The state practice of India and the development of international law : selected areas

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CHAPTER III

LAW OF THE SEA

3.1. Introduction

The Law of the Sea is a vast and multi-faceted area of international law. The 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the implementation of Part XI of the Convention constitute essential instruments of the law of the sea governing a new maritime order for the international community.[165] With its entry into force on 16 November 1994, the Law of the Sea Convention has virtually become the *Magna Carta* of the Oceans, or the Constitution for the Oceans. The Convention has been embraced by more than 160 parties including an intergovernmental organization, namely, the European Union. All South Asian nations are parties to the Convention. These nations have also enacted and promulgated new national legislation to incorporate the provisions of this Convention into their domestic legal orders. The UN Convention is, however, presenting even more challenges than opportunities to these states in their quest for a new maritime order. The maritime security situation in the South Asian region has been and will continue to be extremely volatile due to conflicting claims to maritime areas, disputed boundaries, unregulated pollution of the marine environment and widespread illegal activities at sea.[166] This chapter will examine the following issues: What is India's position on the emerging maritime situation in South Asia? How the emerging maritime situation in South Asia is linked with the evolution of international maritime order? What are the most important issues of the Law of the Sea which find prominent positions of India? What is India's position with regard to non-important issues and why these are considered to be non-important issues? What is the approach and contribution of the Indian judiciary in interpreting and implementing law of the sea obligations at national level? What are the main issues and disputes hindering the establishment of a new maritime order in the South Asian

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[165] UN through the International Law Commission convened a conference in 1958 which came to be known as the Geneva Conventions or UN Convention on Law of the Sea (UNCLOS-I). The four conventions that were opened for signature of UNCLOS-I in 1958 effectively codified the international customary law on the sea existing until that point of time. However, it left a number of issues unsettled. States were selective in becoming party to the conventions and with advancing technology continued to exploit resources beyond the limits envisaged in the conventions. It was only in 1980, with the Vienna Convention, the laws of the sea had been evolved into a hard law from soft law. The UNCLOS-III had consolidated all past treaties, codified customary law and put in place new law for new issues. It was a global agreement as for the first time even land locked states were addressed in maritime affairs. The four conventions were the freedom of the seas; the sovereignty of coastal states in the territorial sea; the ancillary physical, customs, sanitary and immigration rights of coastal states in a contiguous zone. The acceptance by UNCLOS 1 of the Continental Shelf convention enabled the countries bordering the North Sea to divide the sea area for extracting oil and gas. UNCLOS 1 participants remained divided on several issues: - The rights of coalitions of coastal states, land locked states and archipelagic states. - Certain states contested the rights of passage through straits used for international navigation like the Straits of Gibraltar, Hormuz and Malacca. - Land based mineral producers tried to carve out for themselves as much as they could of the newly found seabed mineral resources. UNCLOS 1 completely failed to agree on:-- The precise width of the Territorial Sea (three miles or twelve miles) and the extent of the Exclusive Fisheries Zone. - The prior authorization and/or notification of the passage of foreign warships through the territorial sea of a coastal state. The Second Conference, UNCLOS 2, was therefore convened in 1960 to resolve these issues but failed in major part to do so.

[166] Thomas Mensah, "Protection and preservation of the marine environment and the dispute settlement regime in the United Nations Convention on the Law of the Sea," In Andree Kirchner (ed.) *International marine environmental law*, 9-18 (2003); Donald R. Rothwell, "The International Tribunal for the Law of the Sea and Marine Environmental Protection: expanding the horizons of international oceans governance," 17 *Ocean Yearbook*, 26-55 (2003).

region? What are the present policy options that could contribute to erecting a solid maritime order in the region by peaceful and cooperative means?

The Law of the Sea presents one of the most interesting examples of codification and progressive development of international law. India's historical and contemporary contribution thereto is yet to be analyzed systematically.[167] What started as a principle of *freedom of the seas*, as we all know, now has become the most potent source of economic wealth under the ocean, posing challenges from security to pollution. For a long time, seafaring nations used the seas for navigation and fishing. Coastal states tended to be content with exclusive rights in their narrow belt of territorial waters. India, much like other nations, prior to its independence, was unable to fully exploit the potential of resources in the continental shelf. Since the promulgation of the Truman Proclamation in 1945 extending the US sovereignty over the petroleum and natural gas resources found in shallow waters of the continental shelf and exploitation of fishing and depleting fish stocks in the adjacent waters of coastal states by distant foreign vessels, the whole regime has started to change.[168] After independence, many African and Asian states started to extend national jurisdiction over large adjacent areas to protect their fish stocks.[169] The fact that Indian practice was in disarray is revealed in an example that all questions with law of the sea were dealt with on an *ad hoc* basis in the Ministry of External Affairs. The establishment of the UN International Seabed Authority in 1994 compelled India to constitute an Inter-Ministerial Committee consisting of Cabinet Secretary, Secretaries of Defence, Agriculture, Home, Finance, Mines and Geological Survey of India. This committee served for a long-time until the establishment of the Department of Ocean and Earth Sciences.[170]

This chapter analyses the law and practice of India with regards to the law of the sea and examines which problems India have faced and how it resolved these issues through legal and political mechanisms. It does not analyse the role played by India in the UNCLOS I which resulted in four treaties in 1958: Convention on the Territorial Sea and Contiguous Zone (entry into force 10 Sept 1964), Convention on the Continental Shelf (entry into force 10 June 1964), Convention on the High Seas (entry into force 30 Sept 1962) and Convention on Fishing and Conservation of Living Resources of the High Seas (entry into force 20 March 1966). India did not sign any of these conventions. India did participate in the UNCLOS II in 1960 and did not take any significant

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[167] The personal account of participation in various conferences leading to the final adoption of 1982 Convention by O. P. Sharma, *Law of the Sea: India and the UN Convention of 1982* (Oxford University Press) an excellent and meticulous piece of executive summary on India's position in the UNCLOS 1982 Convention. This chapter draws significant insights from his accounts provided in this book.

[168] Alexander N. Sack, *The Truman Doctrine and International Law*, Washington DC (1947); Osgood, Robert Endicott, *America and the World: From the Truman Doctrine to Vietnam*, (Baltimore: The John Hopkins Press, 1970).

[169] K. Opoku, "The Law of the Sea and Developing Countries", 51 *Revue de droit international, de sciences, diplomatiques et politiques,* 28-45 (1973); R. P. Anand, "Interests of the Developing Countries and developing law of the Sea", 4 *Annales d'études internationals* 13-29 (1973); Lewis M. Alexander, *The Law of the Sea: Needs and Interests of Developing Countries: Proceedings of the 7th Annual Conference of the Law of the Sea Institute 1972*, University of Rhode Island, 1973; A. O. Adede, "Law of the Sea: Developing Countries' contribution to the development of the institutional arrangements for the International Seabed Authority", 4 *Brooklyn JIL* 1-41 (1977); V. S. Mani, "The United Nations Law of the Sea and the Developing Countries," In M. S. Rajan, V. S. Mani and C.S.R Murthy (ed.) *The Non-Aligned and the United Nations,* 56-79 (New York: Oceana, 1987).

[170] India established the Department of Ocean Development in 1981 with an aim of creating a deeper understanding of the oceanic regime of the northern and central Indian Ocean and also development of technology and technological aids for harnessing of resources and understanding of various physical, chemical and biological processes. The Ocean Policy was enunciated in 1982. http://dod.nic.in/dodhead.htm accessed on 29 June 2011.

position.[171] The UNCLOS III resulted into the 1982 Convention which is the primary object of the analysis in this Chapter. The 1982 Convention covered significant issues setting limits, navigation, archipelagic status and transit regimes, exclusive economic zones (EEZ), continental shelf jurisdiction, deep seabed mining, the exploration regime, protection of the marine environment, scientific research and settlement of disputes. This chapter analyzes India's position and practical approach to these issues in the context of international law and national legislations.

In order to analyze India's contribution, it is essential to examine briefly India's state practice on the law of the sea. India, in 1947, proclaimed 3 nautical miles of territorial sea, in accordance with the prevailing traditions of the law of the sea. This proclamation found presidential decrees legitimizing this claim as well as announcing its stated goals to promote its interests. The notification of 30 August 1955 claimed full and exclusive sovereign rights over the seabed and subsoil of the continental shelf adjoining the coast but beyond territorial waters.[172] It should be noted this notification lacked any indication on the depth and the distance from the coastline. By another notification of 22 March 1956, India claimed territorial waters of 6 miles from appropriate baselines. India, through its proclamation of 29 November 1956, claimed a Conservation Zone for fisheries up to a distance of 100 miles from the outer limit of territorial waters. Finally, India claimed on 3 December 1956 a Contiguous Zone.

One of the important weaknesses of these proclamations was that these were based on India's own estimation without any consultation with any of the coastal states. Furthermore, these were general proclamations and India did not lay any claim in action. In other words, India announced the law but did not practice. India participated in the first UN Conference on the law of the sea in 1958 but did not ratify the four conventions as these Conventions failed to accommodate its demand of prior authorization and notification for the passage of warships through the territorial sea. India's initial approach to territorial waters was reactive instead of proactive.[173] This is evident from the fact that India extended its claim over territorial waters to 12 nautical miles in 1967[174] as a reaction to Pakistan's extension of its 3 to 12 miles.[175] While this was the state

[171] UNCLOS II did not result in any new agreements, having failed to address the issue of the delimitation of territorial waters. Generally speaking, developing countries including India participated only as clients, allies or dependents of the USA or the Soviet Union, with no significant voice of their own. http://en.wikipedia.org/wiki/UNCLOS, accessed on 12 November 2009.

[172] According to the notification, the Bays should be considered internal waters and that the base line for measuring territorial waters should be drawn from the mouths of bays/gulfs…the base line should be drawn outside the roadsteads which should be included in internal waters". *ILC Yearbook* 1955, p. 48.

[173] Convention on the Territorial Sea and the Contiguous Zone (entered into force on 10 September 1964), the Convention on the High Seas (entered into force on 30 September 1962), the Convention on Fishing and Conservation of the Living Resources of the High Seas (entered into force on 20 March 1966), and the Convention on the Continental Shelf (entered into force on 10 June 1964). In addition, an Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes entered into force on 30 September 1962.

[174] The number of states extending their territorial seas dramatically increased when the UNCLOS II could not determine a limit for the territorial sea. In this conference, it became clear that the 3 mile limit is not going to be accepted as a solution to settle the question of the outer limit of territorial sea and proposals in support of a 12 mile and 200 miles were gaining favour. While at the time of the UNCLOS II, 40 states claimed a 3 nautical mile limit of territorial sea, at the time of the UNCLOS III, 26 states were in favour of such a limit whereas at the time of the UNCLOS II the 12 mile limit was supported by 16 states and at the time of the UNCLOS III, this limit obtained the support of 52 states including India.

[175] The delimitation of 12 nautical miles had always been the most difficult issue even for states like the USA, which is one of the most important maritime states in the world. USA had remained traditional supporter of the three nautical miles. At the first UNCLOS, it presented its 'six plus six' formula of a six nautical mile territorial zone and a further six nautical mile fisheries zone. However, it joined Canadian proposal for a

practice until the late 1960s, the management or the coordination agencies in India were in disarray as no nodal department was established to comprehensively manage India's affairs in this area. For example, various ministries showed hesitation to deal with one of the aspects, namely, maritime force. Furthermore, India did not have any comprehensive legislation on the law of the sea. Recognizing the need to confirm to the international law, being a major role player in the very evolution of the new international order of oceans, India amended its Constitution enacting the Maritime Zones Act on 25 August 1976.[176] Subsequent to this, a Committee was set up to consider the type of force that should be created to enforce compliance with its provisions. Three options emerged: (a) to entrust the responsibility to the marine wing of the Ministry of Finance, which already had a number of Central Board of Revenue (CBR) anti-smuggling vessels.[177] This option was not pursued as the functions were too onerous; (b) to set up a separate Coastal Command, as part of the Navy, to oversee these functions. This option was seriously considered since it would avoid the expenditure of raising and maintaining a separate armed force. The Ministry of External Affairs, however, felt that patrolling of the EEZ and protection of national assets was a peace time role for which defence assets should not be used; (c) to set up a separate armed force of the Union, along the lines of the US Coast Guard.[178] This option was finally chosen, as it avoided the Navy being distracted from its primary role of preparing for hostilities. Finally, an interim Coast Guard was constituted on 1 February 1977,[179] which operated under the aegis of the Navy until 18 August 1978. A permanent Coast Guard was constituted as an armed force of India on 19 August 1978.[180]

In view of the above, the Indian law and practice with regards to the law of the sea becomes a logical choice in the overall framework of analyzing India's contribution to the codification and progressive development of international law. India has a well-developed state practice in the area of seabed mining, national jurisdiction, and access to the seas, navigation, protection and preservation of marine environment, maritime scientific research, exploitation of the living and non-living resources and the dispute settlement mechanisms.[181]

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similar 'six plus six' formula without any rights for foreign states in the fishing zones. I. A. Shearer (ed.), *D. P. O'Connell, The International Law of the Sea*, (New York: Clarendon Press 1984), p. 163.

[176] After the 3rd UN Conference on the Law of the Sea on 16 November 1994, article 297 of the Constitution of India was amended to state: "Things of value within territorial water or continental shelf and resources of the exclusive economic zone to vest in the Union – (i) all lands, minerals and other things of value, underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union (ii) all other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union (iii) the limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament. The Constitution of India (40th amendment) Act, 1976.

[177] Marine Division of the Directorate General of Logistics – Customs and Central Excises has a separate Marine Division which is entrusted to (a) examine proposals for appropriation/condemnation of vessels received from maritime commissionerates and extending technical support, (b) procure and supply technical and general sea stores through Central Stores Yard, Mumbai, (c) provide overall supervision and control over the four workshops for repair of the vessels, and (d) maintain statistical data pertaining to crafts and crew, (e) to recruit trained and disciplined technical personnel for operating vessels, workshops and Central Stores Yard.

[178] US Coast Guard's missions are to protect the maritime economy, environment, defend maritime borders. It has 11 missions, including, ports, waterways and coastal security; drug interdiction; aids to navigation; search and rescue; living marine resources; maritime safety; defense readiness; migrant interdiction; marine environmental protection; ice operations and other law enforcement. http://www.uscg.mil/top/missions/ accessed on 29 June 2011.

[179] http://indiancoastguard.nic.in/Indiancoastguard/history/morehistory.html accessed on 17 November 2009.

