NATIONAL AND INTERNATIONAL PERSPECTIVE OF MARITIME DISPUTES

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ABSTRACT: The marine boundaries connect all the nations in the world. Developing new sea trade routes and discovering more about the marine life and resources will be more beneficial for the nations, but due to the greed of oil, natural gas and other resources present under the sea, every state is seeking to obtain these resources for their own benefit. This lead to the maritime boundary disputes between the nations. United Nation tried to ease the dispute by organizing Convention on Law of Sea. UNCLOS, 1982 provides the effective provisions about the Breadth of territorial sea, Contiguous zone, Exclusive Economic Zone, Continental Shelf and Freedom of High seas, which define exact positions of countries maritime boundaries but despite of presence of these provisions many nations are still indulged in maritime boundary disputes. International Court of Justice and International Tribunal for the Law of Sea are the adjudicatory bodies set up under UNCLOS.

In this regard this paper tries to study the effective provisions under UNCLOS and the present maritime boundary disputes in the world.

Key Words: United Nations, Territorial Sea, Contiguous Zone, EEZ, Continental Shelf.

1. INTRODUCTION

The most important resources are found in the sea. Marine is considered as the home for aquatic animals as well as the goldmine for the humans. Maritime history can be traced back before two millennia. There are evidences which show that in Europe, various vessels were used by people at that time for coastal fishing and travelling. It is found that at that time people used boats for finding food resources under the sea which led to the exploration of new ocean routes. In India, Mauryan Empire was found to be known as an organization which is devoted to ships during 4 Century BC. It is believed that navigation as a science originated on the Indus river some 5000 years ago. The discovery of new sea routes led to the exploration of new lands and after a gradual period of time people started to settle in different parts of the world by travelling through those sea routes. From the ancient period trade was flourished between the countries through sea routes which also provided many unknown sea resources to the people. It is known that the ocean occupy at least 71% of Earth surface, so the resources which originate under the sea are very vital for human beings. The principle resource is salt which is extracted through sea water from long time ago other resources like Potassium, Magnesium, Gypsum, Sand and Gravel, Limestone etc. After gradual period of time when people learned about the benefits arising out of sea they stated marking their boundaries on sea and also started practicing total jurisdictions over that area, which led to many conflicts between the countries. Some conflicts were resolved, but still conflicts like South China Sea Dispute are not yet resolved. In 1945 after the end of World War II, United Nation was established with a view to prevent future wars and making peaceful relations between the countries. Due to the disputes arising between the countries in regard with sea limits a convention was held by United Nation in 1956-58 known as United Nation Convention on the Law of Sea(UNCLOS) held in Geneva, Switzerland. This Convention tried to make clear demarcation of sea limits for particular countries but unfortunately there were some important issues which were not covered by UNCLOS so a series of convention took place in 1960, 1973 making clear indications for maritime boundary limits.

2. INTERNATIONAL CONVENTION ON SEA LIMITS

The first convention held in respect for resolving sea dispute was United Nation Convention on Law of Sea (1956-58). This Convention opened signature for four conventions and an optional protocol namely-

(i) Convention on the Territorial Sea and Contiguous Zone (CTS) which came into force in 1964.
(iii) Convention on Fishing and Conservation of the living resources of the High Seas (CFCLR) came into
force in 1966.

(iv) Convention on the continental shelf (CCS) came into force in 1964.
And an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes (OPSD).
The precedent of this convention can be found under the work of Hague Conference 1930.The main basis of
the Geneva Conference, 1958 was the final report submitted by International Law Commission on the
Regime of High Seas and of the territorial sea.
Due to unresolved question on fishing limits of countries, the second United Nation Conference on Law of
Sea held in Geneva in 1960. But due to the lack of majority this conference also failed to fulfill its objective as
among various proposals ranging from 3 to 200 miles (Max. Limit), a proposal of 6 miles breadth of the
territorial sea plus 6 miles of fishery zone was accepted by the committee of the whole but did not obtained
the necessary majority.¹
In 1982, United Nation Convention on Law of sea was adopted and signed in Montego Bay (Jamaica). This
treaty was the result of 10 years negotiation (1973-1982). This Convention replaced all four Geneva
Convention of 1958.²
This treaty incorporated all the established facts in the four earlier conventions within a more global
perspective while developing a new rule. This convention came into effect in 1994 presently there are total
of 168 countries signed the treaty. This convention contains total 446 articles, 7 parts and 9 annexes.
The main aim of this treaty was to promote peaceful use of sea, promote international communications and
trade, protection of marine environment and providing maritime safety. For fulfilling its objective it was
necessary for the organization to make clear demarcation of sea limits. The limits demarcated by
conventions are-

**Article- 3- Breadth of the territorial sea**
"Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical
miles, measured from baselines determined in accordance with this Convention."

