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## REGULATION OF SEAS

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Author : Mr. Abhishek Carls  
Director, Legal and International Affairs, Member, ICSSR  
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abhishekarls@gmail.com

### INTRODUCTION

The development of law of seas culminates out of usages in customary law. These usages until half of the 20<sup>th</sup> century laid a regime of *lassies faire* and non-regulation, where the concept of open seas was accepted globally, with only one exception to the territorial waters of the nations. However, as economy boomed in the light of industrial revolutions of the 20<sup>th</sup> century nations wanted to protect their interests in geopolitics, as well as, economics point of view.

Hence, cropped in various objects and contradictions. There was a call to raise these matters in a forum common to all, to resolve the maritime conflicts. Accordingly, the International Law Commission was approached in the year 1949 to settle the same.

The International Law Commission made various drafts on the issue and to discuss the same, the first Conference on Law of Seas took place at the United Nations in the year 1958.

The Law of the Seas aims to provide a set of governing rules to regulate the usage of waters of seas, its resources and incidentals. The aim was to establish a set of norms that is agreed universally by all nations, without raising any future objections, and to prevent any disputes that may arise from ordinary usages.

The law of seas provides for the rights and obligations in fishing rights, wreckage in seas, protection of heritage and culture, protection of marine environment and settle any disputes that arise.

### DEVELOPMENT OF LAW OF SEA:

The convention of law of sea held at Geneva had 82 participating states who adopted four conventions, namely, on territorial sea and contiguous zone, on high seas, on continental shelf and on fishing and conservation of living resources. However, a major issue as to, as what would be the breadth of the sea of the countries was still left unresolved that was essentially required to be addressed in the interest of the states.

The second convention on Law of Seas was held in the year 1960. A reformulation was proposed to address the new arising concerns of the concerned parties but the states could not agree on a middle path and more of deliberations were in waiting on the persisting issues. After a gap of 7 years, a third Conference was held in 1967 to hold further deliberations.

In the third Conference, a small nation called Malta took over the flag to ask for a clear demarcation of the seas to address the concerns of strategic and military importance and economic rights of the countries. Malta emphasized on the most important factor which was to secure the mineral wealth of the oceans and to prevent the deep sea-bed that was being militarised. Nature cannot be allowed to be the domain of any Country.

An adhoc body namely the Sea-Bed Committee was constituted comprising of 42 members. Yet, the solution to the problem was still not found. The third conference continued until its 12th session, after which the United Nations Convention on the Law of the Sea (UNCLOS) was officially adopted in 1982 following the conclusion of the 9th session, which demarcated 4 zones in the Sea.

### **TERRITORIAL SEA:**

It ranges from 12 nautical miles from the land to the territorial sea. The convention provides for a mechanism to settle any dispute that arises, and provision to have a compulsory judicial settlement, in case one of the parties to the dispute, approaches the settlement body under the convention. There was also a provision to have a tribunal for the settlement of disputes.

Territorial sea comprised of an area of 12 nautical miles from its baseline, where the state would have complete sovereignty of passage, entry, exit, and all matters related to the sea. The area could be defined as the internal waters of the Country.

The outer limit of the territorial sea means, the line on which each point shall be equal to the breadth of the territorial sea. Further, different definitions have been derived for states with rivers feeding into seas, bays, states with ports and low tide elevations.

The territorial sea zone not only encompasses the water but also the airspace above the same as well as the sub soil under it. However, the rights of the states are not absolute in that matter, they are subject to exceptions and right of innocent passage that other states may have.

Innocent Passage definition derives from the UNCLOS Agreement meaning thereby as:

Further, it has been mentioned, as to what shall not be considered as innocent passage. The fishing

activity, survey or interfering with communication systems, launch of military device, boarding any aircraft or use of weapons exercise in the sea shall be considered as transgressing the rule of innocent passage.

### **CONTIGUOUS ZONE**

The purpose is to prevent any misuse of immigration or customs laws and to protect the state itself from any sanitary or environmental damage that could be caused. This is of particular significance for the Countries who often share seas as part of the extended baselines. Hence, control is needed in such cases to prevent the other nation(s) from polluting the seas, or stopping illegal immigration through such waters.

### **CONTINENTAL SHELF**

Continental Shelf means the extension of the territorial land into the sea from lower waters to deep waters. The Continental Shelf has shallow gradient along with depth of 200 metres at an average. At some places the Continental Shelf may be very narrow, such as, at the Java Sumatra Islands of Indonesia or at places very wide as at Siberia. The depth varies from 30 to 600 metres.

