



The Regulatory Framework of

The Nigerian *Blue* Economy

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Introduction

In August 2023, the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu, announced the creation of new ministerial portfolios. Part of the new portfolios created by the Tinubu Administration is the Ministry of Marine and Blue Economy, which is headed by Hon. Minister Gboyega Adetola.

The creation of the Ministry is an exciting development for Nigeria and the maritime industry. It shows Nigeria's interest in harnessing the vast economic opportunities that abound in our oceans and other aquatic ecosystems. In Africa, countries like South Africa, Seychelles, and Mauritius are already active players in the blue economy. In Seychelles, tourism accounts for about 16.5% of its GDP. Tourism is Mauritius' biggest ocean export. While the creation of the Ministry is laudable, the key consideration is whether Nigeria has the regulatory framework for the actualisation of blue economy.

In this article, our Rafiq Anammah and Linda Osuagwu undertake an overview of the regulatory framework of the Nigerian blue economy.

The Concept of Blue Economy

The birth of the blue economy concept can be traced to the Rio+20 United Nations Conference on Sustainable Development, held in Rio de Janeiro in June 2012. The blue economy concept has gained more recognition since then, and it is regarded as an alternative economic model for sustainable development that focuses on the ocean. The United Nations recognises the blue economy as the 14th Sustainable Development Goal (SDG). The blue economy is part of the African Union's Agenda 2063; the 2014 Africa's Integrated Maritime Strategy (2050 AIMS); the 2014 Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS); the 2015 UN Agenda 2030 (Sustainable Development Goals, SDGs); and the 2016 African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter). The African Union has identified the blue economy as a key tool to attaining 'a prosperous Africa' based on inclusive growth and sustainable development within the context of the Africa Union Agenda 2063.

Different organisations have come up with several definitions of blue economy. The United Nations (UN) defines blue economy as a range of economic activities related to oceans, seas and coastal areas. The UN highlights the need for sustainable fishing and ocean health as key points for the sustainability of blue economy. The World Bank regards the blue economy as the sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of the ocean ecosystem. To the European Commission, the blue economy refers to all economic activities related to oceans, seas, and coasts. The Commonwealth of Nations describes the blue economy as an emerging concept which encourages better stewardship of our ocean or blue resources.

Though the definition of blue economy varies, the central theme underlying the various definitions is that blue economy involves the use of ocean resources as a means of economic development and improvement of human lives through the healthy utilisation of ocean resources. In essence, while blue economy is a paradigm shift from major dependence on green economy and, in the Nigerian context, on oil, there is the need to ensure that in exploring and exploiting the marine natural resources as an alternative means of economic sustainability and improved living, there is a recognition and implementation of measures to protect the aquatic ecosystem. The sustainability of a blue economy is therefore dependent on a healthy aquatic ecosystem, i.e, the oceans, seas, lakes, ponds etc. As highlighted by the World Bank Group and the United Nations "Oceans that are not healthy and resilient are not able to support economic growth."

The need to protect and preserve the ocean resources has also been the central theme of discussions at several major international fora. For instance, the United Nations has declared 2021 to 2030 as the 'Decade of Ocean Science for Sustainable Development' to support efforts to reverse the cycle of decline in ocean health and to gather ocean stakeholders worldwide behind a common framework. The importance of oceans for sustainable development was also embodied in, among others, Agenda 21, the Johannesburg Plan of Implementation, the Rio+20 outcome document 'The Future We Want', and the 2030 Agenda for Sustainable Development. Nigeria is a signatory to the International Convention for the Prevention of Pollution from Ships ("MARPOL") which is aimed at preventing pollution of the aquatic ecosystem by ships and is basically geared at protecting ocean use. However, it has been argued that Nigeria has not done enough to prevent pollution in the Nigerian maritime environment. To achieve blue economy, Nigeria must pay greater attention to the health of its maritime environment.

Nigeria's Quest to Harness the Blue Economy

Nigeria stands to benefit immensely from blue economy. As stated earlier, the blue economy cuts across all maritime activities, which include shipping, tourism, fishing, maritime transportation, food production, ocean bottom extractive activities, marine biotechnology and bioprospecting, mineral exploration/extraction, etc. The potentials offered by the ocean are enormous, ranging from a sustainable "blue energy", i.e., production of energy from wind, wave, tidal, thermal and biomass sources, to sustainable fisheries, etc. The ocean economy supports 90% of global trade and provides millions of jobs. About 95% of Nigeria's international trade volume is transported through the waters. The European Commission has identified five areas in the maritime sector with high resource potentials, namely; aquaculture, coastal and maritime tourism (blue tourism), marine biotechnology (blue biotechnology), ocean energy (blue energy) and seabed mining.