**Article- 33- Contiguous zone**
"1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise
the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and
regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations
committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of
the territorial sea is measured."

**Article- 57- Breadth of the exclusive economic zone**
"The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the
breadth of the territorial sea is measured."

**Article- 76(5) - Definition of the continental shelf**
"The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in
accordance with paragraph 4 (a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from
which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre
isobaths, which is a line connecting the depth of 2,500 metres."

**Article- 87- Freedom of the high seas**
"1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised
under the conditions laid down by this Convention and by other rules of international law. It comprises, inter
alia, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of over flight; (c) freedom
to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other
installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the
conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their
exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with
respect to activities in the Area.³"
3. MAJOR NATIONAL AND INTERNATIONAL MARITIME DISPUTES

It is known to the world that the resources are the main part of any countries economy; these resources help the countries to develop at a speedy rate. Several resources are extracted by the countries through sea and for exercising power over those resources many countries use diplomatic powers over other countries and this lead to maritime conflict between the countries. These disputes can be either settled by the mediation of any third country or by ICJ but despite of the presence of these adjudicatory bodies still there are some disputes which are in conflict in the present time. These maritime disputes are divided into two parts-

(i) Major International Maritime Disputes
(ii) Major Indian Maritime Disputes

(i) Major International Maritime Disputes

ARCTIC DISPUTE - Countries In Dispute-There are total eight countries but United States Of America, Canada, Denmark, Norway, Russia have coastline bordering Arctic. Icebergs in Arctic Ocean are melting at a speedy rate since 1980. For the world it is an encroaching disaster but all arctic nation stands to benefit from it. Due to lack of ice arctic countries are seeking new trade routes through Arctic Ocean. This region is the north most point of earth axis, located around 725km north of Greenland.

Research shows that arctic could contain as much as 90 billion barrels of oil and 47 trillion cubic metres of natural gas. US Geological Survey estimates that the arctic region holds at least 30% of world’s undiscovered natural gas and 13% of oil, aside to it is also estimated that around $1 Trillion worth minerals like gold, zinc, nickel and platinum lie in this region. Due to lack of presence of any hindrances created by icebergs these resources are becoming more accessible year by year. Presently all the arctic nations are trying to practice dominance over that area but the big question is, who does the ocean belong to?

Under the UNCLOS each nation can claim up to Exclusive Economic Zone that is up to 200 nautical miles (370 km) but if any nation can prove to UN that outer zone belongs to them then they can practice their jurisdiction over that area. Only Norway and Iceland have submitted their claims that have been approved by UN. But Russia, Denmark, Canada have submitted over lapping claims which are not approved yet. In 2014, Greenland claimed area of about 895,000 sq. km, extending from border of Greenland into the Russian limits but Russia denies this claim. Many Russian military exercises were conducted by Russia to show the world that it is not willing to give ownership over that area. Due to Russia permanent surveillance over that area other countries are not able to freely access that area. Russia has more bases north of Arctic Circle than all other countries combined.

China is also trying to take advantage of the opening sea route as a shortcut to trade with Europe but Russia is going forward with its claim. American focus in the dispute has been centered on the Northwest Passage, US is of opinion that the Northwest Passage is not Canadian territory as Canada claims over it. According to America these waterways should be open for international navigation as it restricts the ‘freedom of sea’. European Union also supported the American view on Northwest Passage. Under Canada views Northwest Passage is historically its internal waters. In 1985 Canada drew straight baselines around the Arctic island for enclosing the coastal waters in its jurisdiction. Now Canada had to show that the Northwest Passage was never an international strait.

Many world major powers are trying to gain power over the arctic ocean and some countries are signatory member of UNCLOS so, for the world peace, complying with the provisions of UNCLOS will be the best way to end this long dispute.

