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Managing Editor's Comments

Dear *JTMS* Readers,

Greetings again from Seoul. As the onset of early summer weather signals the rapid approach of the end of the semester, I am struck by how quickly this past year has flown by in the wake of the Covid-19 pandemic. During the pandemic, the world seemed frozen and since then internal political strife seems to be stoked in many countries dealing with a return to normal amid abnormally high inflation. Internationally, the Russian invasion of Ukraine has entered its second year and tensions remain high in the South China Sea and Korean peninsula. Meanwhile, droughts, floods, and fires give constant reminders of the rapidly approaching climate crisis. Never have I felt like the world was so close to major conflict and disaster when we should all be breathing a collective sigh of relief following three stressful years of pandemic response measures. In such a world, sober minds providing balanced analysis are not just needed but urgently called for. In such a world, we need to double down on the rules-based international order to address and mitigate the challenges we face. This includes scholarship on international territorial disputes and the resolution thereof through international law. In line with such demands of the time, we are pleased to offer the Summer/Fall 2023 issue of *JTMS*.

First, Islam Attia performs an in-depth analysis of the position taken by the tribunal in the Chagos MPA Award by examining its reasoning under the broader international law principles of effectiveness and state consent. Attia encourages international courts and tribunals to adopt a systematic approach; in assessing whether and to what extent they can assert their subject-matter jurisdiction over ancillary disputes, by interpreting their dispute settlement and other relevant provisions following Articles 31–33 of the Vienna Convention on the Law of Treaties (VCLT). This implies that, as international courts and tribunals differ in their functions, it is expected that the extent of any court's jurisdiction over any ancillary issue will vary according to the court and the subject matter. Yet, there is a difference between variations based on a systematic approach that follows a consistent methodology and haphazard applications based on subjective positions.

Second, Abhishek Sharma asserts that the Indo-Pacific region's geopolitical climate is fluctuating due to the contestation between the U.S. and China. Amid this, the region is observing a quiet shift and increasing engagement between states whose interests align. India and South Korea have emerged as like-minded states practicing a balanced foreign policy in the region, as they face similar challenges and share values and respect for a rules-based order in the Indo-Pacific region. Sharma's research paper focuses on analyzing the defense cooperation in the Indo-Pacific region undertaken by India and South Korea with each other and other states. Sharma argues that "like-minded countries," here India

and South Korea, can work together and strengthen cooperation in the defense sector to bring stability and ensure the region's prosperity by avoiding the region getting drawn into great power contestation.

Third, using content analysis, Soumyodeep Deb and Amlan Dutta look into India's growing initiatives for enhancing maritime cooperation around the Indian Ocean under SAGAR (Security and Growth for All in the Region) and how it is enhancing maritime security and governance through capability development measures by providing assistance to the other IOR littoral states. It will also look at the regional mechanism where India is playing a significant role to enhance the capability of regional nations and uphold maritime security and governance in the region. The authors point out that through capability development, India can uphold its strategic influence and position in the IOR, which is becoming a zone of major power rivalry between India and China.

Fourth, Adam Mohammed interrogates the various maritime security governance regimes in the Gulf of Guinea. His paper assesses the opportunities and challenges faced by the states' regional and international architecture responses initiated to combat various maritime security threats such as piracy, oil theft, drug trafficking, smuggling, marine pollution, and other forms of sea-bond organized crime experienced in the region. Building on extant literature on the ambition and processes of maritime security governance regimes in the Gulf of Guinea, Mohammed's findings provide an original contribution for understanding the operational complexities involved in effective security response to numerous maritime threats in the region.

Fifth, in our first commentary essay of the issue, Neeraj Singh Manhas contends that availability and use of clean water has been a point of contention for many countries since time immemorial, particularly for countries with a vast population such as China and India. The use of existing resources is a fight for survival, and it is necessary to understand how the perspective of one country has implications for others to such a vast extent that countries have to be aware of their neighboring country's resources in order to formulate their own policies. Singh Manhas concludes that water issues are bound to only get worse, and that measures must be taken at all times to ensure the survival of the ecosystem.

Sixth, Kazuhiko Togo offers his insights into the conflict in Ukraine by providing highlights of the events of the past year, prospects for peace, some thoughts on the perspectives of the parties involved, and considerations that will be necessary if a peace deal is to be achieved. He concludes by offering thoughts on the prospect of third-party mediation and offers some suggestions and reminders for Putin, Zelensky and Biden in terms of their responsibilities to their peoples and to finding a path to peace.

Finally, in our book review section, we have a review of *Ports, Crime and Security: Governing and Policing Seaports in a Changing World* by Anna Sergi, Alexandria Reid, Luca Storti and Marleen Easton.

In closing, I would like to thank our readers, our authors, and our editorial board and staff for providing the support and labor to make yet another great issue of *JTMS* possible.

Lonnie Edge
Managing Editor

Revisiting Jurisdiction of UNCLOS Courts and Tribunals Over Ancillary Sovereignty Disputes

Islam Attia

Structured Abstract

Article Type: Research Article

Purpose—The paper concludes an in-depth analysis of the position taken by the tribunal in the Chagos MPA Award by examining its reasoning under the broader international law principles of effectiveness and state consent.

Design, Methodology, Approach—The paper encourages international courts and tribunals to adopt a systematic approach in assessing whether, and to what extent, they can assert their subject-matter jurisdiction over ancillary disputes by interpreting their dispute settlement and other relevant provisions following Articles 31–33 of the Vienna Convention on the Law of Treaties (VCLT).

Findings—Pursuant to Article 31(3)(c) of VCLT, it follows that a tribunal should take into consideration the relevant principles of international law which here are effectiveness and state consent. Each tribunal has to examine how effectiveness fits within its particular functions and to what extent it allows the tribunal to assert its jurisdiction over an ancillary issue.

Practical Implications—As international courts and tribunals differ in their functions, it is expected that the extent of any court's jurisdiction over any ancillary issue will vary according to the court and the subject matter. Yet, there is a difference between variations based on a systematic approach that follow a consistent methodology and haphazard applications based on subjective positions. The paper concludes that UNCLOS tribunals have no basis to exercise jurisdiction over a sovereignty dispute.

Keywords: international courts and tribunals, jurisdiction, sovereignty disputes, UNCLOS

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Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 5–26 / ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.5 / © 2023

I. Introduction

As of this writing, there are several territorial sovereignty disputes that might possibly be brought before the compulsory dispute settlement procedures under Part XV of the United Nations Convention on the Law of the Sea (UNCLOS), including the disputes over the Falkland Islands, Diaoyu/Senkaku Islands, South Georgia and the South Sandwich Islands, Dokdo/Takeshima, parts of Antarctica, the Spratlys, Paracels or other features in the South China Sea, Sabah, Belize, Tromelin, Western Sahara, Abu Musa, Mbanie Island, Mayotte, and Perejil Island.[1] Although some commentators discussed jurisdiction of Part XV courts and tribunals over sovereignty disputes, no paper has been wholly dedicated to this specific issue encompassing an in depth analysis of the position taken by the tribunal in the *Chagos MPA Award* and examining its reasoning under the international law rules of effectiveness and state consent.[2]

The dilemma considered in this paper is one of the manifestations of the problem of incidental substantive disputes in international adjudication. Incidental substantive disputes are external substantive disputes not regulated by the treaty granting the "primary" jurisdiction of international courts, hence rendering the latter hesitant to exercise jurisdiction over them, despite the necessity of considering these external disputes to settle the primary dispute. Generally, international courts are hesitant and inconsistent in their approach to dealing with this problem from a jurisdictional perspective. This problem exists before various courts and tribunals with respect to different sorts of incidental disputes. For instance, incidental territorial sovereignty disputes were brought before UNCLOS Annex VII tribunals in relation to the *Chagos MPA (Mauritius v. United Kingdom)* and *South China Sea (Philippines v. China)* cases; incidental disputes concerning the use of force and self-determination were brought before the ICJ in relation to *Georgia v. Russia* and *Ukraine v. Russia* cases under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); incidental disputes concerning countering terrorism and countermeasures were brought before the ICJ in the *Qatar v. UAE* case under CERD. All the aforementioned courts or tribunals have limited jurisdiction, because in all these cases they derive their jurisdiction from compromissory clauses in treaties (e.g., UNCLOS, CERD) that limit the task of the concerned court to settling disputes concerning the interpretation and application of its concerned treaty (and not others). Hence, the question that arises is "to what extent may these courts and tribunals assert their jurisdiction *ratione materiae* over the incidental dispute, if deemed necessary?"

Caution is required. Asserting or denying jurisdiction over an incidental substantive dispute can mask a political contest and impose a third-party authority in a world of equal sovereigns. Although the literature and jurisprudence has developed a framework regulating the extent of the powers of a tribunal over the procedures (inherent jurisdiction) and over a non-consenting party (*Monetary Gold* principle), no framework has been developed regulating the extent of the power of a tribunal over the subject-matter. As a result, international practice in terms of the latter is haphazard. This is despite the fact that some rationales and balances behind these frameworks regulating the limits of powers over the procedures and non-consenting parties are inspiring in regulating the limits of powers over the subject matter. Therefore, this paper invites development of a framework for regulating the extent of the power of a tribunal over the subject-matter that is inspired by the

former frameworks, regulating the extent of the powers of a tribunal over the procedures and over a non-consenting party.

The focus of this paper is only on exercising jurisdiction over a sovereignty dispute by UNCLOS Part XV courts and tribunals because territorial sovereignty is the most reflective form of state sovereignty and thus states are not expected to comply with its subjugation to any sort of jurisdiction that is *prima facie* unsubstantiated. Also, because UNCLOS is one of the most advanced dispute settlement systems,[3] examining the incidental substantive dispute dilemma under this system is the most challenging, yet it is also the most rewarding.

This paper generally encourages courts and tribunals to adopt a "systematic approach" in assessing whether and to what extent they can expand their subject-matter jurisdiction. This systematic approach calls for international courts and tribunals to follow a consistent methodology in dealing with ancillary substantive disputes including those concerning sovereignty disputes. For that purpose, a tribunal should interpret its relative provisions following the interpretation maxims in Articles 31–33 of the Vienna Convention on the Law of Treaties (VCLT). Meanwhile, pursuant to Article 31(3)(c) of VCLT, a tribunal should take into consideration the relevant rules of international law, which here are effectiveness and state consent. Adhering to this approach would lead to a more consistent framework for exercising jurisdiction over incidental substantive disputes including sovereignty disputes ancillary to maritime disputes.

Therefore, this paper will first present the tactics of bringing sovereignty claims under Part XV. Second, it will assess whether the provisions of the Convention can provide jurisdiction over a sovereignty dispute in light of the reasoning of the *Chagos MPA Award*. Then it will explore whether such a jurisdiction can be asserted under the doctrine of "incidental jurisdiction" and assess that doctrine under the principles of effectiveness and state consent within the context of UNCLOS. The paper then concludes that such systemic methodology renders UNCLOS tribunals with no basis to expand their jurisdiction over a sovereignty dispute even if it was minor, in contrast to the position of the tribunal in the *Chagos MPA Award*.

II. Tactics of Bringing Sovereignty Claims Under Part XV

States lacking effective control over the disputed territory or island ("claimant") could initiate two types of compulsory procedures against states controlling the disputed territory or island ("respondent") as follows.

2.1 Annex VII Arbitration

The claimant could initiate arbitration procedures against the respondent under several possible grounds. First, the claimant could initiate maritime delimitation proceedings like in the *Mauritius v. Maldives* case before ITLOS, which concerns the delimitation of the maritime area between these two states in the Indian Ocean, including the disputed Chagos Archipelago. The claimant could also challenge one or more of the measures taken

by the respondent in the disputed maritime zone under Articles 2(3), 56(2) and 194(4) of the Convention, which the tribunal in the *Chagos* case found that each requires at least the coastal state to "consult" with other states and "balance" its own rights with theirs.[4] The claimant could also argue that it is entitled to a historic title or even historic rights (i.e., mining, fishing, etc.) in the maritime zones of the disputed territory. The tribunal in the *South China Sea* case held it has jurisdiction to decide on China's "historic rights," as they differ from "historic titles" excluded by an Article 298(1) declaration.[5] The claimant could also submit that the respondent's straight baselines on the coast of the disputed territory are in violation of Article 7 on the basis that the respondent is not the "coastal State" entitled to put baselines on these coasts.[6] Generally, the claimant could argue, like Mauritius did against the United Kingdom,[7] that the respondent is not the coastal state competent to take the measures authorized by the Convention or claim, like Ukraine did against the Russian Federation,[8] that the respondent interfered with its maritime rights in the disputed area.

As a result, through these tactics, the claimant may bring a sovereignty dispute before an UNCLOS tribunal. This would not be a problem if the tribunal finds that it can decide on the case without having to necessarily decide on the sovereignty dispute. This was the case in *Mauritius v. Maldives* since ITLOS found a way to avoid deciding on the sovereignty dispute over Chagos by relying on the ICJ advisory opinion on the matter.[9] Also, in the *South China Sea* case, the tribunal decided on the case without having to decide on the sovereignty dispute over the maritime features in the South China Sea by limiting itself to deciding on the question of whether such features are entitled to maritime zones (regardless of to which State such features belong).

2.2 Compulsory Conciliation

The claimant could initiate compulsory conciliation procedures against the respondent concerning disputes mentioned in Article 298 of the Convention. Under the latter, a state party could submit a declaration excluding the disputes specified in Article 298 from compulsory dispute settlement, including disputes concerning maritime delimitation and historic titles. However, those last two disputes could still be subject to compulsory conciliation upon a request by one of the parties when no agreement is reached within a reasonable period of time in negotiations between the parties. Thus, the claimant might initiate compulsory conciliation against the respondent state that submitted an Article 298 declaration with regard to the respondent's *delimitation of its sea boundaries* or the claimant's *historic title* in the disputed maritime zone. Nevertheless, Article 298(1)(a)(i) explicitly excludes sovereignty disputes from its compulsory conciliation procedure.

III. Jurisdiction Over Sovereignty Disputes Under the Provisions of the Convention

Interpreting jurisdictional clauses has been subject to debate. Some argue for a restrictive approach and some argue for a liberal approach.[10] However, Fitzmaurice found no uniform approach by the ICJ in this respect.[11] Therefore, the best point of departure is to

interpret the jurisdictional clauses of UNCLOS according to Articles 31–33 of the VCLT.[12] Article 31(1) states a treaty shall be interpreted in "good faith" in accordance with the "ordinary meaning" to be given to the terms of the treaty in their "context" and in the light of its "object and purpose."

3.1 Direct Provisions of the Convention

This part examines whether a tribunal can exercise jurisdiction over a sovereignty dispute based on a provision in the Convention that might directly provide such jurisdiction.

3.1.1 Article 288 (Jurisdiction)

Article 288 states that a tribunal "shall have jurisdiction over any dispute concerning the interpretation or application of this Convention" and "shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement." Generally, the international agreements over which the parties base their sovereignty claims neither relate to the purposes of the Convention nor provide jurisdiction to its courts or tribunals.

Consequently, for a tribunal to have jurisdiction over a sovereignty dispute, it has to be considered a dispute "concerning the interpretation or application of the Convention." The "ordinary meaning" of Article 288(1) is neutral because the provision neither grants nor prohibits jurisdiction over such disputes.[13] That is in contrast to the newly adopted draft agreement under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction which explicitly mentions in its Article 55 (Procedures for settlement of disputes) that "[n]othing in this Agreement shall be interpreted as conferring jurisdiction upon a court or tribunal over any dispute that concerns or necessarily involves the concurrent consideration of the legal status of an area as within national jurisdiction, nor over any dispute concerning sovereignty or other rights over continental or insular land territory or a claim thereto of a Party to this Agreement, provided that nothing in this paragraph shall be interpreted as limiting the jurisdiction of a court or tribunal under Section 2 Part XV of the Convention." It is logical to infer that by such explicit and detailed exclusion, states decided to put an end to the controversies that have arisen on this subject before UNCLOS tribunals and in the literature. It is expected that after this agreement is widely concluded by UNCLOS State parties, it may be considered as a subsequent agreement (VCLT Article 31.3.a) on the application of UNCLOS provisions that enhance the exclusion of ancillary sovereignty disputes from the jurisdiction of UNCLOS tribunals.

Besides, taking into account the "context" in interpreting UNCLOS Article 288 requires taking into account the only explicit reference to sovereignty disputes in the Convention, Article 298(1)(a)(i), which also does not explicitly bring ancillary sovereignty disputes within the jurisdiction of UNCLOS tribunals as will be shown below in section 3.1.3.[14]

With respect to Article 288(1), tribunals have adopted a "re-characterization" test on a party's submission. The tribunal first asks whether the sovereignty dispute is just one aspect of the larger Convention question or whether the dispute primarily concerns the sovereignty dispute?[15] In this test, tribunals have claimed that they adopt an "objective

approach" by re-assessing the submissions of both parties, taking into account external evidence as well (i.e., historical, diplomatic, etc.).[16]

The tribunal in the *Chagos* case found that Mauritius's submission that the United Kingdom was not the "coastal state" was characterized as primarily relating to the sovereignty dispute over the Chagos Archipelago.[17] However, Judges Wolfrum and Kateka, in the minority, relied on the wording of Mauritius's submission and thus found that the term "coastal state" was the main dispute before the tribunal and the issue of sovereignty was merely an element in the reasoning.[18]

A few months later, in the *South China Sea* case, the Philippines legal team (which included members from the Mauritius team) learned the lesson from the *Chagos* MPA case and developed more nuanced arguments. Philippines' team requested that the tribunal declare that China's claims based on its "nine dash line" are inconsistent with UNCLOS and queried if whether, under Article 121 of UNCLOS, certain maritime features claimed by both states are capable of generating entitlement to maritime zones greater than 12M.[19]

The tribunal noted that there is a dispute between the Parties regarding sovereignty over islands, but held that the matters submitted to arbitration by the Philippines do not concern sovereignty.[20] The tribunal did not accept that "it follows from the existence of a dispute over sovereignty that sovereignty is also the appropriate characterisation of the claims the Philippines has submitted in these proceedings."[21] The tribunal emphasized that "[t]he Philippines has not asked the tribunal to rule on sovereignty and, indeed, has expressly and repeatedly requested that the tribunal refrain from so doing."[22] The tribunal thus concluded that it did "not see that any of the Philippines' submissions required an implicit determination of sovereignty."[23] The tribunal added that it was "fully conscious of the limits on the claims submitted to it and, to the extent that it reaches the merits of any of the Philippines' Submissions, intends to ensure that its decision neither advances nor detracts from either Party's claims to land sovereignty in the South China Sea."[24]

A few years later, Ukraine's legal team in the *Coastal State Rights in the Kerch Strait (Ukraine v. Russia)* repeated the same mistake of Mauritius' team and challenged that Russia is the "coastal State" within the meaning of UNCLOS. Consequently, the tribunal found that the status of Crimea "is a prerequisite to the decision of the Arbitral Tribunal on a significant part of the claims of Ukraine" and that sovereignty disputes are generally not within its jurisdiction.[25]

The previous case emphasizes how skillful drafting of submissions is significant in fitting them within a tribunal's jurisdiction and how the "re-characterization" test entails an extent of subjectivity that might produce different results depending on the composition of the tribunals in future cases.[26] Therefore, commentators and tribunals are encouraged to develop specific criteria and apply them consistently in order to adopt an objective approach; otherwise, a judgment will be less persuasive and non-compliance will be more probable.

3.1.2 Article 293(1) (Applicable Law)

Article 293(1) of the Convention states that a tribunal "having jurisdiction under this section shall apply this Convention and *other rules of international law* not incompatible with this Convention."[27] Some tribunals considered these "other rules of international law" as a *renvoi* that could serve as a basis for jurisdiction over non–UNCLOS disputes.

The International Tribunal on the Law of the Sea (ITLOS) in *M/V Saiga* and *M/V Virginia G* and the Annex VII Tribunal in *Guyana v. Suriname* all asserted their jurisdiction over non–UNCLOS claims (illegal use of force) under customary international law on the basis of Article 293(1).[28]

However, the previous assertion is inconsistent with the "ordinary meaning" of Article 293(1). A tribunal cannot apply non–UNCLOS rules without firstly establishing its jurisdiction because Article 293 states a tribunal must be one "having *jurisdiction*…."[29] The ICJ adopted a similar position when it refused to expand its jurisdiction in the *Genocide Convention* case as defined by the compromissory clause of the Genocide Convention over other alleged breaches to the applicable law, even if the alleged breaches were to peremptory norms.[30] The tribunals in the *MOX Plant* and *Chagos* cases took the same position by distinguishing between jurisdiction in Article 288 and applicable law in Article 293(1).[31] Therefore, Article 293(1) *per se* does not provide a basis for jurisdiction over a sovereignty dispute.

3.1.3 Article 298(1)(a)(i) (Optional Exceptions)

Sovereignty disputes are not explicitly mentioned in the Convention except under Article 298(1)(a)(i). This Article, as elaborated in section 2.2, permits any state party to exclude disputes concerning maritime delimitation or historic titles from the compulsory procedures, although these disputes could still be subject to compulsory conciliation. However, in that case, the Article explicitly excludes "any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning *sovereignty or other rights over continental or insular land territory*"[32] from compulsory conciliation.

Mauritius argued in the *Chagos* case that this last clause means *a contrario* that sovereignty disputes shall be within the scope of the Convention in the absence of a declaration.[33] But the tribunal rejected this argument stating that "[t]he negotiating records of the Convention provide no explicit answer regarding jurisdiction over territorial sovereignty."[34] The tribunal added that "had the drafters intended that such [sovereignty] claims could be presented as disputes 'concerning the interpretation or application of the Convention,' the Convention would have included an opt-out facility for States not wishing their sovereignty claims to be adjudicated, just as one sees in Article 298(1)(a)(i) in relation to maritime delimitation disputes."[35] However, the methodology of the tribunal in reaching its conclusion is neither clear nor comprehensive.

Article 298(1)(a)(i) is a treaty provision and thus its interpretation shall be subject to Articles 31–33 of the VCLT. Article 32 of the VCLT permits recourse to the *travaux préparatoires* of the treaty and the circumstances of its conclusion *only* in order to determine the meaning when the interpretation according to Article 31 leaves the meaning *ambiguous, obscure*, *manifestly absurd or unreasonable*. The tribunal, nevertheless, did not attempt to interpret Article 298(1)(a)(i) according to the elements mentioned in Article 31 of the VCLT (i.e., the "ordinary meaning" of the provision) which might have led to a different conclusion, or even provided a convincing and consistent legal basis for the same conclusion. One apt illustration of the weakness of the tribunal's analysis is that the minority, in reaching its opposite conclusion, relied on the same *travaux préparatoires* that the majority relied on. The minority argued that if the negotiating records of the Convention provide no explicit answer regarding jurisdiction over sovereignty disputes, then this should not provide a justification for "reading a limitation into the jurisdiction" of the tribunal.[36]

3.2 The Renvoi Provisions of the Convention

This part examines whether a tribunal can exercise jurisdiction over a sovereignty dispute based on a provision in the Convention that might indirectly provide such a jurisdiction on the basis of a *renvoi* in a provision. UNCLOS includes few provisions which refer in general terms to the observance of "other rules of international law" (Article 2.3) and "rights" of other states (Articles 2.3, 56.2 and 194.4) while applying the Convention. Whether and to what extent such general *renvoi* allow an UNCLOS court or tribunal to assert its jurisdiction over ancillary sovereignty disputes was discussed by the *Chagos MPA* tribunal and literature. This part concludes that the tribunal's methodology in interpreting these *renvoi* is imperfect.

