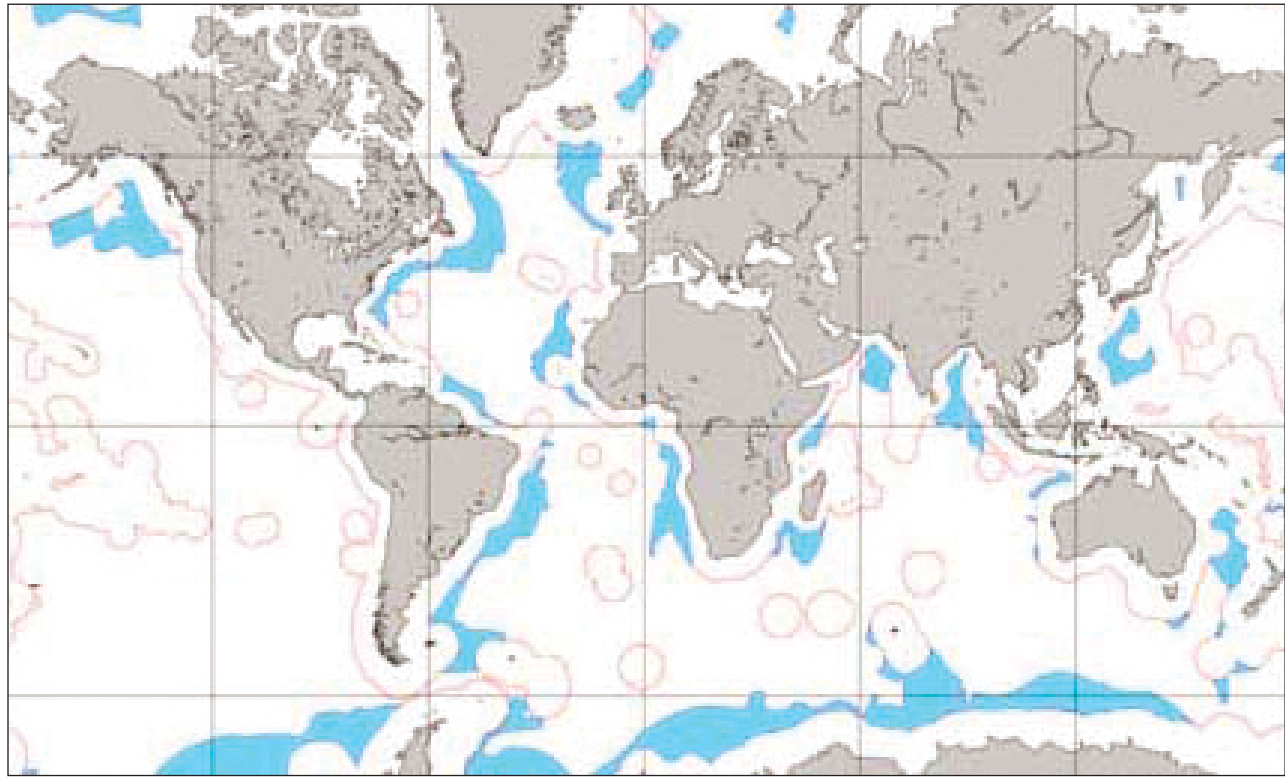


# Idea of amending the Law of the Sea Convention (UNCLOS), 1982



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THERE had been some doubts expressed in some countries that the state parties should not have ratified the Law of the Sea (LOS) convention or should have done so after due amendments as one of the major maritime powers continue to call the convention as LOST (Law Of Sea Treaty). Let there be no illusion in any quarter that the job of amendments would not be that easy as it is thought of by some even in Bangladesh. It is known that the provisions of the Convention have been categorized under two broad headings - those that have passed into the realm of customary international law, and those having been developed and incorporated in the process negotiated at LOS Convention 1982 as constitutive. The limits of 12 nautical miles for the Territorial Sea, the 200 nautical miles Exclusive Economic Zone (EEZ), the regime of the Continental Shelf, and the Freedom of the High seas are now part of customary international law. The principle of the common heritage of mankind has also entered into the realm of customary international law due to its almost universal acceptance. Many of the recognizable traditional customary principles of international law of the oceans have undergone fundamental changes during the process of negotiation of the Convention. A comparative study of traditional customary principles such as those of Innocent Passage or Freedom of The High Seas, indicate that the Convention incorporated some very significant developments within the framework of a binding Convention and not on the basis of customary international law. One of the basic canons of interpretation of statutes is the principle that a statute must be read as a whole. The LOS Convention therefore must be read as a whole and applied in its entirety. States cannot, and should not, be encouraged to