The World Bank Group and the United Nations further identify a number of services provided by ocean ecosystems (for which there are no markets), and which also contribute significantly to economic and other human activity such as carbon sequestration, coastal protection, waste disposal and the existence of biodiversity. This is in addition to the long-standing maritime practices like maritime transport, shipping, fisheries, oil mining, and extraction activities. On 17 January 2022, the former Vice President of Nigeria, Professor Yemi Osinbajo inaugurated the Expanded Committee on Sustainable Blue Economy in Nigeria ("ECSBEN") in Abuja. The inauguration of the ECSBEN marked Nigeria's formal step to actualising its blue economy quest. During the inauguration, Professor Osinbajo noted that the blue economy offered a new frontier for economic development and resource use through a focus on the aquatic ecosystem and that it will facilitate the

achievement of the Sustainable Development Goals (SDGs), 2052 Africa Integrated Maritime Strategy (2052 AIM Strategy) and the United Nations 2030 Agenda.

Nigeria has stepped up its commitment to actualising blue economy with the creation of a Ministry for Marine and Blue Economy. With the creation of the Ministry, it is obvious that Nigeria, like its counterparts in Africa and other parts of the world, has started taking practical steps for the exploitation of the wealth and opportunities in its aquatic ecosystems.

Regulatory Framework For Nigeria's Blue Economy

Nigeria's maritime sector income is mainly focused on shipping and fisheries. While blue economy presents economic development and opportunities that transcend these traditional established practices to Nigeria, it also places an obligation on Nigeria to implement measures that will protect its aquatic ecosystem for the sustainability of the blue economy. The emerging areas of interest in blue economy include tourism, ocean-bottom extractive activities, sea-bed explorations, blue energy, marine biotechnology, and bioprospecting.

Presently, there is no comprehensive policy or harmonised law for the implementation of blue economy in Nigeria. South Africa, which is one of the champions of the blue economy, has enacted an Ocean Act and implemented an integrated ocean governance regime to actualise her blue economy policy. Nigeria has set up the ECSBEN and has established a Ministry of Marine and Blue Economy but is yet to have a dedicated or harmonised policy or legislation that will cater to its blue economy vision.

Nigeria has different legislations that deal with activities on its aquatic ecosystem. Some of these laws have become obsolete and require amendments to reflect the emerging areas of maritime interest. For instance, the Sea Fisheries Act 1992 does not have a provision for Illegal, Unreported and Unregulated Fishing (IUUF) and other evolving fisheries sustainability principles which were not considered at the time of its enactment. Sustainable fisheries is an essential component of a prosperous blue economy, with marine fisheries contributing more than US\$270 billion annually to global GDP. Fish is a key source of food, income and an important source of animal protein, essential micronutrients, and omega-3 fatty acids. Fish stocks are greatly affected by illegal, unreported, and unregulated fishing, which globally accounts for roughly 11–26 million tons of fish catch, or US\$10–22 billion in unlawful or undocumented revenue. It is estimated that Nigeria loses 600 million dollars annually to IUU fishing done by foreign vessels as a result of inadequate manpower to police the country's vast coastline and spends 800 million dollars annually on fish importation. Therefore, the licensing and regular monitoring of foreign vessels operational in Nigerian waterways and oceans is very essential to prevent and curb the IUUF menace.

The Nigerian Coastal and Inland Shipping (Cabotage) Act ("Cabotage Act") has come into effect to ensure that only indigenous vessels and persons can conduct trade of any kind on Nigerian waters. It should be noted that indigenous vessels have also been implicated in IUUF on Nigerian waters. So, there is also the need to license and monitor them just like their foreign counterparts. Similarly, the legislations in Nigeria do not cater for the utilisation of ocean resources as a means of tourism/tourist attractions, even though Nigeria brags of viable waterways, lagoons and other aquatic ecosystem. Tourism is highlighted as becoming the largest global business, and employs 1 out of every 11 persons globally. According to the World Travel and Tourism Council, travel and tourism's contribution to world GDP grew for the sixth consecutive year in 2015, rising to a total of 9.8 percent (US\$7.2 trillion).

