

Maritime Security In India Vis~A~Vis Law Of Seas: An Analysis

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ABSTRACT

Maritime security has threat from various effects like maritime terrorism, stowaways, drug trafficking, container crime, human trafficking, piracy, illegal migration etc. Terrorism has a great impact on the maritime security of any country; it involves movement of arms and ammunitions from the sea to attacks on ships at sea.¹ The 26/11 Security attack has led India to rethink upon its maritime security and has focused on it with great attention and various new strategies were formed for enhancing maritime security.

The connotation maritime security mean different to different people. Thus, paper will; first of all, raise a very basic question that is what maritime security is. The paper highlights the growth of Indian maritime laws. It deals with the security cooperation which India has with different countries. The paper also underlines the challenges faced by Indian maritime security laws and the ways by which it can be curbed.

Keywords: Maritime security, law of seas, challenges, security cooperation, piracy, and terror attacks

¹ Ensuring Secure Seas: Indian Maritime Security Strategy, Naval Strategic Publication (NSP) 1.2, October 2015, ISBN: 978-93-81722-22-0

INTRODUCTION

“To be secure on land, we must be Supreme at Sea...”

- Pt. Jawaharlal Nehru

Maritime Security has drawn much attention these days from the coastal states. It is a constant concern. It has gained attention after various terrorist attacks as they entered through sea route. Maritime security, generally speaking, deals with the “safety of ships and maritime installations with the primary purpose of protecting maritime professionals and the marine environment.”²The contemporary discourse of maritime security can be seen at three levels:³

1. Related to maritime boundaries
2. Threats and challenges at sea
3. Issue of environment pollution

Retired admiral Arun Prakash in his speech defines maritime security as a collection of all the issues that pertain to the seas, and have a bearing on national security.⁴ India is one amongst the states who have given a great attention to this maritime security. India has also incorporated the concept of maritime security in national security strategies. In India, Navy is dominant in power and has an important role to play in ensuring maritime security. This has to be done to counter both traditional as well as non-traditional maritime security threat. India has been an active member in various maritime security conventions and also entered into bilateral treaties with states in order to promote maritime security.

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² Christian Bueger, What is maritime security?, Marine Policy 53(2015)159–164, Available at: www.elsevier.com/locate/marpol

³ Vijay Shakhua, Maritime Security, 9th Berlin Conference on Asian Security, June 2014-2015, Indian Council of World Affairs

⁴ Admiral (Retd.) Arun Prakash, Maritime Security Of India: Future Challenges, November 26, 2013, Available at: <http://www.idsa.in/keyspeeches/MaritimeSecurityOfIndiaFutureChallenges>

ammunitions from the sea to attacks on ships at sea.⁵ The 26/11 Security attack has led India to rethink upon its maritime security and has focused on it with great attention and various new strategies were formed for enhancing maritime security.

Modi has accredited that sea borne terror and piracy is the major challenge that India is facing.⁶ Thus, this paper will focus only on the aspect of threats at sea which may impinge on the safety of the citizens of India and may also affect the sovereignty and integrity of India.⁷

MARITIME SECURITY AND LAW OF SEAS

Maritime terrorism is a threat to every state jurisdiction and there is a need of law to curb the same. India is a country which is geographically situated near sea and is dependent upon sea for various things like trade etc. Thus it is essential for India to maintain security at the coast as well as at the sea. India has prioritised maritime security and has become a party to United Nation Convention on Law Of Seas (UNCLOS) and the Convention for the suppression of the unlawful activities against the safety of maritime navigation, 2005 (SUA convention).

UNCLOS is a convention which basically governs that the activities took place within the maritime zone or not or under which state's jurisdiction. This convention deals with two types of jurisdiction, prescriptive jurisdiction and enforcement jurisdiction.⁸ If an illegal activity has taken place in the territorial sovereignty of a state then another state cannot enforce its enforcement jurisdiction. The convention provides that the prescriptive jurisdiction can be exercised over the area outside the territorial sovereignty of the state. At the same time it provides that only flagship state can exercise jurisdiction over the vessel in the EEZ.⁹

India was interested in becoming a party to this convention as it has met almost all the major issues that India was concerned with. It has adopted that the breadth of the territorial sea would be 12 nm from the base line¹⁰ and No state will have jurisdiction over the high seas.

