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"Property Rights Issues and Emerging Ocean Regime in India"

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ABSTRACT

World ocean order bases itself today on notions akin to reasonable ownership, stewardship, regional justice and common heritage of mankind rather than on proprietorship. The allocation of rights has shifted from an essentially "historical basis" to an "end result basis", preferring equitable distribution. Emergence of 'ocean law' for the management of marine water resources in India's maritime zones is rather slow. The role of law and legal institutions is yet to emerge prominently, particularly concerning the property rights issues in the marine sector. Equality and development of the coastal communities are emphasized without being given an unambiguous preference. At regional level, a strong presumption is established in favour of national interests, often ignoring the residual rights of land-locked states like Nepal and Bhutan. Ad hoc crisis responses have so far replaced any formulation of an integrated strategy to regulated the critically important coastal and marine ecosystems, such as, beaches, lagoons, estuaries, mangroves, coral reefs etc. Options of adhering to a 'public trust doctrine' for greater community participation in managing ocean affairs requires not only the impact assessment studies as a prerequisite but also a critical analysis of public perception, values, attitudes and practices towards oceans in the Indian context. A legislative base for making possible the sustainable utilization of India's ocean space would require not only the complete understanding of prevailing multiple-use conflicts but also a comprehensive and realistic orientation in the factual process of interaction by which the oceans are enjoyed. The key to manage the newly acquired ocean space and resources, India has delimited the maritime boundaries with Sri Lanka, Maldives, Burma, Thailand and Indonesia, thus left with the task of finally negotiating such allocation issues with Pakistan and Bangladesh.

Introduction

Within the more comprehensive earth-space process of authoritative decision, the international law of the sea is distinctive. This may be observed in varying phases of the process of interaction by which people exploit the oceans and their resources, of the process of claim by which authority is invoked for the regulation of interactions, and of the process of decision by which authority is allocated and exercised in such regulation. The most distinctive feature of the process of claim by which people invoke authority for regulation of their interactions upon the oceans is in the predominantly inclusive character of the interests sought to be protected. Exigencies of inter-dependences inherent in the cooperative exploitation of a shared resource both impose severe restraint upon the assertion of special interests against general community interest and encourage the making of claims which express and seek to protect common interest both of inclusiveness and exclusiveness.

The most basic goals for which the process is maintained embrace of course all common interests, but a strong presumption is established in favor of inclusive interest, and exclusive interest is protected only when its protection will clearly contribute most to the common good.

The most complete and refined application of the methods in use would require comprehensive and realistic orientation in the factual processes of interaction by which the oceans are enjoyed. They are the following:

1. An economic categorization of the major recurring types of problems which raise common issues in policy and are affected by common conditioning factors.

2. The postulation of the most general overriding community policy with respect to such problems.

3. The detailed clarification and recommendation of particular policies with respect to each problem.

4. The description of past trends in terms of conformity to these policies.

5. The identification in the degree possible of the factors which have affected past decision.

6. The projection of probable future decisions and conditioning factors, and

7. The recommendation of alternatives in principle and procedure appropriately designed better to secure recommended policies.

Enforcement of rules is the key to manage the newly acquired ocean space and resources. The process of agenda setting and alternative specification must include the analysis of:

1. The inexorable march of problems pressing in on the system.

2. The gradual accumulation of knowledge and perspectiv es among the specialist in a given area and the generati on of policy proposals by such specialists.

3. Impact making capability of prevailing political process of the nation.

The law and its interpretations have proven critical to management of innumerable controversies as diverse as apportionment, zoning, urbanization, civil rights, income distribution, economic developments and management of natural resources and the environment. In an era of such expanding concerns regarding the role of law and legal institutions, water resource management issues have emerged prominently. Examples have illustrated the fact that how fundamental legal issues differ at different stages of the hydrologic cycle (due to changing physical relationships among atmospheric moisture, rainfall, runoff, streamflow and groundwater). Similarly, a model of law, society and resources derived from Easton's systems-theoretic approach to political action (which focuses on governmental institutions as arenas for the resolution of conflicts between competing interest groups) could provide a critical evaluation of national water-resources law. Issues like, public access to water supplies; definition of navigability; private and public water allocation rights (at both state and federal levels); resolution of boundary disputes arising from gradual or sudden shifts in water courses; ground water depletion and pollution; and involved international issues have been often discussed at different levels. However, yet a complete understanding and useful introduction to the complex political geography of water resource law is not on paper. Further, sea-laws in particular, have just started to take shape.

The Law of the Sea negotiations began with what appeared to be a new "shared" meaning regarding the uses of the sea, reflecting the international

communities' desire for equity. Nevertheless, the meaning being shared remains till today very superficial. Equality and development of the poor are emphasized without being given an unambiguous dominance. In general, these quasi-legislative conferences, with new forms of concensus building, are becoming accepted means of accomplishing at least a norm-creating task.

The most distinctive feature of the Law of the Sea (LOS) is the process of claim of maritime zones by which nations invoke authority for regulations of their interaction upon the oceans which is in the predominantly inclusive character of the interests sought to be protected. Similarly, the most basic goals for which the process is maintained embrace of course all common interests, but a strong presumption is established in favour of inclusive interests, and exclusive interest is protected only when its protection will clearly contribute most to the common good. The most complete and refined application of the methods in use would require comprehensive and realistic orientation in the factual process of interaction by which the oceans are enjoyed. And secondly, for enforcement of rules, the key to manage the newly acquired ocean space and resources, maritime boundary delimitation would be unavoidable, so covering both the content and the allocation issues.

UNCLOS and Changing Framework of Water Law

The material change brought by the 1982 UNCLOS III could be easily considered as the biggest reallocation of jurisdiction over areas of the globe ever to have taken place. There has occurred in this period the culmination of major, almost revolutionary,

change in some of the fundamental legal conception which are the components of which the law of the sea is made. Specifically, the conception of property rights has changed from one in which the exercise of rights in the exclusive interest of the proprietor is almost unrestricted to one in which the exercise is constrained by obligations to have regard to the interests of other states. Also, the allocation of property rights by means of delimitation of maritime boundaries has shifted from an essentially "historical basis" (where title to resources is dependent upon the validity of the claims to their acquisition based upon past conduct) to an "end-result" basis where rights are allocated in an attempt to achieve an "equitable" distribution according to the circumstances of the states concerned. These conceptual shifts point towards an approach to the use of marine resources based more upon notions akin to stewardship than upon the untrammelled proprietorship which has, broadly speaking, characterised the previous legal order(1). These changes are really dramatic. Almost 40% of what was formerly the high seas now falls within national jurisdiction of 200 nautical miles wide EEZ, thus redrawing the basic legal concepts of the content and distribution (allocation) between states, of rights over marine resources and implied obligations.