Areas in Nigeria that have been identified that can benefit from tourism and being developed as such, as a key component of blue economy, include Ibeju Lekki, Ogun waterside, Eti Osa, Akuku Toru Rivers, Nike lake, Oron, Ibeno, Degema etc.

The Minister for Marine and Blue Economy, Gboyega Oyetola, had stated that the government has created a roadmap towards a sustainable blue economy, but that is yet to be seen.

Some of the legislations that regulate maritime activities in Nigeria are; 1999 Constitution of the Federal Republic of Nigeria (as amended), the Nigerian Maritime Administration and Safety Agency Act 2007 ("NIMASA Act"), Merchant Shipping Act 2007 ("MSA"), the Coastal and Inland Shipping (Cabotage) Act and the Admiralty Jurisdiction Act ("AJA"), National Inland Waterways Authority Act, Territorial Waters Act 1967, Territorial Waters (Amendment) Act 1998, Exclusive Economic Zone Act 1978, Continental Shelf Act 2012, MARPOL and United Nations Convention on Law of the Sea 1982 ("UNCLOS"). It has been noted that the effective implementation of the UNCLOS is necessary for the successful actualisation of the blue economy concept. The UNCLOS sets out the legal framework within which all activities in the oceans and seas must be carried out, including the conservation and sustainable use of the oceans and their resources. As stated by the World Bank Group, the effective implementation of UNCLOS, its Implementing Agreements, and other relevant instruments is essential to build robust legal and institutional frameworks for investment and other activities in the blue economy.

Nigeria is a coastal state with vast shorelines and enormous unexploited marine natural resources. The country is rich in oil and gas resources, a large volume of which are found and drilled offshore. Like other coastal states, the open seas play a major role in the economic sustenance and development of the country especially in areas like drilling of crude oil, fishing, and generation of hydro-energy.

Historically, the open seas have performed two important functions, namely; they have served as a medium of communication, and they serve as a huge reservoir of resources for exploration and exploitation.

The oceans were once thought to be capable of being subjected to the exclusive control of nations. However, this concept was challenged by writers like Grotius, who enunciated the doctrine of freedom of the seas whereby the oceans as *res communis* were to be accessible to every nation for the purpose of exploration and exploitation of its vast resources and therefore incapable of appropriation by any nation.

Though the concept of freedom of the sea became popular and even crystallised into a principle of international law, not all parts of the sea are accessible to every nation for exploitation. International law has circumscribed specific jurisdictional zones in the oceans for exploration and exploitation by nations according to laid down rules. Some of these jurisdictional zones are the territorial waters, contiguous zone, the exclusive economic zone, and the continental shelf.

The extent to which Nigeria can harness her blue economy potential is circumscribed by international law (customary international law and treaty rules) and domestic maritime legislations. We will undertake a brief overview of the applicable international law and maritime legislations below.

Nigeria's maritime environment is divided into 6 jurisdictional zones, namely; internal waters, territorial water, contiguous zone, exclusive economic zone, and continental shelf. We will discuss the legal regimes governing these respective zones seriatim.

Internal waters

Internal waters are the parts of the seas that are not the high seas, the relevant zones, or the territorial sea, and are regarded as part of the land territory of the coastal state. The UNCLOS provides that waters on the landward side of the territorial sea baseline form part of the internal waters of the state. The National Inland Waterways Authority Act defines internal waters as "all waters on the landward side of the baseline of the territorial sea." It describes inland waterways to include "all waterways, river, creeks, lakes, tidelands, lagoons below the low water baseline."

Because the Nigerian internal waters are regarded as part of its land territory, Nigeria can exercise absolute sovereignty over the internal waters.

Territorial Sea

Article 3 of UNCLOS provides that states are permitted to establish the breadth of their territorial sea up to limit of 12 nautical miles. Section 1 of the Territorial Waters Act, 1967 and the Territorial Waters (Amendment) Act 1998 delimit the territorial waters of Nigeria to "include every part of the open sea within twelve nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters."

Nigeria, just like other coastal states, enjoys extensive jurisdictional control over its territorial waters, subject to the right of passage of foreign vessels. Nigeria's territorial sea forms part of the land territory of Nigeria. Nigeria can, if it so wishes, exclude foreigners from fishing within its territorial waters and from cabotage, reserving these activities for its citizens only.

