people who live with it, the desperation in the new response to it points to the contrary. Desperation indicates not acceptance but a symptom of state failure and better still, of the dearth of the noble political thought of the minders of the state. Thus, the individual responses to their filthy surroundings range from an appeal to the sensibilities of fellow Nigerians to threats/curses. What are these responses? How effective are they? Why should the filthy environment not be blamed solely on individuals or a lacking/weak civil society? In a subsequent section, this paper attempts answers to these questions to show that the problem of filth in Ibadan and any other Nigerian or African city is distinct evidence of a dearth of political thought behind the Nigerian/African state. In this way, it contributes to the debate on the virility of civil society or more broadly, the third sector in sub–Saharan Africa, in social and political thought that its physical space denotes.

IV. Public Space and Service Delivery

Nigeria's PS of which government is the most authoritative agent and legal trustee, with the worst dilapidation and abandonment, is a sharp contrast with its PPS, POS, and

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PIS. The neglect PS exudes is the extent to which it is claimed or unclaimed. In Ibadan city, for example, PPS and most POS and PIS are a pool of attraction, silently telling the story of the government's neglect of PS, its space, and its quality-of-service delivery.

PS buildings are either in a dilapidated state or lack basic furnishing while PPS, POS, PIS, have a full complement of furnishing with air conditioners, running water, good furniture, constant water supply, internet connectivity, and the automobile of different types for ease of movement. A very noticeable neglect of PS is the absence of adequate automobiles for mass transportation. So, bus stops are a pathetic sight in big cities such as Lagos and Port Harcourt because the public transport system is acutely inadequate. Heavy traffic Nigerians call "go slow" occasioned largely by bad roads and lack of traffic control are also common. Absolute negligence is explained away in the claim by a state government that main township roads are the federal government's roads while not making a difference in its "own" roads.[42] It has often happened that the same government rips open a spot on a major township road under the guise of planned repairs only to abandon it with extraordinary hardship for the people as a result.[43] Besides, the government-owned media regularly insult the sensibilities of Nigerians with the admonition, "don't ask, 'what can Nigeria do for you?' but 'what can you do for Nigeria?'"[44]

If anything, the nine-point agenda the Olusegun Obasanjo Administration proclaimed about service delivery in 2004 during his second term in office plainly admitted the government's gross negligence.[45] Even with ubiquitous disservice, disorder, neglect, frustration, and hopelessness, every retiring or dead public servant is praised for "serving the nation meritoriously" by peers, government officials, and friends.[46] Such praises have not ceased even without evidence of the high quality of public welfare or service delivery.

While in other societies, governments are being called upon to assume new functions such as "protecting the environment, guaranteeing the rights of consumers, arbitrating moral issues like abortion and ensuring equal opportunity for minorities and women," traditional responsibilities of governments of "ensuring the economic and physical well-being of their citizens" remain novel concerns of government in Nigeria.[47] One cannot agree more with a Danish student visiting Nigeria and indeed Africa for the first time: After a three-week stay, she concluded that Nigeria is a place "nothing works." Contrasting life in Europe and Africa, she declared,

> In many instances, I find it hard to believe that things could be at the backward level they are in Nigeria. Where I come from, things that are already taken for granted are not just there in Nigeria. We believe in order. Services are perfect. No endless waiting to get things done. It is a clockwork system. People are conscious of time. No queuing for fuel. Public transportation is efficient and prompt. There is so much gap between Europe and here.[48]

As Gbenga Salau, a reporter for *The Guardian* (Lagos) wrote in 2001 "it is … puzzling that in spite of the number of people who storm the registry [the Federal Marriage Registry at Ikoyi, the busiest and most popular in Lagos] to be joined in wedlock every week, with each couple paying, it is still so unkempt. More worrisome is the fact that Nigerians, including the rich and elite—who throng the registry every week, could endure such filth and depreciated facility and keep silent or unconcerned."[49]

The hopelessness and cynicism bred by rulers raise questions about the attitude of Nigerian leaders to the social and economic problems of their people. They make one

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wonder: How does the commissioner for works and transport feel about the chaotic transport situation caused by bad roads in the capital city where he lives, not to mention other cities in his state? How does the commissioner of health or Environment feel about the eyesore, that most part of their capital city epitomizes? As a result of the indifference or rather limited political thought of its leaders, Africa is sprawling with hybrid political orders.[50]

V. Responses to State's Environmental Negligence

The city of Ibadan in Western Nigeria exemplifies the political and governance narrative as well as the consequences of a disordered space and shows that space is not just a geographical expression. The operation of hybrid political orders is illustrated with the orders of environmental sanitation, security of life and property, and land use in Ibadan, which Layi Egunjobi described as a city that is "growing in all directions without direction."[51] It is important to note that the orders referred to here are in signs which are either self-operative or externally propelled. In any case, orders in the form of rules require an external hand to give them effect when deviants appear on the scene. A picture of a dump site in the walled premises of Oyo State Secretariat shot on the 17th of August 2021 shows that even state governments are not enforcing their orders on indiscriminate dumping of waste in PS (see figure 1). A sample of these orders collected and monitored all over Ibadan over the past fifteen years is presented in Yoruba and translated into the English language.

At the beginning of the lone struggle against filth, the common warning signpost at an illegal dump site was: "Dumping of refuse is prohibited." Lacking internal and external deterrence, such warnings have been ignored by dumpers who find it convenient to dump their refuse at convenient sites. In response to their failure, those mounting them have decided to build into them some deterrence with the addition, "violators will be prosecuted." This is an empty warning without prosecutorial resources and a judicial system that can empathize with the victims. Again, without visible external deterrence, the dumping of refuse at the sites continued. The orders had to be reinforced with some moral suasion. Thus, they moved from "Stop dumping refuse here, *eyin obayie je adugbo"* (you spoilers of the district or environment) and "*ma se da ile si bi tiki bojumu*" (do not dump refuse in the wrong place). Without success, the orders had to be further reinforced. The following box contains orders typical of such reinforcement.

Box 1: Warning Signs All Over Ibadan City	
Order in Yoruba	Translation
Da ile sibi Ki ori ijanba Sango.	Dump your refuse to incur the wrath of Sango (god of thunder).
Enikeni ko gbodo da ile si oju odo yi. *Enikeni to wo ba te, yo da rare lebi.*	Do not dump refuse into this stream. Whoever is caught will have themselves to blame.
Ejowo a ni di igbe eniyan ni bi fun lilo.	Attention please! Human excreta are urgently needed for traditional use.
Ojo ti owo ba te eni ti o ba da ile si bi yi, Eninan di apadanu ni ojo nan	Whoever is caught dumping refuse here is a goner.

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Order in Yoruba	Translation
To ba fe so ri buruku, da ile si bi. (By People of Faith Church, Sango-Eleyele Road, Ibadan).	If you want to be cursed, dump your refuse here.
Ti mo ba da ile si bi yi, kit e mio baje.	I should be damned if I dump refuse here.
Akosope kooma dale sibi. Sugbon, dale sibi koosofo tomo tomo.	Nobody says you should not dump refuse here. Do so to lose your child.
Dale si oju odo kio sofo. *Dale si oju odo kio fi owo re gbe omo sin.*	Dump refuse into this stream and waste your life. Dump refuse into this stream and bury your own child.
Ibanu je aye raye nifun enikeni to ba yagbe tabi dale sibi.	Everlasting sorrow is the portion of any that defecates or dumps refuse here.
Enikeni ti o bad a ile tabi egbin si inu gota yi, yi o si ri ibinu gbigboba Olorun.	Anybody that dumps refuse or any irritating thing in this drainage shall incur the wrath of God.
Bi mob a da ile sibi yii *Ki nya were* *Ki nsofo omo* *Ki ma ri opin odun yii* *Ki nsofo oko/aya* *Oro jade ase tele* (By Nigerian Institute of Horticulture)	If I dump refuse here Let me become mad Let me lose my children Let me not see the end of this year Let me lose my husband/wife Amen
Dale si bi ki oloko iparun	Dump refuse here and perish forever.

Source: Various locations in Ibadan.

It is noteworthy that even with their threats, the above orders have not been obeyed since the dumping of refuse at the unwanted sites continues unabated. Thus, helpless individuals have to live with filth and other environmental hazards. They also have to contend with noise pollution from religious gatherings, generators, and small-scale enterprises such as block-making industries, grinding machines, and other environmental concerns including haphazard channeling of wastewater, emptying of soak ways into the streets, etc., in their places of residence. By contrast, PPS, POS, and PIS are substantially free of the nuisance that plagues PS. When they constitute a limited nuisance to themselves such as with generator noise pollution, it is because of the failure of the state to provide or maintain public goods and services. In this regard, the active civil society has failed to build pressure on the state to perform its basic functions as its albatross.

VI. The Odds Against Collective Action

Collective action includes lobbying, contributing to campaign finance, and protests.[52] There is a dearth of literature on the frequency of usage of these forms of collective action in Nigeria. This is why their effectiveness is hard to determine. However, the role of civil society groups including those with ethnic motivations in the struggle for democratic rule in Nigeria is well acknowledged.[53] The print and electronic media communicate reports of protests by labor unions from time to time. For example, the #EndSars protests of 2020 were widely covered and reported by local and international print and electronic media.[54]

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Figure 1: Dumpsite with a warning of prosecution sign in Oyo State Secretariat, Ibadan. Photograph taken by the author on August 13, 2021.

These sources are rich with successful uses of protests by labor unions in their struggle for an increase in wages and salaries. If protests have been so effective in demanding an increase in salaries and wages, why have labor unions and other stakeholders in environmental sanitation not employed them?

There are at least two categories of constraints on civil society's effective response to state failure: Personal and systemic. A typical personal level constraint is desperation arising from the obligation to be gainfully employed particularly in the absence of social security benefits. From the second military interregnum of 1983–1999 till now, the state has existed in many parts of Nigeria as a negative force, shirking its responsibility to provide rules for social and economic behavior.[55] Governing is thus not a problem-solving activity. Although this lawless situation provides a leeway for some to satisfy their material and other psychological needs, for most other elements of society there lurks a war of all against all. For example, a person driven by the need for material self-reproduction and sustenance that the state has failed to guarantee by ensuring a conducive public health environment can decide to bring into a densely populated neighborhood, industrial equipment such as a power generating set, printing machine, tool making and redesigning machine, concrete block making machine, etc.[56] Some of these are put to use in the dead of the night. The quest for livelihood and hope for miraculous solutions to personal problems have also led unscrupulous residents to start noisy religious gatherings any time of the day and worsen the nuisance value of PS.

