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Law of the Sea: An Introduction

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ABSTRACT

The importance of awareness and knowledge of the sea and the international laws applicable to rights and duties of States towards territorial waters and the waters adjacent to it and activities at sea cannot be denied. Trade and commerce through water play a significant role in national security, economy and political stability of a nation which is directly dependent upon trade routes and waterways connecting the international community. Waterways and freedom of movements at sea without any hindrance is vital for international relations and economy of coastal states. This work endeavors to introduce one of the most important areas of the International law called " Law of the Sea" contained in the United Nations Convention on the Law of the Sea (UNCLOS) 1982. This law is emerging at highly accelerated rate with overwhelming response from all over the world. At the same time, as needed, it introduces nontraditional and scientific mechanism of its implementation and enforcement. The introduction of this branch of law is not only the need of the time but indispensable for successful economic developments and diplomacy.

Introduction

Political Law is a body or set of rules which a community or a country establishes for regulating the actions and affairs of its members or subjects which may be enforced by imposition of penalties.

According to Austin (1954), law made for a society or a community by men is of two fundamental or major kinds. The first category of laws includes the laws established by political superiors to their subjects in relation of sovereign and subjects. These laws are exercised through government to the members of a society or a nation in enjoying an independent stature. The other category of laws is made by those having no political superiority or without exercising that superiority or

character in making laws. To these laws Austin calls 'a set of objects frequently but improperly termed laws' (Freeman, 1996). These are the rules which came into existence and applied to society merely by opinions which are the opinions or feelings of an indeterminate body of men towards human conduct. These laws or rules generally include laws of honor, fashion, and major parts of the International law.

International Law

It is also termed public international law or law of nations and is the system of rules, principles and canons which apply between different states having sovereign status including other bodies entitled as international actors. The term was first used by Jeremy Bentham, an English philosopher (1748-1832) (Janis, 1984).

International law is said to be a collection of rules which govern affairs of different states and relations between them in the world as members. This collection of rules has rapidly evolved and developed on need of the world for keeping peace and developing economy. They are not directly binding as municipal laws do under enforcement mechanism of sanctions. However, its complex but sophisticated structure continues to develop both in formation of effective rules as well as their manner of enforcement in non-traditional ways. It has rapidly broadened its scope and sphere from what it was originally introduced that is for the imminent purpose of safeguarding against breaking and probabilities of wars between states and maintaining peace and harmony on the planet by peaceful means and through diplomacy. However, in short spell of time and at high rate, it accelerated and broadened its scope and sphere to cover the areas of human rights, space laws and regulating international organizations formed for various objects. It has played very significant role in spheres of human rights, international commerce and trade and in establishing the international laws for unification of certain rules and regulations to facilitate international and regional trades and communications between states.

International law differs in many respects with traditional concepts of law in way of its legislative powers with binding force. International law lacks in authority to legislate laws binding on international community. There is no specific enforcement system and mechanism like international courts and police with effective powers and jurisdiction. ICJ and Security Council's should not be confused with, in this regard. ICJ has very limited jurisdiction in conflicting matters arising between states and is founded on the consent of the states involved. Unless the states involved surrender to ICJ's jurisdiction expressly, ICJ lacks jurisdiction to hear and adjudge any matter brought before it. It resembles with few exceptions, more to arbitration than a traditional court. The role of the United Nations Security Council (UNSC) is also limited to specific actions to enforce some resolutions of the Council to empower the use of force for compliance with its decisions. It has no power to act as police or law enforcing agency. Rather the system of its enforcement is based upon mutuality and

community respect. In case of violation by or failure of a state to performing its obligations under a treaty or conventions, it suffers not only from verbal criticism leading to condemnation but practical condemnation in way of loss in trust and reliability in performance of respective duties and obligations. Other states may hesitate from further cooperation with a state violating its agreements with regional and international treaties and conventions.

In the wake of New World Order after disintegration of Soviet Union (USSR), international law became more significant in aspects other than war and peace and became more significant in political and economic spheres. It helped focusing more on human rights, international and regional trades and law of the sea as well as maritime law and marine resources. The concept of globalization and coming into existence of new communities and organizations both regional and international like European Union (EU), G-7, WHO, WTO and alike enhanced its need and importance.

