Indo-Pak Maritime Relations and a proposed joint fishery regime: A human rights perspective

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ABSTRACT

SDGs	Sustainable Development Goals
SOLAS	International Convention for the Safety of Life at Sea
TSA	the Special Area
UK	United Kingdom
UN	United Nations
UNCESCO	United Nations Economic and Social Council
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stock Agreement
UDHR	Universal Declaration of Human Rights
UNDESA	United Nations Department of Economic and Social Affairs

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Life at Sea (SOLAS), United Nations Fish Stock Agreement (UNFSA) and many more.[3]States gradually integrate those laws and conventions in their domestic laws to improve ocean governance.

Alongside these specific instruments, international law imposes obligations for states to make friendly relations with each other and settle their disputes peacefully.[4]Therefore, states engage each other through negotiations and dialogues to settle their disputes and resolve their issues. States set Confidence Building Measures (CBMs) to diffuse conflicts, and initiate negotiations for dispute resolution. Several States, despite their hostility, make bilateral agreements and joint ventures to improve bilateral relations and to utilize oceans efficiently for example Japan-Korea, China-Vietnam, India-Bangladesh and Australia-Indonesia.[5]

Diverting resources from conflicts to development, bilateralism and friendly relations between two states brings economic prosperity for both states. Such initiative can also have implications for individuals and there is a need to take into account the

potential feasibility of establishing a regime for fishermen of Pakistan and India who get imprisoned for an indefinite time by hostile maritime agencies of both countries with no institutional mechanism of expeditious justice and prosecution. Moreover, the research will endeavor to explore the feasibility of making provisional arrangements for a joint fishing regime between adjoining maritime border of Pakistan and India, pending a maritime boundary delimitation, with a view to providing fishermen of both countries with dignified access to their livelihood.

The first part of study provides the overview of India Pakistan relations with the specific focus on maritime relations, maritime disputes and its implications for fishermen of both countries. India and Pakistan relations have been fraught since their creation. In order to understand the contemporary dynamics of relations between the two states, it is imperative to know their history. Therefore, the chapter will explain the history of Indo-Pakistan relations and the

understanding of the criminal prosecution system of each country. Therefore, a legal perspective regarding trial and prosecution of fishermen in both countries is been given in this section. The first chapter will conclude by explaining how justice system of both countries is denying the rights of fishermen of each other nationals.

Chapter two of the first part will explain the general legal framework that governs maritime relations between India and Pakistan, in particular as it relates to the exercise of fisheries jurisdiction in disputed maritime areas and the status of maritime disputes under the UNCLOS. Pakistan and India are parties to this convention. The chapter analyses different aspects of UNCLOS relevant to fisheries jurisdiction and its scope to regulate the fishing between and among states particularly between India and Pakistan. It includes the relevance and application of UNCLOS regarding maritime disputes among states, especially between India and Pakistan. It will also analyse the human rights perspective of fishermen under international law arrested in the dispute maritime area. There are different international conventions which bind member states to enforce those laws to safeguard human rights. International human rights law obliges parties to ensure the provision of human rights to individuals under their jurisdiction through applicable international legal instruments such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[8]The chapter includes the analysis of enforcement and application of those human rights conventions with respect to fishermen of India and Pakistan.

The section A of the chapter two provides an overview of the legal framework for managing maritime boundary disputes. UNCLOS is the primary international legal instrument that provides the legal framework to govern ocean affairs amongst states because UNCLOS is very comprehensive and covers almost all aspects of ocean governance. The development of the Convention aimed to set the international economic order in oceans while keeping in view the

[8]The Core International Human Rights Instruments and their monitoring bodies, United Nations Human Right Office of the High Commissioner (UNHROHC), https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies

interests and needs of humankind and states.[9] The Convention gave particular importance to the interests and sovereignty of states while stipulating different terms and conditions regarding its application and enforcement. Therefore, an insight of UNCLOS as a legal framework for oceans affairs has been given in this section while discussing its role in international fishery governance. The Convention provides a comprehensive set of new laws and also reflects others that were already considered to be part of customary international law to govern and manage the fisheries while dividing the ocean in different maritime zones with different

International rule-based system and norms have steered nations to make arrangements to tackle global issues such as geopolitical tensions, climate change, migratory and humanitarian crises. Therefore, cooperation and bilateralism is necessary for states to address their long-standing issues to prevent the conflicts and war which leads to humanitarian catastrophe. These joint ventures and cooperation play crucial role to enhance bilateralism and friendly relations which is discussed thoroughly in this study. States' bilateral agreements in this regard have implications for diplomatic relations between them. These implications impact the diplomatic relations between states which shape their future trajectory of bilateralism and cooperation.

The importance of diplomacy and multilateralism has been increased manifold for states in contemporary world order. Globalization and intertwining interests of states have called for cooperation and opened multiple avenues for collaboration. New regimes among states are playing a central role to develop cordial relations and multiplying the cooperation. States are continuously engaging with each other to reduce the risk of war and prevent the conflict by endeavouring to resolve the disputes among them. Therefore, this study also explains such joint

PART 1: INDO-PAK MARITIME RELATIONS AND IMPLICATIONS FOR FISHERMEN

The part 1 of this study provides the overview of Indo-Pak relations with the specific focus on history of maritime relations and maritime disputes between two countries and its implications for fishermen of India and Pakistan.

CHAPTER 1: INDIA- PAKISTAN MARITIME RELATIONS

This chapter will provide the insights into Indian-Pakistani relations, including the nature of their disputes and the implications of those disputes for their people, especially the fishing communities of both countries. The history of states' bilateral relations is imperative to comprehend the contemporary dynamics of their bilateral relations in the maritime domain. In this regard, the chapter provides a brief overview of the overall disputes between the two countries, before focussing on the particular maritime dispute that has been analyzed to understand its contemporary relevance with fishermen of both countries. Fishing communities of both countries are bearing the brunt of their disputed maritime relations. As will be explained below, fishermen from both countries get arrested frequently during fishing in the Indo-Pak maritime disputed areas. The suffering of fishermen as a consequence of their operational encounters with hostile maritime agencies of the other states also requires an understanding of the criminal prosecution system of each country. The chapter will therefore conclude by explaining how justice system of both countries is blatantly denying the rights of fishermen of each other nationals.

However, their ideological differences became the central factor to define their foreign policy for each other.[14] India sees itself secular state with the majority people belonging to Hindu religion whereas Pakistan sees itself a Muslim state with the majority of Muslim people. These images of themselves have been embedded in their constitutional structure. This Muslim-Hindu difference became the primary reason when Muslim leadership in the subcontinent demanded an independent state during Britain decolonization. These ideological differences are rooted in the history of both states. Ideology of each state is embedded in its national identity. Therefore, the conflict between India and Pakistan is also related with their national identities, but plays out in relation to the territorial claims of the two countries.[15]

Following the British decolonization of the subcontinent and the independence of India and Pakistan, both states had to define their boundaries and resolve their territorial issues.[16]The United Kingdom (UK) left the subcontinent with the inappropriate partition and without addressing the complete territorial composition of both states. Both states had to define their territories and resolve the boundary issues to advance their relations amicably. However, the way Britain made the partition of both states had ahuge influence on their bilateral relations. During the partition, British government did not decideseveral boundary issues which hinged on the bilateral relations of India and Pakistan.[17]

