



*The maritime space that is of India's utmost concern is the Indo-Pacific which holds great strategic importance; Jakarta, Indonesia.*

# 7. Values of UNCLOS in Indo-Pacific Maritime Security, Trade and Transport

Countries across the Indo-Pacific region consider UNCLOS as an important legal framework for maritime security. It is a convention to which the largest number of countries agree. It provides for resolutions to several maritime security issues and conflicts. Under the aegis of climate change, maritime security and trade are critically important because while the Arctic ice melt creates threats, it also creates opportunities for further exploration via new routes. The viability of such prospects, however, remains a matter of speculation; and in this case the availability and significance of the Northern Sea Route is also questioned.

## 7.1 Introduction

The legal framework on the marine activities and resources also defines maritime security. Especially, the legal framework of the UNCLOS is important for maritime security, with special reference to the Indo-Pacific region which holds global significance due to trade, transport and maritime safety.

The level of national jurisdiction and control are increasing over the seas, oceans and marine resources. The possibility of better strategic outreach and the possibility of a conflict amidst cooperation is visible at the same time. UNCLOS upheld principles of equitable sharing and hence, it can promote sustainable use of maritime resources and the protection of the maritime environment (Parmar, 2023). Therefore, states continue to respect the UNCLOS provisions. The extension of the continental shelf is also an issue that draws conflict. Russia was the first Arctic nation to forward its claims for an extended continental shelf (Parmar, 2023). Ambiguities exist in the Laws of the Sea because of the perceived discordance between the scientists and technologies and because of jurisdictional problems (Rajan, 2023).

The legal framework of the UNCLOS is also important for the Strait of Malacca and the NSR, two of the most important routes that relate to the fate of the Indo-Pacific region, from the perspective of maritime security, especially bearing in mind the consequences of climate change. Various debates have emerged regarding the dynamic relationship between both the routes and its importance for the Indo-Pacific region, and by its extension, for India. A brief discussion on some of these aspects have been provided in this chapter.

## 7.2 Perspectives on Indo-Pacific Maritime Security

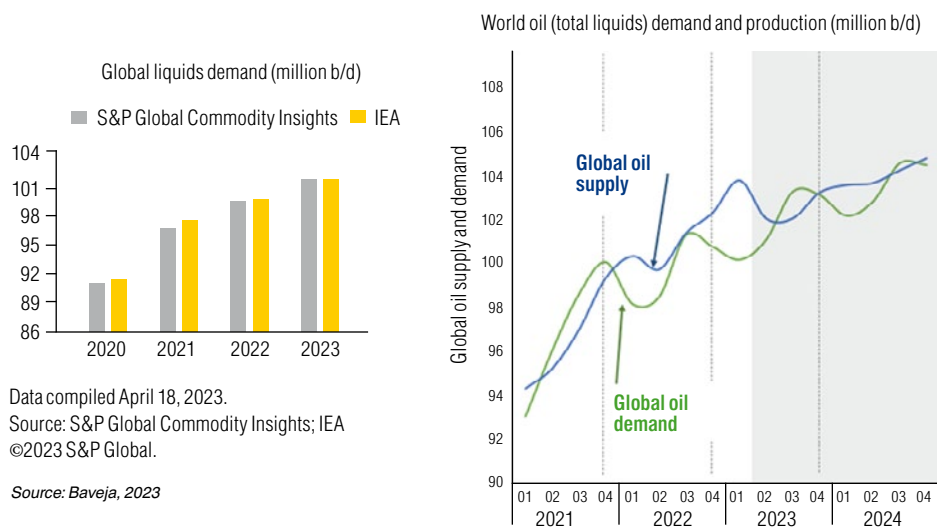
Historically speaking, sea ruled over land and this is true for India as well, ascribed to the large number of invasions and conquests since centuries. Transient political changes were brought by these invasions and led the foundation of new dynasties. However, India lost its Independence soon after it lost the command of the seas (Lahiri, 2023). The British and Spanish colonialism spread through the seas. After Independence, India's maritime history became one of the building blocks for the construction of an oceanic perspective for an Independent India. The Indian Ocean has been relevant for about three centuries since Vasco da Gama arrived in India (Ibid.). India's great naval interest cannot be ignored, especially with China's presence in the South China Sea.