[180] Coast Guard Act of India, 18 August 1978.

[181] Thomas A. Mensah, "Civil liability and compensation for vessel-source pollution of the marine environment and the United Nations Convention on the Law of the Sea (1982)," In *Liber amicorum Judge Shigeru Oda*

The Indian Ocean holds 40% of offshore oil reserves, 65% of strategic raw materials and 31% of gas of India's reserves.[182] Geographic disposition bestows upon India inherent advantages as well as inconveniences that need to be understood and addressed. The 8,118 km long coastline, including the island groups, bestows upon India a large ocean area.[183] Despite such rich maritime heritage, India has been subdued not only in addressing the rights but also in taking any proactive positions in world forum of the UN. Since various ministries are involved in the implementation of the law of the sea provisions and India has enacted several legislations, it becomes important to see whether the national provisions are in harmony with the international obligations.

3.2. India and Basic Issues in the Law of the Sea

India has actively participated in the Law of Sea debates, especially since the Caracas Conference of UNCLOS III in 1974.[184] A brief analysis of Indian statements indicates that India's position, unlike many other instruments, was motivated by the overall interests of the international community and to an extent by national interests.[185] However, it is also true, as debates evolved, Indian core national interests, which constitutes continued economic development and political and social stability and essentially non-negotiable came to dominate its position, which remains valid still today.

Why did India need to play a key role in the law of the sea debates? India is a developing country, has a central position in the Indian ocean, possesses a long coast line of around 8,118 kilometers, has 1,280 islands and islets, about half of which constitute the archipelagoes of Andaman and Nicobar islands on the one hand and Lakshadweep on the other. India's interests have been therefore to obtain an archipelagic status; smooth and freer navigation through waters that traditionally have been used for international navigation,[186] protection of essential strategic and security interests in the waters around its coast and to secure the free mobility of naval ships, preservation of marine environment[187] in the sea areas adjacent to its coast since the channels of navigation pass near its long coastline and exclusive rights to conduct and regulate marine scientific research by foreign researchers within exclusive economic zones (EEZs). Indian revenue from the exploitation of fishery

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ed. by Nisuke Ando, Edward McWhinney, Rudiger Wolfrum, 1391-1434 (2002); Van Dyke, Jon M., "The legal regime governing sea transport of ultra-hazardous radioactive materials, 33 *Ocean Development and International Law* (1) 77-108.

[182] B. S. Randhawa, "Indian Shipbuilding: Key to maritime and Economic Security", In 25 *Indian Defense Review* 1, 2010.

[183] The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, 25 August 1976, http://meaindia.nic.in/actsadm/30aa13.pdf, accessed on 17 November 2009.

[184] J. R. Stevenson and B. H. Oxman, "The Third United Nations Conference on the Law of the Sea: the 1974 Caracas Session", 69 *American JIL*, 1-30 (1975); Platzoder, Renate, *Third United Conference on the Law of the Sea: Documents of the Caracas Session 1974*, (Hamburg: University of Hamburg, 1975).

[185] The issue of continental shelf was of considerable importance to "broad margin" states like India as it continental shelf extended hundreds of miles beyond the 200 nautical miles economic zone. India, with other broad margin states, Russian Federation, Brazil, Argentina, US, UK, Canada agreed to pay a portion of their production from this area to a new International Seabed Authority. *Ibid.*

[186] Nahid Islam, '"The Law of non-navigational uses of international water courses: Options for Regional Regime-Building in Asia", 8 *Energy and Environmental Law and Policy Series* (2010).

[187] India has witnessed many marine environment calamities starting from Maersk Navigator off the Andaman and Nicobar Islands. The Maersk Navigator, a Singaporean registered tanker, collided with Sanko Honor at the entrance of the straits of Malacca on 21 January 1993, causing the largest oil spill in the Andaman and Nicobar Islands. The spill was successfully contained by the Indian Coast Guard.

resources has been growing from 1.5 million tons in 1974 to now 7.61 million tons in 2008-09.[188] New areas of rich fishery resources, such as the off-shore areas of the Arabian Sea, the Bay of Bengal, and the Andaman Sea have been found. At domestic level, various committees have been set up to examine the problems of small fishermen, operation of deep-sea fishing vessels, joint venture arrangements and other fisheries issues.[189]

India has been able to identify and hence capitalize its interests in the resource exploration and exploitation. India requires huge quantities of manganese nodules for its long-term development strategy for metals such as nickel, cobalt and copper.[190] India has developed an intensive scientific and investigation program of the manganese nodules on the deep seabed of the Indian Ocean. Indian continental shelf is found to contain enormous storage of gas and oil. Now the continental shelf of India produces huge amounts of crude oil from the offshore oil fields. Besides oil, various sectors, such as Bombay High Region, Godavari and Krishna, Palk Bay Basins and Andaman offshore, are full of gas fields.[191] These gas fields can assure self-reliance to India to a great extent. Thus, India has multiple interests and hence, her position is clearly and solely based on her national interests and shows alliance with the developing world only when it could further her national interests.

3.3. Indian position on various issues

3.3.1. Prior Notification on Territorial sea: India proposed in 1974 a territorial sea of 12 nautical miles measured from the appropriate baseline along its coast.[192] India advocated that the coastal state may require prior notification to its designated authority for the passage of foreign warships through its territorial sea.[193]

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[188] http://dahd.nic.in, India produced 4.157 million tone fishes in 1991-92 and 2008-09, the tonnage increased to 7.616 million – almost double production and corresponding increase in the revenue. http://dahd.nic.in, accessed on 30 July 2012.

[189] Union Government of India has at least 5 major schemes for development of fish sector and 4 major fisheries institutions in various parts of the Country.

[190] Manganese nodules are rock concretions on the sea bottom formed of concentric layers of iron and manganese hydroxide around a core. The core may be microscopically small and is sometimes completed transformed into manganese minerals by crystallization.

[191] For detailed information on oil and gas fields of India, see, Singh, Lakshman, *Oil and Gas Fields of India*, 1st edition, Dehradun: Indian Petroleum Producers (2000). The book provides useful information on the Oil and Gas fields in the Assam Basin, Bombay Offshore Basin, Cambay Basin, Cauvery Basin, Krishna-Godavari Basin, Tripura-Cachar Basin, and the West Rajasthan Basin.

[192] Third United Nations Conference on the Law of the Sea, Official Records, I: 95-96. It should be noted that this position of India reflected the UK proposal. UN Doc. A/CONF.62/L.4 (1974) and UN Doc. A/CONF.62/C.2/L.3 (1974). This limit includes Andaman, Nicobar and Lakshdweep islands.

[193] The right of foreign merchant ships to pass through the territorial sea of a coastal state has long been an accepted principle of customary international law. India has subscribed to this principle too. However, with regards to the innocent passage of foreign warships, India wanted to impose a requirement of prior notification. This position had to change as article 23 of the UNCLOS required that costal states must not hamper the innocent passage of foreign ships, either by imposing requirements upon them which would have the practical effect of denying or impairing the right or by discrimination. The issue of whether the passage of warships in peacetime is or is not innocent remained one of the most controversial issues. India rejected the principle of innocent passage for warships in the territorial sea. India's position was in stark contrast with position of the US, Western Powers and also the Eastern Bloc. UN Doc., A/CONF.62/WP.8/Part II (1975). The reason for receding from this position was India's self-realisation as a growing maritime nation interested in the freedom of navigation both for itself and the international community. http://indiannavy.nic.in/book/international-law-sea-and-indian-maritime-legislation (accessed on 20 July 2013).

3.3.2. Contiguous zone: Indian position was of a contiguous zone of 18 miles adjacent to the territorial sea or 30 miles from appropriate baselines. This position was taken by India to protect its custom, fiscal, sanitary and immigration interests of India as well as like-minded coastal states.[194]

3.3.3. Exclusive Economic Zone and Continental Shelf: The EEZ is one of the most revolutionary features of the 1982 Convention and the one which has had profound impacts on the management and conservation of the resources of the oceans. It recognizes the right of coastal states to jurisdiction over the resources of some 38 million square nautical miles of ocean space. To the coastal state falls the right to exploit, develop, manage and conserve all resources – fish or oil, gas or gravel, nodules or sulphur – to be found in the waters, on the ocean floor and in the subsoil of an area extending 200 miles from its shore.[195] About 87% of all known and estimated hydrocarbon reserves under the sea fall under some national economic jurisdiction as a result. So till almost all known and potential offshore mineral resources, excluding the mineral resources (mainly manganese nodules and metallic crusts) of the deep ocean floor beyond national limits. The most lucrative fishing grounds too are predominantly the coastal waters. India favoured 200 nautical miles from the coast in which coastal states would enjoy sovereign rights and exclusive jurisdiction over the resources of the sea and over the seabed and its subsoil.[196] At UNCLOS III, India's stand was that as a developing country centrally located in the Indian Ocean, with a coastline of over 8,118 kilometers, its basic national interests were:-

(a) To obtain assurance of smooth and free navigation through traditionally used waters and straits used for international navigation, outside of India,

(b) To achieve archipelagic status for the Andaman and Nicobar Island group and the Lakshadweep Island group which between them, comprised over 1,280 islands and islets,

(c) To protect essential strategic and security interests in the waters around its coast,

(d) To secure the free mobility of naval war ships,

(e) To preserve the marine environment in the sea areas adjacent to its coast, because the channels of navigation passed near its long coastline, and

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[194] Third United Nations Conference on the Law of the Sea, Official Records, I: 95-96. Prior to 1974, India submitted to the Committee on Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction the only draft articles on the contiguous zone. Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, UN Doc. A/9021 and Corr. 1 and 3 (1973), vol. 4. In the 1974 Caracas conference, India reacting the Mexican suggestion to put that text on hold pending discussion on the concept of patrimonial sea, expressed its doubts whether the concept of an economic zone or the patrimonial sea would confer special jurisdiction on coastal states to prevent infringement of customs, fiscal, immigration or sanitation regulations. Third United Nations Conference on the Law of the Sea. Official Records, 2:121. See also UN Doc./A/CONF.62/C.2/L.78 (1974).

[195] The special interest of coastal states in the conservation and management of fisheries in adjacent waters was first recognized in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. That Convention allowed coastal states to take "unilateral measures" of conservation on what was then the high seas adjacent to their territorial waters. It required that if six months of prior negotiations with foreign fishing nations had failed to find a formula for sharing, the coastal state would impose terms. Still the rules were disorderly, procedures undefined, and rights and obligations a web of confusion. On the whole, these rules were never implemented.

[196] It should be noted that the Indian delegation had sponsored a comprehensive proposal for fisheries in which the outer limit of the fisheries zone had been left blank and it was suggested that the limit of 200 nautical miles be set at 200 nautical miles since that distance had received general support from developing countries of Asia, Africa and Latin America. UN Doc A/AC.138/SC.11/SR.84 (1972) 2-4. Also see Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, vol. 3; UN Doc. A/CONF.62/C.2/L.4 (1974); UN Doc./A/CONF.62/C.2/L.78 (1974).

(f) To regulate within its EEZ, the conduct of marine scientific research by foreign research agencies.

India's EEZ became the 14th largest in the world as per the Law of Sea Convention.[197] The extension of the continental shelf to 350 miles or 100 miles beyond the 2500-meter isobaths added 2 million square kilometers to India's economic jurisdiction. India originally advocated a uniform limit of 200 nautical miles. Since no other country with a continental margin extending 200 nautical miles had supported that suggestion, India reappraised its position and supported the view that the national seabed of a state should extend to the outer edge of the margin.[198]

3.3.4. Seabed mining: India's interest in the mining of polymetalic nodules from the seabed derived from its long term strategy for acquiring access to metals like nickel, cobalt, copper and manganese. In the early 1970, the Indian Government had initiated a programme of scientific investigation and evaluation of the manganese nodule resources in the Indian Ocean.[199]

3.3.5. Offshore Oil and Gas: By the early 1970s, India had discovered oil and gas in Bombay High and promising fields were expected in the Godavari, Krishna and Palk Bay basins, as well as the Andaman

[197] India has approximately 2.02 million km^2 exclusive economic zone (India's landmass area is about 3.27 million km^2. Ministry of Earth Sciences, Government of India, Annual Report, 2009-10, p. 28. Australia, Brazil, Canada, Chile, China, Denmark, France, Japan, Mexico, New Zealand, Norway, Russian Federation, UK, USA have larger EEZ than India.

[198] It is in the area of continental shelf that India managed to obtain much more than it had bargained for. As is evident from the statement of the leader of the Indian delegation, India had earlier advocated a uniform distance of 200 nautical miles as the outer limit of the continental shelf. Since no other country with a continental margin extending beyond 200 nautical miles supported that position, India quickly reappraised her stand and joined the Broad Margineers Group to stake a claim to the outer edge of the continental margin. This group was chaired by Ireland, other members being Australia, Argentina, Canada, India, Norway, New Zealand, the UK and the USA. India actively participated in the deliberations of this group, which eventually succeeded in getting the Conference to accept the Irish formula. The technical formula for determining the outer edge of the continental margin was conceived by R. R. Gardiner, a geologist who was a member of the Irish delegation, and came to be called the Gardiner formula. The formula provided for the cut-off limit of either 350 nautical miles from the baselines of territorial seas or 100 miles beyond the 2,500 meter isobaths.

[199] Ranadhir Mukhopadhyay, Anil K. Ghosh and Sridhar D. Iyer, *The Indian Ocean Nodule Field: Geology and Resource Potential*, Elsevier (2008); _____, "Dynamics of Formation of Ferromanganese Nodules in the Indian Ocean," 37 *Journal of Asian Earth Sciences* 4 394-98 (2010); Rahul Sharma, "First Nodule to First Mine-Site: Development of Deep-Sea Mineral Resources from the Indian Ocean", 99 *Current Science* 6, 750-59 (2010); P. K. Sen, "Processing of sea nodules: status and commercial evaluation of India's programme," In *Workshop on Polymetallic Nodule Mining Technology – Current Status and Challenges Ahead*, ISA, National Institute Ocean Technology (NIOT), Chennai, 18–22 February 2008; P. A. Loka Bharathi and S. Nair, "Rise of the dormant: simulated disturbance improves culturable abundance, diversity, and functions of deep-sea bacteria of Central Indian Ocean Basin," 23 *Marine Georesources Geotechnologies*, 419-28 (2005); M Sudhakar and S. K. Das, "Future of deep seabed mining and demand-supply trends in Indian scenario," In *Proceedings of 8th ISOPE Ocean Mining Symposium*, India, 191-96 (2009); C. Raghukumar, S. Raghukumar, G. Sheelu, S. M. Gupta, B. N. Nath, and B. R. Rao, "Buried in time: culturable fungi in a deepsea sediment core from the Chagos Trench, Indian Ocean," 51 *Deep-Sea Resources I*, 1759-68 (2004).

