

SUB REGIONAL COOPERATION IN INDIAN OCEAN, BAY OF BENGAL AND ARABIAN SEA*

HISTORY OF LAW OF SEA

The modern laws of the sea, like other rules of international law are the product of the 'European mind' and 'European beliefs', which developed and got consolidated by European practices during the last four centuries.¹ In the modern times Grotius in his famous book *Mare Liberal* which is supposed to be the first book on the laws of the sea, published in 1609, was written for the purpose of defending his country's Right (GERMANY) to navigate in the Indian Ocean and other eastern seas and to trade with the East Indies.² It's also to be noted that at that time countries like Spain and Portugal were claiming commercial monopoly and political superiority over seas.

While in Europe there was no concept of freedom of sea, In Indian Ocean regions position was just the reverse. When Portuguese arrived in 1498³, the Asians were already engaged in free navigation in Indian Ocean. It may particularly be noted that around 300 B.C. in an important work on Hindu Polity 'Arthshastra' of Kautilya an entire chapter was devoted to maritime rules. History also reveals that from the first century there were maritime commercial relations between Rome, Egypt, Persia, China and India.⁴

In chapter V of *Mare Liberum*, author states that the sea is common to all because it is so limitless that it cannot become a possession of one. Within 12 years of publication of *Mare Liberum*, many writers from England and other countries of Europe wrote books in support of claims of their countries on certain areas of the sea⁵. A strong challenge to the theory of *Mare Liberum* came in 1625 from John Selden, in his book *Mare Clausum* in which he pleaded for the English claim to sovereignty over the English sea and asserted the right of the state to exercise its sovereignty over the sea adjacent to its territory.

But the conflict between *Mare Liberum* and *Mare Clausum* ceased to exist when it was realized that two notions were neither incompatible from the legal point of view nor irreconcilable from the

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¹ J.W.Verzije, ' International Law in Historical Prospective ' (1968), p.435

² Dr.Satyendra Kumar Sharma , 'Law of Sea & Exclusive Economic Zone' (2008),p.1

³ Available at : <http://www.history.com/this-day-in-history/vasco-da-gama-reaches-india> last visited on 17.08.2015 at 11:00 AM

⁴ Supra

⁵ In England Welwood tried to defend The English sovereignty of the seas (1613). Italian writers like Pacius, Matterherius and Zambono wrote to defend Venice's claim (Fulton n.36),p.352,(knight n.31),p.107.

practical stand point. And with this the concept of territorial sea and high seas came into picture. Because of lack of space, authors will restrict the paper only to the high seas domain.

The main question debated over a long time has been as to whether the high seas had the status of “*Res nullius*” i.e.; a thing belongs to one, or the status of “*Res communes*” i.e.; thing which belongs to all. This conflict was resolved in The Hague conference of 1930, which held that the resources of the seas were common patrimony i.e.; belongs to all.⁶ The assertion that the principle of freedom of the sea entails the right to use the sea was confirmed by conventional provisions adopted in the Geneva conference on the Law of The Sea in 1958. Article II of the same reads:

“ The high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by other rules of international law. It comprises, inter-alia, both for coastal and non-coastal states:

- i. Freedom of navigation*
- ii. Freedom of fishing*
- iii. Freedom to lay submarine cables and pipelines*
- iv. Freedom to fly over the high seas*

These freedoms, and others which are recognized by the general principles of the international law, shall be exercised by all states with reasonable regards to the interest of other states in their exercise of the freedom of the high seas”

NEED OF SUB-REGIONAL COOPERATION

South Asia sub regional cooperation is a program initiated in 2001 to achieve economic prosperity in India, Bangladesh, Bhutan, Maldives, Nepal and Sri Lanka through boosting international trade. The priority areas of cooperation of SASEC are to enhance the transport network, facilitate trade by reducing the trade cost and improve energy access. Effective custom administrations are set up for easier and low cost trade of goods across the border. There are more sub regional cooperation's within the region such as India-Bangladesh-Myanmar.⁷ If the infrastructure, tariffs and non-tariff barriers are reduced, the trade volume can immensely increase, thus improving the economy and bilateral relations between the countries.

