

NEW CHALLENGES TO THE LAW OF THE SEA

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ABSTRACT

The two third of the earth's surface being covered with water makes a larger world population being dependent on the marine ecosystem. The crucial role played by the oceans and seas is known to mankind since early centuries. Despite the universal importance of sea, they were subject of disputes and claims. Non-binding and Ambiguous laws gave a clarion call for an international law governing these disputes leading to the United Nations Conference on the Law of the Seas in 1982. UNCLOS, is the umbrella body for the public order in the seas and oceans containing detailed provisions regarding law of Seas. The evolution of the laws of the Sea over time has led to its development along with a spurt of challenges. This paper analysis the major challenges such as lack of respect for UNCLOS, proliferation of excessive maritime claims involving EEZ and extended continental shelf claims, management of shared fish stock in the high seas. The paper has chapters into political, environmental, economic, territorial, human rights challenges to the law of seas in 21st century particularly in its second decade. The concerns over growing tension in the South-China sea between China and number of countries. The paper highlights the vulnerable nature of the marine resources and the increasing level of pollution and waste with oil spills, increased human activities and the deep sea mining, overfishing, increasing levels of the sea, coral bleaching which raises the environmental concern. The ever increasing trade and commerce through the seas and cross-border economic claims have been discussed as a notable modern-day challenge. The humanitarian aspects is also covered with issues of human trafficking through sea, piracy and terrorist activities, illegal smuggling declining the concept of flagship state has. The paper mentions strategic challenges particularly in the Indian Ocean leading to security threats to surrounding nations. The paper

concludes by discussing a comprehensive security plan for the maritime sphere and identical interpretation of UNCLOS by signatory nations.

INTRODUCTION

Earth's hydrosphere mainly covers of the water in the form oceans and Seas covering about 70 per cent of the total area in the ecosystem making it essentially a liquid planet. Apart from sustaining biodiversity in the ecosystem, Marine ecosystem has a cardinal role in the natural climatic cycle. This marine ecosystem has greater importance since time immemorial both economically and strategically. Trade and commerce through the sea undertook an unprecedented growth in the western civilization opening up major trade routes and thus paving the way for colonization in many countries for the Europeans. The world's oceans thus provide a common link for the more than 110 nations whose shorelines are washed by their waters¹. The importance of the seas cannot be underpinned as they are the providers of nourishment to both human and aquatic life, discovery, adventure and modes of communication. Claims of territorial Sea zones have been made since early times by nation particularly the French and the Russians, thus making seas an arena of a dispute over territorial jurisdiction, use of resources, mineral extraction, fisheries etc. The earlier notable principle governing seas was the Freedom of Seas which gave unbinding freedom to navigate in the sea which can be breached under an international agreement. In the words of Hugo Grotius, the father of the International law of the "Freedom of Seas" -

"No part of the Sea may be regarded as pertaining to the domain of any given nation".

The considerable naval powers being against the principle of absolute freedom in the seas made. Law of Seas began to be codified under a uniform body of agreements, treaties customs and convention. The United Nations Conference on the Law of Seas Third Conference held in 1982 led to the formation of Law of the Sea convention coming into force in 1994. The law has developed over the span of time resolving issues. The interaction of the issues related to

¹ See, Encyclopedia ,<https://www.encyclopedia.com/social-sciences-and-law/law/international-law/law-sea>

the law of seas with other international laws builds up an atmosphere of disputes. The evolution of the laws of the Sea over time has led to its development along with a spurt of challenges.

“Law of the sea is as old as nations, and the modern law of the sea is virtually as old as modern international law. For three hundred years it was probably the most stable and least controversial branch of international law².”

The law of the sea is a difficult and multiform branch of law, which comprises the norms regulating the rights and obligations of States in the marine area. Every coastal State has jurisdiction over the oceans and seas, the limits of which are defined by international conventions and national regulations must conform to international law. The law of the sea, in its essence, divides the seas into zones and specifies the rights and duties of States and ships flying their flags in those zones³.

BASIC OUTLINE OF THE HISTORY AND DEVELOPMENT OF THE LAW OF THE SEA.

History of the Law of the Seas:

The origins of the Law of the sea is deep-rooted in the ancient times since the very beginning of the human civilizations. Avoiding the long journey of tracing back the very first expressions of regulatory norms for the conduct of human activities at sea, it is enough to state that the more important that the interaction with the sea became for an empire or human agglomeration, the more common the attempts to regulate the latter became, and those regulations went from simple assignment of competences to officers, to claim large areas of the sea under the exclusive control of that rein⁴. It involves a contestation of rivers from Roman empires to the

² Louis Henkin, *How nations behave*, 212 (2d ed. 1979).

