How Exclusive is the Exclusive Economic Zone: A Balance of fishing rights between coastal States and landlocked States in Africa through RECs

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Declaration

I, CAROLINE WAIRIMU KIHARA, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....

Date: .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:.....

Mr. Humphrey Sipalla

List of Abbreviations

AALCC	Asian – African Legal Consultative Committee
BMU	Beach Management Unit
CTS	Convention on the Territorial Sea and the Contiguous Zone
CHS	Convention on the High Seas
CFCLR	Convention on Fishing and Conservation of the Living Resources of the High Seas
CCS	Convention on the Continental Shelf
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EEZ	Exclusive Economic Zone
GDP	Gross Domestic Product
ICJ	International Court of Justice
IGAD	Intergovernmental Authority on Development
IUU	illegal, unreported and unregulated
ITLOS	International Tribunal on Law of the Sea
LOSC	United Nations Convention on the Law of the Sea
LLS	landlocked states
LLGDS	landlocked and geographically disadvantaged states
LVFO	Lake Victoria Fisheries Organisation
nm	nautical miles
OPSD	Optional Protocol of Signature concerning the Compulsory Settlement of Disputes
PCA	Permanent Court of Arbitration
RECs	regional economic communities

RFMO	regional fisheries management organisation
RFMA	regional fisheries management agreement
SRFC	Sub-Regional Fisheries Commission
TWAIL	Third World Approaches to International Law
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNGA	United Nations General Assembly
US	United States

List of Cases

International Court of Justice (ICJ)

Continental Shelf (Tunisia v Libya Arab Jahiriya), Dissenting Opinion of Judge Oda, ICJ Reports.

Fisheries Jurisdiction (United Kingdom v Iceland), Judgment of 25 July 1974, ICJ Reports.

Fisheries Jurisdiction (Germany v Iceland), Judgment of 25 July 1974, ICJ Reports.

Fisheries Case (United Kingdom v Norway), Judgment of 18 December 1951, ICJ Reports.

Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway), Judgment of 14 June 1993, ICJ Reports.

Permanent Court of Arbitration (PCA)

Grisbadarna case (Sweden v Norway), PCA case No 1908-01.

The North Atlantic Coast Fisheries case (Great Britain v United States of America), PCA Case No 1909-01.

International Tribunal for Law of the Sea

Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC), ITLOS Case No. 21.

Southern Bluefin Tuna case, International Tribunal for the Law of the Sea, No. 3 and 4, 1999.

List of Legal Instruments

Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958, 516 UNTS 205.

Convention on the High Seas, 29 April 1958, 450 UNTS 11.

Convention on Fishing and Conservation of the Living Resources of the High Seas, 29 April 1958, 559 UNTS 285.

Convention on the Continental Shelf, 29 April 1958, 499 UNTS 311.

Inland Fisheries and Aquaculture Policy for East African Community, EAC.

Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, 29 April 1958, 450 UNTS 169.

United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982, 1833 UNTS 396.

The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 11 December 2001.

Abstract

Living resources within the fisheries zones are of fundamental economic interest to both coastal States and landlocked States. Hence, there is need to accommodate both interests for purposes of achieving equity. These competing interests are highlighted in the United Nations Convention on the Law of the Sea (LOSC) under the regime of the EEZ. Unfortunately, lack of preferential fishing rights limits the access to the fisheries zones by landlocked States and geographically disadvantaged States. For example, with the long use of fisheries zones over the centuries, when the EEZ was introduced some states chose to continue recognising fisheries zones of 200 nm rather claim an EEZ such as Japan. This is a problem because the principles governing the previous regime such as preferential rights may be, misused to the disadvantage of landlocked States and have a detrimental value on the principle of sustainability. Therefore, there is a need to come up with a solution to ensure equitable access and management of the fisheries zones within the EEZ in Africa. One such solution is the utilisation of regional economic communities (RECs) as regional fisheries management organisations (RFMOs).

1. Introduction to the Study

The United Nations Convention on the Law of the Sea (LOSC)[1] is considered by the international community as the 'Constitution of the Oceans'.[2] One of the points discussed during the Third United Nations Conference on Law of the Sea (UNCLOS III) was the acquisition of exclusive rights to manage and exploit sea resources. This is because fisheries resources were systematically being depleted in oceans and seas, all in the name of freedom of the seas.[3] This resulted in the emergence of a new off-shore zone called the Exclusive Economic Zone (EEZ).[4]

The EEZ is the result of two recent developments in the relations between coastal States and landlocked and geographically disadvantaged States (LLGDS).[5] The period before UNCLOS III was characterised by the increase in demand of expansion of territorial waters by coastal States. However, the LLGDs wanted participatory and exploitation rights to the sea.[6] Therefore, LOSC established some specific rights in the EEZ especially with regard to exploitation of living resources.[7]

For a long time, it was an acceptable norm in the international community, that the coastal States especially Western powers to have easy access to the sea. This is because of the concept of freedom of the sea.[8] International law has always recognised the rights of a coastal State to exercise some form of control over the seas adjacent. However, through the provisions of the LOSC, landlocked States were granted the equal right to access the living resources in the EEZ.[9]

The ethos of the EEZ is to balance between coastal State rights and the rights of landlocked and geographically disadvantaged States. This balance is challenged by the tendency of coastal States to adopt national legislation that either enhances the competences and jurisdiction of the

[1] *United Nations Convention on the Law of the Sea (LOSC)*, 10 December 1982, 1833 UNTS 396.
[2] Tommy Koh, 'The Exclusive Economic Zone', 30(1), *Malaya Law Review*, July 1988, 9.
[3] Frank X Njenga, *International law and world order problems*, Moi University Press, Eldoret, 2001, 119.
[4] Article 55, *United Nations Convention on the Law of the Sea (LOSC)*.
[5] Tommy Koh, 'The Exclusive Economic Zone', 1.
[6] Mazen Adi, *The application of the law of the sea and the Convention on the Mediterranean Sea*, United Nations New York, 2009, 21-23. See also Frank X Njenga, *International law and world order problems*, 111 and Tuelk Helmut, *Reflections on the contemporary law of the sea*, 50-53.
[7] Article 56 and Article 58, *United Nations Convention on the Law of the Sea (LOSC)*.
[8] Frank X Njenga, *International law and world order problems*, 111.
[9] Article 56 and Article 58, *United Nations Convention on the Law of the Sea (LOSC)*.

coastal State or that which restricts the freedoms recognised in the EEZ. [10] Moreover, legal opinions, local legislations and the activities carried out by the States within the EEZ with regard to both living and non-living resources, go beyond the faculties granted by the LOSC.[11] This paper, however, shall delve into the fisheries jurisdiction within the EEZ, especially because fishing is the *sine qua non* of the concept of the EEZ.[12]

1.1 Background

For many years, nations have made claims of extended maritime jurisdiction and exclusive ocean control for various purposes. The primary objective of many of the claims has been control over fishing in coastal waters with the aim of reserving the exclusive use of fishermen of the coastal State and controlling the activities with regard to the fish resources.[13]

Agreements on fishing privileges can trace its history to 1910 through the agreement between United States (US) and Canada with regard to North Atlantic fisheries.[14] These agreements were later subjected to final arbitration in the PCA. The main issue at hand was that the British claimed that the 1783 treaty with US was null and void after the war of 1812. When the issue was brought before the tribunal it was decided that the grant of liberty to fish off the treaty coasts applied within 3 miles, and that British authorities would require US vessels operating in Canadian territorial waters to report to customs houses and pay taxes. After the decision, the US and Britain signed a treaty embodying the findings of the tribunal.[15]

Since 1945, coastal States with particular interests in offshore fisheries have sought means of limiting major operations by extra-regional fishing fleets. In 1946, a number of Latin American States made claims to the natural resources, leading to a fishery conservation of 200 nm.[16]

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[10] Sophia Kopela, 'The territorialisation' of the Exclusive Economic Zone: Implications for Maritime Jurisdiction,' 20th Anniversary Conference of the International Boundaries Research Unit on the State of Sovereignty, Durham University, United Kingdom, 3 April 2009, 3.
[11] Jenni Kuronen, & Ulla Tapaninen, 'Evaluation of Maritime Safety', (9), *WMU Journal of Maritime Affairs Policy Instruments*, 2010, 30.
[12] *Continental Shelf* (*Tunisia v Libya Arab Jahiriya),* Dissenting Opinion of Judge Oda, ICJ Reports, 19, 231.
[13] David Windley, 'International practice regarding traditional fishing privileges of foreign fishermen in zones of extended maritime jurisdiction', 63(3), *The American Journal of International Law*, July 1969, 491.
[14] David Windley, 'International practice regarding traditional fishing privileges of foreign fishermen in zones of extended maritime jurisdiction', 492.
[15] *The North Atlantic Coast Fisheries case (Great Britain v United States of America),* PCA Case No 1909-01.
[16] Gideon Boas, '*Public International law: Contemporary Principles and perspectives'*, Edward Elgar Publishing Inc., Massachusetts, 2012, 27- 29.