There is a need for regional cooperation as there always a need of a neighbour when a natural calamity occurs and India has always given its support to its neighbour's in the times of tsunami and earthquake in Nepal. The need for sub regional cooperation is not only for economic growth but also for increasing political connectivity between countries. Even the poorest of the poor country is benefitted in practical terms as a result of employment, skill development, etc. India is a heavyweight in the region and our neighbour's look upon us for trade. We are equally looking upon them for various energy resources and facilitate the sale of electricity. This program helps the most industrially mature partner and also offers benefits of regional integration. There have been many projects that have been commissioned by the ADB like the hydropower and road transport

⁶ League of Nations conference for the codification of International Law , The Hague , March – April , 1930 , Final Act , p.17

⁷ South Asia Sub regional Economic Cooperation, available at: <http://www.adb.org/countries/subregional-programs/sasec>

connectivity⁸. Regional cooperation is of high priority especially in the subcontinent as the intraregional trade is very less compared to other regions. We can only improve our economy by focusing on improving cross border trading and build trust among the sub regional partners. At the end of the day 'Together We Stand' should be our ultimate goal.

SUB REGIONAL COOPERATION IN BAY OF BENGAL

The maritime acts which are enclosed with criminal deeds of international nature may range from proscribed fishing, contamination & up rise in terrorism to maritime insurgency operations. Due to inadequacy in the law of the ocean it becomes a problematic task to regulate such disturbances', but regional cooperation can turn out to be a solution to this problem. The Bay of Bengal and its contiguous waters frame a perfect oceanic zone to advance such agreeable systems.

Howsoever hostile utilization of power may appear in a common society, one can't wish it away in the connection of upkeep of peace and security. Threats are seen, now and again even concocted, and their counter-measures are advanced. The aforesaid threats are low-intensity conflicts and can be termed as maritime crimes of universal nature. They shape a wide range going from common burglary, proscribed fishing, deliberate contamination, outfitted theft on ocean adding up to robbery, illicit movement in arms, drugs and humans, terrorism, hired soldier exercises and sea uprising operations. Often, these criminal offenses, however joined with the ocean or the ship (or altered structure on the ocean bed), have joins with the shore. In this way, other than collaboration, association between authorization organizations on ocean and ashore gets to be crucial to curb such criminal acts.

The maritime low intensity conflicts can be partitioned into four comprehensive classes. The major one is the abuse of national resources by unofficial individuals. Illegal fishery is a well-known representation. The second is the endeavour to deliberately contaminate the ocean subsequently prompting environmental harm. Natural debacle because of mishap, however bringing on harm, is not deliberate and should be managed independently. While catastrophe administration should be fortified, mischances or characteristic disasters can't be dealt with as 'risk to security'. The third class is the risk to life and property on board ship. This class has a wide range extending from standard burglary to furnished theft. Every one of them are currently looked to be compared with piracy. The fourth class is danger to national peace and security. This would incorporate illicit movement in arms, precluded drugs and also individuals. This class is frequently connected to terrorism or even insurrection. India, the Maldives, Myanmar and Sri Lanka are unique focuses in the Bay of Bengal locale. Progressively a few conditions of Southeast Asia are additionally encountering this risk. In this connection, it should be underlined that endeavours are frequently made to give these demonstrations, which are basically criminal in nature, a political spread to give them some authenticity. Notwithstanding the endeavour to shroud these demonstrations in political authenticity, they stay, under existing law, criminal acts.

⁸ Institute of Peace and Conflict Studies, *Sub-Regional Cooperation in South Asia: A New Lease of Life?* available at: <http://www.ipcs.org/article/india/sub-regional-cooperation-in-south-asia-a-new-lease-of-4839.html/> (Last Modified February 23, 2015).

As far as India is concerned, India has created, in the course of recent decades if not more, a satisfactory capacity to screen oceanic zones around it notwithstanding amid peace time. Its Navy too has grown adequately to render profitable backing if and when important. Other territorial powers too have grown such abilities. Be that as it may, the errand of checking boundless oceanic zones of every state is too enormous for individual states to perform viably. Their individual assets, which right now are spread too thin, can be better used if the neighboring states start a structure of provincial or sub-local participation. India had been neglecting its eastern maritime frontier until recently. Impression of India as a "hegemonic" force in Southeast Asia and the Cold War environment and the Indian stand on the Kampuchean emergency could have been in charge of it. Be that as it may, the post-Cold War environment has achieved a much needed development and Indian vicinity is being acknowledged as cordial by a few conditions of Southeast Asia. India's recently created ties with the ASEAN mirrors this pattern. India has even started certain strides singularly. In the meeting of the ASEAN's Regional Forum (ARF) held at Bangkok in May 2000, India flowed an idea paper on hostile to theft issues and offered to host a gathering on the issue in Mumbai in October. India is trying to create and reinforce a domain of peace and security in its neighborhood. Reasonable and practical oceanic participation will contribute significantly towards it.

