



RESEARCH PAPER

Indian Ocean Etymology and Legal Rights of Waterways

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PAPER INFO	ABSTRACT
<p>Received: April 19, 2020</p> <p>Accepted: June 15, 2020</p> <p>Online: June 30, 2020</p> <p>Keywords: Indus River, Maritime, Skipper Spice Islands, Strait of Magellan</p> <p>*Corresponding Author: ghulammurtiza@gcuf.edu.pk</p>	<p>A misconception giving rise to apprehensions exist in various circles in Pakistan that Indian Ocean has either been named from India or India may assert its authority on the said mass of water by virtue of its name. Any assertion of power on the waterways in our neighborhood may result in dire consequences politically, economically and militarily. An attempt has been made in this original work to highlight the historical background of naming Oceans and powers of coastal states under International law enshrined in United Nations Convention on the Law of the Sea 1982 (hereinafter UNCLOS 1982) concluding the effect and significance of the name of an ocean for asserting any authority. It is mainly based on personal experience of the authors and research in the field of Maritime, Maritime Law, International Law and Law of the Sea.</p>

Introduction

Ocean, in general is referred to 'the entire body of salt water covering surface of the earth' which is further divided into three oceans namely, Pacific, Atlantic and Indian Oceans.

Sea water covers nearly 73% of surface of earth. Ocean as an extensive mass of water is co-existence with the planet of earth with many usages and benefits for mankind and other creatures in existence on earth. Marine life is a natural source of sea food and associated benefits and is directly dependent upon the existence of the water in form of ocean. Ocean controls climates, brings weather changes and rains which are indispensable for existence of life on the planet.

Oceans are not only vital for life on earth but play significantly in international politics, trade and commerce and diplomatic relationships and peace in the world. Major portion of transportation of goods between different parts of the world is carried by waterways through sea passages. These waterways pass through international, coastal and inland waters. Safe passage without hindrance plays crucial role in trade and commerce of the world. International community recognizes pre-historically the need of

safe and secure movement of merchant ships communicating between different parts of the world. Such movements at sea for commerce and trade, amusements and water sports and non- military objects are regarded as 'innocent passage' and regulated accordingly under United Nations Laws of the Sea embodied in the International Convention called United Nations Convention on Law of the Sea.

Naming the Oceans

Naming of all the oceans is undoubtedly made innocently either accidentally or incidentally but without any political motivation or assertion of rights. The largest Ocean on the planet has been named "Pacific Ocean". Its naming is accidental based on a misunderstanding of the skipper who explored it for the first time in the known history.

In 1519 CE, Ferdinand Magellan, a Portuguese navigator took an expedition of sea journey by sailing unlike the usual eastern route, across the Atlantic Ocean taking western route in search of India and the Spice Islands via South America. Skipper Ferdinand Magellan was the first European to navigate on this expedition under employment of the King of Spain through the strait on October 21 to November 28, 1520 in a small fleet of sailing ships. The expedition is referred to as the first attempted circumnavigation of the world.

On his passage after enduring through terrifying seas and navigating through the Straits of Magellan (named after the skipper), his fleet entered into a sea with unfamiliar environments of calms and peaceful waters in Nov. 1520 CE. Unusual calm and peace of the sea made him calling the mass of water *pacific* (peaceful). Skipper Magellan and his crew sailing in the Pacific Ocean after a long and continuous journey, erred in assuming that they were in proximity of Spice Islands. Whereas in fact they were unaware that their actual destination remained thousands of miles away and they were sailing into the largest ocean on the planet.

The second largest body of water on earth called 'Atlantic Ocean was named by Greeks based on their mythology and is perhaps the oldest name given to an ocean. It was first used during the time of *Herodotus* in Ancient Greece around 450 BC, and deriving its meaning and belief from Greek mythology. In the Greek language, "*Atlantic*" means "*the island of Atlas*" or "*sea of Atlas*." Plato's writings are said to be the oldest survived written work which mentioned the word *Atlantic* (Plato, 2018).

Atlas in Greek belief and mythology is a god of navigation and astronomy, both features necessary for sea ventures. The word *Atlantis* latter corrupted to Atlantic and became common in use. After ten years war between Greek gods referred to as *Titanomachy*, Atlas was believed to hold up the sky for eternity, a responsibility given to Atlas by *Zeus* to bear the planet safely. There are several geographical features named to honor Atlas including Atlas Mountain ranges in North Africa and the sea off the Strait of Gibraltar and the North African coast. The name later extended to the entire Ocean.

