

A.K.H Morshed

COOPERATION IN THE MARITIME ZONES AMONG AND BETWEEN THE SAARC COUNTRIES

Abstract

All the SAARC countries have important and growing maritime interests in the Bay of Bengal, the Arabian Sea and the Indian Ocean to defend individually. This paper boldly argues that in some selected areas, the real interests of the SAARC countries can meaningfully be advanced in the regional context. But to be useful and feasible, it should be promoted step by step, taking into account the sensitivity of the subject matter and avoiding conflicts of jurisdiction. Three areas of interests to the SAARC countries individually and regionally have been taken up. These are : fisheries, maritime environment and scientific research. The author argues that lack of cooperation in these areas may contribute to the rapid destruction of valuable resources. Moreover, unsustainable practices may lead to deterioration of political relations and weakening of the region in the global arena.

The countries of SAARC have important maritime interests in the Bay of Bengal, the Arabian Sea and the Indian Ocean. Even though Nepal and Bhutan are landlocked countries they took an active part in the protracted negotiations in UNCLOS III (1974-82).

Barrister A.K.H. Morshed, former Foreign Secretary and Chairman, Board of Governors of BIISS, is currently the Legal Counsel, Ministry of Foreign Affairs, Government of Bangladesh. The writer has greatly benefited from the valuable advice and suggestions of Dr. S. P. Jagota and Dr. Sahgal both formerly of the Government of India. He has also had the benefit of searching criticism by Mr. Jamshyd Hamid of the Government of Pakistan. Needless to say the views expressed are entirely the writer's and cannot bind any Government or institution.

The UN Convention on the Law of the Sea 1982 contains important provisions safeguarding the interests and rights of the landlocked countries. Of the littoral countries of SAARC India has a long coastline and has been categorised as a broad shelf country. In addition to its important interests in the Continental Shelf and the EEZ both living and non-living, India is also the first developing country to register as a Pioneer Investor with the International Seabed Authority (ISBA). India is already engaged in extensive exploratory work in search of polymetallic nodules on the deep sea floor in the Indian Ocean. It is also engaged in scientific research and study in Antarctica. These activities are closely related to deep sea mining as well as mining in the maritime zones of national jurisdiction. India has signed and ratified the Convention of 1982 (as have Sri Lanka and Pakistan).

Pakistan also has a substantial coastline and is strategically placed between two highly prospective zones, viz. the outermost reaches of the Persian Gulf and the Gulf of Kutch. Pakistan also has substantial fisheries in its territorial sea, EEZ and Continental Shelf.

Bangladesh has a smaller coastline and is pinched in between India and Myanmar. Important hydrocarbon deposits have been found in the near sea and coastal waters close to Chittagong. The fisheries resources in the Bangladesh EEZ and Continental Shelf are probably less rich than those of India and Pakistan and the Maldives in the Arabian Sea. Bangladesh, however, by reason of its huge population and limited land area will have to depend on its marine resources and this dependence will continue to grow rapidly.

Maldives as an island and archipelagic country enjoys relatively vast EEZ and Continental Shelf as areas of national jurisdiction. It has abundant fisheries both actual and potential and is well placed to stake a role in international deep sea fishing.

Sri Lanka negotiated a special dispensation in UNCLOS III for the limits of its continental shelf in the Bay of Bengal which purport to give it and India a broad Continental Shelf in that area. Sri Lanka is well placed in the international deep sea fishing stakes at least in potential.

A feature concerning practically all SAARC countries with the partial exception of India, Sri Lanka and Maldives is the relative lack of priority given to maritime matters. This is reflected in the relative standing of their Navies compared to land forces and the lack of interest of the private sectors in investment in the marine domain. It is only recently that some interest has been roused by the discovery of hydrocarbons off shore and the growth of shrimp farming. Here too the full potential of the sea and its resources has not been exploited through systematic and scientifically sound methods.

