

Short Paper

Legal Aspects for Peaceful Uses of the Sea under UNCLOS Convention

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Abstract

Peace has no alternative but to promote. Peace is addressed in every sphere of human life. Human life with peace gives rise to perpetuity of existing flora and fauna. In the past absence of law and sovereignty a growing number of cross-exploitation conflicts that may include the following: negligent navigation that damages or destroys communication cables, the warming of the seawater used for cooling functions of a nuclear power plant preventing its use for fish farming purposes, an oil spill on the high seas polluting beaches that are essential for tourism in the coastal zone. These activities destroy our natural climate and it changes sea level, ocean acidification, ocean stratification, coral bleaching, changing species distributions and other biological changes to sea. Peaceful exploitation of the world's oceans and their resources in an era of scientific and technical revolution is one of today's urgent global problems. No discipline can come to fruition without peace. They supported the inclusion of the wording "peaceful uses of the seas" into the new convention as a fundamental principle governing the activities of all states in relation to the exploitation of the world's oceans and resources.

Keywords

peaceful uses, marine environment, legal aspects, laws of the sea

1. Introduction

There are some countries of Natural Disaster prone, it experiences flood, river erosion, cyclone, Storm Surges every year due to global warming, These countries are susceptible to sea-level rising. The author has explained in his writing that (Note 1)

(L)ike within the case of the Maldives, but other effects like drought, cyclone, lightning and river erosion have made this country more defenseless. Over 60 million inhabitants are directly dependent on aquatic resources in Bangladesh. One million people are full time fisher folk and 11 million have taken to part time fishing in the country (BBS, 2010). The fishery sector contributes about 3.4 percent of the total export revenue and employs 5 percent of the country's total work force. The agriculture sector provides 64.5 percent of the country's employment and contributing 24 percent of the GDP (BBS, 2010). The Sundarbans alone supply livelihood and employment to a predictable 112,000 people (Khan, 2001). Sundarbans also is the biggest mangrove forest in the world consisting 6200 square kilometers of forest and revering areas lies there. Scientists who have dealt with the ecological aspects of the conflicted use of the seas have warned rather than legal and political people on a long-term deterioration of the marine environment. Recent time economists have initiated to contemplate marine environment a scarce resource.

The LOS Convention has innovated and incorporated scientific research as freedom of the high seas. In discussing general principles for the conduct of marine scientific research the study will go into depth and in so doing, it will search out the various concerns as per the LOS Convention. The LOS Convention is thus a biggest body of international law central of the rights and duties of States regarding maritime environment.

2. Peaceful Uses of the Sea for Humanity

The Sundarban has been listed as World Heritage site and is the most important ecosystem and protective natural barrier against the calamities like tidal surge and cyclone. This contribution of nature would simply be submerged by the rising sea (Note 2). Peace mechanism in the sea has no alternative but to promote. Peace is addressed in every sphere of human life, it is inherently connected and lies at our core spirit. Again peace is non-violent to any species of the universe as like non-harming in action and also extended to speech. Human life with peace gives rise to perpetuity of existing flora and fauna. Peace ensures normalcy of life coming back to home. No discipline can come to achievement without peace. The regime of the law of the sea is practically the outcome of *Mare Liberum* (Note 3) (*Grotius*) and *Mare Clausum* (Note 4) (*Sheldon*) regimes. Although the regime of the seas resulted in claims and counter-claims to "freedom of the seas" and "territorial sovereignty", it is in fact surmounted on peace and thus, forwarding.

3. Peaceful Uses of Sea Bed and Ocean Floor

The deep seabed as incepted by Arvid Pardo (Note 5) was specified to be a deal of peaceful uses of the seabed and ocean floor in Area. He spoke more than three hours in UN general assembly for the demand of establishing a new international regime for the management of the natural resources. His concern was connected to beyond the limits of national jurisdiction that was to challenge the fundamentals of international law (Note 6). Pardo was concerned that the world's seabed and much of the ocean floor were subject to exploitation by economic and technological developed countries that had the equipment to do so. In that case the underdeveloped countries that did not have much wealth to do so get nothing. The United Nations Convention on the Law of the Sea, 1982 (LOS Convention) through multifarious deliberations on varying aspects and issues as appearing has quite a significant impact of peace towards the law of the sea matters.

John L. Mero's *The Mineral Resources of the Sea* (Amsterdam, 1965), he made some realization that the seabed was the only remaining, untapped resource in the world which, as yet, remained unclaimed. They have some recommendation to the United Nations that all humanity would take it upon itself to create the conditions necessary for the exploitation of the seabed and ocean floor for the benefit of all mankind and set a precedent that would make it contingent on mankind to make the preservation of the conditions necessary for the continued existence of humanity, the primary objective of responsibility (Note 7).