³ Nugzar Dundua , *Delimitation of maritime boundaries between adjacent States*, United Nations - The Nippon Foundation Fellow (2006-2007), http://www.un.org/depts/los/nippon/uniff_programme_home/fellows_pages/fellows_papers/dundua_0607_georgia.pdf (Accessed 30 Apr 2018).

⁴ Lester Antonio Ortega Lemus , *Brief outline of the history and development of the law of the Sea* ,Ocean Law blog (May 9, 2011, 11.51 AM), <http://oceanslaw.blogspot.in/2011/05/brief-outline-of-history-development-of.html>

colonial period. The foundation of first principle of governance overseas and oceans was laid down by Grotius known as Freedom of law giving unobstructed freedom of navigation to all the nations. Freedom of seas principle was freedoms. Some nations with expressed desires to extend sea territories up to 200 miles, to claim marine resources, protection of marine environment and management of fish stocks. These claims were against the customary international. There was a dire need of uniform laws that could lead to unilateralism in the field of law of the seas. To avoid the conflicting claims of the nations. The Hague conference of 1930 was held for the codification of international law. Various issues of international significance such as national security and responsibility of the states along with the issue of territorial waters was also discussed. Rapid changes were made after the Second World War. The historic proclamation in 1945 regarding jurisdiction over continental shelf by US President Truman was a catalyst to the future conferences. US extended its control to the natural resources in the continental shelf whereby many nations started their extension in the territorial sea. The First and the Second United Nations Conference on Law of the Seas was held in 1958 and 1960 respectively to resolve some specific issues. Developing countries participated as allies of either US or Soviet Union with no independent ideology. More effective laws were required to resolve some prime concerns and to regulate and control the sea. The third UNCLOS was held between 1973 and 1982. After extensive preparatory work, the First Session of the Third U.N. Conference on the law of the Sea was held in New York in 1973, subsequently, ten other sessions were held by the end of 1981. In the Eleventh Session, on April 30, 1982, the Conference adopted the draft of the Convention on the Law of the Sea by an overwhelming majority of 130 States⁵. The Permanent Court of Arbitration (2009) defined UNCLOS as-

“An International treaty that provides a regulatory framework for the use of the world’s seas and oceans, inter alia, to ensure the conservation and equitable usage of resources and the marine environment and to ensure the protection and preservation of the living resources of the sea. It was adopted in 1982 and entered into force in 1994.”

⁵ Dr. H.O. Aggarwal, International Law and Human Rights, 129, (21st Ed, Central Law Publications)(2015).

Development and Application of the law of the Sea:

The UN does not have any major role in the functioning of the UNCLOS, the major role is played by the International Maritime Organization. It is assisted by other organizations such as the International Whaling Commission, and the International Seabed Authority. There are 17 parts and 320 articles having 160 signatory countries whereby US is still not a signatory to it over its disagreement over Part XI of UNCLOS which mainly deals with the minerals found in the seabed in EEZ. The UNCLOS limited the national boundary to a specific belt. The major challenges and concern faced by UNCLOS at the very starting were non-agreement by various nations over different issues.

Several developed nations, including the USA, Germany and Great Britain, refused to sign the UNCLOS 1982 declaring that its key rules limit "freedom of action" by private companies. And due to their dissatisfaction with the Convention's deep seabed mining regime, other countries like Turkey and Venezuela, for different reasons, did not sign. These reasons included concerns over the provisions on settlement of ocean boundary disputes between opposite and adjacent States.⁶ The United States objected to the provisions of Part XI of the Convention on several grounds, arguing that the treaty was unfavourable to American economic and security interests. Due to Part XI, the United States refused to ratify the UNCLOS, although it expressed agreement with the remaining provisions of the Convention⁷. There were multiple overlapping claims and the claim of maritime boundary elimination.

- This convention covered many pressing issues such as setting limits of the territorial area in the sea limit⁸, internal waters, Exclusive Economic Zones, innocent passage, continental shelf jurisdiction, navigation, transit regimes, archipelagic status, scientific research, Contiguous zone, deep-sea mining, settlement of disputes, environmental protection in the seas, enclosed or semi-enclosed seas. Territorial water refers to 12 nautical miles from the⁹.

⁶ Mazen Adi, *THE APPLICATION OF THE LAW OF THE SEA and the CONVENTION ON THE MEDITERRANEAN SEA*, United Nations - The Nippon Foundation Fellow (2008-2009), http://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/adi_0809_syria.pdf, (Accessed 15 May 2018).

⁷ LawTeacher. November 2013., United Nations Convention on the Law of the Sea. [online]. Available from: <https://www.lawteacher.net/free-law-essays/international-law/united-nations-convention-law-of-the-sea-international-law-essay.php?vref=1> [Accessed 17 May 2018].

