

MARINE SPATIAL PLANNING: A PLAUSIBLE AND SUSTAINABLE LEGAL SOLUTION TO INTERNATIONAL TERRITORIAL DISPUTES AND FISH WARS

Jatin Yadav and Kartik Mehta
Hidyataullah National Law University, Raipur

Abstract

The contemporary relevancy of Hugo Grotius' Paradigm routed in the foundational principles of the law of the sea has resulted in escalating ecological degradation demanding a conversation on the status quo of the United Nations Convention on the Law of the Sea in regards with its applicability and jurisdictional framework. China's incursions on the territorial limits of its South- East Asian counterparts catapulting into so called fish-wars highlights the chasm that international law of sea has failed to abridge even after infamous 'cod wars'. The intersection of economic pursuits of Natural resources coupled with fish harvesting motivated by unsettled political disputes over ambiguous territories pose a serious limitation on UNCLOS and other relevant law pertaining to the governance of sea. With China's domestic waters exhausted due to unbridled exploitation and lapse of legal framework to regulate the same; it has now taken to explore and claim sovereignty over undefined maritime territories (Diaoyu islands) contested by Japan, Vietnam and South Korea. The said circumstances are insinuating of danger to the "concept of the Common heritage of Mankind"; as china is not isolated in its attempts. One has to carefully tread and craft a line of distinction between sustainable development and exclusive exploitation which can be made possible by Global Ocean Governance facilitated by 'Marine Spatial Planning' based on principle of equity; a well formulated, flexible and transparent legal tool to adjudicate legal dilemmas with primary focus on Marine conservation. MSP can be catalyst in mitigating if not eliminating the chasm in law of the sea establishing an interaction link between ocean users in pursuance of environmental preservation and sustainable development policies. The law of the sea affirms formulation of a global legal framework; with the Spirit of MSP routed in the UNCLOS defined directives of marine environment and aquaculture preservation can bolster international law.

Keywords: Maritime Territories, Marine Spatial Planning, Hugo Grotius, Unclos, Cod Wars

Introduction

Southeast Asia is home to some of the most diverse and productive coastal waters in the world. As a result, they are sites of huge importance from economic and environmental security

perspective and should be a conservation priority at international stage. Population explosion, increase in food demand, varied levels of economic growth, overuse of resources and technological change is placing undue burden on these marine resources. These waters are now in turmoil due to conflict and social unrest, posing danger to both security as well as marine sustainability.

Fish constitutes primary source of income generation and dietary protein for many Southeast Asians; more than any other region in the world. It is now universally acclaimed that South Asian coastal fisheries are overused; one of the primary reason being excess capacity. This has resulted into depletion in fish stocks and other resources at varied levels. With increase in Population adding pressure to already over fished fisheries events will turn for worse unless an effective remedial plan is undertaken. Sugiyama states that “Based on current trends, production from capture fisheries in the Asia-Pacific region will decline over the next 10–20 years unless excess capacity and fishing effort is greatly reduced.” Increase in conflict, impoverishment of fisheries, economic losses, lower productivity and loss of food security in communities primarily dependant on fish stocks for wages, protein and livelihood are some of the repercussion plaguing international stage due to overfishing.

Formulation of a policy for marine conversation and effective governance routed in ground reality is one of the contemporary challenges facing the decision makers. However, The identification of such policy which can stand test of both; long- term environment sustainability and economic feasibility is yet to be elucidated. Devising a solution to this conundrum forms the central goal of the paper. This paper aims to elaborate on the solutions put forward in this regard and how marine spatial planning can provide a way out this conundrum.

Fish Wars

Conflict over the access to resources has been documented many times over the course of history. Although wars routed in religious, political and territorial disputes are more well known; conflicts over fishing rights and resources aren't scarce in World History. Ever since the formulation of Exclusive Economic Zones in the 1970s, there is an increase in the frequency of such wars. As establishment of EEZ led to demarcation of access to ocean resources; restricting the areas earlier treaded by foreign fishing vessel resulting in conflict of interest. Maritime treaties, diplomatic negotiations (such as between African and European countries) and redressal by international courts have often came as relief amidst rising tensions.

