



India's maritime security legal framework and its influence on international maritime security cooperation

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ABSTRACT

The Law of the Sea Convention (LOSC) is a veritable constitution of the oceans that was negotiated with the overarching objective of protecting the “common heritage of mankind”. While the primary goal of developing countries was to protect their economic interests by seeking maritime areas with exclusive jurisdiction, the LOSC has a significant role in furthering maritime security cooperation among countries. The universally accepted trait of international cooperation in maritime security efforts requires a commonality of perception of threats and the legally acceptable ways in which they may be mitigated. In order to develop meaningful cooperative endeavours in maritime security, it is essential for India to develop a domestic legislative framework that supports its maritime security demands and promotes its standing as an upholder of the international order.

KEYWORDS

Maritime security; law of the sea; international maritime law; domestic legislation; maritime security cooperation

Introduction

In December 1982, nine years of effort, and innumerable, persistent negotiations at the Third United Nations Convention on the Law of the Sea (UNCLOS III), resulted in the Law of the Sea Convention (LOSC) being signed by 117 states.¹ Four decades after the LOSC was negotiated and nearly three decades after it came into force in 1994, the Convention has 168 parties and is the most important, supranational instrument governing humankind's use of the seas.² The primary motives of establishing an international legal regime governing the oceans were political and economic, with states seeking to protect their economic interests by means of exclusive sovereign rights in maritime areas adjacent to land. Even as countries sought to protect their interests whilst negotiating at the Convention, the overarching theme was that of cooperation to protect the “common heritage of mankind”.³ The transnational nature of the maritime domain has further resulted in extending the scope of the LOSC to govern additional facets, security being one of the most important.

The term “maritime security” does not have a universally accepted definition. In the most generic sense, it has come to embody security in the maritime domain against a combination of “traditional” and “non-traditional” threats. It is the taxonomy of non-

traditional security threats that has been somewhat problematic, with some versions of its definition including aspects such as human and environmental security within it, thus making maritime security an all-encompassing, and arguably vague, term.⁴ Regardless of how a state or a non-state agency defines maritime security, there is broad consensus on its transnational attribute, which makes its pursuit a collective effort. Therefore, unlike security in the terrestrial domain where a state may be content with arrangements within its land territories and remain relatively insulated from the lack of security within a neighbouring state, maritime security and the threats that undermine it are not constrained by political or physical boundaries. Maritime security, thus, is a fundamentally cooperative endeavour, and this is one of few universally accepted attributes of this term.

In order to translate international treaty instruments into effective tools of governance, it is important to have a robust domestic legal framework. This is particularly important in the context of maritime security and cooperation therein between countries, where uniformity of interpretation of international laws is a critical ingredient for constructive cooperative mechanisms to evolve. This article seeks to evaluate the suitability of India's maritime security cooperation framework based on its interpretation of the LOSC and as manifested in its domestic legislative arrangements. In order to focus on aspects of maritime security that are perceived to be the most critical and which would, arguably, accrue maximum benefits from international cooperation, the study is limited to two security outcomes, namely, the prevention of criminal activity at sea and the protection of vital national assets along and near the coast. It is assumed that outside of a state versus state conflict scenario, these would be the primary objectives of India's national maritime security arrangements.

The LOSC and its influence on India's maritime security outlook

The primary objective of India and other developing countries at the LOSC deliberations, from 1973 to 1982, was to negotiate an instrument that would enable equitable access to resources in the oceans, thus allowing the lesser developed countries to benefit economically. Much before the third LOSC proceedings commenced, Arvid Pardo's notion of the seas as the "common heritage of mankind" had been championed at the United Nations (UN) by most developing countries, including India. At one such meeting of the United Nations General Assembly (UNGA) in 1969, the Indian representative described the idea of considering areas beyond national jurisdiction as the "common heritage of mankind" in the following words:

The concept symbolises the hopes and needs of the developing countries, which can legitimately expect to share in the benefits to be obtained from the exploitation of the resources. Those benefits would help to dissipate the harsh inequalities between developed and developing countries.⁵

