



**The  
Indian Ocean:**  
Defining Our Future  
COLOMBO. 11-12 OCTOBER 2018

**Navigating Challenges  
and Prospects in the Indian Ocean:**  
Towards a shared understanding



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## About this Publication

For Sri Lanka and many nations, the oceans hold the key to the future. The ocean and its related eco systems are integral to sustaining life on the planet. Covering more than 70% of the Earth's surface, oceans act as a moderator of global climate conditions and climate regulators, producing a third of the oxygen that people breathe. As approximately 80% of the volume of global goods trade and much of its energy trade is seaborne, the oceans are a critical transport artery. Oceans are both a source of energy and a source of food. Oceans, therefore, are a shared responsibility and the common heritage of humankind.

The world has been witnessing a global economic power shift with the rise of Asia. The Indian Ocean, which has emerged as one of the world's busiest and most critical trade corridors, rapidly surpassing the Pacific and Atlantic Oceans, is pivotal to this transition. It carries two-thirds of global oil shipments and a third of bulk cargo and hosts the most critical Sea Lanes of Communication (SLOCs), directly impacting the development of global trade and economic activity. The Indian Ocean basin has become one of the fastest growing commercial hubs for the exchange of goods, services and people.

The Indian Ocean is of interest not only to the littoral states but also for major maritime users. Managing expectations and ensuring order in an era of heightened change marked by rapidly changing economic conditions, will be central to achieving security and prosperity for the region. It is the collective responsibility of the countries in this region and beyond to ensure that the Indian Ocean remains, and is developed as an Ocean of Peace that:

is thriving in economic activity;

is a model in environmental protection; and

works on the basis of the international rules-based order.

Sri Lanka considers strengthening of security, safety and sustainability of activities as a prerequisite to guaranteeing the freedom of navigation and overflight, unimpeded commerce and the freedom of digital connectivity in the Indian Ocean. 'The Indian Ocean: Defining Our Future' conference was conceived with a view of creating a platform that could bring littoral states and major maritime users together to address issues of mutual concern.

Organised by the Office of the Prime Minister, the Ministry of Foreign Affairs, and the Lakshman Kadirgamar Institute of International Relations and Strategic Studies (LKI) in collaboration with the Global Maritime Crime Programme of the United Nations Office on Drugs and Crime (UNODC), this track 1.5 dialogue was held on 11-12 October 2018, in Colombo, Sri Lanka. Over 300 senior government officials and think tank representatives from over 40 Indian Ocean littoral states and major maritime users participated in the conference.

This publication aims to capture the essence of the vibrant discussions that took place at this track 1.5 dialogue. The purpose is to identify overarching concerns and challenges in the Indian Ocean region in the four thematic areas covered i.e. (i) the Indian Ocean Economy, (ii) Oceans as Development Spaces, (iii) Safety and Security at Sea, and (iv) Reinforcing International Law in the Indian Ocean.

The Indian Ocean region is set to define the destiny of the planet in the 21st century. It is one of the fastest growing regions in the world and is expected to reach middle-income status by 2025. This offers significant economic opportunities for the ocean's surrounding states and maritime users. But expansion also carries risks from rising competition in the region among big powers, environmental degradation and maritime crime.

For smaller states an essential element to maximising opportunities and minimising risks is to actively support the international rules-based order. This applies particularly to Sri Lanka and its long-held ambition to become a hub of the Indian Ocean.

The international rules-based order is not an abstract idea; there are established rules and principles (such as freedom of navigation), which operate on a common understanding of challenges and solutions in the region and around the world. In hosting this dialogue, Sri Lanka is contributing to the maintenance of that common understanding, and thereby ensuring a stable rules-based order in the Indian Ocean in which we can all thrive and grow together.

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Ministry of Foreign Affairs



LAKSHMAN KADIRGAMAR INSTITUTE  
OF INTERNATIONAL RELATIONS AND STRATEGIC STUDIES





Messages



// Dialogue and cooperation are essential prerequisites for growth and stability that benefits all. //

**Message from H.E. Maithripala Sirisena  
President of the Democratic Socialist Republic of Sri Lanka**

The historical evidence of the Indian Ocean trading patterns demonstrate that sea trade has passed through routes linking Southeast Asia, India, Arabia, and East Africa. Major empires involved in Indian Ocean trade include the Mauryan Empire in India, the Han Dynasty in China, the Achaemenid Empire in Persia, and the Roman Empire in the Mediterranean. All those trading partners recognised Sri Lanka as an excellent trading hub.

The geostrategic location of Sri Lanka, coupled with the rich endowment of natural harbours, the plentiful supply of food, good water and other essential items, a congenial social environment providing freedom of worship to different faiths, makes it a thriving destination that serves as a mid-way point, facilitating trade and commerce across the globe. Since ancient times, we pursued a policy of peaceful engagement with all our partners in order to ensure stability in our region and reap the benefits of free trade and commerce.

Bringing this insightful vision to the fore, as a country committed to peace and stability in this region, Sri Lanka initiated a process to declare the Indian Ocean as a Zone of Peace at the Twenty Sixth Session of the United Nations General Assembly on 12 October 1971 under the leadership of the late Mrs. Sirimavo Bandaranaike, the Prime Minister. Sri Lanka has also played a significant role during the negotiations of the United Nations Convention on the Law of the Sea (UNCLOS). This present endeavour bringing together Indian Ocean littoral states and major maritime users emanates from our long belief that dialogue and cooperation is an essential prerequisite for growth and stability that benefits all. Given the economic resurgence of Asia and the significance that the Indian Ocean has assumed, it is incumbent upon those of us geographically located in this area, to play a leading role in deciding the future of this region.

I hope that the deliberations you will have will assist in preserving the essential characteristics of an open, free, fair and peaceful Indian Ocean.

I take this opportunity to acknowledge the efforts and leadership of the Prime Minister, Hon. Ranil Wickremesinghe in giving direction to this process and organising this important conference.

May the Triple Gem bless you all!

Maithripala Sirisena



“ Increasingly defined as the Ocean of the Future, the Indian Ocean is set to determine the destiny of the planet in the 21<sup>st</sup> Century. ”

**Message from Hon. Ranil Wickremesinghe  
Prime Minister of the Democratic Socialist Republic of Sri Lanka**

‘The Indian Ocean: Defining Our Future’ conference was conceived with the aim of highlighting the centrality of the Indian Ocean in deciding our common global future. Increasingly defined as the Ocean of the Future, the Indian Ocean is set to determine the destiny of the planet in the 21<sup>st</sup> Century. Sri Lanka’s strategic location in the Indian Ocean and our long history of peaceful engagement makes it an ideal convener of such an international conference. Our purpose is to create a platform for Indian Ocean littoral states and major maritime users to discuss issues of mutual interest and concern, and work towards an understanding that benefits all. Therefore, it gives me great pleasure to welcome you to Temple Trees for this important conference.

Peace and stability in the Indian Ocean Region (IOR) is in our mutual interest. This region has enormous economic potential and is the lifeline of global trade. Effectively managing the Indian Ocean in a manner that prevents conflict and rivalry and promotes cooperation and partnership for long term stability and peace in the region is critical. Any new regional architecture envisaged should be multilayered and must recognise the distinct identity of the IOR and the intrinsic role of the littoral states. It must also be a multi-stakeholder and therefore, include the littoral states and those with an interest in the region. There is a significant need for an enhanced Indian Ocean regionalism that focuses on augmenting cooperation across the maritime domain. Maintaining and strengthening freedom of navigation and a rules-based order in the Indian Ocean should be central to those discussions.

Before us is a unique opportunity to create an Asian model of international relations underpinned by maritime salience of the IOR. This conference could serve as an important starting point in our collective endeavours to rise above rivalry and antagonism and work together for the common good of our people.

I wish the deliberations of this conference all success.

Ranil Wickremesinghe





// The interest that this conference has generated demonstrates the significance of the Indian Ocean for the future of mankind. //

**Message from Hon. Tilak Marapana, PC, M.P.  
Minister of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka**

It is indeed a momentous occasion for Sri Lanka to play host to 'The Indian Ocean: Defining Our Future' conference which will be held from 11 to 12 October 2018, at Temple Trees. The purpose of this conference is to create a platform for Indian Ocean littoral states and major maritime users to convene and discuss issues related to the maritime domain. The interest that this conference has generated demonstrates the significance of the Indian Ocean for the future of mankind. The participation of key officials, experts, thought leaders, practitioners and policy makers and the extensive agenda of the conference stands testimony to the growing interest on events unfolding in the Indian Ocean region.

Sri Lanka has been deeply involved in developing global a ocean policy since the time of the negotiation of the United Nations Convention on the Law of the Sea (UNCLOS). Located as we are, at the centre of the Indian Ocean, Sri Lanka has significant interest in actively contributing to policy making on ocean governance. This conference would primarily focus on anticipating challenges and strengthening (UNCLOS) which continues to serve as the Constitution of the Seas.

I take this opportunity to congratulate the Office of the Prime Minister, the Ministry of Foreign Affairs, and the Lakshman Kadirgamar Institute for their contribution towards making this conference a reality and wish to also acknowledge the support extended by the Global Maritime Crime Programme of the United Nations Office of Drugs and Crime (UNODC) in the endeavour. I am confident that the deliberations at this conference will provide impetus to create an understanding on enhancing cooperation among nations for economic development and in preserving our oceans as a resource for future generations.

I convey my best wishes for a successful conference.

*Tilak Marapana*

Tilak Marapana



“While the Indian Ocean may separate our respective nations, it also connects them. Our economic futures are fundamentally intertwined and prosperity will only be increased if we work more closely together.”

**Message from Hon. Dr. Harsha de Silva, M.P. State Minister of National Policies and Economic Affairs of Sri Lanka**

It is my honour to extend a warm welcome to all participants of this conference on the future of the Indian Ocean. The region is rapidly emerging as a new centre of the global economy. It is rich in natural resources, including oil and gas, is home to 35% of world's population, and its sea lanes carry around one-third of the world's bulk cargo. At the same time, its littoral states are becoming ever more important drivers of world economy and accounted for 18.5% of global GDP last year.

As an island nation at the centre of the Indian Ocean, Sri Lanka has long recognised the importance of peaceful maritime trade as a means of achieving greater prosperity. This applies to all littoral states, as well as the nations beyond the Indian Ocean that depend on it as a means of connecting to other markets. Against the backdrop of growing threats to the health of the global economy, it is more important than ever that the users of the Indian Ocean come together to ensure that future prosperity is not undermined by unnecessary disruptions to maritime trade.

A secure and peaceful ocean is a prerequisite for the global economy to thrive. Facilitating better maritime visibility and promoting information sharing among littoral states and major users of the Indian Ocean will augment maritime domain awareness and assist in effectively dealing with challenges in the maritime domain.

As you proceed with the scheduled discussions, I would encourage you to remember that while the Indian Ocean may separate our respective nations, it also connects them. Our economic futures are fundamentally intertwined and prosperity will only be increased if we work more closely together.

I wish all participants a fruitful and stimulating conference.

A handwritten signature in black ink, consisting of stylized initials and a long horizontal line.

Harsha de Silva



“As an island nation situated right in the middle of the Indian Ocean, Sri Lanka’s connection to the ocean is deep, multifaceted, and ancient.”

**Message from Mr. Prasad Kariyawasam  
Secretary to the Ministry of Foreign Affairs of Sri Lanka**

Oceans are the very source of life. Oceans shape the climate, feed the world, and contribute to cleansing the air that we breathe. Oceans are vital to our economic well-being. Ninety percent of global commerce takes place, ferried across oceans. They host key submarine cables and hold a wealth of resources as well as untapped potential forms of energy. Yet, when we look at the map of the world, our natural tendency is to focus on the large spaces of land and ignore the oceans. The oceans remain invisible and mysterious to most of us, painted as swathes of dark or light blue. Yet, our very life depends on the oceans. Therefore, it is both essential and urgent to draw the attention of global populations everywhere, to the oceans, to create greater awareness and understanding among all individuals on the vital role that oceans play in sustaining life, and the potential they hold for human development.

As an island nation situated right in the middle of the Indian Ocean, Sri Lanka’s connection to the ocean is deep, multifaceted, and ancient.

The Indian Ocean’s most salient characteristic, as pointed out by Admiral James Stavridis, is that unlike other major oceans, the Indian Ocean has been throughout history, a zone of trade. Preservation of this status, as the world and Indian Ocean nations evolve, is vital for the peaceful and stable progress and prosperity of our region.

The Government of Sri Lanka, having recognised this reality, seeks to take an increased interest in issues related not only to the Indian Ocean but oceans in general. In pursuance of this objective, a specific focus on the oceans will be an enduring aspect of Sri Lanka’s relations and interactions with bilateral partners and international organisations. Closely linked to this policy focus will be the critical issues of climate change and sustainable development. In keeping with President Maithripala Sirisena’s vision of adopting a blue-green development strategy in order to achieve Balanced, Inclusive, Green, Growth (BIGG) and a Sustainable Sri Lanka by 2030, Sri Lanka’s relations and interactions with bilateral partners and international organizations will reflect the pursuit of these goals.

As an integral part of this effort, the Ministry of Foreign Affairs, in partnership with the Office of the Prime Minister, the Lakshman Kadirgamar Institute (LKI) and the Global Maritime Crime Programme of the UNODC, is organising “The Indian Ocean: Defining Our Future” conference. This track 1.5 dialogue brings together stakeholders from littoral states and maritime users to deliberate on issues of maritime significance which impact the Indian Ocean region and beyond. It is our hope that the participants at this dialogue will discuss challenges to freedom of navigation and the rules-based order in a candid and forthright manner with a view to developing a shared understanding that can be of benefit to all.

I take this opportunity to welcome you most warmly, to this conference, and look forward to your active participation in its proceedings.

A handwritten signature in black ink, appearing to be 'Prasad Kariyawasam', with a long horizontal stroke extending to the right.

Prasad Kariyawasam



“The good news is that we have put in place a global plan to restore respect and balance humanity’s relationship with the Ocean.”

**Message from Ambassador Peter Thomson  
UN Secretary-General’s Special Envoy for the Ocean**

The Ocean is in trouble, so much so, that like Climate Change and Climate Action, Ocean Change and Ocean Action are at the very centre of humanity’s 21<sup>st</sup> Century responsibilities.

As a result of anthropogenic greenhouse gas emissions, the atmosphere is warming and with it the Ocean. These same greenhouse gases are also making the Ocean more acidic. Between warming and acidification, we are seeing the death of coral reefs; we are seeing marine species being driven away from overheating tropical waters; and we are witnessing accelerating coastal erosion and rising sea levels. Meanwhile, the pollution of the Ocean has reached unconscionable levels, and fish stocks are under huge pressure from overfishing and widespread illegal fishing practices. The Ocean is truly suffering a multipronged attack from the Anthropocene.

The good news is that we have put in place a global plan to restore respect and balance humanity’s relationship with the Ocean. This plan is centered on SDG14 and the ramping up of our ambitions for the Paris Climate Agreement. Faithfully implemented, this plan will reverse the cycle of decline in which the Ocean is currently caught. All of us have a moral responsibility to our children and grandchildren to see that this is done.

A handwritten signature in black ink, appearing to read 'Peter Thomson'.

Peter Thomson



// The region's economy has emerged as a new global growth pole in the post-crisis era. //

**Message from Dr. Ganeshan Wignaraja  
Executive Director, Lakshman Kadirgamar Institute of International Relations  
and Strategic Studies (LKI)**

It is a privilege to welcome representatives from over 30 countries to Colombo for this landmark conference on the Indian Ocean. In an increasingly uncertain world, the interest of so many is a heartening sign that the Indian Ocean has assumed centre stage and there is a desire for multilateral discussions on common challenges.

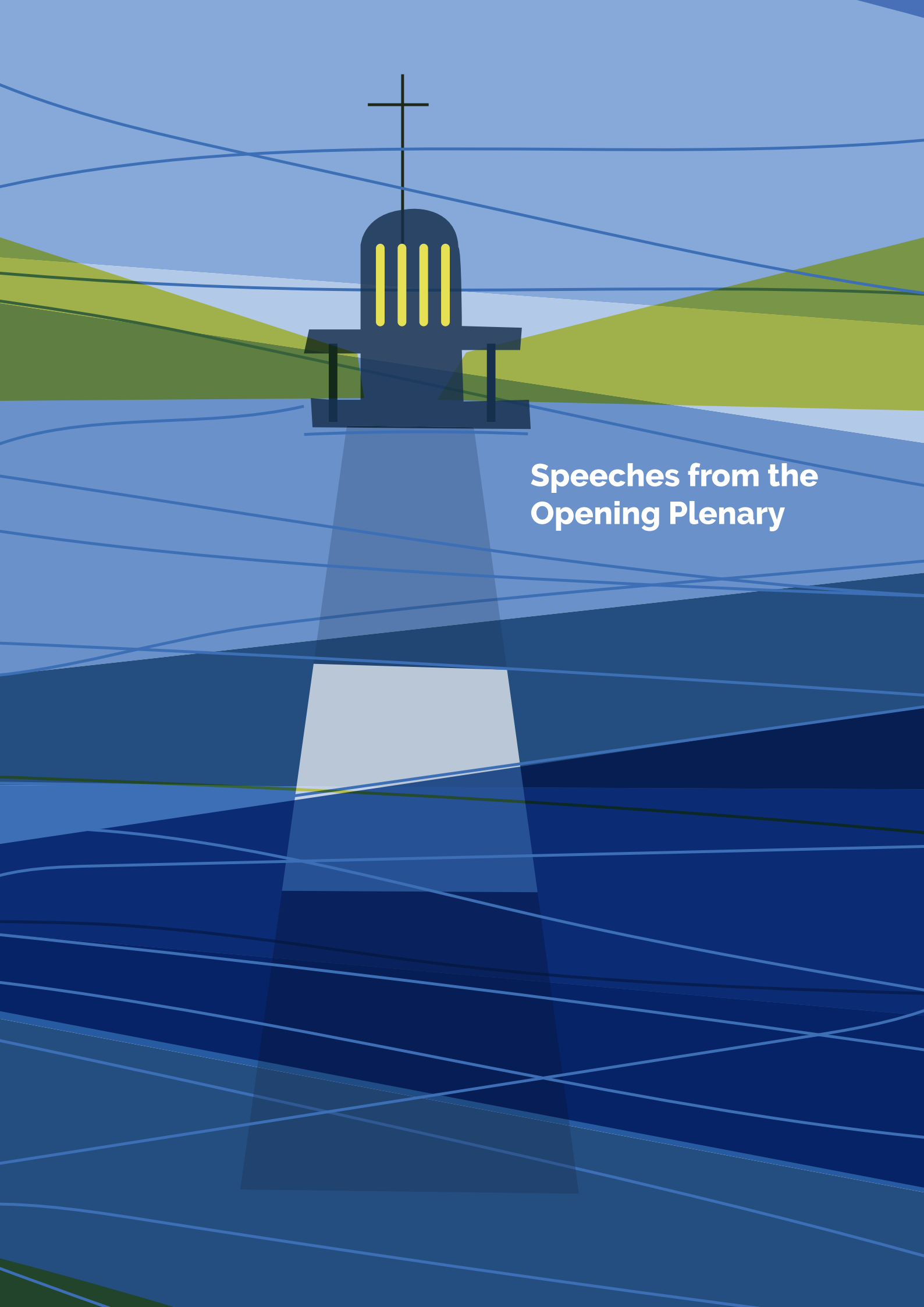
One of the most compelling reasons to convene this dialogue is the prospect of fully realising the economic potential of the Indian Ocean. The region's economy has emerged as a new global growth pole in the post-crisis era. Development gaps remain between countries and within them. But growing links between Asia and Africa across the Indian Ocean, fostered by domestic economic reforms and an emerging architecture of regional organisations, promise to spread wealth more widely. Despite this, disruptions caused by geopolitical and economic challenges remain a significant obstacle to lifting millions out of poverty.

The global research community plays a crucial role in highlighting these challenges in the Indian Ocean and providing policy options. This is embedded in LKI's mission to provide insights and recommendations that advance justice, peace, prosperity and sustainability. As Sri Lanka's leading foreign policy think tank, we hope that this conference will result in new links between the research community and officials on the pressing challenges facing the region. This will be an essential input to realising the dream of a prosperous and peaceful Indian Ocean.

A handwritten signature in black ink, appearing to read 'G. Wignaraja', written in a cursive style.

Ganeshan Wignaraja





## Speeches from the Opening Plenary

**“To my mind, such a shared understanding should address two core, interconnected issues related to the Indian Ocean. They are the Freedom of Navigation and the Freedom of Digital Connectivity. In terms of global trade and commerce the oceans are not only a medium of navigational connectivity but it is also the space for digital connectivity. It is only right, therefore, that we give both these freedoms our attention.”**



**Keynote Address by Hon. Ranil Wickremesinghe  
Prime Minister of the Democratic Socialist Republic of Sri Lanka**

Your Excellency, President Maithripala Sirisena; Foreign Minister Tilak Marapana; UN Secretary-General's Special Envoy for the Ocean, Amb. Peter Thomson; Ministerial colleagues; distinguished delegates; ladies and gentlemen,

It gives me great pleasure to deliver the keynote address at the commencement of this landmark conference - 'The Indian Ocean: Defining Our Future'. Let me begin by extending a very warm welcome to all who are here today, to discuss the future of our common heritage: the Indian Ocean.

Ancient scholars recognised the importance of the Indian Ocean. They called it the repository of jewels in reference to its riches. This was due to the trade civilisation that came about in the Indian Ocean 7000 years ago connecting the cities in the Nile, Euphrates - Tigris and Indus valleys. Many millennia later Admiral Alfred Mahan was far-sighted enough to forecast that the 21<sup>st</sup> Century will be decided on the waters of the Indian Ocean.

The Brookings Institute appropriately refer to the Indian Ocean as the strategic crucible located at its cross roads of global trade connecting the major engines of the international economy in the North Atlantic and the Asia Pacific.

The Indian Ocean sea-lanes have become the major arteries of East-West trade, connecting East and Southeast Asia via South Asia to East Africa, the Middle East and Europe. The rise of Japan, South Korea, China, India and the ASEAN economies have turned these sea-lanes into a maritime super highway carrying around half the world's container shipping and about two-thirds of its oil shipments. A strategic geographic location and a rich resource base underpins this heavy maritime traffic.

That is why the Indian Ocean truly is the 'Ocean of the Future'. Maintaining Freedom of Navigation in the Sea Lanes of Communication of the Indian Ocean therefore assumes significant importance for global trade.

The question that has been posed since the conceptual stages of this conference is - Is it important to talk about Freedom of Navigation in the Indian Ocean when relative calm prevails in the Indian Ocean, and Freedom of Navigation has largely been respected?

As I see it, the question should be, given the importance of the Indian Ocean, (whether) we can leave its security and stability to chance? Shouldn't we take advantage of the benign strategic atmosphere that exists to create a Maritime Order in the Indian Ocean that can withstand future challenges, In my view anticipating challenges and crafting solutions in an atmosphere can assist in a more manageable future for this important ocean.

Otherwise the geopolitical power interplay resulting from the absence of an accepted maritime order will convert the Indian Ocean into a centre of tension.

These strategic tensions can threaten the immense potential of this region involving regional powers, littoral states, major maritime users of the Indian Ocean, and non-state actors as well. In addition, such tensions are not only limited to the surface of the Indian Ocean, but now extend to its sub-surface waters and its airspace as well.

Given how these risks can jeopardise the region's economic potential, a dialogue is needed between littoral states and major maritime users of the Indian Ocean to build a shared understanding of the opportunities and challenges that our common ocean poses for us.

Therefore, this conference aims to create an inclusive platform for discussion and dialogue for littoral states and major maritime users of the Indian Ocean. Our purpose is to work towards a shared understanding that benefits all.

To my mind, such a shared understanding should address two core, interconnected issues related to the Indian Ocean. They are the Freedom of Navigation and the Freedom of Digital Connectivity. In terms of global trade and commerce the oceans are not only a medium of navigational connectivity but it is also the space for digital connectivity. It is only right, therefore, that we give both these freedoms our attention.

Ladies and gentlemen,

Let me explain the reasons that led Sri Lanka to convene this conference.

First, we see the imperative for strengthening the regional rules-based order, which treats small and large countries alike. Smaller states have a long history of advocating for a rules-based order. In the multipolar world of the Indian Ocean, where there is no overarching security architecture or unilateral security guarantor, it is imperative that only a shared understanding based on rules-based order will ensure the security of both larger and smaller states. Therefore, in the interest of the greater good, a dialogue towards building such a shared understanding is needed.

Second, Sri Lanka has historically been an advocate of the rules-based order for the maritime domain. We chaired the UN Conference on the Law of the Sea in 1973, which led to the adoption of the UN Convention on the Law of the Sea (UNCLOS). It is this rules-based order which will keep our sea-lanes of communication open, thereby reducing tension in the Indian Ocean.

Third, as outlined in the government's Vision 2025 policy document, Sri Lanka desires to develop as a trading hub of the Indian Ocean. To realise this objective, we are investing in port and airport modernisation to increase our international connectivity, we are investing in developing highways to connect our ports to the Sri Lankan hinterland, and we are making logistics and government procedures more business-friendly and up-scaling our national exports. However, such aspirations depend, first and foremost, on sustained external demand through thriving maritime trade.

Ladies and gentlemen,

Much has been said about the vital importance of ensuring "freedom of navigation" across our oceans. However, equally important is to ensure the "freedom of digital connectivity" using the ocean bed. Over 80% of internet traffic is transferred using undersea cables. The economic and commercial wellbeing of most countries are now dependent on internet connectivity, and the seabed is becoming an ungoverned maze of undersea cables. What are the security imperatives, threats, vulnerabilities, and responsibilities around the growth of undersea cables on the seabed?

These are ocean issues that have received limited attention but have far reaching consequences into the future. Sri Lanka situated in the middle of

the Indian Ocean sees a need to start examining these issues in-depth. Much of the undersea cable connectivity, in fact to be precise all of the digital connectivity between West and East traverses over the seabed adjacent to Sri Lanka. We want to ensure the freedom of digital connectivity not only as an Indian Ocean objective but as a global objective.

We want to establish an international Centre of Excellence on the Safety of Undersea Cables in Colombo. We will work closely with the Global Maritime Crime Programme of UNODC to establish this Centre. We would like to invite each and every country represented here to send an expert to augment the intellectual and technical capacity of the Centre. We hope that undersea cables will form part of your discussions over the next two days and we can find common understanding on the way forward.

Ladies and gentlemen,

Some years ago, an International Oceanology Centre was established in Sri Lanka under the patronage of my office, to provide an international focus for sharing experiences and capabilities to monitor and assist in ocean governance and capacity building. It is our expectation that we could further develop the facilities of the Centre. Our primary goal is to function as a practically oriented operational Centre in the relevant disciplines.

Ladies and gentlemen,

What do we hope to achieve from this conference? We see a dialogue to strengthen and uphold the rules-based order as vital to realising the interests of all in the region, and particularly smaller states. Now, the core framework for such rules-based order already exists in the UN Convention on the Law of the Seas (UNCLOS), appropriately dubbed the 'Constitution of the Seas'. However, looking at the various challenges facing the Indian Ocean today, it is clear that a dialogue is needed, to clarify grey areas, of the law and strengthen cooperation.

For example, we are currently confronted with various forms of maritime crime in the Indian Ocean. While multilateral security cooperation has led to a decline in the incidence of activities such as piracy, they continue to remain a threat. Importantly, states are somewhat hindered in taking measures against such non-state actors on the high seas. This is where agencies such as UNODC have come up with innovative solutions such as their 'piracy prosecution model'. However, a long-term solution to effectively combat and prosecute maritime crime is needed to facilitate state capacity in this regard.

Another key area is the management and sustainable exploitation of undersea resources. Given that many Indian Ocean littoral states lack the capacity to determine or exploit their resource endowments, they would necessarily have to partner with other states in such activities. Therefore, we are studying on countering transnational maritime crime and proposing to strengthen the maritime surveillance capability and inter-agency operational capability. This would help enhance situational awareness of territorial and extended waters by providing a maritime surface picture for law enforcement purposes.

However, this raises the question of whether such partnerships would be equitable and ensure that these untapped resources would benefit everyone in the region.

So, it should be clear that many of the challenges facing the Indian Ocean revolve around the state capacity to address these challenges. Naturally, this is a pressing concern for smaller and centrally located states like Sri Lanka, and we see the strengthening of UNCLOS and its implementation as vital to expand our capacity in answering such challenges. What we hope to achieve is to reach consensus on the need for a shared understanding on the challenges faced to freedom of navigation and connectivity in the

Indian Ocean. Next we shall see if countries are interested in going forward to a ministerial conference and reach a political understanding. This is the test of our commitment.

