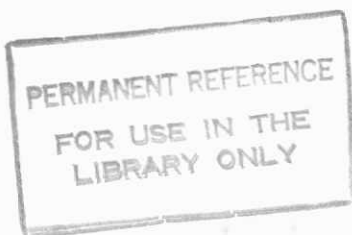


C
341.57
JA-1

The Making of the Law of the Sea Regime and its implications on Sri Lanka

Tanaki Deepthika Jayawardena



In fulfillment of M. Phil degree in History from the University of Peradeniya

Candidate Number: GS / M. Phil. / 95 / 685

544612

Abstract

Title of the thesis: The Making of the Law of the Sea Regime and its Implications on Sri Lanka

Name of the Author: Janaki Deepthika Jayawardena

Department of Study: Department of History, University of Peradeniya

Degree: M.Phil. Degree in History

This study examines the manner in which the international Law of the Sea Regime evolved over time with historical perspective and what implications it has on Sri Lanka. The point of departure of the study is the examination of how the Law of the Sea regime developed during the classical and medieval times. It examines the beginning of the Law of the Sea as laws to protect expanding commerce of the western world from war and piracy. At that time sea laws were codified and laws were regarded as 'private laws' or 'law of nations.' However, the rulers at that time did not try to appropriate sea and it had been regarded as free for navigation. This has changed in the medieval times with the emergence of the feudal states. Some of the rulers began to make claims for adjacent waters mainly to protect their dwindling fishery resources. This has led to the emergence of the concept of closed sea.

New spaces and structures appeared in the modern era when nation states began to form in Western Europe. With the development of nation states in the modern era the Law of the Sea Regime underwent a profound change. The study analyses how the emphasis of the content and forms involved with the Law of the Sea were subjected to change and modification according to the political, economic and technological changes of the world. With the new technological advances of the western European nation states they have been able to explore the unknown parts of the world. The emergence of empires and

merchant capitalism led to a bitter rivalry among those nations and consequently there was a competition between those nations to control seas. As a result conflicts arose and new sea laws were needed. The regime was changed and modified according to the existing debate at that time namely, freedom of the seas (Mare Liberum) or closed sea (Mare Clausum). As Britain became the greatest power in the world, freedom of the sea became a catchword in the Law of the Sea. Yet the controversy remained over the limit of the territorial sea. However, after the Second World War the need to change the existing Law of the Sea regime became imminent due to the global economic, political changes and also due to the new developments in ocean technology. The entry of new actors in the arena of international politics made it difficult for the maritime powers alone to change or modify the law of the sea as they desired. Hence a forum was needed for the new states to make their voice and the United Nations provided the forum. The first, second and third Law of the Sea conferences could be understood with this historical context. In addition to the issue of territorial waters, new spaces of the oceans emerged at the first conference, namely, the contiguous zone and the continental shelf. However, the first and the second conferences were considered not successful because they did not bring an answer to the most debated issue, the limit of the territorial sea. It took fifteen years for the commencement of the third law of the sea conference, as it was a result of intense debate and negotiations of the global community. The developed maritime powers and the developing countries held different ideas about the regime, which they considered as an instrument for safeguarding their interests. The third conference was able to bring solutions to most of the issues and as a result more new spaces such as the Exclusive Economic Zone emerged at the conference. One of the most important outcomes of the third conference is the application of the concept of the Common Heritage of Mankind. In the third conference the deep-sea resources became the most simmering issue. The changing international environment in the late 1980s led nations to compromise, instead of confrontation. The success of the third conference depended on its unique nature of bargaining and consensus decision-making process, which contributed heavily for the successful conclusion of the Treaty. The role of the developing countries in the third Law of the Sea conference is very significant because they were thus able to come forward and assert themselves, which ultimately led to the

formation of an international Law of the Sea regime beneficial to the both developed and developing countries. Finally, the study examines the implications of the Law of the Sea regime on Sri Lanka.