4. Common Heritage of Mankind

Mare Liberum means Freedom of the Seas. Hugo Grotius inscribed on his writing in 1609, a piece and it was one of the foundations of contemporary maritime legal doctrine (Note 8). His insight was sea must be freely accessible to all and shared amongst nations. It is therefore, aimed to deal specifically with the subjects ensued in peace. Peaceful uses of the sea will be consecrated deeply in the cases where it specifies in the LOS Convention. The law of the sea in fact and figure is a four dimensional deal in the sense that it has to juxtapose a study of hydrospace (a) within national jurisdiction and (b) beyond national jurisdiction. The four dimensional approach seems obvious as (i) water space, (ii) seabed and ocean floor, (iii) subsoil of seabed and ocean floor, and (iv) air space above water. Thus the notion of common heritage of mankind was to make a transformation on the world from the protection of unfair exploitation of natural resources (Note 9):

In the second place, the very nature of the common good requires that all members of the state be entitled to share in it, although in different ways according to each one's tasks, merits, and circumstances. For this reason, every civil authority must take pains to promote the common good of all, without preference for any single citizen or civic group. As Our Predecessor of immortal memory, Leo XIII, has said: 'The civil power must not serve the advantage of any one individual, or some few persons, in as much as it was established for the common good of all'. Considerations of justice and equity,

however, can at times demand that those involved in civil government give more attention to the less fortunate members of the community, since they are less able to defend their rights and to assert their legitimate claims.

In each and every case there is peace oriented parameter the fact that peaceful uses are inviolable at all levels. Taking all this into account the purpose of LOS Convention is specification concerning peaceful uses in its various themes both within and beyond national jurisdiction.

More specifically, the infrastructure, e.g., working structure is viewed to deal with Peaceful Purposes Specification is (a) Peaceful Sea Uses within National Jurisdiction, (b) Peaceful Sea Uses beyond National Jurisdiction, (c) High Seas Regime Impasses, (d) Common Heritage Regime for Peaceful Purposes.

5. Peaceful Uses of *Mare Geneticum*

In the environmental context of global sharing, now the international community is conveying a new international legally binding instrument under the LOSC. The UN General Assembly in 2004 (Note 10), proscribes to protect, conservation and sustainable use of biodiversity in marine environment named “Biodiversity Beyond National Jurisdiction” (BBNJ). The purpose was to assess the marine biodiversity and to investigate the prospective requisite for international cooperation. This BBNJ process led the General Assembly to launch the development and to organize an intergovernmental conference and peacefully undertake formal negotiations for a new international legally binding instrument under the LOSC for the conservation and sustainable development of marine biological diversity. Now in the legal regime *Mare Geneticum* is not a stand-alone approach but part of a four-component package, sharing the benefits arising out of Marine Genetic Resources (MGR) in Areas Beyond National Jurisdiction (ABNJ) should also mean attributing such benefits to the designation and management of marine protected areas, the systematization of EIA processes, and the transfer of technology.

6. Peaceful Uses in LOS Convention

The very impact of the study is to expound peaceful uses of the sea. The fact is that every State must work out their claims and accomplishing their duties under this Convention. Article 300 of LOS as stated, “States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right”. Again it has a concern with all States Parties must withdraw any warning or use of power against the defensive integrity or political independence of the State or in any other manner uneven with the ideologies of international law which expresses in the Charter of the United Nation (Note 11). There is an overall approach to peaceful uses of the sea that ensues from peace aspects enshrined in settling disputes between states through peaceful means of the UN Charter. The study of the Area is of more inquisitive and as such, attempts will be made explicitly on general conduct of states

delving into insights of the concerns. Again Article 138 runs about the general principles regarding Area as follows which is called General conduct of States,

The general conduct of States in relation to the Area shall be in accordance with the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international co-operation and mutual understanding. (Art138)

In dealing with the use of the Area exclusively for peaceful purposes and for the benefit of mankind whether it is land-locked or self-governing State nevertheless of the geographical identity. If we analyze provisions runs like, “The Area shall be open to be exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part” (Art 141). Beyond national jurisdiction there are freedoms involving in the concerns of the high seas. Taking this into consideration, efforts will be made on specific provisions of LOS Convention on reservation of the high seas must be for peaceful purposes not anything else (Note 12).

