

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

International Law Of The Sea: An **Evaluation Of The Contemporary Conflicts** **From The Perspective Of India**

Authored By-Tavneet Kaur

Student of LLM (International Law), UILS, Chandigarh University

Abstract

The law of the sea at the international level has always been a subject of argument given contributory rights of the states on the utilisation and exploration of the sea considering different parts of the same. Sea takes over some of the most important areas of human life given its contribution to human life development. Fishing as well as shipping can be identified as two of the primary areas of the sea concerning human operations. Also, given human development, there are many other cases concerning the utilisation of technology and attempts to satisfy the needs of human beings that involve the use of the sea. At the present scenario, since the conception of the Law of the Sea, there have been many issues in the course of dealing with the law of the sea at the international territory. Focusing on the development of trade during the 20th century as well as the inexhaustible realisation of the use of the sea, the principle concerning the Freedom of the Sea was introduced. This also directly concerned the law of the sea at the national as well as international level. Now, given the contemporary issues in relation to the law of the sea as confronted by India, the article will be critically evaluating the issues and stand of India in that scenario.

Introduction

Sea takes over some of the most important areas of human life given its contribution to human life development. Fishing as well as shipping can be identified as two of the primary areas of the sea concerning human operations. Also, given human development, there are many other cases concerning the utilisation of technology and attempts to satisfy the needs of human beings that involve the use of the sea. Furthermore, many other resources as well as minerals followed by natural gas and oil as well as sand and gravel along with diamond and gold were recognised to be made from the seabed. Focusing on the development of trade during the 20th century as well as the inexhaustible realisation of the use of the sea, the principle concerning the Freedom of the Sea was introduced. This also directly concerned the law of the sea at the national as well as international level. Now, given the contemporary issues in relation to the law of the sea as confronted by India, the article will be critically evaluating the issues and stand of India in that scenario.

Contemporary Conflict Of The Law Of The Sea

At the present scenario, since the conception of the Law of the Sea, there have been many issues in the course of dealing with the law of the sea at the international territory. For instance, back in 2016, a United Nations tribunal specifically concluded China for its violation of the UNCLOS concerning its operations within the EEZ or the “*Exclusive Economic Zone*” of Philippines, which is eventually interfering with the fishing activities as well as petroleum activity followed by constructing artificial features, as well as conducting law enforcement activities leading to near-collisions at the sea. It was also suggested that the Philippines has the commitment concerning the delineation and delimitation of its maritime boundaries with regard to the adjacent states according to the UNCLOS (French, 2017). Furthermore, under the governance of the UNCLOS, the Philippines has been found to be obliged concerning the protection and preservation of the marine environment outside and within its maritime zones. It has also been critically evaluated that China has claimed certain particular and historic rights in certain areas that are particularly beyond 200 M from the country’s mainland coasts and any land featuring over which it particularly claimed sovereignty, whereas, within 200 M of the coasts concerning the main islands of the Philippines, and allegedly exploited the resources in those mentioned areas while trying to prevent the Philippines from doing the same (Kopela,

2017). In this case, the Philippine specifically claimed sovereignty over the features that are known as Scarborough Shoal and also, the KIG to be independent with regard to its archipelagic status both legally as well as historically. It should be critically analysed that taking into consideration the contemporary issues persisting between China and the Philippines, it should be a matter of concern for the other countries following the UNCLOS as the international sea is shared by the neighbouring states and certainly have a potential of increasing the impact of the contemporary issues.

Role Of The UNCLOS

The “*United Nations Convention for the Law of the Sea*” or UNCLOS is recognised as the Law of the Sea. It can also be addressed as an international treaty or agreement establishing rules as well as guidelines concerning the use of the world’s oceans as well as seas, with regard to the utilisation and conservation of marine resources and also to secure the preservation as well as protection of all the living beings existing in the sea. This particular treaty was recognised to be signed on 10th December in 1982 in Montego Bay, Jamaica. As a result of the “*United Nations Conference on the Law of the Sea*”, taking place from 1973 to 1982, and coming into force in 1994, was declared to be the dominating law of the sea. The convention under consideration specifically defines several maritime zones for the better establishment and execution of the laws so concerned. It particularly included the baseline, territorial waters, contiguous zone, exclusive economic zone (EEZ), continental shelf and the international seabed area. The EEZ in this case, is recognised to be the international water, to be accessed as well as used by different countries for economic purposes (Strati, 2021). At present, it has been recognised that there is no limit and boundary specifically set for commercial as well as marine business concerning these international waters.