1. The Content

Until even 1958 Geneva Convention on the LOS, the "proprietorial conception" of rights over marine resources prevailed. In case of fisheries, unilateral control of coastal states was in function in Territorial Seas (TS), then generally a 3-nautical miles zone

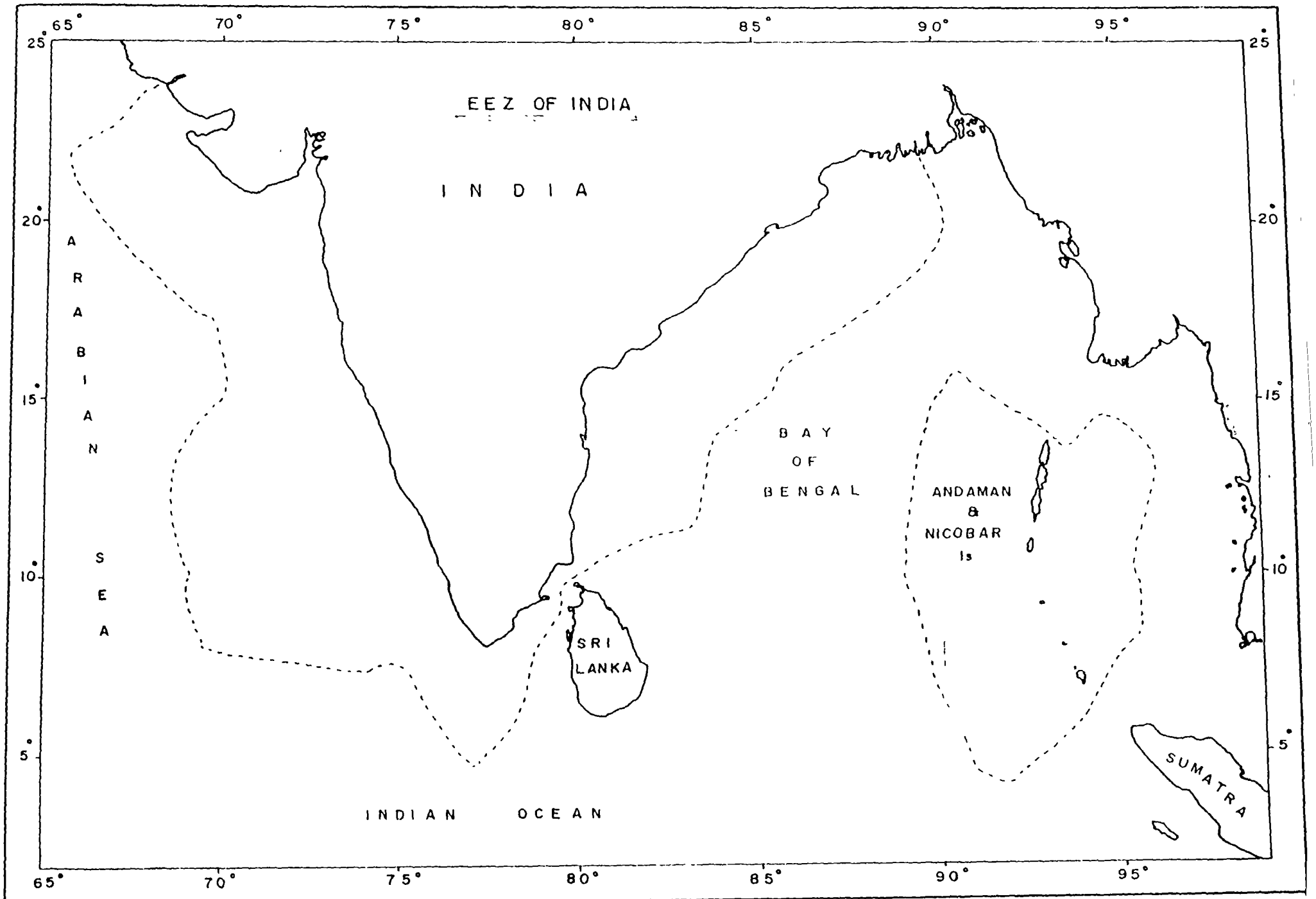
and beyond these limits, no state could regulate the fishery as such, as a "managed resource". But there were obligations undertaken in other treaties precluding, for example, discrimination against the nations, of certain other states: the right of EEZ nationals to access to the TS fisheries of each member state is one example(2).

Marine mineral resources at the sea-bed and sub-soil thereof were also put in similar position, apart from the obligations not to interfere unjustifiably with navigation, fishing, fishery conservation or scientific research, not to establish installations (eg. oil rigs) in international sea-lanes, and undertake "appropriate" anti-pollution measures (3).

Put crudely, the regime established in the 1958 Geneva Conventions, allowed the use of TS and the continental shelf (CS) resources in the purely selfish interests of coastal states. However, the one major area in which inhibiting rules did grow up during last 40-50 years was "the area of abuse of rights". The award in the Trail Smelter(4) arbitration established that states are under a duty to ensure that activities in their territories do not injure other states. In contrast to this "proprietorial approach," the 1982 Convention stressed a lot on "managed resources", particularly in provisions concerning the high seas and the EEZ.

