



Securing the rights of small scale fishers in the light of exclusive and inclusive maritime security claims

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Abstract

Fish as a source of food and fishing as a practice is as ancient and long in the history of human civilization as that of cultivation. The access to the ocean and the markets of the world has exemplified trade, transport, communication, research and greater military activities. The contemporary changes in the trans-economic structure of the ocean have accentuated the claim for a discretionary authority over the exclusive rights enjoyed as a coastal state and a creeping jurisdiction over the adjacent waters jeopardizing the territorial integrity and sovereignty of the other.

As a consequence the claim over the immediately adjacent waters is the most generic and comprehensive assertion of authority. The coastal state exerts absolute authority over the internal waters and the territorial sea and the people and resources within. It is the interest in fisheries which is most explicitly the demand advanced by the coastal state in justification of the extension and authority over the internal waters and territorial sea. This particular interest in fisheries overshadows all the other interests. The maritime security paradigm seeks to align this hyperbole of conflicting interest of inclusive and exclusive claims.

Keywords: exclusive and inclusive maritime claims, small scale fishers, maritime security, human security, blue economy

Introduction

Exploitation of the marine resources is as old as the ocean itself. The nation states employed diplomatic, economic, ideological and military claims over the use of the ocean space. This led to the stratification of the individual and common interest of the ocean *viz-* exclusive claims over the internal waters, territorial sea, the freedom of navigation, over flight and fishing and the competence upon the High seas and the notion of common heritage of mankind. The claim over the internal waters which includes bays, historic bays and harbors were accepted by decision makers, laying foundation to a much conflicted arena of ocean space. The outer expanses of the ocean are as in the past governed by the principle of freedom of the seas. It is apparent that the traditional meaning of the *mare liberum*, that the sea cannot be state property, it cannot be taken into possession through occupation and as a consequence it is free from sovereignty of any individual state, cannot be undone with even in the 21st century.

The balance of this inclusive and exclusive claim lies in the objectives they seek and the need for fuller, peaceful and rational use of the ocean in par with the conflicting states demands and interests. In other words, the internationalization of the oceans, the economic advancement and the common interest over ocean resources is achieved through the basic inherited principle of public order of the oceans. It is in the pretext of balancing of claims that conflicting interests arise especially when the golden thread of exclusiveness is broken beyond the immediate adjacent waters. The principle factors are twofold, the claim to authority and its counterclaim and the fundamental interest in community context.

The concept of Inclusive and Exclusive Maritime security Claims

From both historical and contemporary perspective, the oceans have been put to use in the widest and wildest

possible ways. International Trade, transportation and communication, marine scientific research, cultural transmission and defense relations to name a few. The less significant and the most underrated phenomena is the functional source and highly renewable repository of food resource that feed the world, promising greater yields under cooperation and sustained use. As the maritime zones developed – the internal waters, territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf - the desire to exercise authority over these areas slowly lessened the conflicts over inclusive claims and triggered the exclusive claim of the coastal states over adjacent zones falling under its sovereign rights.

The establishment of territorial sea and the EEZ voiced the need for maritime security and navigational safety precautions in its broadest sense. The overlapping claims to maritime entitlements and the interconnected maritime activities therefore underpin the common territorial security risks namely transnational crimes, terrorist attacks, environmental pollution and resource depletion. The components of this exclusive authority also include the allocation and preservation of fishery resource in the light of rising demand and improved technological advancement. Thus the security concerns of a state may be connected with determining and demarcating the entitlements to the maritime areas.

The evaluation of common interest in terms of contemporary claims rests on the various inclusive and exclusive security concerns that have resulted over the period of time as a product of anticipated conceptions of needs interconnected with technological expertise in use of ocean space. The coastal states are ever more concerned about the activities at sea that may have serious repercussions on the peace, good order and security at land. Although the law enforcement at sea falls under the exclusive jurisdiction of the coastal state, the labyrinth of

rights and regulations are to a larger extent depended on the authority over different maritime zones. This is made most explicit in the coastal state policy over maritime safety and security over fisheries within its exclusive jurisdiction.

The process of claim can be described in terms of the claimants and their objectives, the lawfulness of the claim and the condition that affect the process of the claim. The claimants may be either social groups or national international governmental organizations or particular individuals. The prime objective of the claim is the protection and participation of these groups in the different phases of interface with the ocean and its policies. In the rapidly changing conditions of the contemporary world, the process of claim can be achieved not only through the claimants but by other participants and their communities interconnected thereto.