SOUTH CHINA DISPUTE - Countries in Dispute- Brunei, China, Malaysia, Philippines, Taiwan and Vietnam

The South China Sea extends from Strait of Malacca in the southwest to the Strait of Taiwan in northeast. It is estimated that over 500 million people of respective countries live within 100 miles of its coastline. South China Sea consists of remarkable amount of biological diversity and abundant oil and natural gas. It has a very busy sea route as over half of world oil tankers traffic and merchant fleet sail through its waters. Marking jurisdiction over these areas can give huge benefit to the disputed countries. This made South

4 The other three Arctic States are Iceland, Sweden, and Finland.
5 Available at http://www.marineregions.org/documents/US-Canada
6 Jarashow, Runnels & Svenson, at 1993-94
7 Available at https://economictimes.indiatimes.com

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China Sea as world’s most disputable territory as each country relates its symbolic value to it.

The islands in South China Sea can be divided into two chains first in the Paracel Islands in northwest corner of sea and Sparty Island in the southeast corner. Until the World War II, no claimant country occupied a single island of sea but in 1946, China established itself in Spartyls and in 1947 also in Woody Island, part of Parcel Island. As Vietnam was not able to pick control over its island as it was preoccupied by Vietnam War. With gradual advancement of time China and Vietnam established their permanent presence in several islands of sea. In 1970, when oil was found beneath the water of sea, it followed interest of nearly all countries sharing coastline with it. In 2002, when ASEAN and China came together to sign declaration on conduct of parties in South China Sea, it was considered that after it the disputes will be resolved peacefully between the countries. Due to ambiguity in the claims of countries on continental shelf and escalated steps by China over the sea in 2009, Malaysia and Vietnam sent joint commission on limits of continental shelf setting out some of their claims but again it was objected by other claimant nations. China also sent joint submission containing “nine-dash line”. This line shows seas territorial features and vast majority of China waters. In 2012, China snatched "Scarborough Shoal" from Philippines. Philippine raised its objection over illegal ownership of China and after two months of standoff, both countries agreed to withdraw from Shoal but China did not withdraw its forces from Shoal. Then in 2013, Philippines filed an arbitration case against China under UNCLOS, but the Chinese administration refused to participate in the proceedings. The Philippines submitted its documents and are awaiting for jurisdiction over the issue. Again in 2014, Chinese state owned oil company moved one of its rigs into Vietnamese waters in south of Parcel Island but after confrontation with Vietnamese, China withdrew its rig few months later. Presently, China in constructing its bases in the islands present and nearly area of 2000 acre of new land was claimed by it. Today the territory of South China Sea is the world’s most disputed territory as China continuously taking control over several islands and stopping the other countries to use their area for fishing and other purposes. It is evident that many countries sharing coastline with South China Sea are not able to practice their jurisdiction over that area as the fisherman of these countries are being driven away by Chinese boats. US tried to mediate between the countries but Washington was not able to get countries to resolve this long standing dispute. Recently Malaysian Prime Minister Mahatir Mohammad supported US by saying that China should define its “so called” ownership over the disputed area. The matter is still in conflict as many world powers tried to mediate between the nations to resolve this dispute but due to the Chinese presence over the area this dispute is becoming more complicated.

**MARITIME BOUNDARY DISPUTE IN AFRICAN CONTINENT**

Marking jurisdiction over the sea is very important for countries in African continent. As many countries wealth and resources lie over the sea or beneath the sea. Many maritime disputes were raised by different countries in the continent. Maritime dispute between Somalia and Kenya lies under those disputes.

The dispute between the countries is about the limitations of maritime boundaries of these countries in the Indian Ocean. A narrow triangle of the coast of Africa, in the Indian Ocean is the disputed territory for both countries. This area stretches for about 1, 00,000 sq. km. This area consists of large deposits of oil and gas but its jurisdiction is ambiguous. Kenya made clear indication of its jurisdiction over that area by giving mining licenses to International Companies but Somalia disagrees with Kenya. As a dispute was not able to be resolved by the countries, in 2009, both countries agreed that United Nations commission in charge of mediating border disputes should determine the delimitation of borders between the countries. But after some reasons it did not worked so in 2014, Somalia filed a suit against Kenya in International Court of Justice in Hague. Somalia government contended that both parties met for several times to settle the boundary dispute but not even a single time both countries came to an agreement. As it is known to the world that Somalia is suffering from terrorism and the government is not able to work properly since 2012 they had an elected president and now they want to safeguard their sovereign rights over their territory in the Indian Ocean. Somalia wants UNCLOS to be the deciding parameter of boundaries. In these cases a temporary line is drawn from both coastlines to see if this delimitation is working. Kenya is opposing these delimitations as they showed that for nearly 100 years they are considering it as their own territory. Now, International Court of Justice will decide that whether that area will remain autonomous or under whose territory it will lie. But for deciding the particular territory, the tribunal must keep in mind that if the case is decided in favor of Somalia, the Kenyan