SUB REGIONAL COOPERATION IN ARABIAN SEA

The countries of the northwest ocean border the ocean, gulf, the Red Sea, the Arabian Sea, Gulf of Asian nation and Gulf of port. These ocean square measures are usually regarded by terribly high air and water temperatures throughout summers, in the main within the shallow Gulf areas. The influence of the southwest monsoon could be a vital attribute of the lot of southern areas and drives oceanic processes, as well as major upwelling's, on the coasts of western India and Asian nation.

Manufacture within the region is clearly determined within the high production areas of the Arabian Sea and Gulf of Asian nation, with the West Coast of India, the Moslem Republic of Asian country, Asian nation and Asian country (coastal areas) dominating the landings.

Effectual management of the oceanic assets of those region is sophisticated by the customarily shared nature of the resources, preponderantly (but not restricted to) oceanic species. This can be more combined by the dearth of regional stock assessments of those resources and also the general shortage of data on major exploited fish stocks.

Fisheries management within the region is characterized by the subsequent four factors:

- (i) The nearly total absence of comprehensive stock assessments of major exploited marine resources upon that to base management choices, combined with a usually poor applied mathematics info on landings (and their composition) and fishing effort;
- (ii) The regional and shared nature of the many of the fish stocks that's in distinction to the poorly developed establishments for regional management;
- (iii) The development orientation of national fisheries legislation and policy in most countries despite the apparent over- or totally exploited standing of the many fish stocks; and

(iv) A general lack of success at the regional and national level in activity and dominant fishing capability, notably within the giant and vital artisanal sector

In several countries within the region, the character of each legislation and also the activities of fisheries agencies is one in every of administration (through licensing and administering subsidization programmes, etc.) instead of management in accordance with a well-defined long-run strategic conceive to guarantee property of the resource. Despite being administered, several of the fisheries within the region square measure so basically unregulated therein fishing capability isn't controlled, though gear restrictions square measure common. Within the absence of a long-run, strategic approach to management for stock property, it's so not stunning that fisheries management plans square measure nearly unknown within the region.

However, some progress is being created. Additionally to the newer legislation of African country and Djibouti that emphasizes management in keeping with the principles of ecologically property development, Republic of Yemen is additionally within the method of reforming its approach to fisheries management and is investment in higher info and analysis bases. Sudan is basing its fisheries management on a 25-year-strategic set up whereas Asian nation, the United Arab Emirates and alternative countries have established a designing framework (often 5 years) for fisheries. These latter plans, however, stay development oriented and don't take into consideration the problems of managing for property and also the imperative have to be compelled to live and management fishing capability.

The development of sturdy regional fisheries commissions would be a significant breakthrough in each adopting the mandatory regional management of the numerous shared stocks and additionally in moving towards a lot of strategic approach to fisheries management supported sensible info and inside a framework of long-run sustainable stock management.⁹

SUB REGIONAL COOPERATION IN INDIAN OCCEAN

"Whoever controls the Indian Ocean dominates Asia. This ocean is the key to the seven seas in the twenty-first century, the destiny of the world will be decided in these waters."¹⁰

----*Alfred Thayer Mahan*

The Indian Ocean region is the birthplace of maritime civilization which was considered a playing field of rich industrial European nations during the colonial era. With the origination of decolonization in 1946, the elation of independence was overshadowed by the instability of internal conflicts and inter-state wars that followed. During the Cold War era the two superpowers reinforced their influence directly or indirectly on Seas through an impressive array of available ports in this region. History was rewriting itself in an evolved form.

There had been ample migration of people from one country to the other due to various reasons during last few centuries, and due to such resettlement, there had been cultural exchange and incorporation between diverse societies Most researchers and scholars have noted that during last 2000 years, this region has come under the direct rule of practically all major civilizations of the

⁹ Available at: <http://www.fao.org/docrep/009/a0477e/a0477e06.htm> last visited on 24.08.2015 at 9:30 PM

¹⁰ Available at: http://www.tamilnation.co/intframe/indian_ocean/ last visited on 14.08.2015 at 8:00 PM

world and among these, Indian culture appears to have intermingled best with respective indigenous cultures. This civilization exchange has created in this region '**a family likeness**'.

The present will focus on sub regional cooperation in the Indian Ocean and won't cover bi-lateral cooperation amongst many costal states of the region.

The Indian Ocean covers about 20 % of water on the earth's surface. It is the third largest ocean on the world's Map. The Indian Ocean Rim (I.O.R) countries have a population of approximately 2.6 bn, or 39 % of the world's population. The Indian Ocean accounts for 50% of the world's maritime traffic and Indian Ocean ports handle about 30 % of global trade. Around 66 % of the world's seaborne trade in oil transits in the Indian Ocean. Roughly 55 % oil reserves known till date, and around 40% of gas reserves, are in the Indian Ocean region.