Claim over the immediately adjacent waters is the most generic and comprehensive assertion of authority. The coastal state exerts absolute authority over the internal waters and the territorial sea and the people and resources within. It is the interest in fisheries which is most explicitly the demand advanced by the coastal state in justification of the extension and authority over the internal waters and territorial sea. This particular interest in fisheries overshadows all the other interests.

Fishery claims and counterclaims

The propitious marine environment adjacent to the coast is particularly rich in nutrients favorable for the growth and reproduction of fish. The pattern of ocean currents in the shallow waters near to land makes it rich fishing grounds, and thus serves as major source of food and important centers of employment for the inhabitants of the coastal area. In general the states claim complete authority and sovereignty over the internal waters as it has over the land masses. Therefore by claiming the internal waters, the states assert authority to control the entry of foreign vessels both private and governmental. However the conflicts over the fishery resources are not sought to be resolved by states merely through the claim of authority over the internal waters.

Johnston in his theory to the process of claim divides the claim into three separate heads- viz shared, modified and unshared authority for the point of exploitation and conservation. In simple terms the general claim over all the fishery resource is twofold- one which has competence over all the events affecting the fishery resource and the other which affects the persons using it. Counterclaims hence rest principally on the events affecting the shared use of the oceans. The question of extend of fishery rights of the coastal state and its breadth of territorial sea emerged as a critical factor to the process of claim.

The 1958 Conference on the Territorial Sea and The Contiguous Zone did neither remedy the breadth of territorial sea nor the coastal states fishery jurisdiction. Further the 1960 Conference on the Law of the Sea was close enough to implement the proposal for 12 mile territorial sea but it failed by one vote. The conference crystallized two concepts of interest, first the concept of fishery zone and its extension upto 12 mile limit and secondly the coastal fisheries and preferential rights of coastal states. The inadequacies in the two conferences were leveled at the United Nations convention on the law of the sea 1982 and the 12 mile limit is generally accepted.

The UNCLOS places fisheries jurisdiction chiefly in terms of conservation and management of living resources. This is reflected in Part V and Part VII of the LOSC. Part V deals with the rights, responsibility and duty to cooperate in the conservation and management of living resources lying within the Exclusive Economic Zone and part VII with the management of living resources of the high seas.

Non Traditional Maritime Security Interests

The term maritime security is a drifting concern with the change in tides. It constitutes a web of relations and concepts that relates to the use of ocean. Under international law there is no uniform or universally accepted definition for maritime security, but it is commonly related to the rule of law at sea. Over a period of time several dimensions of security has developed which relates to protection of national security through sea power, maritime safety and the facilitation of trade through economic security. Maritime security has an intricate link with the territorial security of the coastal state i.e. a breach of security happened on the sea may have serious implications on the peace and good order at land.

Maritime security acts as a protection against unlawful and deliberate acts at sea. It includes the protection of the territorial integrity of a state through the use of naval power. The traditional threats to security include maritime piracy, ship hijacking, terrorism, smuggling, human trafficking, military activities, marine pollution, illegal unreported and unregulated fishing and marine environmental degradation. The United Nations resolution adopted by the General Assembly on *Oceans and the law of the sea*, considers piracy and armed robbery at sea, smuggling, terrorist acts at sea, transnational organized crimes, illicit traffic in narcotic drugs and psychotropic substances, human trafficking and IUU fishing as security threats to the global economy. The security threats to the maritime domain also includes the intentional and unlawful damage to the marine environment, dumping of illegal substance, discharge of pollutants, marine environmental degradation and the spread of infectious disease.

Conversely, the vision of collective security has evolved and today maritime security threats must address non- traditional threats that go well beyond force. They do not directly affect the territorial integrity of a state but challenge the protection of the affected individuals or populations. Individual security is an acknowledgement of possessing sovereign authority. State security can be inferred as resolution of individual security and thereby assume a collective authority. International fisheries conflicts, food security, poverty, illegal fishing, environmental security and climate change or maritime accidents and disasters are considered as contemporary nontraditional challenges to maritime security. Therefore elements of maritime security include the concept of blue economy, food security, human resilience and the environmental concerns.