This has not prevented fights from breaking out (such as between Cambodia and Vietnam and China and Philippines) over access to Territorial waters. This has led to boats from other countries and migrant fisherman being Imprisoned or expelled out by taking resort to force. Indonesian fishers are taken into prison as consequence of illegal fishing in Australian waters; with numbers ramping up-to thousands. While sovereignty issues over undefined maritime boundaries are at the roots of such conflicts, access to fish stocks and other resources also constitutes leading cause. Such conflicts are not circumscribed within the boundaries of high sea but also occur in the regions coastal waters. For example, conflicts due to difference in technologies such as between those who use passive fishing equipment like long lines, hand and gill nets (used by small farmers) and those who use “trawls and purse seine nets” (used by comparatively well off farmers). This is partly due to the fact that equipment used by small farmers often get caught and carried off by trawlers used by industrial farmers.

Modern fishing vessels employing high technology for commercial fish processing, vacuum and monopolize resources taking hold of all marine life rendering small scale local farmers vulnerable. Moreover; it is not hidden that more often than not “industrial fishing operations” operate unlawfully within a country’s maritime boundary and soon the differences ultimately culminates into conflict with small scale farmers on one side and industrial on another. Such competition has been reported to be turned violent in areas of Philippines and Thailand.

Overfishing leads to vociferous repercussions with increased pressure on south Asian waters resulting in collapse of fisheries and Increase in conflicts.

The toxic cycle

A cycle is formulated in the above-mentioned circumstances where sudden increase in population coupled with few economic opportunities increases the dependency on fishing as the primary source of livelihood. Such increase puts pressure on the available stock and leads to decline in fish population and increase in competition on both front inside the local community as well as the global one. The effects spiral down to low food and income security, decline in living standard and overall national welfare. These factors only aggravate already over-crowded competition and thus higher chances of conflict concerning the fish stock. This complex and negative feedback cycle follows a design of “self-reinforcing fish-wars” embedded with sociocultural and environmental perils.

Due to this even the most diverse and biologically productive ecosystems are being dragged into the never ending conflict and have to face serious consequences of ever increasing social

tensions. Unrestrained use of modern state of art equipment serves only to further aggravate the situation and widens the gap between economically disadvantaged and well-off in regards of their access to stock. Such conflicts are being increasingly reported to turn violent with increased global competition and demand. The need to align the demands of improving the ecological sustainability of fisheries consumption with the need to maintain and improve food security has been acknowledged by the global community. Same was one of the priority outcomes of 2002 World summit on sustainable development¹.

Devising solutions in a pragmatic institutional arrangements

While devising a solution to bring this cycle to an end; sustainability should be the primary idea if the conflicts are to be reduced. The idea of a novel public policy or better governance to counter this menace of conflict over fish resources by making pragmatic institutional arrangements for access, use, and ownership of the same is at the heart of many solutions advanced. Law and policymakers thus need to look for effective strategies if the conflict is to be contained. One such was the institution of national fisheries management plans by a centralized management agency and seeking scientific advice over the judicious utilization of stock.

Some of the management experience about the effect of implementation of the above said idea has been mostly negative² while an another approach focused on collaborative effort of the community shows some potential for limiting conflicts³ and hope for sustainability and food security. Such collaboration on the part of the global world can be fundamental in achieving the desired outcome of sustainability and preservation of fisheries.

For instance in San Salvador island in the Philippines, Conflict between local fishing community and new migrant one using traditional and modern fishing gear respectively was resolved under co-management arrangement⁴. Co-management is becoming an instrumental tool in effective governance and policy implementation. It is being successfully being accommodated in alternative fisheries management policy in countries such as Indonesia,

¹ United Nations. Report of the World Summit on Sustainable Development, Resolution II, § 30, 2002.

² Pomeroy RS, Viswanathan K. Fisheries co-management developments in Southeast Asia and Bangladesh. In: Wilson DG, RaakjaerNielsen J, Degnbol P, editors. The fisheries co-management experience: accomplishments, challenges and prospects. Dordrecht, The Netherlands: Kluwer Academic Publishers; 2003.

