MARITIME ISSUES IN SOUTH ASIA : A CRITICAL REVIEW

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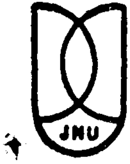

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Certified that the dissertation entitled **"MARITIME ISSUES IN SOUTH ASIA : A CRITICAL REVIEW"** submitted by **JAI PRAKASH NARAYAN GUPTA** in fulfilment of six credits out of total requirements of twenty four credits for the award of the degree of **MASTER OF PHILOSOPHY** of this University is his own work and may be placed before the examiners for evaluation. This dissertation has not been submitted for the award of any other degree of this University or of any other University.

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CHAPTER I

INTRODUCTION

The freedom of the seas, as propounded by Hugo Grotius and practiced for more than 200 years by maritime powers, is now no more. It has been changed altogether. Even prior to the Second World War, vast and huge resources were discovered in the oceans. It was later confirmed by geologists and oceanic experts that abundant resources of oil and gas were lying under the sea-bed off the shores of various countries, outside the territorial seas, and technology was making them economically feasible to exploit. Badly in need of such resources President Harry S. Truman of the United States made a proclamation on 28th September 1945 and declared "natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coast of United States as appertaining to the United States".[1] However, water above the continental shelf remained high seas with the usual freedoms of navigation and fishing. In another proclamation he declared fishing zone in an area of high seas contiguous to the coast of the United States. In this zone fishing activities were to be regulated under the sole control of the United States or by joint agreement with the other states. Both the proclamations explicitly recognized the high seas character of waters above the continental shelf and fishing zones. The trend which had been set by the U.S. was followed by several other countries. Apart from jurisdiction over continental shelves, many other countries started to claim wide fisheries and other zones.

Since the second World War, the international society has been transformed drastically. The law of the seas, like other

rules of international law, could no longer be confined to European States or States of European origin, but it must now serve the interests of the world-wide community of states. Several Asian and African countries emerged as independent members of the world community. To fulfil their aspirations, the new states wanted to mould traditional international law which had been developed by European states for the protection of their interests. At the two conferences on the law of Sea, one in 1958 and the other in 1960, they sought to change the law, but could not succeed. The turmoil in the law of the sea continued.

To meet the aspirations and needs of new states, and to modify the law to bring it in conformity with technological, economic, political and social changes, the United Nations organized another conference on the law of the sea in 1973- the biggest in history -- which after about nine years of protracted negotiations, and painstaking efforts, and hard bargaining on the subject tried to solve all these problems and to evolve a unified international law of the sea for the benefit of all nations. At last, on 30 April 1982, at Montago Bay it succeeded in adopting the United Nations Convention on the Law of the Sea,[2] which for the all practical purposes, is a complete code on the subject. It confirmed that the coastal states have a territorial sea of twelve nautical miles[3] and redefined the continental shelf extending upto the end of continental margin.[4] It established an exclusive economic zone (EEZ) of 200 nautical miles.[5] The Sea-bed beyond the limits of national jurisdiction

has been declared as "common heritage of mankind".[6] At the same time and undoubtedly for the first time it granted the right to geographically disadvantaged states to the uses of the sea.[7] A characteristic feature of the convention is that even before it had formally been adopted it had helped state practice to develop among other things, in favour of a 200-mile EEZ.

With these enormous extensions of maritime rights of coastal and non-coastal states, the freedom of the seas as understood in the past and practiced for centuries by the maritime powers has gone and been altogether changed. But these phenomenal changes in the law of the sea, have led to a number of disputes between several states. The South Asian countries are no exception to this emerging trend. The region comprises littoral states of India, Pakistan, Bangladesh and Burma; island states of Sri Lanka and Maldives; and land-locked states of Nepal, Afghanistan and Bhutan. It is an "Indo-Centric" region, because India is not only dominant power in the region, but also has a central position in it, geographically, culturally, politically, economically, and even militarily. Thus, this dissertation seeks to analyse various dimensions of maritime issues concerning nine countries of the South Asian region, namely, Afghanistan, Bangladesh, Bhutan, Burma, India, Nepal, Pakistan, Sri Lanka and Maldives.

PLAN OF WORK

The study is divided into six chapters including the present one. The second chapter deals with the developments relating to the law of maritime jurisdictions. The developments of the Law of the Sea, significance of the Indian Ocean and geographical location of the South Asian countries have been given the main emphasis in this chapter.

The third chapter is exclusively devoted to maritime boundaries in the South Asian region. Claims and counter-claims of these countries about their territorial seas, contiguous zones, the continental shelves and exclusive economic zones (EEZs) have been thorougly examined here. An attempt has also been made to discuss the theoretical aspects and practical difficulties to solve the existing problems.

The fourth chapter is devoted to the problems of geographically disadvantaged states in South Asia. Their rights to access and uses of the sea have been examined, especially keeping in mind the 1982 UN convention on the Law of the Sea. In addition, the problems and difficulties of Nepal, Afghanistan and Bhutan regarding the access and uses of the sea have been discussed here. An attempt has been made to show the possible way to solve their problems.

The fifth chapter is devoted to the fishery jurisdiction in the South Asian region. The developments of law relating to fishery jurisdiction, especially keeping in mind the new concept of EEZ has been discussed here. In addition, the

problems and difficulties of the South Asian coastal states of the marine fishery within and beyond the area of 200-mile have been examined here. An attempt has been made to show a long term plan for marine fisheries in the South Asian region.

The last chapter summarises the entire discussion in the light of questions related to the solution of the maritime issues in the South Asian region.

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CHAPTER II

DEVELOPMENTS RELATING TO THE LAW OF MARITIME JURISDICTIONS

LAW OF THE SEA: INTRODUCTION AND HISTORICAL PERSPECTIVE

The modern law of the sea, like most other rules of international law, is largely the product of "European mind" and "European beliefs"[1] which has been consolidated and developed by European practices during last three centruies.[2] The essence of maritime law for the last nearly two hundred years can be summarised in a legal slogan, "freedom of the seas". It was accepted as a binding and undisputed principle, almost a dogma, which no one could challenge, and had been recognized and referred to as *jus cogens*.[3] Although the freedom of the seas was also accepted as a binding principle under the Roman law, it had lost its force and validity through the years and had been altogether forgotten after the disintegration of Roman Empire. During the modern times, the principle of the freedom of the seas is said to have been enunciated for the first time by Hugo Grotius, a young Dutch scholar and jurist, in the form of a legal brief, which he prepared to defend his country's and company's right (Dutch East India Company) to navigate the eastern seas and to trade with Southeast Asian countries,[4] and to refute the Portugese claims which were being pressed at that time by Spain.[5] In order to defend his clients, Grotius wrote *De Jure Praedae* (on the Law of Spoils) in 1605. Chapter XII of this book was published in 1609 in the form of *Mare Liberum* (or the Free Seas). This classic book became even more popular than his later and more authoritative work *De Jure Belli ac Pacis* (1625).[6]

The crux of Grotius' argument was "Freedom of the Seas". The seas were there for everyone -- that they were free. The jurisdiction of each coastal states should be confined to a narrow coastal strip, i.e. its "territorial waters". It is important to note that in propounding his arguments he heavily relied on Roman Law and Christian theology, especially writings of Spanish theologians, Francio Alphonso de castro and Ferdinand Vasquis (or Vasquiz) who first raised their voice against the prevailing practice in Europe of appropriating the sea.[7] At the same time, Grotius keenly observed Asian maritime practice and customs.[8] At that time Asian rulers were generally land powers and they believed in the practice of open and free navigation and commerce. They were not much interested in appropriating and controlling maritime areas because their lands were fertile enough to keep them busy and to fulfil their needs and aspirations.

FREEDOM OF THE SEAS A CASUALITY IN EUROPE:

Contrary to the practice of freedom of navigation and unobstructed maritime commerce which was prevailing in the Indian Ocean and the East Indies until the fifteenth century, when the Portugese tried to destroy it, in Europe the practice of *Mare Clausum* (The closed sea) was in full bloom. After the fall of Roman Empire European countries started claiming wider areas of the oceans. While trying to keep the others out from wide maritime areas, they asserted commercial monopoly. Within a few years after the publication of *Mare Liberum*, several writers from England and the continent started writing to defend their

countries' right to control certain areas of the sea. The real reply to *Mare Liberum* was given in 1625 by John Seldon, a brilliant British scholar, through a comprehensive treatise *Mare clausum*, which was written at the behest of the English crown.[9] The "battle of books" between *Mare Liberum* and *Mare Clausum* continued throughout the 17th century. In this battle it was John Seldon who won and his *Mare Clausum* continued to be the most authoritative work on maritime law in Europe for nearly two hundred years.[10]

REVIVAL OF THE FREEDOM OF THE SEAS:

It is important to note that during 1850s with the onset of the Industrial Revolution the European economy got suddenly changed and revolutionized. The needs and demands of the Industrial Revolution viz. surplus capital which could be invested outside Europe, new markets to sell their products, and need for raw materials, all led to changes in law. The Europeans changed their mind and accepted freedom of the seas not because they got suddenly convinced by Grotius' arguments or had other options to choose, but out of compulsions, i.e. to satisfy the needs of their industries and to fulfil their own aspirations according to the changed needs and circumstances. They started the practice of free trade and navigation so that they could jointly exploit the vast and rich resources of Asia and Africa. Britain took the leadership in her hand and, as the great maritime power, became the strongest champion of the freedom of the seas. Freedom of the seas became the "watch-words" for maritime practice of trade and navigation and came to

be accepted "as an incontrovertible doctrine almost a sacred dogma which no one could dare challenge".[11] Grotius, much abused "villain", especially in England, for nearly two hundred years and discarded and neglected by the European powers, became a great hero,[12] for all European powers.

MISUSE AND ABUSE OF THE FREEDOM OF THE SEAS:

With the vast and steady increase of trade and commerce in Europe, during the 19th century the uses of the Oceans started increasing rapidly. The meaning and purposes of the freedom of the seas were not exactly the same in Europe as it was practiced in Asia until 16th century. The European maritime powers started misusing and abusing the freedom of the seas for their narrow and selfish interests, without taking into consideration the interests of the other countries. It gave undue advantage to big maritime powers. Not only this, it gave a licence to the technologically advanced countries to overfish, especially near the coasts of other countries. This gave rise to numerous fishery disputes. Except a narrow belt of territorial waters within coastal state jurisdiction, and a few minor rules of the road, the vast area of the Ocean - more than 70 per cent of the globe-remained an area of legal vacuum or "no-law".[13] This area was free for all to exploit according to their wishes until almost the close of 19th century.

CHALLENGE TO THE FREEDOM OF THE SEAS:

It is important to mention here that the process of the misuse and abuse of the freedom of the seas by the big maritime

powers and technologically advanced countries continued to the detriment of the "backward people" of Asia and Africa in the name of so-called freedom. This reached at its peak only after the Second World War. With the development of science and technology the advanced countries started using sophisticated technology to overexploit the rich living and non-living resources of the ocean near the coast of smaller states. The activities included naval military operations, testing of rockets and missiles; using the high seas as dumping ground, particularly for radio-active waste; stationing and operation of submarines armed with nuclear war-heads; and the so-called data gathering by electronic procedures along the coast of other countries.[14] No wonder, the freedom of the seas came to be considered as a form of "tyranny".[15]

With the phenomenal changes in the international society after the Second World War, all the activities which were going on in the name of the so-called freedom of the seas, or *laissez faire* in the ocean, could not remain unchanged and unchallenged. The challenge to this "sacred dogma" came only after the end of Second World War with the discovery of oil and gas under the sea. The increasing over-exploitation of the fishing resources by larger and technologically advanced ships of distant water fishing by states had also given rise to a number of disputes; Coastal states started claiming wider coastal jurisdictions to protect their economic interests.[16]

POST-1945 ERA: HUNT FOR RESOURCES AND TRUMAN PROCLAMATION

By the end of Second World War, two important trends emerged which had tremendous impact on the extension of coastal state jurisdictions beyond the existing limits either for the purpose of security or for the protection of their national interests. These included:

Firstly, widespread claims of wider territorial sea jurisdictions beyond the traditional three-mile limit which had been established by Britain and most of the European maritime powers. A good number of Asian and African countries started claiming 12-mile territorial sea. The Soviet Union and the Latin American countries were also no exception to this trend.

Secondly, with the development of science and technology it came to be known and later confirmed by geologists and oceanic experts that abundant resources of oil and gas were lying under the sea-bed off the shores of various countries, outside the territorial seas, and technology was making it economically feasible to exploit such resources. Badly in need of such resources President Harry S. Truman of the United States made a proclamation on 28th September 1945 and declared "natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coast of United States as appertaining to the United States".[17] However, water above the continental shelf remained high seas with the usual freedoms of navigation and fishing. In another proclamantion he declared fishing zones in areas of high seas contiguous to the coast of the United States. In such zones fishing activities

were to be regulated either under the sole control of the United States or by joint agreement with the other states. Both the proclamations explicitly recognised the high seas character of waters above the continental shelf and the fishing zones. The basic motivation of the Presidential Proclamations was the oil and fisheries resources in the areas of the sea abutting the territorial sea. These two U.S. proclamations constituted a turning point in the classical law of the sea, heralding a new era of extension of coastal maritime jurisdiction. The trend which had been set by the U.S. was followed by several other countries. Apart from jurisdiction over continental shelves, many other countries claimed wide fisheries and other zones.

NEW CHALLENGES:

In the meantime history had almost come full circle with drastic transformation of international society. The law of the seas could no longer be confined merely to European States or states of European origin, but must serve the interests of world-wide community of states. Many Asian and African countries emerged as independent states from the age colonialism. These countries had common sufferings under their colonial masters during the colonial rule. They came together with equally abused and suppressed countries of Latin America, and formed a group, if not a bloc, and started playing an increasingly important role in development, modification and formation of a new law of the sea.[18] They wanted to change and modify the law of the sea according to the new needs of the new international society and changed circumstances.

To fulfil the aspirations of the new States the United Nations sponsored a conference in Geneva from 24 February to 29 April 1958. It undertook the major task of codification and progressive development in one of the most important fields of international law. Finally, four conventions were concluded in in 1958, namely,

i) The Territorial Sea and Contiguous Zone;

ii) The High Seas;

iii) The Fishing and Conservation of the Living Reources of the High Seas; and

iv) The Continental Shelf.

The 1958 convention on the law of the seas codified the law which had traditionally been accepted, but could not modify it adequately taking into consideration the needs of the 1960s. It failed to fulfil the highest aspirations of the world community. It could not reach an agreement on two important issues i.e. breadth of territorial seas, and fishing limits. In order to settle the unsettled part, the United Nations sponsored another conference in 1960, but unfortunately it also failed to reach agreement on the breadth of territorial sea and fishing limits.

In the meantime the progressive development of International law especially law of the sea had acquired wider dimension due to the accelerating pace of technological, economic, social and political changes in recent years. The objective of the law of seas is not only the maintenance of international peace and security, but also to provide a unified

rule of law which will promote rapid development of developing countries in a manner which is fair and free from all sorts of bias and exploitation.

REVOLUTION OF THE LAW OF THE SEA: UNCLOS-III

To solve all these multifarious problems, and to develop and codify the law in order to meet the changed conditions and new challenges, the United Nations convened the Third Law of the Sea conference in 1973- the biggest in the history -- which after about nine years of protracted negotiations, and painstaking efforts, and hard bargaining on the subject tried to solve all these problems and to evolve a unified international law of the sea for the benefit of all nations. At last it succeeded in adopting, on 30 April 1982, at Montago Bay, the United Nations convention on the Law of the Sea,[19] which for all practical purposes, is a complete code on the subject. The new convention has decisively and deliberately discarded the absolutist conceptual framework of the old system, and at the same time introduced instead a functional and flexible approach to the competing uses of the oceans. It represents a major step towards an integrated management regime for the oceans. A characteristic feature of the convention is that even before it had been formally adopted, it had helped state practice to develop around, among other things, a 200-mile exclusive economic zone (EEZ).