Meanwhile, the fisheries zone was gaining international recognition.[17] The International Court of Justice (ICJ) through its decisions in the *Fisheries Jurisdiction cases*[18] and *Jan Mayen*[19], highlighted that the fishery zone is supported by customary law. In the *Fisheries Jurisdiction cases*, the court upheld the customary law of preferential rights of fishing in adjacent waters in favour of the coastal State. Moreover, this preference is operational in regard to other States concerned in the exploitation of the same fisheries.[20] Therefore, the concept of preferential fishing rights seems to have survived in customary law.[21]

The legal regime of the EEZ was introduced by UNCLOS of 1982. By 1989, the development of the 200 nm fishery zones had been deemed to an extent redundant by the legality and preponderance of the EEZ.[22]

1.2 Statement of problem

In instances of conflict between coastal States and landlocked States, the courts have clearly explained that coastal States have preferential rights over the fisheries zones.[23] This is because coastal States are the main custodians of the fisheries zones for the purposes of sustainability of the living resources within the EEZ.[24] This then raises the concern that landlocked States' access to the fisheries zones is under the full control of coastal States.

1.3 Hypothesis

To ensure a balance between the coastal States and landlocked States with regard to the fisheries zones the approach applied should allow both landlocked States and coastal States to enjoy the benefits of the zones. The approach should encompass sustainable measures that promote equity and cooperation between coastal States and landlocked States. Moreover, the

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[17] Martin Dixon, '*Textbook on International law*', 7th Ed, Oxford Press, Oxford, 2013, 225.
[18] *Fisheries Jurisdiction (United Kingdom v Iceland)*, Judgment of 25 July 1974, ICJ Reports, 3 and *Fisheries Jurisdiction(Federal Republic of Germany v Iceland)*, Judgment of 25 July 1974, ICJ Reports, 175
[19] *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)*, ICJ Reports, 14 June 1993, 38, 59, 61.
[20] *Fisheries Jurisdiction (United Kingdom v Iceland)*, Judgment of 25 July 1974, ICJ Reports, 3, 35 and *Fisheries Jurisdiction (Federal Republic of Germany v Iceland)*, Judgment of 25 July 1974, ICJ Reports, 23- 31.
[21] James Crawford, *Brownlie's principles of public international* law, 8th Ed, Oxford University Press, Oxford, 2012, 276.
[22] Ian Brownlie , *principles of public international law*, 6th Ed, Oxford University Press, Oxford, 2003, 214-216.
[23] *Fisheries Jurisdiction (United Kingdom v Iceland)*, Judgment of 25 July 1974, ICJ Reports, 3, 35 and *Fisheries Jurisdiction (Federal Republic of Germany v Iceland)*, Judgment of 25 July 1974, ICJ Reports, 23- 31.
[24] Article 58, *United Nations Convention on the Law of the Sea (LOSC)*.

approach should promote efficient management and exploitation of the living resources within the EEZ.

1.4 Statement of objective(s)

a. Analyse the legal framework that governs the fisheries jurisdiction.
b. Analyse the development of the landlocked States regime with regard to the use, exploitation and management of the fisheries zones.
c. Investigate plausible solutions to ensure a balance between access to the fisheries zones of both coastal States and landlocked States in Africa while maintaining sustainable exploitation of the living resources through regional economic communities.

1.5 Research question (s)

a. What are the laws and jurisprudence that surround the fisheries jurisdiction?
b. What is the evolution of landlocked States regime within the fisheries jurisdiction?
c. How can a balance between the rights of the coastal States and landlocked States within the fisheries zone be achieved?

1.6 Justification of the study

The significance of this research is to enable increase of the candidate's knowledge in fisheries jurisdiction and the importance of the principle of equity. Moreover, the study will look into the role regional economic communities play and how they can transform the fisheries sector in solving the conflict of interests in the EEZ that occur between the coastal States and landlocked States.

1.7 Literature review

Firstly, in the *Fisheries case*, it is clear that the balancing of States' interests and rights has been an enormous bone of contention in the international community. The International Court of Justice (ICJ) in this case highlighted that international law takes into account the diversity

of facts when determining matters. Hence, with regard to the delimitation one must consider the special conditions obtained in the different areas.[25]

Moreover, Sir Arnold McNair highlighted that the principle of the freedom of the seas must also be taken into consideration. This is to prevent and not encourage further encroachments upon the high seas by coastal States.[26]

Before the mid-1970s, the fisheries regime was governed by the open access regime with high seas freedom and, very limited State control.[27] Furthermore, in the *Fisheries jurisdiction case,* the ICJ recognises that the idea of a fishery zone in which each state may claim exclusive fishery jurisdiction independent of its territorial sea. The fishery zone may be up to a 12-mile limit from the baseline. The case recognised the concept of preferential rights of fishing in adjacent waters in favour of the coastal state as an accepted customary law.[28]

By mid 1980s commentators such Lawrence Juda, highlight that while the general legal concept of the EEZ has gained increasing support, differences remain as to the balance of interests which the EEZ concept entails and what specific rights and duties it encompasses.[29]

In the late 1980s, Tommy Koh discusses the evolution of the EEZ, its principles and legal status. Most importantly, he highlights the fishing resources within the EEZ. Firstly, the progressive extension of the exclusive fisheries jurisdiction by the developed coastal States, in response to competitor fishing States, was matched by similar action on the coastal States. However, developing coastal States were too poor and too under-developed technologically to be able to compete with states such as Japan, the Soviet Union and United States.[30]

Over time the developing coastal States began the movement to remould the international law of fisheries. This was led by the Pacific- coast Latin American states. In 1972, African states joined the movement by holding an African regional seminar. The effect of this was the endorsement of the proposal submitted by Kenya to the Asian – African Legal Consultative Committee (AALCC). Therein, leading to the draft articles on the EEZ submitted to the UN Sea Bed Committee.[31] Accordingly, during UNCLOS III Kenya's proposal on the EEZ was

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[25] *Fisheries Case (United Kingdom v Norway),* Judgment of 18 December 1951, ICJ Reports, 141-142.
[26] *Fisheries Case (United Kingdom v Norway),* Dissenting Opinion Sir Arnold McNair, ICJ Reports, 1951, 72.
[27] Judge Paik J H, 'United Nations Convention on the Law of the Sea (LOSC): International Legal Regime of Fisheries' –< http://legal.un.org/avl/ls/Paik_LS.html# > on 17 February 2019.
[28] *Fisheries Jurisdiction (United Kingdom v Iceland),* Judgment of 25 July 1974, ICJ Reports, 3, 35.
[29] Lawrence Juda, 'The exclusive economic zone: Compatibility of national claims and the UN convention on the law of the sea', 16(1), *Journal on Ocean Development and International Law*, 1986, 43- 45.
[30]Tommy Koh , 'The Exclusive Economic Zone', 4, 8, 10- 14.
[31] Tommy Koh , 'The Exclusive Economic Zone', 8.

adopted and therein both coastal States and land-locked States get to enjoy the fisheries resources within the EEZ.[32]

Additionally, Bernard Oxman in the article, 'The territorial temptation: A siren song at sea,' shows how coastal States are trying to manipulate the law to fit their own interests in the name of the protection of the marine environment from ship-source pollution within the EEZs. The coastal States argued that the fishing and navigation rights are subject to restriction. Despite the fact that this restriction is in a manner inconsistent with the EEZ regime under LOSC.[33]

Patuzi Dorina in her article, highlights that conflict between coastal States and other interested States over the EEZ is bound to rise. This is due to the framing of the Convention, as it gives coastal States power to have the exclusive right and sovereign rights for the purpose the purpose of exploring and exploiting and use of fisheries zone, including regulations within the EEZ. Therefore, coastal States in a way control the activities that take place within the EEZ. This jurisdiction is also in relation to the activities of other States who have interest in the EEZ.[34]

1.8 Research design

1.8.1 Research methodology

This is a qualitative research. The research was exclusively desk research. The main research methodology was the consultation of literature on the subject under study from books, journals and scholarly articles as a secondary data. Additionally, there will be analysis of the statutes on EEZ and interpretation of the statute in the various international courts and tribunals.

1.8.2 Assumptions

This study is guided by the assumptions that the LOSC laws on the EEZ in relation to the fisheries jurisdiction are ambiguous. Furthermore, the LOSC provision on the accessibility of EEZ by landlocked States is hindered by coastal States for their own interests. Additionally, it assumes that the coastal States are not upholding the principles of equity and co-operation.

[32] Tommy Koh, 'The Exclusive Economic Zone', 15.
[33] Bernard Oxman, 'The Territorial Temptation: A Siren Song at Sea,' 100, *American Journal of International Law*, October 2006, 845-849.
[34]Dorina Patuzi, 'The concept of the Economic Exclusive Zone', Vol 1(1), *Academic Journal of Business, Administration, Law and Social Sciences*, University of Tirana, March 2015, 152.