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The complaint of a discomforted neighbor to the one who is responsible is often meaningless because there is no state instrument to mediate and set binding standards. The state has no idea of acceptable activity or behavior or what is injurious to public well-being because it is itself derelict in its duties to the governed. The result is rampant apathy that is undoubtedly antithetical to civil society action. The counter complaints of unscrupulousness stunt the growth of a joint stake in individual social and mental well-being necessary for collective action to pressure the state to play its role in guaranteeing public well-being. A commercial driver put his withdrawal from the irrelevant Nigerian state with implications for his citizenship duties in the following words: "Nothing gives one joy in Nigeria. I will not vote again but simply concentrate on how to cater for my family within my circumstances."[57] The populace is decimated by numerous systemic problems and is like the peasantry Karl Marx described as potatoes in a sack.[58]

The permission of parallel social facilities—individual and public provided—is an important contrast between the economically undeveloped Nigerian society and any pre-economically developed society or pre-industrial and economically developed country. In Nigeria, there is a dichotomy between the public and the private in respect of critical amenities/needs—energy (electricity), water supply, and security. This dichotomy has made mobilization for collective action by disadvantaged Nigerians much more difficult than it might have been for revolutionary changes elsewhere. The political elite who are culpable for the inefficiency of the state monopoly provider of electricity NEPA or PHCN has an alternative to it as a generator.[59] Thus,

> When for any reason, the socially disadvantaged are mobilized on their own platform, say in form of a strike directed at NEPA, which if successful and effective, puts NEPA out of function, the victims of the action are the socially disadvantaged, and not those of the exploiting class who in any case are used to falling back on their standby plants, even when NEPA is in its normal but inefficient run of service.[60]

In other words, a results-oriented protest is possible only if during protests the protesters can subject the beneficiaries or perpetrators of their deprivation to the same pain they have been consigned. Zuru, a town in the northern part of Nigeria is of consequence not for its size but for its large share of the number of serving and retired colonels and generals of the Nigerian army. In 2002, the power supply from NEPA nose-dived for the worse. The retired generals and their privileged civilian folks in the town simply turned to their generators. With the unbearable persistent blackout and the indifference of their privileged folks who could make a difference unacceptable, the youth of Zuru mobilized against them, asserting, "no NEPA, no generator." This forced the elite to influence NEPA to restore a fairly stable supply of electricity.[61] The usefulness of targeted action towards the elites indicated by the Zuru youth action recommends itself to those seeking to influence political leadership for responsive government.

Some in society who are fellow victims of an inefficient service delivery system are led by their desperation to meet their desire for personal advancement to seek a private solution in the acquisition of private amenities rather than join their fellow deprived folks to protest poor public service delivery. In the process, many Nigerians are caught in the web of systemic inefficiency because of their very limited material resources. This is because an inefficient public service delivery system contains numerous deflationary outlets for those

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with little means. Their self-efforts soon prove futile and unsustainable. Just when such ones think that they have found a private solution to an inefficient public utility, the system deflates it with inefficiency in the provision of requisite service. From experience, a Nigerian of little means living in rented accommodation may be forced to acquire a generator as a solution to epileptic public power supply. But before long, this proves to be a non-solution to the lack of public power supply because desperate bouts of scarcity have befallen the supply of fuel by the inefficient production and distribution system for many reasons: Refineries have broken down again; tanker drivers are on strike; fuel dealers are hoarding fuel to make more profit in anticipation of an increase in the pump price; there is a great shortfall in the quantity of fuel imported, etc.[62]

Those with great means who live in their own houses are able to respond to some of these causes of fuel shortage while those with little means can be crippled by any of them. The latter may not be able to sustain the use of their generators because the accommodation that is affordable to them is so crammed that stockpiling fuel for running them is impossible. Another constraint as noted earlier derives from limited material resources, which can be caused by delays in the payment of wages. Thus, the sudden eruption of fuel shortage heightens the desperation to meet obligations for personal advancement of a Nigerian of little means who is then forced to begin the search for a private solution, continuing the cycle of the never-ending search for a private solution in Nigeria. This foisted quest for a private solution for Nigerians is a big strain on the disposition to collective action against the rulers who have perpetrated poor public service delivery.[63] Even if successful, the ethnic or religious solidaristic competition to which the absence of public infrastructure drives the individual[64] cannot meet the individual's need for infrastructure because of the pursuit of the private solution it had initially set in motion. It is important to note that the private solution to public infrastructure deficiency takes strictly individual and not ethnic or religious solidaristic form.

System-level constraint on collective action derives from legally permissible action as well as minimal infrastructure as earlier on noted. For example, the disservice or inefficiency of NEPA or PHCN is legalized by the law that established it. This law gives it immunity against litigation for damage to personal property, poor service delivery, or non-service. It can punish and yet does not owe the consumer stewardship. Section 27, subsection 1 of Decree No. 24 of 1972 that established it provides that

> The Authority *shall not* by virtue of making any inspection or test of a consumer's wires, fittings, appliances and apparatus in accordance with this Decree or any regulations made under the Electricity Act, whether during the progress of the work of installation at the consumer's premises or after completion, be *deemed responsible for the efficiency or safety* of the consumer's wires, fittings, appliances and apparatus so inspected or tested, or for the proper execution of the work of installation, or for any damage or loss arising out of the use or misuse of such consumer's wires, fittings, appliances and apparatus by the consumer or any other person other than an employee of the authority [emphasis added].[65]

The use of the public utility for ethnic patronage mostly for the benefit of more powerful ethno-geographic regions is also an obstacle to cross-ethnic collective action that is called for with regard to the provision of public infrastructure. NEPA's managers before 1999 were reported by *Tempo*, Lagos (vol. 14, no. 2000) to have been doling out its fortunes to friends and discriminating ethnically in the distribution of electricity. The tariff was structured to

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tax southern industries as the case of the cement industry shows. Those in the north were taxed as follows: Benue Cement Company (BCC) was taxed N5 million for 15 mw, Sokoto Cement, N5 million for 10 mw, Ashaka Cement N6 million for 10 mw. Those down south paid more: Calabar Cement N8 million for 10 mw, Okpella Cement N11 million for 10 mw, Sagamu Cement N48 million for 10 mw, and Ewekoro Cement N50 million for 10 mw. In the distribution of electricity for domestic consumption was to be found the same ethnic favoritism. Gombe, a small state with a population far less than that of one of the southwestern states was allocated 43 mw while all the mostly southwestern and Yoruba-speaking states of Oyo, Ogun, Osun, Ekiti, and Kwara states were together allocated 24 mw. In addition, NEPA's "Czars had a card of the exempted load of 733 megawatts, which they played with utmost ethnic cynicism." As the report makes known, "next, perhaps to oil, but no less crucial, NEPA has been one of the turfs the frenzied battle for control of the Nigerian state has been fought with a huge army of the unemployed, manufacturers and households as its prisoners of war."[66]

VII. Conclusion

The resident social scientist is burdened by the methodological problem of how to comprehend the anomic Nigerian situation of which they are a daily victim. In many respects, the government watches simple problems grow into a conundrum for its people. It is baffling that the inconveniences of a disordered PS compounded by individual and group recklessness have been borne as normal part of living in Nigeria. Could this be attributed to a culture of permissiveness of neglect by the state (government), the custodian of PS? If the people can be blamed for preferring self-help with its glaring ineffectiveness to collective solution through public action, the evidence shows that government has primary responsibility for the situation of PS, its space as contrasted by an ordered and in fact, beautiful PPS, POS, PIS where its occupants, political elites, receive their dignitaries to wine and dine.

The government's inefficiency and decisions that are detrimental to citizens' welfare have not received the strong objection they deserve. Nigerians just groan perhaps helplessly while those who can turn to private solutions to the government's irresponsibility hastily do so.[67] White-collar employee-dominated civil society does not recognize its long-term social and economic interests. It has been more preoccupied with immediate pecuniary gains for tiny populations rather than demand provision of public goods for the benefit of all and sundry. As a result, the initial spontaneous response of self-help for self-preservation takes hold and dilutes civil society's collective action. Even in its preoccupation, it is shortsighted because its focus on increases in wages and salaries brings only momentary relief. The government's irresponsibility is expressed only in narratives of deprivation while its fellow victims in the civil society trade abuses for personal escapist measures such as dodging a pothole in the opposite way while driving and shunting a petrol queue. All this bespeaks the limitation of civil society as an agent of change.

This article has demonstrated the interplay between physical space and politics and how the conditions of certain types of space reflect the political consciousness of the elites and the masses. From its exposition, development and underdevelopment discourses are not complete without the examination of the philosophy of space in politics, the arena of

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decision-making of any political community, particularly the state, which monopolizes comprehensive authority. Without a good idea of space, there will be no political software, specifically, policies that promote good governance. This is because the idea of space, which embodies space governance, defines government policies and the constraints on civil society action in altering the face of the PS without a philosophy. Physical space deserves attention to unravel the idea of it and how it affects the politics and development of other societies. Future researchers can address the limitation of this study, that is, its inability to do a detailed empirical analysis of more physical spaces outside Nigeria with comparisons of physical spaces through a combination of qualitative and quantitative methodological approaches with which they can show that physical space reflects the political thought/leadership and life in geopolitical spaces and vice versa.

Notes

1. See Sandra T. Barnes, *Patrons and Power: Creating a Political Community in Metropolitan Lagos* (Manchester: Manchester University Press,1986); Richard A. Joseph, *Democracy and Prebendal Politics in Nigeria* (Ibadan: Spectrum Books Ltd., 1991), https://doi.org/10.1017/S0022278X0005521X; Peter Lewis, "From Prebendalism to Predation: The Political Economy of Decline in Peter Nigeria," *The Journal of Modern African Studies*, 34(1) (1996), pp. 79–103; and Robert H. Jackson, and Carl G. Rosberg, *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (Berkeley: University of California Press, 1982).

2. Christopher J. Kinnan et al., *Research Report—Failed State 2030: Nigeria—A Case Study* (Air University Press, 2011).

3. Alex Boraine, *What's Gone Wrong? South Africa on the Brink of Failed Statehood* (NYU Press, 2014).

4. See, for example, S. N. Sangmpam, "Neither Soft Nor Dead: The African State Is Alive and Well," *African Studies Review,* 36 (1993), pp. 73–94, https://doi.org/10.2307/524734.

5. Robert Fatton. Jr., "Africa in the Age of Democratization: The Civic Limitations of Civil Society," *African Studies Review*, 38(2) (1995), pp. 67–99, https://doi.org/10.2307/525318.

6. Elinor Ostrom, "A Behavioral Approach to the Rational Choice Theory of Collective Action: Presidential Address, American Political Science Association," *The American Political Science Review*, 92(1) (1998), pp. 1–22, https://doi.org/10.2307/2585925.

7. Leslie Lipson, *The Great Issues of Politics: An Introduction to Political Science*, *Ninth Edition* (Englewood Cliffs, New Jersey: Prentice Hall, 1993).

8. Jean-Francois Bayart, Stephen Ellis & Beatrice Hibou, *The Criminalization of the State in Africa* (Oxford: James Curey and Bloomington: Indiana University Press, 1999).

9. Patrick Chabal, and Jean-Pascal Daloz, *Africa Works: Disorder as Political Instrument* (Oxford: James Currey and Bloomington: Indiana University Press, 1999).

10. Michael A. Nwachukwu, "Environmental Sanitation and Compliance: Best Management Practices for Nigeria," Excerpt from the Proceedings of the International Network for Environmental Compliance and Enforcement's (INECE) Eighth International Conference, Linking Concepts to Actions: Successful Strategies for Environmental Compliance and Enforcement, held April 5–11, 2008, in Cape Town, South Africa.

11. John Manton, '"Environmental Akalism' and the War on Filth: The Personification of Sanitation in Urban Nigeria," *Africa*, 83(4) (2013), p. 608, https://doi.org/10.1017/S0001972013000466.

12. *Ibid.*

13. Yekeen A. Sanusi, "Water, Sanitation and Human Development in Urban Fringe Settlements in Nigeria," *Theoretical and Empirical Researches in Urban Management*, 5(8) (17) (November 2010), pp. 14–29.

14. Foluke Ogunleye, "Environmental Sustainability in Nigeria: The 'Awareness' Imperative," *African Issues*, 31/32, 31 (1/2), 32(1/2) (2003/2004), pp. 41–52, https://doi.org/10.1017/S1548450500006600.