3.2.1 The Renvoi to "Other Rules of International Law" in Article 2(3) of the Convention

Article 2(3) states that "the sovereignty over the territorial sea is exercised subject to this Convention and to *other rules of international law*."[37] Thus, the claimant state might argue that the international law sources (treaty or customary international norm) concerning the sovereignty dispute are within these *other rules of international law*, and hence within the scope of the Convention under Article 288(1).

However, the tribunal in the *Chagos* case found that the *travaux préparatoires* of Article 2(3) show that the International Law Commission (ILC) intended that "the obligation in Article 2(3) is limited to exercising sovereignty subject to the *general* rules of international law."[38] Hence, the tribunal did not find that the Lancaster House Undertakings (LHU), which regulate sovereign rights over land and water of the Chagos Archipelago in which Mauritius had an interest that the tribunal declare those undertakings to be binding, represented part of the "general rules of international law" for which the Convention creates an obligation of compliance. However, the tribunal found that general international law requires the United Kingdom to act in "good faith" with regard to the rights of other states.[39] The minority, on the other hand, although relying on the same *travaux préparatoires*, reached a different conclusion, declaring that "the reference to 'other rules of international law' encompasses obligations arising from commitments by the coastal State *bilaterally* or even *unilaterally*, as well as commitments based upon *customary international law*…."[40]

Here also the tribunal's methodology is unclear, and its conclusion is imprecise. Article 32 of the VCLT permits recourse to the *travaux préparatoires* of the Convention *only* after attempting to interpret the provision according to the elements mentioned in Article 31 of the VCLT. The tribunal did not attempt to evaluate the "ordinary meaning" of the *other rules of international law* in light of the Convention's "object and purpose." Also, adding the qualifier "general" raises questions about its consistency with the "ordinary meaning" given to *other rules of international law* and how this can happen by what should be a *supplementary* means of interpretation (*travaux préparatoires*). Besides, the tribunal did not attempt to interpret the provision in light of the "relevant rules of international law" according to Article 31(3)(c) of VCLT as will be examined in section 5.[41] By adhering to the maxims of treaty interpretation, the tribunal would have laid down a more convincing and consistent legal basis to its conclusion even if it would have eventually been the same

conclusion. Moreover, there is no consensus in literature and case law on the scope of the "general rules of international law" found by the tribunal.[42]

3.2.2 The Renvoi to the "Rights" of Other States Under Articles 2(3), 56(2) and 194(4) of the Convention

3.2.2.1 Identifying the "Rights" of Other States. The tribunal in the *Chagos* case found that the *other rules of international law* in Article 2(3) impose an obligation of good faith regarding the rights of other states. Similarly, Article 56(2) declares that the coastal State shall have due regard to the "rights and duties of other States," and Article 194(4) provides that States shall refrain from unjustifiable interference with activities carried out by other states in the exercise of "their rights and in pursuance of their duties." Hence, the tribunal found that each of these obligations requires the United Kingdom to "consult" with Mauritius and to conduct a "balance" between the United Kingdom's rights and interests and those of Mauritius.[43] As a result, the tribunal held that the United Kingdom violated Articles 2(3), 56(2) and 194(4) because it violated its procedural obligation to "consult" and "balance" with regard to Mauritius' rights and interests and not because it violated these substantive rights *per se*.[44] However, a few remarks can be made.

First, such a finding entails a contradiction in the tribunal's line of reasoning because although the tribunal previously declined jurisdiction over the "coastal state" question, here the tribunal considered the United Kingdom to be a "coastal state" that is obliged by the Convention to "consult" and "balance" with another state which the tribunal considered to be Mauritius.[45]

Second, while the tribunal indicated that it was just deciding on the United Kingdom's mere "procedural" obligation to "consult" with Mauritius regarding the latter's rights instead of deciding on any violation to these rights *per se*, the tribunal in fact went beyond that and identified exactly Mauritius's rights by engaging in a long examination of Mauritius's rights and interests under an outside instrument (Lancaster House Undertakings).[46] Was the latter substantive analysis *necessary* for the tribunal's declared objective to assess the United Kingdom's mere "procedural" obligation to "consult" with Mauritius regarding the latter's rights?

Third, did the tribunal have *jurisdiction* to examine these rights and interests especially if they were derived from a disputed source outside the Convention? Relatedly, was it appropriate for the tribunal to determine these non–UNCLOS rights and interests with a decision in the *dispositif* and thus within the *res judicata* of the judgment? The answer to these questions is in the negative. With respect to its jurisdiction, although the tribunal did not hold that the LHU were "breached," still it made a significant decision that these external undertakings are "binding." Consequently, the tribunal's findings that the 1965 Agreement is a binding international treaty as well as its related undertakings represent a success to Mauritius regarding its sovereignty dispute, which is based on the same Agreement.[47] Thus it is necessary to return back to the basis on which the tribunal relied in exercising its jurisdiction to assess whether it was entitled to assert its jurisdiction over Mauritius's non–UNCLOS rights under the 1965 Agreement.

3.2.2.2 Jurisdiction Over Identifying the "Rights" of Other States. The tribunal in the *Chagos* case based its jurisdiction on Article 288(1) and Article 297(1)(c) which states that a

dispute concerning the interpretation or application of the Convention occurs when "….it is alleged that a coastal State has acted in contravention of specified *international rules and standards* for the protection and preservation of the *marine environment* which are applicable to the coastal State, and which have been *established by this Convention* or through a *competent international organization*…."[48]

Accordingly, based on the previous provisions, the tribunal assumed that its jurisdiction permits it to decide on Mauritius's rights and interests under an outside disputed instrument, the 1965 Agreement.[49] The tribunal stated that "the legal effect of the 1965 Agreement is also a central element of the Parties' submissions on Mauritius' Fourth Submission, insofar as it involves the Lancaster House Undertakings. The tribunal finds that *its jurisdiction* with respect to Mauritius' Fourth Submission […] *permits it to interpret the 1965 Agreement* to the extent necessary to establish the nature and scope of the United Kingdom's undertakings."[50] However, it is unclear on what basis the tribunal expanded its jurisdiction over the 1965 Agreement. Article 297(1)(c) only provides jurisdiction concerning those international rules and standards for the protection of the marine environment which have been established by the *Convention* or through a *competent international organization*. Such an exercise of jurisdiction goes against the "ordinary meaning" of Article 297(1)(c).

IV. Jurisdiction Over Sovereignty Disputes Under the Notion of Incidental Jurisdiction

Although the tribunal in the *Chagos* case eventually found that none of the provisions of the Convention provide jurisdiction over the sovereignty dispute over the Chagos Archipelago, the tribunal indicated that itself could exercise jurisdiction over a sovereignty dispute under the incidental jurisdiction maxim.

4.1 Incidental Jurisdiction in the Chagos MPA Award

The tribunal mentioned that it had incidental jurisdiction over sovereignty disputes in two instances: first, it mentioned in the course of interpreting Article 298(1)(a)(i) of the Convention, second, as a general rule independent of any provision. With regard to Article 298(1)(a)(i), the tribunal, after rejecting Mauritius's *a contrario* reading of the Article, added that "at most, an *a contrario* reading of the *provision* supports the proposition that an issue of land sovereignty might be within the jurisdiction of a Part XV court or tribunal *if it were genuinely ancillary to a dispute over a maritime boundary or a claim of historic title*."[51]

Then, the tribunal mentioned its incidental jurisdiction as a general rule independent of any provision by declaring that "as a *general matter*, […] where a dispute concerns the interpretation or application of the Convention, the jurisdiction of a court or tribunal pursuant to Article 288(1) extends to making such findings of fact or *ancillary determinations* of law as are *necessary to resolve the dispute* presented to it"[52] and that "the Tribunal does not categorically exclude that in some instances *a minor issue of territorial sovereignty* could indeed be ancillary to a dispute concerning the interpretation or application of the Convention."[53] However, the previous is not free from ambiguity.

First, with regard to the finding of incidental jurisdiction under Article 298(1)(a)(i), the link between such a jurisdiction and the Article is unclear. Normally, the interpretation of Article 298(1)(a)(i) is expected to lead to a finding that a sovereignty dispute is either within the tribunal's jurisdiction or not. Thus, how could it be inferred from the *a contrario* reading of Article 298(1)(a)(i) that it supports the proposition that a tribunal has incidental jurisdiction? Incidental jurisdiction, if existing on the basis of a provision, shall be considered a "primary," rather than an incidental, jurisdiction.

Second, the relation between the incidental jurisdiction the tribunal found under Article 298(1)(a)(i) and its general rule of incidental jurisdiction is ambiguous. It is unclear whether the tribunal's incidental jurisdiction shall apply only with regard to a "dispute over maritime boundary or a claim of historic title" under Article 298(1)(a)(i) or if it shall apply generally with regard to any "dispute concerning the interpretation or application of the Convention."[54]

Third, and connected to the second point, it is unclear whether a tribunal's incidental jurisdiction can apply in cases where a state submitted an Article 298(1)(a)(i) declaration. If the incidental jurisdiction applies only with regard to a "dispute over maritime boundary or a claim of historic title," then an Article 298(1)(a)(i) declaration would hinder the application of a tribunal's incidental jurisdiction.[55] Nevertheless, if the incidental jurisdiction applies generally with regard to any "dispute concerning the interpretation or application of the Convention," then an Article 298(1)(a)(i) declaration would not necessarily hinder a tribunal's incidental jurisdiction.

Fourth, with regard to the conditions for exercising incidental jurisdiction, the sovereignty dispute has to be "minor," which is a vague condition. Therefore, tribunals are encouraged to set concrete criteria for the application of this condition, otherwise they will decide on it subjectively.[56] Thus, a judgment will be less persuasive, and non-compliance will be more probable.

4.2 Incidental Jurisdiction in Other Case Law

In stating its general incidental jurisdiction over sovereignty disputes, the tribunal in the *Chagos* case cited the *Certain German Interests in Polish Upper Silesia* case.[57] In the latter case, the Permanent Court of International Justice (PCIJ) derived limited jurisdiction from a compromissory clause in the Geneva Convention. The PCIJ, however, found that "the interpretation of other international agreements is indisputably within the competence of the Court if such interpretation must be regarded as *incidental* to a decision on a point in regard to which it has jurisdiction."[58] Hence, although the PCIJ required the ancillary determination to be "incidental," the tribunal in the *Chagos* case stated that it has to be "necessary," though citing the *Certain German Interests in Polish Upper Silesia* case. Thus, it is not clear whether only one or both conditions are required. Also, the PCIJ did not clarify the basis of its finding. But H. Lauterpacht assumed that the Court relied on the principle of effectiveness of treaty obligations.[59] However, effectiveness as a basis cannot exist with respect to ancillary sovereignty disputes particularly, as will be elaborated in section 5.1.

Moreover, the ICJ in the *Croatian Genocide* case derived limited jurisdiction from the compromissory clause of the Genocide Convention. The Court, however, found that

although it had no power to rule on alleged breaches of other obligations under international law, it is not prevented from "considering, in its reasoning, whether a violation of international humanitarian law or international human rights law has occurred to the extent that this is *relevant* for the Court's determination of whether or not there has been a breach of an obligation under the Genocide Convention"[60] The Court also did not clarify the basis of its finding. It seems though the Court is differentiating here between "ruling" in the *dispositif* on the alleged breaches to the outside rules and "considering [them] in the reasoning." However, this differentiation cannot be applied to ancillary sovereignty disputes particularly, as will be elaborated further in section 5.2.

Furthermore, the tribunal in the *Eritrea/Yemen* case derived limited jurisdiction from a special agreement to determine sovereignty and delimit maritime boundaries. However, the tribunal asserted its jurisdiction to determine a party's basepoints as it deemed it "necessary" for its primary jurisdiction. Here also the tribunal did not clarify the basis of its finding. The tribunal found that it "does however *have to decide* on the basepoints which are to control the course of the international boundary line."[61] A similar approach was adopted by the UNCLOS Annex VII Tribunal in the recent *Enrica Lexie* award. In response to a claim by the claimant (Italy) that the Marines arrested by the respondent (India) are entitled to "immunities" under general international law, the tribunal asserted its incidental jurisdiction over the "immunity" dispute as the tribunal "could not provide a complete answer to the question as to which Party may exercise jurisdiction *without incidentally examining whether the Marines enjoy immunity*" and hence characterizing the immunity dispute as falling within "questions preliminary or incidental to the application."[62]

By contrast, the ICJ in the *Malaysia/Singapore* case had limited jurisdiction to determine sovereignty over South Ledge, but the latter appeared to be a low-tide elevation and accordingly should belong to the state in the territorial waters of which it is located. Thus, instead of declaring that it has an incidental jurisdiction to delimit these territorial waters, the Court declined to exercise its primary jurisdiction in view that it had not been mandated to delimit the territorial waters of the parties.[63]

Therefore, all the previous cases indicate the absence of a precise and consistent framework concerning the application of incidental jurisdiction by international courts and tribunals. Interestingly, the same exists in domestic courts. In the United States, the federal courts, which possess a limited jurisdiction *vis-à-vis* state courts by virtue of the U.S. Constitution, commonly exercise incidental jurisdiction over ancillary determinations. Nevertheless, the methodology used by federal courts to assert their incidental jurisdiction has been described as confused and haphazard.[64] Hence, the discussion will now turn to the relevant principles of international law in search of whether they can mandate or prohibit the exercise of such a jurisdiction over sovereignty disputes by UNCLOS tribunals.

V. Incidental Jurisdiction Over Sovereignty Disputes Under the Principles of International Law

Article 31(3)(c) of VCLT states that in treaty interpretation "any relevant rules of international law" applicable in the relations between the parties shall be taken into account.

As ICJ stated in the *Right of Passage* case: it is a rule of interpretation that a text emanating from a Government must, in principle, be interpreted as producing and intended to produce effects in accordance with existing law and not in violation of it.[65] Consequently, the ECHR held that "it must also take into account any relevant rules of international law when examining questions concerning its jurisdiction."[66]

The "rules" mentioned in Article 31(3)(c) have to be applicable between the parties regardless of whether they are named "rules," "principles," "maxims," etc. The ICJ and ILC do not make a distinction between "rules" and "principles," but they agree that the latter may be regarded as norms with a more general and more fundamental character.[67] In the *Gulf of Maine* case, the Chamber of the ICJ stated that "the association of the term 'rules' and 'principles' [in the Special Agreement] is no more than the use of a dual expression to convey one and the same idea, since in this context 'principles' clearly means principles of law, that is, it also includes rules of international law in whose case the use of the term 'principles' may be justified because of their more general and more fundamental character."[68]

Effectiveness and state consent are widely recognized principles of international law. For example, in the *LaGrand* case, the ICJ was faced with the question of whether it had the power to order provisional measures that were binding. There, the ICJ also adopted an interpretation of Article 41 of the ICJ Statute in accordance with the principle of effectiveness to find that its provisional measures had mandatory force. Besides, the PCIJ stated that the principle of consent is related to "a fundamental principle of international law, namely, the principle of the independence of States."[69] Hence, as effectiveness and state consent are principles of international law applicable in a general manner, they are included within the scope of VCLT Article 31(3)(c).

Accordingly, this part examines whether incidental jurisdiction over sovereignty disputes can be asserted under the principle of effectiveness or prevented under the principle of state consent.

5.1 Asserting Incidental Jurisdiction Over Sovereignty Disputes Under the Principle of Effectiveness

This section will examine a tribunal's incidental jurisdiction over sovereignty disputes in light of the principle of *ut res magis valeat quam pereat* or effectiveness. According to Fitzmaurice, effectiveness provides that "treaties are to be interpreted with reference to their declared or apparent objects and purposes; and particular provisions are to be interpreted so as to give them their fullest weight and effect consistent with the normal sense of the words and with other parts of the text, and in such a way that a reason and a meaning can be attributed to every part of the text."[70] The doctrine of "inherent jurisdiction" is the progeny of the doctrine of effectiveness regulating the extent of the powers of a court regarding its procedures.

Fitzmaurice defined inherent jurisdiction as jurisdiction that is necessary of any court of law to be able to function.[71] However, inherent jurisdiction is still controversial within the realm of international adjudication. Briggs, on one hand, sees inherent powers as powers that a court may use to support the exercise of its primary jurisdiction and may be compulsorily exercised independently of the respondent's consent.[72] Thirlway, on the other hand, takes a restrictive view by arguing that jurisdiction is not a general property vested in a court

or tribunal, but it is the power to make a determination on specified disputed issues that will be binding on the parties because that is what they have consented to.[73] Nevertheless, international courts commonly claim that they possess inherent jurisdiction, independent from their constituent instruments, to assume procedural powers like *compétence de la compétence*, ordering provisional measures, conducting site visits and ordering expert reports.[74]

In addition, "inherent jurisdiction" is the conceptual source for "incidental jurisdiction." As Fitzmaurice argues, "[a]lthough much (though not all) of this incidental jurisdiction is specifically provided for in the Court's Statute, or in Rules of Court which the Statute empowers the Court to make, it is really an inherent jurisdiction, the power to exercise which is a necessary condition of the Court—or any court of law—being able to function at all."[75]

Yet, incidental jurisdiction over the subject matter has not been commonly treated under the progeny of inherent jurisdiction yet. So far, no effort has been made to develop a progeny of the principle of effectiveness with respect to the expansion of the powers of a court regarding its subject matter, although expansions in procedures and the subject matter are common in that in both a court expands its power without a basis in its constituent instrument and thus implicates the principles of effectiveness and consent. This explains why the practice of incidental jurisdiction is haphazard, as has been noted in section 4.2 above.

Therefore, as the inherent jurisdiction concept has been used as a progeny for regulating the extent of a court's powers over the procedures, it could be also used as a progeny for regulating the extent of a court's powers over the subject-matter. Accordingly, exploring the rationales behind inherent jurisdiction should be useful in conceptualizing incidental jurisdiction over the subject-matter.

The ICJ found in the *Nuclear Tests* case (1974) that it "possesses an *inherent jurisdiction* enabling it to take such action as may be required, on the one hand to ensure that the exercise of its jurisdiction over the merits, if and when established, shall not be frustrated, and on the other, to provide for the orderly settlement of all matters in dispute."[76]

However, it is not clear from what source of law the Court derived its inherent jurisdiction. Identifying the exact source of inherent jurisdiction is essential in identifying its scope and limitations. The ICJ added in the *Nuclear Tests* case that "such inherent jurisdiction, on the basis of which the Court is fully empowered to make whatever findings may be necessary for the purposes just indicated, derives from the *mere existence of the Court* as a judicial organ established by the consent of states, and is *conferred upon it* in order that its basic *judicial functions* may be safeguarded."[77]

Thus, it is clear, first, that the purpose of inherent jurisdiction is to safeguard the judicial functions of the Court. Hence, the scope of inherent jurisdiction differs depending on the court or tribunal applying it as international courts and tribunals differ in their functions.[78] The Iran–United States Claims Tribunal affirmed this position by stating that "in order to determine which powers international courts and tribunals may exercise as inherent powers one must take into account *the particular features* of each specific court or tribunal, including the *circumstances surrounding its establishment*."[79] Therefore, by transplanting the same rationale to incidental jurisdiction, the application of incidental jurisdiction by the tribunal in the *Chagos* case shall not be necessarily the same as that applied by the PCIJ in the *Certain German Interests in Polish Upper Silesia* case, which was cited by

the tribunal, because the PCIJ and an UNCLOS tribunal differ in their establishment, features and functions.

As a result, the principle of effectiveness requires, before asserting incidental jurisdiction over sovereignty disputes by an UNCLOS tribunal, first determining how such a jurisdiction fits within the particular functions and features of UNCLOS tribunals and the circumstances of their establishment. For instance, unlike the general function of the PCIJ and ICJ which possess general jurisdiction, UNCLOS tribunals' function is limited to settling law of the sea disputes. Besides, UNCLOS tribunals differ in their establishment and features from other international courts and tribunals. For example, the Convention does not even require, in the establishment of its tribunals, an Annex VII arbitrator to have any legal background or an ITLOS member to have any public international law background.[80] Therefore, it is hard to argue that an UNCLOS tribunal should have incidental jurisdiction over any minor or major sovereignty dispute.

Second, it is not clear from the *Nuclear Tests* case whether the source of inherent jurisdiction is the "mere existence of the Court as a judicial organ" or because it is "conferred upon it." On one hand, if the source is the former, then conferral is not needed.[81] Also, this would indicate that inherent jurisdiction is based on a general principle of law. As a result, by importing the same rationale to incidental jurisdiction, the principle of effectiveness would require first determining whether there is a general principle of law that allows the assertion of incidental jurisdiction over a sovereignty dispute. However, the general principles of law known in all domestic legal systems and eligible to be transferred to the realm of public international law are very limited.[82] Moreover, it is doubtful whether the procedural powers asserted by international courts are based on general principles of law as legal systems differ with respect to these procedural powers.[83] Thus, it is hard to contend that incidental jurisdiction over an outside matter is based on a general principle of law, especially since domestic courts enjoy compulsory jurisdiction and some are vested with the power to refer ancillary issues to be decided by other competent courts.

On the other hand, if the source is the "conferral," this would indicate that inherent jurisdiction is based on consent and thus should be defined within the boundaries of treaty interpretation.[84] As a result, the principle of effectiveness would require first determining whether incidental jurisdiction is possible, based on the object and purpose of the Convention and its provisions. Nevertheless, the tribunal in the *Chagos* case did not find that any of the provisions of the Convention provide a basis for exercising jurisdiction over a sovereignty dispute.

Regarding UNCLOS Article 288 (Jurisdiction), the *Chagos MPA* tribunal adopted (as mentioned in part 2.1.1) the "re-characterization test" and found that Mauritius's submission that the United Kingdom was not the "coastal state" was characterized as primarily relating to the sovereignty dispute over the Chagos Archipelago and thus does not fall under Article 288.[85] Regarding UNCLOS Article 298(1)(a)(i), the *Chagos MPA* tribunal found that it does not provide jurisdiction over the sovereignty dispute at the present case and at most, *a contrario* reading of that Article might provide incidental jurisdiction over a minor sovereignty dispute that is genuinely ancillary to a dispute under UNCLOS. However, even the rationale behind this last finding is questionable as shown in section 4.1. Consequently, it is hard to argue that the inherent jurisdiction concept may allow UNLCOS tribunals to exercise incidental jurisdiction over ancillary sovereignty disputes.

Therefore, the notion that incidental jurisdiction over sovereignty dispute could be asserted under the principle of effectiveness is superficial. Hence, assessment will turn now to whether the exercise of such a jurisdiction shall be prevented under the principle of state consent.

5.2 Preventing Incidental Jurisdiction Over Sovereignty Disputes Under the Principle of State Consent

International adjudication is based on the principle of consent. The PCIJ in the *Eastern Carelia* opinion described the principle of consent as related to "a fundamental principle of international law, namely, the principle of the independence of States."[86] The *Monetary Gold* principle is the progeny of the principle of state consent with respect to a court's jurisdiction over a non-consenting state. Thus, this part explores the balances behind the *Monetary Gold* principle and considers them in the practice of incidental jurisdiction.