Offshore.[200] With a view to establish an equitable international regime for the exploitation of seabed resources, the UN General Assembly convened the third conference, UNCLOS III in 1973.[201]

3.3.6. Common Heritage of Mankind: India has been a staunch proponent of the implementation of the principle of common heritage of mankind. This position of India clearly found positive expression in the Convention, which has established general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas and also an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction through an International Seabed Authority and the principle of common heritage of mankind.[202] In addition to above, enlargement of safety zones around oil installations and designation of special areas for the protection of resources have remained India's additional interest throughout the negotiations.

3.4. Indian position and interests and the Law of the Sea Convention of 1982

It can be observed that the 1982 Convention largely accommodated concerns and interests of a country like India by adopting 12 miles as the uniform limit for the breadth of the territorial sea; a 200-mile EEZ within which the coastal state exercises sovereign rights and jurisdiction for certain specified economic activities; and a continental shelf extending to the outer edge of the continental margin to be delimited with reference to either 350 nautical miles from the baselines of territorial waters or 100 nautical miles from the 2,500 meter isobaths.[203] The Indian position can be also considered as positively reflected in the provisions concerning the regime of transit passage through straits used for international navigation.[204] India, hence, could protect its navigational and

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[200] In 2009, India offered 70 blocks of Oil, Gas and 10 for coal-bed methane in the Andaman Offshore. 10 April 2009 *The Hindu Business Line.*

[201] J. R. Silkenat, "Solving the Problem of the Deep Seabed: the Informal Composite Negotiating Text for the First Committee of the UNCLOS III", 9 *New York University JI Law and Politics* 177-201 (1976); Edgar Gold, *UNCLOS III and the Commercial Viability of Shipping: Some Indian Ocean Perspectives*, (Halifax: Dalhousie University, 1979); Dushyant Kamat, *Coastal Zone Management: United Nations Convention on the Law of the Sea – UNCLOS III*, (New Delhi: Jnanda Prakasha (P&D), 2010); N. Balu, "UNCLOS III and the Legal Regime for International Navigation", 19 *Indian Yearbook of International Law* 256-77 (1986); Jonathan Charney, "The Law of the Deep Seabed post UNCLOS III", Eugene: University of Oregon, 63 *A Symposium on the Law of the Sea*, 19-52 (1984).

[202] For more detailed analysis see Jennifer Frakes, "The Common Heritage of Mankind Principle and the Deep Seabed, Outer Space, and Antarctica: Will Developed and Developing Nations Reach A Compromise?" 21 *Wisconsin International Law Journal* (2003).

[203] Common Heritage of Mankind: This concept "has given a rationale and an identity to the international seabed area beyond national jurisdiction and saved it from being drowned in the attempts at appropriation. The development and emergence of the concept is the nearest that could have happened towards the fair settlement of resources in the region. India has gained to the extent that the availability of international seabed area under the CHM concept has made it possible to acquire an undisputable title to the resources on the basis of norms and regulations laid down by the International Seabed Authority. The surrender of 75,000 km2 i.e. 50% of the allotted area is in fulfillment of the obligations for access to the resources that lay in Indian claim of the international seabed area. The deep seabed regime and the amendments made therein have removed the uncertainty and the 'discovery and occupation' principle in pursuit of undesirable titles to resources in the seabed area beyond national jurisdiction, thus paving the way for opportunities and a possible share from the profits for developing countries". Vijay Kumar, "India and the common heritage concept in the international seabed area", 86 *Current Science* 6, 25 March 2004, p. 787.

[204] The regime of transit passage retains the international status of the straits and gives the naval Powers the right to unimpeded navigation. Ships and vessels in transit passage, however, must observe international regulations and the conditions that ships and aircraft proceeds without delay and without stopping except in distress situations and that they refrain from any threat or use of force against the coastal sate. In all matters other than such transient navigation, straits are to be considered part of the territorial sea of the coastal state.

security interests. India's interests concerning abatement and control of marine pollution, marine scientific research and international seabed were also protected. It can be also argued that when India appeared to have lost its interests, it did not promote the cause of developing countries.[205] The most important, perhaps, securing of interest of India was about the Pioneer Investor. India's inclusion in Resolution II annexed to the Convention as one of the four states named as Pioneer Investor, have surprised the developing and developed world and raised high hopes as to India's technological capacity to engage in seabed mining. India again was the first state to be registered as a Pioneer Investor on 17 August 1987 after satisfying the criteria set forth in the Convention.[206] India's position materialized in response to Sri Lanka's proposal for an exceptional method of delimitation in relation to the seabed to the south or southeast of its coast.[207] Pursuant to the Pioneer Investor status, the International Seabed Authority, in 1987, allotted to India a 150,000 square kilometers mine site in the central Indian Ocean for the seabed mining of polymetalic nodules.[208] The richest area at this site has a density of 21 kilograms of nodule per square meter.

3.4.1. India's position on issues of non-significance interests

It is essential to analyse India's policy and practical approach in those issues where it had marginal economic, security and political interests. Such analysis can help to determine whether India has indeed taken a collective leadership role in international law or a leadership of convenience.

India had maintained a low profile on this issue knowing that its interests were coterminous with the major maritime power position and India's strong stand on transit passage regime might have caused unwarranted misgivings in the minds of the straits states or other developing countries.

[205] Kilaparti Ramakrishna, "North-South Issues, Common Heritage of Mankind and Global Climate Change", 19 *Millennium – Journal of International Studies 3*, 429-45 (1990).

[206] Resolution II of the Conference established a special regime to protect the preparatory investment made by countries and enterprises technologically capable of carrying out sea-bed mining or who already were involved in sea-bed mining. These countries could apply for the status of "pioneer investor". Applicants for such status must ensure that areas in which they intended to operate do not overlap. Three groups were designated eligible to register as "pioneer investors": four States which had 'signed the Convention--France, India, Japan and the Soviet Union--or their private or public corporations; four consortia (Kennecott Consortium, Ocean Mining Associates, Ocean Management Inc., and Ocean Minerals Company) whose components come from one or more of eight States--Belgium, Canada, the Federal Republic of Germany, Italy, Japan, the Netherlands, UK, USA and developing countries which had signed the Convention, or their enterprises.

[207] After the Irish formula was incorporated in the Informal Composite Negotiating Text, in April 1979, Sri Lanka examined the Irish Formula and found that the outer limit of its continental shelf would not go beyond 300 nautical miles. Sri Lanka, however, was advised by the US and Canadian geologists that its continental shelf was covered by sediments that were not very thick but which extended to long distances and that if the criterion of 1 kilometer thickness of sediments, as against the 3.5 kilometers envisaged the Irish formula, were to be applied, Sri Lanka's continental shelf would go beyond 500 nautical miles. Sri Lanka therefore rejected the Irish formula on the ground that it would lose some 50% of its margin and asked for an exception to be made. Sri Lanka concretized its proposal in 1979. Initially, Sri Lanka was prepared to make the exception somewhat general in nature, but later, on the insistence of the then USSR that it would support the exception only if it applied exclusively to Sri Lanka and to no other country including India, it sought Indian support for exclusive application of the exception to Sri Lanka. The matter was discussed between India and Sri Lanka and both agreed to promote a proposal that would apply the Sri Lankan exception equally to India and to Sri Lankan since the geological and geomorphologic features of the Bay of Bengal up to the south of Sri Lanka are the same. The joint proposals was made and finally accepted resulting a significant gain for India to claim much larger continental margins than they can under article 76 of the Convention. Ref. Third United Nations Conference on the Law of the Sea. Official Records, 13:23.

[208] David J. Karl, "India Needs a Sputnik Movement," *Yale Global Online*, 4 March 2011; *National Minerals Policy (1993)*, Ministry of Mines, Government of India.

3.4.1.1. Contiguous zone

As far as this issue is concerned, it is observed that India stood up for a collective interest leadership. India wanted to have a continugous zone extending out to 30 nautical miles from the baselines of territorial waters. This proposal of India was not favoured by other negotiating parties as they preferred to have 12 nautical miles only as addition to the territorial sea. The reason behind 30 nautical miles was primarily to curb smuggling activities that spurred enormous rise in mid 1960s and early 1970s. An enlarged periphery would have helped the custom authorities of India in preventing and dealing with smuggling activities and illegal trade. India showed a compromise in accepting the 24 nautical miles from the baseline of territorial waters as preferred by other nations.[209]

3.4.1.2. Archipelagic status for the Andaman and Nicobar Islands

India persisted to get recognition of an archipelagic status for the Andaman and Nicobar Islands.[210] It took a position that there was no logical basis for drawing a distinction between an archipelago that constituted a single state and an archipelago that formed an integral part of a coastal state, *albeit* at some distance from the coastal state.[211] If India would have obtained the status, it would have been able to draw straight baselines joining the outermost points of the islands and then claim various maritime zones measured outward from them. Subsequently, India would have prevented loss of regulatory control over an area of roughly 23,000 square miles, part of the maritime zones of India had the baselines been drawn on the archipelagic principle. The distance between the Andaman group and the Nicobar group of islands is 76 miles. If an archipelagic status had been granted to these groups of islands, India would have full regulatory control over the navigation of ships and vessels passing through the Ten Degree channel,[212] which would have then been part of India's archipelagic waters subject to the restrictive regime of innocent passage or archipelagic sea lanes passage. These were two important legally significant advantages which India lost.[213] The Indian position, which centered on Andaman and Nicobar Island shows that it wanted to have the right of innocent passage governed by domestic laws and requirement to designate sea lanes and prescribe traffic regulations schemes under the domestic law of India.[214]

According to the Convention, an archipelago, is defined as, "a group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features, form an intrinsic geographical economic and political entity or which have historically been regarded as such".[215] The Convention has granted status of an archipelago only to those groups

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[209] India has found no difficulty with the smaller contiguous zone because following the formation of the coast guard service in 1978 the smuggling activity was substantially brought under control and the rationale for seeking a contiguous zone of 30 miles disappeared.

[210] R. P. Anand, *Origin and Development of the Law of the Sea: History of International Law* at p. 208.

[211] Third United Nations Conference on the Law of the Sea. Official Records, 1:96 and 9:135.

[212] This channel, which is approximately 150 km wide, separates the Andaman Islands from the Nicobar Islands in the Bay of Bengal.

[213] As Shaw argues, "the fundamental restriction upon the sovereignty of the coastal state is the right of other nations to innocent passage through the territorial sea, and this distinguishes the territorial sea from the internal waters of the state, which are fully within the unrestricted jurisdiction of the coastal nation. Malcolm Shaw, International *Law*, 6th edition (Cambridge, 2008), p. 569.

[214] India is yet to comply with the obligations of due publicity established by the UNCLOS relating to all laws and regulations adopted by India relating to innocent passage through the territorial sea (article 21.3) and all laws and regulations adopted by India bordering straits relatint to transit passage through straits used for international navigation (art. 42.3). Myanmmar and Pakistan have submitted the due publicity obligations.

[215] Currently Article 46 of the Convention.

of islands that are political entities by themselves, such as Indonesia,[216] the Philippines and Maldives.[217] The history of the negotiation on the definition and concerning provisions on the archipelago states shows there were a few elements of dispute. First, the definition of archipelago state itself - the method of drawing straight baselines and the rights and duties of foreign ships passing through archipelagic waters.[218]

3.4.1.3. Passage of warships through the territorial sea

Another important loss India's interest suffered was the refusal by the negotiating conference[219] to include in the Convention a prior authorization and notification to the coastal state of passage of foreign warships through the territorial sea of a coastal state. India originally demanded this inclusion in the first law of the sea conference in 1958.[220] As the conference did not meet the demand, India declined to ratify the four Geneva Conventions. It shall be noted that Pakistan, Bangladesh, Sri Lanka and Myanmar, by 1977, had all unilaterally promulgated that prior authorization and notification was required for the passage of foreign warships through their respective territorial waters.[221] India's Maritime Zones Act 1976 also requires foreign warships to give prior notification for

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[216] Indonesia has a total area of more than 3 million square miles, of which only about 730,000 square miles comprise land area. The archipelago has a maximum length of 2,750 miles and maximum width of 1,150 miles.

[217] This was because of fear of interference with the freedom of navigation through archipelagic waters that might be created if the off-lying islands of continental coastal states were to be granted archipelagic status. As stated by H. R. Gokhale, the leader of the Indian delegation, Third UNCLOS, Official Records, p. 96, "the concept of archipelagos was being promoted by several developing countries, and a proposal on that subject had been made by several States with which India had friendly relations. His delegation would give sympathetic consideration to the implication of the concept of an archipelago or archipelagic State if the following provision were given consideration: firstly, the body of water enclosed by drawing straight baselines joining the outermost points on the outermost islands constituting an archipelago should be reasonable; secondly,the channels of navigation traditionally used by international shipping should be respected; and thirdly, the principle should apply to the Andaman and Nicobar Islands and also to the Lakshdweep Islands. No distinction should be made between an archipelago that constituted a single State and an archipelago that formed an integral part of a coastal State." quoted in O. P.Sharma, at p. 94.

[218] Evensen provides an interesting division of archipelago: coastal archipelago and outlying (mid-ocean) archipelago. He explains, coastal archipelago are those situated so close to mainland that they may reasonably considered part and parcel thereof, forming more or less an outercoastline from which it is natural to measure the marginal sea. While outlying archipelago means, groups of islands situated out in the ocean at such a distance from the coasts of firm land as to be considered as an independent whole rather than forming part of an outer coastline of the mainland. Based on this, it appears that the Indian claim was more concerned with the latter type – mid-ocean archipelago than coastal archipelago.J. Evensen, *Certain Legal Aspects Concerning the Delimitation of the Territorial Waters,of Archipelagos,* Preparatory Document No.15, A/CONF.13/18, 29 November 1957, p. 290.

[219] USA and the former Soviet Union vehemently opposed the prior notification before warships transited through territorial waters because it would seriously jeopardize their strategic and security interests.

[220] India, together with other developing nations wanted to have the mineral resources belonging to the entire mankind and under the supervision of an international authority. This demand was rejected. Another reason was the intelligence gathering, security concerns and economic gains to be obtained by the developed nations under the pretext of the marine scientific research. Prior Consent was the demand of the developing nations. Also see R. P. Anand, *Evolution and Development of the Law of the Sea* above.