To conclude, the issues that I have highlighted may not have simple solutions. However, we strongly believe that, despite these difficulties and for the benefit of future generations, we should commit ourselves to strengthen a rules-based order. The alternative 'business as usual' scenario cannot end well for the region, as current geopolitical trends can have unforeseen consequences for all of us. We need a normative framework that is robust, transparent, and committed to equity, leaving no one behind. Your presence today indicates that you share our concerns and desire for such an order, and I hope that, in the next two days, we will make important strides in working towards this goal. The Indian Ocean is our common heritage and the common enabler of our peace and prosperity - let us ensure that it will always remain so.

Thank you and I wish you all the best for a successful conference.

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**“As a maritime nation,  
the Government of  
Sri Lanka intends  
augmenting its efforts  
to promote Sri Lanka’s  
ocean interests. The  
Blue Economy holds  
much potential for  
development and  
growth for Sri Lanka  
and would therefore be  
in the forefront of our  
efforts in the future.”**



**Welcome Address by Hon. Tilak Marapana  
Minister of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka**

His Excellency Maithripala Sirisena, President of Sri Lanka; Hon. Ranil Wickremesinghe, Prime Minister of Sri Lanka; Ambassador Peter Thomson, UN Secretary-General's Special Envoy for the Ocean; Dr. Ganeshan Wignaraja, Executive Director, Lakshman Kadirgamar Institute; Hon. Ministers; State Ministers; Secretaries to the Ministries; distinguished invitees;

Ladies and gentlemen,

Good morning!

It is my pleasure and privilege to welcome all of you to this unique gathering, which brings together key representatives from Governments, academic institutions, multilateral organisations and national authorities on a most timely topic of common interest: that is, how we could better manage the Indian Ocean in defining our future. We are extremely pleased that so many countries have accepted our invitation and sent their representatives to this event.

This Conference will explore the region's strongest challenges and opportunities focusing on four important thematic areas namely economic development, sustainable utilization of ocean resources, maritime safety and security and UNCLOS. Our purpose is to work towards a shared understanding that involves the Indian Ocean littoral states and major maritime users.

Ladies and gentlemen,

As an island nation Sri Lanka is dependent on the Indian Ocean for connectivity and for growth. We are also highly impacted by matters concerning the health of the oceans. How we treat the Indian Ocean will determine our future. This holds true not only for Indian Ocean littoral states but many other nations around the world who are major maritime users of the Indian Ocean.

Taking into consideration our inseparable link with the Indian Ocean, the Government of Sri Lanka has adopted a specific policy focus in our foreign relations on the Oceans. As a maritime nation, the Government of Sri Lanka intends augmenting its efforts to promote Sri Lanka's ocean interests. The Blue Economy holds much potential for development and growth for Sri Lanka and would therefore be in the forefront of our efforts in the future. The government's vision is to make Sri Lanka the hub of the Indian Ocean, with a knowledge-based, highly competitive, social-market economy.

This Conference is a result of our Prime Minister's vision for a peaceful and economically thriving Indian Ocean Region. It is Sri Lanka's wish that this discussion be inclusive and engages all partners. We believe, as a neutral country, following a foreign policy of "friendship with all and enmity with none" we can serve as a useful platform in bringing everyone together.

Excellencies, ladies and gentlemen,

These are challenging times. The growth of global populations and economies has resulted in an exponential increase in demand for natural resources. We are increasingly turning towards the oceans to quench our thirst for resources. Climate change is no longer a distant threat; and we are already seeing the signs of what lies ahead. The demand for countries to take adequate measures to increase sustainable utilisation of ocean resources is growing. We should also be vigilant as the demand for resources may lead to conflicts between states which could disturb global peace and stability.

Lack of coordination between international, regional and national organisations responsible for oceans will adversely impact on sustainably harnessing ocean resources and realising the oceans full potential.

The rise of traditional and non-traditional security threats including strategic mistrust and power rivalry on the maritime domain, piracy, drug trafficking, human smuggling, maritime terrorism, illegal, unreported and unregulated fishing and pollution requires adequate attention by states in order to ensure that the rule of law prevails in the Indian Ocean.

Excellencies, ladies and gentlemen,

It is heartening for me to see that Sri Lanka is once again taking the lead in creating a platform for discussion on matters related to the Indian Ocean. As a lawyer, and having served as an Attorney General of this country at one point in my career, I have a strong interest in global lawmaking processes. I have seen, been involved and contributed in numerous occasions to such processes as part of Sri Lanka's delegations. I believe the United Nations Convention on the Law of the Sea or UNCLOS as it is known is a document where Sri Lanka's contribution was seminal.

Our hope is that this conference will stimulate discussions on further strengthening UNCLOS and addressing issues of concern. I hope, at a future date, we can reach an understanding on ensuring Freedom of Navigation in the Indian Ocean and sustainable utilisation of its resources.

Over the next two days, we have the opportunity - and indeed the responsibility - to initiate discussions on fostering cooperation on the use of the Indian Ocean. We should do so keeping in mind that our future generations depend on us to take the right decisions.

I wish you all a successful conference.

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**“You know it is everybody’s responsibility to see that the Indian Ocean, along with the Pacific and the Atlantic, are respected in the way that we should. This is up to individuals in our daily choices, and it goes up to our community organisations, to our national governments, to our regional organisations, and of course up to our multilateral system. We’re all in this together - there is only one ocean, and of course there’s only one planet on which humankind can exist.”**



**Address by Ambassador Peter Thomson  
UN Secretary-General's Special Envoy for the Ocean**

Hon. Prime Minister, excellencies, ladies and gentlemen,

I want to start by commending the Sri Lankan government for its championship of ocean issues, not just here in the Indian Ocean, but around the world. That is something I have witnessed in my work over the last decade. I also want to thank the Prime Minister for bringing us here together, to go over the important issues that we will over the next two days.

Excellencies, ladies and gentlemen, I'd like to begin what I have to say to you with a poem. It's by Pablo Neruda, the Nobel-winning Chilean poet, and I believe it's relevant to what we're going to consider. It reads:

“I need the sea because it teaches me.  
I don't know if I learn music or awareness,  
if it's a single wave or its vast existence,  
or only its harsh voice or its shining  
suggestion of fishes and ships.  
The fact is that until I fall asleep,  
in some magnetic way I move in  
the university of the waves.”

For me, as a sixth-generation Fijian, I go back to what the sea taught me, as we learnt to swim as soon as we learnt to walk in Fiji. When you went for a swim and were surrounded by coral reefs, you learnt about the wonder and the joy of what it is to be a human being on this planet. Of course, it was also the harsh voice that you learnt with all those hurricanes - and you only needed to look out from my home in Suva to see shipwrecks on the coral reef, drownings - and here in Sri Lanka, of course you all know about tsunamis.

What is the ocean teaching us today? It is teaching us a hard lesson. Yes, the joys are still there, yes, the commerce is still there - but there are hard lessons because of what science tells us about the trends in the ocean. It's a deep worry, and the ocean is in deep trouble. Look at ocean acidification and look at its implications for life in the ocean. Look at the fact that half of the air that we breathe comes from the ocean, and that 90% of the heat we generate is absorbed by the ocean, and a quarter of the CO<sub>2</sub> - and you see where that acidification is coming from.

Look at deoxygenation relating to those climate change trends, and what that means for life in the oceans. Look at ocean warming trends, and what that implies for sea-level rise, for coral die-off - those great bunkers of diversity dying off before our very eyes - species migration from the tropics, and the deoxygenation I mentioned. Think about the unconscionable levels of pollution that we now witness on our shores and out on the oceans. Think about the chemicals that are coming from industry and agriculture, and what those are doing to our coastal ecosystems, with evidence in the proliferation of dead zones where no life exists - over 400 dead zones are now identified, and those numbers growing. Think about overfishing - the SOFIA Report from FAO this year showed that 33% of our fish stocks

are being overfished, meaning they are being fished towards extinction if we carry on with these practices. All the while, fisheries subsidies lead to overcapacity, which leads to overfishing.

The second part of my message is less depressing. The second part is that we have a plan – and by ‘we’ I mean all the nations of the world – to reverse that cycle of decline in which the ocean is caught. By that plan, I refer to the Paris Climate Agreement and to the Sustainable Development Goals that all of us adopted in 2015. Awareness without action leads to despondency and despair, so we are in the days of climate and ocean action. We witnessed that period from 2013 through to 2017, where we were putting together that plan and we were raising awareness through such things as the Oceans Conference held last year. We are now at the time of action, not words.

So, what have we got coming up as key action milestones? The central preoccupation for us all has to be the implementation of the Sustainable Development Goals. In the case of the oceans, this is SDG 14. You know that four of the ten targets of SDG 14 mature in 2020 – that’s a sprint for us. We only have 18 months now to achieve those targets. Study them and you will see that they are achievable – they relate to Marine Protected Areas, they relate to removal of fisheries subsidies, better management of coastal and marine ecosystems, and eradicating the harmful fisheries practices and better management of our fish stocks. They are all very achievable targets, but they require all of us to have faithfulness towards the implementation of SDG 14. Because four of those targets mature in 2020, member states of the UN are currently considering mandating a 2020 UN Oceans Conference in Lisbon. The governments of Portugal and Kenya have offered to co-host that conference.

The other thing that we have coming up in terms of implementing SDG 14 is the eradication of fisheries subsidies. For a country like Sri Lanka, this is very relevant, because you have a lot of artisanal fisheries, and SDG 14B relates to helping those artisanal fishers get access to markets and resources. One of the best ways to do that is to eradicate these harmful fisheries subsidies. Why? Because 80% of those subsidies go to big industrial fishing fleets overseas. The WTO is currently considering the removal of these subsidies, and we hope that every country in this room gets behind this action by the WTO before 2020.

The other thing that is very important here in Sri Lanka, is that you are an important linkage between fresh water and seawater because you are an island. You understand as an island that the two are inextricably linked. SDG 6 and SDG 14 are twins in terms of better management of our coastal ecosystems, and that again is one of the targets maturing in 2020. So, Sri Lanka, we look to you for continuing leadership in this area. With the Paris Climate Agreement, Fiji is currently the President of the COP23, and we have put together the Talanoa Dialogue, but also focused on the ocean-climate nexus, because these are two sides of the same coin. Uplifting the terms of our Paris Climate Agreement is absolutely essential to what we’re doing.

I also want to give a shout out to the United Nations Decade of Ocean Science, which will run from 2021 to 2030. The General Assembly adopted this resolution at the end of last year. This will be a huge step for humankind in terms of understanding what goes on in the ocean, and it will be a very neat fit with the culmination of SDG 14 in 2030. I would also like to give a shout out to the work that is being done by member states of the UN for the BBNJ (Biodiversity Beyond National Jurisdiction), a very important international law that we hope will bring better governance to the high seas of our planet.

While I’m in Sri Lanka, may I also mention the traffic separation schemes in relation to the blue whale population in the south of your country. I know that consideration is underway in cooperation with IMO, and I really applaud the work that you’re doing. I have observed such schemes off Hawaii and New

York, where this can be very successfully done. In terms of the blue whale population off the southern tip of Sri Lanka, what a wonderful biodiversity resource that is, and what an important resource it is for Sri Lanka. If you just think of the East African game parks and what they have done for the East African tourism industry, you can think ahead to what that would mean for Sri Lanka.

Ladies and gentlemen, in conclusion, I would like to thank UNODC for all the great work it is doing in the Indian Ocean. You know it is everybody's responsibility to see that the Indian Ocean, along with the Pacific and the Atlantic, are respected in the way that we should. This is up to individuals in our daily choices, and it goes up to our community organisations, to our national governments, to our regional organisations, and of course up to our multilateral system. We're all in this together - there is only one ocean, and of course there's only one planet on which humankind can exist. These are the times of action, let everybody feel that they have a personal responsibility. Otherwise, we may well fail. We have to restore the relationship of respect and balance with the resources of this planet, and in this case, our mother the ocean.

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**“Think tanks are making a significant contribution to understanding the Indian Ocean’s development, and have become key partners of governments in steadily advancing that development.”**



**Introductory Remarks by Dr. Ganeshan Wignaraja  
Executive Director, Lakshman Kadirgamar Institute of International  
Relations And Strategic Studies (LKI)**

His Excellency President Maithripala Sirisena, the Hon. Prime Minister Ranil Wickremesinghe, Hon. Foreign Minister Tilak Marapana, Ambassador Peter Thomson, Hon. Speaker Karu Jayasuriya, distinguished delegates, ladies and gentlemen,

I would like to warmly welcome all of you to this conference on ‘The Indian Ocean: Defining Our Future,’ organised by the Government of Sri Lanka and the Lakshman Kadirgamar Institute of International Relations and Strategic Studies (LKI) in collaboration with the United Nations Office on Drugs and Crime. The presence of over 40 countries today demonstrates the significance of the Indian Ocean region. Many of you have travelled from afar and we are most grateful to you for coming to Colombo. Sincere thanks are also due to the many people who have contributed to organising this conference.

One of the compelling reasons to convene this Track 1.5 conference is to promote the peaceful economic development of the Indian Ocean. The region is a powerful global growth pole, but development gaps persist. Increasing Africa-Asia ties, investment in ports, market-oriented reforms, and supportive regional institutions, could spread the gains from regionalism. However, the dark clouds of geopolitical, economic and environmental risks hang over the region’s future peace and prosperity.

Think tanks are making a significant contribution to understanding the Indian Ocean’s development, and have become key partners of governments in steadily advancing that development. LKI will continue to conduct research and to facilitate forums on the Indian Ocean that bring together policymakers, scholars and advocates to work effectively on regional issues.

After the opening plenary, the inaugural panel deals with clarifying regional opportunities and challenges. There are then four roundtable sessions on the Indian Ocean economy, environmental sustainability, safety and security at sea, and international law. A closing session at the end of the conference will aim to summarise common themes and possibilities raised in the course of the conference.

We hope that the next two days will strengthen ties between officials and scholars, and between governments and think tanks, on pressing regional issues. These are networks that will help us realise our common dream of a prosperous and peaceful Indian Ocean.

I thank you for your attention, and wish you an enlightening and enjoyable time at this conference.

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Remarks of the  
Inaugural Panel



**“There needs to be an understanding on the maritime vision for the region and such a vision needs to be developed through a multi-stakeholder dialogue that includes littoral states and major maritime users. Our purpose should be to ensure the reliable, uninterrupted and safe movement of people, goods, energy and resource supplies throughout the Indian Ocean, not forgetting the digital connectivity that the Prime Minister brought to this forum.”**



**Remarks of Hon. Dr. Harsha de Silva M.P State Minister of National Policies and Economic Affairs of Sri Lanka**

Hon. Prime Minister, distinguished guests, ladies and gentlemen,

It gives me great pleasure to welcome you all to this inaugural panel discussion entitled “Navigating Challenges and Prospects in the Indian Ocean: Towards a Shared Understanding”. It is wonderful to see representation here from all Indian Ocean littoral states and the major maritime users of this ocean.

The presentations in the opening plenary underlined the immense strategic and economic importance of the Indian Ocean region in furthering the quest for world peace and prosperity. The plenary also discussed the sustainable use of marine and other resources in the Indian Ocean, drawing on valuable insights from the 2017 United Nations Ocean Conference in support of the 2030 Agenda for Sustainable Development, and the plenary elaborated on the transformative role that openness and investments in port infrastructure have played in transforming Sri Lanka into a regional trading hub.

This inaugural panel aims to discuss the central role played by the Indian Ocean in global maritime and services trade in the second decade of the 21<sup>st</sup> century, and to explore the challenges facing Indian Ocean littoral states and major maritime users. It also seeks to move beyond an airing of views at a conference towards serious collective reflection and developing a shared understanding of ways forward.

Four issues can be put on the table initially as food for thought.

The first issue relates to the emergence of the Indian Ocean economy as a new global growth pole. Tepid GDP growth in advanced economies and a slowing China - particularly since the 2008-2009 global financial crisis - have led to a search for new sources of global growth. Hitherto the Indian Ocean economy lay below the radar because scant attention was paid to it as a regional unit of analysis in applied economic analysis. However, aggregating the 28 economies across three continents (Africa and the Middle East, South Asia and East Asia and the Pacific) that border the Indian Ocean into a single regional unit reveals a formidable engine of global economy. For instance, the Indian Ocean economy is projected to grow at 5.8% per year in 2018-2020, compared with 3.9% for the global economy - which was just downgraded to 3.6% - in the same period. So the important questions for the panel are: what do the panel feel about the near-term economic outlook for the Indian Ocean economy and what risks might affect this outlook? And, listening to the Prime Minister this morning and what he said, perhaps you could consider what he said with respect to undersea cables and digital connectivity. That, may I add, is the fuel that runs the global economic engine as we know it today.

The second issue is about the environmental sustainability of the Indian Ocean. The Indian Ocean contains an enviable marine ecosystem with rich fishing resources amounting an estimated 28% of global fish capture in 2016. Furthermore, the Indian Ocean has over one-third of world iron production and 17% of global proven oil reserves. However, this amazing

marine and mineral resource base is at risk from over-fishing, pollution by plastic debris and chemical run offs and climate change. The key question for the panel is: how do we deal with the trade-offs between the needs of a growing regional population and preserving the environment for future generations?

Third, is safety and security at sea. A safe and secure Indian Ocean is vital in order to ensure the movement of goods and people across the Indian Ocean and to bolster global trade. However, the Indian Ocean region continues to face many traditional and non-traditional security challenges. They include, among others, piracy; maritime terrorism; illegal, unregulated and unreported fishing; human trafficking; drug smuggling; trafficking of weapons; maritime pollution and climate change. There needs to be an understanding on the maritime vision for the region and such a vision needs to be developed through a multi-stakeholder dialogue that includes littoral states and major maritime users. Our purpose should be to ensure the reliable, uninterrupted and safe movement of people, goods, energy and resource supplies throughout the Indian Ocean, not forgetting the digital connectivity that the Prime Minister brought to this forum. The key questions that arise with regard to safety and security of the Indian Ocean is whether littoral states and major maritime users are willing to rise above strategic mistrust and rivalry and develop a common understanding that benefits all, and if so, what are the mechanisms that need to be developed for this purpose? Are there operational level cooperative measures that can be put in place, particularly on developing greater Maritime Domain Awareness (MDA), which can contribute to safety and security at sea in the region? In passing, the incident just a couple of days ago in the South China Sea between the US destroyer Decatur and the Chinese warship Lanzhou is something we need to make sure does not happen in the Indian Ocean.

Fourth, is the ocean governance regime. An international rules-based order has been the bedrock for Indian Ocean littoral states and major maritime users to balance their interests and to deal with each other fairly. The legal framework to reduce strategic risks in the Indian Ocean has been UNCLOS, which is sometimes referred to as the “constitution of the oceans”, as the Prime Minister put it. However, issues have emerged which are not comprehensively dealt with under UNCLOS, which are nevertheless issues of significant importance and have given rise to ad-hoc cooperative arrangements. Questions for the panel are: whether UNCLOS is sufficiently robust to address rising non-traditional security threats in the Indian Ocean? How best can countries cooperate to identify gaps in legal instruments that currently exist and build understandings on addressing such gaps?

We have a terrific panel, ladies and gentlemen, of high-level officials from key Indian Ocean states and major maritime users to provide their perspectives on these issues. As their bios are in the packs, I shall briefly introduce them as follows:

- (i) Mr. Pankaj Saran is Deputy National Security Advisor of the Government of India;
- (ii) Ambassador Alice Wells is Principal Deputy Assistant Secretary, Bureau of South and Central Asian Affairs at the US State Department;
- (iii) Mr. Yi Xianliang is Director-General of the Department of Boundary and Ocean Affairs of the Ministry of Foreign Affairs of China, and our good friend who was the ambassador here for three years; and
- (iv) Mr. Anil Sooklal is Deputy Director-General at the Department of International Relations and Cooperation of South Africa and Chair of the Committee of Senior Officials of IORA; and
- (v) Mr. Prasad Kariyawasam is the Secretary of the Ministry of Foreign Affairs of Sri Lanka.

I have great pleasure in inviting Mr Pankaj Saran, Deputy National Security Advisor of the Government of India, to deliver his address.

**“The Indian Ocean is however more than just the sum of its littoral parts. It is one of the world’s busiest trade and transit corridors, if one can use that term. The first and foremost responsibility to ensure the integrity of the sea lanes of communication has to be that of the countries of the region themselves.”**



**Remarks of Mr. Pankaj Saran  
Deputy National Security Advisor, Government of India**

I thank you for inviting me to speak at this conference. The subject of the conference is of direct relevance to India, the countries of the region and beyond, and there could be no better venue than Colombo to discuss and deliberate on the future of the Indian Ocean.

The opportunity and challenges that lie ahead of us in harnessing the vast potential of the Indian Ocean are well known, well established and well recognised. To that extent, the Indian Ocean is no different from any other Ocean.

In many ways, history is a great teacher of how the littoral states traded and culturally interacted with each other in different times. The impact of that interaction was in many cases permanent and can be seen even today. If we, in the modern era, can learn from history, and once again engage with each other, as we did in the past, that by itself would be a major step forward.

The Indian Ocean is, however, more than just the sum of its littoral parts. It is one of the world’s busiest trade and transit corridors, if one can use that term. The first and foremost responsibility to ensure the integrity of the sea lanes of communication has to be that of the countries of the region themselves. This has to be done through a collaborative approach in accordance with international norms. The well-accepted international legal framework such as the UNCLOS provides the basis for such cooperation.

The IOR rim countries have already established a number of multilateral forums to address common challenges confronting the region. The Indian Ocean Rim Association (IORA) is an ideal platform for trade, socio-economic and cultural cooperation. Similarly, the Indian Ocean Naval Symposium facilitates exchange of views among the naval professionals to evolve common understanding of maritime security issues in the region.

Diversity among the littoral states is a reality. This manifests itself in size, resource endowments, levels of developments, and security considerations. Forms and mechanisms of cooperation between us should not only reflect this diversity, but also get enriched by our relative comparative advantages. The Indian Ocean is a global common. It has enough to meet our needs, but it also requires our collective respect, sovereign equality and a commitment to the spirit of cooperation rather than competition, and adherence to the rule of law. Interests of others cannot be harmed in this process.

India stands as a ready and willing partner to create such a community of nations in the Indian Ocean. India’s coastline is 7,516 km. It has 1,197 island territories. Its EEZ is more than 2 million sq km and areas of its continental shelf is 372,424 sq km. More than 90% of our trade by volume is transported over the seas. We are, therefore, committed to fostering a peaceful and stable environment in the region.



In the last four years, India has articulated more clearly than ever before our vision for the Indian Ocean. I would refer to Prime Minister Narendra Modi's address in Mauritius in March 2015 where he enunciated the concept of 'SAGAR'- Security and Growth for All in the Region. This was followed by the Prime Minister's speech at the Shangri La Dialogue in Singapore in June 2018 where he elaborated India's vision of the Indo-Pacific in detail.

The key elements of our approach to the Indo-Pacific are:

- I. A free, open, inclusive region, which embraces us all in a common pursuit of progress and prosperity.
- II. Southeast Asia is at its centre. And, ASEAN has been and will be central to its future.
- III. Our common prosperity and security require us to evolve, through dialogue, a common rules-based order for the region. And, it must equally apply to all individually as well as to the global commons.
- IV. We should all have equal access to the use of common spaces on sea and in the air that would require freedom of navigation, unimpeded commerce and peaceful settlement of disputes in accordance with international law.
- V. A rule-based, open, balanced and stable trade environment in the Indo-Pacific region.
- VI. Connectivity initiatives in the regions must be based on respect for sovereignty and territorial integrity, consultation, good governance, transparency, viability and sustainability.
- VII. We must not return to the age of great power rivalries. Asia of rivalry will hold us all back. Asia of cooperation will shape this century.

Based on these principles, you will see in the years ahead an India that is more engaged as a maritime nation with the Indian Ocean community in a manner that enhances collective prosperity, peace and security. In this endeavor, we regard Sri Lanka as a specially valued and important friend and partner. We highly value Sri Lanka's independent role in realizing our shared vision for the common good of the Indian Ocean region, and look forward to working with it.

I thank you.

**“We see IORA as the pre-eminent regional organisation linking Africa, Middle East, Asia & Australasia via the Indian Ocean, and we seek to achieve our vision which is encapsulated in our theme for our Chairship of “IORA: Uniting the Peoples of Africa, Asia, Australasia and the Middle East through Enhanced Co-operation for Peace, Stability and Sustainable Development.”**



**Remarks by Dr. Anil Sooklal  
Deputy Director-General, Department of International Relations and  
Cooperation, South Africa, and Chair, Committee of Senior Officials of IORA**

Salutations,

I am very pleased to be here in my capacity as South Africa's National Focal Point and Chair of the Indian Ocean Rim Association (IORA) Committee of Senior Officials, along with such esteemed colleagues from important countries such as India, USA, China and Sri Lanka.

South Africa is very encouraged by the focus that the Indian Ocean is being accorded of late, with this meeting following several high level international conferences and meetings dealing with the Indian Ocean. This meeting reinforces the emergence and consolidation of the Indian Ocean Region as a leading region with the potential to contribute to global security, economic growth, and sustainable development.

I think we are all familiar with the growing geo-strategic and economic importance of the Indian Ocean Region as a source for innovation, job creation, and sustainable socio-economic development. Indeed, it is precisely for this reason that the Region is receiving such attention. The questions are now being asked about how we interact and manage this space in a way that serves us all as responsible global citizens. As the topic of this session asks: “What is our shared vision for the Indian Ocean Region.”

South Africa would argue that a shared vision for the future of the Indian Ocean Region must be centred on the Indian Ocean Rim Association (IORA), of which South Africa currently leads.

South Africa is one of the founding Members of IORA and views it as the most representative organisation in the Indian Ocean Region, comprising 21 out of a potential 25 countries whose shores are washed by the Indian Ocean directly.

IORA's membership reflects one of the most diverse regions of the world, with a heterogeneous mix of developed countries (such as Australia), developing countries (such as Sri Lanka), small island states (such as the Comoros) and Least Developed Countries (such as Yemen). With the exception of Australia, all IORA Member States are members of the Non-Aligned Movement (NAM). IORA's membership also comprises of twelve (12) Commonwealth Member States.

We see IORA as the pre-eminent regional organization linking Africa, Middle East, Asia & Australasia via the Indian Ocean, and we seek to achieve our vision which is encapsulated in our theme for our Chairship of “IORA: uniting the Peoples of Africa, Asia, Australasia and the Middle East through Enhanced Co-operation for Peace, Stability and Sustainable Development”. This theme encompasses South Africa's view that the Indian Ocean Region should be characterised as a region of peace, stability and development. The IORA Member States, together with the burgeoning interest and

support from our 7 Dialogue Partners covering North America, Europe and Asia, are well placed to realise the goal of navigating the challenges and prospects in the Indian Ocean towards a shared understanding. This is premised on the following:

- IORA has been streamlined and invigorated to become more focused and targeted towards the sustained growth and balanced development of the Indian Ocean region and of Member States, and to create common ground for regional economic co-operation in key priority areas developed during India's tenure as Chair from 2011-2013, and consolidated by Australia from 2013-2015.
- Through the "Jakarta Concord" which was adopted at the historic first IORA Leaders' Summit to commemorate the Association's 20<sup>th</sup> anniversary, we have the highest levels of commitment with which to make the Indian Ocean a region of peace, stability and development through enhanced co-operation.
- Flowing from the Concord is the IORA Action Plan which provides a firm set of realistic and measurable commitments for the IORA Council of Ministers to implement the "Jakarta Concord", and take IORA forward in a more outcomes orientated manner. To this end, the Action Plan provides short, medium and long terms goals to:
  - Promote maritime safety and security in the region;
  - Enhance trade and investment co-operation in the region;
  - Promote sustainable and responsible fisheries management and development;
  - Strengthen academic, science and technology co-operation;
  - Foster tourism and cultural exchanges;
  - Harness and develop the Blue Economy in the region;
  - Promote gender equality and the economic empowerment of women and girls; and
  - Strengthen the IORA Secretariat and its collaboration with stakeholders, including other international organisations and our Dialogue Partners.

As a practical and recent example of the progress being made within IORA, the very recent Delhi Declaration on Renewable Energy in the Indian Ocean Region calls for collaboration among IORA member states in meeting the growing demand for renewable energy in the Indian Ocean littorals, development of a common renewable energy agenda for the Indian Ocean region and promote regional capacity building.