Another important feature of the convention is that it has reconciled divergent interests of states and established the

basis for a new equity in the uses of the oceans and their resources. It confirmed that the coastal states have a territorial sea of twelve nautical miles. It redefined the continental shelf extending upto the end of continental margin. At the same time, it established an exclusive economic zone (EEZ) of 200 nautical miles within which the coastal state may exercise sovereign rights with regard to management of natural resources, living and non-living, in the waters, sea-bed and subsoil.

There is another noteworthy provision in the convention. It stipulates that coastal states must ensure that the living resources of the EEZs are not endangered by over exploitation.[20] Thus, states now have not only the legal power and self-interest to apply sound principles of resource management within this area, but they have the obligation to formulate and implement sound conservation and management strategies for living marine resources, including cooperation in the exchange of scientific information, the conservation and development of stocks, and optimum use of migratory species.[21]

But unfortunately, the 1982 convention on the Law of the Sea has not come into force. Some of the industrialized of Western countries, led by the United States, have refused to sign the convention and its future still somewhat hangs in balance.[22] But inspite of such refusals, some of the provisions of the convention have acquired the status of customary international law.

With this enormous extension of the maritime rights of coastal states and appropriation of 200 nautical miles from the coast, which contain most of living and non-living resources, the freedom of the seas, as understood in the past and practiced for centuries by the maritime powers, is gone and has been altogether changed. These phenomenal changes in the law of the sea and wide extension of coastal states jurisdictions have led to a number of disputes between several states. The South Asian countries are no exception to this emerging trend. But before we discuss the existing disputes of maritime boundary delimitation in South Asian countries, it is important to know and understand the strategic significance of Indian Ocean, where South Asia is located, and real problems and difficulties South Asian countries are facing at present.

INDIAN OCEAN AND ITS SIGNIFICANCE

Indian Ocean, a little smaller than the Atlantic and much smaller than the vast Pacific, has been defined as the area between 25°N and 30°S latitudes and between 40°E and 98°E longitudes,[23] it covers 6,500 miles in length (from north to south) and nearly 6,000 miles in breadth (from east to west), and covers an area of nearly 28,357,000 square miles (or nearly 20.6 per cent of the total oceanic area of the world).[24] Its area and the distances are thus enormous. The Bay of Bengal alone covers an area equal to half of Europe. It is 13,000 feet deep-which makes it deeper than the Atlantic. Its unique feature is that it is more or less landlocked ocean having a landroof, a

situation which is found neither in the Atlantic nor in the Pacific.[25]

It includes the water of Arabian Sea, the Red Sea, the Java Sea, the Timor Sea, the Bay of Bengal and Great Australian Bight. It is surrounded by India, Pakistan and Iran to the north, the Arabian Peninsula and Africa to the west, Australia, the Sunda Islands of Indonesia and Malay Peninsula to the east, and Antarctica to the South.[26]

The Indian Ocean area consists of 36 littoral and 11 hinterland states. Most of these states have got their independence from colonial rule in the decade between 1940s and 1960s, and are part of the Third World countries. Besides South Africa, Australia and Israel all the countries are developing states and excepting these three and Thailand, the rest are non-aligned and members of non-aligned movement (NAM). About half of the states of the region have less than 5 million population, and out of more than 1200 million inhabitants in the region, 72 per cent live in the Indian subcontinent; of these almost three-fifth in India itself. Significantly, some of the less populated countries, like Saudi Arabia and Zambia, possess some of the most important and strategic natural resources, which are needed for the economic sustenance of the world in general and the OECD countries in particular.[27]

RESOURCES:

Indian Ocean area is very rich in natural resources though these are unevenly distributed. According to a rough estimate

nearly two-third of the world's oil resources are found in this area. If this and the oil found in Indonesia are added up, the oil resources in the Indian Ocean area may be around three-fourth of the total resources of the world. In hierarchy important oil-producing countries in the area are Iran, Saudi Arabia, Kuwait, Iraq and Abu Dhabi. Some of the important oil importing countries from the area are Japan, which imports more than 90 per cent of its consumption; Italy 84.5 per cent; Australia 69 per cent; Britain 66 per cent; West Germany 62 per cent; France 51 per cent; and the United States 8 per cent.[28]

Apart from oil, 40 per cent of gold is to be found in this area.[29] Besides these two, the Indian ocean area has natural resources which are of considerable importance. It is estimated that twenty out of forty raw materials of strategic importance to the Western countries are found in this area. Some of the major items in this category are asbestos, mica, bauxite, vanadium, and phosphates are spread over the entire area.[30]

The agricultural products yielded one-fifth of the world's arable land, lie in the Indian ocean area. These include wheat, rice, cotton, tea, coffee, jute and rubber. Most of the world's jute and like fibres are exported from Bangladesh and Thailand. Similarly, nearly 90 per cent of the world's rubber comes from Malaysia, Indonesia, Thailand and Sri Lanka.

POPULATION:

It is important to note that in terms of population, it plays a key role because one third of the humanity lives in

these countries which extend from South Africa to South Asia and from South east Asia to Australia. Some of the mostly densely populated areas of the world as well as largest states in terms of population are in this part of the world.[32] But for a variety of reasons, this region is the poorest in the world, and forms a substantial part of 'South' in the 'North-South' conflict.

IMPORTANT TRANSIT ROUTES:

The significance of the Indian Ocean can be realized from the fact that it provides important trade routes and sea lanes of great strategic importance vital for trade and economy of the world, and the West in particular. From the very beginning, even prior to the decolonisation, and even today, intra and inter-regional trade and traffic remains much less than trade conducted by and with the outside powers.

On account of the land mass that surrounds the ocean on three sides, there are very few entry points. The sea lanes are well set and defined. These may become chock points during times of crisis and conflict. The well-known entry points are: in the east and south-east of the ocean - the Straits of Malacca (between Singapore and Indonesia), the Malay Archipelago, the Straits of Sunda (between Java and Sumatra), the Timore Sea, and the route along the Sea South of Australia; in the West and South-West-the Suez Canal, the Red Sea, and the route via the Cape of Good Hope. Some of the entry points, such as the Strait of Malacca, the Suez Canal, and route via the Cape of Good Hope

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are more important than others. Recently the importance of the Strait of Malacca has increased to a great extent. Dislocation of this route is likely to affect the economy of many countries especially for Japan which imports more than 99 per cent of its crude oil through this passage.[33]

Its significance can be further realised from the fact that around 30,000 ships (including 1500 oil tankers) travel through the sea routes of the Indian Ocean via the Suez Canal, Babal Mandeb Straits, Malacca Straits, Hormuz Straits, around the Cape of Good Hope and through the Mazambique-Madagascar channel.[34]

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In order to fulfil their objectives the outside major naval powers have often practiced the so-called "gunboat diplomacy' through blocking or intercepting the traffic at the entry points into the Indian Ocean, and thus creating difficulties, sometimes of a very serious kind. The differences and tensions are being further exacerbated by the establishment of a U.S. military base in Diego Garcia. This led to accelerate in naval military activities by the big maritime powers including the Soviet-Union, France, the United Kingdom and China.[35]

Apart from these, there are a few intra-regional conflict situations in Southeast Asia, South Asia, West Asia and Southern Africa. In each of the region neighbourhood differences and tensions persist and are being exacerbated by outside powers. If

the littoral powers are able to resolve their differences on their own initiatives - the role of outside powers is bound to reduce. But unfortunately, the differences and tensions are increasing day by day, and this has virtually transformed the area into a "Zone of Conflict" instead of a "Zone of Peace".[36]

SOUTH ASIA: LARGEST GEOPOLITICAL REALITY OF THE INDIAN OCEAN

First and foremost, this area of the region forms the largest geopolitical reality of the Indian Ocean community. Unlike South-West Asia and South-East Asia, which are highly fragmented, South Asia is almost a continental whole, and infact the largest geopolitical reality of the Indian Ocean community.

Secondly, the area of the region looms large on the horizon of the Indian Ocean and physically dominates the northern part of the Indian Ocean which serves as vital link between the West and the East, connecting Europe through the Middle East, with South-East and East Asia. Important straits like the Strait of Bab-el-Mandeb in the Red Sea and the Strait of Malacca join the Indian Ocean with the Mediterranean and the larger Pacific basin. Its island territories of the Andamans and Nicobars screen the Malacca Straits.[37] The only important trade routes which do not form part of this region are those which directly connect Southern Africa and Australia. Apart from sea lanes, South Asia also guards the land routes to the Indian littoral. The routes which emanate from Central Asia and Xinjiang and connect at the Khyber, the Bolan and the Khunjerab passes in Pakistan.[38]

GEOGRAPHICAL LOCATION

Geographically, South Asian region is easily identifiable, lying South of the Himalayan range and forming a littoral of the Indian Ocean. The region begins with Pakistan and extends east until it meets the area encompassed by Southeast Asia. The area of the region is inhibited by about 20 per cent of the world population with only 3.31 per cent of the land surface. Every fifth person in the world and every fourth in the Third World is a South Asian. Geographically, South Asian region comprises Littoral states of India, Pakistan, Bangladesh and Burma; Island states of Sri Lanka and Maldives; and Landlocked states of Nepal, Afghanistan and Bhutan.

DISTINGUISH FEATURES

South Asia is a cradle of ancient civilizations, the home of exquisitely varied cultures of many hues, and the crucible of dynamic philosophic and religious thought. All the countries of the region had started their evolution as nation states simultaneously, and became free only in post Second World War. They have common aspirations, common needs, and common interests. Despite certain similarities and common traits among South Asian countries, there is one distinguishing and special feature of this region. It is an "Indo-Centric" region because India is not only the dominant power in the region but also has a central position in it, geographically, culturally, politically, economically, and even militarily. Geographically, except India no other country shares a common border with each other. Four of them - Pakistan, Bangladesh, Nepal and Bhutan -

share land borders with India and two of them - Sri Lanka and Maldives - share maritime borders. Each and every South Asian nation has a close connection with India. Politically, India's size and population is many time larger than other South Asian countries. According to the World Development Report of the World Bank, India's population is three times bigger than the combined population of the other six regional states and nearly eight times bigger than that of Bangladesh, the second most populous state in the region. It occupies 73 per cent of the total GNP region and is four times bigger than Pakistan, the second largest state in South Asia.[39] In economic field, India is far ahead than others. Its GNP is 78 per cent of the total in the region and is four times bigger than the combined GNP of Bangladesh and Pakistan.[40] Moreover, India has one hundred per cent of resources of South Asia in respect of Uranium, iron ore, bauxite, copper, gold, lead, silver, zinc, asbestos, and diamonds and more than 80 per cent of coal, crude oil and salt.[41] Apart from these, by virtue of its military strength it occupies the central position in the region. South Asia, minus India, has two types of powers. On the one side, it is Pakistan which is considered to be a major power, and on the other side, are Bangladesh, Sri Lanka, Nepal, Bhutan and Maldives which are considered to be minor powers.[42] Despite these, this region is poorest in the world. According to the second UNDP's Human Development Report for 1991, India ranks no.123, Bangladesh no.136, Pakistan no.120, Sri Lanka no.75, Bhutan no.144 and Nepal no.145 in the index of human development.[43]

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28 See **K.P. Mishra,** n.25, p.5.

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31. Ibid.

32. Ibid., p.4.

33. See **K.P. Mishra,** n.25, p.8.

34. See **Akhtar Majeed,** n.27, p.3.

35. For details See **K.P. Mishra,** n.25, pp.9-10.

36. For discussion see **Jasjit Singh** (ed.), Indian Ocean: Conflict and Regional Cooperation (New Delhi, 1986), pp.iv-vii.

37. See **A.J. Akaram,** "South Asia and the Indian Ocean", Regional Studies, vol.III, no.2 (Spring 1985), pp.4-5.

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39. Covering an area of 3.28 million square km., India has a population of 841 million. Bangladesh, the second most populous country in South Asia, has an area of 144,020 Sq.km. and a population of 100.59 million. Bhutan covers

a an area of 46,600 Sq.km. and has a population of little over one million. Nepal covers an area of 147,400 Sq.km. and has an estimated population of 16.14 million. Pakistan has a total area of 804,000 Sq.km. and a population of about 94.43 million. Sri Lanka, lying South-West of India, has a total area of 65,610 sq.km. and has a population of 16.4 million. The Republic of Maldives, 400 miles South-West of Sri Lanka, consists of 2000 low-lying coral islands covering an area of 298 Sq.kms. and a population of 0.195 million. See SAARC Perspective, vol.1, no.3 (1987). Also see **R.P. Anand**, no.16, p.9.

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CHAPTER III

MARITIME BOUNDARIES IN SOUTH ASIA: AN APPROACH TOWARDS THEIR SOLUTION

Maritime boundary delimitation, although not a new phenomenon, has certainly an important element of practice of state in modern law of the sea and indeed is one of the principal concerns of international relations today. The problems of maritime delimitation have multiplied with the enormous extension of maritime rights of coastal states and the economic appropriation of the oceans to a distance of 200 miles or more from the coast. With such extensions, some times the maritime projection of two states meet and overlap. In this circumstances, a line of separation has to be drawn, which is exactly what maritime delimitation is all about.[1]

It is important to note that the need for delimitation arose ever since the territorial sovereignty of the coastal state was extended, beyond its territory and so-called internal waters, over an area of adjacent sea known, significantly, as territorial sea. But the maritime projection of three, six or even twelve miles collided less often - and the difficulty caused by such a collision was easier to resolve than maritime projections extending great distances from coasts. This has necessitated maritime delimitations today of a magnitude previously unknown.[2]

MARITIME DELMITATIONS TODAY OF A MAGNITUDE PREVIOUSLY UNKNOWN

The problems of maritime delimitation arose in stages of varying intensity. The delimitation of the territorial sea rarely gave rise to major difficulties, even when its breadth went beyond the modest three miles. But from the very beginning the problem of continental shelf delimitation was difficult, and the matter quickly reached at crisis level. While the problems of delimitation of continental shelf have to be resolved, further complications in respect of the Exclusive Economic Zone (EEZ) have arisen.[3]

During the last fifteen years numerous agreements have been adopted. It is estimated that over one hundred boundary-delimitation issues around the world await some form of resolution. The reason for such an increase in boundary-delimitation issues is to be found in the provisions of the 1982 UN Convention on the Law of the sea relating to the extension of zones under national jurisdiction.

The coastal states enjoy a variety of sovereign rights and jurisdiction over these areas which translate into important economic and political interests.

The 1982 United Nations Convention on the law of the sea contained various applicable provisions concerning the delimitation of territorial sea, continental shelf and exclusive economic zone (EEZ). Article 15 deals with the delimitation of the territorial sea between states with opposite or adjacent coasts. The median-line is the method to be used, unless an

agreement stipulates otherwise. But such procedure does not apply in cases of historic title or other special circumstances. This provision closely corresponds to Article 12 of the Geneva convention of 1958 on the Territorial Sea and the Contiguous Zone (TS & CZ).

In case of the delimitation of the exclusive economic zone (EEZ) or the continental shelf between adjacent and opposite states, the provisions of Articles 74 and 83, respectively, state that the delimitation shall be based on "equitable" principle. Failure to reach an equitable agreement triggers Section 2 of the Articles which incorporate the dispute procedures of the 1982 Convention contained in Part XV.

These provisions depart from Article 6 of the Geneva Convention of 1958 on the continental shelf whereby the "principle of equidistance" applied in the absence of an agreement, unless another boundary line is justified by special circumstances.

The wording of Article 74 is identical to that of Article 83 of the Convention, with the exception that the words "continental shelf" are substituted in Article 83 of the Convention by "EEZ".