⁸ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 [hereinafter 1982 Convention or UNCLOS].

⁹ baseline- the line along the coast from which the territorial sea and other maritime zones are measured.

- The issues related to the general law of the sea were discussed in the second committee at UNCLOS III including, in particular, the Territorial Sea, Straits, Economic Zone, Continental Shelf¹⁰, High Seas, Land-Locked States' Access, Archipelagoes, Regime of Islands, Enclosed or Semi-Enclosed Seas. There was four major committees in the conference and the fourth committee being committee of dispute settlement.
- UNCLOS divides the seas into zones over which states have greater or lesser authority. At one extreme are inland seas, over which a state has exclusive control, just as it does over its landmass. At the other extreme are high seas, over which no state has control. In between are certain coastal bodies of water, such as bays, which are treated as inland seas; the coastal sea, which forms a belt that projects twelve nautical miles from the coast; the contiguous sea, which extends another twelve miles; and the exclusive economic zone (EEZ), which projects out 200 miles from the shore. As we will see, a state's right to control activities on or underwater decreases as the distance from the coast increases. In addition, UNCLOS identifies certain features of the oceans—including mineral resources in the continental shelf and the deep seabed to which it gives states different bundles of rights. Certain other rules govern other geographical configurations that have special importance for states, including straits, which connect different parts of the high seas, and archipelagos.¹¹
- The UNCLOS outlines duties and responsibilities of the states in their coastal zones as well as in the international zones relating to high seas and international seabed. These rights and duties of states to preserve and protect the marine resources both living and non-living.
- The conference laid down rules for the limited mobility of the nations, vulnerability of the nations to surveillance or interdiction, limitation on the naval forces of the nations on the gathering of oceanographic and intelligence activities within 200-mile zone.
- Development of international law on the Law of the Seas is further strengthened by imbibing of the rules and practices in the state practice. State practice plays a vital role in the development of the international laws.

¹⁰ Article 76, UNCLOS.

¹¹ Eric A. Posner & Allan O. Sykes, *Economic Foundations of the Law of the Sea*, (John M. Olin Program in Law and Economics Working Paper No. 504, 2009), 10,(2009)
https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1186&context=law_and_economics

- Political Institutions such as the Meeting of the States parties and the United Nations General Assembly are the concerned institutions for the further development of the convention.
- International organs work as a pillar support and act as agencies of development of the Law of the Sea in the international ambit. These organizations include UN, IMO, FAO and regional organizations such as RFMOs. International institutional cooperation includes ratification of the legally non-binding instruments, the involvement of the non-state parties such as NGOs etc.
- Development by International courts and tribunals-Though the international court of justice and other arbitral bodies does not help in the development of law directly but they are incidental in procuring important judgments

The UNCLOS may be rightly termed as the Constitution of the sea with detailed provisions which may be termed as the longest in the history of UN. Years after its implementation it required many treaties to modify the existing lacunae.

CHALLENGES OF THE LAW OF THE SEAS

The recent discovery shows the concern for the lack of respect for the provisions of the UNCLOS with major strategic as well as other maritime claims

The proliferation of Maritime claims:

Over the years the international maritime boundaries have severed to a great extent whereby there has been a proliferation in claims to maritime jurisdiction.

Some critics have suggested that the treaty lacks value because some nations, even some state parties, still fail to completely confirm their state practice, their national legislation, and their maritime claims to the framework provided within the Convention. China, for example, became

a party to the Convention a decade ago and still persists in a series of excessive maritime claims, both in geographic reach and regulatory jurisdiction.¹²

Claims on Exclusive Economic Zones and Continental shelf:

The evolution of the Law of the Seas over the years has led to the emergence of the newest juridical zone in the sea Exclusive Economic Zones which was created under Part V of the 1982 conference.

Beyond its territorial waters, every coastal country may establish an Exclusive Economic Zone (EEZ) extending 200 nautical miles (370 km) from shore¹³. Within the EEZ the coastal state has the right to exploit and regulate fisheries, construct artificial islands and installations, use the zone for other economic purposes (e.g., the generation of energy from waves), and regulate scientific research by foreign vessels. Otherwise, foreign vessels (and aircraft) are entitled to move freely through (and over) the zone.¹⁴ This zone can be used for other economic uses also. EEZ is used for exclusive functions limited to the 'exclusive economic functions'. Any activity beyond such exclusive functions may be termed as an extensive claim on EEZ and continental shelf. This concept entails the balance of conflicting interest and further rights and duties. Shaping the evolution of EEZ is necessary as not all the States asserting the rights over the EEZ are state parties or signatories of the convention. This type of extension involves the interference of the fisheries rights of one state by the other, liability of the states in case of oil pollution damages and intervention in case of maritime casualties. No intelligence gathering or manoeuvres are permitted in these territorial seas but only allows the innocent passage for military vessels. Any military exercise will be termed as an instant of extra Maritime claims.