1.8.3 Limitations

This study will be limited to the analysis of the EEZ with regard to the fishing rights between coastal States and landlocked States. Also due to the qualitative nature of the study, its accuracy is limited to the data sources.

1.8.4 Chapter breakdown

This study has been structured as follows:

Chapter One- Introduction

This is the introduction of the study discussing key concepts and the background of the fisheries zone.

Chapter Two- Theoretical framework based on TWAIL

This chapter conceptualises the EEZ by finding out the justification for the creation of the EEZ based on the principle of equity.

Chapter Three-The Legal Framework surrounding fisheries jurisdiction

It analyses the different laws and judicial interpretations with regard to fisheries zones within the regime of the EEZ. Moreover, it discusses the measures can be taken when there is a conflict of interests with regard to fisheries.

Chapter Four- The evolution of the access of landlocked States to and from the sea

This chapter explores the dynamics of the balance of the fishing rights between coastal States and landlocked States in the EEZ. Further, it highlights the development of landlocked States bloc in securing their demands within the law of the sea regime. The chapter compare Austria and Rwanda as landlocked States.

Chapter Five- Conclusion and Recommendations

It concludes the study and gives recommendations.

1.8.5 Time line

This study will take place from July 2019 to December 2019.

2. TWAIL as a lens to achieve equity in EEZ for developing coastal and landlocked States

TWAIL (Third World Approaches to International Law) highlights a system that legitimises and sustains subordination of the Third World by the West. Therein, TWAIL calls out international law as illegitimate.[35] This is because neither its universality nor its promise of global peace and stability make it a just, equitable and legitimate code of global governance for the Third World.[36]

2.1 The history and development of TWAIL

Over twenty years ago in the spring of 1996, TWAIL was a project developed by students in North America.[37] Its birth was as a production of Third World scholars who had concerns about international law across multiple generations. Hence, the platform TWAIL emerged as a decentralisation of an evolving network of Third World scholars over several generations beyond North America.[38] However, the TWAIL scholars of the late 1990s were not the first advocates in the fight against the marginalisation of the Third World in international law. This is so as they were not the first voice to oppose plundering by the West in international legal order.[39]

Therefore, TWAIL should not ignore nor be seen independent from other earlier movements by Third World scholars in carrying forward the aim of creating international legal knowledge free from limitations and mimicry of First World international legal scholarship.[40] TWAIL's utmost vision is to set strategies directed towards creating a world order based on social justice.[41]

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[35] Bhupinder Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review*, 2006, 7.
[36] Makau Mutua, 'International law in ferment: A new vision for theory and practice', *Proceedings of the 94th Annual Meeting, The American Society of International Law*, 5-8 April 2000, Washington DC, 31.
[37] James Gathii , 'The Agenda of Third World Approaches to International Law (TWAIL)', Forthcoming in Jeffrey Dunoff and Mark Pollack (eds.) *International Legal Theory: Foundations and Frontiers, Cambridge University Press*, 5.
[38] James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 5.
[39] James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 6.
[40] James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 7.
[41] Bhupinder Chimni, 'Third World Approaches to International Law: A manifesto', *International Community Law Review*, 2006, 4.

According to Mutua, TWAIL is driven by three principles. Firstly, to understand and deconstruct the uses of international law as a medium for the creation of a racialised hierarchy of international norms and institutions that allow for subordination of non-Europeans. Secondly, provide an alternative normative legal edifice for international governance. Lastly, it seeks to eradicate the underdevelopment of the Third World.[42]

Furthermore, TWAIL thinkers have used the historical sources of international law doctrines to challenge the veracity of those doctrines. They have demonstrated that international law is not based on intellectual and moral commitments that reflect its global subject matter, but only its European history.[43] For example,

> 'How the Protocols and General Acts of the Berlin Conference had for the effect to legalize the colonization of Africa and the imposition of borders on this continent that had absolutely nothing to do with its social realities; that "wars of conquest and fraudulent treaties with African rulers and societies were the agencies for the effective imposition of European sovereignty", despite the apparently fraudulent nature of those treaties; and the colonial borders were eventually validated and legitimized by the League of Nations and the United Nations.'[44]

The TWAIL approach to international law calls for what has been termed as a need for both 'residence and reform' (a duality of engagement).[45] As espoused by the second wave of TWAIL thinkers, people of the Third World must resist the negative aspects of international law. This includes the inapplicability of its self-professed universalism to specific relativistic and cultural contexts. These progressions must be complimented by claims for reform.[46]

TWAIL rejects the eurocentric accounts of international law that fail to take into consideration the history of subordinated groups within it and its current consequences such as those related to climate change, and poverty.[47] This means that TWAIL embraces alternative constructive and reconstructive methods in international law to remedy the subjugation of States.[48]

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[42] Makau Mutua, 'International Law in ferment: A new vision for theory and practice', 31.
[43] Larissa Ramina, 'Framing the concept of TWAIL: Third World Approaches to International Law', *Justiça Do Direito*, 32 (1), January 2018, 6.
[44] Makau Mutua, 'Why redraw the map of Africa: A moral and legal inquiry', *Michigan Journal of International Law*, 16(4), 1995, 1127- 1129.
[45] Luis Eslava and Sundhya Pahuja, 'Beyond the (post)colonial: TWAIL and the everyday life of international law' 45 *Law and Politics in Africa, Asia and Latin America* 2, 2012, 199.
[46] Luis Eslava and Sundhya Pahuja, 'Beyond the (post)colonial: TWAIL and the everyday life of international law' 45 *Law and Politics in Africa, Asia and Latin America* 2, 2012, 209.
[47] James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 2.
[48] James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 2-3, 39.

James Gathii highlights that TWAIL aims to show insight on how international law is a field for legitimised domination and marginalisation of non-European states.

> 'In short, TWAIL scholarship provides a substantive critique of both the politics and the scholarship of international law, in addition to exploring the extent to which international law has legitimated global processes of marginalization and domination of the peoples of the third world, as well as how third world peoples and countries can overcome these challenges.'[49]

In line with the above, when analysing international law, TWAIL scholars analyse not only the rules but also the system of international law. This is because it is the system that formal inequality results in the domination over non-Europeans.

> 'TWAILers trace how international law entrenches the interests of capital over those of values such as human rights or even laying the groundwork for chaos and disorder through the imposition of statehood in non-European countries where it has historical roots. There are several TWAIL strands that explore these roles of international law in constituting order and disorder.'[50]

BS Chimni highlights how the unequal structures and processes that have manifested themselves in the growing North- South divide. This divide has been aided and abetted by international law. His view is that the maintenance of domination in the era of globalisation is solely by the language of international law.

> 'International law has always served the interests of dominant social forces and States in international relations. However, domination, history testifies, can coexist with varying degrees of autonomy for dominated States. In the era of globalization, the reality of dominance is best conceptualized as a more stealthy, complex and cumulative process. A growing assemblage of international laws, institutions and practices coalesce to erode the independence of third world countries in favour of transnational capital and powerful States.' [51]

TWAIL puts forth that for the poor, weak and vulnerable to survive they must engage in collective action as the world system is an exploitative one. This idea draws inspiration from the Haitian revolution where the core aim was the commitment to equality and justice. In this case equality and justice in international relations.[52]

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[49]James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 12.
[50] James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 20.
[51] Bhupinder Chimni, 'Third World Approaches to International Law: A Manifesto', 9.
[52] Blakrishnan Rajagopal, 'International law and its discontents: Rethinking the Global South', *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 106, Confronting Complexity, 2012, 178.

TWAIL advocates for a reconstruction of international law in terms of the legal rules and the system from a perspective of the Third World. In relation to the law of the sea, TWAIL advocated for the re-tell, re-configuration and re-construction of the law of the sea. It is in the spirit of re-construction of the system that the global South joined forces to push for a new regime during the period of 1968 and 1974.[53]

Before the mid- 1970s, the Third World's interests were not advanced in any of the law of the sea's international instruments. However, through the idea of collective actions like that of the Asian- African Legal Consultative Committee (AALCC),[54] the Third World is able to achieve the goal of equity. Also, the efforts of African jurists such as Joseph Warioba and FX Njenga at UNCLOS III to re-tell the law of the sea in a manner that is inclusive of the concerns and protection of the Third World rights.[55]

During the mid-1970s, the landlocked and geographically disadvantaged (LLGDS) states joined forces to combat against the inequalities within the law of the sea regime.[56] TWAIL advocates for the consistency of applying the principle of equity. LOSC recognises the need to share the living resources between both landlocked states and coastal states.[57]

2.2 The concept of landlocked States

For a State to be recognised as landlocked it must lack a coastline that directly deprives it from access to international maritime transport. Landlocked States (LLS) were essentially developed through international laws.[58]

With regard to the development of LLS, the history differs depending on the continent they are in.[59] For example in Africa, most of the LLS arose as a primary effect of colonialism. This is because of the purely arbitrary nature of the boundaries created from the ancient administration subdivisions of the colonial powers.[60] This means that they became States by the mere chance