15. There is yet another type of physical space, which is here labelled personal official space (POS), This space comprises private homes and premises as well as state houses and official residences of political leaders. This space compares favorably with private-public space.

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16. G. O. Olaore, *Values of Land and Rentage of Shelter in Nigeria's Urban Areas: A Case Study of Kaduna*, NISER Monograph Series no. 19 (Ibadan: NISER,1991).

17. Egwaikhide, Festus O., V. Adefemi Isumonah and Olumide Ayodele, *Federal Presence in Nigeria: The Sung and Unsung Basis for Ethnic Grievance*, Dakar: CODESRIA (2009).

18. Francesco Patrizi and Benjamin Brickman, "On Physical Space," *Journal of the History of Ideas,* 4(2) (1943), pp. 224–245, https://doi.org/10.2307/2707326.

19. Halford Mackinder, *Democratic Ideals and Reality*, New York: W.W. Norton & Company (1962), p. xviii.

20. L. R. Vagale, "A Critical Appraisal of New Towns in Developing Countries: Policy Framework for Nigeria," Synopsis of a lecture delivered on May 2, 1977, as guest speaker at the inauguration of the "Planners Week" organized by the Nigerian Association of Town Planning Students, Polytechnic Branch, Ibadan (1977), p. 1.

21. The link between sanitation and individual/public health is captured in detail by World Bank (2018), "Understanding Poverty: Sanitation," www.worldbank.org/en/topic/sanitation/, accessed on 20 August 2021.

22. *Awake!* (October 2010), "The Most Feared Disease of the 19th Century," pp. 20–22.

23. Arnold S. Feldman and Charles Tilly, "The Interaction of Social and Physical Space," in *American Sociological Review*, 25(6) (1960) p. 877, https://doi.org/10.2307/2089984.

24. Jens Chr. Tonboe, "On the Political Importance of Space: The Socio-spatial Relations of Trade Unions, Gender and the Decentralized Danish Welfare State," *Acta Sociological* (29)1 (1986), p. 28, https://doi.org/10.1177/000169938602900102.

25. Henry E. Hale, "How Nationalism and Machine Politics Mix in Russia," in Pål Kolstø, Helge Blakkisrud (eds.), *The New Russian Nationalism: Imperialism, Ethnicity and Authoritarianism*, 2000–2015 (2016), pp. 8–29.

26. Herbert H. Werlin, "Corruption in a Third World Country: Why Nigerians Cannot Handle Garbage," *World Affairs*, 168(2) (2005), p. 79, https://doi.org/10.3200/WAFS.168.2.79-86.

27. *Ibid.*, p. 80.

28. *Ibid.*, p. 80.

29. *Ibid.*, p. 81.

30. "Despite High Budget Deficit, Buhari Proposes N5. 23bn to Renovate Villa," *Daily Trust, Lagos*, 10 October 2021, https://dailytrust. com/despite-high-budget-deficit-buhari-proposes-n5-23bn-to-renovate-villa, accessed November 1, 2022

31. Kimuyu, Hillary, "Treasury to Spend Sh86 Million on State House Facelift," *Nairobi News*, 12 May 2021, https://nairobinews. nation. africa/treasury-to-spend-sh86-million-on-state-house-facelift/, accessed November 1, 2022

32. Elgot, Jessica, "Jacob Zuma Breached Constitution Over Home Upgrades, South African Court Rules," *The Guardian*, 21 March 2016, https://www. theguardian. com/world/2016/mar/31/jacob-zuma-ordered-repay-upgrades-nkandla-home-south-african-state-funds, accessed November 1, 2022.

33. Nigerian National Population Commission, Lagos.

34. *The Guardian*, Lagos, 2–10–01, p. 57.

35. See *The Punch*, Lagos, 8 September 1988, p. 1; *The Guardian*, Lagos, 19 December 1989, p. 3; *The Guardian*, Lagos, 20 January 1992, p. 3.

36. See details in *Business Times*, Lagos, 25 January 1988, p. 7; *The Nigerian Tribune*, Ibadan, 9 May 2001, p. 8.

37. *The Guardian*, Lagos, 4 July 2001, p. 57.

38. See https://www.lindaikejisblog. com/2015/11/nigerian-roads-are-dead-buhari.html is reference for President Muhammadu Buhari's comment on roads.

39. Robert Stock, "Environmental Sanitation in Nigeria: Colonial and Contemporary," *Review of African Political Economy*, 42, pp. 19–31.

40. Herbert H. Werlin, "Corruption in a Third World Country," quoted on p. 79, https://doi.org/10.1080/03056248808703772.

41. John Manton, '"Environmental Akalism.'"

42. Personal observation.

43. *Ibid.*

44. Jingles of Radio Nigeria and Nigeria Television Authority—Federal Government of Nigeria's radio and television networks.

45. *The Guardian*, Lagos, 22–03–2004, p. 1.

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46. Recurring reports of Nigeria's print and electronic media.

47. Russel J. Dalton, Martin P. Wattenberg, "Parties Without Partisans: Political Change in Advanced Industrial Democracies," *International Organization*, 47(4) (1993), p. 193.

48. *African Concord*, Lagos, 8 September 1997, p. 16.

49. *The Guardian*, Lagos, 9 October 2001.

50. Jean-Francois Bayart, Stephen Ellis & Beatrice Hibou, *The Criminalization*; and Patrick Chabal, and Jean-Pascal Daloz, *Africa Works*.

51. Layi Egunjobi, *Our Gasping Cities*, An Inaugural Lecture delivered at the University of Ibadan on Thursday, 21 October 1999 (Ibadan: Faculty of the Social Sciences), p. 3.

52. Paul Burstein and Sarah Sausner, "The Incidence and Impact of Policy-Oriented Collective Action: Competing Views," *Sociological Forum*, 20(3) (2005), pp. 403–409, https://doi.org/10.1007/s11206-005-6595-4.

53. Darren Kew, *Civil Society, Conflict Resolution, and Democracy in Nigeria*, Syracuse University Press, 2016.

54. "Nigerian Army 'Shot and Killed #EndSars Protesters': Report," CNN, November 15, 2021, https://www.bbc.com/news/world-africa-59300011, accessed November 1, 2022. Sunday, Orji, & Busari, Stephanie, "10 People Have Died in Nigeria's Ongoing Protests Over Police Brutality, Amnesty International Says," October 13, 2020, www.cnn.com/2020/10/13/africa/nigeria-police-sars-victims-intl/index.html, accessed November 1, 2022. Lindokuhle Nkosi, Zaza Hlalethwa, "#EndSARS Protestors killEd in Nigeria," *News24*, October 21, 2020, www.news24.com/news24/africa/military-opens-fire-kills-endsars-protestors-in-nigeria-20201021, accessed November 1, 2022.

55. Personal observation.

56. Personal observation.

57. Personal communication, 21 May 2002, Lagos.

58. Karl Marx, *The Eighteenth Brumaire of Louis Bonarparte with Explanatory Notes* (New York: International Publisher, 1852).

59. Ayodeji Olukoju, "'Never Expect Power Always': Electricity Consumers' Response to Monopoly, Corruption and Inefficient Services in Nigeria," *African Affairs*, 103(410) (2004), pp. 51–71, https://doi.org/10.1093/afraf/adh004.

60. Abayomi Feirreira, "Strategies for Mobilizing the Socially Disadvantaged," in Toye Olorode et al., eds. *Nigeria*: *Non-Governmental Organizations (NGOs) and Democracy* (Ikeja, Lagos: Friedrich Ebert Foundation) (1997), pp. 94–95.

61. Interview with Kwale Danjibo Natheniel, Ibadan, 20 July 2003.

62. V. Adefemi Isumonah, "The Forgotten 'Person' in Amoralistic Politics of African Political Elite," *African Notes*, (1 & 2) (2007), pp. 1–12.

63. *Ibid*.

64. The state's failure to provide basic services is the basis of its label as "irrelevant" state. Julius O. Ihonvbere, "The 'Irrelevant' State, Ethnicity and the Quest for Nationhood in Africa," in *Ethnic and Racial Studies*, 17(1) (1994), pp. 42–60, https://doi.org/10.1080/01419870.1994.9993812.

65. Decree No. 24 of 1972 of the Federal Military Government of Nigeria.

66. *Tempo*, Lagos, Vol. 14, No. 2000, p. 4.

67. Festus O. Egwaikhide, "Nigeria Paralyzed: Socio-Political Life Under General Sani Abacha," *Africa Development*, XXVI(3–4) (2001), pp. 239–263.

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UK House of Lords Inquiry: Is the UN Convention on the Law of the Sea Still Fit for Purpose?

Mariam Mgeladze

Structured Abstract

Article classification: Overview Essay

Purpose—The article discusses the UK House of Lords inquiry with respect to the effectiveness of the UN Convention on the Law of the Sea, 1982 (UNCLOS).

Design, Methodology, Approach—Given the due indication of the importance of the UNCLOS, the paper presents the current emerging maritime challenges that maritime global society should overcome. All discussed threats by the invited experts within the UK House of Lords Select Committee on International Relations and Defense are indicated based on the step-by-step approach in light of the UN Convention on the Law of the Sea, 1982. It questions the possibilities and advantages of the amendment of UNCLOS and comes to a conclusion. As for methodology, a comprehensive and complex understanding of the subject matter's various databases were explored and analyzed.

Findings—Due to various changes and developments, it is logical and natural to develop a relevant regulatory framework since the needs of the global society are changing at the time. Therefore, the question of the effectiveness and possible amendment of the UNCLOS convention has legitimate grounds to be intensively discussed. However, the question and actions related to the possible amendment or denunciation of the UNCLOS, or the development of new legal instruments to govern the new maritime threats will require global and common efforts. Perhaps the UK's committee is the right forum to address different emerging maritime treaties, however, what consequences will come of such inquiries remains yet unclear.

Practical Implications—from the practical implication perspective, the article provides the readers with the various arguments and positions presented by the invited experts

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to the UK House of Lords Select Committee on International Relations and Defense. Nevertheless, it indicates the complications and advantages of possible amendment of the UNCLOS for and by different actors.

Originality, Value—In line with the presented arguments by the invited experts to evaluate and assess the effectiveness of the UNCLOS, the position in respect of the amendment of the "Constitution of the Sea" as an effective tool to achieve and regulate the current emerging maritime threats is provided by the article given due regard to Brexit as the pre-existing factor of the inquiry.

