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Sovereignty at Sea: The South China Sea Dispute and UNCLOS Implications

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ABSTRACT

The South China Sea dispute involves overlapping of territorial claims and maritime conflicts among nations like China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan. Central to this intricate issue is the interpretation and application of the United Nations Convention on the Law of the Sea (UNCLOS), an international treaty governing the rights and responsibilities of States concerning global ocean use UNCLOS regulating maritime jurisdictions, defining territorial waters, exclusive economic zones (EEZs), and continental shelf. Beyond regional stability, the South China Sea dispute carries global implications due to its impact on trade routes, valuable resources, and strategic alliances. The interplay between the South China Sea dispute and UNCLOS underscores the tension between territorial claims and international legal principles. A nuanced understanding of these complexities is essential for maintaining stability, upholding legal norms, and facilitating peaceful resolutions within the intricate landscape of maritime geopolitics.

This article discussed in brief the different concepts under the UNCLOS 1982, and the violation of the provisions of the convention by the China and other states in South China Sea for their own interest in the sea.

Keywords: *South China Sea, UNCLOS, Maritime Zones,*

I. INTRODUCTION

The concept of law of seas was based on freedom of the seas since centuries, the states control over the sea was very limited. The seas were governed by the customary international law. By the middle of the twentieth century, as the states capability increased to engage in long range fishing and commercial extraction, concerns arose about pollution and the exhaustibility of ocean resources. In addition, the concept of freedom of the seas was eroding, as many nations had asserted sovereignty over wider areas, claiming rights to the resources of the continental shelf and the water above. It became necessary to develop a treaty-based regime for ocean governance. A series of United Nations conferences on the law of the sea, convened in 1958, 1960 and 1973-1982, produced several treaty agreements and the Third Conference culminated in the adoption in 1982 of a comprehensive treaty instrument, the United Nations Convention

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on the Law of Sea.[2] Due to increase in geo-political interest in seas the states expanding their control over the seas.

The United Nations Convention on the Law of the Sea (UNCLOS) 1982 is a vital framework for governing the rights of nations with respect to the world's oceans. The convention includes economic zones of the sea, the continental shelf, rights to the deep seabed, navigational rights in territorial and high seas, conservation and management of the living resources of the sea, protection and preservation of the marine environment, and others. Procedures for the resolution of disputes are included. The convention is comprised of 320 articles and nine annexes. In addition, two other agreements that supplement UNCLOS have been adopted: The 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 United Nations 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.[3]

Ocean law is governed by several regional and specialised treaty instruments in addition to the global agreements. These treaty instruments address issues like the peaceful use of the sea, maritime space, conservation and management of living resources, protection of the marine environment, communications, illegal activities, and the administration of regional seas.[4]

There are four other Conventions concerning the law of the sea stemming from the First UN Conference on the law of the Sea in 1958. These four conventions are:

(i) The Convention on the Territorial Sea and the Contiguous Zone, 1958

(ii) The Convention on the High Seas, 1958

(iii) The Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958

(iv) The Convention on the Continental Shelf, 1958 and

(v) The Optional Protocol of Signature Concerning the Compulsory Settlement of Dispute.

II. LAW OF SEA CONVENTION, 1982

The United Nations Convention on the Law of Sea (UNCLOS) is an international treaty that

[2] Barbara Bean, *Law of the Sea,* American Society of International Law, 27 April 2015, 4.
[3] Ibid.
[4] Ibid.

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was adopted in 1982. It defines the rights and responsibilities of States with respect to their use of world oceans. UNCLOS establishes certain principles for various activities in sea like, navigation, fishing, exploitation of resources in different maritime zones. UNCLOS is the result of previous failed accomplishments of 1930 convention, 1958 convention. UNCLOS treaty was adopted on 10 December,1982. It came into force on 16 November, 1994 and has been ratified by over 160 states.

The main aim of UNCLOS is to establish legal framework for the use and conservation of the world's oceans and their resources. It addresses wide range of issues, including maritime boundaries, navigation, environmental protection, resource management and scientific research.

The UNCLOS establishes 12 nautical miles (1 nautical mile is equal to 1.852) as the breadth of the territorial sea from baseline which was previously 3 nautical mile, with a right of innocent passage through these waters by other states. Protect coastal states sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of their waters in an up to 200 nautical mile exclusive economic zone (EEZ). Provides coastal states with the right to prevent, reduce, and control marine pollution from vessels in ice-covered areas within the limits of the EEZ. Confirms coastal state jurisdiction over the living and non-living resources of the seabed and subsoil of the continental shelf in the EEZ, and in some instances, in the "extended continental shelf" that lies outside the EEZ. Defines the process to delineate and achieve international recognition for the outer limits of the continental shelf where they lie beyond the 200 nautical mile limit. Establishes a legal framework for the development of the mineral resources of the deep seabed and sharing of the benefits, for areas located beyond coastal state jurisdiction. Sets principles for the conduct of marine scientific research, imposes duties on all states to ensure, through proper conservation and management measures, the long-term sustainability of fish resources and sets comprehensive rules for the protection and preservation of the marine environment and imposes duties on states to protect the oceans from all sources of pollution.

III. TERRITORIAL SEA

A State can exercises sovereignty and control within its territory which includes land and water, and the air space above such land and water.

Territorial waters is that area of the sea which is in between the land and the high sea, adjacent to a coast, so that portion of waters was recognised as territorial waters The term "territorial waters" refers to the area of the sea between a line parallel to the shore and a certain distance

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away from it. The majority of maritime States previously set this distance at three marine miles, measured from low-watermark..[5]

The legal status of the territorial sea is well enumerated under Article 2 of the Third United Nations Convention on the Law of the Sea, 1982, is similar as given under UNCLOS I. A territorial sea refers to the area of water adjacent to a country's coastline that is considered to be under its sovereignty. It extends outward from the baseline, which is usually the low-water mark along the coast, and typically extends up to 12 nautical miles (about 22.2 kilometers) from the baseline. Within this zone, the coastal state has certain rights and jurisdiction, including the authority to enforce its laws, control navigation, and exploit natural resources.

In *Anglo-Norwegian Fisheries*[6] case the UK challenge the 1935 Decree and to declare the principles of international law to be applied in defining the baselines. The International Court of Justice arrived at the conclusion that the method adopted by the Norwegian Government in the 1935 Decree was not contrary to international law. Three methods have been contemplated to affect the application of the low-water mark rule.[7] The first method, the trace parallel, consists of drawing the outer line of the belt of territorial waters by following the coast in all its sinuosities. The court observed that this method may be applied without difficulty to an ordinary coast which is not too broken. Where a coast is deeply indented and cut into and where it is bordered by an archipelago[8] such as the *`skjaergaard'* such a method is not possible. The arcs of circles method which is constantly used for determining the position of a point or object

(A) Territorial Sea and South China Sea

The People's Republic of China (PRC) 1992 Law asserts a 12 nm territorial sea. If a state claim sovereignty over a 12-M territorial sea, including the airspace above and the seabed and subsoil below, is generally consistent with international law. However, the PRC's assertion of a territorial sea measured from unlawful straight baselines or otherwise based on treating entire South China Sea Island groups as collective units is not permitted by international law and is not recognized by the United States. Likewise, the PRC may not assert a territorial sea generated by any South China Sea feature that is not an island as defined in Article 121(1). This includes

[5] Rose Varghese, "*Territorial Sea and Contiguous Zone Concept and Development*", Cochin University Law Review Vol. IX, pg 438, 1985

[6] U.K. v. Norway, (1951) I.C.J. Rep. 116; also see (1951) International Law Reports, Vol. 18, pg 86

[7] the separation between the infralittoral level of the foreshore and the circalittoral level, always covered with water.

[8] Article 46 clause (b) of UNCLOS III "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

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submerged features, such as Macclesfield Bank, Vanguard Bank, and James Shoal, as well as low-tide elevations that are beyond any lawful territorial sea entitlement, such as Mischief Reef and Second Thomas Shoal. Under UNCLOS it is given that the features that are not islands in their natural state cannot be artificially altered to meet the definition of an island and are not entitled to a territorial sea of their own. 12nm territorial sea extent that would be consistent with international law with respect to the islands and island groups claimed by the PRC in the South China Sea. The PRC's 1992 Law also contains unlawful restrictions on the right of innocent passage within the territorial sea. Specifically, it contains a requirement that foreign military ships obtain permission from the PRC prior to entering its territorial sea. In 2021, the PRC revised its Maritime Traffic Safety Law in a manner that unlawfully restricts the right of innocent passage. Under international law as reflected in Article 17 of the Convention, the ships of all States, including warships, enjoy the right of innocent passage through the territorial sea. The right of innocent passage do not require advance notification or permission requirements. The United States has protested the PRC's unlawful restrictions on innocent passage both diplomatically and operationally.[9]

IV. CONTIGUOUS ZONE

The development of the contiguous zone concept dates back to the Hovering Acts enacted by Great Britain in the 18th century against foreign smuggling ships. In the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone in Article 24 was the first attempt to codify the contiguous zone which was later codified in Article 33 of UNCLOS.[10]

(A) Overview of the Contiguous Zone

Article 33 of UNCLOS states: [11]

1. 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.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which

[9] United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, Law of Seas, No 150, People's Republic of China: Maritime Claims in the South China Sea, pg 25
[10] Savita Nalísha Kum, *Maritime zones (contiguous zones) regulations*, LLM dissertation, pg-6, 2019-2020
[11] United Nation Convention for the Law of Sea 1982.