He went on to add that "it is of supreme importance to take into account the interests, needs and aspirations of the developing countries".⁶

As the LOSC negotiations went on, it became clear that countries would have significantly larger maritime areas within which they would exercise exclusive sovereign rights for resources. The creation of the exclusive economic zone (EEZ) was a notable achievement, one that received near-unanimous approval in the early stages of the negotiations.⁷

Accordingly, in 1976, India passed the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act (also called the Maritime Zones of India Act, 1976 or MZI Act, 1976), whereupon it assumed “sovereign rights for the purpose of exploration, exploitation, conservation and management of natural resources, both living and non-living, as well as for producing energy from tides, winds and currents in its exclusive economic zone”.⁸ It was becoming evident that the significantly greater maritime area under national jurisdiction would demand a proportionate growth in India’s maritime security capabilities. Together with the discovery of oil on the seabed off the west coast of Maharashtra and Gujarat, the award of the EEZ advanced the long-pending proposal of the Indian Navy for a coast guard, which was now considered essential to perform law enforcement functions within India’s maritime zones. Accordingly, the Indian Coast Guard (ICG) was established as the fourth armed force of India, with the primary mandate of law enforcement within India’s maritime zones.⁹

By stipulating the various maritime zones, and the rights and obligations of countries therein, the LOSC brought numerous challenges for maritime security into focus. India’s recognition of this aspect is reflected in its interpretation of certain aspects of the LOSC and the creation of domestic legal instruments to underpin security arrangements that could mitigate perceived threats. For instance, the Indian Government enacted the MZI Act, 1976 even as negotiations on the text of the LOSC were underway, ostensibly to regulate activities within certain maritime zones that were expected to be allocated to states in the final text of the convention. The MZI Act stipulated the requirement of foreign warships to give prior notice for undertaking innocent passage through India’s territorial seas.¹⁰ Furthermore, while the MZI Act, 1976 explicitly stated that in India’s EEZ, “ships and aircraft of all States shall, subject to the exercise by India of its rights within the zone, enjoy freedom of navigation and over flight”, this was diluted by the stated requirement of foreign vessels to seek India’s consent for the conduct of “military exercises or manoeuvres” in India’s EEZ and continental shelf.¹¹ By placing constraints on activities of foreign naval vessels within its maritime zones India sought to create pre-emptive domestic legal structures to mitigate anticipated security threats. Whilst the merits, utility, and legitimacy of such stipulations are debatable, the fact that a number of India’s perceived maritime security challenges were recognised as a result of the LOSC and its outcomes merits acknowledgment.

Another significant impact of the LOSC on India’s maritime security structure was the impetus it generated for demarcation of boundaries with its maritime neighbours. Seven neighbouring and adjacent countries influence the extent of India’s maritime zones, namely, Pakistan, Maldives, Sri Lanka, Indonesia, Thailand, Myanmar, and Bangladesh. In order to enforce Indian jurisdiction within its maritime zones, it was vital, in the first instance, to establish its limits. Consequently, India concluded numerous agreements with these countries to finalise its maritime boundaries. The most recent boundary settlement, however, came about after a legal ruling against India, and in favour of Bangladesh, at the Permanent Court of Arbitration in 2014.¹² As on date, India has settled all but two of its international maritime boundaries, mostly through bilateral and trilateral agreements. India’s most significant unresolved maritime boundary is with Pakistan due to the historical Sir Creek land border dispute.¹³ The manner in which this dispute is resolved will determine the western limits of India’s maritime zones. India’s other unresolved maritime boundary is the limits of its EEZ with respect to that of Indonesia.