³ Tawake A, Parks JE, Radikedike P, Aalbersberg W, Vuki V, Salafsky N. Harvesting clams and data: involving local communities in implementing and monitoring a marine protected area. *Conservation Biology in Practice* 2001;2(4):32–5.

⁴ Berkes F, Mahon R, Pollnac R, Pomeroy R. *Managing small-scale fisheries: alternative directions and methods*. Ottawa: International Development Research Center; 2001.

Thailand, Philippines and Vietnam. A pre-requisite to such policy is a close collaboration between Government and local stakeholders. As Bennett et al. States “In so far as such an arrangement can strengthen the links between those that use the resource and those that manage or control the resource, comanagement of some form may be the best long-term solution to conflict management. Where co-management is able to redistribute power and responsibility in the fishery, potential conflicts related to power relations and allocation of resources might be mitigated.”⁵ If instituted effectively it can prove to be pivotal in resolving marine resource conflict. It can serve as a pragmatic and effective management tool for coastal nations dealing with conflicts regarding marine resource.

Marine Spatial Planning: An effective way out

Resolving the issues of ocean, its preservation and judicious use of the marine resources needs collaboration and cooperation at regional, national and global level. Marine spatial planning is an pivotal tool for sustainable marine governance; transparent, well-formulated and flexible instruments of marine sustainable governance are important in reaching holistic development goals aiming at better regulation and preservation of the global ocean.

“Global ocean governance” is a multidimensional and dynamic concept taking in to account management on economic, social and legal fronts⁶. Ocean governance is a concept focused on addressing pertinent issues concerning world ocean. MSP is a pragmatic way to formulate and enforce rational framework in the use of marine space. It is pivotal to bolster the link between ocean users to establish a firm reach to the goals of environmental preservation and sustainable development along with socioeconomic factors as well. The law of the sea affirms formulation of an International legal regime best suited to address the issues of international cognizance; although at the same time it will be challenging to institute the same due to decentralized nature of the public law system.

In the study of international public law the law of the sea is one of its earliest areas that governs the use of World ocean and its resources. Hugo Grotius - “the father of the Law of Nations”- has significantly influenced the principles of the the law of sea. Hugo Grotius’ paradigm (as

⁵ Bennett E, Neiland A, Anamg A, Bannerman P, Rahman AA, Huq S, et al. “Towards a better understanding of conflict management in tropical fisheries: evidence from Ghana, Bangladesh and the Caribbean”. ;25:365–76.

⁶ Friedheim, R. “ Designing the Ocean Policy Future: An Essay on How I Am Going To Do That”, “Ocean Development & International Law”, pp. 183–195.

mentioned in his work *mare liberium*) is still relevant today and confirms the fundamental foundations of the law of the sea-

(1) Coastal states have jurisdiction over their marine spaces and (2) the resources beyond that aren't limited to any particular state but open to all.

UNCLOS are rules and norms governing the use of ocean including marine resources and overseeing the fulfillment of duties and rights of states with maritime boundaries. The preamble to UNCLOS which stipulates that "the problems of ocean space are closely interrelated and need to be considered as a whole" implies the idea of ecological unity of world ocean. This acknowledgement is pivotal for MSP specifically in joint and interacting areas of Areas Beyond National Jurisdiction and Exclusive Economic Zones. The organization of marine space is a plausible and pragmatic advancement of the formulation of duties and use of rights granted under UNCLOS as well as an effective tool in helping the nation parties with their international obligations concerning use of marine space.

MSP was the main focus of international meeting held in 2007 organized by IOC (of UNESCO). Inclusion of MSP in policy formulation adds an holistic, future oriented and consistent decision-making touch to the process concerning the use of sea by humans. There are two doubts to be addressed concerning the issue of integrated management, First, selection of elements to be integrated and second, International law's framework and expanse to which this process can be supported by it. Though there is no clearly stipulated definition of integrated management in the main goal of the said approach is to devise effective solutions to pertinent problems of the sea and its resources. Axiological, normative and functional are the three level at which integration is an essential deciding criterion to address the issues concerning world ocean. The need at first stage is clearly visible through moral obligation and the growth of "preventive responsibility for marine and normative protection"⁷. IOC (of UNESCO) defines MSP as "a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process"⁸. MSP aims to align the diverse groups of entities and their interest with the common goal of sustainability. The difficult legal framework of marine areas, the varieties of and consequences of human activities in the ocean space such as

⁷ Harrison, J. (2011). "Making the Law of the Sea, A Study in the Development of International Law" (pp. 238, 257-258). Cambridge.