⁵ Ensuring Secure Seas: Indian Maritime Security Strategy, Naval Strategic Publication (NSP) 1.2, October 2015, ISBN: 978-93-81722-22-0

⁶ Sea-borne terror, piracy challenge to maritime security: Narendra Modi, Feb 8, 2016, Available at: <http://www.deccanchronicle.com/nation/current-affairs/080216/narendra-modi-to-navy-fight-piracy.html>

⁷ Supranote 4

⁸ Article 73, UNCLOS

⁹ Article 217, UNCLOS

¹⁰ Article 3, UNCLOS

High sea does not include EEZ, Territorial waters and internal waters.¹¹ UNCLOS basically is an anti piracy convention and deals with piracy in the high seas only.

In order to combat with issues of illegal activities in the territory of the state and maritime zones outside the territory of the state, SUA convention of 1988 was adopted. The reason behind the adoption of SUA convention was the increasing terrorist activities at the ocean.¹² The SUA convention basically deals with the events after the illegal act i.e. apprehension conviction and punishment. There is only one provision that talks about prevention and i.e. article 13 and it says that state parties should participate in prevention of illegal activities and should take all the practical measures for the same. India is also a signatory to SUA convention and it is different from UNCLOS in various aspects. SUA has widened the scope and deals with the ship navigating from or through the outer limit of the territorial water. This means SUA has its application in the exclusive economic zone as well. SUA has widened its application from age old phenomenon of piracy to recently developed activity of terrorism.

SUA has complied with the general principles of international law and it excludes warships and government vessels from its ambit. This SUA convention has addressed the problem of terrorism at sea for the first time and developed as the international anti terrorist legislation.¹³ The main purpose of the SUA Convention therefore, is to ensure that appropriate action is taken against persons committing unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.¹⁴ It also contains a provision for extradition. In these cases also extradition will be dealt by extradition treaty but in case there is no extradition treaty then the extradition clause can be used to extradite.¹⁵

¹¹ Article 86, UNCLOS

¹² Kamrul Hossain, Hugh M. Kindred, and Mary R. Brooks, The Challenge of Maritime Security against Terrorism: A Dialogue Between the European Union and Canada, Available at:

¹³ Helmut Tuerk, Combating terrorism at sea- SUA, Available at: <https://www.unodc.org/tldb/bibliography/Helmut%20Tuerk.pdf>

¹⁴ Neakoh Raissa Timben, PIRACY: A Critical Examination Of The Definition And Scope Of Piracy And The Issues Arising Therefrom That Affect The Legal Address Of The Crime Globally, University of Tromsø Faculty of Law, Fall 2011, Available at: <http://munin.uit.no/bitstream/handle/10037/3893/thesis.pdf?sequence=2>

¹⁵ Article 11, SUA Convention 1988

With the change in time the optional protocol to SUA convention was enacted in 2005. The vital aspect of 2005 SUA convention is that it has broadened the list of the offences and it includes maritime terrorism as an offence.¹⁶ Terrorism is not defined anywhere in the convention but the 2005 convention provides that there must be specific knowledge and intention to cause terrorism and there must be a terror motive. The purpose should be so as to do or to abstain the government from doing any act and also to intimidate the population of that state.¹⁷ SUA Parties are obliged to establish jurisdiction principally when unlawful acts are perpetrated against their ships, in their territory or by one of their nationals. In other cases SUA regulates facultative jurisdiction, for instances: States may establish jurisdiction in connection with acts resulting in death or injury of their own citizens, or if the crime was committed to oblige this State to do or abstain from doing any act.¹⁸

To ensure the smooth working and implementation of SUA convention in India, the parliament has passed a law i.e. SUA Act in 2002. It extends to whole of India including the territorial water, continental shelf and the exclusive economic zone.¹⁹ The provisions of this Act reflect the features of the SUA convention and its protocol as well. It is the national legislation that deals with combating terrorism at sea and off shore by clearly defining the offence and its punishment.²⁰ SUA Act provides that any unlawful exercise of control, act of violence or destruction of the fixed platform of the ship is considered as an offence.²¹ It further provides that in such offence causes death then it is punishable with death penalty and in case it seizes or threatens a person and a ship, the punishment may be extended upto 10 years and 2 years respectively.