Besides these, Article 121 of the UN Convention is also important for the purpose of delimitation. It deals with the "regime of islands" and provides as follows:

"1. An island is a naturally formed areas of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone (EEZ) and the continental shelf of an island are determined in accordance with the provisions of this convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

Finally, there is one additional, very important aspect of the field of delimitation. It is the role played by the judicial decisions rendered either by the International Court of Justice or by an Arbitral Tribunal. Although defined as a subsidiary means by Article 38 of the statute of the International Court of Justice (ICJ), these decisions have contributed and still contribute to clarification of the elements which can be applicable in search of an equitable solution.

Since 1982, the Court has rendered a few judgements in relation to the maritime boundary delimitation. These judgements will provide an important clue and precedents for the purpose of resolving the existing and future maritime disputes. Some of the important judgement are as follows:

(i) **24 February 1982: Tunisia/Libyan Arab Jamahiriya** (Case concerning the continental shelf);[4]

(ii) **10 December 1985: Tunisia/Libya Arab Jamahiriya** (Judgement on the Application for Revision and Interpretation of 24 February 1982 in the case concerning the continental shelf);[5]

(iii) **21 March 1984: Libya/Malta** (Judgement of the ICJ in respect of Italy's application for permission to intervene in the case concerning the continental shelf);[6]

(iv) **3 June 1985: Libya/Malta** (Judgement of the ICJ on the continental shelf);[7]

(v) **12 October 1984: Canada/United States of America** (Judgement of the ICJ on the delimitation of the maritime boundary in the Gulf of Maine Area);[8]

(vi) **14 February 1985: Guinea/Guinea-Bissau** (Award of the ILR on the maritime delimitation).[9]

The issue of maritime boundary has a long history, which can be viewed in three phases. The first phase, which lasted from the eighteenth century to the start of the Second World War, witnessed the general acceptance of the territorial seas extending sovereignty of states of their coasts. During this period some basic principles of delimitation applicable in this area were developed.

The second phase, which commenced with the first agreement delimiting maritime areas beyond the territorial sea (the Treaty of the Gulf of Paria, 1942) and the Truman Proclamation on the continental shelf (28th Sept. 1945), saw the issue of maritime boundary delimitation expand to cover the continental shelf. It was highlighted by conventional acceptance of the

concept in the 1958 Geneva Convention and its full judicial recognition in the decisions of the International Court of Justice in the **North Sea Continental Shelf cases** in 1969.[10]

From then on, the issue acquired a new dimension as the concept of Exclusive Economic Zone and a new definition of the continental shelf were first introduced in negotiating texts prepared by the Conference on the law of the sea and subsequently embodied in the provisions of the United Nations Convention on the law of the Sea.

This chapter examines the maritime boundaries in South Asian region and describes the claims and counter-claims made in those areas. The unresolved claims and counter-claims are analyzed in the light of the 1958 Geneva conventions, the 1982 UN Convention, relevant customary international law, and court decisions.

BANGLADESH AND INDIA:

After the disintegration of the Eastern and the Western wings of Pakistan, Bangladesh emerged as an independent sovereign state on December 16, 1971 with the crucial and critical help of India. The country has a close and informal relations with India. Just after the independence of Bangladesh, the then Prime Minister of India Mrs. Indira Gandhi and Bangladesh's President, Sheikh Mujibur Rahman had signed a 25-year "Treaty of Friendship, Peace and Cooperation" in 1972,[11] and endorsed to resolve their problems, including maritime

boundary, in a friendly and cordial atmosphere. But after the assassination of Sheikh Mujibur Rahman in 1974, the relationship between the two became tense and full of suspision and mistrust. Inspite of the adverse situation, continuous efforts were made throughout the period by the both sides to evolve a consensus on the issues and to solve its bilateral problems. In such efforts many of its bilateral problems have been solved, and agreements have been signed.[12] But still there are some important and crucial problems which are left unresolved including the delimitation of maritime boundary.

Bangladesh is surrounded by India on the north, west and east and shares a considerable length of border with Burma in the east. In the south lies the deeply indented coastline of the Bay of Bengal which is unstable, broken, and irregular.[13] The presence of rivers deltas and islands in the Bay have put Bangladesh in a peculiar situation when it comes to deciding the boundaries of different sea zones.[14]

Bangladesh is a land of mighty rivers like Ganges (called Padma in Bangladesh), Brahmputra and Megha. They flow from the Himalayas, the highest mountains in the world, through Nepal and India, and carry down to the bay a colossal discharge of silt.[15] Apart from this, heavy monsoon rainfall, cyclonic storms, and tidal surges, together with the silt, have contributed to a continuous process of erosion and shoaling on land in the mouth of the mighty rivers.

The country has nearly 90 million population squeezed into

about 55,598 square miles.[16] It is one of the most densely populated countries of the world, and classified as one of the least developed countries under the UN General Assembly Resolution.[17] According to the second UNDP's Human Development Report for 1991 Bangladesh ranks no.136 and India no.123 among 160 countries in the index of human development.[18]

It is important to note here that after emergence as an independent state, Bangladesh took active part in the proceeding of UNCLOS III, and in 1974 it had enacted its own Territorial Waters and Maritime Zones Act. In April 1976, it declared a 12 nautical miles of territorial sea, 200 miles of EEZ, and a continental shelf extending to the outer limits of continental margin.[19]

India also redefined in its Maritimes Zone Act, and declared in 1976, a 12 miles of territorial sea, 200 nautical miles of EEZ, and a continental shelf extending to the outer edge of the continental margin or to a distance of 200 nautical miles where the outer edge of the continental margin does not extend up to that distance.[20]

Bangladesh has a long standing dispute on overlapping maritime boundaries with India as well as Burma. The topography of the Bay of Bengal adjoining Bangladesh and its neighbours is very peculiar. The sediments running out of many rivers of the lower riparian state of Bangladesh flow into the Bay of Bengal and contribute to the shallowness of the bay and the growth of the delta. At some places as far out as 50 miles from the coast

the depth is only ten fathoms (60 feet). The entire territory of Bangladesh is a monsoon area. A close look at the area clearly indicates the following characteristics of the coastline.

1. The estuary of Bangladesh is such that no stable water line or demarcation of landward and seaward area exists.
2. The continuous process of alluvion and sedimentation forms mudbanks, and the area is so shallow that only small boats can navigate it.
3. The navigable channels through the aforesaid banks are continuously changing course, and it is difficult to establish a clear cut demarcation.

Because of its peculiar geographical, geological and geomorphological considerations, neither the "normal baseline" (trace parallel) nor the "straight baselines" as given in Articles 3 and 4 of the 1958 Territorial Sea Convention suit the requirement of Bangladesh. To cope up with these problems, it is, therefore, suggested to amend Article 4 of the territorial sea so as to meet the local requirements through permitting the delineation of baseline by "depth method" i.e., geographic coordinates at specific depth of the coastal waters linked by straight lines to effectively demarcate landward and seaward areas,[21] on following grounds:

1. The coastline is heavily indented by the numerous rivers in the region;
2. The baselines enclose the world's largest delta, the Ganges delta;

3. The waters adjacent to the coasts are marked by continual fluvial erosion and sedimentation creating an unstable baseline; and

4. The application of depth-method suits its peculiar geographical, geological and geomorphological situations.

Taking into account the peculiarity of the situation, Bangladesh has drawn baselines on the basis of depth method. Measuring 221 nautical miles, the baseline joints eight fixed points at 10 fathoms depth which at some places makes the depth as much as 50 miles from the shore.[22] This has been contested by both India and Burma.[23] These countries point out that if the baselines accepted as boundaries, Bangladesh's ocean territory would be increased to a great extent. They also content that Bangladesh has sought to convert 6,200 square nautical miles of potential Exclusive Economic Zone, and continental shelf into territorial sea and internal water through its floating baseline.[24]

However, to meet the peculiarity of the situation Article 7(2) of the 1982 convention has given some hope, which provided:

> "Whereas because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by coastal state in accordance with the convention."

But this article did not meet the peculiarity of Bangladesh's situation. Apart from this, there are serious problems with the ten-fathom baseline with India as well as Burma. India rejected it. It is likely that the ten fathom baseline is merely a bargaining position for both the countries.

Applying the ICJ's three part test to the baselines produces uncertain results. At no point Bangladesh baseline has been drawn from a low water mark attached to land. The ICJ permitted Norway to draw straight baselines from low-water mark. The legality of the "floating baseline" is uncertain, and has not been decided. The leap from the low-water mark to ten fathom is, therefore, contestable.

Secondly, the baseline must not appreciably deviate from the coastline. The Bangladesh's line runs straight across the sandwip channel region, while the coast recedes a substantial distance away from the line.

Thirdly, the enclosed water must be substantially linked to the land to qualify for the regime of internal waters.

Bangladesh position is further weakened by the fact that recently it has been to lobby for drawing a baseline from the furthest extent of the submerged sedimentary delta,[25] an even farther encroachment into traditional high seas domain.

The dispute between Bangladesh and India arose in 1974 when the Bangladesh Government signed "production-sharing" contracts for conducting seismic surveys and exploratory

drilling with six companies. The block that was awarded to Ashland was disputed by India on the ground that the area would fall within the Indian EEZ under the equidistance principle. India has also lodged a formal-protest to Bangladesh against granting rights in that area.[26]

The dispute between the two was further complicated by the emergence of an island in 1970 at the mouth of the Haribhanga River on the border between the two countries. This island is known as New Moore island or Purbasha in India and South Talpatty island in Bangladesh. It is U-shaped formation roughly five miles from the coast of Bangladesh and approximately two miles from the coast of India.[27]

After discovery and occupation of the said island, India claimed the Island since 1971 and notified the U.S. Naval Oceanography Office and British Admiralty. Indian claim is based on the ground that the flow of Haribhanga river (which forms the boundaries between the two countries) is to the east of island which, therefore, lies on the natural prolongation of the Indian Territory. Bangladesh also claims the island on the ground that the river flow to the west of the Island and, therefore, lies within the natural prolongation of the Bangladesh Territory.[28] The possession of this land is, therefore, crucial in the establishment of the maritime boundary.

Bangladesh claimed the island in 1979, almost after eight years of Indian claim. When Indian Prime Minister visited

Bangladesh in April 1979, the President of Bangladesh took up the matter with him. Bangladesh also proposed for a joint survey about the actual location and rightful ownership of the island. Apart from this, it has sent several patrol boats into the area which sometime clashes with Indian ships. Till now its outward manifestations of sovereignty is limited only to the extent to the diplomatic communication and clashing with Indian ships near the island.

The .law of acquisition of inhabited island was discussed in the **Clipperton Island Arbitration.**[29] There are two principles on it, which are relevant to new Moore Island - the principle of discovery and effective occupation.

To establish sovereignty over an unhabited island more than mere discovery of the island is required, and some form of an outward manifestation of sovereignty. is needed.[30] The other criteria to the acquisition of island is not clear. The effective occupation requirement was waived by the arbitrator in the Clipperton situation, who stated that although inhabited territories required stringent occupation standards, such as the imposition of the claiming nation's laws on the resident population, uninhabited islands are exempt from the effective occupation requirements. International legal scholars have attacked the exemption of effective occupation for uninhabited islands and said that, at the very least, the claiming nation has the duty to maintain occasional surveillance over its claimed island.[31]

Both the countries have contradictory claims over the island. India asserts that the international law boundary of Haribhanga should be extended following the median line principle, placing New Moore in the Indian Territorial waters. On the other hand, Bangladesh rejects the median line principle.

The island is a crucial issue for both the countries for fixing its baselines. New Moore island and Bangladesh's baselines demonstrate the need for creativity and flexibility in determination of its maritime boundaries, and in this peculiar situation equitable principle would be more favourable and justifiable for both the countries, which would also reduce the impact of the new island in the delimitation of its maritime boundaries.

INDIA AND PAKISTAN

India and Pakistan are adjacent states, sharing a common border. There is a boundary dispute between the two countries in the Rann of Kutch. The Rann of Kutch possesses unique geographical features which have justified its characterization as a territory without counterpart on the globe.[32] The very nature of it became, in fact, a controversial issue. India maintained that it is land, while Pakistan argued that it is a marine feature.[33] During a part of each year the Rann is dry salt desert, and for the remainder of each year it is flooded with water. The origin has not been established. The depth of water varies between a few feet to a few yards.[34] India claimed that all of it was Indian Territory, while Pakistan claimed the northern half of the Great Rann.

The Rann of Kutch is connected to the Little Rann, which in turn is connected with Gulf of Kutch. The Gulf of Kutch is roughly 72 miles inside the Indian Territory, below Sri Creek. The effect of the Rann of Kutch on the international maritime boundary is uncertain. The Rann drains into Khori creek, not Sri Creek. The Khori Creek is roughly 12 miles down the coast from Sri Creek, inside Indian Territory.

India's national legislation on Maritime Zones contains almost the same language as Article 15 of the 1982 UN Convention on the law of the sea.[35] But there is one deviation. India does not use the word "median" in its articles.

Pakistan Maritime Zones Act,[36] on the other hand, contains much of the same language. The boundary shall be a line every point of which is "equidistance" from the baseline. There is one provision of Pakistan's Act which states that the continental shelf, the EEZ, the boundary contained therein shall be effected by an agreement in accordance with "equitable principle" and taking into account of all the "relevant circumstances".

The dispute between India and Pakistan became acute shortly after the emergence of India and Pakistan as independent states in 1947.[37] First, it formed the subject of an exchange of diplomatic correspondence between the two countries and thereafter, and eventually resulted in the outbreak of hostilities in 1965.

After mediation by Prime Minister Harold Wilson, both parties consented to effect a peaceful settlement by an arbitration. Accordingly, a Tribunal was constituted in Geneva in February 1966. The Tribunal, after a long hearing from both the parties, decided the case exclusively on facts. The Tribunal rendered its Award on February 19, 1968.

It is important to note that an agreement was reached between the parties before the conclusion of the oral hearings as to the manner in which boundary determined by the Tribunal should be demarcated on the ground by the parties jointly. Since the decision of the Tribunal has gone in favour of India, where more than 90 per cent of the disputed area was given to India,[38] and upheld Pakistan's sovereignty over the balance. Frustrated and angry, Pakistan has not so far demarcated its maritime boundary with India.[39]

Applying the 1982 convention on the Law of the sea to the present case Pakistan may argue to give the status of special circumstances of the Rann of Kutch due to its geomorphological situation. However, both India and Pakistan have accepted the method of "equidistance" to delineate their maritime boundary eventhough actual mechanics of the agreement have not been worked out.

INDIA AND SRILANKA

In comparison with Sri Lanka, which has a coastline of 650 nautical miles, India bears a long coastline of 57,000 kms. In fact, India's continental shelf and margin run into vast

expenses of the sea surrounding its mainland and islands. It has about 131,000 square nautical miles area within 200 metre isobath. The maritime area within 200 nautical miles of the Indian coastline amount to 587,600 square nautical miles.[40]

Sri Lanka has an area of 150,000 square nautical miles of EEZ, its continental shelf is narrow and the continental slope and the 2,500 metre isobath line are very close to its coasts. It has an area of about 7,800 square nautical miles within 200 metre isobath.[41] Due to its wide continental rise that extends hundreds of miles from the coast, Sri Lanka would be unable to take benefit as a result of the detailed rules by which the outer limits of the continental margin has been defined in Paragraph 4 of Article 76 of 1982 Convention. It therefore, suggested at the 8th Session of UNCLOS III that it should be allowed an exceptional method of delimitation on the ground of equity, and taking into account the special characteristics of its continental margin.[42] Sri Lankan suggestion has been taken into consideration by the conference and allowed Sri Lanka to establish the outer edge of its continental margin by straight lines, not exceeding 60 miles in length connecting fixed points, defined by latitude and longitude, at each of which the thickness of the sedimentary rock was not more than one kilometre.[43] But it is difficult to predict about the future outcome of this method of delimitation. At the same time, uncertainty is prevailing about the full impact of the 1982 Convention on the maritime boundary of Sri Lanka and India.