One of the primary territorial issues between India and Pakistan is related to the valley of Kashmir located on the northeast side of Pakistan and northwest side of India. Kashmir was a princely state in the subcontinent. It was ruled by the Hindu ruler where majority of people were Muslims. Ruler of Kashmir made the accession of the valley with India against the will and wishes of Muslim majority Kashmir people. On the face of this accession, a strong resistance broke out in Kashmir and Kashmiri people turned down the accession. India military forces stepped in to suppress the resistance and occupied the Kashmir. Pakistani forces also rolled in

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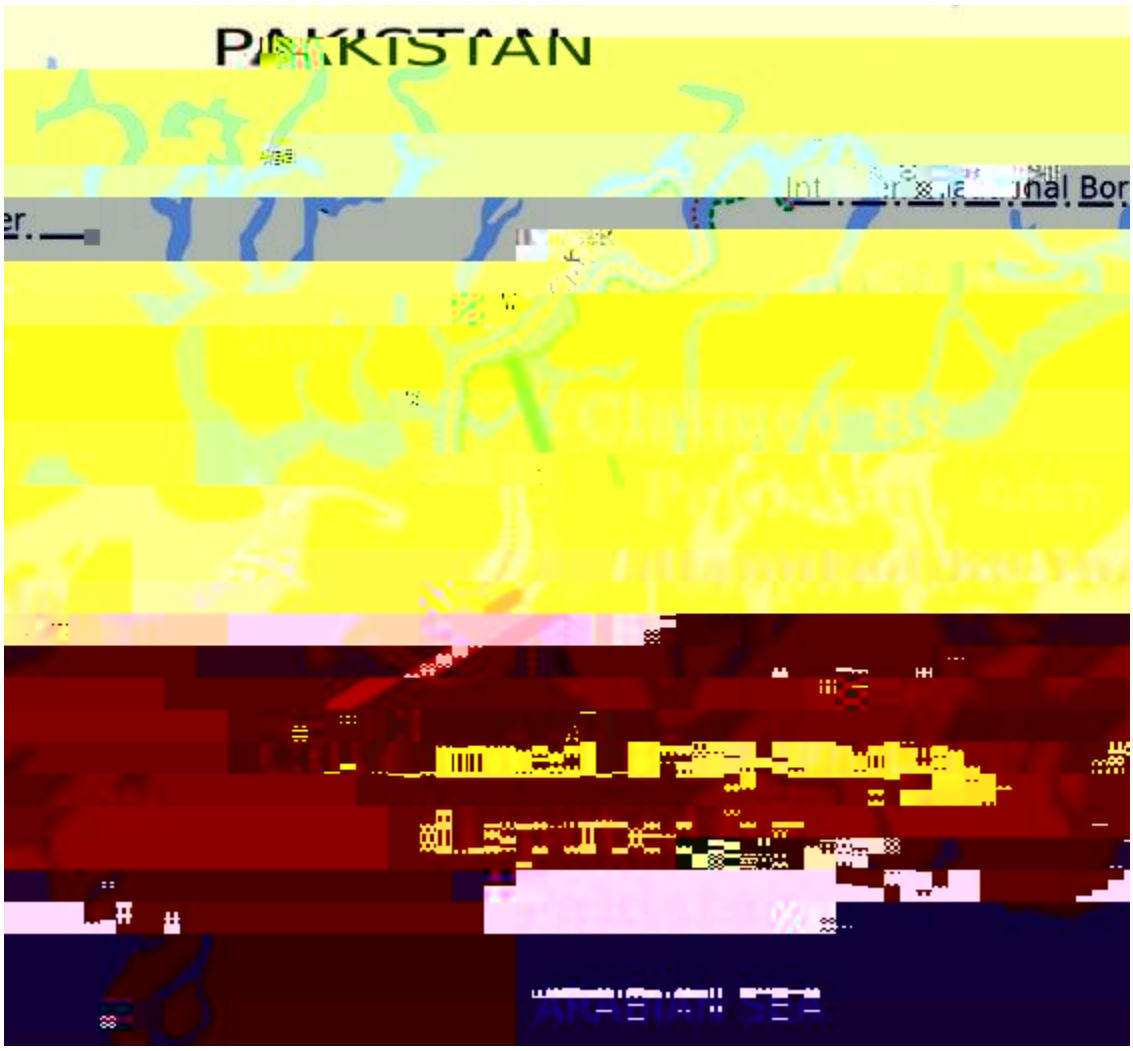
[14] Rizvi, Hasan-Askari. “Pakistan: Ideology and Foreign Policy.” Asian Affairs10, no. 1 (1983): 48–59. http://www.jstor.org/stable/30171948.

[15] Nasr, Vali. “International Ideas and the Origins of Pakistan-India Conflict.”

This dispute has left large place of ocean in Arabia Sea unexplored. A major portion comprising EEZs of both countries is untouched in terms of Marine Scientific Research.

The negotiators and policy makers of India and Pakistan had been most of the time concentrated on the land based issues such as Kashmir conflict and Siachen Glaciers. They have been following the assumption that both states cannot make progress to resolve other conflicts without addressing the Kashmir issue. Resultantly, the other conflicts, especially the Sir Creek dispute, remained completely neglected. Sir Creek is a water body or can be called an estuary or fluctuating tidal channel spanning 60 miles in length located in Kutch area often called the Rann of Kutch.[27] The Kutch area is located in the southwestern part of India and southeastern part of Pakistan. The Rann lies on the border between the Pakistani province of Sindh and the Indian state of Gujarat. Pakistan and India have not yet demarcated their maritime boundary because the demarcation office directly related to the delimitation of Sir Creek. In this respect, Pakistan takes the position that a solution must first be found to the Sir Creek issue, because this will provide the point on the land from which to draw the maritime boundary. On the other hand, India insists to make the maritime boundary delimitation without depending on the Creek's delimitation. The Sir Creek issue has also been a complex issue because it is directly related to land boundary of Kutch area which will determine the intersection of coast.

[27]Misra, Ashutosh. "The Sir Creek Boundary Dispute: A Victim of India-Pakistan Linkage Politics." Boundary and Security Bulletin 8.4 (2001): 91-96.


PAKISTAN

Western Boundary Case tribunal decided the matter and declared the award in February 1968. As shown above in the map, international border was drawn following the decision of the tribunal. The map is taken from Indian Defense News.[29]The award upheld the Indianclaim and gave it 90% of entire Rann,conceding a d [

After few years in 1997, both states held another round of negotiations at the level of Foreign

negotiations could also not make any desirable progress. Again, both states agreed to continue the discussion to resolve the issue. These dialogues also ended up without providing any concrete progress despite the discussion and proposals from both sides.

After failures of the 2006 dialogues and a gap of six years, both states decided to hold another round of discussions with the spirit to resolve the issues in 2012. Under the resumedprocess, Surveyor General of India Dr Swarna Subba Rao headed the Indian delegation and Additional Defense Secretary Rear Admiral Farrokh Ahmad headed the Pakistan delegation. Discussionstook placeovertwo consecutive days. However, once again, theyfailed to yield concrete results. After the round of talks, the Indian Ministry of external affairs issued a statement regarding these dialogues:

> "The two sides discussed the land boundary in the Sir Creek area and also delimitation of International Maritime Boundary between India and Pakistan. They reiterated their desire to find an amicable solution of the Sir Creek issue through sustained and result oriented dialogue. They agreed to hold the next round of the talks on Sir Creek issue in Pakistan at mutually convenient dates, to be determined through diplomatic channels".[39]

It was the last round of negotiations regarding Sir Creek issue in the past 10 years. This is the history of the negotiations, talks, discussions and dialogues between India and Pakistan. Both states have endeavouredfrequentlyto resolve the issue. In this regard, they formed multiple delegations of high officials, separate working groups and held talks at different levels. They discussed different proposal and analyze different technicalities of the issues. However, they could not resolve the issue and all of the discussions ended up in the complete failures. The maritime disputes between India and Pakistan may involve geographical intricacies, domestic political polarization and serious economic and security concerns. However, both states had always maintained and showed their political will and determination to resolve the issue amicably. Despite series of failure in diplomatic talks, rejection of proposals of each other and

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[39] Joint Statement on India-Pakistan Talks on Sir Creek Issue, June 19, 2012, Ministry of External Affairs, Government of India, https://www.mea.gov.in/Speeches-Statements.htm?dtl/19918/Joint+Statement+on+IndiaPakistan+Talks+on+Sir+Creek+Issue

derailing of dialogues, both states kept trying to engage each other to reach on the acceptable resolution.