This brief preliminary introduction, it is hoped, will serve to show that the SAARC countries have important and growing maritime interests to defend individually. This paper urges the view that in some selected areas, the real interests of the SAARC countries can only be advanced in the context of regional co-operation.

As a noted Indian authority has aptly said:

“Maritime co-operation among the SAARC countries is both desirable and feasible. But to be useful and feasible it should be promoted step by step, taking into account the sensitivity of the particular subject-matter and avoiding conflicts of jurisdiction.”

The three areas of immediate interest for the SAARC countries both individually and in the regional context, may be subsumed under the following broad heads: Fisheries, the Marine Environment and Scientific Research.

Fisheries

The problem of over-fishing and the depletion of stock--in some cases irreversibly--is now a world-wide problem. In 1996 a Treaty for the Preservation of Living Stock was negotiated and settled under the auspices of the UN. The global phenomenon has two manifestations: first, the depletion of stocks manifests itself in ever decreasing annual yields of particular species and second, the balance between different species is disturbed perhaps irrevocably with unforeseen and incalculable consequences for the Marine Ecology. These changes impact with peculiar force on the developing countries. These countries such as the SAARC countries do not have the sophisticated highly capital intensive equipment to compete with modern blue water fleets deployed by the developed countries and the NICs. in the high seas. Furthermore they do not in general have the sophisticated means of policing their own EEZ against outside encroachment. Many, if not most, developing countries do not have access to reliable information on the available and potential stock which increases their vulnerability to poaching. It is tempting to see these trends as the inexorable transfer of dwindling real resources from the developing to the developed countries.

Part V of the UN Convention of 1982 lays down the rights of the Coastal State in its own EEZ. These are very detailed provisions not least in the domain of the preservation and maintenance and renewal of stocks. A number of articles in this part relating to different species lays down the mandatory duty on the Coastal states involved to take measures of implementation through appropriate regional and sub-regional organisations. (c.f. article 61 Conservation of living resources; art 63 stocks occurring in the EEZ of two more states ; art 64 highly migratory species; art 65 marine mammals; art 66 andramadous stocks originating in rivers; art 67 Catadromous stocks). These provisions have the practical effect of placing coastal states under a broad general duty to co-operate in the framework of regional organisations.

Article 69 provides for and protects the rights of 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 EEZ of coastal states of the same sub-region or region". This provision which is dovetailed with provisions for the preservation and renewal of stock may optimally be implemented in a regional or sub-regional context because of the nature of the factors that come into play in giving effect to it.

It is felt that regional co-operation in this domain may be relatively painless because of a broad identity of interests of the states of SAARC. Even India with its weight and technical sophistication will find it useful to co-operate in policing its vast coastline and more particularly in the preservation and renewal of stock. For the smaller countries such co-operation is becoming a dire necessity. At the outset co-operation would probably start with exchange of information. SAARC can act as a clearing house of information. Co-operation in policing would eventually lie in agreed quotas for outside states parallel to licensing procedures etc.

Co-operation in this domain would probably yield 'externalities' in dealing with especially other outside states and regional organisations. It may be noted that the EU has signed the Convention of 1982 *qua* EU additionally to the signatures and ratifications of its Member states. Thus they enjoyed two bites at the cherry throughout the long-drawn negotiations.

Marine Environment

Co-operation in the protection and preservation of the marine environment of the SAARC countries offers a promising platform for the sustainable development of the marine resources of these areas. The marine environment is threatened by activities of the coastal states of SAARC and even more so by external and extra-regional forces. Moreover, without co-operation in the maritime domain co-

operation in the preservation and protection of the Sub-continental environment as a whole may be substantially impaired.

South Asia is endowed with two hugely valuable but specially fragile eco-systems in the deltas of the Ganges and the Indus. A major thrust to protect these now becomes a regional/sub-regional imperative. The preservation of the many mangrove swamps dotted along India's coastline and the coastline of Sri Lanka would offer many synergies for the region as a whole.

