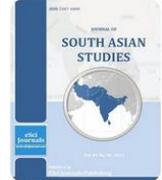




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SECURITY DIMENSIONS OF SETHU SAMUDRAM SHIP CANAL PROJECT AND UNITED NATIONS CONVENTION ON THE LAW OF SEA: INDIA-SRI LANKA CONTEXT

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ABSTRACT

The proposed flagship project of Sethu Samudram Ship Canal by the Indian Government will create an unavoidable by-pass that would inevitably divert the sea traffic through India's own maritime waters and would give India a firm grip on one of the world's most strategic and busiest sea-lanes. The Sethu Samudram Ship Canal project has negative implications for neighbouring Sri Lanka, including concerns over environmental, political, military, economic and livelihood issues. In order to understand the threat perspective to the neighbouring states of India in particular Sri Lanka, the study takes Barry Buzan's security dimensions analysis and the United Nations Convention on the Law of Sea-1982. Buzan's analysis will help to classify five security sectors under threat due to massive dredging of the canal in the Indian water. The study concludes by recommending the United Nations Convention on the Law of Sea-1982 and its main clauses as a feasible instrument in establishing long term understanding and awareness on the issues pertaining between India and Sri Lanka on the proposed ship canal project.

Keywords: India-Sri Lanka Relations, Maritime Waters, Security, Sethu Samudram Ship Canal, State, Threats.

INTRODUCTION

For long time the maritime security has been interpreted narrowly as the maritime security of a state, protection of territory from seaward aggression or protection of national maritime interests. Recent years have seen an increasing focus on proliferation of mass destruction weapons and ballistic missiles, the remaining legacy of the Cold War, rapid military power build-up, territorial and sovereign disputes, confrontation surrounding maritime rights and benefits and illegal activities such as piracy and armed violence at sea (Hideaki, 2001). In the undividable liquid volume, the maritime security has been ensured by both national and regional efforts. There are already plenty of international instruments, conventions as well as bilateral and regional agreements to deal with non-traditional and conventional maritime issues.

Treated as a bilateral maritime issue, the impacts of Sethu Samudram Ship Canal Project (SSCP) initiated by

the Ministry of Shipping, Government of India shall not be confined to its territory. The canal is a 167 km long shipping route, and envisages the creation of a navigable canal from the Gulf of Mannar to the Bay of Bengal to suit different drafts namely, 9.15 m, 10.7 m and 12.8 m through dredging/excavation in Adams Bridge and parts of Palk Bay and avoids circumnavigation of ships around Sri Lanka (Francis, 2002). It involves dredging in an 89 kilometre stretch for a width of 300 meters and for a depth of 12 meters for ships less than 30,000 Deadweight tonnage (DWT) with draft restricted to 10m (Sivaram, 2006). The proposed navigation route is said to have been conceived in 1860 by Commander Taylor and the project has been subject to several reviews in the 20th century. The canal will be of strategic importance to the national defence agencies since the naval vessels can play in territorial waters.

It offered a direct link between the Bay of Bengal and the Arabian Sea through the Palk Bay, entirely on Indian territorial waters which facilitate increased maritime security for Tamil Nadu due to development of the canal and ports. These strategic advantages to India derive

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from obtaining a navigable sea route close to the coast. The canal lays in the territorial waters of India and is important to India strategically. Prima facie, there are a lot of advantages that the canal ensures to India. However very few studies have been done by the Sri Lankan side on the negative consequences the SSCP likely to cause in future. Likewise India failed to formally recognize serious distinct security disadvantages that SSCP pose to the sovereignty of Sri Lanka, marine environment and fishing communities both from India and Sri Lanka. The deficiencies and shortcoming related to non-cooperation between India and Sri Lanka have been addressed in the context of main clauses and articles in the United Nations Convention on the Law of Sea (UNCLOS)-1982.