Whilst bilateral agreements exist between India and Indonesia on the demarcation of their continental shelf boundary, the altered EEZ limits, due to Indonesia establishing archipelagic baselines, are yet to be negotiated.¹⁴ In this instance, however, operational constraints of law enforcement in an area where limits of the EEZ have not been firmly established are being overcome through cooperative efforts and regular engagement between the maritime security agencies of India and Indonesia.¹⁵

As is evident, developments related to the LOSC manifested as maritime security requirements for India even before the Convention was concluded in December 1982. There was an acknowledgement across government and maritime security agencies that the manner in which India realised its economic objectives would hinge, to a large extent, on how effectively it used the maritime domain and resources therein. Subsequently, it was essential to establish a robust domestic legislative framework that would permit effective maritime security operations in India's maritime zones, as also cooperation with other regional states to ensure security of the maritime commons in the region.

Analysis of India's domestic legislative framework for maritime security

A coastal state's embodiment of the principles of international maritime law is reflected in the manner it translates these into domestic legislative instruments. Domestic legislation pertinent to maritime security would, therefore, be an outcome of a process that assesses risks to the state and evaluates possible mitigating measures within the international legal framework that it has acceded to. Hence, to support a robust operational model for maritime security, India's domestic legislation framework needs to, first, be adequate to counter the threats that India faces on and from the maritime domain and second, be internationally recognised as being legitimate and in conformity with accepted norms and rules. The two characteristics of adequacy and legitimacy of the legal framework are also key drivers of international cooperation in maritime security efforts, as a common understanding of maritime security operations would permit the seamless sharing of capabilities across states.

Adequacy of India's maritime security legislative framework

The most significant maritime security threats to India's national interests are posed by attacks on India's coastal facilities and critical infrastructure from the seas, as well as other criminal activities, such as piracy, armed robbery, illegal fishing, and trafficking. Acts of terrorism along India's coastline pose significant risks due to their sponsorship and support by state agencies. "Soft" targets, such as population centres, transport hubs, places of cultural importance, and tourist attraction, are particularly vulnerable to attacks from the sea, as was witnessed in the Mumbai attacks of 2008.¹⁶ The vulnerability of Indian coastal areas to acts of deliberate attack, particularly those sponsored by state entities, is acknowledged in India's maritime strategy document, which states:

There has been a steady rise in non-traditional threats, in occurrence and scale, with the lines at times getting blurred with traditional challenges. This is especially the case where

non-traditional threats receive cooperation, support and sponsorship from traditional entities. Changes in the nature of non-traditional threats and challenges necessitate corresponding changes in strategies, force structures, operating methodology, training, and coordination mechanisms.¹⁷

India has also incurred significant economic and reputational costs due to criminal activities in the Indian Ocean Region (IOR). Between 2010 and 2015, the entire west coast of India was declared a “high risk area” by the Contact Group on Piracy off the Coast of Somalia.¹⁸ This caused increased costs of maritime cargo due to the additional war risk premiums paid by shipping companies. For a country aspiring to be a “net security provider”, this imposed significant reputational costs as well.¹⁹ Other criminal activities in India’s maritime zones also pose grave national security challenges. For instance, in June 2019, 10 Chinese fishing vessels sought shelter in the port of Ratnagiri on the Maharashtra coast to escape from the effects of cyclone Vayu. Only later was it realised that these vessels had been engaged in illegal fishing within India’s EEZ.²⁰ Whilst engaging in criminal activities at sea, the fact that these vessels may be engaged in “grey zone” activities of a much serious nature cannot be ruled out. This is particularly relevant in the context of recent instances where Chinese vessels have been found indulging in espionage and illegal hydrographic surveys close to the Indian coast.²¹

In order to mitigate these threats, and their subsequent evolution into more complex risks, it is vital for India to have a robust maritime security legal framework. However, there are significant shortcomings in the adequacy of India’s security laws in deterring and defending against these threats. One of the biggest lacunae in India’s security legislation is the antiquated nature of most of its laws. A number of security-related laws continue as relics of India’s colonial past, which have not been suitably amended and revised to reflect contemporary security demands. For instance, while the Information Technology Act, 2000 articulates various cyber offences, there are no applicable punitive stipulations in the Indian Penal Code (IPC, 1860). Therefore, individuals convicted of cybercrimes are awarded punishments listed under “punishment for mischief”, among other provisions, in the IPC.²²

