



UNCLOS AND MARINE POLLUTION

SRUTHY SREEKUMAR

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INTRODUCTION

In order to appreciate the momentous significance of the United Nations Convention on the Law of the Sea 1982, it is necessary to address the historical background of this event. An indispensable dimension of the law of the sea has historically been the so-called freedom of the seas which related to fisheries and navigation in the earlier period and was extended to scientific research, laying of pipelines and air navigation in later years. However, during the age of discovery around the fifteenth century, the powerful maritime states of Spain and Portugal claimed sovereignty over large areas of ocean space. For example, Portugal claimed sovereignty over the Indian Ocean and a large portion of the Atlantic Ocean. Spain claimed sovereignty over the Pacific and England over the North Sea. However, Grotius and other leading publicists persistently advocated the freedom of the seas which was generally accepted by nations of the international community as complying with their national interests. At the same time, it was generally recognized by the eighteenth century that coastal States were entitled to a belt of sea adjacent to their coasts up to a seaward limit of three miles advocated by Bynkershoek. Bearing in mind the foregoing, the ensuing discussion outlines the development of the concept of the law of the sea with particular reference to enforcement powers of the coastal state in the territorial sea.

HISTORICAL BACKGROUND

The seventeenth century was the century of the “battle of the books”. The booklet anonymously published in 1609 by the Dutch jurist *Huig de Groot (Hugo Grotius)*, *Mare Liberum*, gave expression to the basic concept that the sea must be free because, by its nature, it is not susceptible of occupation. *Mare Liberum* acquired great fame, and the idea of the freedom of the seas, especially as far as navigation was concerned, found followers and opponents in books by scholars of many countries, including England, Scotland, Portugal, Venice, Genoa and the Netherlands. Similarly, among opponents one must recall the Englishman *John Selden*, who published in 1635 a treatise on the Closed Sea (*Mare Clausum, Seu de Dominio Maris Libri Duo*). It propounded the idea that the seas, similar to land, could be subjected to occupation and control by a State and that in fact, some States, already in fact exercised such power as regard navigation and fishing in certain areas of the sea.

In the eighteenth and nineteenth centuries the accepted regime of the sea was that described by *Grotius*, namely that of freedom, with the exception of a narrow band of waters adjacent to the coast. It was another Dutch author, *Cornelius van Bynkershoek*, who although starting from premises close to those of the adversaries of the freedom of the seas, proposed a rational basis for this regime. In his *De Dominion Maris Dissertatio*, published in 1702, he admitted in principle that the seas could be the subject of occupation, but stated that in the present “no sea is possessed by anyone”. He argued that the coastal States’ dominion of areas of the sea close to the coast depended on the exercise of sovereignty over the land and that its extension ended where the power of man’s weapons ends: “The control of the land [over the sea] extends as far as cannon will carry, as that is as far as we seem to have both command and possession”. So, the ‘cannon shot rule’ was proclaimed.

In 1793, the United States first adopted the three-mile limit as equivalent to the canon-shot rule for purposes of neutrality on the outbreak of war between Great Britain and France. As typically shown in the *Anna* case of 1805, the three-mile rule was also recognized in Great Britain. The adoption of the three-mile rule by Great Britain was of particular importance due to its considerable naval power. Nonetheless, it would be incorrect to conclude that the three-mile rule had become a universally accepted rule. In fact, the Scandinavian countries continued to claim a four-mile limit. Several countries, such as France and Italy, maintained different limits for different purposes. In light of the wide cleavage of opinion between States, no rule was formulated with regard to the breadth of the territorial sea.

That problems remained became apparent even as early as the Hague Codification Conference 1930, which attempted without success a codification of the law of territorial waters; only to discover that there was not a sufficient agreement about the maximum legally permissible breadth of territorial waters. It was during and at the close of the Second World War, however, that developments of new technologies began to require a corresponding development of new law. In 1946, the two Proclamations of President Truman of the United States focused attention upon two such problems: the conservation of fish stocks in the high seas, and the exploration and exploitation of the resources of the seabed and subsoil of the continental shelf under the high seas. The result of the Proclamation was a rapid acceptance in state practice of the legal propriety of the extension

of an exclusive coastal state jurisdiction to the exploration and exploitation of the resources of the continental shelf.

