An Examination of the Features of the Regime of the Sea 1982 Thirty - Eight Years After: Time for Reform

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Abstract

Sea is a large body of water that is surrounded by land. It is a crucial part of human trade and commerce, voyage, mineral extraction, power generation and is also considered as an essential source of blue economy nowadays. International law of the sea is a law of maritime space that defines various jurisdictions of the maritime zones as well as the rights and obligations of the coastal States in these zones, especially with regard to the conversation of marine environment and biodiversity. The law of the sea comprises the rule governing the use of the sea, including its resources and environment. The law of the sea is one of the principal subjects of international law and is a mixture of treaty and established or emerging customary law. The law of the sea covers rights, freedoms and obligations in areas such as shipping, territorial seas and waters and the high seas, fishing, wreaks and cultural heritage, protection of the marine environment and dispute settlement. The objective of this article is to demonstrate a brief overview of the international law of the sea with a special emphasize on the Law of the sea and its legal framework. This study also strives to focus the civil and criminal liability, jurisdictions, rights and obligations of the coastal states with regard to the different maritime zones. Furthermore, the study delineates the rule and extent of using these maritime zones in the light of various treaty provisions on the international law of the sea where different adjudicated cases are also presented along with a profound scrutiny upon their facts, issues, judgment and reasoning.

Keywords: Coastal State, Convention, International law, Law of the Sea.

1. Introduction

From time immemorial the oceans have been and will continue to be fundamental to human life. The ever increasing use of the oceans necessitates international rules governing various human activities in the oceans. The law of the sea is a complex and

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fascinating area. Like international law of armed conflicts, law of diplomacy, international human rights law and international environmental law, the law of the sea is one of the oldest branches of public international law. Originally, the law of the sea consists of a body of rules of customary law later on these rules were progressively codified. Today, the international community and the oceans are constantly changing.[2]

International law of the sea is the part of public international law that regulates the rights and obligations of States and other subjects of international law, regarding the use and utilization of the seas in peace time. It is distinguished from the private maritime law which regulates the rights and obligations of private persons with regard to maritime matters, e.g. the carriage of goods and maritime insurance. Law of the sea developed as part of the law of nations in the 17th century with the emergence of the modern national state system. The seas of the world have historically played two key roles: first as a means of communication and secondly, as an immense reservoir of both living and non-living natural resources. Both of these roles have encouraged the development of legal rules[3] No branch of international law has undergone more radical changes during the past four decades than has the law of the sea and maritime highways. Law of the sea is concerned with the public order at sea and much of this law is codified in the United Nation Convention of the Law of the Sea 1982.

International disputes may frequently be arisen among the neighbouring coastal States regarding the delimitation of maritime boundary just as the case of Cameroon and Nigeria. Issues of exploitation of natural resources, commission of any crime in the territorial boundary of another state etc. these disputes are generally resolved by the international courts or tribunals on the basis of complaints filed by the parties concerned following the rules of international law of the sea. This article, however, is to examined salient characteristics and maritime zones such as inland waters, territorial sea, contiguous zone, exclusive economic zone, high sea and continental shelf.

The rights of coastal states to regulate and exploit areas of the ocean under their jurisdiction is one of the foundations of the Law of the sea. These rights need to be balanced with the freedom of

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2 Yoshifumi Tanaka, the International Law of the sea, 1st ed. Cambridge university press, UK, 2012 p.3

3 Shaw N Malcolm, International Law 6th edi, Cambridge University, 2008 p 242

navigation and access to resources outside State control the freedom of the seas. These zones give coastal states different jurisdictional rights. In general, a state has more rights in zones near to its coastline than it does further into the ocean. The main challenges associated with these zones are variations in geography affect where zones end and where new zones begin.

The primary function of international law involves space, distribution of jurisdictional maritime zones of coastal state and the same applies to the law of the sea.[4] The ocean is considered as a unit in the physical sense, the proper management of the oceans necessities international cooperation between states. International cooperation therefore is a prerequisite for the conservation of marine resources and biological diversity by international rules. The regulation of marine pollution has to be regulated because pollution may spread beyond maritime boundaries. The law of the sea provides legal framework thereby safeguarding the common interest of the international community.[5]

This led to the issue of the scope of international law of the sea. The ocean as pointed out is a subject of the law of the sea as one single unit. The marine spaces as pointed out by Gidel, must communicate freely and naturally with each other all over the world. This means marine space must be connected to another by a narrow out let, normally by a strait. Accordingly, the law of the sea is not applicable to the Caspian Sea because it is separated from the ocean.[6] It is important to mention therefore that rivers and lakes are part of terrestrial territory and are not governed by the law of the sea except countries of Scandinavian countries such as Denmark, Norway and Sweden. The international law of the sea is governed by three major principles: the principle of the freedom of the use of the oceans, the principle of sovereignty and the principle of common heritage of mankind in the use of the resources of the sea.