[53] Francis X Njenga, '*International law and World order problems'*, 122.
[54] Francis X Njenga, '*International law and World order problems'*, 122.
[55] Aldo Chircop, The Maritime Zones of East African states in the Law of the sea: Benefits gained, opportunities missed, *African Journal of International and Comparative Law*, September 2008, 126.
[56] Tuerk Helmut, *Reflections on the contemporary law of the sea*, 51.
[57] Article 56 and Article 58, *United Nations Convention on the Law of the Sea (LOSC)*.
[58] Kishor Uprety, 'The transit regime for landlocked States', *Law, Justice and Development Series*, April 2005, 4-5.
[59] M. A. Sulaiman, 'Free access: The problem of land-locked States and the 1982 United Nations Convention on the Law of the Sea', *South Africa Year book of International Law*, 10(145), 1984, 10, 17-20.
[60]Kishor Uprety, 'The transit regime for landlocked States', 6.

when European States were carving continents for their own good. For instance in Africa majority LLS are former protectorates of European powers. [61]

Other than lack of maritime access, LLS have a few characteristic in common. One of which is the geographical disadvantages.[62] Generally, the States with the easiest access to the sea are mostly in Europe while the developing LLS are situated far from international markets and resources of the EEZ.[63]

In the name of protecting the marine environment from ship-source emissions within the EEZs, developed coastal states are attempting to manipulate the legislation to suit their own needs. Coastal states claim that limits be placed on fishing rights. Despite the fact that under LOSC this restriction is inconsistent.[64]

Furthermore, the EEZ conflict is bound to rise between coastal states and landlocked states. This is attributable to the Convention's wording, as it grants coastal states the power to have preferential privileges and sovereign rights for the purpose of developing, use and exploiting of the fisheries zones. Therefore, coastal States control the activities that take place within the EEZ.[65]

In contrast, similar action on progressive extension of fisheries zones by the coastal states was mirrored by other competing coastal states. Developing coastal states, however, were too small and economically underdeveloped to be able to compete with countries like Japan, the Soviet Union, and the United States. [66]

As highlighted above, international law does not take into account the economic and cultural differences of the Third World. Moreover, it aims to protect the vast majority of the global North.[67] However, due to the core principles of envisioned by TWAILers, developing States when unified can seek justice through equity to fight the political tyranny of international law regardless of the States' inequalities.[68] The evolution of this development shall be discussed in Chapter three and four.

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[61] Kishor Uprety, 'The transit regime for landlocked States',7-8.
[62] Kishor Uprety, 'The transit regime for landlocked States',6-8.
[63] Kishor Uprety, 'The transit regime for landlocked States', 4, 7,8.
[64] Bernard Oxman, 'The territorial temptation: A siren song at sea,' 845-849.
[65]Dorina Patuzi, 'The concept of the Economic Exclusive Zone', 152.
[66] Tommy Koh, 'The Exclusive Economic Zone', 4, 9, 10.
[67] Tommy Koh, 'The Exclusive Economic Zone', 4, 8, 10- 14.
[68] Bhupinder Chimni , 'Capitalism, imperialism, and international law in the twenty-first century', *Oregon Review Of International Law*, 14 (17), 2012, 39.

2.3 Conclusion

TWAIL developed from scholars who had concerns about the international law system that subordinated the Third World. TWAIL puts forth that for the poor, weak and vulnerable to survive they must engage in collective action as the world system is an exploitative one.[69] Scholars like Mutua advocate for the deconstruction of racialised international norms, provision of a legal alternative and eradicate the underdevelopment of the global south[70] while James Gathii highlights how international law provided a forum for the legitimised marginalisation of non-European States.[71] Additionally, BS Chimni analyses how the growing North-South divide has been aided by the unequal structures within international law.[72]

In conclusion, TWAIL highlights that the eurocentric centred international law has led to the inapplicability of its self-professed universalism based only on the European history. TWAIL then proposes a duality of engagement of international law that advocates for the re-tell, re-configuration and re-construction of international law.[73] This means the need to apply the principle of equity.[74] In this case, TWAIL advocates for the consistency of applying equity in the law of the sea. Hence, LLS and coastal states sharing living resources within the ocean should be recognised under LOSC.[75]

[69] Makau Mutua, 'International Law in ferment: A new vision for theory and practice', 31.
[70] Makau Mutua, 'Why redraw the map of Africa: A moral and legal inquiry', 1127- 1129.
[71] James Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', 2-3, 39.
[72] Bhupinder Chimni, 'Third World Approaches to International Law: A Manifesto', 9.
[73] Luis Eslava and Sundhya Pahuja, 'Beyond the (post)colonial: TWAIL and the everyday life of international law', 199.
[74] Kishor Uprety, 'The transit regime for landlocked States',4-5.
[75] Article 56 and Article 58, *United Nations Convention on the Law of the Sea (LOSC)*.

3. Legal Framework on Fisheries Jurisdiction

3.1 Introduction

Fisheries zones have been areas of contention in the legal regime surrounding the law of the sea. States for a long time have fought to expand their territorial prerogatives. Some States used political channels while others went down the path of sustainability where they argued to preserve pre-existing rights.[76] An example of such is where coastal States were consistently encroaching through claims to regulate fisheries and to conserve the living resources.[77]

This brought about conflict among competing States over the areas of interest. This led to the search for clarity through legislation and the courts' interpretations in order to achieve equity in the delimitation of territories. This chapter shall delve into the legal approaches to fisheries jurisdiction from the 1908 *Grisbadarna*[78] case to the 2015 *Sub-Regional Fisheries Commission's* advisory opinion.[79]

3.2 The era before the 1982 LOSC

The law of the sea is widely thought to begin when European coastal States took to signing bilateral and multilateral agreements to expand their sovereignty over the maritime areas adjacent to their national territories.[80] The increase in the number of States acquiring national territories in the ocean led to the renaissance period. The renaissance period was the enlightenment of the finiteness of the sea's resources on one hand. On the other hand, some States were fearful that there sources will be over exploited by the technologically advanced States.[81]

However, due to the lack of an overarching international treaty to guide the actions of the States they arose several disputes with regard to fisheries jurisdiction that were directed to the international courts.

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[76] Thomas Clingan Jr., 'Emerging Law of the Sea: The Economic Zone Dilemma', 14 *San Diego Law Review*, 1977, 3.
[77] Thomas Clingan Jr., 'Emerging Law of the Sea: The Economic Zone Dilemma', 3-4.
[78] *Grisbadarna case (Sweden v Norway)*, PCA case No 1908-01.
[79] *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC*), ITLOS Case No. 21, 2 April 2015.
[80] Tariq Hassan, 'Third Law of the Sea Conference: Fishing Rights of Landlocked States', 8 (3) *University of Miami Inter-American Law Review*, 1976, 686. Also see, James Crawford, *Brownlie's Principles of Public International* Law, 8th Ed, Oxford University Press, Oxford, 2012, 276.
[81] Tariq Hassan, 'Third Law of the Sea Conference: Fishing Rights of Landlocked States', 686.

3.2.1 Period before 1958 Geneva Conventions: Analysis of *Grisbadarna case* and *North Atlantic Coast Fisheries case*.

At the Permanent Court of Arbitration (PCA) arose two cases namely: The *Grisbadarna case*[82] and *North Atlantic Coast Fisheries case*.[83] Both cases involved bilateral agreements used to demarcate maritime boundaries to enable amicable and equitable ways to share the seas' resources.

Firstly, in *Grisbadarna* an agreement had been signed between Sweden and Norway on October 1661 with regard to delimitation of maritime boundaries. Thereafter, uncertainties arose that led to the dispute brought before the PCA for arbitration.[84]

The Tribunal was tasked with answering whether the boundary fixed by the 1661 agreement was sufficient. Moreover, if it was not what was the way forward.[85] The tribunal saw it was fit to assign Grisbardarna to Sweden and Skjottegrunde to Norway. Additionally, the Tribunal held that the result was equitable and in perfect harmony with the factual circumstances notably with respect to the use of the fisheries and placing of the buoys.[86]

The Tribunal applied the principles of equity and cooperation, to resolve the dispute, thus embedding these tools of municipal law into international law. In the spirit of equity backed with sufficient evidence, the resources were shared between Sweden and Norway.