Keywords: amendment, fits for purposes, treats and challenges, UNCLOS

I. Introduction

On June 23, 2016, the United Kingdom (UK) left the European Union. The 2016 referendum over Brexit changed the entire policy of the UK, including shipping and law of the sea matters. However, while Brexit is calculated as a choice by the people, it polarized the values, principles, policies, and priorities of the UK. Moreover, it facilitated a cleavage of its society as well. Within the framework of Brexit, the UK decided to review the effectiveness of the United Nations in terms of the Law of the Sea Convention 1982 (UNCLOS) framework; namely, an inquiry considering the applicability of UNCLOS in the 21st century has been launched by the UK House of Lords Select Committee on International Relations and Defense (Committee).[1] The committee invited academic experts on the law of the sea and ocean global governance to provide relevant oral and 46 pieces of written evidence from academic persons and organizations.[2]

The inquiry examines a wide range of matters, such as human rights protection at sea, human security at sea, concept and challenges of maritime security, autonomous maritime systems, protection and preservation of the maritime environment, provisions of the enforcement of UNCLOS, 1982, and its dispute resolution mechanisms.[3] It is the first attempt by a state to examine whether UNCLOS, 1982, may effectively govern and regulate new and emerging challenges of global maritime society.[4]

The committee heard testimony from Steven Haines, professor of public international law at University of Greenwich and trustee of Human Rights at Sea; Malgosia Fitzmaurice, professor of public international law at Queen Mary, University of London; Sir Malcolm Evans, professor of public international law at the University of Bristol; Dr. Youri Van Logchem, senior lecturer at the Institute of International Shipping and Trade Law at the Hillary Rodham Clinton School of Law at Swansea University; Dr. Richard Caddell, senior lecturer in law at Cardiff Law School; Dr. Sofia Galani, assistant professor in public international law at Panteion University; Professor Natalie Klein, faculty of law at the University of New South Wales, Sydney[5]; Professor Clive Schofield, head of research at WMU-Sasakawa Global Ocean Institute at World Maritime University; Dr. Surabhi Ranganathan, associate professor and co-acting director of the Lauterpacht Centre for International Law at the University of Cambridge; Admiral Sir Philip Jones, former First Sea Lord at Royal Navy[6]; Douglas Guilfoyle, associate professor of law at the University of New South Wales Canberra; Professor Anna Petrig, chair of international law and public law at University of

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Basel, Richard Barnes, Professor of International Law at the University of Lincoln[7]; the Right Hon. Lord Goldsmith of Richmond Park Minister for the Pacific and the International Environment at Foreign, Commonwealth and Development Office and Department for Environment, Food and Rural Affairs; and Andrew Murdoch, legal director at Foreign, Commonwealth and Development Office.[8]

The article emphasizes key areas of oral speeches given by invited witnesses and opens a dialogue for readers to identify the consequences of such an inquiry as a matter of positive law development or as an act that will polarize the UK and challenge its current positions.

II. Origins of UNCLOS

UNCLOS is an international agreement that establishes a legal order for the seas and oceans. It was signed in 1982 and it came into force in 1994.[9] The convention has been ratified by 168 state parties.[10] The convention crystalized all existing customary international law within a more global perspective through the development of new and quite modern rules.[11] It governs all aspects of ocean space, such as delimitation, environmental control, marine scientific research, economic and commercial activities, transfer of technology, and the settlement of disputes relating to ocean matters.[12] More importantly, the convention has created three new institutions, including:

i. The International Tribunal for the Law of the Sea, Hamburg;
ii. The International Seabed Authority, Kingston; and
iii. The Commission on the Limits of the Continental Shelf, United Nations Headquarters, New York.

There are two amendments of UNCLOS—one is the Agreement concerning Part XI of the Convention dated July 1994, and another is the Fish Stocks Agreement, ratified in August 1995.

III. New Emerging Threats for Global Maritime Society

3.1 UNCLOS Still Fit for Purposes?

Within the framework of committee hearings, the main question on whether UNCLOS is still fit for its purposes, Prof. Malgozia expressed that UNCLOS, 1982 has the whole nexus of certain provisions, rules, and regulations bringing into the fold of the convention organizations and treaties, which enables the other institutions and other conventions to participate in the development of the law of the sea.[13] Importantly, all invited experts in their testimonies highlighted that UNCLOS, 1982 is indeed a living treaty, "a Constitution for the Oceans" which crystalized all existing customary international law and created a package deal for ratifying countries. However, there is no doubt that UNCLOS was a product of the necessity and concerns of its time and space, therefore the living treaty cannot be considered an ideal system trying to predict and preserve

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all types of challenges existing today.[14] Invited experts considered the amendment of UNCLOS as an anathema and suggested developing the soft law taking into account subsequent practice and agreement.

3.2 Human Rights

Protection of human rights has been one of the most vital questions discussed during hearings. Based on oral evidence heard from experts, UNCLOS, 1982 fails to protect human rights at sea. In this respect, Prof. Sir. Evans and Mr. Andrew Murdoch[15] underlined that UNCLOS, 1982 has extraordinarily little to say about the protection of humans ensuring their rights and security at sea.[16] Experts such as Prof. Klein and Lord Goldsmith stated that Flag States have to ensure that human rights obligations are protected and enforced at sea[17]; in addition, Professor Petrig indicated that proper law enforcement is a very important component in the quest to enforce human rights at sea.[18] Lord Goldsmith underlined that there is a limit to how policeable some of the commitments of UNCLOS, 1982 are on the high seas and there is no complete legal apparatus that enables a state to enforce it. It has been stated by witnesses, that the two concepts such as "Free Sea" and the "exclusive jurisdiction of the Flag State" hinder the effective enforcement, preservation, monitoring, and compliance with human rights at sea. The abuses of human rights on the high seas, migration, and refuges moving by sea, unexplained deaths and missing seafarers, physical abuse of young cadets, sexual harassment incidents onboard commercial and cruise ships, abandoned seafarers in foreign ports, mental distress, and suicides at sea are critical and emerging challenges of current maritime society. In addition, there are also legal, political, and operational challenges that interrupt the effective protection of human rights at sea. Therefore, it was advised by experts, to supplement UNCLOS, 1982 with a new regulation enabling relevant states and/or international organizations to effectively protect human rights in the ocean.

3.3 Maritime Environment. Climate Change and Pollution

Another current and global emerging challenge that had been discussed was climate change and maritime pollution. It has been highlighted by experts that even though there are several International Maritime Organization (IMO) conventions regulating fisheries, marine pollution, exploitation, and exploration of resources, they are not efficient or effective to address new emerging challenges of the global ocean. Experts highlighted that UNCLOS, 1982 does not address either issue such as the conservation of biodiversity, CO2 sequestration, the use of marine genetic resources, consequences of global warming, sea-level rise, utilization, exploration, and exploitation of Arctic and energy sources.[19]

In his speech, Professor Clive Schofield underlined a few important challenges regarding ocean warming, ocean chemistry changes, acidification, deoxygenation, impacts on the circulation system, terms of increasing frequency and intensity of extreme weather events and their effects on the stock of capelin fish, and changes and delays in the migration of the stock and the spawning periods. The Professor emphasized that those events are consequences of climate change on the oceans, which is not related directly to UNCLOS,

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1982. Following his argumentations, UNCLOS, 1982 is climate bling and climate silent and not adequate to the climate changes impacts.[20] Professor Schofield and Dr. Surabhi Ranganathan consider that the International Tribunal for the Law of the Sea (ITLOS) will be an obvious forum to hear climate change disputes.[21] Dr. Surabhi Ranganathan addressed new issues regarding marine spatial planning, which is a new instrument/tool for competing interests in ocean space.[22] Professor also talked about the Arctic and the Ilulissat Declaration of 2008[23] and highlighted that the Arctic countries, such as Canada, Denmark on behalf of Greenland, Norway, the Russian Federation, and the United States of America, recognized the importance of UNCLOS as governing the legal regime of the Arctic Ocean.[24]

The effects of climate change on fisheries had been addressed by Dr. Surabhi Ranganathan as well and he stated that the climate change effects on fisheries matter shall not be governed by UNCLOS, 1982, but contrary to the provisions of the fish stocks agreement and the regional treaties that exist for the conservation, use, distribution of fishery resources, conditions for fishing activities, and enforcement of coastal and economic zone regulations. In his speech, Dr. Surabhi also addressed major pollutants of the ocean such as plastics, and the melting of ice in the Arctic which opens new perspectives for the extraction of oil and gas, fisheries, and navigational resource.[25] He spoke about the London Protocol of the International Maritime Organization[26] dealing with geoengineering, deep-sea mining, and ecosystem-based management of the ocean and considers the provisions and language of UNCLOS, 1982 in respect of the marine environment as weak.[27] He also underlined that the UK may also play important role in the promotion of the protection of Pacific blue economies by supporting the elimination of distant water fishing subsidiaries of industries in the global north and supporting market measures that protect the blue economies of Pacific States.[28]

Professor Petrig and Professor Douglas Guilfoyle considered climate change and sea-level rise as a current maritime threat and underlined that ITLOS may provide its advisory opinion regarding the consequences of sea-level rise on baselines and the outer limits of maritime areas, islands, and rocks, and the rights and obligations of states regarding the protection of oceans as part of the climate system.[29] Lord Goldsmith also formulated the position regarding climate change, sea-level rise, and support of the climate change refugees[30] and added that those matters will be interpreted based on rules, state practice, declarations, or other instruments which might be needed to give certainty together with UNCLOS, 1982.[31] Professor Douglas Guilfoyle addressed the issues of protection and preservation of the marine environment and stated that based on article 212, States may adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flags. Therefore, in case of CO2, or indirectly excess heat energy (which would be relatively straightforward to class as pollution of the ocean under Article 1 of UNCLOS), states will be urged to clarify their obligations, develop laws and regulations to protect and preserve the marine environment and address the matters of climate change.[32]

In respect of environmental issues, it has been stated by witnesses[33] that gerning pollution of the ocean and the Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ), the UK may play important role in bringing together different delegations and

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different interest groups to achieve consensus. Lord Goldsmith also covered the matters of Arctic and Antarctic and stated that the UK tries to bring China and Russia with the protection of those areas and added that the UK wants maximum protection.[34]

3.4 State Jurisdiction/Dispute Settlement

All maritime threats, regardless of how complex, or triangled it might not be, require the state to define, adopt, regulate, ratify, implement relevant legal instruments and develop appropriate capacity-building mechanisms. In committee hearings, Commander Caroline Tuckett underlined that UNCLOS, 1982 is an example of international consensus on how to use the oceans lawfully and gives coastal states certain rights and responsibilities in controlling aspects of the ocean,[35] and indicated that UNCLOS, 1982 lays out the principles of state responsibility and shall not be flexible.[36] However, he underlined that how reliant the willingness of states is to follow the provisions of UNCLOS, 1982 is another matter. Commander stated that from the Royal Navy perspective, UNCLOS, 1982 is fit for purpose because it outlines state responsibilities and demonstrates where states have to provide accountability for their actions. On the other hand, Prof. Haines was critical about the concept of free seas and spoke about the vacuum of Flag State jurisdiction and the abuse of the flag's jurisdiction by the open registries.[37]

3.5 Maritime Security

Protection of maritime security had been considered an important maritime challenge. As had been underlined by Dr. Galani, there is not a fixed definition of maritime security as it is challenging to agree on what maritime security means to different actors and different regions. It has also been stated that UNCLOS does not refer to maritime security and does not have a definition of maritime security either, and it cannot deal with all the existing threats to maritime security of the XXI century.[38] However, Andrew Murdoch stated more details of maritime security are expressly provided by the other instruments adopted by the IMO.[39]

Through committee hearings, Admiral Sir Philip Jones discussed challenges of interpretation of provisions of UNCLOS, 1982 in the waters of the South China Sea and the East China Sea.[40] He spoke about maritime security issues in areas of the Northern Gulf, with the waters of Iran, Iraq, Kuwait, and Saudi Arabia, and emphasized the need to police who is in those waters at any time.[41] The Admiral also admitted the interpretation of UNCLOS, 1982 rules in the enforcement of the rules-based international system at sea in the Arctic, in China, and Africa. He underlined that navies play important role in maritime security and the Government shall invest in it. He came up with the recommendation to use and implement the drip-drip of partly military action, capacity-building, and political engagement in challenging areas.[42] Lord Goldsmith spoke about the South China Sea; the problem with the nine-dash line; the eastern Mediterranean area, where Turkey is being particularly aggressive around the EEZs of Cyprus and Greece; territorial seas and innocent passage right of Ukraine hindered by the Russian Federation; the Taiwan Strait; the Gulf of Guinea and others. Lord Goldsmith mentioned that in this area, the UK tries to promote and protect the rights of freedom of navigation and its international compliance.[43]

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Professor Richard Barnes suggested that the UK, together with other states, shall develop the best policy outcomes and be more engaged in high-level policy initiatives through diplomatic activities with the framework of the IMO. Professor Barnes stated that due to Brexit, the UK is now an independent state rather than part of the EU. This raises both opportunities and challenges, as the UK can pursue its policy agenda, however, it lacks the same weight that 28 member states and a powerful market have in their ability to influence other states. With respect to Russia and China, Professor Barnes stated that, based on legal commitments under international law, the UK shall have to try to cooperate with good faith, even though Russia and China are outliers in all aspects of the law of the sea, in the sense of annexation of the Crimean Peninsula and restrictions on navigation in waters around it by Russia and the exorbitant claims to jurisdiction by China in the South China Sea.