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4 Starke J G, Introduction to International Law, Butterworths, London, 1994 p. 282
5 Ibid p.4
6 Ibid p.4

2. What are the Objectives of the Law of the Sea 1982?

The United Nations Convention on the law of the sea lays down a comprehensive regime of law and order in the world's oceans and seas. It was signed by 117 states and establishes rules governing the uses of the ocean and its resources. The Convention also provides the framework for the development of a specific area of law of the sea, otherwise, known as "The Area" which consists of the resources of the ocean floor, soil and subsoil beneath the High sea for the use of mankind. It is interesting to note that the Convention is a comprehensive and a lengthy document having 320/446 articles group in seven parts and contained nine annexes. It came into force internationally on the 16th November, 1994.

The objectives of the Convention are as follows:

a. To promote the peaceful use of the seas and oceans of the world:
b. To facilitate international communications;
c. To enable equitable and efficient utilization of ocean resources;
d. To protect and preserve the marine environment;
e. To promote maritime safety all over the world.

3. Legal and Institutional Framework

The 1982 law of the sea provides two specific legal regimes which are fundamental to maritime security and order on the seas, these are: the regime of consecutive maritime zones, and the jurisdictional trinity of flag, coastal and port state control. The current regime is the only international convention which stipulates a framework for state jurisdiction in maritime spaces. The law of the sea is to be found only in one document; rather than the old practice which comprises of the mixture of customary international law and treaty, bilateral and multilateral treaties. The first UN Conference on the law of the sea was held in Geneva. In this conference four multilateral conventions covering various aspects on the law of the sea were adopted:

1. Convention on the Territorial Sea and contiguous Zone;
2. Convention on High Seas;
3. Convention on Fishing and Conservation of Living Resources; and

4. Convention on the Continental Shelf. All these conventions are in force, though in many[7] aspects they have been superseded by the 1982 UN Convention on the Law of the sea which is mainly for general application..

The third UN Conference on the Law of the Sea was finally adopted a package deal after years of protracted and arduous negotiations. It regulates inter alia, all ocean space, its uses and resources, and the establishment of maritime zones and marine environmental protection.[8]. The legal regime on deep seabed mining (Part XI of UNCLOS0 used to be a main obstacle for ratification of the Convention by Western states and blocked the entry into force of UNCLOS. The 1994 agreement relating to the implementation of Part XI of UNCLOS regulated the commercial exploitation of the deep seabed and led to more countries ratifying the Convention. The convention is of historic significance, second only to the UN Charter itself, due to its universal scope and the principles and specific rules that it set forth due to having won nearly universal formal ratification, albeit with exceptions, among the sovereign nations of the world. It should be noted that the states that have signed the UNCLOS are not bound to follow the Convention. Therefore, UNCLOS is a legal instrument of paramount importance for the entire international community. It is based on the fundamental premise that all the problems of the oceans are closely interrelated and need to be considered as a whole. The 320 articles and 9 annexes have been regarded as the 'Constitution for the Oceans'. The convention addresses many of the contentious issues that previous conferences on the law of the sea had been unable to settle. UNCLOS has also inspired the development of soft law and, in the largest sense, the emerging definition of inspirational principles for advancing the rule of law, peaceful relations, and sustainable use of global marine resources. Yet the Law of the Sea remains a field of unsolved issues. It still faces a host of issues relating to distribution other than territorial jurisdiction over natural resources. They range from deep seabed mining in the Area and related transfers of technology to the coordination of communication and extraction of resources; from the compensatory rights of landlocked and geographically disadvantaged states to finding a proper balance in

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7 United Nations Conference on the Law of the Sea held in Geneva 1958

8 The third UN Conference adopted on 10th December 1982

preventing and combating marine pollution, overfishing, and the preservation of biodiversity.

The 1982 Convention on the Law of the Sea therefore constitutes a comprehensive codification and development of contrary international law governing the sea in time of peace. Maritime jurisdictions are now governed mainly by the 1982 UN Convention on the Law of the Sea. The 1982 law of the sea is intended to govern the use of oceans for fishing, shipping, exploration, navigating and mining and it is the most complete treaty in public international law that covers a range of law of the sea, such as: delimitation of maritime boundaries, maritime zones, marine environment protection, marine scientific research, piracy and so on. (Starke, 1994). The greater part of the convention, containing the more significant rules therein enunciated much the previous law was thereby changed; appear now to command the general consensus of the world community.

4. The Salient features of the Law of the Sea

The Convention introduced new concepts in the traditional law of the sea to include inter alia, the maximum width of the territorial sea which is fixed at 12 nautical miles and that of the contiguous zone at 24 nautical miles; a transit passage regime for straits used for international navigation. States consisting of archipelagos, the outermost islands being connected by archipelagic baselines so that the waters inside these lines are archipelagic waters; a 200 mile exclusive economic zone including the seabed and the water column, may be established by coastal states in which such states exercise sovereign rights and jurisdiction on all resource activities; Other states enjoy in the exclusive economic zone high seas freedoms of navigation, over flight, laying of cables and pipelines and other internationally lawful uses of the sea connected with these freedoms. A rule of mutual due regard applies to ensure compatibility between the exercise of the rights of the coastal states and of those of other states in the exclusive economic zone. The concept of the continental shelf has been confirmed, though with newly defined external limits. The international Seabed Authority being the machinery entrusted with the supervision and regulation of exploration and exploitation of the resources; provisions dealing with the protection of the marine environment setting out general principles and rules about competence for law making and enforcement as well as on safeguards; detailed provisions concerning marine scientific

research, based on the principle of consent of the coastal State, consent which should be the norm for pure research and discretionary for resource-oriented research. The ocean bottom beyond national jurisdiction is proclaimed to be the "Common Heritage of the Mankind"[9].