In middle Ages, the Arabs called it by several names including the most prominent and literary name being *Bahr-al-Zulumat*, the Sea of Darkness. Europeans during this period also referred it as "*Mare Tenebrosum*," means "Sea of Darkness."

The third ocean on the planet named Indian Ocean' and its naming appears to be in a similar manner. The name, Indian Ocean has not been given by any Indian regime or politically motivated but by the earlier adventurers reaching India exploring sea routes to India (Harper, 2000).

It is called by the existing name, i. e. "Indian Ocean" at least as earliest as 1515 CE. Some Latin writings attested it in the form of *Oceanus Orient alis Indicus* or "*Indian Eastern Ocean*". The word "India" is rooted not in "Hindu" or based upon religious identity. The name "India" originated and attested in writings as a consequence when the Ancient Greeks and Romans reached to the Indus River and valley and found a Civilization around the Indus River and the valley. The River Indus usually called "*Sindhu Mahasagara*" or great sea of the *Sindhu*" or "*Sindh*" in the Ancient Indian cultures and called same by the inhabitants. Indus River in *Tibetan* and *Sanskrit* called *Sindhu*, *Sindhi* or *Mehran*, one of the greatest rivers of the world originating from Himalaya in the South Asian region. The name of the river conventionally derived from the Sanskrit and Tibetan word *Sindhu* which meaning river and sea. The fact is evident from the archives and hymns of the Aryan of prehistoric India, the ***Rigveda*** (Regveda 1500 BCE), said to be collected verbally around 1500 BCE, mentions the source of country's name as River (Indus). The Indian Ocean also called the Eastern Ocean by Western explorers who reached India in search of safer trade route to India and Spice Islands. The terminology is in use since mid-18th century.

On other hand, Chinese explorers who reached to the mass of water across Spice Islands and adjacent to Pacific Ocean during the 15th century expeditions called it the Western Oceans. The geography of Ancient Greek witnesses the region called Indian Ocean known to them and they called it the *Erythraean Sea*. The two names i.e. Western and Eastern (Indian) Oceans given to the same body of water are well understandable. Greek expeditions and European explorers approached it from west finding it east of them whereas, Chinese navigators found it west of them on their approach, called it accordingly. But the term "Indian" is common in both.

Importance of Indian Ocean-History

The Indian Ocean witnesses as a zone of high human interaction for millennia, extending to around 1,500 years of high-seas trade before the arrival of Europeans in the region in 1498. A wide variety of interactions between people of different regions and civilizations are evident in the region including migrations, travels, trades and transfer of ideas and technologies, warfare and peacemaking, spread of religions and art. Evidences suggest that historically Egyptians explored the Indian Ocean as early as about 2300 BCE, when they sent their naval expeditions to the "land of Punt," situated in the vicinity of the Somali land on the eastern entrance of the Red Sea on the African Coast. These expeditions are said to begin earlier than 2900 BCE and were numerous continuing for several hundred years.

Seven Voyages of Zheng He

Admiral Zheng He, (1371-1433 CE) was a Chinese Muslim sea explorer employed by the Ming dynasty on diplomatic missions to boost trade, commerce and maritime

affairs with the neighboring world. His seven voyages to Indian Ocean are very famous. *Zheng He's* name was *Ma He* and he belonged to a Chinese Muslim family. His name "*Ma*", as his family name derived from the Chinese version of Muhammad (SAWW). His father performed Hajj which inspired *Ma He* to travel and explore the world out of China. *Zheng* was the surname awarded to *Ma He* by the emperor.

The Ming Dynasty in an effort to exhibit its sea (naval) power to bring the coastal states in maritime affairs of South and Southeast Asia in harmony and collaboration with China for trade and commerce and exploring further trade routes at sea made these expeditions. Chinese consequently extended their power out to the seas for more than 300 years. They developed extensive maritime commerce in excess of finding the markets for spices, aromatics and industrial raw materials. Exchanging trade and travelers to and from both sides especially Indians and Muslim visiting China widened the horizon of China geographically. During this period, developments in technologies in shipbuilding and seafaring techniques started touching new heights.

During his seven voyages to Indian Ocean with a fleet of sailing ships (1405-1433), he visited a number of ports and carried out diplomatic missions in addition to introducing Chinese markets and trading. His fleet in the South China Sea visited Champa (Vietnam), Siam (Thailand), Malacca and Java in Indonesia. Entering the Indian Ocean, they called at Cochin and Calicut in India and Sri Lanka. Moving forward into the Indian Ocean his fleet visited Hormuz in Iran-Persian Gulf. On Arabian coast, the fleet visited Dhofar in Oman and Aden in Yemen.