In the high seas, the International Sea-bed Authority (ISA) is charged with the organization, control and administration of resources. It includes an

express responsibility to ensure: "the promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand" (5). This obligation to take into account the interests of land-based competitors of sea-bed minerals is elaborated in complex provisions(6) establishing a production limit on sea-bed mining operations intended to preserve the stability of the world mineral markets(7). Pursuit of the interests of sea-bed miners, regardless of the interests of others, is not a possibility. There is in particular, a clear obligation to ensure the protection of developing countries from adverse effects on their economies or on their export, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in "the Area" (8). This approach is further reflected in provisions designed to ensure that developing states which would have very little chance indeed of engaging in sea-bed mining in the Area under a laissez-faire regime, have the opportunity to participate in mining operations(9) and also in the provisions for distributing the "projects" of sea-bed mining among all states, miners or not, as part of the "Common Heritage of Mankind"(CHM) which the sea-bed minerals have been held to constitute (10). In sharp contrast to this CHM characterization of the resources of the deep sea-bed, the USA, Japan and other West European countries have decided not to sign the 1982 Convention but to pursue mining "unilaterally" under a "mini treaty" concluded between themselves, thus making themselves free of the legal


EEZ OF INDIA
INDIA
ARABIAN SEA
BAY OF BENGAL
ANDAMAN & NICOBAR Is
SRI LANKA
SUMATRA
INDIAN OCEAN
65°
70°
75°
80°
85°
90°
95°
25°
20°
15°
10°
5°

obligations concerning production limits and so on (11).

Though less revolutionary than the deep sea-bed regime, the EEZ regulations, too, demonstrate the inclusion of positive obligations towards other states in the very core of national rights over marine resources. Perhaps the clearest example of this is the manner in which the problem of fishery catch allocation was resolved. Each coastal state has a duty to determine the "total allowable catch"(TAC) of the living resources in its EEZ(12) with a clear obligation to maintain or restore populations of harvested species at levels which can produce, the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and with special requirements of developing states. The obligation goes further. Having determined the TAC, the coastal state must determine its own harvesting capacity and shall through arrangements give other states access to the surplus of the allowable catch in EEZ on an equitable basic particularly to land-locked and geographically disadvantaged states. But it is not all that clear that there is a correlative right of access vested in individual states, particularly LLGDS.

In nutshell the coastal state here is not a proprietor, free to do with those resources what it wishes.

It is a custodian, a steward. This point, can also be well made by contrasting two conceptions : "property" and "ownership". So, in the Law of the Sea, the abosolute proprietor of the 1958 convention has,

given way to the custodian of the 1982 Convention, aiming towards a modified economic relationship characterizing 'New International Economic Order'.

The wording of the 1982 Convention, then ascribes "sovereign rights" involving both rights and duties to coastal states over EEZ fisheries. However, there is no safeguard against states making excessively low determinations of the TAC or excessively high determinations of their own harvesting capacity, in order to preclude rights of access arising, not against refusal to admit particular states, nor against insistence by the coastal state on the inclusion of provisions in bilateral access agreements which are in fact unacceptable to other states(13).

1982 Convention also took the novel step of introducing what might be termed as the concept of "reasonable ownership" imposing an obligation on states to have regard not only to the rights but also to specified interests of certain other states, as an integral element in the title under which they hold the property, for example, even the intellectual property(14) or scientific expertise. Knowledge thus is being considered as the basic ingredient for exploring the development of issue areas in international regimes. Consensual knowledge could be used as a basis for policy by groups and individuals professing differing political ideologies(15). Further, indirect rather than direct links to management decisions

facilitate the emergence of consensual knowledge. The knowledge base also changed the focus of concern from the ocean as whole to primarily coastal and inshore areas.

In marine sector, while environmental control measures at national level can be interpreted as corrections to the system of property rights over domestic resources, the problems of controls are compounded at international level. Private, national or supra-national ownership rights are absent. Therefore control must evolve pari passu with international law. Additionally, the initiation of environmental control policies can have a profound impact on the distribution of welfare among various individuals and groups. Both welfare identification and institutions for compensating for welfare changes, or redistributing welfare, remain far stronger at the national level than at the international level.

Consequently, the distributional or equity implications of environmental control measures, which are often neglected domestically in order to concentrate on resource allocation efficiency criteria, can not be set aside at the international level. The equity consequences of environmental control measures directly affect the well-being of the states that negotiate the environmental control agreements, and therefore must be incorporated in any analysis of international environmental control policy formation. Finally, analysis of ocean environmental issues, cannot employ the simple models for examining common property resources which postulate a single use for the resources and market price for the resource services. The oceans have multiple and conflicting uses, some of which are valuable but unpriced in market place, thus requring intensive model building for evolving integrated policy(16).

The Indian Scenerio

Recognition of the prime importance of a marine dimension of existing developmental policies by the Government of India is relatively new. Nevertheless, the issue of utilization of national ocean space and its resource management has become a matter of priority. But the governmental attempts to educate the general public, and in particular the coastal community, and to inform the decision makers, private sector investors, academia, and other concerned agencies, about the applicability and extent of acceptibility of these international agreements governing the various ocean uses, are negligible. Protection of the national coastal and marine waters is a shared responsibility of the government and the citizen. Little exercise has been undertaken in India to explore the actual and potential role of government in sustainable ocean-space-utilization of India's oceanic zones and to evolve a perspective on the possible rights and duties of Indian citizens towards them. Pre-1980 fragmented and sectoral approach has become a matter of relatively little consequence as today's needs and conflicts are making it clear that new and more appropriate form of ocean governance must be considered. The major issues which need elaborate evaluation before concluding any nation legal regime are:

(1)Current status and future prospect of related public policy in the light of international obligations and stewardship responsibilities which UNCLOS III bestows on coastal nations, like India.

(2) Philosophical perspectives on sustainable ocean

space development in contrast with utilitarian and anthropocentric treatment of the issue

(3) An analysis of the Indian efforts in support, emergence, and promotion of a stable and balanced regime of law for the world's oceans, the practice of states, and different bilateral and multilateral agreements

(4) The options and regulations regarding the evolution of a "Public Trust Doctrine" and its applicability, thus clarifying the stewardship role of government vis-a-vis the coastal zone

(5) Issues in conflict regarding use of traditional methods of resource production and consumption in contrast with the modern technological adaptations

(6) Creation of "joint-development zones" in disputed maritime zones and cases of overlapping jurisdictions.

(7) Values, normal practice and changing attitude of people and government towards ocean-space utilization.

