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China's Maritime Relations with South Asia: From Confrontation to Co-operation (Part Two)

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Summary

Following the discussion in Part One of China's maritime strategy and its relations with South Asia – particularly India – Part Two of this *Strategic Analysis Paper* will identify the appropriate means of dealing with global and regional maritime security concerns regarding China's maritime strategy as far as the Indian Ocean and South Asia are concerned. It will:

- Examine maritime co-operation in the Indian Ocean and South Asia; and
- Examine China's participation in global and regional maritime co-operation.

Maritime Co-operation in the Indian Ocean and South Asia

One of the ways in which global and regional maritime security concerns regarding China's maritime strategy in the Indian Ocean and South Asia can be dealt with is through multilateral maritime co-operation in those regions. This section will therefore examine the development of such co-operation.

With regard to the implementation of the United Nations Convention on the Law of the Sea (UNCLOS) in the Indian Ocean, it is necessary to examine, first, maritime boundary delimitation and jurisdiction and, second, freedom of navigation and measures for facilitating the same. Schofield argues that the eastern and western halves of the Indian Ocean are geographically distinct.¹ The eastern Indian Ocean is characterised by major archipelagos, most notably that of Indonesia, but also the Andaman and Nicobar Islands groups. These island groups are predominantly located towards the Indian Ocean's mainland margins and there are relatively few isolated islands. In contrast, the western part of the Indian Ocean features predominantly smooth continental coastlines, coupled with numerous small isolated islands and groups of islands such as the Comoro Islands group and other

¹ Schofield, C., 2007, 'A Complex Mosaic: Maritime Jurisdictional Claims in the Indian Ocean', *Indian Ocean Survey*, Vol. 3, Nos 1 & 2, pp. 3, 20-22.

islands scattered through the Mozambique Channel, the Seychelles, the Maldives, the Chagos Archipelago, Réunion and Mauritius.

He goes on to argue that, in addition to the contrast between the eastern and western parts of the Indian Ocean in terms of coastal geography, there is also a marked contrast between these two sectors of the Indian Ocean with regard to maritime boundary delimitation. While in the east, over twenty maritime boundary agreements have been concluded and the maritime boundary mosaic is largely complete, with the exceptions of the Bay of Bengal and boundaries associated with the recently independent East Timor, in the west only seven maritime boundaries have been delimited since 1976.

In his view, this contrast cannot be attributed completely to the impact of differing coastal geography. Political factors have tended to play a dominant role. Significant civil unrest in, for example, Mozambique, Somalia and Yemen has tended to push maritime boundary delimitation to the background in a number of cases in the western Indian Ocean. Similarly, the sovereignty disputes over some of the islands outlined above are concentrated in the western part of the Indian Ocean, most notably in the Mozambique Channel. These contentious disputes over territory necessarily need to be resolved as a precursor to the delimitation of the associated maritime boundaries.

Other important factors that have hampered maritime boundary delimitation, particularly in the western Indian Ocean, include problematic claims to straight baselines² and maritime jurisdiction, unilateral claims at odds with the principle of equidistance³ and disputes over the terminus of the land boundary on the coast. He observes that, where boundaries have been in dispute, innovative and conciliatory practice has delivered equitable and mutually acceptable maritime boundary agreements. This is exemplified by the progress that has been achieved in the Andaman Sea.

Another notable feature of maritime boundary delimitation practice in the eastern part of the Indian Ocean is the presence of innovations in the shape of separate boundaries for the seabed and water column and alternatives to maritime boundary delimitation lines, such as joint development zones. According to Schofield, such practices illustrate that viable, co-operative and mutually beneficial alternatives to maritime boundary delimitation exist, even if a particular boundary dispute appears to be deadlocked, provided the requisite political will to reach agreement is present.

Bateman argues that the concept of freedom of navigation has both economic and strategic significance.⁴ The disruption of Indian Ocean seaborne trade would put a great deal of pressure on countries like Japan and China and, to a lesser extent, also on the United States. Moreover, the access waterways into and out of the Indian Ocean have great strategic significance for Indian Ocean countries wishing to deploy naval forces out of the region and

² A “baseline” is a line on a map used to establish the base on the coast from which to measure distance out to sea.

³ In this context, “equidistance” is a legal principle which applies to cases of legitimate maritime territorial claims that overlap.