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the breadth of the territorial sea is measured.

The concept of the "Contiguous Zone" had found recognition in the Geneva Convention on the Territorial Sea and Contiguous Zone of April 28, 1958.

UNCLOS describes the contiguous zone as a zone contiguous to the territorial sea of the coastal State in Article 33. However, in Article 55, if it is claimed it will superimpose upon the EEZ, in the absence of a claimed EEZ, such area forms part of the High Seas according to Article 86 and the outer limit of the contiguous zone may not extend more than 24 nm from the baseline from which the Territorial Sea is measured according to Article 33(2).[12]

(B) Contagious Zone and South China Sea

The PRC's 1992 Law asserts a contiguous zone of 12 nm that is "outside of, but adjacent to, its territorial sea." Within the contiguous zone, the PRC asserts the authority to "exercise powers…for the purpose of preventing or punishing infringement of its security, customs, fiscal and sanitary laws and regulation or entry-exit control within its land territories, internal waters or territorial sea." The PRC's asserted authority to prevent and punish infringement of its "security" laws exceeds the coastal State's powers in the contiguous zone as it is not consistent with international law as reflected in Article 33 of the Convention. The United States has protested this claim.[13]

V. CONTINENTAL SHELF

Continental shelf refers to the seabed and subsoil of the submarine areas adjacent to but outside the territorial sea of a coastal state. The coastal States have the exclusive right to explore and exploit the natural resources of the continental shelf including both mineral and other non-living resources, and no other State may do so without express consent. Every coastal State is entitled to claim the continental shelf upto 200nm of the baseline from which the breadth of the territorial sea is measured, regardless of the configuration of the seabed. However, where the outer edge of the continental margin extends beyond 200nm, the coastal State may claim the legal title to a natural prolongation of its continental shelf but in no event can the outer limits of the continental shelf exceed 350nm from the baselines or 100 nm from the 2,500-metre isobath. If a State wishes to make such a claim it must make a submission to the Commission on the Limits of the Continental Shelf which will then make a final and binding recommendation

[12] Savita Nalísha Kum, *Maritime zones (contiguous zones) regulations*, LLM dissertation, 2019-2020 pg.7.
[13] United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, Law of Seas, No 150, People's Republic of China: Maritime Claims in the South China Sea, pg. 25-26.

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on the claim.[14]

In *North Continental Shelf Case*[15], ICJ explained the basis of the entitlement of a coastal State to its continental shelf. It stated:

> What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion,- in the sense that, although covered with water, they are prolongation or continuation of that territory, an extension of it under the sea.

(A) Article 76 and the UNCLOS Continental Shelf Regime

Article 76 begins by establishing a basic definition of the continental shelf that recognizes the interests of wide-margin states: A coastal state's continental shelf consists of either 200 nautical miles of the seabed measured from its territorial sea baselines, or, where the shelf stretches beyond this point, of the entire natural prolongation of its landmass up to one of two seaward limits. The article sticks with the legal understanding of continental shelf—the term refers to the entire continental margin, including the shelf, slope and rise. If a state is claiming only 200 nautical miles, article 76 has no more to say—the entire seabed within those 200 miles falls under the state's control, even if it is not, from a geological standpoint, part of the continental margin. For wide-margin states making extended claims, however, the article lays out a complicated formula for determining the actual outer boundaries of the continental margin. According to article 76, a state's extended continental shelf hits its outer limit either at any point where the thickness of the sedimentary rock is less than one percent of the distance between that point and the foot of the continental slope, or at any point sixty nautical miles from the foot. The foot of the continental slope is the point of maximum change in the gradient of the slope's base. To mark these outer limits, states use either of the two formulas to measure a collection of outer points at intervals of sixty nautical miles or less, and then draw a straight line from point-to-point. This line is the official boundary—beyond it lies the deep seabed—and it can extend no further than 350 nautical miles from the territorial sea boundaries, or "100 nautical miles from the 2500meter isobath, which is a straight line connecting the depth of 2,500 meters." States can use any collection of measurement options they want to make their claim—for example, establishing some points based upon sedimentary thickness and others at sixty nautical miles, depending on which measurement will give them the most territory. This is

[14] Alina laczorowska, Public International law, 5th edition, 2014 pg 288.
[15] Germany v. Denmark; Germany v. Netherland, International Court of Justice (ICJ) reports 1969.

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intended to allow wide-margin states to maximize their claims within the constraints of the outer limit requirements. To gather the submarine measurements that article 76 requires, states have to take sonic images of the sea floor, identify the various parts of the article 76 formula, figure out how to measure them based on the different options permitted, and satisfy other procedural requirements.[16]

(B) Rights and duties of coastal States over the continental shelf

Coastal States have sovereign rights over the continental shelf for the purpose of exploring and exploiting their natural resources. The rights conferred upon coastal States do not depend upon 'occupation, only a coastal State can (i) regulate or authorize any drilling for any purpose on the continental shelf or (ii) construct and authorize and regulate the construction of any artificial islands, installations and structures.

The rights of a coastal state to exploitation and exploration apply only to natural resources of the seabed and subsoil. Such rights do not, for example, confer upon a coastal state any right to wrecked ships or their cargo. The natural resources to which the continental shelf regime apply are (i) mineral and other non-living resources and (ii) sedentary species.

VI. EXCLUSIVE ECONOMIC ZONE (EEZ)

It is an area beyond and adjacent to the territorial sea. In this area, the coastal State enjoys certain sovereign rights subject to the rights and freedoms accorded to all other States. EEZ emerged primarily through the efforts of developing States seeking to exercise greater control over the exploitation of economic resources offshore. Although the EEZ was created by the LOSC, the concept of it and underlying principles relating to its creation were grounded in emerging State practice prior to UNCLOS III, specifically claims of the US and many Latin American States to fisheries zones.[17] Despite State practice preceding UNCLOS III, it was the incorporation of the concept into the draft Convention during the course of negotiations that directly led to its development as a customary norm. [18]

In *La Bretagne* Arbitration,[19] the majority judgment held:

The third United Nations Conference on the Law of the Sea and the practice followed by States on the subject of sea fishing even while the Conference was in progress have crystallized and

[16] Anna Canvar, "*Accountability and the Commission on the Limits of the Continental Shelf:Deciding who owns the ocean*", IILJ Emerging Scholars Paper 15 (2009) (A Sub series of IILJ Working Papers) Finalized 8/11/2009 pg.9-10.
[17] Alina laczorowska, Public International law, 5th edition, 2014 pg. 214
[18] Ibid
[19] Canada v. France, Permanent Court of Arbitration, 1986.

sanctioned a new international rule to the effect that in its EEZ a coastal state has sovereign rights in order to explore and exploit, preserve and manage natural resources.

A coastal State does not automatically acquire sovereign rights over the EEX. The EEZ must be claimed. While jurisdiction over the continental shelf arises from 'the innateness of local authority over submarine terrain', there is no inherent quality attached to the EEZ that permits a coastal State to exercise rights over it without first making a claim. The ICJ pointed out that although there can be a continental shelf without an EEZ there cannot be an EEZ without a corresponding continental shelf.[20]

(A) Rights and duties of a coastal State

A coastal State does not exercise sovereignty over the EEZ but may instead acquire, on the basis of the LOSC, certain sovereign rights over the resources contained therein. These rights extend not only to the living resources in the oceans, but also to the resources of the seabed and its subsoil, and also to the airspace above, and are to be exercised for the purpose of exploration, exploitation, conservation and management. A coastal State also has the right to engage in other 'activities for the economic exploitation and exploration of the zone, such as the production of energy from water currents and winds'.

The EEZ is a bit deceptive term in that a coastal State is not permitted to claim exclusive rights over the living resources therein, but has preferential fishing rights. This means that a coastal State cannot wholly exclude other States from fishing in its EEZ. A coastal State is required to determine the allowable catch or the extent of fishing which will permit maintenance or, if appropriate, restoration of its fisheries populations, it is also required to determine its capacity to harvest living resources and, if its capacity is insufficient for it to harvest the entirety of its allowable catch, to grant other States access to the surplus. However, a coastal State is granted exclusive rights to non-living resources. [21]

Along with rights coastal States imposed with some duties like, in relation to artificial islands, installations and structures. These must be constructed, operated and dismantled in a manner that safeguards navigation.[22]

Under LOSC the EEZ jurisdiction confers on the coastal State in relation to the:

- The establishment and use of artificial islands, installations and structures;

[20] Supra 49 at 315.

[21] Ibid

[22] Article 60 LOSC

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- Marine scientific research ; and
- The protection and preservation of the environment.

(B) Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed. [23]

In this way a coastal State can enforce its laws to be followed by other States.

