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**HOW TO ENHANCE INDIA'S GLOBAL STATURE AS A MARITIME
NATION**

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HOW TO ENHANCE INDIA'S GLOBAL STATURE AS A MARITIME NATION

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Abstract

The article targets towards extrapolating and highlighting the key issues discussed in the IMRC 2022 with esteemed figureheads of the commercial, insurance and maritime arbitration industry. The focus of the research is to provide solutions for increasing the shipping tonnage of maritime industry in India, provide feasible routes for creation and development of Indian Maritime Arbitration Association and considers ways to increase insurance capacity in India and the need for enhanced risk management in Indian ports and shipping.

Keywords: Maritime, Insurance, Risk management, Controlled Tonnage, Arbitration, IMAA.

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1. INTRODUCTION

India is blessed with a rich maritime heritage, to shape Indian maritime sector into a robust engine of nations development we have given top priority to port-led development, India's immense potential of coastline strength needs to be harnessed to the fullest (Maritime India Vision 2030).

There have been discussions and deliberations about taking concrete measures to add pace to capacity building and enhancing efficiency of the sector with the favourable policies and reforms. India certainly needs to work towards ease of doing business, creating modern infrastructure of global standards to ensure modern multi-model connectivity and to strengthen its position in the global maritime scenario.

There are over 150 initiatives across various maritime sub-sectors like boats, shipping, waterways etc. (Maritime India vision 2030). The paper explores possibility of 'Building Global Credibility for Indian Maritime Sector'. For achieving global credibility India needs to focus on four areas:

- Developing Indian Controlled Tonnage
- Increase India's insurance capacity for the maritime sector
- Set-up Indian Maritime Arbitration body for International maritime disputes
- Establishing India as a hub for bunkering activities

The emphasis now must be shifted to three key areas: capacity building, expertise, and quality improvement. In simple terms, capacity could never be capable of sustaining the industry until the requisite expertise of global ranking is fostered and employed, while guaranteeing better and improved quality product and services are delivered to the global maritime industry. Presently constituted, the aim is to expand controlled tonnage so that trade and logistics can be profitable and build a name for themselves in the global marine industry. Capacity, on the other hand, is not just limited to the number of shipments. There is also an urgent need for the development of state-of-the-art ports facilities capable of handling enormous cargo volume while also providing faster turnaround time. In short to enhance the efficiency of the ports.

2. DEVELOPING INDIAN CONTROLLED TONNAGE

India with its 7517 Km coastline is an important maritime nation. It is amongst the leading maritime nations of the world Rank 19 in 2021 with 26.40 million DWT. Since the independence India has not succeeded in growing tonnage under the Indian flag, in fact it has declined in real terms from 1.16 of the global fleet in 1970 to less than 0.8 in 2021. To influence international maritime decision making and to have a voice in IMO it is crucial to become large flag state and ship owing nation.

India has potential to develop International standard Maritime Clusters with immense strategic benefits including but not limited to reputation enhancement, knowledge hotspots and employment at all levels. India needs to work on to create a level playing field and for adding capacity by:

2.1 Indian Flag Primary Register Tonnage:

To compete globally and to create a level playing field for ship owners following steps are important. Shipowners Capital expenditures (Capex) towards fixed assets, i.e., the purchase and maintenance etc. of vessels, as shipping is a capital-intensive business and Capex is very high which leads to stress on free cash flows for running the business. Uncertainties and risky nature of shipping does not make things easy for shipowners hence they need support and encouragement and internationally comparable regulatory support, and tax regime, simple and convenient approval procedures, reasonable cost of borrowing finance, leasing, and insurance, availability of subsidiary schemes and soft loans. Tax relaxation on earning of officers and crew members sailing on Indian vessels.

In April 2015 GOI operationalized International Financial Services Centre (IFSC) at GIFT Multi Services SEZ. GIFT IFSC has constituted the Committee for Development of Avenues for Ship Acquisition, Financing and Leasing, and it has already started working on alternate financing and leasing structures.

Indian Merchant Shipping Act of 1958, for the first time, deals with registration of ships. Part V of Indian Merchant Shipping Act deals with exclusively with the registration of Indian ships. Ships are required to be registered only at ports designated as ports of registry. At present Mumbai,

Calcutta, Madras, Cochin and Mormugao have been notified as ports of registry and principal officers of Mumbai, Calcutta & Madras and Surveyor in charge of Cochin and Mormugao have been notified as Registrar of Indian ships. Certain formalities are required to be complied with before a ship is registered as an Indian ship, and these are laid down in the Merchant Shipping (Registration of ships) rules 1960 as amended from time to time.