Section B: Fishing Community in India and Pakistan

The India-Pakistan maritime border is convulsed in uncertainties in terms of maritime boundary demarcation from the mouth of Sir Creek seawards. However, this part of the ocean is rich in fisheries and biodiversity. In this respect, they are important for fishing communities living on the coastlines of the India and Pakistan maritime border who areentirely dependent on fishing. Their dependency on fishing is indispensable because of two factors. Firstlyfishing provides them with the food to eat. Secondly, they earn their living and support their family economies by catching and selling fish in the market. According to the claim of Hasan Ansari,

> "The fishing industry has come a long way since Independence and become a source of influential income, employment, and livelihood for the economically-underdeveloped population in Pakistan and India. More than seven million people use fishing as a source of livelihood in Pakistan and India".[40]

These opportunities are important because coastal areas of India and Pakistan are not developed enough to provide their fishing communities other social, professional and economic opportunities to support their livelihood. Moreover, the fishermen living in the coastal areas are far from major cities and they do not have other options to sustain their livelihood. Fishermen of both countries are going through the same economic and social circumstances with the same level of dependency on fishing. Therefore, fishing for fishermen of both countries regardless of their national identities is a sign of life and livelihood. As stated by Mukul Sharma and Charu Gupta

> "The fishers of India and Pakistan have been children of the sea, and the ocean their shop floor. Fishing is not only an occupation for them but a way of life. They

[40] Hasan Ansari & Ravi Vohra, "CBMs at Sea," 28.

also play a large part in the prosperity of the two countries by earning a

both nationalities. It has created a perpetual fear which has been embedded in their livelihood. These arrests also negatively impact the already strained relations between India and Pakistan. Fishermen arrested during their encounter with hostile maritime agencies are deprived of their independence, livelihood and later on denied justice. Their families suffer because arrested

In these circumstances, their sufferings are not restricted to themselves. The secondary bruntof their inhuman arrest also affectstheir families and children. They also suffer from the same anxiety and pain knowing that they are helplessness and they cannot do anything to get them released. They suffer from the fact that there is no any law, mechanism or legal process through which they can struggle to get them back.

Trial and Prosecution of fishermen: A legal perspective

India and Pakistan both have certain domestic legislation which enables their maritime security institutions to arrest the fishermen and seize their boats and fishes. Regardless of the fact that uncertainties and ambiguities existed in legal tools delaying release of fishermen, both states are continuously operating under those laws. Unfortunately, those laws are not very clear and do not provide standard operating procedures to release the fishermen earliest. Pakistan passed the act name "Territorial Waters and Maritime Zones Act" in 1976 to safeguard their maritime security and govern the waters.[47]Whereas The Foreigner Act 1946 provides the legal framework under which Pakistani forces arrest fishermen. According to this act, sub-section 2 of section 14:

"(2) Where any person knowingly enters into Pakistan illegally, he shall be guilty of an offence under this Act and shall be punished with imprisonment for a term which may extend to ten year s and fine which may extend to ten thousand rupees".[48]

This is the provision which establish a criminal offence when fishermen entered into claiming territory of Pakistan. Thereafter, section 14B provides following two provisions under which fishermen get released.

"(i) with the consent of the Federal Government, be permitted by the Court trying him for any offence under this Act to depart from Pakistan; or
(ii) under the order of the Federal Government , be permitted to depart from Pakistan while he is undergoing any sentence passed under this Act."[49]

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[47]Territorial Waters and Maritime Zones Act" 1976, National Assembly of Pakistanhttps://na.gov.pk/uploads/documents/1324604592_490.pdf

[48] The Foreigner Act 1946 Pakistan, https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/37905/128188/F1951227926/PAK37905%202016.pdf

[49] Ibid

(b) require the master of the vessel or seizure or detained to bring such vessel to any specified port;
(c) arrest any person who, such officer has reason to believe, has committed such as offence."[53]

The subsection 4 of section 9 of the same act described the procedure for trial and prosecution of fishermen.

"(4) Where any vessel or other things are seized, or any person has been arrested, under sub-section (2)(a) the vessel or other things so seized shall, as soon as possible, be produced before a Magistrate competent to try as offence under this Act who shall make such order as he may deem fit for the retention of custody of such vessel or things with Government or with any other authority pending the completion of any proceedings for the prosecution of any offence under this Act or for its use by such authority during such retention or custody on such terms and conditions as the Magistrate may thing fit to impose:"[54]

The provision (a) of sub-section 2 of section 4 provides the procedure for the release of fishermen after their arrest. These are the contemporary legal frameworks of both countries which are providing them legal basis to arrest the fishermen and boats over crossing of maritime borders. Other than these acts, there are not legal tools or documents which provide standard procedures for the release of fishermen. With the realization of gap of trial and prosecution of national of each other, Pakistan and India formed a Joint Judicial Committee on Prisoners in 2007 which held its first meeting in New Delhi on 26 February 2008.[55]

The Committee was formed by the Foreign Minister of Pakistan and the External Affairs Minister of India to draft the recommendations and necessary procedure for expeditious release and provision of basic and legal rights to prisoners who were held in prisons of each other countries. The committee comprised eight judges including four judges from each country. After their first meeting, the committee recommended following steps to both governments:

i. “Each Government shall maintain a comprehensive list of the nations of other country under its arrest, detention or imprisonment. The lists shall be exchanged on 1 January and 1 July each year.
ii. Immediate notification of any arrest, detention or imprisonment of any person of the other country shall be provided to the respective High Commission.
iii. Each Government undertakes to expeditiously inform the other of the sentences awarded to the convicted nationals of the other country.
iv. Each Government shall provide consular access within three months to nationals of one country under arrest, detention or imprisonment in the other country.
v. Both Government agree to release and repatriate persons within one month of confirmation of their national status and completion of sentences.
vi. In case of arrest, detention or sentence made on political or security grounds, each side may examine the case on its merits.
vii. In special cases, which call for or require compassionate and humanitarian considerations, each side may exercise its discretion subject to its laws and regulation to allow early release and repatriation of persons”.[59]

The judicial committee which was formed in 2007 emphasized the need to implement this agreement in true spirit. Unfortunately, the judicial committee itself became inactive in 2013. However, both countries continued to exchange the list of prisoners after this agreement. These exchanges of lists give the idea about number of fishermen who get arrested. The date of exchange of lists in last couple of years can help to analyze and understand the number of fishermen suffering from this inhuman practice. In the year after this agreement was concluded, Pakistan handed over the list of around 400 Indian nationals who were arrested by Pakistan. According to Economic Times,