The salient features of the Convention are:

Limits of maritime zones (such as territorial sea, contiguous zone, exclusive economic zone, continental shelf), Rights of navigation including through straits used for international navigation, Peace and security for oceans and seas, Conservation and management of living resources, Protection and conservation of marine environment, Marine scientific research, Regime for the activities on the seabed beyond the limits of national jurisdiction and Procedure for settlement of disputes.

5. Jurisdictions of the Maritime Zones

Under both the Geneva Convention on Territorial Sea, 1958 and the UN Convention on the Law of the Sea, 1982 there are following seven maritime areas over which the States can exercise their jurisdiction. The convention splits the oceans into marine areas into five main zones, each with a different legal status; Internal waters, Territorial Sea, Contiguous Zone, Exclusive Economic Zone and the High Seas. It provides the backbone for offshore governance by coastal states and those navigating the oceans.

1) Inland waters; Territorial Sea; Contiguous Zone; Exclusive Economic Zone; High Seas; and Continental Shelf.

The Base Line

The Coastal curve, from which the maritime area of a State is measured, is called baseline or low water line. Baseline can be of two types:

a) Normal baseline and
b) Straight baseline[10]

The UNCLOS convention provides that the normal baseline for measuring the breath of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by

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9 Khan, Environmental studies, ABD pub. 2006, P.160

10 Rahma Abu, New Path Development; Perspective Global South sustainable development, 2003 p. 145

coastal state. It is a line hugging the coast[11]. On the other hand, straight baseline departs from the physical coastline due to certain distinctive features of coasts of a State[12].

Article 12 (1) and (2) of the 1958 Convention contains provisions as to the delimitation of the baseline and states that, where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is the equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal states. The globally recognized principle as to the delimitation of straight baseline is accepted the famous Anglo-Norwegian Fisheries Jurisdiction Case[13]

In this case, the Norwegian government delimited its fisheries zone by a decree.[14] The area of this delimitation was about thousand miles of coastland of its 66.28.2 North Latitude. The Norwegian limit of four miles of territorial waters had been established by a Royal decree in 1812 and the UK also admitted it. But it was not measured from the low water mark at every point. Linking the out most point of land and sometimes drying rocks above water only at high tide. The UK recognizing the Norwegian claim of four miles challenged the validity of the baseline before ICJ the Norwegian method were contradictory to the international law. The court decided by a vote 10 to 2 in favour of Norway approving the Norwegian practice of drawing an outer line for its territorial sea that was based on straight base lines following the general directions of the coast but not the indentation of that coast. The court gave the following reasons:

1. In respect of delimitation of territorial waters with other States the ICJ observed that the act of delimitation is always an international aspect.

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11 Article 5 UNCLOS 1982
12 See Khan 2007 p.227
13 England v Norway ICJ 1951 p.13
14 12th July 1935

2. The coastline of Norway is not one of the ordinary nature; rather it is of a broken nature.

The case is mainly based on the principle that, in some situations geographical circumstances permit the drawing of straight baseline in the territorial sea.

6. The Inland Waters

Internal Waters include coastal areas such as ports, rivers, inlets and other marine spaces landward of the baseline low-water line where the port state has jurisdiction to enforce domestic regulations. Enforcement measures can be taken for violations of static standards while in ports as well as for violations that occurred within the coastal state's maritime zones and beyond. However, foreign vessels are not usually held to non-maritime or security port state laws so long as the activities conducted are not detrimental to the peace and security of the locale. The internal waters which exist from the baseline to the landward side area of the coastal State are called the inland waters.[15] The convention states that, waters on the landward side of the baseline of the territorial sea from part of the internal waters of the State. Likewise, in the 1958 Convention.

