



DECIPHERING 40 YEARS OF UNCLOS 1982 AND THE DEVELOPMENTS IN MARITIME SAFETY AND SECURITY OF FISHERS

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Abstract - The commonest form of controversy over the coastal claim is the access to fisheries and the control over access of warships. Although the monopoly over fisheries in the territorial waters was widely contested as irrational and unreasonable infringement on the public domain, the claim was buttressed by economic dependency and historic practice. Accordingly the developments in the demarcation of maritime boundaries and the substantial increase in the exploitation of fisheries marked distinctive phase for the conservation and management of global fishery resources and the coastal fisheries closely connected therein.

Thereafter the access to the ocean and the markets of the world has exemplified trade, transport, communication, research and greater military activities. Scholars who support the non traditional approach to maritime security claim that the International maritime security paradigm seeks to align this hyperbole of conflicting interest of inclusive and exclusive claims of coastal states over their fisheries. Thus this article seeks to bring clarity to the significance of the law of the sea conventions in streamlining security of fishers.

Keywords: *UNCLOS 1982, Ocean governance, Maritime safety, Security of fishers, Legal developments.*

INTRODUCTION

The law of the Sea like all the other branches of international law serves only the function of protecting the common interest against the dissentient powerful and the lawless.

The International Law of the Sea is an outcome of a wide comprehensive process of authoritative decision making, policy frameworks which embrace and affect the mankind as a whole. Its distinctive feature lies in the process of interaction. This may be construed as the use and abuse of the resources of the ocean by the people, the claim and authority over such interactions and the right to exercise regulatory authority over the vast expanses of the oceans and the relatively inexhaustible rich living resources. Traditionally, the coastal states exercised exclusive claim over the waters described as 'internal' and 'territorial' waters. This area was which lied adjacent to the coastal area, was exclusively owned by the coastal states. Irrespective of the changes over the years the coastal state exercise unquestioned regulatory rights over marine resources within narrow stretch of water closer to the land and by law, no state was allowed to exercise jurisdiction over the resources of the high seas.

McDougal and Burke, in their landmark discourse on the context and polices governing the *Public Order* of the Oceans, points out that the key factor towards the process of claim by which nations invoke the authority for regulation of their interaction over the ocean is the inclusive and exclusive character of their interests. More specifically the exclusive claims that restrict the participation by other states in decision making and the reciprocal inclusive claim of the other states over the events beyond these area upon the high seas. The exclusive character means the unique demands held by individual states and exercised against the rights and responsibilities of all other states. It is the sovereign rights exercised by the state over the ocean space without hindering the interest of others. The law of the sea is constructed in such a way that the common interest of the international community is protected and that the mutual benefit is shared by the majority.

Evidently, the fundamental problem of access, regulation and authority over the use of ocean resources principally lies in the process of claim. There is also a strong presumption of interdependence, which in fact layers the collective enjoyment of ocean space by embracing both inclusive and exclusive claim. The task of achieving an appropriate balance between the inclusive and exclusive claim thus accord to considerable discretion in protecting these interests often conceived as security.



As can be seen, security in maritime law has been defined in two broad context viz traditional and nontraditional maritime security. Of which the connection between UNCLOS and the rights of fishers may be linked to the nontraditional modern approach.

THE WORLD'S FISHERIES

The living resources of the sea are divided according to their mode of life- drifters, swimmers or fixed organisms. Marine fishery resources are largely divided into two heads, demersal and pelagic. Demersal species are bottom feeders that live in the shallow waters or near the sea bed while the pelagic species are surface feeders which are adaptive to both shallow and deep waters and are commercially priced. Over the years, scientific development in the understanding of the marine ecosystems and the need for global awareness for sustainable management of the resources is widely recognized and undertaken. The FAO Code of conduct for responsible fisheries 1995 has consolidated the Sustainable Development Goal -14 to conserve and sustainably use the oceans, seas and marine resources. To this end, the FAO has implemented minimum substantive criteria for responsible and sustainable fisheries and aquaculture through evidence based statistics and analysis of the persistent and emerging issues in the industry.

The total global capture fisheries production in 2018 is recorded at 179 million tonnes, out of which 156 million tonnes were used for human consumption. The production of marine capture fisheries increased to 84.4 million tonnes in 2018. China is the greatest fish producing country with 35 per cent of the total fish production followed by Indonesia, Peru, India, The Russian Federation, The United States of America and Viet Nam. Fish consumption accounted for 17 percent of the global intake of animal protein in the year 2017 which amounts to 7 percent of the total protein consumed.

