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International Law of the Sea: An Overlook and Case Study

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International Law of the Sea: An Overlook and Case-Study

By: Akshita Sharma

ABSTRACT:

Sea is a huge anatomy of water that is adjoined by the land. It is a vital part of human trade and commerce, expedition, mineral removal, power generation and is also contemplated as an important source of the blue economy recently. International law of the sea is a law of coastal space that peacefully resolves the global argument on maritime boundary between or amid the States and defines several jurisdictions of the maritime zones as well as the rights and responsibility of the coastal States in these zones, mainly with regard to the conservation of marine environment and biological variety. The key purpose of this piece of academic research is to exhibit a brief overview of the international law of the sea with a special highlight on the sources and legal structure of this law. This study also attempts to focus the civil and criminal liability, jurisdictions, rights and responsibility of the coastal states with consideration to the different maritime areas. Moreover this study describes the rules and area of using these maritime zones in the illumination of various treaty statutes on the international law of the sea where dissimilar adjudicated cases are also available along with an intense scrutiny upon their facts, issues, decision and reasoning.

KEY WORDS: COASTAL STATE, CUSTOM, INTERNATIONAL LAW, MARITIME, SEA [1]

[1] www.researchgate.com

INTRODUCTION

International law of the sea is that component of public international law that controls the rights and duties of States and other content of international law, regarding the use and utilization of the seas in calm time (Brown, 1994). It is prominent from the private maritime law that controls the rights and duties of private persons with regard to maritime matters, for e.g., the transportation of goods and maritime insurance (Churchill & Lowe, 1999). Law of the sea was developed as a component of the law of nations in the 17th century with the appearance of the modern national State system (O'Connell, 1982). The seas of the world have customarily played two key roles: firstly, as a way of communication, and secondly, as a huge reservoir of both living and non-living organic resources. Both of these roles have motivated the development of legal rules (Shaw, 1997: p. 390). No section of international law has undergone more complete changes during the past four decades than has the law of the sea and maritime expressways (Starke, 1994: p. 242). Law of the sea is bothered with the public order at sea and much of this law is written in the UN Convention on the Law of the Sea (UNCLOS) (Churchill, 2013). In the international jurisdictions disputes may regularly arise among the adjacent coastal States concerning the delimitation of maritime frontier, exploitation of minerals or organic resources, commission of any crime in the territorial frontier of another State, etc. These disputes are normally resolved by the international courts or the tribunals on the grounds of complaints filed by the parties concerned on account of the rules of international law of the sea or on account of the precedents as a crucial source of international law. This study, although, is concerned with those rules of international law generally referred to as "the law of the sea" and is thought about as a starting point for research on the law of the sea. This research work chiefly deals with the broader area of the sea law that obviously involves consideration of matters usually of the baseline, inland waters, territorial sea, adjacent zone, Exclusive Economic Zone (EEZ), high sea and mainland shelf.

RESEARCH QUESTION

What are the principle functions of the law of sea?

OBJECTIVE

The key purpose of this piece of academic research is to exhibit a brief overview of the international law of the sea with a special highlight on the sources and legal structure of this law.

RESEARCH METHODOLOGY

The paper is illustrative in nature which is possibly based on a short research. This having concern to the character of the article, in arranging the similar, analytical method has been utilized to. It is completely based on the secondary references composed from Text-books on International Law, Publication Articles, Newspapers and Adjudicated Cases etc. The collected references have been presented in past form in order to make the study more informative, analytical and useful for the readers. Also in this study the contemporary examine cases on international law of the sea are elaborately elucidated so that the jurisdiction, rights and duties of dissimilar subjects of international law can directly be understood.

ABOUT INTERNATIONAL LAW OF THE SEA

Legal and Institutional structure it should not be acute to assume that the law of the sea is to be discover only in one place; sooner the current law is a combination of customary international law and agreement law, both bilateral and multilateral.

THE FOUR GENEVA CONVENTIONS ON TERRITORIAL WATERS AND CONTIGUOUS AREA, 1958

The very first UN Conference on the law of the sea was adopted in 1958 in Geneva. In this conference four multilateral conventions covering numerous aspects on the law of the sea were acquired:

1) Convention on the Geographical Sea and Contiguous Area
2) Convention on the Big Seas
3) Convention at the Fishing and Prevention of Living Resources
4) Convention on the Mainland Rack.