The most ironical situation in today's scenario is that through the U.S not being the ratified of the convention is keen on its implementation by other nations. The bizarre stand that the U.S held in relation to the law of seas is puzzling. There is always a conundrum on both the sides of U.S and India as on one side they are keen on conducting joint military exercises such as Malabar and on the other, the U.S tries to cock a snook at India's excessive maritime claims.

¹² James Kraska, *The law of the Sea Convention A national Security Success - A global strategic mobility through the rule of law*, The Geo. Wash. Int'l L. Rev., Vol. 39 2007, 556.

¹³ Article 57, UNCLOS.

¹⁴ Robin R Churchill, *Law of the Sea (International Law 1982)*, Encyclopedia Britannica (Sep 23. 2013) <https://www.britannica.com/topic/Law-of-the-Sea#ref913546> (Accessed May 17, 2018).

The U.S Department of defence listed out 13 countries for excessive maritime claims in the year 2015 in a two-page document. There is a lack of cooperation's amongst the nations in the Indian Ocean and the Asia Pacific region. Claims over the China Sea is a well-known case, claims over unsustainable rocks and reefs in the South China Sea. An extended area of the oceans is being gulped by the states in the name of excessive straight baselines. The major challenge for the Law of the Seas is to deal with both the international laws and the domestic laws in such cases of military interventions without permissions in the EEZ. The Law of the Seas has to look for a new mechanism.

- To codify uniform baselines
- To adjudicate baselines of the states and to reach a common consensus among the states.
- For settlement of disputes related to Sea.

Management of fisheries stocks in the high seas:

There are many shortcomings in the LOS conference regarding the shared stock of fisheries which get distributed between the EEZ of two different states. An effective operative management does not exist in the LOS which are desirable for the management of the fish stock in the high seas. This shortcoming act more or less as a challenge for the Law of the Seas. Under Article 63 para 1 and para 2 two classes of fish stocks have been given. One trans boundary stock which refers to stocks shared between and among neighbouring coastal states, and the other category of stocks which are highly migratory and straddling stocks as they move from the coastal states exclusive economic zones to adjacent high seas. These stocks raise various conflicting issues which have still been not resolved. The high mobile character of such fish stock as they encompassed by EEZ and passes it. The gradual expansion of the fishing in the high seas as a result of an alternative to the increased pressure of fishing in the EEZ has garnered massive attention to the lack of laws and agreements on the management of the fisheries stocks in the high seas. The shared stock has not received the much-needed attention as compared to straddling stocks in academic literature or summits or political discussions. In the views of the FAO, the management of both the straddling and the shared stocks remains

one of the real challenges on the way towards achieving long-term sustainable fisheries.¹⁵ Various issues related to the management of the shared stock of the fisheries include research and development of fisheries in the high seas, sharing of such scientific knowledge as it leads to cooperation, allocation and access of the shared stock, unresolved boundary area enforcement and the access granted to the third party. The requirement is to calculate the number of maritime boundaries and from that deduce the number of shared stocks in cooperation. All this acts as a challenge for the future of the law of the seas to devise out negotiation procedures between the states. As has also been seen, although article 63(1) of the LOS Convention requires States to enter into negotiations to seek agreement on shared stock co-operative management arrangements, it does not provide any real advice or guidance as to how such negotiations should be conducted or on the substantive content of any resulting agreement. There seems, therefore, clearly to be a need for some more helpful advice and guidance on these matters to be provided to States by the international community¹⁶.

Maritime Security:

There is no set definition of “maritime security.” In its 2008 Oceans and the Law of the Seas report¹⁷, the UN General Assembly noted how it encompasses a wide range of threats: At its narrowest conception, maritime security involves protection from direct threats to the territorial integrity of a State, such as an armed attack from a military vessel. Most definitions also usually include security from crimes at sea, such as piracy, armed robbery against ships, and terrorist acts. However, intentional and unlawful damage to the marine environment, including from illegal dumping and the discharge of pollutants from vessels, and depletion of natural resources, such as from IUU (Illegal, Unreported, and Unregulated) fishing, can also threaten the interests of States, particularly coastal States¹⁸.

¹⁵FAO, *Report of the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks Fisheries* Report No. 695.