With globalization and the growing interdependence of states, the perception of maritime security has under gone concomitant changes. The coastal states security interest now may also include economic, social, ecological, food security and human security in a broader understanding. The peaceful and safe use of the sea will not only provide economic security but also human welfare. The shift in security paradigm can be traced to the progress in law of the sea and the recognition of the maritime zones. This

therefore fostered the exclusive and overlapping claims of coastal states over the adjacent waters and to have better control over the use of ocean space. Thus not only the use of force or military activities, but the conservation and management of fisheries, research and survey activities, pollution and border disputes also fit into the wider ambit of security. It is difficult to settle on a clear cut definition of what maritime security means, it is rather pertinent to understand the concept based on the context it is being used for.

The Blue Economy

Oceans have always been vital link to trade and commerce and have played a significant role in global Fisheries. The concept of blue economy and the blue growth, as proposed in the *Rio+20* world summit in 2012 aims at sustaining the economic development structured through sustainable management strategies in ocean governance. A secure maritime environment and proper enforcement of laws and regulations is necessary precondition to attain the blue economy goals. The two core scope of blue economy can be identified as food security and the resilience of coastal population- human security. The elementary concern of human security includes food, shelter, sustainable livelihoods and safe employment. Amongst fisheries considerations, the security threats ranges from the increase in illegal, unreported and unregulated fishing activities the safety and security of seafarers and the vulnerability of coastal populations to the maritime threats. The four concepts that provide a semiotic understanding of the maritime security matrix thus includes, sea power, maritime safety, the blue economy and human reliance as the different branches of maritime security.

Human Security

Human security places consideration to the needs of individual human beings rather than the security needs of the dominant state alone. It was proposed initially by the United Nations Development Program in the 1990s. Later The United Nations General Assembly Resolution 66/290 of 2012, recognized human security as a link to reinforce development, human rights and peace and security. It is described as the freedom from fear and the freedom from want. It is the right of all people to live in freedom and dignity free from poverty and misery and benefit from equal opportunity in order to enjoy their rights and freedoms. It can be interconnected to the wider areas of security such as economic, food, political, mental & physical health, environmental protection and community interests.

Fish stocks are extremely migratory in nature and so fisher folks tend to move beyond the maritime zones in search of better catch. Fishers frequently come under threat and become victims of the overwrought relations while crossing maritime boundaries between states. Threats and environmental stresses like pollution, extreme weather events, fishery scarcity and unhinged coastal development significantly weaken human security among small scale fishers. Due to the social stigmas and inequalities, the fishing community time and again faces meager wages and forced labor in unhealthy conditions. The small scale fishers comparatively follow the traditional systems of fishing without having the knowledge and at times the access to modern techniques of fishing and outsourcing.

The human rights violations rampant among the fishers include Marginalization and vulnerability of the community, Child labour, gender inequities, lack of decent work and labour standards and fragile livelihood security. Transshipment is another area wherein the poor fishers fall prey to. Transshipping and the transferring of fish or other cargo from one boat to another are not illegal in many of the coastal states, but it is beyond the watchful eyes of the port authorities and so lacks consistency in regulation. Reduction in fish stocks due to over exploitation of the resources and the increase in illegal unreported and unregulated fishing activities, inhumane conditions on board the fishing vessel, smuggling and trafficking of persons by sea and the use of unseaworthy vessels stand as a strong case against human security.

The International Labor Organization (ILO) convention 147 on the Minimum standards in merchant ships constitutes a provision of human element as it provides for minimum internationally accepted labor and social security standard for all merchant vessel regardless of its place of registration. It also deals with safety standards and shipboard condition of living and employment including work and manning and social security measures.

Food Security

Food security exists when all the people, at all the times have access physically, socially and economically to sufficient, safe and healthy food, which may meet their nutritional needs and food preferences for an lively and healthy life. The International Conference on the Sustainable contribution of Fisheries to Food security 1995 focused on linking sustainable fisheries development to food security, and subsequently resulted in the adoption of the Kyoto Declaration. The declaration made broad nexus between fishing security, environmental protection and trade in accordance with the principles and obligations recognized under the World Trade Organization Agreement. The *Reykjavik Declaration* on Responsible Fisheries on the Marine Ecosystems of 2001 emphasized the need to include ecosystem considerations in fisheries management in order to sustain long term food security and thereby contribute to human development. The International Action Plan to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) which concerns particularly with fishing in contravention of law, referred to the loss of economic opportunities as a challenge to food security and ecological protection.