All these conventions are in power, though in many features they have been replaced by the 1982 UN Convention on the Law of the Sea which is chiefly of general application. For non-parties to the 1982 Convention and for those affairs on which the 1982 Convention is still, the 1958 Conventions will pursue to govern the connections of States that have confirmed them. For States that are neither party to the 1982 Convention nor to the 1958 Conventions, the applicable law is the customary law.

ABOUT UN CONVENTION ON THE LAW OF THE SEA 1982

The 1982 Convention on the Law of the Sea comprises a diverse codification and evolution of contemporary international law regulating the sea in time of peace. The UNCLOS, also known as the Law of the Sea Convention, is a worldwide agreement that arose from the third UN Conference on the Law of the Sea (UNCLOS III), which happened between 1973 and 1982. This treaty is contemplated to be the "constitution of the oceans" and constitutes the result of an unparalleled, and so far never recreated, effort at codification and continuous development of international law (Treves, 2013). Maritime jurisdictions are now controlled mainly by the 1982 UN Convention on the Law of the Sea. The comprehensive 1982 Convention that substituted the 1958 four conventions on the law of the sea comprising 320 articles and 9 supplements were concluded in 1982. The UNCLOS is planned to govern the use of oceans for fishing, shipping, negotiating and mining and it is the most finalized treaty in public international law that covers a span of law of the sea topics, for e.g. delimitation of maritime frontiers, maritime areas, marine environment safeguarding, marine technological research and piracy and so on. This Convention constitutes the most noteworthy development in the entire history of the rules of international law concerning the high seas (Starke, 1994: p. 242). The larger part of the convention, comprising the more notable rules therein articulated much the preceding law was changed; perform now to command the general agreement of the world community.

IMPORTANT FEATURES OF THE UNCLOS 1982

A cautious list of the main considerable provisions of the Convention, emphasize on those, institute changes or new ideas in the customary law of the sea would seem to involve the aspects (Treves, 2013):

a) The maximum wideness of the territorial sea is predetermined at 12 miles and that of the contiguous area at 24 miles.

b) A "transit passage" government for channels used for international navigation is settled.

c) States consisting of archipelagos, provided certain circumstances are satisfied, can be contemplate as "archipelagic States", the outward islands being attacked by "archipelagic baselines" so that the waters inner these lines are archipelagic waters.

d) A 200-mile exclusive economic zone (EEZ) involving the seabed and the water line, may be settled by coastal States in which such States perform sovereign rights and jurisdiction on all resource-connected activities.

e) Other States relish in the exclusive economic zone (EEZ) high seas liberty of navigation, above flight, lying of cables and pipelines and other internationally legal uses of the sea attached with these liberty.

f) A rule of common "due regard" applies to ensure similarity between the performance of the rights of the coastal states and of those of other states in the exclusive economic zone (EEZ).

g) The idea of the continental shelf has been established, though with freshly defined outer limits.

h) The International Seabed Authority being the "machinery" assigned with the supervision and procedure of expedition and misuse of the resources.

i) A sequence of very comprehensive provisions deal with the safeguard of the marine environment setting out common principles and rules about capability for law-making and imposition as well as on protection.

j) Comprehensive provisions regarding marine scientific research situate on the principle of approval of the coastal State, approval which should be the standard for pure research and optional for resource-oriented research.

k) The ocean bottom apart from national jurisdiction is declared to be the "General Heritage of the Humanity" (Khan, 2006).

BILATERAL/MULTILATERAL AGREEMENT OR CUSTOMARY INTERNATIONAL LAW

Apart from the above stated two crucial international instruments, the customary international law and other bilateral or multilateral treaties are also the observable source of international law of the sea. Concerning customary international law, it is earlier noted that the 1958 and 1982 UN Conventions on the Law of the Sea have given a lot to the evolution of customary international laws. There may be other rules of customary international law that may not exactly be reflected in any conventional work nor owe their beginning to incorporation in such a work. These as with all customary rules, tie States in the usual manner.