The external threat to the Marine Environment is mainly represented by pollution through oil and chemical spillage. Here too SAARC countries can co-ordinate their resources especially their resources in expertise to draw up a preventive regional regime. Mechanisms for jointly handling actual disasters could gradually evolve among interested countries.

Part XII of the Convention of 1982 is concerned with preservation and protection of the Marine Environment where the likely threats to the Marine Environment are identified and the rights and duties of states are spelt out.

Here again (as in respect of Fisheries) the Convention of 1982 lays down a mandatory duty on states to co-operate globally and regionally. Special emphasis is laid on regional and international co-operation in studies, research programmes and exchange of information on the nature and the extent of pollution, exposure to it and its pathways risks and remedies" (art 200)

Marine Scientific Research

Co-operation in marine scientific research is clearly one of the most promising fields for co-operation. Some lines of enquiry readily suggest themselves. Research in the living resources of the sea—fish, weed and plankton—as an alternative source of protein would form an appropriate part of any regional food security scheme in SAARC.

Another field is regional co-operation in the feasibility of marine based energy resources e.g., tides and the heat exchange intrinsic to the meeting of sweet- and salt-water.

Existing co-operation in dealing with natural disasters such as tidal waves and cyclones between India, Pakistan and Bangladesh (as exemplified in Urir Char) can be reinforced through joint research in weather and climatology. Already Bangladesh has profited from experience in other SAARC countries in designing cyclone shelters.

Scientific research on global warming and sea level rise is of interest to all SAARC countries but especially to Bangladesh and Maldives.

Indeed regional co-operation in scientific research offers a fruitful basis for co-operation both in the domain of fisheries and of the marine environment.

Part XIII of the Convention of 1982 devoted to Scientific Research is structured differently from the parts considered above under the two previous heads. The scheme of Part XIII is essentially to safeguard the rights of neighbouring states including landlocked ones from the potential harmful effects of marine research undertaken by a coastal state or international organisation or body.

Nevertheless the overall regime of the 1982 Convention offers a promising framework for co-operation in scientific research. Probably the starting point of such co-operation is some limited co-ordination of research programmes and agenda and gradual integration of research with land based programmes.

While the UN Law of the Sea Convention of 1982 has been taken as an appropriate point of departure for maritime co-operation among the SAARC countries, the scope and context for such co-operation has to be placed in a broader framework. In particular UNCED 1992 and follow-up including the UN Convention on

Climate Change and the UN Convention on Bio-diversity as well as the seven programme areas of Chapter 17 of Agenda 21 and its follow-up constitute the essential context of effective regional co-operation. The latter includes *inter alia* the outcome of the World Coast Conference of November 1993; Programme of Action for the Sustainable Development of Small Island Developing states of April May 1994; Agreement on Straddling Stocks and highly Migratory Species 1995 : the Global Programme of Action for the Protection of the Marine Environment from land based Activities of November 1995. Finally, the Review of Agenda 21 including Chapter 17 by the Special Session of the UN General Assembly of June 1997 and the forthcoming Programme 1998-2002 must figure as part of this broad framework. The SAARC countries have participated in the formulation and negotiation of these Instruments and Programmes. Indeed they have individually made valuable contributions thereto.

In promoting co-operation it is perhaps important to begin with efforts to develop common interests of the participating states in sustainable ocean management for the benefit of living and future generations. Initiatives in Integrated Coastal and Coastal Zone Management are likely to yield large near time benefits. In the conditions prevailing in the SAARC region coastal management has close potential linkages with programmes for the eradication of poverty. Indeed any programme of coastal management will have an important Poverty Alleviation component.