The global inland fishery catches is estimated to be 12.4 percent of the total capture fish production with two thirds of the total production concentrating in Asia since 2000s. Fish farming is dominated by Asia with 89 percent of the global production in volume terms over the last 20 years. The aquaculture sector showed a steady increase from 25.7 percent in the mid 2000s to a increase of 46 percent in 2018.

The number of people engaged in the primary sector of capture fishing is estimated to be 39.0 million and 20.5 in the aquaculture sector. Of the total global statistics of workers in the fisheries sector, the highest numbers of workers are concentrated in Asia followed by Africa, the Americas, the Europe and Oceania. The bulk of this capture fishery production comes from developing countries employing small scale, and artisanal fishers and aquaculture workers. The primary capture fisheries sector is gender neutral and women play a decisive role in the primary and post harvest operations providing labour in both subsistence and commercial industry.

According to FAO state of world fisheries and aquaculture 2020, 59.51 million people are engaged in the primary sector of fisheries and aquaculture out of which women include 14 percent of the global total. The total number of fishing vessels including small undecked vessels to large industrial vessels in 2018 (4.56 Million) has had a 2.8 percent decline as compared to 2016. Asia has the largest fishing fleet with an estimate of 3.1 million vessels which is 68 percent of the global total.

THE FIRST UN CONFERENCE ON THE LAW OF THE SEA 1958

In the wake of the Second World War there was increase in the demand for control and jurisdiction over the natural resources in the continental shelf among the coastal states and a concomitant interest over the abundance of resources on the high seas. In this setting, President Truman issued the proclamation on the Continental shelf and on Fisheries respectively, which marked a new phase in the growth of the law of the sea.

As a consequence the International Law Commission proposed a report on the articles concerning the basis for the first United Nations Conference on the Law of the Sea. The UNCLOS I adopted four separate conventions, an optional protocol on dispute settlement and nine comprehensive resolutions. The Convention on the Territorial Sea and the Contiguous Zone, explicitly divided the ocean into three zones which includes the internal waters, the territorial sea and the High seas. The principle claim to the



exclusive use and the authority to deny the access to the territorial sea pertains to warships and foreign fishing vessels.

The most remarkable outcome of the conference is The Convention on Fishing and Conservation of the Living resources of the High seas. The 1958 *Geneva Convention* referred to the indifferences in national fisheries interest as the chief obstacle to the codification of the international law of the sea.

As it can be seen, the Convention considered the conservation of the living resources of the High Sea owing to the exploitation of the resources in the wake of modern technological advancements. Whilst the convention favors the optimum sustainable yield of the resources to secure maximum supply of food for human consumption, it does not provide a comprehensive set of rules for the safety and security of the fishers employed in the fishing vessels. As will be seen, states are obliged for the conservation of living resources and enjoy the freedom of fishing. The convention realized only limited success in gaining ratification by states.

LEGAL REGULATION OF OCEAN SPACE UNDER UNCLOS 1982

The conclusion of the law of the sea convention is perhaps the most challenging frontier in international rule making. The current Law of the sea convention 1982 (LOSC) was etched out after numerous deliberate considerations spanning over sixteen years and two failed attempts. The 1958 Geneva Convention on the law of the sea adopted four conventions which deal exclusively with the territorial sea, the high sea, fishing and conservation of living resources of the high sea and the continental shelf. The Geneva Convention divided the ocean floor into three basic categories; the internal waters, the territorial sea and the high seas. Whilst nine resolutions were adopted in the convention, principal focus was placed for conservation of fisheries and the discrimination against fishermen. The second conference was convened in 1960 in order to address the issue of breadth of territorial sea which the first convention failed to settle. The proposal put forward by the participating states regarding six mile territorial sea breadth along with the six mile exclusive fishery zone and the ten year moratorium for historic fishing in the outer six miles was defeated by a single vote and hence couldn't make any progress on the subject.

After several revisions, sessions, and negotiations the LOSC was finally adopted in 1982, marking the new beginning to the international law of the sea. The principle feature of the convention is its comprehensiveness. It contains seventeen parts and divides the marine spaces into five broad categories of governance, the marine spaces that lie within the national jurisdiction and the marine spaces that lie beyond the national jurisdiction. It also succeeded in resolving the question related to the breadth of the territorial sea and also established compulsory procedures of dispute settlement. The limits on the maritime zones of the coastal state have clearly established the exclusive rights and obligations of the coastal state over its marine space and on the other hand the right of the third state over the maritime zones.