INTERNATIONAL TRIBUNAL FOR THE LAW OF SEA

Following the entry into force of the UN Convention on the Law of the Sea on 16th November, 1994 powerful efforts were made for the institution of an International Tribunal for the Law of the Sea (ITLOS). In August 1996, 21 Judges of the Tribunal were selected on the ground of "equitable geographical distribution". The ITLOS is an intergovernmental organization generated by the mandate of the Third UN Conference on the Law of the Sea. It was settled by the UN Convention on the Law

of the Sea, signed at Montego Bay, Jamaica, on 10th December, 1982. The ITLOS was eventually established on 21st October, 1996 of which jurisdiction is not mandatory and is discretionary or based on the approval of the States. The Tribunal comprises 21 members, elected from amidst the highest position of fairness and honesty and a recognized capability in the area of the law of the sea (Kapoor, 2008: p. 153). The Tribunal, located in Germany, settled a global structure for law over "all ocean space, its uses and resources".

UNCLOS: SEVERAL JURISDICTIONS OF THE MARITIME AREAS

Under both the Geneva Convention on Territorial Sea of 1958 and the UN Convention on the Law of the Sea of1982 there are subsequent seven maritime zones over which the States can exercise their jurisdiction:

1) The Baseline

The coastal curve, from which the maritime zone of a State is calculated, is called baseline or the low water line. Baseline is of two types: a) normal baseline b) straight baseline. Normal baseline is the low-water mark line through the coast. The low-water mark after ebb tide on the coast is contemplating the normal baseline. It is a line that embraces the coast. Article 5 involves clauses as to standard baseline and disclose that, except where or else provided in this Convention, the normal baseline for calculating the breadth of the territorial sea is the low-water line amidst the coast as noticeable on large scale charts functionally identified by the coastal State. On the other hand, straight baseline leaves from the physical coastline due to definite distinctive aspects of coasts of a State (Khan, 2007: p. 227). Article 12 (1) and (2) of 1958 Convention includes provisions as to the delimitation of the baseline and states that, where the coasts of two States are opposing or adjoining to each other, neither of the two States is qualified, failing agreement in the middle of them to the opposite, to expand its territorial sea behind the median line every point of which is central from the closest points on the baselines from which the breadth of the territorial seas of each of the two States is calculated. The provisions of this section shall not apply where it is obligatory by reason of famous title or other special conditions to delimit the territorial seas of the two States in a way which is at difference with this provision. The worldwide recognized proposition as to the delimitation of linear baseline is acquired in 1951 from the judgment of the well-known Anglo-Norwegian Fisheries Jurisdiction Case 1951.[2]

[2] England v. Norway; ICJ

In this case, the Norwegian government determined its fisheries zone (territorial sea) by an order of 12th July, 1935. The zone of this delimitation was about thousand afar of coastland of its 66.28.2 North Latitude. The Norwegian boundary of four miles of territorial waters had been situated by a Royal decree in 1812 and the UK also declared it. But it was not calculated from the low water mark at every point. Connecting the outermost point of land and someday drying rocks over water only at high tide. The UK, identifying the Norwegian asserts of four miles challenged the authenticity of the baseline freshly made and laid their complaint in the ICJ for adjudication. The matter in this case before the Court was whether the base lines decided by the said order in application of the Norwegian method were opposed to the international law. The Court concluded by a vote 10 to 2 in approval of Norway admiring the Norwegian practice of tracing an external line for its territorial sea that was established on straight base lines following the common directions of the coast but not the hollow of that coast. As per to the Court the following causes were considered to arrive at the decision:
1) In regard to delimitation of territorial waters with other States the ICJ noticed that the act of delimitation is always an international feature, it can't be dependent only upon the will of the coastal State as indicated in the domestic law.
2) The coastline of Norway is not one of normal nature; rather it is of a shattered nature. The Court said that the procedure of baselines working by Norway was not contrary to the international law; inter alia, the particular geographical facts included and the economic benefits peculiar to the area.

The case is predominantly based on the proposition that, in some circumstances, geographical situations allow the outlining of a straight baseline in the territorial sea. This procedure consists of choosing appropriate dots on the low water mark and outlining straight lines in the middle of them. The decision of this case was afterwards accepted by the world group and was included in the 1958 Geneva Convention on Territorial Sea and Contiguous Area.