The declaration also calls for promotion of technology development and transfer, strengthening of public private partnerships in renewable energy and collaboration among IORA member states and the member nations of the International Solar Alliance (ISA). IORA member countries also resolved to collaborate with the International Renewable Energy Agency (IRENA).

South Africa will be hosting the 2<sup>nd</sup> IORA Tourism Ministerial meeting later this month, and we look forward to further progress in promoting cooperation and collaboration on Tourism within IORA.

In conclusion, the Association is playing its meaningful role as a credible and relevant regional organisation contributing to the well-being of the countries and peoples of the Indian Ocean Region. Our shared vision should be to further strengthen this role by working together to realise its full potential.

**“With half of the world’s population and a quarter of its economic output and the fastest-growing economies, the Indo-Pacific is indeed the most dynamic region in the world. However, the Indian Ocean is also one of the least connected on this planet.”**



**Remarks by Ambassador Alice G. Wells  
Principal Deputy Assistant Secretary, Bureau of South and  
Central Asian Affairs, US Department of State**

I want to thank our hosts for this vitally important Track 1.5 dialogue. It’s a real pleasure to be here.

I’d like to focus my remarks on two distinct ways in which the United States has taken concrete steps today to deepen our commitment to the Indian Ocean region and to help advance a collective vision for a safe and prosperous future.

The first is by making new investments in support of maritime security. Working with our Indian Ocean partners to expand maritime capacities, to promote greater information sharing, and to ensure free and open maritime domain that is the life blood of the region’s security, stability and prosperity.

But the second is by supporting greater private sector engagement as the best and really the only means of creating long-term sustainable and inclusive growth.

Before I turn to those subjects, however, I do want to recognise the Maldives, an Indian Ocean country, for its recent successful national election. The United States congratulates the Maldivian people for their enthusiastic exercise of democratic rights in the face of significant obstacles. And I want to congratulate President-Elect Solih on his victory and affirm that my government is eager to work with President Solih and his government to advance our shared goals in this region.

So let me outline some of the practical steps that the United States is undertaking to support maritime security. We recently launched our own Bay of Bengal Initiative to help countries build the capabilities and information-sharing networks necessary to effectively address security challenges and natural disasters. As an initial element of this program, we’re providing USD 39 million to support Sri Lanka’s coastal maritime radar system, to provide training and equipment for improved surveillance response and interdiction. The United States also recently transferred a high endurance naval cutter to further improve Sri Lanka’s maritime capabilities.

An additional USD 40 million will help Bangladesh enhance its coastal radar system, modernize and enhance its patrol boat fleet and provide training in support of expanded [standard] maritime interdiction.

Now these increased capabilities are essential tools for combating the illegal, unregulated and unreported fishing, piracy and smuggling as well as other forms of transnational crime. And we’re designing our efforts to complement our partners’ work in the region.

For example, we’re excited about India’s proposed Information Fusion Center, which will help bridge the gap in the region’s common maritime operating picture, cooperating closely with existing fusion centers in Singapore, Madagascar and Bahrain.

Working tri-laterally with India and Japan and quadrilaterally with Australia, we're exploring the principles and the practicalities of maritime domain awareness and security.

We're also conducting a range of multilateral humanitarian assistance and disaster response exercises within the Indo-Pacific nations, such as our annual Cooperation Afloat Readiness and Training, and the Southeast Asia Cooperation and Training exercises with 10 and seven Indo-Pacific nations, respectively.

These exercises help to build crucial habits of cooperation, to respond to incidents effectively and efficiently.

Now while these investments in maritime security seek to develop physical capabilities, we also recognise the importance of deepening people-to-people ties which foster the human connections that will help societies work better together, including to address security challenges.

So for this reason the United States recently established a fellowship for the Indo-Pacific Security Studies, an exchange program that aims to increase civil society participation in security affairs, as well as support the inclusion of women and minority experts in these vital conversations.

I would like to now turn to my government's efforts to promote private sector opportunities and economic growth. These US initiatives are based on the recognition that only the private sector has the resources to fully support transparent and sustainable development in this critical region. Market economies, free trade, private sector finance and open investment environments have driven the Indo-Pacific's economic success so far, and are the key to ensuring that the Indo-Pacific region remains the engine of economic growth that's been discussed at this platform.

That is why in July, Secretary Pompeo at the Indo-Pacific Business Forum announced three new initiatives designed to better position the US government to support private sector growth in the region. These initiatives will focus on infrastructure, digital economy, and energy.

We're also excited about the BUILD Act which was signed by President Trump this week. The BUILD Act establishes a modern US development finance institution that would empower entrepreneurs, create jobs, and reduce poverty in partner countries. Under the BUILD Act, the new US Development Finance Corporation will have a lending limit of USD 60 billion, doubling the amount that had been available for its predecessor. Importantly, the new Development Finance Corporation will also be empowered to make equity investments overseas, as well as to conduct feasibility studies to more effectively identify new investment opportunities. It will also continue to make loans and provide political risk insurance.

So even as we're increasing the US government's ability to help identify and finance feasible commercial projects, I want to stress that we're also supporting countries in improving the domestic business climates through USAID, through the Department of Treasury and Commerce, through collaboration with business chambers and industry groups, we're helping countries create business climates that are critical to promote trade and attract not only domestic, but also foreign investment.

We're also working closely with like-minded partners in the region. For example, President Trump and Prime Minister Abe recently announced a variety of cooperative bilateral projects in Bangladesh and Sri Lanka.

And ASEAN, which is critical to all of our efforts, we're work with to promote cyber security defense of critical infrastructure.

So the two sets of initiatives that I've described which will focus on improving maritime security as well as energising private sector to spur

investment and growth, underscore the United States' commitment to remain a valuable partner for the Indian Ocean region, which is a lynch-pin of our broader Indo-Pacific strategy.

But let me highlight a major challenge facing all of us and that is the need to strengthen regional connectivity. With half of the world's population and a quarter of its economic output and the fastest-growing economies, the Indo-Pacific is indeed the most dynamic region in the world. However, the Indian Ocean is also one of the least connected on this planet. According to the World Bank, South Asia inter-regional trade constitutes less than five percent of the region's total trade. By comparison among ASEAN countries, there's 25% total trade. Among European countries, 60%. It is less expensive for India to trade with Brazil than with some of its neighbors. Poor trade and infrastructure and restrictive rules and regulations for border trade are key factors that are going to limit the capabilities of this very dynamic region.

The World Bank estimates that removing barriers and streamlining customs procedures would nearly quadruple inter-regional trade from USD28 billion to USD100 billion in South Asia.

Some of the initiatives I've outlined today can help by supporting greater maritime cooperation, facilitating infrastructure investments, promoting digital economies that transcend borders, and linking energy markets.

But clearly, more needs to be done. We look forward to the discussions today and throughout this conference as we look to define this new future in the Indian Ocean. I can assure you that the United States has never been more committed to ensuring a free and open Indian Ocean region as part of a larger Indo-Pacific, and we welcome the opportunity to work with all of our partners to create an Indo-Pacific region in which each nation, to echo President Trump, "is strong, prosperous, and self-reliant."

Thank you very much.



**"Indian Ocean belongs to the world but is initially related to countries in the region. The long-term stability of IOR depends on a security architecture that serves the fundamental interest of the regional countries. All parties should enhance dialogue and cooperation on regional security architecture to jointly maintain peace and stability in the region."**



**Remarks by Mr. Yi Xianliang  
Director-General, Department of Boundary and Ocean Affairs,  
Ministry of Foreign Affairs, People's Republic of China**

H.E. Ranil Wickremesinghe, Prime Minister of Sri Lanka, Hon. Ministers, Distinguished Guests, Ladies and gentlemen,

Good Morning! It's my great pleasure to have this opportunity to be back in Sri Lanka, where I had worked as the Ambassador of China to Sri Lanka till last year. I am thrilled to see so many familiar faces and immediately feel at home. During my tenure as Ambassador, I had deep discussions with Sri Lankan colleagues on China-Sri Lanka cooperation and regional development issues, and reached extensive consensus on practical and inclusive cooperation under the Belt & Road Initiative (BRI) framework. Today I am honored to join you again at this conference to look into the future of the Indian Ocean Region (IOR) and explore more opportunities of cooperation together. First of all, on behalf of the Chinese delegation, I would like to extend my deepest gratitude to the host of this conference for the warm hospitality and thoughtful arrangements. And I wish this conference a great success.

Ladies and gentlemen,

Profound and complex changes are taking place regarding the geopolitical and economic circumstances in the world , with opportunities and challenges coexisting. During the 19th National Congress of the Communist Party of China, Chinese President H.E. Xi Jinping called on the people of all countries to work together in establishing a new form of international relations featuring mutual respect, fairness, justice, and win-win cooperation, and building a community with a shared future for mankind living in a clean and beautiful world that enjoys lasting peace, universal security, common prosperity, openness and inclusiveness. IOR keeps a good momentum of development while immense unsteadiness and uncertainties also parasitize. China has always devoted itself to safeguarding peace and stability of IOR and promoting common development in the region featuring harmony, cooperation and win-win results. China insists that an inclusive, win-win cooperation is the sole path leading to a bright future of IOR.

Cooperation along the Ancient Silk Road is an inspiration to modern times. Thousands of years ago, China and Indian Ocean countries started trade and cultural exchanges, learning from each other and the "Maritime Silk Road" came into being, which benefitted generations by generations. 1600 years ago, Chinese monk Fa-hsien came a long way to India and Sri Lanka to study Buddhism by land and brought back Theravada to China by sea. Indian monk Bodhidharma arrived in China in the 6th century by ship, created Zen Buddhism and introduced martial Padipata from Indian religion to China, which laid the foundation for the development of Chinese Shaolin Kung Fu. Arabic traveler Suleiman crossed the ocean and reached India and China in the 8th century and then wrote a book called Ancient Accounts of India and China. In the early 14th century, Chinese navigator Wang Dayuan, honored "the Oriental Marco Polo", traveled across the Indian Ocean twice by commercial boat, authored Dao Yi Zhi Lue (A Brief

Account of Islands). Years later, Chinese navigator Zheng He, heading fleets of over 200 ships and 27,000 crew members, travelled to the West Pacific and Indian Ocean 7 times, and visited more than 30 countries including Sri Lanka, India and Kenya. The voyage of Zheng He largely deepened relations between China and Southeast Asia, South Asia, Central East and African countries. Since the fleets of Zheng He had fought gallantly against piracy, the voyage of his fleets and other commercial boats enjoyed freedom and security of navigation. In the mid-15<sup>th</sup> century, a Ceylon Prince visited China as a respected envoy and then married a Arabic noble and made his home in Quanzhou, and his descendent led a good life ever since.

The Ancient Maritime Silk Road served as the artery of transportation for Asia, Europe and Africa. There were countless envoys, monks and merchants of different regimes and dynasties making their way to the West and East through this artery for friendship, cultural exchange and trade. The long-standing people-to-people exchanges never ceased, in fact, they were renewed again and again as time goes by. The Ancient Maritime Silk Road enhanced the peaceful coexistence and mutual learning between civilisations of East and West, and instilled the spirit of openness, inclusiveness, harmony and mutualism into the genes of Chinese culture and the Ancient Maritime Silk Road.

China is sharing weal and woe with the Indian Ocean countries. With a vast territory, China shares its boundary with 5 countries of South Asia and its southwestern provinces are mainly nurtured by Indian Ocean monsoon, thus having intimate links and geographical ties with Indian Ocean countries. In 2017, China's gross trade in goods registered nearly 4 trillion USD with a year-on-year growth of 14.2%. In fact, more than 80% of China's foreign trade depends on sea lanes, over 40% of which has to pass through the Indian Ocean. That means more than 5000 large commercial ships are heading to or from China across the Indian Ocean every year, so it is a crucial concern of China to safeguard the freedom of navigation and safety for Indian Ocean.

China stands as a major force for the development of peace and stability in the Indian Ocean Region. China actively participates in the UN's escort missions and anti-piracy operations in the Gulf of Aden. By April 2018, China has dispatched 29 escort fleets and more than 100 naval vessels and 24,000 personnel to carry out escort missions. Till now more than 6,400 Chinese and foreign vessels have benefited from the missions. It fully embodies China's effective exercise of maintaining freedom of navigation and security and the responsibility as a major power.

China is also an active member of ReCAAP (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia) which covers more than 30 countries along the Indo-Pacific Region including ASEAN nations, Australia, Sri Lanka, Japan, Korea, India, Pakistan, Denmark, Netherlands, UK, US and etc.. As the former Governor of China to the ReCAAP, I envisioned and advocated for the cooperation on combating piracy and safeguarding the navigational freedom in Indian Ocean.

China shares the feeling and fate with the regional countries all the time. For example, China donated a large amount of grant to Sri Lanka when it was stuck by severe disasters like drought or flood, and actively took part in the reconstruction work.

From the perspective of trade, culture and people-to-people exchange, China is surely an important member of IOR. China has proved that no country is more eager to maintain a peaceful and secure, united and, cooperative, and prosperous Indian Ocean family. China will continue to honor its commitment to enhance relations with countries in IOR, making positive contributions to promoting regional peace, stability and prosperity.

The regional countries have a to cooperate for common interest. Under the context of globalisation, IOR in some sense has become a pillar of

world prosperity. Alfred Thayer Mahan predicted in 1890 that “Whoever controls the Indian Ocean will dominate Asia”. Fortunately, it could hardly be realised, because no country alone could dominate the Indian Ocean. Common and shared development in the region is a trend that cannot be reversed.

China is one of the biggest beneficiaries and also a strong advocate for globalisation. China adheres to the path of peaceful development, resists cold war mentality and zero-sum game, and encourages the concept of “Common, Comprehensive, Cooperative and Sustainable Security”. This concept is in keeping with the trend of globalisation and the times featuring peace, development, cooperation and mutual benefit. It also provides new models for security cooperation in IOR. We believe every country, regardless of its size and strength, should be respected and its security should be ensured. The security of both individual countries and the region as a whole should be safeguarded through dialogue and cooperation. As a Chinese proverb says, “Strength does not come from the muscle of the arms, but from the unison of the heart.” We should undertake to enhance strategic mutual trust, reduce mutual misunderstanding, seek common ground while resolving differences and maintain good relations with each other. We need to focus on both development and security, foster sound interactions and progress on economic cooperation and security cooperation.

China is also a faithful practitioner of this security concept. China is always committed to maintaining peace and stability in the Asia-Pacific region, and is devoted to addressing territorial and maritime issues through friendly consultations and negotiations with parties directly concerned. Pending the settlement of disputes, China makes efforts to establish mechanisms and regulate norms to control disputes and incidents. However, in contrast, some forces outside the region continuously expand their military presence and make troubles in the South China Sea in order to serve their own strategic interests. It has made some coastal states lose their own way and go astray, disturbing the peace, stability, security and development of the region. Someone said the Indian Ocean might be the next South China Sea. We need to be vigilant to prevent the region from a new cold war or even a hot war undermining the existing peace and stability.

Globalisation is now facing some reactionary phenomenon such as protectionism, unilateralism, anti-globalisation, and actions like trade bullying, economic sanctions, war threats and toppling of regimes are seen quite often. It is damaging the security and the development atmosphere in the region. This mentality is out of step with the current reality of interdependence and common development, and will harm the interests of all countries as well as the world peace and stability.

The Indian Ocean belongs to the world but is initially related to countries in the region. The long-term stability of IOR depends on a security architecture that serves the fundamental interest of the regional countries. All parties should enhance dialogue and cooperation on regional security architecture to jointly maintain peace and stability in the region.

Let’s enhance inclusive and win-win cooperation under BRI in context of the deep transformation of the world economy. China comes up with the “Belt and Road Initiative” (BRI) at the call of times. Deep-rooted in history, the BRI focuses on the present and faces up to the future, aiming to make the glory of the ancient silk road shine again. BRI is an initiative to promote economic development, social progress and cultural exchanges, which brings more and more opportunities for the development of IOR.

Over the five years since the initiation of BRI, friendly cooperation between China and South Asian countries has developed rapidly and registered extensive achievements. Asian Infrastructure Investment Bank (AIIB) and the Silk Road Fund have been facilitating and nourishing BRI projects in Indian Ocean countries. Our economy has been integrated through opening up, which in turn promotes rapid development of the economy.

The cooperation between China and the Indian Ocean coastal countries has been increasingly deepened, moving towards a sound situation of policy connectivity, infrastructure connectivity, trade connectivity, financial connectivity and people-to-people connectivity.

BRI is an open and inclusive initiative. BRI originated in China, but belongs to the world and has delivered benefits that are shared by all countries in the world. Since its initiation, the Belt and Road Initiative has garnered support from more than 140 countries and over 80 international organisations, with over 130 cooperation agreements signed and more than 240,000 jobs created. It is in line with various development visions and plans for countries in IOR. We are looking forward to building closer cooperative partnerships, thus making China's development benefit more Indian Ocean countries. Sri Lanka is a traditional friend and neighbour of China and also a supporter and participant of BRI. China is ready to assist Sri Lanka to carry out its great plan of making itself a hub of navigation, trade and finance in South Asian and IOR.

China always undertakes to adopt an open, inclusive and win-win way in the implementation of BRI. China welcomes any third country to join in the BRI, collaborate in project construction along the routes and share the cooperative development achievements at any time. China is open to work with India, Australia and other countries in a model of "China-India Plus" or "China-Australia Plus" to help other countries in the region to achieve development and prosperity.

Ladies and gentlemen,

"Row the boat together as we are in the same boat, so that we can sail afar through wind and waves." Development and prosperity of IOR is the common aspiration of the regional states and their peoples, and is an important power source for world peace and stability. It is expected for all countries to enhance dialogue and cooperation in the spirit of mutual respect, consultation and consensus, and openness and inclusiveness. Let's uphold this spirit and join hands together to make a bright future for the Indian Ocean Region!

Thank you.

**“The Indian Ocean is a region where countries have consistently and continuously maintained adherence to the UN Convention on the Law of the Sea (UNCLOS) and other international arrangements. Sri Lanka is keen, therefore, to work proactively with countries in the Indian Ocean region as well as the major Indian Ocean users in an inclusive manner, to identify challenges and seek ways to reach a shared understanding.”**



**Remarks by Mr. Prasad Kariyawasam,  
Secretary, Ministry of Foreign Affairs, Sri Lanka**

Hon. Dr. Harsha De Silva, State Minister of National Policies and Economic Affairs & Chair of the Panel, Fellow Panelists, Ladies and Gentlemen.

I want to begin by thanking the erudite speakers before me for the useful insights they shared; the frankness with which they spoke about issues including challenges; and for the articulation of their vision for security and prosperity in the Indian Ocean region.

I recall reading a remark made by Admiral James Stavridis, a US Navy veteran and academic, that unlike other major oceans, the Indian Ocean has been throughout history, a zone of trade. This struck me as something relevantly remarkable. Preservation of this status – the Indian Ocean as a – “Zone of Trade”, while the world as well as the Indian Ocean Nations evolve in the modern world, I think, is vital for the peaceful and stable progress and prosperity of our region.

Let me for a moment dwell on where Sri Lanka’s interests and concerns arise from:

- Having come out of prolonged conflict, we are determined as a nation to take steps to ensure non-recurrence of conflict, to ensure that we realise the full developmental potential that evaded us for long years.
- Our vision of achieving equitable economic development, as you would recognise, is inextricably linked with sustaining peace and stability that will not only facilitate the prosperity of our own citizens but benefit people of our region and beyond.
- As an island nation, we understand fully, and we acknowledge and recognise the interconnected nature of our region, to the world. Therefore, we are deeply aware that the prosperity that we seek for the citizens of Sri Lanka, requires the sustenance of certain conditions in the entire region and beyond.
- If the stability in the Indian Ocean and its littoral comes under stress, strain and threat, Sri Lanka’s prosperity as well as that of other nations in the region, especially the smaller nations, would come under serious harm and difficulty.
- On the other hand, any disruption in the Indian Ocean space can create a major upheaval in the world trading and communication systems that heavily depend on the maritime super highway that cuts across our Ocean.

Therefore, it is in our common interest – both Indian Ocean littoral states as well as the major Indian Ocean users that we seek:

- Ways to cooperate and avoid confrontation;
- Ways to reach a common understanding on how we are going to deal with issues and challenges that affect all of us;
- Ways to maintain stability and tranquillity in the Indian Ocean;
- Ways to work together for the common prosperity of this region and the connected regions beyond; and
- Ways to create an inclusive Indian Ocean architecture that does not exclude anyone.

Ladies and gentlemen,

I began by referring to the Indian Ocean Region as having remained a “Zone of Trade” throughout history. It was based on interdependence and avoiding a direct major international conflict. Ancient trade routes in the Indian Ocean region in fact epitomised the idea of freedom of navigation and an unwritten rules-based understanding, and respect for all users of that route. What is remarkable perhaps is that not only have we managed to preserve this status, but we have built on it gradually and in a progressive manner over the years in modern times.

Within the UN, Sri Lanka as well as other countries in the region including Singapore were actively involved in developing ocean governance processes during negotiations in the UN Conference on the Law of the Sea.

The Indian Ocean countries have continued to choose cooperation over conflict in the maritime domain, and have resorted to resolving disputes through dialogue and adherence to international rules and norms. For example, the peaceful resolution of the Bay of Bengal Maritime Boundary arbitration between Bangladesh and India in 2014; and the demarcation of the sea-based boundary between India and Sri Lanka in 1976.

The Indian Ocean is a region where countries have consistently and continuously maintained adherence to the UN Convention on the Law of the Sea (UNCLOS) and other international arrangements.

Sri Lanka is keen, therefore, to work proactively with countries in the Indian Ocean region as well as the major Indian Ocean users in an inclusive manner, to identify challenges and seek ways to reach a shared understanding on how we would:

- continue to preserve stability and tranquillity in the Indian Ocean;
- actively maintain freedom of navigation and overflight and adherence to a rules-based order;
- cooperate with each other to confront challenges such as piracy, human trafficking, human smuggling, drug trafficking, maritime terrorism, and IUU fishing;
- cooperate with each other in ensuring the security of the Sea Lanes of Communication and keeping them open and transparent;
- work in cooperation to ensure the safety and security of submarine cables;
- work together and in tandem on humanitarian assistance and disaster relief efforts and improve interoperability with our partners in search and rescue as well as rehabilitation operations;
- cooperate in achieving SDG 14 - that is conserving and sustainably using the oceans, seas and marine resources for sustainable development of countries in the region;

- cooperate in a manner that is respectful of each other, encouraging free and fair trade, open and transparent investment, and entrepreneurship at all levels; and
- make every effort to close the gap between a skills and jobs mismatch by focusing on equipping people with the skills they need to help us uplift our societies, through cooperation and win-win solutions.

Ladies and gentlemen,

In this endeavour to find ways to reach shared understanding on issues, it is useful to consider the linkages between the Indian and the Pacific Oceans as well. The Indian and the Pacific together represent a maritime super highway with tremendous economic potential. In this context, both Indian Ocean littorals and ASEAN have a central role to play. While attention is focused on the Indian Ocean Economy as a possible new growth pole, and key actions to meet challenges to growth are being addressed, it would also be useful to focus on linkages between the Indian Ocean and the Pacific, that will maximise the Indo-Pacific economic potential, and indeed resultant stability.

Ladies and gentlemen,

Our endeavour is to create the space for you to share your ideas and hopes for the future of the Indian Ocean Region. These two days in Colombo will provide a platform for all stakeholders to identify the main challenges that require our common attention. I hope that this dialogue will be the first step that paves the way for the development of a shared vision and understanding reflecting the collective will of the people of this region and beyond with a view to creating a stable and prosperous future for all.

Thank you.



**“Sadly, just as the oceans present opportunities for the development of people and the improvement of society, so too do they present opportunities for criminal groups who increasingly use the oceans as a venue for their activities. 50% of the surface of our world is high seas and therefore beyond the jurisdiction of any single state. That gives a tremendous opportunity to those who wish to conduct their criminal activities beyond reach and tremendous challenges for states who wish to stop them. Nowhere is the challenge greater than here in the Indian Ocean.”**



**Remarks by Mr. Alan Cole  
Head, Global Maritime Crime Programme,  
United Nations Office on Drugs and Crime (UNODC)**

His Excellency, Maithripala Sirisena, President of Sri Lanka; Hon. Ranil Wickremesinghe, Prime Minister of Sri Lanka; Hon. Tilak Marapana, Minister of Foreign Affairs; Hon. Dr. Harsha de Silva, State Minister of National Policies and Economic Affairs; His Excellency, Ambassador Peter Thomson, The United Nations Secretary General's Special Envoy for the Ocean; Hon. R. Sampanthan, Leader of the Opposition; Hon. Karu Jayasuriya, Speaker of the Parliament; Members of governments; distinguished guests; ladies and gentlemen,

On behalf of the Executive Director of the United Nations Office on Drugs and Crime, Mr. Yuri Fedotov, who regrets that he is unable to attend today in person, it gives me great pleasure to be here and to make a few remarks in the presence of so many distinguished leaders from the Indian Ocean and beyond.

UNODC approaches maritime matters through our mandate to support states in addressing transnational organised crime. Sadly, just as the oceans present opportunities for the development of people and the improvement of society, so too do they present opportunities for criminal groups who increasingly use the oceans as a venue for their activities. 50% of the surface of our world is high seas and therefore beyond the jurisdiction of any single state. That gives a tremendous opportunity to those who wish to conduct their criminal activities beyond reach and tremendous challenges for states who wish to stop them. Nowhere is the challenge greater than here in the Indian Ocean.

I know there will be plenty of opportunities to discuss this issue in the next two days but for now I want to express UNODC's pleasure to be a partner in this event and our thanks to the Government of Sri Lanka for allowing us to contribute to the discussions. It is events such as these, along with the excellent annual Galle Dialogue on Maritime Security here in Sri Lanka, which have established Sri Lanka as a leading proponent of enhanced Rule of Law on the waters of the Indian Ocean: Blue Justice in support of the Blue Economy.

I also wish to thank the Government of Sri Lanka for the very warm welcome they have given my team on our arrival in Colombo: it is much appreciated, and we can be assured of a long and fruitful partnership. Finally, I must thank the Government of Japan for the particular support they have given to our work in the Indian Ocean, along with the European Union, the United Kingdom and the United States who also support our work in the region.

**“It does not follow that Indian Ocean states need be prisoners to this instrumental competition. This is because Indian Ocean states have had relations among themselves dating back several millennia.”**



**Remarks by Prof. Sandeep Gopalan  
Pro Vice-Chancellor for Academic Innovation, Deakin University, Australia**

The Indian Ocean has transformed from a geopolitical backwater to being seen as central to peace in the Asian Century. That transformation is owed more to the competition between the dominant superpower and its aspiring rival than any actions of the Indian Ocean states themselves. However, it does not follow that Indian Ocean states need be prisoners to this instrumental competition. This is because Indian Ocean states have had relations among themselves dating back several millennia. If our ancient forbears could build links such as these, what explains the fact that the Indian Ocean became a backwater? The answers to this question are complex. I wish to look to the future, and it is in this context that Deakin University engaged with the Sri Lankan government on this initiative.

There are three principles which could be leveraged to ensure that the Indian Ocean does not remain a backwater. The first principle is rules. Rules must be clear, precise, capable of being monitored and of being enforced uniformly. The second principle is legitimacy – rules must be seen as legitimate by the states committed to implementing them. This means that the rules cannot simply be reflective of the interests of dominant states, but must rather include the true wishes of all states in the region. The third principle is about capability enhancement – it means going beyond the state to ensuring that the various disparate peoples of the Indian Ocean can participate in the region’s Blue Economy.

**“As a way forward,  
we resolved that  
strengthening existing  
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states offered the best  
promise.”**



**Remarks by Mr. Athula Pathinayake  
Executive Director, Centre on the Legal Profession, Deakin University,  
Australia**

The initiative for these conferences started when Hon Prime Minister delivered the keynote address in February 2017 at Deakin Law School Oration in Melbourne. During his speech on ‘Freedom of Navigation in the Indian Ocean’, and in subsequent meetings, he indicated the importance of opening a dialogue on these important geopolitical issues in this diverse and complex region. Deakin University’s Centre on the Legal Profession, have fully committed to realising the Prime Minister’s vision, most notably by holding a conference and series of workshops on maritime order in the Indian Ocean during April-May of this year in Melbourne. The programme was broadly divided into sessions on UNCLOS, Economics, Security, and the Environment, with each playing a critical role in any policy decision made within the Indian Ocean Region. Over the course of the conference, the role of both treaty-level and domestic interventions in Indian Ocean Region states was discussed, as was the possibility of a ‘Rules Based Order’ for maritime activity in the region.