Specifically it will make an exhaustive study in going through the provision of Article 240 is the guideline for general principle for marine scientific research which states (Note 13),

In the conduct of marine scientific research the following principles shall apply: (a) marine scientific research shall be conducted exclusively for peaceful purposes; (b) marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention; (c) marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses; (d) marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment.

Marine scientific research in the Exclusive Economic Zone (EEZ) and on the continental shelf is a substance pertaining to the coastal state to the extent of 200 n. m from the baselines from which the extensiveness of the territorial sea is calculated. Scientific research on the continental shelf beyond 200 n. m is in the command of the freedom of the high seas. To this conclusion, the matter will be dealt critically. As a practical consideration, there is a scope to interpret scientific research in various perspectives. In analyzing that investigation will be made as to scientific research through the spirits that result in LOS Convention provisions. According to the Article 246(3) states,

Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. In this

regard “Coastal States shall establish rules and procedures ensuring that such consent will no be delayed or denied unreasonably”.

In the case of the Area emphasis requires to reiterate for peace. That means, the LOS Convention provisions like marine scientific research in the Area must be approved out entirely for peaceful purposes and for the advantage of mankind as a whole. To construct artificial islands, structures and other installations as per the LOS Convention is the freedom of the high seas. But the freedom is to some extent curtailed in the EEZ and on the continental shelf. Endeavors will be expatiated to find out its insights and in so doing the LOS provisions such as, “such installations shall be used exclusively for peaceful purposes”. (Art 147d)

7. Conclusion

Needs arise to submit to international co-operation for promoting peace and in consequence, the LOS Convention provisions that respecting the sovereignty in according to the ethics of mutual benefit all States and competent international organizations must promote peaceful mechanism with respective international co-operation for marine scientific research (Note 14). It will be highly emphasize to secure, maintain and promote peace there seem several imperatives engulfed in the UN Charter. To reiterate this LOS Convention is not limited in saying that efforts can be made out on the implied provisions concerning peaceful uses of the seas. To this end, good faith, and measures against abuse of rights as embodied in the LOS Convention saying as “States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right” (Art 300) that require to go ahead for peaceful uses of the seas. Peaceful uses of the seas through peaceful purposes-the very approach of UNCLOS Convention highlighted in notwithstanding the fact that the world has a lot to achieve from peacefully and sustainably managed the oceans, as stated in the Preamble to the LOSC is the spirit and purpose of the Convention as a whole is to “promote the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment”.

Notes

Note 1. Md. Abdul Alim. “Climate change and its challenges for the marine environment with special reference to ecological aspects in Bangladesh”, *International Journal of Maritime Crime and Security*, Volume 02 Issue 01, 01 Sep 2021. London, WC1N 3AX, United Kingdom.

Note 2. Abul Kalam Md. Iqbal Faruk, *Climate Change Impact on Biodiversity in Bangladesh* retrieved from <https://www.iucn.org/content/climate-change-impact-biodiversity-bangladesh> visited on 12 July 2022.

Note 3. Dutch philosopher Hugo Grotius considered the father of international law generally wrote *Mare Liberum (The Freedom of the Seas)*, published in 1609, which set forth the principle that the sea was international territory and that all nations were thus free to use it for trade.

Note 4. English jurist John Selden argued in *Mare Clausum* that the sea was as capable of appropriation by sovereign powers as terrestrial territory.

Note 5. Arvid Pardo was Malta’s permanent representative to the UN General Assembly (1964-1971).

Note 6. Address by Arvid Pardo to the 22nd Session of the General Assembly of the United Nations (1967), Official Records of the General Assembly, Twenty-Second Session, Agenda Item 92, Document A/6695.

Note 7. Pardo’s proposal is reflected in the Declaration of the Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted by the UN General Assembly at its 25th Session on 17 December 1970.

Note 8. H Grotius, *Freedom of the Seas, or, the right which belongs to the Dutch to take part in the East Indian trade* (Oxford University Press, New York, 1916).

Note 9. Pope John XXIII, *Pacem in Terris*, 1963. [accessed on 15 September 2022].

Note 10. UNGA Res. 59/24, UN Doc. A/RES/59/24, 17 November 2004, para. 73.

Note 11. Article 301 of the UNCLOS, 1982.

Note 12. Article 88 of Laws of the Sea Convention, 1982 runs “The high seas shall be reserved for peaceful purposes”.

Note 13. Article 240 of Laws of the Sea Convention, 1982.

Note 14. Article 242(1) Laws of the Sea Convention, 1982.