

DISPUTES IN THE ARCTIC AND SOUTH CHINA SEA AND UNCLOS: WITH SPECIAL REFERENCE TO CANADIAN AND CHINESE CLAIM OF HISTORICAL WATERS

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Oceans are the core of geopolitics. The shipping channels, hydrocarbon, fishing and mining resources have made the Oceans lucrative zone and this has resulted into the scramble for the Oceans. This research paper is focused on the issue that how the clashes of commercial and strategic interests have created South China Sea & the Arctic region a zone of intolerance. These commercial and vested interests have posed a complex challenge to the Law of Seas. Growing international attention has sparked academic interest in the geopolitics of Arctic region marked by a multiplicity of visions of the present as well as of the future. This paper presents the principal topics of academic engagement with ocean geopolitics, focusing on the past decade, and aims to illustrate the complexity of debates about these highly dynamic and changing regions like, South China Sea and the Arctic. There is only major difference that the South China Sea Channels are the busiest sea routes whereas the Arctic is not navigable for coming few years due to presence of ice. Like the other Oceans of the World both are governed by the United Nations Convention on the Law of Seas (UNCLOS), which was ratified in 1982. But the UNCLOS provisions are getting tough task to resolve the important issues in both the regions. The provisions of UNCLOS are unclassified to specific and typical geographical features of the Oceans. The present paper is a modest attempt to analyse the complexities and challenges before the UNCLOS in both the regions and how the ambiguity of the law has resulted into power game in the maritime affairs which has given worth to *realism*.

Key words: Geopolitics, UNCLOS, energy politics. Overlapping claims, littoral realism.

The UNCLOS III which was ratified in 1982 to govern the world oceans has provided a mechanism to settle a number of important issues related to ocean usage and state sovereignty, viz. navigation rights; limitation of territorial sea boundaries (twelve miles offshore); set exclusive economic zones (up to 200 miles offshore); set up rules for extending continental shelf rights (up to 350 miles offshore); created the International Seabed Authority; and created other conflict resolution mechanisms (i.e., the UN Continental Shelf Commission). Though it is a comprehensive document to govern the Ocean, some of the emerging situations inhibit its seamless applicability and some territorial disputes have emerged and are unresolved and some are likely to emerge (Proelss, & T Müller 2008).

Both the Arctic region and South China Sea (SCS) have presented complex challenges before the UNCLOS. These challenges made them vulnerable to arm conflict which would draw almost all major lesser powers of the world. This research paper present a comparative study of territorial disputes in both the regions the Arctic Ocean and South China Sea and limitations of UNCLOS due ambiguous provision to deal with them. These two regions have been chosen due to their similarity in geographic condition, power projection of major powers. Due to their strategic location both the region were used in World War II, both are rich hydrocarbons and world's major fishing grounds. The contrast between these two is that the Arctic became a theatre of nuclear submarines with the beginning of the Cold War despite it was frozen and territorial disputes are emerging after the UNCLOSIII was negotiated,

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whereas the territorial disputes have already emerged involving all its littoral states in SCS. This article composed of five sections including the introduction and conclusion. The first section which is introductory section underlines the geopolitical, geo-economics and geo-strategic scenarios in the Arctic and South China Sea, the second and third section discuss about the disputes in the Arctic region and South China Sea. The fourth section would analyses the application and limitation of UNCLOS in the disputes in the Arctic and South China Sea and the fifth which last section is conclusion

I. Introduction:

The Arctic Ocean including its seas is the smallest and shallowest among all the oceans on earth. The Arctic geography defines this region as “the Greenland Sea, the Barents Sea, the Kara Sea, the Laptev Sea, the East Siberian Sea, the Chukchi Sea, the Beaufort Sea as well as Baffin Bay, the Foxe Basin, numerous straits and bays of the Canadian Arctic Archipelago, the northern parts of the Pacific and Atlantic oceans; the Canadian Arctic Archipelago, Greenland, Spitsbergen, Franz Josef Land, Novaya Zemlya, Severnaya Zemlya, Novosibirsk Islands and Wrangle Island, as well as the northern coasts of the continents of Eurasia and North America” (AMSA 2009 16-18). The South China Sea (SCS) is located on the major international shipping routes between the Indian Ocean and northeast Asia, including the ports of China, Japan, Korea, and Russia. Ships from the Indian Ocean pass through either the Straits of Malacca and Singapore Strait (between Indonesia, Malaysia, and Singapore) or the Sunda Strait (between the Indonesian islands of Java and Sumatra) and traverse the South China Sea in the direction of either the Taiwan Strait (between the Chinese mainland and Taiwan) or the Luzon Strait located between Taiwan and the Philippines (Bekman, 2013 p.143). The South China Sea lanes are second busiest sea routes in the World