As a way forward, we resolved that strengthening existing legal regimes including UNCLOS, building more institutional support for cooperation between all states offered the best promise. The conference organised by the Centre on the Legal Profession was a great success and I am sure that this week’s event will continue to ask difficult questions for all of us, as academics, public servants, and community members alike. Deakin University is proud to continue and strengthen its relationship with Sri Lanka.



# Summary of Round Table Sessions



## Round Table Session 1

*The Indian Ocean economy has become a major driver of global growth over the past two decades and has the potential to become a dominant force in the world economy by 2025. But the diversity in the region's economies requires the right policies to make the most of its potential. This session aimed to set out the priorities to ensure the Indian Ocean's future as the new global growth pole.*

Round Table Session 1 on 'The Indian Ocean Economy; The New Global Growth Pole' was co-chaired by Dr. Ganeshan Wignaraja, Executive Director of the Lakshman Kadirgamar Institute of International Relations and Strategic Studies(LKI), Sri Lanka, and Dr. Prabir De, Professor, Research and Information System for Developing Countries, India

### **The session panellists were:**

- Prof. Masahiro Kawai, Representative Director and Director-General of the Economic Research Institute for Northeast Asia, Japan
- Dr. Sutiphand Chirathivat, Professor Emeritus, Chulalongkorn University, Thailand
- Dr. Siswo Pramono, Director General, Policy Analysis and Development Agency, Ministry of Foreign Affairs, Republic of Indonesia
- Ms. Caroline Vinot, Head of South Asia Division, European External Action Service, European Union

### **The main points from the panellists' presentations and ensuing discussion were as follows:**

- Asia's economic rise, driven by China's rapid growth and the spread of global value chains (GVCs) in East Asia - has transformed the Indian Ocean into one of the world's busiest East-West maritime trade corridors.
- About two-thirds of the world's oil shipments and a third of bulk cargo is transported through the Indian Ocean.
- Internet traffic transmitted through undersea cables is growing rapidly and fueling the expansion of the services sector.
- Expansion of regional maritime trade and the services sector has translated into the development of a Blue Economy linked to the Ocean and its resources and wider regional economic development.
- There is a broad agreement that the Indian Ocean economy - spanning the littoral states in Africa, Middle-East, South Asia, East Asia, and the Pacific - is becoming an important global growth pole.
- The region has been growing faster than the world economy in recent decades.
- Per capita incomes and living standards across the region have also increased to historically unprecedented levels.
- Extra-regional players are becoming increasingly important in the region's trade.
- China has emerged as the region's largest trader.
- Others like the US, the EU and Japan are also key traders for the region.
- The region is witnessing a surge of investments in ports, logistics and other trade-related infrastructure in response to expanding infrastructure needs at national and regional levels.
- National infrastructure investment by littoral states in the Indian Ocean is being supplemented by various mega-regional infrastructure initiatives such as China's Belt and Road Initiative, Japan's Partnership for Quality Infrastructure, and the EU's Strategy on connecting the EU and Asia.

**The panellists and discussants also noted the following challenges facing the Indian Ocean economy:**

- Several macroeconomic risks are clouding the region's outlook including a trade war between the US and China and a climate of rising protectionism, external debt, servicing problems linked to infrastructure projects, and capital outflows from littoral states associated with heightened risk aversion by international investors.
- Geopolitical tensions and rising security threats in the Indian Ocean are posing greater risks than before.
- The geographical dispersion of the region and gaps in infrastructure pose barriers to maritime trade and regional connectivity.
- While various national and mega-regional infrastructure initiatives are investing in ports and logistics, a lack of coordination between competing donors coupled with insufficient progress on domestic regulatory reforms could lead to sub-optimal investment outcomes.
- There is a lack of data on the terms associated with mega-regional infrastructure initiatives and the external debt obligations of littoral states.
- Significant development gaps within and between littoral states hinder some from fully participating in the process of trade-led growth in the Indian Ocean.
- Small island states face specific issues related to the impact of climate change and limited financial resources to undertake climate change mitigation or adaptation projects.
- Landlocked states around the Indian Ocean face higher trade costs than littoral states due to higher costs of transporting goods to sea ports, difficulties in border transit and weak logistics systems.
- Regional economic governance remains nascent at best.
- Some sub-regions, notably South-East Asia, have achieved some success in pursuing regional economic integration alongside global economic integration but South Asia, the Middle-East, and Africa have seen more limited progress.
- A lack of political will and inadequately resourced regional institutions have typically hampered effective regional economic cooperation in the Indian Ocean.

**The following recommendations were made by the panellists and discussants:**

- Continuing efforts to liberalise trade and investment flows will improve the outward-orientation of Indian Ocean littoral states but the speed, stages and sequencing of reforms should be tailored to individual national circumstances. Trade adjustment programmes are important complementary policies to minimise disruptions from opening up.
- Intra-regional trade and the spread of GVCs beyond East Asia could be encouraged by improving the depth and quality of free trade agreements (FTAs) in the Indian Ocean and by eventually linking them into a mega-regional trade agreement.
- Useful lessons can be gleaned from ASEAN's experience of open regionalism and consensus building among members. A master plan on regional connectivity in the Indian Ocean, similar to the Master Plan on ASEAN Connectivity 2025, would further help to coordinate efforts on regional infrastructure development.
- Extra-regional players and development partners of littoral states should work together to promote regional economic integration across the Indian Ocean. Constructive dialogue with interested parties would help to mobilise greater financial resources and create additional opportunities for capacity building initiatives in poorer Indian Ocean littoral states.
- The release of data on the terms of mega infrastructure projects and associated external debt obligations would help improve external debt management and timely implementation of infrastructure projects.

- One small but significant step towards addressing the region's development gaps would be to mobilise financial resources through the establishment of an Indian Ocean Development Fund.
- Regional economic governance should be strengthened. Increased high-level meetings between officials from Indian Ocean littoral states would help facilitate greater dialogue on common economic challenges.
- Appointing an Eminent Persons Group (EPG) is another move to strengthen IORA's role in the regional economy.





## Life Below Water: Reframing the Oceans as Development Spaces

### Round Table Session 2

*Oceans cover more than 70% of the Earth's surface and are an essential base for human life. But a rapidly growing population and the resulting increase in pollution threatens the health of our oceans. This session explored the opportunities to establish economically-viable policies at the regional level, which favour the sustainable and low-pollution development of the Indian Ocean.*

Round Table Session 2 on 'Life Underwater: Reframing the Oceans as Development Spaces' was co-chaired by Prof. Mohan Munasinghe, Founder Chairman, Munasinghe Institute for Development, and Dr. Erika Techera, Professor of Law, University of Western Australia.

#### The session panellists were:

- Prof. Micheni Japhet Ntiba, Principal Secretary, State Department for Fisheries, Aquaculture and the Blue Economy, Ministry of Agriculture, Livestock and Fisheries, Kenya
- Prof. Sandeep Gopalan, Pro Vice-Chancellor for Academic Innovation, Deakin University, Australia
- Dr. Ananda Mallawathantri, Country Representative for Sri Lanka, International Union for Conservation of Nature (IUCN)
- Dr. Karri Ramu, Scientist, National Centre for Coastal Research, India
- Mr. George Cooke, Deputy Director, Bandaranaike Centre for International Studies, Sri Lanka

#### The main points from the panellists' presentations and ensuing discussion were as follows:

- The Indian Ocean has significant stocks of marine resources, including non-renewable resources such as hydrocarbons and mineral ores, and renewable resources such as fish stocks.
  - Fish capture in the Indian Ocean and Western Pacific has risen from just under 20 million metric tons in 1970 to more than 50 million tons by 2016.
  - More than a billion potato-sized nodules rich with manganese, copper, cobalt and nickel have been found in the Indian Ocean's abyssal planes.
- UNCLOS has recognised the importance of the deep seabed and instituted the International Seabed Authority as its oversight mechanism.
- There are also various regional and international organisations gathering data on the oceans, such as the UN Environment Programme (UNEP), the International Maritime Organisation (IMO) South Asia Cooperative Environment Programme (SACEP), and the Intergovernmental Oceanographic Commission.
- Other country-led initiatives, such as the US-Asia Environmental Partnership, have also assisted in technology transfer and capacity-building in relation to ocean conservation.

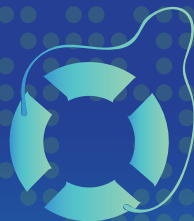
#### The panellists and discussants also noted the following challenges facing the Indian Ocean marine environment:

- Concepts such as the Blue Economy are open to diverse interpretation, leading to challenges in devising regional governance approaches on this issue.
  - Similar varying interpretations are encountered even in relation to more specific concepts such as Marine Protected Areas.
- While certain regional initiatives have conducted studies and gathered data on marine pollution, no effective legal mechanism exists to regulate, reduce or prevent pollution of the oceans.

- Deep seabed mining is a particularly important issue, despite UNCLOS rendering national and international actors accountable to a wide variety of stakeholders on this matter.
- Littoral states' lack of capacity to harness their Blue Economy potential themselves could lead to risks of exploitation by external actors seeking to gain access to these resources.
- Poor domestic governance could also lead to littoral states falling victim to the 'resource curse.' International actors are accountable to a wide variety of stakeholders on this matter.

**The following recommendations were made by the panellists and discussants:**

- Gaps in UNCLOS regarding the sustainable exploitation of marine resources need to be addressed. Arguments regarding 'customary/traditional rights' on exploitation of marine resources should only be accepted where it is not contrary to the spirit of UNCLOS.
- However, it might be better to focus on strengthening relevant national laws first since they have greater buy-in from various stakeholders. For example, ocean pollution needs to be mainstreamed into the national environmental action plans of littoral states.
- Littoral states could act collectively through forums such as IORA to partner with major maritime users (several of whom are IORA Dialogue Partners) to jointly undertake an audit of Indian Ocean marine resources.
  - Additionally, an Indian Ocean Action Plan could be devised under IORA to synergise various national efforts and deepen cooperation.
- It is important to integrate scientific data into regional marine policy formulation through interdisciplinary study and synchronisation of data-gathering activities.
- The private sector should be properly incentivised to contribute to ocean conservation, since governments lack the resources to handle such issues on their own.
- Educating the public and investing in human capital for the purposes of ocean conservation is vital.
- Such educational activities have borne fruit in terms of sensitising the public to issues such as the degradation of coastal mangrove habitats.



# An End to Uncertainty:

Safety and Security at Sea

## Round Table Session 3

*The Indian Ocean is emerging as a major geopolitical theatre due to the ever-increasing trade through its sea lanes. At the same time, nations of the Indian Ocean rim have witnessed the growth of non-traditional threats to maritime security. This session discussed the most pressing security threats in the Indian Ocean and highlighted opportunities for regional understanding and cooperation.*

Round Table Session 3 on 'An End to Uncertainty: Safety and Security at Sea' was co-chaired by Adm. (Retd.) Travis Sinniah, former Commander of the Sri Lanka Navy, and Adm. (Retd.) R. K. Dhowan, former commander of the Indian Navy.

### **The session panellists were:**

- Ambassador Markus Potzel, Commissioner for South Asia, Federal Foreign Office, Germany
- H E Satoshi Suzuki, Deputy Minister for Foreign Policy, Ministry of Foreign Affairs, Japan
- Dr. Maria Sultan, Chairperson and President, South Asian Strategic Stability Institute, Pakistan

### **The main points from the panellists' presentations and ensuing discussion were as follows:**

- Ensuring freedom of navigation along the Indian Ocean's sea lanes of communication, whilst closing these lines to illegal actors, is essential to guaranteeing regional maritime security.
- Multilateralism remains the preferred mode of addressing Indian Ocean maritime security threats, for no one country has the resources to combat such threats on their own.
- Certain non-traditional threats in the Indian Ocean, such as piracy, have declined from their peak in 2010-11. This is the result of effective multilateral security cooperation in the Western Indian Ocean and Southeast Asia.
- Regional forums such as Indian Ocean Rim Association (IORA) and the Indian Ocean Naval Symposium (IONS) can play a key role in combatting maritime security threats.
- IONS provides a template at the operational level for cooperation on security activities such as Humanitarian Assistance and Disaster Relief (HADR), and Search and Rescue.
- Effective Maritime Domain Awareness (MDA) is a cornerstone of regional security cooperation.
- Major maritime users are supportive towards littoral states' efforts to combat non-traditional threats.
- The US-led Combined Task Force 150 and Combined Task Force 151 conduct anti-piracy and anti-narcotics operations in the Western Indian Ocean.
- The EU conducts its own anti-piracy initiative in the Western Indian Ocean – Operation Atlanta – and is now focusing on engaging with Indian Ocean security beyond counter-piracy.
- Japan is investing in strengthening regional maritime law enforcement capacity by supplying naval hardware and dispatching officers to conduct training in littoral states.

### **The panellists and discussants also noted the following challenges facing Indian Ocean security:**

- Increasing militarisation of the Indian Ocean's strategic chokepoints remains a key security concern.
- Vast regions of the Indian Ocean remain 'unpoliced,' particularly the CENTRAL Indian Ocean.
  - Indian Ocean littoral states are not well represented in the anti-piracy patrols in the Western Indian Ocean.

- Maritime Domain Awareness (MDA) is also patchy.
  - While IORA is committed to building a regional surveillance network, it lacks funds.
  - MDA is also toothless without an accompanying law enforcement capacity.
  - There might also be mere proliferation of information centres to enhance MDA, without effective coordination between such centres.
- While effective security measures have been adopted against non-traditional threats in certain parts of the Indian Ocean, these efforts are not grounded in a strong normative framework.
  - At the same time, while UNCLOS provides an effective framework for addressing threats such as piracy, it might have deficiencies in addressing other non-traditional threats.
- There has been no open discussion on the 'elephant in the room' as far as the security situation is concerned: increasing naval competition between certain littoral states and major maritime users.
- There is also the possibility of clashes resulting from competing infrastructure and connectivity initiatives.

**The following recommendations were made by the panellists and discussants:**

- Strengthening cooperation on combating non-traditional threats is a less contentious issue that can be seized by efforts to build dialogue on more contentious issues like naval buildups and deployment of submarines.
- Greater interaction between IORA and IONS is needed to strengthen regional cooperation on maritime security threats.
- Security measures must be backed up by, and grounded in, a robust normative framework based on UNCLOS. For example, UNODC's 'piracy prosecution model' could be expanded to cover the whole Indian Ocean region.
- Effectively addressing non-traditional threats such as piracy requires a constant naval presence in the Indian Ocean.
- Peace and security in the region cannot be ensured without addressing development gaps, which lead to vulnerable populations and maritime crime.
- Increased information exchange – particularly of white shipping information – is a key first step in building effective regional MDA.
- Seeking partnerships with major maritime users to build a regional MDA network could make this project financially feasible.
- As part of this network, an information sharing centre on IUU fishing, drug and human trafficking should be established to complement Singapore's ReCAAP Information Sharing Centre.
- Another step is to explore the possibility of establishing an International Centre of Excellence on the Safety of Undersea Cables.



## Reinforcing International Law in the Indian Ocean: UNCLOS and Emerging Issues

### Round Table Session 4

*UNCLOS is the core of the ocean governance regime. The rise of non-traditional security threats and new challenges to its interpretation and application requires collective reflection and deliberation to find effective solutions. This session considered how to ensure and enhance the prosperity, sustainability, and stability of the Indian Ocean within a rules-based approach.*

Round Table Session 4 on 'Reinforcing International Law in the Indian Ocean' was co-chaired by Ambassador Rohan Perera, Permanent Representative of Sri Lanka to the United Nations in New York, and Prof. Natalie Klein, Professor, Faculty of Law, University of New South Wales, Australia and Nonresident Fellow, LKI.

#### The session panellists were:

- Mr. Alan Cole, Head, Global Maritime Crime Programme, United Nations Office on Drugs and Crime
- Prof. Andrew Serdy, Director, Institute of Maritime Law, University of Southampton, United Kingdom
- Dr. Bimal Patel, Director and Professor of Public International Law, Gujarat National Law University, India

#### The main points from the panellists' presentations and ensuing discussion were as follows:

- UNCLOS remains widely recognised as the bedrock of ocean governance, even though there is a lack of clarity in certain areas.
- It is important to note that UNCLOS is a framework agreement in some respects, and that its preamble explicitly accepts that there are certain issues that require management through other sources of law, such as other treaties or customary international law. An example of one such issue is access to ports.
- Jurisprudence of the International Court of Justice (ICJ) and other tribunals, as well as relevant soft law – such as resolutions of the UN General Assembly and UN Security Council – can offer interpretive guidance where UNCLOS is not clear on certain issues.
- The rules of treaty interpretation provide States Parties to UNCLOS some flexibility in interpretation given those rules account for the modern context, allow for consideration of State practice and expect integration across relevant rules.
- The long drawn-out process of negotiating UNCLOS (nearly 9 years) has ensured that it reflects a sustainable political compromise between Coastal States and other States seeking to make use of the oceans.
- The political difficulties associated with negotiating a regional normative instrument make UNCLOS a preferable option for emphasizing the rules-based order in the Indian Ocean.
- Geopolitical tensions, despite their generally detrimental security implications, can play a helpful role in clarifying the law of the sea, as has happened under US-Soviet tension during the Cold War.
- It is important to recall that UNCLOS integrates and allows for the operation of customary international law in many instances.
- The widespread acceptance of UNCLOS means that the convention itself has become customary international law for those states that have not ratified the convention.
- The historical custom in the Indian Ocean has been to respect freedom of navigation. This makes UNCLOS an instrument that organically articulates customary international law in the Indian Ocean.

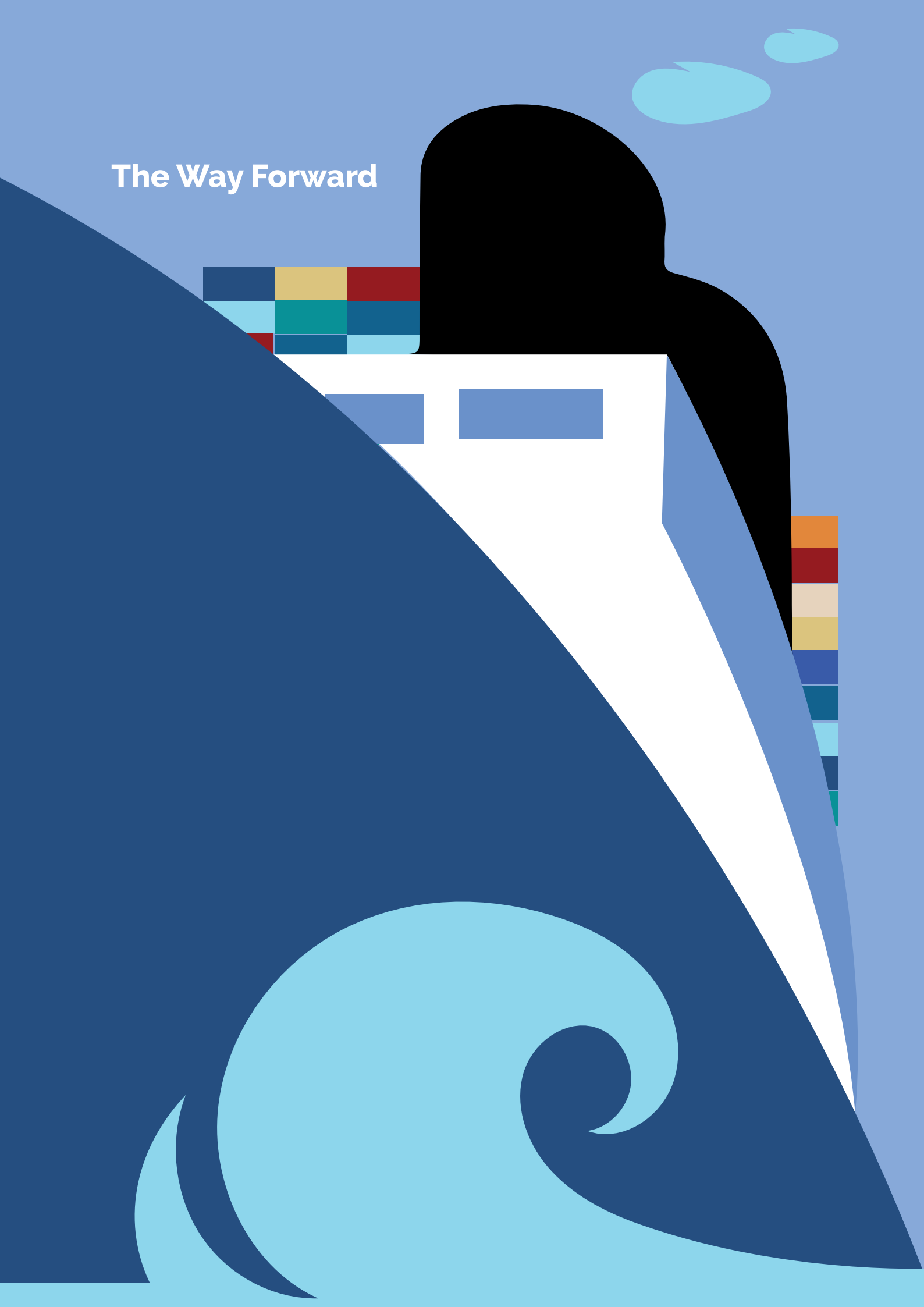
**The panellists and discussants also noted the following challenges facing Indian Ocean security:**

- There is sometimes a fragmentation of international law between the International Tribunal on the Law of the Sea, the ICJ, and the Commission on the Limits of the Continental Shelf.
- There is also a certain level of inconsistency over states' baselines under UNCLOS.
- Combating maritime crime on the high seas is rendered difficult under UNCLOS by the lack of an efficient process to obtain Flag State consent to board a vessel.
- The interpretation of what activities a foreign naval vessel may lawfully carry out in a Coastal State's Exclusive Economic Zone (EEZ) remains a matter of debate.
- Coastal States are also unable to take any action against a Flag State's warships operating in their territorial waters beyond demanding that they leave.
- Warships' 'right of innocent passage' therefore remains an issue, especially in the case of vessels such as submarines.
- The regulation of floating armouries also remains an issue under UNCLOS – action can be taken against such vessels (a) in the territorial sea of the Coastal State only if they violate the 'right of innocent passage;' (b) if they act in violation of the Coastal State's domestic laws within the territorial sea; or (c) if they can be policed consistent with requirements in the contiguous zone in relation to customs violations.
- UNCLOS lacks adequate definitions for regulating unmanned naval vessels.
- UNCLOS also has deficiencies in its definition of certain forms of maritime crime and the scope of enforcement powers for responding to these crimes on the high seas.
- UNCLOS also does not explicitly integrate freedom of digital connectivity into its legal framework, despite the fact that 99% of global internet traffic travels through undersea cables.
- The relationship between UNCLOS and customary international law also remains somewhat unclear, especially regarding concepts such as 'historic title' and 'historic rights.'
- Trying to review UNCLOS comprehensively, however, is too risky a political exercise given the considerable political compromise that went into its formulation. What could be done is largely 'tinkering around the edges'.

**The following recommendations were made by the panellists and discussants:**

- Article 94 of UNCLOS, which sets out the responsibilities of Flag States on the high seas, requires further elaboration and clarification.
- The Caribbean Regional Agreement could serve as a model for the Indian Ocean with regard to combatting maritime crime.
- The position of Coastal States' baselines and the outer limits of their maritime zones may need to be reviewed in response to rising in sea levels.
- Existing definitions of maritime crime need to be revisited and updated to reflect current trends, such as maritime terrorism, and further work done on the adoption of domestic legislation to better address the proliferation of criminal activity in territorial waters.
- Possible conflicting interpretations of UNCLOS with respect to its relationship with customary international law could be clarified.

# The Way Forward





**Summary of Roundtable Sessions by Prof. Nayani Melegoda,  
Dean, Faculty of Graduate Studies, University of Colombo and Member,  
Board of Management, LKI**

Good Afternoon. Hon. Minister Dr. Harsha De Silva, distinguished guests,

I am delighted to summarise the discussion we had over the last day and half in the 'Indian Ocean: Defining Our Future' Track 1.5 Conference.

The inaugural panel agreed that the Indian Ocean has historically been – and continues to be – a multipolar region, and also that it is continuing to grow and attract investment. Panelists agreed that the continued openness of the strategic Indian Ocean sea-lanes and the sustainable exploitation of its considerable marine resources were vital to maintaining the geopolitical status quo as well as furthering regional prosperity. However, the region lacks an overarching security architecture and has significant development gaps, which contribute to naval competition and proliferation of maritime crime. Littoral states have, however, become increasingly aware of these strategic risks, and are looking to develop effective responses in consultation with other littoral states and major maritime users of the Indian Ocean. One major response is to commit to upholding the regional rules-based order using UNCLOS as the in-built framework, while strengthening aspects of UNCLOS that might be somewhat inadequate in addressing current security threats. Another response is to build capacity in regional forums, particularly on combatting non-traditional threats.

In roundtable session 1 on the 'Indian Ocean Economy', it was recognised that current growth could propel the Indian Ocean to middle-income status by 2025, with significant reductions in poverty. Various regional infrastructure initiatives and the region's economic diversity also provide a foundation for trade-led growth. However, development gaps, barriers to trade and weak regional economic governance hinder the region from realising its full economic potential. A key recommendation emerging from the panel and the subsequent discussion was that trade liberalisation in the Indian Ocean, while desirable, should progress cautiously with due regard given to individual national circumstances. The participants also agreed that linking various existing sub-regional and bilateral FTAs into a larger trade agreement could strengthen regional economic governance. On the question of regional development gaps, it was proposed that forums such as IORA engage with their Dialogue Partners more effectively in mobilising development assistance, and also that an Indian Ocean Development Fund be established for this purpose.

Roundtable session 2 on 'Life Underwater' focused on the Indian Ocean's marine environment and sustainable exploitation of its resources. All participants agreed that the Indian Ocean has significant stocks of marine resources, and that various regional and international organisations have been contributing towards gathering data on the Indian Ocean marine environment. However, this environment faces considerable challenges from activities such as overfishing and plastics pollution. Many countries also do not have the capacity to conduct assessments of their marine resource endowments. One of the key recommendations made by this session was that scientific data needed to be integrated more effectively into marine policy formulation. Data gathering in turn could be made more effective by synchronising various data-gathering activities and organisations across the region. It was also emphasised that the private sector needed to be incentivised and mobilised to contribute to ocean conservation.

The third roundtable session on 'Ending Uncertainty: Safety and Security at Sea' recognised that multilateralism was the preferred option for addressing regional maritime security threats, and that several such multilateral initiatives have been successful in reducing overall threat levels in the Indian Ocean. All participants also agreed on the importance of maintaining the openness of the Indian Ocean's sea-lines of communications. However, they also recognised challenges such as the inadequacy of MDA in the region. To further strengthen Indian Ocean maritime safety and security, the participants proposed firstly that increased information exchanges were needed to enhance MDA. In addition,

links between regional forums such as IORA and IONS needed to be strengthened, particularly to build capacity in emerging security activities such as HADR and Search and Rescue. Finally, security measures needed to be grounded in UNCLOS.

This brings us to the final roundtable session on 'Reinforcing International Law in the Indian Ocean: UNCLOS and Emerging Issues'. There was widespread agreement among the participants that UNCLOS was the core of ocean governance, and that it represented an important political compromise between ensuring freedom of navigation and sustainable exploitation of the ocean. However, it is by no means all-encompassing – other sources of law might be needed to interpret its provisions. Some of the key issues related to UNCLOS noted by participants were: the lack of an efficient process for obtaining Flag State consent when combatting maritime crime; potential abuse of the 'right of innocent passage' by vessels such as submarines; the lack of provisions to regulate matters related to undersea cables; and the tensions between customary international law on 'historic title' or 'historic rights' and UNCLOS. The participants agreed that reviewing UNCLOS in full was too risky a political exercise, but recommended that regional agreements that seek to facilitate cooperation on addressing maritime crime – such as the Caribbean Regional Agreement – could serve as a model for the Indian Ocean.

To conclude, then, some of the major recommendations emerging from the conference are that: the Indian Ocean region move ahead cautiously on regional economic governance, with an Indian Ocean Development Fund being a key step; integrate scientific data into littoral states' marine policies; enhance MDA through increased information sharing; use other regional agreements based on UNCLOS as a model for strengthening Indian Ocean efforts to combat maritime crime. In addition to these, perhaps the single most important idea emerging from the conference is that freedom of navigation in the Indian Ocean is as much part of the region's customary international law as it is of UNCLOS, and that it cannot therefore be challenged by claims relating to 'historic rights' or 'historic title'.