The cotemporary International Law of the sea classifies the maritime zones into multiple jurisdictional zones, namely the internal waters, the territorial sea, the contiguous zone, the archipelagic waters, the exclusive economic zone, the continental shelf, the high seas and the Area. It has long been accepted that the state has exclusive sovereign control over the internal waters as it has over its landed territory. Thus that marine space under the national jurisdiction includes the internal waters, maritime ports, territorial seas, international straits and the archipelagic waters. These marine spaces operate as highway for sea communication reconciling the territorial sovereignty of the coastal state and the inclusive interest of freedom of navigation.

The claims over the contiguous zone beyond the territorial seas was made clear in article 24 of the Geneva Convention on the Territorial sea of 1958, wherein the international law accords the coastal state to exercise preventive and protective control over 'certain' aspects outside its territorial sea. It includes the prevention and punishment of infringement of fiscal, customs, immigration or sanitary regulations within the contiguous area. The coastal state may exercise control over the zones as a matter



of policing, protection of coastal states revenue laws, health and quarantine regulations. The problem of enforcement in this adjacent zone or the Epicontinental Sea historically lies in the claim for biological resources and the operations of extra regional fishing fleets. Back in 1976, due to lack of express recognition, a five judge bench expressed the view that there was no general customary rule regarding maximum fishery limits of a coastal state. The scope of the competence to prescribe legal regulations was further made redundant by the development of 200 miles Exclusive Economic Zone (EEZ).

The concept of EEZ was presented at the United Nations Committee on the Peaceful uses of ocean floor of 1973 and later on adopted in the LOSC 1982. The claim over EEZ coexists with the right over the continental shelf i.e. the seabed and subsoil. The existence of these zones depends on the actual claim exercised by the coastal state. To minimize the coastal state interference with navigation in the EEZ, UNCLOS has delicately balanced and defined the enforcement of laws relating to fishing and marine pollution. The coastal state has been conferred with sovereign rights to explore, exploit, conserve and manage the living resources and to take necessary measures of arrest, inspection, boarding, judicial proceedings and penalties for violation of fisheries laws and regulations. The enforcement jurisdiction gives authority to seize vessels violating the coastal state laws and regulations. The real focus behind the enforcement of claims beyond the territorial sea and within the EEZ can explicitly be seen in the increasing modern interest and demand over fisheries and the conception of security as against military advancements.

REGULATION OF FISHERIES UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982

The LOSC 1982 adopted a comprehensive juridical framework by which the coastal state enjoys complete sovereign right to explore, exploit, conserve and manage the living resources within the 200 mile exclusive economic zone. The common interest of the states with respect to traditional fishing rights, existing agreements and other legitimate activities is protected and regulated in accordance with the conditions of exercise of such rights and further bilateral agreements between the states. Article 61 is perhaps the most relevant regulation connected with the safety and security of fishers and fishing vessels. Paragraph 3 of article 61 requires the coastal state to take measures to produce maximum sustainable yield in par with the relevant economic and environmental factors. This paragraph does not provide direct reference to the safety of fishermen but the most plausible interpretation of 'economic needs of the coastal fishing communities' would appear to have positive affirmation on the socio-economic security of the coastal fishers.

Further the foreign fishing vessels are subject to the authority of the coastal state over the living resources within its exclusive economic zone. By authorizing so, the LOSC balances the community interests of the coastal state over its resources and permits access to fisheries to foreign fishing vessels through appropriate measures. This approach helped in meaningful exclusive access and more particular attention towards sustainable fishing activity. Of particular interest and relevance is the protection extended to the fishing communities of landlocked and geographically disadvantaged states from detrimental effects and economic dislocation by giving access to participate in exploiting the living resources within the EEZ of the coastal state.

The UNCLOS places fisheries jurisdiction chiefly in terms of conservation and management of living resources. This is reflected in *Part V* and *Part VII* of the LOSC. Part V deals with the rights, responsibility and duty to cooperate in the conservation and management of living resources lying within the Exclusive Economic Zone and part VII with the management of living resources of the high seas. Though the preamble of LOSC specifies the strengthening of peace, security, cooperation and friendly relation in conformity with the principles of justice and equity in order to promote socio-economic advancement of all, the concern over security interest is largely indirect. It is expressly considered in matters related to the innocent passage, disclosure of information regarding national security and the



general conduct of states over the Area which is the seabed and the subsoil. The LOSC grants the freedom of fishing to all states in the high sea with a balanced duty to cooperate and manage the resources within. The safety security network and fisheries jurisdiction within the EEZ is unclear as the LOSC is silent on the security matters within the EEZ. In contrast, the coastal state enjoys absolute discretion over management of fisheries in its territorial waters. The coastal state may adopt laws to regulate the innocent passage of vessels, to prevent infringement of fisheries law and to enforce action against illegal unregulated fishing activity in its territorial waters.