International Law of the Sea

Origin

About 73 percent of the planet is covered with salt water termed ocean. Since the prehistoric era, mankind has been extracting benefits from the sea, rivers, lakes and other waters connected therewith. It has always been considered a common heritage for mankind. In the past, limited population on the land and sufficiency of available resources, human remained more interested in land activities than at sea. Traversing the sea in the past was adventurous and high risk activity and only few could attempt the sea adventures. However, with passage of time, increasing population and depleting resources on land made the human attracted more to sea for benefiting from such resources. International commerce and trade, fishing, minerals under the sea bed and other wealth in or under the seabed attained the importance for mankind and different countries in the world. Questions of asserting authority and jurisdiction on coastal waters and open sea started getting international attention. Such assertions and assumption of control on coastal waters and open sea, resulted in various conflicts between different nations of the world regarding controls and sovereign rights on sea. United Nations Organization ultimately considering it an important issue brought it on its agenda to deal with it for peace and prosperity in the world. The deliberations on pre-existing issue drawing attention of the world started in 1949 till the first international convention on law of the sea which as a consequence held in 1958. In 1949 International Law Commission (ILC) decided to give priority to the topic of the law of the sea after going through the survey of entire area of the international law. It selected the topics for establishing and codifying the law of the sea in fulfillment of article 18 of its Statute (U.N. Resolution, 1949). The essence of the conference prompted from the desire to discuss and settle mutually with understanding and cooperation any or all issues relating to seas in harmony with the law of the sea. The Conference marks an historic and significant milestone in

contributing towards the peace, justice and prosperity in the world and peoples of different nations having equal opportunity in the resources at sea.

Development

The United Nations Convention on the 'Law of the Sea' also termed Geneva Conference was organized and lasted from 24 to 27 February 1958 in Geneva. It was convened on the report of the International Law Commission (ILC) to covering high seas regime, limits of various zones for coastal States like territorial waters, contiguous zones and continental shelf. It included matters like resources which are living of the seas especially the high seas with regard to harvesting and preservation of such resources. The object of the conference included to examin the law of the sea, its scope and sphere extended to include technical, biological, economic and political aspects. Eighty six (86) countries from different parts of the world with 700 delegates participated in the conference. The conference resulted in four conventions, nine resolutions and an optional protocol. The fate of an international conference is generally dependent upon whether the participating states ratify the conventions or not. The Conference received overwhelming response in this regard. However, issues like width of territorial sea limits could not be resolved and agreed upon.

On the unresolved issue, the United Nations General Assembly decided to hold a conference for its resolution in 1960 (U.N. Doc., 1958).

The four conventions adopted in the conference (1958) include:

1. The Convention on the Territorial Sea and the Contiguous Zone 1958 prohibited the coastal States from impeding the foreign ships from performing innocent passage through such straits which are used for sea navigation joining two parts of high seas. It enforce on 10 September 1964. The international treaty on law of the sea 1982 went further and recognized a new right of transiting including passage through straits entering from or leaving and to the Exclusive Economic Zone (EEZ). It helped facilitating international navigation in a continuous and expeditious manner.
2. The Convention on the High Seas defined the term "high seas" as all the seas and their parts excluding internal and territorial waters (sea) of a coastal State. The high seas made available to all nations and countries whether coastal or non-coastal States. No State can assert sovereignty rights and/or jurisdiction on high seas. Right of exercising such jurisdiction and authority on the high seas is subjected to the provisions of this Convention and relevant International laws. These include sea and air passages, fishing, laying submarine cables and pipelines at the high seas. The convention enforced on 30 September 1962.

3. The Convention on Fishing and Conservation of the Living Resources of the High Seas refers to an agreement between member States for solving through cooperation and peaceful means the issues of living resources and their conservation at high seas in consequence of the use of modern technologies and developments under apprehension of danger to such resources and some species. The Treaty enforced on 20 March 1966.
4. The Convention on the Continental Shelf includes the seabed and subsoil measured from the coast into the sea to a distance not exceeding 200 nautical miles which includes 12 nautical miles from the baseline as territorial waters or sea of the coastal State. The coastal State enjoys sovereign rights in the continental shelf to explore and exploit the natural resources. The Treaty enforced on 10 June 1964
5. A Protocol (optional) was also agreed upon and signed for Compulsory Settlement of Disputes which enforced on 30 September 1962.

The Conference tribute to the International Law Commission for its efforts and further adopted regarding Nuclear tests, pollution by radioactive substances, fisheries conservation, dangers to marine life including special reference to fisheries in the coastal areas, waters with historic importance, and paving grounds for the second UN conference on law of the sea.

As mentioned earlier, in order to consider the matters which could not attain agreements in the 1958 Conference the second conference held in 1960 when the issues of the breadth of the territorial waters (sea or zone) and limits of fishery were postponed to a later stage.