In the maritime security perspective, a coastal state can prevent privately contracted armed security personnel from entering its ports and internal waters if carriage of weapons is forbidden by national legislation. Moreover, once entering a port and the vessel which they are aboard can be held accountable for other violations that took place at sea if they have impacted the port state or for other reasons with the permission of the flag state. The coastal State therefore, has sovereign control and authority over its inland waters. The coastal state also has the civil and criminal jurisdiction over its internal waters, provided that order situations in the inland waters of the coastal area are hampered. It shall definitely apply its criminal jurisdiction. For instance, in Fijens Case of Wildenhus Case[16] (Belgium vs. USA) supra. Another leading case in this respect is Rex vs. Anderson.[17] In this case an American national who killed a foreign national in a British ship and at the time of that killing the vessel was in the French territorial water. The vessel was of Britain and the place of committing crime was France. The case was filed before the British court, Anderson argued that the crime was

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15 Article 8 (10 UNCLOS 1982 also article 5 (1) 1958 Convention
16 1887
17 1886

occurred in the French territorial water and for this reason Britain has no jurisdiction to try the accused. The main issue before the court was whether the British court has actually jurisdiction to try the accused. The Appellate court held that, the three countries involved in this case are entitled to prosecute Anderson and so can Britain in order to protect its vessel. The reason was that Britain has jurisdiction to prosecute because the crime was committed in the British ship. The USA has personal jurisdiction to prosecute the accused and France can prosecute as it has the territorial jurisdiction as the crime has hampered the security and peace of France.

State v. Yannopulous[18] (Italy vs. Greece) is another relevant case here. In this case, Yannopulous was a Greek national and was a member of crew of a ship belongs to Cypress. The ship was anchored in an Italian port with huge quantity of marijuana. Carrying marijuana is an offence. Yannopulous was arrested and taken to court alleging that his carrying of the marijuana was a threat to the peace and security in the shore. The issue was whether Italy had the jurisdiction to try Yannopulous for the alleged offence. The Italian court acquitted Yannopulous and set him free on the ground that: Under customary international law the coastal state has both the civil and criminal jurisdiction in its internal matters. But if the offence is committed on board of the vessel, the flag state has the jurisdiction, which is concurrent to that of the state whose national was the offender. And there is an exception to this general rule which provides that if the offence disturbed the peace, security and good order of the shore, the coastal state can try such offence on the ground of public interest.

7. The Territorial Sea

The territorial sea has traditionally been regarded as founded upon the principle laid down by the Dutch Jurist Bynkershoek in his de dominion maris dissertation in 1702 that a state's sovereignty extended as far out to sea as a common shot would reach and the three mile limit has traditionally been represented as simply rough equivalent of the maximum range of a canon shot in the 18th century. Actually the territorial sea is the closest maritime area adjacent to the land territory of states. The territorial sea forms an undeniable part of the land territory to which it is bound, so that a cession of land will automatically include any band of territorial waters[19]. In the

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18 1974

19 Brown E.D, The International law of the Sea, pub. Dartmouth, 1994 p.180

Territorial sea, a coastal state has unlimited jurisdiction over all including foreign activities unless restricts are imposed by law. All coastal states have the right to a territorial sea extending 12 nautical miles from the baseline. In the maritime security context, it remains debated as to whether the coastal state can set and enforce laws to restrict movement of Privately Contracted Armed Security Personnel, forbid maritime security operations including illegal carriage or discharge of weapons within the territorial sea, or if enacting such legislation would be prejudicial to general freedom of navigation and the regime of innocent passage.

The features of territorial waters are:

a. The foreign flag would have a right to innocent passage through the territorial waters.
b. An innocent passage can be suspended temporarily in specified areas for the coastal States security or to conduct a weapon exercise.
c. Criminal jurisdiction can be exercised by the coastal state on foreign flag vessels in a territorial sea.
d. Civil jurisdiction can be exercise if the vessel is passing through the territorial sea after leaving the internal waters.
e. Transit passage is allowed for ship through the state.
f. States may enact legislation concerning the safety of navigation, pollution, prevention, uncontrolled fishing activities, customs, immigration, health and sanitary arrangements.

What is the legal position of the coastal state?

Ordinarily coastal states claimed only three miles of territorial sea till the 1960s and there was no uniformity in the national jurisdictions of the territorial sea. The 1982 convention has put to rest all varying width of the territorial sea. According to the Convention,[20] the sovereignty of a state extends beyond its land territory and internal waters, to a belt of sea adjacent to its coast. Article 2 (1) of the 1982 UN Convention, the sovereignty of a coastal state extends, beyond its land territory and internal waters and, in the case of an archipelagic state, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

[20] Article of the Convention 1958

The sovereignty over the territorial sea is exercised subject to this convention and to other rules of international law (Article 2 (3), 1982). According to article 3 of the 1982 Convention, 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. The width of the territorial sea is defined from the low water mark around the coasts of the state. In the area of territorial sea, the coastal state shall have its exclusive jurisdiction. But the other states shall enjoy an exceptional right of innocent passage.