pick and choose areas and parts of the provisions of the Convention and it should always be remembered that the Convention is a delicate balance of rights and obligations.

The LOS Convention has, for the first time, outlined the importance of baselines. It is from this baseline that the limits of the Territorial Sea, Contiguous Zone, EEZ, and the Continental Shelf are measured. The LOS Convention, in clarifying the status of atolls and of islands having fringed reefs, has made provisions legitimizing the drawing of baselines where coastlines are very unstable because of deltas and other natural conditions. Thus the importance of concretizing the baselines principle in a binding convention for various purposes can hardly be overemphasized if conflicts on delineation of respective national and international zones are to be minimized. The concept of transit passage through straits is an instance of an innovative principle that has no roots in customary international law. The right of transit passage stipulated in the Convention cannot be availed of except within the context of the Convention and it cannot be assumed to have become part of customary international law.

While it is true that the LOS embodies several concepts of customary international law, these have, in the process of negotiation, undergone significant development. However, the mechanisms and systems incorporated in the LOS for the implementation of these "customary principles", such as those of Territorial Waters, Contiguous Zone, EEZ, and the Continental Shelf, are to be found not in customary law but in the provisions of the LOS. Thus claims and determination of the extent of the rights and obligations within these maritime zones and the regime of transit passage are to be found in the provisions of the Convention. Though the concept of the EEZ may be deemed to have become part of customary international law, in view of its almost universal

acceptance, the details of rights and obligations in it can only be invoked within the 1982 Convention.

Ratification of the Convention is therefore sine qua non in the claiming of these maritime zones, particularly the claim and exercise of the right of transit passage that has never been a part of customary international law. The ratification of the Convention by some landlocked states is a reflection of faith in part X of the Convention which provides for the right of access of landlocked states to and from the seas and freedom of transit. The right of access to and from the seas and the freedom of transit of these landlocked states and other ratifying states ceased to be a matter of bilateral arrangement with the neighbouring coastal states and now are governed and regulated by the provisions of articles of LOS. The Convention stipulates that the landlocked states shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZs of coastal states of the same sub-region or region, taking into account the relevant economic and geographical circumstances of all the states concerned. While the benefits to be enjoyed by these states under these provisions are somewhat problematic, they nevertheless provide new rights which they cannot attain outside the 1982 Convention.

The LOS convention, for the preservation and protection of the marine environment, explicitly states that the objectives of the Convention are the establishment of a legal order designed to facilitate international communication and to promote the peaceful uses of the seas and oceans. The emphasis in part XII, places on protecting and preserving the environment brings into sharp focus the primordial importance of the oceans in maintaining the global ecological balance as well as controlling and moderating the world climate. It is also one of the most coherent bases for sustainable development of marine resources. Even a cursory reading of the

provisions of articles of the Convention would show that they are not merely a restatement of existing conventional law or practice but are fundamental or constitutional in character as they have already become widely accepted so as to be considered a part of customary international law. Part XII of the Convention is thus, a maiden venture towards a global response to the problems of combating marine pollution. Part XII and allied provisions of the Convention are significant for the general development of international law because they comprise the first such endeavour to develop a public international law framework in response to the deterioration of and threats to the marine environment. It is expressly designed to operate as an "umbrella" or framework for further global and regional actions as, besides the traditional norm-setting function, regional approaches are expressly recognized and indeed mandated. Thus the LOS directs the states to cooperate on a global and, as appropriate, on a regional basis "taking into account characteristic regional features." It also incorporates a system of exploitation that could contribute to sustainable development, that is, development which meets the needs of the present without compromising the ability for future generations to meet their needs. Adherence to the LOS Convention is the most significant initial action that nations can take in the interests of the ocean's threatened life-support system and to protect the marine ecosystems.