VII. CONTINENTAL SHELF, EEZ AND SOUTH CHINA SEA

The PRC's 1998 Exclusive Economic Zone and Continental Shelf Act (1998 Law) asserts a 200 nautical miles EEZ and a continental shelf that extends ". . . 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." Within its EEZ and continental shelf, the PRC claims "sovereign rights" related to natural resources and economic activities and "jurisdiction" related to artificial islands, installations, and structures; marine scientific research; and the protection and preservation of the marine environment. These jurisdictional provisions relating to the EEZ and continental shelf are generally consistent with international law as reflected in Parts V and VI of the Convention. The PRC's assertion of EEZ and continental shelf authority, however, exceeds what is provided for in the Convention in a number of other respects. Within the EEZ, the PRC also asserts "jurisdiction with regard to customs, fiscal, health, security and immigration laws and regulations." Such jurisdiction is not consistent with international law as reflected in the

[23] Article 73 LOSC

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Convention and is not recognized by the United States. The United States has protested efforts by the PRC to assert such jurisdiction in connection with incidents relating to U.S. military vessels and aircraft operating in the PRC's claimed EEZ.[24] The PRC's Surveying and Mapping Law, promulgated in 2002, also exceeds the scope of EEZ and continental shelf authority provided for under the Convention by requiring that any surveying and mapping by a foreign entity in "sea areas under the jurisdiction of the People's Republic of China" are subject to approval by the PRC. Although the Convention provides for coastal State jurisdiction in the EEZ and continental shelf over "marine scientific research," this authority does not extend to all surveying and mapping activities, such as military surveys and hydrographic surveys. Accordingly, the United States has protested this claim, including through operational assertions, numerous times. Regarding the geographic extent of the PRC's EEZ and continental shelf in the South China Sea, the PRC asserts that it has EEZ and continental shelf, "based on Nanhai Zhudao," including "Zhongsha Qundao" and "Nansha Qundao." As discussed above, this is not consistent with international law, as the PRC cannot lawfully claim baselines (from which maritime limits are measured) enclosing each of its claimed island groups "as a whole." The tribunal in The South China Sea Arbitration also concluded that all of the islands within the Spratly Islands fall within the definition of "rocks" set forth in Article 121(3) and are, thus, incapable of generating an EEZ or continental shelf. The tribunal's award is final and binding on the PRC and the Philippines pursuant to Article 296 of the Convention. The PRC's 1998 Law provides that any State enjoys the freedom to lay submarine cables and pipelines in the PRC's EEZ and on its continental shelf "provided that it observes international law and the laws and regulations of the People's Republic of China." It further provides that "[t]he laying of submarine cables and pipelines must be authorized by the competent authorities of the People's Republic of China." A coastal State may not restrict the freedom to lay submarine cables and pipelines in the EEZ or on the continental shelf except in accordance with the provisions of Article 79 of the Convention. The PRC's requirement of prior authorization for the laying of submarine cables in its EEZ and on its continental shelf exceeds its authority over those activities as set forth in the Convention.[25]

In *Black sea delimitation* case[26], Russia and Ukraine had overlapping claims to maritime areas

[24] Maritime Claims Reference Manual, People's Republic of China (2017), U.S. Dep't of Defense, Navy Judge Advocate General's Corp website available at https://www.jag.navy.mil/organization/code_10_mcrm.html ;Department of Defense Annual Freedom of Navigation (FON) Reports, available at https://policy.defense.gov/ousdp-offices/fon/.

[25] United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, Law of Seas, No 105, People's Republic of China: Maritime Claims in the South China Sea, pg 26-27

[26] Romania v. Ukraine , International Court of Justice, 2009.

in black sea. The main issue of the case was the delimitation of the continental and exclusive economic zone between these two states. The Court ruled that the delimitation line between Romania's continental shelf and Ukraine's continental shelf in the Black Sea should be determined by applying a equidistance method. Court established a single maritime boundary line between these two states, determining their respective maritime zones.

Same should be followed by the China and other neighbouring nations to resolve their dispute for overlapping claims on continental and EEZ .

VIII. STRAITS

Straits are narrow passages of water surrounded by land areas linking open seas. It's a naturally occurring geographical feature that often serves as a passageway for maritime traffic between different regions. The term "strait" comes from the Old English word "*streccan*," which means to stretch or extend, referring to the narrow stretch of water that extends between two larger bodies of water.

These straits are important maritime waterways for international navigation and overflight. These straits become important when the coastal states claiming their sovereignty over these straits. These straits are used for trading purposes where the trade of many nations depends.

(A) Law relating to Straits under UNCLOS

Article 34

Legal status of waters forming straits used for international navigation

1. The regime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.

2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

Article 35

Nothing in this Part affects:

(a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;

(b) the legal status of the waters beyond the territorial seas of States bordering straits as

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exclusive economic zones or high seas; or

(c) the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

Article36

High seas routes or routes through exclusive economic zones through straits used for international navigation

This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply.

Article 38

Right of transit passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

Article 39

Duties of ships and aircraft during transit passage

1. Ships and aircraft, while exercising the right of transit passage, shall:

(a) proceed without delay through or over the strait;

(b) refrain from any threat or use of force against the sovereignty, territorial integrity or political

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independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;

(d) comply with other relevant provisions of this Part.

2. Ships in transit passage shall:

(a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

(b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

3. Aircraft in transit passage shall:

(a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

(b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40

Research and survey activities

During transit passage, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the States bordering straits.

Article 41

Sea lanes and traffic separation schemes in straits used for international navigation

1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.

2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.

3. Such sea lanes and traffic separation schemes shall conform to generally accepted

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international regulations.

4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

5. In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States concerned shall cooperate in formulating proposals in consultation with the competent international organization.

6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.

7. Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

Article 42

Laws and regulations of States bordering straits relating to transit passage

1. Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:

(a) the safety of navigation and the regulation of maritime traffic, as provided in article 41;

(b) the prevention, reduction, and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;

(c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;

(d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.

2. Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.

3. States bordering straits shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations.

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5. The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

Article 43

Navigational and safety aids and other improvements and the prevention, reduction and control of pollution

User States and States bordering a strait should by agreement cooperate:

(a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and

(b) for the prevention, reduction and control of pollution from ships.

Article 44

Duties of States bordering straits

States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.

Corfu Channel case [27] Corfu is an island in the Mediterranean Sea under the sovereignty of Greece. The Corfu Channel lies between the island of Corfu and the European mainland and is bordered by Albania and Greece. The case arose from incidents that occurred on October 22nd, 1946, in the Corfu Strait: two British destroyers struck mines in Albanian waters and suffered damage, including serious loss of life. The Albanian Government refused to remove the mines but the British forces continued with their military arrangements to sweep the mine-stricken waters through an operation they named 'Operation Retail' on 12 and 13 November 1946.[28] In this case three questions were raised. 1) Whether the British government liable for compensation from Albania for the explosion, 2) Whether the clearing of mines by British military from Albanian water is the breach of sovereignty of Albania over its water, 3) Whether the foreign military vessels transit through a strait without prior permission of the State

[27] Corfu Channel Case (United Kingdom v. Albania); Assessment of Compensation, 15 XII 49, International Court of Justice (ICJ), 15 December 1949, available at: https://www.refworld.org/cases,ICJ,402398c84.html

[28] Mohd Hazmi bin Mohd Rusli, A Historical Overview on the Legal Status of Straits Used for International Navigation under International Law, AALCO Journal of International Law, Vol.1, (2012) 114. Emran, A., The Regulation of Vessel-Source Pollution in the Straits of Malacca and Singapore (Master of Maritime Studies (Research) Thesis, University of Wollongong, 2007), 45-46; George, M., Legal Regime of the Straits of Malacca and Singapore (LexisNexis, 2008), pg. 27-29

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bordering strait.

ICJ for the first question made Albania liable to pay compensation to British government because Albania omitted to reveal or publicise the danger beneath the waters. For the second question ICJ decided Britain had violated Albania's sovereignty by sweeping the mines in Albanian waters during the commencement of 'Operation Retail' without prior permission from Albania.[29] Even though the Corfu Channel was a strait used for international navigation, Albania still had the right to exercise sovereignty over it.[30] The Last question ICJ decided that the foreign vessels has the right to transit through the strait without prior authorization of coastal states as long as it is innocent passage. It expounded that the right of innocent passage cannot be prohibited by a coastal State in times of peace.[31]

IX. ARCHIPELAGOS

An archipelago is a group or chain of islands that are usually located close to each other in a body of water, such as a sea, ocean, or river. The term "archipelago" originates from the Italian word words "*archi*" meaning "chief" or "principal," and Greek word "*pelagos*" meaning "sea." Archipelagos can vary in size, with some consisting of just a few islands and others containing hundreds or even thousands of islands. According to article 46 of UNCLOS archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands; and "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Archipelagos can be found all around the world, and they often have unique geological, ecological, and cultural characteristics. They can be formed through various geological processes such as tectonic activity, volcanic activity, or erosion. Some well-known examples of archipelagos include the Hawaiian Islands, the Indonesian Archipelago, the Philippines, and the Aegean Islands in Greece.

Archipelagos can have significant ecological importance, as they may be home to diverse and distinct species of plants and animals that have evolved in isolation on the different islands. Additionally, they often have cultural significance, with many indigenous and local communities developing their own traditions, languages, and ways of life on these isolated

[29] Ibid 115. Bishop (n56), pp. 580-583; Karoubi (n56) pg.129.
[30] International Court of Justice (n 56) pg.36.
[31] Ibid at 28-29.