8. The Contiguous Zone

The concept of contiguous zone was virtually formulated as an authoritative and consistent doctrine in the 1930s by the French writer Gidel, and it appeared in the 1958 Convention on the Territorial Sea[21]. The Contiguous Zone is an intermediary zone between the territorial sea and the high seas extending enforcement jurisdiction of the coastal state to a maximum of 24 nautical miles from baselines for the purposes of preventing or punishing violations of customers, fiscal, immigration or sanitary and thus residual national security legislation. A Contiguous Zone is that part of the sea which is beyond and adjacent to the territorial sea of the coastal state. It may not extend beyond 24 miles from which the width of the territorial sea is measured[22]. Article 33 of the 1982 Convention deals with contiguous zone and reveals that, 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. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. Likewise the 1958 convention also provides same[23]. Therefore, coastal state can take measures to prevent or regulate armed maritime security activities out to 24 nautical miles under the

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21 Lowe, A.V, The Development of the concept of the Contiguous Zone, 1981 p. 109

22 Kapoor S.K, International Law and Human Rights, (A Nutshell) 12th ed., India Central Agency, 2008 p.136

23 Article 24[1] 1958 convention 1958

reasoning that is undertaking customs enforcement operations to prevent movement of arms into its waters and seaports.

c) Vessels which infringe these laws may be detained by the state within this zone.
d) Foreign vessels have right to innocent passage.[24]

9. Jurisdiction of coastal State in an Exclusive Economic Zone

The Exclusive Economic Zone (EEZ) is a creation of the law of the sea 1982 and is another intermediary zone, lying between the territorial sea 12 nautical miles and the high seas to the maximum extent of 200 nautical miles. Although high seas freedoms concerning general navigation principles remain in place. In this zone the coastal state retains exclusive sovereignty over exploring, exploiting and conserving all natural resources. The coastal state therefore can take action to prevent infringement by third parties of its economic assets in this area including, inter alia, fishing, bio-prospecting and wind farming. In order to safeguard these rights, the coastal state may take necessary measures including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the international laws and regulations.

An important case which properly clarify the matter is the Fisheries Jurisdiction Case (USA and Germany vs. Iceland; ICJ, 1974). In this case following the Geneva Conference 1958, Iceland declared a 12 nautical miles' exclusive fisheries zone and the UK accepted it. On 1st September, 1972 Iceland announced 50 miles of its water territory for the conservation of economic zone measured from straight baseline close to all fisheries vessels. In 1972 the UK unilaterally sue Iceland before the ICJ claiming that Iceland was not entitled to the unilateral extension of the zone. The UK further said that the conservation of fish stock of Iceland should be subject to bilateral arrangements between the two States. At that time, the court received another issue concerning the similar German-Iceland dispute. The court joined them together.

The court by 10 to 4 votes held that Iceland was not entitled to declare unilaterally an exclusive fisheries zone of 50 nautical miles beyond its territorial water. The governments of Iceland. The reasoning in this case was that, the ICJ first established the principle of "preferential rights" over the particular regime of the sea. The court held that, 90 percent foreign currency of Iceland is earned from

[24] Ibid

fishing. In fact, the total economy of Iceland depends on the fishing. Finally, this matter was emphasized and incorporated in 1982 convention and it was enacted that the EEZ shall extend to 200 nautical miles from the baseline of the coastal state, which was the reflection of the "creeping annexation rule" in international law.

10. Coastal State and Non-Coastal State Rights in EEZ

Article 56 contains provisions regarding the rights, jurisdiction and duties of the coastal State in the EEZ. Article 56 (1) states that, in the EEZ, the coastal State has:

a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.
b) Can enact regulations on pollution and environment protection.
c) Has exclusive right to construct artificial Islands and security zones.
d) Has exclusive right to fishing and development of fish farms.
e) Can conduct scientific research and marine exploration.

The obligation of vessels in EEZ are:

a. Freedom of navigation as in the high seas.
b. Freedom to lay submarine cables/pipelines that is passing through the EEZ.
c. To observe pollution regulations as per the coastal state regulations.
d. Fishing gear if carried must be stored/secure condition. No fishing allowed.
e. Respect and comply with the security zones of the offshore installations, artificial islands of the coastal state.

11. The Continental Shelf

The term "continental shelf" is usually meant that part of the continental border which is between the shelf break and shoreline or, where there is no clear slope between the shoreline and the point where the depth of the superjacent water is around between 100 to 200 meters. Continental shelf is a geological expression referring to the ledges that project from the continental land mass into the seas and which are covered with only a relatively shallow layer of water and which eventually fall always into the ocean depths. It is an

underwater landmass that extends from a continent, resulting in an area of relatively shallow water known as a shelf sea and a region adjoining the coastline of a continent, where the ocean is no more than a few hundred feet deep.

The legal concept of continental shelf came into attention since Truman Proclamation of 1945 wherein it was declared that the USA considered the resources of the shelf contiguous to the USA as appurtenant to the US and subject to its jurisdiction and control. The 1982 Convention defines continental shelf of a coastal state as comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. [25]

Rights of the Coastal State over the Continental Shelf

The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. The rights are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation. The natural resources consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil[26].

In the continental shelf, a coastal state can do the following:

a. Exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
b. If the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal state.
c. The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

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25 Article 76[1] United Nations Convention 1982
26 Ibid article 77

d. All states are entitled to lay submarine cables and pipelines on the continental shelf, coastal states may not impede the laying or maintenance of such cables or pipelines.