The ICJ in the *Monetary Gold* case held that it cannot proceed in a matter when a decision on the "legal interests" of a non-consenting state over which the Court has no jurisdiction would not only be "affected" by a decision, but form "the very subject matter" of the decision.[87] The Court stated that this is an application of a "well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent."[88] This means that the Court could exercise its jurisdiction if the implicated "legal interests" of a non-consenting state would only be "affected" by the decision. However, in this situation, the non-consenting state will be protected by Article 59 of the Statute which provides that "the decision of the Court has no binding force except between the parties and in respect of that particular case."

Then, what test exactly does the Court adopt in identifying whether the legal interest of the non-consenting state would only be "affected" or would form "the very subject matter" of the decision? The ICJ elaborated in the *Nauru* case that the test of the latter is "not purely temporal but also logical," so that deciding on the implicated legal interest is needed as "a prerequisite" or "a basis" for the Court's decision on its mainline jurisdiction.[89] The "prerequisite" decision in the *Monetary Gold* case precisely concerned the "international responsibility" of a third state. Moreover, the Court in the *El Salvador/Honduras* case considered Nicaragua's legal interests to be "affected" but not to constitute the "very subject matter" of the judgment because the Court will not need to declare on Nicaragua's "rights" under the disputed condominium in the waters of the Gulf of Fonseca, but merely on the disputed condominium as between El Salvador and Honduras only.[90]

Therefore, the case law makes it clear that, at least, a need to directly decide on an "international responsibility" or "rights" of a non-consenting state would constitute a bar to exercise jurisdiction. An advantage of the *Monetary Gold* formula is that it strikes a balance between the principles of effectiveness and state consent. It does not preclude the Court from exercising its mainline jurisdiction due to a mere "effect" on the legal interest of a state over which it lacks jurisdiction *ratione personae*. But at the same time, it does not bind that state with the findings of the Court. A disadvantage is that it opens the floor for contradictions between the findings of different international courts and tribunals on the same issue.

What was observed with respect to the principle of effectiveness is also observed with respect to the principle of state consent. Although the *Monetary Gold* principle is the progeny of the principle of state consent with respect to the expansion of jurisdiction *ratione personae*, there is no similar progeny with respect to the expansion of jurisdiction *ratione materiae*, although the two fields implicate the general principle of state consent. While in the former, a court assesses to what extent its decision would implicate a party over which it lacks jurisdiction *ratione personae*, in the latter a court assesses to what extent its decision would implicate an outside issue over which it lacks jurisdiction *ratione materiae*.

In addition, H. Lauterpacht observed that "numerous judgments show the Court 'bearing in mind the fact that its jurisdiction is limited, that it is invariably *based on the consent of the respondent* and only exists *in so far as this consent has been given*.'"[91] Thus, no reason appears to differentiate between the criteria that regulates when there is no consent *in toto* (*Monetary Gold* principle) and when there is only a limited, partial or incomplete consent (implicated issue). Therefore, exploring the balances behind the *Monetary Gold* principle would be useful in assessing incidental jurisdiction over sovereignty disputes.[92]

This first depends on whether the *Monetary Gold* principle is confined to the ICJ. The answer is in the negative.[93] As mentioned, the ICJ stated with respect to the *Monetary Gold* principle that this is an application of a "well-established *principle of international law* embodied in the Court's Statute."[94] This means that the principle is applicable to any court or tribunal operating within the corpus of public international law, including UNCLOS tribunals. Moreover, the tribunal in *Larsen v. Hawaiian Kingdom* rejected the argument that the principle was applicable only to the ICJ.[95] Second, the terms the framers of UNCLOS used in Article 298(1)(a)(i) to exclude ancillary sovereignty disputes from compulsory conciliation resembles those used in the *Monetary Gold* principle. Article 298(1)(a)(i) excluded any dispute that "*necessarily* involves the *concurrent* consideration" of any dispute concerning sovereignty.[96] Third, the test used by the tribunal in the *Chagos* case with regard to the tribunal's incidental jurisdiction over minor sovereignty disputes resembles that used in the *Monetary Gold* principle. In the former, the tribunal stated it cannot exercise jurisdiction when the "real issue in the case" and the "object of the claim" do not relate to its mainline jurisdiction. In the latter, the ICJ stated it cannot exercise jurisdiction when "the very subject matter" of its judgment is the legal interests of a non-consenting party.

Therefore, by adopting the same balances of the *Monetary Gold* principle in assessing incidental jurisdiction over sovereignty disputes, an UNCLOS tribunal has to decide whether deciding on such a dispute would entail a direct decision on the "international legal responsibility" or "rights" of a party. It might be argued that a tribunal incidentally deciding on a sovereignty dispute can just decide which party is the sovereign under international law, without necessarily deciding on its "international responsibility." However, a response to this is that even in such a case the judgment is directly deciding on the "rights" of a party and thus these rights constitute the "very subject matter" of a part of the judgment as noted in *El Salvador/Honduras* case. Therefore, incidental jurisdiction should be declined.

Also, it might be argued that a tribunal can identify who is the sovereign party in its *reasoning* rather than in its *dispositif*, thus no binding effect would entail the determination on sovereignty *per se*, and thus, technically, no judicial decision on "rights" would occur. Instead, what might occur would not exceed an "effect" on the legal interests of a party, hence it is a situation under the *Monetary Gold* principle considered not to prevent the exercise of full

jurisdiction. Nevertheless, a response to the previous is that even identifying who is the sovereign party in the *reasoning* of a judgment would be binding in this case and thus a judicial decision on "rights" would occur. This is because the *res judicata* of a judgment extends to its essential reasons.[97] Thus, here also incidental jurisdiction should be declined.

As a result, whether the ancillary sovereignty dispute is minor or major should be immaterial. Therefore, the tribunal's finding in the *Chagos* case that it might exercise jurisdiction over a *minor* issue of territorial sovereignty ancillary to its primary jurisdiction departs from the balances of the principle of consent as reflected in the *Monetary Gold* principle.[98] Therefore, the principle of state consent should prevent an UNCLOS tribunal from exercising incidental jurisdiction over any ancillary sovereignty dispute.

VI. Conclusion

Incidental substantive disputes exist before various courts and tribunals with respect to different sorts of disputes. It becomes more sensitive when the ancillary dispute is a sovereignty dispute because territorial sovereignty is the most reflective form of state sovereignty, and thus states are not expected to comply with its subjugation to any sort of jurisdiction that is *prima facie* unsubstantiated. Regrettably, the international practice of exercising jurisdiction over an external ancillary dispute is haphazard due to the absence of a framework. Therefore, this paper argues that courts and tribunals are encouraged to adopt a "systematic approach" in assessing whether they can expand their jurisdiction over the subject-matter. That approach would require a tribunal to first interpret its relative provisions following the interpretation maxims in Articles 31–33 of the VCLT. Meanwhile, pursuant to Article 31(3)(c) of VCLT, a tribunal should take into consideration the relative principles of international law which here are the principles of effectiveness and state consent.

By applying this systematic approach to the problem of sovereignty disputes before UNCLOS tribunals, it appears that neither of the relevant provisions of UNCLOS provides its Part XV tribunals jurisdiction over a sovereignty dispute. In addition, the exercise of such a jurisdiction cannot be asserted by the principle of effectiveness and is inconsistent with the principle of state consent. Hence, UNCLOS tribunals have no basis to exercise jurisdiction over a sovereignty dispute even if it was minor, in contrast to the position of the tribunal in the *Chagos* case. As a result, any future claimant state should not be able to have a finding by an UNCLOS tribunal concerning an ancillary sovereignty dispute.

Other international courts and tribunals facing incidental substantive disputes should adopt the same systematic approach based on Articles 31–33 of the VCLT. Each tribunal also has to examine how the principle of effectiveness fits within its *particular features* and to what extent it allows exercising jurisdiction over an incidental substantive dispute without disturbing the balance of the principle of state consent. Therefore, it is expected that the extent of a tribunal's jurisdiction over an incidental substantive dispute will vary according to the tribunal and the subject matter. However, there is a difference between variations based on a systematic approach and haphazard applications based on subjective positions.

Notes

1. See Arbitration under Annex VII of the United Nations Convention on the Law of the Sea, Counter-Memorial Submitted by the United Kingdom, 15 July 2013, para. 4.61

2. There are papers on the subject albeit using different analytical approaches. See for example Alexander Proelss, "The Limits of Jurisdiction *Ratione Materiae* of UNCLOS Tribunals," *Hitotsubashi Journal of Law and Politics* 46 (2018), pp. 47–60; Joshua Benn, "ITLOS & Mixed Disputes: Untapped Jurisdiction," *Indian Journal of Projects, Infrastructure and Energy Law*, January 26, 2022, https://ijpiel.com/index.php/2022/01/26/itlos-mixed-disputes-untapped-jurisdiction/, accessed May 11, 2023; Viktoriia Hamaiunova, "Jurisdiction of Law of the Sea Courts and Tribunals in Mixed Boundary Disputes Over Land and Maritime Territory," Master Thesis *University of tarty-School of Law* (2019) https://dspace.ut.ee/handle/10062/66757 , accessed May 11, 2023

3. Alan E. Boyle, "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction," *The International and Comparative Law Quarterly* 46(1) (1997), p. 37, https://doi.org/10.1017/S0020589300060103.

4. *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* (2015), paras. 520, 540.

5. *The South China Sea Arbitration Award (The Republic of Philippines v. The People's Republic of China) (2016),* para. 229. See also *Sovereignty and Maritime Delimitation in the Red Sea, Award of the Arbitral Tribunal in the Second Stage (Eritrea/Yemen) (1999),* para. 103 [hereinafter Eritrea/Yemen]; *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain, Merits, Judgment, 1.C.J. Reports 2001, p. 40 (2001)*, paras. 235–236.

6. See W. Michael Reisman, "Eritrea-Yemen Arbitration (Award, Phase II: Maritime Delimitation)," *American Journal of International Law* 94(4) (2000), p. 732, https://doi.org/10.2307/2589799.

7. *Chagos Marine Protected Area Arbitration* (n 4), paras. 71–90.

8. Statement of the Ministry of Foreign Affairs of Ukraine on the Initiation of Arbitration against the Russian Federation under the United Nations Convention on the Law of the Sea, September 14, 2016, https://mfa.gov.ua/en/press-center/news/50813-zajava-mzs-ukrajini-shhodo-porushennya-arbitrazhnogo-provadzhennya-proti-rosijsykoji-federaciji-vidpovidno-do-konvenciji-oon-z-morsykogo-prava, accessed August 3, 2018.

9. *Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives),* Preliminary Objections, Judgment, ITLOS Special Chamber, 28 January 2021, para. 246.

10. See Elihu Lauterpacht, *Aspects of the Administration of International Justice Aspects of the Administration of International Justice* (Cambridge University Press, 1991), p. 23.

11. Jonathan I. Charney, "Compromissory Clauses and the Jurisdiction of the International Court of Justice," *The American Journal of International Law* 81(4) (1987), pp. 855–887, footnote 48, https://doi.org/10.2307/2203414.

12. See *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13, para. 19.

13. Peter Tzeng, "Supplemental Jurisdiction Under UNCLOS," *Houston Journal of International Law* 38(2) (2016), pp. 561–562.

14. *Ibid*.

15. Stefan Talmon, "The Chagos Marine Protected Area Arbitration: Expansion of the Jurisdiction of UNCOLS Part XV Courts and Tribunals," *International and Comparative Law Quarterly* 65 (2016), p. 933, https://doi.org/10.1017/S0020589316000403.

16. *South China Sea Arbitration Award* (n 5), para. 150; *Chagos* (n 4), para. 208.

17. *Chagos* (n 4) paras. 207–212.

18. Talmon, 2016, p. 934.

19. *South China Sea Arbitration Award (Philippines v. China)* PCA Case No. 2013–19, Award on Jurisdiction, para. 26.

20. *Ibid*., paras. 152–154.

21. *Ibid*., para. 152.

22. *Ibid*., para. 153.

23. *Ibid*.

24. *Ibid*.

25. *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, Award on Preliminary Objections, PCA, 21 February 2020, p. 154.

26. Talmon 2016, pp. 933–934; Callista Harris, "Claims with an Ulterior Purpose: Characterising

Disputes Concerning the 'Interpretation or Application' of a Treaty," *The Law & Practice of International Courts and Tribunals* 18 (2020), pp. 279–299, p. 298, https://doi.org/10.1163/15718034-12341405.

27. Emphasis added.

28. *M/V Saiga (No. 2) (St. Vincent v. Guinea)*, ITLOS Case No. 2, Judgment (1999), para. 155; *M/V Virginia G (Pan. v. Guinea-Bissau*), ITLOS Case No. 19, Judgment (2014), para. 359; *Guyana v Suriname, Award,* ICGJ 370 (PCA 2007), 17th September 2007, Permanent Court of Arbitration, para. 406; Tzeng 2016, pp. 519–535.

29. Emphasis added.

30. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro),* Judgment, I.C.J. Reports 2007, p. 43, para. 147.

31. *MOX Plant (Ireland. v. U.K.), Procedural Order No. 3 (Suspension of Proceedings on Jurisdiction and Merits, and Request for Further Provisional Measures)* (2003) para. 19; *Chagos MPA Award* (n 4) para. 181; Tzeng 2016, pp. 523–524.

32. Emphasis added.

33. *Chagos MPA Award* (n 4), para. 218.

34. *Ibid*., para. 215 (emphasis added).

35. *Ibid*., para. 217.

36. *Ibid*.; *Dissenting and Concurring Opinion of Judges Kateka and Wolfrum*, para. 27.

37. Emphasis added.

38. *Chagos MPA Award* (n 4), para. 516 (emphasis added); Tzeng 2016, pp. 555.

39. *Chagos MPA Award* (n 4), para. 517.

40. *Chagos MPA Award* (n 4), *Dissenting and Concurring Opinion of Judges Kateka and Wolfrum*, paras. 92-94 (emphasis added); Talmon 2016, pp. 938.

41. See *Oil Platforms (Islamic Republic of Iran v. United States of America),* Judgment, I.C.J. Reports 2003, p. 161, para. 41.

42. Tzeng 2016, 557.

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Acknowledgments

The author would like to thank Professor Devika Hovell, of the London School of Economics (LSE), for her helpful insights and comments on a draft of this piece. The author would also like to thank the anonymous reviewers for their feedback. The views in this article are those of the author alone and do not necessarily reflect the views of any institution the author is affiliated to. All errors remain the author's.

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Submitted: 2-26-2023 • Sent for Review: 3-1-2023 • Decision: 4-15-2023

Creating a Resilient Indo-Pacific Region: Analyzing India and South Korea's Defense Cooperation

Abhishek Sharma

Structured Abstract

Article Type: Research Paper

Purpose—The Indo-Pacific region's geopolitical climate is fluctuating due to the contestation between the U.S. and China. Amid this, the region is observing a quiet shift and increasing engagement between states whose interests align. India and South Korea have emerged as like-minded states practicing a balanced foreign policy in the region, as they face similar challenges and share values and respect for a rules-based order in the Indo-Pacific region. This research paper focuses on analyzing the defense cooperation in the Indo-Pacific region undertaken by India and South Korea with each other and other states.

Design, Methodology, Approach—This paper has used content analysis as an approach.

Findings—With the great power competition between the U.S. and China growing in severity, the overspilling of the security competition in the Indo-Pacific region will make the regional contest more bipolar, forcing countries to rethink their national security and defense. States like India and South Korea will find it challenging to align entirely with either major power, as doing so restricts their strategic autonomy and constrains their economic interests. The contesting space between the U.S. and China restricts the scope of maneuvering for countries that wish to practice strategic autonomy, like ASEAN members and earlier non-aligned countries. Such geopolitical polarization gives India and South Korea space to emerge as legitimate alternatives to significant powers as partners in strengthening their defenses—in other words, a better, safer alternative choice to cooperate

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Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 27–46 / ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.27 / © 2023

in strengthening their defenses. Therefore, India and South Korea must strengthen the Indo-Pacific region's defense security by collaborating, cooperating, and creating an alternative avenue for countries that also share goals of upholding, protecting, and maintaining the region's stability, yet avoiding the great power rivalry.

Practical Implications—This paper argues that "like-minded countries," here India and South Korea, can work together and strengthen cooperation in the defense sector to bring stability and ensure the region's prosperity by avoiding getting drawn into great power contestation in the region.

Keywords: cooperation, defense, India, Indo-Pacific, South Korea

I. Introduction

The Indo-Pacific region has gained traction in the contemporary geopolitical game due to the U.S.–China political contest. The rise of the Indo-Pacific concept lies at the center of the contemporary power shift happening in the world. The change from Asia-Pacific to Indo-Pacific signifies the elevation of strategic considerations because of the focus on traditional security, particularly maritime security. The Indo-Pacific is an amalgamation of different interpretations of states' interests that exist in the contiguous geographical region and beyond in the Indian and Pacific Oceans. It is also a malleable concept that is changing with time and space, giving it more flexibility to adapt to differing perceptions, still with a strong maritime foundation. The Indo-Pacific concept is essentially a maritime concept focused on bringing together the Indian and Pacific Oceans. This concept was evoked by Shinzō Abe as he referred to the coming together of the two seas of prosperity and freedom as the "Confluence of two seas" in his address to the Indian parliament in 2007.[1] However, the concept finds its roots in the work of different scholars. The earliest trace of the Indo-Pacific concept in India was found in the book *India and the Pacific World* by author Kalidas Nag in 1947, where he looked at the connectedness across Asia through the "historical connect and cultural relations."[2] Karl Haushofer, a German geopolitical thinker, is another prominent scholar who contributed to the Indo-Pacific concept.[3] Visible manifestations of the rising prominence of the Indo-Pacific region include the changing power dynamics in the region, formation of new alignments and realignments, U.S.–China rivalry, and the emerging nexus between security-economic-technological aspects in state strategy. Amid the shifting focus toward the Indo-Pacific region, there is a fear that the new rivalry may give rise to an arms and technology race between the U.S. and China. The rising military power and capabilities of both countries have forced many countries to build military strength. Some countries have leveraged the developing and existing defense manufacturing dedicated to domestic demands to fill the region's requirements. India and South Korea are particularly interested in engaging in the region by selling their military assets and equipment. Both countries see an opportunity to enhance demand by building defense relations with regional states through various mechanisms.

South Korea and India share the perspective of resolving disputes through diplomatic negotiations rooted in international laws and norms. However, both countries want to avoid the strategic dilemma by opposing polarization. India and South

Korea's interests converge in ensuring that the region remains free of great power rivalry because it would force them to take a position risking their national security. India and South Korea want the role of the U.S. to be limited to a strategic stabilizer state rather than starting a new cold war. In this context, both countries have worked with regional "like-minded" states to uphold stability and further economic prosperity. This paper acknowledges that defense cooperation expands beyond the Indo-Pacific region of both countries. However, it has limited the scope of cooperation of India and South Korea to the Indo-Pacific region (geography as stated in their respective Indo-Pacific strategies).

The paper first analyzes the common factors both countries share in expanding defense cooperation in the Indo-Pacific region. This is followed by elaborating on the respective visions of India and South Korea in the Indo-Pacific region. Then it evaluates the application of their respective visions in the region and concludes by tracing the strengthening of India–South Korea cooperation in the defense sector and briefly discussing the possibilities of further collaboration. The research is based on primary sources like state strategies, leaders' speeches, government documents, and secondary sources from think tanks, newspapers, journal articles, and analytical pieces.

II. Defense Cooperation Based on Two Strands: Strategic Stability and Economic Considerations

India and South Korea have followed different approaches in the Indo-Pacific region while cooperating with states on military-tech supplies, strategic stability, and economic benefits. The approaches have two main strands on which cooperation and engagement take place—strategic stability and economic benefits. The strategic stability factor focuses on maintaining stability in the Indo-Pacific region. In other words, this approach focuses on strengthening, modernizing, and enhancing military, technological and research developments with "like-minded" countries in the Indo-Pacific region. The second strand, economic considerations, sees cooperation as creating a sector that adds to the economy's growth. There exists a varied degree of appropriation in the case of both India and South Korea while cooperating in the domain of military-tech. The different approaches followed by both states have been shaped by the new geopolitical developments in their respective region, mainly with the rise of China as the new threatening power. Recently, the Indo-Pacific region has dominated the geopolitical conversation; India and South Korea have tried to leverage the situation to strengthen their military cooperation with states in the region to maintain strategic stability and benefit from economic considerations. The emphasis on strategic stability and economic considerations varies with the foreign policy and strategic visions of both India and South Korea.

2.1 Strategic Stability

As the geopolitical environment in the world is shifting toward a more competitive one due to the rise of China, the consequences of the changing power equation

between the U.S. and China will generate implications for the Indo-Pacific states' military buildup. The world military expenditure surpassed US$2 trillion for the first time.[4] The trend in military spending in Asia and Oceania, which amounts to US$586 billion, increased by 2.5% in 2021 compared to 2020 due mainly to the increase by India and China.[5] This additional expenditure signals new strategic thinking developing in the Indo-Pacific region states. Among the states in the top ten military expenditures, five are Indo-Pacific states, including China at the second position, followed by India in third and Saudi Arabia, Japan, and South Korea in eighth, ninth, and tenth positions.[6] Among the top forty states leading the list of military expenditure, 17 are Asian states, including Australia, Iran, Indonesia, Thailand, Taiwan, Singapore, and Israel.[7] The share of the Indo-Pacific states in the top 15 world-leading military expenditure states is led by China (14%), India (3.6%), Saudi Arabia and Japan (2.6%), South Korea (2.4%), and Australia (1.5%).[8]

In the Indo-Pacific region, the sub-regional trend of military expenditure is dominated by East Asia, which saw an increase in expenditure for the 27th consecutive year and which stood at US$411 billion in 2021.[9] Asia and Oceania saw a rise of 0.2% (higher than 2020), an allocation of 6.7% for the military budget as a percentage of total budget.[10] The increasing defense and military expenditures have led to states sharing a common strategic vision in the Indo-Pacific region. The exploration of the common understanding is also due to the need to ensure a balance of power and stability in the region. As the geopolitical environment destabilizes due to the difference in the balance of power and rising insecurity, states that are in a position to bring stability to the region will find ways and mechanisms to do so. India and South Korea share the perspective of a stable and inclusive Indo-Pacific that is not dominated by a great-power rivalry. Both these post-colonial Asian states share the understanding of challenges the states face in the region, such as development, digitization, and modernization. India and South Korea have experienced the fallout of the Cold War and the shrinking space it provides for states to pursue their national interests, hence the understanding that to cooperate and engage with each other and other states in the Indo-Pacific region will ensure that the rising U.S.–China rivalry does not subserve the challenges in the region. India and South Korea agree on the need to maintain a rules-based international order that upholds transparency, inclusiveness, and openness.[11] This partnership is based on maintaining regional strategic stability through better and closer cooperation in bilateral, minilateral, and multilateral forums. Driving factors behind the India–South Korea partnership include agreements with "like-minded" countries, emerging defense manufacturing sectors, and growing defense relations. First, amid narrowing space for diplomacy and multilateralism, both countries share, to a certain extent, values of liberal international order and the pursuit of strategic autonomy. Second, they share the same strategic reality—bounded by a nuclear weapons state and located in high-security geography—influencing them to think alike. In other words, India and South Korea share the same geopolitical experiences but in different geography and contexts. Third, the strengthening strategic partnership between the two countries has led to the development of substantial defense relations and is expected to grow further. The growing cooperation between India and South Korea's militaries is also due to a legacy of military cooperation because of their neighbors—Pakistan and North Korea.