In the *North Atlantic Coast Fisheries case,* agreements on fishing privileges can trace its history to 1910 through the agreement between United States (US) and Canada with regard to North Atlantic fisheries.[87] These agreements were later subjected to final arbitration in the PCA. The main issue at hand was that the British claimed that the 1783 treaty with US was null and void after the War of 1812.[88]

The Tribunal decided that the grant of liberty to fish off the treaty coasts applied within 3 miles, and that British authorities would require US vessels operating in Canadian territorial waters

[82] *Grisbadarna case (Sweden v Norway),* PCA case No 1908-01.
[83] *Grisbadarna case (Sweden v Norway),* PCA case No 1908-01.
[84] *Grisbadarna case (Sweden v Norway),* PCA case No 1908-01.
[85] *Grisbadarna case (Sweden v Norway),* PCA case No 1908-01.
[86] *Grisbadarna case (Sweden v Norway),* PCA case No 1908-01.
[87]*The North Atlantic Coast Fisheries case (Great Britain v United States of America),* PCA Case No 1909-01.
[88] *The North Atlantic Coast Fisheries case (Great Britain v United States of America),* PCA Case No 1909-01.

to report to customs houses and pay taxes.[89] After the decision, the US and Britain signed a treaty embodying the findings of the Tribunal.[90]

The decision of the Tribunal formed the foundation for the new agreements to be made for fisheries regime. Therein, during the period prior to the 1958 Geneva Conventions, bilateral agreements formed under the principles of international law lay the foundation for the fisheries jurisdiction. Furthermore, jurisprudence from the disputes solved added to the development of fisheries jurisdiction. Hence, before the 1958 Conventions the fisheries jurisdiction was based on the principles of equity.

3.2.2 Geneva Conventions

The first United Nations Conference on the Law of the Sea (UNCLOS I) led to the 1958 Geneva Conventions on the Law of the Sea. The Geneva law of the sea regime is comprised of four Conventions and an optional protocol namely: the Convention on the Territorial Sea and the Contiguous Zone (CTS);[91] the Convention on the High Seas (CHS);[92] the Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR);[93] the Convention on the Continental Shelf (CCS);[94] and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes (OPSD).[95]

Other than the now recognised right of landlocked States to their own flag at sea, the result of UNCLOS I favoured the coastal States. For example, under the Convention on the Continental Shelf, coastal States were allowed to nationalise the most valuable areas of the seabed.[96]

Also, the Geneva Convention on the Territorial Sea did not exclusively agree to create fishing zones. Moreover, Article 24 did not give exclusive fishing rights in the Contiguous Zone.[97] Due to this there were many attempts by States to reconcile the lacunae. For example, there was a European Fisheries Convention of 1964 that was adopted in the UK as the Fishing Limits

[89] *The North Atlantic Coast Fisheries case (Great Britain v United States of America),* PCA Case No 1909-01.
[90] David Windley, International practice regarding traditional fishing privileges of foreign fishermen in zones of extended maritime jurisdiction, 492.
[91] *Convention on the Territorial Sea and the Contiguous Zone,* 29 April 1958, 516 UNTS 205.
[92] *Convention on the High Seas*, 29 April 1958, 450 UNTS 11.
[93] *Convention on Fishing and Conservation of the Living Resources of the High Seas*, 29 April 1958, 559 UNTS 285.
[94] *Convention on the Continental Shelf*, 29 April 1958, 499 UNTS 311.
[95] *Optional Protocol of Signature concerning the Compulsory Settlement of Disputes*, 29 April 1958, 450 UNTS 169.
[96] Tuerk Helmut, *Reflections on the contemporary law of the sea*, 50-51.
[97] Malcolm Shaw, *International Law*, 6 ed., Cambridge University Press, 20018, 581.

Act which stated that the coastal State has the exclusive right to fish and exclusive jurisdiction in matters that are within the six mile belt from the baseline of the territorial waters. Moreover, other parties to the Convention within the six and 12 mile belt do have the right to fish. However, they have to prove habitual fishing in that belt within the period of January 1953 and December 1962.[98] This was an attempt to reconcile the interests of the coastal States and the landlocked States (LLS).

3.2.3 The evolution of Fisheries Jurisdiction in the period of the 1970s

In the *Fisheries Jurisdiction cases*, the ICJ pronounced that the concept of the fishing zone had attracted support under international customary law in recent years especially since the Geneva conference.[99] In 1972, Iceland proclaimed a unilateral 50-mile exclusive fishing zone. Upon this declaration by Iceland, the United Kingdom (UK) and the Federation of Germany then took the dispute to the ICJ and requested the court to decide on whether the proclamation by Iceland was in contravention of international law.[100]

The court held that there was no existing rule permitting Iceland's actions. Moreover, it appeared that there was no rule barring claims of beyond 12 nautical miles. Therein, Iceland's extension of the fisheries zone was not binding upon the UK and Germany as they had not consented to it. Additionally, the Court upheld the customary law of preferential rights of fishing in adjacent waters in favour of the coastal State. Moreover, this preference is operational in regard to other States concerned in the exploitation of the same fisheries.[101] Therefore, the concept of preferential fishing rights seems to have survived in customary law.[102]

Preferential fishing rights gave coastal States the upper hand over landlocked states with regard to access to the fisheries zones. Moreover, the landlocked states have to prove prior activities of exploiting the same fisheries for them to be considered to have a stake in the fisheries

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[98] Malcolm Shaw, *International Law*, 582- 584.

[99] Malcolm Shaw, *International Law*, 580. See also James Crawford, *Brownlie's Principles of Public International* Law, 275-278.

[100] *Fisheries Jurisdiction(United Kingdom v Iceland),* Judgment of 25 July 1974, ICJ Reports, 3, 35 and *Fisheries Jurisdiction (Federal Republic of Germany v Iceland),* Judgment of 25 July 1974, ICJ Reports, 23- 31.

[101] *Fisheries Jurisdiction(United Kingdom v Iceland),* Judgment of 25 July 1974, ICJ Reports, 3, 35 and *Fisheries Jurisdiction (Federal Republic of Germany v Iceland),* Judgment of 25 July 1974, ICJ Reports, 23- 31. See also, Crawford James, *Brownlie's Principles of Public International* Law, 279.

[102] Ian Brownlie, *Principles of Public International Law*, 6th Ed, Oxford University Press, Oxford, 2003, 214-216. See also Crawford James, *Brownlie's Principles of Public International* Law, 280.

zones.[103] Landlocked states were, therefore, disadvantaged and lacked direct rights to the fisheries zones as coastal states could claim special dependence on their fisheries.

3.3 The era after the 1982 LOSC

One of the points discussed during UNCLOS III, was the acquisition of exclusive rights to manage and exploit sea resources. This is because fishery resources were systematically being depleted all in the name of freedom of the seas.[104] This resulted in the emergence of a new off-shore zone called the Exclusive Economic Zone (EEZ). [105] The EEZ is the result of two recent developments in the relations between coastal States and distant-water fishing States.[106] Therein, LOSC established some specific rights in the EEZ especially with regard to exploitation of living resources.[107]

LOSC is the main legal framework on the EEZ. It highlights the rights and duties with regard to the living resources within the EEZ.[108] This chapter shall analyse the laws and jurisprudence that have highlighted on the issues of access and exploitation of the fisheries zones within the EEZ.

3.3.1 LOSC

Article 56 of LOSC provides the rights, jurisdiction and duties of the coastal State in the Exclusive Economic Zone as follows:

> 1. In the exclusive economic zone, the coastal State has:
>
> (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone.

[103] *Fisheries Jurisdiction (United Kingdom v Iceland),* Judgment of 25 July 1974, ICJ Reports, 3, 35.
[104] Frank X Njenga , '*International law and World order problems'*, 119.
[105] Article 55, *United Nations Convention on the Law of the Sea (LOSC)*. Also Frank X Njenga, '*International law and World order problems*', 123-125.
[106] Tommy Koh, 'The Exclusive Economic Zone', 30(1), *Malaya Law Review,* July 1988, 1.
[107] Article 56 and Article 58, *United Nations Convention on the Law of the Sea (LOSC)*.
[108] Article 56, Article 61 and Article 62, *United Nations Convention on the Law of the Sea (LOSC)*.

> 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.[109]

The LOSC incorporated the principles of international law, customary law, equity and co-operation to enable sustainable use and exploitation of the fisheries zones. However, Article 297 makes it extremely difficult for LLS to contest the coastal States' unilateral decisions with regard to marine scientific research and the use of fishing in its EEZ.[110]

3.3.2 Straddling Fish Stock Agreement of 1995

LOSC is the overarching legal regime for the management of marine living resources. The 1992 Agenda 21, analysed the regime and highlighted conservation of fisheries as a problem in dire need of a solution.[111] In 1993 in line with resolution 47/192 of the United Nations General Assembly (UNGA), the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened. The aim was to bring to life the provisions of LOSC with respect to the conservation and management of straddling and highly migratory fish stocks.[112]

Under the Agreement the fundamental principle is the cooperation of States in sustainable use and exploitation of the resources.[113] Moreover, the Agreement birthed the idea of regional fisheries management organisations and arrangements as the main pilot for co-operation in the conservation and management of the resources.[114]

Additionally, the Agreement pushes for the union between the different regimes of the sea, for example, high seas, EEZ in order to create a harmony in the conservation and management of the resources in a sustainable manner.[115] Therein, the straddling fish agreement provided a

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[109] Article 56, *United Nations Convention on the Law of the Sea (LOSC)*.
[110] Article 297, *United Nations Convention on the Law of the Sea (LOSC)*.
[111] *The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, 11 December 2001.
[112] Preamble, *The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*. Herein as *United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.*
[113] United Nations, Background on the *United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*.
[114] United Nations, Background on the *United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*.
[115]United Nations, Background on the *United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*.

window of opportunity to incorporate landlocked States in the 'heritage of mankind'.[116] This means regional fish management agreements (RFMAs) push for synergy between landlocked States and coastal States in the management of the fisheries in the EEZ.[117]

3.3.3 Effect of cooperation on landlocked States

In the advisory opinion sought by the Sub- Regional Fisheries Commission (SRFC) the key issue was the illegal, unreported and unregulated (IUU) fishing activities carried out within the EEZ.[118] It was a major concern because the EEZ is a zone that is shared between the landlocked States and coastal States. Also, the living resources within the EEZ are to be managed and conserved in a sustainable manner.[119] The issue was broken down into four pertinent questions. Question one dealt with what are the obligations of the flag State in cases where IUU fishing activities are conducted within the EEZ of third -party States. The second question looked at the extent to which a flag State is liable for IUU fishing activities conducted by its vessels.

