

Theme: Regional Approaches to the Law of the Sea
(Sub theme: Protection of Marine environment)

Indian Approach on protection of Marine Environment

Sushil Goswami

Introduction

- Dualist Approach: Operational interaction between International and municipal law
- State Practice/Approach and international law: Importance
- *Study of what the states do but includes what state do not do*
- *By analyzing the activity, programs and minute details of the state, its organs and officials, one can establish a coherent picture of the state practice/approach.*

Article 38 (1), ICJ Statutes

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. International custom, as evidence of a general practice accepted as law;

c. The general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

- *Essential requirement:*

State practice, in order to contribute to the customary rule, must be followed consistently, commonly and concordantly.....Ref: ICJ in the *North Sea Continental Shelf* case, 1969

Marine Environment

(A classic sector of transboundary characteristics)

- **UNCLOS and Marine Environment**

- A. Preamble of the convention
- B. Article 1: defines pollution

Chapter XII

- A. Article 192: General Obligation
- B. Article 193: Sovereign right of States to exploit their natural resources
- C. Interaction between Article 192 and Article 193 and question of Supremacy between rights and Duties
- D. Article 194 (1): Measures to prevent, reduce and control pollution of the marine environment
- E. Article 197: Cooperation on a global or regional basis

- UNCLOS and Marine Environment...Cont.

A. Preamble of the convention

Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, ***and the study, protection and preservation of the marine environment.***

- **UNCLOS and Marine Environment..Cont.**

- B. Article 1: Definition of pollution**

"pollution of the marine environment" 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

- **UNCLOS and Marine Environment..Cont.**

Chapter XII

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

A. Article 192: General Obligation

States have the obligation to protect and preserve the marine environment.

- UNCLOS and Marine Environment..Cont.

Chapter XII: PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

B. Article 193: Sovereign right of States to exploit their natural resources

States have the **sovereign right** to exploit their natural resources pursuant to **their environmental policies** and in accordance with their duty to protect and preserve the marine environment.

- UNCLOS and Marine Environment..Cont.

Chapter XII: PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

C. Interaction between Article 192 and Article 193 and question of Supremacy between *rights and Duties*

- **UNCLOS and Marine Environment..Cont.**

Chapter XII: PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

D. Article 194 (1): Measures to prevent, reduce and control pollution of the marine environment

States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they **shall endeavour to harmonize their policies** in this connection.

- UNCLOS and Marine Environment..Cont.

Chapter XII: PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

E. Article 197: Cooperation on a global or regional basis

States **shall cooperate on a global basis** and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

Regime of Protection of Marine Environment

Approach and practices of India

- Approx 4660 Miles coastline
- Its marine resources are spread over in the Indian Ocean, Arabian Sea, and Bay of Bengal
- One of the largest ship breaking yard
- The exclusive economic zone in an area of 2.02 million sq km
- Population, employment, food and other needs of the country
- Economic and industrial growth

Constitution of India

Article 51(C) – The State shall endeavour to..... foster respect for international law and treaty obligations in the dealings of organised peoples with one another

Article 253. Legislation for giving effect to international agreements.

Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

International law/Principles should be given the effect through legislative process

The Ministry of Environment, Forest and Climate Change, since 1985

- Nodal agency in the administrative structure of the Government for **planning, promotion, co-ordination and overseeing the implementation of India's environmental** policies and programmes including environmental pollution and protection.