⁴ Bateman, S., ‘Freedom of Navigation and Indian Ocean Security – A Geo-Political Analysis’, *Journal of Indian Ocean Studies*, Vol. 10, № 3, 2002, pp. 366-70.

for extra-regional countries wishing to deploy naval forces in the Indian Ocean. He points out that the major Indian Ocean countries such as Australia, India and South Africa, share a common interest with important non-Indian Ocean countries in North-East Asia, North America and Western Europe in maintaining freedom of navigation in the Indian Ocean, especially in the key access waterways. This common interest establishes a basis for maritime co-operation and confidence building in the Indian Ocean. Bateman also notes that, despite their common interest in the rights of navigation and oceans management, the littoral and island countries of the Indian Ocean are extremely diverse. Earlier attempts at building co-operation in the Indian Ocean have not been completely successful, and the level of existing co-operation is not as high as elsewhere in the world. He is of the view that there is scope for a higher level of naval and maritime co-operation to ensure and enhance the freedom of navigation in the Indian Ocean.

Apart from Law of the Sea issues such as maritime jurisdiction and rights of navigation as pertaining to the Indian Ocean, the Indian Ocean Zone of Peace (IOZP) initiative, the Indian Ocean Marine Affairs Co-operation (IOMAC) process, the Indian Ocean Rim Association for Regional Co-operation (IOR-ARC), and the Indian Ocean Naval Symposium (IONS) have been the specific attempts at institutionalising maritime co-operation in the Indian Ocean region.

Berlin points out that, in 1989, important extra-regional western members of the UN Ad Hoc Committee on the IOZP withdrew from it, arguing that superpower rivalry in the Indian Ocean had diminished with the end of the Cold War and that, therefore, there was no need to create an IOZP. He argues however, that, while the anticipated “New World Order” on which such a position was based may have prevailed very briefly in the early 1990s immediately after the end of the Cold War, by the beginning of the twenty-first century, rivalry in the Indian Ocean had re-emerged.⁵ Therefore, despite the many complexities of the IOZP initiative, the need for such an initiative and its implementation remains. By the late 1990s, the Arusha Agreement, which had attempted to formally establish IOMAC as an organisation, had not managed to acquire the necessary number of ratifications needed to enter into force. The IOR-ARC has focussed on economic, rather than maritime, co-operation. Gurpreet Khuranna suggests that the security agenda of the latest initiative, IONS, could complement the economic agenda of IOR-ARC.

With regard to maritime co-operation in South Asia, Alam has proposed the formation of a South Asian Association for Regional Co-operation (SAARC) Centre for Maritime Co-operation.⁶ The suggested objectives of such a Centre for Maritime Co-operation are as follows:

- To foster maritime co-operation and dialogue among the states of the SAARC and to promote maritime confidence and security building measures;
- To promote adherence to the principles of the 1982 UN Convention on the Law of the Sea, to commence dialogue on the areas of UNCLOS which are either indefinite or not

⁵ Berlin, D., ‘Indian Ocean Redux: Arms, Bases and Re-emergence of Strategic Rivalry’, *Journal of Indian Ocean Studies*, Vol. 10, № 1, 2002, p. 27.

⁶ Alam, M.K., ‘Regional Maritime Co-operation under the Auspices of the South Asian Association for Co-operation (SAARC)’, *BISS Journal*, Vol. 18, № 1, 1997, pp. 19-41.

fully accepted by regional nations, and to promote joint hydrographic survey efforts to assist in the observance and implementation of UNCLOS;

- To help safeguard the peaceful merchant shipping of the region and to examine the means for developing procedures to assist in the protection of shipping within the region with increased joint activity in naval control of shipping;
- To create a secure atmosphere for the sustained exploitation of the resources of the sea and to identify regional hydrographic survey and oceanographic priorities and examine ways to conduct joint surveys in those waters with greatest priority;
- To contribute to the preservation of the marine environment and to provide a framework of co-operation for weather prediction; and
- To undertake policy-oriented studies on specific regional maritime security problems and to provide training in relevant aspects of maritime operations to those lacking in certain types of capability or expertise.