In addition, India and South Korea face the same strategic reality—nuclear threat and military confrontation. India faces strategic threats and risks from its neighbors Pakistan and China, and South Korea from North Korea's emerging nuclear and ballistic weapons program. India and South Korea exercise a different degree of strategic autonomy in their foreign policy. India's strategic autonomy posture has changed since the Cold War when it pursued a foreign policy of non-alignment to post–Cold War when it adopted multi-alignment that emphasized issue-based cooperation. This approach is based on cultivating better ties with major power centers recognizing the emerging multipolarity. From an alliance perspective, the new Indian foreign policy practice may seem confusing to others. However, what remains at the core is the pursuit of political objectives and maximization of national interests. The Indian approach stands against dividing the world into binaries of good/bad, civilized/uncivilized, and democratic/undemocratic, the template used by the alliance systems, but mainly by great powers who see any diversion from the status quo as a challenge to their authority. India challenges these notions as it understands that if it wants to carve out a space for itself in international relations, it needs to continue focusing on its issues and be an independent voice of reason. Like India's multi-alignment policy that focuses on diversifying state relations, South Korea's global pivotal state vision also aims to strengthen relations beyond its immediate region. This shows that irrespective of following different approaches, both countries' willingness to exercise strategic autonomy allows them to explore partnerships beyond traditional state relations.

2.2 Economic Benefits

As the Indian economy grows, it is likely that military strength will follow the trend, particularly against the backdrop of rising insecurity from its northeastern and northwestern neighbors. A common term, "two-front war," which dominates discourse in strategic circles, points toward the risks India is likely to face in future. Therefore, India recognizes that there lies an opportunity to diversify and modernize its defense inventory, and in particular, to develop and expand its indigenous defense industrial production. The vision is to manufacture and export defense equipment and technology from India through the establishment of Defence Industrial Corridors (DICs), one in Uttar Pradesh (a northern state) and one in Tamil Nadu (a southern state).[12] The benefits these corridors bring are in the form of employment generations vital for India's prosperity. It is estimated that the two DICs are expected to generate 2.5–3.5 lakh jobs (250,000–350,000).[13] The opportunities also lie herein for India's Small and Medium Enterprises (SMEs) to become reliable and a source of innovation to address the challenges of a knowledge-based economy in industry 4.0.[14] India aims to achieve the target of approximately US$25 billion, by the end of 2025, including US$5 billion in defense goods and services in the Aerospace sector.[15] India falls into the Market Type B (Growth Countries) category that has traditionally been dependent on other countries, but with economic growth it now wants to leverage and target defense exports as a tool for economic development.[16] The growth in India's defense exports can be noted in Table 1, which indicates a linear increase in exports and, simultaneously, the number of authorizations; this shows the convergence between the policy and practice.

Table 1: Defense Exports and Export Authorizations

	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21 as on date
Total Export (in Millions of Rs)	19,410	20,590	15,220	46,820	107,460	91,160	57,110
No. of Authorizations Issued	42	241	254	288	668	829	633

The value mentioned includes actual export by DPSUs and value as per authorizations issued by DDP (EPC) to private firms and SCOMET (other than Cat. 6). Source: Ministry of Defense Government of India, "Year End Review—2020 Ministry of Defense," *PIB Delhi*, January 1, 2021, https://pib.gov.in/Pressreleaseshare.aspx?PRID=1685437, accessed May 5, 2023.

India has also taken subsequent decisions to enhance confidence of countries to partner in the defense-tech domain. India has opened defense export offices for Defense PSU like Bharat Electronics Ltd. (BEL) in Vietnam and Myanmar. In addition, India is helping to engage the startup ecosystem in the defense and aerospace sector.[17]

Earlier, South Korea was the ninth-largest arms exporter in the world, and its share in the global export markets was 2.7%.[18] However, with the increasing demand for military equipment, it has risen to the eighth-largest exporter in 2022 and aims to be the fourth-largest arms exporter.[19] In 2021, South Korea exported military equipment worth US$7 billion, compared to US$5 billion in the previous year, and sales expected to top US$10 billion in 2022 are now estimated to have reached US$15–20 billion.[20] The country aims to be one of the top defense exporters in five years, transforming domestic demand into an export-oriented industry. The increasing defense exports trend, if continued, may hold enormous potential for the South Korean economy if it can leverage the demand for the next generation of autonomous military assets. South Korea recognizes the importance of the defense sector projects in creating an ecosystem of SMEs that can compete globally and add to its growth. Even fighter jet development generates substantial revenue and economic activity. The KF-21 fighter jet is 65% domestically produced; consists of around 30,000 individual parts; helps almost 700 Korean businesses from SMEs, conglomerates, and middle companies; and the project employs 12,000 direct and 100,000 indirect job opportunities, with a value of 5.9 trillion won.[21] Such projects help drive the local economy by employing citizens and adding to the economy through the defense exports market.[22] In 2017, South Korea exported to 83 countries with 132 exporting companies, totaling about US$3.1 billion in defense product exports.[23] Table 2 states the economic benefits associated with arms exports. Strengthening relations in defense also gives other countries a stake in South Korea's security with the additional benefits of high-tech jobs and lower costs due to large-scale manufacturing.

Table 2: South Korean Arms Exports

	2014	2015	2016	2017	2018	2019	2020
Total Exports in Millions of USD	207	94	480	742	1,056	698	827

Source: Created by the author from the "Arms Exports (SIPRI Trend Indicator Values)—Republic of Korea," *The World Bank*, https://data.worldbank.org/indicator/MS.MIL.XPRT.KD?end=2020, accessed May 5, 2023.

Defense exports are not just a tool for economic benefit, they also ensure the development of strategic ties between states through military cooperation. These ties aid in building better understanding and enhanced trust between states. The collaboration between like-minded states like India and South Korea as democratic nations helps uphold rules-based order. They share a degree of comfort in working with each other and have similar converging perspectives. In addition, deepening defense cooperation also gives stakes to other states that engage in defense trade for each other's security.

III. India and South Korea's Vision for the Indo-Pacific

3.1 India

India's vision of the Indo-Pacific stands "for a free, open, inclusive region, which embraces all in a common pursuit of progress and prosperity" of the region and is dominated by the strategic interpretation that India has for the region.[24] The vision has evolved with time and is shaped by the shifting geopolitical dynamics in the Indo-Pacific region. The Indo-Pacific region is geographically defined by the unity of the Indian and Pacific Oceans. The Indo-Pacific ranges from "the western coast of North America to the eastern shores of Africa … [and] Southeast Asia is at the center of the Indo-Pacific, with ASEAN architecture assuming a prominent role."[25] The unity of both oceans brings with it the understanding and compatibility of like-minded states in the Indo-Pacific region. The like-minded states share a common perspective of the Indo-Pacific region due to their converging interests and aligning strategic visions. India's Indo-Pacific vision aligns with the democratic and developing nations of the region. As stated by India's Prime Minister Narendra Modi at the Shangri-La Dialogue:

> We believe that our common prosperity and security require us to evolve, through dialogue, a common rules-based order for the region. And it must equally apply to all individually as well as to the global commons. Such an order must believe in sovereignty and territorial integrity, as well as equality of all nations, irrespective of size and strength. These rules and norms should be based on the consent of all, not on the power of the few. This must be based on faith in dialogue, and not dependence on force. It also means that when nations make international commitments, they must uphold them. This is the foundation of India's faith in multilateralism and regionalism; and, of our principled commitment to rule of law.[26]

Irrespective of India's Indo-Pacific vision conceptualization, the primary focus of India has been on the Indian Ocean Region (IOR). The IOR is India's sphere of influence, due to which the IOR becomes vital to India's geostrategic interest. India has attributed its vision in the IOR region to SAGAR (Security and Growth for All in the Region). This was stated by PM Modi during the Commissioning of OPV *Barracuda* in Mauritius in 2015, where he stated that

> Our goal is to seek a climate of trust and transparency; respect for international maritime rules and norms by all countries; sensitivity to each other's interests; peaceful resolution of maritime issues; and increase in maritime cooperation.[27]

The SAGAR vision emphasizes that the primary responsibility of peace, stability, and prosperity of the IOR lies with the states that reside in the region. However, India also remains open to the idea of engaging and cooperating with states that reside outside the region, those that are stakeholders in maintaining open sea lanes of communication, and have interest or stakes in the region to work through "dialogue, visits, exercise, capacity building and economic partnership."[28] The IOR is a part of the Indo-Pacific region, and the policy for the region is contextual to its geopolitical realities and geographical proximity to the Indian subcontinent. Besides the IOR, India has proactively cooperated with forums beyond the region into extended neighborhoods with ASEAN-led mechanisms like ASEAN Defense Ministers Meeting (ADMM) Plus. At the eighth ADMM Plus meeting, India stated its position for respecting the sovereignty and territorial integrity of nations in the Indo-Pacific region and called for an open and inclusive order.[29] In addition, India also reiterated its support for freedom of navigation, over-flight, and unimpeded commerce under the UN Convention on the Law of the Sea (UNCLOS).[30] India has engaged with forums in the Indo-Pacific region like the Indian Ocean Rim Association (IORA), Quadrilateral Security Dialogue (Quad), Indian Ocean Naval Symposium (IONS), and ADMM Plus to create a consensus around the need to follow the rules-based order and ensure that the interests of states in the region are not neglected toward the benefit of one country.

3.2 South Korea

South Korea is the fourth-largest economy and has one of the largest defense expenditures in the Indo-Pacific region. As an export-oriented economy, South Korea has direct interests in open, inclusive, free, and secure sea lanes of communication. As the Quad agrees on the centrality of ASEAN in its Indo-Pacific vision, South Korea also recognizes and supports the centrality of ASEAN and ASEAN-led regional architecture.[31] The U.S. vision of the Indo-Pacific recognizes the importance of working with partners and allies like India and South Korea to ensure stability and prosperity of the region. Quad and AUKUS are two forms of architecture currently addressing the region's strategic security threat. However, the U.S. also engages outside the framework of existential structures with allies and partners in the region. South Korea is an important ally and critical in strengthening the stability of the Indo-Pacific region. As an ally of the U.S., South Korea has increasingly aligned its strategic vision with the U.S. and Japan. The three countries share a vision of a free, inclusive, and open Indo-Pacific that respects a rules-based international order.[32] Even the U.S.'s Indo-Pacific Strategy recognizes working with treaty allies like South Korea as critical to attaining the objectives mentioned in the strategy.[33] South Korea's Indo-Pacific strategy states to "promote our [South Korea's] vision of freedom, peace, and prosperity … implement our Indo-Pacific Strategy based on three principles of cooperation—inclusiveness, trust, and reciprocity."[34] The strategy clearly outlines the expanse of the Indo-Pacific region from the west coast of the U.S. to the east coast of Africa. The opposition to instability

in the Indo-Pacific region finds its place in the strategy quite precisely. South Korea's Indo-Pacific strategy highlights:

> We oppose unilateral change of status quo by force and pursue a harmonious regional order where nations' rights are respected, and our shared interests are explored. Solidarity and cooperation amongst nations that promote freedom, human rights, and other common values will foster greater creativity and innovation, and lead to a brighter future for the Indo-Pacific.[35]

It is important to remember that South Korea is a late entrant to the club of states that have their Indo-Pacific document (strategy/vision/outlook), and the document's release gives a sense of the motivation behind the formulation of the current strategy. This Indo-Pacific strategy became possible only after the new conservative administration came to power in South Korea. During the earlier Moon Jae-in administration, Seoul adopted a foreign policy of strategic ambiguity which took no principled position on issues in the Indo-Pacific region, particularly the U.S.–China rivalry, until strategically clear foreign policy was adopted.[36] The changed foreign policy stance was taken to support Yoon's GPS vision, which aims to expand beyond the Korean peninsula issue and to align South Korea's foreign policy initiatives more closely with the U.S. in the Indo-Pacific region. Hence, the Indo-Pacific strategy made more sense as it gave strategic direction and pointed out the challenges, principles, and tools to address regional issues. A new Indo-Pacific strategy acknowledging India's prominent role in South Asia and the Indo-Pacific region gives more clarity and opportunities for both countries to explore and cooperate, which was not previously the case.

South Korea has also expanded its reach beyond its adjacent maritime landscape by reaching toward the South China Sea and Indian Ocean region through multilateral institutions and bilateral mechanisms. In the South China Sea, South Korea has engaged with ADMM Plus for three reasons: emerging security community, deepening ROK–ASEAN Relations, and finding a venue for bilateral and minilateral dialogue.[37] Participation in forums like ADMM Plus also adds to South Korea's role as a norm influencer in shaping the security perspective on the Korean peninsula. Closer relations with Southeast Asian countries also help in addressing challenges and leveraging opportunities. The challenge of China's rise and the unpredictability of the U.S. forces South Korea to look toward new avenues of cooperation in the region, and the opportunity in this engagement is to strengthen defense cooperation and industry through exchanges, transfers of technology, and localized production in alignment with the New Southern Policy PLUS.[38] The focus is also shifted toward the Indian Ocean Region for Seoul as it joined the IORA as a Dialogue partner, signaling the growing importance of the IOR and the need to engage by pursuing diplomatic diversification through regional strategic communications.[39] The emphasis is to expand the ambit of cooperation in areas of maritime security, cultural exchanges, tourism, and development. The broadening interest in engaging with several institutional structures addressing security in respective regions of the Indo-Pacific indicates the magnifying perspective of South Korea for the Indo-Pacific region. The release of the Indo-Pacific strategy for the region gives the earlier disintegrated approach a clear strategic direction and a framework that helps link strategy, institutions, partnerships, and initiatives in a common thread.

IV. Evaluating India and South Korea's Military Cooperation with States in the Indo-Pacific Region

4.1 India

Table 3: Indian Defense Companies in SIPRI Top 100 Arms Producing and Military Service Companies in the World

Company	Arms Sales (2019)	Arms Sales (2020)	Total Sales (2020)	Arms Sales as a % of Total Sales (2020)
Hindustan Aeronautics	2,930	2,970	3,124	95
Indian Ordnance Factories	1,900	1,900	1,935	98
Bharat Electronics	1,570	1,630	1,918	85

Total Sales are in millions of USD. Source: created by the author from the "SIPRI Arms Industry Database 2021," *SIPRI*, https://www.sipri.org/databases/armsindustry, accessed January 28, 2023.

India has supported Indo-Pacific countries by selling defense assets and offering services and soft loans. It has provided a Line of Credit (LOC) to developing countries for defense and defense-related projects. In 2016 during his visit to Vietnam, Indian PM Modi announced US$500 million as the 19th LOC to Vietnam for defense projects and simultaneously upgraded India-Vietnam relations from a Strategic Partnership to a Comprehensive Strategic Partnership, giving a new direction to contribute to the stability, security, and prosperity of the region.[40] Earlier in 2014, the EXIM Bank of India provided US$100 million in LOCs to Vietnam, related to the agreement on delivering twelve Offshore Patrol Vessels (OPV) between Larsen and Toubro and Vietnam Border Guards.[41]

Similarly, in April 2019, the EXIM Bank of the Government of India (GoI) signed an agreement with the Armed Forces Division of the People's Republic of Bangladesh for a LOC worth US$500 million for defense-related financing.[42] The GoI extended a US$100 million LOC to Mauritius to procure a helicopter, an aircraft, and defense assets to enhance its maritime security.[43]

India's arms exports:

- Mauritius already operates defense platforms supplied by India: Dornier Do-228, ALH Dhruv, Passenger Variant Dornier (PVD), a 1,300-ton offshore patrol vessel (OPV) named *Barracuda*, and signed a contract with Hindustan Aeronautics Limited (HAL) for the export of one Advanced Light Helicopter (ALH Mk-III).[44]
- India gave two patrol boats, named PS *Topaz* and PS *Constant*, to Seychelles in 2004 and 2009 and gifted a 48.9m Fast Patrol Vessel built by GRSE to Seychelles.[45]
- India's BrahMos Aerospace Private Limited (BAPL) signed a deal with the Department of Defense of the Republic of Philippines to supply a shore-based anti-ship missile system.[46]
- India supplied a 3,000-ton diesel-electric submarine INS *Sindhuvir* to Myanmar as a gift and sold them Advanced Light Torpedo (ALH) Shyena torpedoes made

by Bharat Electronics Ltd. (BEL), an Indian public sector enterprise, for US$37.9 million in 2017.[47]

4.2 Evaluating South Korea's Military Cooperation with States in the Indo-Pacific Region

Table 4: South Korean Defense Companies in SIPRI Top 100 Arms Producing and Military Service Companies in the World

Company	Arms Sales (2019)	Arms Sales (2020)	Total Sales (2020)	Arms Sales as a % of Total Sales (2020)
Hanwha Aerospace	2,260	2,250	4,510	50
Korea Aerospace Industries	1,766	1,720	2,384	72
LIG Nex1	1,250	1,360	1,360	100
Hanwha Defense	1,260	1,220	1,218	100
Hanwha Corp.	990	1,170	3,398	34

Total Sales are in millions of USD. Source: created by the author from the "SIPRI Arms Industry Database 2021," *SIPRI*, https://www.sipri.org/databases/armsindustry, accessed January 28, 2023.

South Korea's military spending reached a total of $50.2 billion in 2021 and is ranked ninth on the list of arms exporters in the 2016–2020 period.[48] South Korea developed its first KF-21 prototype, an indigenous-made next-generation Korean fighter jet with cutting-edge technology, and it intends to deploy 40 KF-21 by 2028 and 120 by 2032.[49]

South Korea's arms exports:

- South Korean defense company Hanwha Defense signed a deal to provide thirty units of K9 self-propelled howitzers to Australia.[50]
- South Korean Defense manufacturer Hanwha Defense, in collaboration with Indian Private Defense Manufacturer Larsen and Toubro, produced the K9-Vajra in India, and an additional order of 200 units of K9-Vajra was placed by India in 2022.[51]
- Korea Aerospace Industries Co. (KAI) received a US$240 million deal with Indonesia for a trainer jet deal to supply six T-50 advanced trainer jets to the Indonesian air force.[52]
- South Korea signed a US$420 million deal to export twelve FA-50 fighter jets by KAI to the Philippines in 2014 and delivered a 2,600-ton Guided Missile Frigate to the Philippines Navy in 2020.[53]
- South Korea signed a US$260 million agreement in 2017 with Thailand to provide eight T-50 trainer jets and two more T-50TH Advanced trainers jets to Thailand's air force, a US$78 million deal in 2021.[54]
- New Zealand's Royal New Zealand Navy (RNZN) received a 26,000-ton vessel, the largest built by South Korean Hyundai Heavy Industries, in 2020.[55]
- United Arab Emirates signed a preliminary deal with South Korea for Cheongung II mid-range, surface-to-air missiles costing around US$3.5 billion.[56]

V. India and South Korea's Defense Relations

South Korea and India have "special strategic partnerships" based on "shared universal values of democracy, [and a] stable, secure, free, open, inclusive and rules-based region."[57] These strong relations have exponentially grown through increased cooperation and engagement in different sectors. The traditional security awareness in the Indo-Pacific region has heightened since Chinese aggression became more overt. But long before, India and South Korea shared the perspective on the need for an open and inclusive economic regional architecture that recognizes both countries' long-term and legitimate interests based on mutual benefit and shared opportunity in the region.[58] Despite South Korea not being a member of the Quadrilateral Security Dialogue that consists of India, the U.S., Australia, and Japan, it shares the values that the group upholds. South Korea and the U.S. share a vision for a free and open Indo-Pacific with a view to create a prosperous, safe and dynamic region.[59] Before releasing its Indo-Pacific strategy, South Korea took note of India's vision in the Indo-Pacific region, which focused on inclusiveness and cooperation.[60] The white paper presented in 2018 by South Korea emphasized the need to consolidate political and economic cooperation with India and contribute toward peace, stability, and mutual prosperity by institutionalizing regional cooperation. One of the main objectives was to contribute to regional and world stability and peace.[61] India and South Korea have systematically expanded their closeness in the defense domain.

Both countries signed a Memorandum of Understanding (MOU) on Defense Cooperation and Defense Research and Development in 2010 and a subsequent bilateral agreement on the Protection of Classified Military Information during the South Korean president's visit to India in 2014.[62] This highlighted the states' strategic intentions, even when the relations were dominated only by trade and commerce. They agreed to strengthen their relations in 2015 by establishing a 2+2 Format of Vice-Ministerial level defense and foreign affairs dialogue.[63] Under the leadership of Prime Minister Narendra Modi and President Park Geun-hye of the ROK, relations expanded with new areas of collaboration. The interest diversified into cyber security cooperation, transnational threats, encouraging more collaboration between the shipyards regarding defense requirements, deepening defense cooperation through staff-level talks of the two navies, and regular visits by the heads of armed forces.[64]

Since 2014, high dignitaries from both countries have regularly exchanged visits. These included Indian External Affairs Minister (EAM) Sushma Swaraj's visit in 2014, PM Modi in 2015, Defence Minister Manohar Parrikar in 2015, and Modi's second visit in 2019.[65] During 2018 heads of states meeting, both leaders reiterated their mutual perspective on encouraging cooperation between defense industries and enhancing exchanges in military training and experience sharing, research and development, and innovative technologies.[66] India's Chief of Army Staff, General M.M. Naravane, also visited South Korea and agreed on improving bilateral training exercises, educational exchanges, and defense industry cooperation.[67] During South Korean Defense Minister Suh Wook's visit to India in 2021, both countries showed interest in expanding their relations in defense shipbuilding, as South Korea was interested in supplying self-propelled anti-aircraft defense systems and building minesweepers for the Indian military.[68] The Indian Navy has also increased its engagement with South Korea. Three South Korean Navy Ships visited Indian ports in

2017 and were reciprocated by ICG Ship *Shaurya*'s visit to South Korea the same year.[69] In 2021, the Indian Navy's INS *Kiltan* joined with South Korean naval vessel ROKS *Gyeongnam*, a Daegu-class frigate, in the East China Sea.[70] The Milan 2022 exercise included the participation of South Korean Navy Frigate ROKS *Gwangju* (FFG-817).[71]

South Korean and Indian diplomats have maintained momentum in the absence of regular high-level visits due to the Covid pandemic to strengthen the defense cooperation between both countries. South Korea's ambassador to India has interacted with various stakeholders to bring relations closer between the two countries through his visits to Indian defense companies like Larsen and Toubro (currently manufacturing K-9 Vajra howitzers for India in collaboration with Hanwha Defense) and Mazagon Dock Shipbuilders Limited (MDL), and at the official level with Ajay Kumar, Ministry of External Affairs Secretary (East), where they "exchanged views on high-level talks and aspects of bilateral defense cooperation."[72] Similarly, during a recent visit to South Korea, Ministry of External Affairs Secretary (East) Ambassador Saurabh Kumar discussed ways to strengthen strategic cooperation through regular high-level visits and meetings at the level of 2+2 vice defense and foreign ministers.[73]At the same time, South Korea's Vice Minister Cho Hyundong also reiterated the intention to strengthen "bilateral cooperation in various areas, including defense and the defense industry," aligning with their Indo-Pacific strategy.[74]

India's Act East policy focuses on greater engagement with Southeast and East Asian countries, converging with South Korea's New Southern Policy (NSP), which emphasizes better relations with Southeast and South Asian states. India and South Korea's defense relations have come a long way from where they started. Former South Korean Defense Minister Suk Woo showed interest in participating in the Indian government flagship project Atmanirbhar Bharat (Self Reliant) with India in the defense corridor that was supposed to come up in Uttar Pradesh and Tamil Nadu.[75]

India and South Korea are Indo-Pacific regional states in initial and advanced stages of setting up their military-industrial complex, but both states still depend on other states for their defense supplies. Between 2016 and 2020, India and South Korea's share in global arms imports constituted 9.5% and 4.3%, respectively.[76] They are also expanding the scope of the relations by identifying emerging areas of convergences, like critical and high-technology, supply chain resilience, cyber security and information technology, extremism, radicalization, and maritime security and the threats posed to it by terrorism during the National Security Adviser meeting. India and South Korea's move to expand their relations beyond the trade and commerce into new sectors is a positive development. However, the lack of progress in building on the existing MoUs showed the absence of a strategic thread. One of the major reasons relations have not proliferated comprehensively is the missing "strategic element" that binds the economic-security-technological nexus in today's emerging state-to-state relations. Another is the lack of a political vision in both states that can direct and nudge the pace of relations. If these aspects can be addressed, relations between the two countries can progress at a much faster pace.