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

Security: The term security has become ubiquitous for contemporary policy maker (Rahman, 2009). In addition to the traditional concern with security from external military threats to a state, often it has given high priority to such issues as human rights, economic, the environment, drug traffic, epidemics, crime or social injustice. Security for Morgenthau was defined as integrity of the national security and its institutions. He combines 'culture' with it, emphasizing that the 'survival of a political unit in its identity' (i.e. security) constitutes 'the irreducible minimum, the necessary element of its interest vis-à-vis other units' (Morgenthau, 1978). Referring to the different national perceptions of security existing among states, an expert group of the UN penetrated security as a condition in which states consider that there is no danger of military attack, political pressure or economic coercion so that they are able to pursue freely their own development and progress (Cooray, 1995). According to Mesjasz (2004), Security can be defined in three meanings:

- Traditional meaning: Security as an attribute of state, absence of military conflict- "military security". Security used in a broader sense but still referring directly to the phenomena taking place in international relations or directly /indirectly caused by interstate relations;
- Security as a public good;
- Security in a universal sense (of a unit and of a social entity) - human security

The United Nations Development Programme (UNDP) has developed a very broad understanding of human

security resting on the idea that security should not focus exclusively on states, territory and military question as individuals are at the heart of security concerns. It was the Human Development Report 1994 entitled *New dimensions of Human Security* which made the first attempt at articulating the broad approach to human security. It states that the human security has two principal aspects: Freedom from chronic threats such as hunger, disease and repression and Protection from sudden calamities (Human Development Report, 1994). As a conceptual framework, the UNDP proposes that seven components of human security are in a danger such as economic security threatened by poverty, food security threatened by hunger and famine, health security threatened by injury and disease, environmental security threatened by pollution, environment degradation and resource depletion, personal security threatened by various forms of violence, political security threatened by political repression and community security threatened by social unrest and instability (Human Development Report, 1994).

The idea of "security" has been further defined in "People, States and Fear" (1991). The three levels that are referenced and addressed in detail in the book are individuals, states and international systems. The sectors are classified as political, military, economic, societal, and environmental (Buzan, 1991; Buzan, Wæver & Jaap, 1998).

The political and military sectors of security identified by Buzan are accompanied by three others that are more difficult to define: economic, societal and environmental (Stone, 2009). Military threats are capable of posing threats to the state on several levels. Political threats represent a constant concern for a state and centred upon the system of government, the extent of political cohesion, levels of legitimacy, and the presence of an ideologically orientating force which gives meaning to the idea of a state. Economic security is an important indicator as to the general security of a state. Practices that promote sustainable development are of utmost importance to environmental security. With the proliferation of weapons of mass destruction, growing environmental degradation, and resource depletion, states' national security is being increasingly threatened (Buzan, 1991).

Maritime policies and strategies: Maritime policies respond to political order, in the widest sense, with the

main actor being the State. Ocean and maritime matters are regarded as 'an affair of State', understood as the role assigned to maritime space in social and economic relations (Vivero, Mateos & Florido, 2009). Maritime space today is threatened by not only traditional issues like piracy but also non-traditional issues like gun running, illegal drug trade and nuclear weapons explosions. According to Stopford (2009) as ships can sail around the world between different states, it is appropriate to have worldwide regulations on matters like maritime safety in order to avoid a situation where each coastal state has its own rules on issues like ship structure, manning etc.

Ocean is also playing a crucial role in power expansion. The first work offering a scholarly look at sea power and its use in war was Captain Alfred Thayer Mahan in 1890 (Horell, 2008). Mahan highlighted conditions which offered nations the opportunity to develop sea power, but he focused on naval power- an ability to win fleet on fleet actions in the pursuit of national goals. His contemporary Sir Julian Corbett provided more contexts for naval power, and thus a more convincing study of the contribution of sea power to national power (Corbett, 1988).

According to Posen (2003), a maritime strategy is, by definition, the strategy applied by a particular actor to the maritime scene consistently with its own interests. It is by no means an abstract construct. And like any other strategy, maritime strategies of various actors should somehow link together, taking advantage of the synergistic power of cooperation, which multiplies the gains of all participants. Moreover, they should realistically assess the direct and indirect costs of policies of confrontation at present and in the future (Bailles & Cottey, 2006). Some strategic planning in the maritime sphere by powerful states may not be beneficial for small states lie near vicinity.