The island and archipelagic states, besides their expanded jurisdiction over living and non-living resources - the provisions of part XII of the Convention on the preservation of the marine environment, could be, in view of the adoption and coming into force of the Convention on Climate Change, a very significant first line of defense against the "heat trap" caused by the greenhouse effect. The process of ratification leading to early entry into force have contributed to lending to the Convention the legal and moral authority of the Law which is so necessary to guarantee particularly the rights of developing countries vis-à-vis the encroachment from the maritime powers which have in the past been the hallmark of the regime of the oceans. Many developing countries have been cautioned by some quarters that the accession to, or ratification of, the Convention would entail colossal and increased financial obligations for them. It is important that such misconceptions be clarified and, where necessary, categorically refuted. Ratification of the Convention by the developing coastal States by itself entails no financial obligation on the part of the ratifying states. Any significant financial obligations which may devolve to the states' parties would arise only when the deep seabed mining arm of the International Seabed Authority - the Enterprise - undertakes a venture for the exploration and exploitation of the polymetallic nodules in the area.

The reluctance on the part of some of the industrialized countries to ratify the Law of the Sea Convention, after all the concessions made at LOS, 1982 to accommodate their then expressed concerns, has generated a feeling of frustration and betrayal among the developing countries. Recently, somewhat clandestine efforts have been made in some quarters to amend the Convention even before it came into force.

Those who have advocated and lobbied for such premature amendment have ignored the strong feelings of many developing countries. It is the general view that under Resolution I and II of UNCLOS, 1982, it is neither permissible nor within the mandate of the Precom to make substantive changes to the Convention to be incorporated in a protocol. This is not to suggest that the Convention is sacrosanct and immutable. The Convention itself admits amendments of any of its provisions - except those concerning the Common Heritage of Mankind. But the procedure for amending is very clearly spelt out and can only be applied subsequent to the entry into force of the Convention, if the need arises.

The importance of a globally binding LOS Convention to the entire international community was the basis of the unique, and in many respects peculiar negotiating procedures which characterized UNCLOS 1982. Realizing the need for a consensus, comprehensive package deal Convention, the developing countries seriously engaged in evolving compromised solutions with the maritime powers and other industrialized countries; the result was the LOS 1982 Convention. Indeed, this Convention involved numerous concessions from the developing countries to meet the then expressed fears and concerns of the developed countries. Among these compromises and concessions are the very provisions in the Convention relating to each of the above-mentioned issues. Nothing new has emerged since 1982 to justify tinkering with the above provisions. Neither the proposed amendments to the Convention nor the "empty chair" negotiating tactics hitherto adopted by the US is therefore a solution to the reservations nursed by the developed countries. The United States attended the informal consultations convened by the Secretary-General of the United Nations in 1990, but has made no undertaking that, should the identified issues be resolved, she would accede to the Convention. It is not inconceivable that, if concessions were made on the above issues, new "problems" would be identified for further amendments. Finally, it should be pointed out that a new international legal order would be built up in slow measures literally by placing one stone atop another.

The LOS Convention is the cornerstone of the new international legal order in the oceans, and it is therefore imperative that it be placed firmly and squarely into the realm of binding international law. 149 state parties, through their ratification, have reiterated their conviction that the LOS Convention is indeed the cornerstone of a new and emerging order in all aspects relating to oceans from economic, ecological, and navigational perspectives. Bangladesh has ratified the convention in 2001 after it had signed it in 1982. Now we must amend our domestic laws to be brought at par with the LOS Convention and make our rightful claim on the 12 nm Territorial Sea, 24nm Contiguous Zone, 200nm EEZ and 350nm of Continental Shelf as per UNCLOS without any more delay. At the same time we must solve our 35 years old maritime boundary disputes with both India and Myanmar to establish our undisputed claims on the huge living and non living economic resources of the Bay of Bengal, which our 140 million people need badly for their sustenance.