South Korea can benefit from the liberalization and business-friendly environment in the Indian Defense sector. Foreign Direct Investment (FDI) through automatic route in the defense sector increased from 49% to 74% as a result of defense reforms and to boost the self-reliance policy of the government of India. In modernizing the Indian Navy fleet, South Korea can be a vital partner. Major defense manufacturers like Lockheed Martin

and Hyundai Heavy Industries (HHI) can help India upgrade its fleet with the latest technology, like the Aegis Ballistic Missile Defence (BMD) system. The Aegis represents India's logical choice as it builds new ships and aircraft carriers that are offensively viable and defensively secure.[77] The Indian prime minister, during his visit to South Korea, visited HHI and sought a partnership between Indian and South Korean shipyards to ensure benefit from its expertise and experience.[78] HHI subsequently signed an agreement with Larsen and Toubro (L&T) to build a Liquified Natural Gas (LNG) carrier.[79] Similarly, in his visit to South Korea, India's Secretary of Defense Production Raj Kumar expressed his intention to create a win-win partnership between the two countries in the defense sector and also proposed to export K9-howitzers to third-party countries in cooperation with South Korea.[80] Due to its advanced military exports, South Korea can support and collaborate to strengthen and modernize Indian defense. Shipbuilding is one sector where both countries can work together, and with the vision of stable and prosperous Indo-Pacific the opportunities to explore remain hopeful. We may see India and South Korea grow closer due to strategic space constraints with a new cold war settling in. The existing two narratives in the region provided by China and the U.S., respectively, are contradictory to each other's vision and make the regional order a bipolar contest which both India and South Korea don't want, as they would like to explore a third way with the role of ASEAN countries at the center.[81]

VI. Conclusion

In the Indo-Pacific region, the emerging asymmetrical geopolitical power dynamic pushes existing relations to the test. The geopolitical alignments in the Indo-Pacific region are polarizing the international system into a bipolar order, with the influence of other global developments. Due to the shifting power dynamics, the Indo-Pacific regional security architecture remains in the middle of this geopolitical eye. In addition, the convergence of geoeconomics and geopolitics, in the form of geostrategy, is adding more pressure on states in the region. This has led to many challenges in pursuing an independent foreign policy. Recently, the Indo-Pacific region has attracted particular attention amid U.S.–China strategic rivalry. India and South Korea, which share strategic realities and a greater sense of insecurity than other countries, will play a vital role in shaping and influencing the geopolitical and strategic direction the region may take. Defense cooperation between the two countries will increase, focusing on high-level meetings (military and political level), military exercises, and exchanges between defense and epistemic communities. Sales and procurement of defense equipment and arms will also increase as the militaries of both countries build up. Defense research, innovation, and lines of credit are some innovative ways that both countries have helped states look for better economic incentives and technology transfers. The opportunity also lies in strengthening the defense cooperation with other countries in the region as they also look to enhance their military power. Strategic stability and economic considerations are two factors driving both countries to expand their roles. In addition, the Indo-Pacific strategies enunciated by India and South Korea lay down a strategic roadmap to ensure that the region remains safe, secure, and stable. ASEAN remains at the fulcrum of the Indo-Pacific outlook of both countries. Another

convergence in India's Act East policy and South Korea's New Southern Policy also acts as a bridge to strengthen cooperation with ASEAN at its center. Building strategic ties through defense cooperation is an additional factor India and South Korea would explore further together and with other countries. Defense companies based in India and South Korea that produce arms and equipment will be critical in further developing strategic ties in the defense sector. This cooperation between the two countries also allows for collaboration on issues that would deepen defense ties by focusing on topics such as extremism, radicalization, supply chain resilience, as well as cyber and critical technologies.

The implications of the new geostrategic alignments are even shaping the cooperation and engagement in the arms trade. Irrespective of emerging as a reliable partner, the market covered by India and South Korea remains very low. Some challenges remain for India and South Korea. Deliveries of weapons systems like missiles, such as BrahMos, to Russia can be a matter of concern for several countries in the Indo-Pacific region. Similarly, South Korea's dependence on U.S. technologies and its alliance may restrict the space to strengthen cooperation with any country which shares adversarial relations with the U.S. As the cooperation and collaboration between India and South Korea grow exponentially, with their stature also rising as middle-power norm influencers, but most importantly as emerging defense suppliers, the vitality of these relations will be one of the bedrocks in ensuring the stability of the Indo-Pacific region.

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Submitted: 2-1-2023 • Sent for Review: 2-21-2023 • Decision: 4-9-2023

India's Role in Capability Development Measures for Maritime Security in the Indian Ocean Under SAGAR

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Structured Abstract

Article Type: Research Paper

Purpose—The paper looks into India's growing initiatives around the Indian Ocean Region (IOR) under SAGAR (Security and Growth for All in the Region) for enhancing maritime cooperation, and how it is enhancing maritime security and governance through capability development measures by providing assistance to the other IOR littoral states. It will also look at the regional mechanism where India is playing a significant role to enhance the capability of regional nations and uphold maritime security and governance in the region.

Methodology—Content analysis has been the primary approach to consolidate the arguments.

Findings—With the ever-growing significance of the IOR, and with India being the region's major power, it has to work closely with the other littoral states to enhance maritime security in the region. That can be possible through a collective mechanism and by increasing the capability of the other states, as India can provide resources and both military and institutional training. This will help India continue to be the regional security provider amid growing Chinese influence in the Indian Ocean Region.

Practical Implications—The paper attempts to point out that through capability development, India can uphold its strategic influence and position in the IOR, which is becoming a zone of major power rivalry between India and China.

Keywords: BRI, capability development, Indian Ocean, maritime security, SAGAR

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Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 47–59 / ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.47 / © 2023

I. Introduction

The 21st century has seen a geopolitical shift from Eurocentric West to Asia-centric East with the rise of major Asian powers like China, India, ASEAN, etc. This is impacting the overall power dynamic, which is now shifting from the Atlantic to the Indo-Pacific. In the geopolitical context of the Indo-Pacific, it can be argued that the Indian Ocean Region has a prime significance. The Indian Ocean is the world's third largest water body, stretching from the African coast in the west to Australia in the east. The region is rich in natural resources, as it is home to 40% of world's offshore petroleum, while also being home to some of the fastest-growing economies. The Indian Ocean carries two-thirds of the world's seaborne trade in oil, 50% of world's container traffic and one-third of world's seaborne bulk cargo.[1]

The sea lane of communication which stretches across the Indian Ocean is one of the most vital, connecting some of the most strategically important straits like the Strait of Malacca, the Strait of Hormuz and Bab-el-Mandeb. With high cargo movement, the threats of piracy have always been a factor in the Indian Ocean, with the Strait of Hormuz and the Strait of Malacca being major targets of maritime piracy. Along with piracy, the IOR also faces issues like maritime terrorism and illicit drug trafficking. Apart from this, the region also faces major natural calamities every year, which have a toll both on human life and economic cost.

It is in this context that India's role for maritime security through capability development measures under its SAGAR (Security and Growth for All in the Region) policy becomes of prime importance, as that will not only keep India as the net security provider, but also help tackle diverse maritime threats which might impact India's national security. India, under its SAGAR initiative, is playing a key constructive role in enhancing the maritime capability of the IOR nations and toward developing regional mechanisms for maritime security and development of the region.

The first part of the paper will look at the concept of SAGAR and the various initiatives undertaken by India in the Indian Ocean. The second part of the paper will look into India's role in capability development measures in the Indian Ocean, and the final segment will look at how SAGAR can be a major foreign policy tool for India under the growing Chinese influence in the Indian Ocean Region.

II. The Concept of SAGAR and India's Initiatives in the Indian Ocean Region

The growing significance of the Indian Ocean in the geopolitics of the 21st century has made SAGAR a very significant initiative for India to maintain its sphere of influence in this region. However, there is not one significant official document related to SAGAR that has been laid down by the Indian government.[2] The concept of SAGAR (Security and Growth for All in the Region) was first articulated by India's Prime Minister Narendra Modi during his 2015 state visit to the island nations of Mauritius.[3] It was a historic trip in itself as Modi was the first Indian prime minister to visit Seychelles since 1981 and also the first standalone Indian prime minister to visit Sri Lanka since 1987.[4] However, it was while

commissioning the India-built offshore naval patrol vessel *Barracuda* for the Mauritian Coast Guard that Modi unveiled the SAGAR concept, which is the Hindi word for "sea."[5] This is an interesting analogy, as the vessel built by India would be used by the Mauritian Coast Guard to safeguard its EEZ (Exclusive Economic Zone) and the concept of SAGAR revolves around security for all in the region. Therefore, announcing the launch of SAGAR from that particular platform echoed India's commitment for regional development and security.

Although there has been no official document in regard to SAGAR, the speech of the Indian prime minister in Mauritius in 2015 pointed toward five key propositions: (1) maintain national security and safeguard national interest along with maintaining security of the region; (2) enhance economic and security cooperation along with building maritime security capacity of regional nations; (3) promote cooperation and collective action through existing institutions like the Indian Ocean Naval Symposium (IONS) for maritime cooperation; (4) enhance collaboration and sustainable development; and (5) work with extra-regional actors with stakes in the region.[6] Through this initiative, India wants to work collectively with the various IOR nations. Being the region's major power, it has taken the lead not only to maintain its own strategic interest, but also the interests of its maritime neighbors by enhancing their capabilities for ensuring their economic and security well-being,[7] with the primary aim to help them enhance their interests through capability development, collective security mechanism, and advancing peace and stability in the region. With India's rise, the significance of the maritime sphere has galvanized. This has, therefore, led India to recalibrate its overall maritime strategy so that it can play a major role in the regional maritime security architecture.[8] The IOR has always been dominated by India's influence, and India has played a significant role in managing peace and stability in the IOR. It has helped in averting multiple coups, from Mauritius in 1983, to Seychelles in 1986 and Maldives in 1988.[9] During the recent Covid-19 crisis, India launched major initiatives. Under the banner of "Mission Sagar," India dispatched its naval ship INS *Kesari* to Maldives, Mauritius, Madagascar, Comoros and Seychelles.[10] The ship had a medical assistant team and consignments of Covid-related medicines and food. The Covid relief work under Mission Sagar was inspired by PM Modi's vision of SAGAR.[11] India has always been the first responder to any natural calamity in the IOR, and therefore, this led India to be labeled as the net security provider in the overall Indian Ocean Region.[12]

III. India's Role in Capability Development Measures in the Indian Ocean Region

With the ever-growing importance of the maritime sphere, it is significant for nations to have their own capability to deal with any threats, traditional or non-traditional, arising in the maritime sphere. However, most of the nations of the IOR do not have adequate training, resources or equipment needed to conduct any such operations for enhancing maritime security. This makes the region dependent on other sub-regional or extra-regional nations for maintaining security. The recent fire onboard a ship carrying chemicals off the coast of Sri Lanka required Indian assistance, as after six days the Sri Lankan authorities were unable to douse the fire.[13] Therefore, enhancement of capability will lead to quicker resolution of these

kinds of threats, which can reduce any resulting security implications. Capability development requires developing nations to cooperate with relevant organizations, associations and nations which have the capability, through which it can help them enhance their (1) human resources capability; (2) institutional capability; and (3) create a sound environment.[14] The maritime capacity-building measures have various paradigms as nations tend to increase the capacity of other nations through joint exercises, providing equipment which can help them carry out various operations, and also training crew and staff.

The importance of individual nations playing their part for maritime security goes on to have a major impact for the overall security of the region. This has led India, under PM Modi, to look deeper into collective security mechanisms for maritime security, a fundamental pillar of the SAGAR initiative. Being the major power of the region, India has stepped up its efforts through various forms of capacity-building measures to enable the nations to develop capabilities to respond to the rising maritime challenges. During his three-nation trip to Sri Lanka, Seychelles and Mauritius in 2015, PM Modi signed various agreements which would enable the maritime capacity of these Indian Ocean littoral nations. Apart from gifting the offshore patrol vessel *Barracuda* to Mauritius, the Indian PM also offered a $500 million line of credit for various infrastructure projects in the island nation.[15] The island nation has been a big recipient of Indian grants, which has helped create major infrastructural development projects, from housing to hospitals to the nation's supreme court.[16] These initiatives will enhance institutional capability measures which can help in the maritime governance in the Indian Ocean Region.

The Exclusive Economic Zone (EEZ) is an important component of Mauritius's economy, and its protection is of great significance from both economic and security perspectives. This has led India to work with the Mauritian government in development of their maritime defense. During the state visit of Indian President Ramnath Kovind to Mauritius in 2018, India had provided a $100 million line of credit to Mauritius for procurement of defense equipment along with other defense deals for enhancing Mauritius's maritime security force.[17] India has also been helping to train Mauritian security personnel, conducting joint patrols and enhancing Mauritius's coastal surveillance capability.[18] With such a long coastline, surveillance becomes of prime importance as it allows law enforcement agencies to intercept any possible maritime security threat. India has been working for decades to enhance Mauritian surveillance capability around its EEZ. It had earlier provided the Mauritian maritime agencies with Dornier aircraft, along with training to conduct such operations. In 2016, it further provided Mauritian authorities with third Dornier aircrafts for coast surveillance.[19] These efforts have largely contributed to enhancing the maritime capabilities of Mauritian authorities, thus further securing regional security.

In the case of Seychelles, India has played a key role in developing its military capacity by providing training and equipment. In 2012, the then-president of Seychelles had lauded India for its role in maintaining the security of their maritime EEZ.[20] During his trip to the island nation in 2015, PM Modi announced the gifting of a second Dornier aircraft to Seychelles along with inaugurating the first of the eight coastal surveillance radars being built by India for the maritime surveillance of the region.[21] In 2018, during the delivery of the aircraft, the Indian external affairs minister pointed out that securing the sea is fundamental for the security and growth of both the nations—it is the cornerstone of India's SAGAR initiative, and India would be committed to provide support through capacity-building measures with Seychelles.[22] The area of sustainable development has also been addressed by

India, with New Delhi recently handing over the Magistrate Building and a one-megawatt solar power plant to Seychelles.[23] These initiatives, along with India's support during the Covid-19 pandemic, which included over 50,000 doses of vaccine, were well received by the president of Seychelles, who had pointed to India's support as being crucial for the nation's development.[24] Under SAGAR, collective security is taken to be a fundamental pillar, and this has led India to work hand-in-hand for capability development with other IOR nations like Sri Lanka. The Indian Navy is providing training assistance and support to the Sri Lankan Navy by providing specialized equipment for their naval academy.[25]

Table 1. India's Supply of Military Equipment to Four IOR Nations for Maritime Security Since 2015

Country	Name of Equipment	Type of Equipment	Year of Order	Year of Delivery	No. of Units Provided
Seychelles	Do-228MP	Military patrol aircraft	2015	2018	1
	EL/M-2022	Surveillance radar	2015	2018	1
	L&T Fast Interceptor	Maritime patrol vessel	2016	2016	1
	FPV-300	Maritime patrol vessel	2021	2021	1
Mauritius	Do-228MP	Military patrol aircraft	2014	2016	1
	MCGS *Barracuda*	Offshore patrol vessel	2014	2016	1
	Dhruv	Helicopter for policing	2021	2022	1
	Do-228	Light transport aircraft	2021	2021	1
	Do-228	Light transport aircraft	2021	2022	1
Maldives	Do-228MP	Military patrol aircraft	2020	2020	1
	Kamiyab patrol vessel	Maritime patrol vessel	2019	2019	1
Sri Lanka	*Samrath*	Offshore patrol vessel	2014	2017/2018	2
	Do-228	Maritime patrol aircraft	Gifted	2022	1

Source: Compiled by the authors using various sources, including the arms transfer database of Stockholm International Peace Research Institute (SIPRI), https://www.sipri.org/databases/armstransfers, and various news reports.

Speaking of Maldives, Indo-Maldivian relations went through a difficult phase prior to 2018 as President Yameen gravitated more toward China. This was seen as posing major security challenges to India, as Maldives had long been considered to be under the Indian sphere of influence. India has always played an important role in matters related to Maldivian security and protection of its EEZ. In 2015, India helped Maldives install the first of three coastal radars, in addition to donating $240,000 for operational expenses of helicopters while also signing various defense pacts.[26] Under constrained relations, India still pushed to enhance Maldivian maritime security and garnered back Maldivian sympathy to India's security concerns vis-à-vis China. With the ousting of President Yameen in 2018 and the coming of President Solih into power, India has staged a comeback in Maldives. India has

been providing training to Maldivian maritime security forces for years, which has played a major role in enhancing their capacity-building measures. India has offered Maldives a $50 million line of credit for various defense projects and to develop naval facilities which would enhance humanitarian assistance and maritime security capability in the IOR.[27]

Also since 2015, India has signed agreements that would allow it the access to ports and facilities of France in the Reunion islands, the U.S. in Diego Garcia, and Duqm port in Oman, which will allow India to quickly provide maritime assistance to disaster relief or antipiracy operations and uphold maritime governance in the region under the SAGAR initiative.[28] It has also led India to develop strategic partnerships with major Asia Pacific nations like Japan, Singapore, South Korea, Australia, and Vietnam, which expands India's reach in the wider Indo-Pacific region.[29] India has also adopted new approaches which is pushing its capabilities as a net security provider[30] in the region, including a measure called Mission-Based Deployment (MBD) which emphasizes the ability to deploy mission-ready ships and aircrafts at critical sea lanes of communication.[31]

Table 2. Indian Navy's Mission-Based Deployment Plan

Deployment	Area
ANDEP	Patrolling between the North Andaman and South Nicobar
CENDEP	Patrolling in waters south of India, off the Maldives and Sri Lanka
IODEP	Patrolling in the South Indian Ocean, off Mauritius, Seychelles and Madagascar
GULFDEP	Patrolling of the North Arabian Sea and the approaches to the Strait of Hormuz and the Persian Gulf
MALDEP	An IN ship is permanently sailing near the mouths of the Straits of Malacca
POGDEP	Anti-piracy patrolling of the Gulf of Aden
NORDEP	Patrolling of the North Bay of Bengal, in waters north of the Andaman and the coasts of Bangladesh and Myanmar

Source: Sujan Dutta, "Indian Navy Informs Government About the Fleet's Reoriented Mission Pattern," *New Indian Express*, April 1, 2018.

This plan will allow the Indian Navy to dispatch its resources quickly during hours of need around the Indian Ocean, which will work to maintain security for all in the region. As pointed out by the Indian defense minister, the Indian Navy has successfully conducted mission-based deployment around the Indian Ocean, which has increased maritime domain awareness and provided swift disaster relief work.[32]

IV. Regional Institutions for Maritime Governance and Capability Development Measures

Regional mechanisms have been a significant way to integrate regional nations into a singular grid for maintaining security and enhancing regional partnerships. India has been a major player in initiating and supporting some of the major regional institutions with a

goal of improving maritime governance and security in the IOR. This section of the paper will look at some of the regional institutions through which India will play a major role for maritime security and capability development.

4.1 Indian Ocean Naval Symposium (IONS)

The Indian Ocean Naval Symposium (IONS) is a regional organization structured to answer the needs of maritime security of the region. India pitched the initiative in 2008 and it has been described as the first significant maritime security initiative in the 21st century.[33] IONS is fashioned after the Western Pacific Naval Symposium (WPNS), where all the navies of the West Pacific would meet to discuss cooperative issues and matters that needed further consideration.[34] Therefore, the fundamental concept of IONS was to show India's ability, similar to that of the U.S., as a major power and to promote the prominent role of the Indian Navy in the IOR.[35] However, the launch of IONS can be credited with enhancing regional interoperability and trust among regional navies and coast guards. This can allow joint ventures in matters related to maritime security as the region is an epicenter of transnational crimes and natural disasters. Thus, having a mechanism which unites regional nations will accelerate maritime security initiatives. There were four fundamental objectives outlined during the induction of the IONS:[36]

1. To promote shared understanding in matters related to maritime security in IOR.
2. To enhance the capacity of the regional states and work on maritime security and stability.
3. To promote and establish consultative cooperative mechanisms to mitigate maritime security challenges in the region.
4. To enhance joint operations, organizational skills and logistical systems for speedy recovery during humanitarian assistance and disaster relief work in IOR.

Under the concept of SAGAR, the relevance of IONS becomes vital as it brings together the navies of all IOR nations, increasing the collective approach to maritime security. With initiatives like SAGAR and IONS, India can enhance the capabilities of regional navies, which would be constructive for regional development.[37] During the 10th edition of IONS in 2018, the theme was set to be "IONS as a catalyst for SAGAR," which highlights the significance of SAGAR in integrating other major regional mechanisms with itself.[38] Therefore, it can assist in the enhancement of regional security and interoperability, subsequently helping with developing capabilities of other Indian Ocean littoral states.

4.2 Indian Ocean Rim Association (IORA)

The Indian Ocean Rim Association (IORA) was one of the first organizations established to answer challenges in the region. IORA was first launched in 1997 with the aim to develop regional multilateral structure with an emphasis on economic and social agendas, however it remained silent for a long time.[39] Unlike IONS, whose major emphasis has been maritime security, IORA has been focused on the economic objectives around the Indian Ocean, though the organization is still to reach its full potential in regard to enhancing integration of the region and its nations.[40] IORA has six major priority areas

to push sustained growth and also align maritime security with IONS, however no formal link has been established between the two organizations.[41] This emphasizes lacks of synergy among the institutions in the IOR, which can impact their work capabilities. Being the major regional power, India's role in the IOR becomes very important and after the launch of SAGAR, organizations like IORA are of prime importance for regional integrity and promoting the notion of collective development. It has been pointed out by India that IORA will be playing a significant role in the Indo-Pacific and will be a major tool for regional cooperation.[42] After the launch of SAGAR in 2015, India is actively working to elevate IORA through dialogues and forums, and also has a 10-point suggestion for the development of the association and work on a blue economy.[43] IORA allows the nations of the IOR to gather under its umbrella and push for collective economic development, which will have a positive implication for the entire region.

