

Navies and Maritime Militia: An Unequal Contest

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On 4th September, the USS Firebolt, a coastal patrol boat, operating in the Persian Gulf was the subject of ‘harassment’ by seven Iranian boats operated by the Iranian Revolutionary Guard Corps Navy (IRGCN). This was preceded by a series of similar incidents in the week commencing 22nd August, which eventually led to the firing of warning shots by the USS Squall with its .50 calibre gun. With four such incidents reported in less than a month and 31 incidents so far this year in the Persian Gulf, the Pentagon is understandably disturbed with the series of ‘unsafe and unprofessional’ interactions with the IRGCN.

Considering the turbulent political history between Iran and the US, the friction between US naval forces deployed in the Middle East and the IRGCN is not surprising. The US may have hoped for a détente in the wake of the Iran nuclear agreement and the subsequent lifting of sanction associated with Iran’s nuclear programme, but clearly the same has not materialized in the Persian Gulf. In fact in May 2016, a senior IRGCN commander had threatened to shut down the Strait of Hormuz in response to a proposed legislation in the US seeking a stronger response to Iran’s ‘provocative actions’ against the US Navy. Looking beyond the historical animosity between these two countries, such incidents tend to challenge the legal framework governing the oceans and pose a notable threat to freedom of navigation in the maritime zones of a coastal state.

With one-third of global oil exports transiting the Persian Gulf, freedom of navigation in these waters is critical to the world economy. From a legal standpoint,

the Strait of Hormuz presents the classic problem of 'territorialization' of those parts of the seas, which are used commonly for navigation. The Strait is 21 nautical miles (NM) at its narrowest point, and most of its waters are claimed as territorial seas by Iran and Oman. While the Law of the Sea Convention (LOSC) was being negotiated, the threat to freedom of navigation due to the increase in width of territorial waters from the erstwhile three NM to 12 NM was flagged and recognized. This was offset by the regime of transit passage through straits used for international navigation, which allowed ships and aircraft to transit unimpeded through such straits, with certain provisos that are generally more liberal than the regime of innocent passage through territorial waters.

While it may be believed that such clear stipulations in the LOSC may settle the question of legitimacy of Iran's threats to close the Strait, the problem lies in the fact that both Iran and the US are not parties to the UNCLOS. Moreover, the US believes that the regime of transit passage through straits is established practice and hence customary international law while Iran maintains that the regime of transit passage is a treaty-bound obligation, one that it is not committed to fulfil as it is not party to the convention. Similarly, Oman which is the second coastal state abutting the Strait of Hormuz, made declarations while ratifying the UNCLOS to the effect that it did not recognize the regime of transit passage as customary international law and that it permitted only innocent passage through its territorial waters. With both Oman and Iran claiming territorial waters of 12 NM as is permissible under UNCLOS, this is yet another example of how countries have been eager to claim the benefits of UNCLOS while being reticent in fulfilling their associated obligations. Oman has thus far not operationally challenged transit passage through the Strait of Hormuz. Iran's verbal and operational assertions however would require to be factored and the possibility of navigational freedom being curtailed in the Persian Gulf would most certainly figure as one of the many complex operational scenarios in that part of the world.

Another issue that such incidents highlight is the strategic value of using maritime militia or non-naval forces to raise the ante in confrontation with asymmetric naval forces. This has been an enduring facet even in the South China Sea where Chinese militia embarked on fishing boats have confronted larger naval ships, especially of the US Navy. While naval forces generally tend to de-escalate up to a certain threshold, their supposed inaction at being provoked aggressively is used to

stir up domestic nationalist sentiments. Any retaliatory action by such naval vessels is bound to cause destruction and casualties, which could then be highlighted as examples of hegemonic aggression in dealing with smaller, 'harmless' boats. In the current environment, it is quite likely that navies of the region will be increasingly confronted by such non-naval seaborne elements that would push the boundaries of international law and operational safety. Evolving an effective strategy to counter them would remain a challenge.

Whatever be the ends or the means of such assertions, there is little doubt that strategic jostling in the Asia- Pacific will bring to bear greater pressures on freedom of navigation in these waters. International law, even in the most prescriptive form is constrained in enforcement and therefore it will be increasingly important for the US and regional maritime powers to assert and reinforce the liberal regime of international laws governing the oceans.

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