Laws of the Sea and Maritime Laws-Distinction

Interestingly and more rightly, despite criticism from different areas of the maritime sector, the term law of the sea has been separated from maritime laws. In the past, no obvious distinction existed between the two areas of law and both were considered synonymously located in the same domain. But it is not so in reality. The former is a set or a body of rules of international laws relating to public order at sea and to govern how coastal and maritime states of the world use and control the sea and opportunities for benefits from sea and its resources. Bulk of the law the in codified form is found in the United Nations Convention on the Law of the Sea (UNCLOS), signed in 1982. The latter is a body of laws as rules of the international law as well as laws enacted by sovereign States. Maritime laws govern business through water (sea), navigation at sea and in ports, the transportation of persons and property at sea and regulating marine affairs in general; maritime laws are also a set of rules which govern (maritime) contracts, torts, and workers' compensation claims arising in consequence of navigation and commerce at sea over water. Such laws relate to shipping, ship constructions, ships' equipment and the required standardization, ships' registration, ownerships, inspections and surveys, maintenance standards and employment of

ships (freighting and chartering), laws applicable to shipmasters, ship agents, crews and cargoes. In nutshell, the laws relating to ships and shipping are generally termed as maritime laws. Maritime laws and law of the sea however, are entirely different in their nature and application.

Codification of the Law of the Sea

As a result of continuous efforts of the United Nations from 1949 to 1982 and continuing thereafter, the 'United Nations Convention on the Law of the Sea' finally laid down a comprehensive system of international laws and order for the seas and waters connected therewith. The term "Ocean" signifies 'the entire body of salt water covering surface of the earth' which is further divided into three oceans which are named, Pacific, Atlantic and Indian Oceans (United Conventions on the Law of the Sea 1982 hereinafter UNCLOS 1982, Article, 2:1). The regime established rules for governing oceans and uses of all kinds and their resources. It defines the rights and duties of a coastal or a non-coastal whether as a signatory and ratified the convention or not. It applies equally to all states and international actors recognized internationally. It builds the concept that problems of and resulting from use of oceans and associated waters therewith are closely interconnected and they are necessarily required to be dealt with and addressed together and in entirety. The United Nations Conference (1982) realized that since the earlier conferences held on the same issue in 1958 and 1960 emphasized the significance and need for an effective and generally acceptable Convention on the law of the sea. The Conference invariably recognized the commonality of interest and problems of the sea to be dealt with as a whole and on equitable grounds.

International Law of the Sea and Sovereignty

In achieving the desired objects, a new concept of sovereignty of States has been introduced. Sovereignty of all the coastal States have been expressly recognized in the Conference (UNCLOS 1982, Article 1&2).The Convention recognizes the sovereign status of a coastal State into the adjacent water (sea) extending beyond its land and internal waters (if any) to the extent of its territorial waters defined in the Convention. The said sovereignty extends to its archipelagic waters, air space above its territorial waters (sea), seabed and subsoil (UNCLOS, Article 3).

However, the sovereignty recognized herein in the Convention is subjected to the Convention and international law. The jurisprudential sovereignty in essence is not affected by command of the international law differing from the command of a determinate person or determinate aggregate or persons to whom submission is made by the sovereign. The object of recognition of sovereignty of coastal States is on basis of equity considering the sea as the heritage of the entire humanity. It is expected that codification of the law and uniform international order will assist international trades and communications and will help in promoting peaceful environments for using the sea and its benefits and

conservation of its living resources. Likewise, it will help the coastal and other States to carry out study and experiments for protection and preservation of marine environments.

United Nations Convention of the Law of the Sea-UNCLOS 1982

The Convention held on 10 December 1982 in Montego Bay in Jamaica for signatures after 14 years of continuous efforts from 1973 to 1982 by more than 150 countries all over the world. The convention addressed and formed traditional rules for using seas and introduced new legal regimes and notions and addressed to new apprehensions. The convention after codifying the Law of the Sea provided necessary and relevant framework for future developments in the area of international law.

The Convention enforced on 16 November 1994 and thereby stands globally recognized as International law pertaining to all matters relating to the international law of the sea.

The Convention consists of 320 articles with nine annexes. It governs all features of sea space particularly delimitation, controlling environments, scientific research at sea, activities of economic and commercial nature, technology and its transfer and disputes relating to sea.

Few of the salient features of the Convention are listed below

Sovereign Status of coastal States

United Nations Convention on Law of the Sea (UNCLOS-1982) expressly recognizes the sovereign control of respective coastal States on their territorial (waters) limits into the sea. The coastal States have been given legal rights to declare their respective breadth (UNCLOS 1982, Article 5&7) of territorial waters (sea) to a maximum distance of 12 nautical miles into the sea as measured from the baseline (UNCLOS 1982, Article 19) as defined in the UNCLOS-1982. Normal baseline as defined is a parallel line along the coast as the lowest low-water line as a reference for measuring the breadth of the territorial waters (sea) from that line.

However, foreign ships will have the right of 'innocent passage' (UNCLOS 1982, Article 17) through territorial waters of a coastal state (UNCLOS 1982, Article 38).