¹⁶ Robin R Churchill, *The Management of Shared Fish Stocks: The Neglected “other” paragraph of Article 63 of the UN Convention on the Law of the Sea*, 54, Publication on Ocean Development ,3,6-8,(2010), <https://www.academia.edu/767457>

[Unresolved_issues_and_new_challenges_to_the_law_of_the_sea_time_before_and_time_after.](https://www.academia.edu/767457)

¹⁷ United Nations, General Assembly, *Oceans and the law of the sea: joint debate: report of the Secretary-General*, A/63/63/Add.1 (29th Aug. 2008), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/493/50/PDF/N0849350.pdf?OpenElement>

¹⁸ Lynn Kuok, *South China Sea Dispute Undermines Maritime Security in Southeast Asia*, INASIA Weekly insights and analysis, (August 23, 2017), <https://asiafoundation.org/2017/08/23/south-china-sea-dispute-undermines-maritime-security-southeast-asia/>

Piracy and Crimes at Sea:

Maritime crimes may be covered under different heads, all of which possess a different conflict of law issues in the sea. These crimes may be categorized to smuggling of exotic plants and animals, illegal carrying of weapons, drug trafficking, sailing in unauthorized areas but the most prominent one having a wider ambit of turmoil in the seas is maritime piracy. Piratical attacks on merchant vessels that have occurred in recent times around the coast of Somalia have struck the very core of maritime security and safety. Piracy plays a significant role in the present difficulties. Piracy may be committed by a person of any nationality on the vessel of any nationality on the High Seas. It is a crime against public international law and has the concept of Universal Jurisdiction. This Universal jurisdiction has found its way in present international convention governing UNCLOS Article 101-

“The concept includes any illegal act of violence or depredation committed for private ends by the crew or passengers of the private ship on the high seas against another ship or property or both.”

Crimes at sea offer examples of situations that straddle the two classes of problems delineated above—sometimes multiple nations will wish to exercise jurisdiction over the purported criminal, and in other instances, no nation may have an adequate incentive to act against the criminal. A shipboard homicide, for example, is a possible example of the first situation, in which multiple nations may claim an interest based on the nationalities of the ship, criminal, and victim, and the geographic location of the crime. Crimes such as piracy in the open ocean may attract no government action—the nation from which the offending ship emanates may have little interest in sanctioning a crime that benefits its nationals, and those harmed by such crimes may face a severe free rider problem in patrolling the oceans to prevent piracy¹⁹. There is a need of law enforcement, cooperation, patrolling by the navies and the transfer of the convicts to regional states such as Kenya, Seychelles, Mauritius where pirates can serve their sentences in U.N built admonished jails. Strengthening up marine security requires stringent measures to be taken on part of the states and also capacity building in both the regional states and Somalia. The capacity building requires the assistance of the countries in building up their material, human and institutional framework for dealing with the maritime security issues.

¹⁹ *Supra*, note 11, at 10.

Another scenario is contracting private security personnel's for security if the marine vessels at the sea at times are better equipped with technology and machinery Today the drug supplying market is one of the largest with more than 200 billion people annually consuming illicit drugs. Supplying this market, which could generate as much as US\$400 billion annually, frequently depends on smuggling illicit drugs on the water and across national borders²⁰. Seas are used as means to transport such drugs smugglers along with smuggling of the drugs in the sea are involves in illicit crimes such as murdering, mass murders, human trafficking in many parts of the world such as Mexico.

Crimes such as transnational terrorism flourish along with piracy as organized crimes. Al-Qaeda has been involved in the drug smuggling in Southeast Asia as it depends on the illicit weapons deal in the Sulu arms trade, money laundering and the sale of blood diamonds from Africa. The Liberation Tamil Tigers of Elam was operating a fleet of cargo carrying weapons from the east to the west, passing unnoticed through the Straits of Malacca. The exploitation of maritime laws and secrecy using flags of convenience allowed the crimes to flourish. These and other criminal activities have seen millions of dollars of cargo, kidnappings and phantom ships used for transnational crimes, such as drug and human trafficking, go beyond the eyes of security agencies in ports²¹. The major challenge they possess for the government is the interference with the sovereignty of the security sector and its transparency and also the long-term development of the naval forces may be undermined. The crimes at sea are difficult to deal with due to many conditions in hand due to the severe weather conditions in the sea causing waves to cause havoc. The major issues that the onboard officers face during the voyage i.e, of ensuring the safety of the cargo etc. In many cases, the maritime law officer is killed or severely injured on the board causing impurities to the enforcement of justice. Yet another issue is maritime law challenges is the frequent lack of backup support and the ability of the suspect vessels to evade the detection because of their profile, low radar signature, or nighttime operations. Even after addressing operational (and potentially significant logistical, material, and medical) issues, legal considerations include: Resolving jurisdictional issues; ensuring an evidentiary chain of custody on a platform that may not have a secure storage space; obtaining witness statements and conducting other aspects of an investigation, possibly

²⁰ U.N. Off Drugs AND Crimes, *Estimating Illicit Financial flows resulting from drug trafficking and other transnational organised crimes*, at 32 (Oct. 2011), http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf.