It is important to mention here that after prolong negotiations India and Sri Lanka concluded and completed the process of boundary delimitation in 1977 through three separate agreements. The first agreement, the most difficult on the three, concerned "historic waters of Palk Strait" was signed in 1974. It involved the conflicting claims to the Kacchativu Island, an half-coral and half-sand. The island is about 3.75 square miles in the area. It is located in the Palk Strait about 12 miles from the nearest Indian coast and 10.5 miles from the Sri Lanka.[44] The dispute over ownership of the Kacchativu island was one of the unsettled legacy inherited by India and Sri Lanka. Both the countries were claiming the island on historical grounds, but none of them was able to give any concrete evidence of state activities to the exclusion of other. The island used for centuries by the fishermen of both the countries. Most part of the island was uninhabited except for a chapel which was occasionally used by the faithful, living both in India and Sri Lanka, especially at an annual fair at the shrine of St. Anthony.[45] Thus, the Kacchativu island became the major obstacle to a boundary agreement and created a climate of suspision and mistrust affecting the entire range of relations between the two countries.

The question of disputed island was resolved by an agreement in a package deal which was signed on June 26-28, 1974. The agreement came into force on July 8, 1974. According to the package deal, while Sri Lankan sovereignty over the island was established, as a concession to India the position of

the median line was not affected. The median line was drawn in the area of the island which is about 11 miles from the nearest point in India and one mile from the island. Indian pilgrims and fishermen were also permitted to visit the island without travel documents or visas as before.[46] Besides this, the traditional fishing rights of both the countries were preserved.[47] Both the countries agreed to exploit jointly the rich mineral resources and petroleum products which are situated on one side of the boundary. A separate agreement was required to be concluded for this purpose.[48]

The second agreement was signed on March 23, 1976, establishing maritime boundaries in the Gulf of Manaar and the Bay of Bengal. The agreement entered into force on May 10, 1976.[49] It is important to note here that the Palk Bay and Gulf of Manaar were claimed by both the countries as historic waters. Following the agreement both the countries have passed necessary provisions so as to give effect to their respective maritime zones. The Palk Bay an inlet of the Bay of Bengal, is bordered by the Indian Peninsula on the west, the island chain of Adams Bridge on the South, and the island of Ceylon on the east. The principal access to the Bay of Bengal is through Palk Strait, north of Sri Lanka. The Palk Bay measures approximately 74 nautical miles along its north-south axis and 76 nautical miles on the east-west axis, but it is otherwise wholly surrounded by land. The boundary of the Gulf of Manaar consists of 13 turning or terminal points. The question of historic Palk was resolved by High Court of Madras (India) in 1903-04 in the **Annakumaru**

Pillai V. Muthupayal. The court decided that Palk Bay was "land locked by His Majesty's dominions for eight-ninths of its circumference... (and) effectively occupied for centuries by inhabitants of the adjacent districts of India and Ceylon respectively.[50] The court further added that Palk Bay was under the jurisdiction of British Majesty and was an historic Bay.[51] The Court had recognized the acquiescence of foreign nation toward the historic status of the Palk Bay. Apart from this the Court also declared that the Gulf of Manaar was also an "historic bay" and integral part of the British dominions.[52]

The 1976 agreement between India and Sri Lanka acknowledged the historic waters of India in the Palk Strait, and the Palk Bay area of the sea was recognized as internal waters of India. But it allowed Sri Lanka to fish at Wadge Bank for a period of three years from the date of establishment by India of its Exclusive Economic Zone.[53] This was done by India as well as Sri Lanka. It was also agreed that after the expiry of three years India would provide annually to Sri Lanka, at their request, 2000 tonnes of fish of a quality and species and at a price to be mutually agreed upon by the two Governments.[54] The supply would be for a period of five years.[55]

Just after a gap of a few months an agreement was concluded between India, Sri Lanka and Maldives fixing Trijunction point (T Point) between the three countries.[56] The Trijunction point is located at a distance of about 200 nautical miles from Indian, Sri Lankan, Maldives coasts, perhaps an unique coincidence. Thereafter, the Third agreement between

India and Sri Lanka extended the terminal point of the boundary in the Gulf of Manaar to the Trijunction point between India, Sri Lanka and the Maldives.[57]

It is important to note here that barring the minor adjustment in the Palk's Bay due to the settlement of the question of Kachchativu, the boundary line in all respects has been drawn on the basis of the median line.

INDIA AND BURMA

India and Burma have opposite coasts, although in some respects the coasts appear to be adjacent. Both the countries had a long standing maritime dispute in the Gulf of Martaban and the Bay of Bengal. Since a long time Burma has been engaged in an on-again off-again mini war with various insurgent tribal minorities, warloads and communists groups. This had led the country to keep aloof from all regional organizational activities, including the Association of Southeast Asian Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC). At the same time it has broken its ties from the British Commonwealth and Non-Aligned Movement (NAM). All these have led it to keep íts isolated from the rest of the world. Despite these drawbacks the country has tried to take maximum benefit of the recent developments in the law of the sea. In November 1968, Burma proclaimed the use of straight baselines "where it is necessary by reason of the geographical conditions prevailing on the Union of Burma coasts, and for the purpose of safeguarding the vital interests of the inhabitants of the

coastal region....."[58] In 1977, the use of straight baselines was slightly amended to suit its geographical requirements.[59]

The first major baseline issue between the two countries related to claim by Burma to close Martaban by a 222 mile long baseline. The traditional maximum distance for closing a line across a bay was supposed to be 24 miles.[60] This 24 mile limit can be extended by a claim to historic waters.

The Gulf of Martaban is very shallow. It is not deeper than 20 fathoms between Thante point at the mouth of the Rangoon river, west from the Darebank River on the Moulmein side. Apart from this, there are several rivers which are contributing sediment near the shore of the area. The mouth of the Rangoon river is very unstable and extends to a distance about five miles. For nearly 35 miles, the entire region is between two and five fathoms deep. The presence of delta, the shallowness of the region, and instability of coastline are distinguishing and special features that favour Burma to draw a straight baseline a across the mouth of the Gulf.

It is important to mention here that there are some possible arguments in favour of Burma to draw such a baseline. These are based on the following grounds:

1. The Gulf of Martaban is a natural prolongation of the Irrawady River Delta.
2. The Delta is one of the geographical criteria that favours to draw straight baselines under Article 7(2) of the 1982 Convention on the Law of the sea.

3. The shallowness of the region and instability of the coastline are distinguishing features to draw such baselines.

But these arguments do not meet the requirements of Article 7 of the 1982 Convention. A closing line at the mouth of the Gulf is extremely long and it departs an appreciable distance from the general direction of the coast, a characteristic that is forbidden by Article 7(3) of the Convention. In drawing such baseline, it must not only deviate from the general direction of the coastline, but the sea area enclosed by the line must also be sufficiently closely linked to the land. Burma drew a line straight across the mouth of the Gulf and has not given any justification for it.

The second major maritime issue between the two countries is related to Narcondam Island in the Andaman sea. The island, a craterless volcano, has an area of 7 square kilometres which stands 710 metre above the sea level and is bounded by cliffs 100 metres in height.[61] This island is owned and occupied by India. Burma also claimed the Narcondam Island, and tried to occupy it but India defied all Burmese claims and was determined to defend sovereignty over the island.[62]

It is important to mention here that Burma drew a line in the Andaman Sea encompassing the island. The distance between Burmese baseline and the coast of Burma is sometime 78 miles. This baseline departs appreciably from the general direction of the coastline which is forbidden under Article 7(3) of the 1982

Convention. At some places, the baseline bulges out in a concave form.

After prolonged negotiations, India and Burma have delimited their maritime boundaries. An agreement was concluded between the two countries on December 23, 1986 which delimited maritime boundary in the Bay of Bengal and the Andaman sea.[63] The boundary begins in the Bay of Bengal and runs through the Coco channel. The channel that separates the Andaman Islands of India from Burma's Preparis Islands.[64] The line continues into the Andaman sea, circumvents Nargondam Island, and runs through the middle of the Andaman Sea. The boundary ends at a point where both the countries have expressly agreed to establish a Trijunction point (T point) with Thailand.[65] The agreement has confirmed India's retention of Narcondam island.[66] Prior to this, an agreement was signed on 25th July, 1980 between Burma and Thailand delimiting the maritime boundaries in the Andaman Sea. This came into force on April 12, 1980.[67]

THE REPUBLIC OF MALDIVES

The Republic of Maldives, 400 miles of South-West of Sri Lanka, consists of about 1009 tiny islands mostly 0.6 to 0.8 km long, covering an area of 298 square kms[68] and a population of 0.195 million.[69] Almost all the islands are grouped together in a region of open sea. The longest distance separating two islands, Suvadia to Hadduinati, is roughly 50 miles. All the islands are not inhabited. Only about 204 islands or 20 per cent of the islands are inhabited. Because of its islands make

up the country would be able to fulfil land/water ratio requirement given in article 47 of the 1982 convention for archipelagic status, but it has not done so.[70]

It is important to mention here that the Maldives has employed floating baselines. In drawing the baseline, a very narrow rectangle is created around the Maldives group. The baselines appears to be clean and simple, showing a logical straight forward approach to a complex islands group. The rectangle was slightly amended in 1972 and is declared to be within 72°30'30" east and 73°48' east and Parallels 7°9'30" north and 0°45'15" south. The floating baselines do not touch at any point the said territory of Maldives though northern and some part of the eastern boundaries lie within one nautical mile of some atolls. But on the west and the east, they pass 52 and 38 nautical miles, respectively, from the nearest land.[72]

In February 1969 the Maldives created an Exclusive Economic Zone (EEZ) parallel to the rectangle at a distance of approximately 100 miles. A bill was passed in December 1970 to establish Territorial Water limits and Fishing Territory. This was done to revise slightly the outer limits of fishing zone.[73] In 1976, it declared EEZ. All these declarations are legally questionable because the rectangle baselines used by the Maldives have been challenged on both legal and historical grounds.

It is important to note here that the Maldives along with India and Sri Lanka concluded a boundary agreement in July 1976 concerning the determination of Trijunction point (T Point)

between the three countries in the Gulf of Manaar. The "T Point" is situated approximately 200 nautical miles from each coast. The boundary runs in a northwesterly direction for approximately 223 nautical miles. This segment of boundary is generally equidistance from the Southwest coast of India (Cape Camorin to Quilon and from northeast Maldives atolls (Male Atoll to Tiladummati Atoll).[74] Through this agreement they recognized each other's claims.

Again, in the same year India and the Maldives signed another boundary agreement in the month of December 1976 determining the maritime boundary in the Arabian Sea. The boundary consists of 20 terminal or turning points connecting arcs of great circles. The total length of boundary is 426.25 nautical miles.[75] Through this agreement India has recognized Maldives' EEZ.

ASSESSMENT OF MARITIME BOUNDARIES IN SOUTH ASIA

It is important to note here that India has seven neighbouring States for maritime boundary purposes, namely, Bangladesh, Burma, Maldives, Pakistan, Sri Lanka, Indonesia and Thailand. With five of these coasts are opposite, namely, Burma, Indonesia, Thailand, Maldives and Sri Lanka, although in some respects the coasts appear to be adjacent. The other two States are located on the same coast adjacent to India, namely, Pakistan and Bangladesh. India has concluded its maritime boundary agreements with all its opposite states but has not been able to delimit its boundaries with adjacent States,

viz. Bangladesh and Pakistan. The boundary negotiation with Bangladesh started in October 1974 and have not yet been concluded. With Pakistan the boundary negotiations have not yet started.

India has concluded nine agreements between 1974 and 1979 with four of its neighbours, namely, Sri Lanka, Maldives, Indonesia and Thailand. In 1986 it has delimited its maritime boundary with Burma. These agreements were concluded in stages. The first agreement related to the boundary in historic waters of the Palk's Bay and was concluded between India and Sri Lanka in 1974. In 1976, the boundary line was extended both into the Gulf of Manaar and into the Bay of Bengal. Later during the same year, an agreement between India, Sri Lanka and Maldives was concluded. The agreement fixed the Trijunction point (T Point) between the three countries. Thereafter, a third agreement between India and Sri Lanka extended the terminal point of the boundary in the Gulf of Manaar to the Trijunction point between India, Sri Lanka and the Maldives.

With Indonesia the first agreement concluded in 1974, settled the boundary between Great Nicobar (India) and Sumatra (Indonesia). The distance between the two is about ninety nautical miles. The boundary line settled by this agreement extended to about 48 nautical miles. By another agreement in 1977, this boundary line was extended both into the Indian Ocean and into the Andaman Sea.

With Thailand, the negotiation started in 1977. Later in June 1978, an agreement between the two countries was signed.

These two countries concluded boundary agreement in the Andaman Sea. The agreement entered into force in December 1978.

Again, another trijunction point between India, Indonesia and Thailand was settled in Jakarta in February 1978. The agreement was signed in June 1978 and came into force in March 1979.

By early 1979, India's boundaries with Sri Lanka, the Maldives, Indonesia and Thailand were in large measure concluded, and all these agreements have entered into force.

In December 1986, an agreement between India and Burma was concluded which delimited maritime boundary in the Bay of Bengal and the Andaman Sea. The boundary begins in the Bay of Bengal and runs through the Coco channel. The agreement entered into force in 1987.

It is important to mention here that in all these boundary agreements no reference was made to the applicable principles for drawing the boundary lines. The boundaries were generally described with reference to points of latitudes and longitudes indicated in the agreements. There are only two exception to this general trend. These are:

(i) in the case of Palk's Bay where some adjustment in the boundary was made between India and Sri Lanka because of the Kacchativu island; and

(ii) the Andaman Sea between India and Thailand where minor adjustment were considered essential.

Except these two cases, the boundaries were drawn on the basis of median lines between the opposite coasts or, where the boundary extended laterally into the seas the equidistance line was drawn from the adjoining coasts of two countries.

CONCLUSION:

As we have mentioned earlier that India had concluded and completed its maritime boundaries with all of its opposite states in between 1974 and 1986, but it has not been able to delimit its maritime boundaries with adjacent states namely,, Bangladesh and Pakistan.

In concluding its maritime boundaries agreements with adjacent states no reference was made to the applicable principle for drawing the boundary lines. Except in the cases of Palk's Bay and Andaman Sea where some minor adjustments were made, the boundary lines were generally described with reference to points of latitudes and longitudes indicated in the agreement.

In 1974, the boundary negotiation with Bangladesh started but have not been completed. In delimiting the maritime boundary with Bangladesh, the New Moore Island is a crucial and critical factor for both the countries. In this situation "equitable principle" would be much more favourable and justifiable for both the countries.

The dispute between India and Pakistan is on Rann of Kutch. Although both the countries have accepted the method of "equidistance" to delineate the maritime boundary the actual mechanics have not worked out.

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CHAPTER IV

PROBLEMS OF GEOGRAPHICALLY DISADVANTAGED STATES IN SOUTH ASIA: THEIR RIGHTS OF ACCESS AND USES OF THE SEA

The geographically disadvantaged States[1] by definition those states which are from the standpoint of geography, unfavourably situated or circumstanced.[2] In the context of the Law of the Sea, they are the land-locked States, as also coastal states which are either shelf-locked or are endowed with narrow or short coastlines.

The land-locked states are those states which have no sea-coast.[3] Although some of the land-locked states have access to the sea via internationalised navigable rivers and apparently exhibit some of the characteristics of coastal sates, they are considered to be land-locked because they do not exercise sovereign control over their high ways to the sea.[4] Some states have sea-shore but are shelf-locked (They rather prefer to use neighbour's harbour instead of using their own sea outlet).

