

# Law of the Sea in South East Asia: Environmental, Navigational and Security Challenges

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## INTRODUCTION:

With the important milestone of 40<sup>th</sup> Anniversary of LOSC, 1982 which was celebrated on 10<sup>th</sup> December, 2022, this book review of this 15 Chaptered book assumes utmost importance. The learned author has highlighted various aspects related to the Law of the Sea starting from the basic introduction to maritime South East Asian region which comprises SCS up to the Gulf of Tonkin & Luzon Strait so far as to the Strait of Singapore in South incl. Indonesian, the Philippines Archipelago & Timor-Leste with Andaman Islands, Malay Peninsula & Myanmar to the West, it also includes the Federated States of Micronesia, Palau & Papua New Guinea.



Then the book gives a background on the UNCLOS & SE-Asian states that have ratified to the convention & advantages to them like recognition as archipelagic States under Part IV of LOSC

The author has referred to cases like ICJ ruling on the *Pedra Branca* dispute, *Pulau Ligitan* and *Pulau Sipadan* issue, Corfu Channel case, 2009 Black Sea Case & tribunal awards like the SCS tribunal constituted under Annex VII of the convention to resolve the dispute b/w. Philippines & PRC, 14 Mar. 2012 ITLOS ruling on the dispute b/w. Bangladesh & Myanmar in Bay of Bengal these case references are made in the context of understanding boundary disputes, marking baselines, recognition of low tide & High tide elevations/islands/archipelagos for marking baselines etc. The book covers various organisations both regional to Asia & Pacific like ASEAN<sup>1</sup>, ICRC<sup>2</sup>, PEMSEA<sup>3</sup>, CTI<sup>4</sup>, etc. The book also covers security challenges posed by the Maritime domain in various forms like Non-State Actors (Terrorist threats from groups like Abu Sayaff Group & Jamalul Kiram group , Piracy, Armed Robbery), Environmental Challenges in the form of IUU Fishing, SLR/Global Warming, Climate Change etc. and its consequences like reduced area availability for aquaculture, inundation of small islands and ways to counter these challenges through bodies like SEAFDEC<sup>5</sup> and processes such as EIA & MSP. The book refers to various treaties like the UNFCCC & its 1997 Kyoto Protocol, 2015 Paris Agreement, 1973/78 MARPOL, 1972 London Dumping Convention & its 1996 protocol as well as other RFMO/A in dealing with Environmental Cases. Another important topic dealt with in this book is LOSC effectiveness from the perspective of combating Transnational crimes in the Asia Pacific like Human Trafficking & Bali Process of 2002, Niue treaty have been cited as guiding principles in tackling these challenges. The book also refers to certain specific articles & dissects their role and disputes concerning them like Natural State Doctrine & Art.121 of UNCLOS, ambiguity relating to Part XV of the convention and others. FONOP's has been given special detailed analysis within the literature with comparative study between the practices relating to the Right of Innocent Passage (Art. 17,18,19) of Vessels including Warships & how some states like China do not adhere to their own protocols while others like America walk the talk. China & its authoritative policies like the 'Nine-Dash Line' have been covered in different chapters of the book. A chapter has been dedicated to the analysis of Singapore-China relations & its downfall in the light of SCS Arbitration. The classification of disputes in Chapter 14 of the book simplifies the conflicts for the reader while forming a correlation to Art.33 of UN Charter.

## **ANALYSIS AND DISCUSSION:**

In the First Chapter of the book, the author gives a brief history of LOSC in SE Asia, SPLOS, what comprises SE Asia and how countries like China & Malaysia have benefitted under the treaty, this chapter also analyses Coastal & Flag states from the statehood POV. For Example: Taiwan & PRC dispute where Taiwan although an independent state does not occupy a place in LOSC, some critical issues & judgements

<sup>1</sup> Association of South East Asian Nations, <https://asean.org/> (last visited 08/12/22)

<sup>2</sup> International Committee of the Red Cross, <https://www.icrc.org/en> (last visited 08/11/22)

<sup>3</sup> Partnerships in Environmental Management for the Seas of East Asia, <https://www.pemsea.org/> (last visited 08/12/22)

<sup>4</sup> Coral Triangle Initiative, <https://www.coraltriangleinitiative.org/> (last visited 08/12/22)

<sup>5</sup> South Asian Fisheries Development Centre, <http://www.seafdec.org/> (last visited 08/12/22)

have been analysed like the SCS dispute and Regional bodies role in resolving the disputes like the ASEAN & PRC resolving mechanism under cl. 10 of DOC in 2002<sup>6</sup>. FON, Maritime Security & blind eye of UNSC towards SE Asian security concerns, living resource management, Oil & gas, Environment have been introduced.

The book notes different Maritime claims in SE Asian region: Archipelagic State status of countries like Indonesia, the Philippines & Solomon Islands u/a. 46(a), 121 & 47 of LOSC & its spill over effect like the Chinese protest to Republic Act No. 9522 of the Philippines over contested Huangyan Island & Nansha Islands (p. 20). The provision of Part XV of LOSC that states may exempt consideration of historic bays & titles from compulsory dispute settlement w.r.t. China's 'Nine-Dash Line'<sup>7</sup> theory has been covered. The other part of Chapter 2 of the book covers protest over excessive length of certain Straight Baselines and example of Vietnamese practice of extending baselines has been cited. The final part deals with LOSC maritime claims with regards to Continental Shelf & EEZ claims, rulings of CLCS etc.