12. The High Seas

The main stream of Grotian theory was that the high sea is res communis as it is physically impossible to take possession of it. Scelle has argued that the character of high sea can be compared to public parks or beaches or any open public place available to the public for general use under the domestic law[27]. Article 86 of the 1982 states that all parts of the sea that are not included in the EEZ, in the territorial sea or internal waters of a State, or in the archipelagic waters of an archipelagic State. Is high sea, that high seas are open to all states and that the freedom of the high seas is exercised under the conditions laid down in the Convention and by other rules of International Law.[28]

The High Seas, which lie beyond 200 nautical miles from shore, are to be open and freely available to everyone, governed by the principle of equal rights for all. In agreeing to UNCLOS, all state parties acknowledged that the oceans are for peaceful purposes as the Convention's aim state can act or interfere with justified and equal interests of other states. The convention establishes freedom of activity in six spheres: Navigation, over flight, laying of cables and pipelines. Artificial islands and installations, fishing, marine scientific research. Freedom of navigation is of utmost importance for all, and maritime security activities can be considered part of navigational activities as they protect vessels from interference by third parties.

Freedom of the High Sea

The freedom of navigation is a traditional and well established feature of the doctrine of the high seas, as is the freedom of fishing. The Convention contains provisions regarding right of navigation which reveals that, every state, whether coastal or land-locked, has the right to sail[29]. There must be the existence of a genuine link between the State and the ship.[30] Ships shall sail under the flag of one state only and, save in exceptional case expressly provided for in

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27 Khan, Foreign and International Law , Amazon 2007 p.341
28 Ibid p.367
29 Article 90 law of the sea 1982
30 Article 91(1) and 92(1) law of the sea 1982

international treaties or in this convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality[31]. The preceding articles do not prejudice the question of ships employed on the official services of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization. Every state shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.[32]

Under the High seas both coastal and landlocked states have the following rights in the high sea.

a. Freedom of Navigation
b. Freedom of Overflight.
c. Freedom of laying submarine cables and pipelines.
d. Freedom to construct artificial islands and other installations permitted under international law.
e. Freedom of fishing, subject to the conditions of the conventions.
f. Freedom of scientific research.

13. The Doctrine of Hot Pursuit

An exception to the exclusive jurisdiction of the flag state over a vessel in the high seas is the right of hot pursuit. The right of hot pursuit of a foreign vessel is a principle designed to ensure that a vessel which has infringed the rules of a coastal state cannot escape punishment by fleeing to the high seas. In reality it means that in certain defined circumstances a coastal state may extend its jurisdiction on to the high seas in order to pursue and seize a ship which is suspected of infringing its laws. The right, which has been developing was elaborated in the convention, building upon High Seas Convention[33]. Hot pursuit of a foreign vessel may be undertaken if there is good reason to believe that the vessel has violated the laws and regulations of the coastal state, but it must be commenced when the vessel or one of its boats is within the internal

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31 Article 19[2[UN Convention on the Law of the Sea 1982
32 Ibid article 93
33 See article 111 UN Convention on the Law of the Sea 1982 and article 23 1958 Convention

waters, archipelagic waters, the territorial sea or the contiguous zone, and may only be continued outside the territorial sea or contiguous zone if the pursuit has not been interrupted.

Pursuit is permissible only by the warships or military aircraft or other vessels or aircraft clearly marked and identifiable as being on government service and authorized to that effect [34]. Right of hot pursuit only begins when the pursuing ship has satisfied itself that the ship pursued or one of its boats is within the limits of the territorial sea or as the case may be in the contiguous zone, or EEZ or on the continental shelf. The right to hot pursuit ceases as soon as the vessel pursued has entered the territorial waters of its own or of a third state.

There is also huge debate in international law as to how far shall the coastal state use this right. The famous case named I am Alone Case (Canada vs. USA)[35] in this regard. In this case the "I am Alone", a rum runner of Canadian registry, was seen by the coast guard vessel Wolcott about 10.5 miles off the Louisiana Coast, but within one-hour sailing distance from the coast. The ship refused to stop sailing when ordered by the Wolcott. Pursuit was taken up by the Dexter and Wolcott caught up with the "I am Alone" more than 200 miles off the coast of USA. After that when "I am Alone" refused to stop sailing the Dexter opened fire. Consequently, the "I am Alone" was sunk. The core issues before the court was whether the pursing of US vessel was a hot pursuit? The commissioners held that the pursuing by the US vessel was not a hot pursuit. The opening fire by Wolcott was not justifiable thus the USA was ordered to pay compensation to Canada.

14. The Deficiency of the Law of the sea 1982

While the Convention represents the best effort on the part of the international community of states to address governance issues that required solution at the time of its conclusion. The Convention did not resolve all of them in detail. Consequently, while the Convention quite rightly is called "a constitution for the oceans" there is no doubt that the conclusion of the Convention constituted a remarkable achievement it should also be acknowledged that the regime for the governance of oceans, which it contributed to create, still has gaps that need to be addressed.