[221] The issue of passage of warships in peacetime is or is not innocent remains a controversial even today. Some authors contend that "this includes warships by inference, but other authorities maintain that such an important issue could not be resolved purely by omission and inference, especially in view of the reservations by many states to the Convention rejecting the principle of innocent passage for warships and in the light of comments in the preparatorary materials to the 1958 Convention". India's objection was related to the Western states which maintained preponderant naval power. See Malcolm Shaw, *International Law*, 6th edition, p. 573.

passing through India's territorial waters and enjoins all submarines and other underwater vehicles to navigate on the surface and show their flag while passing through these waters.[222]

3.4.1.4. Enlarged safety zones for the Offshore Installations

The 1958 Continental Shelf Convention had provided for a safety zone of 500 meters around artificial islands, installations, or structures on the continental shelf in which the coastal state may take appropriate measures to ensure the safety of both, the navigation and the artificial islands, installations and structures.[223] As the size of modern tankers have increased, their speed and the time taken to stop or divert such huge vessels off their courses, India advocated for a larger safety zone around oil installations and structures.[224] However, this demand was not fully met. Nevertheless, India's stand stood partially vindicated, when the 1982 Convention incorporated a rule allowing a coastal state to promulgate safety zones around artificial islands, installations and structures in excess of 500 meters, if authorized by generally accepted international standards or as recommended by the competent international organization.[225]

3.4.1.5. Establishment of the Designated or Special Areas

India advocated a unilateral establishment of designated or special areas in the EEZ in which the coastal state could take protective measures with regard to the living resources, marine environment and safety of offshore terminals, installations, and structures.[226] This proposal, like the earlier ones, too, did not find support among the negotiating parties.

3.5. Maritime Laws of India

India has several acts dealing with maritime matters. The 1976 Territorial Waters, the Continental Shelf, the Exclusive Economic Zone and other Maritime Zones Act included some of the proposals of India, which were opposed or not incorporated in the 1982 Convention. The 1976 Maritime Zones Act describes sovereign rights and the exercise of jurisdiction of India in various maritime zones. It should be noted that the act was deficient and inadequate in view of the establishment of coast guard and other institutional enforcement mechanisms by

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[222] Article 4 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 reads, "foreign warships including submarines and other underwater vehicles may enter or pass through the territorial waters after giving prior notice to the Central Government: Provided that submarines and other underwater vehicles shall navigate on the surface and show their flag while passing through such waters. This is commensurate with Articles 19, 21, 24, 25, and 30 of the Law of the Sea Convention which recognize the rights of innocent passage through the territorial sea and activities and measures which govern the rights and obligations of the Coastal State and the foreign ships.

[223] Art 5 of 1958 Convention on the Continental Shelf.

[224] Article 3 of the Maritime Zones Act of India. Beckman, Robert, "Current International Law Provisions for Safety of Offshore Oil and Gas Installations", 1st Meeting of the CSCAP Study Group on Safety and Safety of Offshore Oil and Gas Installations, 7-8 October, Danang, Viet Nam.

[225] See Art 60(5) of the 1982 Convention.

[226] India proposed that " The coastal state may designate an area of the exclusive economic zone to be referred as the "designated area" in which the coastal state may prohibit or regulate the passage of foreign warships, with such exceptions as the coastal state may specify and take such other measures, as it may deem necessary or appropriate, for the purpose of:- (a) Protecting the mineral and living resources of the designated area which have already been located therein and other economic uses of the area; (b) Ensuring the safety of artificial islands, offshore terminals, installations and other structures and devices; (c) Protecting the marine environment; (d) Preventing smuggling. This proposal was made at the behest of the Ministry of Food and Agriculture of India which suggested that the living resources need to be protected against pollution from vessels.

India. India neither drafted supplementary rules to give further effects to the Act. In view of the above, it enacted the 1981 Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act. It also promulgated detailed rules on 1982 Maritime Zones of India (Regulation of Fishing by Foreign Vessels). In sum, the 1976 and 1981 Acts together with the 1982 Rules constitute the maritime legislative framework of India. Afterwards, India, enacted 1978 Coast Guard Act,[227] 1974 Water Prevention and Control of Pollution Act, 1958 Indian Merchant Shipping Act,[228] amended in 1983, and various statutory notifications.[229]

3.5.1. Implementation of the Law of the Sea Convention provisions and possible conflicts

3.5.1.1. Baselines

The 1982 Convention did not accept the Bangladesh proposal to draw straight baselines expressed in terms of certain depths. In view of this, Bangladesh promulgated a straight baseline system all of whose base points are at sea, lying close to the 10-fathom isobaths and in places as far as 50 nautical miles from the nearest land. This promulgation led to diplomatic protests from India as this had serious implications for freedom of navigation and delimitation of boundaries between India and Bangladesh.[230] India deposited a list of geographical coordinates of points defining the baselines of India on 17 February 2010 pursuant to Notification of the Government of India dated 11 May 2009 and 20 November 2009.[231] Pakistan has declared that it does not recognize the Baseline system promulgated by India and has reserved its right to seek suitable revision of its notification, on any claim India makes on the basis of India's notification to extend its sovereignty/jurisdiction on Pakistani waters or extend its internal waters, territorial sea, EEZ and continental shelf.[232]

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[227] The Coast Guard Act 1978 requires the Coast Guard to (a) Ensure the safety and protection of offshore terminals, installations and other structures and devices; (b) Provide protection to fishermen, including assisting them when in distress at sea; (c) Protect the marine environment by preventing and controlling marine pollution; (d) Assist the customs in anti-smuggling activities when patrolling the seas beyond Indian customs waters; (e) Enforce the Maritime Zones Act of 1976; (f) Take measures for the safety of life and property at sea; and (g) Collect scientific data.

[228] This Act aims to foster the development and ensure the efficient maintenance of an Indian mercantile marine in a manner best suited to serve the national interests and to provide for the registration of Indian ships.

[229] Jitin Varghese laments on the "fact that we are still relying on a 163 year old archaic colonial statute, stresses the need for codifying and reforming maritime laws in India... Some other outdated admiralty laws, still existent in India are Admiralty Jurisdiction (India) Act, 1860, The Admiralty Court Act, 1861, Colonial Courts of Admiralty Act, 1890, Colonial Courts of Admiralty (India) Act, 1891. These laws derive their legitimacy from Art.372, Constitution of India, which states ….. all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority." In the aftermath of Enrica Lexie case wherein two Indian fishermen were killed by Italian marine, he further empahsises the need that "Maritime law considering its special nature is a sphere wherein domestic laws regularly come in conflict with International legal principles and needs regular updation." Jitin Varghese, *Reforming Maritime Laws in India*, MindText – A Centre for Public Policy Research Initiative 2013; Also see Shrikant Hathi and Binita Hathi, *Maritime Practice in India*, 7th Edition, (Brus Chambers: 2012).

[230] Fietta, Stephen, "Controversy in the Bay of Bengal: Issues Surrounding the Delimitation of Bangladesh's Maritime Boundaries with India and Myanmar", *ABLOS Conference 2010* (2010), Monaco; Masum Billah, "Delimiting Seaboundry by Applying Equitable Principles", *The Daily Star*, 10 March 2009; Saleque, Khondkar, "Bangladesh Claims to UNCLOS", *Pakistan Defense*, 7 April 2011.

[231] Law of the Sea Bulletin No. 71 and 72.

[232] Note Verbale from Pakistan to UN New York, dated 6 December 2011, Ref. Sixth/LS/7/2011.

3.5.1.2. Passage of foreign warships through the territorial sea

As mentioned above, the demand of India for prior authorization and notification was not incorporated into the 1958 Convention. Only the prior notification clause was inserted. However, the neighboring coastal states, Pakistan, Bangladesh, Sri Lanka and Myanmar have stipulated a requirement of prior authorization and notification for the passage of foreign warships through their respective territorial seas.[233] India faced a potential conflict with Sri Lanka owing to this matter. Sri Lanka attempted to put requirement of prior consent for the passage of Indian warships in accordance with its legislation in the Palk Bay waters. India argued that, on the basis of reciprocity, Sri Lanka may require prior notification only as provided for in the 1976 Indian Maritime Zones Act. The matter was not settled through legal means but by mediation of legal advisors of both parties, under which, a blanket clearance for a specified period was to be given by Sri Lankan authorities and Indian warships were to keep the commander of the Sri Lankan navy informed of their movements through the territorial waters of Sri Lanka. Both countries wanted to sign the Memorandum of Understanding but despite a prolonged period, this has not been materialized.[234]

3.5.1.3. Contiguous zone and security

The 1976 Indian Maritime Zones Act prescribes security as one of the purposes for which a contiguous zone may be claimed.[235] India used this reason while advocating a contiguous zone of 18 miles beyond the outer limit of territorial sea. However, later on India dropped this reason from the negotiations. Therefore, it is abundantly clear that the inclusion of security in the Act as one of the purposes for which a contiguous zone could be claimed was improper. In this regard, it should be noted, however, that India still needs to amend its legislation to make it compatible with the 1982 Convention.

3.5.1.4. Delimitation of Maritime Boundary for EEZ and the Continental Shelf

The question of delimitation of the EEZ and the continental shelf between adjacent and opposite states proved to be one of the most difficult issues in the 1982 Convention negotiations.[236] There were two main opposing views; one group favouring equitable principles as the basis of delimitation criteria and other emphasizing the median or equidistance line as the normal boundary. The final text of the Convention uses the language of Article 38 of the ICJ Statute which is vague and cannot be very useful in settling the issues that once arose, with a view to achieve an equitable solution.[237] India has maritime boundaries with seven adjacent or opposite states (Sri Lanka,

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[233] Bangladesh, Section 3(7) of Territorial Waters and Maritime Zones Act 1974; Myanmar, Section 9(a) of the Territorial Sea and Maritimes Zones Law 1977, Pakistan, Section 3(2) of the Territorial Waters and Maritimes Zones Act 1976 and Sri Lanka, Section 3(1) of the Maritime Zones Law, 1976.

[234] V. Suryanarayanan, "Consolidate the Gains of India's Foreign Secretary's Visit to Sri Lanka", *South Asia Analysis Group*, 6 February 2011; *India-Sri Lanka: Furthering Peacetime Engagement*, Indian Military Review, January 2011.

[235] The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, Section 5(4).

[236] Ted L. McDorman, "The Entry into Force of the 1982 Convention and Article 76 Outer Continental Shelf Regime", 10 *The International Journal of Marine and Coastal Law* 2, 165-87 (1995); D. R. Verwey, "Outer Delimitation of the Continental Shelf under the 1982 Convention on the Law of the Sea: Legal Solution or Legal Confusion? 7 *Leiden JIL* 2, 23-42 (1994); J. Symonides, *Continental Shelf in the Convention on the Law of the Sea 1982*, (Berlin: Akademie-Verlag, 1987); Young Leng Lee, "The 1982 Convention on the Law of the Sea and Continental Shelf Problems in Southeast Asia", 9 *Ocean Management* 61-72 (1984).

[237] The analysis of the jurisprudence on the maritime delimitation in exclusive economic zones based on the Gulf of Maine, North Sea Continental Shelf, Cameroon v. Nigeria, Qatar v. Bahrain cases of the ICJ and the

the Maldives, Myanmar, Indonesia, Thailand, Pakistan and Bangladesh). S. P. Jagota, the Deputy Leader of the Indian Delegation speaking on the delimitation criteria concluded that "in a nutshell, it would appear that by the new proposal of the President, the controversy between the Equity Group and the Equidistance Group regarding the appropriate balancing of the basic elements of delimitation criteria has been resolved by making a reference to applicable international law combined with the goal of delimitation, namely, an equitable solution".[238] It may, however, be contended that this reference to international law and equitable solution is too vague, and that the precise factors to be taken into account in delimitation and the value or effect to be given to them have not been specified or clarified. To that extent, it may be argued that the new proposal would not act as a practicable guide either to negotiators, teachers, and researchers or even to arbitrators or judges concerned with delimitation questions. India has concluded maritime boundary agreements with Sri Lanka (1974 and 1976[239]), Indonesia (1974)[240], and the Maldives (1976)[241] and trijunction point with Thailand/Indonesia (1977),[242] Sri Lanka, India and Maldives[243] and Myanmar (1982),[244] and with Myanmar and Thailand.[245] However, the maritime boundary issues with Pakistan and Bangladesh[246] are yet to yield tangible satisfactory solution. In view of the above

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Barbados v. Trinidad and Tobago Award of 11 April 2006, the Anglo-French Continental Shelf case leads Shaw to conclude that "in all cases, whether delimitation is …economic zone…the appropriate methodology to be applied is to draw a provisional equidistance line as the starting position and then see whether any relevant or special circumstances exist which may warrant a change in that line in order to achieve an equitable result. The presumption in favour of that line is to be welcomed as a principle of value and clarity". Malcom Shaw, *International Law* (6th edition) (Cambridge: 2008), p. 605-06.

238 S. P. Jagota, the Deputy Leader of the Indian Delegation speaking on the delimitation criteria quoted in O. P. Sharma at p. 194.

239 Agreement between Sri Lanka and India on the Boundary in Historic Waters between the two Countries and Related Matters of 26 and 28 June 1974 and Agreement between Sri Lanka and India on the Maritime Boundary between the two Countries in the Gulf of Mannar and the Bay of Bengal and related Matters of 23 March 1976.

240 Agreement between the Government of the Republic of India and the Government of Republic of Indonesia relating to the Delimiation of the Continental Shelf boundary between the two Countries of 8 August 1974.

241 Agreement between India and Maldives Boundary in the Arabian Sea and Related Matters.

242 Agreement between the Government of the Kingdom of Thailand and the Government of Republic of India on the delimitation of the sea-bed boundary between the two countries in the Andaman Sea of 22 June 1978

243 Agreement between Sri Lanka, India and Maldives concerning the delimitation of the trijunction between the three Countries in the Gulf of Mannar of 23, 24 and 31 July 1976.

244 Myanmar has lodged a claim that India's submission made unilaterally by India and based on domestic law of India is not in conformity with the provisions of Article 83 of the UNCLOS and requested the CLCS to consider India's claim without prejudice to the continental shelf areas which Myanmar is fully entitled to claim in accordance with the relevant UNCLOS provisions. See Note Verbale of Myanmmar to UN Secretary-General dated 4 August 2009, ref. No. 391/032017. Bangladesh has also lodged a claim through its NV dated 29 October 2009 (ref. PMBNY-UNCLOS/2009). Oman too has lodged the claim (with regards to Arabian Sea) that the Indian claim overlaps with Oman's claim for continental shelf and therefore the boundaries are subject to delimitation.