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landmasses. Archipelagic waters are not considered part of the high seas and are not subject to the sovereignty of any State

(A) Rights of Archipelagic States

Under article 49 of UNCLOS the sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines, this sovereignty of archipelagic States over archipelagic waters is extend to its air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein and lastly, the system of passage in the archipelagic sea lanes established by the Convention should not affect the status of archipelagic waters, nor on the archipelagic State's exercise of its sovereignty over these waters, their airspace, the subsoil, the subsoil thereof and the resources therein.

Thus, the sovereignty of the State over its archipelagic waters is different from its sovereignty over its internal waters, since the sovereignty of the State over the internal waters is absolute or total sovereignty. While archipelagic waters, although subject to the archipelagic sovereignty of the archipelagic State in principle, have rights established in the archipelagic waters of other States, with a view to ensuring the freedom of international navigation.[32] Archipelagic waters differ in their legal status from the situation of the territorial sea, despite the fact that they are subject to state sovereignty. This difference or paradox shows that archipelagic waters lie behind the archipelagic baselines from which the territorial sea of the State begins. However, the Archipelagic State has obligations in those waters vis-à-vis other States beyond the established obligations in the territorial sea.[33]

(B) Right passage through Archipelagic Waters

Archipelagic state have rights over the archipelagic waters but there are some restrictions to the archipelagic state to enjoy its sovereignty over the archipelagic waters and some rights are given to the other states in the water these rights are:- 1) right of innocent passage, and 2) the right of archipelagic traffic.

1. Right of innocent passage

Under article 52 of UNCLOS the ships of all states can pass through archipelagic waters and enjoy their right to innocent passage but this right is subject to the restriction which is given under article 53 of UNCLOS and the archipelagic state has the right to temporarily suspend the foreign ships from archipelagic waters if the suspension is required for security purpose but it

[32] Maher Gamil Aboukhewat, The Legal Status of Archipelagos in the International Law of the Sea, Economics, law and Policy, Vol.2, 2019, 196. Amer, 2000, pg. 313.
[33] Ibid at 196.

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should be noted here that that the suspension will only take effect if it is duly published.

2. Right of Archipelagic Sea Lanes

This right is given under article 53 of UNCLOS where a archipelagic state may specify the sea lanes and air routes for the foreign ships and aircraft which are passing through the archipelagic waters and the adjacent territorial sea and these ships and aircrafts enjoy the right through these sea lanes and air routes. These foreign ships and aircraft pass which passes through sea lanes and air route as in accordance with the Convention to enjoy their right of navigation and overflight , solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. These sea lanes and air routes means that the ships and aircrafts can pass through the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary. There are specific point given for entry and exit is given for ships and aircraft, such ships and aircrafts should not deviate more than 25 nautical miles to either side of such axis lines during passage. Archipelagic states also provide the traffic separation schemes to the ships which passes through these waters for their safety while passing though sea lanes. These schemes may be substitute to other sea lanes or traffic separation scheme which previously designated for other sea lanes. These schemes should be in confirmation of international norms. Article 53 (9) says in designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them. Article 53(10)The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given. Article 53(11) Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article and under sub clause (12) If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Under UNCLOS article 5 the normal baseline is “Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water

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line along the coast as marked on large-scale charts officially recognized by the coastal State". The straight baseline given under article 7 is coastal states may employ straight baselines in "localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity."[34] Waters on the landward side of the baseline become the internal waters of the coastal state in which coastal states enjoy sovereignty (Article 2(1)); consequently, the passage of foreign vessels is not allowed therein—no innocent passage is bestowed with the exception of areas that had not previously been considered as internal waters.[35]

Fisheries case[36] the Norwegian Government had, in the northern part of the country (north of the Arctic Circle) delimited the zone in which the fisheries were reserved to its own nationals. 'the United Kingdom asked the Court to state whether this delimitation was or was not contrary to international law. In, its Judgment the Court found that neither the method employed for the delimitation by the Decree, nor the lines themselves fixed by the said Decree, are contrary to international law; the first finding is adopted by ten votes to two, and the second by eight votes to four.[37]

Still there is no law on the archipelagos which are middle in the sea and the continental powers are exercising their sovereignty over these archipelagos which needed specific regulation to maintain integrity. Article 53 recognizes the strategic importance of archipelagic waters and aims to prevent conflicts by providing a framework for cooperation between archipelagic states and other nations that rely on these sea lanes for their economic and strategic interests.

(C) China's Claim over outlying Archipelagos

There is no law over outlying archipelagos but the continental states are exercising their right over these outlying archipelagos based on customary international law. China's society of international law (CSIL) argues that China also has right to exercise its sovereignty over outlying archipelago based on its historic rights over South China Sea. The CSIL publish a report in which they claim its right over outlying archipelago for the South China Sea:

[34] U.N. Convention on the Law of the Sea art. 7(1), Dec. 10, 1982, 1833 U.N.T.S. 397 ("In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.").

[35] Ibid. art. 8 ("Except as provided in Part IV [Archipelagic States], waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State. 2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.")

[36] United Kingdom v. Norway, Judgment, 1951 I.C.J. Rep. 133 (Dec. 18).

[37] Fisheries case, Judgment of 18 Dec.1951, https://www.icj-cij.org/sites/default/files/case-related/5/1811.pdf.

"China's [South China Sea Islands as archipelagos] include…islands, reefs, shoals and cays of various numbers and sizes. China's claims to maritime entitlements have always been based on each archipelago as a unit…[the Spratly Islands]…[possess] all the characteristics of an archipelago, i.e., formed by islands, reefs, cays, banks, interconnecting waters and other natural features…By geographical characteristics, [the Spratly Islands are] fully qualified as an archipelago [forming] one economic and political entity…The archipelagic unit status of China's [Spratly Islands] is also widely acknowledged and recognized in the international community. These archipelagos face Philippines and China, there are some archipelagos which are less than 200 nautical miles from Philippines so there are overlapping claims on South China Sea between China and Philippines for the maritime delimitation."[38]

The claim over these outlying archipelagos is due to the natural resources found in the region these outlying archipelago is rich in oil and natural gas, China depend on Russia and Saudi Arabia for the oil imports if China succeed in controlling these outlying archipelago then its dependence on the Russia and Saudi Arabia may decreases. The other reason for claiming outlying archipelago is to eject the US from South China Sea. China is contesting for exercising its sovereignty over Spratly Island archipelagos. Chinese scholars rejecting the UNCLOS on the archipelagos and consider it as biased towards continental states because these states exercising their sovereignty over outlying archipelagos.

China assuming the Spratly Island as Chinese archipelago. Chinese scholars asserts "interconnecting waters within the archipelago are under China's sovereignty over Spratly island".[39] Because of overlapping claims on Spratly Island archipelagos China want to exercise its sovereignty over these archipelagos and outlying archipelagos based on customary international law which is not given under UNCLOS III.

X. RIGHT OF INNOCENT PASSAGE

The right of innocent passage for foreign vessels within the territorial sea of a coastal State is defined as "navigation through the territorial sea for the purpose of (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility." Passage must be "continuous and expeditious," but it may include stopping and anchoring when incidental to ordinary navigation or rendered necessary by unusual circumstances. Article 19 of the LOSC declares that passage is "innocent" so long as it is not prejudicial to the peace, good

[38] Chinese Society of International Law, The South China Sea Arbitration Awards: A Critical Study, 17 CHINESE J. INT'L L. Vol.17 issue.207, (2018) pg.254.
[39] Ibid at 477.

order, or security of the coastal State and further outlines a list of 12 activities that are considered "prejudicial." This list effectively precludes a range of military operations, including practicing or exercising weapons; collecting information to the prejudice of the coastal State; launching, landing, or taking on board any aircraft or military device; and jamming coastal State communications. Submarines and underwater vehicles conducting innocent passage must navigate on the surface and show their flag. It is important to note that the right of innocent passage only applies to foreign vessels. Aircraft in flight are not entitled to innocent passage and thus aircraft must remain onboard vessels during innocent passage. An exception to the authority to deny innocent passage to aircraft exists within the limited context of the "right of assistance entry" based on the long-recognized duty of mariners to render immediate rescue assistance to those in danger or distress at sea. The right of assistance entry permits entry into the territorial sea by ships or, under certain circumstances, aircraft without permission of the coastal State for the limited purposes of rescue or assistance. This principle of customary international law is also reflected in the "duty to render assistance" described in Article 98 of the LOSC. The right of innocent passage applies to straits used for international navigation in accordance with the LOSC and cannot be suspended even when a situation of armed conflict exists. The right of innocent passage also applies to archipelagic waters, but it can be subject to temporary published suspensions for the protection of coastal State security.

XI. HIGH SEAS

The High Seas are all parts of sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. In other words, the high seas comprise the ocean space beyond the jurisdiction of coastal States, the waters superjacent to the seabed, the ocean surface, and the atmosphere above. The high seas are open to all States, whether coastal or landlocked.[40] No State may validly purport to subject any part of the high seas to its sovereignty.[41] Every State, both coastal and landlocked, has the right to sail ships flying its flag on the high seas.[42] The State, whose flag those ships fly, possesses exclusive jurisdiction, except in a few exceptional circumstances, which have been expressly provided under the UNCLOS or under other treaties, by which the State concerned is bound. No authority other than that of the flag State can order the arrest or detention of the ships, even as a measure of investigation. In case of a collision or any other incident of navigation regarding a ship on the high seas, involving the penal or disciplinary proceedings of the master or of any

[40] Article 87, UNCLOS 1982.
[41] Article 88, UNCLOS 1982.
[42] Article 90, UNCLOS 1982.