Visit to Mecca

A Chinese mission during the fourth voyage paid homage to the Holy City of Mecca and then continued to Northwesterly to Egypt. During *Zheng He's* voyages, on return voyage, the fleet visited Somalia and Kenya on the eastern coast of Africa reaching south to the Mozambique Channel. During the expedition in the fourth voyage, *Zheng* brought envoys of more than 30 states to pay honor to Chinese emperor. In the sixth voyage the envoys visiting China were taken back to their countries. *Zheng He* died in Calicut during spring of 1433.

Trade routes in Indian Ocean to and from Persian Gulf, Red Sea, East Africa and India from the western side have been common for long time. Similarly the eastern routes from India up to China as discussed above are known to history. Exploring a safe and economical route from Western Europe to the Spice Islands and India gained momentum during medieval period. However, the successful expedition of the Portuguese explorer Vasco da Gama in May, 1498 is considered the most remarkable in reaching India by sea sailing around Africa, one of the most significant expeditions in the history of sea exploration. The Portuguese skipper was piloted from Mozambique to India by an Arab pilot having good local knowledge and experience of sailing from Africa to India. The port of Calicut had been the center of trade during the period.

Unlike Chinese on diplomatic and introducing trade missions, Europeans, one after the other rushed to the Indian subcontinent as the land of wealth and opportunities. Vasco da Gama's charted route at sea to India allowed Portuguese monarch to establish not only a rich and profitable trading with India and Southeast Asia but to enlarge its

empire include provinces from India centering around the famous city and the state of Goa, where largest city named Vasco da Gama remained under Portuguese control till 1961.

On the conquest of Constantinople in 1453 CE, when Ottomans Empire took complete control of the city, the Silk route was feared to be blocked. In fact, it did not stop but was restricted. Matt Riggsby, MA Archaeology, Boston University, denies the complete blockade of the route. However, European merchants and interests shifted their emphasis to the uninterrupted sea route to Indian Ocean.

After exploration of the sea route by Vasco da Gama, Portuguese were followed by French, Spanish and Britain in the rat race to explore further and reach India by sea. It was a high time in development of ships, maritime expeditions, naval warfare and colonialism (*Encyclopedia Britannica, 2019*).

Rights on Oceans and Safe Passages

Notwithstanding the name of any ocean, International law in the form of conventions and treaties does not recognize or provide for exercise of jurisdiction or power to any person (State or international actor) to control the oceans or any part thereof except as described herein the rules enshrined in the UNCLOS 1982. The territorial states however, have been given rights to exercise their control, authority and jurisdiction in respective territorial waters including asserting certain rights to the extent of their continental shelf (including extended continental shelf if applicable) under the provisions of UNCLOS 1982. The body of Entire Ocean as mentioned above is divided into three oceans geographically without rights to asserting any legal writ by any state except to the extent described in the law. The boundaries of differently named oceans have been approximately defined without being marked practically. These divisions are illustrious by ordinates called Latitudes and Longitudes. The divisions and limitations are not for exercise of any powers or jurisdiction or claim but geographical for the sake of references and convenience. However, in the recent years, International Hydrographic Organization (IHO) and United Nations Ocean Atlas have applied delimitations between the Oceans and marked the limits by ordinates (latitudes and longitudes) or parallels of latitudes and meridians.

Law of the Sea enshrined in the UNCLOS 1982 provides for Powers and jurisdictions which coastal states may exercise through enactments in their municipal laws and rules thereof.

The Territorial Sea

According to Article 3 of UNCLOS 1982, every coastal state has been given the right under the convention (UNCLOS 1982) to establish the extent of breadth of its territorial sea to a distance not exceeding 12 nautical miles measured from the predetermined line off its coast and named as baseline(UNCLOS, Article 5). The sovereignty of the relevant coastal state may extend in all respects subject to the outer limits of such territorial waters.

The Contiguous Zone

It extends into the sea beyond the territorial zone by further 12 nautical miles i.e. the area of the sea next to and past the limits of territorial waters and prolonging seaward to 24 nautical miles measured from the baseline defined in the law. The Government of the relevant coastal state is empowered to take necessary measures against any contravention or any attempt to contravene any law in force in the coastal state relating to security; immigration and/or sanitation; it also includes dealings in customs and other financial matters (UNCLOS 1982, Article 33).

The exclusive Economic Zone

The exclusive economic zone (EEZ) is the area of the sea charted beyond and next to the territorial sea subjected to the specific legal regime with rights and jurisdictions of the coastal state defined under the Convention (UNCLOS 1982, Article 55).