Resources, shipping lanes and maritime interests in and around the South China Sea have created a complex set of claims pertaining to rights, obligations and jurisdiction over the sea. Like the Arctic Ocean the South China Sea is also known for its bountiful resource potential (both living and non living which includes hydrocarbon resources). The Arctic holds an estimated 13% (90 billion barrels) of the world's undiscovered conventional oil resources and 30% of its undiscovered conventional natural gas resources, according to an assessment conducted by the U.S. Geological Survey (USGS)². The SCS is estimated to have a large amount of oil and gas reserves. The study conducted by the United States Geological Survey (“USGS”) in 2010 suggested that the estimate may contain anywhere between 5 and 22 billion barrels of oil and between 70 and 290 trillion cubic feet of gas in as-yet undiscovered resources. The undiscovered resources could be even greater, as the USGS assessment had not examined the entire area.³ Apart from this both the regions are rich in fishery and other marine living resources. The Arctic water contains a number of good quality of fishes like halibut, redfish, haddock, king crab, snow crab and Pacific cod. Biological resources are similarly bountiful in the Far North – the king crab, snow crab and Pacific cod. Fishing in the Arctic region constitutes 10 per cent of the world fishing (Borgerson 2013). The ice melting in the Arctic Ocean made the strategic shipping lanes navigable, have the potential to transform global shipping patterns. The Northeast Passage (NEP) and the Northwest Passage (NWP) together encircle the earth. The Northeast Passage (NEP) is a sea route which connects the Atlantic and the Pacific Oceans traversing the Arctic following Russia’s and Norway’s coasts. There is also a third lane is the Transpolar Passage (TPP) or Transpolar Sea Route (TSR) that is a future naval Arctic route that runs from the Pacific Ocean to the Atlantic Ocean through the Arctic Ocean. The European Community and

² <https://www.eia.gov/todayinenergy/detail.php?id=4650>

³ US Energy Information Administration, Feb. 7, 2013, available at http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf

the North Asian countries would be benefited if the Arctic routes become navigable. The Arctic routes are shorter than the existing routes which would save time and fuel. For example it would boost trade between north-west Europe and countries such as China, Japan and South Korea by making the voyage far shorter and thus coast effective. The NSR reduces shipping distances and time between North Western Europe and Northeast Asia by about one third and average transport cost reductions of between 20 to per cent between both regions using intensively the NSR (Bekkers at al 2015. 4). The trade from these routes may have serious implications over the country like Egypt in term of revenue earned by Suez Canal. The Arctic shipping routes run through resources rich location which has benefit for the shipping by reducing the threats like piracies which are common in the sea routes from the Indian Ocean attracted the global community.

The Arctic Ocean is strategically important as a central connecting area between the North American and Eurasian continents offers the shortest air routes for connecting almost all the important cities and the trade centres of the northern hemisphere (Raucek 1983; Watson 2008). Despite covered by thick ice and impossible to navigate, it acquired significant strategic importance during World War II and the Cold War. Throughout the 20th the Arctic had a history of militarisation that started with World War II. During the Battle of Atlantic⁴ the Arctic constituted as Allied supply route. The former USSR received many resources and convoys from the “Lend Lease” programme. The Arctic was the shortest route and the former USSR had its military settlement in its Arctic region especially in the Barents Sea and Kara Sea and therefore, targeted by Nazis (Herring 1973). To weaken the United Kingdom and to reduce American intervention in the European war scenario Nazis blocked these lanes (White 2008). The battle of Atlantic added an episode of militarization in the Arctic Ocean and underlined its strategic importance. During the Cold War both the leaders of NATO and Warsaw Pact (the US and the former USSR) made it strategically important. Even today, the Arctic icy waters are best suitable for submarine deployment (ice reduces the effectiveness of acoustic listening devices like sonar, while the ice shelf prevents visual and thermal monitoring).