Additionally, the third question analysed a situation where a fishing license is issued by a State or international agency shall the international agency or the State be held liable for the violation of fisheries legislation by the vessel in question. The last question was with regard to what are the rights and obligations of coastal States in ensuring the sustainable management of shared stocks and stocks of common interest.[120]

In the interest of this chapter, the last question is of most interest. The Tribunal pointed out that co-operation and good faith are the key obligations that States and international organisations owe to each other to ensure efficient conservation and management measures of shared stocks within the EEZ. This is to avoid over-exploitation. [121]

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[116] United Nations, Background on the *United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*. See also, Gerhard Hafner, 'Austria and the Law of the Sea', 29-31.

[117] *Southern Bluefin Tuna case,* International Tribunal for the Law of the Sea, No. 3 and 4, 1999 as stated in *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC*), ITLOS Case No. 21.

[118] *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC),* ITLOS Case No. 21.

[119] Article 55, Article 56 and Article 58, *United Nations Convention on the Law of the Sea (LOSC)*.

[120] *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC),* ITLOS Case No. 21.

[121] *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC*), ITLOS Case No. 21.

The Tribunal went ahead to quote what was said in *Southern Bluefin Tuna case*, 'the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment.'[122]

This advisory opinion opened up doors for landlocked States to come together with coastal States and cooperate to form regional fisheries

management organisations (RFMOs).[123] RFMOs create a platform for sustainable management of fisheries within the EEZ. Therein, creating an opportunity for landlocked States and coastal States to both benefit from the living resources within the fisheries zones.[124]

3.4 Conclusion

In the early 1900s, the fisheries jurisdiction was based on the principle of equity where each State was accorded its due. This was because there was no written law that governed the fisheries zones.[125]

In 1958, the Geneva Conventions attempted to lay down written laws with regard to the high seas, continental sea, fishing, contiguous zone, territorial zone and conservation of living resources in the high seas.[126] However, the Conventions failed to exclusively highlight the fishing rights within the contiguous zone. This resulted in a series of case law that attempted to fill the lacunae. Hence, the recognition of preferential fishing rights. [127]

Between 1968 and 1974, there was deliberations on the need for a new law of the sea regime. The new regime should be inclusive of the rights of landlocked to access the fisheries zones.[128]

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[122] *Southern Bluefin Tuna case,* International Tribunal for the Law of the Sea, No. 3 and 4, 1999 as stated in *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC*), ITLOS Case No. 21.

[123] *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC*), ITLOS Case No. 21.

[124] *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC*), ITLOS Case No. 21.

[125] *Grisbadarna case (Sweden v Norway),* PCA case No 1908-01 and *The North Atlantic Coast Fisheries case (Great Britain v United States of America),* PCA Case No 1909-01.

[126] David Windley, International practice regarding traditional fishing privileges of foreign fishermen in zones of extended maritime jurisdiction, 492.

[127] *Fisheries Jurisdiction (United Kingdom v Iceland),* Judgment of 25 July 1974, ICJ Reports, 3, 35 and *Fisheries Jurisdiction (Federal Republic of Germany v Iceland),* Judgment of 25 July 1974, ICJ Reports, 23- 31.

[128] Frank X Njenga , '*International law and World order problems',* 119. See also Tuerk Helmut, *Reflections on the Contemporary Law of the Sea,* 50.

Moreover, the regime should aim to conserve the living resources within the EEZ. This resulted in the 1982, LOSC.[129]

In 1995, the principle of sustainable management of the living resources within the EEZ was adopted. Furthermore, the concept of cooperation was introduced. Thereafter, cooperation was emphasised in order to protect the rights of landlocked States and promote the principle of equity.[130]

In conclusion, the conventions and the courts have attempted to reconcile the interests of the coastal States and the LLS with the respect to the fishing rights within the EEZ. However, due to customary law and historical backgrounds there seems to be a bias favouring costal States.

[129] Francis X Njenga, '*International law and world order problems'*, 122.
[130] *Southern Bluefin Tuna case*, International Tribunal for the Law of the Sea, No. 3 and 4, 1999 as stated in *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC*), ITLOS Case No. 21.

4. The Evolution of the access of landlocked States to the sea and its resources

4.1 Introduction

As was earlier discussed, LOSC aims to achieve equitable division of the ocean's resources.[131] However, jurisprudence as highlighted that coastal States have an upper hand in jurisdictional matters within the fisheries zones. In *Fisheries Jurisdiction (United Kingdom v Iceland),* it was noted that preferential rights of coastal states has been deeply embedded in customary law.[132] Furthermore, coastal States opt into the co-operation with landlocked States in sharing of the fisheries zones.[133]

Due to the favourable treatment of coastal states in the law of the sea regime, landlocked and geographically disadvantaged states came to together to state their claims within the EEZ in the spirit of equity.[134] Therein, this chapter shall delve into discussing the evolution of landlocked states within the law of the sea regime. More specifically it shall analyse Austria's role in the development of the law of the sea. The chapter shall also examine Rwanda as a landlocked State in Africa and considering what role Rwanda could or is playing in shaping discourse and acceptance of landlocked state rights to access fisheries. Finally, the chapter shall look at Rwanda's role in advancing regional integration in East Africa.

4.2 Rise of landlocked states in law of the sea

The thorny issue of landlocked territories access to and from the ocean has a long history. Coastal territories in Europe began granting landlocked states treaty rights as early as the eleventh century to allow them access to the sea.[135] Landlocked states even sometimes pursued direct territorial access to the sea, some of them in the nineteenth century, such as Paraguay and Bolivia.[136]

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[131] Preamble and Article 56, *United Nations Convention on the Law of the Sea (LOSC)*.
[132] *Fisheries Jurisdiction (United Kingdom v Iceland),* Judgment of 25 July 1974, ICJ Reports, 3, 35.
[133] United Nations, Background on the *United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*.
[134] Gerhard Hafner, 'Austria and the Law of the Sea', in Tullio Treves (eds), *The Law of the Sea: The European Union and its members*, Martinus Nijhoff Publishers, Hague, 2017, 34.
[135] Gerhard Hafner, 'Austria and the law of the sea', 30-34.
[136] Gerhard Hafner, 'Austria and the law of the sea', 32. See also Lily Mcmakin Alexander, 'The disadvantaged States and the law of the sea', 5(1) *Marine Policy,* 1981, 185.

It was not until new inland states – Austria, Hungary, and Czechoslovakia – appeared on Europe's map with the disintegration of the Austro-Hungarian Empire at the end of the 1914-1919 Great War I that the right of landlocked states to fly a national flag was finally acknowledged.[137] The landlocked states ' right to raise their flag on the oceans, however, could only be successful if they also enjoyed the right of access to it at the same time.[138] In 1958, UNCLOS I was an important step taken to improve the relationship between landlocked states and the law of the sea rules. A total of 90 states participated during UNCLOS I, of which ten were landlocked.[139]

The 1958 Conventions based on draft articles drawn up by the ILC were, distinguished by a lack of understanding of the specific position of landlocked states in maritime matters. Austria was chairing the interest group of landlocked countries. The era was characterised by a true spirit of solidarity between its members that were both developed and developing.[140]

During UNCLOS III, Austria opposed the idea of an exclusive economic zone, together with other landlocked and geographically disadvantaged states which would give exclusive rights to coastal states.[141] Nevertheless, since the propensity to create these zones could not be impeded, these LLS demanded the right to participate in the exploration and exploitation of living and non-living resources in the exclusive economic zones to compensate for the losses caused by the development of these zones.[142]

4.3 Austria and the law of the sea

Austria emerged as a landlocked country at the end of the War of 1914- 1919. Because of its geographical location, Austria differs from the majority of the member States of the European Union in its relation to maritime law. This particular situation is due to the distance from the sea, and their need for transit through the territory of foreign countries to access the sea.[143] Austria considers its geographical position to be disadvantageous, a disadvantage that is particularly obvious to it as it formerly was a coastal state. In addition, it considers it a