¹⁶Article 3, SUA Convention 1988

¹⁷ Robert Beckman and Tara Davenport, Maritime Terrorism and the Law of the Sea: Basic Principles and New Challenges, Centre for International Law, National University of Singapore, Presented at Globalization and the Law of the Sea, 1-3 December 2010, Mariott Metro Center, Washington D.C

¹⁸ European Commission Seminar Piracy And Armed Robbery Against Shipping
Brussels, 21 January 2001 LEGAL ASPECTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPPING
Notes for the oral presentation by Agustín Blanco-Bazán

¹⁹Section 1, SUA Act 2002

²⁰ Dr Suresh R, Maritime Security of India: The Coastal Security Challenges and Policy Options, Vij Books India Pvt. Ltd, 2014

²¹Section 3, SUA Act, 2002

The Act also provides that the cognizance for offences as provided under the act shall be taken if it has been committed on the ship of Indian flag or has taken place on the fixed platform irrespective of its taking place in abroad.²²

MARITIME SECURITY: NATIONAL INITIATIVES

As the threat of maritime security is extended from other states only then one way to promote security is security cooperation between small and big states through bilateral and multilateral treaties. India has entered in security cooperation with various states out of which some important ones are discussed here.

One of the most important cooperation was a trilateral agreement between India, Maldives and Sri Lanka for maintaining peace and security in the Indian Ocean and to prevent maritime terrorism. India and Sri Lanka does not have a friendly relationship because of Sri Lanka's geographical location in Indian Ocean and there were many conflicting situations between both the states. Maldives and India have comparatively better relations as India has helped Maldives in disaster management and against Sri Lanka in a Coup attempt.²³ In this trilateral agreement, the states focussed on Maritime domain awareness?? to which IMO was a part. It also concentrated on the "Training and capacity building initiatives in areas of MDA, Search and Rescue, and Oil Pollution Response; and joint activities including trilateral exercises, maintaining lines of communication between illegal maritime activities and formulation of marine oil pollution response contingency plans and cooperation in legal and policy issues related to piracy are other issues",²⁴

Another important cooperation is between India and Mauritius. This is an expansion of the trilateral cooperation between India, Maldives and Sri Lanka in the Indian Ocean regime. This expansion will give an advantage to India. India had signed an MOU and the pact provides for "setting up and upgradation of infrastructure for improving sea and air connectivity at the Outer Island of Mauritius which will go a long way in ameliorating the condition of the inhabitants of this remote Island. These facilities will enhance the

²²Section 3(8), SUA Act, 2002

²³Dr. M. Samatha, India, Sri Lanka and Maldives Trilateral Maritime Security Cooperation: Political and Economic Constraints in Implementation, Indian Council of World Affairs Policy Brief, Available at:

²⁴ Rahul K Bhonsl, India's Maritime Cooperative Security Architecture, 1, Available at: <http://mantraya.org/indias-maritime-cooperative-security-architecture/>

capabilities of the Mauritian Defence Forces in safeguarding their interests in the Outer Island”²⁵

India also had cooperation with Seychelles and the cooperation underlined issues such as Coastal Surveillance Radar System (CSRS), maritime security capacity building through support in infrastructure and platforms as patrol vessels/surveillance aircraft.²⁶ It is an attempt to prevent piracy and terrorism in the Indian Ocean. The Seychelles government has allotted a land to build a naval base of India as it would help both the countries in strengthening maritime security and it would also help in exercising greater control on IOR and command the Oil transport lines.

CONCLUSION

India has made many efforts to strengthen Maritime security against terrorism and unlawful activities. Out of such many efforts one is enactment of SUA Act, 2002. This was enacted against the complexities of the UNCLOS and SUA convention which can only be resolved after an adequate national legislation is made. The effectiveness of such measures depends on States participating in and implementing these measures. International and regional efforts should now focus on encouraging States to participate in such measures and on examining how States can effectively implement their obligations under the relevant conventions. Also India has taken other initiatives in the form of security cooperation to maintain and strengthen the maritime security in India.

²⁵India to develop strategic assets in 2 Mauritius, Seychelles islands, March 12, 2015, Available at: <http://indianexpress.com/article/india/india-others/india-seychelles-sign-four-pacts-to-boost-security-cooperation/>

²⁶ Manju Seth, India needs to shore up maritime security, The Tribune India, Available at: <http://www.tribuneindia.com/news/comment/india-needs-to-shore-up-maritime-security/27731.html>