The **Indian Ocean Rim Association (IORA)**, previously known as the **Indian Ocean Rim Initiative and Indian Ocean Rim Association for Regional Cooperation (IOR-ARC)**, is an international organisation comprising of coastal states which are bordering the Indian Ocean. The IORA is a regional forum which is tripartite in nature and brings together representatives of Government, Business and Academia, for the promotion of co-operation and faster interaction among them. It is based on the **Principles of Open Regionalism** for reinforcement of Economic Cooperation particularly on Trade Facilitation and Investment, Promotion and as well as Social Development of the region. The Coordinating Secretariat of IORA is located at **Ebene, Mauritius**.

The objectives of IORA are as follows:¹¹

1. To promote sustainable growth and balanced development of the region and member states.
2. To focus on those areas of economic cooperation which provide maximum opportunities for development, shared interest and mutual benefits.
3. To promote liberalisation, remove impediments and lower barriers towards a freer and enhanced flow of goods, services, investment, and technology within the Indian Ocean rim.

IORA members embark on projects for economic co-operation relating to trade facilitation and liberalisation as well as promotion of foreign investment and technological exchanges, tourism, migration of natural persons and service providers on a non-discriminatory basis; and the development of infrastructure and human resources, alleviation of poverty, promotion of maritime transportation, cooperation in the fields of fisheries trade, research and management, aquaculture, education and training, energy, IT, health, protection of the environment, agriculture, disaster management.

It has been assessed that trade potential in this Indian Ocean Region (IOR) is not fully shattered and there exists high potential of trade complementarities among the IOR economies. There is a pressing need for discussing trade issues including, manufacturing sector, regional production network, protectionism, sub-regional cooperation etc. in a regional cooperation framework. In this

¹¹ Available at: https://en.wikipedia.org/wiki/Indian-Ocean_Rim_Association last visited on 14.08.2015 at 8:15 PM

context, the time is ripe for engaging in regular dialogues among the member countries for broader and deeper engagements in future.¹²

Settlement of disputes under the United Nations Conventions of the Law of the Sea, 1982

One unique characteristic of the UN convention on the Law of the sea, 1982, is that it contains provisions regarding machinery for the settlement of disputes between the parties regarding the interpretation or application of the present convention.

Part XV of the convention has been devoted to the provisions relating to settlement of disputes. Part XI contains a special section 5 on the settlement of disputes relating to seabed.

Under Article 279 the convention suggested that the state parties shall settle the dispute between them by peaceful means in accordance with Article 2, Para 3 of the Charter of United Nations, and to this end shall seek a solution by the means indicated in the Article 33 , Para 1 of the Charter.¹³ The procedure specified in the convention is to be adopted only when peaceful means are exhausted.

As per the provisions of the convention, a dispute is to be settled in the following sequence:

- (i) If any dispute arises over the interpretation or application of the convention, the parties shall engage in settlement by Negotiation or peaceful means.
- (ii) Parties may refer to Conciliation of their choice.
- (iii) The convention provides for four mandatory procedures:
 - (a) The International tribunal for the Law of Sea
 - (b) The International court of Justice
 - (c) An arbitral tribunal
 - (d) A special arbitral tribunal.

If the State does not submit any application opting for any method then the arbitration procedure is envisaged according to Annex VII.

The seabed disputes are settled by the Chamber of the international tribunal for the law of the sea. This organisation has its headquarters in Hamburg and it consists of 11 members elected from among the tribunal. Consideration of the specific case requires a Quorum of seven elected members of the tribunal and these are considered by the *AD HOC* chamber.

A dispute is settled by an Arbitral body formed in accordance with Annex VII only if both the parties have chosen this procedure. Each party may appoint four arbiters from the list given by the UN secretary General. Arbitration decisions are taken by a majority of votes.