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other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.[43] This provision deems to have overruled the rule established by the PCIJ in the Case of the *S.S. Lotus*[44] in 1927 that allowed concurrent jurisdiction in case of a collision on the high seas between two vessels flying different flags.

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. Fenwick opines that High Sea or Open Sea is the sea outside the territorial waters. The High Seas were defined in Article 1 of the 1958 Geneva Convention on the High Seas as all parts of the sea that were not included in the territorial sea or in the internal waters of a state. In the view of recent developments, this definition has become inadequate. This provision mainly replicates the customary international law, though in consequence of the developments the definition in article 86 of the 1982 Convention includes: "...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...". Article 87 of the 1982 Convention provides 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.[45]

In opposition to the principle of maritime sovereignty, the principle of the "freedom of the high seas" began to develop, has pointed out , in accordance with the mutual and obvious interests of the maritime nations, Article 2 of the Geneva Convention on the High Seas, 1958 provides that the freedom of the high seas comprises *inter alia*, both for the coastal and non-coastal states. [46] There are four freedoms which is mentioned in this Convention. These are :

i. freedom of navigation,

ii. freedom of fishing,

iii. freedom to lay submarine cables and pipelines, and

iv. freedom to fly over the high seas.

[43] Article 97, UNCLOS 1982.
[44] France v. Turkey, Permanent Court of International Justice, 1927.
[45] Arif Ahmed, "*International Law of the Sea: An overlook and case study*", Beijing law review, Vol.9 No.9, 2017 pg. 33.
[46] ibid

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These freedoms and others which are recognized by the general principles of international law shall be exercised by all states with regard to the interests of other states.[47] In article 87 of the 1982 Convention two more freedoms were inserted. The freedoms of high seas expressly enumerated in Article 87 (1) of the Convention are following:

(1) freedom of navigation;

(2) freedom of over flight;

(3) freedom to lay submarine cables and pipelines;

(4) freedom to construct artificial islands and other installations permitted under international law;

(5) freedom of fishing;

(6) freedom of scientific research.

Article 87 (2) of the Convention states that, these freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the area. It is further provided that; the high seas shall be reserved for peaceful purposes.[48]

No State may lawfully purport to subject any part of the high seas to its sovereignty.[49] Grotius, the father of international law was one of the first strenuously to attach the extensive claims to freedoms and sovereignty. His objections, as reflected in his famous book Mare Liberum, were based predominantly upon two grounds:

(a) No ocean can be the property of a nation as it is impossible for any nation effectively to take it into possession by occupation; and

(b) Nature does not give a right to anybody to appropriate things that may be used by everybody and are exhaustible.

In other words, open sea is a res gentium or *res extra commercium.*[50]

Now, Article 86 of the 1982 UNCLOS provides for the application of the provisions of this Part as follows:

> The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or

[47] ibid.
[48] Article 88 UNCLOS 1982.
[49] Article 89 UNCLOS 1982
[50] Supra 37 at 34.

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> in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 86 says the high seas are those parts of the sea that do not belong to the EEZ, the territorial sea, the internal waters, or the archipelagic waters if it is an archipelagic state. If we elaborate the article 86 it means that the high seas start at 200 nautical miles from a state's coastline, since that is the outer boundary of the EEZ.

It is important to note that while the EEZ is not a part of the high seas but there are some of the freedoms linked to the high seas apply in EEZ, like the freedom of navigation, overflight, laying submarine cables and pipelines and every other internationally lawful use connected to these.[51] This final use has been employed, particularly by the United States, as a basis for conducting military activities in the EEZ, without notice or the consent of the coastal state. All activities frequently carried out on the high seas can be carried out in the EEZ as well, again without the need for notice or coastal state consent. Examples include: weapons testing, military exercises, maritime security, and law enforcement operations (like the repression of piracy), and the right of visit and flight operations. The freedom of marine scientific research and freedoms relating to the natural resources of the high (including fishing) seas do not apply. This is not without its risks. A clash between a coastal state and a state using its EEZ is not unlikely, especially when it comes to those principles that the LOSC does not clearly define, like marine scientific research, military activities, and peaceful uses of the seas. These freedoms apply together with the exclusive rights of the coastal state, insofar as they are not incompatible with the legal regime of the EEZ. The reasoning behind this is a logical consequence of the freedom of the high seas. Whenever states have tried to expand the area of national jurisdiction and thus impinge on the *mare liberum* principle, other states have resisted this and seen it as derogation from the freedom of the high seas. So when the creation of the EEZ was being negotiated, it was decided that the freedoms that apply within it should be the same, both quantitatively and qualitatively, as those existing at the high seas. The same qualitatively means that the nature and extent of the right should be the same.

(A) Freedom of High Seas

Article 87 of the LOSC provides for the freedom of the High Seas as follows:

> 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by

[51] Article 58 UNCLOS 1982.

other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2;

(f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Under article 87, there is non-exhaustive list of the more specific freedoms of the high seas: navigation, overflight, laying submarine cables and pipelines, constructing artificial islands and other installations, fishing and conducting scientific research. This list was not meant to be the be-all and end-all of the freedom of the high seas; it is only a couple of examples. This is because of several reasons, like the fact that ocean technology is constantly developing and changing, so it is impossible to foresee what the uses of the high seas are going to look like further down the line.[52] Another reason is that states cannot control the activities of other states at the high seas, so its users are free to do as they please, barring some restrictive rules.[53] By making the list exemplary instead of exhaustive, there is more flexibility in adding or changing freedoms later on. There are other freedoms that are not mentioned in this article. One example is that some naval maneuvers and weapon testing are allowed, although obviously only under certain conditions.[54] One specific instance of this is the testing of nuclear weapons by the United States in the 1950s.[55]

In other cases, this has been contested by other states, like in the case of France closing off a large part of the ocean to test weapons in the 70s.[56] But this particular one has not been without

[52] R.R. CHURCHILL and A.V. LOWE, The Law of the Sea, Manchester, Manchester University Press ND, 1988, 166.
[53] R.R. CHURCILL and A.V. LOWE, The Law of the Sea, Manchester, Manchester University Press ND, 1999, 205.
[54] Supra 51 at 168.
[55] N. KLEIN, *"Legal limitations on ensuring Australia's maritime security*", Melbourne Journal of International Law, vol. 7, issue 2, 2006, pp. 306-338.
[56] supra 44 at 206.

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its share of controversy. Ofcourse freedoms that are not included in the treaty will be subject to more debate and resistance. There are activities some states claim to constitute a freedom, while other states deny this. In judging these cases it can be useful to apply the general principle that if a use is compatible with the status of the high seas and no specific rule excludes it, it constitutes a freedom.[57]

The High Seas are open not only to coastal states, but to land-locked states as well. Article 125 of the LOSC deal with the right of access to and from the sea and freedom of transit. Before the LOSC there was the Geneva Treaty of 1958 that provided for this general principle in its article 3. However, for land-locked states the LOSC is a significant step forward.

Article 89 provides for Invalidity of claims of sovereignty over the high seas as follows:

> No State may validly purport to subject any part of the high seas to its sovereignty.

The above provision signifies that a state cannot lay claim over part of the high seas and bring it under its sovereignty. It is not only states that are incapable of making these kinds of claim but international organizations are also not allowed to do this either. The high seas are part of the international public domain and as such do not fall under the jurisdiction of any inter-state cooperation.

(B) Limitations on Freedom of High Seas

a) Reasonable use of high seas – The principle of reasonable use implicates that when carrying out activities at the high seas, states must consider the interests of other states while using the high seas. It also implies that states should not indulge in those activities that interferes with the exercise of the principle of freedom of the high seas by other states. This means that states should not engage in activities that have a negative impact on the use of the high seas by another state. Since all states have the right the exercise the high seas freedoms, so the states must be aware about the rights of other states and maintain good balance.

b) Peaceful purpose – Article 88 says that the high seas are reserved for peaceful purpose. Like this area should not be used for testing nuclear bombs which is not even legal.

c) Conservation and management of the sea's living resources –States must cooperate to ensure the conservation and sustainable management of living marine resources, such as fish and other aquatic species. This includes measures to prevent overfishing and protect vulnerable species.

d) Marine Scientific Research – While states have the freedom to conduct marine scientific research, this should be done in accordance with international regulations, and coastal states

[57] ibid

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have the right to regulate research within their EEZ.

e) Interference with Cables and Pipelines – States are prohibited from interfering with the laying, maintenance, and operation of submarine cables and pipelines.

(C) Flag state Jurisdiction

The high seas are those area of sea where no state can exercise sovereignty. The ships which are passing through these high seas are dealt with the domestic jurisdiction of the state whose flag they have in the ship. Under Art.92(1) it is given that the ship under flag of one state have exclusive jurisdiction over high seas.

In *Lotus case*[58] there was collision of French ship (Lotus) and Turkish ship (Bouz-Kourt) in the high seas, the Turkish authorities arrested the captain (Demon) of French vessel where around 10 people of Turkish ship died, Demon managed to save some people included the captain of Turkish ship and reached Istanbul where the Demon arrested by the police and the case was tried in Turkish Court and sentenced him 80 days imprisonment with fine. The French captain argued that Turkey Court has no jurisdiction. Both French and Turkish government take their case to Permanent Court of International Justice (PCIJ). Here two questions were raised: 1) Whether or not the Turkey violated the principles of International Law for having no jurisdiction to try the case? 2) Whether or not the Turkey is liable for compensation to Demon if Turkey found to violate the principle of International Law. Here, for us the decision of first question is important. The PCIJ decided that Turkey has not violated the principle of international law and Turkey has jurisdiction of criminal proceedings against Demon because there is no such principle under international law the criminal proceeding can be exclusively initiated by the state who flag is flown.