Thank you.

## **Remarks by Hon. (Dr.) Harsha de Silva, State Minister of National Policies and Economic Affairs, Sri Lanka**

Good afternoon everyone,

I think that we can all agree that the last day and a half of This track 1.5 event has generated a rich discussion of various issues on the future of the Indian Ocean.

It was in February 2017 that I was in the audience when Prime Minister Ranil Wickremesinghe was giving an oration at Deakin University. He was talking about issues in the Indian Ocean. He said Sri Lanka should punch above its weight class, and that we should bring people together to build a consensus. The first meeting was at Deakin, and today we are at a successful meeting in Colombo.

There seems to be an emerging consensus among us on four main points:

1. The Indian Ocean economy is rapidly becoming a global growth pole in an uncertain world beset by economic risks.
2. The region's economic expansion needs to be inclusive, broad-based and environmentally sustainable so that we leave a meaningful legacy for future generations.
3. Strategic mistrust and non-traditional security threats (such as maritime crime, overfishing, pollution, and protection of undersea cables for the digital economy) are significant challenges to achieving regional peace and prosperity. Robust discussion that are inclusive and where no one is excluded is needed.
4. The rules-based international maritime order centred on UNCLOS needs reinforcing for the benefit of Indian Ocean littoral states and maritime users.

So where do we go from here? We shall produce a report on the proceedings of this event to capture the varied and insightful discussions. This report will contain elements that can form the building blocks for a possible statement of understanding in line with emerging consensus on the aforementioned issues.

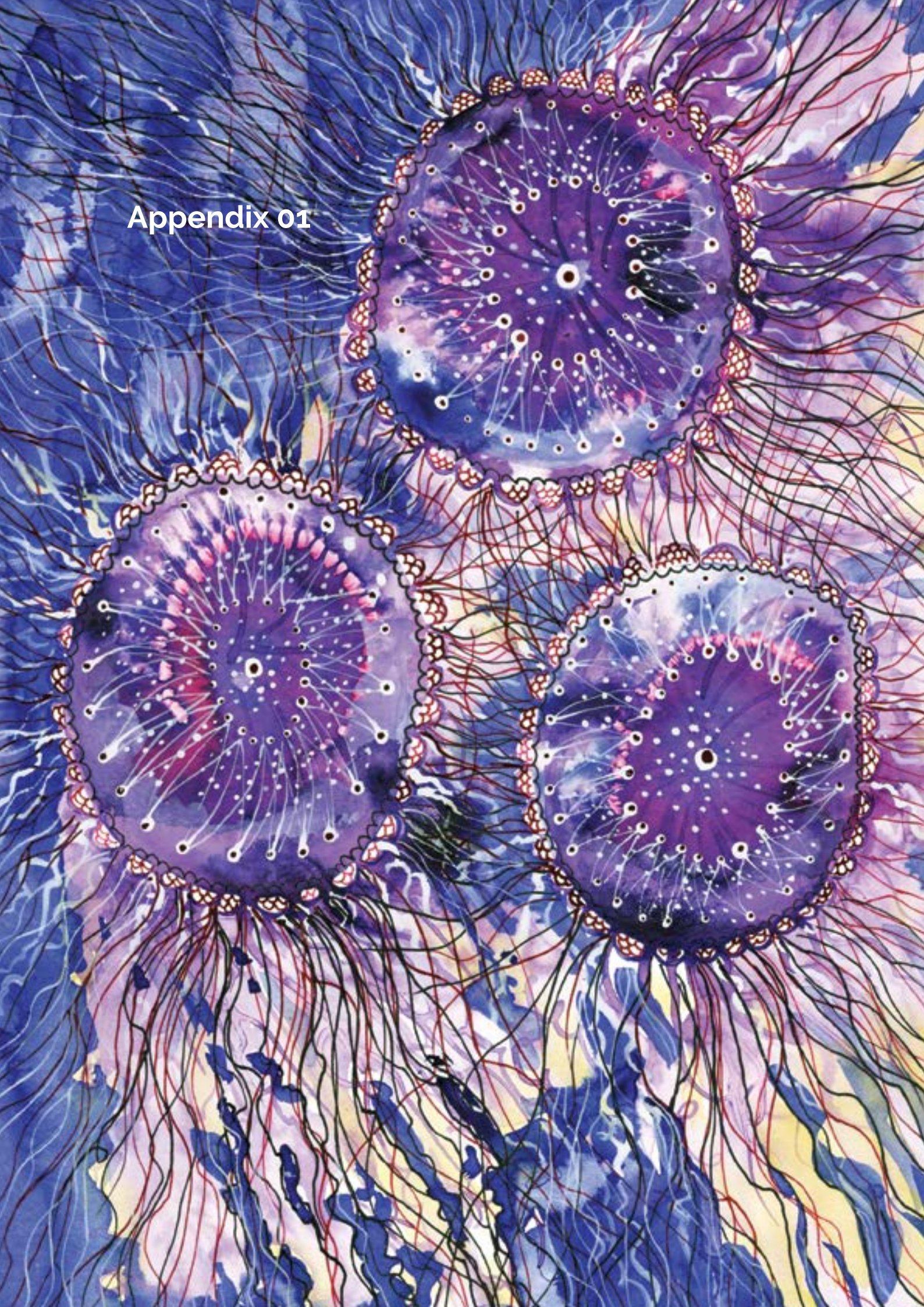
As Prime Minister Ranil Wickremesinghe said yesterday, our purpose is to work towards a shared understanding that benefits all. Ideally, this would address the critical inter-connected issues of the Freedom of Navigation and Freedom of Digital Connectivity.

We hope to work with Indian Ocean littoral states and maritime users to convene a conference early next year that could lead to a political consensus on the future of the Indian Ocean. This may not be an easy undertaking but we must persevere. As an Indian Ocean community, there are more things that connect us than divide us.

Thank you for coming. Thank you for actively engaging. We look forward to welcoming you to Sri Lanka next year.



## Appendix 01





# Conference Programme

## THURSDAY 11 OCTOBER

### Opening Plenary

- 08.00 am Registration
- 08:45 am Guests to be Seated
- 09.00 am National Anthem
- 09.05 am Lighting of Traditional Oil Lamp
- 09.10 am Introductory Remarks  
Dr. Ganeshan Wignaraja, Executive Director, LKI
- 09.15 am Welcome Address  
Hon. Tilak Marapana, Minister of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka
- 09.20 am Keynote Speech  
Hon. Ranil Wickremesinghe, Prime Minister of the Democratic Socialist Republic of Sri Lanka
- 09.30 am Address  
Amb. Peter Thomson, UN Secretary-General's Special Envoy for the Ocean

### Inaugural Panel

#### Navigating Challenges and Prospects in the Indian Ocean: Towards a Shared Understanding

The Indian Ocean has long played host to some of the world's most important trade and communication corridors, and its littoral states are now rapidly emerging as new drivers of the global economy. However, the region also faces a number of challenges. This panel will bring together officials from major littoral states and users of the Indian Ocean to outline their shared vision for the future of the region.

- 09.55 am Opening Remarks by Chair of the Panel  
Hon. (Dr.) Harsha de Silva, State Minister of National Policies and Economic Affairs, Sri Lanka
- 10.05 am Panel Discussion  
Mr. Pankaj Saran, Deputy National Security Advisor, Government of India  
Dr. Anil Sooklal, Deputy Director-General, Department of International Relations and Cooperation, South Africa, and Chair, Committee of Senior Officials of IORA  
Amb. Alice G. Wells, Principal Deputy Assistant Secretary, Bureau of South and Central Asian Affairs, US Department of State  
Mr. Yi Xianliang, Director-General, Department of Boundary and Ocean Affairs, Ministry of Foreign Affairs, People's Republic of China  
Mr. Prasad Kariyawasam, Secretary, Ministry of Foreign Affairs, Sri Lanka
- 11.05 am Remarks  
Mr. Alan Cole, Head, Global Maritime Crime Programme, United Nations Office on Drugs and Crime
- 11.10 am Remarks  
Prof. Sandeep Gopalan, Pro Vice-Chancellor for Academic Innovation, Deakin University, Australia  
Mr. Athula Pathinayake, Executive Director, Centre on the Legal Profession, Deakin University, Australia
- 11.15 am Tea & Coffee

## Round Table Session 1

### The Indian Ocean Economy: The New Global Growth Pole

The Indian Ocean economy has become a major driver of global growth over the past two decades and has the potential to become a dominant force in the world economy by 2025. But the diversity in the region's economies requires the right policies to make the most of its potential. This session will seek to set out the priorities to ensure the Indian Ocean's future as the new global growth pole.

- |       |    |   |
|-------|----|---|
| 11.40 | am | Introductory Comments by Co-Chairs<br>Dr. Ganeshan Wignaraja, Executive Director, LKI<br>Dr. Prabir De, Professor, Research and Information System for<br>Developing Countries, India   |
| 11.50 | am | Remarks by Speakers<br>Ms. Caroline Vinot, Head of South Asia Division, European External Action Service,<br>European Union<br>Dr. Siswo Pramono, Head/Director General, Policy Analysis and Development<br>Agency, Ministry of Foreign Affairs Republic of Indonesia<br>Prof. Masahiro Kawai, Representative Director and Director-General, Economic<br>Research Institute for Northeast Asia, Japan and Professor Emeritus and Specially<br>Appointed Professor, Graduate School of Public Policy, University of Tokyo, Japan<br>Prof. Suthiphand Chirathivat, Professor Emeritus, Chulalongkorn University, Thailand |
| 12.20 | pm | Comments from Discussants and Participants  |
| 01.10 | pm | Closing Remarks by Co-Chairs  |
| 01.20 | pm | Lunch   |

## Round Table Session 2

### Life Below Water: Reframing the Oceans as Development Spaces

Oceans cover more than 70% of the Earth's surface and are an essential base for human life. But a rapidly growing population and the resulting increase in pollution threatens the health of our oceans. This session will explore the opportunities to establish economically-viable policies at the regional level, which favour the sustainable and low-pollution development of the Indian Ocean.

- |       |    |  |
|-------|----|--|
| 02.40 | pm | Introductory Comments by Co-Chairs<br>Prof. Mohan Munasinghe, Founder Chairman, Munasinghe Institute for Development<br>Dr. Erika Techera, Professor of Law, University of Western Australia   |
| 02.50 | pm | Remarks by Speakers<br>Prof. Micheni Japhet Ntiba, Principal Secretary, State Department for Fisheries,<br>Aquaculture and the Blue Economy, Ministry of Agriculture, Livestock and Fisheries,<br>Kenya<br>Prof. Sandeep Gopalan, Pro Vice-Chancellor for Academic Innovation, Deakin<br>University, Australia<br>Dr. Ananda Mallawatantri, Country Representative, International Union for<br>Conservation of Nature, Sri Lanka<br>Dr. Karri Ramu, Scientist-E, National Centre for Coastal Research, India<br>Mr. George Cooke, Deputy Director, Bandaranaike Centre for International Studies, Sri<br>Lanka |
| 03.40 | pm | Comments from Discussants and Participants   |
| 04.30 | pm | Closing Remarks by Co-Chairs   |
| 04.40 | pm | Tea & Coffee   |
| 07.00 | pm | Dinner Hosted by the Hon. Ranil Wickremesinghe, Prime Minister of Sri Lanka  |

Venue : Temple Trees

## FRIDAY 12 OCTOBER

### Round Table Session 3

#### An End to Uncertainty: Safety and Security at Sea

The Indian Ocean is emerging as a major geopolitical theatre due to the ever-increasing trade through its sea lanes. At the same time, nations of the Indian Ocean rim have witnessed the growth of non-traditional threats to maritime security. This session will discuss the most pressing security threats in the Indian Ocean and highlight opportunities for regional understanding and cooperation.

- 09.00 am    Introductory Comments by Co-Chairs  
                 Adm. (Retd.) Travis Sinniah, Former Commander of the Sri Lankan Navy  
                 Adm. (Retd.) R. K. Dhowan, Former Chief of the Indian Naval Staff and Chairman,  
                 National Maritime Foundation, India
- 09.10 am    Remarks by Speakers  
                 Amb. Markus Potzel, Commissioner for South Asia, Federal Foreign Office, Germany  
                 Mr. Satoshi Suzuki, Deputy Minister for Foreign Policy, Ministry of Foreign Affairs,  
                 Japan  
                 Dr. Maria Sultan, Chairperson and President, South Asian Strategic Stability Institute,  
                 Pakistan  
                 Capt. Raul Pedrozo, Principal Deputy Staff Judge Advocate, US Indo-Pacific Command  
                 Vice Adm. (Retd.) Anup Singh, Former Commanding-in-Chief, Eastern Naval Command
- 09.50 am    Comments from Discussants and Participants
- 10.40 a.m    Closing Remarks by Co-Chairs
- 10.50 am    Tea & Coffee

### Round Table Session 4

#### Reinforcing International Law in the Indian Ocean: UNCLOS and Emerging Issues

UNCLOS is the core of the ocean governance regime. The rise of non-traditional security threats and new challenges require collective reflection and deliberation to find effective solutions. This session will consider how to ensure and enhance the prosperity, sustainability, and stability of the Indian Ocean within a rules based approach.

- 11.10 am    Introductory Comments by Co-Chairs  
                 Dr. Rohan Perera, Permanent Representative of Sri Lanka to the UN in New York  
                 Dr. Natalie Klein, Professor, Faculty of Law, University of New South Wales, Australia  
                 and Nonresident Fellow, LKI
- 11.20 am    Remarks by Speakers  
                 Mr. Alan Cole, Head, Global Maritime Crime Programme, United Nations Office on  
                 Drugs and Crime  
                 Prof. Andrew Serdy, Director, Institute of Maritime Law, University of Southampton,  
                 United Kingdom  
                 Dr. Bimal Patel, Director and Professor of Public International Law,  
                 Gujarat National Law University, India
- 11.50 am    Comments from Discussants and Participants
- 12.40 pm    Closing Remarks by Co-Chairs

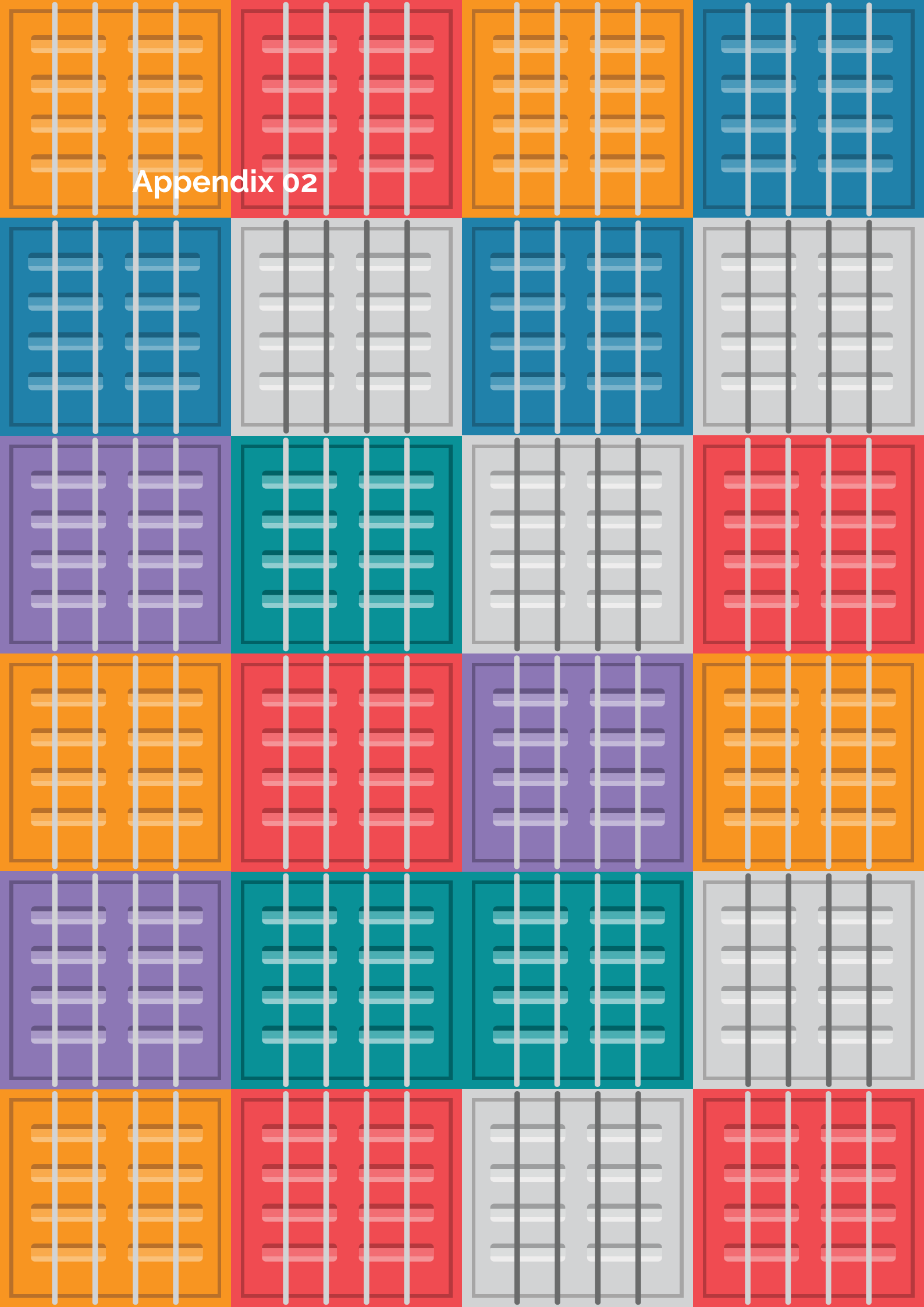
Closing Session

### Closing Session

- 01.00 pm    Summary of Round Table Sessions  
                 Prof. Nayani Melegoda, Dean, Faculty of Graduate Studies, University of Colombo
- 01.20 pm    Remarks on the Way Forward  
                 Hon. (Dr.) Harsha de Silva, State Minister of National Policies and Economic Affairs,  
                 Sri Lanka



Appendix 02



# Issues Paper

## Round Table Session 1

### The Indian Ocean Economy: The New Global Growth Pole<sup>1</sup>

#### 1. Measuring the Indian Ocean Economy

Despite its importance in international relations and international law, the macroeconomic significance of the Indian Ocean remains below the radar. This is partly the result of the units of analysis that are generally employed by macroeconomic studies and the novelty of research on Asia-Africa economic integration.

While the International Monetary Fund (IMF), the World Bank, the United Nations (UN) and others provide regular country and regional macroeconomic analysis, this has been confined to more traditional geographic groupings typically based on shared land borders.<sup>2</sup> As such, there is an absence of literature on the historic performance and short-term outlook of Indian Ocean littoral states as a grouping, and accounting for the importance of economic links between its diverse economies.

When looked at as a single unit, the 28 states of the Indian Ocean have a substantial weight in the global economy. This includes Australia, Bangladesh, Brunei Darussalam, Cambodia, Comoros, India, Indonesia, Iran or Islamic Republic of Iran, Kenya, Madagascar, Malaysia, the Maldives, Mauritius, Mozambique, Myanmar, Oman, Pakistan, Seychelles, Singapore, Somalia, South Africa, Sri Lanka, Timor-Leste, Thailand, the United Arab Emirates, United Republic of Tanzania, Viet Nam, and Yemen. In 2017, these economies were home to 35% of the world's total population (2.6 billion people), and accounted for 15.7% of world trade (USD 5.9 trillion) and 18.5% of global GDP (at PPP exchange rates). For analytical convenience, the region can be divided into three geographical sub-regions that are significant in their own right: Africa and the Middle East, South Asia, and East Asia and the Pacific (see Table A1).

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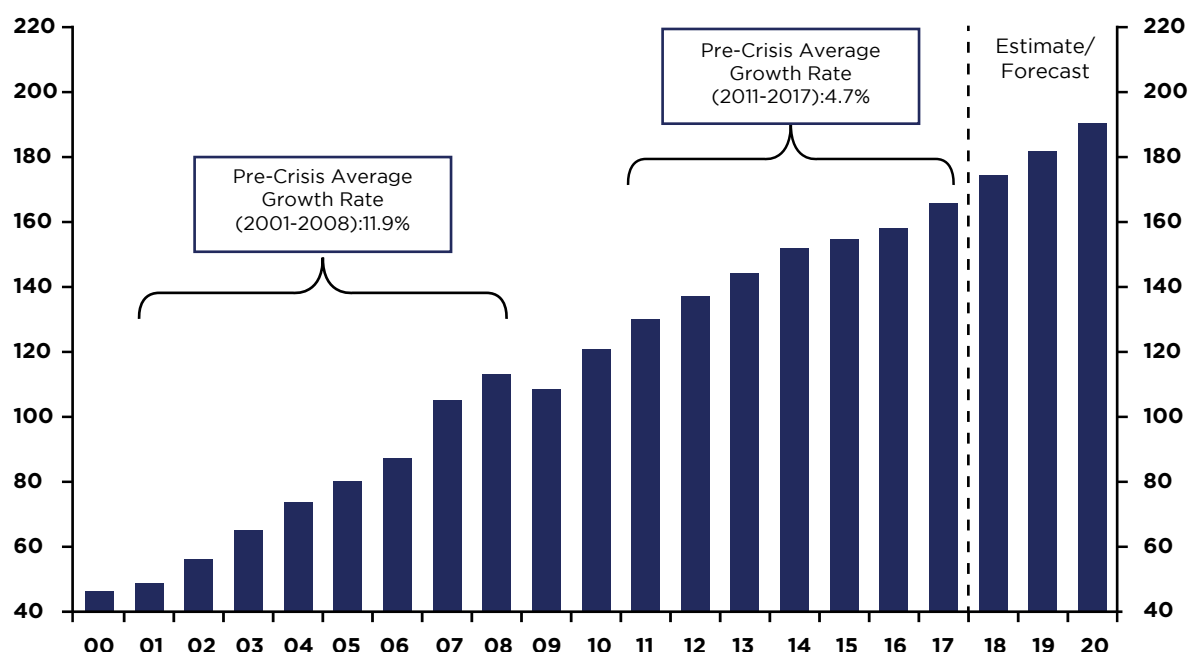
<sup>1</sup> Background paper prepared by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies (LKI), Sri Lanka.

<sup>2</sup> For example, the IMF produces a bi-annual World Economic Outlook report as well as several Regional Economic Outlook reports, including for the Asia-Pacific, Sub-Saharan Africa, the Middle East and Central Asia. IMF (2018a). World Economic Outlook 2018, International Monetary Fund: Washington DC-IMF (2018b). Regional Economic Outlook 2018: Sub-Saharan Africa, International Monetary Fund: Washington DC.

## 2. Maritime Trade Led Growth

Maritime trade has fundamentally shaped the Indian Ocean economy throughout history, but this has been especially true since the turn of the 21st century.<sup>3</sup> This rise has been propelled by the strategic location it holds among global shipping lanes and the relatively low costs of shipping as a means of transporting goods internationally.

Figure 1: Indian Ocean Container Port Traffic\* (Million TEUs)



Sources: LKI calculations based on UNCTAD, Maritime Transport Database, Available at: <http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx>, Accessed on August 2018\*2018-2020 data are based on the continuation of post-crisis average growth rate.

Today, the Indian Ocean hosts 23 of the world's top 100 container ports.<sup>4</sup> Container traffic through its ports has increased fourfold from 46 million TEUs in 2000 to 166 million TEUs in 2017, and is on course to reach over 190 million TEUs by 2020 (see Figure 1). East Asian and Pacific ports dominate container traffic, within the Indian Ocean, accounting for 63% total regional container traffic in 2017. Overall Indian Ocean container traffic was equivalent to 22% of global container traffic in 2017. Meanwhile, China accounted for 28.4% of global container shipping, the US for 6.8%, Japan for 2.9%, and Germany for 2.8%.

Reflecting the expansion of maritime trade in the Indian Ocean, regional trade growth has outperformed the world economy since 2000. Trade volumes in the Indian Ocean grew by an annual average of 9.4% from 2000 to 2008, and while growth settled at a slower average of 4.8% from 2011 to 2017 after the global financial crisis, this compares with 6.9% and 3.9% for world trade volume growth over the same periods.

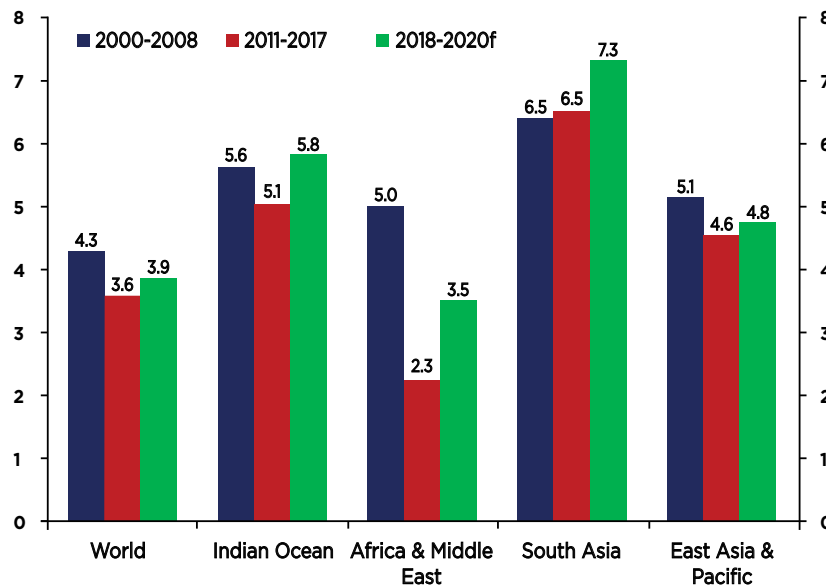
In terms of trading partners, China accounted for 16.1% of the Indian Ocean's total goods trade in 2017, while the EU had 12%, the US 7.9% and Japan 6.5%. But intra-regional trade is also substantial, accounting for 27.2% of the region's trade.

Similarly, regional GDP growth was less affected by the crisis than world growth. The Indian Ocean economy grew at 5.6% per year during 2000-2008 and slowed slightly to 5.1% in 2011-2017, led by a strong performance in South Asia (see Figure 2). Meanwhile, world growth slipped from 4.3% to just 3.6% in the two sub-periods.

<sup>3</sup> See Pandya, A., R. Hebert-Burns and J. Kobayashi (2011), Maritime Commerce and Security: The Indian Ocean, Washington DC: The Henry L. Stimson Center, Washington D.C. [https://www.stimson.org/sites/default/files/file-attachments/Section\\_1\\_-\\_Maritime\\_Commerce\\_and\\_Security\\_The\\_Indian\\_Ocean\\_1.pdf](https://www.stimson.org/sites/default/files/file-attachments/Section_1_-_Maritime_Commerce_and_Security_The_Indian_Ocean_1.pdf)

<sup>4</sup> According to the 2017 Lloyd's List Top 100 Container Ports Rankings.

Figure 2: Indian Ocean Economy and Sub-Regional Real GDP Growth (% y/y)



Sources: LKI calculations based on IMF, World Economic Outlook Database, Available at: <http://www.imf.org/external/pubs/ft/weo/2018/01/weodata/index.aspx>, Accessed on June 2018.

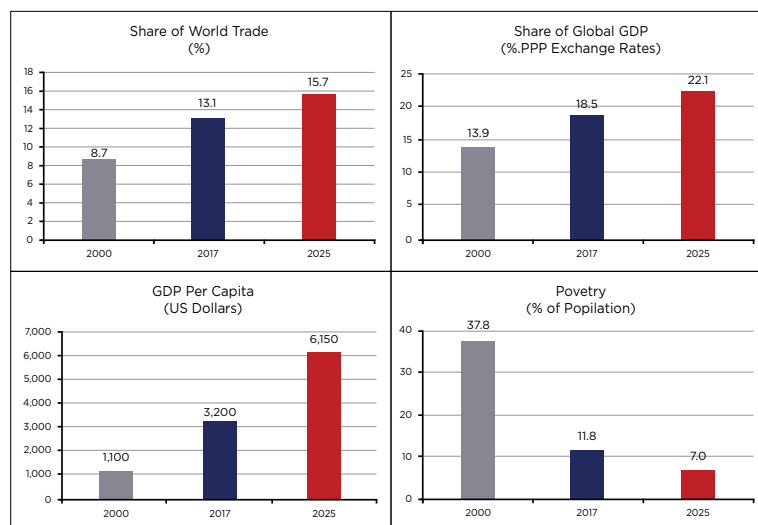
The regional outlook appears more favourable than the global outlook. Regional trade volume growth is expected to pick up to 6.5% per year in 2018-2020, while regional growth is expected to be 5.8% per year in 2018-2020 (see Figure 2).