Keeping in mind the national interests and sensitivities of the SAARC countries it is possible to suggest the following as initial areas of regional co-operation:

(i) sharing of information and technology for effective national integrated marine and coastal management including aquaculture traditional and artisanal fishing and fisheries, coastal ecology and coastal zone management;

(ii) promotion of a common policy for access of foreigners to the living resources of the EEZ and for effective monitoring control and surveillance;

(iii) co-operation in conservation and management of straddling fishstocks and highly migratory species

(iv) development of preventive and remedial measures including contingency planning in facing natural hazards and disasters such as cyclones, tidal waves;

(v) promoting regional tourism through cruise ships and coastal trade;

(vi) marine environmental protection in the coastal zone against pollution from various sources of including land based activities.

(vii) establishment of regional centres for promoting training, scientific research (R & D) information exchange, capacity building and periodic review of developments in these and other areas in SAARC ;

(viii) co-operation against drug trafficking

(ix) Last but not least, the question of funding and institutions should be looked into in a regional context.

Co-operative Approaches to Exploration and Exploitation

One of the potential areas for regional co-operation is in the development of co-operative approaches in the field of exploration and exploitation of the marine resources. In view of the highly sensitive nature of such potential ventures involving the strategic interests of the littoral states, they have to be viewed essentially in a longer term perspective. Before such ventures can become feasible a system of confidence building measures has to be in place so that the states involved are persuaded that their strategic interests are in no way jeopardised.

In parts of the world difficult problems of maritime boundary delimitation have led to the designing of regimes for joint exploration and exploitation embracing two or more states. As yet these designs have not been tested in actual situations. Since maritime boundary problems are seen as territorial problems, they arouse strong atavistic feelings associated with property and vested rights. The successful working of such designs clearly calls for high degree of political co-operation and statesmanship of the highest order among the participating states.

South Asia has its share of intractable maritime delimitation problems notably between India and Pakistan, and India and Bangladesh. Still Bangladesh and Sri Lanka urged such forms of co-operation in the Bay of Bengal in the framework of ECAFE/ESCAP. Scholars and diplomats in ASEAN have been active in examining these forms of co-operation suggesting a possible trend. The SAARC countries can profit from these currents of thought and ideas. Academic exchanges in this field can prove to be a useful way of addressing these sensitive problems in non-confrontational discourse.

The Formation of BIMSTEC

A new regional economic co-operation grouping BIMSTEC has now emerged comprising Bangladesh, India, Myanmar, Sri Lanka and Thailand. Two of its members belong to ASEAN e.g. Myanmar and Thailand and three belong to SAARC *viz.* Bangladesh India and Sri Lanka. Though BIMSTEC is only eighteen months old, its potential as 'a bridge' between SAARC and ASEAN has gained recognition. In the maritime domain, BIMSTEC offers an important link for broadening the scope of regional co-operation in SAARC.

At the second ministerial meeting of BIMSTEC in Dhaka on 19 December 1998 the leader of the Sri Lankan delegation Lakshman Kadirgamar had this to say:

"There is plenty of scope for co-operative endeavours in seabed resources of the region such as conservation of coastal eco-systems, prevention of marine pollution, exploitation of ocean materials and development of ocean energy. A policy for the protection of the tuna fish and other endangered marine species within the waters of the BIMSTEC region has become an urgent need. We must lobby collectively against such illegal exploitations and the problems caused by foreign vessels invading our seas. To this end we could explore the possibility of formulating proposals for joint patrolling and surveillance in the Bay of Bengal. Further we must strengthen our resource capabilities for joint actions in the areas of fishing and processing, boat-building, the development of ports and ornamental fish farming."

Conclusion

The relative neglect of maritime problems and possibilities in South Asia may prove extremely costly to the region as a whole as well as to individual SAARC countries. Lack of co-operation may contribute to the rapid destruction and loss of valuable resources. Environmental degradation and unsustainable practices may also contribute to the degradation of political relations between countries as well as weakening the region as a whole in the global arena.

On the other hand, moving maritime co-operation up on the SAARC agenda promises many dividends both economic and political. It will have beneficial effects on co-operation in other areas.