2.2 Easy and Friendly Bareboat and/or Bareboat-cum-demise charters

Bareboat charter is the contract for the lease or sub lease of a vessel for a specified time for which the charterer has complete possession and control of the vessel, except for selling the vessel or keeping it for mortgage, charterer has right to appoint the required human resource to run the vessel for the duration of the charter. Charterer do not but excluding the right to sell or mortgage the vessel. India needs to formulate friendly and charter schemes of international standards, such as:

- Minimum 3 years BBC duration
- Maximum 22 years age at the time of entry
- Classed with Indian Register of Shipping or Dual Class, at despondent Owner's option
- Indian Crew
- Indian Flag or Dual Flag for ease of financing/mortgage
- Similar benefits as that of Indian Flag Primary Register Tonnage for employment of tonnage
- Simplified and international standards for formation of joint venture (JV) company, registration, and taxation.

2.3 Indian International Shipping Register (IISR)

It is a good time for this ground-breaking change to transform India's global position. Visibility, credibility, and strength of a maritime nation is directly proportional to the shipping tonnage it controls (a combination of its Primary or International Register). Increased tonnage along with good regulatory environment and world class infrastructure and port terminals together are important for India to gain an influential position at the IMO. India can consider building a

maritime cluster around the tonnage to become a knowledge and innovation hotspot and generate employment. Global and economic conditions are volatile and currently it is an opportunity for the sector to act immediately to reap the benefits. To achieve this the following steps are recommended:

- 2.3.1 In principle approval of establishing the IISR by MOS urgently: Develop SOPs for IISR with engaging top-notch Class-advisors. IISR shall have its management and SOPs on the lines of the best practices of the top 5 Shipping Registers. Process will include evaluation of the existing registries, their processes and identify the best practices.
- 2.3.2 Ships registered under IISR shall be allowed to have a mixed nationality crew. Having more ships with half Indian crew is better from the employment perspective than having a few Indian National Flag ships with full Indian crew.
- 2.3.3 Intense communication blitz through MEA and other international events showcasing realistic financial outcome
- 2.3.4 IISR must encourage more owners of different nationalities to register ships under the IISR.
- 2.3.5 To register the ship under IISR, the Ship-owner shall be required to register a company in India. The process of establishing the company, operation, and taxation to be investigated and simplified (with the urgent cooperation with MCA). We may adopt the procedures established in the top 5 International Ship Registries- that have succeeded in getting GDP edge to their respective governments.

3 INDIA'S INSURANCE CAPACITY FOR THE MARITIME SECTOR

Shipping is an extremely capital intensive and cyclical sector. A shipowner assumes a significant level of risk. Aiming towards leasing assistance for shipowners may be a sensible course of action, but ship leasing is a commodity that is still in its early stages, and there is inherent risk attached with it. Regrettably, the ship financing sector has been converging rather than increasing, making fund accumulation a conspicuous concern that is, of course, intertwined with legacy. In India, marine insurance is one of the least known sectors of the shipping and port industries. A variety of issues are wreaking havoc on India's insurance industry. Some examples include a lack of an integrated strategy, extensive multi-broking, intermediaries' lack of experience and

expertise, experts' lack of grasp of maritime law, and, most crucially, a refusal to recognise the linked nature of maritime contracts.

While insurance policies in maritime is substantially different from the traditional insurance market for motor vehicles, marine insurance is far more service oriented and requires immediate responses. If an event occurs, a Protection and Indemnity (P&I) club must place a guarantee on it before the asset may depart and carry on with its business arbitration and dispute resolutions.

Current state of Maritime Insurance in India is not very good. Cargo and Hull marine insurance a meagre 2% of market share in FY'18 (valued at about Rs. 158.5 cr. in FY'18), of India's non-life segment. The Loss ratio was as high as 75%. Quantitative terms for premium, growth was -1% to Rs. 2,800 cr. in FY'18. Reinsurance for Indian businesses outside India went from Rs. 6,723 cr. in FY2016 to Rs. 12,461 cr. in FY2017. While there is Marine Hull premium shift from foreign to Indian (21.89% in FY'15 to 54.27% in FY'17, there is no significant growth in marine cargo premiums.