The author is a freelancer.

## The great game in South Asia

FARHOD MIRZABAEV

The Iran-Pakistan-India gas pipeline project (IPI) may jeopardize the India-US nuclear deal. Top US officials are worried that IPI will prop up the regime in Iran which is suspected of pursuing a secret nuclear weapons program and accused of sponsoring international terrorism. The letter sent by senior members of the US Congress to the Indian Prime Minister was the latest attempt to influence the Indian leadership to drop the IPI project.

It is safe to assume that in the near future there is no chance of normalization of relations between Iran and US given the problems of Iran's nuclear program; Iran's sponsoring of the Hezbollah in Lebanon and Hamas in Palestine, and Iran's support for Shiite militias in Iraq. Therefore, it is erroneous to consider the current tense relation between Iran and US as temporary, even if the Democratic Party candidate comes to power in the White House after the 2008 presidential elections. There still will not be any significant change in US stance towards Iran. The fact that Iran remains a sworn enemy of Israel rules out any chance of detente in US-Iran relations.

The US-India nuclear deal is highly lucrative for the US companies and therefore, the US may choose not to scuttle it even if India moves ahead with the IPI. There are many other ways to kill the IPI project, however. For instance, the US might persuade Pakistan to opt out of the IPI project. Recently World Bank vice-president Praful Patel told reporters that the Bank might extend financial support to Pakistani government in building the IPI pipeline; he also said that the Bank supported the Turkmenistan-Afghanistan-Pakistan (TAP) gas pipeline project.

Iran and Pakistan have never been good neighbours; Shiite pogroms that took place in Pakistan in the past have been a destabilizing factor in bilateral relations. Pakistan and Iran were in opposing camps in the civil war in Afghanistan. While Iran increasingly feels encircled by pro-American regimes in its vicinity - Iraq, Azerbaijan, Afghanistan, Pakistan and NATO member Turkey - it is not certain though that any of Iran's neighbours will join hands with the US in any military endeavour against Iran.

The US government is interested in opening up Central Asian energy resources to world markets provided it is done under the leadership of US energy companies. It aims to weaken the Russian position in Central Asia and put an end to the Russian stranglehold on Central Asian energy resources.

It is interesting to note that Gazprom, the Russian gas giant, has shown interest in the IPI project with the Gazprom representative in Tehran saying that the company was keen to participate in the 'peace pipeline.' He noted that Gazprom was one of the few energy companies in the world that had the necessary experience in building such pipeline projects and added that the IPI pipeline should carry on to China.

Recently China has been trying to clinch deals with gas-rich Turkmenistan and Uzbekistan to build a gas pipeline to China, which can again weaken Russian stranglehold on the Central Asian countries. Therefore, Russia wants the IPI to be extended to China in order to dissuade China from disrupting the Russian monopoly in Central Asia.

The TAP pipeline, meanwhile, is also beset by numerous problems such as the unfriendly relations between Pakistan and Afghanistan, and security issues - the pipeline will run through "the most dangerous part of the world." It is a well-known fact that the Pakistani government is very weak and there is a risk that it might not be able to provide necessary security to the pipeline. This factor is equally relevant for both the IPI and TAP projects.

Finally, the US may persuade Pakistan to opt for TAP and drop IPI. First, TAP is more beneficial for Pakistan because it would not have to rely on Iran given the latter's bad reputation for its unreliable business practices. For example, last winter, Turkey was not happy with the disruption of gas supplies from Iran during the winter. Iranians responded to Turkish complaints by pointing to the unusually harsh winter conditions. Second, Pakistan appears not really interested in playing a positive role in the economic development of India, as it still perceives India to be the major threat to its security. The transit fees that India is offering to Pakistan in the IPI are likely to come down very substantially; moreover the main beneficiary of the IPI is not Pakistan but India.