No action, however, seems to have been taken to date regarding Alam's proposal. Perhaps, when thinking about multilateral maritime co-operation in South Asia, it is necessary to take the following two points into account. First, the argument made by Roy-Choudhury, in the context of naval co-operation in the eastern sub-region of the Indian Ocean, that '... the development of a set of bilateral naval relationships could, over a period of time, be made to evolve into a loosely defined multilateral set of activities'⁷ In South Asia, there has been a fair amount of effort directed at maritime co-operation between India and Pakistan, as well as between India and Sri Lanka. If one goes by Roy-Choudhury's argument, such bilateral maritime co-operation among South Asian countries could evolve into a set of loosely defined multilateral activities.

Second, it is important to locate South Asia as a continental sub-region within the Indian Ocean maritime region. To illustrate, let us take Lehr's suggestion that multilateral security co-operation in the Indian Ocean should focus on the northern part of the Indian Ocean, consisting of the Bay of Bengal and the Arabian Sea.⁸ The Bay of Bengal is a sub-region of the Indian Ocean to the east of South Asia, and the Arabian Sea is a sub-region to the west of South Asia. The Arabian Sea is situated between the continental sub-regions of South Asia and West Asia (or Middle East). The Bay of Bengal is situated between the continental sub-regions of South Asia and South-East Asia.

If one thinks in these terms, multilateral maritime co-operation in South Asia may well overlap with multilateral maritime co-operation in the Middle East and South-East Asia. If one thinks in institutional terms, what this translates into is that maritime co-operation within SAARC may well have to be co-ordinated with maritime co-operation within the Gulf Co-operation Council (GCC) and the Association of South-East Asian Nations (ASEAN). While not much importance has been given so far to maritime co-operation *per se* within SAARC,

⁷ Roy-Choudhury, R., 1998, 'Maritime and Naval Co-operation in the Indian Ocean', *Asian Strategic Review 1997-98*, Institute for Defence Studies and Analyses (IDSA): New Delhi, p. 275.

⁸ Lehr, P., 'Prospects for Multilateral Security Co-operation in the Indian Ocean: A Sceptical View', *Indian Ocean Survey*, Vol. 1, No 1, January-June 2005, pp. 11-13.

the ongoing India-Pakistan and India-Sri Lanka bilateral co-operation could evolve into multilateral co-operation within SAARC. If and when it does, it may have to co-ordinate with GCC and ASEAN efforts at maritime co-operation.

China's Participation in Global and Regional Maritime Co-operation

An understanding of China's conformity with, and implementation of, the UNCLOS and its participation in the ASEAN Regional Forum (ARF) and the Council for Security Co-operation in the Asia Pacific (CSCAP) – regional measures for combating piracy – and the Regional Maritime Security Initiative (RMSI) of the United States, can be gained by examining the nature of its participation in multilateral maritime co-operation. Given the relatively underdeveloped state of maritime co-operation in the Indian Ocean and South Asia, China's future maritime role in South Asia could emerge from the manner in which it has engaged in maritime co-operation with Asia-Pacific countries.

With regard to China's implementation of, and conformity with, the UNCLOS, several points can be made. First, there is the issue of military activity – that is to say, activities such as task force manoeuvring, anchoring, intelligence collection and surveillance, military exercises, ordnance testing and firing and hydrographic and military surveys – in foreign Exclusive Economic Zones (EEZs). Keyuan Zou and Ji Guoxing have discussed this issue in the case of the April 2001 air collision involving a United States EP-3E surveillance aircraft and a Chinese jet fighter over China's EEZ. Ji Guoxing has also discussed it with reference to China's naval activities in Japan's EEZ.⁹

Following the incident involving the EP-3E, China had accused the United States of violating international law. While the UNCLOS – Article 301 in particular – provides for the peaceful use of the sea and prohibits the threat of force and the use of force, the convention does not explicitly prohibit the military use of the EEZ. Moreover, UNCLOS Article 58(1) can be used to justify military activity in foreign EEZs, because it confers high seas freedoms referred to in Article 87 – navigation, over-flight and the laying of submarine cables and pipelines – on the EEZ as well. Keyuan Zou goes on to argue that, while military activities in foreign EEZs are not explicitly disallowed under international law, given that the EEZ is not a part of the high seas and that the EEZ is an area under national jurisdiction, there should be a check-and-balance mechanism to regulate military activities in foreign EEZs. Furthermore, he also points out that it is possible to argue that military use of a foreign EEZ is limited to navigation, over-flight and other rights provided for in Article 87, which would exclude activities such as those listed above.