245 Agreement between the Government of the Union of Myanmar, the Government of the Republic of India and the Government of the Kingdom of Thailand on the determination of the trijunction point between the three countries in the Andaman Sea of 27 October 1993.

246 Discovery of gas and India and Myanmar claims on continental shelf in the Bay of Bengal has left Bangladesh with less than 200 miles of EEZ and no continental shelf for Bangladesh. Bangladesh does not prefer the 'equidistance principle' preferred by India and Myanmar. This led to Bangladesh and Myanmar to refer the case to the ITLOS, whereas in case of India and Bangladesh, the case is brought before the PCA. India and Bangladesh have three issues which impede the settlement on maritime boundary between two nations. These are ownership of the New Moore (South Talpatti) island, demarcation of sea boundaries, and flow of Haribhanga River. These issues have direct impact on the demarcation of territorial waters, the EEZ and the continental shelves, which are essential for the exploitation of marine resources by these nations. This was important step for the foreign policy establishment of Bangladesh because Bangladesh for long had believed that its maritime area in the Bay of Bengal has been unfairly cut off by India and Myanmmar.

ambiguity in the Convention which ascribes importance to equitable principles and not according primacy to the median or equi-distance line, India will find difficult to settle the maritime boundaries with these neighbours.[247]

3.5.1.5. Exclusive Economic Zone

According to the Article 55 of UNCLOS, the Exclusive Economic Zone (EEZ) is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. As per its article 56, in the EEZ the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. The above two articles give the coastal states rights over an area beyond and adjacent to the territorial sea, for economic exploitation. But as per its article 57, this EEZ shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

3.5.1.6. Continental Shelf

Article 76 gives rights to the coastal states to go down to some points beyond the EEZ called the continental shelf. As per its sub article 1, the continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. As the limits of sea boundary prolongs towards the deep sea, disputes may arise between adjacent states on their boundaries and claims over their natural resources. So, the sub article 4(a) of the article 76 gives clarifications to resolve the disputes.

Khurshid Alam, "De-Limitation of the Bangladesh-Myanmmar Maritime Border", 5 *South Asia Journal*, July 2012. Dispute concerning delimitation of maritime boundaty between Bangladesh and Myanmar will have will have strong influence in future litigations, especially, in the Bangladesh v. India case because the tribunal recognized the entitlement of Bangladesh beyond 200 NM and delimited the area by extending the 215° line southwards. In addition, to ensure Bangladesh's access to such area the Tribunal also granted continental shelf right of Bangladesh underneath Myanmar's EEZ in the grey area. Commander M Yeadul Islam, "Maritime Delimitation Case Laws for Upcoming Litigations" 33 *Bangladesh Institute of International and Strategic Studies* 3, July 2012; Dispute Concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh vs Myanmar) Judgement available at http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/1C16_Judgment_14_02_2012.pdf accessed on 19th March, 2012, para.33. Bangladesh has instituted arbitral proceedings concerning the delimitation pursuant to Article 287 and Annex VII, Article 1 of the UNCLOS and the case is being heard by the Arbitral Tribunal established by the Permanent Court of Arbitration.

[247] Although the book does not examine the core content of the maritime dispute between India on the one hand and Bangladesh and Pakistan on the other hand, India continues to assert its core interest to prevail in maritime boundary issues. India can be said to have been using delaying strategy to maintain the claim and has been avoiding using any force and will be reluctant to use any force in the foreseeable future. One of the reasons could be that India's military forces till now have been mostly land-based and it has started developing significant naval capacity only in the recent years. As the maritime boundary issues would pose a significant obstacle to the realisation of the immense importance of securing the ocean resources, the coastlines and sea lanes in the Indian Ocean, Arabian Sea and the Bay of Bengal, India has started augmenting overall strength of its naval forces. Such augmentation will give it more leverage and right to assert its core interests too.

Article 76 sub-section 4(a) provides for the purposes of this Convention. The coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured by either, i) a line delineated in accordance with paragraph 7 by reference to the outer-most fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or ii) line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope. This article 76 limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a) (i) and (ii), not beyond 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or not beyond 100 nautical miles from the 2,500 metre isobaths which is a line connecting the depth of 2,500 meters.

India and Bangladesh sharing the common seashore of Bay of Bengal enriched with huge natural resources, have confronting views in order to determine the delimitation of their respective right over common sea-shore of Bay of Bengal. The resolution of Indo-Bangladesh maritime boundary dispute entails addressing two contentious issues – that of the baselines to demarcate maritime areas and the delimitation boundaries including the outer limit of the overlapping extended continental shelf. Following revision, the UNCLOS stipulated that the 'median' or the 'equidistance' be the principle for maritime boundary demarcation which India supports. Bangladesh strongly opposes the 'equidistance' principle given the nature of its coast.[248] The state practice of India, Bangladesh and Myanmar show that (a) Bangladesh had already notified its baseline, which is disputed by both India and Myanmar. It measured its baseline from a distance of 10 fathoms from the shore, arguing that its coastline is unstable. But it was the allotment of offshore blocks by Bangladesh to multinationals ConocoPhillips and Tullow, which led to the aggravation of the dispute. India asked the companies to desist from oil explorations and delimitation in respect of the extended continental shelf until the delimitation was completed on the part of India;[249] (b) Bangladesh disputes the claim made by India in respect of natural prolongation of its landmass through the outer edge of Bay Of Bengal (BOB Sector) and the western Andaman Sector by giving some geographical reason; (c) Bangladesh claims that India's claim is not supported by geographical and geomorphologic evidence. Furthermore, according to Bangladesh the submission of India is liable to be neglected as the submission is made without consultation or consent from the states which are parties to such dispute. Thus, the current dilemma concerns the necessity to explain the implication of the relevant provisions of UNCLOS, to assess the impact of this Convention, to consider and recognize India's rightful claims made in the "Partial submission to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8 of the United Nations Convention on the Law of the Sea" on 11th day of May, 2009 and to find the solution of the following paradox:- the coasts of Bangladesh and India in the Bay follow a curve, there is overlap of the EEZs as well as continental shelves of the two countries, leading to disagreement on where exactly their

[248] In Qatar v. Bahrain, the ICJ held that the appropriate methodology was first to provisionally draw an equidistance line and then to consider whether circumstances existed which mus lead to an adjustment of that line. It also noted that "the equidistance/special circumstances" rule, applicable to territorial sea delimitation, and the 'equidstance/relevant circumstances' rule as developed since 1958 it its jurisdprudence and practice regarding the delimitation of the continental shelf are closely related. Qatar v. Bahrain, ICJ Reports 2001, pp. 110-111. This approach has been further affirmed by the Court in Cameroon v. Nigeria case, I.C.J Reports 2002, pp. 441-42.

[249] http://news.priyo.com/story/2010/dec/06/13565-govt-yet-award-gas-block-tullow-disputed-area accessed on 28 August 2012.

respective maritime borders fall. And last but not the least, to discuss and resolve the present dispute amicably.[250]

3.6. Enforcement Challenges

This section analyses issues and challenges India has faced in implementing and enforcing Law of the Sea Convention provisions at the domestic level. Activities in maritime zones in India are monitored and managed by a diverse number of government institutions having differing rights, interests, mandates and responsibilities. Although Section 11 of the Maritime Zone Act 1976 (MZI Act 1976) provides stringent punishment of imprisonment up to three years or unlimited fine or both, the enforcement provisions are encountering a number of stumbling blocks. The lack of statistical data on the number of infringement in the MZI does not actually point to sanctity of the Maritime Zone Act or towards the effectiveness of the Act and its enforcement. It is arguable that this is more a case of lack of suitable provision pertaining to the power/authority to prosecute. This was mainly due to the requirement of obtaining previous sanction of the Union Government before instituting prosecution against any person prescribed under Section 14 of the Maritime Zone Act 1976. Reluctance to try an offender under this Act is probably due to prolonged delay in obtaining the sanction of the MEA, the administrative ministry under this Act.[251]

With the overlapping jurisdictions and the incorporation of freedom of seas through the UNCLOS, boarding a ship without authorization under law may lead the law enforcement agencies for a protracted legal engagement and payment of consequent damages for delay. Further, although Section 15 of the MZI Act 1976 empowers the Union Government to make rules by notification to carry out the purposes of the Act in general and for delegating specific power, the fact remains that India is yet to frame these rules under the said Maritime Zone Act, unlike the MZI Rules, 1982 framed under the Maritime Zone Act, 1981. As of December 2009, India has issued only seven notifications under the Maritime Zone Act 1976.[252] Of them two important notifications issued in 1986 related to notifying "designated area" of oil platforms etc., in the Western coast (ONGC oil platforms of Bombay High North and South near Mumbai) and notification for prohibition of entry of Merchant ships for other sea traffic (except the Indian Naval ships and Indian Coast Guard ships) within 500 meters of these restricted zones, named as "designated areas". The coordinates of the oil platforms notified as designated areas were amended and more oil rigs were added vide the notification issued by the Ministry of External Affairs in 1996.[253] However, with the absence of rules framed under the said Act or any notification authorizing the

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[250] It may be noted, in this context, that India welcomed the decision of the General Assembly enhancing the period of functioning of CLCS from 15 weeks a year to 21-26 weeks a year. With the increased timeframe, the CLCS will be able to consider claim submissions for an extended continental shelf in an expeditious manner. MEA Annual Report 2012-13, p. 103.

[251] Section 14 of the Maritime Zones Act provides that "No prosecution shall be instituted against any person in respect of any offence under this act or the rules made there under without the previous sanction of the Central Government or such officer or authority as may be authorized by that Government by order in writing in this behalf".

[252] S. K. Mishra, *Compliance with the Provisions of the Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zone Act*, 1976, Ministry of Shipping Notification, Government of India, Notification of 14 May 2002; Notification concerning Service Tax, 7 July 2009.

[253] As per the Notification, "the areas in the Continental shelf or, as the case may be, in the exclusive economic zone of the India where the installations, structures, and platforms, the coordinates of which are given in the schedule…and the areas extending up to five hundred meters from the said installations, structures, and platforms as designated areas…". *Pride Foramer v. Union of India*, AIR 2001 Bom 332, 2002 (4) BomCR 751; *Jindal Drilling and Industries Ltd. V. Union of India*, writ petition no. 610 0f 1994; *Hitch Drilling*

Naval Officers or Indian Coast Guard officers with the power of apprehension, arrest etc., the very purpose of imposition of such restrictions, is rendered superfluous. Moreover, there is also a clear absence of listing of offences in the MZI Act 1976.[254]

A critical examination of the MZI Act 76, also reveals that the offences mentioned therein are generalized in Section 11, which states that "whoever contravenes any provisions of this Act or of any notification thereunder shall (without prejudice to other action which may be taken against such person under any other provision of this or of any other enactment) be punishable with imprisonment which may extend to three years or with fine, or with both". While offences related to poaching are dealt with under the MZI Act 1981, smuggling under the Customs Act 1962, offences such as unauthorized research activity, unauthorized operation of any vessel in the Offshore Development Area (ODA), acts aimed at collecting information to the prejudice of the defence or security of India, any activity not having a direct bearing on passage have not been covered under any other Act. In many instances, cases resembling violations of provisions of MZI Act 1976 have been booked under other acts like Indian Penal Code, 1860, Indian Arms Act, 1959, and Indian Passport Act, 1967, etc. and did not yield the desired results.

It is indeed remarkable that no credible statistics are available in the public domain with respect to violations in compliance of 1976 MZI Act. It would be highly unimaginable that in the wide expanse of the EEZ, no violations occur. It may be more likely that the violations occur but are not detected, due to the surveillance constraints, or that enforcements are not actually enforcement in view of inherent lacunae. However, in the few cases that were reported and analyzed, it was amply clear that the maritime enforcement agencies have observed vessels clearly contravening the provisions of 1976 MZI Act of their conduct in territorial waters. The vessels remained apprehended and subjected to measures under various sections of the Indian Penal Code, 1860 Act, Indian Arms Act 1959, Indian Customs Act, 1962 etc. except under 1976 MZI Act as it requires obtaining of sanction from the Union Government with necessary justification.

India has been constantly experiencing increase in the presence of support vessels in the Offshore Development Area, increased movements of coastal vessels and the simultaneous presence of foreign vessels exercising passage in the sea lanes adjoining the coast. Whilst the "Cabotage Rule" is clearly mandated through the Merchant Shipping Act 1958, through Articles 405 to 414,[255] to safeguard Indian interest in coastal shipping and activities, it does permit foreign vessel operating through 'licensing' by adhering to stipulated norms. With the continuous increasing operations of deep sea fishing vessels with foreign crew, regardless of restricted permissions, the Indian coast is becoming increasingly vulnerable and hence requires robust response in form of

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Services India v. Union of India, writ petition no. 984 of 1997; *Collector of Customs Calcutta v. Sun Industries*, 1988 SCR (3) 500, 1988 SCC Supl. 342; *Garden Silk Mills India v. Union of India*, writ petition 29 September 1999.

[254] The Act does not specify the list of offenses, however, a close reading of Article 5 of the MZI Act 1976, allows to understand that "No person (including a foreign government) shall, except, under and in accordance with, the terms of any agreement with the Central Government or of a licence or a letter of authority granted by the Central Government, explore, exploit, any resources of the exclusive economic zone or carry out research or excavation or conduct any research within the Exclusive Economic Zone or drill therein or construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device therein for whatsoever purpose.

[255] Cabotage is the transport of goods or passengers between two points in the same country. Originally, starting with shipping cabotage now also covers aviation, railways and road transport. Cabotage is trade or navigation in coastal waters, or the exclusive right of a country to operate the air traffic within its territory. http://en.wikipedia.org/wiki/Cabotage, accessed on 17 November 2009.

an appropriate amendment to the MZI Act 1976.[256] The problem gets compounded due to the fact that fish caught by the licensed foreign vessels are often shipped to the mother ship for a further illegal transshipment and that such practice cannot be verified by any legal means for the absence of such norms.[257] In this regard, it can be observed that checking tasks along the sea coasts are enormous. Secondly, it is not feasible to seal the maritime route like road areas. Thus, a robust vigilant mechanism backed by strong legal enforceable provisions offers a near ideal solution in this regard. This would inevitably require amendments to MZI Act 1976. As India is set to increase from 2.01 to 3 million square kilometers its continental shelf, India is also required to put in place corresponding legislative and regulatory framework.