The matters of maritime terrorism, cybersecurity, and illegal, unreported, and unregulated fishing, have also been discussed. It had been indicated by witnesses that UNCLOS, 1982 as an overarching framework was never designed to address above mentioned matters.[44]

3.6 New Technologies

Within the committee hearings, new issues such as technological development were discussed as well. The main focus has been shifted to autonomous capability at sea. Commander Caroline Tuckett underlined that there are no references in UNCLOS, 1982 for regulating uncrewed vessels.[45] However, the principles of UNCLOS, 1982, which provides freedom of navigation, apply to such vessels and technology.[46] He underlined that IMO reviews the conventions such as collision regulations,[47] SOLAS,[48] and the search and rescue convention.[49] The problem with the autonomous capabilities is that nobody knows who owns such vessels, and more importantly, they might be registered to a flag state registry in one country but remotely operated from another state, therefore the matters of jurisdiction are a challenge.[50] In this respect, Professor Anna Petrig, mentioned the challenges of unmanned ships and autonomous ships, which navigate without a crew on board, human-machine or machine-machine interaction, and maritime crimes, and urged the committee to develop a series of rules or procedures addressing matters of connection with a ship without crew onboard, ships nationality, certificates, and law enforcement strategies.[51] Professor Anna stated that UNCLOS, 1982 has an almost symbiotic relationship between the onboard crew and the ship as many provisions refer to the ship engaging in prohibited activity rather than the person. Professor added to her argumentation that UNCLOS, 1982 does not contain rules in respect of offense when a crime is committed through the use of a remote-controlled or pre-programmed craft.[52] On the other, hand, it had been underlined the positive sides of technological innovation in areas of extracting useful minerals from seawater and it could support improved compliance with existing obligations provided by the convention on the preservation and protection of the marine environment, however, it comes with certain risks,[53] for example, Mr. Andrew Murdoch considered geoengineering and carbon dioxide storage through the use of iron filings, controversial and risky.[54]

Within the framework of committee hearings, it had been underlined the role of IMO in developing generally accepted international rules, laws, and standards and supports

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capacity building, collaboration, and cooperation in the various field of shipping, pollution, safety, and security at sea, environmental issues, including ship noise, and ballast water emissions.

IV. Possibility of Amending the Convention

It's important to mention that rapid technological development enabled our global maritime society to create unmanned, autonomous ships, drones, robots, artificial intelligence, blockchain, big data, etc. However, technological innovation requires the global maritime society to adopt innovative legal solutions *mutatis mutandis*, as it touches the interests of maritime security, cybersecurity threats, and maritime crimes. The current edition of UNCLOS is lacking a means of dealing with those threats. Having stated that, is it possible to require the amendment of UNCLOS, 1982 and if yes, what are the due procedures to amend it?

UNCLOS, 1982 is an international convention that can be amended by the member states. By Article 312 of the UNCLOS, 1982, an amendment may be done after the expiry of a period of 10 years from the date of entry into force of the convention. However, state parties shall address this by written communication to the Secretary-General of the United Nations and shall propose specific amendments to the convention. The written communication shall be circulated to all member states of the convention by the Secretary-General of the United Nations. If within 12 months from the date of the circulation no less than one-half of the states parties reply favorably to the request, then the Secretary-General shall convene the conference.

The decision regarding the amendment of the convention shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea unless otherwise will be decided by the conference. The above-mentioned article encourages member states to make every effort to reach an agreement on any amendments by consensus.[55]

Article 315 of UNCLOS, 1982 sets out that the amendments to the convention shall be open for signature by the member states for 12 months from the date of its adoption unless otherwise provided for in the amendment.

As a final step, Amendments will enter into force for the member states by ratifying or acceding to them following the deposit of instruments of ratification or accession by two-thirds of the state's parties, or by 60 state parties.[56] However, the amendment may also require a larger number of ratifications or accessions for its entry into force.[57]

Based on section 2 of Article 40 of the VCLT, 1969 any proposals to amend the multilateral treaties have to be notified to all the contracting states and each one has to have the right to participate in the negotiation, decision-making process, in the conclusion of any agreement for the amending of the treaty.[58] Those are due procedures defined by the convention which have to be protected while amending multilateral treaties like UNCLOS, 1982. However, are the above-mentioned challenges equally common and essential for all contracting states of UNCLOS, 1982 to employ those provisions? Are there any possibilities that the state Party will naturally avoid any conference regarding the amendment of the convention? More importantly, will the state Party object to the proposed amendments or adopt them without any objection? Those are a number of the questions that have to be

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taken into account while amending the convention as it will play an important role to finalize the negotiation process successfully.[59]

V. Hurdles to Amendment

Multilateral treaties with a quasi-legislative function are difficult to be renegotiated. Additionally, amendments and entry through force are time-consuming, while the current challenges are emerging and require an effective mechanism to be governed, regulated, and addressed. Is it a solution to consider UNCLOS, 1982's all-purposes legislation and amend the convention? Will this approach create legal certainty, stability, and equity? UNCLOS, 1982 has been amended before, and contracting states already have some experience on this matter. Despite the fact that current maritime threats are complex, globally significant, and require an immediate, collective, and innovative response to all states to address them with due diligence and true statesmanship, it is uncertain whether the position of the UK, based on the results of the discussion to propose a specific amendment to the convention or a supplementary regulation, will be shared by other parties of UNCLOS. One thing remains clear, there are a lot of maritime matters. Therefore, member states of the convention should know what their expectations are and how they can act to achieve a packaged deal without any ambiguities and vagueness in its provisions. This helps avoid unconducive legal certainty and meet the needs of effective ocean governance, by balancing global interest, sovereign power, and jurisdiction of state.[60]

It is clear that the UK cannot address all maritime threats as an independent actor. The Sea is common now, and in this respect, the engagement of different states is important, even more crucial. Historically, the UK was considered a naval power country and it is obvious that the UK wants to secure its position in respect of maritime issues over its maritime zones through leading international maritime organizations or institutions. However, how the UK, not a party of UNCLOS, 1982, considers promoting, straightening, or engaging in different dimensions of the maritime activities, will be interesting to investigate. It remains doubtful that the denunciation of UNCLOS, 1982 by the UK, based on rules and provisions of international law, will be an effective mechanism for the UK to reach its goal and secure its potential as a global maritime actor. It's also unclear if the UK has an appetite to amend UNCLOS, 1982. It is obvious that any amendment of UNCLOS or statement to amend UNCLOS, requires relevant support from the member states as well. Perhaps the global conference held in Glasgow in 2021 was not enough for the UK to consider that sound amount of state support in its decision to amend or share the same spirit to amend the convention. Therefore, the logical chain of the process makes clear that either the UK will remain a part of UNCLOS, 1982 and will address relevant international organizations forum to define the legal regulatory framework, or the UK will denunciate UNCLOS, 1982 as the convention unfit for the 21st century, creating another model of a single state in Europe, similar to the U.S.

Additionally, the UK knows how UNCLOS, 1982 operates and works to regulate issues regarding the law of the sea and ocean, maritime zones, boundaries, and resource matters. In this respect, the UK benefited from UNCLOS, 1982. It undeniable that certain provisions

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of UNCLOS, 1982 are drafted on a vague basis and are uncertain from some perspectives. Additionally, the convention does not address new and emerging challenges, however, it is considered a constitution of the sea, a framework legal basic which opens the possibility to build upon new rules and regulations to define the best standards for regulating new and emerging threats. As a basic document, the constitution shall provide basic principles, so-called starting points, and a general concept of threats, then it is up to legal drafters to regulate the specific problem with more specific provisions.

VI. Conclusion

It is obvious that the political, economic, social, technological, security, normative, and institutional changes and developments will require a relevant framework of regulation. Likely leading lead to new rules through the amendment, reinterpretation, or replacement of the basic legal instrument. Currently, we are witnessing one of the more important discussions, perhaps a historical moment that will change "what everyone knows is true" with respect to UNCLOS, 1982. However, is it possible for global society to predict future maritime needs, threats, and challenges while addressing them all? The author thinks it is not possible because needs are changing over time and in ways that will be impossible to predict, even if it's possible to effect. UNCLOS, 1982 was negotiated, signed, and ratified by countries with different perspectives, backgrounds, capabilities, and needs. It governed existing challenges of the global community at a time. This is why it is always referred to as a "package deal." One thing is clear, the outcomes of the inquiry will lead to a lengthy negotiation process between state parties of the convention, and we hope that the idea and spirit of the ongoing discussion will survive.

It is a non-changeable fact that UNCLOS, 1982 is a document of its time, and it is valid and fair to challenge the document or start to open a dialogue with member states to amend the convention for regulations of new emerging threats. However, is UNCLOS, 1982 the right document to amend? Previously, every emerging issue regarding maritime security, safety, or environment has been solved within the framework of IMO through its international legal instruments. Therefore, is it rational, pragmatic, or practical for the UK to come to the decision to denunciate the convention? UNCLOS, 1982 does not allow States to make a reservation on its provisions, nor does it open perspectives of its applicability based on a case-by-case principle.

Additionally, Brexit shall be taken into account as a pre-existing factor of the inquiry. It isolated the UK and created a single state in the middle of Europe, similar to the U.S. However, even if the UK decides to denounce the convention within the international law framework, the country will still be bound by customary international law. How effectively can the UK try to govern, regulate, or engage in the law of sea-related matters and deal with new emerging challenges while denouncing UNCLOS, 1982 and sharing the same policy and approach as the U.S.? If based on the results of the inquiry, the UK begins preparing the legal ground to denounce or revoke its participation in UNCLOS, 1982 then it remains doubtful such a decision would set a good example for other states to perform their rights and obligations set in the UNCLOS, 1982 under the due diligence principle; especially having taken into account problematic regions discussed several times by the committee, such

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as the South China Sea, the Mediterranean Sea, the Russian Federation's assertion of passage rights in Ukrainian's Sea of Azov, etc. There is no doubt that the UK has a strong maritime history as a sea power country. More importantly, it has had a strong position in different international organizations and institutions. Perhaps the UK's committee is the right forum to probe and address different, emerging maritime treaties. However, what consequences will come of such inquiries remains unclear.