Specifically, in the context of maritime security, while a number of changes were made to the maritime security organisation in the wake of the 2008 Mumbai attacks, no commensurate amendments or additions were made to India’s legal framework. The only major act of legislation that was created as a result was the National Investigation Agency Act, 2008, which established the roles and duties of India’s leading agency in counterterrorism response.²³ There has been a recent move to revamp old statutes and revise instruments. For instance, the Marine Aids to Navigation Act, 2021 – which repeals the Light House Act, 1927 – and the Major Port Authorities Act, 2021 have been recently enacted, with others such as the draft Marine Fisheries Act, 2021 currently under consideration.²⁴ These new legal instruments seek to plug critical gaps in different aspects of India’s maritime security architecture. However, some gaps that existed prior to the 2008 terror attacks have continued to pose constraints for India’s maritime security agencies.

One such gap is the enforcement of fisheries laws in India’s EEZ by the ICG. Since coastal states and union territories exercise jurisdiction within India’s territorial seas, state police agencies are responsible for prosecuting illegal fishing activities in that area. In the EEZ beyond the territorial seas, the coast guard is the lead agency for

preventing and prosecuting illegal fishing activities. However, the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 authorises ICG officers to investigate only foreign fishing vessels in India's EEZ.²⁵ Thus, until recently, the coast guard had no powers to arrest Indian fishers engaged in illegal fishing within India's EEZ.²⁶ Even for apprehending foreign-flagged boats engaged in illegal fishing, the coast guard had to seek approval of the Ministry of External Affairs (MEA).²⁷ India's ability to counter illegal, unreported and unregulated (IUU) fishing will receive considerable impetus through provisions in the draft Marine Fisheries Act, 2021, but it is politically prickly for the same reasons as it seeks to regulate a heretofore relatively unregulated undertaking.²⁸ Until this legislation is enacted, security agencies will continue to face notable shortcomings, and consequently significant operational gaps, in preventing and prosecuting acts of illegal fishing in India's maritime zones.

While the Indian Navy has been designated the lead maritime security agency post-2008, there are no legal provisions that allow it to investigate or apprehend vessels in India's maritime zones.²⁹ The assignment of responsibilities without commensurate authority is a serious shortcoming of India's maritime security arrangements. Furthermore, there are no domestic legal instruments in India that define piracy as a crime for which an individual may be prosecuted.³⁰ This implies that an individual charged with acts of piracy may not be brought to justice for these offences in an Indian court. Since acts of piracy are committed on the high seas, no other provision of the IPC may be applicable to award suitable punishment to such individuals. The Anti-Maritime Piracy Bill, 2019 was introduced in the Parliament to plug this significant gap and once enacted, will provide the necessary legal authority to prosecute individuals accused of acts of piracy. However, the draft bill is yet to be legislated and has contentious provisions, particularly related to the award of the death penalty, which are yet to be resolved.³¹ The cumulative effects of these gaps in India's maritime security legal framework are significant and severely constrain India's maritime security agencies from fulfilling their charter effectively and developing meaningful collaborative endeavours with other countries on combating maritime security challenges.

Legitimacy of India's maritime security legislative framework

In seeking to plug gaps in the legal framework, some Indian laws have clear elements of overreach. While the ICG and the Indian Navy have been pursuing a case for suitable powers of visit and arrest in India's maritime zones, these have remained unsettled, ostensibly due to differences between the MEA and the Ministry of Defence (MoD).³² Rather than drive a long-term sustainable solution to this issue, the MoD chose to amend the Coast Guard Act in 2019, with a view to provide coast guard officers with legal authority to enforce laws within India's maritime zones.³³ This amendment states that coast guard officers are permitted to arrest any person or vessel in India's EEZ if they are suspected of committing any criminal offence as per Indian laws. This is also an extension of a previous stipulation of 1981, which extended all the provisions of the IPC and the Code of Criminal Procedure to the outer limits of India's EEZ.³⁴ However, the LOSC affords coastal states the powers of enacting only such laws as may be applicable to the coastal state's rights in each maritime zone. Therefore, within India's EEZ, Indian laws can only seek to prosecute those offences that relate to its