2) Inland Waters

The inner waters which prevail from the baseline to the landward side zone of the coastal State are known as the inland waters. Article 8 (1) of the 1982 Convention provides that waters on the landward side of the baseline of the territorial sea form part of the inner waters of the State. Also article 5 (1) of the 1958 Convention states that, waters on the landward side of the baseline of the territorial sea form part of the inner waters of the State.

Civil and Criminal Territory of the Seaside State

The coastal State has its sovereign power and authority over its inland waters. The coastal state also has the civil and criminal territory over its internal waters. If the law and order circumstances in the inland waters of the coastal area are hindered, it shall surely apply its criminal territory. There is a famous case in this regard e.g., the Fijens Case[3] which has already been considered in the earlier chapter. Another essential case in this regard is Rex vs. Anderson.[4]

In this case, James Anderson was an American resident murdered a foreign resident in a British ship and at the time of that murder the boat was in the French territorial water. That is to say, in this case the accused was an American citizen, the boat was from Britain and the place of committing the offence was France. When a case is registered before the British Court, Anderson asserts and contends that the crime happened in the French territorial waters and for this cause Britain has no territory to try the accused in this. The major issue before the Court was whether the British Court has really had territory to try Anderson. The Appellate Court concluded that the three countries included in this case are qualified to prosecute Anderson and so can Britain in order to safeguard its boat. The cause behind this decision was that Britain had territory to prosecute Anderson as the crime was committed in the British ship, i.e. here the label State is Britain. Also, the USA has also Personal Territory to prosecute Anderson and France can also prosecute as it has the Territorial Jurisdiction as the crime has hindered the security and calmness of France.

3) Territorial Sea

The doctrine of territorial sea has customarily been considered as founded upon the proposition laid down by the Dutch Jurist Bynkershoek in his de dominio maris dissertation in 1702 that a state's sovereignty expanded as far out to sea as a general shot would reach and the three-mile limit has customarily been depicted as simply uneven equivalent of the greatest reach of a cannon shot in the 18th century (Sircar, 1997: p. 56). Possibly the territorial sea is the closest maritime zone adjoining to the land territory of states (Khan, 2007: p. 228). The territorial sea forms an undisputable part of the land territory to which it is leap, so that a surrender of land will automatically involve any belt of territorial waters (Brown, 1994).

[3] Wildenhus Case (1887) (Belgium v. USA)

[4] 1868

Lawful Condition of the Coastal State

Usually the states assert only three miles of territorial sea till the 1960s and there was no consistency in the national jurisdictions of the territorial sea. The 1982 Convention has put to rest all different widths of the territorial sea. As per article 1 of the 1958 Convention, the sovereignty of a state expands beyond its land territory and inner waters, to a region of sea adjacent to its coast. According to article 2(1) of the 1982 UN Convention, the sovereignty of a coastal state expands, beyond its land territory and inner waters and, in the case of an island state, its island waters, to an adjacent region of sea, expressed as the territorial sea. This supremacy expands to the sky over the territorial sea also to its ground and earth.[5] The supremacy over the territorial sea is practiced subject to this Convention and to other rules of international law.[6]As per article 3 of the 1982 Convention, every State has the right to institute the breadth of its territorial sea up to a range not exceeding 12 nautical miles, calculated from baselines determined in conformity with this Convention. The wideness of the territorial sea is specified from the low water mark throughout the coasts of the state (Reisman & Westerman, 1992). In the zone of territorial sea, the coastal state shall have its complete jurisdiction. But the other states shall relish an unusual right called the "right of innocent passage".

Right to Innocent Passage: Clarification of the Concept

Article 17 of the 1982 Convention covers the right of innocent passage of states and states that, content to this Convention, ships of all the States, whether coastal, relish the right of innocent passage along the territorial sea. The 1982 Convention also includes provisions concerning the meaning of 'passage' which in its article 18 (1) provides that, passage means navigation along the territorial sea for the motive of: a) crossing that sea without entering inner waters or calling at a port facility outward internal waters; or b) beginning to or from inner waters or a call at such port facility. Passage must be constant and speedy. Passage involves stopping and mooring, but only insofar as the similar are alike to usual navigation or are given necessary by force greater or anguish or for the motive of giving assistance to persons, ships or aircraft in risk.[7] Oppositely, article 19 (1) lays down the meaning of 'innocent passage' and appropriately provides that passage is innocent so long as it is not detrimental to the peace, good order or protection of the coastal State. Such passage shall take place in similarity with this Agreement and with other rules of international law. The right to innocent passage shall no more