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8 Available at https://www.lawfareblog.com/south-china-sea-dispute-brief-history
9 Available at http://www.academia.edu/Documents/in/South_China_Sea_Dispute
border would also shift and this could lead to another maritime dispute between Kenya and its southern neighbour Tanzania which could further escalate disputes between Mozambique, Madagascar and South Africa.

Respectively, to the west of the continent Ghana and Ivory Coast are also engaged in similar maritime conflict regarding their boundary in the Atlantic Ocean. Under Ghana’s perspective “equidistance rule”¹¹ must be used for deciding maritime boundary between two nations. International Tribunal on Law of Sea accepted Ghana’s arguments.¹²

In the East Africa, Malawi and Tanzania also had maritime dispute. The main area of dispute is “Lake Malawi” as it borders with Tanzania and had a huge deposit of oil. Tanzania wants its control over the area but colonial era border for Tanzania ends on the bank of lake.

The most present maritime disputes are in African continent, as many countries share their border from sea, and for making their country economically wealthy every country wants to grab the most amounts of sea territory, so that they can be benefitted from the resources present under the sea.

(ii) Major Indian Maritime Disputes

India’s maritime history is very progressive as ancient Indian scripture “Rig Veda” refers to ships, and Indus River as a natural outlet to sea. The coastline of India ranges about 7500 km and its Exclusive Economic Zone ranges nearly 23 lakh square km and India shares its maritime boundary with seven countries namely Pakistan, Maldives, Sri Lanka, Bangladesh, Myanmar, Thailand and Indonesia.

Maritime Dispute between India and Bangladesh

India’s relation with Bangladesh gained momentum after the 1971 war for Bangladesh Independence from Pakistan; India played a critical role in securing Bangladesh interest.

But the delimitation of their maritime boundary in Bay of Bengal is the main conflict between the states as both countries have significant interest in fisheries and more importantly in oil and natural gas reserves in the disputed region. The region of “South Talpatti Island” was basically in conflict and also these waters are extensively used for fishing and shipping.¹³ India proposed to use ‘straight baseline system’ for delimitation while under Bangladesh view ‘normal low water baseline system’ would be more efficient in deciding the boundaries. According to 1958 Convention, the use of equidistance method is obligatory if both the countries do not come to an agreement. But under Bangladesh view if the equidistance principle is followed then it will lose out a whole area which consists of fisheries, oil and natural gas reserves recently discovered. In 2009, Bangladesh government filed its claim alleging that India was encroaching upon its maritime zones and exploiting the oil blocks in the contested area for its own use. As India tried to settle this dispute by bilateral agreement, but due to difference of opinion between the parties it could not be resolved so the International Tribunal on Law of Sea gave its verdict in 2014, awarding Bangladesh 19,467 sq. km. of the 26,602 sq. km. in Bay of Bengal, no appeal can be done against the verdict of ITLOS.¹⁴

Maritime Dispute between India and Sri Lanka

Katchatheevu is an uninhabited islet in the Palk Strait which was formed due to the volcanic eruption in 14th century. It has an area of about 285 acre lands which is important for fishing activities for both countries fishermen. In 1921, both countries claimed this piece of land for fishing and the dispute remained unsettled.¹⁵ In 1974, Katchatheevu was given to Sri Lanka through Indo- Sri Lankan Maritime Agreement. The Tamil Nadu Government raised objection as it was historically a part of Ramnad’s Zamindari. The agreement did not talk about the fishing rights of Indian fishermen but they were allowed to dry their nets on the island. In 1991, due to the emergence of LTTE, the fishermen got easy access into the fishing as civil war was going on in Sri Lanka over the northern borders. In 2008, Jayalalitha moved to the Supreme Court to nullify Katchatheevu agreement of 1974. After the end of civil war in 2009, Sri Lanka focused on its maritime boundaries by arresting the Indian fishermen who mistakenly crossed the Sri Lankan territory. In

¹¹The rule says “Nation’s maritime boundaries should conform to a median line that is equidistant from the shores of neighboring nations.”