sovereign rights of exploring and extracting natural and mineral resources. For all other offences, flag state jurisdiction would normally apply. This is, therefore, a clear overreach of judicial powers in India's maritime zones, an aspect that was disputed successfully by the Italian government in the *Enrica Lexie* case.³⁵

As a nation seeking to lead maritime security efforts in the IOR, it is imperative for India to ensure that its legislative framework is adequate for its maritime security objectives, while simultaneously being in conformity with the LOSC and its other international treaty obligations. Whilst India's security concerns are legitimate, its maritime security capabilities have grown significantly since independence in 1947. India's navy and coast guard are potent forces, capable of delivering desired security outcomes at sea and on land. It is important that their roles and operations be supported by a robust and efficient legal framework, one which is also reflective of India's stature as a capable, responsible, and rules-abiding maritime power. This will also permit the establishment of effective structures for regional cooperation – an aspect that is crucial for maritime security in the IOR.

Legal constraints for maritime security cooperation

The linkages between maritime law and security cooperation are significant, even if they are not obvious. The shared understanding and acceptance of rules is a basic requirement for engendering international cooperative efforts, which are vital for maritime security. In this context, James Kraska and Raul Pedrozo state:

The law is contributing substantively to maritime security by creating new norms, regimes, and expectations, and procedurally by building trust and collaborative decision-making. The emerging global maritime security regime is inclusive, multilateral and consensual, in sharp distinction to the disparate and competing national perspectives on international law concerning counter-terrorism. The vehement disagreement among nations over issues of detention, interrogation, drone strikes, and targeting of terrorists does not exist in the maritime domain. Furthermore, the important role of law in facilitating maritime security cooperation is at odds with conventional wisdom that suggests the oceans are subject to a legal vacuum – a sort of wild and ungoverned space.³⁶

At a fundamental level, therefore, if two or more countries seek to collaborate in maritime security efforts, they need to arrive at common perceptions of what constitutes a threat, as also on the most effective way of deterring and defending against it. International legal instruments, such as the LOSC, are important in driving international security collaboration. The fact that a group of countries agree to abide by the provisos of a particular treaty indicates their shared acceptance of the causes and effects of the same. At the operational level, however, when security agencies from multiple countries are involved in cooperative security endeavours, each operates within the framework of their respective domestic legislative arrangements. Therefore, for such cooperation to be substantive and meaningful, it is important for their respective domestic legislative frameworks to be aligned and in conformity with international rules and norms.

The differences in legal outlook between India and many other countries on innocent passage by military vessels in territorial seas, and military exercises in the EEZ, illustrate how these divergences may create hurdles in collaborative operational endeavours. India requires military vessels to provide prior notification for conducting innocent passage through its territorial seas.³⁷ It also requires military vessels to seek approval before

conducting “military manoeuvres” in its EEZ.³⁸ The United States (US) characterises these as “excessive maritime claims” and conducts operational assertions contesting them.³⁹ In April 2021, the *USS John Paul Jones* conducted such an operational assertion, contesting India’s requirement for warships to seek prior approval before conducting military exercises and manoeuvres in its EEZ.⁴⁰ While this is a fairly regular operation, conducted against many countries – some of which are its allies – this particular transit evoked strong reactions within India, particularly on social media.⁴¹ The official response from the US and Indian governments was relatively muted, but the strong public reaction in India could influence future bilateral naval and maritime security cooperation between the two countries. Moreover, even in seeking to establish greater control within its maritime zones, India’s legal framework falls short, as the stipulation for conduct of exercises by foreign warships is not legislated domestically and only exists as remarks made by India while signing the LOSC.⁴² Arguably, therefore, India’s position on these issues may require a review as these stipulations are neither required nor enforceable. While navies on both sides have worked around these divergent legal perspectives to develop a healthy bilateral engagement, this dissonance may influence political will on both sides to deepen maritime security cooperation.