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34 Starke, International Law 3rd edit 1994 p. 279

35 ICJ 1935

This was clearly demonstrated by the fact that shortly after the conclusion of the Convention two implementing agreements had to be negotiated to supplement its provisions, namely the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

It is a framework convention and, as a framework convention which enjoys almost universal acceptance, it has proved to be a flexible instrument providing a solid legal foundation for the further progressive development of the international law of the sea, as a platform on which new emerging issues relating to the international governance of activities in the oceans are to be addressed[36]. The United Nations Convention on the Law of the Sea is established to define coastal and maritime boundaries, to regulate seabed exploration not within territorial claims, and to distribute revenue from regulated exploration. Territorial sea is defined under the UNCLOS as the 12-nautical mile zone from the baseline or low-water line along the coast. The coastal state's sovereignty extends to the territorial sea, including its seabed, subsoil and air space above it. Article 56 of the UNCLOS outlines parameters for the establishment of a country's exclusive economic zone, which extends 200 nautical miles from the country's coastline. Article 56 gives sovereign rights for exploration, exploitation, conservation and resource management of living and non-living natural resources of waters in the country's EEZ.

There is also the issue of technology transfer, one of the most odious redistributionist clauses from the original convention. The mandatory requirement has been discarded, replaced by a duty by sponsoring states to facilitate the acquisition of mining technology if the Enterprise or by sponsoring states to facilitate the acquisition of mining technology if the Enterprise or developing States are unable to obtain equipment commercially. Yet the Enterprise and developing states would find themselves unable to purchase machinery only if they were unwilling to pay the market price or preserve trade secrets. The new clause might be interpreted to mean that industrialized states, and private miners, whose cooperation is to

[36] G.A. Res. 69/292, U.N. Doc. A/RES/69/292 (June 19, 2015

be ensured by their respective governments, are responsible for subsidizing the Enterprise's acquisition of technology. Presumably the U.S and its allies could block such a proposal in the council, but again, it is hard to predict the future legislative dynamics and potential log-rolling in an obscure United Nations body in upcoming years.

Another emerging issue concerns oceans energy resources, considering that the oceans offer a vast and powerful source of energy that has so far not been utilized on a significant scale. For example, one of the issues that arise relates to the potential use of methane hydrates: white, ice-like solids that consist of methane and water. Some scientists, such as Professor Klaus Wall-mann of the GEOMAR Helmholtz Centre for Ocean Research Kiel, are of the view that there is ten times more natural gas in methane hydrates than in conventional gas deposits. Methane hydrates are only stable under certain pressures (35 bar or 507.6 pound-force per square inch) and at low temperatures.[37]

The production of environmentally friendly energy from the oceans is now being promoted worldwide. The broad suite of technologies collectively known as ocean energy is also beginning to emerge as a viable baseload source of renewable energy. Ocean energy involves a wide range of engineering technologies that permit for obtaining energy from the ocean using a variety of conversion mechanisms. It appears that most of the offshore renewable energy installations, at least in the near future, will be constructed in the internal waters, territorial sea and exclusive economic zone of coastal states, and, in the case of archipelagic states in archipelagic waters.

Transboundary Resource Management is another issue that has not yet been the object of international adjudication, but which seems to be of growing importance. The management of transboundary resources shared by adjacent or opposite States. With an increasing number of exploration and exploitation activities taking place on the ocean floor, it is only a matter of time before more oil and gas fields straddling maritime boundaries will be discovered. In respect of how to treat transboundary resources, there is considerable state practice to be found in bilateral treaties. The practice is not uniform.

Deep sea resources are another issue: Current global supply of these metals and minerals is distributed unevenly around the world. For example: The Democratic Republic of the Congo controls 47%

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37 Ibid UN Documents 2015

of global cobalt reserves and Chile 30% of global copper reserves; South Africa possesses 80% of global manganese reserves, while China con-trols 95% of the global market in rare earth elements. Deposits of these resources in the deep seabed by far exceed those on land. The economic situation will therefore change drastically once exploitation of them commences.

Finally, there is a potential source of conflict is the issue of transboundary resources straddling the line dividing national jurisdiction and the Area[38]. Article 142, paragraph 2, of the Convention provides that "in cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required." A dispute may arise between the Authorities, or entities that are given contracts by it, and the coastal state concerned in the context of managing such transboundary resources. If such a dispute arises, the issues that need to be addressed are one, who are the parties to such a dispute, and two, which judicial body would have the authority under Part XV of the Convention to adjudicate this dispute.

Threats of shipwrecks is another issue: The threats posed to historic shipwrecks are relatively new and have surfaced as a consequence of the technological developments that allowed sophisticated search, location and exploitation of shipwrecks. These threats can be split into three categories. The first is of human sourced activities that are directed at shipwrecks and have shipwrecks as their primary target. This category includes commercial treasure hunting and salvage, looting and souvenir collecting. The second category is of human sourced indirect activities that do not have shipwrecks as their primary target. This category includes commercial fishing and off-shore projects such as lying underwater cables, the building of pipelines and other structures that are placed on the seabed. The third category is of natural impacts, which include deterioration caused by time, currents, tidal movements, corrosion and other natural physical, chemical, biochemical and biological processes.