Transit Passage through Straits

Foreign ships and aircrafts of all nations given of free transiting passage in waters and air respectively through straits and through air space above for navigation. The states bordering such straits will have the rights to regulate navigation and other features in the straits.

Right of Archipelagic Passage

The sovereignty of Archipelagic States (e.g. Indonesia and Philippine) formed by islands with interconnected waters has been defined in the Convention and waters between islands are called archipelagic waters where passage and navigation may be regulated by the concerned State but other States will be entitled to archipelagic passage between these islands where practicable. To regulate sea traffic, Traffic Separation Schemes (TSS) (UNCLOS 1982, Article 55) may be introduced in the area.

Islands Regime

The delimitation of the territorial waters (sea) and Contiguous Zone shall be established similar to the rules applicable to land measurements.

Coastal State and Sovereignty in the Exclusive Economic Zone (EEZ)

The Exclusive Economic Zone (EEZ) has been defined in Convention as the area of the sea outside and next to the territorial waters (sea) which is subjected to the specific legal system and regime with rights and jurisdictions of the relevant State defined under the Convention. The breadth of EEZ extends into the sea not exceeding 200 nautical (UNCLOS 1982, Article 57) miles as measured from the baseline (UNCLOS 1982, Article 56(1) (a)).

Coastal States have been given sovereign rights to exercise in EEZ to the extent defined in the Convention. The sovereignty in this zone is not unlimited but its limits have been defined in the Convention. These rights include rights of natural resources i. e. to explore, exploit, conserve and manage the natural resources, both living as well as non-living of the water, overlying or on the bottom of the sea including its subsoil (UNCLOS 1982, Article 56(1) (b) (II), marine scientific research and protection of environments (UNCLOS 1982, Article 56(1) (b) (III).

The Exclusive Economic Zone (EEZ) and other States

All other states equitably enjoy freedom of navigation (UNCLOS 1982, Article 87(1) (a)) in and flying (UNCLOS 1982, Article 87(1) (b)) over the EEZ as well as laying, removing or repairing submarine cables and pipelines (UNCLOS 1982, Article 87(1) (c)), fishing (UNCLOS 1982, Article 56(1) (e)) and scientific research (UNCLOS 1982, Article 87(1) (f)).

Rights of Landlocked and Geographically Disadvantaged States

Land-locked and geographically disadvantaged States have been given right on equitable basis to share and participate in benefits of the sea of an appropriate part of the surplus of the living resources of EEZ of a coastal State in

the same region subject to protection regime of highly migratory species of fish and marine mammals (UNCLOS 1982, Article 69&70).

The Continental Shelf

If we go into the detail of Article 76 of UNCLOS 1982, we observe that the Convention describes the limits of 'Continental Shelf' of a coastal State as the seabed including subsoil of the underwater areas extending past its territorial waters (sea) throughout its natural elongation of territorial land to the far edge of the continental margin not exceeding 200 nautical miles measured from the reference line called baselines. Coastal States are entitled with sovereign rights over the continental shelf for exploration and utilization purposes. Coastal States are expected to share with international community the part of the revenue derived from such activities.

The Extended Continental Shelf

As per Article 76 (7 to 9) of UNCLOS 1982, the Convention authorizes and defines the 'Extended Continental Shelf' that, if the outer edge of the continental margin extends beyond 200 nautical miles into the sea measured from the baseline, the coastal State, on its desire, may apply for extension of its continental shelf beyond 200 nautical miles as mentioned above. The application may be made to the United Nations' Commission on the Limits of the Continental Shelf (CLCS). CLCS after satisfying with the required geological conditions fulfilling all the requirements may grant the desired extension not exceeding beyond 350 nautical miles into the sea as measured from the baseline.

Within the extended area of the sea as extended continental shelf, the coastal State among other benefits which it may be entitled to derive, has exclusive rights non-living resources for exploring and utilization belonging to the seabed and subsoil and sedentary species. Rights on living resources including fishing rights however, remain limited to EEZ

International Tribunal for the Law of the Sea

The Convention obliges that any dispute between States to be settled by peaceful diplomatic manners. For this purpose the Convention established the International Tribunal for the Law of the Sea at International Court of Justice (ICJ) or to arbitration. The tribunal has exclusive jurisdiction to hear and decide over the deep seabed mining disputes. Conciliation is also available and in some circumstances is compulsory.

Conclusion

The study of this particular and most significant law needs to be introduced in institutions imparting legal education. This area of law though accelerating at high rate is achieving its due importance but not popular and familiar to Pakistani

institutions and at times misinterpreted in many ways due to lack of its introduction and necessary efforts in this direction.

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