[5] Article 2 (2), 1982

[6] Article 2 (3), 1982

[7] Article 18 (2)

remain guilty if the peace and protection of the territorial sea of the coastal state is hindered by any act of the foreign boat.[8]

Duties of the Coastal State

The coastal state has some duties concerning the innocent passage under the 1982 Convention. For example, the coastal state shall approve necessary legislations concerning the right to innocent passage.[9] That is to say, the duty to ensure the protection of innocent passage lies upon the coastal state.[10] Again, article 25 deals with the rights of safeguarding of the coastal State which states in its sub article (1) that, the coastal State may grab the required steps in its territorial sea to stop passage which is not innocent. The coastal State may, without prejudice in form or in fact amidst the foreign ships, refrain temporarily in particular areas of its territorial sea, the innocent passage of foreign ships if such adjournment is crucial for the safeguarding of its security, involving weapons exercises. Such adjournment shall be accomplished only after having been duly issued (Article 25 (3)).

Provisions Relating to War Ships and Other Non-Trading Ships

Article 30 deals with the provisions concerning non-compliance by warships with the laws and rules of the coastal State and discloses that, if any warship don't obey with the laws and rules of the coastal State regarding passage along with the territorial sea and ignores any request for yielding therewith which is made to it, the coastal State may need it to leave the territorial sea instantly. According article 31, the mark State shall bear global duty for any loss or injury to the coastal State arising from the disobedience by a warship or other government ship working for non-commercial purposes with the laws and rules of the coastal State regarding passage along with the territorial sea or with the provisions of this Agreement or other rules of international law. The authority to keep the passage guiltiness is always of the coastal state.

4) Contiguous Area

The idea of contiguous zone was nearly formulated as a reliable and constant doctrine in the 1930s by the French writer Gidel, and it emerged in the 1958 Convention on the Territorial Sea. Contiguous area is that component of the sea which is exceeding and adjacent to the territorial sea of the coastal state. It may not expand beyond 24 miles from which the wideness of the territorial sea is calculated

[8] Article 19 (2) (a) - (i), 1982

[9] Article 21 (1) - (4), 1982

[10] Article 22 (1)

(Kapoor, 2008: p. 136). The use of contiguous areas gives the coastal state an extra area of territory for restricted purposes (Dixon, 2005: p. 202). Article 33 of the 1982 Convention deals with contiguous area and discloses in its sub-article (1) that, in an area contiguous to its territorial sea, expressed as the contiguous area, the coastal State may exercise the power necessary to: a) stop infringement of its duties, tax, immigration or hygienic laws and rules within its territory or the territorial sea; b) penalize infringement of the above mentioned laws and rules performed within its territory or territorial sea. The contiguous area may not expand over 24 maritime miles from the baselines from which the broadness of the territorial sea is calculated.[11] Again, article 24 (1) of the 1958 Convention also lays down that, in an area of the high seas contiguous to its territorial sea, the coastal State may exercise the control obligatory to: a) Stop infringement of its duties, tax, immigration or hygienic rules within its territory or territorial sea; b) Penalize infringement of the above rules performed within its territory or territorial sea.

Territory of the Coastal State in the Contiguous Area

If the coastal state observes that another state or person is infringing its rights, or running away after performing any crime, or hindering the law and order circumstances in the contiguous area of the coastal state, then it has territory to prosecute and penalize the perpetrator state. The pertinent case in this regard is the Re Martinez Case (1959). The facts of the case were as follows: Below Article 2 of the Italian law of the sea, from the baseline to 6 nautical miles area is Custom Area and the next 6 maritime miles zone is Carefulness Area. Martinez includes himself in smuggling in the 9 kilometers zone far from the baseline of Italy. The Italian authorities tried to arrest him and fired him but he then got away 54 maritime miles in the sea. But eventually he was caught by the Italian authorities and his trial was begun. Martinez contended that he had performed smuggling outside the territorial sea of Italy and he was arrested illegally. For this cause, Italy has no territory to try him. The main issue in this case was, whether Italy has any territory to prosecute Martinez? The Appellate Court said that the Italian Court has the jurisdiction to prosecute Martinez. The Court has the thinking in this case that; the Carefulness Area was made by Italy in order to continue the protection and good order in the coastal area and mostly to stop smuggling in the coastal area.