Another issue is on Science and new technological challenges to the Law of the sea today which offers fresh perspectives on a set of vital issues in the field of Law of the sea and policy. Since the early period of the new law of the Sea. Successive waves of revolutionary

[38] Article 142(2) Law of the sea 1982

scientific discoveries and technological innovations have intensified the global population's exploitation of ocean and coastal resources. The interface of science, technology and ocean law both historically and in current day perspective and emergent challenges in legal ordering of ocean uses for sustainability and equitability among stakeholders. Ecosystem approaches to resource management, the historic interplay of science and military concerns, the place of science in dispute-settlement processes, the varied human uses of the seabed, the roles in ocean governance of indigenous peoples, legal issues in fisheries management and conservation, and special regional problems of the Arctic, the Bering Strait, the South China Sea, and the eastern Mediterranean are some of the challenges of the law of the sea today.

Finally, the Law of the Sea 1982, was formulated in the context of manned vessels, thus raising significant doubts about the validity of Unmanned Underwater Vehicles operation at sea (UUVs). The UNCLOS places human/seaman as a significant element when ensuring maritime safety and security as well as determining responsibility and liability within the maritime sector. With the rapid advancement of technology, there has been a lot of development including the use of unmanned underwater vehicles at sea. It is now a common method of intelligence gathering at sea. The Unmanned Underwater Vehicles are used to collect information such as depth measurement, noise, salinity, and currents in the ocean. Being one of the latest marine technologies capable of undertaking several roles, both for military and civil purposes. These underwater vehicles are set to replace manned technology in future marine operations. For instance, for the last four years, the Chinese government has annually organized an award ceremony for their local fisherman. The reason, however, is rather unique. The fishermen were honored not because they practiced sustainable fisheries or had caught a lot of fish, but because they had found an unidentified underwater vehicle and reported it to the Chinese authorities.[39]

Challenges arise when neighbouring states claim the right to seize foreign underwater drones operating near their naval assets or territories without permission on the grounds that leaving a drone to roam freely could risk the safety of other vessels in the surrounding waters. In addition to marine safety issues, maritime security at sea could also be at risk if unmanned vehicles are allowed to operate

[39] See Aristyo Darmawan and Jeremiah, Law of the sea not ready for modern technology? In the ASEAN post Tuesday 6th July 2021.

freely within a country's sovereign waters. Unmanned Underwater Vehicles have the astounding ability to gather intelligence. Marine survey activities can also be considered a threat due to the blurred distinction between intelligence gathering or other military survey operations and marine scientific research in general.

The Law of the sea 1982 stipulates that all states must obtain a coastal state's consent when undertaking marine scientific research in the latter's marine territory. In this regard, Exclusive Economic Zones and other marine territories fall within the jurisdiction of a coastal state, while military survey operations are left unresolved. However, at the same time, military survey operations can be undertaken to collect valuable information, as a result of consented activities like marine scientific research.

Another issue that arises is the capacity of coastal states to check and ensure whether the respective unmanned device is used for foreign military or public purposes. For the sake of national sovereignty and interests, coastal states can actually argue that consent or permission from them is prerequisite to the operation of foreign Unmanned Underwater Vehicles in all their maritime territories, including EEZs, since unmanned underwater vehicles are also listed as one of the device types used for marine scientific research within the United Nations Marine Scientific Research Guide 2010.

15. Recommendations

The international community of states should seek solution to these emerging issues through the process of international governance within the framework of relevant existing institutions. First, the United Nations, its agencies and related organizations that provide fora where states and other actors can engage in a dialogue and negotiations which, if successful, should result in additional norms and regulatory regimes supplementary to those established by the Convention and facilitating its implementation.

Although the Convention addresses issues relating to the management of marine resources in a somewhat comprehensive way, it does not cover a number of emerging issues such as the conservation of marine biodiversity, carbon sequestration or the use of marine genetic resources. Likewise, it does not address some issues arising from global warming or the rapidly increasing demand for energy sources. So, new issues continue to arise and need to be addressed.

16. Conclusion

It is apparent from the above examination that the law of the sea is a burgeoning area of international law. The Convention pf 1982 did much to create systematic and humdrum rules for the management and use of this common resources and many of the rules contained in these conventions have now passed into customary international law. The great achievement was the conclusion of the 1982 United Nations Convention on the Law of the Sea which deals with about all the vital issues of the law of the sea and it does so in a manner that has commanded a significant amount of support. Also many of its provisions either reveal the existing customary international law or will crystallize into new law in the future. However, time is now ripe for the review of some areas of contentions identified in this article and the need for reform after its existence for almost thirty-nine years in order to meet with the current technological development. Technology has become a growing challenge for seas oceans governance today. As we have just passed the anniversary of the United Nations Conference on the Law of the Sea. It is about time, all maritime states should reflect on the convention and the many challenges that the oceans of the world are facing today.