The maritime space that is of India's utmost concern in Indo-Pacific which holds great strategic importance for India. The shift from the Atlantic to the Pacific was a pivotal development for the Indian Ocean. However, it also laid an onus on India to awaken a maritime consciousness and to regain maritime glory (Lahiri, 2023). The Indo-Pacific

South China Sea

maritime consciousness

Fig. 7.1: The rising global demand for oil and natural gas



nuclear power  
ship borne energy

climate induced  
migration  
maritime security

geopolitical tension

40 per cent

region is home to four most populous nations, the largest democracy and the largest autocracy in the world, four of the five largest economies, which comprise about 60 per cent of the world's GDP, and 2/3 of the present global growth, seven of the world's ten largest armies, the most sophisticated navies, and five of the world's declared nuclear powers (Ibid.). The Indo-Pacific region has nine of the ten biggest ports in the world and half of the entire world's container cargo, i.e., 50 and 70 per cent of ship-borne energy cargo flows through this area (Ibid.).

The Indo-Pacific is not an anomaly for India but rather an idea whose time has come. The activities in the region impacts the entire world (Lahiri, 2023). The major concerns with the Arctic ice melting and the rise in the sea level can be linked to climate-induced migration and refuge. Therefore, maritime security has become a serious issue in contemporary times.

### 7.3 The Relevance of the Strait of Malacca vs the Northern Sea Route

The impact of climate change in the Malacca Strait is visible, and the concern emerges mainly from the great significance of the Strait for the world economy (Srikanth, 2023). There has been speculation that the NSR can dilute the importance of the Strait of Malacca (Sharma, 2023a). The Strait connects all the emerging economies of the world and China's reliance on the crude oil is being fulfilled via the Malacca Strait. Meanwhile, China's control over Africa also makes the Strait crucial for the country. The number of ships sailing via Malacca and the NSR vary widely. Less than 100 vessels pass through NSR within a year, while about 80,000 vessels pass through the Strait every year (Ibid.). The global bulk carriers of oil and gas as well as coal mainly passes through the Strait. Fossil fuel is not likely to disappear from usage anytime soon and hence, the energy transition to clean energy is also distant (Fig. 7.1), which makes the Malacca even more critical to the world energy map. Moreover, there are infrastructural disadvantages of the NSR. For instance, ice-breaker vessels are necessary to navigate through the NSR, however, such vessels are expensive and limited (Ibid.). The geopolitical tension between the Russia and the West is also likely to create an obstacle for the viability of the NSR in the future. The Ukraine war has elevated tensions between Russia and the West (Ibid.). There may be efforts in the future where more vessels will try to access the NSR for cargo transportation because of its shorter route. Yet, the NSR will not be able to reduce the paramount importance of the Malacca, from both the economic and security perspective.

After the then Russian President M Gorbachev declared NSR open for the first time, non-Russian ships were able to access these waters, although they have to be, till date, escorted (Chattopadhyay, 2023). In theory, NSR reduces 40 per cent of the sailing distance. Yet, the route is only navigable for some parts of the year, and commercially navigable for only 1.5 months annually (Ibid.). This is one of the biggest challenges of the NSR and it also serve as a strong argument against NSR becoming an alternative of the Strait of Malacca in the near future (Ibid.). The problem of licensing to navigate via the route is also a challenge for the

NSR, along with the tonnage of commercial vessel containers and ships. Only small ships can navigate through the NSR which reduces their efficiency and increases the cost due to the prolonged time due navigating through variable sea ice extent (Ibid.).