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The development of the Convention aimed to set the international economic order in oceans while keeping in view the interests and needs of humankind and states. The convention gave particular importance to the interests and sovereignty of states while stipulating different terms and conditions regarding its application and enforcement. The convention addresses and regulates all aspects of ocean affairs and management. It took decades to develop UNCLOS because of its comprehensiveness and scope to deal with all issues of the seas. Exploitation and exploration in oceans was increasingly intertwining with clashing interests of states. Scientific and technological advancement made it easier for states to exploit the living and non-living resources beyond theirterritorial jurisdiction. States gradually started to assert more dominance overocean space. It led states to seek expansion of their maritime territory which started to create disputes among states for different maritime zones. While giving historical perspective of the convention, the Division for Ocean Affairs and the Law of the Sea (DOALOS) of United Nations comprehensively summed up:

> "A tangle of claims, spreading pollution, competing demands for lucrative fish stocks in coastal waters and adjacent seas, growing tension between coastal nations' rights to these resources and those of distant-water fishermen, the prospects of a rich harvest of resources on the sea floor, the increased presence of maritime powers and the pressures of long-distance navigation and a seemingly outdated, if not inherently conflicting, freedom-of-the-seas doctrine - all these were threatening to transform the oceans into another arena for conflict and instability."[77]

UNCLOS was developed to provide the legal framework to address all such kind of issues. The convention covers almost all macro issues related to oceans including disputes in different maritime areas. It provides the framework to settle the disputes by peaceful means. Part XV of the convention provides the framework to manage maritime disputes and the settlement of

[77] Ibid

disputes among states regarding the application or interpretation of the convention, albeit with exceptions discussed below.[78]

UNCLOS and fisheries jurisdiction

In the domain of international fishery governance and management, the convention provides a comprehensive set of new laws and rules. The convention has divided the oceans in differentmaritime zones to establish different regimes, rules, laws and regulatory frameworks. These maritime zones fall into three different categories. The first category includes zones under the sovereignty of the coastal state, namelyinternal waters, archipelagic waters, and territorial seas. Thesecond category includes zonesin whichsovereign rights are conferred on the coastal state for particular purposes, namely the exclusive economic zone and the continental shelf. Thethird category includes zones beyond the jurisdiction of the coastal state. Coastal states have absolute rights and sovereignty to regulate and supervise fishing in first category.According to article 19 of UNCLOS, states are obliged to provide innocent passage to foreign ships in this category. However, according to article 190(2)(i), any fishing activity by foreign ships in first category shall be considered to beprejudicial to the peace, good order or security of the coastal State.The article has prohibited the fishing for foreign ships and given absolute sovereignty to coastal states especially for fisheries jurisdictions. In contrast to EEZ, the territorial sea regime is largely silent on fishery governance in UNCLOS. According to Martin Tsamenyi and Quentin Hanich, there are at least two reasons for the absence of fisheries obligations in sovereign maritime zones of the convention.

“Under general international law, coastal States have absolute sovereignty in s obl in6(-16(i)-d

> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

Despite being the subject of the convention and having the obligation, India and Pakistan have not yet delimited the maritime boundary as adjacent states. This is because of the limitation put forth in the second sentence of the article which contains a rule-exception relationship between 'equidistance'and 'special circumstances/historic title'.[81]This relationship undermines what is otherwise a relatively clear rule in first sentence of article 15. In case of India Pakistan, maritime boundary delimitationinvolvesthe situation of 'historic title' as discussed in the first chapter.

Article 74 of the convention provides the legal guidelines for delimitation of EEZ between States with opposite or adjacent coasts.[82]Paragraph 3 of the article is very particularly important in this regard.[83] The clause obliges member states to make provisional arrangement of practical nature while working towards a final decision. It says:

> "The States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation"[84]

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[81] Article 15 The United Nations Convention on the law of the Sea, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[82] Article 74, The United Nations Convention on the law of the Sea, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[83] Article 74(3) The United Nations Convention on the law of the Sea, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

Similarly, Article 83 provides the legal framework for delimitation of the continental shelf between States with opposite or adjacent coasts.[85]Paragraph 3 of the article emphasized for provisional arrangement of practical nature with two obligations until the delimitation.[86] In case of India and Pakistan, both states have not made any kind of interim measures pending the delimitation of maritime boundary. Although both articles are not related to territorial regimes yet it implies two obligations for states regarding dispute settlement. First, they are obligated to make every effort to

The convention is developed to address all aspects of issues and different concerns of states parties to bring them on the table for dispute settlement. However, Pakistan and India have not utilized any of above institution or forum to resolve their maritime boundary dispute. Because article 298 allows states to opt out of compulsory dispute settlement for disputes concerning the interpretation and application of articles 15, 74 and 83 relating to sea boundary delimitations or

> provisions about assistance to persons or ships in distress, the obligation of rescue, and the exception to the rule against stopping and anchoring during innocent passage for the purpose of rendering assistance to persons, ships or aircraft in danger or distress."[96]

The convention has included certain provisions which imply the importance of human beings operating in the maritime domain. The convention emphasized the importance of human rights and lives in several clauses. Though it does not deal directly with human rights of fishermen in disputed waters, there are various provisions which imply that human lives should be given paramount importance in all kind of oceanic affairs. For example, article 98 obliges states to provide necessary assistance to distress people operating on seas. According to the article

> "Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him."[97]

In this article, the UNCLOS made it a duty of state to render assistance to the crew or the passengers who are in danger at sea. The inclusion of this article in the convention implies the consideration of humanitarian aspect in this legal framework. Article 73 of clauses 2 of the convention suggests the prompt release of crew upon posting of reasonable bond or other security.

> "Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security."[98]

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[96] Tullio Treves Berkeley Journal of International Law Volume 28 | Issue 1 Article 1 2010 Human Rights and the Law of the Sea

[97] Article 98, The UN Convention on the law of the Sea, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[98] Article 98, The UN Convention on the law of the Sea, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

This article is only applicable in EEZ. However, India and Pakistan havenot been established any kind of mechanism to post bond or other security for the release of their fishermen.Similarly, article 292 further detailed the provision and procedure of prompt release of vessels and crews

> "Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree."[99]

However, India and Pakistan never complies this provision with regards to the release of fishermen. None of the states ever submitted to international tribunal or court for the release for their fishermen.An application for the release of a vessel or its crew from detention may be made by or on behalf of the flag state. Clause 2 of article 292 says

> "The application for release may be made only by or on behalf of the flag State of the vessel."[100]

While following the procedure and according the convention, the court or tribunal shall deal with the application without any delay. However, India and Pakistan never utilized this forum for the release of their fishermen and their vessels. It appears that both states do not give importance to lives and property of fishermen. They are not considering the fishermen worthy enough to set up legal structure or mechanism to put the application at competent forum for their immediate release. Since the convention directly dealing with the state parties to ensure the smooth operations at sea, however, it encourage member states to make the necessary arrangement to ensure and make the favourable conditions for people working at sea. Moreover, these provisions

> "The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law."[105]

This provision shows that sovereignty and exercise of enforcement power in territorial sea is subject to other rules of international laws. One of the areas of international law that is particularly relevant is human rights law, as discussed below.