There is nationality of ships as given under article 94 of UNCLOS and there are conditions for granting nationality, registration of the ships and for the right to fly the ship with flag. Ships cannot change its flag until and unless it is sold to some other state. The flag state jurisdiction depends on the nationality of the state it belongs and then the state has sovereignty over the ships with and outside its jurisdiction even on high seas.

Article95

Immunity of warships on the high seas

[58] France v. Turkey, PCIJ, 7 Sept.1927 https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_10/30_Lotus_Arret.pdf.

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article96

Immunity of ships used only on government non-commercial service

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

(D) Exceptions to flag state jurisdiction

There are two exceptions of the flag state jurisdiction on high seas. These are:-

1) Right to visit (Article 110) - the warships in order to intercept the foreign ships on the high seas is not justified unless it proves that the foreign ship is engaged in piracy, slave trade, unauthorized broadcasting, flag state of warship has jurisdiction under article 109, ship is without nationality, refusing to show flag, or the ship is of same nationality as warship.

2) Hot Pursuit (Article 111) – Coastal States have the right to pursue and arrest a vessel that has violated their laws within its waters and pursue it to the high seas, but this pursuit must be continuous and immediate. As given in article 111(1)" the hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established"

XII. REGIME OF ISLANDS

Article121

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

(A) China's Claim on Spratly Island

According to article 121 (1) and (3) there is a difference between island and a rock. It says island is that area where life sustain and rock cannot sustain life and have no exclusive economic zone and continental shelf. If we see here the Philippines v. China case then Philippine contended that Scarborough Shoal and all high tide features and consider it as rock China against it and entitled to have exclusive economic zone and continental shelf from Spratly island. The features on Spratly which is decided by Tribunal as rock to which China claim its sovereignty these are :-

(i) *Scarborough Shoal*

The tribunal decided that Scarborough shoal is a "rock" under article 121(3) and found that there is no evidence as claimed by China that fisherman working on these reef and any connection with the connection to, the high-tide rocks at Scarborough Shoal. Nor any other activity.[59]

(ii) *Johnson Reef*

Johnson reef is also a "rock" decided by the Tribunal. Tribunal finds "that Johnson Reef, in its natural condition, had at least one rock that reaches as high as 1.2 metres above Mean Sea Level and is accordingly a high-tide feature. Like the rocks at Scarborough Shoal, the high-tide portion of Johnson Reef lacks drinking water, vegetation, and living space"[60]. Tribunal lastly decided on Johnson reef that "While China has constructed an installation and maintains an official presence on Johnson Reef, this is only possible through construction on the portion of the reef platform that submerges at high tide. China's presence is necessarily dependent on outside supplies, and there is no evidence of any human activity on Johnson Reef prior to the beginning of China's presence in 1988".[61]

[59] Philippines v. China, Permanent Court Of Arbitration, 12 July 2016, 232, https://pcacases.com/web/sendAttach/2086.
[60] Ibid
[61] Ibid

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(iii) *Cuarteron Reef*

According to Tribunal Cuarteron reef is a "rock". This reef is barren and there will be no sustenance of life. It was found by the Tribunal that before 1988 there was no activity in Cuarteron reef it is only after 1988 that China constructed an installation and start working on the reef and it is only possible if the submerged part of reef is elevated. Tribunal also said no matter how much China elevated the portion it cannot become island from rock.

(iv) Fiery Cross Reef

Fiery cross reef is a "rock" in tribunal's view. "The Tribunal finds that Fiery Cross Reef, in its natural condition, had one prominent rock, which remains exposed approximately one metre above high tide, and is accordingly a high-tide feature. According to the Chinese sailing directions, the surface area of this rock exposed at high tide amounts to only two square metres. The high-tide portion of Fiery Cross Reef is minuscule and barren, and obviously incapable, in its natural condition, of sustaining human habitation or an economic life of its own".[62] Tribunal find the same construction of an installation and all same facts as find in Cuarteron reef.

(v) Gaven Reef (North)

Tribunal find the Gaven reef as "rock". Tribunal find the Graven reef "in its natural condition, had a small sand cay in its north-east corner that remains exposed at high tide and is accordingly a high-tide feature. It is a minuscule, barren feature obviously incapable, in its natural condition, of sustaining human habitation or an economic life of its own".[63] All other work after 1988 by China found by the Tribunal same as found in above two reefs.

(B) McKennan Reef

McKennan reef according to tribunal is a "rock". Tribunal finds that McKennan Reef includes a feature that remains exposed at high tide and is accordingly a high-tide feature.[64]

China claiming the Spratly Island as a whole which is contested by the Philippines before the Permanent Court of Arbitration. Tribunal found that Philippine is the archipelagic state and is entitled to archipelagic straight baselines and China is not a archipelagic state. China stated that the Spratly Islands should be enclosed within a system of archipelagic or straight baselines, surrounding the high-tide features of the group, and accorded an entitlement to maritime zones as a single unit. With this, the Tribunal cannot agree.[65] Tribunal do not consider the China's

[62] Ibid
[63] ibid
[64] Ibid
[65] Ibid at 236.

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sovereignty over Spratly Island because China is not a archipelagic state and it is doing against article 47, article 7 of the convention. Tribunal found that none of the high-tide features in Spratly Island is an island under article 121(1), these features do not support life sustenance or economic life. China is not entitled to Mischief reef and Second Thomas Shoal and there is no overlapping claims over these between China and Philippines, Tribunal found that these features are part of exclusive economic zone and continental shelf of Philippines. Tribunal decided that China's claim over Spratly Island is against the provisions of UNCLOS and the claims of Philippines over the Spratly Island is according to UNCLOS.

XIII. ENCLOSED AND SEMI-ENCLOSED SEAS

According to the article 122 enclosed or semi enclosed sea defined as "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States". South China Sea is a semi enclosed sea surrounded by Malaysia, China, Philippines, Vietnam, and Brunei. Due to its location the claims of the states surrounded by South China Sea is always in dispute and overlap with the claim of other neighbouring state. As given under article 123 that the surrounded states should cooperate each other. But the states surrounded by South China Sea is in conflict with each other for its claim in the sea. The main claim is of China who claim its sovereignty mainly on two Islands of SCS i.e., Paracel and Spratly Island. These islands are also claimed by Philippines and Vietnam and these states are not cooperating each other on management, exploitation, conservation, exploration of living resources of sea, not coordinate for protection and preservation of marine environment, to coordinate on scientific research. So somewhere they are violating the article 123 of UNCLOS. South China Sea is rich in minerals, natural resources both living and non- living, natural gas, and oil, so not only the neighbouring states of South China Sea but also states like US is also interested in the sea. China claiming the South China Sea by drawing a nine-dash line based on its historic claims. South China Sea is not rich in resources but also an important sea route also, more than 50 % of trade passes through this route. Most of Southeast Asian nations depend upon this sea route for its trade, not only these nations but Australia, Japan also depends on SCS for its trade. China exploiting the SCS by drilling the sea for deep seabed mining to extract minerals, doing marine scientific research in the sea.

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XIV. DEEP SEA-BED MINING

Deep sea mining means extracting minerals from the ocean floor for more than 600 feet below sea level.[66] The exploration and exploitation of seabed minerals can only be carried out under a contract with the international Seabed Authority (ISA) is as given under UNCLOS. The international seabed Authority so far sanctioned 31 contracts for exploration and exploitation of ocean floor out of these 31 contract 5 contracts given to Chinese companies.[67] According to ISA, the member states must ensure that while deep sea mining they are abide by the provisions of UNCLOS, but the requirements for deep sea mining for China is vague, creating lax regulation.[68] Generally four types of minerals are there in deep sea which can create the nations wealthy this is the reason why China is interested in deep sea mining. These minerals are :-

1) Liquid and Gaseous Substance like petroleum, helium, condensate, carbon-dioxide and nitrogen,
2) Ore- bearing silts and brines like zinc, copper, and iron,
3) Cobalt rich crusts

China started scientific exploration of two artificial islands, Fiery Cross and Subi Reefs in the South China Sea.[69] The research and development in SCS is not legitimate but China misinterpreted the traditional UNCLOS provisions to make its research legitimate. China spending heavily on deep sea mining and managed to extract the minerals from the seabed. China has two objectives for deep- sea mining: 1) to make the US and other nations dependent upon China for the mineral supply, and 2) the use of cobalt and other rare earth elements for defense manufacturing. [70] There is also a concern about impact on marine ecosystem by deep – sea mining. China has made huge progress in deep – sea technology but still lacks in regulation to conserve the ecosystem.