The SCS is of vital commercial and strategic significance to the States of the regions and has been sustained trade relations amongst peoples of Southeast Asia, and between them and other people of the world such as Persian, Arabia, India and China. Consequently, in the course of history, the prosperity of various Kingdoms in the region had depended largely upon the SCS and, to some extent, the rise and fall of some of these Kingdoms were determined by their capability to use the sea between East and Southeast Asia. The World War II also added new strategic dimension in the importance of SCS. The Spratly islands, at that time, were used as a submarine base for Japanese Navy during the World War II. The SCS, therefore, become an area in which great powers involved their interests and wanted to expand their military and political influence during the Cold War also. Political geography of these two regions is complicated. Both the leaders of Cold War the US and Russia (the former USSR) are close neighbours and heavily investing in building military capacity and in SCS is the theatre of power projection of emerging major power China.

II. Territorial and Sovereignty Disputes the Arctic Ocean

After Cold War global warming and geography of the Arctic Ocean has made it core of the global politics, as Borgerson states, “The Arctic's unique geography is an asset unto itself, view from the top of the globe, the region sits at the crossroads of the world's most productive economies.” now the global community is expecting that an ice-free Arctic would

⁴ The Battle of Atlantic, from 1939 to 1945, was the longest continuous battle of World War II. Canada played a key role in the Allied struggle for control of the North Atlantic as German submarines worked furiously to cripple the convoys shipping crucial supplies to Europe. The Nazi force was defeated; it cost the lives of more than 70,000 Allied seamen and 4,600 Canadians.

serve as an economic corridor by providing resources and shipping channels. These have renewed the political and economic interests of the Arctic nations towards this region. Scott Borgerson's warns that, "*Arctic meltdown*" would generate military conflicts which can result in environmental disaster. He added, "Climate change may transform the Arctic Ocean into a third waterway for transcontinental traffic into North America. The result is that the northern tier will become open to benefits and exposed to the potential costs of worldwide commerce" (Borgerson 2008). Now the Arctic states are competing over territorial waters as well as outer continental shelf extensions. These challenges are of various types: disputes over the territories in which only the Arctic nations are involved, and the disputes in which the Arctic and non-Arctic nations over various matters like fishing, oil drilling and shipping routes.

A. The Overlapping Claims in the Arctic Ocean: The competition for territory has resulted in overlapping claims over continental shelf. This question is unique in case of the Arctic Ocean because of the configuration and geology of the sea floor. The Arctic continental shelf has semi-enclosed shaped encircled by littoral states, the extension of the continental shelves and delimitation of maritime boundaries would lead to invariably overlapping claims (Ebinger and Zambetakis 2009). Disputed boundaries represent the major security challenge which includes not only border disputes but also the questions of passage rights, domestic and international waters, the length of the continental shelf and the boundaries of the Exclusive Economic Zones (EEZs) and ownership of resources lying beneath the sea. There are two main international laws that provide principles for the nations to settle these differences – the 1958 Continental Shelf Convention and the 1982 UNLOS III. The Convention of 1958 establishes that coastal states have sovereign rights over the natural resources within 200 nautical miles from their baselines. Beyond the EEZ lie the high seas, where the rights of free shipping and flag rights apply. The most problematic question is where the continental shelf starts and where it ends.

Two questions, the first regarding the delimitation of national boundaries and second the respective EEZ, affect almost all Arctic countries and have created several boundary disputes among the Arctic littoral nations. These questions are highly controversial in case of existing treaties regarding boundary delimitation before the UNCLOS III. For example, disputes currently exist between Russia and the United States regarding the Bering Sea; the US and Canada over the Beaufort Sea; Canada and Denmark concerning the Davis Straits; Denmark and Iceland with respect to the Fram Strait are still unresolved. Some major disputes in the Arctic Region are:

- In 1867 the United States purchased the territory of Alaska; the purchase agreement defined a marine boundary between Russia and the newly acquired US territory. The Convention of 1867 determined two geographical lines – one in the Bering Sea and the second one in the Arctic Ocean – to delimit American and Russian territories. "However, in case of the Bearing Sea the 1867 Agreement actually not only applied to maritime territories and was not intended for the delimitation of EEZ", the concept didn't exist at that time (Konyshov and Sergunin 2014). When the UNCLOS III was adopted, the 1867 Treaty line became the most contentious marine boundary in the world because of the indistinct language of the purchase agreement between Russia and the US. The treaty failed to define the type of line, map projection and horizontal datum used to illustrate this boundary. None of these two countries have original or other authenticated maps used during the negotiations to resolve the issue. When the United States and the former Soviet Union implemented a 200 nautical mile Exclusive Economic Zone (EEZ) in 1977, they exchanged diplomatic notes indicating their intent "to respect the line set forth in the 1867 Convention" as the limit to each countries' fisheries jurisdiction where the two hundred nautical mile boundaries overlapped. This boundary dispute was resolved in a 1990 treaty, commonly known as the "Baker-Shevardnadze Agreement, between the United States and the former USSR". Though both

the countries made compromise the US still controlled a far greater amount of area in the Bering Sea than what the new agreement proposed, based on the equidistant line principle normally used in international boundary disputes. The US quickly ratified the 1990 Agreement but the USSR didn't ratify (Kaczynski 2007).