Fishermen: a human rights perspective

Fishermen are human beings and entitled to all those human rights promulgated in different international conventions. States are obligated to support and ensure all those human rights for individuals. Similarly, this is the responsibility of states under the obligation of IHRL to ensure the safety of human rights of fishermen. India and Pakistan are also parties to different international human rights conventions. Those conventions make it obligatory for states to prevent the violations of human rights laws for individuals especially for fishermen who are the subject of this study. Therefore, the section will analyze the relevance and application of those laws and conventions on fishermen of India and Pakistan. United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) in December 1948 which defined and recognized the inherent dignity of mankind and set the basis for development of human rights laws.[106] The declaration not only provided the basis for international legal framework for the safety of human rights but also defined all aspects of human rights in conspicuous manners. The declaration is not binding on states. However, it provided precursor to other human rights covenants which are signed and ratified by India and Pakistan and therefore; are binding on both countries. In both covenants, the wording of the declaration is repeated. Preamble of UNDHR states

> "Recognizes that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"[107]

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[105] Article 2, The UN Convention on the law of the Sea, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[106] History of the Declaration, 1948, https://www.un.org/en/about-us/udhr/history-of-the-declaration

[107] Universal Declaration of Human Rights 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights

> “Everyone has the right to life, liberty and the security of person.”[110]

This article makes it clear that all human being are entitled toright of life and liberty. Fishermen of both countries are also suffering from the violation of this article as discussed in chapter 1. They lose their liberty and in some cases lives while pursuing their livelihood. Article 5 of the same ensures the safety of people from all kind of inhuman treatment and torture. It says

> “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”[111]

Contrary to the spirit of this article and the declaration, there are various news and reports

“Everyone has the right to work, to free choice of employment, to just and

India made the accession to this convention in February 2006.[121] Similarly, India made accession

Fisherman of India and Pakistan may have been entitled to the compensation against their arbitrary arrests. However, let alone the compensation, they hardly get their right to liberty and life. Article 10 of the ICCPR outlined that the arrested persons or prisoners shall be treated with humanity and respect should be given to the inherent dignity of men. According to the article,

> "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[128]

In several cases as reported by different news agencies and organization of both India and Pakistan, the fishermen imprisoned in different jails are not treated with humanity and dignity. The treatment of fishermen has been thoroughly discussed in previous chapter. The treatment they get is blatant violation of these laws. Similarly, the ICESCR also outlined the rights in details giving by the UNDHR. However, two articles of the covenants are particularly important regarding the obligations of states towards all those human rights described in the UNDHR, the ICCPR and the ICESCR. Article 2 clause 1 of the ICESCR says

> "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."[129]

This clause suggests that the member states are have the obligation to take necessary measures including international assistance and cooperation to safeguards the rights enunciated in the declaration and covenants. Similarly, clause 1 of the article 6 of the covenant described that

[128] Article 106, International Covenant on Civil and Political Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

> "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."[130]

This article also seeks states to take appropriated steps for the realization of human rights of their citizens. Fishermen of India and Pakistan are primarily suffering from the lack of cooperation of both countries to make the necessary arrangements for their dignified livelihood. Both states never sought international assistance or cooperation to build legal framework or establish regime to safeguard the rights of fishermen. Both countries never attempted to make any specially arrangement specifically dealing with human rights of their fishermen.

The study found that UNCLOS provides comprehensive framework to resolve maritime disputes and delimitation of maritime boundary. In general cases, it provides unequivocal guidelines and framework to settle the dispute among states. In certain cases, UNCLOS provides principles interpreted by judicial decisions to address the complex issues of boundary delimitation as discussed above. Similarly, International law and the law of the Sea provide various areas and frameworks to address and cover human rights issues and aspects while dealing with individuals. India and Pakistan mostly focus on the negotiations related to maritime territory and delimitation but never sought to make any kind of arrangement exclusively for fishermen. Fishermen of both countries are suffering from grave violation of human rights enunciated in various international

PART TWO: SCOPE FOR FISHERMEN REGIME BETWEEN INDIA AND PAKISTAN

The world has seen various wars, conflicts, disputes and differences among states. It has caused huge loss of human lives, economies and infrastructure. At the same time, the world has also witnessed various dispute and conflict resolutions which added to the dignity of human beings and brought economic prosperity. There is always a space for dispute resolution and cooperation between hostile states regardless of how intense and complicated those disputes are. There are various states that have made unprecedented bilateral cooperative arrangements to resolve or manage their disputes. By looking at India and Pakistan through these lenses, there is always a possibility for new regimes to be developed between these countries. In particular, there is a potential for anew regime concerning the lives and livelihood of fishermen of both countries. This part of the study will explore the options for establishing a new regime between India and Pakistan while considering their bilateral relations and broader legal frameworkas discussed in previous chapters.

CHAPTER 1: OVERVIEW OF JOINT FISHING ZONES AND SELECTED STATES PRACTICE

This chapter will explainthe concept of a joint development zone and joint fishing zoneand how they have been applied to disputed maritime areas. States realized the importance of cooperation and mutual coordination mechanism to deal with disputes and differences regardless of the complexities of environmental and geographical considerations. Similarly, in the maritime domain, many states found ways to make the necessary arrangements not only to manage their disputes but also to make the most of oceans. This chapter will provideinsightsintovarious arrangements and joint mechanism, especially joint development zones and joint fishing zones made by different states to resolve or manage their maritime disputes and make most use of oceans.When states interact with each other and agree to work jointly, it has implications fortheir bilateral relations. This study also incorporates the analyses of implications of such joint ventures and cooperation on diplomatic relations. Thereafter, the next section will analyse selected states practices of joint fishing zoning, modalities of their arrangements and contextualization of India-Pakistan relation in this regard.

Section A: Overview of Concept of joint fishing zones

The joint fishing zones or joint development zone does not have any universal or formal definition, structure, framework or modalities. However, an attempt has been made in this study to explore the concept of such joint ventures and their relevance with diplomatic relations between two states. In this regard, various definitions or concepts have been discussed by different scholars. Moreover, various states have made different kind of arrangements, broadly falling in the maritime domain, which are discussed in detail. States' bilateral agreements in this regard have implications for diplomatic relations between them. This section entails the concept and examples of joint fishing zone, their importance and implications on diplomatic relations.

Need and importance for joint fishing zone

International cooperation and multilateralism arenecessary to pro4(n di(a)4(hp(n)2(s),d [(io)2(n) pr)390.00n

Australia and Papua New Guinea (PNG) reached an innovative agreement in 1978 relating to the Torres Strait.[144]It was a different kind of arrangement. The agreement established a protected zone in Torres Strait rather than creating a joint development zone. It was aimed to provide the environment for free movement of traditional inhabitants, to safeguard traditional fishing activities, to protect the marine environment and to regulate commercial fisheries. They also set up a joint advisory council and detailed regulatory regime consisting liaison Officers of Papua New Guinea and Australia that allows both countries to work together for licensing, policing as well as the protection, preservation and management of fisheries.[145]

Denmark and the United Kingdom concluded a maritime boundary agreement in 1999 for the area between Scotland and the Faroe Islands.[146] They made this agreement to facilitate their fishermen. In the agreement, a 'special area' was defined for fisheries jurisdiction. The agreement was unique and provides exemplary arrangements for other states. According to article 6 of the agreement, each party has the right to conduct fishery operation and issuing of licenses to fishing vessels. Both parties agreed not to interdict fishing vessels operating in that particular zone when vessels have a license issued by the other party.

Similarly, there are many states that made different kind of arrangements and joint development agreements pending their maritime boundary issues. Those arrangements and agreements include

Thailand. [147]

structures and installations, to establish artificial islands, to conduct marine scientific research, and take all possible measures to preserve and protect the marine environment.[152]

Such kinds of arrangements help states to progress in range of areas. States, despite their long-standing disputes, made their way to work collectively to make more use of oceans. These kinds of agreements and arrangements provide instrumental support to manage the fishery, facilitate their human resource and to generate more revenue to improve economies as implied by UK and Denmark agreement report by UK government.[153] These arrangements are also necessary to make more use of oceans with minimum resources. There are a number of reasons which warrant states to work collectively and make joint agreements to improve fishery governance and facilitate their fishermen.