In the exercise of its powers over cabotage within its territorial waters, Nigeria has restricted foreign vessels from being used for coastal carriage, towage, carriage of petroleum products, and domestic trading within its territorial waters. Only Nigerian vessels or exempted foreign vessels are permitted to carry out these activities. Nigeria also has extensive control over security and custom matters within its territorial waters.

Contiguous Zone

Under UNCLOS, the contiguous zone forms part of the coastal states' exclusive economic zone. By Article 33 (2) of UNCLOS, a state's contiguous zone shall not be more than 24 nautical miles from the baseline from which the breadth of the territorial sea is measured. Unlike the territorial sea, the contiguous zone must be specifically claimed by a state because it does not automatically attach to the land territory of the state. A state is permitted to exercise necessary control over its contiguous zone for the following reasons:

"(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea."

Exclusive Economic Zone

The Exclusive Economic Zone ("EEZ") was developed out of earlier claims by coastal states like the fisheries zone. It is a compromise between states that advocate for a more restricted coastal jurisdiction and those that prefer a 200-nautical mile territorial sea.

The UNCLOS has delimited the EEZ not to "extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured." Nigeria through the Exclusive Economic Zone Act, 1978 ("EEZ Act"), has delimited a 200-nautical miles EEZ for itself. Section 1 (1) of the EEZ Act provides as follows:

"(1) Subject to the other provisions of this Act, there is hereby denominated a zone to be known as the Exclusive Economic Zone of Nigeria (in this Act referred to as the "Exclusive Zone") which shall be an area extending from the external limits of the territorial waters of Nigeria up to a distance of 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured. "

However, Nigeria's EEZ shall be less than 200-nautical miles if under a treaty or other form of written agreement, it agrees with any neighbouring state that its EEZ shall be less than 200-nautical mile.

Nigeria has the exclusive right to explore and exploit all the natural resources in the sea bed, sub soil and superjacent waters in the EEZ subject only to the provisions of any treaty to which it is a party with respect to the exploitation of the living resources of the EEZ.

Under UNCLOS, Nigeria has the sovereign right and jurisdiction to explore, exploit, conserve, and manage all the natural resources of the EEZ; produce energy from the wind, waters, and currents of the EEZ; establish and use artificial islands, installations, and structures in the EEZ; conduct marine scientific research in the EEZ; protect and preserve the marine environment of the EEZ; and exercise other rights and duties in the EEZ as provided for in the UNLCOS.

However, it should be noted that notwithstanding Nigeria's sovereign and exclusive jurisdiction over its EEZ, other states, whether coastal or landlocked, enjoy the rights associated with the freedom of the sea as provided in Article 87 of UNCLOS in the EEZ.

But while exercising their Article 87 rights in the EEZ, these other states shall comply with Nigeria's laws and regulations, the provisions of UNCLOS, and other rules of international law. The Article 87 rights are:

1. freedom of navigation;
2. freedom of overflight;
3. freedom to lay submarine cables and pipelines, subject to Part VI of UNCLOS;
4. freedom to construct artificial islands and other installations permitted under international law, subject to Part VI of UNCLOS;
5. freedom of fishing, subject to the conditions laid down in section 2 of UNCLOS; and
6. freedom of scientific research, subject to Parts VI and XIII of UNCLOS.

Continental Shelf

Article 76 (1) of UNCLOS defines the continental shelf as comprising "the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance." Section 3 of the Continental Shelf Act 2012 ("CSA") defines the continental shelf as "the seabed and subsoil of the submarine areas that extend beyond Nigeria's territorial sea throughout the natural prolongation of Nigeria's land territory to the outer edge of the continental margin, or to distance of 200 nautical miles from the baselines from which the breadth of Nigeria's territorial sea is measured where the outer edge of the margin does not extend up to that distance."

The important point to note about the continental shelf is that it is usually rich in oil and gas resources and contains numerous fishing grounds.

Nigeria has sovereign and exclusive rights for the exploration and exploitation of the natural resources in its continental shelf. These rights are exclusive because even if Nigeria does not explore and exploit those natural resources, no other state can do so without first seeking and obtaining Nigeria's consent to do so. Unlike the territorial sea, Nigeria's rights over the continental shelf neither depends on any express claim/proclamation nor on occupation. The natural resources of the continental shelf over which Nigeria can exercise exclusive rights are "the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."