-The EEZ boundary in the Arctic yet to be resolved either formally or provisionally is the US-Canada boundary in the Beaufort Sea; the language of the 1825 treaty between Russia and the United Kingdom is hazy in defining the maritime boundary..

-There is another dispute regarding the Spitsbergen Archipelago. Norway obtained sovereignty over the Spitsbergen Archipelago – Svalbard – in the Treaty of Paris of 1920. All the other signatories, i.e., some forty countries, got equal rights to fisheries, commercial enterprise, and the exploitation of resources on the land at Svalbard and within 12 nautical miles from shore. With the establishment of 200 nautical miles EEZ, Norway also argues for establishment of EEZ around Svalbard. The other signatories are claiming that the non-discriminatory principle of the Svalbard Treaty must be applicable also to the 200 nautical mile zone, whereas Norway adheres to the literal interpretation of the treaty text. The other signatories' argue that the wider ocean areas would have been included in the 1920 treaty of commercial activity outside the territorial water which had been an option at the time. To avoid the conflict Norway did not establish an EEZ around Svalbard rather, a so-called fishery protection zone (Ostrued and Honneland 2014).

- In another dispute involved Norway, Iceland and Denmark and Canada. Norway has resolved disputes with Iceland and Denmark. Denmark and Canada have reached an agreement on their maritime boundary between Greenland and Canada from Baffin Bay through Nares Strait and the Lincoln Sea, though this agreement has not yet been finalised as a treaty.

The article 76 is also reason for intensifying the territorial disputes in the Arctic Ocean. Like many legal texts that are written by large committees, Article 76 appears clear on its face but, upon closer examination, bears little relationship to the real world: its terminology is ambiguous and overly simple. Plus the process that is followed inside the Commission has, up to now, not been transparent as it appears in the writing. The provision made under Article 76 of the UNCLOS III is actually the seed bed of major disputes in the Arctic region. This authorises the coastal State to exploit the resources beyond the 200 nm of its EEZ according to UNCLOS III 76(1) for establishing the outer limits of such a continental shelf, a state has to approach the Commission on the Limits of the Continental Shelf (CLCS) with supporting scientific and technical evidences as soon as possible, within ten years after ratifying the UNCLOS III. Now each and every Arctic nation has submitted their respective claims for extended continental shelf. Both the US and Russia have submitted their proposal which claims over vast territories in the Arctic bed. This submission hydrocarbon interest also.

The US which is not the signatory of the UNCLOS III of 1982 because the US Senate has not ratified has asked the expert to prepare a report to examine the benefits of signing the UNCLOS III. The U.S. State Department in 2004 claimed that if the United States ratified the law, it could claim sovereignty over 600 miles of seabed off the Alaska (Gunitskiy.2008, 267). This claim would be beyond EEZ to the Continental Shelf Commission which could expand the U.S. areas for resource exploitation by 290,000 square miles (Freidman and Freidman, 2004). On the other hand the Russian Prime Minister Putin also planned for submitting a huge extension proposal. Russia's claim, which would extend its control over an additional 1.2 million square kilometres of the Arctic, which would also include an estimated 10 billion metric tons of hydrocarbons buried under the Arctic seafloor.⁵

⁵ <http://www.geotimes.org/aug07/article.html?id=WebExtra080107.html> accessed on 30th April 2019

In such situation the UNCLOS does not provide for effective dispute resolution. The CLCS only has a mandate to review the evidence and make recommendations, not enforce decisions. Claims are subject to counter-claims by other states, with the whole process liable to degenerate into lengthy bilateral negotiations (Gunitskiy.2008, 262).

B. Disputes over Ridges One dispute is regarding the Lomonosov mountain ridge runs through the Arctic Ocean, from the New Siberian Islands (north of the middle of Russia) to Ellesmere Island (a Canadian island between the mainland of Canada and Greenland) and approaches Russia, Greenland, and Canada. This ridge is claim by all three Russia Canada and Denmark. The US counters all these claims and argues that ridges in the Arctic sea bed are global common and no country can claim sovereignty over them.