The rights of the adjacent state to its Continental Shelf are limited in the sense that the rights are classified as rights over natural resources and not the sovereign rights. These rights are exclusive in the sense that no other coastal; state can explore any natural resources, without the consent of the state holding rights over it.

The Convention mentions that the rights are not sovereign but rather just rights over natural resources. The rights of other states include laying cables and pipelines on the Continental Shelf. However, the coastal state has the right to regulate the drilling on its Shelf.

The ICJ had intervened to fix the equitable principles in case of exploration and use of continental shelf:

The Court said that three principles are of utmost importance. Firstly, the geographical position of the parties involved has to be assessed and natural configuration of the coast needs to be seen.

Secondly, the general direction of the coastline needs to be seen so as to assess which party has more meritorious claim over the same. Thirdly, the concept of natural prolongation needs to be applied which says that the continental shelf is appurtenant to the land.

The convention on Continental Shelf expressly mentions that when Continental Shelf comprises of

more than one state, then the boundary of the Shelf shall be determined between them, as per the agreement they reach. In case, the parties do not reach an agreement, then the boundary is a median line from which every point nearest to the baseline of the state is equidistant.

### **HIGH SEAS:**

High seas denote all parts that are not part of the territorial sea or internal waters. The principles behind the high seas are that seas cannot be owned and are under ownership of common mankind. Therefore, all nations equally have rights of navigation, overflight, fishing and constructing artificial islands.

Rather, the UN Convention does not permit to claim sovereignty of the high seas. The treaty mentions that all states, coastal or landlocked; to have Sail Ships sail in the high seas along with its flag.

Interestingly, as a protection measure, the states are required to register their ships and accord them nationality as per the convention. And the ships are to display their nationality flag and they are not permitted to change it during the course of the journey except for when the ownership changes. Furthermore, strict provisions have been made for the inspection of ships by the Qualified Surveyor, as well as, command of ship with Masters and Officers holding the requisite qualifications. The Complaint mechanism is provided, wherein, the states cannot flag any improper use of jurisdiction, with regard to ships and high seas.

Every state is required to cause an enquiry into the cases involving marine casualty or incident of navigation of high seas that involve ship flying with its flag and where loss of life or serious injury has been caused to other nationals and their property. Any Warships and Ships on govt non-commercial use have complete immunity from jurisdiction of any other state.

High seas belong to none, as such, All ships are duty bound to extend assistance. They are also to inform to the Port of Registry about such incident of collision.

High seas being unregulated due to its mammoth size, entail risk of human trafficking. It is also the duty of the states to ensure that ships flying its flag are not involved in slave trade.

### **CONCLUSION**

The United Nations at the core of the issues has tried to re-assert time and again that the natural resources are domain of none of the nations. They are the common concerns of the mankind. Therefore, it needs to be implemented in letter and spirit and in a concrete manner so that no country/state shall be

permitted to exploit the same to the exclusion of others. Yet, the question still arises whether the UNCLOS is all encompassing.

It is interesting to see that smaller states have taken up the initiatives to regulate the world order, in terms of exploitation of resources, and the truth is that fear remains always to be exploited by the powerful and so there ought to be check and balances.

Since the time Malta had taken up the initiative, various developments have taken place and the Law on Seas, as it stands today, has undergone various interpretations in the various Courts. Now, new areas of concerns are arising, such as the Island States being under danger of being submerged to the rising climate crisis as states like Tuvalu and various other Island States have been drawing attention of the major stakeholders to help them in distress. Therefore, it cannot be said that the UNCLOS treaty is all encompassing.

A long time has passed since the last time the UBNCLoS has majorly reviewed these concerns. As such, new and more broader areas of concerns need to be discussed a fresh under the UN banner not just on supplementary platforms but on higher active mode.

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6. **PART II TERRITORIAL SEA AND CONTIGUOUS ZONE**

UNCLOS Article 2

UNCLOS Article 3

UNCLOS Article 4

UNCLOS Article 18

UNCLOS Article 19

UNCLOS Article 33

#### **7. PART VI CONTINENTAL SHELF**

UNCLOS Article 76

UNCLOS Article 77

UNCLOS Article 79

UNCLOS Article 78

UNCLOS Article 80

UNCLOS Article 81

## **8. PART VII CONTIGUOUS ZONE**

## **9. PART V HIGH SEAS**

UNCLOS Article 89

UNCLOS Article 90

UNCLOS Article 94

UNCLOS Article 96

UNCLOS Article 97

UNCLOS Article 98

UNCLOS Article 99