Multiple countries have particularly expressed their desire concerning the expansion of their respective national maritime zones, and the use of natural resources followed by the protection of fish stocks as well as reducing pollution (Kohl, 2017). The “*League of Nations*” particularly held a conference to address these issues at The Hague in 1930; however, it has particularly failed to reach any agreement. Back in the 20th century, there was a significant increase in the case of technological development in fisheries as well as oil production within the maritime scope, where countries are capable of finding and using natural resources.

India's Position On The Conflict Of The Law Of The Sea

It has been studied that India has particularly claimed the contiguous zone concerning its extension of 24 nautical miles by taking into consideration its intention of enacting the “*Maritime Zones Act of 1976*”. As suggested by W.Friedman, the definition of continental shelf could be detailed to be the zone attached around the continent extending from a low water line till the depth and which is usually marked towards a greater depth. It has also been assessed that it is commonly referred to as a “*continental shelf*”, which is a sloping platform covering continents as well as islands. Furthermore, this is considered to be a submerged seabed bordering continental landmass as well as is addressed as an extension and even part associated with that land. It was also evaluated that it usually extends to a depth of 200 metres. Apart from that, the coastal countries possess limited sovereignty rights concerning the continental shelf for the exploration and utilisation of the “*natural resources*”, and not ultimate sovereignty. “*The Maritime Zone Act*” has particularly defined the position of India that the country has declared to be a continental shelf to be nearly 200 nautical miles from the land (). It has been assessed that the rights and obligations of India under this particular command could be recognised to be similar to those in different countries, as per the stipulation concerning the international conventions. However, the government is capable of declaring the continental shelf as well as its magical waters for a particular area and taking action with regard to regulating it.

An “*exclusive economic zone*” or EEZ can be identified to be an area of the sea zone as prescribed by the UNCLOS. Over this area, a state possesses multiple rights concerning the exploration as well as utilisation of marine resources with the inclusion of energy production from water as well as wind. It particularly stretches from the baseline up to 200 nautical miles from its coast. In terms of geography, the EEZ may also sometimes include the continental shelf of a state.

The primary difference existing between the territorial sea taking into consideration its 12-mile rule, followed by the EEZ or “*exclusive economic zone*” is that when the territorial sea particularly confers ultimate sovereignty over the waters and in that case, EEZ can be recognised to be merely a sovereign right referring to the coastal State particularly below the surface of the sea. An instance associated with an EEZ or exclusive economic zone can be identified to be the Bombay High, existing between 73 to 74 NMs of the coast of India that is

being used for the exploration of oil by the government of India. It is to be assessed in this case that Section 7 of the “*Maritime Act of 1976*” specifically provides exclusive rights for the exploration as well as and exploitation of the natural resources within EEZ or “*exclusive economic zone*”.

Flag State Rule

Taking into consideration the legal point of view, a vessel and a ship as well as an aircraft or the submarine would be required to be registered in a specific country, taking into consideration all practical reasons, it must display or fly the flag concerning the registered country. In this case, it could be observed that “*The Flag State rule*” would particularly be applicable for both military as well as commercial ships, along with all types of oil tanks as well as cruise ships. However, presently, Panama as well as Liberia are recognised to be the two countries having a maximum number of ships that are registered; yet, most of the ships have been found to be broken down as well as sold as junk in Alang, Gujarat. It was also recognised that the principle of the “*The Flag State rule*” has also been particularly implemented under the governance of Part VII Article 92 of the UNCLOS and also in environmental disputes, it was assessed that “*the Flag State rule*” can further be implemented under the governance of Article 217 (1) of the UNCLOS, 1982.

As evaluated from the case of “*S.S Lotus case (France Vs. Turkey, 1927)*”, back in 1925, on the liberalisation of the Turkish economy, the country started its expansion of trade outside the country borders with other countries. However, unfortunately, it was found that a French vessel S.S lotus along with a Turkish ship S.S Bozkurt collided, due to which the Turkish ship was severely damaged and allegedly killed 8 Turkish Nationals on the Turkish vessel. On the other hand, the remaining survivors on that ship were thereby taken to Turkey (Chinkin et al., 2019). In Turkey, the French boat captain, followed by the first watch officer and Monsiver Demons, were accused of killing and Demons was condemned to detainment and fine. The French government requested the arrival of Monsieur Demons and the exchange of his case to the French Court. Turkey and France consented to elude the question to the PCIJ (“*Permanent Court of International Justice*”). The French and the Turkish government were firmly accusing one another and Monsieur Demons was being charged by the Turkish government with purposely causing the mishap. The French government further argued that they reserve a privilege to preliminary size the individual on the grounds that the episode included a French