(8) Multiple-use-conflicts and need for an integrated model of national ocean policy

(9) Developments in the 'problem' politics' and policy' streams.

Even though "land India' is governed by the general purpose governments (federal, state, and local), decisions about "Ocean India" rely upon single-purpose governmental agencies under specific narrow legislative

mandates. The concept and potential of India's EEZ need to be brought in to focus. Settlement of the national EEZ and the continental shelf disputes would do much to foster amicable relations among the neighbouring costal countries. Likewise, agreements on transnational marine resources and activities would provide profound opportunities for further cooperation. As far as the regulatory framework is concerned, important shortcomings remain between handling marine and coastal problems, which can best be addressed by a unified legislative approach and a corresponding nodal administrative machinery. Maladjustment between the regulatory framework and the overall requirements of the existing situations prevails. Besides examining the ways in which Indians have traditionally utilized the ocean space, and their knowledge about ocean resources and issues, the implications for inducing a higher level of public awareness regarding their rights and duties toward ocean resources, need to be explored. The question of whether an explicit statement about it may be needed to help increase public awareness and involvement in the ocean should be addressed.

For example, continuation of intensive fishing practices in defined coastal areas have elicited considerable political controversy, particularly against large scale mechanized fishing. Attempts need to be made to identify the range and type of problems costal communities may face in the future and to assess their ability to cope with these potent disruptions or changes Above all, to be successful in the long terms ocean development will require strong citizen

support for decades to come. That support may only be available if ocean development is deemed to be moral incorporating elements of stewardship, harmony, survival, balance, prudence, and management. A shared responsibility, through incremental legislations among federal agencies, state and local governments, interest groups, and private citizens, preceded by sufficient public education and involvement, can best promote a sustainable coastal-space-utilization. Regarding deep-sea mining, it was on August 17, 1987 that India became the first registered "pioneer investor", an award by the ISA, and a mining area of 150,000 sq. kms. was allotted for preparing complete workplan for exploration and exploitation of polymettalic nodules in the Central Indian Ocean Basin. For a developing country like India, that too in the field of sophisticated deep-sea mining technology, this achievement is noteworthy. However, as in January 1986, India invested around US$600 million in that Mn-Nodule Project (PMN). Before the planned commercial production (3 million tons dry nodule over 22-25 years, requiring an investment of US$1-1.5 billion) could start, an investment of US$200-300 million more would be necessary. Further, India has also the option of identifying 52,300 sq. kms. for incorporation in the pioneer area and move toward her short-term aim of recovering 3 million tons of dry weight nodule

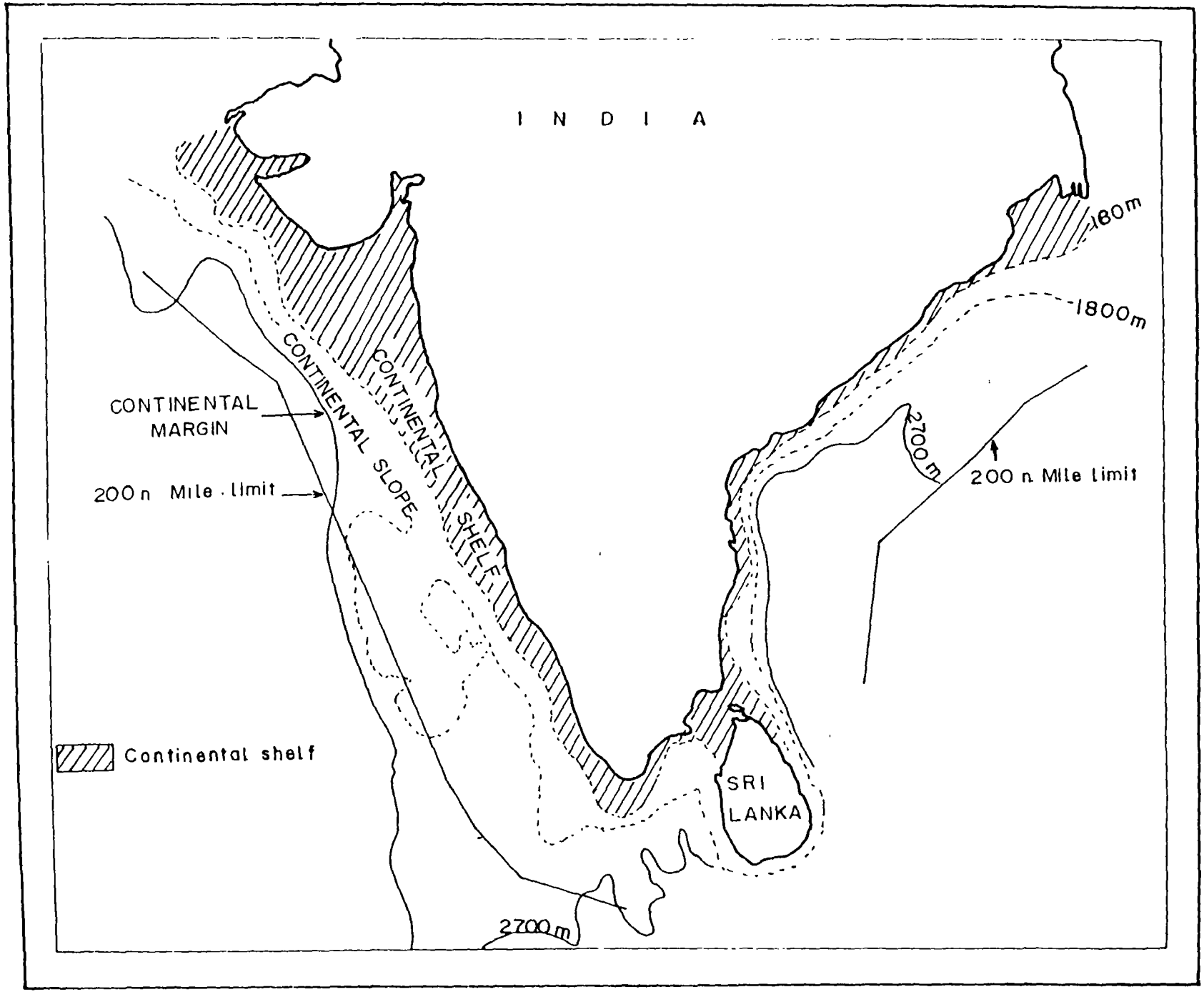
per year by 1992 besides considerable mining of polymetallic sulphides and cobalt incrustations. Working out these challenges successfully and in economically justifiable way would require an examination of different technological options(including its possible mandatory transfer) and heavy demand for skilled personnels. The level of incorporation of PMN program with elements like industry interaction, public information and impact assessment is being evaluated and new methods are being traced to achieve the maximum outlined objectives.