The term transit states are those states which are situated between a land-locked state and the sea, through whose territory traffic in transit passes.[5] The trade history of India, Nepal and Bhutan shows that land-locked Nepal occupied a significant place as trading centre and was a transit state.

The term "traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit states, when the passage across such territory with o r without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or testimates within the territory of the land-locked states.[6]

It is important to note here that there are thirty or nearly one-fifth of the countries in the world which do not have sea coast.[7] In addition to this, there are many more countries which consider themselves geographically disadvantaged.[8] They joined forces to form an interest group - the group of land-locked and geographically disadvantaged states - and played an important role in the third Law of the Sea conference to protect their rights in the wake of extended coastal states jurisdiction.

Characteristics of the Geographically Disadvantaged States

Geographically, most of the land-locked states are located in the interiors of continents. Some of them are considerably more interior than others. The effect of the interior location of most land-locked states are to increase costs of all exports and imports and time needed to transport such goods. This also increases risks of loss, damage or pilferage enroute, and maintenance costs of transportation equipment. These effects are felt all the more by the land-locked states because of time needed to cross an international boundary with goods in transit.

Politically, most of the Afro-Asian land-locked states started their evolution as nation states simultaneously and became free in the post-Second World War. They are part of Third World and they consider themselves as such.

Functionally, the land-locked states can be categorised as buffer states. All of the land-locked states of South America and Asia and larger ones of Europe may be categorised as buffer

states. In addition to this, the various land-locked states have distinctive national personalities and historical importance.

Militarily, all the land-locked states are weak and most of them are either dependent on their neighbouring countries or militarily advanced countries. In general, their dealing with neighbouring countries, rely on persuasion rather than threats.

Economically, except for a few land-locked countries from Europe, the rest are least developed among the developing countries with slow growth rates, and are typically dependent on a very limited number of commodities for their exports. South Asian land-locked countries are typical example of this kind. They are facing numerous handicaps and are dependent for their foreign trade upon transportation facilities owned and controlled by other countries with whom they must remain on good terms. They are very much aware of the precarious nature of this dependence.

Problems of Geographically Disadvantaged States

In this modern scientific world, international trade is a key factor for economic development of any nation. The economic development of a nation depends primarily upon its imports of necessary goods and export of surplus products. This two-way traffic naturally requires facilities for getting imports and sending exports. Remoteness of the geographically disadvantaged states from the sea if they are not provided with free and

unrestricted access to and from the sea, may lead to strangulation of their economy. It has been universally accepted that the geographically disadvantaged states are facing special problems in their trade promotion and economic development. The absence of adequate and convenient port and transport facilities entail rise in price of good to be exported and imported. It causes extra cost on the exported and imported goods and ultimately the problem of high price of commodities. Under this condition, in this competitive world, they are unable to compete in the international market.

These countries find themselves more dependent on another country's transport policy, transport enterprises and transport facilities. This raises in principle the possibility of a measure of monopolistic exploitation, irrespective of whether practiced deliberately in the pricing of transport facilities and their use to or in the limitation of access to routes.

Thus, the geographical position of these countries seems to be a factor seriously inhibiting the expansion of their trade and economic development and hampering their efforts to take advantage of the international measures envisaged to promote the trade and development of all developing countries.

NECESSITY OF THE RIGHT

The right to traverse the sea and exploit its resources is becoming economically significant for all nations as world population is increasing and land base resources continue to diminish. Access to the sea and its resources is equally

important for the land-locked and geographically disadvantaged states. Their problems are related to access to the sea, enjoying the freedom of the high sea and participating in the exploration and exploitation of ocean wealth. The paramount factor in the participation in international trade is the accessibility to international markets with cheap and effective transport facilities. A developing land-locked state faces special problems in its trade promotion and economic development. To cope with these problems, it is essential that their rights should be recognized perpetually by the coastal states as well as by the world community at large.

BASES OF THE RIGHTS:

It is important to note here that there are four important bases for recognition of transit right of the land-locked states which have been put forward by various authors. These are as follows:

(a) Natural Law Basis

According to natural law writers, the right of transit is conferred by on every land-locked states by its sovereignty, a necessary corollary to the acceptance of the freedom of the high seas.[9] In other words, when the oceans are declared as common heritage of mankind, it is reasonable and essential that these geographically disadvantaged states should be given the right of access to and from the sea as well as its uses on the basis of natural law.

(b) Servitude

From the time of the Roman Law, the owner of a piece of land has the right to use it in any way he chose, so long as that right does not infringe the right of his neighbours. If `A's land is located in such a way that it is necessary to cross `B's land before he can enjoy his own land, `A' is said to have natural servitude across `B's property.[10] These geographically disadvantaged states should also have a share in the oceans and may be argued that a similar rights should be given to these states to traverse through neighbouring states to reach the oceans.

(c) Claims to the Right of Innocent Passage:

The claim of innocent passage through the territorial sea of the coastal states has been suggested by some writers in support of the right of transit for land-locked states. Tabibi says, the right of land-locked states to free transit over land is the same as recognized in territorial waters as a right of innocent passage. Although, both land and territorial waters are the property of the coastal states, the rights of innocent passage over land as well as water exists in favour of land-locked states and their nationals. The reason for the existence of innocent passage in international law is the same as in civil law.[11]

(d) Claim of Transit Rights

The denial of innocent passage through foreign territories

for merchant ships and warships had led to several wars. Accordingly, in common interest, the traffic rules were regulated. Like others, land-locked states also claim the right of transit, as this natural right has existed ever since antiquity. Fried says that everywhere and through the ages, peaceful transit of merchants and travellers, of pilgrims and artisans, and their goods and honour have been under special protection, solemnised by treaties and customs, sanctified by religious percepts and underpinned by notion of elementary propriety and of natural benefit.[12] A divergence of opinions exist on this point. Lauterpacht and Fawcett take the view that the right of transit exist in customary law for every nation. But others' hold that the right of transit is not firmly established under customary law. At the same time judicial dicta does not provide any elaborate guidance in this regard. The court basically relied on a 1776 Treaty between Portugal and the Maratha ruler.

(e) <u>Right to uses of the Sea</u>

In the **North Sea Continental Shelf Cases** , the ICJ declared that a State's Continental shelf constitutes "a natural prolongation of its land territory into and under the sea". The right of the state in respect of this shelf exist *ipso facto* and by virtue of its sovereignty over the land, and as a extension of it. It is important to note here that most of the living and non-living resources are found within this area. Since the beginning, these geographically disadvantaged states

have also been contributing, directly or indirectly, in the formation of such resources. Naturally, they have equal right to use such resources.

Recognition of transit rights for landlocked state began at the end of the 19th century. The first significant contribution to the struggle for recognition of the right may be said to have been made by Barcelona Convention, 1921 which laid down the principle of "freedom of transit" on a non-discriminatory basis. Later, Article V of the General Agreement on Tariff and Trade made the provision for the right of transit in general. The Geneva Convention of High Seas, 1958 recognized the right of transit of land-locked states. By 1982, the right of land-locked states was well settled. Apart from confirming the right of land-locked states to access to and from the sea, the 1982 convention also provided the rights of use of the sea.

The present chapter examines the problems of geographically disadvantaged states in South Asia, namely, Nepal, Afghanitan and Bhutan. This chapter is divided into two sections (i.e. Section-A and Section-B) Part I of Section-A discusses the rights of land-locked states to access to and from the sea from Barcelona Convention, 1921 to the 1982 UN Convention on the Law of the Sea. Part II of Section-A examines the problems of land-locked states in South Asia in the light of the rights granted under the multilateral conventions and bilateral agreements between the land-locked and coastal states. Section-B is further divided into two Parts.

Part I of Section-B discusses the rights of land-locked states to Uses of the Sea granted under the 1982 UN convention on the Law of the Sea. Part II of Section-B examines the problems of land-locked states in South Asia in the light of the rights granted under the 1982 convention.

It is important to note here that of the world's thirty land-locked states, three are in South Asia, namely, Nepal Afghanistan and Bhutan. These three are also among those states designated by the United Nations as the least developed among the developing countries. One of the reasons for their poverty is their location. Not only do they lack sea coasts, which alone is a handicap, but they are also located at some distance from the sea. All the three are in Mountainous terrain difficult for transporting large quantities of heavy and bulky goods essential for their economic development. Like all other land locked states, their development options are limited by their lack of direct access to the resources of the sea. So they cannot even develop the kind of artisanal inshore marine fisheries that sustain people in coastal regions of more favoured countries. And, of course, every more important in the earlier stages of economic development, they have to negotiate with larger, richer and more powerful neighbours for transit across the coastal states territories to and from the sea. Little wonder, that Nepal and Afghanistan have been among leaders of all the developing land locked states for more than thirty years in an effort to secure for themselves a free and unrestricted rights to and from the sea and its resources.

SECTION - A

Part I: Evolution and Recognition of the Rights of Land Locked States

The evolution of multiateral treaty on transit problems of land locked states has been very slow. For most countries, economic development required international trade steady, reliable and inexpensive. To this end, the first success was achieved in 1921 with the Barcelona convention. By 1982, the rights of land locked states were almost well settled. An indepth analysis of the multiateral conventions show the trend of the right of land locked states which have been recognized gradually and slowly.

(i) The Barcelona Convention, 1921

The first significant contribution to the struggle for recognition of the right of access to the sea may be said to have been made by the Barcelona convention of 1921. Although the convention was not concluded exclusively for the benefit of the land-locked states, its provisions are of great importance to these countries, as it is the only convention still in force, that deals exhaustively with the problems involved in all types of transit trade across other countries. Article 1 of the convention defined 'transit', giving it a wide interpretation. The other important Articles are Articles 2,6 and 7. Article 2 made it obligatory for States Parties to facilitate freedom of transit on routes in use and convenient for international transit. Article 6 removed any obligation for a contracting

State to allow freedom of transit to a non-contracting State. Article 7 also empowered contracting State to impose temporary restrictions on freedom of transit in the case of an emergency affecting the safety of the state or the vital interest of the country.

However, the convention did not fulfil the aspirations of the land locked countries. There are mainly, three points around which criticism is centred. These are:

First, the convention was confined in its application to only State Parties to it. It did not declare principles of general application.

Secondly, it did not provide for all means of transport and communication, such as traffic by roads and pipelines, whose importance in modern times can hardly be over emphasised.

Thirdly, it was confined to the transit problems of land locked European Countries, which were already in good economic condition. The convention failed to take sufficient notice of distinctly precarious position of states in the new world[14]. In fact, only eight out of thirt y land locked states acceded to the convention.

ii) **The General Agreement on Tariffs and Trade, 1947**

Although the Havana charter did not come into force, nevertheless, it made a significant contribution to the recognition of the right of transit of land locked countries. The United Nations Conference on Trade and Employment adopted at

Havana in 1948 supported in its Article 33, the freedom of transit for land locked states. The same principle was reiterated in the subsequent conferences, and was incorporated in the General Agreement on Tariff and Trade (GATT). The basic aim of the GATT is to reduce traffics and other barriers to international trade. It reaffirmed the the freedom of transit[15]. But there is a major limitation. It does not make any express reference to the situation of land locked countries. It had declared the freedom of transit as a general principle applicable to all states, it would have provided a guiding principle for future convention[16].

(iii) **The Geneva Convention on High Seas, 1958**

On the eve of the first United nations Conference on the Law of the Sea, there took place a preliminary Conference of land -locked states in Geneva from 10th to 14th February 1958. Divergent opinions were expressed by members as to whether there is any need for new rules on this issue[17]. At last, it laid down seven principles which might be charcterised as restatement of principles and norms of international law concerning right of land locked states to free access to sea and specific rights derived there from. It is significant to note here that these seven principles served as the basis for formulation of provisions concerning the rights of land locked states which were incorporated in 1958 Geneva convention on the High Seas. While Article 2 of the Convention stated that the high seas was "open to all nations", meaning thereby both coastal and non-

coastal states. Article 3 of the Convention stated

(1) In order to enjoy the freedom of high seas on equal terms with coastal states, states having no sea coast should have free access to the sea, and a state having a sea coast shall by "common agreement" with the former and in conformity with existing international convention accord: (a) to the state having no sea coast, on the basis of reciprocity, free transit through its territory; (b) to ships flying the flag of that state, treatment equal to that accorded to its own ships or to ships of any other states as regards access to sea ports and use of such ports.

(2) States situated between the sea and a state having no sea coast shall settle by mutual agreement with the latter, and taking the rights of coastal states or states of transit and the special conditions of state having no sea coast.

The Geneva convention is more advanced than the previous convention in the sense that it for the first time addressed the right of land-locked states to have free access to and from the sea on the ground of enjoying freedom of the seas, and it further held that these rights should be on a reciprocal basis.

But the convention is criticised on following grounds:

Firstly, the principle free access to the land-locked states and equality and equal treatment of the coastal and non-coastal states were in the nature of declaratory decrees without

providing for consequential reliefs. At the same time, it did not impose any obligation on the transit state to enter into an agreement. Instead of agreement it should have laid down the modalities for implementation which would be agreed upon by both parties.[18]

Secondly, the right of access is also conditioned by the principle of reciprocity. This means that the land-locked states should also grant transit on a reciprocal basis. If the state of transit has no need of access through the land-locked state, the latter would be left to its fate.[19]

(iv) **New York Convention, 1965**

The New York Convention on Transit Trade of land-locked states was adopted mainly due to the fact that the bilateral agreements regulating the trade between land-locked and transit states inadequately protected the rights of land-locked states.[20] In the year 1964 a sub-committee was formed under the auspices of UNCLOS-I. This sub-committee prepared a draft which was finally adopted on 8 July 1965.

The Convention tried to reconcile the divergent interests of land-locked and transit states. It confirmed that the recognition of the right of each land-locked state to free access to the sea was an essential principle for the expansion of trade and economic development.

Regarding security interest, in emergency situation endangering its political existence or safety, a contracting

states was authorized to deviate from the provisions of the Conventions, but only in exceptional circumstances and for a short period, on the understanding that the principle of freedom of transit would be observed to the utmost possible extent during such period.

The Convention allows a contracting Party to avail itself of greater transit rights than those provided under the convention. And a land-locked state, which is not a Party to the convention, may assert its rights under the convention only on the basis of most favoured nation clause of a treaty between that land-locked state and a contracting state granting such facilities and special rights.

The Convention goes beyond previous conventions in recognising a land-locked state's right of transit to and from the sea. Articles 4,5 and 7 of the Convention are pertinent in this connection. Article 4 requires states not only to provide adequate means of transport but also adequate handling equipment for movement of traffic without unnecessary delay. Article 5 provides for simplification of administrative and customs procedures to facilitate 'free, uninterrupted and continuous traffic in transit'. And Article 7 enjoins the competent authorities of transit states to cooperate with the land-locked states to eliminate delay or difficulties arising in the transit process.

Except far these provisions the Convention is not different from the previous conventions. The convention failed

to differentiate between the need for transit arising from the geographical location of states having no sea coast and any other transit serving only to facilitate transport and communication in general.[21] Moreover, the Convention recognizes the right of land-locked states on the basis of economic necessity but it does not proclaim these principles as binding in international law.[22]

UNCLOS - III: A STEP FORWARD FOR LAND-LOCKED STATES

To solve the multifarious problems of land-locked and geographically disadvantaged states, and to develop and codify the law in order to meet the changed conditions and new challenges, the United Nations convened the Third Law of the Sea Conference in 1973, which after nine years of protracted negotiations and painstaking efforts, and hard bargaining on the subject tried to solve the problems of land-locked and geographically disadvantaged states and to evolve a unified law on the subject. At last, it succeeded in adopting on 30 April 1982 at Montego Bay, the United Nations convention on the Law of Sea, which for all practical purposes, is a complete code on the subject. Part X of the convention, containing Articles 124 to 132, deals exclusively with the rights of land-locked states. Article 124(a) defined a land-locked state having no sea coast. Article 125 provides that to realise the right of access to and from the sea for the purpose of exercising rights provided for in this convention, land-locked states shall enjoy freedom of transit through the territory of transit states by all means of transport. The right of access to and from the sea is a general

right and freedom of transit is a specific right by which the possibility of developing the economies of land-locked states exists. So, a land-locked state makes use of all means of transport. Article 124(d) defines "means of transport". Regarding freedom of transit, the land-locked states suggested a modification. They wanted it to be free and uninterrupted transit. This suggestion did not find any place in the final convention.