²¹ Adrian Raj, *Terror on the seas*, New Strait Times, Aug 14, 2017, <https://www.nst.com.my/opinion/columnists/2017/08/267590/terror-seas>.

while underway; and determining whether to arrest or detain a suspect. Authorities must also identify the port to take suspects to, ensure prosecutorial interest (possibly while underway), and confirm the venue for prosecution²².

Information sharing:

Public understanding of the seas is vital for the governance of the global oceans. The understanding of the sea and its Exclusive Economic Zones is necessary in order to understand the activities, perils and opportunities at the sea. The increasing importance of Maritime Domain awareness and Information sharing about threats states face at Sea is gaining importance. Whether one shares the optimistic viewpoint of the sea becoming increasingly more ordered, or the pessimistic one of a new anarchy, there is little doubt that better ocean governance is a necessity. Better ocean governance can only be envisioned if knowledge of the sea is advanced. To pursue the goals as they are expressed under the three maritime agendas, namely 'maritime security', 'blue economy' and 'ocean health', the close link between knowledge and governance has to be considered. Attention is required on how science, technology and knowledge production of the sea can be advanced and play a role in ocean governance.²³ The RECAAP Agreement (Regional Agreement for Combating Piracy Activities in Asia) is one such agreement that aims at sharing information about the activities at the sea. IMO Long Range Information and Tracking Regulation and International Data Exchange regulate problems of small vessels and ships. Along with tackling the issues at the sea together, it gives rise to capacity building issues, if you want to share information with developing states or states poor in infrastructure, you have to give them the capacity to gather the information in the first place or rather assist them to develop it.

²² Brian Wilson, Human Rights and Maritime Law Enforcement (July 2016). *Stanford Journal of International Law* Vol. 52, No. 2. Available at SSRN: <https://ssrn.com/abstract=2820578>

²³ Christian Burger & Amaha Senu, Knowing the Sea: The Prospects and Perils of Maritime Domain Awareness, July 8, 2016, <http://piracy-studies.org/knowning-the-sea-the-prospects-and-perils-of-maritime-domain-awareness/>

Human Rights violations:

The United Nations Convention on the Law of the Sea does not expressly include the term Human Rights²⁴ but its application is found in every aspect of the maritime law. *Medvedyev v. France*, a European Court of Human Rights case, highlights the struggle of balancing human rights obligations with maritime law enforcement operations²⁵. The French government's position in the case, summarized by the Strasbourg court, emphasized that "the unpredictability of navigation and the vastness of the oceans made it impossible to provide in detail for eventuality when ships were rerouted"²⁶. A joint partial dissent, however, noted that regardless of operational challenges, the court should not "endorse unnecessary abridgements of fundamental human rights in the fight against [drug trafficking]. Such abridgements add nothing to the efficacy of the battle against narcotics but subtract, substantially, from the battle against the diminution of human rights protection."²⁷ No ship or its crew member can transcend international boundaries without the proper ID requirements and permission of the country in whose authorized territorial waters it enters. Seafarers have been strongly affected by the rise of security measures post-2011. There has been the rise in the instances of an increase in the cases of human trafficking and illegal. While there are countries which are lenient to the local people and people may escape the local authorities and board the ship without legal documents. These persons are called as stowaways. These stowaways hide inside the less inspected areas of the ship for a long time with provisions of food and water with them and once they are caught they are thrown midway into the sea with some drum or box which will float inside the sea. This act is done in order to avoid the legal procedures to disembark the stowaway, to avoid deportation cost and other blame for the security leak. To stop this kind of an act and also to put an end to the growing instances of stowaways the International Maritime organizations an (IMO) has issues stricter guidelines. Port states are keen on having Visa/I. D requirement at the port. This has lined up as a challenging human right issue for the law of the seas.

Regular migration by the sea where migrants are picked up by search and rescue exercise by boat is a fundamental obligation that states need to rescue people distressed in the sea. However, the issue to persuade the territorial state to allow those people to be disembarked has

²⁴ Bernard H. Oxman, Human Rights and the United Nations Convention on the Law of the Sea, 36 COLUM. J. TRANSNAT'L L. 399, 401 (1997)

²⁵ *Medvedyev v. France*, App. No. 3394/03, Eur. Ct. H.R. ¶ 131 (2010),

²⁶ *ibid*, 59

²⁷ *ibid*, 46

been far more complicated. Also, the Human Right activists are also concerned with law enforcement activities. So in case, the pirates are arrested or smugglers are caught. The question arises is of criminal justice. The major operational challenges in dealing with the weather conditions at the sea