Further with regard to the states are required to ensure that the measures for the conservation of living resources in the high seas should not discriminate the fishermen of any state. Although there is no direct reference to the socio economic rights of the coastal state, the UNCLOS places thrust on the conservation and management of living resources and design measures for the maintenance of maximum sustainable yield of harvested species to maintain the socio-economic needs of the coastal fishing communities and developing states. It sets out the rights of geographically disadvantaged states and the need for bilateral, sub regional and regional agreements in order to avoid detrimental effects on the fishing communities and industries of the coastal state.

EARLY DEVELOPMENTS IN SAFETY AND SECURITY OF FISHING VESSELS AND FISHERMEN

The first successful pooling of knowledge, understanding and ideas regarding the design, construction and safety of fishing boats was addressed in the 1953 International Fishing Boat Congress held in Paris, France and Miami, United States. It was organized by the FAO owing to the rapid increase in fishing activities. Conversely, the first international attempt to address the safety of sea going vessels and its personnel is the International Convention for the Safety of Life at Sea (SOLAS). The conventions from its first version in 1914 to the present 1974 convention have covered many aspects of safety of life at sea. The 1960 SOLAS conference held by the IMO incorporated technical changes to the safety convention and though the convention was proposed to apply on fishing vessels, it was later on dropped owing to the differences in size of the fishing vessels. Recommendation 7 of the 1960 convention invited stakeholders- the IMCO to conduct studies on the intact, stability of fishing vessels in consonance with the work already carried out by the FAO. In 1963 the Inter Governmental Maritime Consultative Organization (IMCO) in its resolution on the Intact Stability of Fishing Vessels voices the urgency in 'continuing its studies on the stability of fishing vessels with all possible speed'. In 1974, the FAO conceived the Bay of Bengal Project which covered fishing activities of the seven countries around the Bay of Bengal region. Active cooperation and participation towards improvement of fishing vessel safety and fishermen training was the highlight of the project which covered all facets of design, construction and manning of small scale vessels as well. In brief, the long-established cooperation between FAO, ILO and IMO has led to the development of legal framework and guidelines for the safety and security of fishing vessels and fishermen.

CONCLUSION

The contemporary changes in the trans-economic structure of the ocean have accentuated the claim for a discretionary authority over the exclusive rights enjoyed as a coastal state and a creeping jurisdiction over the adjacent waters jeopardizing the territorial integrity and sovereignty of the other.

Events of the past law of the sea conventions and the unanimity of opinion on the freedom, rights and duties of the coastal state over the sea led to the formulation of a general prescription that can be applied verbatim. The negotiations of the third United Nation convention on the law of the sea 1982 resulted in the agreement on a comprehensive international law that regulates every possible activity on, in and under and over the sea including the regulation of marine fisheries.

The gaps in the LOSC convention were later leveled by the international community in its *Agenda 21* and the LOSC relating to the Conservation and Management of Straddling Fish Stock and Highly



Migratory Fish Stocks (UNFSA) 1995. A broad connection between fisheries and maritime security is reiterated in the preamble of the UNFSA. It states that the implementation of the provisions of the convention will promote the protection of international peace and security.

As may be seen, no strong determination has been made as regards the safety and security of the fishers and fishing vessels in the LOSC 1982. This appears as a major detriment to the protection of the fishers employed in operation in the coastal waters. The fisheries provision of the 1982 United Nations Convention on the Law of the Sea and the new instruments adopted in its aftermath each mark distinct phases in the development of the global regime for the conservation and management of marine fisheries resources. They reflect the concern that fundamental changes in the international fishery situation have been brought about with the introduction of highly mechanized fishing methods and technologically advanced fleets with no comparable progress in preventing over-exploitation and abuse. With globalization and soaring trans-national trade and economy, there is a need to think beyond the LOSC framework to fit maritime security as a threat to the good order at sea, the wellbeing of the humans and the environment that binds them.

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