⁸ Ehler, C., & Douvère, F. (2009). *Marine Spatial Planning: A Step-by Step Approach Towards Ecosystem-based Management*. Manual and Guides No 153 ICAM Dossier No 6. Paris: Intergovernmental Oceanographic Commission UNESCO IOC, 99 pp.

overfishing, measure of protection and other factors constitute a complex web which can be solved by effective planning.

Many states across the globe has already started process to equip their domestic law with instruments that are used to govern maritime space, to achieve the international obligation of environmental conservation stipulated in Article 192 of UNCLOS. MSP as a tool of maritime policy can do wonders for the problems of fish wars and others issues affecting the sustainability of marine life. In Baltic sea region, the common norms of MSP are developed as such that they include holistic, ecological and sustainable management⁹. Maritime management is primarily focuses on two areas legal and institutional one. The legal aspect focuses on normative and substantial dimensions of law while institutional is primarily concerned with executive level covering governmental and non-governmental organizations carrying out activities directed at environmental management. It is an multidimensional process ranging from planning to executive management practices. The ecosystem approach and precautionary principle seems to determine the present framework for MSP.

Coastal areas have critical role to play to achieve desired result of lowering the conflict and increasing the sustainability. All International law entities should cooperate in the pursuance of common goal of environmental protection. Building awareness in the local community by explaining the importance of ocean on people's life and the ravages of over exploitation of marine resources would could prove to bring change from ground level. The designed MSP framework should include surveillance instruments to maintain scrutiny on the practice of overfishing which are the leading cause of Fish wars. To attain these objectives data and statistics on the use of sea is required. MSP process should meet international norms; while international laws should also be accommodating to new specialized solutions to modern problems.

The problem of fishwars can be solved by MSP by incorporating within three main ideas of first; an effective global management system to determine sovereignty claims and to designate an critical area of common heritage to mankind as of critical importance to avoid conflicts and preserve marine life and resources. Second, global management system should be followed through by a regional one to maintain transparency in administration and effectiveness in execution of the policy and lastly third, active actions should be taken by the nations themselves to formulate policies in consonance with international law to reduce conflict. MSP

⁹ Zaucha, J. (2014). "Sea Basin Maritime Spatial Planning: A Case Study of the Baltic Sea Region and Poland". *Marine Policy*, 50, 34–45.

can also stipulation the possible use of marine resources and their rational distribution to keep check on over-exploitation and maintain principle of equity.

Conclusion

An integrated approach focused on maritime affairs of global and regional level seems to be the necessity of time as China along with other nations engages in fishwars. Moreover; the issue of sustainability and preservation of marine life and resources are plaguing concerns ever since. Marine Spatial planning shows potential which focusing on collaborative effort on global and regional level with effective institutional and legal measures shows hope for an effective solution in the long- run. The introduction of such instruments for the management of the marine space has shed light on new arena in international law. The issues such as fishwars and over exploitation of resources are constantly plaguing the ocean space which calls for better formulated and contemporary relevant policies in order to devise a long term, rational administration of marine resources in a sustainable manner and avoid conflicts on these resources.

MSP is a dynamic process aiming to reduce ever increasing conflict over marine resources threatening environment sustainability and economic feasibility. It should be based on multidimensionality and inter dependencies of interactions in the marine environment and the focus should be on to devising a successful regulatory framework focused on navigating the conflict by establishing checkpoints at various levels. Fish wars are majorly centered around ambitious maritime boundaries and thirst for more resources; both can be successfully tackled with collaborative effort and well framed policies; MSP is one such steps towards achieving that.