3.7. Climate Change and Maritime Boundary Issues with Bangladesh, Pakistan and Sri Lanka

Climate change issues have gone beyond the environmental concerns.[258] The issues have direct and significant geopolitical impacts as climate change can alter the national boundaries.[259] Rapidly rising sea-levels,[260] coastal-states and low-lying area between India and neighbouring nations are vulnerable to the impact of the climate change.[261] With the rise in sea levels, coastlines may shift or submerge and will create uncertainties in the outer boundaries and corresponding issues of coastal states' rights. This in turn could lead to claims of altered maritime boundaries, which may affect territorial claims between states.[262] Not only in the sub-continent, but the world across, maritime boundaries, due to the prolonged efforts of the UNCLOS have been settled.[263] However, the climate change issues will undo some of these settlements. Climate change will lead to environmental

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[256] Radhakrishnan Rao, *India's Coastal Security,* http://www.indiastrategic.in/topstories231.htm accessed on 30 June 2011; P. K. Ghosh, "India's Coastal Security: Challenges and Policy Recommendations", *Observer Research Foundation of India Brief 22*, August 2010; Marine News, "Coastal Security Group: Marine Police Stations in Tamil Nadu", 13 April 2009; "Coastal Security Group gets 12-tonne Boat," *The Hindu* 30 May 2009; Saurabh Joshi, "Coastal Security: Navy's Report Card", http://www.stratpost.com/coastal-security-navys-report-card, 30 June 2011.

[257] It has been widely reported and verified that terrorists who carried out attacks in Mumbai on 26 November 2008 used the coastal route for their transit. This clearly shows the level of vulnerability the Indian coast is facing.

[258] Nico Schrijver, "The Impact of Climate Change: Challenges for International Law", In U. Fastenrath (ed.), *From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma*, pp. 1278-1297. (Oxford: Oxford University Press, 2011).

[259] Aldo Chircop, "Ships in distress, environmental threats to coastal states, and places of refuge: new directions for an Ancien Regime?", 33 *Ocean Development and International Law* 2, 207-26 (2002).

[260] M. Rafiqul Islam, and M. K. Zaman, "Looming Global Warming-Induced Sea Rise and Transfer of Green Technology to the Least-Developed Countries: Challenges and Options for Submersible Bangladesh," 32 *European Intellectual Property Review* 12, 643-652.

[261] Cleo Paskal, "How climate change is pushing the boundaries of security and foreign policy," Energy, Environment and Development Programme, EEDP CC BP/07/01, Chantham House, June 2007; M. D. Nalapat, "UPA Ocean Diplomacy Undermining Indian Interest", *Organiser*, 25 September 2005; Harun Ur Rashid, "Is India taking Advantage?", *Daily Star*, 17 May 2006; Boundary News, Durham University, "Sea Level Rise is blamed for Submerging Disputed Island between Bangladesh and India", 26 March 2010; Rasyidal Hafiz, "Climate Change and Its Further Impact on Maritime Security Interests of Asia-Pacific States", http://www.tandef.net/climate-change-and-its-further-impact-maritime-security-interests-asia-pacific-states accessed on 4 July 2011; Admiral V. S. Shekhawat, "India's Maritime Threats", 22 *India Defense Review* 2, April-June 2007.

[262] http://siteresources.worldbank.org/INTLAWJUSTICE/Resources, accessed on 23 June 2011.

[263] David D. Caron, "Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries: A Proposal to Avoid Conflict*" in* Seoung-Yong Hong and Jon M. Van Dyke eds., *Maritime Boundary Disputes, Settlement Processes and the Law of the Sea*, (Brill: 2008).

refugees to India and will create tension over maritime boundaries in the Bay of Bengal.[264] The climate change may lead to change in sea level which will have direct impact on certain baselines which would further trigger the significant effect on maritime boundaries. The ongoing maritime boundary issue between India and Bangladesh has its part origin in the possible effects of climate change and Bangladesh losing out important offshore oil and other resources in the Bay of Bengal. Under the existing circumstances, if coastline of Bangladesh would squeeze internally, due to climate change, its maritime boundary would retreat correspondingly which may completely squeeze it out of zones that are rich in hydrocarbons.[265] Sri Lanka, India's neighbour in the south, due to climate change is likely to undergo "widespread effects of climate change including, climate variability and sea-level rise, directly affecting the overall abundance and security of endemic species within Sri Lanka" creating challenges of its own to the Indo-Sri Lanka relations.[266] With regards to the ongoing dispute of Sir Creek, it has been suggested that the area may be converted into a Zone of Disengagement or a jointly administered maritime park. Not only such a solution would help prevent fishermen from both countries doing fishing activities in the area without fear but such solution could help in mitigating the effects on sensitive ecology of the 96 km area due to climate change in favour of both countries.[267]

3.8. Role of the Indian judiciary and the implementation of the Law of the Sea Convention at national level

The Indian judiciary has been called upon to resolve and clarify several cases pertaining to the implementation of the Law of the Sea Convention with regards to the domestic practice.

3.8.1. *State of Kerala v. Joseph Anton*y case[268]

In this case, the dispute was essentially between the fishermen in the State of Kerala (a state in the south of India) which use traditional fishing crafts such as catamaran, country crafts and canoes which use manually operated traditional nets and those who use mechanized crafts which mechanically operate sophisticated nets like purse senie, ring seine, pelagic trawl and mid-water trawl gears for fishing in the territorial waters of the State. The Court in this case clarified that the operation of fishing by mechanized nets like the purse seine is responsible for destroying the fish stock by killing juvenile fish and fish eggs and thus preventing their breeding. The mechanized nets are thus not only impoverishing the mass of poor fishermen by reducing their catch progressively but also by destroying the standing fish stock itself.[269] There is also a danger of over-exploitation

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[264] Proceedings from the Indian Ocean Maritime Security Symposium, Australia Defense College, Canberra, Australia, 15-17 April 2009; Lusthaus, Jonathan,"Shifting Sands, Sea Level Rise, Maritime Boundaries and Inter-State Conflict", 30 *Politics* 2, 113-8 (2010).

[265] Harun ur Rashid, 'Is India taking advantage?', *Daily Star*, 17 May 2006 quoted in Pascal above at p. 3.

[266] R. Mendelsohn, M. Munasinghe and Seo S Niggol (ed.), "Climate change and agriculture in Sri Lanka: A Ricardian Valuation", 10 *Journal of Environment and Development Economics*, 581-596 (2005).

[267] A solution to Sir Creek could galvanise India-Pakistan relations, http://articles.timesofindia.indiatimes.com/2012-12-05/ accessed on 1 August 2013.

[268] AIR 1994 SC 721.

[269] Pramod Ganapathiraju, "Illegal, Unreported and Unregulated Marine Fish Catches in the Indian Exclusive Economic Zone – Field Report," *Policy and Ecosystem Restoration in Fisheries,* Fisheries Centre, University of British Columbia, Canada, Vancouver, (April 2010); B. Bhathal, "Historical reconstruction of Indian marine fisheries catches, 1950–2000, as a basis for testing the Marine Trophic Index", 13 *Fisheries Centre Research Reports* 5, Fisheries Centre, University of British Columbia, 2005; P. V. Dehadrai, "Utilization of Marine Fisheries Resources in India, Proceedings of the National Symposium on Utilization of Living Resources of the Indian Seas, December 19-21, 1987, CIFE, Bombay,Published by National Academy of Sciences, India, pp. 15-18; B. M. Kurup and R Radhika, "Status of trawl fishery in Kerala, Paper submitted

leading to complete extinction of the pelagic fish within the territorial waters.[270] The Court clarified the adverse impacts of fishing by mechanized nets.

3.8.2. *Swan Fisheries (Private) Ltd. and Anr. v. State of West Bengal*[271]

In this case, the West Bengal High Court drew a conclusion that the Indian state machinery's involvement in the harassment of foreign nationals with no fault of their own by way of seizure and their arrest could adversely affect India's foreign relations and hence it would not be in the interests of the state. In this case, the Court examined the argument that there was no *prima facie* case under the Indian Penal Code, the MZI Act 1976, the Indian Forest Act 1927, the Indian Telegraph Act 1885 against the company or its Directors or the crew members who have been arrested and subsequently released.

3.8.3. *Commissioner of Income Tax v. Ronald William Trikard and Others*[272]

In this case, the issue was regarding chargeability of income tax on a non-resident working on the continental shelf, outside India at relevant time. Income of non-resident individual working in continental shelf and exclusive economic zone was sought to be taxed for years prior to the issue of notification, which extended Act to the continental shelf. In this case, the Court held that India has limited sovereign powers over the area beyond territorial waters and continental shelf and exclusive economic zone are not part of the Indian territory at the relevant time. Therefore, income arising or accruing there prior to notification extending the Act to such places cannot be taxed. The continental shelf and exclusive economic zone in which the assessed worked were not part of India prior to the Notification[273] of the Government of India in view of the provisions of section 6(6) and section 7(7)of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones, Act, 1976 and consequently the salary income earned by the assessees prior to the notification in 1983 was not chargeable to tax under the Income Tax Act, 1961 in the assessment year 1983-84.[274]

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to Fishery Technology"; J. Kurien and T. R. T. Achari, "Overfishing along Kerala Coast: Causes and Consequences," 23 *Economic and Political Weekly* 35/36, 2011-18 (1990); S. Miglani, "Foreign fishing vessels may be driven from Indian deep seas", *Asia Times*, April 8, 1997; Pramod, G., "Trawl fishery along the India's northeast coast: an analysis of catches, seasonal changes and ecological impacts", Marine Affairs Program, *MMM Project*, Dalhousie University; K. M. Shajahan, "Deep Sea Fishing Policy: A Critique", 31 *Economic and Political Weekly* 5, 263-66 (1996); V. Vijayan, L. Edwin and K. Ravindran, "Conservation and Management of Marine Fishery Resources of Kerala State, India", 23 Naga: The ICLARM Quarterly 3, 6-9 (2000).

[270] "Global Status of Oceanic Pelagic Shark and Rays", Lenfest Ocean Program: Protecting Ocean Life through Marine Sciences, Washington DC, December 2007; Johnston, Paul and Santillo, David, "Conservation of Seamount ecosystems: Application of the MPA Concept", 2002 Annual ICES Conference, Copenhagen, October 2002; D. Pauly, V. Christensen, S. Guenette, T. J. Pitcher, U. R. Sumaila, C. J. Walters, R. Watson and D. Zeller, "Towards sustainability in world fisheries", 418 *Nature* 689-95 (2002); C. M. Roberts, "Deep impacts: the rising toll of fishing in the deep sea", 17 *Trends in Ecology and Evolution* 5, 242-45 (2002); Christopher Moyes, and Nuno Fragoso, "Predicting Postrelease Survival in Large Pelagic Fish", 135 *Transactions of the American Fisheries Society* 1389-97 (2006).

[271] 1998 (60) ECC 36

[272] [1995] 215 ITR 638 (Mad)

[273] Bearing G.S.R. No. 304(E) (see [1983] 142 ITR 11), dated March 31, 1983

[274] Decision followed in the case, *McDermott International Inc. v. Union of India and Ors.* [1988] 173 ITR 155 (Bom)

3.8.4. Great Eastern Shipping Company Ltd. v. State of Karnataka and Ors.[275]

The Indian courts have also clarified the issues regarding the extension of the jurisdiction with respect to the individual states of a Union. The applicability of the legislation of the individual states over this territory has also been disputed in some cases. In the case of *Great Eastern Shipping Company Ltd. v. State of Karnataka and Ors.*,[276] Section 3 of the MZI Act 1976 and Article 297 of the Constitution was interpreted by the High Court of Karnataka, in order to decide the question of whether the use of tug on the territorial waters would amount to use of the tug within the State of Karnataka. In this case, the Court interpreted the provisions of the Indian statutes to hold that the territory of a State consists in the first place of the land within its boundaries. In the case of a State with a sea coast, certain waters which are within or adjacent to its land boundaries, and these waters are of two kinds-national and territorial.[277] The Court also held that the marginal seas 'bore such a relation to the nearest land as to be regarded as appurtenant to it.'[278] 'Notwithstanding, the principle of the freedom of the seas, there are certain portions of the sea along a State's coasts which are universally considered as a prolongation of its territory and over which its jurisdiction is recognized.'[279] With some it is an actual ownership (dominium) because it implies in certain cases, an exclusive enjoyment very characteristic of ownership, especially in the matter of fishing and pilotage, others treat it as a right of limited sovereignty conferring only a right of jurisdiction on the littoral State.[280]

3.8.5. *Pride Foramer v. Union of India*[281]

The Indian courts have also examined some aspects of the Customs Act and applicability of its provisions by way of a notification as per Section 6 (6) of the MZI. In the case of *Pride Foramer v. Union of India*,[282] while interpreting the national and international provisions, the Court came to the conclusion that the contiguous zone of India is that part of the sea which is beyond and adjacent to the territorial waters and the zone extends to a line which is 24 nautical miles of the coast. This section specifically recognizes the competence of the Union Government to exercise such powers and take such measures as to consider necessary with respect to (a) the security of India, and (b) immigration, sanitation, customs and other fiscal matters. The Court concluded that the Indian position is consistent with the mandate of the UNCLOS, the territorial sovereignty of the coastal State extends beyond the land territory only up to the outer limits of the territories sea (the equivalent expression in our 1976 Act is "territorial waters") which is 12 nautical miles from the low water mark line of the coast (base line) which is consistent with the UNCLOS, 1982.

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[275] [2004] 136 STC 519 (Kar)
[276] [2004] 136 STC 519 (Kar)
[277] (i) "National waters" : These consist of the waters in its lakes, in its canal, in its rivers together with their mouths, in its ports and harbours, and in some of its gulfs and bays .....(ii) "Territorial waters" : These consist of the waters contained in a certain zone or belt, called the maritime or marginal belt, which surrounds a State and that includes a part of the waters in some of its bays, gulfs, and straits'
[278] Hyde on International Law, Second Edition, Volume 1, page 452.
[279] *Ibid.*
[280] Messrs Higgins and Colombos on International Law of the Sea.
[281] AIR 2001Bom 332.
[282] AIR 2001Bom 332.