By Article 81 of UNCLOS, Nigeria has the exclusive right to authorise and regulate drilling within its continental shelf. This means that all the oil and gas resources within Nigeria's continental shelf are within Nigeria's exclusive control and, therefore, cannot be exploited by any other state or entity without Nigeria's consent first sought and obtained.

It would appear by Articles 78 and 79 of UNCLOS that other states can exercise Article 87 rights over Nigeria's continental shelf but they must do so in compliance with the rules and regulations laid down by Nigeria as applicable in the continental shelf.

Extended Continental Shelf

Article 76 (6) of UNCLOS, permits a state to extend its continental shelf to 350-nautical miles upon making a submission to that effect to the Commission on the Limits of the Continental Shelf ("CLCS") established pursuant to Annex II of UNLCOS. Pursuant to Article 76 (6) of UNCLOS, Nigeria made submissions for extended continental shelf to the CLCS in May 2009 and October 2016.

In December 2023, the United Nations approved the extension of Nigeria's continental shelf by 20 nautical miles. This means that Nigeria's continental shelf is now 220 nautical miles.

The implications of this extension is that Nigeria can now explore and exploit the abundant carbon and marine resources believed to be present within the area and the country can redraw the map of its territory around the Gulf of Guinea.

Other Domestic legislative Provisions

Apart from the treaty provisions and other domestic legislations that regulate the delimitation of the Nigerian maritime zones, there are domestic legislative provisions that deal with other specific aspects of the Nigerian maritime industry. For instance, it is indisputable that a sustainable blue economy is dependent on healthy water bodies. While there is the need to exploit maritime resources for economic development, there is also the need to implement laws, policies and measures to protect the maritime environment. Currently, Nigeria has laws for the prevention of the pollution of Nigeria's waters. For instance, Section 44 of the NIMASA Act 2007 empowers the Nigerian Maritime and Safety Agency ("the NIMASA") to make regulations concerning the dumping of ship and shore generated waste in Nigerian waters and the removal of wrecks from the which constitute navigation risks, and which are threats to the marine environment. Section 45 of the NIMASA Act prohibits all ships from carrying or jettisoning harmful substances or packages. Nigeria is a signatory to MARPOL.

With respect to merchant shipping and other related matters, the MSA deals with the registration of ships in Nigeria, mortgage of ship or share in ship.

The AJA prescribes the types of maritime claims and the jurisdiction of the Federal High Court to entertain the claims.

Blue Economy Challenges

The actualisation of Blue Economy is not without its challenges. Humans had for a long time viewed and treated ocean resources as limitless. However, this view has proven to be incorrect as ocean resources have limits. There is excessive use and, in some cases, irreversible change of valuable marine resources and coastal areas. The major human impacts include:

1. Unsustainable extraction from marine resources, such as unsustainable fishing.
2. (Physical alterations and destruction of marine and coastal habitats and landscapes including ocean erosion.
3. Marine pollution.
4. Impacts of climate change, for example sea-level rise.
5. Unfair trade.

Conclusion

While it is commendable that Nigeria has taken some practical steps towards the actualisation and enhancement of the blue economy, such as the inauguration of the ECSBEN and the creation of the Ministry of Marine and Blue Economy, the country needs to develop and implement a modern and comprehensive regulatory framework for the blue economy to enable it maximise the potentials of its blue economy.

If the government can develop and implement a proper regulatory framework that reflects modern realities for the blue economy in Nigeria, the country will immensely gain in the areas of port and shipping, fisheries, aquaculture, sustainable blue energy, ocean mining, coastal tourism, oil and gas, blue carbon and other ecosystem services, and research and education.

Recommendations

- The Ministry of Marine and Blue Economy in collaboration with the ECSBEN and other industry stakeholders, should develop a draft Blue Economy Bill which will recognise and reflect; (a) the emerging maritime resource interests, and (b) modern ways of exploiting and protecting the aquatic ecosystem.
- B. The federal government should ensure that all the obsolete legislations with respect to the Nigerian maritime industry are either amended to reflect modern realities or repealed and re-enacted to enable Nigeria to maximise its blue economy potentials.
- C. The government should strive and ensure Nigeria exploits and explores the vast natural resources that are present within the extended continental shelf to boost the country's revenue generation.
- D The government should ensure that all the benefits derivable from the respective maritime treaties that Nigeria is a party to are identified and harnessed because this will boost Nigeria's blue economy and improve the country's revenue generation.

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