In addition to these, the convention also enunciates some privileges. Article 127 says that (a) traffic in transit shall not be subject to any custom duties, taxes or other charges levied for specific services rendered in connection with such traffic, and (b) Means of transport in transit and other facilities provided for and used by land-locked states shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit state. Article 125(3) protects the legitimate interests of transit states. Article 131 puts an obligation on other states to give equal treatment to ships flying the flag of land-locked states in maritime ports. Article 130 obligates transit states to take all appropriate measures to avoid delays or difficulties of a technical nature in traffic in transits and if delays or difficulties still occurred, the competent authorities of both states concerned should cooperate towards their expeditious elimination.

Part II

PROBLEMS OF GEOGRAPHICALLY DISADVANTAGED STATES IN SOUTH ASIA: ACCESS TO AND FROM THE SEA

As we have already mentioned earlier that there are three land-locked states in South Asia, namely, Nepal, Afghanistan and Bhutan. Here, we discusse the problems of each one separately:

NEPAL:

Nepal is situated on the southern slope of Tibet, surrounded on east by Sikkim, on West by Bengal and on South by Bihar and Uttar Pradesh. It covers an area of 1,47,000 square kms. and has estimated population of 16.14 million.[23] The major part of the country is high mountains and rolling hills which comes about 80 per cent of the total land area. The region lies at an altitude of 1,60,000 to 29,000 feet above the seal level without snow linest at 16,000 feet.

The country is solely dependent on India in the matters of transit facilities. From the point of view of transit one can assert that Nepal is India's land-locked country. It has also common borders with china but due to geographical barriers and distances, Nepal cannot expect access to sea via China.

There is one distinguish and special advantage of this country. Apart from land route, it has river navigation facilities. This means of transportation can be of great use to Nepal, because it is a cheaper means of transportation. Nepal can reach the sea over her own rivers. From navigation point of

view, the three rivers, i.e. Koshi, Gandak and Karnali can be of great use. From Calcutta to Nepal terminal the distance of Koshi river is 504 miles; Gandak 735 miles; and Karnali 920 miles.[24] Although all the three rivers are navigable, Gandak can be most useful for Nepal because it has sufficient water levels for water transportation and is located in Nepal in close proximity to major East-West and North-South. Moreover, Gandak and even Karnali can be utilised with little investment.[25] At the same time Nepal has legitimate claim for navigation right through these rivers because they flow from Nepal into India.

The relationship between the two countries has been more informal than legalistic and contractual. This relationship goes back to the beginning of the histroy. A mention is found in "Kautilya's Arthsastra" about the commercial relations between the two countries. During the British rule, Nepal was accorded certain trade and transit facilities by British India under the Treaty of 1923. This treaty was in effect almost for twenty seven years.

Treaty of Trade and Commerce, 1950

As soon as India got independence, Nepal started demanding the modification of the 1923 Treaty. It felt the need for extending her trade relations with overseas countries. Accordingly, a Treaty of Trade and Commerce was signed in July 1950.[26] By this treaty India recognized Nepal's right of full and uninterrupted transit of all goods and manufactures through the Indian territory.[27] The commodities to be transported across Indian territory and their destination were to be decided by agreement between the two countries. Moreover, goods and merchandise of Nepalese origin in transit through India would be exempted from exercise and import duties.

But this treaty had several restrictions affecting the Nepalese economy. Thus, the treaty prohibited Nepalese goods to be sold to a third country at a rate cheaper than Indian goods. Due to tariff policy of India, the Nepalese goods could not compete with Indian goods in Indian market, and because of the tariff advantage, Indian goods dominated the Nepalese market.[28] For the above mentioned reasons, Nepal demanded revision to the treaty.

Trade and Transit Treaty, 1960

A new trade and transit treaty was signed in September 1960, which came into force in November 1960. This treaty replaced the Treaty of Trade and Commerce, 1950. The major difference between the 1950 treaty and the 1960 treaty was that the latter's provisions regulating transit rights were based on

multilateral conventions. Articles VII to XI were the key articles regarding transit in trade. Article VII is based on the principle of reciprocity as provided in Article 3(i) (a) of the 1958 Geneva convention on High Seas which was later reaffirmed in the 1965 New York convention on Transit Trade of land-locked states. Article VIII of the treaty explained the meaning of transit, which was based on Article 1 of Barcelona Convention, 1921. The Other provisions prescribed that arrangements for traffic in Transit would be mutually decided upon the details of the procedure to be followed for traffic in transit was to be laid down in the protocols. Finally, the traffic in transit was exempted from custom duty, and all transit duties, except reasonable charges for transportation, services rendered and for supervision.

Initially, this treaty was for a period of five years, but it was agreed that it could be extended for another five years. By the expiry of the treaty Nepal became conscious of her industrial development and transit rights and started demanding, for the first time, unfettered transit facilities by rail, road and sea routes because this was the period when much effort was going on to recognize the right of land-locked states as part of international law. Nepal demanded that more facilities at Calcutta Port and transit via Madras, Bombay and Kundla should be provided. Besides her stress on two separate treaties on trade and transit. India was ready to provide these facilities to Nepal but wanted an assurance from Nepal that such facilities would not be a misused and abused.

Treaty of Trade and Transit, 1971

Prior to the signing of the treaty of trade and transit, 1971, there were certain differences between the two countries on certain issues. Nepal wanted to conclude two treaties, one governing transit facilities and other dealing with trade matters on the ground that both are different matters. After the expiry of the 1960 treaty, a dead-lock prevailed between the two countries for a period of six months, and finally on August 13, 1971 the treaty of trade and transit was signed for a period of five years.

The new treaty was based on the most favoured nations treatment on reciprocal basis. The transit facilities available to Nepal under the 1971 treaty were much more than before.[30] Besides rail route, the road transit was also provided for the first time between Calcutta and Nepal. The other important provisions in this treaty are consonance with multilateral convention. India was to take all necessary measures to ensure that such freedom of transit accorded by it on its territory did not in any way infringe its legitimate interest of any kind. The treaty also conceded the right of land-locked states to fly its own flag on its ships.

The 1971 treaty expired on August 14, 1976. This treaty could not be implemented smoothly. Two rounds of talks were held in Kathmandu and in New Delhi to arrive at mutually agreed solutions, but no solution came out.

Treaty of Transit, 1978

When Janta Party came in power in India, Nepal's long cherished demands were fulfilled. Janta Government with its foreign policy of 'beneficial bilateralism' towards its neighbours concluded two separate treaties with Nepal in March 1978. One dealing with transit and the other dealing with trade. Through 'transit treaty', India recognised Nepal's right to seek transit facilities not only to and from Indian Ports but also to and from Bangladesh for its trade with other countries. Possible measures were taken in order to make transit procedure more liberal and simplified for speedy movement of traffic in-transit. The treaty established an insurance system for goods moving by rail upto the border and those moving by road. In addition to these, facilities were provided to curtail Nepalese transit goods. Thus, the 1978 treaty was wider than previous treaties. It provided many more new facilities which Nepal had not availed of earlier.

Initially, the 1978 transit treaty was concluded for a period of five years. This was renewed in 1983 for a further five years. This was also extended twice in March 1988 and again in October 1988 for six months each time. At last, on March 23, 1989, it expired. A dead-lock was created for sometimes. Several efforts were made by both sides to normalise relations between the two. Finally, on June 10, 1990, a joint communique signed by the Prime Ministers of India and Nepal restored the *status quo ante* and promised to usher a new era

even brighter than what obtained before Indo-Nepalese relations went downhill in March 1989.

AFGHANISTAN:

Afghanistan is a country of magnificient mountains and fertile valleys. The country is blessed with many rivers and small streams. Among them, only four are considered to be important. These are: **AMU DORYA, HELMAND, HARI RUD AND KABUL RIVERS.** The most important, and the only one that is navigable is Amu Dorya. The economy of the country is agriculture base. About three quarters of the national income is derived from agriculture. Most of its foreign trade has been routed through Karachi (Pakistan). The balance goes largely through the Soviet-Union and Iran. Due to its geographical position, Afghanistan has option to take transit benefit from the coastal states like Pakistan, the Soviet-Union and Iran. Accordingly, it concluded its bilateral agreements with Pakistan, the Soviet-Union and Iran. These agreements are as follows:

(i) Transit Agreements with Pakistan:

Before August 1947, the relations between the two countries were governed by a treaty for establishment of neighbouring relations between the Government of Afghanistan and the British Government, and the Anglo-Afghanistan Trade Convention of June 1923. In the first treaty exemption from custom duteis were made for most of Afghan goods entering into Indian Ports and a specified custom procedures. Routes between

the Indian Ports and Afghanistan were also agreed upon under the treaty. The second treaty specified the routes and administrative procedures in details.

After the partition, these treaties became the concern of independent India and Pakistan. Soon after, Afghanistan came to realize that they were completely inadequate for its needs. To cope up with these problems Afghanistan and Pakistan concluded a transit agreement in 1958, which provided for free transit through Pakistan, exemption from custom duties, taxes and charges of all kinds except for administrative and transportation charges. It also simplified shipment arrangements and provided important rail facilities. But it did not last long. Before this agreement lost its validity, the border between the two was closed between September 1961 and July 1963. When the border was reopened, the relations between the two began to improve, and transit agreement was also extended for one year in 1964.

In March 1965, Afghanistan and Pakistan signed a new transit agreement. This was for five years. It provided some additional transit facilities, such as extension of the rail-road from Pakistan railhead at Landi-Khana through the Khyber Pass to Tur Khan.[31] Commitments were made to meet and consult once a year to review the working of the agreement and in case of dispute, it would be referred to arbitration.[32] Afghanistan wanted at least a ten year agreement and still other concessions, but Pakistan was awaiting the result of the United Nations Conference on Transit Trade of Land-Locked countries

which was to open in June 1965.

The entire arrangement between Afghanistan and Pakistan was, of course, reciprocal and on short-term basis.

(ii) Transit Agreements with the Soviet-Union

Since 1921 Afghanistan's trade across the Soviet-Union was negligible. Between Afghanistan and Soviet-Russia a treaty of friendship was concluded in 1921 in which Soviet-Russia agreed to provide unimpeded and custom free transit through its territory, of all categories of goods brought by Afghanistan either in Russia itself through government bodies or directly aborad, provided access to the sea for Afghanistan.[33]

In June 1955, the two countries signed a transit agreement which revived Article 6 of the 1921 treaty and granted to Afghanistan the right of free transit of goods through its territory on the same conditions applicable to transit goods belonging to third countries. The agreement covered all categories of goods, regardless of their origin, for destinations which were not prohibited under the law regulating transit through the territory of the Soviet-Union.[34] It also extended most favoured nation closure treatment to each other and waived the custom duties for transit goods.[35] It was for a period of five years. Three months later, a one year supplementary agreement detailed the procedures for landing transit trade. This specified Kushke and Termez as Ports of entry for Afghan exports with transportation across the Amu-

Darya to the latter being provided by the Soviets. Goods were to be from these cities by rail to appropriate ports. The Soviet-Union also agreed to perform numerous services in connection with the shipment. Similar treatment was to be accorded to Afghanistan imports.

The 1955 treaty was extended in 1966. The new treaty also included Soviet commitments to develop the port of Sherkhan Bandor and other facilities for transport through Amu-Darya. In general, these and subsequent lesser agreements have been quite favourable to Afghanistan and Afghan goods transit through the Soviet-Union. The recent renewable treaty was signed in 1964.

(iii) **Transit Agreement with Iran**

Between Afghanistan and Iran the first agreement towards normal commercial relation was signed in 1960, which was based on a barter basis. The agreement provided for Iranian textiles, including velvets to go to Afghanistan and in return Iran undertook to tranship and sell overseas Afghan dried fruit. Later, in the same year another agreement was signed between the two which provided for transit facilities and Afghanistan's desire to purchase Iranian Petroleum. The major agreement, however, is that signed in February 1962 with a five year validity period. The agreement provided reciprocal free transit rights and warehouse and storage facilities for Afghan transit goods in Khorramshahr Bander and Meshed. In addition to this, rail route facility was provided between the Khorram Shahr, at the head of the Persian Gulf, and Meshed.

BHUTAN:

Bhutan is situated in the Eastern Himalayas and is bounded on the east-west and south by India. It covers an area of 46,600 square kms. and has a population of a little over one million.[36] As regards this land-locked state, it also shares a common border with China. But the country is virtually dependent on India for access to the sea. Like Nepal, Bhutan is also facing similar problems with India and has faced sometimes bitter experience with India for access to the sea. But there is one difference. Unlike Nepal, the relations between the two countries are relatively smooth and are based on mutual cooperation and assistance.

SECTION B

PART - 1: THE USES OF THE SEA BY GEOGRAPHICALLY DISADVANTAGED STATES

There are certain fertile areas of the sea have come to be specified. The fertile areas of the sea are found in three kinds of places: Over the continental shelves; in areas where warm and cold currents meet and mix; and places where there is upwelling of cold, nutrient rich water from the depths of the sea. Nearly all of these fertile areas are found within 200 miles of the coasts continents and islands. At present, this is the only area that can be relied upon for immediate supply of a variety of mineral resources, petroleum products and food stuffs.

When Arvid Pardo drew the attention of the world community

through the forum of the United Nations to the wealth of the Oceans, their importance began to be realised. Consequently a resolution was adoped by the General Assembly in 1970, declaring the sea-bed, ocean floor and subsoil thereof as "common heritage of mankind".[37] It is now universally accepted that every state has the right over the wealth of oceans, i.e. the right to explore and exploit the same, irrespective of a state's economic, political and geographical background.

The concept of high seas also gave the right of navigation, fishing, laying of under-water cables and pipelines and flights over the high seas. Geographically disadvantaged states are not exempted from these rights. [illegible] They are equally eligible to enjoy these rights. Since they are geographically disadvantaged, they need special privileges in the enjoyment of the above mentioned rights.

To take benefit of the rich resources of the sea, the land-locked states started their struggle. They had organized themselves as a negotiating group in 1957 for the first United Nations Conference on the law of the Sea. The group considered themselves as "geographically disadvantaged". But for one reason or another they could not gain any substantial benefit from the extensions of coastal jurisdictions far out to sea. Moreover, the rapidly broadening definition of "continental shelf" was troubling to the new group of land-locked and geographically disadvantaged states.

Since 1970, the real concern of the group (the group of land-locked and geographically disadvantaged states) was to share in the resources of the proposed 200-nautical mile of EEZ, and participation in the decision making body of International Sea-bed Authority as well as revenue earned by exploitation of "common heritage of mankind" i.e. resources of the high seas. Throughout the latter years of the Sea-bed Committee and the early years of UNCLOS-III, the group fought to keep the belt of sea over which the coastal states would have any kind of jurisdiction as narrow as possible. But they did not succeed. Realizing this and striving to maintain the "Third World Solidarity" while hoping to gain some concession later, the group gave its tacit approval to the concept of EEZ. During the entire period of UNCLOS-III they strove to win back a small portion of what they had given away. Again, the group failed to achieve its target.