To date, India’s international maritime security cooperation efforts have been confined to certain aspects, such as information sharing and capacity building. India’s maritime security agencies have generally operated independently, outside of coalition structures, like the Combined Task Force (CTF) 150 and CTF 151 operating in the IOR.⁴³ Despite this, Indian naval ships that are engaged in anti-piracy patrols off the Horn of Africa since 2010 have often been required to coordinate operations, such as convoy escort missions, with other national and coalition maritime units operating in the vicinity.⁴⁴ This has been relatively successful, based on the shared understanding of the dangers of piracy and the importance of defeating it. Currently, there may not be sufficient political appetite for India’s maritime security agencies to be part of multi-flag security operations. However, considering the rapidly evolving security scenario in the Indo-Pacific and India’s increasing engagement with multilateral entities, such as the Quadrilateral Security Dialogue (Quad), it is likely that India’s maritime forces may engage in operations involving partner agencies from other countries. In such a scenario, the significant gaps in India’s domestic legislation are likely to pose operational constraints. For instance, if a multilateral anti-piracy operation in the high seas entailed the prosecution of offenders in Indian courts, it would not be to internationally acceptable standards, considering that there does not exist an Indian law that recognises piracy as a punishable offence. Besides curtailing the effectiveness of such cooperative endeavours, these shortcomings also dilute efforts to build a regional reputation as an effective maritime power.

The loss of national maritime security capacity as a consequence of inadequate domestic legal arrangements also creates impediments to effective maritime security cooperation. The US Defense Strategic Cooperation Plan identifies capabilities of partner countries as an important factor of international security cooperation.⁴⁵ For India, as a maritime power of some influence and an aspiring regional power, it is important to demonstrate the ability to effectively defend its maritime interests, in order to catalyse greater and meaningful cooperative arrangements. It is easy to focus on operational capabilities that are afforded by platforms, trained and motivated human resource, and a forward-looking maritime strategy. However, supporting structures – such as

organisational and legal structures – are vital enablers for operational effectiveness, which, in turn, engender greater incentive for regional partners to enter into cooperative arrangements. Whereas India's current cooperative lines of effort focusing on information sharing and capacity building do not rely heavily on its domestic security legislative framework, this will come into focus at higher levels of maritime security cooperation, such as in coordinated patrols and other operations. Even in its efforts to build capacity among smaller regional partners, India's ability to translate capacity to operational capabilities for the recipients of its aid will be an important driver of subsequent operational arrangements. Therefore, a robust domestic legislative framework that enables operational effectiveness is a key ingredient for India to drive substantive maritime security cooperation efforts in the region.

Recommendations and the way ahead

Much has changed in the world since the LOSC was concluded in December 1982. The security environment has evolved significantly, both in scale and complexity, and the need to provide a robust framework for oceans governance is arguably more acute today than 40 years ago. With a growing economy that is increasingly dependent on the unhindered use of the oceans, successive Indian governments have been cognisant of the importance of developing national maritime security capabilities and promoting international cooperation in maritime security efforts. However, in order to make its increasing operational capabilities more effective and create a national maritime security architecture that enables international collaboration, India needs to review and revise its legal framework urgently.

Many of the gaps in India's legal framework for maritime security continue to exist due to the lack of synergy at the functional levels between the MoD and the MEA. Whereas the MoD is the key ministry dealing with national security issues, the MEA is the nodal ministry for all LOSC-related matters. Any proposal for amending national maritime security-related legislation based on the LOSC requires the consent of both the MoD and the MEA, which is not easily forthcoming. This may be attributed primarily to the lack of cross-disciplinary expertise in both these ministries that can bridge the gap between maritime security operational and legal requirements. In the long term, the Indian government would require to invest in such expertise to steer the development and maintenance of a legal framework that can adequately support India's maritime security efforts, including international cooperation.