Lastly in case of the Antarctic Treaty system, the 1956 and 1958 Indian appeal to bring Antarctica under UN governance; 1959 opposition to the signing of the Antarctic Treaty System (ATS); the 1970's confrontationist; and 1980's collaborative approach with ATS, make her swing roles unpredictable and more inclined to national interests rather than CHM or NIEO as envisaged in case of global commons like Antarctica.

2. Allocation or Distribution

Traditional view of the international law concerning the acquisition of territory itself, on the analysis of the manifestations of state power in the history of disputed territory, in order to see whether title has been effectively acquired and maintained on the basis of occupation, prescription, cession, or any other factor. For example;

(1) The International Court in the Minquiers and



Map showing the continental margin of India

accounts of post-mortems carried out on corpses washed ashore on the islets, and

(2) The tribunal in the Rann of Kutch arbitration (India vs Pakistan)(18) showed a similar preoccupation with the details of visiting tax collectors to outlying villages, as evidence of the exercise of state authority. This retrospective approach, judging the validity of a claim to territory by reference to the previous display of effective sovereignty, in accordance with the requirements of international law, has not been followed recently in the case of maritime boundary demarcation due to lack of required precision. Exceptions have been made in claims to specific sea-bed areas or resources, such as pearl bed or to clearly defined waters such as bays.

In 1969 the first third-party settlement of a disputed shelf boundary was that made by the ICJ in the North Sea Continental Shelf cases where the principle of appurtenance[19] was used to tackle the problem of concavity of the concerned states' coastlines (eg. Denmark, Germany and Netherlands)
In crude sense, while land-boundary demarcation still bases on "retrospective method", the maritime boundaries base themselves on "end-result principles"(20)

So equitability and appropriateness have become vital for maritime boundary delimitation, as also diplayed later in the 1977 Western Approaches Arbitration Case(21) and the Tunisia-Libya-Malta Continental Shelf Cases (22), and recently the Gulf of Maine Case. So in the language of international diplomacy equitable rules have become those principles, constituted by a body of law which coul be applied by judges and arbitrators and were not simply a license for decisions ex aequo et bono.

India used the term "territorial waters" while extending its sovereignty to a belt of sea adjacent to its coast in its national legislation(24). India also adopted a 12 nautical mile "contiguous zone" for purpose of customers and sanitary regulations in December 1956(25).

The 1976 Maritime Zones Act further clarified that India accepted the limit of 24-miles(26) in a spirit of compromises and provided for the same limit. The Act maintained that the Govt. of India would exercise such powers and take such measures in, or in relation to, the contiguous zone as it might consider necessary for the security of India and to immigration, sanitation, customs, and other fiscal matters.

Similarly, as early as 1956,(27)the then President of India proclaimed that India has, and always had, full and exclusive sovereign rights over the sea-bed and subsoil of the continental shelf adjoining its territory and beyond its territorial waters (28). By another1956 Presidential proclamation(29), a 100-mile zone was declared (as EEZ) as a resonable belt for conservation purposes. It maintained that the coastal communities of India had from time immemorial been fishing in the high seas adjacent to its territorial waters. Nevertheless, it was in 1976 that the Indian Maritime Zones Act(30) gave the Govt. of India exclusive jurisdiction to authorize, regulate, and control scientific research. It prohibited any person, including a foreign government, to conduct any research within

India's EEZ except under, and in accordance with, the terms of an agreement with the Govt. of India or a letter of authority granted by the Govt. of India. Thus, India provided for a consent-based regime for scientific research in its EEZ in accordance with the views exposed in UNCLOS III. Thus, as an emerging nation, India was keen in providing unhindered international navigation throughout the EEZ. It did help UNCLOS III in establishing EEZ as a zone 'sui generis" by denying the EEZ the juridicial status of either the high seas or the territorial sea. In this zone some of the freedoms of the high seas are ensured along with the rights and interests of the coastal state. The issue of allocation has become more prominent by the agreements undertaken by Govt. of India with South Asian or other neighbouring counterparts.

The Indian Scenerio

Most of the South Asian States are gifted with long coastlines but without any developed maritime capability. Geographically, Nepal and Bhutan are landlocked states with convenient transit routes only through India since 1947. Pakistan, Indian, and Bangladesh, with sharing land frontiers, are of littoral nature. Sri Lanka, Maldives are islands; however, the former has a continental character, while the latter, with a chain of 1087 small coral islands, has an archipelagic nature. The South Asian region is Indo-centric; thus needing a special examination of bilateral relationship between India and other South Asian