According to David Rosenberg, Joint fishing zone or joint development zone helps states to contribute and actively support to the development of advice and scientific knowledge. They can improve policy coherence regarding international fishery governance, trade and development. It amplifies cooperation among parties including economic, technical and scientific cooperation. These arrangements also contribute to ocean governance especially to sustainable fishing activities that may promote employment and prove economically viable. Bilateral agreement between state parties in one domain can potentially lead parties to work jointly in multiple domains and areas.[154]

Moreover, joint fishing zones immensely contribute to fight against illegal, unreported and unregulated (IUU) fishing and promote necessary actions to make fishing sustainable. These zones serve equally to state parties and also contribute to regional ocean governance including fisheries governance, coastal management, maritime relations and scientific developments.[155] These cooperative and bilateral arrangements between states not only serve the purpose of

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[152] Article 3, Treaty between Colombia and Jamaica. The treaty was signed on 12 November 1993 (entered into force 14 March 1994). Treaty text available at https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/JAM-COL1993MD.PDF

[153] International treaty, UK/Denmark: Free Trade Agreement in respect of the Faroe Islands [CS Denmark No.1/2019]

[154] David Rosenberg, Managing the Resources of the China Seas: China's Bilateral Fisheries Agreements with Japan, South Korea, and Vietnam. The Asia-Pacific Journal | Japan Focus Volume 3 | Issue 6 | Jun 2005.

[155] Ibid

economic development and societal prosperity but also exert considerable impacts on bilateral relations between states. These developments and cooperation between states define the future trajectory of their bilateral relations.

Implications on diplomatic relations

In contemporary world order, the importance of diplomacy and multilateralism has been increased manifold for states. Globalization and intertwining interests of states have opened multiple avenues to advance the collaboration among states. Disputes among states have been increasingly becoming the chief concerns of states to find the amicable resolutions. New regimes among states are playing a central role to develop cordial relations and multiplying the cooperation. States are continuously engaging with each other to reduce the risk of war and prevent the conflict by endeavouring to resolve the disputes among them. The United Nations established The International Day of Multilateralism and Diplomacy for Peace through a resolution in December 2018 to promote the international cooperation, and international norms among states.[156] The resolution emphasized the need to enhance cooperation among states and to resolve disputes through peaceful means. The UN, in its

dispute settlement or maritime boundary delimitation with the spirit to advance the cooperation and resolve the dispute in future.[158]

States' initiatives to set up cooperative mechanisms and joint development plans also have considerable implications for diplomatic relations. It can help states to resolve their longstanding disputes, to create amicable relations, to reduce hostilities and to develop long lasting peace as claimed by Professor Schofield below. Joint development zones or fishing zones is one of the initiatives which can not only positively impact diplomatic relations but also help to resolve long standing maritime boundary delimitation issues. Joint development zone or joint fishing zone between states can potentially lead states to reach an agreement for permanent boundary delimitation and to initiate cooperation in other fields too. Professor Schofield comprehensively summed up

> "The joint zone may act as a catalyst for reaching agreement on the delimitation line, for example providing both parties with some rights in the maritime area of interest and therefore countering the potential drawback of defining a boundary line and subsequently discovering that the bulk, or all, of the resources in the area subject to overlapping maritime claims falls on the 'wrong side of the line' as it were. Where overlapping claims exist and the parties have reached a deadlock in maritime boundary delimitation negotiations, the alternative of a shared rather than unilateral management regime may prove attractive."[159]

It does not only imply that states can reach agreement on maritime boundary delimitation by making provisional arrangements or cooperating in disputed areas but also impliesthat it may positively influence diplomatic relations between states

conflicts, then resolution of those disputes or making efforts to resolve disputes can also lead them to amicable relations and economic prosperity. Joint development zones or fishing zones is widely recognized in the world by several states to be an attractive mode of diplomatic conversation and an alternative means of cooperation. It cannot only improve diplomatic relations among states but also benefit disputing coastal states regarding maritime territorial delimitation. It is a rational and logical need being widely practiced among states albeit provisional nature.

Such kind of joint collaboration by states enhances mutual interactions. These interactions help to shape better foreign policy of states toward each other keeping in view their national interests, ideological goals, economic concerns to boost bilateral ties. These kinds of maritime bilateral agreements have the potential to effectively influence the diplomatic relations between two states for mutual benefits.

made a temporary agreement without prejudice to the permanent delimitation of EEZ. According to Ministry of Foreign Affairs of South Korea

> “The ROK-China Fisheries Agreement is a temporary one, effective until the EEZ

> in the fishing sector and to the development of the bilateral relations between the two countries as a whole"[168]

Both countries took this initiative with the spirit of managing their maritime dispute bilaterally and peacefully. It shows that provisional arrangements between two countries can be a key to resolve the maritime disputes through bilateral negotiations. The agreement was concerning three key areas. First, it created a cooperative management regime to manage the shared fishery resources. Second, it provided different principles for fishing access in each other's EEZ. Third, it also reaffirmed parties' exclusive rights over fishing activities and fishery resources in their own EEZ.[169] The agreement also led to the formation of a Joint Fishery Committee (JFC).

China and South Korea made the fishery agreement which is based upon the EEZ fisheries regime of UNCLOS and it is provisional in nature pending the delimitation of maritime boundary.[170] This agreement has no relevance or applicability in territorial sea regime. Article 1 of the agreement clarifies that it applies to China's EEZ and Korea's EEZ. Article 2 of the agreement provides

> "Each Contracting Party shall permit, in accordance with the provisions of this Agreement and its relevant laws and regulations, the fishing activities by the nationals and fishing vessels of the other Party in its exclusive economic zone".[171]

This article allows national of both parties to fish in each other's EEZ subject to relevant regulation. Article 2 to article 5 of the agreement provides detailed provisions regarding regulations of mutual fishing access. Prescriptive and enforcement jurisdiction of the coastal

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[168] Ministry of Foreign Affairs of the People's Republic of China https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/tyfls_665260/tyfl_665264/2631_665276/200011/t20001115_600034.html

[169] Article 56(1), United Nations Convention on the Law of the Sea,

against the fishing vessels of the other state.[183] However, if one party finds a fishing vessel of other flag state involve in fishing against the measures by the JFC in any of zones, the party can notify the other state party along with all relevant circumstances. According to article 7(3) of the agreement, the party who is notified should immediately take necessary measures regarding the involvement of their fishing vessel in question and report back to the party who informed them.[184] These arrangements imply the spirit of article 73 of UNCLOS and its enforcement especially clause 4 of article 73 where states are suppose to promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed In cases of arrest or detention of foreign vessels the coastal State.[185]

Article 11 of the agreement is the most important to discuss given the context of this research. This article includes the humanitarian aspect while governing the fishery relation parties. According to first paragraph of this article

> “When nationals a2154(ny(. 110(a)4(ny p) n)-10(a)9ni)-2heorch//ng t2governc1(a)4(2154)3.9(nd ot0.00

> "When nationals and fishing vessels of one Contracting Party need to take refuge due to bad weather or other emergencies, they may, in accordance with the provisions of Annex II of this Agreement, contact the relevant departments of the other Contracting Party and seek refuge in the ports of the other Contracting Party. The nationals and fishing vessels shall abide by the relevant laws and regulations of the other Contracting Party and obey the commands of the relevant departments"[187]

This article clarifies that nationals and fishing vessels of contracting party can seek assistance and refuge from other contracting party. It was further added that the laws and regulation of other contracting party will be applied in that case. This article further implies that the contracting parties took this measure to ensure the dignified livelihood of their fishermen.