The US may not press the Indian government hard to give up the IPI or condition successful conclusion of the Indo-US nuclear deal on India dropping the IPI; the IPI may simply never come to fruition because of the inability of Iran, Pakistan and India to come to an agreement on financial aspects of the project. The US may also try to sabotage it by persuading Pakistan to opt out of it in exchange for help with the TAP project.

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# Conflict and the media in globalization matrix

IFTEKHARUL BASHAR

PEACE researchers in the past have often tried to understand the real relationship between conflict and the media. What they found out was baffling because they kept globalization matrix out of calculation. As the process of globalization intensifies, its direct and indirect influence over conflict and media seems to be more visible. Besides, this process has also influenced the relationship between conflict and media in a complex manner.

It is indeed a fact that mass media now has the power to shape and mobilize public opinion and is often manipulated by the conflicting parties to incite violence and provoke armed conflicts. Control over the mass media and the flow of information can be a decisive factor in the near future in shaping the outcome of a conflict.

We live in a world much smaller than ever before. We live in an era of ever interconnectedness of people, places, capital, goods and services. We are witnessing an increase and intensification of political, economic, and cultural interactions across territorial borders. As a result, all the states and societies have become entangled in a complex system of mutual dependence. It is this reality of worldwide interdependence, its emergence and dynamics that the word 'globalization' aims to sum up.

The global economy more generally has become infrastructurally dependant upon the spread of global communication networks and the systematic use of radio, television, telephone, fax, computer and satellite facilities for the generation and dissemination of information. These technological innovations and their systematic applications in economic transactions resulted in the shrinking of distances with faster and improved connection between people and the places.

Globalization has its distinct impact in almost every field. We can feel it in the economy, in the society, in the politics, and of course in the media. While the developing world

still remains gripped in a vice of poverty and poor health, global television networks saturate with images of luxurious lifestyle in wealthy nations around the world. Globalization has its different impacts in different places. Many economists blame it for being a cause of intensified poverty in the countries which were not adequately prepared to join in the process of globalization in the early 1990s. Globalization has played a significant role in worsening the poverty of the Third World. It is quite evident that globalization of the world economy has benefited some, but marginalized many more and has increased inequalities within and among nations. Besides, globalization driven by forces to open national borders to trade, capital, and information, made the world more vulnerable to terrorism in a way.

It has been found that in many cases globalization creates poverty, which as some analysts argue, somewhat indirectly contributed to the growth of contemporary 'global' terrorism. A growing global divide between the 'haves' and 'have-nots' has already generated a population of underprivileged and resentful people, a prime reservoir for the recruitment of terrorists and fostering violence further. The statistics are grim. A UN study released not so long ago reported 2.8 billion of the world's 6 billion people live on less than \$2 a day; and among them 1.2 billion eke out an existence on \$1 a day. And an USAID report reveals that in Third World countries around the globe such as Benin, Guatemala, Haiti, Morocco, Pakistan and Uganda, less than 30 percent of adults aged 25 and over completed primary education.

It has been strongly argued by many scholars that contemporary global terrorism is more dependent on media coverage when it comes to the question of sensitizing the people or the ruling elites. Think of the 9/11 attacks on the World Trade Center and how the media covered it and how people within and outside the US responded to it. Seeing the

Twin Towers collapse on the TV screen obviously sensitized the audiences across the globe. It is through media coverage that the world came to know about the evil strength of terrorism. Some media specialists may argue that media coverage encourage terrorism. But there are opposing views of course. Robert G. Picard argues that there is inadequate scientific proof that media coverage does, indeed spur terrorism; he also suggests that increased publicity might actually lessen terrorism. This view does not fit into the reality as we have seen both vertical and horizontal growth of terrorist activities around the world since the 9/11.

Majid Tehranian, a noted scholar in his much-celebrated book 'Global Communication and World Politics', says that information imperialism is dividing the world between the high-tech and high-growth centers of global information economy and the disintegrating peripheries of diminishing jobs, identities and opportunities. At the constructive level, global communication has already placed the democratic norms of order, freedom, equality and community on national agenda. Tehran further argues this achievement is likely to make democracies stronger through debates and free expressions of diverse opinions.