Since the freedom of navigation and over-flight in EEZs is subject to the resource-related rights of coastal states, one could also prohibit foreign military activities in the EEZ because of the harm they can do to the economic activities of the coastal state. Keyuan Zou argues that, if a certain military activity is of a threatening nature, it should be banned in the EEZ and, if not, it should be allowed under conditions laid down by the coastal state. He also

⁹ Ji Guoxing, 2002, 'Asian Pacific SLOC Security: The China Factor', *Working Paper No 10*, Royal Australian Navy, Sea Power Centre: Canberra and Keyuan Zou, 2008, 'Maritime Security and Multilateral Interactions Between China and its Neighbours', in Guoguang Wu and Helen Landsdowne, (eds), *China Turns to Multilateralism: Foreign Policy and Regional Security*, Routledge, Taylor and Francis Group: London and New York.

points out the need for a review of the UNCLOS regarding military and intelligence activities in foreign EEZs. Ji Guoxing, however, argues that China's naval activities in Japan's EEZ, which are not always notified beforehand, accord with the principle of freedom of navigation and, given such practice, China should not ask other countries for prior notification of their activities in China's EEZ. Therefore, even though Ji Guoxing takes note of the fact that EEZs fall within the coastal state's sphere of jurisdiction, his position on this issue also comes close to that of maritime states.

Second, Keyuan Zou has noted that the provision regarding the continental shelf in China's 1998 Law on the Exclusive Economic Zone and the Continental Shelf includes an emphasis on the 'natural prolongation of China's rights to the continental shelf', and that this is not entirely in conformity with the relevant provision in the UNCLOS. Third, China's 1958 Declaration on the Territorial Sea and its 1992 Law on the Territorial Sea and Contiguous Zone require foreign military vessels on innocent passage to obtain permission before entering China's territorial sea. Ji Guoxing suggests that, for its part, China, too, should notify other countries before its military vessels implement innocent passage in their territorial waters. Fourth, with regard to the issue of transit passage through straits used for international navigation, Ji Guoxing notes that the presence of US fleets in many parts of the Asia-Pacific would make the adoption of a vessel traffic services (VTS) system by China in the Taiwan Strait, a strait used for international navigation, somewhat controversial. He also notes that the Chinese Government is opposed to the calls among some Chinese for declaring the Taiwan Strait an internal strait of China.

With regard to regional maritime co-operation, China is an active participant in the ARF and CSCAP process in general, and in measures for combating piracy in particular. At the CSCAP Maritime Co-operation Working Group (MCWG) meeting held in November 1997, Xu Guangjian stressed that the safety of shipping and the smooth flow of traffic through international sea lanes is important to China.¹⁰ The report on the discussions at this meeting also notes that both China and India are importing increasing amounts of energy along sea lanes and that, therefore, they are prepared to co-operate in maintaining stability at sea in the region.

At a joint meeting of the MCWG and the Transnational Crime Working Group held in November 1999, Zhiguo Gao stated that China did not favour co-operation in the military sphere, that co-operation in other spheres should be based on respect for state sovereignty and non-intervention and an incremental approach to common problems based on consensus. He also indicates a preference for bilateralism over multilateralism.

At a meeting of the CSCAP Study Group on Facilitating Maritime Co-operation in the Asia Pacific held in December 2006, it was pointed out that, with development of the international situation and the emergence of non-traditional security threats, the PLA-N was playing a more important role in tasks such as combating terrorism, piracy, smuggling, drug-

¹⁰ Xu Guangjian, 1998, 'Energy, Maritime Safety and Pollution Prevention: a Chinese Perspective', in Sam Bateman and Stephen Bates (eds), *Shipping and Regional Security*, Strategic and Defence Studies Centre, Research School of Pacific and Asian Studies, The Australian National University: Canberra.

trafficking and search and rescue. It also notes that China's provincial governments have jurisdiction over the territorial sea, while the central government has control over the EEZ.

In May 2002, China submitted to the ARF Senior Officials Conference a document concerning China's stand in strengthening co-operation in non-traditional security fields. In November 2002 the Joint Declaration of ASEAN and China on Co-operation in the Field of Non-Traditional Security Issues was adopted, which initiated full co-operation between ASEAN and China in the field of non-traditional security issues. The priorities included combating trafficking in illegal drugs, people smuggling, including trafficking in women and children, sea piracy, terrorism and arms-smuggling.