The Korean-Chinese Fisheries Agreement is envisaged in article 74 of UNCLOS as 'provisional arrangement of a practical nature' and 'without prejudice to the final delimitation'.F6cea74,aUn6t(e).vet6onse1

Meanwhile, they established a governing framework to regulate the fishery jurisdiction and overlapping areas with the view to enhance the prospects of final delimitation of their maritime boundaries amicably. Moreover, these arrangements not only showcased their commitments to international law and rules but also provided an example of cooperative management of fisheries affairs to littoral states having maritime disputes.

UK-Denmark Joint Fishing Management and their modalities

The United Kingdom and Denmark concluded an agreement in 1999 related to maritime boundary disputed area between Scotland and the Faroe Islands.[190] This agreement differs significantly from the case study above because the agreement has decentralized mechanisms where the states concerned continue to adopt unilateral measures but agree to refrain from enforcing those measures against vessels of the other claimant state.

This disputed area is located between Scotland and the Faroe Islands in waters of North Atlantic.[191] The Faroe Islands is self-governing archipelagic country under Kingdome of Denmark.[192] The agreement put an end to the long standing dispute and resulted into the establishment of new zone called The Special Area (TSA) and delimitation of continental shelf. According to agreement

> "("the Parties") Having agreed to delimit the continental shelf in the area between the Faroe Islands and the United Kingdom within 200 nautical miles from the

The agreement developed an interesting joint management framework to regulate the fisheries zones and continental shelf. The agreement resulted in the establishment of a new special regime governing The Special Area (TSA)in the central part of the Boundary. it provided for joint fisheries jurisdiction for both countries. The TSA covers an area of 8,000 km² or 2,337nm2 approximately.[194]Article 1 of the agreement provides geographical characteristics of the area that falls under the jurisdiction of the agreement. Article 1(3) states

> "In the north-east, the termination point of the boundary line is the equidistant tripoint between the Faroe Islands, Norway and the United Kingdom. In the south-west, the termination point of the boundary line is a point situated 200 nautical miles calculated from the territorial sea basepoints on Mykinesholmur and on St. Kilda, respectively."

Article 2 of the agreement deals with the petroleum and other mineral deposit found in or on continental shelf. It provides a comprehensive guideline to deal with these minerals in case of dispute. Clause 3 of Article 2 is important in this regard as it emphasize to resolve the dispute bilaterally as soon as possible. It says

> "The Parties shall make every effort to resolve any disagreement as rapidly as possible. If, however, the Parties fail to agree during the discussions, they shall jointly consider all of the options for resolving the impasse including inviting the opinion of independent experts."

It implies the spirit of the parties to take ahead their relation positively and resolve the issues bilaterally. Article 3 and 4 further clarify the geographical features of the areas. Article 5 of the agreement provides the framework of fisheries jurisdiction and rights in the special area. It provides three clauses to govern the fisheries management in the TSA.

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(a) To apply the relevant rules and regulations applicable within its zone of fisheries jurisdiction concerning the management, including the issuing of fishing licenses, and conduct of fisheries;

(b) To refrain from inspection and control of fishing vessels which operate in the Special Area solely under a license issued by the other Party;

channel for consultation and stipulates to hold the consultation within six days of receipt of the request. According to article 8

> Each Party may through the diplomatic channel call for consultations with the other Party with a view to reaching agreement on any issue pertaining to articles 5, 6 and 7 of this Agreement. Such consultations shall be heldnot later than sixty days after receipt of the request.

It was added to respond immediately all issues arise between the parties related to this agreement. In the end of the agreement, article 10 clearly maintains that the agreement shall be without prejudice to any claim of either Party outside the Area.

Discussion

Taken together, the case studies demonstrate the range of mechanisms that countries can apply in disputed waters to regulate their fishery relations and to make the most use of oceans in cooperative way. The first case study shows that countries (China and South Korea), without

CHAPTER 3: SCOPE OF JOINT FISHING ZONE BETWEEN INDIA AND PAKISTAN

This chapter will thoroughly analyze the scope and feasibility of establishing a joint fishing regime/zone between India and Pakistan in the light of case studies considered in the previous chapter. Both countries need to manage their dispute and issues especially maritime dispute not only to ensure amicable interaction and relations at sea but also to promote peace and stability in the region. Both countries have helTJ 0 TwMva4(r)3(e)-2(ous)-1((hi)-2(s)4(l)-2(sogu)4(s)-109( ))-2(o)]0

Recommendation 1

Pakistan and India can make the agreement to govern the JFZ by establishing a centralized mechanism. This recommendation includes the agreement containing different conditions and mechanisms to govern the fishery in JFZ. India and Pakistan should also establish the India-Pakistan Joint Fishery Committee (IPJFC). It can be composed of a representative and several members appointed by both countries in equal numbers as deemed necessary. This Agreement should be without prejudice to any claim of either Party outside the JFZ and it should incorporate an express clause to that effect. Following are the recommendations to govern the JFZ.

- Each party should permit the nationals and fishing vessels of the other Contracting Party to engage in fishing activities in the JFZ.
- The authorized agencies of each Party can issue fishing licenses to the nationals and fishing vessels of the other Party in accordance with the mutually agreed condition.
- Both parties can decide annually on the species that can be fished, the quotas, operating hours, operating areas and other operating conditions for nationals and fishing vessels of each other in the JFZ and notify the other Party.
- Nationals and fishing vessels of one claimant state entering the JFZ to engage in fishing activities should abide by the mutually agreed te to e905 Tw 12 (c)4(l)-2(a)4(i)( )TBT 0 scn 0 Tw 12

attention of the nationals and fishing vessels, and notify the other party of the facts and relevant information. The party should respect the notification of the other Party and, after taking necessary measures, shall notify the other Party of the results.

- The parties should take guidance and other necessary measures for their nationals and fishing vessels in order to ensure the safety of navigation and operations, deal with marine accidents smoothly and promptly and maintain the normal operation order at sea.
- When nationals and fishing vessels of one country encounter an emergency in the JFZ, the other party should make every effort to rescue and protect them, and promptly notify the relevant party.

The tasks of the IPJFC including but not limited to following:

1. Negotiate the matters including “the allowable species, catch quotas and other specific operating conditions for nationals and fishing vessels”, “matters related to maintaining operational order”, “matters concerning the status and conservation of marine living resources” and “matters concerning fisheries cooperation between the two countries” and make recommendations to the governments of countries.
2. Make necessary proposals to the governments of both countries to improve and revise the governing options.
3. Negotiate and decide on matters related to agreement
4. All decisions and recommendations should be subject to the unanimous consent of the representatives of both parties.

The governments of the both contracting parties should respect the recommendations made by the committee. Both countries can jointly manage the JFZ. Both states never attempted to build legal framework or establish regime to safeguard the rights of fishermen. Both countries never attempted to make any specially arrangement specifically dealing with human rights of their fishermen. Their focus mostly has been on the negotiations related to maritime delimitation but not on making the arrangements provisional in nature and exclusively for fishermen. This joint management can potentially enhance collaboration between both countries to manage their

maritime dispute which might have spill over affects for other disputes. It will also increase the prospects of having amicable relations between both countries.