Marine has a relatively limited portfolio for the insurance business, generating just 3000 crores of premium out of a total of 2 lakh crores in the country. Over a decade, the statistics for marine hull have slowly declined from 1100 crores in 2012-13 to an annual premium of 875 crores presently. Some maritime businesses have reported a decline in volume of trade, resulting a freeze in new shipbuilding in the industry. As a result, marine premium loss ratios have consistently exceeded 100 percent, approaching 150 percent at times during the last decade. According to the most recent statistics, the amount is about 96 percent, demonstrating how terrible the state of this portfolio is currently.

General Insurance companies develop their capacity based on the capital they deploy, the premium they generate, and the reinsurance support they have. Ports and terminals are properties that fall into 'Wet' properties because of their proximity to the ocean front and sometimes extending into the sea in the form of SPMs, jetties, breakwaters, and other structures and/or machineries or appurtenances. As most property treaties exclude wet properties, insurance companies tend to only retain that much of the risk that fits into their net retention.

The other aspect is high liability cover requirement by the ports. Inclusion of mechanical breakdown and consequential loss cover which otherwise falls into the category of 'Engineering Insurance', makes it more complicated.

Due to the above aspects, some insurance companies offer a package policy known as ‘Port Package Insurance’, it combines all these risks that a port is exposed to.

3.3 Capacity in the Indian Market

- 3.3.1 Due to the treaty restrictions, the available capacity of insurers is only that much which is representative by their absolute net retention.
- 3.3.2 GIC Re sometimes provides capacity by way of compulsory session and by way of facultative reinsurance. Due to the lack of underwriters and inexperience in the marketplace, foreign reinsurers with presence in India prefer such risks to be underwritten in London or other reinsurance Centre's in the world. This is the reason for cession of reinsurance premium to overseas reinsurance Centre's / reinsurers.

Marine Insurance is one of the less understood aspects of shipping and port industry, in India. Indian marine insurance has been plaguing, the factors can be listed as below:

3.1.3 Lack of integrated approach

- a) Excessive multi-broker/intermediaries
- b) Lack of experience and expertise
- c) Lack of understanding of maritime law
- d) Failure to comprehend interconnective nature of maritime contracts
- e) Maritime Insurance training is essential and building upon the knowledge and expertise via proper mandates is imperative.
- f) Understanding and utilization of insurance provisions in all international cargo movements can only be achieved if EXIM cargo associations are given a set of guidelines to adhere to.
- g) Currently 18% GST on Insurance makes competition more difficult for Indian Insurance Companies

3.2 Steps to be taken

3.2.1 Risk Evaluation

a) *Review of Existing Systems*

- Focus on quality and extent of risk exposure
- Make independent and unbiased recommendations
- Ensure that exposures (hardware + third party) are suitable and cost-effectively covered
- Take into account the insurance capacity available within the country
- Evaluate the need for obtaining cover from overseas underwriters and reinsurers and make plans to expand capacity in India to replace the same, over time.

b) *Identify the residual risk resting with ports*

- Includes a realistic evaluation of the extent and cover of Shipowners', Stevedores, and third-party port users' insurance cover
- Evaluate possibility of applying the "co-assured" or jointly assured concept, to reduce liability and recovery under subrogation from the port(s).

c) *Identify the base exposure common to all ports (for economies of scale)*

- Identification and quantification of specific risks relating to individual ports.
- Identification of additional insurance capacity (both property and third-party liability) that India needs.

d) *Force Majeure Risks*

- Port projects (Greenfield in particular) are exposed to force majeure events, such as natural calamities, fire, other disruptions of operations.
- These risks are often mitigated through insurance contracts and specific provisions in concession agreements.
- Type of insurance cover with regards to the risk covered, and adequacy in event of catastrophic losses and disruption needs to be evaluated.
- Case in point, the present pandemic – A good opportunity for Indian insurers to gauge and prepare for the future.

As known, the premium of any insurance depends upon the disclosure of risk. The success of a claim is also inherently dependent upon the exact nature and quantum of the risk, truthfully declared.

Thereby, it is the paramount responsibility of the potential insured to disclose the insurable risks, in order to make the claims process smooth, and expedite compensation.