Notes

1. "UK House of Lords Inquiry: Is the UN Convention on the Law of the Sea Still Fit for Purpose?," accessed November 9, 2021.
2. Written evidence, https://committees.parliament.uk/work/1557/unclos-fit-for-purpose-in-the-21st-century/publications/written-evidence/, accessed October 27, 2022.
3. UNCLOS: Fit for Purpose in the 21st Century? https://committees.parliament.uk/work/1557/unclos-fit-for-purpose-in-the-21st-century/, accessed October 27, 2022.
4. Formal meeting (oral evidence session): UNCLOS: Fit for Purpose in the 21st Century? https://committees.parliament.uk/event/6169, accessed October 27, 2022.
5. Supra note 2.
6. Formal meeting (oral evidence session): UNCLOS: Fit for Purpose in the 21st Century? https://committees.parliament.uk/event/6349/formal-meeting-oral-evidence-session/, accessed October 27, 2022.
7. Formal meeting (oral evidence session): UNCLOS: Fit for Purpose in the 21st Century? https://committees.parliament.uk/event/6421/formal-meeting-oral-evidence-session/, accessed October 27, 2022.
8. Formal meeting (oral evidence session): UNCLOS: Fit for Purpose in the 21st Century? https://committees.parliament.uk/event/6565/formal-meeting-oral-evidence-session/, accessed October 27, 2022.
9. United Nations Convention on the Law of the Sea, https://www.imo.org/en/OurWork/Legal/Pages/UnitedNationsConventionOnTheLawOfTheSea.aspx, accessed October 27, 2022.
10. States Parties, https://www.itlos.org/en/main/the-tribunal/states-parties/, accessed November 9, 2021.
11. D.P. O'Connel, *International Law, vol. 1*, second edition (London: Stevens, 1970), p. 22; Martin Lee, "The Interrelation Between the Law of the Sea Convention and Customary International Law," available at https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1188&context=ilj, p. 413; Cezary Mik, "Custom in the Present International Law of the Sea," *Wroclaw Review of Law*, Administration & Economics 8(2), available at: https://www.researchgate.net/publication/330476236_Custom_in_the_Present_International_Law_of_the_Sea/fulltext/5c41da28458515a4c72f74ae/Custom-in-the-Present-International-Law-of-the-Sea.pdf, p. 134.
12. UNCLOS, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf, accessed October 27, 2022.
13. United Nations Convention on the Law of the Sea, https://www.imo.org/en/OurWork/Legal/Pages/UnitedNationsConventionOnTheLawOfTheSea.aspx, accessed October 27, 2022.
14. Transcripts of the meeting of House of Lords International Relations and Defence Committees and academic experts on maritime law and security, and the maritime economy. Available at: https://committees.parliament.uk/event/6169, accessed October 27, 2022.
15. *Ibid*., p. 11
16. UNCLOS: Fit for Purpose in the 21st Century?, October 20 2021, https://committees.parliament.uk/event/6011/formal-meeting-oral-evidence-session/, accessed October 27, 2022.
17. UNCLOS: Fit for Purpose in the 21st Century? November 3, 2021, https://committees.parliament.uk/event/6169/formal-meeting-oral-evidence-session/, accessed October 27, 2022.
18. International Relations and Defence Committee, oral evidence: UNCLOS: Fit for Purpose in the 21st Century? November 24, 2021, https://committees.parliament.uk/oralevidence/3126/pdf/, p. 17, accessed October 27, 2022.
19. *Ibid*.

동북아역사재단
NORTHEAST ASIAN HISTORY FOUNDATION

20. International Relations and Defence Committee, Uncorrected oral evidence: UNCLOS: Fit for Purpose in the 21st Century? November 17, 2021, https://committees.parliament.UK/oralevidence/3063/pdf/, accessed October 27, 2022.
21. Supra Note 20.
22. *Ibid*.
23. Ilulissat Declaration of 2008, https://arcticportal.org/images/stories/pdf/Ilulissat-declaration.pdf, accessed October 27, 2022.
24. Supra Note 20.
25. Supra Note 20.
26. London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, and London Protocol (LP), available at: https://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Pages/LDC-LC-LP.aspx, accessed October 27, 2022.
27. Supra Note 20, p. 14.
28. Marine Biodiversity of Areas Beyond National Jurisdiction, https://www.iucn.org/our-union/commissions/group/iucn-wcel-ocean-law-specialist-group/biodiversity-areas-beyond-national, accessed October 27, 2022.
29. Supra Note 18, p. 8.
30. *Ibid*., p. 19.
31. International Relations and Defence Committee Uncorrected oral evidence: UNCLOS: Fit for Purpose in the 21st Century?, December 8, 2021, https://committees.parliament.uk/oralevidence/3190/pdf/, p. 2, accessed October 27, 2022.
32. Supra Note 18.
33. *Ibid*.
34. *Ibid*., p. 27.
35. International Relations and Defence Committee Uncorrected oral evidence: UNCLOS: Fit for Purpose in the 21st Century?, November 10, 2021, https://committees.parliament.uk/oralevidence/3001/pdf/, accessed October 27, 2022.
36. *Ibid*., p. 15.
37. *Ibid*.
38. *Ibid*.
39. International Relations and Defence Committee Uncorrected oral evidence: UNCLOS: Fit for Purpose in the 21st Century?, November 10, 2021, https://committees.parliament.uk/oralevidence/3001/pdf/, p. 2, accessed October 27, 2022.
40. Supra Note 20.
41. *Ibid*., p. 9.
42. Supra note 20, p. 12.
43. Supra note 31, p. 26.
44. *Ibid*., p. 17.
45. Vienna Convention on the Law of Treaties, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, accessed October 27, 2022.
46. International Relations and Defence Committee Uncorrected oral evidence: UNCLOS: Fit for Purpose in the 21st Century?, November 10, 2021, https://committees.parliament.uk/oralevidence/3001/pdf/, accessed October 27, 2022.
47. Convention on the International Regulations for Preventing Collisions at Sea, 1972, https://www.imo.org/en/About/Conventions/Pages/COLREG.aspx, accessed October 27, 2022.
48. International Convention for the Safety of Life at Sea (SOLAS Convention), https://www.imo.org/en/KnowledgeCentre/ConferencesMeetings/Pages/SOLAS.aspx, accessed October 27, 2022.
49. International Convention on Maritime Search and Rescue (SAR), https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx, accessed October 27, 2022.
50. International Relations and Defence Committee Uncorrected oral evidence: UNCLOS: Fit for Purpose in the 21st Century?, November 10, 2021, https://committees.parliament.uk/oralevidence/3000/pdf/, p. 5, accessed October 27, 2022.
51. Supra Note 18.
52. Supra Note 18, p. 6.
53. *Ibid*., p. 8
54. International Relations and Defence Committee Uncorrected oral evidence: UNCLOS: Fit for

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Purpose in the 21st Century?, November 10, 2021, https://committees.parliament.uk/oralevidence/3001/pdf/, p. 2, 9

55. UNCLOS, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf, accessed October 27, 2022.

56. Article 316 of UNCLOS.

57. Section 2 of the 316 UNCLOS.

58. The Vienna Convention on the Law of Treaties, 1969, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, accessed October 27, 2022.

59. China, the European Union, or other member states may attempt to amend UNCLOS in order to change the favorable extended continental shelf and deep seabed mining regimes, or give coastal states more control beyond their territorial seas and potentially obstruct the freedoms to navigate and to lay and maintain international cables.

60. Marta Chantal Ribeiro, Fernando Loureiro Bastos, Tore Henriksen, *Global Challenges and the Law of the Sea* (Springer, 2020).

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2022:

- Berger, Stefan, and Hashimoto, Nobuya. (2022). *Borders in East and West: transnational and comparative perspectives*. Berghahn Books.
- Bissonnette, Andréann, and Vallet, Élisabeth. (2022). *Borders and Border Walls In-Security, Symbolism, Vulnerabilities*. Routledge.
- Borg, Simone, Attard, Felicity, and de Fremeaux, Patricia Mallia Vella. (2022). *Research Handbook on Ocean Governance Law*. Elgar Publishing.
- Chan, Edward Sing Yue. (2022). *China's Maritime Security Strategy: The Evolution of a Growing Sea Power*. Routledge.
- de Souza, Moises, Coutaz, Gregory, and Karalekas, Dean. (2022). *Asian Territorial and Maritime Disputes: A Critical Introduction*. Sandman Books.
- Harris, Paul. (2022). *Routledge Handbook of Marine Governance and Global Environmental Change*. Routledge.
- Holst, Rozemarijn J. Roland. (2022). *Change in the Law of the Sea: Context, Mechanisms and Practice.* Brill.
- Joshi, Manoj. (2022). *Understanding the India-China Border: The Enduring Threat of War in High Himalaya*. Hurst.
- Merrills, John, and De Brabandere, Eric. (2022). *Merrills International Dispute Settlement 7th Edition*. Cambridge University Press.
- Østhagen, Andreas. (2022). *Ocean Geopolitics: Marine Resources, Maritime Boundary Disputes and the Law of the Sea*. Elgar Publishing.
- Talmon, Stefan. (2022). *The South China Sea Arbitration: Jurisdiction, Admissibility, Procedure.* Brill.

2021:

- Belov, Martin (Ed.). (2021). *Territorial Politics and Succession: Constitutional and International Law Dimensions.* Palgrave Macmillan.

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- Bryant, Rebecca, and Reeves, Madeleine (Eds.). (2021). *The Everyday Lives of Sovereignty: Political Imagination Beyond the State*. Cornell University Press.
- Buszynski, Leszek & Do, Thanh Hai (Eds.). (2021). *The South China Sea: From a Regional Maritime Dispute to Geo-Strategic Competition*. Routledge.
- Cathcart, Adam, Green, Christopher, and Denney, Steven (eds). (2021). *Decoding the Sino-North Korean Borderlands (Asian Borderlands*). Amsterdam University Press.
- Daxdecker, Ursula, and Prins, Brandon. (2021). *Pirate Lands—Governance and Maritime Piracy*. OUP.
- Frettingham, Edmund, and Hwang, Yih-Jye (Eds.). (2021). *Maritime and Territorial Disputes in the South China Sea: Faces of Power and Law in the Age of China's Rise*. Routledge.
- Jones, Bruce. (2021). *To Rule the Waves: How Control of the World's Oceans Shapes the Fate of the Superpowers*. Scribner.
- Kittichaisaree, Kriangsak. (2021). *The International Tribunal for the Law of the Sea*. OUP.
- van Logchem, Youri. (2021). *The Rights and Obligations of States in Disputed Maritime Areas*. CUP.
- Ma Xuechan. (2021). *The Spratly Islands and International Law Legal Solutions to Coexistence and Cooperation in Disputed Areas*. Brill.
- Marianthi, Pappa. (2021). *Non-State Actors' Rights in Maritime Delimitation: Lessons from Land*. CUP.
- Moore, Cameron. (2021). *Freedom of Navigation and the Law of the Sea: Warships, States and the Use of Force*. Routledge.
- Sergi, Anna et al. (2021). *Ports, Crime and Security: Governing and Policing Seaports in a Changing World*. Bristol University Press.

2020:

- Ackerman, Tobias, and Wuschka, Sebastian. (2020). *Investments in Conflict Zones: The Role of International Investment Law in Armed Conflicts, Disputed Territories, and 'Frozen' Conflicts*. Brill.
- Heritage, Anisa, and Lee, Pak K. (2020). *Order, Contestation and Ontological Security-Seeking in the South China Sea: Governance, Security and Development*. Palgrave Macmillan.
- Johansen, Elise, Busch, Signe, and Jakobsen, Ingvlid (Eds). (2020). *The Law of the Sea and Climate Change: Solutions and Constraints*. CUP.
- Kessler, Gary C. (2020). *Maritime Cybersecurity: A Guide for Leaders and Managers*. Independently published.
- Litina, Eva. (2020). *Theory, Law and Practice of Maritime Arbitration*. Wolters Kluwer.
- Núñez, Jorge E. (2020). *Territorial Disputes and State Sovereignty*. Routledge.
- Otto, Lisa. (2020). *Global Challenges in Maritime Security: An Introduction*. Springer.
- Purcell, Kate. (2020). *Geographical Change and the Law of the Sea*. OUP.
- Rytövuori-Apunen, Helena. (2020). *Power and Conflict in Russia's Borderlands: The Post-Soviet Geopolitics of Dispute Resolution*. Bloomsbury.
- Trevisanut, Seline, Giannopoulos, Nikolaos, and Holst, Rozemarijn Roland. (2020). *Regime Interaction in Ocean Governance*. Brill-Nijhoff.