Not only China but the states like South Korea, Norway, Russia and other would like to start deep sea mining. Japan too eager to deep- sea mining for its dependence on China for minerals. But there are nations like France and Germany and other nations who opposes deep sea mining,

[66] Jacelyn Trainer, The Geo-Politics of deep sea mining and green technologies, UNITED STATES INSTITUTE OF PEACE, 3 Nov,2022,
[67] China's deep-sea mining, what you need to know, Discover how China is investing in the research and development of deep-sea mining to reduce its reliance on foreign suppliers of essential metals, 12 March 2023, https://fairbd.net/chinas-deep-sea-mining-what-you-need-to-know/.
[68] Supra 65.
[69] Angus Soderberg, Drilling deep on Chinese deep-sea mining, AMERICAN SECURITY PROJECT, 25 Jan 2023.
[70] Ibid.

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they are concerned about the ocean ecosystems, these activities causes loss to reefs and fish and other marine animals.[71]

XV. INTERNATIONAL SEABED AUTHORITY

According to article 153(1) of UNCLOS the International Seabed Authority (ISA) is an autonomous intergovernmental organization which was created to organize, carryout and control the activities in the Area on behalf of mankind as a whole. The word "Area" is defined under article 1 of UNCLOS as "the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction". According to article 136, Area is the common heritage of the mankind and the under article 137(1) it is given that no state has any sovereignty over the Area it should be used for mankind as whole, under 137(3) "No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized". But if we look at the activities of China in South China Sea, we can analyse that China is not abide by the principles of UNCLOS for its activities in the sea. The ISA is facing challenges to protect the deep-sea minerals and at the same time to preserve the ocean environment.

The international Seabed Authority have the power which are consistent with the Convention to exercise with the activities related to Area. So, if any activity like deep sea mining or other marine activities is started by any state then it is important for that state to take permission from ISA before engaging in any sea related activity.

XVI. MARINE SCIENTIFIC RESEARCH

Under Article 245 of UNCLOS the coastal states have sovereignty over its sea to conduct marine scientific research. If any other state wants to conduct marine scientific research, then they must take consent of coastal state. As given under Article 246, the coastal state can conduct and authorize such marine research in exclusive economic zone (EEZ) and in continental shelf. The other states can also conduct marine scientific research in EEZ and in continental shelf for the peaceful purposes and for providing scientific knowledge which is beneficial for whole mankind. For no other purpose the coastal state will allow the other state to conduct marine scientific research like for exploitation of natural resources, use of explosives, construction of artificial islands.

[71] Akira Kitado, China. South Korea push for deep sea mining as global talks begin, NIKKI ASIA, 10 July, 2023.

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South China Sea is one of the rich sea in natural resources both living and non-living, that's why the neighbouring and other nations have keen interest in its maritime scientific research. There were few marine scientific research (MSR) was conducted during years 1997 - 2007 between Vietnam and Philippines, this is knows as Joint Oceanographic and Marine Scientific Research Expedition in South China Sea (JOMSRE - SCS). The main aim of this research is to improve the relations of these two nations through cooperation in MSR and knowledge of marine environment and resources in SCS. [72] This initiative was ended in 2007, and the other countries included China and ASEAN states was interested to take part in this expedition but it was not resumed since 2007. China also conducting MSR in SCS in the exclusive economic zone of coastal state without its permission but China won't allow the other states to conduct the same research in it own exclusive economic zone according to its own maritime laws. Recently, China is conducting surveys for its marine scientific research,oil & gas exploration, and military research across the SCS, these surveys is conducted in the exclusive economic zone of Vietnam, Philippines and Malaysia.[73] China establish it own law on the Exclusive Economic Zone and the Continental Shelf in 1988, according to this law if any maritime or scientific research is conducted by any nation then it needs to take the approval of Chinese authorities, but China itself not taking approval from other's nations before engaging in marine activity in its EEZ, this way China is violating the provisions of UNCLOS.[74]

These marine scientific research pollute the oceans and deteriorating the fish, reefs and whole marine ecosystem. Here it is important to discuss the preservation of marine environment and measures taken in UNCLOS to control pollution in sea,

XVII. PROTECTION & PRESERVATION OF MARINE ENVIRONMENT AND POLLUTION IN MARINE ENVIRONMENT

According to Article 193 of UNCLOS every state has a sovereign right to exploit its resources subject to its laws. At the same time, it is the duty of every state to preserve its marine environment while engaging in marine activities in its own Area or Area of other state. It is given under Article 194 that state must take all measure to prevent, reduce and control pollution in marine environment, states should not engage in unjustifiable interference in the activity of other state which is exercised as their right, under Article 194(5) the states must take measures to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened,

[72] Vu Hai Dang, Resumption of JOMSRE-SCS: Practical suggestions to move forward, Asia Maritime Transparency Initiative, 8 Dec.2021, amti.csis.org.
[73] RFA Staff, New Reports reveal extent of Chinese surveys in South China Sea, 1 March 2023.
[74] Ibid

or endangered species and other forms of marine life. While controlling and reducing pollution it is not allowed to any state to transfer the damage to another state. Article 208 says that Coastal states which are engaging in seabed activities, constructing artificial island and installation should adopt regulation to reduce and control the pollution in the Area.

Activities in South China Sea deteriorating its marine ecosystem. South China Sea has diverse marine biodiversity on earth. It has mangrove forests, fish, and other species. These activities of China in SCS are losing its biodiversity. Dredging of artificial islands results in breaking of coral reefs, disturbs ecosystems by changing wave patterns, and disrupts the migration corridor of many species through the South China Sea, including tuna. Sand plumes from dredging can also kill coral reefs by blocking sunlight or burying them.[75] Fisheries is the main source of food security and employment of many people in SCS region. China has lost half its coastal wetlands, 57% of mangroves and 80% percent of coral reefs in its exclusive economic zone (EEZ). In the South China Sea, which accounts for about 12% of the global catch per year, fishing stocks have plunged by a third over the past 30 years and will fall further by 59% by 2045.[76] China has expanded its fishing to reach as far away to the EEZs of Argentina, Somalia and South Korea. Chinese fishermen are alleged to have illegally harvested corals, marine turtles, clams, sharks, eels and other marine animals from the waters of other countries on several occasions. [77] Fish in the SCS region is depleting and now fisherman trying to do the fishing in the deep sea through certain techniques which causing the damage to marine ecosystem. China is fishing in the Vietnam's exclusive economic zone to which claim's its own, now, due to loss of fishes in the region China made Vietnam and surrounded nations hard to have fishing.

China's main claim is on Paracel and Spratly Island, China started constructing artificial islands, military installation, China brings its fighter jet, cruise, military vessels in the Paracel Island. This dredging causes destruction of coral and reef flat which sustain entire marine ecosystem. About 7% of shallow reef area of the seven reefs in the South China Sea have been permanently lost. Dredgers send up plumes of sediment and corrosive sand, which wash back into the sea and smother the species underwater by blocking sunlight and

[75] Ryan McNamara, The Environmental Collateral Damage of the South Chona Sea Conflict, https://www.newsecuritybeat.org/2020/10/environmental-collateral-damage-south-china-sea-conflict/amp/.
[76] Pratnashree Basu, Aadya Chaturvedi, Troubled Waters : Marine Ecology Threats in the South China Sea, 18 June 2021, https://www.orfonline.org/research/troubled-waters-marine-ecology-threats-in-the-south-china-sea/?.
[77] Ibid.

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oxygen. Sediments from dredging of reef limestone reduce growth rates, cause lesions, and inhibit sexual reproduction among species.[78]

China carried out its oil and gas exploration in EEZ nations. Beijing has even placed a 10-storey oil drilling platform in the area disputed with Vietnam, which can dig up to a depth of 9,000 meter. According to official figures published by CNOOC in 2019, it was producing 286,790 barrels/day of crude oil and 709.1 million cubic feet/day of natural gas from their oil fields in the western and eastern South China Sea areas.[79] The seafloor is harmed during initial seismic surveys, rig construction and drilling, hydrocarbon production, oil and natural gas transportation caused damage to seabed. Fish pods that rely on auditory and visual signals as they move through their habitat are harmed by the noise, emissions, and discharges caused by seismic surveys. Slurry from drilling operations, which includes mud, cuttings, wash water, drainage, and sewage, is dumped into the ocean. In addition, they frequently leak and spill the extracted hydrocarbons, which results in dangerous emissions.

International law and environmental conventions are being violated by China's actions in the South China Sea. China has accepted Article 194 of the UNCLOS, which requires member states to ensure that their operations do not harm other states or their environment through pollution. They are also accountable for safeguarding the "rare or fragile ecosystems" of threatened marine animals. China has ratified the Convention on Biological Diversity, which requires its members to guarantee that their actions do not harm the environment in areas outside of their borders but still China engaging in those activities which causes danger to marine ecosystem.

(A) Agreement for the implementation of the provisions of the United Nations Convention on the Law of Sea of 10 December 1982 relating to the Conservation and Management of straddling Fish Stocks and Highly migratory Fish Stocks

Article 2 of the Agreement says that the main of the objective of this agreement is “to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention”.

UNCLOS mandates coastal States and high seas fishing states to collaborate directly or through the relevant, already-existing international organisations for the conservation of straddling fish stocks and highly migratory species on the basis of a personal stake in these resources. These interests stem from the sovereign rights of coastal states to manage and

[78] Ibid.
[79] Ibid.