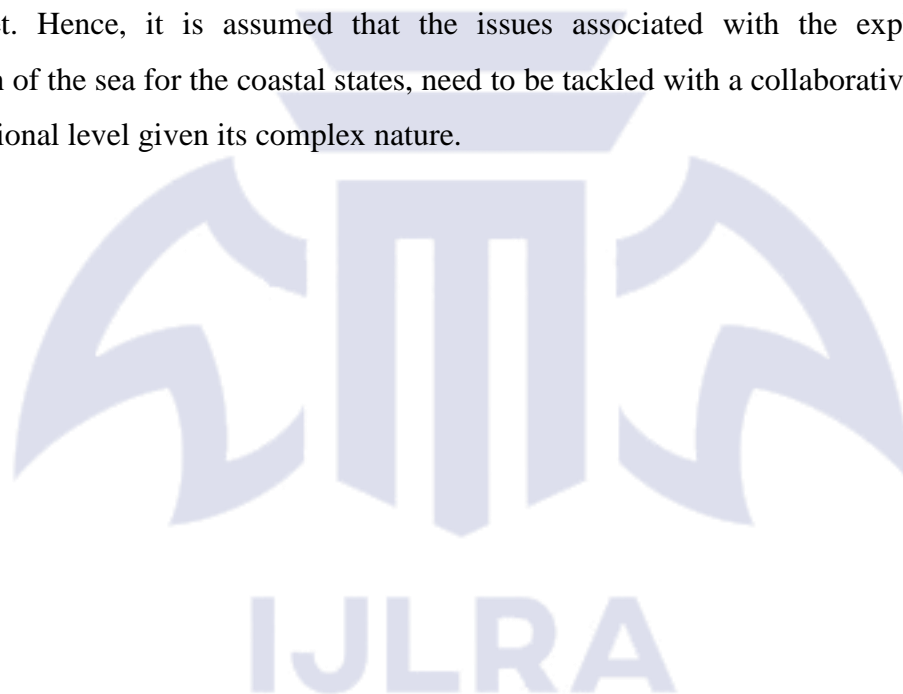
boat and a French National. The PCIJ in this case held that Turkey had disregarded no standards of International Law by organising a body of evidence against Monsieur Demons and furthermore reserved no options to indict him. After this judgement, there was an immense analysis and after the development of the United Nation, certain progressions were given the Flag State rule.

Rights Of The Coastal State

Critically examining the rights of the coastal states, it was observed that the states do not have the right of exercising sovereignty over the coastal state. It was thereby assessed that the states will exercise their respective sovereignty rights for the exploration and exploitation of minerals and non-living resources in the ocean floor as well as soil during the primary 5 years concerning production at that given place. In this regard, the speed will be increasing by approximately 125th with regard to the value of each resulting year till 12 years (Kohl, 2017). It will also stay seven-membered thereafter. On the off chance that coastal states don't exploit as well as explore the sea minerals and other assets where no elective state could attempt these exercises without its particular assent. Nonetheless, the privileges of the coastal state over the seabed don't meaningfully affect the system opportunity of route on the high oceans or that of the airspace higher than the superimposed waters. The States can't practise power over coastal states. They will practise power privileges to investigate and take advantage of minerals, non-residing assets of the sea depths and soil during the essential 5 years of creation at that spot. The speed will increment by 125th of the worth of each subsequent year till 12 years and will remain seven-membered from there on.

Conclusion

From the evaluation of the critical analysis, it is observed that the law of the sea at the international level has always been a subject of argument given contributory rights of the states on the utilisation and exploration of the sea considering different parts of the same. It was also critically evaluated that there are multiple contemporary issues concerning the coastal states with regard to the utilisation of the EEZ. For instance, the case of China and the Philippines have found their place of discussion for a long time now, with no particular solution to the concern yet. Hence, it is assumed that the issues associated with the exploitation and exploitation of the sea for the coastal states, need to be tackled with a collaborative approach at the international level given its complex nature.



References

Chinkin, C., Heathcote, G., Jones, E. and Jones, H., (2019). Bozkurt Case, aka the Lotus case (France v Turkey): ships that go bump in the night. Hart.

French, D., (2017). In the Matter of the South China Sea Arbitration: Republic of Philippines v People's Republic of China, Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Law of the Sea Convention, Case No. 2013-19, Award of 12 July 2016. *Environmental Law Review*, 19(1), pp.48-56.

Kohl, A.W., (2017). China's Artificial Island Building Campaign in the South China Sea: Implications for the Reform of the United Nations Convention on the Law of the Sea. *Dickinson L. Rev.*, 122, p.917.

Kopela, S., (2017). Historic titles and historic rights in the Law of the Sea in the light of the South China Sea arbitration. *Ocean Development & International Law*, 48(2), pp.181-207.

Strati, A., (2021). The protection of the underwater cultural heritage: an emerging objective of the contemporary law of the sea. BRILL.

IJLRA