3.9. Maritime Zone Act 1981

With increase in the poaching activities by the foreign fishing vessels in the Indian EEZ, a need was felt to frame a specific law to deal with the illegal fishing as also to protect the Indian fishermen and other maritime interests of India. [283] Accordingly, the Maritime Zones of India (Regulation of Fishing by Foreign Fishing Vessels) Act, 1981 was enacted to regulate fishing activities by foreign fishing vessels and to provide for deterrent punishment by way of imprisonment, heavy fines and confiscation of the foreign fishing vessels convicted of offences of illegal fishing. This Act complements the Maritime Zone Act 1976 where the rights in the EEZ were protected for exploitation of living resources by the citizens of India and the foreign vessels need to obtain license or permit in accordance to the conditions laid down in Maritime Zone Act 1981.[284] The Act specifically authorized the Union government under Article 9, Chapter III for the enforcement of its provisions. Further, through an amendment, the Navy as well as the police was also subsequently authorized to implement and enforce the provisions of the said Act. With the passage of time, the MZI Act 1981 came to be employed more frequently by the agencies of the Union government such as the Navy and the Coast Guard at Sea. Specific power of apprehension, arrest and seizure were vested with the state police officials in the coastal states and specified ports were also notified in each coastal state where foreign fishing vessels could be taken for being handed over to police for prosecution. Designated courts at specific places of trial with judicial magistrates first class were also empowered, in view of the heavy fines prescribed under the said Act for which the magistrates were not originally empowered under the criminal law of India. The 1981 Act, unlike the umbrella legislation of the Maritime Zone Act 1976 did not have any restriction of obtaining previous sanction of the Union government before initiating prosecutions for the various offences, although the accused persons under the Maritime Zone Act 1981 are all foreigners.[285]

3.10. Monitoring and liasioning agency

The Coast Guard of India is the principal agency for enforcing all national legislations in the Maritime Zones of India. During hostilities, India's Coast Guard functions under the overall operational command of the Navy as is

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[283] The lack of robust framework on foreign fishing vessels is not only a subject of legal policy-making and scholarly interest. The fishing community of India and neighbouring countries, Pakistan, Sri Lanka and Bangladesh have been suffering in various ways due to lack of such framework. Even being a most powerful country in the South Asian region, the fishing laws of India continue to enable exploitation of fish stocks in its EEZ. http://www.downtoearth.org.in/content/how-foreign-vessels-exploit-india-s-loopholes-fishing-laws accessed on 31 July 2013.

[284] Although India enacted this act much later than two of its immediate neighbours with which it has unsettled maritime issues, its 1981 Act needs to be critically examined in light of provisions of the Territorial Waters and Maritime Zones Act 1976 of Pakistan; Territorial Waters and Maritime Zones Act 1974 of Bangladesh. Joshua Ho and Sam Bateman analyse economic and security dilemma and challenges in the Asian region including South Asia and raises concerns due to the anomaly and implementation of maritime zones act prevalent between these three countries. Joshua Ho and Sam Bateman (ed.), *Maritime Challenges and Priorities in Asia*: Implications for Regional Security, (Routledge, 2013).

[285] See Charu Gupta and Mukul Sharma (ed.) *Contested Coastlines: Fisherfolk, Nations and Borders in South* Asia, (Routledge, 2012). Gupta and Sharma analyses the plight of foreign vessels and nationals of neighbouring countries of India, especially Pakistan and Bangladesh and apart from raising security and economic concerns, identifies ordinary fishermen's livelihood related problems and challenges and how they fall victim of lack of sound legal framework and enforcement machinery. Cassandara de Young, *Review of the State of the World Marine Capture Fisheries Management: Indian Ocean*, FAO: 2006.

done by other Coast Guards of the world.[286] India established the Department of Ocean Development in 1981 with an aim of creating a deeper understanding of the oceanic regime of the northern and central Indian Ocean and also development of technology and technological aids for harnessing of resources and understanding of various physical, chemical and biological processes.[287]

3.11. Role of various executing bodies in fulfilling the obligations

The Department of Ocean Development (now the Ministry of Earth Sciences) of India is the nodal agency for implementation of the provisions of UNCLOS. It ensures that the provisions concerning the framework and mechanisms for management of oceans are fulfilled by India. Indians have been elected on all the institutions established under United Nations Convention on Law of the Sea, International Seabed Authority, and Commission on Limits of Continental Shelf and International Tribunal on Law of the Sea.[288]

3.12. Delineation of Outer Limits of Continental Shelf

Since India intends to delineate the outer limits of the continental shelf beyond 200 nautical miles, it is required to submit particulars of such limits along with the supporting scientific and technical data. If delineation is properly undertaken, India would be in a position to gain substantial area beyond the EEZ. It was required to be submitted by May 2009 and was to be examined by the Commission on Limits of Continental Shelf (CLCS).[289]

3.13. Inter-governmental Oceanographic Commission

India actively participates in the Inter-Governmental Oceanographic Commission which was established by the UNESCO in 1960 and which promotes global co-operation in marine scientific investigations, ocean services

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[286] The Coast Guard Act, 1978; Emergence of the Coast Guard in India on 01 Feb 1977 as a new service was the result of an awareness that had been growing for some time in the Government for the requirement to enforce National Laws in the waters under national jurisdiction and ensure safety of life and property at sea. It was also considered desirable that these law enforcement responsibilities should be undertaken by a service suitably equipped and modelled on the Coast Guards of advanced nations like USA, UK etc leaving the Navy to exercise the fleet for its wartime role. A committee was, therefore, constituted in Sep 1974 with Mr KF Rustamji as its chairman to study the problem of seaborne smuggling and the question of setting up a Coast Guard type of organization. This committee recommended the setting up of a Coast Guard Service patterned on the Navy for general superintendence and policing of our seas in peace time under administrative cover of the Ministry of Defence. The Maritime Zones of India Act was passed on 25 Aug 1976. Under this Act, India claimed 2.01 million sq km of sea area in which she has the exclusive rights for exploration and exploitation of resources, both living and non-living at sea. Following this a Cabinet decision was taken by which an interim Coast Guard Organization came into being on 01 Feb 1977. The Coast Guard in its present shape was formally inaugurated on 18 Aug 1978 as an independent armed force of the union with the enactment of the Coast Guard Act 1978 by the Parliament with its motto as `VAYAM RAKSHAMAH; which means `WE PROTECT'. http://www.indiancoastguard.nic.in/ accessed on 29 June 2011.

[287] The natural resources, most important among others, mangenese nodules, lie 2 to 3 miles – about 5 kilometers – down, in pitch-black water where pressures exceed 7000 pounds per square inch and temperatures are near freezing. Many of the ocean floors are filled with treacherous hills and valleys. Appropriate deep-sea mining technology is required to accommodate this environment.

[288] In accordance with the provisions of article 2 of Annex II to the Convention, "the Commission shall consist of twenty-one members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to the Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who shall serve in their personal capacities".

[289] The National Centre for Antarctic and Ocean Research (NCAOR) at Goa, an autonomous body under the DOD, is coordinating this national endeavour with active co-operation and participation of all national institutions.

and capacity building in developing countries through the concerted efforts of all the member states.[290] India is considered to have substantial interests in the mandate of the Commission. The Commission has two main functions – ocean science and ocean services. The Ocean Science mandate is important for India, as this deal with the processes and conditions of marine environment and the availability of resources. Furthermore, coastal erosion, identification of phosphate-base and continental margin mineral deposits holds significant environmental and economic interests for India. The Ocean Services mandate deals with the Global Climate Observing System, global sea-level observations, international oceanographic data and exchange, training, education and mutual assistance in marine areas. Under the Marine Living Resources Act, the Ministry of Earth Sciences, the nodal agency, has an objective of assessing a realistic and reliable information on the potential of marine living resources in the Indian EEZ for sustainable development and management and to augment the sea food production and thereby the income of coastal fishing community and the fishing industry. India also has substantial interests in the ocean resources, namely, organisms with pharmaceutical values. Similarly, India has developed polymetallic nodules programme, environmental impact assessment study carried out in collaboration with major sea-faring nations, has designed and developed test seabed mining system and research and development activities to develop and standardise extraction processes for large-scale production of metallic nodules.[291] Furthermore, India has implemented several research programmes viz. Marine Satellite Information Services (MARSIS), National Ocean Information System (NOIS), Sea Level Monitoring and Modelling (SELMAM), Data Buoy Programme and Joint Global Ocean Flux Studies (JGOFS) to understand the role of the ocean and its processes and for generation of user oriented coastal and ocean data and data products like waves, winds, temperature, current, salinity, upwelling, potential fishing zone information, coastal maps etc., for supporting coastal and off-shore developmental activities and oceanographic research.

India has identified 7,858.59 square kilometer of area for potential mining of nodules. Under its 2012-17 approach paper, India plans to design and develop programs and techniques for polymetallic nodules, comprehensive swath bathymetric survey of EEZ, ocean ridge minerals, gas hydrates exploration, delineation of the outer limits of the extended continental shelf, low temperature thermal desalination, deep-sea technology development, among others.[292]

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[290] India has been one of the 40 founding members of the Commission. In accordance with the provisions of article 2 of Annex II to the UNCLOS, the CLCS, "shall consist of twenty-one members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to the Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who shall serve in their personal capacities". In this regard, reference in the Annual Report of the Ministry of External Affairs of India (2012-13) that "Dr S. Rajan, India's nominee"was re-elected in June 2012, is an interesting pointer to the actual composition of the CLCS membership.

[291] Under this program, the Government of India has achieved; inter alia; collection and identification of 200 new marine flora and fauna for chemical extraction and bio-evaluation; continuation of the process of Biological evaluation of 5 organisms possessing anti-viral, anti-diabetic, anti-cholestrol, anti-anxiotic, wound-healing and larvicidal activities; and Initiation of clinical trials of active extracts, regulatory pharma- cology and taxicology. http://dod.nic.in/mardr.htm accessed on 30 July 2012.

[292] Draft Approach Paper for the 12th Five Year Plan (2012-17), Ministry of Earth Sciences, Government of India, pp. 8-12. *Legal Roadmap for Exploration and Exploitation of Resources in the Indian Ocean: Considerations for India*, a policy-paper prepared and given by the researcher to the Ministry of Earth Sciences in July 2013.

3.14. COMNAP/SCALOP/ATCM Meetings

After becoming a member of the Antarctic Treaty,[293] India continues to participate in the meeting of the Council of Managers of National Antarctic (COMNAP)[294] and Standing Committee of Antarctic and Logistic Operations (SCALOP), Antarctic Treaty Consultative Meeting (ATCM)[295] and Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).[296] Since 1981, India has been sending scientific research expeditions to Antarctica to learn more about the scientific investigations, especially with relations to climate and weather patterns. India is a founder member of Asian Forum for Polar Science (AFOPS), which is active not only in Antarctica but also in the Arctic. In 2006, India joined Droning Maud Land Air Operators Network (DROMLAN) as one of the founder members. The scientific activities of India, which started on a modest scale, have evolved into a comprehensive ongoing programme that has been subject to continuous updating in accordance with the national priorities and global perspectives.[297]

3.15. India at Law of Sea Convention Forums

India has sought an active role in the discussions related to the Law of Sea Convention forums. India has remained a Member of the Council of the International Seabed Authority under the Investors category. The Council is the executive organ of the International Seabed Authority and is concerned with all policy and technical issues concerning the international seabed area. As the first Registered Pioneer Investor, it was a matter of high prestige for India to be elected as a Member of the Council under investors' category, after protracted negotiations and deliberations. India, while engaging in deep seabed mining, needs to have due regard to the special interest and needs of especially the landlocked and geographically disadvantaged states such as Nepal and Bhutan.[298] In the South Asian region, India's neighbouring states' limitations with regards to participation in

[293] India became a full consultative member of the Antarctica Treaty on 19 August 1983. India has established a first scientific investigation station, called DakshinGangotriin 1983 (this was later on abandoned due to subsidence of glaciers) and the second permanent station Maitri was established in 1989. With an aim to make it operational, India has started the third such station called Bharathi. India extensively uses the results of the scientific investigations carried out at these stations in the realm of climate and weather. As of end of 2009-10, India has launched 29 expeditions to Antarctica. Ministry of Earth Sciences, Government of India, Annual Report 2009-10, p. 18.

[294] Created in 1988, COMNAP is the international association that brings together National Antarctic Programs from around the world to develop and promote best practice in managing the support of scientific research in Antarctica. Each country that is a signatory to the Antarctic Treaty 1959 normally establishes a *National Antarctic Program*, which has national responsibility for managing the support of scientific research in the Antarctic Treaty Area on behalf of its government and in the spirit of the Antarctic. https://www.comnap.aq/

[295] India hosted the 30th ATCM in 2007.

[296] http://dod.nic.in/antarc1.html accessed on 30 July 2012.

[297] It is interesting to note that the Antarctica has been declared as a common heritage of mankind, while the Arctic is not declared as such. India has not joined the Arctic Council and has pressed for the "Antarctic Treaty template where the territorial claims of States have been shelved for the duration of the Treaty. The reasons for which the international community accepted the discipline of the Antarctic Treaty are today even more compelling and urgent with respect to the Arctic. Placing this on the U.N. agenda during India's term in the Security Council and initiating international action on it could be a historic contribution by India in its role as a responsible global power." Shyam Saran, *India's Role in Arctic Cold War*, The Hindu, 1 February 2012.