3.2.2 Claims Status Evaluation

- a)* Basic purpose of taking cover is threatened when claims may be in dispute / outright rejected. All the client gets then is a false sense of security, until crisis happens or there is a need for a claim payment.
- b)* Auditing the processes being followed in each port is essential, alongside valuation/quantification of the risk and risk mitigation.
- c)* In addition, regular inspections and maintenance systems put in place (with recommendations for improvement and implementation) will lead to a reduction in the perception of risk, and thereby reduce the premium, which will help in convincing more companies to take cover.

3.2.3 Developing a Gold Standard

- a)* Streamlining processes through development of a Gold Standard
- b)* Prepared and implemented by the authoritative body.
- c)* Schedule of regular internal and independent external audits
- d)* In the event of claims, insurance policy ensured to respond in time and pay-out of legitimate claims quickly.
- e)* Faster pay-outs of legitimate claims will provide stability to trade & commerce, following a loss.
- f)* Reduction in claims that do not get paid out for breach of terms and conditions, warranties or put on hold unduly by insurers.
- g)* Under the “Indian Port Association” umbrella, PSU Ports Management to form a code of practice including but not limited to:
 - i. Maintenance of proper asset registration, annual/biannual valuation of assets to avoid condition of under-insurance.
 - ii. Evaluation of “Business Interruption” exposure by maintaining accounts to a good standard.

- iii. Maintenance of machineries, equipment, immovable and movable assets with a high standard and proper recordkeeping.
- iv. Measures and procedures put in place for loss prevention and loss minimisation.
- v. Maintaining claims record, keeping database of breached and unjustifiable claims
- vi. Periodic surveys and compliance of recommendations made
- vii. Private ports need to align to these measures, especially in respect to their sustainability audit (covering public ports)

3.2.4 Increasing Insurance Capacity

While the key improvements mentioned previously (A-C) are in progress, the below steps will aid in streamlining and growing the Indian Maritime & Port Insurance Capacity:

- a) Establishing a Primary Insurance Pool with a CMD (from the industry) and an operational team.
- b) Establishing a Stakeholders' Advisory Board with representatives from PSUs, Private Underwriters and Significant Clients.
- c) Investigate and understand reasons why insurance capacity could not be increased (consulting with Indian insurance PSUs and Financial Institutions).
- d) Carry out a study of Chinese Insurance model to keep most of the insurance & reinsurance premia within the country.

In order that the market starts developing its capacity, the PSU ports need to create a pool on a contribution basis based on the following criteria:

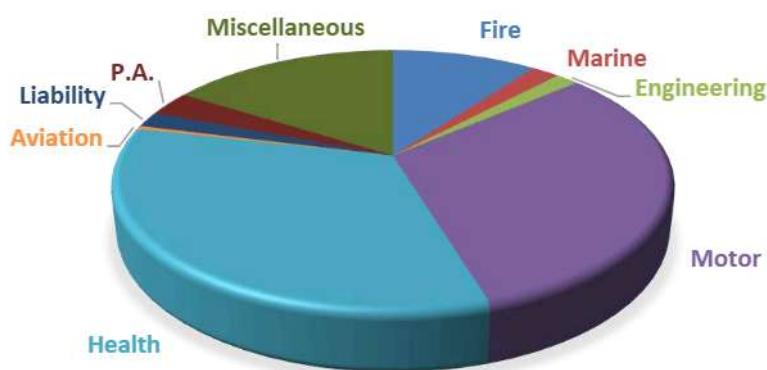
- a) *Type of Cargo Handled:* They retain certain part of the risk at the pool level, and they contribute to a pool which will entertain liability up to a certain amount.
- b) *Turnage of Cargo Handled:* The next portion will be the available capacity of the Indian market. This will be fully retained in the market and will be fully administered by an Indian insurance company with assistance of nominated risk managers and loss adjusters. We call this to be 'Primary Layer'. This will be rated by Indian Insurers based on their losses.
- c) *Revenue earned:* Over the primary layer, Indian reinsurers must ensure capacity deployment by pooling and that would add to the first layer above the primary or one can structure excess of loss reinsurance on a layer basis and price it appropriately so that ports pay higher premium for higher capacity requirement.