THE UN CONVENTION ON THE LAW OF THE SEA

At the end of the final version of the convention, the group won specific mention in the Preamble and in seventeen Articles. Of these seventeen Articles, seven simply deals with one way or other non-discrimination against states with no sea coast while Preamble and seventeen Articles contain vague formulation taking into account the special needs and interests of the land-locked and certain other groups of state, or slight variation of this formulation. Only three articles contain specific provision pertaining to land-locked and geographically disadvantaged states. These are:

Firstly, Article 254 of the convention allows land-locked and geographically disadvantaged states to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them. Such participation should not be objected to by the coastal states. But this is a vague article. It does not specify any clear guideline. Instead, it should provide a modality regarding the participation of the proposed marine scientific research.

Secondly, Article 161 of the convention allows land-locked and geographically disadvantaged states to represent in the Council of the International Sea-bed Authority to a degree which is reasonably proportionate to their representation in the Assembly. This is also a vague and meaningless at this juncture for the land-locked and geographically disadvantaged states.

Last but not the least, Article 69 which grants land-locked states to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZs of the coastal states of the same sub-region or region. The right granted under this article is not absolute. It is subject to several restrictions. The land-locked states are not allowed to exploit the minerals or other resources of the EEZ. In addition to this, Articles 61 and 62 specify along list of rights and obligations of the coastal states with respect to conservation and utilization of the living resources of the EEZ. In addition to these, "Articles 71 and 72 further limit participation by making Article 69

inapplicable in case of a coastal state whose economy is overwhelmingly dependent on the exploitation of the living resources of its EEZ". It also prohibits the transfer to third states or their nationals of the rights granted by Article 69.

Thus, the net result is that unless a coastal neighbour of a land-locked state has a huge surplus of "living resources" in the EEZ and is extraordinary generous in permitting its less fortunate neighbour to utilize resources, few if any land-locked states will ever derive any benefit from any EEZ. If they want to fish, they will have to go beyond the EEZ. This is at the cost of heavy expenses, and in competition with already established distant-water fleets, in a region which is for all practical purposes a biological desert and almost of no use.

PART II

PROBLEMS OF GEOGRAPHICALLY DISADVANTAGED STATES IN SOUTH ASIA: USES OF THE SEA

As we have already mentioned earlier in Section-A there are three geographically disadvantaged land-locked states in South Asia, namely, Nepal, Afghanistan and Bhutan.

It is important to note here that regarding the marine fishing in the Indian Ocean, only off the coast of Oman, there is any significant area of Phytoplankton production. The production of Phytoplankton, the base of the food chain in the sea, is customarily measured in milligrams of carbon produced per square meter per day ($mgC/m^2/d$).[38] The area which produces over 500 $mgC/m^2/d$ are considered to be most fertile, and the

area which produces 250 and 500 are the next most fertile.[39] If Nepal, Afghanistan and Bhutan are ever to do any marine fishing, they will have to do within the EEZs of India, Pakistan, Bangladesh, Burma and Thailand. Before doing so, they will have to conclude bilateral agreements with their coastal neighbours under Paragraph 2 of Article 69 of the 1982 convention.

At this stage, among these three, only Nepal is likely to engage in such activities, but not on its own. Joint ventures with India and/or Bangladesh is the most possible scenario. It is relevant to note here that both India and Bangladesh are actively participating in marine fisheries, and may refuse to grant such right to Nepal on the ground of exemptions given in Paragraph 2 of Article 69 i.e." (a) the need to avoid effects detrimental to fishing communities of coastal state; (b) the nutritional needs of the populations of the respective states."

Afghanistan, due to its political turmoil and practical compulsions, is unable to participate in such activities for another some time.

Bhutan, a newly independent state, is too underdeveloped to participate in ocean fishing at this stage.

CONCLUSION

As we have already mentioned that multiletaral agreements laydown the general principles recognizing the fundamental rights of the geographically disadvantaged states, whereas biletaral agreements deal with a specific situations to solve any issue regarding access and uses of the sea. Through consistent efforts, they have achieved some success. In a series of major international agreements, the right of geographically disadvantaged states regarding the access to the sea has become firmly established. Except for minor diversions and unusual tariff charges the right is almost settled through bilateral agreements in South Asia.

The right to uses of the sea to the geographially disadvantaged, the 1982 UN Convention for the first time granted the rights to participate in the proposed Marine Scientific Research Projects (Article 254) and International Seabed Authority (Article 161) through qualified experts. Apart from these, the right to share in the "living resources" in the EEZ on "equitable basis has been granted to land-locked states (Article 69). However, the terms and modalities have to be established by the coastal states through bilateral, sub-regional or regional arrangements. The land-locked states is allowed to take part in the exploitation of an appropriate part of the surplus of allowable catch.

At present South Asian geographical disadvantaged states are not in position to exploite these resourses. They are too underdeveloped to exploit these resources on its own basis.

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5. See Article 1(c) of the Convention on Transit Trade of Land-Locked States (1965) and Article 124(b) of the UN Convention on the Law of the Sea.

6. See United Nation Document TD/B/18. Also see Article 124(c) of the 1982 UN Convention on the Law of the Sea.

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CHAPTER V

FISHERY JURISDICTION IN SOUTH ASIA

Fish are living resources. They are mobile and have no respect for political boundaries. They swim inshore, offshore, and alongshore. This means that land-based jurisdictional concepts or concepts for management of mineral resources are much more difficult to apply to fisheries.[1] It can serve as an important source of food supply for mankind. Although at present more than 97 per cent of the world's food supply comes from land,[2] there is little doubt that man is in danger of outrunning his food supply through increases in the number of the people. A situation may come in future when he will probably not have enough food if he relies solely on land to produce it. This crisis may be mitigated, if not totally averted by greater use of the sea as a source of food. It is expected that the oceans can produce as much as land, or even more.[3] Although at present the ocean produces only 2 or 3 per cent of the total calories consumed by mankind, it has a tremendous potential as an important source of protein. If exploited properly the ocean can be a great help to the poor countries in overcoming their deficiencies in food resources and in feeding their hungry millions.

Because of the need and increasing demand for all these products and tremendous development in fishing technology since the Second World War, the world fishery catch expanded rapidly between 1950 and 1970, from 21 million metric tonnes to nearly 62 million metric tonnes.[4] Again, at the beginning of the 1980s a drastic change took place in the production fisheries. But a major problem is that so far only six of the 150 odd nations are

responsible for more than one half of the total world catch of fisheries.[5] This is due to an outmoded theory devised in the seventeenth century, accepted in the nineteenth century, and practiced to this day. Absolute freedom of the sea and *laissez faire* in the ocean have led to ruthless exploitation of the fishery resources by a few countries.[6]

The poor fishermen from developing countries cannot go near the coast of the other countries and cannot compete with the technologically developed countries who are seen with their modern fishing trawlers and equipments off the coasts of most developing countries that have abundant resources. The high seas is essentially a biological desert. It produces a negligible fraction of world's fish catch at present and has little or no potential for yielding more in future. Therefore, the distant-water fishing fleets go near the coasts of smaller coastal states and catch large quantities of fish in their waters.

DEVELOPMENTS OF LAW RELATING TO THE FISHERY JURISDICTION

As we have discussed in Chapter-II, the doctrine of the "freedom of the seas" as propounded by Hugo Grotius and practiced for more than 200 years by maritime powers, is no more valid in that form. It has changed altogether. By the end of the Second World War, there were widespread claim of wider territorial sea jurisdictions beyond the traditional three-mile limit in order to protect themselves from the distant-water fishing fleets, which have been going near the coasts of smaller

coastal states and catching large quantities of fish in their waters. A good number of Asian and African countries started to claim 12-mile of territorial sea. The Soviet-Union and Latin American were already champions of wider coastal state jurisdictions but the coastal marine powers refused to recognize these extensions.

In the meantime, with the development of science and technology the big maritime powers acquired new sophisticated technology to exploit the rich resources of the sea. Badly in need of such resources President Harry S. Truman of the United States made two proclamations on 28th September 1945. One related to the continental shelf jurisdiction and other related to the Fishery jurisdiction for the protection of its coastal fisheries in areas of the high seas contiguous to the coast of the United States. The trend which has been set up by the United States was followed by several other countries. They started to claim wider jurisdictions for the protection of their coastal fisheries threatened by the distant-water fishing fleets.

Another important change also took place at that time. Many Asian and African countries emerged as an independent members of the International society. They wanted to change and modify the law according to their changed needs and demands. They acquired a new influence in the postwar divided world society.

Geneva Convention of 1958

In order to bring some order, the UN in 1958 organized a conference on the Law of the Sea to develop and codify the existing law in a systematic manner. Freedom of fishing was recognized and codified at the first conference on the Law of the Sea. Even though all the four conventions adopted by the conference refer to freedom of fishing, it mainly dealt with the convention on "Fishing and conservation of the Living Resources of the High Seas". Article 1 of the Convention specified the limitation when it said that freedom of fishing has to be exercised subject to: a) treaty obligations; b) the interest and rights of the coastal states; and c) provision contained in the convention concerning conservation of the living resources. In addition to this, Paragraph 2 of Article 6 of the Convention recognized the concept of special interest of the coastal states in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea and the state was entitled to take part on an equal footing in any system of research and regulation for the purpose of conservation of the living resources in that area, even though its nationals did not carry on fishing there. However, no conservation measures could be taken by any state unilaterally in any part of the high seas beyond the territorial sea unless, of course, its own nationals and nationals of no other state were fishing in that area. In addition to these, Article 9 of the convention provided for a compulsory arbitration procedure in case of a dispute.

It is important to note here that the convention did not recognize any preferential or exclusive right of the coastal states to fisheries in water beyond its territorial sea.[7] At the same time, the freedom of fishing was circumscribed by the twin concepts of conservation and special interest of the coastal state. The need to restrict the freedom of fishing for conserving the resources are occasioned by the over-fishing and depletion of certain valuable stocks.[8] Finally, no agreement could be reached to the extent of the territorial sea and fisheries jurisdiction.

Geneva Convention of 1960

In order to reach an agreement on the extent of territorial sea and fisheries jurisdiction another attempt was made in 1960, but again it failed.

Demand for Change in Law and Emergence of the Concept of Exclusive Economic Zone

Because of the above mentioned reasons, the developing coastal states demanded a completely new legal order to replace the existing one. It is relevant to mention here that their demand for change in the Law was occasioned more by their desire for getting a bigger share in the living resources of the ocean than their concerns for the depletion of the said resources. Therefore, the developing coastal states put forward claims to a wider exclusive fisheries jurisdiction.

In line with this trend-thought the Latin American States issued two declarations in 1970: the Monte Video Declaration of

Principles on the Law of the Sea and the Lima Declaration on the Law of the Sea. Through these declarations they reiterated the right of the coastal state to establish the limits of its maritime sovereignty or jurisdiction in accordance with reasonable criteria, having its geographical, geological and biological characteristics, and need to make rational use of its resources.[9] In 1972, ten Caribbean States adopted the Declaration of Santo Domingo which supported the concept of a "Patrimonial Sea" extending the coastal jurisdiction to 200 miles.[10] Developing coastal states from Asia and Africa also voiced their dissatisfaction over the legal regime of freedom of fishing accepted in the Geneva convention. At the January 1971 Session of the Asian-African Legal on Consultative Committee, Kenyan delegate, Njenga, suggested the extension of coastal state jurisdiction to 200 mile as its exclusive economic zone (EEZ). It was later discussed and supported at the Non-aligned Conference at Yaounde during 20-30 June 1972 and later, at the Council of Ministers of the Organization of African Unity at Addis Ababa (Ethiopia). In May 1973, the concept of EEZ was again supported permitting the coastal state to determine its jurisdiction for the purpose of exclusive exploitation of resources, both living and non-living, upto a distance of 200 miles from the baseline from which the territorial sea is measured.

The 1982 UN Convention on the Law of the Sea

At the Third UN Conference on the Law of the Sea, a consensus emerged that fisheries jurisdiction might be extended

beyond the territorial sea to a distance of 200 miles from the coast. In accordance with this consensus many states[12] unilaterally extended their jurisdiction upto 200 miles, thereby setting a trend, creating customary international law in favour of the exclusive economic zone through state practices. With this extension, it is estimated that approximately 85 to 90 per cent of the total world's fish would come from the enclosed coastal zones.

When the 1982 UN Convention on the Law of the Sea was adapted on 30 April 1982 at Montago Bay, it confirmed a 200-mile exclusive economic zone. Article 56(1)(a) of the Convention declares that a coastal state has in the 200-mile EEZ:

> "(a) 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 Sea-bed and of the Sea-bed and its sub-soil...."

Within the EEZ, the coastal states shall have sovereign rights over the entire range of living and non-living resources, subject to some regulations and limitations.[13] The regulations and limitations about the living resources can be generally found in Articles 61 (Conservation of living resources), 62 (utilization of living resources), 63 (common stocks), 64 (highly migratory species), 65 (marine mammals), 66(anadromous stocks), 67 (catadromous species), 68 (Sedentary species), 69 (rights of land-locked states), 70 (rights of geographically

disadvantaged states), 71 (exceptions to Articles 69 and 70) and 72 (restrictions on transfer of rights). In addition to these, special provisions have been made for the conservation and optimum utilization of shared stocks and highly migratory species[14] on regional basis.

Although it was originally intended that a state's right to an EEZ would only arise when the State adopted the 1982 Convention, the 200-mile zone has become so popular that 86 States have promulgated laws or decrees establishing a 200 miles of fishery or economic zone[15]. Moreover, the ICJ in case concerning Continental Shelf (**Malta/Libyan Arab Jamahiria**)[16] expressed the view that the EEZ has emerged as part of customary international law.

This expansion of national jurisdiction over greater areas of the ocean and resources found therein may give rise to numerous conflicts especially when the extended jurisdiction of a coastal state encompasses resources that had previously been exploited by a neighbouring or other state. Developing coastal states face special problems because of their deficiency in skilled labour, managerial skills, economic infrastructure, capital and finance, and effective linkages to national and international markets.

The present chapter examines the fishery jurisdiction in South Asia in the light of the emergence of the concept of EEZ, the 1982 UN Convention on the Law of the Sea, relevant customary international law and state practice. This chapter also

examines a proposed plan for the development of marine fisheries for the South Asian region. In addition we shall discuss about the highly migratory stocks which are found within and beyond the 200-miles of the EEZ.

It is important to mention here that even prior to the 1982 convention South Asian states, like many other states, through proclamations declared 200-mile exclusively economic zones[17] and gained large areas of the sea within their sovereign jurisdictions as part of EEZ in the Indian Ocean. This extended fishery jurisdiction can have a significant effect on maritime fisheries in South Asian region. It will provide a stimulus for survey and development of the unutilized and underutilized resources of the Arabian Sea and the Bay of Bengal. Even if these resources are not directly exploited by South Asian countries, they may be used to generate revenues which can be channeled back into the development of marine fisheries. In addition to this, the 200-mile of EEZ will reduce the risks of investment and provide an impetus to the development of marine fisheries. As long as the waters beyond 12 miles were high seas, South Asian fishermen had difficulty competing with the highly mechanized and mobile fleets. This factor tended to discourage any attempt to build up an indigenous capacity. Moreover, the extended fisheries jurisdictions will enable these countries to develop the resources in accordance with their own socio-economic priorities. The open access system of the past was advantageous to large mechanized fleets and distorted the allocation of resources in favour of such

technology. But even this extended jurisdictions are not free from restrictions and conflicts. There are two major problems with such extensions:

First, most of the South Asian countries do not have appropriate sophisticated gadgetry, patrol vessels, and skilled personnel to check outsiders. Several long-distance fishing fleets come in the Indian Ocean including South Asian waters and catch large quantities of fish. There are scores of cases where South Korean and Taiwanese have been caught by India, Bangladesh and Burma. There is also a problem in Sri Lanka and Maldives which are incapable of enforcing their restrictions. The Koreans and Taiwanese come in and even conceal their names and numbers so that they can not be identified and take out enormous amount of fish without paying their dues.[18] This is one area where collective effort is called for and need for these countries to control poaching and control the growth of fishing.[19]

Secondly, with this extension conflicts arise in situations where previous users of those resources from other states are no longer able to exploit them. This may lead to dispute between the coastal states of South Asian region.