Arguably, the most effective manner in which a robust maritime security legislative framework may be developed is by including elements for that purpose within India's security organisation. This would entail the creation of entities within India's national maritime security organisation that would be responsible for the creation and maintenance of a suitable legislative framework. This was, heretofore, not a viable proposition as there was no national coordinating agency for maritime security which could exercise authority over all participating agencies, both civilian and military. However, the newly created office of the National Maritime Security Coordinator would be ideal to house a legal unit within it, to draft and seek the enactment of appropriate legislation that could support India's maritime security efforts.⁴⁶ It would also be appropriate to include mechanisms for periodic review and update of legislative instruments related to maritime security, to maintain their relevance in a rapidly evolving security

environment. Furthermore, as the agency responsible for international maritime security cooperation, this office would be suitably empowered to develop suitable “ways” and “means” for its desired “ends”, including the creation of a legislative framework that would support India’s national security strategy, whilst promoting the international rules-based order that it has committed to uphold.

In the more immediate time frame, India’s legal framework for maritime security would benefit significantly from the expeditious enactment of pending legislations, such as the Anti-Maritime Piracy Bill and the Marine Fisheries Act. These instruments will provide immediate impetus to the maritime security agencies’ efforts against piracy and IUU fishing. India may also benefit from international cooperation in this regard, and emulate best practices in the maritime security legal framework of other countries in the region. Countries such as Australia have relatively sophisticated legal arrangements that support their national maritime security interests and promote cooperative engagement with like-minded countries.⁴⁷ Whilst it may not be necessary or indeed desirable to adopt the same legislative instruments, there may be a lot to gain from studying the aspects of maritime security that have been legislated, the manner in which legislative instruments provide authority to different agencies involved, and the periodicity with which these legislative instruments are revised. There is also much to be gained from the division of authority between federal and state governments, particularly in the context of maritime security demands in a federal system of administration. This will enable the creation of capabilities within states, such as effective marine police units, which is a particularly weak facet of India’s maritime security organisation.⁴⁸ By studying legal arrangements in other advanced countries, and engaging with experts therein, India may avoid reinventing the wheel and could adopt templates that can be suitably modified to meet its maritime security objectives. Whilst contributing to India’s national maritime security capacity, this would also provide a robust framework for engaging in meaningful cooperative endeavours with its partners.

Conclusion

The requirement of international cooperation in maintaining security in the maritime domain is one of the few universally accepted facets of maritime security. The LOSC, which was negotiated within the overarching objective of protecting the “common heritage of mankind”, provides an imperfect but sound framework for cooperative efforts in maritime security. Whilst agreement at the political level is essential to build cooperative engagements in maritime security, at the operational level, it is essential to share a common understanding of maritime security risks and mitigating strategies in order to develop substantive lines of cooperative effort. This shared perception is manifested in the manner in which a state signals its interpretation of the LOSC through domestic legislation and the concurrent development of its operational capabilities. Together, these form the basis for international cooperation in maritime security.

While India’s operational capabilities in maritime security have evolved considerably since the LOSC was concluded 40 years ago, its domestic legislative framework has lagged and is not adequate to support national maritime security objectives. This has posed significant operational constraints and promises to retard the efforts of its maritime security agencies to forge meaningful networks of international cooperation. India’s maritime

security legislative framework requires to meet both the standards of adequacy and legitimacy before it can suitably support its regional maritime security objectives. This requires significant investment in building cross-disciplinary legal expertise within the security and foreign affairs portfolios, using the newly created office of the National Maritime Security Coordinator to develop and maintain appropriate legislative instruments, including emulating best practices prevalent in other countries that have developed relatively sophisticated legal frameworks for maritime security requirements. This is essential for meeting the demands of maritime security in an increasingly complex region, and for India to demonstrate its intentions to uphold the rules-based international order.

Notes

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