- **Department of Ocean Development, since 1981:**

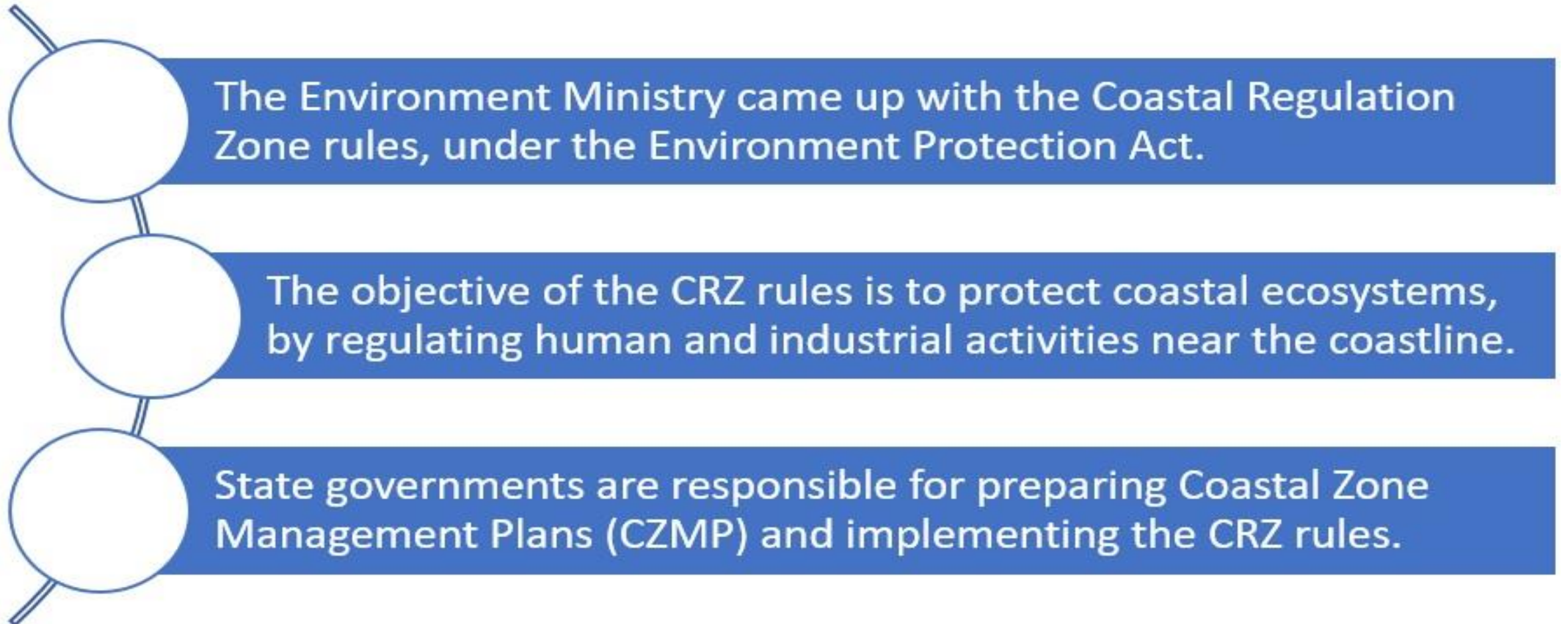
Scientific monitoring of the marine environment & Management of resources

Indian Practice on Protection of Marine Environment: Legislative Approach

- ✓ 1897, Indian Fisheries Act
- ✓ 1908, Indian Ports Act
- ✓ 1958, Merchant Shipping Act
- ✓ 1974, Water (Prevention and Control of Pollution) Act
- ✓ 1976, Maritime Zones Act
- ✓ 1978, The Coast Guard Act (Central Coordinating Agency)
- ✓ 1980, Forest Conservation Act Protection to marine biodiversity
- ✓ 1982, Coastal Pollution Control Series
- ✓ 1986, Environment Protection Act (EPA) (An Act to provide for the protection and improvement of environment upon United Nations Conference on the Human Environment held at Stockholm in June, 1972)
- ✓ 1991, Deep Sea Fishing Policy
- ✓ 1991 Coastal Ocean Monitoring and Prediction systems (COMAPS Project)
- ✓ 1995, National Environmental Tribunal Act
- ✓ 1996, Coastal Zone Management Plans (CZMPs)

Indian Practice on Protection of Marine Environment..Cont

- ✓ The Coastal Regulation Zone rules (CRZ rules) in February 1991
- ✓ The **Coastal regulation zone notification 2011 and replaced by 2018** notification and develop the coastal region of the country in sustainable manner on scientific principles



- 28 November 2019, India ratified the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships.
- Recycling of Ships Act, in 2019, ratifying the Hong Kong Convention and laying down statutory regulations for all matters related to ship-recycling within the territory of India.
- Use of technology
- Maritime Boards
- Specialized Institutions

Judicial Approach (e.g)

- **Vellore citizens welfare forum v. Union of India, 1996**
- **Indian Council of Enviro-Legal Action v. Union of India**
- **MC Mehta V Union of India**
 - Sustainable development
 - industrial growth plays a crucial role in the economic development of the country, it is not on the cost of human life
 - Integrated- precautionary and anticipatory approach to development planning

(some other examples)

Marine pollution concerns in Asia have impelled nations **to come together** and indulge in **joint (bilateral and regional) cooperative efforts** to protect the marine environment in the region.