- d) *Geographical location:* With better risk management and improved loss experience, the market retention can be increased.
- e) *Result of JH-143 Survey and Past Loss Experience:* Increasing the Capacity in the Indian Market, by following steps:
- A large general insurance company, preferably a PSU with deep reserves and expansiveness to provide capacity, administer the programme and front the policies.
 - A group of officers / executives who have the required experience and the expertise to handle the specialized class of insurance.
 - Experienced international brokers to advise on technical matters, structure, and source reinsurance capacity.
 - A group of reinsurers who will look at it on a long-term basis.

STAKE HOLDERS ADVISORY BOARD (proposed to be newly appointed)					
OBJECTIVE: TO ENSURE COMPLIANCE BY THE POOL					
PRIMARY INSURANCE POOL (proposed to be newly formed)					
OBJECTIVE: MAXIMISE MARKET RETENTION					
NIA (LEAD)	UII	OIC	GIC Re	INDIAN PRIVATE SECTOR (E.G.)	INDIAN PRIVATE SECTOR (E.G.)
NEW INDIA ASSURANCE	UNITED INDIA INSURANCE	ORIENTAL INSURANCE COMPANY	GENERAL INSURANCE CORPORATION	TaTa AIG	BAJAJ ALLIANZ
				ICICI LAMBARD	HDFC

V.

Segment Wise Gross direct premium income by non-life insurers in India



(April 2021 to February 2022)

Source: gicounsil.in

TIER 5: BUILD UP INSURANCE CAPACITY (FOREIGN REINSURERS: OVERSEAS)
TIER 4: BUILD UP INSURANCE CAPACITY (LLOYD'S INDIA, FRB: FOREIGN REINSURERS INDIAN BRANCHES)
TIER 3: BUILD UP INSURANCE CAPACITY (INDIAN REINSURERS: PUBLIC & PRIVATE)
TIER 2: BUILD UP INSURANCE CAPACITY (INDIAN REINSURERS: PUBLIC & PRIVATE)

Category of Marine includes Marine Cargo and Marine Hull, while category of Motor includes Motor OD and Motor TP and Miscellaneous includes Crop Insurance + Credit Guarantee + All other miscellaneous.

In the year 2021 to Feb 2022 total premium registered growth of 11.05 percent from previous year. In the year 2020- 2021 it was 179237.93 and increased to was 199043.4 crores.

Year	Marine Cargo	Marine Hull	Marine Total
2021-22*	2906.43	936.31	3842.74
2020-2021	2263.76	952.92	3216.68
% Growth	28.389	-1.743	19.463

Table 1: Marine Sector gross direct premium in India (2020 to 2022 February)

Source: gicouncil.in

4 INDIAN MARITIME ARBITRATION BODY FOR INTERNATIONAL MARITIME DISPUTES

Maritime arbitration is an efficient and effective method of resolving maritime disputes. Maritime disputes are technical, commercial, and global in nature and is required to be accepted by stakeholders involved in maritime international trade.

India has a long tradition of arbitration, such as the settlement of differences by tribunals agreed-upon by the involved parties. In current times the maritime trade globally is governed by some regulatory bodies. Maritime law or admiralty law addresses nautical and private issues and disputes. These laws are basically consisting of domestic law about shipping/maritime activities, and private international law governing the relationships between private parties functioning on ocean-going ships.

4.1 Current Status of Legal / Alternate Dispute Resolution in India

4.1.1 *Maritime Arbitrations*

- a) London presently the leading arbitration centre for commercial disputes.
- b) Maritime Arbitrations are a significant contributing element to this.
- c) Dedicated bodies for maritime alternate dispute resolutions like LMAA in the UK, TOMAC in Japan, etc.
- d) Meantime in India, best we have at present is 'Rules for Maritime Arbitration' in the ICA, set up in 1965. Similarly, we have the 'Maritime Arbitration Rules' in IDAC.
- e) As per LCIA data in 2015, from a total of 449 appointments of arbitrators, no Indian Arbitrators were chosen.
- f) With most Indian arbitrators in Singapore, of 126 arbitrations in 2015 from SIAC data, only 3% were Indian appointments

4.1.2 *Indian Maritime Arbitration Body*

Maritime Industry is Multi-Modal, Multi-Contract, Multi-Jurisdiction and Multi-Nationality. The industry needs a dispute resolution system that is private, cost-effective, time efficient and enforceable. India needs to Work towards establishing an international Maritime Dispute Resolution Centre. India has benefit of language and education which can be leveraged the industry's desire to participate in making India a world leader in alternate dispute resolution. India can effectively conduct Online hearings, integrate the use of AI in litigation and ADR.