Similar link is portrayed in the 2009 *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal Unreported Unregulated Fishing* (PSMA). It states that the agreement deeply concerns the effect of illegal unreported and unregulated fishing on the fish stocks, marine ecosystems and the livelihood of those legitimate fishers who are depended therein. It specified the escalating need for *food security* on a global basis. The agreement also made clear the inter relation between fishing security, environmental protection and trade by ensuring economic security and food security through trade in fish and fishery products. The FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries of 2015 complimented the Code of conduct for responsible fisheries and linked the promotion of fisheries management by maintaining food security, poverty alleviation and sustainable development. The guideline gave emphasis to the upliftment of the

vulnerable category of fishers who contribute greatly to the economy. Various regional binding and non-binding instruments also link fisheries to food security as a means to promote sustainable use of the marine resources.

Socio-Economic security

Social security as a human right responds to the universal need for safety and security against certain life risks and social wants. An effective social security system promotes income security, protection of health and contributes to the prevention and eradication of poverty and inequality. It seeks to ensure decent standards of living for all and protects human dignity. In the globalised world, social security is a precursor to attenuate the degree of economic and social crisis.

The ILO international framework for social security stands unique with its focus on development of benefit schemes and national social security schemes collaborated with the good practices from all parts of the world. The Social Security (Minimum Standards) Convention, 1952 (No.102) covers nine principle branches of social security namely, medical care of preventive or curative in nature, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family welfare, maternity benefit, invalidity and secure survivors benefits. Fishers fall under the marginalized sections of society giving thrust for crucial social security maintenance system. Article 8 of the Code of Conduct for Responsible fishing covers the duties of states to ensure whether the fishing activities are carried out in responsible manner, promoting safety at sea, social security and decent working conditions, finance and insurance schemes.

The sustainable development goal gives attention to the growth of the blue economy, which aims at eliminating coastal poverty by providing means to good health and education, human rights and democratic participation to people living on fishery. The blue economy includes many ocean related activities like sustainable fisheries, coastal ecosystems, waste management, climate change, tourism, sustainable use of renewable energy, management of Trans-oceanic trade, and ship sourced pollution. As a preparatory concept it was adopted in the Rio +20 United Nations Conference on Sustainable Development (UNCSD). It purports to bring out the same initiative as that of the Green economy ie: "improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities". If the coastal marine biodiversity is altered it affects the human populations that dwell on the coastal marine bounties and thereby affects the economic stability of that country. The Indian Ocean Rim Association (IORA) in October 2014 brought out its long term proposal for creation of priority areas especially the rising demand for aquaculture and fisheries.

Small scale fishers – claims and maritime security concerns

Contextually traditional fishers are often referred to as small scale or artisanal fishers and the terms are used interchangeably in different countries. It is important to note however, that there is no all-encompassing definition for SSF and the existing definitions are quite variable. Globally the definition to what amount to artisanal, traditional, small scale has both economic and social overtones. Majority of the SSF are considered to be found in the developing

nations, considerable number of SSF exist in developed nations as well with the exception of the use of sophisticated fishing gears.

Nevertheless the definition and the term used for SSF differ in accordance with the technique used and the size of vessel, e.g. one-manned canoe and catamarans in poor developing countries to 20 m seiners, trawlers, and long liners in developed countries. Of central concern therefore is to look into how most of the SSF work, the technique used and the scale of activity as opposed to industrial fishing. Several studies defining SSF concludes with similar characteristic features which ranges from subsistence to other small scale vessels of <24m or below, decked or undecked. The SSF exploit the same pelagic and demersal fish stocks as that of the larger scale commercial fisheries. Even though characterized as low in terms of technology and mechanization, the SSF harvest more than the total catch of the large commercial marine fisheries.

According to the FAO 2018 review, there are about 67800 fishing vessels of 24 m LOA globally in 2018 and about 82 percent motorized fishing vessels of 12 m and less LOA. The majority of the small vessels are undecked and roughly 3 percent of them were motorized. Apparently, Asia accounts to the largest fishing fleet of small undecked and motorized vessels followed by America, Oceania, Europe and North America. SSF employs more than 90 percent of the capture fisheries and fish workers of the world undertaken by men and women alike.

SSF comprise of all the activities in the value chain of pre-harvest, harvest and post-harvest and plays a significant role in providing food security for the local, national and international markets. They are characterized as dynamic and diverse and are often linked to the local communities. They perform fishing related activities such as processing and marketing which taken as a whole, support the local economy and thereby boost the overall national economies by income generation.