Environmental Challenges:

1. Overfishing and destructive fishing practices

The major cause of loss of marine biodiversity is overfishing which has many serious consequences to the balance of life in the sea. Overfishing is termed as fishing beyond a natural level. Destructive rising practices devastate the marine environment and include bottom trawling, bycatch, the use of poison and explosives and ghost fishing. When fishing techniques have been universally recognized as destructive, the only solution is to ban them. Anyone continuing to use these techniques must be severely punished. National legislation has identified and banned many of these practices. However, the temptation to break the law is very high both for factory ships on the hunt for huge profits and small-scale fishermen facing reduced fish stocks.²⁸ More than 30 percent of the world's fisheries have been pushed beyond their biological limits and are in need of strict management plans to restore them. Several important commercial fish populations (such as Atlantic Bluefin tuna) have declined to the point where their survival as a species is threatened. Target fishing of top predators, such as tuna and groupers, is changing marine communities, which lead to an abundance of smaller marine species, such as sardines and anchovies.²⁹ The establishment of the Exclusive Economic Zone has not proven right for the exclusive protection of the marine environment. Growth in demand for fish products as they are a great source of protein have led to unprecedented increase in fishing activities in extreme environmental conditions also. It has led to the extinction of some species and many are on the verge of extinction such as orange roughy and Patagonian toothfish. High seas fish stocks are a valuable source of protein for human consumption, but there is evidence of serious depletion in the larger pelagic species, such as

²⁸ Slow fish, Destructive Fishing Practices and Bycatch, slowfish@slowfood.com, (Apr 29, 2018), http://slowfood.com/slowfish/pagine/eng/pagina.lasso?-id_pg=41

²⁹ WWF, Overfishing, <https://www.worldwildlife.org/threats/overfishing>

tunas and billfishes, resulting in fishing for smaller species, lower down the trophic levels.³⁰ This raises serious questions about the impact of such fishing on the whole marine ecosystem and its long-term sustainability. Economists, as well as biologists, have begun to raise sustainability concerns in the light of the huge amounts of money spent each year to subsidize fisheries³¹. The international community now fears the new regime of fishing called IUU (Illegal Unregulated and Unreported Fishing). There are currently ten Regional Fisheries Management Organization for the management and conservation of fisheries stocks and tuna fish. It is an economic and seafood fraud wherein the economic agents design appropriate measures to befool the authorities. Seafood fraud is committed by changing the labels of the sea products on the cartons and replacing them with some local species. This is done in order to conceal the illegally caught fish and escape authorities. IUU has a deep impact on the seafood industry. The kinds of seafood are mislabeled and sold to the consumers as frozen. It has led to the sale of endangered species in the market such as sharks. A number of measures have been introduced by the international community to deal with the issues of IUU. A number of regional fisheries organisations have adopted approaches to counter this menace but an overall strict regulation is the need of the hour.

2. Impact on Marine environment

The 1982 Convention introduced, in Article 192, a major new principle – an unprecedented, unqualified and robust obligation on all states to “protect and preserve the marine environment.” It also contains more specific obligations to protect and preserve rare or fragile species and ecosystems in all parts of the marine environment, as well as the habitat of depleted, threatened or endangered species and other forms of marine life.³² Environmental issues pose deep governance issues both inside and outside national jurisdiction. The deep sea ecosystem is declining exponentially by increased human activity such as dumping of marine waste, garbage, oil spills, marine pollution, increases fishing, transportation etc. The most recent thirty years have seen an unparalleled extension of human exercises and effects on the seas and on the high oceans specifically. Researchers have found, they are hydrothermal vents and also helps in the regulation of the temperature. Huge quantities of minerals are lying in the sea-bed

³⁰ Daniel Pauly, et al., “Fishing Down Marine Food Webs,” (1998) 279 *Science* 860, 862–63.

³¹ FAO/World Bank Study, *The Sunken Billions* World Bank, 2008

³² Article 194(5)

and ocean floor and subsoil thereof. Oceans are the carbon sinks of the earth which are done mainly by ocean species. These useful marine species or microorganisms are destroyed by human activities particularly of dumping wastes and pollution by ships. Melting of the icebergs and glaciers caused by global warming has already garnered much public attention. It has already led to the increased level of the seas which is a forefront environmental issue to deal with. Aquatic planktons, corals, sea fishes may face trouble in maintaining their carbonates level in the acidic nature of the oceans which is increasing due to increased atmospheric carbon levels in the oceans and seas. The relevant international framework provided by the UN Framework Convention on Climate Change and its science advisory body – the Intergovernmental Panel on Climate Change - have barely started to focus on these issues, even though some entrepreneurs have already seen opportunities for generating lucrative ‘carbon offsets’ by using as yet unproven ocean fertilization techniques in an attempt to generate algal blooms that might fix more carbon in the ocean.³³