It must therefore be understood that the law of the sea was to a large extent codified by the first United Nations Conference on the Law of the Sea (UNCLOS I) at Geneva in 1958, which drew up four conventions: The Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, and the Convention on the Continental Shelf. These conventions were ratified or acceded to by forty-six, fifty-seven, thirty-six and fifty-four states respectively, while thirty-eight states became parties to the Optional Protocol on the compulsory settlement of disputes. Even the 1958 Conference on the Law of the Sea failed to achieve agreement on the breadth of the territorial sea as did also a Second United Nations Conference on the Law of the Sea (UNCLOS II), which met in Geneva in 1960 with the object of dealing with that issue.¹

MARINE POLLUTION

From the outset, it must be understood that the ocean encompasses almost 70% of the space on this planet and is subjected to continuous threat from surplus human activities in the region. Excessive human activity has threatened the lives of the aquatic animals and coral reefs. Over the past few decades it has been seen that many of the species under water is on the verge of extinction or is already extinct. As a result, the concept of marine pollution has assumed a place of prominence. It therefore becomes essential to attribute a suitable definition to the above terminology. Marine pollution can be defined as the spreading of harmful substances like plastic, oil, factory and agricultural waste, chemicals etc. disposed of into these water bodies causing degradation of the quality of water and its species. Notably, the United Nations Convention on the Law of the Sea played a major role with regard to **“marine pollution”** as it laid down a comprehensive regime of law and order in the world’s oceans and seas. It was based on the

¹ Rothwell R. Donald et. al, “The Oxford Handbook of the Law of the Sea”, (Oxford: Oxford University Press, 2015), p. 4.

principle that problems of ocean space are closely interrelated and needed to be addressed holistically.²

UNCLOS AND MARINE POLLUTION:

Article 19 (2) (h) of the Convention stipulates that the coastal State may determine that passage is not innocent if an act of willful and serious pollution occurs. Criminal jurisdiction may also exist if the act of pollution is such that the “**consequences of the crime extend to the coastal State**”. Coastal States have certain other obligations such as adoption of measures to prevent and limit pollution and to facilitate marine scientific research in their exclusive economic zones (EEZs). Marine pollution has been a topic of concern for over half a century, from the late 1950’s instances like the usage of tankers to transport oil to the reoccurrence of a number of cases of oil spills. For instance, the *Torrey Canyon* oil spill was one of the world’s most serious oil spills. The supertanker *SS Torrey Canyon* ran aground on a reef off the south-west coast of the United Kingdom in 1967, spilling an estimated 25–36 million gallons (94–164 million liters) of crude oil. Attempts to mitigate the damage included the bombing of the wreck by aircrafts from the Royal Navy and Royal Air Force, causing a potential international incident, as the ship was not British, and was in international waters. Hundreds of miles of coastline in Britain, France, Guernsey, and Spain were affected by the oil and other substances used in an effort to mitigate damage.³

This led to strengthening of marine pollution or **MARPOL 73/78**. In 1972, at the *United Nations Conference on the Human Environment* marine pollution was a huge issue and in the same year the *Convention on the Prevention by Dumping of Wastes and Other Matter*⁴ also called the *London Convention* was signed. Although the convention didn’t ban marine pollution, it established a black and grey list which was all about *substances to be banned* (black) and *regulated by national authorities* (grey). Many problems arise when these toxins that are released due to human activities are fed upon by the sea creatures and then they are fed upon by human beings. The toxins get further spread up in the food chain resulting in widespread diseases.

² Rothwell R. Donald et. al, “The Oxford Handbook of the Law of the Sea”, (Oxford: Oxford University Press, 2015), p. 4.

³ https://en.wikipedia.org/wiki/Torrey_Canyon_oil_spill.

⁴ Tanaka Yoshifumi, “The International Law of the Sea”, (New York: Cambridge University Press, 2012), p.21.

The *London Convention*⁵ was amended thrice, viz:

- **1978**- came into effect on March 11,1979; dealt with incineration of wastes at sea.
- **1980**- effective on May 19,1990; gave procedures to be followed when permits are issued for special dumping.
- **1993**- effective from February 20,1994; banned dumping of low level radioactive wastes into the seas. They phased out the dumping of industrial wastes by December 31,1995 and called for an end to incineration of industrial wastes to sea.

The **1996 Protocol** became effective on March 24,2006 and replaced the 1972 convention. It was very restrictive in nature and allowed incineration of wastes, dumping of low radioactive wastes as well as industrial wastes but the attitude towards dumping has changed over the past years and same has always been reflected whenever an amendment was adopted and thus, it led to the new protocol on 7th November 1996.