In Chapter 3, the evolution of Ocean Boundary making in SE Asia is covered where Article 15 of LOSC offers median line delimitation for the 1958 Convention on Continental Shelf and provides various stages for delimitation like the line should be established using geometrically objective methods & disproportionality test. This chapter talks about maritime delimitation in various areas such as The Andaman Sea and Bay of Bengal and touches upon the 14 Mar. 2012 ITLOS ruling on the dispute b/w. Bangladesh & Myanmar. This Chapter also covers Malacca & Singapore Straits, the Territorial Sea agreement in 1970 and a Continental Shelf agreement in 1971 & it discusses the grey areas of Baselines demarcation like the Baselines of Maritime Zones Act, 2006 where Malaysia does not include any geographical coordinates. Other zones covered under this chapter are South China Sea, Gulf of Thailand, East China Sea, Philippine Sea, Celebes Sea, Timor and Arafura Sea.

It also describes the security aspects of Maritime domain as being amorphous (p. 66) where it states that Terrorist Attacks such as the *MV Limburg* incident (pp. 68-69) which led to a \$0.48/barrel hike and impacted corporations in the region. The work of the author also touches upon Arms Proliferation where UNRCPD has been recognised as the nation to combat SALW & WMD smuggling and as response to combating these threats it suggested measures such as State Action through Joint Patrols such as Malacca Straits Patrols and Plan of Action of Regional organisations like ASEAN & UNODC's Global Maritime Crime Programme<sup>8</sup>.

The diverse range of topics related to Maritime Security can be seen in (chps. 5-6) where it deals with Environmental issues where examples of coral bleaching<sup>9</sup> in Indo-Pac in 1998-99 has been cited to give the reader the impending threats of Climate Change & degrading environment. The chapter has also referred to US Natl. Intelligence Council's report on 'The Geopolitical Implications of Climate Change to 2030 for

<sup>6</sup> Association of Southeast Asian Nations, <https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/> (last visited on 10/12/22)

<sup>7</sup> Z. Gao & B.B. Jia, *The Nine Dash Line in the South China Sea: History, Status and Implications*, 107, AJIL, 98-124 (2013)

<sup>8</sup> Marine Link, <https://www.marinelink.com/news/solutions-develops435449> (last visited 12/12/22)

<sup>9</sup> O. Hoegh-Guldberg, *Implications of Climate Change for Asian-Pacific Coastal and Oceanic Environments*, note 6, p.36

Southeast Asia', the learned author provides solution in the form of organisations like PEMSEA which was established as a regional project of Global Environment Facility in 1994 & its initiatives like Sustainable Development Strategy for Seas of East Asia & proposes joint maritime surveillance. Asia Pacific Adaptation Network (APAN) & Coordinating Bodies of the Seas of East Asia (COBSEA) Strategic Directions 2018-22 establish maritime policy planning as a priority for the region.

Another important case study has been made in Ch.8 of the book by the author regarding Chinese Maritime Militia (PAFMM) a practice deployed by many states recently by states like Iran<sup>10</sup>, these forces act as auxiliaries to the Coast Guard. An important inference is drawn by the author regarding Responsibility of States for Internationally Wrongful Acts regarding the presence of 'indicia of instructions' & 'direction or control'. The book also covers interpretation of treaty under Art. 31 of VCLT in Ch.10 relating to FONOP's but a narrow view has been taken in p.172 of the book regarding Indian Navy's exercise in the water of other states<sup>11</sup>. One of the important observation regd. Territorial disputes is made on difficulty in measuring tidal pattern of waters as acknowledged by the SCS Tribunal. Through the book one

important critique can be made in this regard that in the case of Mischief Reef in SCS the tribunal reached the conclusion that survey of HMS Herald indicated the feature to be a LTE but it also declared Second Thomas Shoal as a LTE (Tribunal merits dispositive nos. 3(c) and 4) by relying on Royal Navy survey in the 1930s, Chinese Chart No. 18500 & 2011 edition of the Chinese Sailing Directions, the same means which were discarded in the former case and this raises questions on the verifying means of Tribunal, a critical lesson which the book does not cover in (pp.235-240) and I believe this was a missed opportunity for the Publication to dissect the SCS ruling and its loopholes.

**Conclusion:** I would recommend this accessible volume to both those new to the field in search of the current regional state of the art, and those experienced researchers looking to contextualize their work in the wider Regional Maritime Context. The sheer array of maritime developments, disputes and uncertainties discussed in this regional hotbed for the law of the Sea will surely leave every reader with new knowledge and reflections to ponder upon. The extensive sources cited provide eager readers with a springboard to delve deeper into a rich area that will continue to evolve and this volume acts as an essential guide in understanding the Law of the Sea.

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<sup>10</sup> Iran International, <https://www.iranintl.com/en/202202022531> (last visited 12/12/22)

<sup>11</sup> Indian Maritime Doctrine Indian Navy Naval Strategic Publication 1.1, <https://www.indiannavy.nic.in/sites/default/files/Indian-Maritime-Doctrine-2009-Updated-12Feb16.pdf> (last visited 12/12/22)