However, several risks could tilt the regional economic outlook at least in the short-term. These include escalating trade conflicts between major economies, rising interest rates driven by the tightening of monetary policy in advanced economies, rising oil prices, and waning investor confidence in emerging markets. Progress on domestic economic reforms can also have a bearing on the Indian Ocean's outlook.

### 3. Prospects to 2025

Setting these near-term risks aside and assuming the continuation of the positive economic trends seen since 2000, the Indian Ocean economy is likely to play a notable role in the world economy by 2025 with improved prosperity. This 'business as usual' scenario is based on projections of several key indicators for the Indian Ocean economy (see Figure 3).

Figure 3: The Indian Ocean Economy in 2025



Sources: LKI calculations based on World Bank, World Development Indicators Database, Available at: <https://data.worldbank.org/topic/poverty>, Accessed on July 2018; IMF, World Economic Outlook Database, Available at: <http://www.imf.org/external/pubs/ft/weo/2018/01/weodata/index.aspx>, Accessed on July 2018.

The main regional projections are:<sup>5</sup>

- The Indian Ocean economy's share of world trade in goods and services is expected to rise from 13.1% to 15.7% between 2017 and 2025.
- Similarly, the Indian Ocean economy's share of global GDP (at PPP exchange rates) is expected to rise from 18.5% to 22.1% between 2017 and 2025. This will place it in the league of other major players such as China, the US, and the EU.
- The Indian Ocean economy's per capita GDP (current USD) is likely to almost double from USD 3,200 to USD 6,150 between 2017 and 2025.
- The share of the region's population living in extreme poverty (defined as an income level of less than USD 1.90 per day) could fall from 11.8% in 2017, to 7.0% by 2025.
- Variations between the sub-regions seem likely. For instance, in 2025 South Asia is likely to account for 12.1% of global GDP, East Asia and the Pacific for 7.1%, and Africa and the Middle East for 2.9%.

#### 4. Selected Policy Challenges

However, the continued economic dynamism of the Indian Ocean economy is not guaranteed. It could be affected by several challenges that could yet undermine the region's prosperity. At the very least, failing to address these issues will mean the region's economic potential is left underexploited. Dealing with all the challenges facing such a vast region, including issues as diverse as climate change, maritime security threats, and poor national governance, is beyond the scope of this issues paper. But in terms of trade-led growth, the key driver of regional prosperity - four challenges appear most pressing.

##### Ports and Customs Quality

Gaps in port infrastructure and onerous customs procedures are an important barrier to maritime trade as they increase the cost of moving products across borders.<sup>6</sup> While comprehensive intercountry comparison of infrastructure quality and customs procedures is difficult, a few indicators provide an insight. The Quality of Port Infrastructure component of the World Economic Forum's Global Competitiveness Index,<sup>7</sup> suggests that the average quality of ports in the Indian Ocean economy (4.2) typically lags behind that of the Organisation for Economic Co-operation and Development (OECD) (5.0). More developed regional economies appear to have better ports than less developed economies, particularly those in Africa.

In specific relation to customs, the Trading Across Borders indicator compiled by the World Bank<sup>8</sup> shows how many hours, on average, a country takes for border compliance. In the Indian Ocean, it takes an average of 65 hours for border compliance. In terms of sub regions, South Asia is the slowest, with an average of 73.2 hours while Africa and the Middle East are the fastest with an average of 62.3 hours.

Amidst fiscal constraints, many Indian Ocean economies need to undertake public investment in port development and customs modernisation. The emerging collection of mega-regional infrastructure initiatives—such as China's Belt and Road Initiative (BRI), Japan's Partnership for Quality Infrastructure, the Africa-Asia Growth Corridor, the EU Investment Plan, and ASEAN's Master Plan for Connectivity—and international financial institutions can also facilitate investment in port and trade facilitation. However, these competing large-scale initiatives and donor programmes may also present some challenges to recipients, including a lack of coordination between competing donors, differing social and environmental standards, insufficient progress on the domestic regulatory reforms needed to maximise the benefits of new infrastructure, and risks to debt sustainability in recipient economies.<sup>9</sup>

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<sup>5</sup>See Wignaraja, G., Collins, A., and Kannangara P. (2018), "Is the Indian Ocean Economy a New Global Growth Pole?" LKI Working Paper No 2 for details of forecasting methodology. [www.lki.lk](http://www.lki.lk)

<sup>6</sup>De, P. (2009), *Globalisation and the Changing Face of Port Infrastructure: The Indian Perspective*, Bern: Peter Lang.

<sup>7</sup>World Economic Forum, *The Global Competitiveness Report 2017-2018*, Available at <https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018>, Accessed on July 2018. Data not available for Comoros, Iran (Islamic Republic of), Somalia and the Maldives.

<sup>8</sup>World Bank, *Doing Business Database*, Available at <http://www.doingbusiness.org/data/exploretopics/trading-across-borders>, Accessed August 2018

<sup>9</sup>See H. Yoshimatsu (2017), "Japan's Export of Infrastructure Systems: Pursuing Twin Goals Through Development Means" *The Pacific Review*, 30:4; Hurley, J. S. Morris and G. Portelance (2018), "Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective", CGD Policy Paper 121, March (Center for Global Development).

## Barriers to Trade and Investment

Import tariffs in most Indian Ocean countries have fallen significantly since the 1990s in line with global trends, but murky non-tariffs measures (NTMs) impede goods trade. The weighted average tariff rate in the Indian Ocean fell from 7.6% in 2000 to 2.8% in 2016.<sup>10</sup> The numbers of NTM's initiated and notified to the World Trade Organization (WTO) by Indian Ocean economies rose from 128 to 686 between 2000 and 2017. The bulk of NTMs initiated in 2017 were technical barriers to trade (59.9%) and sanitary and phytosanitary measures (32.2%).

Barriers to trade in services also seem prevalent in the Indian Ocean. Admittedly, the extent of these barriers is difficult to quantify as they can take various forms, ranging from licensing or accreditation to provide a service in a country, to restrictions on foreign companies in certain sectors or even tourist visa fees. The World Bank's Services Trade Restrictiveness Index<sup>11</sup> suggests that barriers to services trade in the Indian Ocean (36.7) are high relative to the OECD (19.5). South Asia appears to be more restrictive than other sub-regions when it comes to trade in services. Behind the border regulatory barriers are an additional deterrent to trade and foreign investment across the Indian Ocean. It takes an average of 22 days to start a business in the Indian Ocean economy compared with an average of only 8 days in the OECD.<sup>12</sup>

Gradually reducing barriers to trade and investment would support trade-led growth in the Indian Ocean. However, to benefit from liberalisation, factors of production need to be reallocated between and within sectors. This structural change is a key source of the gains from trade, but brings with it costs of adjustment.<sup>13</sup> Some workers face temporary unemployment and income losses through jobs lost to international competition. Accordingly, the speed, stages, and sequencing of trade and investment reforms need to be tailored to individual national circumstances. This should be accompanied by suitable trade adjustment programmes to retrain workers in sectors displaced by foreign competition and provide better financial access for small and medium enterprises (SMEs).

## Development Gaps

Significant economic progress over recent decades notwithstanding, development disparities and capacity gaps remain between Indian Ocean economies. In March 2018, the United Nations classified ten regional economies as less developed countries (LDC) including Bangladesh, Cambodia, Comoros, Madagascar, Mozambique, Myanmar, Somalia, United Republic of Tanzania, Timor-Leste and Yemen.<sup>14</sup> LDCs face significant structural impediments to sustainable development and typically have lower per capita incomes than other regional economies. They are also vulnerable to economic and environmental shocks and have low scores in the HDI.

While the diversity of the region's economies in terms of income levels presents an opportunity for mutually-beneficial trade based on each country's comparative advantage, development gaps impede LDCs from fully engaging in trade-led growth. Financial constraints restrict national investments in port and logistics infrastructure that would improve their quality and reduce trade costs. LDCs also rely on trade-related taxes for a larger share of their revenue as limitations in tax administration capacity and large informal sectors undermine the efficacy of other forms of taxation, which further raises trade costs. Moreover, SMEs located in LDCs lack international competitiveness and the ability to join global value chains. At the same time, skills deficits and difficult business environments deter export-oriented foreign direct investments that would allow LDCs to engage in trade in higher value-added sectors.

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<sup>10</sup> WTO, Trade and Tariff Database, Available at: [https://www.wto.org/english/res\\_e/statis\\_e/statis\\_e.htm](https://www.wto.org/english/res_e/statis_e/statis_e.htm) , Accessed on July 2018.

<sup>11</sup> World Bank, Services Trade Restrictions Database, Available at: <http://iresearch.worldbank.org/servicetrade/>, Accessed on June 2018

<sup>12</sup> World Bank, Doing Business Database, Available at: <http://www.doingbusiness.org/data/exploretopics/trading-across-borders>, Accessed August 2018

<sup>13</sup> See Francois, J., M. Jansen and R. Peters (2011), "Trade Adjustment Costs and Assistance: The Labour Market Dynamics" in Jansen, M., R. Peters and J.M. Xirinachs (eds), Trade and Employment: From Myths to Facts, Geneva: International Labour Organisation and Brussels: European Commission.

<sup>14</sup> <https://www.un.org/development/desa/dpad/least-developed-country-category/ldcs-at-a-glance.html>

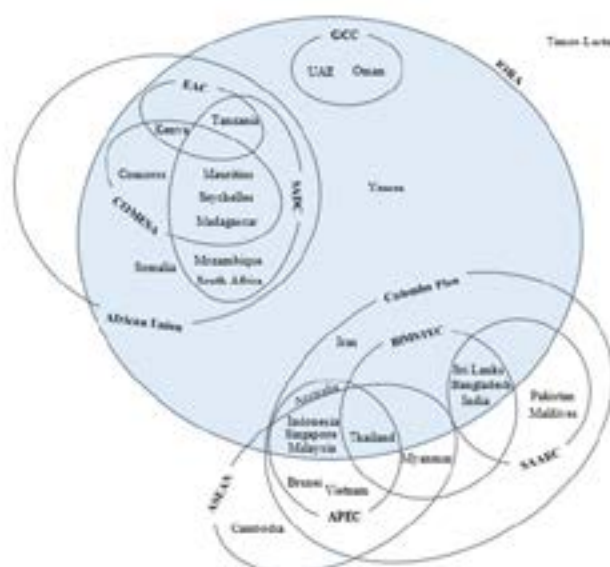
Foreign aid flows appear insufficient to close these development gaps. Total foreign aid to Indian Ocean economies as a group, doubled from USD 12.4 billion to USD 25.1 billion between 2000 and 2016. However, the bulk of such aid is concentrated in a few countries. Aid flows remain low in other economies that have large trade-related needs and high poverty levels. Accordingly, there have been high-level political calls by Sri Lanka's Prime Minister for the establishment of an Indian Ocean Development Fund to provide loans, grants and technical assistance to enhance economic development in regional economies.<sup>15</sup>

An additional risk is that some countries could find themselves stuck in the 'missing middle' of development finance, when total resources available fall as the country moves from low towards middle-income status.<sup>16</sup> Some middle-income countries also lack the requisite technical knowledge to build institutions for fostering trade-led growth, such as world class ports and bodies for negotiating comprehensive free trade agreements (FTAs). A case, thus, exists for external development assistance and knowledge transfer to support the middle-income transition in the Indian Ocean economy. Fostering public-private sector partnerships (PPPs) for port development and better targeting countries with rising inequality and fragile situations are essential to more effectively utilise scarce external assistance.

### Nascent Regional Economic Governance

A classic hub and spoke network of some 11 regional institutions and several FTAs include multiple Indian Ocean countries (see Figure 4). The hub of the network is the Indian Ocean Rim Association (IORA), which covers the majority of the Indian Ocean economies. Multiple spokes include several mostly smaller sub-regional institutions that count Indian Ocean economies among their membership, such as Association of South-East Asian Nations (ASEAN), the Gulf Cooperation Council (GCC), and the Southern African Development Community (SADC). A number of Indian Ocean countries are also included in cross-regional institutions such as the Asia-Pacific Economic Cooperation (APEC).

**Figure 4: Network of Regional Institutions Governing the Indian Ocean**



*Source: Compiled using information available on official websites of these respective institutions.*

<sup>15</sup> Prime Minister's Office of the Democratic Socialist Republic of Sri Lanka, Inaugural Address delivered by Hon. Ranil Wickremesinghe, Prime Minister of Sri Lanka at the Indian Ocean Conference on 1 September 2016, Shangri La Hotel, Singapore, Global Power Transition and the Indian Ocean; [http://www.pmo.gov.lk/download/press/D00000000050\\_EN.pdf?p=7](http://www.pmo.gov.lk/download/press/D00000000050_EN.pdf?p=7) (last accessed 25 September 2016).

<sup>16</sup> Wignaraja, G., J. Tyson, A. Prizzon and D.W te Velde (2018), Asia in 2025: Development Prospects and Challenges for Middle-Income Countries, London: Overseas Development Institute, September. <https://www.odi.org/publications/11202-asia-2025-development-prospects-and-challenges-middle-income-countries>



This network of regional organisations is at a nascent stage of institutional development compared to those in the Americas or Europe. Many have limited powers delegated from members, lack formal rules or legal structures, have inadequate financial resources and lack permanent secretariats. For example, IORA's secretariat has less than 20 staff members working on six priority areas, of which promoting trade and investment is just one.<sup>17</sup> While the stated objectives of these institutions all make some reference to pursuing economic prosperity, in practice, they have overlapping agendas with differing emphasis on promoting regional economic integration. Of the 11 regional institutions, only six have a trade agreement in force, and the scope and ambition of these agreements vary significantly.

Adding to this tangle of regional institutions are around 10 bilateral FTAs between Indian Ocean economies. These are exclusively between countries in the South Asian, and East Asian and Pacific sub-regions of the Indian Ocean, and the scope of trade liberalisation varies significantly. Further complicating matters, 52 bilateral investment treaties between countries in the Indian Ocean formalise rules for bilateral investment, as well six additional bilateral FTAs or economic cooperation agreements that contain investment provisions.

Given the diversity of Indian Ocean economies, it is perhaps inevitable that the quest for Indian Ocean economic regionalism is likely to remain 'institution light' for the foreseeable future. However, the Indian Ocean's existing hub and spoke network of regional institutions and FTAs could be strengthened. One step would be to appoint an Eminent Persons Group (EPG) from member states tasked with developing a plan to strengthen IORA's role in regional economic governance. The EPG's review should provide a vision for IORA's role in regional economic governance, as well as delegated powers from members, formal rules and legal structures, financial resources and a permanent secretariat.

Another step would be to encourage linking the various sub-regional and bilateral FTAs in the region to a mega-regional trade agreement with common trade rules and standards. This would increase market access, reduce trade barriers and facilitate regulatory coherence. It would also help insure against rising protectionist tendencies internationally. Asia's mega-regional trade agreement – the Regional Comprehensive Economic Partnership (RCEP) – seems to be a reasonable candidate. This agreement is currently under negotiation among 16 Asia-Pacific economies including important Indian Ocean economies like Australia, Cambodia, India, Indonesia, Malaysia, Singapore and Viet Nam. RCEP has an open accession clause which means other economies can join the agreement at a later date. Furthermore, RCEP addresses the special needs of less-developed ASEAN economies through early elimination of tariffs on products of interest to them, and the provision of development assistance to narrow development gaps.

## Questions for Discussion

1. What are the most pressing risks to the outlook for the Indian Ocean economy?
2. How can national and regional initiatives used to improve the quality of port infrastructure in the Indian Ocean (e.g. Belt & Road Initiative, Asia-Africa Growth Corridor) be effectively dovetailed?
3. What concrete steps should be taken to strengthen regional economic governance?
4. Is an Indian Ocean Development Fund an optimal solution to development gaps?
5. How should the residual barriers to trade and investment flows in the Indian Ocean be addressed?
6. How do traditional and non-traditional security issues threaten the Indian Ocean's economic prosperity?
7. How can greater Asia-Africa trade and investment links be fostered?

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<sup>17</sup> Waidyatilake (2017), "The Indian Ocean Rim Association: Scaling Up?" LKI Policy Briefs, July. [https://www.lki.lk/wp-content/uploads/2017/07/LKI-Policy-Brief\\_The-Indian-Ocean-Rim-Association-Scaling-Up\\_Barana-Waidyatilake.pdf](https://www.lki.lk/wp-content/uploads/2017/07/LKI-Policy-Brief_The-Indian-Ocean-Rim-Association-Scaling-Up_Barana-Waidyatilake.pdf)

**Table A1: Key Indicators for Indian Ocean Region Economies**

Country	Population (Millions, 2017)	Land Area (Thousand Sq. Km)	GDP (USD Billions, 2017)
Africa and the Middle East	359.4	7,217.8	1,426.8
(Share of World)	(4.8%)	(5.5%)	(1.8%)
Comoros*	0.8	1.9	0.7
Iran (Islamic Republic of)*	81.2	1,628.8	431.9
Kenya*	49.7	569.1	79.5
Madagascar*	25.6	581.8	11.5
Mauritius*	1.3	2.0	12.4
Mozambique*	29.7	786.4	12.7
Oman*	4.6	309.5	74.3
Seychelles*	0.1	0.5	1.5
Somalia*	14.7	627.3	7.4
South Africa*	56.7	1,213.1	349.3
United Arab Emirates*	9.4	83.6	377.4
United Republic of Tanzania*	57.3	885.8	51.7
Yemen*	28.3	528.0	16.5
South Asia	1,578.6	3,819.5	3,031.0
(Share of World)	(20.9%)	(3.0%)	(3.8%)
Bangladesh*	164.7	130.2	261.4
India*	1,339.2	2,973.2	2,611.0
Maldives	0.4	0.3	4.5
Pakistan	53.4	653.1	66.5
Sri Lanka*	20.9	62.7	87.6
East Asia and the Pacific	705.2	11,706.0	4,050.7
(Share of World)	(9.3%)	(9.0%)	(5.1%)
Australia*	24.5	7,741.2	1,379.5
Brunei Darussalam	0.4	5.8	12.7
Cambodia	16.1	181.0	22.3
Indonesia*	264.0	1,910.9	1,015.4
Malaysia*	31.6	330.8	314.5
Myanmar	197.0	676.6	304.0
Singapore*	5.7	0.7	323.9
Thailand*	69.0	513.1	455.4
Timor-Leste	1.3	14.9	2.6
VietNam	95.6	331.0	220.408
Indian Ocean Total	2,643.2	22,648.8	8,508.5
Share of World	35.0%	17.5%	10.7%

\* Members of the Indian Ocean Rim Association (IORA).

Sources: Compiled by LKI based on data from UN DESA, Available at: <https://esa.un.org/unpd/wpp/>, Accessed on July 2018; World Bank, Food and Agriculture Database, Available at: <https://data.worldbank.org/indicator/AG.LND.TOTL.K2>, Accessed on July 2018; IMF, World Economic Outlook Database, Available at: <https://www.imf.org/external/pubs/ft/weo/2017/01/weodata/index>, accessed on July 2018

# Issues Paper

## Round Table Session 2

### Life Below Water: Reframing the Oceans as Development Spaces<sup>1</sup>

#### 1. Natural Resources in the Indian Ocean

The oceans cover more than 70% of the Earth's surface. The deep seabed and the high seas alone account for two-thirds of the ocean, cover half of the planet, and are said to be home to upwards of 90% of marine life.

The living and non-living resources in the Indian Ocean represent one of the region's most significant assets. According to the UN Food and Agriculture Organization (FAO), catches from the fisheries in the Indian Ocean and western Pacific have soared from less than 20 million metric tonnes in 1970 to over 50 million tonnes in 2016.<sup>2</sup> It has additionally been reported that 'among the world's fishing nations, 14 of the 18 largest producers and all of the top 10 lie around the Indo-Pacific rim, accounting for more than two-thirds of the global haul.'<sup>3</sup>

Beyond fishing, deep seabed mining in the Indian Ocean is poised to become the next big development race. In the Indian Ocean, hydrothermal vents have been found, containing copper, cobalt, nickel, zinc, gold and other rare earth elements.<sup>4</sup> In the Indian Ocean's abysmal planes, more than a billion potato-sized nodules rich with manganese, copper, cobalt and nickel have been found.<sup>5</sup> These potential mining sites additionally support highly biologically diverse ecosystems, each with the potential for biomedical and other industrial use.

While deep seabed mining has still not reached the exploitation phase, the potential exploitation of national continental shelves is also a reality for several states bordering the Indian Ocean. The delimitation of maritime boundaries between Bangladesh and Myanmar, as well as between Bangladesh and India open the possibility for intensified activities concerning the exploration and exploitation of oil, gas and minerals, which may be the target of economic activities in the deep seabed. However, such increased activities may have an ecological price.

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<sup>1</sup>Background paper prepared by Max Planck Foundation for International Peace and the Rule of Law, Germany.

<sup>2</sup>FAO Yearbook 2016: Fishery and Aquaculture Statistics (Rome: FAO, 2016), xxii

[http://www.fao.org/fishery/static/Yearbook/YB2016\\_USBcard/booklet/web\\_i9942t.pdf](http://www.fao.org/fishery/static/Yearbook/YB2016_USBcard/booklet/web_i9942t.pdf).

<sup>3</sup>Stimson Center, 'Sea Change: Evolving Maritime Geopolitics in the Indo-Pacific Region' (December 2014).

<sup>4</sup>The Indian Ocean has five confirmed hydrothermal vent sites with many more suspected along the Central, Southwest, and Southeast Ridges. India additionally joins China, Germany, and South Korea in contracts to explore seafloor massive sulfides.

<sup>5</sup>India has a contract to explore polymetallic nodules over 750,000 km<sup>2</sup>.

## 2. Defining the Threats

There is a tendency in literature to generalise threats to the marine environment caused by human activities by referring to illegal, unreported and unregulated (IUU) fishing, the pollution of the sea and climate change. However, any human activity utilising the sea in whatever way may have a negative impact on the marine environment. Moreover, threats to the marine environment should not be seen in isolation, they should be weighed against the benefits for the populations of littoral states or the international community. UNCLOS has specific rules for each of the activities mentioned below, which provide some limitations on such activities to protect the marine environment in general and the interests of coastal states or the interests of other users of the marine environment.

### Fisheries

It is a well-known fact that fish resources are endangered. Many stocks are overfished and declining, and some have been or are nearly depleted. The figures provided by the FAO speak a clear message.<sup>6</sup> The reasons for that are manifold; overfishing; utilising particularly devastating fishing practices, for example shark-finning; the destruction of important habitats; over subsidising fishing activities; and a lack of respect of quotas. For instance, evidence shows that overfishing can lead to decreasing health in fish stocks, including a steady decrease in fish size for many species and a decrease in mature fish.<sup>7</sup> Further, the most commercially important fish species are considered overfished.<sup>8</sup> Deep-sea fishing, including bottom trawling, has not only exacerbated concerns of overfishing but has also raised alarm regarding the threat it poses to ecosystems and biodiversity. These concerns compound other environmental challenges, such as land-based pollution and climate change.

Most of these risks and problems have been identified for several years. In its Code of Conduct for Responsible Fisheries,<sup>9</sup> the FAO has developed several measures to provide for a regime concerning sustainable fishing. They set out obligations of coastal states and corresponding obligations of flag states, who, as International Tribunal for the Law of the Sea (ITLOS) has stated, have an international responsibility to cooperate with the coastal State accordingly.<sup>10</sup> The Code of Conduct is considered as binding for the member states of the FAO.

The measures in the Code of Conduct include an obligation of coastal states to fully implement and enforce the existing international rules concerning fisheries in their territorial seas vis-à-vis all vessels under any flag engaging in fishing in their territorial seas. Correspondingly, flag states must respect the fishing laws of coastal states' in their territorial waters.

The Code of Conduct also recognises the sovereign rights of Coastal states in respect to the management of fisheries resources in their exclusive economic zones. This includes their obligation to provide for a regime guaranteeing sustainable fisheries activities, including its effective implementation and enforcement under Article 73 of UNCLOS. In regard to this, flag states are obliged to respect the coastal states' fishing laws applicable in the respective exclusive economic zones.

Moreover, coastal states and flag states should cooperate with the RFMOs fully in respect to highly migratory species, for example tuna, and straddling fish stocks. The protection of specific habitats, such as the coral reef as a spawning ground for many species and the basis for the food chain in the marine environment must be considered. Efforts should be made to establish marine protected areas based on reliable scientific advice, particularly regarding marine biodiversity.

Finally, the Code of Conduct also requires efficient port State control, which would ensure that illegally caught fish cannot be landed, as a meaningful tool to curtail IUU fishing.<sup>11</sup>

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<sup>6</sup>FAO (n 1).

<sup>7</sup>U Thara Srinivasan et al, 'Global fisheries losses at the exclusive economic zone level, 1950 to present' *Marine Policy* 2012 36 (544); Tony J Pitcher and William WL Cheung, 'Fisheries: Hope or despair?' *Marine Pollution Bulletin*, 2013 Vol 74(2).

<sup>8</sup>*ibid.*

<sup>9</sup>FAO Code of Conduct for Responsible Fisheries available at <http://www.fao.org/3/a-v9878e.htm>.

<sup>10</sup>See, Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (Advisory Opinion of 2 April 2015) ITLOS Reports 2015, 4.

<sup>11</sup>An interesting example of port State control are the rules adopted by the North-East Atlantic Fisheries Commission.

## Exploration and Exploitation of the Continental Shelf within and beyond 200 nm

Coastal states have sovereign rights concerning the exploration and exploitation of their continental shelves with few limitations.<sup>12</sup> However, they may not engage in exploration or even exploitation activities in disputed areas<sup>13</sup> and are obliged to cooperate with neighbouring or opposite states.

While there is a general obligation to protect the marine environment,<sup>14</sup> there are no efficient rules and regulations to prevent, reduce or control the pollution of the marine environment at the international level. This is an issue where regional cooperation in the Indian Ocean is called for. It is in the interest of all states concerned – coastal states, as well as states cooperating in continental shelf activities – to have the necessary standards worked out. Any transboundary pollution might result in international responsibility.

## Deep Seabed Mining

Deep seabed mining remains in the exploratory phase and it is foreseen that the exploitation phase will begin in the coming years. Notably, the Indian Ocean constitutes an area where deep seabed mining will take place in the near future with a number of states engaged in one or more sites. There are concerns that deep seabed mining activities will have a negative impact upon the deep seabed as a habitat and the marine environment in general.<sup>15</sup>

On the basis of reliable scientific findings one has to distinguish between the exploration and exploitation of polymetallic nodules, polymetallic sulphites and cobalt rich crusts. In the Indian Ocean only the two former activities are seriously under consideration. Comparing the two, the exploration and exploitation of polymetallic nodules has an effect on a larger area while, the exploration and exploitation of polymetallic sulphites will affect a relatively small area. The regulations issued by the International Seabed Authority reflect this fact.<sup>16</sup>

Under UNCLOS, the organisation established to oversee deep seabed mining, the International Seabed Authority, has the legislative competence to issue rules, regulations and standards to prevent, reduce and control pollution of the marine environment from such activities in the so-called 'Area.' States are under obligation to implement such rules and are subject to a specialised regime concerning international responsibility in this respect under UNCLOS.

There is, however, one issue worth considering further. Coastal states may engage or license other states or entities to explore or exploit polymetallic nodules or sulphites on their outer continental shelves. Such activities would only be subject to the general obligation to protect the marine environment, but not the regulations and standards of International Seabed Authority. It would be important step for Indian Ocean coastal states to agree not to undercut the regulations, rules and standards, if undertaking similar activities on their outer continental shelves.

## Land Based Pollution (Plastic Debris, Chemicals etc.)

The Indian Ocean has been found to be gravely polluted by plastic debris and chemical run-off. The Indian Ocean garbage patch, in as far back as 2010, is estimated to be at least five million square kilometers in size.<sup>19</sup> Further cooperation to deal with this issue is required.

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<sup>12</sup>UNCLOS, Part VI.

<sup>13</sup>UNCLOS, Art 83(3).

<sup>14</sup>UNCLOS, Art 208.

<sup>15</sup>Luc Cuyvers et al, 'Deep Seabed Mining: A Rising Environmental Challenge' (IUCN, 2018); ISA 'Environmental Assessment and Management for Exploitation of Minerals in the Area' (ISA Technical Study No 16, 2016); ISA, 'Discussion Paper: Enforcement and Liability Challenges for Environmental Regulation of Deep Seabed Mining' (June 2016).