¹⁵ Available at https://www.livemint.com

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2015, the Sri Lankan Prime Minister Ranil Wickramasinghe spoke in an interview that Indian fishermen may be shot if they intrude into Sri Lankan waters. As of today many fishermen are detained from both the countries, if they accidently cross the border. But for the maintenance of peace and stability between the two nations, these fishermen get released after the diplomatic talks between the representatives of these countries.

India faced many maritime disputes with its neighbouring countries like India’s dispute with Pakistan over the demarcation of boundary along “Sir Creek” and many other disputes which India was able to solve by bilateral talks.

4. **ADJUDICATORY BODIES SETUP UNDER “UNCLOS”**

Section 2 of Part XV of the Convention provides for the bodies which are set up under UNCLOS, to which the parties can refer their dispute if the states are not able to agree on a settlement. These bodies are-

(i) The International Court of Justice

(ii) International Tribunal for the Law of Sea

(iii) An arbitral tribunal established in accordance with Annex VII to the convention.

(iv) A special arbitral tribunal constituted pursuant to Annex VIII to the convention for disputes falling within the categories specified in the annexure.

International Court of Justice is considered as the principal judicial organ of the United Nations. The ICJ cannot exercise its jurisdiction over all the member states of UN, but if disputes states want ICJ to exercise its jurisdiction over the dispute then ICJ can provide one. The convention provided an option for the disputed parties that if they want a binding solution over the dispute then they can approach ICJ.

Along with ICJ, the states also had the option to choose other standing judicial body which was set up under UNCLOS, to settle their disputes. The International Tribunal for the Law of Sea is a judicial body which is solely set up under UNCLOS, to settle maritime boundary disputes between the states. Annex VI to the convention contains the detail about ITLOS.

Apart from these judicial bodies the countries which are not willing to submit their dispute to the ICJ or ITLOS, can resolve their dispute by Arbitral Tribunal set up in accordance with Annex.VII and Annex.VIII to the convention. States can agree to submit their dispute for settlement, by arbitral tribunals whose members will be selected by the parties of the particular dispute. Under Annex.VII, arbitration is done between the parties if there is any contravention in connection with the provisions of the convention while under Annex. VIII, arbitration between the parties is done when the dispute is regarding fisheries, protection and preservation of the marine environment, marine scientific research and navigation and pollution from vessels.

5. **CONCLUSION**

Maritime Disputes became very common from the beginning of 19th century, when states gained knowledge about the resources lying beneath the sea. Every country tried to grab the maximum limits of sea, so that they can be enriched from the resources under it. In respect of avoiding those disputes the United Nation conducted its first convention on Law of Sea in 1958, the main aim of the convention was to decide the sea limits of every nation but due to the absence of effective provisions this convention was not able to fulfill all the objectives, it seemed. Then, after a series of conventions finally in 1982, the United Nation Convention on Law of Sea was adopted and signed by member countries. This convention gave clear limitations over the maritime boundaries of different countries. Despite of proper demarcations given under UNCLOS, there are many maritime disputes between the states which are presently in conflict. The Arctic Dispute, the South China Sea Dispute, are the long standing maritime disputes which need immediate international attention for the peaceful settlement of these disputes. For the peaceful settlement of disputes, the UNCLOS also provided the International Judicial bodies like ICJ and ITLOS, which played a very effective role in settling of maritime disputes between the states, the states also had the option to settle their disputes through arbitration. Thus in the present globalised era if countries want to take advantage of the resources present under the sea then they should end their conflict peacefully, so that small nations will also be able to develop at a speedy rate.

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16 Sir Creek is a tidal estuary which exist on the border of India and Pakistan.

17 Available at: [http://www.mpil.de/files/pdf2/mpunyb_mensah_2.pdf](http://www.mpil.de/files/pdf2/mpunyb_mensah_2.pdf)