4.3 Information Fusion Centre–Indian Ocean Region (IFC–IOR)

The establishment of the IFC–IOR is taken to be a significant initiative to enhance maritime security in the region. It was established in 2019 with the primary aim of sharing white shipping data, which would lead to a more collaborative approach for maritime security, as the center has built links with 18 countries and 15 maritime centers.[44] The IFC can enhance maritime security around the IOR and provide real-time analysis of maritime traffic. The fundamental goal for establishing the IFC–IOR has been to increase joint monitoring of the IOR as it becomes a hub for great power competition, apart from the increase in natural disasters and transnational crimes like piracy and drug trafficking.[45] The joint monitoring has led India to request that other major and littoral nations station a liaison officer at the IFC for better coordination and sharing of information. The IFC currently has liaison officers from five major countries—the U.S., France, Australia, Japan, and the UK. Also, there is high interest among many other nations to send liaison officers, which can help in interoperability and information sharing, enhancing maritime security.[46] The IFC initiative can help India in continuing to promote itself as a net security provider in the region as China expands its footprints around the Indian Ocean.[47] With India working to maintain its sphere of influence around the IOR, it has to work to increase its international profile to meet its strategic needs. Therefore, it is critical for India to take lead steps for upholding maritime security in the Indian Ocean Region.[48]

V. Chinese Influence in the IOR and Its Implications for India's Initiatives

The launch of SAGAR can be argued to be a major foreign policy tool to advance and counter growing Chinese influence seen since the launch of China's Belt and Road Initiative (BRI). The Indian Ocean is one of the most strategic waterways for China in the 21st century, as 80% of its oil and other natural resources pass through these waters and the Malacca Strait.[49] This is a major security concern for China as any disruption of its imports will have a drastic implication on its economic growth, making the Indian Ocean an issue of national interest for China. This led former Chinese President Hu Jintao to label

China's dependency on the Indian Ocean and Malacca Strait as "China's Malacca Dilemma."[50] With the launch of the maritime aspect of the BRI in 2013, China's economic investments around the IOR have quadrupled as it has been working on development of major infrastructure projects around the region. This has also raised Chinese stakes in the IOR, making it a significant region for China's security and national interests. China is constructing multiple ports under its maritime silk route initiative which, according to China, will advance interregional trade among nations.

However, Chinese investments are considered to be very opaque, having major implications for the host nation, as then–U.S. Secretary of State Mike Pompeo pointed out by saying that Chinese deals come "not with strings attached but with shackles."[51] This notion has gathered a lot of attention, mainly in India, as the nation views Chinese investment around the Indian Ocean to have a dual purpose under String of Pearls. The major crux of the argument regarding String of Pearls is that Chinese military and civilians both would be using the ports in the IOR, a major security implication for India.[52] The takeover of the Sri Lankan port of Hambantota by China strengthened this argument and has raised alarm bells in neighboring India. With the unprecedented economic crisis in Sri Lanka, the alarm bells regarding predatory Chinese investments have only gotten louder. This is seen to have major implications for India, as growing Chinese influence will undermine the Indian sphere of influence in the IOR. As pointed out by a former Indian diplomat, India's position on rejecting the BRI is significant, given that Beijing is planning a China-centric Asia through BRI, and India joining it means accepting Chinese superiority.[53]

Growing Chinese economic initiatives under BRI has had an impact on India's influence in the region. In recent times, a growing number of countries around the Indian Ocean and its neighborhood have cozied up to the Chinese, especially given its deep pockets. In 2014, a Chinese submarine had docked at Colombo, which rang alarm bells in New Delhi as it was seen to have major implications for Indian national security.[54] The recent docking of a Chinese spy ship in 2022 in the Sri Lankan port of Hambantota, which has been constructed by China, further reiterates India's fear of China's growing footprint in the Indian Ocean.[55] During Abdulla Yameen's tenure, Maldives gravitated toward Beijing and signed key pacts under BRI.[56] These became a major obstacle toward the notion of taking a collective approach in the IOR, as some of the deals undermined India's strategic interests. With time, these growing Chinese initiatives will try to further undermine India's influence, which therefore presents major challenges for India in the region.

This has led India to restructure its policy around the Indian Ocean to answer the challenges of growing Chinese initiatives, and SAGAR can be argued as a major foreign policy initiative to rebut this challenge. SAGAR has been labeled as the major foreign policy initiative adopted by the Modi government to enhance its outreach in the region. With the Indo-Pacific garnering momentum, the maritime aspect has become a crucial element in Indian foreign policy-making through initiatives like BIMSTEC (the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation), Project Mausam, and SAGAR. Among all of these, SAGAR is seen to provide India with strategic depth in the Indian Ocean by maintaining its strategic influence amid growing geopolitical competition. SAGAR can be a viable alternative to China's BRI in the region as its approach is aimed at collective development, unlike the extractive approach of the BRI.[57] Under the SAGAR initiative, India wants to promote the agenda of collective development, which will

thereby enhance the capability of regional nations and promote the agenda of growth for all. This can be India's major foreign policy approach in countering China's BRI in the IOR. However, the vision of SAGAR is yet to reach to its full potential, as India can link its initiative with its other maritime initiatives, which could provide India the credibility needed to expand its reach around the wider Indo-Pacific.[58] This would make it a credible player in the Indo-Pacific region and uphold strategic interest amid growing Chinese initiatives in the region.

VI. Conclusion

The launch of SAGAR has been a major initiative adopted by the Indian government to not only spread its sphere of influence but also help in the collective development of the region. The various capacity-building measures initiated under it have been crucial to safeguarding the maritime security of the region. The 21st century is regarded as the Asian century, which would see the rise of major Asian powers with the Indian Ocean at the center of this development. Therefore, maritime security around the Indian Ocean becomes of primary importance. The SAGAR initiative adopted by India has been working on capacity building measures, which can be regarded as crucial for the overall maritime security of the Indian Ocean region. With the region facing major issues stretching from terrorism and drug trafficking to natural calamities, having a resolute maritime force is essential for a swift response. Therefore, India's initiatives under the umbrella of SAGAR will enhance maritime security mechanisms by enhancing the capabilities of the other littoral states and enabling them to work together, which would play a significant role in the overall development of the region. However, more diplomatic, economic and political efforts are required from India's side for running the initiative smoothly. With the return of great power politics in the Indian Ocean Region, there will be some implications that would impact overall development in the region. But collective security mechanisms and collective measures for development could play a binding role for the Asian century to prosper.

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Submitted: 8-31-2022 • Sent for Review: 9-30-2022 •
Resubmitted: 4-9-2023 • Sent for Review: 4-11-2023 • Decision: 4-30-2023

Maritime Security Governance in the Gulf of Guinea: Opportunities and Challenges of States' Responses

Adam Mohammed

Structured Abstract

Article Type: General Review

Purpose—This article interrogates the various maritime security governance regimes in the Gulf of Guinea. The paper assessed the opportunities and challenges faced by States' regional and international architecture responses initiated to combat various maritime security threats such as piracy, oil theft, drug trafficking, smuggling, marine pollution and other forms of sea-borne organized crime in the region.

Findings—The study revealed that enormous opportunities and vulnerabilities accompany the geostrategic importance of this region. Security governance responses by all actors has been impeded by the proliferation and duplication of security regimes, lack of harmonization of initiatives, lack of State and regional personnel and assets' capability, gross distrust among the region's states, and inadequate funding, among other challenges.

Practical Implications—If these challenges are addressed appropriately, the Gulf of Guinea States will maximize the region's enormous maritime resources and ensure security and sustainable blue economy development for enhanced State and regional prosperity.

Originality, value—Building on extant literature on the ambition and processes of maritime security governance regimes in the Gulf of Guinea, the study's findings provide an original contribution for understanding the operational complexities involved in effective security response to the numerous maritime threats in the region and demonstrate that when these regimes are harmonized and effective, the prosperity of the region would be invaluable to international peace and development.

Keywords: governance, Gulf of Guinea, maritime security, state responses, threats

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Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 60–77 / ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.60 / © 2023

I. Introduction

The Gulf of Guinea is one vast, diverse, and highly important shipping route. It straddles an unbroken coastline of over 6,000 kilometers while cutting across about 18 countries of West, Central and Southern Africa. The States in the region can be described as an intricate assemblage of coastal and landlocked Francophone, Anglophone, Lusophone, and Spanish-speaking countries, whose interpersonal postures are compounded by the divergence of language, domestic institutions and legal norms. The region's economic, geopolitical and geostrategic interests regarding maritime security collaborative initiatives have rather remained intriguing and complex.[1] This is in spite of the fact that the Gulf of Guinea States share immense potential, both in terms of its resource endowment and strategic importance as a major shipping route/hub, which has drawn significant domestic, continental and international attention occasioned by increased threats and vulnerabilities.[2]

Indeed, the States have witnessed a number of diverse threats to the West African regional security landscape. Apparently, the Gulf of Guinea, which occupies a significant geostrategic position within this geographical area, is not immune from these regional security challenges. This is because piracy has become one of the most prevalent maritime security crimes bedeviling the region with huge consequential human, economic, environmental and political costs. Therefore, the manifestation of piracy, for instance, constitutes a significant and direct threat to peace, security and economic development of the Gulf of Guinea region.[3] While, as increased global trade passes through this strategic maritime route, the consequences of ship hijacking and other illicit activities by organized criminal networks have no doubt attracted considerable regional and international community attention.[4] Thus, the Gulf of Guinea requires a strategic approach consistent with domestic aspirations and multi-stakeholders partnership initiatives, as well as coherent regional collaborative arrangements given the transnational character of most threats and vulnerabilities in the region.[5]

It is essential to note that the enduring security threats have mobilized responses from both within and beyond the region. For instance, in 2013, the West and Central African States formed a new regional maritime security framework dubbed the Yaoundé Accord. The framework is aimed at promoting information-sharing and resource-pooling along the African coast, from Cabo Verde in the north to Angola in the south. This is also reinforced by individual states' large-scale anti-piracy programs, such as the establishment of the Falcon Eye surveillance infrastructure and Deep Blue projects in Nigeria.[6] To this end, efforts at national, regional and international levels have been geared toward addressing the plethora of maritime security challenges in the Gulf of Guinea. As a result, the region has witnessed the proliferation of national, regional and international-partnered institutions and several initiatives. These include, but are not limited to, the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), Gulf of Guinea Commission (GGC) and Maritime Organization of West and Central Africa (MOWCA). Other initiatives include the G7 Friends of the Gulf of Guinea Group (G7++FOGG), International Maritime Organization (IMO), United Nations Office on Drug and Crime (UNODC), and other non-state actors such as ship-owner's associations and national maritime domain security architecture are poised to secure this maritime corridor. However, these initiatives have overtime proven less effective as threats remain

seemingly unabated and are actually growing. The complexities surrounding these institutional coordination and operational frameworks have remained highly debatable, reaffirming the fact that the fundamental question as to the efficacy of the current arrangements in the region remain under-analyzed.[7] Therefore, this paper aims to interrogate various national, regional, and international institutions and initiatives geared toward sustainable maritime security in the Gulf of Guinea within the analytical paradigm of political, economic, and legal frameworks and security regimes developed to stem the cost of maritime insecurities along the Gulf of Guinea maritime domain.

II. Review of Extant Literature

The Gulf of Guinea region has become a focal point for international concerns regarding maritime security over the last decade. It is said that it represents a global hotspot for incidents of piracy and robbery at sea, among other complex challenges in the maritime domain, including trafficking, oil theft, pollution, and illegal, unreported and unregulated (IUU) fishing.[8] Against this backdrop, a range of initiatives focused on the region have been developed at international, regional and national levels to address these issues. However, measuring their level of success and/or failure has been an issue of scholarly debate. Broohm's work on maritime security governance, a new strategy management to avoid piracy in the Gulf of Guinea and its legal guarantee, argues that the most significant factors that would boost maritime security in the region include strong collaboration, strong law enforcement, national team spirit, synchronization of policies, and adoption of a maritime security strategy that would factor in the interest and responsibilities of all actors and stakeholders.[9] Garba argues that for effective ocean governance, modern management principles and an integrated governance framework will be needed to improve the enforcement and compliance within the ecological belt of the Gulf of Guinea.[10] As such, institutional frameworks built on a multi-layered approach are required.

Ebo'o succinctly argues that the Gulf of Guinea is not ungovernable, but the current institutional and regional focus is insufficient to improve security.[11] Ebo'o further argued that in spite of the diversity of crimes within this maritime space, responses to the complex security threats have been one-sided and often complex. Thus, there is need for a shift in strategy and attitudes toward a holistic approach that involves the strengthening of technical capacities and their sustainability. Similarly, Morcos posits that the confluence of threats mobilized the international community in the early 2010s.[12] This led to the 2013 Yaoundé Summit, which came up with new maritime security architecture that seeks to create shared maritime domain awareness among regional states through enhanced information sharing. In spite of this, Morcos argues that though the Yaoundé process has made considerable progress, the maritime security architecture remains incomplete due to the absence of an appropriate legislative and judicial framework, and the limited capacities of local navies or coast guards that are underequipped to provide credible deterrence.[13]

In a similar vein with Morcos, Norland aptly opines that social, political and economic challenges impede Gulf of Guinea regional navies and coast guards' enforcement capacities from maintaining sufficient security over their territorial waters.[14] Other scholars like Murphy and Ali contend that the ineffectiveness of maritime security governance architectures

in the Gulf of Guinea is largely because of the land-centric approach to security which has necessitated less priority and investment in equipment for the protection of the maritime space.[15] Accordingly, the maritime security architecture in the Gulf of Guinea is incapable of handling emerging maritime piracy and other crimes due to a lack of logistics and capacity building, and of course, owing to over-reliance of the land regarding national security in the region.[16] While there is considerable literature on security governance efforts in curbing spates of crime and insecurity in the Gulf of Guinea, there seems to be a dearth of research in assessing the diverse complexities of numerous security governance architectures in the region. This article aims to fill the gap.

III. Methodology

This paper adopts a hybrid method of combining exploratory, qualitative, and case-study research methodology in order to conduct an analysis of the opportunities and challenges of maritime security governance in the Gulf of Guinea. Since maritime security response mechanisms in the Gulf of Guinea over time have been multi-layered, the chosen method ensures an examination of national case studies (Nigeria and Senegal), and regional and international maritime security architectures geared toward effective security management of the Gulf of Guinea. This is done within the Copenhagen School's *regional security complex* analytical paradigm advanced by Barry Busan. This framework is plausible because Busan defines a regional security complex as a group of states whose primary national security concerns are so inextricably linked together that they cannot be removed or addressed independently of each other. Thus, the thrust of this theoretical scheme believes that security interdependence is core in the formation of regionally based clusters.[17] Consequently, the maritime security governance architecture in the Gulf of Guinea can be exhaustively located within this analytical paradigm.

While data for analysis are largely sourced from secondary sources, the author utilizes his enormous experiences and observation as a field commander with the Nigerian Navy. He has participated in a number of operations to secure the Gulf of Guinea maritime space over the last two decades, and as such, this paper proceeds by examining data using the qualitative content analysis approach. The method involved a rigorous and comprehensive analysis of data on various efforts adopted by maritime security stakeholders at both international, regional and national levels to stem the spate of maritime crimes and insecurities in the Gulf of Guinea. Thus, the degree of measurement of the opportunities and challenges of maritime security governance in the Gulf of Guinea hinges on the level and frequency of crime insecurity occurrences/reportage. This measurement analytics presents a chronological trend of the success and failure of existing security frameworks.

IV. National Case Studies: Perspectives from Nigeria and Senegal's Efforts

The Nigerian maritime domain inarguably plays host to a significant number of maritime security threats recorded in the Gulf of Guinea yearly. This brings to fore that the

responsibility to combat threats to Nigeria's maritime environment is essentially a law enforcement operation at sea, carried out by the Nigerian Navy. The principal defense against maritime threat throughout history has been military intervention, primarily undertaken through naval action.[18] The Nigerian Navy has, over the years, attempted to live up to its constitutional mandate of maritime security and defense of the country. However, the attacks on shipping in the Gulf of Guinea exposed the vulnerability of the region's maritime space and eventually led to the development of various military and non-military countermeasures. This has been done in collaboration with other maritime stakeholders within Nigeria's maritime corridor and by extension, the Gulf of Guinea. Consequently, the Nigerian Navy applies the principle of "Maritime Trinity of Action," such as surveillance capability, response initiatives and law enforcement, to effectively perform its maritime constabulary and coast guard duties. These comprise a number of activities and operations designed to improve the security of Nigeria's maritime domain in line with the Five Spectrum Layered Approach in the Nigerian Navy doctrinal instrument, known as Nigerian Navy Total Spectrum Maritime Strategy 2012. This has necessitated activities such as intelligence and information-based operations, active kinetic-based response (e.g., Op Calm Waters, Op Eagle Eye and Op Swift Response), choke point management, and collaboration with other maritime security stakeholders like the Nigerian Maritime Administration and Safety Agency (NIMASA), Nigerian Port Authority (NPA), Nigerian Custom Service (NCS), Nigerian Air Force (NAF), et cetera.[19]

Plausibly, there have been significant improvements in active collaboration between the maritime law enforcement agencies in Nigeria, specifically the Nigerian Navy, NPA and NIMASA, which has resulted in substantial reductions of pirate attacks around Lagos Harbor. The partnership between the three agencies has significantly improved joint maritime patrols and maritime law enforcement within the territorial waters and harbor approaches.[20] This collaboration includes the provision of a number of interceptor boats, special mission vessels and helicopters manned by the Nigerian Navy for the provision of all-round security and the Satellite Surveillance Centre (SSC).[21] All these and more have provided stronger defense for vessels wishing to either anchor or steer ship-to-ship transfer operations offshore and thereby enhanced maritime security at a national level. All vessels in Nigerian waters are tracked by the Falcon Eye Alignment (FEA) and the SSC and can detect each ship's International Maritime Organization (IMO) number.[22] This has improved information sharing among maritime stakeholders.

Further to this, Nigeria as well as some member States of the Gulf of Guinea maritime corridor have, aside from its military deployments, also relied on Private Maritime Security Logistics Companies (PMSLC) as an additional response in the interim to cover the gaps of sufficient patrol boats. This regime, which is business-driven, further becomes a weakness of maritime security.[23] Notwithstanding, Nigeria has made conscious efforts toward building the capacity and capability of the maritime security forces through fleet renewal, acquisitions of new platforms and human capacity development, as well as increased naval policing actions at sea. Consequently, there have been tremendous success in the area of surveillance and monitoring through the acquisition and deployment of various Maritime Domain Awareness (MDA) infrastructures to enhance basic maritime awareness and the inadequate capability to monitor maritime shipping and maritime space, tactics, techniques and procedures (TTP) on the security of the region.[24]

Therefore, the establishment and continuous acquisition of MDA infrastructure by the Nigerian Navy and other maritime stakeholders such as the Regional Maritime Capability (RMAC) Centres, the FEA and the Virtual Regional Maritime Traffic Centres (V-RMTC) is a step in the fulfilment of this aspiration.[25] Relatedly, the MDA infrastructure acquired by other maritime stakeholders, like the NPA Command Control Communication and Intelligence System (CCIS), NIMASA Integrated National Surveillance and Waterways Protection Infrastructure, known as the Deep Blue Project (DBP), which already has functional Command, Control, Computer Communication and Information (C4i) Centres with recently acquired platforms such as the special mission helicopters, unmanned aircraft systems, the ATR42 and special mission maritime patrol aircrafts, et cetera, are without doubt a significant bold steps by Nigeria to address maritime insecurities around its seascapes.[26] The MDA Centres are currently ensuring effective electronic monitoring of the nation's maritime environment through surveillance, response initiative and enforcement.

These technologically advanced MDA infrastructures acquired evidently reflect Nigeria's efforts at constantly expanding its maritime security strategy toward combatting piracy and other associated maritime crimes. With the advantage of these facilities, law enforcement and antipiracy patrols, backed by surveillance that can trail the IMO number for all vessels in Nigeria's waters, are being carried out.[27] Increased deployment of warships and air assets to checkmate the activities of violent pirates against oil tankers, merchant shipping and other seafaring communities, further attest to the level at which Nigeria is gradually improving her maritime security.

Perhaps the conduct and transformation of a series of operations by the Nigerian authorities such as Operation Calm Waters, which cover the brown waters of the Niger Delta, and Operation Tsare Teku, an anti-piracy operation designed to cover the territorial waters up to the extended limits of the Gulf of Guinea, are classic cases in evidence. These conduct of operations were corroborated by Rear Admiral Akpochi Suleiman (Retired), a former joint task force commander responsible for security in the Delta, who further observed that the conduct of the combined exercises and the new Nigerian Navy exercise code named "Eagle Eye" have significantly reduced the incidences of piracy and other maritime crimes in Nigeria.[28] Similarly, the conduct of Operation Accord, Operation Bekan Mmon and Operation Octopus in 2021 further enumerate these operational as well as kinetic efforts.

Most recently, in 2020, 2021 and 2022, the Nigerian Navy, in collaboration with other law enforcement authorities, in order to sustain the gains of effective maritime security, have activated Operation River Dominance and Operation Dakatar Da Barawo with the sole aim of addressing the challenges of crude oil theft, piracy and sea robbery, and other maritime related crimes. The operations were designed to focus on the inner corridor (creeks, estuaries and river entrances) andthe coastlines including the offshore loading export terminals.[29] Consequently, the successes recorded from enhanced maritime force capability and capacity projections through the help of MDA infrastructures show a significant improvement not only in naval actions, but reduced maritime criminalities within the maritime corridors of Nigeria. For instance, the Nigerian Chief of Naval Staff (CNS) stated that over 211 illegal refineries have been demobilized during these operations, with over 27 billion naira worth of crude seized and saved for the country.[30] Also part of ongoing efforts to curtail export theft, over five oil tankers, including *Mt Trinity Arrow*, *Very Large Crude Carrier*, *Heroic Idun*, and *Monte Urbasa*, were seized and under interrogation

for suspected oil theft from Nigerian offshore export terminals. These actions from maritime law enforcement authorities have likely saved the country export theft of millions of barrels of crude that would have been stolen by these very large tankers.[31] Thus, this highlights the allegations of complicity of international oil cartels and syndicates and the need for improved energy governance transparency and national prosperity.

Consistent with efforts toward capacity development of the Nigerian Navy and other stakeholders, as well as robust regional collaboration in maritime security governance, Nigeria hosted the 2019 Global Maritime Security Conference–Abuja and the 2022 International Maritime Conference–Port Harcourt. It is also worth mentioning the formulation and enactment of the Suppression of Piracy and Other Maritime Related Crime (SPOMO) Act 2019. Evidentially, the 2021 trial, conviction, and sentencing of ten pirates involved in the 2020 highjacking of a Chinese merchant vessel, MV *Hailufeng II*, to twelve years' imprisonment at the Federal High Court in Ikoyi, Lagos, marks a major milestone for Nigeria's new anti-piracy law.[32] It is, no doubt, a significant turning point that synchronizes non-kinetic naval policing actions at sea with prosecutorial efforts of the country. These efforts, among others, have seen the exit of Nigeria from the IMO world piracy list on March 5, 2022. Furthermore, the following data shows the successes in support of efforts to curb smuggling of crude oil and processed petroleum products in the first half of 2019 and second half of 2020.

Table 1: Summary of Nigerian Navy Successes in Support of Efforts to Curb Smuggling of Crude Oil and Processed Petroleum Products at Q1 2019 and Q1 2020

Product	Q1 2019	Q1 2020	Total Qty	Diff
Crude Oil (in barrels)	201,921	30,282	232,203	-171,639
AGO (in liters)	31,666,480	8,443,400	40,109,880	-23,223,080
PMS (in liters)	924,292	14,370	938,662	-909,922
DPK (in liters)	948,000	363,650	1,311,650	-584,350

Source: TOPS Branch, NHQ, adapted from Enoch, 2020.