<sup>16</sup>See Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (ISBA/18/A/11); Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (ISBA/16/A/12/Rev.1); Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (ISBA/19/C/17).

<sup>17</sup>UNCLOS, Art 209.

<sup>18</sup>UNCLOS, Art 208.

<sup>19</sup>Lori Bongiorno, 'New garbage patch discovered in Indian Ocean' (Yahoo news, 28 July 2010). <https://www.sott.net/article/212814-New-garbage-patch-discovered-in-Indian-Ocean> accessed 20 September 2018.

### 3. Opportunities for further Policy Cooperation

It has been found that policies to prevent and reduce pollution must include both land-based, as well as sea-based approaches, and will need to cover a wide range of industries; from fishing, mining, oil-and-gas and the dismantling of vessels to agriculture. Regional coordination to the extent possible on these policies will be beneficial to each country in the region, as even the land-based pollution by one country will necessarily affect the others by way of run-off into the shared ocean space. Areas for regional agreement can include: agreement to implement and enforce land and sea cleaning programmes, to spread public awareness of the effects of pollution domestically, to set stringent standards on the use of pesticides within domestic agricultural production, and to strictly enforce the polluter pays principle.

While much attention has already been paid to the issue of overfishing, once Regional Fisheries Management Organisation (RFMO) are strengthened and appropriately coordinated, new collective policy approaches may be explored. One policy approach, which has been found to serve as a useful framework in the prevention of overfishing, is spatial planning and management of the marine areas.<sup>20</sup> Marine spatial planning allocates marine space, geographically, and temporally for different purposes on the basis of the best scientific information regarding sustainable practice for each zone. It is considered 'a future-oriented planning process that takes into account all of the sectors related to governance of maritime issues.'<sup>21</sup> Through the spatial management of fisheries, fish stock levels can be managed in each designated area. Further more, biological processes should govern the limitations placed on fishing during certain timeframes, like during spawning season.

Marine Protected Areas (MPAs) are one aspect of spatial management of fisheries. While there are more than two dozen MPAs in the Indian Ocean, they each exist within the exclusive economic zones of countries and do not cover the sea beyond national jurisdiction. Existing MPAs are managed in isolation by individual countries.<sup>22</sup> Beneficial effects of individual MPAs will vary, as restrictions imposed within MPAs vary. At one end of the spectrum, MPAs where no fishing or other exploitative activities are allowed have shown to rapidly increase fish population after two to three years and eventually be restored.<sup>23</sup> Restored fish stocks tend to additionally benefit fishing areas outside of the no-fish zone as the population spreads.<sup>24</sup>

Beyond the necessity to cooperate on pollution and fishing, there needs to be coordination on deep seabed management, which will also be vital to the sustainable development of the Indian Ocean. This will be necessary regarding deep sea activities within national jurisdiction, as well as in the Area beyond national jurisdiction. As a result of the scale and significance of expected impacts, a number of environmental mitigation strategies to protect the marine environment have been proposed in draft regulations and are currently being debated within the context of the International Seabed Authority.<sup>25</sup> As a result, the ongoing development of the draft Exploitation Regulations provide a critical opportunity for State engagement to ensure that seabed mining is regulated in a way that provides effective protection of marine environments in the Indian Ocean.<sup>26</sup>

With all the concerns noted one should bear in mind several facts. First, deep seabed mining is meant to produce subsidies to developing countries and therefore it is necessary to properly weigh the risks of deep seabed mining against the expected advantages. Second, the whole area which might be used for deep seabed mining consists only of 2% of this area in general. Third, the effect of deep seabed mining on the environment might be less than the one of land-based mining. Fourth, according to UNCLOS deep seabed mining is under the legislative jurisdiction of the International Seabed Authority alone. That means the coastal states should coordinate their efforts in the Assembly of International Seabed Authority to make their particular regional concerns heard.

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<sup>20</sup>Loris Larik, 'Blue Growth and Sustainable Development in Indian Ocean Governance' (The Hague Institute for Global Justice, March 2017).

<sup>21</sup>*ibid.*

<sup>22</sup>*ibid.*

<sup>23</sup>World Conservation Congress of the International Union for Conservation of Nature (IUCN, 2008); "Marine protected areas – Why do we need them?" (IUCN, 9 February 2010); Keith Sainsbury and Ussid Rashid Sumaila, "Incorporating ecosystem objectives into management of sustainable marine fisheries, including 'best practice' reference points and use of marine protected areas" in Michael Sinclair and Grimur Valdimarsson (eds.), *Responsible Fisheries in the Marine Ecosystem* (FAO, 2003).

<sup>24</sup>A. Hastings and L. W. Bostford, 'Equivalence in yield from marine reserves and traditional fisheries management' *Science* 284 (1999), 1537-1538.

<sup>25</sup>See draft Exploitation Regulations by the International Seabed Authority.

<sup>26</sup>Luc Cuyvers et al, 'Deep Seabed Mining: A Rising Environmental Challenge' (IUCN, 2018).

## 4. Conclusion

The need for states to take urgent action arises from the multitude of issues canvassed above. Current bilateral and multilateral efforts to cooperate in the management of resources on the basis of existing treaties, as well as efforts to negotiate and conclude new legal instruments, offers opportunities to better enforce the existing international legal framework. It should be reiterated that under UNCLOS and its Implementation Agreements, the sovereign right to exploit natural resources is balanced with a duty to protect and preserve the marine environment.<sup>27</sup> The sustainable usage of natural resources will be a key to securing the region's future welfare. Thus, to effectively and efficiently use the ocean as a development space these principles will need to be implemented both in the seas within national jurisdiction, as well as on the high seas and the deep seabed.

It should be noted that maritime spaces under the sovereignty of coastal states or where coastal states exercise sovereign rights are open for some unilateral action. In the other ocean spaces there is, according to UNCLOS, there is no room for national legislative action for coastal states but enforcement of international rules and standards can and should be strengthened.

## Questions for Discussion

1. What are the best options for regional cooperation to address pollution in the ocean including plastics, land based and atmospheric pollution?
2. Are additional legal frameworks needed to ensure the sustainable exploitation of ocean resources? For example, how should the legal framework for deep seabed mining be developed in conformity with Part XI of the UNCLOS, and in relation to the continental shelf (within and beyond 200 nm)?
3. How can the legal framework be better implemented and enforced to address overfishing in the Indian Ocean? How can port jurisdiction of states be strengthened to address IUU fishing?
4. What technical and other assistance could be provided to developing countries to help them address ocean pollution and sustainably exploit maritime resources?

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<sup>27</sup>UNCLOS, Art 193.



# Issues Paper

## Round Table Session 3,

### An End to Uncertainty: Safety and Security at Sea<sup>1</sup>

#### 1. Maritime Safety and Security

The UN Convention on the Law of the Sea (UNCLOS) has been described as the ‘constitution for the oceans.’ UNCLOS neither defines the term ‘maritime safety’ nor ‘maritime security.’ The two terms are best defined by the references to them and, in particular, by the special regimes established for their implementation in UNCLOS, although these regimes do not address all concerns as ‘safety’ and ‘security’ concerns.

On that basis, maritime safety includes, amongst others, issues such as: safety of navigation; the construction and sea-worthiness of ships; the qualifications and training of marine personnel and their safety; the safety of passengers and cargo; mandatory equipment and publications; and the prevention, reduction and control of marine pollution.

Maritime security is conceptualised in UNCLOS as threats directed against or threatening the notion of the sovereignty of states.

In literature, there is a tendency to qualify so-called new threats under the umbrella of the protection of security. Such approaches disregard the approach to ocean governance adopted in UNCLOS, especially in relation to fisheries and the protection of marine environment, camouflaging the very clear division of UNCLOS concerning the applicable legislative, implementation and juridical regimes concerned.

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<sup>1</sup>Background Paper prepared by the Max Planck Foundation for International Peace and the Rule of Law, Germany.

<sup>2</sup>‘A Constitution for the Oceans’, Remarks by Tommy T.B. Koh of Singapore, President of the Third United Nations Conference on the Law of the Sea 1982, available at [http://www.un.org/depts/los/convention\\_agreements/texts/koh\\_english.pdf](http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf).

<sup>3</sup>Christian Bueger and Timothy Edmunds, ‘Beyond seablindness: a new agenda for maritime security studies’, *International Affairs* 93:6 (2017) 1296; United Nations General Assembly, ‘Oceans and the Law of the Sea: Report of the Secretary-General (10 March 2008) UN Doc. A/63/63, para 39; N Klein, *Maritime Security and the Law of the Sea* (Oxford University Press 2011) 2.

## 2. Maritime Safety and Security Issues in the Indian Ocean

### Piracy and Armed Robbery

Half of the world's container traffic and approximately 30% of world trade is handled by ports in the Indian Ocean region; and 60% of oil shipments and 33% of the world's bulk cargo passes through its waters.<sup>4</sup> The Indian Ocean is also unique, relative to the larger Atlantic and Pacific Oceans, as it has several prominent choke points, including the Malacca Strait, each of which are critical to global trade.<sup>5</sup> Thus, as the Indian Ocean region is essential to ensure global trade and energy security, the issues of piracy and armed robbery of ships are crucial.

Considering the objective of not infringing on the sovereignty of coastal states, the UNCLOS regime concerning piracy is narrowly defined and confined to clearly described acts on the high seas and exclusive economic zones.<sup>6</sup> Accordingly, the regime against piracy does not cover such acts in the territorial seas or in certain straits, for example, the Malacca Strait,<sup>7</sup> since the majority of it is comprised of the territorial seas of three littoral States: Indonesia, Malaysia, and Singapore.<sup>8</sup> This also renders the UNCLOS provisions on hot pursuit redundant, as the right ceases when the ship being pursued enters the territorial waters of its own State or a foreign State.<sup>9</sup> It is evident that in such areas, a regional agreement is warranted.<sup>10</sup>

Any response to piracy and armed robbery in the Indian Ocean would also need to appreciate the unique nature of these threats in different Indian Ocean sub-regions. For example, analysing all reports on acts of piracy and armed robbery in Somalia, the Western Indian Ocean, reveals that 154 incidents were reported in international waters; twelve in territorial waters; and three in the port area.<sup>11</sup> This is in contrast with Bangladesh, in the Indian Ocean region, where seven incidents were reported in international waters; 74 in territorial waters; and 143 in the port area.<sup>12</sup> In Somalia, the perpetrators used guns 74 times (and used knives not at all),<sup>13</sup> whereas in Bangladesh, the perpetrators used knives 104 times and used guns four times.<sup>14</sup> Given the clear divergence in the patterns of the incidents, and the manner and intensity of the perpetrators' efforts, a one-size-fits-all solution to piracy and armed robbery in the Indian Ocean region would be unsuitable.

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<sup>4</sup>Bhagya Senaratne, 'Maritime Safety and Security Challenges: A Sri Lankan Perspective', in Vijay Sakhuja and Kapil Narula (eds), *Maritime Safety and Security in the Indian Ocean*, (2016) National Maritime Foundation, 12.

<sup>5</sup>Anil Jai Singh, 'Capability Building in the Indian Ocean', in Vijay Sakhuja and Kapil Narula (eds), *Maritime Safety and Security in the Indian Ocean* (National Maritime Foundation, 2016), 92.

<sup>6</sup>Rheny Pulungan, 'The Limitations of the International Law on Piracy and Maritime Terrorism: Options for Strengthening Maritime Security in the Malacca Straits', Doctoral Thesis (2014, University of Melbourne) 105 available at [https://minerva-access.unimelb.edu.au/bitstream/handle/11343/40765/Rheny%20Pulungan%20thesis\\_June%202014.pdf?sequence=1&isAllowed=y](https://minerva-access.unimelb.edu.au/bitstream/handle/11343/40765/Rheny%20Pulungan%20thesis_June%202014.pdf?sequence=1&isAllowed=y).

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>UNCLOS, Art 111(3)

<sup>10</sup>Rheny Pulungan (n 5).

<sup>11</sup>IMO Global Integrated Shipping Information System, 'Regional Analysis of Reports on Acts of Piracy and Armed Robbery: Somalia' available at

<https://gis.imo.org/Public/PAR/Reports.aspx?Name=RegionalAnalysis>.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

## Maritime Domain Awareness

The response to any maritime security threat requires accurate knowledge of maritime activities. The collective knowledge of what happens at sea, including knowledge about criminal and illegal activities, and an understanding of maritime patterns of life, is known as Maritime Domain Awareness (MDA). The state of MDA in the Indian Ocean varies on a sub-regional basis, for example, the Western and the South-East Asian Indian Ocean. Overall, it is evident that the whole Indian Ocean region needs to develop its MDA capabilities.

In the Western Indian Ocean region, a majority of MDA functions are provided by international actors, such as the European Union's Naval Force Atalanta, or within the framework of internationally funded projects. One such project is the Djibouti Code of Conduct (DCoC) process, a regional agreement for training and information-sharing under which three information-sharing centres have been established in Yemen, Kenya and Tanzania. In 2017, the scope of the DCoC was considerably broadened beyond piracy and armed robbery against ships to include other transnational organised crime in the maritime domain. Another MDA project in the Western Indian Ocean region is the Programme to Promote Regional Maritime Security, which has launched two centres for information-sharing and operational coordination under the Indian Ocean Commission. Despite these initiatives, it has been argued that the region is not ready to take over from international actors and provide MDA functions, and that little progress has been achieved in this regard.

In the South and South-Eastern Indian Ocean region, several MDA initiatives exist. One such framework is the Information Fusion Centre (IFC), which is an initiative of the Singaporean Navy. The IFC is linked to nearly 45 agencies from 28 countries and works to generate a maritime situation picture. Another initiative is the Information Management and Analysis Centre (IMAC) by the Indian Navy, which connects maritime surveillance systems and shares intelligence and information about unusual or suspicious movements and activities at sea for use by Indian agencies. Another significant framework is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (ReCAAP), which was the first regional government-to-government agreement to promote and enhance cooperation against piracy and armed robbery of ships in Asia. It established the ReCAAP Information Sharing Centre for the sharing of piracy and armed robbery related information, which also cooperates with DCoC. The IFC and IMAC have been critiqued by some for lacking institutional and technological networking to generate a common maritime picture for Indian Ocean countries; and for not being linked to other regional MDA systems.<sup>25</sup>

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<sup>15</sup>Christian Bueger, 'Policy Brief: Effective Maritime Domain Awareness in the Western Indian Ocean', Institute for Security Studies (2017) 2.

<sup>16</sup>*ibid.*

<sup>17</sup>Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden 2009.

<sup>18</sup>The DCoC was initiated and is supported by the UN International Maritime Organization and the European Union.

<sup>19</sup>The Jeddah Amendment to the Djibouti Code of Conduct 2017.

<sup>20</sup>Christian Bueger (n 15).

<sup>20</sup>*ibid.*, 3-5.

<sup>22</sup>Vijay Sakhuja, 'Indian Ocean: Exploring Maritime Domain Awareness' (Institute of Peace and Conflict Studies, 2015) available at [http://www.ipcs.org/comm\\_select.php?articleNo=4825](http://www.ipcs.org/comm_select.php?articleNo=4825).

<sup>23</sup>*ibid.*

<sup>24</sup>'About ReCAAP' (ReCAAP) available at [http://www.recaap.org/about\\_ReCAAP-ISC](http://www.recaap.org/about_ReCAAP-ISC).

<sup>25</sup>Vijay Sakhuja (n 22).

There is a need to clarify the relationships between national and regional MDA.<sup>26</sup> This would increase synergies and enhance the common interest in more accurate and up-to-date maritime intelligence in the region. Another possibility is the idea of a pan-Indian Ocean MDA arrangement. The Indian Ocean Rim Association (IORA), which is the only multilateral forum connecting the littoral states of the Indian Ocean region,<sup>27</sup> is one possible forum for such a framework. Promisingly, the Jakarta Concord, signed by the Heads of State of all IORA members, commits all states to promote maritime safety and security in the region by strengthening regional cooperation to address transboundary challenges, including piracy, armed robbery at sea, terrorism, trafficking in persons, people smuggling, irregular movement of persons, illicit drugs trafficking, illicit trafficking in wildlife, crimes in the fisheries sector, and environmental crimes.<sup>28</sup> Also, the IORA Action Plan 2017-2021 states the intention to explore a regional surveillance network of existing member state institutions, including sharing of data and exchange of information on maritime transportation systems as a long-term goal.<sup>29</sup>

Many MDA initiatives, including DCoC and ReCAAP, were implemented to respond to piracy and armed robbery against ships. However, accurate and high-quality intelligence is not limited to these issues, and it comprises of the backbone of any law enforcement effort at sea given the vast space that needs to be policed with limited resources.<sup>30</sup>

### **Terrorist acts Involving Shipping and Other Maritime Interests**

The Indian Ocean region has experienced terrorist attacks on maritime targets, including the attack on the USS Cole in 2000 and the MV Limburg in 2002 off the coast of Yemen by Al-Qaeda; the 2008 Mumbai attacks by Lashkar-e-Taiba; the 2004 attack on SuperFerry 14 in the Philippines by the Abu Sayyaf Group; and the 2014 attempt on a Pakistani navy ship by Al-Qaeda in the Indian Subcontinent.<sup>31</sup> Further, terrorist groups such as Al-Qaeda and ISIS are reportedly active in many countries in the Indian Ocean region.

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<sup>24</sup> 'About ReCAAP' (ReCAAP) available at [http://www.recaap.org/about\\_ReCAAP-ISC](http://www.recaap.org/about_ReCAAP-ISC).

<sup>25</sup> Vijay Sakhuja (n 22).

<sup>26</sup> Christian Bueger (n 14) 7-8.

<sup>27</sup> Barana Waidyatillake, 'The Indian Ocean Rim Association: Scaling Up?' (Policy Brief: Lakshman Kadirgamar Institute of International Relations and Strategic Studies, 2017) available at <https://www.lki.lk/publication/indian-ocean-rim-association-scaling/>.

<sup>28</sup> IORA, Jakarta Concord (March 2017) para 16(a).

<sup>29</sup> IORA, IORA Action Plan 2017-2021, IOR/COM/20ANNIV/17/DOC3.1.

<sup>30</sup> Christian Bueger (n 14).

<sup>31</sup> Vijay Sakhuja (n 21); ME6 Joses Yau Meng Wee, 'Maritime Terrorism Threat in Southeast Asia and Its Challenges' *Journal of the Singapore Armed Forces* 2017 43(2), 34 available at <https://www.mindef.gov.sg/oms/safti/pointer/documents/pdf/V43N2A3.pdf>.

Combined with the analysis about the importance of the Indian Ocean to trade and energy security globally, maritime terrorism is a pertinent threat in the region.

Outside UNCLOS, but in conformity with it, a legal regime has developed to counter terrorist attacks against vessels and maritime installations. This regime differs from the one on piracy. One has to distinguish between preventative measures and those being of a repressive character.

Preventative measures are predominantly reliant upon information gathering. In this respect, coastal states have wide discretion and some preventative measures have been detailed in international agreements associated with UNCLOS. For example, the International Convention for the Safety of Life at Sea (SOLAS), Chapter V, sets out provisions on vessel monitoring systems; namely automatic information systems and long-range identification and tracking systems. However, automatic information systems are only required to be fitted aboard all ships of 300 gross tonnage (GT) and upwards engaged on international voyages, cargo ships of 500 GT and upwards not engaged on international voyages and all passenger ships.<sup>32</sup> Also, SOLAS Chapter XI-2 incorporates the International Ship and Port Facility Security Code, which includes measures that enhance maritime security on board ships and at ship/port interface areas.<sup>33</sup> However, the Code only applies to passenger and cargo ships of at least 500 GT, and excludes fishing vessels regardless of their size.<sup>34</sup> Both measures exclude smaller vessels, which have previously been used in terrorist attacks,<sup>35</sup> including the Mumbai attack, when terrorists used a fishing vessel to bypass security.<sup>36</sup> Preventative measures are more effective if supported by cooperative efforts of states, particularly on a regional basis.

The ASEAN region has adopted a collaborative approach to countering terrorism, by improving the geopolitical climate through confidence building measures; shared intelligence; and capacity building and enhanced interoperability.<sup>37</sup> Confidence building measures include numerous platforms relating to maritime security, such as the ASEAN Regional Forum, the ASEAN Defence Ministers' Meeting and the ADMM-Plus Maritime Security Working Group.<sup>38</sup> Shared intelligence has been fostered by cooperation between ReCAAP ISC, IFC, regional intelligence agencies, navies, coast guards and the shipping community.<sup>39</sup> The region has reaped the benefits of intelligence sharing, for instance in 2014, the perpetrators responsible for hijacking oil tanker V.L.14 in the South China Sea were interdicted within 16 hours.<sup>40</sup> Interoperability is enhanced by multilateral maritime exercises at sea, such as Maritime Information Sharing Exercise and the Western Pacific Naval Symposium's Multilateral Sea Exercise.<sup>41</sup> These information exchanges strengthen interoperability between navies and other maritime agencies, allowing for quick and decisive responses to threats. The ASEAN model exemplifies the benefits of a collaborative and regional concerted effort to respond to maritime security issues.

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<sup>32</sup> IMO, 'AIS Transponders', available at

<http://www.imo.org/en/OurWork/Safety/Navigation/Pages/AIS.aspx>.

<sup>33</sup> UN General Assembly, 'Oceans and the Law of the Sea: Report of the Secretary-General (10 March 2008) UN Doc. A/63/63, para 65.

<sup>34</sup> Natalie Klein (n 2) 306.

<sup>35</sup> *ibid.*

<sup>36</sup> Meng Wee (n 30) at 35.

<sup>37</sup> *ibid.*, 38.

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

## Drug Trafficking

Drug trafficking is a major issue within the Indian Ocean region, which consists of the so-called 'Golden Triangle' and 'Golden Crescent'.<sup>42</sup>

UNCLOS provides that all states must cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged by ships on the high seas, and states may request cooperation from other states when they have reasonable grounds to believe that a ship flying its flag is engaged in illicit traffic.<sup>43</sup> Coastal states have prescriptive and enforcement jurisdiction to respond to drug trafficking within their territorial waters and contiguous zone<sup>44</sup> and may also exercise criminal jurisdiction over vessels passing through their territorial waters, where such measures are necessary for the suppression of illicit traffic in narcotic drugs and psychotropic substances.<sup>45</sup> Although, the obligation to stop trafficking of narcotic drugs is of a universal character, not all coastal states are able or willing to fulfil that obligation.

The specific provisions in the UN Drugs Convention<sup>46</sup> concerning illicit traffic by sea<sup>47</sup> includes the requirement of cooperation between parties; enabling parties to notify flag states of suspicious activity, and to take actions, such as boarding and search of the vessel with the authorisation of the flag state. Certain regional arrangements provide for enforcement activities in the territorial waters of foreign States. For example, the 2003 Caribbean Agreement<sup>48</sup> includes provisions allowing for the possibility of third states to exercise law enforcement powers within the territorial seas of state parties.<sup>49</sup> Additionally, states have also entered into 'shiprider' agreements, whereby officials of one state that have embarked on the vessel of another state grant the latter permission to conduct law enforcement activities in the former's waters.<sup>50</sup> Such collaborative and regional approaches are crucial in order to fill the void left by the inability and unwillingness of certain coastal states to suppress drug trafficking.

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<sup>42</sup> Bhagya Senaratne (n 3) 15.

<sup>43</sup> UNCLOS, Art 108.

<sup>44</sup> For example, UNCLOS Arts 19(2)(g) and 33.

<sup>45</sup> UNCLOS, Art 27(1)(d).

<sup>46</sup> UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (UN Drugs Convention) adopted 20 December 1988 available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=VI-19&chapter=6&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VI-19&chapter=6&clang=_en).

<sup>47</sup> UN Drugs Convention, Art 17.

<sup>48</sup> Agreement concerning Cooperation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area 2003.

<sup>49</sup> N Klein (n 2) 79.

<sup>50</sup> *ibid*, 312.

## Illegal, Unreported and Unregulated Fishing

The fight against illegal, unreported and unregulated (IUU) fishing is an essential element in the worldwide approach towards the sustainable management of fisheries. The regimes provided by UNCLOS and the Implementation Agreement concerning the management of straddling fish stocks, attempts to safeguard the fisheries resources for the generations to come, and to provide a balance between the various interests of coastal states, as well as long distance fishing fleets. In considering the existing regimes, account has to be taken of the fact that states have different competencies in respect to certain zones (territorial sea and exclusive economic zones), and to different species (long distance fish resources, such as tuna; coastal stocks; catadromous species; and anadromous species, such as salmon).

IUU fishing is a serious issue in the Indian Ocean, caused by high demand, depletion of fish stocks in other parts of the world, an increased number of fishing vessels from outside the region; the lack of effective regional fisheries management organisations; the increased sophistication of fishing vessels and equipment; subsidies; and the limited state resources to invest in policing the exclusive economic zones.<sup>51</sup>

Increasingly, we are witnessing the emergence of new cooperative efforts by Regional Fisheries Management Organisations (RFMOs) to combat IUU fishing. This includes reporting on fishing activities by the RFMO members through monitoring and inspections; catch documentation schemes; and the compilation of lists of vessels suspected of IUU fishing to increase scrutiny of such vessels and with the intention of encouraging the relevant flag States into compliance.<sup>52</sup> These measures seek to capitalise on regional cooperation to create a more effective regime to combat IUU fishing. One example of a regional collaboration that has improved policing abilities is the FISH-i Africa initiative that has been implemented in East Africa to improve information sharing, training and enforcement.<sup>53</sup> Its successful VIGILANCE programme operates at a national, regional, and global level, to check and verify the identities of licensed and flagged fishing vessels together with their owners and operators that operate in the region.<sup>54</sup> The FISH-i Africa partnership has resulted in the denial of fish landings at multiple ports and millions of dollars in fines.<sup>55</sup>

In the attempt to fight IUU fishing, new forms of implementation have been developed due to the efforts of the RFMOs. A prime example of this has been the recognition of Port State Jurisdiction. Under the Port State Measures Agreement (PSMA),<sup>56</sup> Port States may require, at a minimum, information from foreign vessels seeking to enter their ports as to the identity and journey of the vessel, its fishing and transshipment authorisations, the catch on-board and the catch to be offloaded.<sup>57</sup>

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<sup>51</sup> Sam Bateman et al, 'New Challenges for Maritime Security in the Indian Ocean – An Australian Perspective', 6-7; Caitlyn Antrim, 'International Law and Order: The Indian Ocean and South China Sea' in David Michel and Russell Sticklor (eds) *Indian Ocean Rising: Maritime Security and Policy Challenges* (Stimson, 2012), 76; R. Baird, *Illegal, Unreported and Unregulated Fishing: An Analysis of the Legal, Economic and Historical Factors Relevant to its Development and Persistence* Melbourne Journal of International Law 2004 5, 299.

<sup>52</sup> Natalie Klein (n 2) 317.

<sup>53</sup> Pew Trusts, 'How to End Illegal Fishing', (December 12, 2017) available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/12/how-to-end-illegal-fishing>. The FISH-i Africa Task Force includes Comoros, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, and the United Republic of Tanzania.

<sup>54</sup> Stop Illegal Fishing, 'FISH-i Africa: Our Future' (2017) 31-37, available at [https://www.fish-i-africa.org/wp-content/uploads/2017/09/FISH-i\\_Africa\\_Our\\_future\\_WEB.pdf](https://www.fish-i-africa.org/wp-content/uploads/2017/09/FISH-i_Africa_Our_future_WEB.pdf).

<sup>55</sup> Pew Trusts (n 52).

<sup>56</sup> FAO, Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, FAO Doc. C 2009/LIM/11-Rev. 1 (2009) (Port State Measures Agreement).

<sup>57</sup> Port State Measures Agreement, Art 8 and Annex A.



Based on this information, Port States determine if there is sufficient proof that the vessel has engaged in IUU fishing or activities in support of such fishing, and if so, may deny entry into its port.<sup>58</sup> In order to promote the effective implementation of the PSMA, state parties are required to cooperate and exchange information related to the objective of the PSMA with relevant states, international organisations, and regional fisheries management organisations; and to cooperate at a sub-regional, regional and global level in the effective implementation of the PSMA.<sup>59</sup>

In assessing the regime on fisheries, consideration of the limits of coastal states envisaged in the implementation of their legislation concerning fisheries is required. Only legislation in conformity with UNCLOS may be enforced and further limitations are contained in Article 73 of the UNCLOS. The jurisprudence of ITLOS confirms that the confiscation of fishing vessels is possible, although it also provides for juridical challenge of the measure (see UNCLOS, Article 292).<sup>60</sup>

## Damage to the Environment

Usually, damage to the environment in the context of conversations about maritime safety and security would refer to vessel, land and other source pollution, and intentional severe pollution of the marine environment. While this would be true in the Indian Ocean region as well, there are several unique environmental threats in the region, especially in the South Asia region.