5) Exclusive Economic Zone (EEZ) or the Heritage Sea

[11] Article 33 (2)

Before examining the Exclusive Economic Zone (EEZ), it is very much relevant to mention an essential case on this topic which will exactly clarify the matter. Here the case is the Fisheries Jurisdiction Case.[12] In this case, in 1958 following the Geneva Conference, Iceland proclaimed a 12 nautical miles complete fisheries area and the UK received it in 1961. On 1st September, 1972 Iceland declared 50 miles of its water territory for the conservation of economic area calculated from straight baseline close to all fisheries ships. On 14th April, 1972 the UK unilaterally instituted proceedings before the ICJ asserting that Iceland was not qualified to the unilateral addition of the area. The UK moreover said that the preservation of fish stock in Iceland should be subject to bilateral arrangements in the middle of the two States. At that time, the court accepted another issue regarding the identical German-Iceland dispute. The Court connects them together.

In this case, the main issue before the Court was, whether Iceland was qualified to the unilateral addition of its economic area 50 nautical miles beyond its territorial water? The court by 10 to 4 votes said that Iceland was not qualified to declare unilaterally a complete fisheries area of 50 nautical miles beyond its territorial water. The governments of Iceland, the UK and West Germany were under a duty to negotiate a fair solution among them. The decision moreover said that the special rights of Iceland, the UK and West Germany should be taken into description in the negotiation. The thinking in this case was that the ICJ first instituted the principle of "special rights" over the specified regime of the sea. The Court said that 90 percent foreign currency is received from fishing. In fact, the entire economy of Iceland relies on fishing. For this cause Iceland was given the special right over that particular area. The Court discovered the unilateral announcement of 50 nautical miles.

Explanation of the idea of EEZ

The idea of Exclusive Economic Zone EEZ was for the first time recommended by Kenya in the Asian-African Legal Consultative Committee at its Colombo Session which took place in January, 1971 (Kapoor, 2008: p. 141). Article 55 of the 1982 convention states that, the EEZ is an area behind and adjacent to the territorial sea, subject to the particular legal regime instituted in this Part, under which the rights and territory of the coastal State and the rights and independence of other States are determined by the relevant provisions of this Convention. The EEZ is a band of sea, adjacent to the coast, expanding up to 200 miles from the baselines of the territorial sea. Within this area, the coastal state is given "supreme rights" for the motive of traversing and utilizing the living and non-living natural resources of the sea (Dixon, 2005: p. 203). Article 57 deals with the broadness of the exclusive

[12] USA and Germany vs. Iceland; ICJ, 1974

economic zone and provides that the exclusive economic zone shall not expand beyond 200 maritime miles from the baselines from which the broadness of the territorial sea is calculated.

6) High Seas

The chief stream of Grotian theory was that the high sea is res communis as it is physically impractical to take possession of it. Scelle has contended that the personality of the high sea can be compared to public parks or beaches or any open public place obtainable to the public for common use under the domestic law (Khan, 2007: p. 241). Fenwick (1971: p. 496) suggests that high sea or open sea is the sea outwards the territorial waters. The high seas were explained in article 1 of the 1958 Geneva Convention on the High Seas as all parts of the sea that were not involved in the geographical sea or in the inner waters of a state. In the perspective of recent developments, this definition has become very complete and insufficient. This provision basically replicates the customary international law, though in outcome of the developments the definition in article 86 of the 1982 Convention involves: "...all parts of the sea that are not involved in the EEZ, in the territorial sea or inner waters of a State, or in the island waters of an island State...". Article 87 of the 1982 Convention states that high seas are unlocked to all states and that the liberty of the high seas is exercised under the situations laid down in the Agreement and by other rules of international law.