The customary practices of resource allocation and sharing in the SSF sector has been changed owing to the rapid technological developments and non-participatory centralized management systems. The major difficulty being the increasing competition and conflict with large fishing vessels and relatively modern fishing gears. The upgradation of the SSF with the latest technological developments example, fish finders, AIS, GPS, biodegradable and collapsible traps, bycatch reduction is slow and static. Even if it were desirable, the local fishermen are said to romanticize working with the elements of nature. The detailed complexities of international regulation of radio technology, navigation systems, time systems, weather communication are beyond the scope of the SSF.

Although the FAO SSF Guideline proposes to ensure global food security, economic and social security and sustainable fishery resources, there is a marginal gap in its implementation. In most of the developing countries SSF remains in a flux of socio-economic vulnerability along with poverty and marginalization. In particular overfishing and increasing competition by the industrial fishing units deprive the SSF of their local fishing grounds.

It may easily be observed that climate and other related alterations at different scales in the ocean cause severe deprivations to fish and fishing activities. The Intergovernmental Panel on climate Change Sixth

Assessment (IPCC AR6) Report in its Special Report on Ocean and Cryosphere in a Changing Climate (SROCC), anthropogenic activities have accelerated the pace of ocean warming, acidification, and loss of oxygen. The shifts in the thermal zones is said to alter the suitability of the coastal and marine species habitat and their migration routes. This has greatly impacted the distribution of fish stocks and their contribution to food chain.

Notwithstanding the dominance of small scale fishing vessels in the industry, they are often unreported in national statistics and are unregulated to a large extent. In spite of being the most dangerous occupation, the fatalities in the fisheries sector are gravely under reported. On an average, 24,000 fatalities have been reported worldwide per year in the Occupational Safety and health branch of the International Labour Organization (ILO). For the most part, fishermen are exposed to the perils of the sea as they operate the fishing gear and the equipments on open deck. Unlike industrial vessels the small scale vessels are immune from registration and licensing. Due to the lack of information, the small scale vessels are omitted entirely from the local registries and therefore no accurate disaggregation of the vessels can be inferred. The prevalence of relatively limited documentation on the SSF is an argument that appears to be preventing the development of the sector.

Conclusion

The international legal framework for maritime security comes under two major heads- criminal and regulatory. It rests on the dissipation of the SOLAS and ISPS Code and the SUA convention in conformity with the principles of UNCLOS. What it lacks is the identification and classification of the insecurities and the enforcement of legal liability on matters related to safety and security of the small scale fishers and fishing vessels.

The developments in the International Fisheries Law emphasize that much has taken place in international fisheries law in the course of the second half of this century and for the most part since the 1970s. The fisheries provision of the 1982 United Nations Convention on the Law of the Sea and the new international fisheries instruments adopted in relation with the convention, mark well defined phases in the development and adoption of a global regime for the conservation and management of marine fisheries resources. They reflect the persisting concern that the fundamental changes in the international fisheries sector have been largely brought about with the introduction of highly mechanized fishing methods and technologically advanced fleets with absolutely no comparable breakthrough in preventing over-exploitation and abuse. With globalization and soaring trans-national trade and economy, there is a need to think beyond the LOSC framework to fit maritime security as a threat to the good order at sea, the wellbeing of the humans and the environment that binds them.

The FAO Code of conduct for Responsible fisheries with its provision to protect the small-scale fishing sector and its fishermen from large scale industrial interests provides a basic action space for managing the interests of small-scale fishers. However, it is not comprehensive and its continuing competence is challenged by the drifts in policies and stakeholders. It may be agreed that both the inclusive interests of fishers and the exclusive interests of particular states is explicitly given in the FAO SSF Voluntary

guidelines for securing sustainable small-scale fisheries. But, again, an all-encompassing regulatory framework has not been achieved or is achievable as there is no fixed definition over the vessel size and the area of operation.

The small scale fishing community has largely been left out of the general development experience. The lack of integrated support for the management and regulation of SSF can have long term consequences in achieving national, regional and sub regional developments in the sector. The fisheries sector has to be secure in terms of economic growth, health food and nutrition and socio economic development. Facilitating greater transparency in fisheries sector decision making at all levels through greater stakeholder participation in national and regional processes is necessary to protect the interest of the fishing community. Despite the theoretical abundance there is a need to ensure the disciplined use of the ocean for the exclusive interest of all? As it stands today there is considerable heterogeneity within the SSF sector and the coastal community. The opportunity is ripe for implementing new agendas and regulations that speak the consciousness of the SSF community.

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