UNITED NATIONS CONVENTION ON LAW OF THE SEA - 1982.

Although not directly dealing with the maritime security issues, the UNCLOS acts as a legal instrument which provides the constitution for the Oceans and basis for the jurisdiction that a country may exercise at sea in its various roles as a coastal, port or flag state (Bateman, 2006). The convention guarantees the rights and duties of a State with regard to the various uses of the Oceans including state sovereignty over ocean space and resources (Song, 1999). It guarantees rights of nations

with respect to the world's oceans by addressing navigational rights, economic rights, pollution of the seas, conservation of marine life, scientific exploration, piracy, and more. The study by focusing on the main clauses of UNCLOS, integrates the security issues that SSCP poses on the security sectors outlined by Buzan.

ANALYSIS

Many scholars have defined the economic gains and lose of SSCP for India and Sri Lanka. John reveals that promises of the project may be valid for some ships, but there has been a serious deficiency in studying its impact for other ships (Kannan, 2007). Kannan also explored the importance of examining the socio-economic cost of SSCP. However he found that it is difficult to see any economic benefit from the project immediately (Kannan, 2007). Rodriguez examined major shortcomings in the Environment Impact Assessment¹ and other related documents of the project in terms of adequacy and gaps and methods used to assess environmental impacts, but more importantly, in terms of data on basic parameters such as sub-surface geology, bathymetry, and sedimentation process in the project area (Sudarshan, 2007). In light of the above, one can conclude that the project has not been adequately assessed for the environmental impacts to the biodiversity of the Palk Strait, Palk Bay and the Gulf of Mannar (GoM) and serious impacts and drastic changes to the biodiversity of the region.

Many researchers have contributed to clarify the issue of environment damage to both India and Sri Lanka. The major and minor mangrove wetland areas in Tamil Nadu pertaining to this region are Palk Strait (700 ha), GoM Marine area (148 ha) and GoM Island area (30 ha) (Selvam, Gnanappazham, Navamuniyammal, Ravichandran & Karunagaran, 2002). Pemphis acidula is a true mangrove species and is endemic to the islands of GoM (Jagtap, Untawale & Inamdar, 1994). The Gulf has a rich diversity of bird life, with 84 recorded aquatic species and 183 terrestrial species (Balachandran, 1995). The EIA summery states that the routes selected through earlier studies, particularly in GoM area, have been rejected, keeping in view the sensitivity along the coastal stretch of Gulf of Mannar harbouring a marine national park (Withanage, n.d).

According to Ramesh the canal has no economic benefits, only the whole of Palk Bay is reeling today, under an excessive stress caused by the December 26th tsunami (Ramesh, 2004). Increased and unplanned dredging

would destroy a sea having one of the highest levels of primary production in the world (Rajendran, 2005). The canal also has totally neglected the number one risk factor in the project area, namely cyclonic disturbances (Ramesh, 2004). While some potential negative impacts are expected during the implementation phase of SSCP, the operation of SSCP will bring some beneficial impacts, such as facilitate vessels to save distance and time. The canal will be beneficial from India's defence point of view as the Indian Naval and, Coast Guard ships will not be required to circumnavigate along the Sri Lankan waters. Economic development of coastal districts of Tamil Nadu through development of some ancillary industries etc., development of infrastructure and new growth centres in the region, upgradation/augmentation of external infrastructure such as road/rail connectivity, water supply, power supply and the enhancement in quality of life of the region also can be expected (Sethu Samudram Ship Canal Project- Executive Summary, 2004). India is treating the problem without acknowledging the real dangers behind the problem. The problems need to be squarely faced and creative solutions found so that national interests of both states are protected (Vivekanandan, 2004).