The language of UNCLOS will not resolve a legal dispute in which different countries all claim areas of the Arctic based on distinct geological connections to the same mountain range (Holmes,2008 p.337).

The submarine ridge appears to be exception if the continental shelf covers parts of such a ridge, it cannot be extended to more than 350 nm from the coast no matter where the 2,500 meter isobaths falls.” This issue lies at the heart of the dispute over the remaining Arctic territory where in particular the definition of the Lomonosov and Alpha-Mendeleev ridges as “submarine ridges” (or instead as “submarine elevations” which are natural components of the continental shelf and do not fall under the limit of 350 nm) is disputed. Though the Article 76 requires scientific evidence of a natural prolongation to be submitted to the UN commission on the limits of the continental shelf for review, “the commission will not issue recommendations with respect to overlapping claims. It is up to the countries involved to negotiate a solution, refer the matter to an international court or tribunal, or simply agree to disagree and not issue exploration licenses for the contested area”, therefore the states have to resolve the dispute in their own (Dorman 2009).

C. Sovereignty over the Northwest Passage One major question in the Arctic is in the Arctic is the sovereignty over the Northwest Passage. Canada claims that the waters in NWP are historical on the basis of decision of International Court of Justice in Anglo-Norwegian Fisheries Case 1951⁶ and therefore Canada has complete sovereignty over these waters and no right to navigation exists. In 2007, the long-sought Northwest Passage, which could potentially cut a journey from Europe to Asia by 2,500 miles, opened to commercial shipping for the first time. The passage remains a point of contention between the United States, which

⁶ “*Anglo-Norwegian Fishery Case* of 1951 – a dispute between the United Kingdom (UK) and Norway.” The case was brought by the United Kingdom against the Norway which aroused due to the decree of the Norwegian government of July 12th. 1935. “According to this decree it had drawn a straight baseline in the fishing zone situated of its northern coast and reserved fisheries for its own fishermen. The reason was this northern bank was shallow sea and known for the good quality of fishes and fishing was the main occupation in this region, The British trawlers used to do fishing which was giving a set back to the local fisherman. By drawing this line the Norwegian made the fishing by the foreign trawlers illegal. The two questions emerged that whether this decree, which laid down a method for drawing the baselines is in accordance of the international law? And whether the width of the Norwegian territorial waters had to be calculated, was valid international law?” This question was rendered particularly delicate by the intricacies of the Norwegian coastal zone, with its many fjords, bays, islands, islets and reefs. The United Kingdom gave the argument, that some of the baselines fixed by the ruling did not follow the general direction of the coast and also were not drawn in a lawful manner. In its decision of 18 December 1951,” the Court bring into being that, contrary to the submissions of the United Kingdom, neither the method nor the actual baselines stipulated by the 1935 Decree were contrary to international law(ICJ 1951).” The ICJ had accepted that if these enclosed waters have been used by any community and it is long established, it must be maintained in the international law. Further, in such a situation, there also would be no limit on the straight baseline. Canada claims that the Inuit have been using this water for their livelihood since times immemorial, and possibly, Canada has a right to fix an unlimited straight baseline if the geographical feature is complex.

considers it international waters, and Canada, which considers it to be under Canadian sovereignty (Gunistkiew, 2008, 261) on the basis of historical title over these waters. The US counters the Canadian claim that waters in the NWP are 'International' is based on the reading of Article 37 of the UNCLOS III and the ICJ judgement in the "*Corfu Channel Case 1946, between United Kingdom Verses Albania.*" To be brief, Albania damaged the warships of UK sailing through Corfu Channel and the UK claimed compensation. Albania appealed that the Corfu Channel is its internal waters and therefore, its action was defensive. The ICJ rejected Albania's argument and declared that a waterway which connects two oceans and is being used for navigation since long is an international strait. The NWP qualifies the first condition; but it has not been a busy strait for navigation like the Corfu Channel. Thus there remains a degree of ambiguity, whether these waters are internal to Canada or international waterways (ICJ, 1949, Corfu Channel Case).