Classical example is the initiatives and approach of Republic of Korea (ROK)

- **Japan-Korea Environmental Conservation Cooperation Agreement concluded in 1993.**

This Agreement acts as the fulcrum for the periodic meetings of the **Japan-Korea Joint Committee on Environmental Conservation Cooperation**, which are convened to **encourage dialogue** on their respective environmental policies and bilateral and multilateral environmental cooperation.

Tripartite Environment Ministers Meeting (also known as TEMM) between South Korea, Japan and China.

This group meets annually to look into several environmental issues in the northeast Asian region including the conservation of the marine environment.

- Korea-China Environmental Cooperation Agreement concluded in 1993

India-Republic of Korea

H.E. the Prime Minister of India and H.E. President of the Republic of Korea (ROK) on May 18-19, 2015 during state visit issued common statement:

- Recognizing the integral **link between economic growth, preservation of environment and clean energy**, India and Korea agreed to **enhance exchanges** between their respective Ministries and agencies.
- Lauding the **Korean Green Economy initiative**, India expressed **willingness to work with Korea** for mutually-beneficial partnerships in deploying innovative policies and technologies to improve urban water and air quality and to protect natural resources.

Republic of Korea and Australia

- The Foreign Ministers and Defense Ministers of Australia and South Korea met in 2015 and identified a **new Defence and Security Cooperation Blueprint** to ensure continued cooperation in areas such as maritime safety.
- It was decided that the maritime authorities of both countries will cooperate closely on issues of **marine oil spill prevention and response and protection of the marine environment**. (Joint Statement on the Australia-Republic of Korea Foreign and Defense Ministers, September 11, 2015.)

ASEAN-Republic of Korea

- A joint statement was adopted by the **ASEAN-Republic of Korea** during Commemorative Summit in 2014, wherein the parties strengthened cooperation to address major transboundary challenges including **climate change and environment**
- It was further agreed that common challenges on maritime issues such as environment and fisheries would be **addressed through cooperative efforts,**
- and also the **sustainable use of the coastal and marine environment** as well as transboundary environmental pollution would be looked **into** (Joint Statement of the ASEAN-ROK Commemorative Summit on the 25th Anniversary of the ASEAN-ROK Dialogue Relations, December 12, 2014.)

- A. Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Northwest Pacific Region, 1994 (“NOWPAP”) under the Regional Seas Programme of the United Nations Environment Programme.
- B. Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (“Fish Stocks Agreement”)
- C. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989 (“Basel Convention”)
- D. Convention on Biological Diversity, 1992 (“CBD”)
- E. Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (“CITES”)
- F. Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (“HMFS Pacific Convention”)
- G. Convention on the Prevention of Marine Pollution by Dumping Waste and Other Matter, 1972 (“London Convention”)
- H. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1977 (“Environmental Modification Convention”)
- I. International Convention for the Prevention of Pollution from Ships, 1973/1978 (“MARPOL”)
- J. International Convention for the Regulation of Whaling, 1946 (“Whaling Convention”)
- K. International Convention on Civil Liability for Oil Pollution Damage, 1992 (“CLC”)
- L. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (“Fund Convention”)
- M. The Antarctic Treaty System (Environment Protocol 1991, Marine Living Resources 1982, Antarctic Treaty 1959)
- N. UN Conference on Environment and Development, 1992 and Agenda 21 (“Rio Declaration”).
- O. United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”)
- P. United Nations Convention to Combat Desertification, 1996 (“UNCCD”)
- Q. United Nations Framework Convention on Climate Change, 1992 (“UNFCCC”) and the Kyoto Protocol, 1997

South Korea's state practice qua the preservation and protection of the marine environment is evident in many instances.

- *First*, Party to several multilateral conventions
- *Second*, closer home, it has made regional efforts
- *Third*, the laws of South Korea enacted both under the aegis of the many conventions it is party to and also otherwise reflects a commitment to maintain adherence to the rules of customary international law that bind states

Conclusion

- ✓ Regional ASIAN Agreements: transboundary character (in place of fragmented approach)
- ✓ Regular documentation on approach//Article 205 Publication of reports
- ✓ Regional Implementation and Monitoring body
- ✓ Duty to cooperate:

-Prompted by the desire to settle, in a spirit of mutual understanding and cooperation.. *Preamble of UNCLOS*

-A fundamental principle in the regime of the prevention of pollution of the marine environment under Part XII of the Convention and general international law. (*The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, ITLOS 20001*)

*Let together marvel the growth and prosperity
to sustainability*