[137] Gerhard Hafner, 'Austria and the law of the sea', 31.
[138] Tuerk Helmut, *Reflections on the contemporary law of the sea*, Martinus Nijhoff Publishers, Leiden, 2012, 50-51.
[139] Tuerk Helmut, *Reflections on the contemporary law of the sea*, 50.
[140] Tuerk Helmut, *Reflections on the contemporary law of the sea*, 51.
[141] Tuerk Helmut, *Reflections on the contemporary law of the sea*, 51.
[142] Tuerk Helmut, *Reflections on the contemporary law of the sea*, 50-53.
[143] Gerhard Hafner, 'Austria and the law of the sea', 28.

restriction of its economic and political opportunities imposed by nature and, therefore, a long-term obstacle to its development options.[144]

These two aspects, on the one hand the landlocked position and on the other the transit routes, governed the relationship between Austria and the sea. As for its character as a landlocked state, it was historically known as a state with no interest in maritime use. Even in the 19th century, different states policies were based on the assumption that landlocked States could not use the sea in a rational and responsible manner.[145] This is so as the activities that landlocked states would carry out were considered to have high operational costs.[146]

The only chance Austria had to take advantage of sea law is by engaging in the 'heritage of mankind'.[147] While the issue of access to the sea was the main concern of landlocked states for a long time, one of these states, led by Austria, claimed their share in the use of the sea immediately after the War of 1914-1919. They put forward their first demands of their right to fly their flag. To enable landlocked states to secure the supply of the necessary resources for their populations even in times of international crisis, this right was considered necessary.[148]

As at 1993, 26 large seagoing vessels with a gross tonnage of 123,600 GRT were included under the Austrian flag. A resolution on the acknowledgement of the landlocked state's rights to fly their flag was generally recognised as early as 1921 and their failure to offer reciprocal rights was recognized when these states were granted rights to use foreign ports.[149]

When the UN made the first serious attempt to codify the law of the sea since the War of 1939 to 1945, landlocked states met on the eve of UNCLOS I to find a common position on access to the sea.[150] At that time, Austria was engaged in maritime scientific research, particularly in the Adriatic Sea, where its state-owned oil company was engaged in oil drilling off-shore. Therefore, by then landlocked countries, geographical location was no longer considered a major impediment. Therein, discussions begun on the new maritime legal order.[151]

Due to the massive demand of the coastal states to expand their national maritime zones, the landlocked states felt a double disadvantage. Thus, at UNCLOS III the group of landlocked

[144] Tuerk Helmut, *Reflections on the contemporary law of the sea*, 53. See also Gerhard Hafner, 'Austria and the law of the sea', 29-30.
[145] Gerhard Hafner, 'Austria and the law of the sea', 29-31.
[146] Gerhard Hafner, 'Austria and the law of the sea', 31.
[147] Central Intelligence Agency, *law of the sea country study: Austria*, 2001, 2-4.
[148] Gerhard Hafner, 'Austria and the law of the sea', 29-31.
[149] Gerhard Hafner, 'Austria and the law of the sea', 28.
[150] Gerhard Hafner, 'Austria and the law of the sea', 29.
[151] Gerhard Hafner, 'Austria and the law of the sea', 28-30.

states (LLS) chaired by Austria was established.[152] The group claimed the following: a right to maritime uses including maritime scientific research independent of coastal state jurisdiction, a right to benefit from the exploration and exploitation of international sea area and participatory rights in the various legal systems related to sea and sea transit.[153] During UNCLOS III, these claims became the dominant arguments and points of negotiation.[154]

The law of sea negotiations offered Austria an opportunity to be a spokesperson for landlocked states, acting as an intermediary between large political blocs, i.e. developing and developing states.[155] Austria voted in favour of and ratified on 10 December 1982 the United Nations Convention on Law of the Sea (LOSC). It also ratified the Convention by means of a resolution on the option of means for settling disputes concerning the application of the Convention.[156]

4.4 Rwanda as a landlocked state

After UNCLOS III, not all African states were pleased with the outcome of the conference. Most especially the continent's landlocked states that did not benefit as much as they had anticipated.[157] As of today a total of eight out of sixteen landlocked African states have ratified LOSC.[158] Rwanda is one of the LLS that has not ratified the LOSC. It is a landlocked, rural, agrarian country with farming accounting for about 63 percent of export earnings and some mineral and agro-processing.[159]

Due to its landlocked geography, Rwanda's fisheries resource base is made up of lakes, rivers, underground water and water resource reserves. Rwanda's fisheries framework to meet the national fish demand revolves around the internal fisheries resources.[160]

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[152] Gerhard Hafner, 'Austria and the law of the sea', 31.
[153] Gerhard Hafner, 'Austria and the law of the sea', 31.
[154] Edward Miles, *Global Oceans Politics: The Decision process at the Third United Nations Conference on the Law of the Sea*, Martinus Nijhoff Publishers, 1998, 208-209.
[155] Central Intelligence Agency, *Law of the Sea country study: Austria*, 2001, 2-4. See also Edward Miles, *Global Oceans Politics: The Decision process at the Third United Nations Conference on the Law of the Sea*, 209.
[156] Central Intelligence Agency, *Law of the Sea country study: Austria*, 2001, 4,5. See also, Gerhard Hafner, 'Austria and the Law of the Sea', 31.
[157] Aldo Chircop, 'The maritime zones of East African states in the law of the sea: Benefits gained, opportunities missed' , 126.
[158] Only Botswana, Burkina Faso,Lesotho, Mali, Swaziland, Uganda, Zambia and Zimbabwe have ratified as stated on Division for Ocean Affairs and the Law of the sea, 'Chronological list of ratifications of, accessions and successions to the Convention and the related Agreement, UN Oceans and Law of the sea, -< https://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm > accessed o 4 December 2019.
[159] Central Intelligence Agency, *The world fact book*, 12 November 2019, 1.
[160] Ministry of Agriculture and Animal Resource, 'Master plan for fisheries and fish farming in Rwanda', 17 February 2011, 6- 11.

The main legal framework around fisheries is *Law on determining the organisation and management of aquaculture and fishing in Rwanda*; that advocates for sustainable management of fisheries and development of aquaculture.[161] Additionally, the Fishery and Aquaculture Development Policy was developed to deal with the technical and institutional problems related to the management of fisheries and aquaculture sector.[162]

Rwanda became a full member State of the East African Community (EAC) with effect from 1st July 2007. The EAC is an intergovernmental organisation that aims to realise a deep integration and economic bloc amongst its member States. As part of its vision EAC developed a regional strategy and implementation plan for the development of sustainable aquaculture.[163] This plan is an integral guideline to Rwanda's master plan for fisheries and fish farming, as the two aim to increase the benefits from fisheries and achieve the sustainable management of fisheries[164]

4.4 Analysis of Rwanda emulating Austria's actions in the fight for LLS.

Similar to Austria, Rwanda is a small landlocked country with economical capabilities to scale up. Furthermore, it has access to the sea either through the Kenyan or Tanzanian coast.[165] It is a country uniquely adopted to negotiate for the equitable share in the 'heritage of mankind' within the economic fisheries zones.[166]

One of the aims of the blue economy in East Africa is to maximise on the economic benefits of marine resources for developing countries. One way that was through effective management of fisheries, aquaculture and tourism.[167] So far, Rwanda has undertaken recommendable efforts under the green economy in terms of bringing together investors, policymakers and practitioners from across the continent to share green growth and climate-resilient development

[161] *Law on determining the organisation and management of aquaculture and fishing*, Law No. 58/2008, Rwanda.
[162] Ministry of Agriculture and Animal Resource, 'Master plan for fisheries and fish farming in Rwanda', 17 February 2011, 33.
[163]History on the East African Community, accessed on -< www.eac.int >. See also Ministry of Foreign Affairs and International Cooperation, *EAC Affairs: EAC overview*, Rwandan Ministry of Foreign Affairs and International Cooperation.
[164] Michael de San, EAC strategy and implementation plan for sustainable Aquaculture plan: Part 2and 3, January 2013, 19-22.
[165] Central Intelligence Agency, *The world fact book*, 12 November 2019, 1.
[166] Gerhard Hafner, 'Austria and the Law of the Sea', 31.
[167] World Bank, World Bank in Rwanda, 30 September 2019.

experiences.[168] Moreover, it has laid the foundation of the integration of the green economy in Rwanda through the Green fund.[169] The latter highlights Rwanda's unique nature of being a State that is committed to nation-building. Due to its history, Rwanda has a political regime characterised by elites committed to development and collective action initiatives.[170]

Austria's fight for landlocked states rights to the ocean's resources was driven by the fact that they were once a coastal state while Rwanda's formidable efforts to attain a unified front in achieving landlocked states right to the fisheries zones is driven by the need to achieve a developed African continent.[171] Therefore, Rwanda has a different attitude towards law of the sea.