A coastal state in the sea area named herein as Exclusive Economic Zone (EEZ) is entitled with sovereign rights for exploring, exploiting, preserving and managing the natural resources, both living and non-living of the water, seabed and subsoil for exploration and exploitation and other activities including scientific research, protection of environments etc (UNCLOS 1982, Article 56).

The Exclusive Economic Zone (EEZ) is limited to and shall not extend outside 200 nautical miles from the predetermined baselines as defined in the law from which the breadth of the territorial sea is measured (UNCLOS 1982, Article 57).

The Continental Shelf

The continental shelf of a coastal State refers to the seabed including subsoil of the submarine areas extending past its territorial sea throughout its natural prolongation of territorial land to the outer edge of the continental margin not exceeding beyond a distance of 200 nautical miles from the baselines.

The Extended Continental Shelf

If the outer edge of the continental margin extends beyond 200 nautical miles into the sea measured from the baseline, the coastal State, on its desire, may apply for extension of its continental shelf beyond 200 nautical miles as mentioned above. The application may be made to the United Nations' Commission on the Limits of the Continental Shelf (CLCS). CLCS after satisfying with the required geological conditions fulfilling all the requirements may grant the desired extension not exceeding beyond 350 nautical miles into the sea as measured from the baseline (UNCLOS 1982, Article 76).

Within the extended zone, the coastal State has among other things the exclusive rights of exploring and exploiting non-living resources of the seabed and subsoil as well as sedentary species. Rights on living resources including fishing rights however, remain limited to EEZ (UNCLOS 1982, Article 77).

Names of Oceans-Significance

As discussed above, name of an Ocean is an innocent act without any motive and does not create rights or authority whatsoever for a coastal state. Geography or name of an Ocean does not provide any justification political, moral or legal to asserting any rights or exercising powers thereon except certain sovereign rights under UNCLOS-1982 to the extent of the limits described in UNCLOS 1982. Even within the confines of continental shelf including territorial waters, the respective coastal states are duty bound to allow 'Innocent Passage' for navigation (UNCLOS 1982, Article 3). Secondly, there is no evidence whatsoever, to support the anxiety that a coastal state may assert its claim and powers or exercise its jurisdiction beyond the UNCLOS 1982 limits by virtue of its name. There is no evidence that a coastal state could benefit in whatsoever way by virtue of the name of an ocean or a part thereof, say Indian Ocean, South China Sea, Arabian Sea, Gulf of Oman etc.

Various sea blockades and concentrations of naval fleets in different parts of the world during last few decades have all been imposed for display of their powers with justification by respective resolutions of the United Nations Security Council. None of such operation has ever been carried out on grounds of name of the body of water. Despite some blockades lacking morality, were still given legal force by United Nations Security Council (UNSC). There is history of sea blockades worldwide from past to present with warlike conditions existing either from disputes or aggressions but none was based on or made on basis of the name of the sea or ocean.

Conclusions and Recommendations

Based on the above discussions, we conclude as under:

1. Names of Oceans do not create any rights, duties or powers for coastal states and are only for references. There exists no apprehension of any respect for assertion of power or authority on the grounds the name of an ocean or its part thereof. Exercise of powers and jurisdiction by a coastal state is strictly governed by International conventions, treaties, customs, and usages including specifically the law enshrined in the UNCLOS 1982. This law defines the rights and obligations of the coastal states and provides remedies to the members wronged by other states in any respect. In order to achieve the desired results and remedies available, knowledge and awareness of relevant international laws including Law of the sea is indispensable. It requires thorough study of provisions of the Law of the Sea enabling to assert the rights under such law. A legal course is suggestive rather than condemnation and living under apprehension and supremacy of other nations. Exercise of undue authority on oceans and waterways by maritime and naval states and international actors cannot be ruled out. However, awareness of the international law especially the Law of the Sea and International conventions plays a significant role in preparing safe and secure strategy against any aggression. It also includes strategy for diplomatic handling of the wrongs done to a nation in way of compensations for losses and damages. Such wrongs include any aggression, use of force, naval or economic blockades and similar acts like quarantines.

2. Pakistan's maritime sector necessarily requires a thorough and continuing study of the seas which directly and indirectly affect the safe waterways leading to the coast and ports thereof whether in existence or which may be designed and established in future.
3. Naval and maritime developments in the adjoin seas also need to be carefully and continually studied for devising strategies for security and economy. Overwhelming population worldwide especially in South Asian region desperately require utilization of seas and oceans and control thereof.

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