INDIA AND MARINE POLLUTION

India has one of the largest coastline of about 7500kms with over 1200 islands in the EEZs flourishing with coral reefs, estuaries, mangroves and mudflats. Over the years due to insensitive exploitation of these resources and dumping of organic and inorganic wastes these resources are facing threats to their existence. The increasing amount of pollution is taking a toll on the level of dissolved oxygen and microbial concentration levels which are the health indicators of the coastal water. According to the reports by various sources and Ministry of Ocean Development⁶ the recommended level of dissolved oxygen for ecologically sensitive coastal areas and beach tourism is 5mg/liters or above.

MAJOR SOURCES OF COASTAL POLLUTION

The major sources of coastal pollution are as follows:

- aquaculture effluent

⁵ Tanaka Yoshifumi, "The International Law of the Sea", (New York: Cambridge University Press, 2012), p.21.

⁶ <http://www.yourarticlelibrary.com/geography/oceanography/marine-pollution-and-laws-to-control-it/3221>.

- fertilizers
- fish processing industries
- industrial effluent
- municipal sewage
- ports and harbors
- shipbuilding and shipbreaking yards
- solid waste dumping
- tourist resorts/beaches

SUMMARY OF POLLUTED RIVERS IN COASTAL REGIONS⁷:

STATES	CITY/STATE ALONG THE RIVERS POLLUTED RIVERS	NO. OF
MAHARASHTRA	161	49
WEST BENGAL	48	17
GUJARAT	37	20
KARNATAKA	24	15
TAMIL NADU	23	07
KERALA	22	13
ORISSA	20	07
GOA	09	08
ANDHRA PRADESH	08	06
DAMAN AND DIU	02	01
TOTAL	354	148

The Bay of Bengal, the Arabian Sea, and the Indian Ocean are choc-a-bloc with pollutants. Approximately 80% of the ocean's pollution are caused by pollutants like plastic, which kills

⁷ <https://www.geographyandyou.com/climate-change/pollution/coastal-pollution>.

thousands of ocean-inhabitants each year. Around 5-6 million tons of petroleum and oil have been discharged into the Indian Ocean which is around 40% of the total petroleum spill in the world's waters. Therefore, tackling marine pollution has been boosted as India's Automated Ocean Pollution Observation System is all set to sail by April 2018.

The Arabian Sea is a main oil tankers way to South East Asia, and beyond, most likely secretarial for the tar like residues dump on the west coast of India. This constant problem is however a serial trait is mainly synchronized by the monsoons and allied winds. Metals, being a conventional pollutant, need watchful monitoring since they stay forever in the atmosphere without break-down. The biggest problem with the plastic entering the ocean is it gets really hard to remove the plastic waste once it enters the ocean waters especially due to the vast area. To combat the marine pollution throughout India, the government has started taking initiatives to protect the oceans around the country. *The Union Ministry of Earth Sciences* has started up with a comprehensive study to identify the source of litter especially the plastic wastes that floats into the Indian coastal waters. Not just the government but nowadays even the public is taking measures to protect the waters by reducing the usage of plastic in tourist areas, NGOs involved in cleaning the beaches, social service groups educating the public the need for a litter free area especially near the ocean.

CONCLUSION

It was the oceanographer *Jacques Yves Cousteau* who postulated that "the sea is the universal sewer". Undoubtedly, regular human activities are indeed making this a reality. Protection of the ocean is the moral responsibility of each and every person who uses it; whether there's a body to look into it or not. According to UNCLOS marine pollution happens due to six factors, all of which is a result of human activities. Thus, it's the responsibility of the humans to watch their actions and the government to come up with more stringent rules and regulations to protect the sea and its creatures.

REFERENCES

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4. https://en.wikipedia.org/wiki/Torrey_Canyon_oil_spill.
5. <http://www.yourarticlelibrary.com/geography/oceanography/marine-pollution-and-laws-to-control-it/32219>.
6. [https://www.geographyandyou.com/climate-change/pollution/coastal-pollution./](https://www.geographyandyou.com/climate-change/pollution/coastal-pollution/)

The 1982 United Nations Convention on the Law of the Sea (UNCLOS III) has been promoted as the foundation for comprehensive international regulation of economic, environmental, and national security matters. However, UNCLOS III is flawed. It fails to provide coastal states with sufficient authority to control pollution beyond their territorial boundaries-especially in the exclusive economic zone (EEZ). Certain modifications of UNCLOS III are needed to make the convention more effective.Â UNCLOS III requires states to take measures, including the adoption of laws and regulations, to prevent pollution of the marine environment. 43 These regula- tions, furthermore, must be no less effective than the accepted minimum.