The impact of forces of globalized communications and control of those by the multinationals or transnational companies, though they served the owners' goals well, often backfired. For instance, if the break up of the Eastern Bloc in Europe can be attributed to the orchestrated communications' attack against this communist bloc, American defeat in Vietnam was forced by the American resistance at home; a result of live coverage of war. In the case of Vietnam, Presidents Lyndon Johnson and Richard Nixon were so embarrassed by the media coverage that they placed political pressure on the television networks to stop showing films on Vietnam War that portrayed United States in a bad light.

A relatively recent instance of



free press taking up gross violations of human rights is the torture and abuse of prisoners at Abu Gharib prison in Iraq by the American military and the CIA. Seymour Hersh and some of the other enterprising journalists uncovered much of the scandal on the exposure caused a great deal of outrage in the United States. One outcome of the debate that followed is that the US military is

writing a new and detailed code for the interrogation of prisoners that would eliminate the harsh and objectionable methods including the use of dogs to terrorize prisoners, sleep deprivation, slapping and humiliation.

It is not very clear what will be the role of media in the coming years. But one thing is clear, the corporatization of the media will

continue as more satellite television networks are coming up all over the world though not equitably in every region. We have to remember that media today is neither state owned nor by a single person. Its role will be determined by the shareholders and the new economic paradigms over which even the most powerful states have no control. The ultimate controller will be the profit and the factor

driving the media will be the motive.

What exactly is the role of media in any conflict? To answer this question, we have to understand that conflict is not an unusual occurrence in the social system (though the common and popular view is quite the opposite). Recent literatures perceived conflict as natural and inevitable part of all human social relationships. It is important to examine the level, the intensity, the type, the object of conflict and the way it is handled. From this point of view violence could be defined as a form of severely escalated conflict.

The media, in fact acting through ephemeral, intermittent, but explosively powerful coming together of news sources, print or broadcast organizations, and both mass and specialized audiences, are partially autonomous parties to the relationships in which conflict situations exist. The news media are unusual, volatile entities, different in some ways from individuals or organized, stable groups. They do not merely transmit, but also frame and interpret messages; however, they must operate within the contexts of shared cultural meaning just as other social actors do, turning the reality into stories, which then become part of the reality. Media organizations necessarily observe social and cultural conventions, and cultural patterns are essential determinants of the roles that the news media take during conflicts.

Due to the technological breakthrough in the field of communication the media has become stronger, faster, and of course popular. Media is now more human-centric. With the development of democratic values widespread involvement of average citizen or subject in political affairs and a widening scope of private contacts between people of different nationalities, the psychological and public opinion dimensions of foreign policy have become increasingly important.

In the globalized world, the media can play a more active role in conflict resolution process as long as it maintains a neutral position. In any inter-state conflict, when traditional

diplomacy remains too occupied with matters what we call high-politics, the humanitarian and non-traditional aspects like human security, displacement, gender, public health and environmental issues remain somewhat ignored. At this point, media can offer track-two diplomatic support. It can work as a neutral third party or a mediator by organizing and broadcasting live debates and talk shows concerning the stakeholders. Actually media has an important role to play at every stage of conflict. By supplying information about conflict issues to a wide audience, the media can constitute an essential part of a "court of public opinion" and thereby help to contain societal conflict by assisting the solution of underlying problems.

The advancement of telecommunications technology, blessed with globalization, bringing people of different nations into more direct contact during conflict situations, traditional cultural factors become increasingly important as different ways of thinking and acting collide. The mass media can be seen as a factor in the creation of international conflict; they are the key to control and resolution of these problems. Whichever side of the coin one chooses to look at mass media as a cause or cure of conflict - there is no doubt that news media are no longer peripheral players on the global scene; they are important participants whose organizational patterns of behavior, values, and motivations must be taken into account in understanding national and international conflict. The democratic system can count on the reasonableness of the people and can avert nations from getting into conflict and wars if only the media is firm in its commitment to peace and plays the role of a sentinel.

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