In this connection, it is interesting to note that there have been no fishing disputes in South Asia with the exception of some minor incidents in which fishermen from Tamil Nadu were arrested for trespassing in Sri Lanka waters.[20] This can be attributed to several factors:

(i) For most of the littoral states of the Indian Ocean, including those of South Asia, the fishing resources are not fully utilized and the government policies are designed to encourage greater efforts in the new extended zones. Less than 22 per cent of the potential commercial catch is harvested in the Indian Ocean;[21]

(ii) the shrimp stocks, highly coveted in the region, are found well within 200 miles zones. There are no instances in which significant shrimp stock migrate through the EEZ of more than one state;[22]

(iii) In most of Indian Ocean states, including South Asia, fish is small-scale local or artisanal industry.[23] Industrial fishing is not unknown to these states but it is not done on a large scale.

When a stock is underutilized there is not much possibility of a conflict. It is only when as a stock is fully utilized that additional catch by one nation impinges upon the catch of other nations and gives rise to conflicts. But such a state may not last long with the population increases in the South Asian countries and consequent increase in protein needs. To cope up with this problem all the countries in the region

have announced ambitious plans to expand their ports and buy trawlers and deep sea fishing vessels which can operate at great distances and harvest for bigger catches. Accordingly, each country will try to recover its investment in equipment by more aggressive fishing. The attempt on the part of each country will be to maximise its own share of the transnational stock by buying more and bigger trawlers. This may lead to unnecessary capitalization and increase in the per unit of fish for all. Under these circumstances policy decisions will have to be made about the extent to which the EEZ should be polished, the use to which the surplus catch should be put, the commitment of resources for survey and research, and many other basic issues. Assured ownership rights in the 200-mile zone make it possible to draw up long-term development plans for maritime fisheries which can be integrated with, and have a significant effect on, South Asia's development plans a whole.

There are six major aspects of a plan for development of marine fisheries for the South Asian region. These are:

1. **Research and Development of New Resources:**

While the water between 10 and 50 miles from the coasts are extensively fished, there is not much information available about the deep-water resources. The deep-sea fishing survey in South Asia has been substantially limited to bottom trawling because of the importance of prawn. Although the survey of deep-sea stocks is capital intensive, there are several alternatives for the development of new resources that will

have to be carefully weighed and analyzed for cost, time and other factors. These may range from foreign contractual arrangements to self-reliance or joint international ventures or mixed international ventures. Recently, the Government of India Chartered a Polish-trawler to survey the northwest coast by Pelagic trawling although the reports of the first three voyages were not encouraging.[24]

2. **Conservation:**

It is essential that fish stocks be conserved at the maximum sustainable yield (MSY) for the purpose of continued harvesting of this renewable resource. Information about the nature, size, rate of growth, mortality and recruitment of stocks is necessary. There is a greater diversity of species in the tropics than in the temporate zones. In this connection more detailed information will be necessary for large category of catch in the Indian Ocean which is presently characterized as miscellaneous and is not reported by species or stock. Conservation is possible only on the basis of reliable information on optimum catch levels. These may vary greatly from year to year for specific stocks in specific areas. So the cost of information gathering has to be balanced with the expected gain. Fortunately, Indian coastal waters are not over fished. This allows time to these countries to collect more data in order to establish the maximum exploitation levels without endangering the basic productivity of the stocks.

3. Full Utilization

Full utilization of resources in the 200-mile zone has many different aspects in the South Asian context. It means, first, to determine the maximum exploitation level of stocks and ensuring that the total allowable catch (TAC) is harvested either directly or by giving a contract to outsiders in return of for payment. Secondly, minimising the waste and spoilage. Thirdly, to ensure that a large proportion of fish be used for human consumption. Finally, the offals and trimmings that are discarded must be put to productive use.

4. Preservation of the Small-Scale Coastal Fishing Industry

About 60 per cent of the total marine catch of India comes from the traditional fishing sectors.[25] The same is the position with the rest of the South Asian countries. These fishermen operate about 5-10 miles from the coast, using catamarans, dugout canoes, and plank-built boats. Since traditional fishing provides more employment opportunities, and the return on investment in non-powered boats is almost twice than on powered boats. The former generate about seven times the direct employment opportunities.[26] Under these situations, even small improvements and encouragements will lead to substantial impact on catch of fisheries.

5. Increase in Economic Efficiency

According to the UN Food and Agriculture Organization report less than 22 per cent of the potential commercial catch

is harvested from the Indian Ocean. This proportion is low compared to the other oceans of the world where current landings are well over half the estimated potential. South Asian countries do not have the problem of over capitalized fisheries. In this situation, a rule of the game is required to be established so that mistakes and problems of other parts of the world are avoided while fully developing and utilizing the resources. In this connection following steps are required to increase economic efficiency.

Firstly, control and regulation of the type of gear, the number of fishermen or vessels, or closing off certain areas or seasons. However, this control is costly and difficult to enforce in practice;

Secondly, for financial institutions to regulate investment on potential resource productivity and current capacity with regard to fishing and processing. These institutions should be able to prevent inefficiencies by regulating the availability of credit or the issuance of foreign exchange authorization; and

Thirdly, registration and licensing of all powered fishing vessels.[27]

If all these methods are implemented properly it will certainly lead to increase in economic efficiency of these coastal states.

6. Integrating Fishery Development with Overall Development Planning

South Asian region is poorest in the world. These

countries do not have sufficient system of fishing, processing and marketing. In this situation an integrated fishing development plan is essential which will take into account the interrelationship between investment in fisheries and the economic processes in rest of the community so that a sustained development can take place as opposed to the development of isolated enclaves.

Soteks within and Beyond the 200-Mile Zone

It is important to note that there are certain highly migratory stocks like tuna and bill fishes, which will not be encompassed within the EEZ even within the extended fisheries jurisdictions. The extent of the tuna is only now being assessed, but it appears that this is found in less substantial quantity than that found in the Pacific Ocean and are underutilized and it is tuna that attracts the fishing fleets of nations beyond the Indian ocean. Japan, Korea and Taiwan have been catching tuna in the Indian Ocean for over 20 years. More recently, Spain and France had vessels in Indian Ocean capturing tuna. France's tuna catch, for example, had gone from nil in the early 1980s to a catch of 64,000 million tons in 1984.[28] South Asian littoral States like India, Maldives and Sri Lanka have significant tuna fisheries.

The tuna is an expensive commodity. This is consumed almost entirely by the high-income States. About ninety per cent of tuna is presently consumed in the United States, Japan and Western Europe.[29] Day by day the demand for tuna is

increasing. The world tuna fleets had grown at the rate of seven per cent per year between 1964 and 1971[30] and is expected to grow at the rate of three to four per cent in near future. This will lead to overfishing by the existing and new fleets.

Indian coastal states, including South Asian littoral states can get benefit from the tuna resources through the export of locally caught fish, charging fees for fishing rights and use of harbour facilities by non-local fleets, employment ashore and afloat in both local and long range fleets, and food for local consumption. A good amount of foreign exchange can be earned by the littoral states of South Asia through the tuna which will certainly lead to help the balance of payment-position of these countries and can enable them to invest on capital intensive technique of production.

CONCLUSION

The extension of national maritime jurisdiction under the 1982 Convention has created the need for cooperation and agreement between neighbouring states, as living resources do not necessarily conform to man-made divisions. The cooperation and agreement imply an approach to the utilization of living resources of the ocean. This part of a wider concept of ocean managment designed not only to maintain the EEZ but also to protect its ecosystem. The EEZ according to 1982 Convention is subject to multiple uses Fisheries activities comprise one of the major issues. It is desirable at this stage for the littoral states of South Asian countries to come

together and chalk-out a plan for overall development of the fishery resources so as to enable them to take maximum benefit.

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11. See Saroj Mohan, No.8, p.230.
12. The USA, Canada, Mexico have passed legislation to this effect in 1976. The USSR, Denmark, New Zealand, Norway and countries of European Common Market have also extended their fisheries jurisdiction to 200 miles.
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facilities, navigational aids, etc.; Marine Scientific research; and the Protection and Preservation of the Marine Environment.

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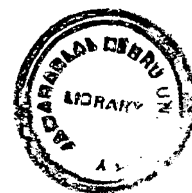

CHAPTER VI

CONCLUSION

With the enormous extension of coastal state jurisdictions, appropriation of 200 nautical miles from the coast and rights granted to the geographically disadvantaged states, the maritime issues have found such a wide dimension which was previously unknown. The problems of maritime issues arose in stages at varying intensity. The delimitation of the territorial sea rarely gave rise to major difficulties, even when its breadth went beyond the modest and traditional three miles. But from the very beginning the problems of continental shelf delimitation became difficult, and led to a crisis. Although this critical phase seemed to have passed as far as the delimitation of the continental shelf, at least temporarily concerned new problems have arisen in respect of the exclusive economic zone (EEZ). The rights of geographically disadvantaged states have added new problems to the maritime issues. Previously the rights of geographically disadvantaged states were confined only to the access to the sea. The 1982 UN Convention on the Law of the Sea provided certain new rights to geographically disadvantaged states in the EEZs, continental shelf and even getting a share in the proposed International Seabed Authority (ISA).

All these have led to claims and counter-claims over the existing areas between several coastal states, on the one hand, and claims of the geographically disadvantaged states to the uses of the Sea. The South Asia which forms the largest geopolitical reality of the Indian Ocean is no exception to this emerging trend.

For the purpose of the present study we have dealt with the maritime issues in South Asian region. The issues are divided into three parts. These are:

1. Maritime Boundaries in South Asia;
2. Rights of Geographically Disadvantaged State in South Asia; and
3. Fishery Jurisdiction in South Asia.

It is interesting to note here that India has successfully concluded and completed its maritime boundaries agreements with all of its opposite states, namely, Sri Lanka, Maldives, Indonesia, Thailand and Burma between 1974 and 1986. In concluding these maritime boundaries agreements no reference was made to the applicable principles for drawing the boundary lines. The bondaries were generlly described with reference to points of latitudes and longitudes indicated in the agreements. There are only two exceptions to this general trend. In the case of Palk's Bay some minor adjustment in the boundary was made between India and Sri Lanka because of the Kacchativu island; and the Andaman Sea between India and Thailand where minor adjustments which were considered essential.

Except these two cases, the boundaries were drawn on the basis of Median Lines between the opposite coasts or, where the boundary extended laterally into the seas the equidistance line was drawn from the adjoining costs of two countries.

But till now, India has not been able to delimit its

boundaries with adjacent states, viz. Bangladesh and Pakistan. The boundary negotiation with Bangladesh started in 1974 and have not yet been completed. In delimiting the maritime boundary with Bangladesh, the New Moore Island is a crucial and critical factor for both the countries, claim sovereignty over the island. The island is a crucial issue for both the countries. The New Moore Island and flowing baseline drawn by Bangladesh demonstrate the need for creativity and flexibility in determination of its maritime boundaries. In this peculiar situation "equitable principle" would be much more favourable and justifiable for both the countries. This will also reduce the impact of new island in the delimitation of its maritime boundaries.

Apart from delimitation of the maritime boundaries, there are other issues between the two countries. These are: river-water dispute; rectification and implementation of the 1974 land boundary agreement; Tin-Bigha corridor; ensuring peace and tranquility on the borders; mutual cooperation in stopping illegal movement of people across the borders; and extension of railway facilities for Indian goods across the Bangladesh territory. Although some of the issues have been resolved through agreemets between the two countries, there are certain issues, including the delimitation of maritime boundary, which have not been resolved as yet. The solution to the issue of maritime boundary is much more political in nature than legal. The solution to the issue of maritime boundary depends upon the solution of other bilateral issues. The acceptance and counter-

acceptance of one or more proposals by both the countries would be the appropriate way to solve their bilateral issues, including the maritime boundary delimitation.

With Pakistan, the dispute is on the Rann of Kutch. Although both the countries have accepted the method of "equidistance" to delineate their maritime boundary the actual mechanics of the agreement have not been worked out. Apart from delimitation of maritime boundary, there are many other issues between the two countries. The solution of the maritime boundary is much more political in nature than legal. Under these circumstances the method suggested in case of Bangladesh should also apply in the case of Pakistan.

In case of the rights of geographicallly disadvantaged states in South Asia, multilateral agreements lay down general principles recognizing the basic rights of these states. Whereas bilateral agreements deal with specific situations to solve any issue regarding the access and uses of the sea. Thus, all the multilateral Conventions (i.e. from Barcelona Convention, 1921 to the 1982 UN Convention on the Law of the Sea) concluded so far provided and even made it obligatory for the coastal and land-locked states to enter into agreements to deal the matter in detail. But in practice, the bilateral agreements generally do not fully implement the right of access and uses of the sea.

Little wonder, therefore, that Afghanistan and Nepal, the land-locked countries of the region have been among the leaders

of all the developing land-locked for more than thirty years in an effort to secure for themselves a free and secure access to the sea and enjoy its fruits. Through consistent efforts, they have achieved some success. In a series of major international agreements, the rights of geographically disadvantaged states regarding the access to the sea has become firmly established. Except for minor diversions and unusual tariff changes the rights are almost settled through bilateral agreements in South Asia.

Regarding the right to uses of the Sea to the geographically disadvantaged states, the 1982 UN Convention for the first time granted the rights to these States to participate in the proposed Marine Scientific Research projects through qualified experts (Article 254 of the Convention) and International Seabed Authority (Article 161 of the Convention). In addition, right to share in the "living-resources" in the EEZ on "equitable basic" has been granted to the land-locked states (Article 69 of the Convention). However, the terms and modalities have to be established by the coastal states through bilateral, sub-regional or regional arrangements, taking into account, inter alia, the interests of the fishing communities of the coastal states. The land-locked states can take part in the exploitation of an appropriate part of the surplus of allowable catch.

In so far as, the geographically disadvantaged states of South Asia are concerned rights to participate in the proposed Marine Scientific Research project and International Seabed

Authority (TSA) are of no relevance, because these states are economically too underdeveloped to think of these rights in near future. Regarding the right to share in "living-resources" in the EEZ, no bilateral, sub-regional or regional agreements have been concluded so far. Basically there are two reasons behind it.

First, it requires a lot of bargaining between the geographically disadvantaged states and the coastal states of the region. So far coastal estate of the region have not shown any willingness to conclude such an agreement.

Second. all the three geographically disadvantaged states of the region are least developed among the developing countries. None of them is able to use the resources of the sea on its own. Joint ventures with India seem to be the most likely route. In this connection South Asian Association for Regional Cooperation (SAARC) may provide a platform to conclude such an agreement.

Coming to the Fishery Jurisdiction in South Asia, even before the 1982 Convention on the Law of the Sea has come into force, South Asian states have started to claim 200-miles of EEZ. One after another proclamations have been issued by these states. Through these proclamations they have gained large areas of the sea within their sovereign jurisdictions.

This will enable these countries to develop the resources in accordance with their own socio-economic priorities.

Although these countries do not have sophisticated gadgatory, patrol vessels and skill personnel to check outsiders, the assured ownership right in the 200-mile zone will make it possible to draw up long-term development plans for marine fisheries which would make a significant impact on South Asian development plan as a whole.

Under these circumstances, there are two possible solutions: One way to exploit the fish stocks in their EEZs is to sell them to the highest bidder. This would lead to alter the present position of underutilization to optimum utilization rather quickly.

Secondly, there is other solution to this problem. The South Asian countries may exploit these resources through joint venture agreements. The joint venture agreements usually involve technology transfer and assistance from foreign states to the coastal states with the goal usually being the expansion of the coastal states' own fishery capabilities and phasing out of foreign fishing. SAARC may provide such a forum for joint venture.

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