Liberty of the High Sea: Clarification of the Concept

In resistance to the principle of coastal sovereignty, the principle of the "freedom of the high seas" started to develop, as Hall (1924: p. 189) has marked out, in accordance with the common and obvious benefits of the coastal nations (Starke, 1994: p. 243). Article 2 of the Geneva Convention on the High Seas, 1958 states that the liberty of the high seas constitutes inter alia, both for the coastal and non-coastal states. There are four liberties as has been stated in this Convention: 1) liberty of navigation, 2) liberty of fishing, 3) liberty to lay undersea cables and pipelines, and 4) liberty to fly over the high seas. These liberties and others which are identified by the common principles of international law shall be exercised by all states with concern to the benefits of other states. In article 87 of the 1982 Convention two more liberties were inserted. The liberties of high seas expressly listed in article 87 (1) of the Convention are as follows: a) liberty of navigation; b) liberty of over flight; c) liberty to lay undersea cables and pipelines; d) liberty to build artificial islands and other installations granted under international law; e) liberty of fishing; f) liberty of scientific research. Article 87 (2) of the Convention provides that, these freedoms shall be exercised by all States with due concern for the benefits of other States in their exercise of the liberty of the high seas, and also with due concern for the rights under

this Convention with regards to activities in the area. It is moreover provided that the high seas shall be booked for peaceful purposes.[13]

Liberty of the Navigation in the Sea: Common Rules

The liberty of navigation is a customary and well established aspect of the doctrine of the high seas, as is the liberty of fishing. Article 90 of the 1982 Convention includes provisions concerning right of navigation which discloses that every State, whether the coastal or land-locked, has the right to sail ships flying its label on the high seas. Ships have the citizenship of the State whose flag they are qualified to fly. There must be the actuality of an authentic link between the State and the ship.[14]
Ships shall sail below the label of one State only and, rescue in unusual cases clearly provided for in international treaties or in this Agreement, shall be subject to its complete jurisdiction on the high seas. A ship may not change its label during a journey or while in a port of call, save in the case of a real handover of ownership or transform of registry.[15]A ship which sails under the label of more than two States, using them as per convenience, may not assert any of the nationalities in question with regard to any other State, and may be understood to be a ship without nationality.[16] The foregoing articles do not preconception the question of ships working on the official service of the UN, the International Atomic Energy Agency (IAEA), flying the flag of the organization.[17]

Right to Hot Pursuit: Clarification of the Concept

An exception to the complete jurisdiction of the flag state over a boat in the high seas is the right of hot pursuit (Kapoor, 2008: p. 145). The right of hot pursuit of a foreign boat is a principle planned to ensure that a boat which has violated the rules of a coastal state can't run away punishment by fleeing to the high seas. In actuality it means that in defined situations a coastal state may expand its jurisdiction onto the high seas in order to follow and grab a ship which is presumed to be infringing its laws. The right, which has been growing in one form or another from the 19th century, was completely elaborated in article 111 of the 1982 Convention, constructing upon article 23 of the 1958 High Seas Convention. Hot pursuit of a foreign boat may be managed if there is good cause to believe that the boat has infringe the laws and rules of the coastal state, but it must be begin when the boat or

[13] Article 88, 1982

[14] Article 91 (1), 1982

[15] Article 92 (1)

[16]Article 92 (2), 1982

[17] Article 93, 1982

one of its vessels is within the inner waters, island waters, the territorial sea or the contiguous area, and may only be pursue outside the territorial sea or contiguous area if the pursuit has not been intermittent.

Pursuit is permitted only by the warships or military aircraft or other boats or aircraft clearly pointed and distinguishable as being on government service and approved to that effect (Starke, 1994: p. 279). Right of hot pursuit only commences when the pursuing ship has pleased itself that the ship follows or one of its vessels is within the ranges of the territorial sea or as the case may be in the contiguous area, or EEZ or on the continental shelf.[18] Article 23 of the 1958 Convention provides that, if any warship does not obey the rules of the coastal State regarding passage along with the territorial sea and ignores any request for capitulating which is made to it, the coastal State may need the warship to leave the territorial sea. The right to hot pursuit terminates as soon as the boat pursued has invaded the territorial waters of its own or of a third state.[19]

7) The Continental Shelf: Clarification of the Concept

The word "continental shelf" is generally meant that part of the continental frontier which is in the middle of the shelf break and shoreline or, where there is no explicit slope in the middle of the shoreline and the point where the deepness of the superjacent water is around in the middle of 100 to 200 meters (UN, 2012). Continental shelf is a geological term referring to the shelf that projects from the continental land mass into the seas and which are sheltered with only a relatively shallow layer of water and which in the end fall away into the ocean depths. It is an underwater land-mass that expands from a continent, ensued in an area of relatively shallow water called a shelf sea and a region joining the coastline of a continent, where the ocean is no higher than a few hundred feet in depth.