Table 1 indicates how various kinetic operations of the Nigerian Navy targeted at reducing maritime criminality between first quarter (Q1) of 2019 and the first quarter of 2020 were significantly successful. These actions have seen a constant decline of smuggling of crude oil and processed petroleum product, as indicated above. For instance, the amount of crude oil smuggled between the period under review shows the significant reduction of 74%, accounting for 171,639 less barrels than the 201,921 barrels smuggled in Q1 of 2019. The same account is reported in AGO with 58% reduction in products being smuggled. Whereas, there was a commendably significant reduction of PMS by 97%, which accounted for 909,922 less liters than the 924,292 liters in Q1 of 2019. Furthermore, DPK shows a 45% reduction of smuggling activities within this period, a significant difference.

These successes notwithstanding, the Nigeria maritime coastline has continued to be marked as troubled waters. It can be plausibly argued that the introduction of the Choke Point Regime and all the counter piracy initiatives in Nigeria show that there is the capacity to contain piracy within Nigeria, however, maritime law enforcement forces lack sufficient logistics

sustainability due to inadequate funding and budget. No doubt, Nigeria possesses the inherent capabilities to combat maritime insecurity in Nigeria and the Gulf of Guinea, but there are profound challenges of funding and sustainability of maritime forces at sea. This assertion has further corroborated the opinion of Hassan and Hasan, who posit that "Coastal states having maritime enforcement capability usually control piracy by naval action and hence the need for a stronger naval force.[33] However, the Gulf of Guinea countries have limited maritime capacity and little capability to counter the threat effectively through this means."[34] This weakness in capacity to exercise effective control over maritime state coastal and deep offshore territories remains a challenge for most Gulf of Guinea states.

Putting the issue in context, the main gap fundamentally lies in the area of availability of sophisticated assets for full coverage of territorial waters and Exclusive Economic Zones (EEZs) in spite of the fact that Nigeria has the best, but limited, platforms to police its vast maritime area, as espoused by Osinowo, who suggested that the minimum Nigeria will require is about 90 offshore patrol vessels (OPV) to cover its vast coastline.[35] Furthermore, it is arguing that the inability of the political class in the past to prioritize maritime security investment manifested in the lack of adequate and sustainable funding for the Nigerian Navy and other Gulf of Guinea navies that would have facilitated the availability of requisite assets for the coverage of their vast maritime area and other areas of influence. This resulted in an increase of maritime insecurity incidences in areas outside national territorial waters and within the expanse of the Gulf of Guinea maritime areas, highlighting the need for sustainable funding for navies and coast guards for enhanced maritime security development in the region.[36] The long-range form of attacks provides pirates with time to achieve their objective due to absence of rapid responses and information sharing capability. This has, over time, exposed the limited capacity of available maritime surveillance equipment for extended patrol. Thus, there is need for the acquisition of long-range surveillance maritime patrol aircraft to provide quick, real-time maritime pictures to surface craft to coordinate speed enforcements and arrest.

Similarly, Senegal's geostrategic position makes her a favorable choice for maritime traffic, trade, and businesses and hence, a strategic shipping lane. The country is located at the far west of the African continent and enjoys a stretch of 570 kilometers of coastline, four maritime borders and an international sea lane into the Gulf of Guinea with huge maritime resources (particularly fisheries), and trade and commerce through a maritime façade extended by an EEZ of 200 nautical miles.[37] Its navy, just like that of Nigeria, has the constitutional mandate to provide maritime security and defense for the country with the primary mission of coastal surveillance, enforcement of navigational laws, monitoring of territorial waters and support for other components of the armed forces. Therefore, given the fact that this country is hugely rich in fishery resources and serves as one of the most strategic shipping routes, the Senegalese Navy's maritime security activities are aimed at fisheries monitoring, environment protection and pollution control, combating smuggling, illegal migration, and drug trafficking.

According to Ndiaye, while the country deals with the above threats, future threats such as piracy, armed robbery, high-scale pollution and terrorism are the most profound threats identified in the state maritime strategy.[38] Similar to the Nigerian Navy Total Spectrum Maritime Strategy discussed earlier, the main objectives of Senegal's Maritime Strategy are anchored on the Maritime Rescue Coordination Centre (MRCC) and Emergency Operation Centre. Other objectives include maritime domain and situational awareness, coordination of incidents at sea, liaison with national and international structures, and

operational decision-making processes (if many administrations are involved). The country's MDA infrastructures are poised to provide the critical maritime picture for effective security of Senegal's maritime corridor at full deployment of the infrastructure coverage capability. The acquisition of platforms and other naval assets like OPVs and littoral surveillance vessels through national efforts and international stakeholders' collaboration have resulted in a slow and steady progress made in Senegal's maritime security of her seascape. The state has also enhanced its maritime security capability through building the capacity of special forces units for anti-piracy, offensive actions, and fast patrol boats. Recently a number of foreign navy vessels have jointly conducted exercises with the Senegalese Navy for the sole purpose of enhancing maritime security. Senegal also held a Naval Infantry Symposium in 2022, in collaboration with United States Marine Corps, Europe and Africa, aimed at galvanizing efforts of special operation forces in Africa.[39]

The successful suppression of maritime threats such as piracy can be accomplished with the collective vigilance of the maritime domain of regional countries.[40] This is important because, in spite of the commendable efforts put in place by Senegal, there are still fundamental gaps within their maritime security and defense, which are being exploited by organized criminal networks within their maritime corridor. Unlike Nigeria, Senegal has limited incidences of piracy at sea, while its major challenge (beyond force capacity and capability, as well as limited MDA infrastructure) lies in the fact that there is seemingly a lack of national coordination of efforts toward managing the proliferation of nongovernmental actors and their activities. There is also proliferation of diversity of actors at sea (fisheries, agriculture, gendarmerie, police, customs, maritime authority, port authority, et cetera). Hence there is a lack of commitment to a single coordinating body for maritime security. Similarly, there are issues surrounding harmonization of legal frameworks for effective coordination, and budgetary constraints occasioned by public officials' lack of prioritization of both land-based priorities and maritime interests, and a gross shortage of naval and air assets.[41]

V. Regional Response and Resilience Architectures

Given the complex nature and character of maritime security threats and the difficulties national governments in the Gulf of Guinea face in providing adequate maritime security operational capabilities, coordinated regional efforts are not only invaluable, but essential in sustaining a viable maritime security posture within their regional security complex. Hence, the creation of a regional cooperative maritime security approach is one possible option for a systemic solution to maritime insecurity in the Gulf of Guinea.[42] Though the possibility of instituting an international initiative to patrol the Gulf of Guinea seems impossible on account of its cost, it has become necessary to employ regional cooperation as an important factor in combatting this threat. Since the Gulf of Guinea waters have become a prominent site of maritime threats, countries within the zone have begun to mobilize themselves to ameliorate or avert the risks.[43] This is geared toward the establishment of regional common surveillance and development of joint coordination capabilities within the region.[44]

Consequently, the Yaoundé Summit of June 2013—under the auspices of the Gulf of Guinea countries as well as the ECOWAS, ECCAS and the GGC—agreed on a

memorandum on maritime safety and security in Central and West Africa, setting the code of conduct with regard to the fight against piracy, armed robbery against ships, and unlawful maritime activity in including the establishment of Interregional Coordination Centre (ICC) to execute a regional plan for maritime safety and security.[45] The follow-up of the Yaoundé Summit has led to the setting up of the Regional Coordination Centre for Maritime Security in Central Africa (CRESMAC) in Pointe-Noire, Congo Brazzaville, and the ICC in Yaoundé, Cameroon. However, issues relating to funding are severely disrupting the operationalization of the zones.

Other protocols have followed suit for ECOWAS countries during the Yamoussoukro summit in Ivory Coast, known as Pilot Zone E, leading to the creation of a Regional Coordination Centre for Maritime Security in West Africa (CRESMAO) and for ECCAS in Zone D; the development of cooperation in A and B zones; and CRESMAC strategies, which need viable fiscal commitment, to mention a few. Although, these programs look realistic on paper, the implementation remains a challenge. However, Glock doubts the practicability of this structure due lack of technical ability and funding problems in the Gulf of Guinea countries.[46] The biggest failure of the Summit was its inability to identify measures for reconciling other parallel initiatives.[47]

According to Egede, in spite of the complexities in the region, it is worth noting that significant progress has been made in the development of the Gulf of Guinea maritime security architecture.[48] These developments have been witnessed at both the regional and continental levels, including the development and adoption of 2050 Africa's Integrated Maritime Strategy (AIMS), which was adopted in 2014, and the Lomé 2016 adoption of the African Charter on Maritime Security and Safety and Development in Africa. Other initiatives include the forums for stakeholders to discuss effective maritime security strategic options for the continent and region, such as the 2018 Nairobi Blue Economy Conference, the establishment of the Gulf of Guinea Inter-Regional Network (GoGIN) as well the recent 2019 Global Maritime Security Conference hosted by Nigeria.[49]

Therefore, with these initiatives, improved interoperability of forces will strengthen maritime security in the region. In contrast, however, Ali identifies the lack of cooperation to be the bane of the summits coupled with the multiplicity between the various maritime security frameworks.[50] Though it is a known fact that cooperation and coordination among all states within the region would aid in the prevention and suppression of maritime insecurities, it has perhaps only worked effectively at high-profile meetings of regional governmental and non-governmental stakeholders and less in pragmatic terms.[51] Moreover, there is also the challenge of proliferation of regional maritime security architectures, which are now distracting each other, and that Nigeria being the hot enclave of piracy would require the focus on the Gulf of Guinea arrangement, as it comprises few countries and may have the potential to succeed because its major cardinal principle is anchored on security.[52]

The obstacles in combating piracy and other maritime security threats lie in the geopolitical structural division between two regional blocs resulting in regional distrust. There are other challenges on agreements on the financial burden, which has led to non-implementation of a particular tax regime such as the integrated tax system set. Another obstacle in enhancing joint regional security within the Gulf of Guinea region could be attributed to general mistrust between Nigeria and the French colonies, with the latter regarded as the hegemon in the region as well as in border disputes in states.[53]

Nonetheless, there are concerns of the complications that may result from the support by international actors, which could complicate coordination as a result of increased competition for scarce resources by nations.[54] While encouraging, certain recent measures related to the acquisition of naval assets across the Gulf of Guinea countries, international naval trainings, naval patrols, and a whole-up community approach is undoubtedly supporting regional collaborative efforts and intelligence sharing among nations and demonstrates successes for regional cooperation and collaborations with positive outcomes for the Yaoundé accord despite some challenges. The socioeconomic reality prevalent in the coastal communities remains most prevalent, hence their easy recruitment into piracy activities.[55]

The underlying challenges, including issues of special funding, will significantly affect the Yaoundé accord's implementation. This issue of maritime security funds brings to the fore the realization that until such a feat is achieved, as done in the Horn of Africa, the Gulf of Guinea countries may not be able to defend their interests, and the prevailing security situation will continue.[56] Although the 2016 Lomé Charter emphasized fishing and the blue economy, including issues of human security, it can be argued that it failed to harness the consensus of the region.[57] It further failed to initiate discussion on issues on human migration and smuggling, thereby neglecting other maritime crimes, but most importantly several countries failed to sign the charter.[58] Therefore, it is plausible to note that the lack of political action in Angola, in particular, led to the ineffective progress in Zone A, while the challenges of funding contributed to the slow progress affecting the center in Yaoundé Zone E, also leading to its closure.[59] Nevertheless, collaboration already exists between zones but needs to be complemented by regular combined sea patrols and exercises, while at the same time allowing the principle of hot pursuit across international maritime boundaries. Further to this, the region is witnessing an increase in naval cooperative engagements. In 2018, the CNS of Nigeria, Togo, Benin, and the High Chief of Niger Gendarmerie signed a memorandum of understanding for joint patrols. This was operationalized through Operation Safe Maritime Domain 2021 with the funding support of UNODC, which expected to greatly address the threat of piracy and sea robbery, including other maritime related crimes, across the Nigerian maritime corridor.[60] The joint collaboration is being coordinated by the Multilateral Maritime Coordination Centre Zone E. It is plausible to say, conclusively, that the various regional maritime security architecture in the Gulf of Guinea have considerably made commendable gains. This is evident in the continuous drop in the cases of piracy particularly and other maritime crimes in general over the past few years. For instance, the International Maritime Bureau's latest global report for the second quarter of 2022 reveals that of the 58 piracy incidents, only 12 were reported in the Gulf of Guinea. This shows that there is a remarkable improvement on the maritime security governance in the region.[61]

VI. International Response Efforts and Architecture

Multilateral bodies and external partners have also played, and are still playing, a very important role in response to the maritime security challenges in the Gulf of Guinea because maritime security has become a new priority area of international policy. Beyond

the Gulf of Guinea, foreign governments have increasingly provided the needed training and expanded multinational exercises. While intergovernmental organizations such as the UNODC and IMO have assisted with capacity building and legislation that ensures alleged pirates can be tried for their crimes, the private sector has also contributed new tools for MDA, developed best management practices for vessels operating in the Gulf of Guinea, and improved the security of vessels operating in high-risk areas.[62]

Consequently, the G7 countries issued a declaration on maritime security in 2015 where they emphasized that a "sound and secure maritime domain" is invaluable in order to preserve peace, enhance international security and stability, feed billions of people, foster human development, generate economic growth and prosperity, secure the energy supply, and preserve ecological diversity and coastal livelihoods.[63] In the same light, the Security Council adopted resolutions on the need for an all-inclusive plan among states affected to effectively address the problem. Through the Council of the European Union (EU), in March 2015, there was adoption of the Gulf of Guinea Action Plan 2015–2020, outlining the EU's strategy in assisting the region in combating maritime insecurity. Through this plan, there will be the provision of support at both regional and national levels toward the ongoing attempts of ECOWAS, ECCAS, the GGC and all signatories of the Yaoundé Declaration. The EU anticipates that the execution of this blueprint will bolster intra-regional synergy and increase the level of direction among the EU, its member states, and global allies. Thus, the status of the plan states that the Council "stands ready to assist West and Central African coastal states to achieve long lasting prosperity through an integrated and cross-sectorial approach, linking the importance of good governance, the rule of law, and the development of the maritime domain to enable greater trade cooperation, and job creation for the countries in the region."[64] It is important to note that the EU is already implementing activities such as:

1. CRIMGO (Critical Maritime Route for the Gulf of Guinea): This began in 2013 with the aim of enhancing information sharing, the provision of training and support cooperation at the regional level.
2. SEACOP: known as the Seaport Cooperation Project, aimed at building interagency intelligence and control units to control suspected shipments and boost unlawful trafficking through sea routes.
3. WAPIS: West Africa Police Information System, the purpose of which is to arrange national and regional databases to gather police information.
4. Support to the Maritime Transport Sector in Africa Program: three projects focusing on West and Central Africa on maritime safety, port effectiveness, and control, as well as diverse activities targeting IUU fishing to mention a few.[65] Whether this initiative has effectively achieved its set objectives after 2020, measured through the indicators of enhanced maritime security and sustainable blue economy development, remains debatable.

Maritime security capacity building is a growing field of international activity. It suffices to state succinctly that the Gulf of Guinea has also witnessed several international interventions geared toward building the capacity of its maritime forces.[66] For instance, the international response galvanizing naval forces from the United States, Europe, South America and Africa in a multinational maritime exercise known as Exercise Obangame Express aims to improve tactical expertise and cooperation among West and Central

African nations in order to enhance those maritime forces' ability to deter maritime threats in the Gulf of Guinea.[67] Exercise Obangame and Saharan Express were marked specially for the first time, combining the forces in a particular geographical location to increase capacity building for more partners across West Africa and to improve interoperability.[68] Other international responses include G7++FOGG, which is made up of Portugal, Spain and the UK, and was created in 2012 to improve coordination between global cohorts on capacity building initiatives and to avoid repetition of actions in developing maritime security in the Gulf of Guinea. The French government, with a huge interest in the region, implemented a cooperation program in 2011 known as ASECMAR to support reforms in the region through state action at sea initiatives to help develop interagency and intergovernmental approaches to maritime policy and security.[69]

Furthermore, the United States' interests in the Gulf of Guinea, arguably, are seen to be majorly driven by oil reserves.[70] This calls into question the rationale for many of its numerous intervention programs in the region. For instance, the establishment of AFRICOM—that is, implementing initiatives such as African Partnership Station (building of national and regional initiatives), Obangame Express as mentioned earlier (conducted by naval forces of Africa and improving cooperation), Saharan Express (through U.S. naval forces at the coast of Dakar to enhance states' ability in monitoring their maritime domain) and the African Maritime Law Enforcement Partnership (AMLEP)—aimed at helping allies to build maritime security capabilities, the improvement of their maritime environment and support in their enforcement of laws and treaties are argued to best serve American strategic interests in the region. This argument can be further corroborated with the operationalization of these approaches and initiatives which are widely different from the physical commitments in counter-piracy operations in the Gulf of Aden, where military ships are committed to the protection of the maritime corridor and has evidently reduced piracy to a minimum.

The combination of these initiatives includes non-governmental and private players and the prolonged gathering of capability, gains and resources from a national and regional perspective through smart maritime management, anchored in an understanding of the key role the players have, to be understood to avoid multiplicity and promote understanding.[71] It is therefore pertinent to state that beyond the skepticism of international actors and or capacity-building interventions serving naïve strategic interests of Gulf of Guinea states benefactors, the region's states must take effective measures to improve the security of its maritime domain through promoting coordination like information sharing, the provision of enhanced training and capacity building, harmonization of national legislation, and the creation of national maritime coordination agencies.[72] It is important to highlight increased naval diplomacy and cooperative visits and exercises. For instance, the conduct of Exercise Obangame Express 2022, African Grana Nemo, as well as the international flag visits of the Brazilian Navy Ship *Independencia*, Her Majesty Ship *Trent* and Her Majesty Canadian Ship *Goosebay/Moncton* in 2021 lay credence to this assertion.

VII. Conclusion

The Gulf of Guinea is inarguably one of the most strategic maritime zones of the world. It is conceivably so because of the vast maritime space, which covers over 6,000

kilometers of seascape laden with abundant reserves of hydrocarbon energy resources, making it a major global energy shipping route and future supplier of global energy. The region also plays host to some of the world's most treasured marine resources and lies, geostrategically, as a simple important route for global shipping, trade and commerce. These enormous advantages, however, come with a litany of security challenges. In recent years, there has been a worrying surge in acts of piracy, attacks against ships and other nefarious forms of organized crime in the Gulf of Guinea.[73] In response to these heinous maritime security threats, States in the region, through national, regional, continental and international efforts, have developed several maritime security regimes poised to enhance maritime capabilities of naval forces and other maritime stakeholders for robust and effective maritime defense, security, and sustainable blue economy development. It is to be noted, however, that in spite of these laudable measures, the problems have shown limited signs of abatement. This aptly shows that maritime security in Nigeria and the Gulf of Guinea requires proactive measures that are potent and supported by a strong balanced naval fleet as well as an integral shore-based maritime air power. To achieve this there is need to fully integrate a supportive and effective Maritime Domain Awareness (MDA) infrastructure, which would ensure the strengthening of the strategic and operational capabilities of the Nigerian Navy and other maritime law enforcement agencies.[74]

This paper identified the major gaps, such as regional distrust leading to lack of cooperation among members and seeming lack of coordination due to the multiplicity of actors, thereby making the work disjointed and incoherent from the perspective of different players. Also, the multiplicity of partners makes domestic ownership of the activities stressful and complex. Another issue of significant concern is the presence of programs and blueprints already being implemented or in a planning phase that would seem to suggest similar goals, with the corresponding risk of doubling overlap. To correct this, the Friends of the Gulf of Guinea, a G7 plan, was arranged to coordinate the different efforts.

Furthermore, the failure of some States in the region to take responsibility for its maritime security aptly explains the funding challenges confronted by both ECCAS and ECOWAS, and the regional coordination center CRESMAC is confronted with so many logistics challenges and thus is seldom operational, with a manifest lack of sustained patrol in zones A and B.[75] Nevertheless, there are inspiring traces of progress; like out of the 16 planned coordination centers, ten have been established and are currently operational.[76] On improving information sharing and coordination, there is still much to be done to achieve this strategic regional initiative fully, but so far credible milestones mark an important step forward. Pertinently, the greatest challenge confronting this region is the transformation of initiatives and strategies into concrete decisive actions at the operational and tactical level while synchronizing the duplication of processes and initiatives. There is no doubt that there is a significant gap between the proposals that are signed and adopted, and their implementations and actions as displayed in the Lomé Charter, which show a growing crack of regional distrust. For instance, the actions of some critical players such as Cameroon and Senegal, which were contrary to the decision of other members on the charter, is a case in evidence. Therefore, the inability of the region to achieve collective cooperation shows the fundamental regional gap of collaborative efforts and as such brings to fore that cooperation in the Gulf of Guinea could better be achieved at smaller regional levels rather than an expanded caucus, as was exploited by Nigeria and Benin during Operation

Prosperity and the recent Joint Maritime Border Patrols being finalized by a technical committee between Nigeria and Equatorial Guinea, as well as the operationalization of the Memorandum of Understanding between the four countries of Nigeria, Togo, Benin and Niger through the activation of Operation Safe Maritime Domain with the funding support of the UNODC.

Conclusively, it is pertinent to state that for effective maritime security governance in the Gulf of Guinea, concerted efforts by all States and stakeholders must be robustly cooperative at both strategic, operational and tactical levels of security management. Because of the incapacities of some of the Gulf of Guinea States' navies, there is a profound need for joint maritime patrols as well as the establishment of the Gulf of Guinea Maritime Task Force as recently advocated by the Nigerian chief of naval staff at the 2022 International Maritime Security Conference in South Africa. Further, as aptly opined by Morcos, to effectively combat maritime security threats, there is an absolute need for advanced technology acquisition by States in the Gulf of Guinea and relevant actors as well as capacity development of personnel.[77] However, though these infrastructures are very expensive, considering the paucity funds available to most Gulf of Guinea States, there is a need, therefore, to galvanize global and multilateral financial support to fund advance technology equipment. At the moment, the plethora of maritime security regimes are overlapping and parallel, making it complex for coordination and target-driven strategy. Hence, there is need for effective harmonization of the diverse security architecture at both individual state levels and the regional level that have over time become counterproductive rather than complementary. To this end, the Harmonised Standard Operating Procedure currently operated by Nigeria and the Maritime Strategy operated by Senegal to streamline maritime law enforcement agencies become veritable strategic tools that should be adopted by other Gulf of Guinea States. While countries like Nigeria can be commended for the formulation of maritime law, there is still the need for other states to enact and domesticate such laws within the framework of global maritime convention. There should also be robust commitment and political will by leaders of the region to drive the imperative of security at both diplomatic and strategic levels. These efforts among others will, no doubt, bring about viable and sustainable maritime security governance in the Gulf of Guinea.

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Submitted: 9-1-2022 • Sent for Review: 9-23-2022 • Decision: 10-31-2022

Analyzing China's Concept of Water and Its Implications for India and Bangladesh

Neeraj Singh Manhas

Structured Abstract

Article Type: Commentary Essay

Purpose—The availability and use of clean water has been a point of contention for many countries since time immemorial, particularly for countries with a vast population such as China and India. The use of existing resources is a fight for survival, and it is necessary to understand how the perspective of one country has implications for others to such a vast extent that countries have to be aware of their neighboring country's resources in order to formulate their own policies.

Design, Methodology, Approach—This article pursues its analysis primarily by conducting a literature review to determine what the concept of "water" means to China and conducting research to understand the current situation in China. Based on the same, implications are drawn for India and Bangladesh and policy recommendations made so that these countries can sustain themselves.