The Indian Ocean region is prone to natural disasters.<sup>61</sup> The impact of natural disasters on Indian Ocean states is exacerbated by several factors, including densely populated areas; poverty; and low levels of development.<sup>62</sup> Moreover, there are no regional arrangements for early warning, risk reduction, disaster mitigation, regional responses, post-disaster relief and rehabilitation.

IORA could be a potential forum for such an initiative.<sup>63</sup> The suitability of IORA is supplemented by the fact that its scope and mandate has been widened to include disaster risk management as a priority.<sup>64</sup> The Jakarta Concord affirms the member states' undertaking to strengthen regional disaster preparedness and to enhance cooperation with stakeholders in addressing issues related to natural disasters through, inter alia, capacity building and sharing of information.<sup>65</sup>

The IORA Action Plan 2017-2021<sup>66</sup> also includes several intended measures in this regard, including the long-term goal of developing resilience through early warning systems and regional exercises, and training for coordinated disaster risk reduction.

Climate change and rising sea levels have potentially serious implications for states. One such concern is that the rising sea-level could move maritime baselines inward, thus displacing the territorial sea and exclusive economic zones that are drawn from baselines. Another critical threat is the submergence of small island nations.

This threat is particularly acute in the Indian Ocean region. Migration has already been caused by rising sea levels with the submergence of Bangladesh's Bhola Island.<sup>67</sup> There is also the threat of the submergence of Maldives in the future, given that 80% of its territory has an elevation of one meter or less above the sea level.<sup>68</sup>

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<sup>58</sup> Port State Measures Agreement, Art 9.

<sup>59</sup> Port State Measures Agreement, Art 6.

<sup>60</sup> See, 'Hoshinmaru' (Japan v Russian Federation) (Prompt Release Judgment of 6 August 2007) ITLOS Reports 2005-2007, 18; 'Tomimaru' (Japan v Russian Federation) (Prompt Release Judgment of 6 August 2007) ITLOS Reports 2005-2007, 74; and 'Volga' (Russian Federation v Australia) (Prompt Release Judgment of 23 December 2002) ITLOS Reports 2002, 10.

<sup>61</sup> G.V.C. Naidu, 'Indian Ocean Region: Need to Step-up Cooperation', in Vijay Sakhuja and Kapil Narula (eds), *Maritime Safety and Security in the Indian Ocean*, (National Maritime Foundation, 2016), 28.

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*

<sup>64</sup> IORA, 'Priorities and Focus Areas' available at <http://www.iora.int/en/priorities-focus-areas/overview>; Also see IORA Charter, Art 3(c).

<sup>65</sup> IORA, Jakarta Concord 2017, para 16(d).

<sup>66</sup> IORA, IORA Action Plan 2017-2021, IOR/COM/20ANNIV/17/DOC3.1.

<sup>67</sup> Caitlyn Antrim, 'International Law and Order: The Indian Ocean and South China Sea' in David Michel and Russell Sticklor (eds) *Indian Ocean Rising: Maritime Security and Policy Challenges* (Stimson 2012) 65, 78.

<sup>68</sup> *ibid.*

Again, it has been suggested that IORA may be the regional forum that is suited to address this issue. In this regard, initial steps appear to be the acknowledgement in the Jakarta Concord of the vulnerability of coastal and Small Island Developing States due to climate change and ocean acidification; the need to work together to implement the Paris Agreement on climate change; and the need to enhance cooperation with stakeholders in addressing issues related to climate change.<sup>69</sup>

### **Collaboration between Port State Control Regimes**

Port State Control is the inspection of foreign ships in ports to verify that the ship and its equipment comply with international rules and regulations, and that the ship is manned and operated in compliance with such rules.<sup>70</sup> Generally, it is implemented through regional memoranda of understanding (MOUs), and currently, nine such regional MOUs have been signed.<sup>71</sup> These MOUs are not treaty instruments, but are administrative agreements between the maritime authorities of the states concerned.<sup>72</sup> Recently, there has been recognition of the need to improve the Port State Control regime, especially to boost collaboration, harmonisation and information sharing amongst states and with the IMO.<sup>73</sup> Some of the matters discussed include the possibility of promoting compatibility between the regional MOUs; mutual recognition of other regimes activities and inspections; and the development and maintenance of a coordinated list of under-performing vessels.<sup>74</sup>

Reformation of the current Port State Control regime is in its nascent stages and much needs to be done before harmonisation and information sharing can become a reality. Such a global approach would create synergies that would enhance and further global interests in maritime safety and security.

### **Questions for Discussion**

1. How much of a threat is piracy in the Indian Ocean and what needs to be done to facilitate more effective prosecution of piracy in the region?
2. The Indian Ocean is marked by a variety of sub-regional information-sharing and naval cooperative mechanisms, which however lack grounding in a robust legal framework. How can the relationship between national and sub-regional MDA initiatives be improved in the Indian Ocean region, including with regard to natural disasters?
3. How can SOLAS, ISPS and other applicable IMO instruments and their implementation be improved to better respond to the threat of maritime terrorism?
4. What are some of the measures that can be implemented to improve the capacity of coastal states to repress and prevent drug trafficking?
5. Can cooperation on so-called non-traditional threats be used to initiate further dialogue and confidence-building on inter-state security concerns, especially regarding naval activities?

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<sup>69</sup> IORA, Jakarta Concord 2017, para 16(d).

<sup>70</sup> IMO, Port State Control, <http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx>.

<sup>71</sup> Europe and North Atlantic (Paris MOU); Asia and the Pacific (Tokyo MOU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MoU); the Indian Ocean (Indian Ocean MOU); and the Riyadh MOU. The United States Coast Guard maintains the tenth PSC regime. IMO, Port State Control.

<sup>72</sup> Doris König, 'The Enforcement of the International Law of the Sea by Coastal and Port States' (2002) 62 ZaöRV 1, 8.

<sup>73</sup> IMO, 'Port State Control Regimes move to boost collaboration, harmonization and information sharing', <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/30-PSC-workshop.aspx>.

<sup>74</sup> *ibid.*

# Issues Paper

## Round Table Session 4, Reinforcing International Law in the Indian Ocean: UNCLOS and Emerging Issues<sup>1</sup>

### 1. The Place of UNCLOS in Indian Ocean Governance

The UN Convention on the Law of the Sea (UNCLOS or Convention) is often referred to as the 'constitution of the oceans.' The Convention seeks to delineate all ocean space into different maritime zones and it sets forth the rights and duties of states in relation to their activities within each of those maritime zones. Its importance is underscored by the fact it has close to 170 state parties, including 25 Indian Ocean states (see Annex A). Many of its provisions are otherwise considered as reflecting customary international law.

The negotiation of UNCLOS was a long, complex process that resulted in many compromises. Consequently, the text of the Convention reflects a careful balance between the different demands of states. One such balance is found between the exclusive rights of the coastal state, particularly for the exploitation of the ocean's natural resources, and the inclusive, or shared, rights of other states that coexist with coastal states' rights within some maritime zones and that are also protected on the high seas. For example, the freedom of navigation exists for other states in the Exclusive Economic Zone (EEZ) of the coastal State but must be exercised with due regard for the rights of the coastal State. The freedom of navigation is also recognised as a right enjoyed by all states on the high seas, an area over which no state exercises sovereignty.

The Convention was intended 'to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea.'<sup>1</sup> Yet questions arise of whether UNCLOS is a perfectly worded and comprehensive instrument, given the compromises that had to be reached over nine years of negotiation. Moreover, in drafting and adopting UNCLOS, states had to acknowledge that there were existing international agreements — including treaties developed for the safety of shipping at the International Maritime Organisation (IMO) as well as some treaties dealing with species protection or management — that had a bearing on ocean matters and needed to sit within this new legal framework. UNCLOS accommodates these existing agreements within its terms, noting in the Preamble that 'matters not regulated by this Convention continue to be governed by the rules and principles of general international law.'

While UNCLOS remains the bedrock of ocean governance, new challenges require reflection on how a rules-based approach to international relations may be brought to bear — so as to strengthen the security, safety and sustainability of activities in and around the Indian Ocean. In these circumstances, the ongoing interpretation and application of UNCLOS has raised issues in its operation, even though the Convention continues to serve as an indispensable instrument in ocean governance to ensure maritime safety and security into the future. Resolving outstanding issues through cooperation has the potential to advance prosperity, sustainability and stability in the Indian Ocean region within a rules-based approach.

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<sup>1</sup> Prepared by the Lakshman Kadirgamar Institute of International Relations and Strategic Studies(LKI), Sri Lanka.

## 2. Emerging Issues on the High Seas

The high seas comprise the maritime areas beyond national jurisdiction. The freedoms of the high seas recognised in Article 87 of UNCLOS include the freedoms of navigation, overflight, etc. These freedoms are essential in preserving sea lanes of communication between states to ensure the free movement of people and goods around the world. They are to be exercised with due regard for the interests of other states and with respect to activities on the deep seabed (the Area).

The freedoms of the high seas have been modified by agreement between states, including within the Convention, as evident in obligations relating to the conservation and management of marine living resources under Articles 116-119 and in the right of visit under Article 110. Other international agreements have further delineated the obligations and rights of states in respect of specific activities on the high seas.<sup>2</sup> Yet at the core of these developments remains the concept that the high seas are a maritime domain of shared space over which no State exercise sovereignty;<sup>3</sup> State powers are restricted to those vessels flying its flag and states must exercise effective jurisdiction and control over those vessels flying its flag.

Under UNCLOS, Article 94 sets out the duties of the flag state over its vessels. Article 94 requires every state to 'effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.' States do not always fully or rigorously implement these requirements, so as to attract registration fees from vessel owners (sometimes referred to as open registries or flags of convenience).

Yet there is an increasing trend to place more emphasis on flag state responsibilities. Article 94 has an inclusive list of measures 'to ensure safety at sea'<sup>4</sup> to deal with issues of seaworthiness, crew, collisions and other related matters. The International Tribunal for the Law of the Sea (ITLOS) has considered that the 'administrative' matters over which flag states must exercise effective jurisdiction and control include those for the conservation and management of marine living resources.<sup>5</sup> From Article 94(6), which requires a flag State to investigate and possibly remedy matters reflecting a failure to exercise effective jurisdiction and control, ITLOS considered this responsibility would also arise in relation to coastal State reports of illegal, unregulated and unreported (IUU) fishing activities.<sup>6</sup>

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<sup>2</sup> See eg United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 August 1995, 2275 UNTS 43 (entry into force 11 December 2001).

<sup>3</sup> UNCLOS, Art 89.

<sup>4</sup> UNCLOS, Art 94(2) and (3).

<sup>5</sup> Request for an Advisory Opinion from the Sub-Regional Fisheries Commission, 2 April 2015, ITLOS Reports 2015, p. 4, para. 119.

<sup>6</sup> Ibid, para. 139.

While Article 94 is seemingly only applicable to vessels when operating on the high seas pursuant to Article 86, flag State duties under Article 94 have also been held to apply within the territorial seas.<sup>7</sup> Flag State responsibilities may also be augmented through other international instruments, including where the protection of human rights for those on board vessels has received greater scrutiny.<sup>8</sup>

*In light of these developments, it may be timely to articulate the scope of flag State responsibilities under Article 94; setting out more fully what is included and what responsibilities are shared with other States. Setting out flag State monitoring and reporting duties in relation to specific activities may enhance efforts to improve maritime domain awareness in the Indian Ocean region.*

Steps taken by flag States will only advance shared interests in the Indian Ocean to a limited extent, given that vessels flagged to many different states traverse these waters. Exclusive flag State authority over vessels has also had important implications in the fight against transnational crime at sea. While States have powers to investigate crimes committed within their territorial sea or in port, investigation and prosecution of crimes at sea may be important to interrupt trafficking routes and halt shipments of illicit substances (including drugs, weapons, or fish caught in violation of international obligations). If State authorities seek to take action against a vessel flagged to another state, they need the consent of the flag State. This consent may be pre-existing in an international agreement but must otherwise be obtained on an ad hoc basis. Policing activities may be hindered, or rendered ineffective, if timely consent is not obtained.

*Improving mechanisms to obtain consent from flag State officials will enhance efforts to combat transnational crime. Developing procedures or guidelines for contacting relevant State officials to obtain consent for boarding, and for subsequent action as needed, may facilitate law enforcement operations in fighting transnational crime. A coordinated approach for policing Vessels Without Nationality could also be identified in terms of permissible steps to board, inspect and potentially arrest individuals on board, particularly if the nationals on board these vessels are from Indian Ocean littoral states.*

### **3. Emerging Issues in Relation to the Exclusive Economic Zone (EEZ)**

In the EEZ, UNCLOS provides in Article 56 that the coastal state enjoys sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources in this maritime area, as well as exclusive jurisdiction over the protection and preservation of the marine environment, the establishment and use of artificial islands, installations and structures, and marine scientific research. These rights are to be exercised with due regard for the rights of other States. Article 58 provides that other states continue to enjoy the freedoms referred to in Article 87 and 'other internationally lawful uses of the sea related to these freedoms.' In the exercise of these rights, other states must also demonstrate due regard for the rights of the coastal state and comply with the provisions of the Convention and other rules of international law that are compatible with the EEZ regime in UNCLOS.<sup>9</sup>

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<sup>7</sup> As evident in the application of the COLREGS to an incident occurring in the territorial sea as discussed in the South China Sea Arbitration.

<sup>8</sup> Such as the 2006 Maritime Labour Convention, 23 February 2006, 2952 UNTS \_\_; 45 ILM 792 (2006) (entry into force 20 August 2013).

<sup>9</sup> UNCLOS, Art 58(3).

To ensure the sustainable development and use of resources within the Indian Ocean, coastal States will need to incorporate ecosystem-based management approaches to the conservation and management of fish resources. While littoral States are seeking to regulate fisheries within their jurisdiction, enforcing those laws can be challenging, especially where maritime zones are large and pose surveillance challenges for proper monitoring and control. This issue has already emerged in the Pacific Ocean and is coming under increasing scrutiny within the Indian Ocean.

*Coastal State law enforcement, especially with regards to fishing, remains a critical concern. Coastal States may seek to coordinate efforts at monitoring, controlling and surveilling, especially for the conservation and management of straddling stock and highly migratory species. There is scope to build on inspection regimes anticipated under the 1995 Fish Stocks Agreement and under regional fisheries agreements (the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region 1992 may be a model to consider). In addition, management efforts will be enhanced through sharing scientific data and information about the status of fish stocks, the marine environment, or in relation to suspected unlawful fishing activity. Procedures or guidelines may be needed to facilitate communication between relevant state authorities and develop coordinated approaches to this issue.*

Maintaining the freedom of navigation within the EEZ as enshrined in UNCLOS remains of critical economic importance to support the movement of international cargo. Military vessels also enjoy the freedom of navigation within the EEZ. Conflicting views have emerged as to what military activities are permissible by military vessels flagged to a third State within the EEZ of a coastal State. As noted, Article 58 refers to the freedom of navigation and 'other internationally lawful uses of the sea related to these freedoms.' Some States interpret this provision to allow all military activities, including surveillance and training exercises. Others take the position that not all military activities by another state are permissible within its EEZ. No authority is granted to the coastal State to regulate military activities under Article 56 of UNCLOS.

What is important to recall in this debate is that States are prohibited from the threat or use of force against the territorial integrity or political independence of another State. This obligation, enshrined in article 2(4) of the UN Charter, is also set out in UNCLOS in Article 301. Moreover, Article 88 preserves the high seas for peaceful purposes and this provision applies in the EEZ so far as it is not incompatible with the EEZ regime. Whether particular military activities arise to a threat or use of force in violation of Article 301 must then be assessed on a case-by-case basis depending on the particular activities and the relationship between the States concerned.

*Given the ongoing debate as to whether foreign flagged vessels may undertake military activities within the EEZ, it is important to define and emphasise the limits on these activities in relation to the prohibition on the threat or use of force that is applied and recognised under UNCLOS.*

#### **4. Emerging Issues in the Territorial Sea**

The territorial sea, which includes its bed, subsoil and the airspace above it, is subject to the sovereignty of the coastal State, with the exception of the right of innocent passage, other provisions of the Convention as well as 'other rules of international law.'<sup>10</sup> In the Chagos Archipelago arbitration, the Tribunal considered that 'other rules of international law' was intended to refer to general international law rather than specific bilateral commitments between states.<sup>11</sup> The Chagos Archipelago Tribunal determined that general international law required the United Kingdom to act in good faith in its relations with Mauritius with regard to the exercise of sovereignty over the territorial sea.

The right of innocent passage involves continuous and expeditious passage where the vessel does not enter the internal waters or ports of the coastal State.<sup>12</sup> To be innocent, the passage must not prejudice the peace, good order or security of the coastal State,<sup>13</sup> and UNCLOS identifies a list of inclusive activities that may be considered prejudicial, including the loading or offloading of any commodity, fishing activities, or any research or survey activities.<sup>14</sup> The coastal State, therefore, has a large measure of discretion in determining what is in violation of the peace, good order or security of its territory.

In the event the coastal State determines that a vessel is in violation of the right of innocent passage, the responses of the coastal State are limited under Article 25 to taking steps to prevent any passage that is not innocent.<sup>15</sup> In addition, the coastal State may exercise criminal jurisdiction in accordance with Article 27 and limited civil jurisdiction under Article 28 over merchant vessels on commercial service. The coastal State must not otherwise hamper the innocent passage of foreign vessels through its territorial sea. Where the coastal State is not permitted to take action, the flag State instead has authority to respond to issues in relation to its vessels. Coastal State action against warships is limited to requiring the warship to leave the territorial sea immediately if the warship does not comply with the

coastal State's laws and regulations concerning passage through its territorial sea.<sup>16</sup> Therefore, while the coastal State has sovereignty over its territorial sea, it is constrained in what actions it might take that limit the rights of passage of foreign-flagged vessels through its waters.

Moreover, the coastal State is only entitled to limit the right of innocent passage through a temporary suspension in specified areas of the territorial sea if essential for the protection of the coastal State's security. This suspension must not discriminate in form or in fact among foreign ships.<sup>17</sup> The coastal state is allowed to introduce some regulations over the passage of vessels, including traffic separation schemes,<sup>18</sup> and must usually ensure that regulations relating to navigation align with international agreements or standards.<sup>19</sup> Any interference with passage must, therefore, be consistent with the requirements of UNCLOS, and the international agreements alluded to in its provisions.

*The extent of protection afforded to navigational rights in the territorial sea is carefully defined within UNCLOS and must be respected to ensure the balance between the rights of the coastal States and the rights of third States are maintained. Coastal States should ensure that their bases for exercising jurisdiction against foreign-flagged vessels are clearly defined in domestic legislation and that the limitations on the exercise of jurisdiction as set out in UNCLOS continue to be respected to ensure unimpeded passage to facilitate international trade while still protecting the maritime safety and security of the coastal State.*

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<sup>10</sup> UNCLOS, Art. 2.

<sup>11</sup> Chagos Marine Protected Area Arbitration, Mauritius v United Kingdom, Final Award, ICGJ 486 (PCA 2015), 18th March 2015, para. 516. Judges Kateka and Wolfrum dissented on this limitation to Article 2(3). See *ibid*, Dissenting and Concurring Opinion, para. 94.

<sup>12</sup> UNCLOS, Art 18.

<sup>13</sup> UNCLOS, Art 19(1).

<sup>14</sup> UNCLOS, Art 19(2).

<sup>15</sup> UNCLOS, Art 25(1).

<sup>16</sup> UNCLOS, Art. 30

<sup>17</sup> UNCLOS, Art. 25(3).

<sup>18</sup> See UNCLOS, Art 22.

<sup>19</sup> UNCLOS, Art 21.



## 5. Emerging Issues in Relation to Ports

Article 11 of UNCLOS does not specifically define ports, but to the extent they are to be utilised for delimiting the territorial sea, ports are considered as 'permanent harbour works' and are regarded as forming part of the coast. As part of the coast, States have sovereignty over ports located within their territory,<sup>20</sup> and may control what vessels enter their ports and under what conditions.

Ports are largely unregulated under UNCLOS, with the exception of indicating the relevance of ports for the purposes of delimiting the territorial sea,<sup>21</sup> and providing for the exercise of port State jurisdiction for the purposes of enforcing requirements relating to the protection and preservation of the marine environment.<sup>22</sup>

Access to ports is predominantly a matter of customary international law or is otherwise regulated by a separate agreement.<sup>23</sup> In prescribing conditions for entry, States are entitled to regulate their ports in consistency with their national interests. For example, the International Ship and Port Facility Security (ISPS) Code allows States to put in place notice requirements regarding the entry of a vessel into a port as part of a suite of measures to reduce the likelihood of a terrorist attack against a port.<sup>24</sup> The Port State Measures Agreement allows states to set requirements and restrictions on fishing vessels seeking entry into port so as to prevent, deter and eliminate IUU fishing.<sup>25</sup>

If access of a vessel to a port is restricted because of environmental risks associated with that vessel, different IMO treaties may be at issue but Article 211(3) of UNCLOS may also be invoked. This provision anticipates that states will 'establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their offshore terminals.' In doing so, a State is required to give due publicity to any such requirements and communicate them to the IMO, as the relevant competent intergovernmental organisation.<sup>26</sup> Article 218 of UNCLOS permits the exercise of port State jurisdiction over polluting vessels.

In relation to the rights and obligations that a State may exercise over any vessels that enter its ports, this legal authority is also governed by customary international law and treaties other than UNCLOS. To this end, McDougal and Burke have noted:

It is universally acknowledged that once a ship voluntarily enters port it becomes fully subject to the laws and regulations prescribed by the officials of that territory for events relating to such use and that all types of vessels, military and other, are in common expectation obliged to comply with the coastal regulations about proper procedures to be employed and permissible activities within internal waters.<sup>27</sup>

Exceptions to this authority apply in relation to vessels that have entered the port in distress,<sup>28</sup> vessels subject to sovereign immunity,<sup>29</sup> and in relation to the inapplicability of local labour laws.<sup>30</sup>

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<sup>20</sup> Robin R Churchill & A Vaughn Lowe, *The Law of the Sea* (3rd ed, 1999) 61.

<sup>21</sup> UNCLOS, Art 11.

<sup>22</sup> UNCLOS, Art 218 and 211(3). Article 98(1)(c) refers to ports in the context of the duty to render assistance and provision of information as to the journey of a ship involved in a collision.

<sup>23</sup> Note in this regard that Article V of the GATT (1994, Freedom of Transit) provides for freedom of transit of goods, vessels and other means of transport across the territory of WTO members via the routes most convenient for international transit.

<sup>24</sup> See Natalie Klein, *Maritime Security and the Law of the Sea* (OUP, 2011), 158-162 (discussing the ISPS Code).

<sup>25</sup> Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, signed 22 November 2009, entered into force 5 June 2016, UNTS Registration No. I-54133. See discussion in Klein, *Maritime Security*, above n 24, 72.

<sup>26</sup> UNCLOS, Art 211(3).

<sup>27</sup> Myres S McDougal & William T Burke, *The Public Order of the Oceans* (1962) 156.

<sup>28</sup> Stuart Kaye, 'The Proliferation Security Initiative in the Maritime Domain; (2005) 35 *Israel Yearbook of Human Rights* 205, 210-211.

<sup>29</sup> See UNCLOS, Art 32 and Art 95.

<sup>30</sup> Kaye, above n 28, 210-211.

It is the right of the coastal State, as a corollary of the principle of State sovereignty,<sup>31</sup> to close a port to foreign shipping. Ports may be closed to safeguard good order on shore, to signal political displeasure, or to defend 'vital interests.'<sup>32</sup> To the extent a foreign company is operating a port, the coastal State retains its sovereignty over the port and it would be incumbent on a coastal State to maintain or establish its regulatory powers over a port to ensure that it is able to adhere to its international obligations and preserve its rights to control access to its ports consistent with those obligations or otherwise in exercise of its sovereignty.

*The sovereignty of a coastal State over its ports as a matter of customary international law may be affirmed. The sovereignty of the coastal State may be limited by international agreements promoting transit for the purposes of international trade, but the authority of the coastal State has been recognised for matters relating to maritime safety and security, specific law enforcement operations and marine environmental protection.*

### Questions for Discussion

1. To what extent is freedom of navigation under threat in the Indian Ocean?
2. What are the emerging legal issues in the maritime order of the Indian Ocean?
3. How might states improve the efficacy of UNCLOS in addressing such a threat or issues?
4. In what other ways can states address such a threat or issues; is there a role for soft law?

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<sup>31</sup> Justin S.C. Mellor, 'Missing the Boat: The Legal and Practical Problems of the Prevention of Maritime Terrorism' (2002) 18 American University International Law Review 341, 393. See also A.V. Lowe, 'The Right of Entry into Maritime Ports in International Law' (1977) 14 San Diego Law Review 597, 607.

<sup>32</sup> See Klein, Maritime Security, above n 24, 67.v

## Annex A - Indian Ocean State Parties to UNCLOS\*

Country	Date of Signature	Date of Ratification
Australia	10-Dec-82	5-Oct-1994
Bangladesh	10-Dec-82	27-Jul-01
Brunei	5-Dec-84	5-Nov-96
Cambodia	1-Jul-83	-
Comoros	6-Dec-84	21-Jun-94
India	10-Dec-82	29-Jun-95
Indonesia	10-Dec-82	3-Feb-86
Iran	10-Dec-82	-
Kenya	10-Dec-82	2-Mar-89
Madagascar	25-Feb-83	22-Aug-01
Malaysia	10-Dec-82	14-Oct-96
The Maldives	10-Dec-82	7-Sep-00
Mauritius	10-Dec-82	4-Nov-94
Mozambique	10-Dec-82	13-Mar-97
Myanmar	10-Dec-82	21-May-96
Oman	1-Jul-83	17-Aug-89
Pakistan	10-Dec-82	26-Feb-97
Seychelles	10-Dec-82	16-Sep-91
Singapore	10-Dec-82	17-Nov-94
Somalia	10-Dec-82	24-Jul-89
South Africa	5-Dec-84	23-Dec-97
Sri Lanka	10-Dec-82	19-Jul-94
Tanzania	10-Dec-82	30-Sep-85
Thailand	10-Dec-82	15-May-11
Timor-Leste	-	8-Jan-13 (Accession)
UAE	10-Dec-82	-
Vietnam	10-Dec-82	25-Jul-94
Yemen	10-Dec-82	21-Jul-87
*Signature and Ratification of UNCLOS by major users of Indian Ocean		
China	10-Dec-82	7-Jun-96
Japan	7-Feb-83	20-Jun-96
United States	-	-

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The Task Force appointed by Hon. Ranil Wickremesinghe, Prime Minister of Sri Lanka gave overall direction to the conference. It was chaired by Hon. Dr. Harsha de Silva, State Minister of National Policies and Economic Affairs. Its members included H. E. Dr. Amrith Rohan Perera, Permanent Representative of Sri Lanka to the United Nations; H. E. Chitranganee Wagiswara, High Commissioner of Sri Lanka to India; Admiral Travis Sinniah, former Commander of the Sri Lankan Navy and Consultant (Indian Ocean Affairs); Dr. Hiran Jayewardene, Secretary General, Indian Ocean Marine Affairs Cooperation (IOMAC); Senior Professor Nayani Melegoda, Dean, Faculty of Graduate Studies, University of Colombo; Mr. Vikum de Abrew, Deputy Solicitor General, Attorney General’s Department; Ms. Sashikala Premawardhane, Director General, Ocean Affairs and Climate Change, Ministry of Foreign Affairs; Ms. Manorie Mallikaratchy, Director - Human Resources Development, Ministry of Foreign Affairs; Ms. W.I. Nanayakkara, Dean, Faculty of Law, University of Colombo; Dr. Ganeshan Wignaraja, Executive Director of the Lakshman Kadirgamar Institute of International Relations and Strategic Studies; Dr. Maneesha Wanasinghe-Pasqual, Head, Department of International Relations, University of Colombo; Professor J.T.S. Gunasena, Head, Department of International Studies, University of Kelaniya; Professor Amal Jayawardena, Senior Professor, General Sir John Kotelawala Defence University; Dr. Dan Malika Gunasekera, Dean, CINEC Maritime Campus; and Mr. Rohan Maskorala, CEO, Shippers’ Academy Colombo.

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