Arbitrations India must also have its own maritime arbitration centre which is claimable because India's EXIM trade where about 85 billion dollars a year are spent on foreign freight by foreign flag vessel requires to be serviced in India. It simply cannot struggle around different arbitration centres from Hong Kong to London to Singapore or elsewhere and must create its own centre. The distribution of seats in arbitration is done via charter party which takes respective decisions in the interest of Indian cargo and then drives the arbitration process by its commands on which arbitral tribunal individuals are going to be assigned to.

4.2 Identifying London Maritime Arbitration Association (LMAA) procedures

Party autonomy is key to Arbitration success. Adoption of LMAA rules with logical changes may make the process simpler and practical, without having to reinvent the wheel.

Similar to LMAA and Tokyo Maritime Arbitration Commission (TOMAC), the IMAA shall be independent, with no compulsory appointments from PSUs, government, or industry associations. IMAA to have its own governing body.

- Establishing a Panel and List of commercially minded individuals as Maritime Arbitrators, as well as lawyers with Maritime Law knowledge and experience.
- Support from policy makers to promote IMAA (e.g., make IMAA clause compulsory for PSU maritime trades).
- Awards by IMAA enforceable by Indian court of law. IMAA to also provide Mediation, Med-Arb, Arb- Med services

4.3 Existing Panels

- The Society for affordable redressal of disputes (SAROD-Ports) has been formed by the Indian Ports Association (IPA) in association with Indian Private Ports & Terminals (IPPTA) under the Societies Registration Act, 1860. The Society has been registered in Delhi on 30.01.2020 and shall be functioning as per the Rules and Regulations framed and amended from time to time. The purpose of SAROD-Ports is to take care of the pending or future disputes between the ports and the concessionaires. The objectives of SAROD-Ports to achieve dispute resolution timely, cost effectively, while continue to enrich the dispute resolution mechanism with the help of experts.
- Include existing segment specific panels (e.g., SAROD-Ports) under the IIMA umbrella to serve the parties desiring to base their dispute resolution clause upon them.

4.4 IMAA Alternate Dispute Resolution: *The key point in ADR is Enforceability of awards*

- Courts must be supportive of the IMAA's rulings, and refuse to entertain appeals against an award, except in cases of public policy, or in the case of a proven bias from one or more involved arbitrators. Parties who engage in arbitration must comply with the decisions of the arbitrator, and the award thereby issued.

- Once the IMAA has been established, discourage the mushrooming of Maritime Arbitration centres or associations. A way to achieve this is by maintaining an open fair list and panel of the arbitrators involved.

4.5 Support needed from

- MOS – for a strong follow up through one of its departments / divisions
- Ministry of Law & Justice – to enact certain regulations that encourages the courts to allow / uphold the decisions made through the body conceptualized
- Ministry of Corporate affairs agree to give a nod
- Ministry of Commerce and Industry to concur

ABBREVIATIONS

ADR	Alternative Dispute Resolution
BBC	Bare Boat Charter
CAPEX & OPEX	Capital expenditure, and Operating Expenses
GIFT	Gujarat International Finance Tec-City
GOI	Government of India
IFSC	International Financial Services Centre
IMAA	Indian Maritime Arbitration Association
IISR	Indian International Shipping Register
IPA	Indian Ports Association
IPPTA	Indian Private Ports & Terminals
JV	Joint Venture
LMAA	London Maritime Arbitration Association
OD	Own Damage
SOP	Standard Operating Procedure
TP	Third Party
TOMAC	Tokyo Maritime Arbitration Commission

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¹² Makkar, Jagmeet (2020) working papers submitted during MIV 2030 deliberations for Thrust Area 11: Initiative 8 (Develop international leadership by setting maritime Arbitration body for international dispute resolution); Initiative 10 (Increase India's insurance capacity for maritime sector to reduce dependence of foreign markets for direct and reinsurance); Initiative 11 (Potential to establish Indian International Shipping Registry (IISR) along maritime clusters on Indian Coast to attract Indian and non-Indian shipowners to register ships); Initiative 12 (Potential to allow bare-boat leasing structure for Indian National Ship owners to lease vessels from global financial institutions under Indian Flag).

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