The legal idea of continental shelf came into observation after the Truman Proclamation of 1945 wherein it was proclaimed that the USA contemplated the resources of the shelf contiguous to the USA as relevant to the US and subject to its jurisdiction and power (Kapoor, 2008: p. 139).

[18] Article 111 (1), 1982

[19] Article 111 (3), 1982

Where the continental margin expands beyond 200 miles, the Convention states that the continental shelf should not expand more than 350 nautical miles from the baselines or 100 nautical miles from the 2500 meter depth.

Rights of the Coastal State above the Continental Shelf

Article 77 of the 1982 Convention covers the rights of the coastal State above the continental shelf and provides:

1) The coastal State practices above the continental shelf independent power for the motive of exploring it and utilizing its natural resources.
2) The rights are complete in the sense that if the coastal State doesn't traverse the continental shelf or utilize its natural resources, no one may take on these activities.
3) The rights of the coastal State above the continental shelf do not lean on occupation, productivity, or on any express declaration.
4) The natural resources comprise of the mineral and other non-living resources of the seabed and earth together with living organisms' affiliation to sedentary kind, that is to say, creature which, at the harvestable phase, either are motionless on or under the seabed or are inadequate to move excluding in constant physical touch with the seabed or the earth.

In the North Sea Continental Shelf Case[20], there were two bilateral contracts between the Federal Republic of Germany and the Netherlands and in the middle of the Federal Republic of Germany and Denmark. The two contracts were signed in 1964 and 1965 separately and did no more than designing a diving line for a short distance from the coastline commencing at the point at which the land border of the two States worried was located. Moreover, agreement for delimitation of their part in the North Sea Continental Shelf had demonstrated impossible and the parties of the state agreements put the dispute individually to the ICJ. Issues of this case are: 1) which proposition of international law shall be empirical by the parties in the delimitation of water boundary? 2) Whether the provisions of Article 6 of the Geneva Convention on the Continental Shelf, 1958 shall be pertinent to a State like Germany? The proposition of equidistance is not pertinent to the parties. The Court pronounced this case on the basis of fair principle and the judgment goes in approval of Denmark and Netherlands. In this case the ICJ governed against the actuality of a customary rule which the Court in a prior decision declared that the division of a general continental shelf of an adjacent country must be split according to the central principle (Khan, 2007: p. 471). The thinking in this was that, as Germany did not confirm the Geneva

[20] Federal Republic of Germany vs. Denmark and Netherlands; ICJ 1969

Convention on the Continental Shelf of 1958, it is not leap to comply with the provisions of the convention. But after considering the matter, the court created the new "principle of justness" in this case.

Again, in the Tunisia-Libya Continental Shelf Case[21], a dispute arose in the middle of Tunisia and Libya in regard to the delimitation of the particular area of continental shelf concerning to each on the origin of the geology, physiographic and bathymetry. On 10th June, 1977 both Tunisia and Libya invaded a treaty to go before the ICJ for the delimitation of the particular area of continental shelf. The ICJ was asked to deliver a judgment and it did so. But Tunisia applied a revision against the verdict of ICJ and the Revision Court upheld the preceding judgment. Whether the Geneva Convention on the Continental Shelf or the traditional international law shall be pertinent in deciding the case was the chief issue in this case, as none of the States did confirm the Convention of 1958. The verdict of this case was brought on the basis of the just principle. By a bulk of ten to four votes the Court said that the delimitation method to be empirical according to the principle of fairness taking into account all the relevant situations.

CONCLUDING COMMENTS

It is evident from the above inspection that the law of the sea is an expanding area of international law. The 1958 and 1982 Conventions on the Law of the Sea did much to generate systematic and mundane rules for the management and use of this general resource and many of the rules included in these Conventions have now proceeded into customary international law. The great achievement was the conclusion of the 1982 UN Convention on the Law of the Sea which deals with all the crucial issues of the law of the sea and it does so in a manner that has ordered a significant amount of hold up. Also numerous of its provisions either disclose the existing customary international law or will harden into new law in due course.

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[21] 1982 ICJ

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