Rwanda is at the forefront of achieving regional integration in East Africa showcasing its capacity in diplomatic initiatives. Rwanda has the political ability to drive fast-tracking initiatives within the EAC for a developed and integrated fisheries regime.[172] In promoting the pillars of integration within EAC, Rwanda has waived work permit fees to enable free movement of people and labour. Additionally, they have embraced the concept of lower roaming rates for voice with no receiving charges as a means to promote joint infrastructure development. Moreover, in 2013 Rwanda hosted two important conferences that discussed the ways of driving regional integration.[173]

These initiatives will benefit all member States of the EAC and also improve the common markets. Additionally, the genuine collective action to develop both the inland and marine fisheries will result in an increase in each member State's GDP.[174]

[168] Daniel Nzohabonimana, What makes Rwanda one of Africa's fastest growing economies, TRT World, 17 January 2019. See also Gitura Mwaura, 'Twin concepts of Green and Blue economy well anchored in the region.' The New Times, 1 December 2018.
[169] Daniel Nzohabonimana, What makes Rwanda one of Africa's fastest growing economies, TRT World, 17 January 2019.
[170] David Booth, Diana Cammack, Thomas Kibua, Josephat Kweka and Nichodemus Rudaheranwa, East African integration: How can it contribute to East African development?, February 2007.
[171] Gerhard Hafner, 'Austria and the law of the sea', 31.
[172] Towards political federation in the East African Community achievements and challenges, East Africa Community, 22.
[173] Towards political federation in the East African Community achievements and challenges, East Africa Community, 27.
[174] David Booth, Diana Cammack, Thomas Kibua, Josephat Kweka and Nichodemus Rudaheranwa, East African integration: How can it contribute to East African development?, February 2007.

5. Why RECs as RFMOs?

5.1 Introduction

The aim of the study was to identify the main cause of conflict between landlocked States and coastal States with regard to the fisheries zones. Moreover, the study aimed to research on a sustainable solution to the access of fisheries zone by both the coastal States and Landlocked States in Africa.

Helmut and Hafner, both discuss the role of landlocked States in Europe, in inspiring the rise of group of LLGDS.[175] The LLGDS strengthened the involvement of landlocked States in the United Nations Conferences on Law of the sea (I, II and III) in 1958, 1960 and 1973 to 1982 respectively.[176]

In 1974, Momtaz Djamchid stated that a certain satisfactory balance had to be established between the different regions and that this balance had to be based on two criteria: quantitatively (the number of landlocked States attached to each region should be approximately the same) and, qualitatively, (a number of economic factors should be taken into account).[177] Therefore, Momtaz Djamchid suggests that regions should be formed in such a way as to maintain a balance with respect to both the amount of landlocked and geographically disadvantaged States belonging to each and the degree of dependence on farming of those States. In other words, the creation of regions that are themselves disadvantaged or landlocked should be avoided.[178]

5.2 The way forward with RFMOs

The regime of law of the sea seeks to achieve equity. Moreover, under the EEZ, the LOSC in conjunction with the Straddling fish agreement seeks to promote cooperation between States to achieve sustainable use and management of the fisheries zones. This study was limited to landlocked states who under the UNCLOS III submitted compelling negotiations for the

[175] Tuelk Helmut, *Reflections on the Contemporary law of the sea*, 50-53. See also Gerhard Hafner, 'Austria and the Law of the Sea', 28-31.
[176]Tuelk Helmut, *Reflections on the Contemporary law of the sea*, 50-53.
[177] Momtaz Djamchidas cited in Antonio Punal, 'The rights of landlocked and geographically disadvantaged States in Exclusive Economic Zones', *Journal of Maritime Law and Commerce*, 3 July 1992, 430.
[178]Momtaz Djamchid as cited in Antonio Punal, 'The rights of landlocked and geographically disadvantaged States in Exclusive Economic Zones', 431-432.

application of equity in sharing of the resources within the EEZ.[179] Therein, the main recommendation that this research shall put forth is the use of Regional Economic Communities (RECs) as RFMOs.

As earlier mentioned in chapter 3, RFMOs are the key to cooperation between States in taking measures necessary for the conservation of living resources in the sea.[180] Their main objective is to strengthen coordination of member States' policies in the following ways: development of the monitoring and control of resources, push for the adoption of common strategies in the international fora, increase states' research capacities, develop the member States' financial and technological frameworks and lastly to unify the policies for the preservation, sustainability and management of fishery resources in the region or sub-region.[181] Therefore, on one hand there are RFMOs and RFMAs that can bridge the gap of cooperation for equitable access to the living resources in the fisheries zones. In west Africa, they have successfully formed RFMOs for sustainable benefits for the population through an effective management.[182]

On the other hand, economic integration provides a model for synergy in Africa. The economic landscape developed for integration in Africa are the regional economic communities (RECs).[183] Regional economic communities are expected to serve their member states in adopting the regional integration program. The principle of good faith and the subsequent enforcement of treaty obligations are the foundation on which member states will make regional integration decisions and ensure their efficiency and execution.[184] RECs are characterised by Member States who are typically representatives of more than one regional economic group for social, political or economic purposes. For example, Kenya is part of East African Community (EAC), Intergovernmental Authority on Development (IGAD) and the Common Market for Eastern and Southern Africa (COMESA).[185]

[179] Preamble, *United Nations Convention on the Law of the Sea (LOSC)*.
[180] Michael Lodge and David Anderson, Recommended best practices for regional fisheries management organizations, The Royal Institute of international affairs, May 2007, 1-4.
[181] Michael Lodge and David Anderson, Recommended best practices for regional fisheries management organizations, The Royal Institute of international affairs, May 2007, 1-4,8.
[182] Pierre Jean Camille, Regional fisheries management organizations (RFMOs): West African region, 4.
[183] United Conference on Trade and Development, 'From Regional Economic Communities to a Continental Free Trade Area: Strategic tools to assist negotiators and agricultural policy design in Africa', 12 February 2018, 4-6.
[184] United Conference on Trade and Development, 'From Regional Economic Communities to a Continental Free Trade Area: Strategic tools to assist negotiators and agricultural policy design in Africa', 12 February 2018, 4, 9.
[185] United Conference on Trade and Development, 'From Regional Economic Communities to a Continental Free Trade Area: Strategic tools to assist negotiators and agricultural policy design in Africa', 12 February 2018, 4-9.

5.2.1 East African Community (EAC)

The EAC currently does not have specific legislation on fisheries zone. However, it adheres to the principles of international law. Moreover, it recognises the national legislations on fisheries zones.[186]

The EAC formed a body known as Lake Victoria Fisheries Organisation (LVFO) that acts like a beach management unit (BMU) for the resources in Lake Victoria that is shared between Kenya, Uganda and Tanzania.[187] Considering the LLS within the regional organisation, the EAC has developed Inland Fisheries and Aquaculture Policy for East African Community[188] and the East African Community vision 2050[189] to promote cooperation of fisheries both inland and within the EEZ.[190]

In the next 32 years, EAC is hoping to achieve a harmonised fisheries management organisation within the inland fisheries. They also aim to expand cooperation of fisheries management and aquaculture to the EEZ and coastal region.[191] Therefore, all member States benefit economically and achieve their full potentials.

EAC has set out an elaborate plan to introduce a harmonised fisheries management organisation. However, the lapse of 32 years to achieve its full functionality is a bit too long. This is does not come as a surprise because it has taken East Africa a long time to achieve some of the basic principles of integration such as a common market, which still has some elements to be fulfilled.[192] Fisheries do fall under the natural resources that need adoption of common strategies and policies for the preservation and management of the resources under the common market.[193] Therefore, there is a need to pave way for a faster progressive implementation of a harmonised fisheries management organisation.

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[186] African Union- Inter African Bureau for animal resources, *Regional assessment of fisheries issues, challenges and opportunities for Eastern Africa Region*, December 2012, 7-9.
[187] EAC, Secretariat, *5th EAC Development strategy*, December 2017, 49.
[188] Inland Fisheries and Aquaculture Policy for East African Community, EAC.
[189] EAC, Secretariat, *East African Community Vision 2050*, Arusha, Tanzania, February 2016.
[190] EAC, Secretariat, *5th EAC Development strategy*, December 2017, 49-50, 61.
[191]EAC, Secretariat, *East African Community Vision 2050*, 62.
[192]EAC Customs Management (Amendment) Bill, 2019 sails through First Reading, East African Legislative Assembly, 4 October 2019.
[193] East Africa Community, What is the Common market?, -< https://eac.int/integration-pillars/common-market > accessed on 2 May 2020.

5.3 Conclusion

This study concludes that the use of RFMOs and RFMAs will ensure a balance between the coastal States and landlocked States with regard to the fisheries zones. Therefore, the use of an approach that allows both landlocked States and coastal States to enjoy the benefits of the zones. Moreover, the use of RECs as RFMOs would encompass sustainable and practical measures that promote equity and cooperation between coastal States and landlocked States. This is as it shall benefit the states the costs of setting up new organisations. Moreover, it shall strengthen the already existing trading economies by scaling up the goals. As a parting shot, the use of RECs as RFMOs in Africa will promote the upcoming blue economy in Africa and also push forth the agenda of the African free trade area.

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