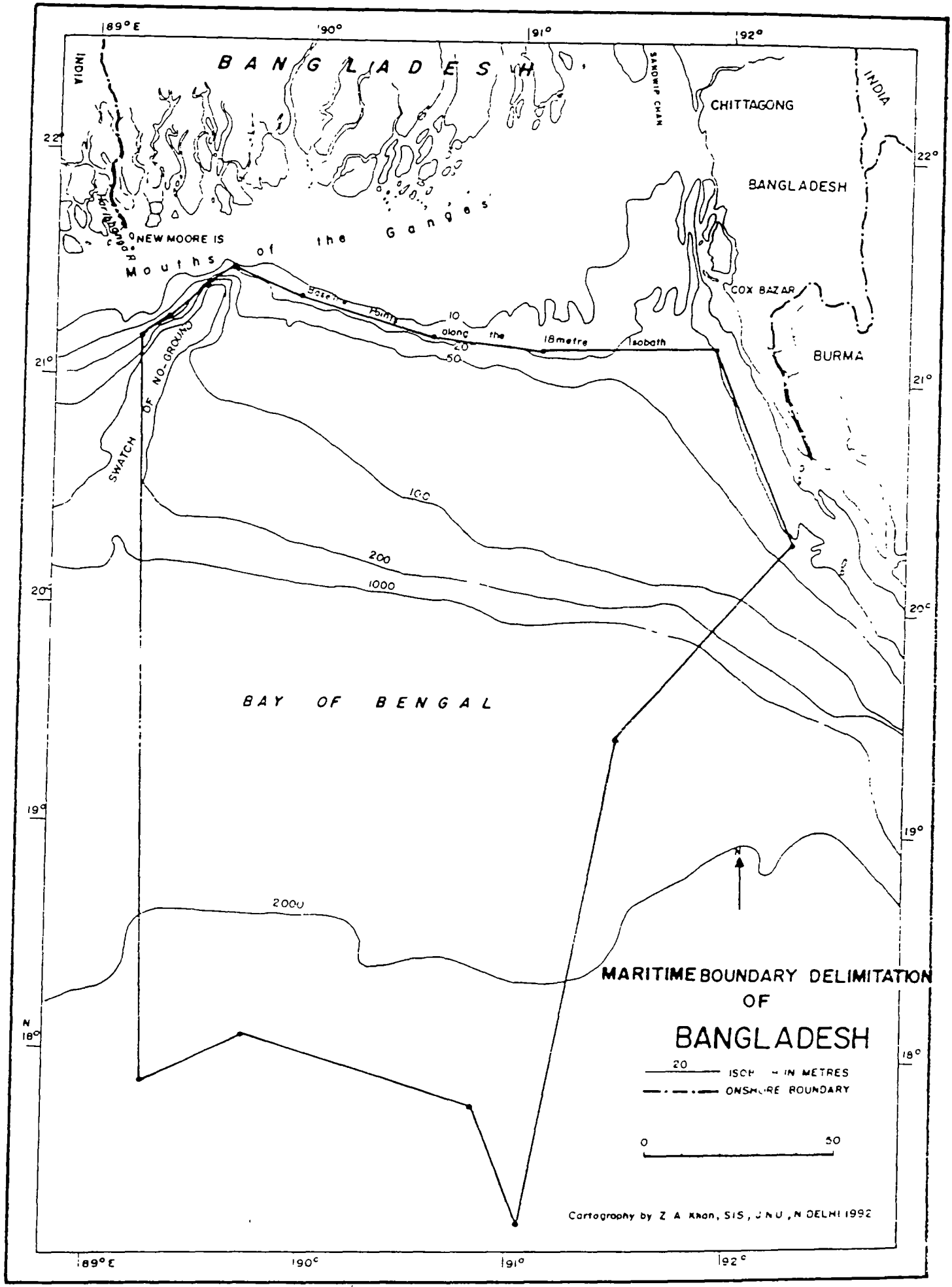
states.

Extension of zones of national jurisdiction under UNCLOS III has increased the maritime contiguity among Bangladesh, India, Pakistan, and Sri Lanka. On one hand it presented new opportunities for joint efforts in the exploration and exploitation of mineral resources, scientific ventures, and collection and change of meteorological data; on the other hand, it raised the possibilities of conflict over boundary delimitation, right over traditional stocks, and pollution control issues. Confrontations along South Asian maritime boundaries continue to develop because of the ineptness of allocation, and the change in conditions along particular boundaries, either during their evolution or since their demarcation. The realities of randomly concentrated exhaustible resources, complicated by political considerations, make the issue of marine boundary delimitation in the Indian Subcontinent increasingly difficult to settle on an amicable basis. Also, disputes over boundaries and/or resources often interact with historic rivalries, mostly of post 1945 period.

In nutshell, in Asia, about 28 maritime boundary agreements have taken place. Out of these, 9 were concluded between India and the seven neighbouring countries. Negotiations between India-Pakistan and India-Bangladesh have not yet reached a conclusive stage. Other 5 countries have already had agreements in the recent past. So we may say that in outh Asia countries with opposite coasts have been successful for maritime boundary delimitation. However, countries with adjacent or continuous coastlines are facing problems.

India-Bangladesh: In the case of the Indo-Bangladesh exclusive economic zone (EEZ) boundary demarcation in the Bay of Bengal, India claims the block awarded to Ashland in her EEZ while Bangladesh, in order to mitigate the drawbacks of its recessed coastline, has announced unilaterally a 10-fathom beseline, except west of Cox Bazaar where there is deep landward indentation of this isobath, and declared that under this criterion Ashland region comes well within its EEZ. Bangladesh maintained that wide fluctuations in the low-water mark and extensive areas of shallow water meant simply that the area could not be charted in the usual way. It was also argued that apart from the channels leading to the ports of Chalna and Chittagong, most of the area in question was not navigable. Also by claiming this baseline, Bangladesh has sought to convert 6200 square nautical miles of its potential EEZ into the country's territorial (internal) water. On 30 April 1982, the Burmese and the Indian delegations outrightly rejected this defense of Bangladesh's actions. For them, no justification seems to be possible for these baselines. Even if the coast of the Ganges Delta was considered to be shallow and liable to retreat, that is no justification for fixing the baseline as much as 50 nautical miles seaward of the nearest land. Because this beseline is not anchored to the coast, it would be technically possible even to sail into the internal waters of Bangladesh without crossing the straight baseline.

Another problem arose due to the 1971 Indian Navy's discovery of the U-shaped island named New Moore Island (named Purbasha by India or South Talpatty


89°E
90°
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BANGLADESH
INDIA
INDIA
SANDWIP CHAN
CHITTAGONG
BANGLADESH
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NEW MOORE IS
Mouths of the Ganges
COX BAZAR
BURMA
21°
10
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100
200
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SWATCH OF NO-GROUND
BAY OF BENGAL
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MARITIME BOUNDARY DELIMITATION
OF
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20 ISOB - IN METRES
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0
50
Cartography by Z A Khan, SIS, J N U, N DELHI 1992

by Bangladesh), lying 5 nautical miles off the Ganges Delta. India claims the island on the grounds that the flow of the Harinbhanga River is to the east of the island, and the island lies on the natural prolongation of Indian territory. On the other hand, Bangladesh is of the view that the river flows to the west of the island is not possible to clearly distinguish the natural prolongation of Indian territory.