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- Tripathi, Dhananjay. (2020). *Re-imagining Border Studies in South Asia*. Routledge India.

Maritime Security and the Law of the Sea: Help or Hindrance?

Evans, Sir Malcolm D., and Galani, Sofia (Eds.). Northampton: Edward Elgar Publishing, 2020. ISBN: 978-1-7889-7140-9. 240 pp.

Researchers and academics worldwide have been grappling with numerous facets of maritime security in recent years. In the context of ocean governance, the word "maritime security" has proven to be one of the most divisive concepts. This recently published book, edited by Sofia Galani and Sir Malcolm D. Evans, titled *Maritime Security and the Law of the Sea: Help or Hindrance?*, provides a sharp vision of the concept of maritime security and law that deals with resolving various maritime security threats facing the world today and other conflicts between states. This book offers fresh insight and a deep analysis of the practical challenges in dealing with maritime security issues. It provides solutions under international law and thus gives an essential stimulus to new thinking in this emerging and challenging field. Due to the lack of discussion of global maritime security threats in contemporary academic literature, this work is urgently needed and crucial. In this regard, the book is very timely and provides constructive contributions.

This book contains nine chapters and presents a helpful outline of the problem. Its primary hypothesis is to explore "whether or how the law of the sea is both a help and hindrance" in dealing with various aspects of maritime security. Through this book, the authors succeed in encapsulating the conceptual challenges that encircle the gaining consciousness of the idea of maritime security. From that perspective, the book aims to influence how one understands the contemporary global discourse around the subject matter. Current debates on maritime security are increasingly encapsulated through the prism of states' growing concerns over national security in strategic sectors, including whether it impedes overall ocean governance or economic development, as the problems and related issues have started to converge. Accordingly, the book is comprised of nine substantive chapters, including an introduction by the editors. The edited volume has gathered a group of twelve researchers and professionals from various policy domains to investigate the all-encompassing nature of maritime security. Collectively, this book also highlights the significance of policy practitioners having a grasp of the maritime environment. The chapters follow a similar format: the author(s) first discuss key ideas in each maritime security threat and how they have complicated states' maritime security policies. Then they provide case studies and examples to analyze the extent of the issue and the limitations of states' measures to mitigate the threat.

In its introductory chapter, this book advances the rhetoric and establishes the argument of whether the 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides help or is a hindrance to maritime security. Given these questions, this edited volume is timely and serves as an introduction to the subject at hand. It opens with a helpful outline of the problem by Sofia Galani and Sir Malcolm D. Evans, introducing the definition and various aspects of maritime security and its interaction with UNCLOS. It traces whether or not relying only on UNCLOS to provide solutions to maritime security issues aids or hinders such efforts. As a result, the purpose of this book is to revisit UNCLOS

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from the standpoint of maritime security as an array of the complex interplay of various factors and whether it fits the current and future challenges of maritime security. It further examines the relevance of UNCLOS from a maritime security standpoint. This chapter tries to define maritime security, evaluates the approach of UNCLOS in maintaining maritime security, and assesses the interplay between UNCLOS and state maritime security responses. It argues that maritime security is a mix of state and non-state threats and activities. This supports the argument that emerging threats and activities at sea represent a paradigm shift in international law of the sea. It asks the critical and well-timed question of whether UNCLOS can help with maritime security or if new tools and conventions are needed to strengthen ocean security. This is a question of our times and for future generations.

The second chapter by Christian Bueger and Timothy Edmunds builds on Bueger's 2015 article, which was one of the earliest efforts to gain new insights and rebuild the framework for maritime security and discusses the issues of international maritime security as an important policy concern. This shift in thinking has led researchers and academics to re-examine the traditional and historical conceptions of maritime security from a new perspective based on its novel challenges and in providing a timely solution. It looks into the history and gives a comprehensive account of the various maritime security threats and different approaches regarding maritime security discussions centered in and on the maritime security agenda. It argues that sea-blindness will obscure potential sectors of growth significant to the innovative development of international interaction, growth of the blue economy, overall ocean governance, and the maintenance of political order at sea. For that, local level capacity-building is the utmost priority among the various stakeholders in their maritime security agenda. It investigates the intriguing problems maritime security concerns pose in broader discourses within international relations and the study of security. The link between the global maritime domain and the practice of international law while also maintaining national interests, security, and development, the priority areas have been explored in this chapter at a great length. There are practical institutional challenges, for which there is an urgent need for revamping institutional cooperation, which has been astutely highlighted in the book.

In the third chapter, Richard Barnes and Mercedes Rosello go further into maritime security, the challenges of illegal, unreported, and unregulated (IUU) fishing, and the international fisheries law dealing with IUU Fishing. The topics of this study are more complex international fisheries and criminal offenses, which are harder for authorities to stop. The chapter digs further into the relationship between fisheries and security problems (human, maritime and environmental). The authors move the conversation forward by bringing up the topic of fisheries regulation and management in the context of maritime security within the domain of UNCLOS, demonstrating how this might have a disruptive influence on maritime security as a whole. This chapter discusses different conceptualizations of maritime security based on nature, approach, and understanding of the term. It thus highlights the broken window theory, which suggests that *more serious disorder can result from breaches of lower-level rules and standards*, to reach a simpler explanation of the IUU fishing problem and the ensuing maritime security threats. Destabilizing and competitive harvests are typically the result of poorly managed and ill-organized fishing. This might jeopardize the safety of the food supply. Fisheries resource depletion shall give rise

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to resource conflict and ultimately pose a significant threat to food security. The rising tensions between and among the states due to the limited availability of fisheries resources is a problem. Examples of conflicts between the British and the French fishers suggest that the resource conflict was real, and the navies of both States had to intervene to restore peace and order at sea. As an alternative, a conceptual framework is utilized to illustrate the need for a certain level of "joined-up thinking." Conflicts over resources may also be a component of a more complicated security situation that can quickly escalate into more severe conflict and pose dangers to human security. The "Scallop War" between the UK and France in 2018 and the territorial dispute in the South China Sea have been used as examples to stress more on this pressing issue. The link between IUU fishing and criminality has also been widely discussed, providing examples from Indonesia and Australia, and establishing that fisheries crimes are often related to other crimes such as human trafficking, forced labor, and other unauthorized acts on board. While discussing the issue of criminality, however, the authors maintain that there is limited availability of literature and data on the issue, which remains a point for further research.

Chapter 4, by Volker Roeben, highlights the rules of legal reasoning and interpretation, the grammar, the legal language, the structure of legal argumentation in the context of the disputes, and the claims under the law of the sea as part of the maritime security discourse. This chapter refers to the *South China Sea Arbitration* to reflect on the various approaches in a particular dispute regarding the Exclusive Economic Zone (EEZ). Chapters five and six by Anna Petrig and Kara Chadwick, respectively, deal with the novel issues of maritime crimes, naval operations, and the use of unmanned maritime systems, taking the discourse further into a new zone of the *crimes of the future* and how UNCLOS will deal with them. This is a paradigm shift, and the author asks whether the new paradigms require new treaties and conventions.

Other chapters in this book address the equally critical issue of ships without nationality and the ensuing marine security threats, including maritime piracy, maritime boundary disputes, and maritime terrorism and port security, by experts and cover a wide range of topics. The last chapter, by Prof. Keyuan Zou, offers a seasoned insight into the issues of non-traditional maritime security threats, which have grown significantly in recent years due to a rise in sea piracy and maritime boundary delimitation in the South China Sea. The littorals contiguous to the South China Sea may be at odds with each other regarding claims within continental shelves and EEZ, resulting in disputes regarding overlapping maritime boundaries and sovereignty claims. In this chapter, Prof. Zou significantly discusses at length the practical difficulties arising from conflicting claims of the coastal states adjacent to the South China Sea about the exercise of sovereign rights of States' safety of navigation at sea, the challenges of piracy, and the Code of Conduct for the South China Sea. Analyzing the security situation in and around the South China Sea reveals the presence of both cooperative and adversarial efforts at play. Peace and order at sea act as a precondition to upholding holistic maritime security, and it is necessary to have a case for regional cooperation. This is because a single state's national security challenges cannot be adequately handled by a single state alone. Prof. Zou adds that these littorals must work together to achieve peace and security in the region.

This book is a fascinating and highly comprehensive analysis of several significant issues posed in modern maritime security and the law of the sea, as well as crucial issues

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like fisheries management, piracy, armed robbery, and the use of unmanned maritime systems at sea, etc. While keeping the readers engaged with case studies and examples, this meticulously researched work compiles and assesses a richness of domestic and global experience in an age of vividly changing power dynamics at sea, as there is a profound need to re-evaluate established traditions. With a quite timely and apt choice of examples, the book manages to convey the complexities of the law of the sea and maritime security threats in a new, vibrant, and fascinating way. Despite its modest size, this book contains a treasure of information and a definitive study of the complex, perplexing, and dynamic conceptions of maritime security threats. There is a wealth of resources here for individuals interested in maritime security and its interaction with the law of the sea. This book will be valuable for researchers, legal practitioners, regulators, adjudicators, policymakers, and academics on the issue of maritime security and the law of the sea and other international law professionals throughout their careers. It provides insight into the evolving global legal system required to deal with ever-growing challenges in the maritime domain. It examines current maritime security concerns and the need for comprehensive global responses to them in great detail. Maritime security concerns and other dangers are intertwined, and this book aims to increase awareness of this link. There aren't many simple solutions to complex maritime security concerns. Against this backdrop, the book has done an excellent job with its insightful and thought-provoking assessment of today's most critical issue facing the global maritime domain and its possible remedies. This book is essential to maritime security studies and enhances awareness of the maritime domain as a worldwide concern in the twenty-first century.

—Tarique Faiyazand Balraj Kaur Sidhu,
Indian Institute of Technology Kharagpur

The Development of the European Union (EU) as a Sea-Policy Actor

Laursen, Finn. Northampton: Edward Elgar Publishing, 2020. ISBN: 978-1-8391-0124-3. 240 pp.

Finn Laursen, an honorary professor at the University of Southern Denmark, published the *Development of the European Union (EU) as a Sea-Policy Actor* in 2020 with Edward Elgar Publishing. This masterful book framed 12 chapters with comprehensive figures, charts, and maps within a total length of 240 pages.

The author placed an analytic consideration on political science theories, classical integration theories, neo-institutionalist integration theories, and regional theories to discuss the initiation and development of four maritime and marine pillars in the EU's fisheries, maritime transport, marine environment, and maritime safety policies. Each chapter explains in detail the historic details of policy and development over time, exploring related regulations, court discussions, and case studies.

The bibliographies are placed at the end of each chapter, highlighting primary and secondary resources and considerable explanatory notes. The literature is lucid, well organized, and richly resourced in content. Last but not least, the author has richly framed his analysis within tables or individual boxes that make the concept comprehensive for newcomers, scholars, and researchers.