The UNCLOS provides a regulatory framework for the use of the world's seas and oceans, inter alia, to ensure the conservation and equitable usage of resources and the marine environment and to ensure the protection and preservation of the living resources of the sea. UNCLOS also addresses such other matters as sovereignty, rights of usage in maritime zones, and navigational rights. As of November 7, 2012, 164 States have ratified, acceded to, or succeeded to, UNCLOS.

Today, the principle of "sovereignty" is interpreted not as a right enabling a State to do whatever it likes and the principle of territorial sovereignty finds its limitations when its activities have a bearing on territorial sovereignty and integrity of another State. Consequently, the scope for discretionary action arising from the principle of sovereignty is determined by such principles and adages as 'good neighbourliness' and *sic utere tuo ut alienum non laedas*- you should use your property in such a way as not to cause injury to your neighbour's (Mendis, 2006). This principle highlights the responsibility of States for actions causing transboundary damage such as SSCP by India. If a state becomes aware of cases in which the marine environment is in imminent danger of being damaged or

has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations as per UNCLOS, Article 197. The definition deals with the political security which emphasise that protecting idea of State and the institutions is important in avoiding vulnerabilities, whether economic or ecological. The political security encompasses the acquisition of political capability such as protecting State boundaries, state institutions or regime survival. The vulnerable effect is strong in terms of Small States like Sri Lanka. According to Keerawella and Siriwardena a factor that shaped the defence thinking of the government was the perception of insecurity as a small country located in an important strategic position. Smallness accompanied with weakness amounts to limitations of options and lack of defence resources.

India has a duty to brief Sri Lanka that the SSCP has no economic or military danger future bilateral problem. The committee set up by the Sri Lankan government headed by Ariyaratne Hewage and Prof. Shantha Hennayake affirmed that India shared only a 'little information' on the project, though several meetings had been held to elicit information ("Doomed: Sethusamudram ship," 2013). Article 123 of UNCLOS makes a reference on enclosed or semi-enclosed seas.ⁱⁱ States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- To coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- To coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- To coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- To invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

The concept is reiterated by The Rio Declaration (1992), adopted in a non-binding form by the United Nations Conference on Environment and Development (UNCED). The States shall prevent trans-boundary damage and

recommend that States have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and the health of human beings, including generations unborn as stated in Principle 2 of the 1992 Rio Declaration.

SSCP means security by filling the vital strategic gap around India's coastline created by the geographical location of Sri Lanka and necessitating circumnavigation when naval craft move between East and West India. Ignoring the fact that growing interdependence between States is giving rise to the increasing development of rules to deal with international environmental responsibility and trans-boundary environmental risks associated with human activity, India is looking for taking strategic advantage to secure its power in the Indian Ocean via the proposed Canal. However irrespective of power capability, the UNCLOS recommend that states shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies as per UNCLOS, Article 200.

Economic security is closely linked with the political and societal security, all these types of security closely intertwined. The project will destroy the livelihood of at least 3.5 lakh fishermen in the coastal districts of Tamil Nadu. As such, catches have been dwindling, forcing fishermen to scout in areas falling in Sri Lankan territory, especially near the Island of Katchatheivu.ⁱⁱⁱ As UNCLOS is about cooperation in all aspects of ocean management and governance, it defines a special obligation on fishing rights due to pollution of the marine environment. Pollution of the marine environment is defined as means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities as per UNCLOS, Article 1.

Social displacement of fishermen is a sensitive issue related to the societal security issue of the SSCP.

Livelihood and welfare of fishermen will be affected by the project and traditional fishing especially in Dhanushkody areas' will be totally affected (Ramesh, 2004). Damage to fishing nets due to movement of ships may occur over time. Fishing has been the sole occupation of 20 million fisher folks living along the coast of GoM and in Palk Strait (Sudarshan, 2007). However the completed report done by India has not assessed the affected population on land acquisition and resettlements.