The 2002 Declaration on the Conduct of Parties in the South China Sea, which China is party to, also mentions the suppression of piracy and armed robbery at sea. The Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), finalised in November 2004, provides for regional co-operation through the establishment of an Information Sharing Centre (ISC), capacity building, joint exercises, facilitation of extradition, mutual legal assistance and encouragement of ships to take protective measures. The agreement entered into force with effect from 4 September 2006, after acquiring the necessary number of ratifications. The ReCAAP was signed on behalf of the Chinese Government in October 2006 and, in February 2008, ReCAAP-ISC announced that it would receive a contribution of US\$50,000 (\$49,800) from China. As Christoffersen argues, it is in China's interest to ratify the ReCAAP because that would reinforce China's status as a "user state" in the Malacca Straits.¹¹

China has not, however, been supportive of the Regional Maritime Security Initiative (RMSI) of the United States, announced in March 2004, preferring instead a maritime security initiative led by countries of the region.

Keyuan Zou argues that the principle of the rule of law has begun to increasingly influence China's conduct of international relations. The UNCLOS encourages maritime co-operation at the regional level, and China is playing an active role in such co-operation. He fears, however, that China's strict adherence to the principle of "the inviolability of sovereignty" may stand in the way of interaction with neighbouring countries.

Ji Guoxing emphasises that the security of SLOCs is the classic multilateral maritime security issue and that, therefore, China is willing to co-operate with other countries in defending those SLOCs. He is of the view that a regional maritime co-operation mechanism on SLOC security in the Asia-Pacific region should be set up under the ARF, and that such a mechanism should include separate sub-regional multilateral incidents-at-sea (INCSEA) agreements for North-East Asia, South-East Asia and the Indian Ocean. Recognising the existing suspicion regarding the sincerity of China's participation in multilateral security fora and its commitment to observing internationally accepted rules, he stresses that China must actively seek to dispel such suspicions and make its due contribution to multilateral SLOC security co-operation in the Asia-Pacific region.

¹¹ Christoffersen, G., 2008, 'Chinese and ASEAN Responses to the US Regional Maritime Security Initiative', in Guoguang Wu and Helen Landsdowne (eds), *China Turns to Multilateralism: Foreign Policy and Regional Security*, Routledge, Taylor and Francis Group: London and New York, p. 141.

Conclusion

China's most important maritime concerns in its relations with South Asia are oceanic trade transit points for western China and the sea lanes connecting the Strait of Hormuz and the Strait of Malacca, which carry its energy imports. Chinese activity related to these concerns in and around South Asia has, however, added to concern among some in India, such as Arasakumar, regarding a "strategic encirclement" of India. As pointed out by both Kondapalli and You Ji, comprehensive bilateral co-operation on the energy issue between China and India is one of the ways in which at least some of these mutual concerns could be addressed.

The IOR-ARC, in which China has the status of dialogue partner, and the recently inaugurated IONS may provide appropriate regional multilateral arenas for addressing China's maritime concerns regarding the Indian Ocean as a whole. If and when maritime co-operation is institutionalised within SAARC, China's observer status in that association could also be helpful.

It is important, however, to take note of the fact that maritime co-operation in the Indian Ocean and South Asia is at present relatively underdeveloped. The great deal of attention devoted to maritime co-operation by the ARF and the CSCAP – and the fact that all the littoral countries of South Asia, as well as China, are members of the ARF – indicates that these groupings are the most likely to provide an appropriate multilateral regional setting for addressing the maritime concerns in China-South Asia relations. Bateman has argued that there is also scope for expanding the membership of the Pacific and Indian Oceans' Shipping Working Group within the Naval Control of Shipping (NCS) framework.¹² Such an expansion could include some of the South Asian countries, as well as China. Finally, it should be kept in mind that the global and regional legal and institutional frameworks for multilateral co-operation in maritime affairs are themselves in the process of development, and that, therefore, China's growing participation in them will occur in tandem with their development.

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¹² The Naval Control of Shipping (NCS) framework was first established by the North Atlantic Treaty Organisation (NATO) in the Atlantic Ocean and then extended to the Pacific and Indian Oceans.

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