Recommendation 2

This recommendation is related to decentralized mechanisms where India and Pakistan can continue to adopt unilateral measures but agree to refrain from enforcing those measures against vessels of the other claimant state in the JFZ. This mechanism appears more feasible given its less complex features. While governing the JFZ, both parties can agree on following agreement containing decentralized mechanism. This Agreement should be without prejudice to any claim of either Party outside the JFZ.

While stipulating rights with regard to fisheries jurisdiction in the JFZ, each Party should continue

- To apply the relevant rules and regulations applicable within its zone of fisheries jurisdiction concerning the management, including the issuing of fishing licences, and conduct of fisheries;
- To refrain from inspection and control of fishing vessels which operate in the JFZ solely under a licence issued by the other Party. When one of the parties finds that the nationals and fishing vessels of the other contracting party violate the decision of the committee, it may bring the facts to the attention of the nationals and fishing vessels, and notify the other party of the facts and relevant information. The party should respect the notification of the other Party and, after taking necessary measures, shall notify the other Party of the results.
- To refrain from any action that would disregard or infringe upon the exercise of fisheries jurisdiction by the other Party or the conduct of fisheries under licence issued by the other Party.
- To take all possible steps to prevent and eliminate pollution from its offshore activities, in accordance with the international law.
- Take due account of the interest of the other Party in maintaining its fishing possibilities;

- To take measures to avoid unnecessary interference with fishing carried out under licence issued by the other Party
- Ensure that the other Party is given timely notification concerning any activity which may have a negative impact upon the marine environment or the fisheries under licence issued by the other Party, if the Party either has authorized that activity or has been notified of it.

In this mechanism, both parties can set up a body or institutional framework or mechanism with the objective to exchange information quickly and to oversee the arrangements. It can potentially provide framework for confidence building measures and may evolve over time if the parties can agree on further measures. The primary objective of the establishment and management of JFZ is to prevent the arrest of fishermen and protect their rights. This mechanism can potentially safeguard the rights of fishermen and prevent their arrest.

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their commitments to international law and rules but will also provided an example of cooperative management of fisheries and human rights of fishermen for littoral states having long standing maritime disputes and involves issues of fishermen.

Section B: Implications for National/Regional Governance and Sustainable Development Goals

When two states cooperate to pursue common goals and agenda, it has implications for their bilateral relations, foreign policy and their behaviour towards regional and international e.19(i)- Tw 2(r)3(bi)83/l

> performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. However, without good governance, human rights cannot be respected and protected in a sustainable manner."[199]

Human beings are at the receiving end of all laws and policies promulgated to govern the state. Therefore, human rights should be the cornerstone of all legislations and policy making. Human rights are inherent to all human beings, regardless of sex, nationality, race, ethnicity, religion, language and any other status. Human rights law covers a number of rights including the right to life and liberty, the right to work, freedom of opinion and expression, right to education and many more as described in previous chapters. In this regard, it is the responsibility of states to safeguard human rights which ultimately contributes to good governance at national level. According to UN Charter,

> "States are under the obligation promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[200]

These human rights neither differ in times of war or peace nor are specific to one government or religion. These are inalienable and constant rights and should be promoted and protected by states and governments. In order to safeguard human rights, states need to adopt 'human right approach' in their development, policy making, conduct and governance. States are responsible to administer and govern their institutions in a way that could ensure integration of human right aspects in pursuit of institutional goals. This approach is a perspective that is required to be embedded in every discourse related to human beings. This is also a process which can

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[199] The Office of the High Commissioner for Human Rights, GOOD GOVERNANCE PRACTICES FOR THE PROTECTION OF HUMAN RIGHTS, United Nations New-York and Geneva, United Nations Publication 2007, Newc2(ne)4g/J 03

Pakistan and India are UN member states and obliged to take actions to achieve the 2030 agenda and the 17 goals.[205] These goals cannot be achieved by an individuals or a single state. It requires the participation of and actions by all states, institutions, responsible authorities and individuals. These provisional arrangements between India and Pakistan regarding joint fishing zone and prevention of arrest of fishermen have the potential to contribute and achieve several sustainable development goals.

It can play crucial role to achieve first SDG "End poverty in all its forms everywhere" in the region.[206] Fisheries are the major source of food and employment for humankind. Better fishery governance not only enhances the fish catch but also make it a reliable source of employment for fishermen. These provisional measures between India and Pakistan can play potential role to fight the poverty of coastal communities. It contributes to SDG 1 and especially will help to achieve target 1.4 of SDG 1. Target 1.4 states

> "By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property,

improved nutrition and promote sustainable agriculture" and especially its target 2.1.[210] This target says

> "By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round"[211]

These arrangements between both countries will contribute to achieve this target by producing sufficient for all and end hunger. The JFZ will help to fight the vulnerabilities at sea and make fishing easier for fishermen. Such kind of conducive environment may attract the female members of fishermen to fish and participate in this livelihood. Women participation in fishing is low in India and Pakistan. Therefore, it can potentially contribute to SDG 5 "Achieve gender equality and empower all women and girls".[212]The JFZ arrangements will also be a significant contribution to SDG 8"Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all".[213] It will h con3n

implementation and revitalize the Global Partnership for Sustainable Development".[219] These arrangements will bring both countries into partnership in particular domain. This partnership will also enhance the global partnership for sustainable development.

Overall, these provisional arrangements between India and Pakistan will contribute to several areas including global partnership, international obligations, international human rights, global goals and global governance. At domestic level, these arrangements will help to institutionalize human rights in governance, develop human rights, to enrich human resource and safe human rights of fishermen and to improve governance. At both national and international level, such kinds of arrangements have potential to develop human rights, bring peace and stability in region and in the world.

CONCLUSION

This research purposed the establishment and development of new legal regime for fishermen of India and Pakistan. The suggested arrangements are carrying the spirit of the preamble of United Nations. According to Preamble of United Nations Charter,

> "We The Peoples Of The United Nations Determined to save succeeding

to the ocean governance and economic activities of states. Their arrest, release and legal standing is imperative to understand the context. Therefore, a legal perspective regarding trial and prosecution of fishermen in both countries was also discussed to understand the extent of their sufferings. The study shows how justice system of both countries is blatantly denying the rights of fishermen of each other nationals. It included the domestic legal framework and justice system of both countries concerning arrest of fishermen.

To further understand this, chapter two explained the general legal framework that governs maritime relations between India and Pakistan, in particular as it relates to the exercise of fisheries jurisdiction in disputed maritime areas and the status of maritime disputes under the UNCLOS. The study analysed different aspects of UNCLOS relevant to fisheries jurisdiction and its scope to regulate the fishing between India and Pakistan. UNCLOS is very comprehensive international instrument and provides a legal framework containing obligations and guidelines for ocean governance especially international fishery governance. It also provides guidelines for state parties to settle their maritime disputes which are discussed above in the context of India and Pakistan. A special focus has been given on UNCLOS as a potential instrument to protect human rights in maritime domain. Preamble of UNLCOS states

> "The States Parties to this Convention Prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world."[222]

The preamble provides the potential of the law of the sea to settle disputes peacefully for maintenance of peace, justice and progress for all. In this regard, various analyses of the status of fishermen under the UNCLOS and interpretation of International Tribunal for the Law of the Sea (ITLOS) in different judgments are discussed.

Being parties to UNCLOS, the study discussed the obligations, relevance and application of

migratory humanitarian crises, such kind of bilateralism is necessary for states to address their long-standing issues to prevent the conflicts and wars which potentially lead to humanitarian

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