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LEX BONA FIDE - LAW JOURNAL is an open access, peer- reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEX BONA FIDE: LAW JOURNAL

SOUTH CHINA SEA DISPUTE

(by V. Srimathi, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University)

ABSTRACT

The South China Sea, which is a part of the western Pacific Ocean in Southeast Asia covers approximately 37 lakhs km square. It consists of innumerable coral reefs, atolls and small islands. Paracel Islands and the Spratly Islands are two major archipelagos, the former is controlled by China and the latter is fully claimed by Taiwan, Vietnam and China and it is partly claimed by the Philippines, Brunei and Malaysia. The South China Sea is one of the most important waterways for trade. It is a key route for crude oil which comes from the Persian Gulf and Africa passes through the Strait of Malacca and to Singapore, Japan, Thailand, Taiwan, Hong Kong and South Korea. This set consists of raw material deposits, rich fishing grounds and prepotency. In this article, we will discuss the dispute between the countries over the territory and sovereignty over ocean areas and the two islands: Paracels and Spratlys.

INTRODUCTION

South China Sea dispute is a major international sea dispute. It is a key route for international trading. This South China Sea consists of innumerable coral reefs, atolls and small islands. It has raw material deposits, rich fishing grounds and prepotency. The dispute between the Countries was provoked by their interest in these raw material deposits, prepotency and rich fishing grounds. The dispute is between China, Vietnam, the Philippines, Taiwan, Malaysia and Brunei, they fight over the territory and sovereignty over the ocean areas and the two islands namely the Paracels and the Spratlys.

LAW OF THE SEAS

Laws on the sea were observed by the States as customary rules of international law. The entire sea will be divided into three maritime zones: territorial sea, contiguous zone and the high seas. United Nations Conference on the Law of Sea (UNCLOS) in its 11th session which was held on April 30, 1982, adopted the draft of the Convention on the Law of the Sea. This Convention has 320 Articles which are further divided into XVII parts and IX annexes. The UNCLOS defines the maritime territorial boundaries of a country coastal state into the following categories: Territorial Sea, Contiguous Zone, Exclusive Economic Zone and High Seas.

TERRITORIAL SEA/ WATERS

The territorial sea which was formerly called territorial water also called as Maritime belt which is adjacent to the coastal State and over which the coastal State can exercise sovereignty. It has a prodigious strategic, economic and navigational significance for the coastal areas. The UNCLOS has defined the limit and extent of territorial boundaries. The territorial waters extend to 12 nautical miles which are approximately 22 km, measured from the baseline. The 'normal baseline' for measuring the breadth of the territorial sea is the low-water line which is along the coast.

CONTIGUOUS ZONE

Contiguous zone, part of the sea which is adjacent and beyond to the territorial waters of the coastal state. Article 33 of the UNCLOS provides that a contiguous zone may extend to 24 nautical miles from the baseline from which the breadth of the territorial sea is measured. The coastal State may exercise predominance to prevent the contravention of its customs, taxation, immigration or sanitary regulation and punish the contravention of these laws.

EXCLUSIVE ECONOMIC ZONES

The Exclusive Economic Zone (EEZ) also known as the Patrimonial Sea, aims to secure for coastal States the seabed, the subsoil and the resources of the sea regardless of variations in geographical or economic or ecological conditions.

Article 57 of the 1982 Convention provides that Exclusive Economic Zone shall not extend 200 nautical miles from the coast baseline from which the breadth of the territorial sea is measured.

THE HIGH SEAS

The high seas represent all the parts of the sea that are out of the territorial seas and contiguous zones of the states. Article 86 of 1982 of the UNCLOS explains the concept of the term high seas and Article 87 deals with the freedom of the high seas.

SOUTH CHINA SEA DISPUTE

China, Vietnam, the Philippines, Taiwan, Malaysia and Brunei have competing claims. This South China Sea dispute is over the sovereignty and the territory of the ocean areas, and the two islands - the Paracels and the Spratlys and also for the fisheries. These two islands contain natural resources. And the sea is a key route for international trading through waterways. China claims the largest portion of the territory which it calls the "Nine-dash line". It has built its military bases and structures on the artificial island in the Paracel Islands and the Spratly Islands.

PHILIPPINES VS. CHINA

The Philippines, on 22nd January 2013, registered arbitral proceedings in the Permanent Court of Arbitration in Hague against China, under the Annex VII of the UNCLOS 1982. The Philippines pleaded that the “nine-dash line” which is claimed by China is invalid because it has transgressed the United Nations Convention on Law of the Sea agreement which mentions the Economic Exclusive Zone.

The tribunal held that China has violated the responsibility of maritime safety mentioned in Article 94 of the UNCLOS and further the tribunal said in its award that China has violated Article 123, 192, 194(1), 194 (5), 197 and 206 of the UNCLOS by building the artificial island. Thus, the verdict is given in favour of the Philippines.

VIETNAM AND CHINA

Vietnam also had trouble with China from 1974. China killed more than 70 Vietnamese troops and seized the Paracels from Vietnam and in 1988 both the countries had conflict in Spratlys losing nearly 60 sailors. In 2012 large anti-China protests was led by the Vietnamese for the Chinese navy sabotaging two Vietnamese exploration operations. And again on May 24 both had a collision because of the introduction by China of a drilling rig into waters near the Paracel Islands.

CONCLUSION

China has to follow the verdict given by the Permanent Court of Arbitration, Hague. The law mentioned the Exclusive Economic Zone. Violating it might affect the other countries sovereign rights and the South China Sea is a major international shipping route for trade purposes. This dispute not only affects the neighbouring countries but also the trade between many countries.

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