[298] Helmut Tuerk and Gerhard Hafner, "The Land-Locked Countries and the United Nations Convention on the Law of the Sea", 18 *PrinosiZaporedbenoproucavanjeprava I medunarodnopravo,* 58-70 (1985); Hema Pandey, *Transit Right of Landlocked States under International Law: "With Reference to Nepal's Transit Right via India based on Transit Treaty between Nepal and India, Paper presented at the Kathmandu School of Law* (2011), Ramesh Kumar Rana, "*Right of access of land-locked state to the sea by the example of bilateral agreement between land-locked state- Nepal and port state – India*, Masters Thesis, University of

the deep seabed mining will remain and this is mainly due to lack of finances and technology. Neighbouring countries of India are engrossed in various social, economic and political problems. Therefore, their ability to commercially exploit the benefits remains weak. Under the regional cooperation process, neighbouring states should embark upon the fullest exploitation of the resources by entering into cooperative and strategic alliances with India as India has the capacity and technology for such activities. The neighbouring states also need to show more interest in these mining activities and should not withdraw merely because of lack of finances and technology. A regional cooperation approach focusing on deep seabed technology together with marine technology could help the South Asian nations in acquiring the offshore mining technology and could contribute to the overall enhancement of marine technology of the concerned states.[299] India has the highest potential for deep seabed mining in the Central Indian Basin of the Indian Ocean. The fullest exploitation could lead to mitigate India's growing needs for nickel, copper, cobalt and manganese. Therefore, it is of utmost interest that India undertakes deep seabed mining with full financial capacity and technologies. It shall be noted that Law of the Sea Convention negotiations took note of the concerns of the developing countries with regards to the transfer of marine technology. As an outcome, Part XIV of the Convention has provisions on "Development and Transfer of Marine Technology" which aims to assist developing countries in their acquisition of marine technology.[300] Developing countries, including India, expected that the ISA would take full responsibility for guaranteeing transfer of technology to developing countries.[301] These countries also expected that the role of ISA

Tromso, (2010); Stephen Vasciannie, "Land-Locked and Geographically disadvantaged states", 31 *Commonwealth Law Bulletin* (2005); Ingrid Delupis, *Land-locked states and the law of the sea*, Stockholm Institute for Scandinavian Law 1957-2009; Robert E. Bowen, "The land-locked and geographically disadvantaged states and the law of the sea", 5 *Political Geography Quarterly* 1, (1986); Surya P. Subedi, "The Marine Fishery Rights of Land-locked states with particular Reference to the EEZ", 2 *International Journal of Estuarine and Coastal Law* 4, 277-339 (1987).

[299] It should be noted that the term marine technology is not defined in Part XIV. According to the Secretariat's report, marine technology comprises "the body of knowledge and hardware needed for the uses of ocean space and for surveying and developing marine resources. In its general sense, it includes such components as: technical information, design, know-how, engineering, hardware, processing technology, and management. It encompasses the equipment and technical know-how employed in the traditional marine industries such as naval architecture and shipbuilding, fishing or coastal development, as well as in the newer activities of exploration and exploitation of deep-sea minerals and hydrocarbons." Yuwen Li, *Transfer of Technology for Deep Sea-Bed Mining: The 1982 Law of the Sea Convention* (Leiden: Nijhoff, 1994), pp. 141-42.

[300] Pinto summarises Part XIV as follows: "States have a duty to act directly (i.e., bilaterally with a recipient) and through international organisations and to cooperate with one another and with international organisations in an appropriate manner, in order to promote, facilitate, stimulate, and advance access to – and the development and transfer of – marine science and technology, in particular, by means of coordinated programmes and through national and regional means." Pinto (1986) at p. 265.

[301] According to Article 144 of the Convention, the International Seabed Authority shall take measures in accordance with the Convention:(a) to acquire technology and scientific knowledge relating to activities in the Area; and(b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.2. To this end the Authority and States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:(a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;(b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

would go beyond exploration and exploitation and cover marine scientific research and the transfer of marine technology in general.[302]

3.15.1. Law of the Sea Convention and International Cooperation

The records show that India has signed bilateral agreements on marine affairs with a number of Law of Sea Convention states such as the Russian Federation, China, Portugal, and Mauritius.[303] In addition, it has also implemented collaborative programmes in Myanmar, Mauritius, Seychelles in the field of ocean science and technology. India organized 5 days training programme for Sri Lanka and Myanmar on Delineation of Outer Limits of Continental Shelf at NCAOR, Goa.

3.16. Ratification issue

India signed the UNCLOS 1982 on 10 December 1982 but ratified the same on 29 June 1995, nearly 13 years after the signature. India attached the declaration, under article 287 of the Choice of Procedure with regards to the Settlement of Disputes, to its ratification, reserving its right to make, at the appropriate time, declarations and on the understanding that the provisions of the Convention do not authorize other States to carry out in the exclusive economic zone and on the continental shelf, military exercises or maneuvers, in particular those involving the use of weapons or explosives without the consent of the coastal State.[304] Similarly, it signed the agreement relating to the Implementation of Part XI of the Convention on 29 July 1994 and ratified the same on 29 June 1995. India ratified the Agreement for the Implementation of the Provisions of the Convention of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on 19 August 2003.

While enacting Maritime Zone Act 1976, it was also proposed to undertake separate legislation in future, as and when required, for dealing with the regulations for exploration and exploitation of particular resources or particular group of resources as well as with other matters on which India has jurisdiction. However, this has not been followed-up by the Indian Parliament. The 1976 Act, under Section 11, provides for stringent punishment of imprisonment up to 3 years or unlimited fine or both for the offences committed under the Act. However, the Act necessitates the requirement of previous sanction of the Union government of India before instituting prosecution against any person prescribed under Section 14 of the said Act.[305] Further, Section 15 of the Maritime Zones Act 1976 empowers the central government to make rules by notification to carry out the purposes of the Act in general and for delegating specific power for *inter alia* regulation for conduct of any person in the territorial waters, the contiguous zone, the exclusive economic zone or any other maritime zone of India. However, so far no rules have been framed by the central government under the said Act. These can lead

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[302] It is interesting to note that the developing countries considered "transfer of technology" itself as the part of common heritage of mankind, which was opposed by the developed countries during the negotiations. See Y. Li, *Ibid.* p. 156.

[303] These include agreements in the field of political relations, energy, trade, space, science and technology, defense, security, culture, terrorism. For a list of bilateral agreements between India and these nations, see, www.meaindia.nic.in.

[304] According to Article 309 of the Convention on the Law of the Sea, no reservations or exceptions may be made to the Convention unless expressly permitted by other articles of the Convention.

[305] Section 14 reads, "no prosecution shall be instituted against any person in respect of any offence under this Act or the rules made hereunder without the previous sanction of the Central Government or such officer or authority as may be authorized by that Government by order in writing in this behalf".

to a conclusion that India has not been pro-active in enacting necessary legislations at domestic level to fully exploit the potential offered by the oceans.

3.17. Challenges of the effective implementation of the law of the Sea

The functioning of the Convention, pre-1982 acts enacted by India, together with issues of extended jurisdiction, new fields of activity and increased uses of the oceans, continue to confront India with important challenges. The challenges impact upon India's ability to apply the new provisions in accordance with the letter and spirit of the Convention and how to harmonize national legislation with it and how to fulfill the obligations at national level.

3.17.1. Lack of admiralty court

India does not have its own maritime statute and it follows the British model of Admiralty Court Act 1861. India should establish a maritime court which can assume jurisdiction by virtue of the presence of the vessel in Indian territorial jurisdiction irrespective of whether the vessel is national or not and whether registered or not and wherever the residence or domicility or their owners may be.[306]

3.17.2. Bureaucratic delays and exploration for peaceful research purposes

Recognizing the inordinate bureaucratic delays, UNCLOS provides some relief regarding exploration of sea for peaceful research purposes. The final provisions of the Convention have represented a concession on the part of the developed nations. According to this, India's jurisdiction within its territorial water remains absolute. It is required to give prior consent within the EEZ and in case involving research on the continental shelf. It shall be noted, though, that such consent for research for peaceful purposes is to be granted 'in normal circumstances' and 'shall not be delayed or denied unreasonably', except under specific circumstances. According to this, if India, for example, does not reply within six months of the date of request, its consent would be implied.

3.17.3. Assistance by developed countries

India, like many other developing countries, faces challenge to benefit from the rights which it has acquired under the 1982 Convention. For example, India has established an EEZ but whether it is able to perform all rights and duties under the Convention is uncertain. Similarly, the delimitation of EEZ, the surveying of its area, its monitoring, the utilization of its resources and generally speaking, its management and development are some of the most important long-term endeavours which can be beyond the capacity of the nation.

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[306] Admiral Capt A. K. Bansal laments on the failure of the Indian Parliament as well as the Supreme Court of India to define the scope and nature of admiralty jurisdiction even after 65 years of indepdencen. He hopes that Admiralty Bill pending before the Indian Parliament can fil this gap. A. K. Bansal, "India Awaits Suitable Admiralty Law", *Maritime* Gateway 2013 (http://www.maritimegateway.com/mgw/index.php?option=com_content&view=article&id=513:india-awaits-suitable-admiralty-law-&catid=34:rokstories accessed on 31 July 2013). Krutikha Prakash reaches the similar conclusion, see K. Prakash http://lawinrem.wordpress.com/2012/11/23/the-need-for-a-new-indian-law-on-admirality/ accessed on 31 July 2013; Robert Force and A. N. Yiannopoulos, *Admiralty and Maritime Law*, vol. 2, (Beard Books: 2006); B. C. Mitra, *An Introduction to the Law Relating to Shipping in India*, (1968: Indian Law Institute); Shrikant Hathi and Binita Hathi, *Maritime Practice in India*, 7th edition, (Brus Chambers: 2012).

3.17.4. Robust legislative framework

India has an extensive range of interests and obligations in the coastal and the marine activities occurring within its maritime zones of jurisdiction. While performance of these activities will require operational, political, and technological responses, a sound legal framework is essential in all these spheres. The legal framework must balance its needs, concerns and interests within the overall international legal framework presented by the Law of the Sea Convention.

3.18. Concluding remarks

India's major interests have been largely accommodated in the 1982 Convention and India has been able to derive security, strategic and economic benefits from these relevant provisions of the Convention. India now claims the 12th largest EEZ. India's claim with regard to the continental shelf was initially limited to 200 miles, but the Convention has accepted much wider limits extending up to 350 nautical miles or 100 miles beyond the 2,500 meters isobaths and this formula allows India to add 2.02 million sq. km to its jurisdiction.[307] India already has found its continental shelf rich in oil and gas and is producing million tons of crude from its oil fields. India's current strategy is to build self-reliance in offshore exploration and development. India is one of the pioneer investors with France, Japan, China and the Russian Federation. It has been allotted a mine site in the central Indian Ocean to carry out seabed exploration activities for the recovery of polymetalic nodules.

India, unlike disarmament and other regimes, at various junctures, maintained a low profile in the Law of Sea Convention negotiations because its interests in freedom of navigation and security were identical to the interests of the major maritime powers. India does face, however, a challenge of suitably amending the provision of the Maritime Zones Act.

The original position of India at the UN was (31 October 1969) in the first Committee of the UN, that the sea bed and the ocean floor, beyond the limits of the present national jurisdiction, should be reserved exclusively for peaceful purposes and that the activities which are not in consonance with this concept should not be permitted.[308] As per India's argument, the natural resources beyond the national jurisdiction should be utilized to close the gap between developing and developed economies – a natural prolongation of India's consistent stand on the Common Heritage of Mankind which was first propounded by Arvid Pardo.[309]

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[307] On 11 May 2009, the Republic of India submitted to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. According to the submitting State, this is a partial submission and, as a coastal state in the Southern part of the Bay of Bengal, India reserves the right to make at a later date, notwithstanding the provisions regarding the ten-year period, a separate submission on the outer limits of its continental shelf, based on the provisions of the Statement of Understanding contained in Annex II to the Final Act of the Third United Nations Conference on the Law of the Sea. On 29 January 2010, India deposited with the UN Secretary-General, pursuant to Article 16 (2) of the Law of the Sea Convention, a list of geographical coordinates of points defining the baselines of India. The list of geographical coordinates of points is referenced to the Indian Geodetic Datuum (Everest Ellipsoid 1956). See UN Maritime Zone Notification, M. Z. N. 76. 2010. LoS of 17 February 2010.

[308] Speech by Mr Sen of 31 October 1969, India's Permanent Representative to the UN.

[309] Arvid Pardo, a national of Malta, is known as the Father of the Law of the Sea Conference. He made a speech at the UN General Assembly on 1 November 1967, and called for international regulations to ensure peace at sea, to prevent further pollution and to protect ocean resources. It was Pardo who first proposed that the seabed constitutes part of the Common Heritage of Mankind, a phrase that appears in Article 136 of the United Nations Convention on the Law of the Sea. He called upon that some of the sea's wealth be used to bankroll a fund that would help close the gap between rich and poor nations. Thanks to his tireless efforts

UNCLOS is not being implemented first by the UN but by the states. The implementing agencies are the International Maritime Organization, International Whaling Commission and the International Seabed Authority in its implementation. India has actively participated in these forums since their establishment.

Despite a major seafaring nation and having vital interests in the law of the sea regime, it is interesting to note that India took a long time to ratify the Convention. This reflects general position of India with regards to the ratification of major multilateral instruments. India's records suggest that India invariably waits for major countries to ratify the international instruments before it signs or ratifies. India recognizing the enormous economic, security, an environmental importance of the seas and the important role played by the UNCLOS in establishing the regime to govern the rights and obligations of stakeholders, has articulated its policy and practice to reinforce the strength given by the seas and the Law of the Sea regime. Secondly, its security interests, including enforcement measures against piracy, narcotic and terrorism operations at sea feature dominantly in its policies. Third, as India has signed and ratified the law of sea related conventions and regulations; its dispute settlement reservations are clearly stipulated, as the case with Bangladesh shows. However, by actively participating in the bodies and commissions established by the Convention, namely, IMO, ITLOS, ISA, CLCS, it is able to exert its influence and protect its long-term interests. Fourth, India is able to play an active role in concert with other coastal states in maritime environmental challenges, ocean acidification, ocean pollution and depleting fishing stocks. As the Law of the Sea Convention provides a blue print covering an entire host of measurable national security, economic and environmental issues of vital national interests to India, it has been able to further its concrete interests and prevent undermining its interests among the convention established bodies, unlike, for example, the USA. Finally, India, being one of the important coastal states, is able to strengthen its influence and further its commitment to the international rule of law and build institutions that create a stable law of the sea regime. As political issues concerning the implementation of the Law of the Sea Convention are ironed out, India is and will increasingly focus on the importance of the "implementation of the provisions of the Convention which regulates all aspects of the oceans from delimitation to environmental control, scientific research, economic and commercial activities, technology and settlement of disputes."[310]

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which culminated in 1982, when the Convention was opened for signatures, and in the early years, he continued a dedicated effort to promote the issue, for instance helping achieve near-unanimous passage of GA Resolution 2749 on December 17, 1970. This resolution embodied principles regarding the seabed and its resources that would later be incorporated into the Convention. Pardo was unhappy with the final instrument's provision for an Exclusive Economic Zone, lamenting that the common heritage of mankind had been whittled down to a few fish and a little seaweed. New York Times, "Maltese at a UN, a Rare Diplomat", 24 January 1965, p. 21; *The New York Times*, "Malta's Imaginative and Erudite U. N. Delegate", 10 December 1969, p. 5; Carl Christol, "In Memoriam", *Political Science and Politics*, 777-8 (1999).

[310] MEA Annual Report 2012-13, p. 103.