Under Annex VIII special arbitral tribunal is appointed which consists of five members and considers a relatively limited category of disputes consisting of:

- (i) Fisheries
- (ii) Protection and preservation of marine environment

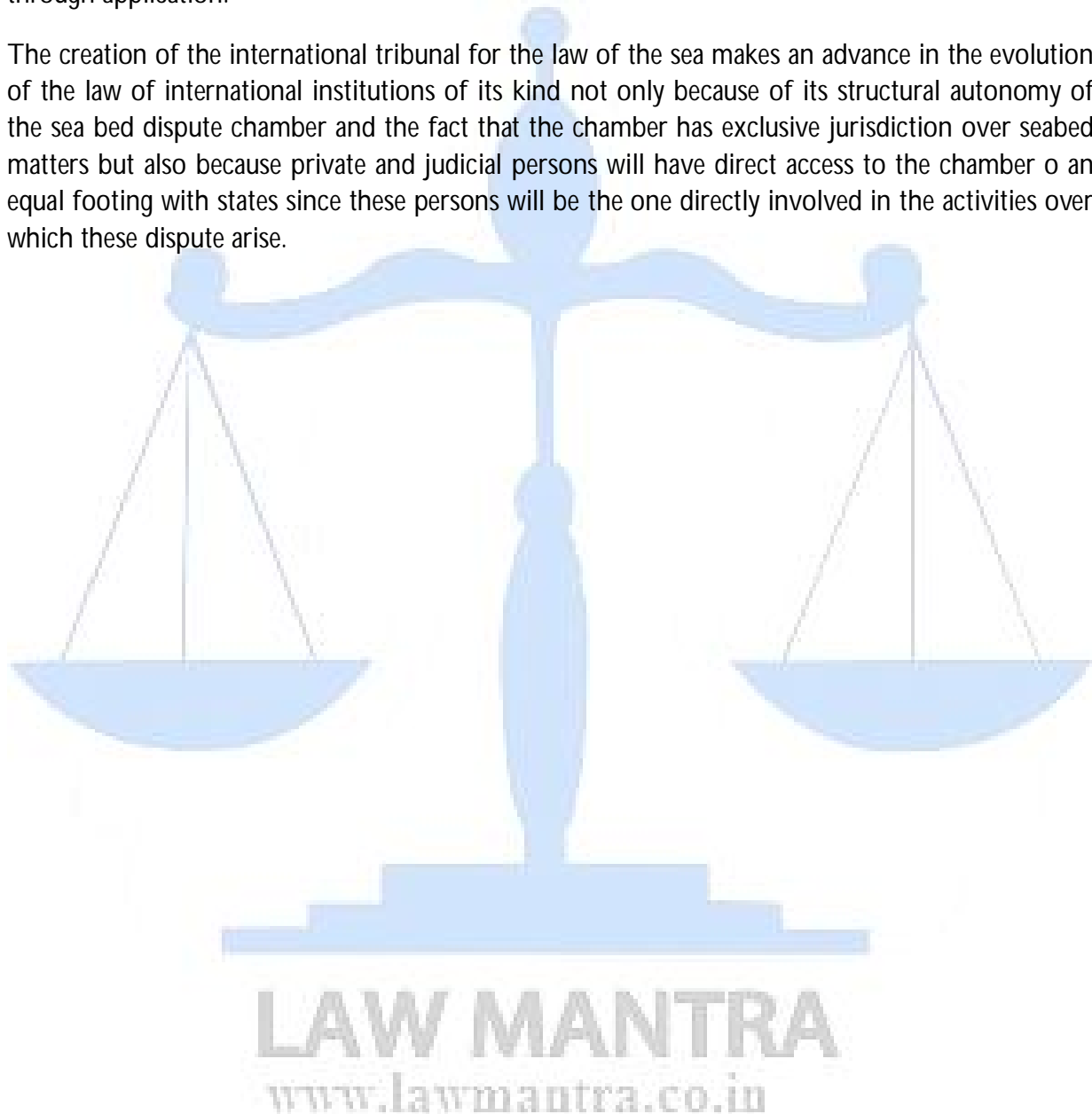
¹² Available at: indian-ocean.in/concept-note.php last visited on 14.08.2015 at 8:40 PM

¹³ Such means are negotiations, inquiry , mediation, conciliation, arbitration and judicial settlement

- (iii) Marine scientific research
- (iv) Navigation including pollution from vessels and by dumping

The convention contains provisions expressly ruling out the use of the procedures entailing a binding decision with respect to certain sovereign rights and jurisdiction¹⁴ specifying the cases in which these standards or rules may be applied¹⁵ and enabling a state to rule out these procedures through application.

The creation of the international tribunal for the law of the sea makes an advance in the evolution of the law of international institutions of its kind not only because of its structural autonomy of the sea bed dispute chamber and the fact that the chamber has exclusive jurisdiction over seabed matters but also because private and judicial persons will have direct access to the chamber on an equal footing with states since these persons will be the one directly involved in the activities over which these dispute arise.



¹⁴ Article 297, para 2(a) and 3(a) of 1982 convention

¹⁵ Article 297 Para 1