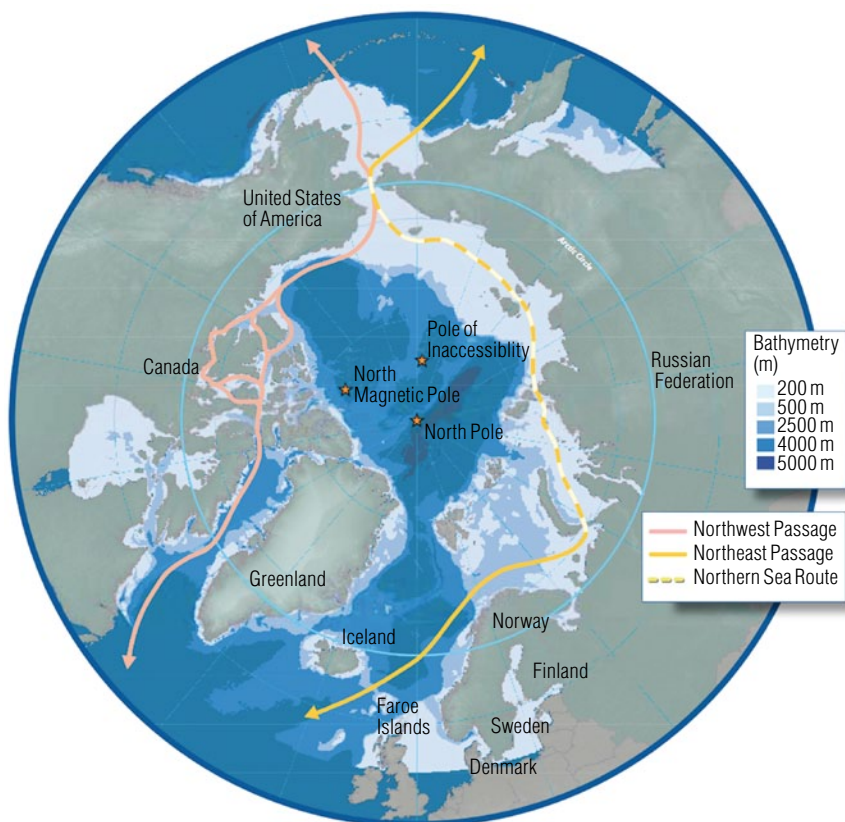
Looking from the Indian point of view, NSR is one of the primary areas for its economy and diplomacy. NSR is believed to be ice-free by 2050, and it will bring both opportunities and challenges. The INSTC is an important proposition for India if NSR becomes viable for navigation (Pradhan, 2023) (Fig. 7.2). Moreover, NSR can open opportunities for exploration of the Arctic energy resources.

From the Saint Petersburg, to the Kara and the Barents Sea, and the Mormons are some of the important regions where energy resource exploration is possible. Russia is the biggest claimant into the area and it calls the Mormons port the NSR Western gateway (Baveja, 2023). Therefore, NSR has strategic importance, even if it is not commercially viable as of now. Other regions that the NSR can open up for energy exploration are the Beaufort Sea (North Slope, Alaska and Mackenzie Delta, Canada), Northwest part of the Russian Arctic (Barents Sea and West-Siberia), and the Canadian Arctic Archipelago (Nunavut) (Ibid.). It is estimated that the recoverable reserves in the Arctic amount to

INSTC

offshore

Fig. 7.2: The NSR is believed to be ice-free by 2050



Source: Baveja, 2023

## offshore

150 billion barrels of oil and natural gas liquids and 1700 trillion cubic feet of natural gas. These resources account for about 22 per cent of the undiscovered, technically recoverable resources in the world. About 84 per cent of the estimated resources are expected to occur offshore. Receding sea ice cover and permafrost thaw will influence accessibility to mineral and energy in the Arctic and opening of the NSR in the future (Ibid.). The cargo load in 2019 carried via the Yokohama, Japan to Rotterdam, Netherlands route was 26 million tonnes. Therefore, there are future prospect for energy transportation and exploration via the NSR, even if it cannot replace the Strait of Malacca in terms of strategic and economic significance (Chattopadhyay, 2023).

### 7.4 Recommendations

- i. Although the CLCS and ISA (two bodies under UNCLOS) have come up with some basic regulations for exploration of deep-sea minerals, however, commercial mining is a contentious issue that needs to be resolved (Rajan, 2023). There are many countries, several scientists and many of the industries who lobby to promote sea bed mining. The UNCLOS needs to have an authority to declare any commercial mining as illegal or disprove it, in case a country declares to go for such mining. There needs to be a moratorium on deep seabed mining.
- ii UNCLOS as one of the most talked about maritime legal conventions has limitations that need to be addressed. It does not encompass some of the recent challenges that exist in the field of maritime security. There are a growing number of maritime contests and disputes in the Indo-Pacific region. There is also a gap in the enforcement and compliance of the UNCLOS. The USA is not a part of this convention, despite being an important part of the Indo-Pacific region. These divergences have to be merged (Banerjee, 2023).