The environmental security, as other sectors, cannot be viewed in isolation, and as Buzan, who has analysed the concept "environmental security," and its use, recommends that environmental problems be treated as part of the economic field. The proposed project gives rise to the problem of Sedimentation in the Palk Bay, endangers ecological important species and corals along the proposed alignment, and makes a permanent loss of 6 Km² areas in the sea floor of Adam's Bridge and environmental damage to Gulf of Mannar (Rizwan, 2008). The Gulf has chains of shoal, nearly seven in all, 30 km long called the Adam's Bridge. It is an inlet of the Indian Ocean, between southeastern India and western Sri Lanka. It is through this area that the SSCP will run through, which will be the pathway connecting the GoM to the Palk Bay. Pillai provided a comprehensive account of coral fauna of GoM and the diversity includes 94 species of 37 genera with most common being *Acropora* sp, *Montipora* sp and *Porites* sp. (1986). Patterson et al., have subsequently updated the species list to 104 species of 38 genera (Patterson et al., 2004).

The UNCLOS is not an environmental treaty but usually addresses environmental concerns including its protection and preservation in Part XII of the treaty. The treaty also contains numerous references to environmental duties and obligations throughout its many articles.

For instance Part XII opens with Article 192 empowering and ensuring the responsibility of the States. It claims that States have an obligation to protect and preserve the marine environment. This is immediately followed by Article 193 which outlines that States have the sovereign right to exploit their natural resources pursuant to their environmental policies. Nations are then subsequently charged with creating national law to address various pollution issues and are supposed to employ the best practicable means at their disposal and in accordance with their capabilities. Article 204

requires states to observe and evaluate the risks posed by pollution to the marine environment. In particular, nations are required to monitor the effects of any activities that they permit or actually engage in. The emphasis that UNCLOS puts on environmental preservation is unique in its characteristics as a responsibility lying on the scope of the State practice.

Article 195 emphasizes on the State responsibility on prevention, reduction and control pollution in the marine environment. Part XII of UNCLOS also encourages nations to participate in regional agreements related to the environment and establishes duties of nations to their regional counterparts. India failed to contribute in making this responsibility realized. Sri Lanka as a regional counterpart of India has not invited to take part in formal conversation over mitigating environmental damage and propose possible measures that could bind both States in long run. Some of the duties that nations owe to other regional nations include the duty to notify of imminent danger to the marine environment from pollution or actual damage from pollution. All States are encouraged to work together to form regional plans for the preservation of the marine environment as well as to develop contingency plans for responding to pollution incidents and coordinating with one another in data-sharing on regional marine pollution and establishing scientific criteria for the promulgation of regulations regarding marine pollution (Hollis & Rosen, 2010).

Formulating and elaborating international rules, standards and recommended practices and procedures consistent with the Convention for the protection and preservation of the marine environment, taking into account characteristic regional features is one underline principles of UNCLOS, Article 197. Underlining the important principle of state sovereignty, the States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention as described in UNCLOS, Article 194.

CONCLUSION

In light of the above, the study concludes that the project has not been adequately assessed for the environmental impacts to the biodiversity of the Palk Strait, Palk Bay

and the Gulf of Mannar. The project will cause drastic changes to the biodiversity of the region. It is likely to also cause major impacts and losses of fisheries and livelihoods to the region. Reviewing the current status of the implementation phase of the project, considerable environmental and economic damage has probably already been done.

Therefore it is recommended to apply international laws and regulations especially special provisions in UNCLOS where both India and Sri Lanka are parties to the treaty and have legal obligation to follow the good neighbourhood policy between them. Safeguarding the main principles of UNCLOS by India would specifically help it to make the neighbouring state Sri Lanka to preserve state centric bilateralism and good neighbourhood policy with India.

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ⁱ The Initial Environmental Exam was done by National Environmental Engineering Research Institute [NEERI], Nagpur, India in 1998. It recommends securing a major marine project and a full scale, 'Environmental Impact Assessment' - EIA

ⁱⁱ According to UNCLOS, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

ⁱⁱⁱ Retrieved from <http://ankurnitw.blogspot.com/2009/09/disadvantages-of-setusamudram-project.html>