Interstate Dispute:

South-China Sea Dispute

The problem of growing mistrust and mutual misconception which has led to the undermining of the maritime security issues in the South-east Asia. Nine out of ten states of the ASEAN (Association of South East Asian Nations) are coastal states and regional security in these states means the security of the seas. Maritime security in the ASEAN is divided into broadly two categories “conventional security threats” such as military threats and state sovereignty concerns and other “non-conventional threats”.³⁴ The growing assertiveness of China in the South-China Sea has acted as a maritime security challenge to the law of the seas particularly in the South-east Asia with overlapping jurisdictional claims on the sea. China in the year 1947 arbitrarily chiselled out for itself on a map, 80-90% of the disputed South China Sea with the U-shaped nine-dash line. As Chinese would argue, their country has historically exercised

³³ Rosemary Rayfuse, Mark Lawrence and Kristina Gjerde, “Ocean Fertilisation and Climate Change: the Need to Regulate Emerging High Seas Uses” (2008) 23 *International Journal of Marine and Coastal Law (IJMCL)* 297-326.

³⁴ ASEAN Regional Forum Work Plan for Maritime Security 2015 - 2017, <http://aseanregionalforum.asean.org/files/library/Plan%20of%20Action%20and%20Work%20Plans/ARF%20ork%20Plan%20on%20Maritime%20Security%202015-2017.pdf>

jurisdiction over the sea since ancient times. The other claimant States that imperfectly ring the South China Sea – the Philippines, Vietnam, Malaysia and Brunei, have all based their argument on the provisions of conventional international law i.e. the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which allows them to measure their territorial sea of 12 nautical miles from the baseline, contiguous zone of 24 nautical miles, Exclusive Economic Zone (EEZ) of 200 nautical miles, and lastly the Continental Shelf of at most 350 nautical miles. These overlapping jurisdiction claims over the resource-endowed South China Sea by China and the four major claimant States have been a difficult issue to resolve.³⁵ All this has led to the unnecessary weapon proliferation of the claimant states. The lack of clarity over the status and maritime entitlement of features negatively impacts user states and their security interests. This issue has caused considerable tension between the United States and China, most obviously manifested in U.S. assertions of maritime rights in the South China Sea under its Freedom of Navigation Program as well as China's objections to them.³⁶ The dispute poisons and destabilises the overall security environment given its impact on intra-ASEAN relations, ASEAN's relations with China and the United States, and the relationship between the two superpowers. It also undermines attempts to widen or deepen cooperation on non-traditional security threats. When Singapore set up its Information Fusion Centre in 2009 to facilitate information-sharing and collaboration between partners to enhance maritime security, it was careful to emphasise the sharing of less-sensitive commercial shipping information (as opposed to intelligence) and collaboration on non-traditional security issues like piracy and terrorism.³⁷

The South China Sea dispute must be carefully managed if it is not to undermine maritime security. The tribunal's award in the Philippines case against China is arguably an important building block to fostering maritime security insofar as it brings legal clarity to various contested issues.³⁸

³⁵ Ogunnoiki, Adeleke Odumine, *China as a rising power and her growing assertiveness in the SouthChina Sea*, International Journal of Advanced Academic Research | Social & Management Sciences | ISSN: 2488-9849 Vol. 4, Issue 2 (February 2018)

³⁶ Lynn Kuok, *South China Sea Dispute Undermines Maritime Security in Southeast Asia*, INASIA Weekly insights and analysis, (August 23, 2017), <https://asiafoundation.org/2017/08/23/south-china-sea-dispute-undermines-maritime-security-southeast-asia/>

³⁷ *ibid*

³⁸ *ibid*

CONCLUSION

Maritime Security agenda is placed high on the security agendas of many international actors. The sea security activities and exercises that have been noticeable all through the previous decade require a more generous treatment of the issue in the academic discussions. Maritime security has raised serious concerns in the international relations and policy framing. It is ideal opportunity to perceive the maritime arena as a pot of for change and advancement in worldwide legislative issues all in all by moving beyond sea bedliness. A new maritime security agenda needs to be disseminated to local actors through developed actions. There is a need for constant strategic vigilance in the security threat regions with higher vulnerabilities of harm to border security, piracy, terrorist attacks and other maritime claims. In modern times a system of good governance at the sea is difficult to be maintained when the international order is itself breaking down. Maintaining freedom of navigation rights needs to be maintained by the defender of International law including all the signatories to the treaty. Interpretation of UNCLOS by the state practice needs to be stable, secure and consistent which demands strict abidance by the signatory countries.