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conserve living marine resources inside their EEZs as well as the qualified freedom of all States to engage in commercial fishing on the high seas. Despite the fact that Article 63, paragraph 2, of the UNCLOS states that cooperation is intended to ensure the conservation of straddling fish stocks in the high seas areas adjacent to the EEZs, Article 64 states that such cooperation is intended to ensure the conservation and promotion of the optimum use of highly migratory species "throughout the region," which includes areas under the national jurisdiction of coastal States.[80]

Due to their broad nature, the provisions of the United Nations Convention on the Law of the Sea (UNCLOS), particularly those dealing to high seas fishing, are insufficient to address this issue. The inadequate management of high seas fisheries, overcapitalization of the fishing industry, excessive fleet size, overexploitation of resources, issues with unregulated fishing, vessel reflagging to avoid controls, inadequately selective fishing gear, unreliable databases, and a lack of sufficient cooperation were all identified as fishery problems in Chapter 17 of Agenda 21 of the 1992 United Nations Conference on Environment and Development (UNCED).[81]

The conservation and management of straddling fish stocks and highly migratory fish stocks are governed by a set of broad principles that are outlined in Article 5 of the UN Fish Stocks Agreement. According to Article 5, coastal States and states that engage in high seas fishing must work together to adopt measures designed to ensure the long-term sustainability of these stocks and to advance the goal of maximising their use in order to conserve and manage straddling fish stocks and highly migratory fish stocks. They must also make sure that these actions are supported by the most recent scientific research and are intended to keep stocks at levels where they can provide maximum sustainable yield (MSY), subject to the relevant environmental and economic variables mentioned earlier.[82]

States must also take concrete efforts for the (a) implementation of the precautionary principle; (b) mitigating the negative effects of fisheries activities; and negative impacts of human activity on the environment; (c) reduction of pollution, waste, and discards; (d) the employment of judicious, economical, and environmentally responsible fishing gear and methods; (e) the

[80] DOALOS/UNITAR BRIEFING ON DEVELOPMENTS IN OCEAN AFFAIRS AND THE LAW OF THE SEA 20 YEARS AFTER THE CONCLUSION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA Wednesday, 25 and Thursday, 26 September 2002 United Nations Headquarters, New York, Conference Room 5, pg 2, https://www.un.org/depts/los/convention_agreements/convention_20years/1995FishStockAgreement_ATahindro.pdf

[81] Ibid.

[82] Ibid at 4.

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preservation of marine biodiversity; (f) the reduction or elimination of overfishing and excessive fishing capacity; (g) gathering and sharing information on all relevant topics promotion of scientific research; (h) support of fishing operations; (i) careful consideration of the artisanal and subsistence fishers' interests; (j) the implementation and enforcement of the use of efficient monitoring, control, and management techniques to promote conservation and surveillance.[83]

Articles 5 (General Principles), 6 (Application of the Precautionary Approach), and 7 (Compatibility of Conservation and Management Measures) of the UN Fish Stocks Agreement are equally applicable within areas under the national jurisdiction of the coastal State. The UN Fish Stocks Agreement only applies to the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas. [84]

XVIII. INTERNATIONAL TRIBUNAL FOR THE LAW OF SEA AND SEABED DISPUTES CHAMBER

Under Article 1 Annex VI, the International Tribunal for the law of sea constituted and shall function in accordance with the provisions of UNCLOS and the Statute. Under Article 14 A Seabed Disputes Chamber shall be established in accordance with the provisions of section 4 of this Annex. Its jurisdiction, powers and functions shall be as provided for in Part XI, section 5.

Although the 1982 Law of the Sea Convention is the main treaty, the International Tribunal for the law of sea (ITLOS) is tasked with interpreting and applying, the topics it may address and the roles it may play vary greatly. The rules governing navigation, the areas under the jurisdiction and control of coastal states, maritime boundary delimitation, fisheries and other ocean resources, marine scientific research, the marine environment, and mining on the continental shelf and deep sea floor are all covered by the law of the sea. Some of these laws date back a long time, while others were developed later or during the Law of the Sea Convention's discussion. The Convention has served as a framework agreement for numerous international organisations and treaty discussions.[85]

States that have ratified the Convention are entitled to access the Tribunal, as well as, under some circumstances, parties other than States parties.[86]

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[83] Ibid.
[84] Ibid.
[85] John E. Noyes, the International Tribunal for the law of sea, Cornell International Law, Vol.32 (1999) 112.
[86] Neha Yadav, The International Tribunal for the Law of the Sea (ITLOS): A New Horizon in International Law, IJLJ - Vol. 1 (2020) 156, https://ir.nbu.ac.in/bitstream/123456789/3979/1/IJLJ%20-

All discussions presented to the Tribunal in accordance with the Convention are included in its jurisdiction. It similarly relates to all matters that are unquestionably required by any other agreement that grants the Tribunal jurisdiction. Twelve international agreements that currently govern the Tribunal have been completed up to this moment.[87]

However, if the parties generally concur, the Tribunal's jurisdiction is required in cases involving the concise appearance of ships and gatherings under Article 292 of the Convention and temporary appraisals pending the establishment of an arbitral court under Article 290, Section 5 of the Convention.[88]

If a legitimate request arises within the scope of the International Seabed Authority's activities, the Seabed Disputes Chamber is prepared to give notice of its suppositions. The Tribunal may also issue warnings in specific instances in accordance with international agreements linked to the ideas of the Convention. Applications or notices of exceptional comprehension may initiate discussions before the Tribunal. The Statute and Rules of the Tribunal set forth the guidelines to be followed for the progression of matters that are brought before it.[89]

(A) Jurisdiction

According to UNCLOS Article 21, the Tribunal's jurisdiction includes all disputes and applications made to it in conformity with the Convention. It also covers everything specifically covered by any other agreement giving the Tribunal jurisdiction. The Tribunal has the authority to decide on issues that are brought before it (contentious jurisdiction) and to offer legal advice (advisory jurisdiction).[90]

1. Contentious jurisdiction

Subject to the restrictions of article 297 and the declarations made in accordance with article 298 of the Convention, the Tribunal has jurisdiction over all issues involving the interpretation or implementation of the Convention. A matter that would otherwise be out of the Tribunal's jurisdiction under these provisions may be agreed upon by the parties and submitted to the Tribunal in accordance with Article 297 and declarations made under Article 298 of the Convention. The Tribunal also has jurisdiction over any disputes and applications made to it in accordance with the terms of any other agreement giving the Tribunal authority. The United

%20Vol.%2011%20No.%201%20%28Part%20I%29%20Article%20No%2011.pdf.

[87] Ibid.

[88] Ibid.

[89] Ibid.

[90] International tribunal for the Law of the Sea, 9, https://www.itlos.org/fileadmin/itlos/documents/brochure/1605-22023_Itlos_Selbstd_En.pdf.

Nations Fish Stocks Agreement and the Nairobi International Convention on the Law of the Sea have both been signed as multilateral accords that give the Tribunal authority.[91]

2. Advisory jurisdiction

The Seabed Disputes Chamber is qualified to provide an advising opinion on legal issues that arise within the context of the activities of the Assembly or Council of the International Seabed Authority, according to article 191 of the Convention. On the basis of international agreements relevant to the objectives of the Convention, the Tribunal may additionally provide advisory opinions when requested to do so.[92]

(B) Chambers

In accordance with paragraph 3 of article 13 of the Tribunal's Statute, all conflicts are resolved by the Tribunal as a complete court, with the exception of the particular case of the Seabed conflicts Chamber. If both parties agree, disputes may, however, be addressed to a chamber. The following chambers have been established: [93]

i. Seabed Disputes Chamber

As a special entity within the Tribunal, the Seabed Disputes Chamber has exclusive jurisdiction in disputes with respect to activities in the Area and may give advisory opinions at the request of the International Seabed Authority. The Chamber is open to States Parties and private entities sponsored by them conducting activities in the Area and to the International Seabed Authority. [94]

ii. Chamber of Summary Procedure

iii. Chamber for Fisheries Disputes

iv. Chamber for Marine Environment Disputes

v. Chamber for Maritime Delimitation Disputes

Ad hoc chambers- The Tribunal may create ad hoc chambers to handle a specific case if parties request it. With the consent of the parties, the Tribunal chooses the members of such chambers. In the cases involving the conservation and sustainable exploitation of swordfish stocks in the southern Pacific Ocean (Chile/European Union) and the dispute over the delineation of the

[91] Ibid
[92] Ibid.
[93] Ibid 14.
[94] Ibid.

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maritime border between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), such ad hoc chambers, made up of five judges, have been established.[95]

According to Article 39, the judgments, or orders of the highest court of the State Party whose territory the enforcement is sought are as enforceable in that area as the decisions of the Chamber.[96]

XIX. CONCLUSION

The Convention for the law of sea aims to provide the general principles which governs the different aspects related to sea like sovereignty of coastal states over the sea, rights of landlocked state over the sea, maritime zones, jurisdiction of flag state, protect and preserve the sea from pollution, the ITLOS etc. This convention serves as a vital framework for governing maritime activities and resolving disputes. China's actions in SCS have raised concerns about the violation of UNCLOS provisions and the stabilization of regional stability. By ignoring the rights of neighboring nations and asserting expansive territorial claims, China's behaviour challenges the principles of international law and undermines the spirit of cooperation enshrined in UNCLOS. It is important to consider the challenges faced by world due to global warming and the nations should not engage in the activities which pollute the environment even if there lies their own interest.

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[95] Ibid.
[96] Ibid.

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