The study begins with an introduction to the Treaty of Rome in 1957, which established the European Economic Community (EEC), and the Treaty of Maastricht, which

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constituted the EU in 1993 up to the latest major treaty reform and the Treaty Lisbon in 2009. Furthermore, the study considers the main policies, law-making procedures, and development plans on the Common Fisheries Policy (CFP), the Common Maritime Transport Policy (CMTP), marine environmental and safety policies as well as security and defense operations and developments. The author believes the security and safety operations:

> has given the "Blue Europe" a naval dimension. The functional scope of the Blue Europe has expanded over time and there have been efforts to improve the institutional capacity. However, the institutional capacity remains weak when it comes to naval operations because this latest component of the Blue Europe has largely not adopted the so-called Community method used for the initial EU sea and ocean-related policy.

In this regard, chapter 3 focused on the "Blue Europe." It looks at the treaties from the basis of EU integration. This discussion seeks to bring about an understating of the constitutional basis of the "Blue Europe" to evaluate the outcome of EU development over time.

Dr. Laursen stated:

> Today, the EU has become an important marine and maritime policy actor. It has also become an important global actor in these areas. The treaty base has been rather flexible, and some adaptions took place in some of the treaty reforms which followed the founding treaties after [the] 1950s. Since the EU can only do what is allowed to the treaties, it is important to trace the development of this basis over time.

Chapter 4 is dedicated to a study of the United Nations Convention on the Law of the Sea (UNCLOS) along with an analytical review of EU leadership in developing UNCLOS. The chapter addressed the EEC's position in UNCLOS I and II as the first pillars of the development of UNCLOS III. The analysis continued to evaluate the community's fluency in implementing sea policies in fishing resources, maritime transport, the safety of shipping, and the prevention of marine pollution. The author followed up with the CFP development and reforms in chapters 5 and 6. The Common Maritime Transport Policy (CMTP) and developments were introduced in chapters 7 and chapter 8, which explored marine environmental actions, treaties, and conventions. Also addressed was the EEC's position to implement, adopt and develop marine environmental and safety policies from 1972 to 2020.

Chapters 9 to 11 studied the EU policy on marine and maritime safety policies as well as naval cooperation and defense developments, including combatting at sea piracy, especially off the coast of Somalia, and illegal immigration and smuggling in the Mediterranean Sea, the EU NAVFOR naval operation Atalanta in 2008, the EU NAVFOR MED operation in 2015, and Frontex operation Triton. This chapter included interesting figures, maps, and charts. An expansion of the author's analysis to include a wider scope of maritime zones would an indispensable asset to maritime scholars.

This analysis ends with explanations regarding international relations theories, liberal intergovernmentalism, neo-functionalism, and neo-institutionalism on the four pillars of marine and maritime policies in the EU. The study approached the conclusion positively to cover the research questions and all objectives.

—Sayedeh Hajar Hejazi, Research Intern,
Journal of Territorial and Maritime Studies

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Call for Papers and Style Guide

JTMS Summer/Fall 2023 Issue Call for Papers

The *Journal of Territorial and Maritime Studies* (*JTMS*) is soliciting submissions for its Summer/Fall 2023 issue. *JTMS* is an interdisciplinary journal of research on territorial and maritime issues sponsored by the Northeast Asia History Foundation with editorial offices hosted by Yonsei University in South Korea. The journal provides an academic medium for the announcement and dissemination of research results in the fields of history, international law, international relations, geography, peace studies, and any other relevant discipline as they pertain to terrestrial and maritime territorial issues. The journal covers all continental areas across the world, and it discusses any territorial and maritime subjects through the various research methods from different perspectives; moreover, practical studies as well as theoretical works, which contribute to a better understanding of terrestrial and maritime territorial issues, are encouraged.

For consideration in the Summer/Fall 2023 issue, manuscripts should be submitted electronically to *jtms@yonsei.ac.kr* by February 1, 2023. Submitted papers should include four major sections: the title page, structured abstract, main body, and references. The title page should contain the title of the paper, the author's name, the institutional affiliation, and keywords. To be considered, Manuscripts must follow the *JTMS* style guide available on our website. A length of maximum 9,000 words is preferred for an article, including endnotes, and approximately 2,000 words for a review. Inquiries may be sent via the email address provided above.

Our style guide and other journal information may be found on our website at:
http://www.journalofterritorialandmaritimestudies.net/

JTMS Call for Blog Entries

The blog of the *Journal of Territorial and Maritime Studies* welcomes submissions for blog entries. This forum is intended to discuss topics related to recent territorial and maritime news, research, and policy. It is hoped that this blog will help bring a fresh perspective on how to deal with territorial and maritime issues and the complexities these issues present.

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Those wishing to submit a blog post can send their post to jtms@yonsei.ac.kr along with the author's contact info, bio, and a recent photo.

Style Guide

General Guidelines

JTMS is a scholarly journal. Paragraphs must be fully developed without contractions, first and second person pronouns, repetition, jargon, sexist language, awkward syntactical constructions. Use a limited number of succinct headings and subheadings that are underlined or italicized as appropriate. Carefully honed style that is in a mellifluous prose is as important as substantive content. *JTMS* recommends authors ask colleagues whose writing style they respect for help with review and revision. Please note that all accepted material is subject to editorial emendation.

Length: Research articles should be no more than 9,000 words, commentary essays no more than 4,000 words and book reviews no more than 2,000 words.

Format: Research should be saved as Microsoft Word document formatted Times New Roman, 12-point font, double-spaced. There should be generous margins, no right-hand justification, and pages numbered consecutively.

Title Page: Title page must include 1.) the title of the paper, 2.) author's contact information including name, affiliation, address, phone number, fax number, email address, 3.) A structured abstract (see samples below) and few key words of the paper.

Biography: Author's biographical statement (75 words or less) must be underneath his/her contact information. This will be edited and published in the *Journal of Territorial and Maritime Studies*.

Headings: *JTMS* uses three levels of headings. Major headings (heading level 1) are center justified in bold with no indentation of the first sentence following the heading. Secondary heading (heading level 2) is left justified in italic with the first sentence after the heading indented. Tertiary heading (heading level 3) is left justified in italic with the first sentence after the heading beginning on the same line.

Tables & Figures: Insert each table or figure on a separate page at the end of the text. Indicate the position of the table or figure in the text (e.g., Insert Table 2 here). The page containing the table or figure should be placed after the page that first references the table/figure in the text. Authors have the responsibility of providing high quality figures and images in tiff format and with a resolution of 800 dpi or higher. Supporting materials may be submitted as hard copies for scanning or through e-mail submission. Please forward all materials to the editor.

Endnotes: Use full citation endnotes with no bibliography or reference list. Endnotes should be brief, used sparingly, and consecutively numbered with superscript Arabic numbers. Please convert all footnotes to endnotes.

Book

1. Robert Jervis, *The Meaning of the Nuclear Revolution: Statecraft and the Prospect of Nuclear Armageddon* (Ithaca, NY: Cornell University Press, 1989), p. 167.

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2nd Non-Consecutive Endnote

2. Jervis 1989, p. 160.

Consecutive Endnote

3. Ibid., p. 50.

Journal

2. David Karl, "Proliferation Pessimism and Emerging Nuclear Powers," *International Security* 21(3) (1996–97), p. 89.

Website

3. Sangwon Yoon and David Lerman, "Hagel Calls on North Korea to Tone Down Rhetoric," *Bloomberg News*, April 11, 2013, *http://www.bloomberg.com/news/2013-04-10/south-korea-braces-for-possible-missile-test-from-north-today.html*, accessed January 21, 2014.

Legal Case Citations

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001, pp. 101102, para. 205.

Non-consecutive citations:

ICJ Reports 1978, supra note 18, p. 50, para. 102.

Newspaper Article

4. Andrei Lankov, "Stay Cool. Call North Korea's Bluff," *New York Times*, April 9, 2013.

Footnote

5. The classic optimist-pessimist debate can be found in Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons: An Enduring Debate*, 3d. ed. (New York: W.W. Norton & Company, 2013). For detailed surveys of the literature more generally, see Peter Lavoy, "The Strategic Consequences of Nuclear Proliferation: A Review Essay," *Security Studies* 4(4) (1995), pp. 695–753; and Francis Gavin, "Politics, History and the Ivory Tower-Policy Gap in the Nuclear Proliferation Debate," *The Journal of Strategic Studies* 35(4) (2012), pp. 573–600.

One File: Submit the paper as one file in the following order: Title, Structured Abstract, Text, Endnotes, Tables and Figures, and Biographical Statement.

Structured Abstract

Article Classification: JTMS categorizes articles into the following 6 classifications: Research Paper, Viewpoint, Technical Paper, Conceptual Paper, Case Study, and General

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Review. Please write *one* of the categories in which your paper belongs on the article title page.

The article title page must include a structured abstract with 4–5 of the following subheadings: 1.) Purpose, 2.) Design/Methodology/Approach, 3.) Findings, 4.) Practical Implications, 5.) Originality/Value. The structured abstract, including keywords and article classification, must be 200 words or less.

Structured Abstract Samples

Sample 1

Article Type: Research Paper

Purpose—Some scholars imprint an academic discipline by their contribution to the manner in which people think and research, namely, by putting forward novel concepts and insights. The purpose of this paper is to examine the impact of Sumantra Ghoshal's work on the study of subsidiaries and multinational enterprises and organizational formats for foreign operations.

Design, Methodology, Approach—A bibliometric study on Bartlett and Ghoshal's well-known book *Managing Across Borders: The Translational Solution* is performed to assess its impact in international business (IB) research. The entire record of publications in the top leading IB journal, Journal of International Business Studies (JIBS), is examined.

Findings—Theoretically supported, Ghoshal's work was keenly influenced by his corporate experiences and his constant questioning of the dominant theories and assumptions. The analyses in this paper show the impact of the work on the "transnational solution," namely, on the understanding of multinationals and subsidiaries, thus being one of the most notable contributions for IB research over the past 20 years.

Practical Implications—Useful for graduate students and in writing a literature review, this paper presents an interesting manner to examine a scholar's and a theory's impact on a discipline.

Originality, Value—This paper presents an extensive bibliometric analysis of research published over a time span of 22 years in international business studies.

Sample 2

Article Type: Research Paper

Purpose—While many studies on institutional environment have primarily focused on the influence of the host country environment, limited insights have been offered on how the different dimensions of home institutions affect firm internationalization. This paper aims to fill this gap by investigating the effects of regulatory institutions at home.

Design, Methodology, Approach—Using country governance quality to proxy quality of regulatory institutions, this study attempts to reveal how regulatory institutions at home facilitate a multinational enterprise's (MNE's) international expansion and why the influence differs in different country clusters. Using hierarchical linear modeling and cluster analysis, proposed hypotheses were tested with a three-year panel 511 firms from 38 countries.

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Findings—The results provide substantial support for authors' hypotheses that MNEs with high governance quality at home are more engaged in internationalization than those with low governance quality at home. Moreover, differences in institutional effect do exist between country clusters.

Practical Implications—This study provides evidence that while country difference exists, governance quality at home can facilitate MNE's expansion into foreign markets. This finding will help managers of any MNEs to consider country-level factors and evaluate the governance quality at home before committing resources into foreign operations.

Originality, Value—Building on the institutional environment literature, this theory and results make original contributions by underscoring how the consideration of regulatory institutions at home can significantly improve understanding of institutional influence on MNEs. The findings have important implications for both international business researchers and managers of MNEs.

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