India-Pakistan: Maritime boundary demarcation in the Arabian Sea between Pakistan and India has not yet reached agreement firstly due to the lack of urgency and the inherent reluctance to relinquish a claim to the seabed area which may later prove to have commercially potential hydrocarbon deposit -- vital in their quest for energy, independence, and economic security. The curved shape of the coast and selection of agreed baseline are major contentions.

India-Sri Lanka: The negotiations between India and Sri Lanka in 1974 and 1976 solved the existing problems by providing Sri Lanka with sovereigny over the island of Kachchativice in Palk Bay and retaining traditional maritime facilities to the fishermen. It also allowed Sri Lanka to fish on the Wedge Bank. Thus the boundary line between India and Sri Lanka followed the median-line principle, except as adjusted in the Palk Bay in relation to the settlement on the question of the island of Kachchativice. The agreement further stipulated that if any single geological deposit was found extended across the boundaries of either side, the two countries shall

seeks to reach an agreement as to how the structure of field shall be most effectively exploited and apportioned.

India-Thailand: Minor adjustment in the Andaman Sea between India and Thailand were made for separating India's Nicobar Islands and the Thai coast by a series of median lines with full weight given to these islands which are presumably India's "mainland". Thailand relied on the reason of simplicity in the administration principle and the "thalweg" principle of natural prolongation, while India finally compromised through modification of purely median lines. Thus, the effect given to those far away Indian Islands is less than full, yet more than half.

India-Burma: The only possible dispute in boundary demarcation between them may arise over the issue of ownership of Narcondam Island in the Andaman Sea, which Burma sometimes appears to covet from India, its neighbor. Geographically, Narcondam Island is a craterless volcano with an area of 7 square kilometers, which stands 710 meters above sea level and is bounded by 100 meters in height. In this case India insists that any boundary negotiated with Burma gives her full effect to Narcondam Island. It further implicates the Indian claim will also cover part of the continental shelf of the Irrawaddy River Delta. The fate of the area concerned would finally depend on whether the line of equal distance was based on the Burmese coastline or on the Burmese baseline which closes the Gulf of Martaban. In the first case, the area would be 1175 sq. nautical miles; in the second case, the area measures 580

sq. nautical miles. On a number of occasions the Burmese authorities have claimed Narcondam Island, but India has shown a determination to defend its sovereignty in this matter. Burma would presumably argue that on grounds of natural prolongation, no claim to part of the continental shelf of the Irrawaddy River Delta could be made from Narondam Island. However, there are two counter arguments against this view. First, Sundra Shelf terminates at a submarine ridge linking the island with the continental margin off the delta. Second, the question of natural prolongation need not arise in cases where states are less than 100 nautical miles apart. India could simply make her claim to an EEZ and refuse to discuss questions of continental shelves separately.

India-Maldives: In the case of Maldives, there are three basic problems. The first concerns the status of the constitutional rectangle, the second deals with the definition of the outer edge of the EEZ, and the third relates apparently to the disputed waters between Maldives and the British Indian Ocean Territory (BIOT) around Diego Garcia. In the north, a boundary has already been negotiated with India based on the median-line principle. Surprisingly, Maldives has claimed only 197 rather than 200 nautical miles in the south; the claim still impinges on areas which are closer to the northern territory of the BIOT. The total area in dispute is about 21,600 square miles. So long as Britain uses the territory for strategic purpose only, it may not be troublesome for Maldives to contest this area. However, a different situation would prevail if

Mauritius ever regained the Chagos Archipelago and decided to control it in order to reduce pressure on its present restricted land territory. In this unique situation, one notices the possibility of the use of the constitutional rectangle as straight baseline by Maldives.

In fact, as case study at global level, the South Asian Maritime Zone is well equipped with proper and extravagant baselines forming claims to the maritime zones with sensible international agreements on equidistance and equity. Potential conflicts are moreover based on competition for territory and the varied interpretations of the terms of the Convention. Further, the existence of multinational river systems in this region brings the South Asian river basins--in particular the Ganges, the Indus, the Brahmaputra, and perhaps the Mekong rivers--into focusinterms of dispute potential. Jointly controlled development-zones could be established for the management of disputed zones. For example, India and Sri Lanka, in a joint survey approach, have agreed to an exchange of survey data gatnered in the Palk Bay(Ceylon Petroleum Corporation) and the Cauvery Basin Areas (by the oil and Natural Gas Commission of India). Besides indigenous agencies, Sri Lanka has signed a contract with Cey oil, a subsidiary of American Pexamin Pacific Inc. on its northwest coast and has also leased oil blocks in the Palk Bay. On the other hand, India has given exploration contracts in the Gulf of Manner to a Canadian firm and in the Palk Strait to an American consortium. Cooperation among neighboring states may extend further in areas like collection, compilation, interpretation, and exchange of statistical information both regarding development of resource base and pollution control methods.

In a nutshell, the views of India and Sri Lanka on the continental margin, its uses. have developed on the basis of mutual needs of the respective countries. The attitude of Bangladesh on the delimitation and selection of extraordinary baseline has its basis in India's assessment of her economic needs. Likewise, Pakistan's stand on the transit right of the landlocked states and its insistence on more rights for coastal states have its origin in Afghanistan problems. The support of Nepal and Bhutan to the issue of Common Heritage of Mankind is based on their respective needs of sharing the economic benefits of the vast resources of the Indian ocean.

Further, since the geographical circumstances in South Asia are unique in individual cases, specific rules cannot be incorporated in the UNCLOS but have to be agreed upon the basis of bilateral or regional negotiations. The salience of maritime may strengthen regional arrangement, particularly among groups of nations with close cultural, economic, and political links.

CONCLUSION

In other words, the old order for ocean governance was a hierarchic structure with power resting in the hands of a few mighty states and became an expression of the right of the most powerful. The intermediate order (developed after World War II) stressed on CHM, global justice and global participation. Prof. Joseph Nye puts this change as as two types of power: "Power over others" and "power over outcomes". "Power over others" is the kind of power used under the old order and which involves forcing the opponent to submit by military or economic means. "Power over outcomes' is the power to influence peaceful processes ensuring the protection of one's interests when the out come of the process develops(31).