III. Territorial Disputes in South China Sea:

Importance in maritime navigation, significance for international trade and transport security in the sea, as well as strategic interests pertaining to balance of power, are the driving forces that mark the significance of these dynamics. The territorial claims over the SCS are among the most contested ones in the world. SCS is a semi-enclosed sea rich in diverse living and non-living resources, is located in the south of China, bordering Vietnam and Malaysia in the west; Brunei, Malaysia, and Indonesia in the south; the Philippines in the east; and Taiwan in the north. Six of these seven countries bordering the sea are involved in the conflicts pertaining to the territorial claims and contestations over the SCS (Hossian, 2013, 108). The SCS is covering an area of 3.5 million square kilometres, regarded as the 'maritime heart' of Southeast Asia as it connects the Pacific Ocean in the east, to the Indian Ocean in the south. The continents of Asia, Africa, Europe, and Australia are linked through the SCS (ibid, 115, 116).

Both economic and physical geography have shaped the fate of the SCS as zone of conflicting interests. The most important dispute is the territorial dispute. Like 1867 Alaska Treaty, the Sino-Vietnamese territorial dispute is rooted in the interpretation of the boundary treaty signed by the Qing court and France in 1887 that delimited both the land and sea boundary. Vietnam maintains that the treaty established a "complete borderline which has a historical basis in the age-old political life of the two nations, a solid international legal value, and all practical elements for recognition on the terrain." But at other times, Vietnam has said that the Sino-French convention is "too old and cumbersome to give guidance in defining" the boundary. China's reservations about the treaty were not known until after the boundary dispute with Vietnam became public. China agrees that the Sino-French convention provides the basis for a negotiated settlement, but Beijing does not recognize the accord as a valid treaty, contending that even though China was not defeated by France in 1885, nevertheless, the "Qing Dynasty Government accepted France's humiliating conditions and signed an unequal treaty" (Hyer, 1995, 37). Currently there are three types of disputes waiting to be resolved in the South China Sea which involve the overlapping claims of six governments to territorial sovereignty and maritime rights, encompasses the main sea lines of communication that connect Southeast Asia with Northeast Asia, covers large fishing grounds and may contain vast reserves of oil and natural gas (Fravel, 2011 p. 292).

A. Sovereignty Disputes over Island Disputes over sovereignty centre on questions of which coastal states have the right to exercise the full measure of state authority over the physical territory of the islands in the South China Sea. These involve Vietnam, Malaysia, the Philippines, and perhaps Brunei, as well as China and Taiwan. Vietnam claims "indisputable sovereignty" over all of the Spratly (Truong Sa) and Paracel (Hoang Sa). Malaysia claims

sovereignty over approximately twelve of the southernmost Spratly Islands, based on their situation on its claimed continental shelf. Likewise, Brunei appears to make a similar claim to sovereignty over Louisa Reef, on the basis of its location within its claimed exclusive economic zone. The Philippines claims sovereignty over many of the easternmost Spratly Islands, a cluster to which it refers as the Kalayaan Island Group. China and Taiwan maintain overlapping, related claims to all the islands in the South China Sea (Dutton 2011,3)..

B. Jurisdictional Disputes in Maritime Boundary and EEZ The two main sources of jurisdictional disputes in the South China Sea are the boundaries of the various national EEZs and continental-shelf zones over which each state may exercise its authority. Within the geographic limits outlined in UNCLOS article 76 (specified boundaries), coastal states are afforded exclusive authority (state power) to regulate the exploration and exploitation of the resources of the seabed, although the legal character of the water space above the continental shelf remains unchanged (a limited, specified set of subject matters). Thus, international law provides for limited coastal-state jurisdiction within a specified zone known as the continental shelf.

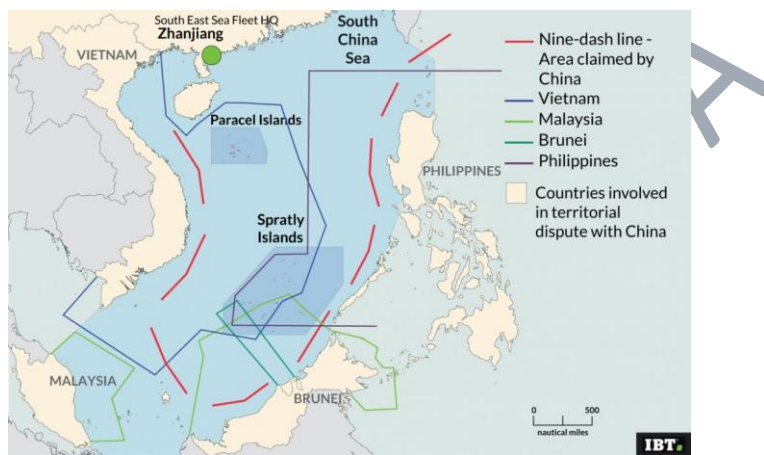
There have been two factors that constitute the maritime boundary disputes in the SCS: (i) the progressive development and codification of the law of the sea which prompted States in the region to unilaterally claim their maritime areas; (ii) the geographical circumstances in the region does not allow coastal States to establish maritime jurisdiction to the maximum possible extent as recognized by the law of the sea without overlapping with others. Ramses Amer has identified the following overlapping claims in SCS region:

- Between Philippines and Taiwan over the EEZ and the continental shelf areas to the north of the Philippines and to the South of Taiwan.
- In the Gulf of Tonkin, Vietnam and the People's Republic of China have overlapping claims to the EEZ and continental shelf. However, the author omitted that in the Gulf of Tonkin and also there exists an overlap in the territorial sea claims between the two countries.
- The People's Republic of China's and Taiwan's claim to the so called "historic water" in the SCS overlap to varying degrees with claim to the EEZ and the continental shelf areas made by Vietnam, by Indonesia to the northeast of Natuna, by Malaysia to the north of the coast of the State of Sarawak, and to the northwest of the State of Sabah, by Brunei to the north of its coast, and by the Philippines to the west of the Filipino archipelago. However, the validity of this claim is rejected by all countries in the region, even certain Chinese academics accepted "the nine-dashed line and the historic water claims do not conform to the provisions of UNCLOS, it is expected that China would abandon them in the coming years".
- Brunei and Malaysia have overlapping claims to the EEZ and continental shelf areas off the coast of Brunei and Sarawak.
- Vietnam's EEZ and continental shelf claim in its south and southeast coast overlap with Indonesia's continental shelf claims to the north of the Natuna Islands. Indonesia and Malaysia have overlapping claims to EEZ and continental shelf areas in a zone to the east of Peninsular Malaysia and to the west and north of Anambas islands, as well as to the east-northeast of the Natuna Islands and to the Northwest of Kalimantan (Indonesian part of Boneo) and to the west of Sarawak.
- Vietnam and Thailand, Vietnam and Malaysia and Vietnam, Malaysia and Thailand respectively have overlapping continental shelf and exclusive economic zone overlapping in the Gulf of Thailand.
- Another zone of overlapping claims to EEZ and continental shelf areas can be found to the southwest of Vietnam, to the east-northeast of the east coast of Peninsular Malaysia and to the southeast of the coast of Thailand. The claims of Malaysia, Thailand and Vietnam overlap in one area. In other areas, bilateral claims overlap between Malaysia and Thailand, Malaysia and Vietnam and Between Thailand and

Vietnam respectively. There also existed a tripartite overlapping of continental shelf and EEZ among Vietnam, Thailand and Malaysia in this area.

- There are overlapping claims to EEZ and continental shelf areas in the Gulf of Thailand off the coast of Cambodia, Thailand and Vietnam. The Cambodia, Thailand and Vietnam overlap in one area. In other areas bilateral claims overlap between Cambodia and Thailand, Cambodia and Vietnam and between Vietnam and Thailand respectively (Amer, 2002,37).

To resolve these the United Nations Commission on the Limits of the Continental Shelf (CLCS) set 13 May 2009 as the deadline for littoral states to lodge claims to extended continental shelves beyond the 200 nautical mile limit set by the UN Convention of Law of the Sea. On 6 May, Malaysia and Vietnam submitted a joint proposal, and on the following day Vietnam also presented a separate claim. China quickly filed a protest but did not make a formal submission. Under the rules of the CLCS contested submissions cannot be evaluated. In a new assertion of sovereignty, China documented its maritime claims by attaching a map containing nine dashed lines which formed a U-shaped area embracing virtually the entire South China Sea (Thayer. 2010). The Map 1 shows the territorial claims of all the parties in SCS and Chinese U shaped claim.



Territorial Disputes and Chinese Claim in the South China Sea

IV. Application and Limitations of UNCLOS in Territorial Disputes and Historical Waters

The remedial provisions of UNCLOS indicate a strong preference for peaceful resolution of disputes. Article 279 provides that parties should first try to settle disputes informally." If two countries are unable to settle a dispute on their own, UNCLOS provides four methods of resolution. Parties can use the International Tribunal for the Law of the Sea, the International Court of Justice, or one of two arbitral tribunals. When a country ratifies UNCLOS, it may choose a forum for settling its disputes under the Convention. If a dispute exists between two countries that have elected different fora, UNCLOS directs the parties to use arbitration, unless they agree otherwise. The Arctic nations have elected different fora. Article 298, however, allows each nation to decline to accept any method of resolution for various categories of disputes. Canada, Denmark, and Russia all indicated that they do not accept any of the procedures for the resolution of disputes provided for under Article 298 (Holmes, 2008, 335.336).