The focus of the new order would be more on national self-sufficiency through bilateral diplomacy with a demand for regional justice. However, it is predicted that this phase would tend to render the exercise of both kind of powers in even more complex, multifaceted and uncertain ways. Any future crisis in the law of the sea would be instigated by the national egoism versus community perspectives. However, it has become clear tha the common interest of all states in both exclusive and inclusive uses of the oceans of the world and in economic accommodation of all uses is not difficult to demonstrate now. Non-appropriability character of the CHM would remain a severe challenge in functional terms. Similarly, since major economic uses of the oceans interact, a sectoral approach to ocean economics would be obsolete and impractical.

In fact the law of the sea, like all international law, serves only the function of protecting common interest against the dissendent, powerful and lawless. Its only ultimate sanction, in a decentralized world, is in mutual restraint and tolerance which inhere in a recognition of common interest(36). The same point has been well made by Prof. Katzenbach about all private international law, "Comity implies a similar objective measured in public terms: reciprocal self-restraint rather than mutual policy frustration".

Having earlier stressed the need to integrate the development of ocean law with mechanisms to implement it, particularly for the benefit of the developing countries, one has to explore further the functions that may be performed most effectively by regional and global organizations to develop and implement international law.

Moreover, the key to successful implementation of regulations recommended by the LOS could only come true functionally by regional co-operation. Scattered through the 1982 Convention, particularly in the environmental sections, are many exhortations to co-operate. Indeed, the most promising examples of co-operation so far are to be seen in the UNEP Regional Seas Program. It will have to come more and more in fisheries, especially for migratory species like tuna. Another area is in marine scientific and the transfer of technology. These would be the quiet, almost unnoticed ways, in which advances are won(36). It is also important that the arrangements for all of these issues serve to integrate entire

networks of organizational actors at national and international levels. However, polarization need to be avoided like the plague.

To avoid the possibility that the international law becomes an empty vehicle for too many world's people, the nations reacting against international law because it imposes obligations without compensatory benefits, the major challenge of the future would be to further evolve legal obligations coincidental with terms mutually beneficial to the developed and developing nations. This will entail additional efforts to mobilize global, and regional organizations to ensure that all states acquire

1. The scientific data and technical skills to assess and marine resources and impacts of ocean use

2. The institutional mechanisms to plan and oversee marine activities

3. The financial resources to undertake management and enforcement responsibilities(37)

Earlier ratification of UNCLOS III by 60 countries, particularly by prominent coastal nations of the world, including India, would certainly facilitate the implementation of the legal regime for global ocean in the coming years and would help transform this quasi-legislative status into a legislative one.

Ocean form the larger part of the omni-interactive regenerative universe. Besides examining the ways in which Indians have traditionally utilized the ocean space, and their knowledge about ocean resources and issues, the implications for inducing a higher level of public awareness regarding their rights and duties toward ocean resources need to be explored. The question whether an explicit statement of citizens' rights and duties toward coastal space utilization may be needed to help increase public awareness and their involvement in the ocean should be addressed. For example, continuation of intensive fishing practices in defined coastal areas have elicited considerable political controversy, particularly against large scale mechanized fishing.

Attempts are being made at various levels to identify the range and type of problems coastal communities may face in future and to assess their ability to cope with these potential disruptions or changes. As with any other public activity that needs community support, it is also important to establish the moral codes for ocean resource development.

There is much to be done about the conceptual base, methodologies, and practical planning tools to ease the process of policy-making and to facilitate the integration of the marine dimension into the national planning process. Simultaneously, the scientific products must be tailored to answer the ecological, economic, and governmental management system.

A shift of concern from pursuing raw ocean science to overall environmental health has begun to emerge. Environment oriented interest groups have started

organizing themselves around major ocean issues. Notions of conserving the marine environment and controlling marine pollution are being translated into larger concepts of ecology and the moral and ethical values of resources. Ecopolitics is getting additional boost. It is being realized that the coastal zone needs vigilant public attention, and an analytical framework would need to be developed soon for the health of the marine environment. A shared responsibility among federal agencies, state, and local governments can best promote a sustainable coastal space utilization.

The solution to coastal and marine pollution are complex and will require the commitment of people and government at all levels. Expansion of marine scientific research and monitoring programs, with rapid technological adaptation, seems unavoidable. Therefore, an extensive account, based on the ecological conservation of India's marine and coastal environment, needs to be worked out in the near future, besides giving proper attention to the political and organizing aspects of it. India must expand her efforts nationally to educate, inform, and train scientists and environment al resource managers at all levels to help them acquire the skills needed to deal with complex environmental problems and difficult management decisions. For example, the fragile balance of the extremely productive estuarine environment may be easily destroyed by unregulated human activities. Changes in water quality or alterations caused by dredging or construction works to coastal barrier (that protects the mouth of these inlets) can lead to destructive changes in marshes and mudflats that lie behind. Protection of national estuarine environment could be promoted

only by its inclusion in an active coastal-zone-manageme mt program. Such inclusion is also essential for developing a capability to predict responses of estuarine environments to human actions and natural events, and for implementing cost-effective strategies to manage these fragile ecosystems. Until then, only costly uncertainly will remain regarding the effectivene ss of alternative management strategies. Expenditure of funds on sitespecific problems are seen as a poor investment for developing a national approach to estuarine management by research rather than a resource management agency. Needed now are studies on the basic functioning of studies on habitats and relationships to overall productivity around the country. Such scientific understanding would, thereby, provide the critical knowledge needed to:

-Develop appropriate water management strategies

-Develop cost effective pollution control strategies

-Maintain and restore critical estuarine habitats

-Restore and enhance estuarine dependent fisheries

Improve our ability to sustain and increase long-term economic returns from estuaries through recreation, resource extraction, transportation and waste disposal.

This new knowledge can be used by resource management agencies to develop costeffective regulations, improve permitting, and reduce litigation. The ultimate benefit will be enhanced economic development through the wise use and management of estuaries.

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