Though part XV of the UNCLOS has recommended dispute settlement mechanism but in reality it is apparent in both the region complexity of disputes have made this mechanism ineffectual. The US is not the signatory of the UNCLOS which has posed difficulties is

determining the Canadian and Russian claim under the under article of 76. In SCS case China didn't allowed to intervene the CLCS which is a part of UNCLOS.

Regarding Islands:

The LOS Convention does not deal with disputes over the sovereignty of islands, nevertheless, and to some extent, it can be seen as one of the factors that led to the intensification of sovereignty claims over the islands. The LOS Convention instead addresses mainly the relationship between States with regard to the use of seas and oceans through the establishment of maritime jurisdiction zones and the exercise of State jurisdiction in these zones. In fact, during the negotiation at the Third UNCLOS, a drafted article concerning sovereignty disputes over islands was deleted from the draft of the LOS Convention (Nguyen.2005.45)

The United Nations International Law Commission (ILC) discussed the concept of historic waters in the 1950s, and in 1962 the UN Secretariat, upon the request of the ILC, produced a study on the juridical regime of historic waters, including historic bays. However, it did not give a conclusive definition of historic waters, nor criteria nor standards by which this concept could be applied. So the theoretical controversy over the concept of historic waters remained unresolved. Because of the ambiguity in definitions and controversial nature of this issue, the Third UN Conference on the Law of the Sea (UNCLOS III) simply dropped it from the agenda, leaving only a few tantalizing references in the 1982 United Nations Convention on the Law of the Sea (LOS Convention) (Keyuan,2001,151). The International Law Commission suggested that three conditions needed to be fulfilled to sustain a historic water claim: (1) the actual exercise of coastal state authority over the area, (2) continuity over time of this exercise of authority, and (3) the attitude of foreign states to the claim (ibid). Thus the historical waters are those which actually belong to high sea but the coastal have historic right exercises sovereignty over these waters. Thus these waters treated as internal waters. But the claims of historical waters are neither defined nor provided to coastal states by any law. This right is validated only if their status is challenged by the any other party or parties in ICJ or any tribunal. Their extent nature all depends upon the arbitration. If Canadian case is considered the extent which Canada enclosed and called it historic waters actually never overlap with any states claim and this maritime region is actually remained a source of provide food and livelihood and there was no challenge against this practice. But the reason for which the US and European Union are protesting the American claims is the NWP which runs through the Canadian Arctic archipelago which a strategic shipping lane. Again the article 37 remains ambiguous in defining existing shipping lane and newly emerged shipping lane. The argument of this article is that assessed on a case-by-case basis according to the particularities and realities of the claim.

The another challenge emerged due pre existing treaties like Treaty of Alaska Deal, the Treaty of Paris of 1920, Qing court and France in 1887 have become contentious with the new provisions of UNCLOS. The provision of extension of territorial sea and extended EEZ has prompted the states to adopt the new provision and creates disputes.

V. Conclusion

The analysis provided in preceding sections reveals that UNCLOSIII which is regarded as the constitution to govern the world ocean, despite being a comprehensive document has not taken many issues in to consideration when negotiated. In case of the Arctic Ocean and South China Sea there several issues which really need to resolved by an effective mechanism. Both the region are experiencing severe militarization and any arm conflict in these region can draw many powerful countries and organizations in the war. It is being advocated that when the UNCLOS III was negotiated, Arctic Ocean issues were not so prominent due to its inaccessibility. Disputes in the Arctic Ocean were also not prominent as today therefore no specific attention was given on these issues. But the disputes in the SCS are older and

prevailed during the time of negotiation of UNCLOS III and it also appeared that these would involve more parties. The CLCS has mandate to review the claims but not give binding decision. In case of South China Sea the intervention of CLCS has been hindered by Chinese power projection. In the arctic case the US which is not a signatory of the UNCLOS III and refuses to accept any decision which it feels hampers its interest. Thus interests of major powers also prevent any dispute resolution. After 37 year of this convention the global scenario has changed and these disputes have global implications and any international law required to come up the preventive measures that can check the serious conflict to emerge.

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