Findings—The findings are a true projection of the water crisis prevalent in the Global South countries. It has been found that there is a severe water crisis in China and many regions do not have sufficient access to clean water. The lack of availability of fresh water sources, the existence of pollution and climate change are detrimental to the ecosystem in China. Due to the same, the Chinese are drawing on resources and the same causes stress on other countries, such as India and Bangladesh, as they share a common water resource and physical boundaries.

Practical Implications—India and Bangladesh need to formulate policies and maintain better foreign relations to ensure they will have access to fresh water sources and are able to protect themselves.

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Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 78–85 / ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.78 / © 2023

Originality, Value—Water issues are only bound to get worse with the current situation and measures must be taken at all times to ensure the survival of the ecosystem.

Keywords: China-India-Bangladesh relations, water issues,
water scarcity, water stress

I. Introduction

In many parts of China, there is a severe problem with water scarcity. The per-person water resources are barely 2,100 cubic meters, or one-fourth of the global average.[1] The issue is made more difficult by factors including population expansion, agricultural demand, and the negative effects of climate change.[2] It is also important to understand that in China, 80% of the human population lives in 10% of the land area.[3] These factors also have impacts on neighboring countries, such as India and Bangladesh, and these nations need to be prepared with their own policies if they wish to sustain themselves.[4] This paper analyzes the current Chinese perspective on water and its implications on India and Bangladesh and seeks to suggest some measures so that these countries can sustain themselves.

II. The Chinese Perspective on "Water"

Water has been the backbone of agriculture for thousands of years, and waterways have served as a means of transportation. China is home to a huge landmass, an abundance of resources, but also the regions are highly different from one another. It is also the birthplace of oriental civilization.[5]

China's water philosophy is based on the notion of "Water Civilization." It is an all-encompassing strategy that emphasizes the significance of water in all aspects of life, including agriculture, industry, and urban growth. The conservation, allocation, and protection principles underpin China's water management plan. China's water conservation policy entails lowering water use through improved management practices and technologies. Improving irrigation efficiency, promoting water-saving crops, and implementing water recycling and reuse programs are all part of this. The goal of China's water allocation plan is to balance water resources among regions and sectors. Setting water quotas for different regions, creating water markets, and enacting water price rules are all part of the process. This aids in the prevention of water disputes across regions and industries.

Five lake zones predominate in China. With nearly 50% of the world's lakes located there, the Tibetan Plateau has the most lakes overall. The majority of such lakes are clean and unpolluted. Rather than pollution, aridification is the main threat to lakes in northwest China, where lakes are quickly disappearing.[6] With a fourth of the total lake area, the middle and lower Yangtze River region has the second-highest density of lakes. Over 80% of such lakes there have severe pollution problems. Lake Tai and Lake Chao in this area are the worst affected. Due to the eutrophication of Lake Tai, a significant water crisis occurred in Wuxi in 2007. Northeast China is home to the fourth lake region. Finally, the degree of human impact on lakes varies between the provinces of Yunnan and Guizhou.[7]

A number of water management cases played a significant role in China's successful

water governance throughout its history.[8] In the 1950s, there were around 9,000 yearly deaths from floods; in the previous ten years, there have been about 540. For the majority of the population, the quality of drinking water has improved.[9] Prior to the Water Law of 2008, China used a system to manage water that was chaotic, with many, hazy administrative institutes that carried out diverse tasks for managing water resources. The mechanism for managing water resources was comparatively disjointed.[10] The level of implementation was relatively low in intensity and efficacy, and was full of legal loopholes due to a lack of clarity in the law. As per the new law, the State Council's water administration department is in charge of the uniform management and oversight of the nation's water resources. Although the new "Water Law" has significantly improved the way that water resource management systems are managed, many systems in particular still lack soundness as a result of the influence of numerous causes. Furthermore, these flawed systems are having a very difficult time being implemented in the current legal climate.

III. Current Water Situation in China

North China frequently experiences year-round water scarcity due to both inadequate water quantity and quality, but South China experiences periodic water scarcity mostly because of declining water quality. In the last ten years, the authorities in China have spent a massive amount of money in determining the state of water in the region and in attempting to fix the condition of water, as well as to find ways of accessing more clean water.[11]

Pollution is rampant in China and many resources are severely polluted; additionally, there is massive water scarcity prevalent in many regions. Through a series of interconnected operations in the Chinese provinces of Hebei, Shanxi, and Ningxia—three of the most water-scarce provinces in the Northern area of the country—the World Bank–supported Water Conservation Project II addressed these water shortage challenges head-on. The results[12] in the project areas included:

- In every case, crop yields rose significantly from the 2011 baseline estimates.
- Hebei's groundwater overdraft was reduced by 16.52 MCM (million cubic meters) annually.
- Shanxi lowered its annual groundwater withdrawal by 5.80 MCM.
- In the regions where the scheme was carried out, agricultural water productivity rose from 1.0 to 1.40 kg/m^3 (of ET [evapotranspiration]).

This project assisted with greener growth and focused on sustainability, which is good as the idea is to maximize the limited resource. The project helped put China's national strategies and policies for managing water resources and developing its agriculture into practice. It is also encouraging to observe how the project's novel methods of water management are now being used more widely in China and influencing other initiatives that the World Bank supports in other regions of the world.[13]

China's concept of water has been shaped by its unique geography and water scarcity challenges. China is home to just 7% of the world's freshwater resources but has a population of over 1.4 billion people. This has led to intense competition for water resources, particularly in arid and semi-arid regions. China has responded to these challenges by

developing a comprehensive approach to water management that focuses on conservation, allocation, and protection.

China's water management practices have significant implications not only for China but also for its neighboring countries. China shares several transboundary rivers with neighboring countries, including the Brahmaputra, the Indus, and the Ganges. China's dam-building activities on the Brahmaputra River have raised concerns in neighboring countries over the impact on downstream water availability. China's water allocation policy could also have implications for downstream countries as increased water demand in China could lead to a reduction in water flow to downstream regions.

Similarly, many more projects are being undertaken to preserve water and source more resources. This is evident in the way China has been building dams around resources and has been sourcing out excess water from Brahmaputra. Ten main rivers that flow into 11 different nations originate in China, which is the world's leader in the construction of hydropower dams. Because of this, neighbors to the south are concerned that it controls all of Asia's major water sources. China is in a unique position of ultimate control over the majority of the Tibetan plateau because it holds the headwaters of the major international rivers, which provide water to over 40% of the world's population.

IV. Implications for India and Bangladesh

Because several transboundary rivers run through India and China, including the Brahmaputra, Indus, and Ganges, water management practices in China have serious consequences for India's water security. China's dam-building efforts on the Brahmaputra River have alarmed Indians, who are concerned about the impact on downstream water supplies. China's water distribution program, which involves allocating water allotment to different areas, may have ramifications for India as well. As China's water demand rises, the supply of water to India may decrease. This might have a huge impact on irrigation-dependent agriculture in India.

Bangladesh is a low-lying delta area that is particularly vulnerable to climate change and natural calamities. China's water management practices may have serious consequences for Bangladesh's water security. China's dam-building efforts on the Brahmaputra River might disrupt the downstream flow of water to Bangladesh, wreaking havoc on agriculture and fisheries.

China's water preservation program, which strives to enhance water quality, might benefit Bangladesh. The country's drinking water is mainly reliant on groundwater, which is frequently polluted by arsenic. China's experience in water treatment technologies might assist Bangladesh in improving the quality of its water.

There have been numerous water resource disputes between India and China in recent years.[14] Conflicts are mostly brought on by the creation and exploitation of transnational rivers, as was previously stated. Although China and India share boundaries and more than 15 rivers in common, the Brahmaputra (also known as Yarlung-Zangbo in China) is the focus of the most pertinent conflict between the two countries since it is seen as a key resource for long-term sustainable development. The matter is more complicated than it first appears because it involves not just the river's water but also some areas in Arunachal

Pradesh, where conflicts regarding the territory of such region is prevalent. This region is also part of the Brahmaputra basin. It is reasonable for India to be concerned about proposals to divert the Brahmaputra. There are currently 28 proposed dams in the basin, but the hydropower plan from Yarlung-Zangbo purportedly includes the development of several hydroelectric facilities in addition to the 12 tiny dams on the upper reaches and tributaries of the Brahmaputra that already exist, with one under construction. Despite being very advantageous for Chinese interests, the consequences for Bangladesh and India will be catastrophic. Approximately 60% of the overall water flow will severely decrease, according to environmental experts, if this does happen, and this is a cause for concern for neighboring nations as their access to water gets cut off massively and China would be the one controlling the dams.

The Brahmaputra's water resources can also be used by China as leverage over India. By obstructing the flow of water upstream, China could easily cause famine throughout India's whole northeast. Additionally, the construction of Chinese escalation dams would restrict India's ability to move on with its own plans to set up hydroelectric projects on its soil to meet its energy needs.[15]

The main point of contention between India and Bangladesh relates to the management of the river called the Teesta. This is also a branch of the Brahmaputra river.[16] Of Bangladesh's total cropland, 14 percent is in the Teesta flood plain, and more than 7% of the population relies on the river for their livelihood. Farmers and other Bangladeshi citizens who depend on the Teesta River for their day-to-day survival have difficulty due to the decrease in water availability from the river. India's river management, which routinely diverts water from the river particularly for irrigation during the dry season, also adds to the consumers of this water, and there is further conflict as both China and India rely on such water. Bangladesh is also a contender during the dry season as well, as they rely on the river for their water source and due to India drawing from the same, it becomes difficult for them to access the water.

In compliance with international conventions, such as the Watercourses Convention, the central government of India has made an effort to find a fair and reasonable solution to the Teesta management dispute with Bangladesh. In truth, a solution—in the form of a Memorandum of Understanding to distribute the water evenly between the previous prime ministers of India, Manmohan Singh, and Bangladesh, Sheikh Hasina—was about to be reached in 2011, though did not yield results.[17] The Teesta conflict may need a comparable amount of diplomatic compromise.[18]

The concerns for India and Bangladesh are many, such as Chinese pollution potentially making transboundary rivers unusable, sabotaging them. Concerns over China's upstream activities were raised in 2017 when some rivers were found blackened, with multiple sediments found on the riverbed and the water unsafe for human consumption.[19] Not only does this affect the regions in China and the villages therein, but it also affects the neighboring nations. This incident had a negative effect on fishing communities as well as agriculture productivity in the Siang valley, which is crucial to India due to the production of rice therein.

While during this incident, China had claimed that the cause of such sediments was not due to their actions and was only due to an earthquake, some reports that earlier stated that evidence was found that this happened say otherwise. China, also due to their

geographical location, have in their possession data related to rivers and lakes; knowledge of these can be used to control flooding and upstream fluctuations. In order to facilitate cooperation and collective use of resources in the regions, China and India have signed two agreements concerning data exchange for the Sutlej and Brahmaputra post–2007. While in theory these agreements are said to help relations, the reality is far different. While there have been improvements with respect to the management of water, there are also ways for countries to withhold information from another that is dangerous and detrimental to the other.[20]

According to allegations, China violated the deal by withholding important information pertaining to the Brahmaputra and Sutlej rivers, which led to floods in the states of Assam and Uttar Pradesh. Shared waters in the neighborhood had previously caused concern. Concerningly, there were some concerns with the Parechu River in 2004 and there was a possibility that some portions of India experience floods because of the same. During the same, China, as per its obligation, did share useful information regarding the flow of the river. However, there was a rumor that China purposefully created a "liquid bomb," an artificial lake that could be released whenever China choses to and that would be detrimental to regions in India. China also denied India's demand to send experts to the region and this further added to the rumor mill. When a surge of 12 to 14 meters was noticed in the river in June 2020, the possibility of China using the river as a tool to harm India became more realistic.[21] While there has not been any such conclusion thereof, it is still important for nations around China to prepare themselves for such actions and to be on alert. These are all concerns for India and Bangladesh.

Reservoirs and dams are necessary for the effective management of surface water resources in China due to the country's harsh monsoon environment, which causes alternating periods of drought and flooding. The Three Gorges Dam, the largest dam in the world, is one of the numerous enormous dams in China, which also has the most dams overall. Large water transport infrastructure has also been constructed in China to alleviate the uneven distribution of resources among the region's several basins. This is a cause for concern for other nations as these large dams can store tons of water, thereby cutting off access to water for other regions and leading to a lack of availability of resources. The ecological impact of these dams must also be considered, as India and Bangladesh, being the neighboring countries, will face the brunt of damage caused to the nearby villages, the land and the consequences of any damage to the dams. The floods caused due to excessive storage of water in the dams and the consequences of climate change are both not singular events that will impact a particular region. These are all ongoing impacts that have the power to affect multiple regions, and both Bangladesh and India must be wary of them.

V. Conclusion

Water scarcity is predicted to worsen due to climate change. The Himalayan glaciers and snowpack, which feed many of China's rivers, will melt as a result of the world's temperatures rising. This will increase the seasonal variability of water in the rivers in the region, and over time it will result in less water being available. In addition to reducing China's water supply, the changes brought about by climate change in the form of extreme

weather events are all causes of concern that would further impact the availability of water. Urbanization could continue to put pressure on water supply in big cities. Around 80% of the people in China are anticipated to migrate to cities by 2050.[22] Because of China's harsh monsoon climate, which produces alternating periods of drought and flooding, reservoirs and dams are essential for the efficient management of surface water supplies. The world's largest dam, The Three Gorges Dam, is one of the many huge dams in China, which also has the most of them overall. Large water transport facilities have also been built in China to address the differential distribution of resources across different basins in the region.

The failure of state regulatory agencies to adequately oversee, monitor, and enforce Chinese water-quality legislation would need a shift in strategy. Environmental and human disasters will intensify unless China quickly develops the legal, technological, and institutional instruments to clean up water pollution, minimize wasteful and inefficient water consumption, restore natural ecosystems, and generate sustainable sources of supply.

Furthermore, developing supply limitations are limiting the amount and type of economic activity that the Chinese may pursue, raising the prospect of decreases in agricultural productivity or industrial output in the future years. New methods, tactics, and technologies will have to be tested as China strives for long-term sustainable use of its rare and important freshwater resources.

These are all important to India and Bangladesh as these regions will face the impact of these measures and situation. What is important for India and Bangladesh to do, is to strengthen cooperation among themselves so that they can present a united front against China in the fight for water. Both these countries need to make sure that diplomacy and foreign relations are at their very best with other South Asian nations so that they all can benefit from each other, and at the same time international pressure will coerce China into acting in a fair manner. It is also time for these nations to set up better systems in place to access sea water and cleanse the same, so that it can be used for their needs. The same needs to be done with rainwater as that can be preserved. There also needs to be a system to handle heavy rains that are prevalent in both the countries; instead of it leading to floods, preservation measures must be found. The Brahmaputra is a common resource and diplomacy can be the key to ensure that its resources are shared equally across all regions. Setting up a committee to monitor the same can be useful, provided India and Bangladesh are able to tackle Chinese insistence and actions with the support of foreign pressure.

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Submitted: 4-23-2023 • Sent for Review: 4-24-2023 • Decision: 4-30-2023

An Alternative Way to Face the Ukrainian War

Kazuhiko Togo

Structured Abstract

Article classification: Commentary Essay

Purpose—This essay outlines the conflict in Ukraine, assesses the positions of the parties involved, and suggests a path toward peace.

Design, Methodology, Approach—This essay uses media and government sources to create a timeline of events and consider the perspectives of Putin, Zelensky and Biden.

Findings—It goes without saying that for Ukrainian leadership, ousting Russia from all Ukrainian territory including Crimea is the best outcome, but there is no realistic perspective that Putin will endure the humiliation of complete defeat, particularly if he sees the Ukrainian war as a proxy U.S. war.

Practical Implications—In the case of the Ukrainian War, respect for human life gives the only clue for a common exit strategy from which all parties concerned will benefit deeply.

Originality, Value—This essay provides a viewpoint that countervails much of the prevailing media reportage that paints a narrative of a path to Ukrainian victory and Russian defeat regarding the Ukraine conflict.

Keywords: Biden, peace, Putin, Ukraine War, Zelensky

I. Introduction

It has been just over a year since Russia invaded Ukraine. There is no doubt that the Russian invasion of Ukraine has brought about many tragic results. This brief essay reviews how the war in Ukraine has evolved over the past year and shares thoughts on how to achieve a ceasefire that can eventually be developed into a peace treaty.

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Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 86–96 / ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.86 / © 2023

II. Events of the War from February 24 to August 9, 2022

Even soon after February 24, a date which changed the world, genuine efforts for a ceasefire existed and, as early as the March 29 peace talks held in Istanbul, Ukraine made an astonishing proposal which might realize Ukrainian neutrality as well as a satisfactory settlement of Crimea and Donbas to put them outside the scope of neutral Ukraine. Since Crimea was under de facto control by Russia on February 24, Ukraine proposed a special regime of 15 years of negotiations, and on Donbas, an equivalent proposal was made.

The Russian side was seriously interested, but a reported massacre at Bucha changed the situation. On April 2, immediately after the rapprochement of March 29, the Ukrainian side reversed the proposal. In particular, it put Crimea inside the framework of a neutral Ukraine, meaning to remove it from a special negotiated position. The Russian side immediately refused that proposal and since then, no peace talks have taken place. Then Ukraine adopted its key position, requesting more arms to win over Russia at the battlefield. That basic strategy continues to this day.

From April to July several changes took place, including the fall of Mariupol and surrender of the Azof regiments, whose headquarters were located there. But on May 8, the G7 issued a joint statement that they shall not let Russia win. The U.S. supplied $4 billion of military assistance by early May. The Speaker of the U.S. House of Representatives, Nancy Pelosi, visited Kiev on May 1, and promised that another US$20 billion in military assistance would be procured as soon as possible.[1] From June to July, the U.S. supplied 16 HIMARS (High Mobility Artillery Rocket System) and substantially and politically consolidated the Ukrainian position.

III. Events from August 9 to the End of 2022

The situation began to change dramatically from the beginning of August. On August 9, the first attack on Crimea was made. Zelensky made repeated statements about regaining Crimea, and on August 23, made an impressive statement that to "regain Crimea was his own decision."[2] On August 24, it was followed by Biden's statement to implement an additional US$3 billion of military assistance.[3] On September 7, the Ukrainian government acknowledged that the August 9 attack was an action taken by Ukraine.

Putin did not stay silent. On September 21, he reacted by ordering 300,000 troops to partial mobilization.[4] It was followed by a decisive referendum, which was implemented from September 23 to September 27 in four regions: not only Luhansk and Donetsk, but also in Zaporizhzhia and Kherson. According to Russia, the referendums demonstrated that the regions were in favor of joining Russia,[5] and on September 30 these four regions were formally declared as a part of Russia. It was probably the most important measure taken by Putin in this period.

While Russia took these moves, on September 26, three out of four Nord Stream pipelines were blasted.[6] No one accepted responsibility, but the clear beneficiaries were those whose interests were damaged by these pipelines; the U.S. was one of them. Russia was most unlikely because it was the key beneficiary.

On October 8, Ukraine attacked the Crimean Bridge, which was built after the annexation of Crimea in 2014 and connects the Russian mainland to Crimea. Putin launched a four-day retaliatory attack.[7]

On October 9, General Surovikin was named as the commander of the Russian army in Ukraine.[8] On October 19, martial law was introduced in the four newly annexed regions. From around this time, Russian attacks on Ukrainian infrastructure became widely reported, including attacks on electricity or water supplies, both being critically important to maintain normal life during the winter in major cities. There were also increased reports of Russian-Iranian cooperation, including Iranian drones used for attacks in Ukraine. Although neither side confirmed such activities, the national interests of Russia and Iran seemingly converge because the U.S. is a vital enemy for both.

IV. Events from the End of 2022 to the End of February 2023

In these two months tensions rose higher on the battlefield. On December 21, President Zelensky visited Washington. In the media, delivery of a patriot missile was highlighted, but in retrospect there could have been debates about supplying a wide range of weapons, including missiles of longer range and tanks.

From the beginning of January, reports on the delivery of Euro-American tanks increased and on January 25, spectacular decisions were made that Germany was ready to supply them, but let other NATO partners deliver Leopard 2, the best and most numerous tanks shared by European NATO countries. This decision was simultaneously made public with the American decision to deliver its best tank, the Abrams M1.

It coincided that on February 2, the ceremony commemorating Soviet victory at the battle of Stalingrad, Putin utilized in full the menace, which was now becoming apparent, of the best German tanks. Memory must be still fresh that the Soviet Union had deadly tank battles against German tanks during World War II. Delivery of the Leopard 2 did not take place quickly, nor did the delivery of the Abrams M1 take place as quickly as once reported. Instead, on February 7 it was decided that 178 improved versions of Leopard 1 shall be delivered to Ukraine.

Zelensky made his second visit outside of his own country on February 8, traveling to London and then immediately to Paris, where he met Macron and Schulz, followed by a February 9 trip to Brussels, where he met with representatives of the European Union. Although details were not revealed, Zelensky's reportedly made a strong request for jet fighters, to which Britain and France were apparently not negative. This clear upgrade and increase of lethal weapons were followed by a major policy declaration by Putin on February 21 in his Address to the Federal Assembly; Biden's speech in Warsaw, made on February 22 just after his visit to Kiev on February 20, surprised the world because it was prepared under total confidentiality.

Putin emphasized that the current war is the result of Russia's inevitable defense against the U.S., and that Russia will not be defeated. Biden emphasized that the U.S. always stands on the Ukrainian side, which is fighting not only to protect its own territory, but also for the protection of freedom, and that Ukraine shall not be defeated.

V. Majority Views in the West

The majority's views are something along the following lines. One year of war in Ukraine has shown that Ukraine is fighting so much better and more courageously than expected. Zelensky is determined to win the war to oust Russian troops from all occupied territories, including Crimea. The U.S. and NATO are not going to fight directly with Russia because such a European war would be extremely dangerous, resulting in unimaginable deaths and risking the possibility of escalation into nuclear war. But to the extent that Western countries will not enter into direct war with Russia, it is ready to let Ukraine fight with adequate lethal weapons—enough to weaken Russia substantially.

The end game is not clear. Putin has maintained that Ukraine is not going to win over Russia. So, the majority view is that by supplying developed lethal weapons, Ukraine could succeed in winning over Russia, and that could result in the end of Putin or Putin's regime; this is the ideal image of an end game. There is no reason it cannot be realized. In such a situation, considering a joint exit strategy is not necessary or even counter-productive because it could give an impression that the Western side is weak.

President Biden made a surprise visit to Kiev on February 20 and proved to the world his solidarity with Ukraine. On the following day, February 21, President Biden made an emotional speech at Warsaw touting that he will be united with Ukraine: "President Putin chose this war. It's simple. If Russia stopped its invasion of Ukraine, it would end the war. That is why, together, we're making sure Ukraine can defend itself… Freedom. Stand with us. We will stand with you. Let us move forward with faith and conviction and with an abiding commitment to be allies not of darkness, but of light. Not of oppression, but of liberation. Not of captivity, but, yes, of freedom."

VI. Minority Views in the West

But if one follows carefully, there have emerged some minority views in the West that rely exclusively on the increasing supply of highly developed lethal weapons to Ukraine with the view of terminating Putin, which may be risky and improbable. The reason why is fairly simple: Russia may not be as weak as was expected. Prolonging war in that situation means a continuation of war over a long period of time, during which the loss of human life in every warring party will increase dramatically. Is it not wiser to find a mutually acceptable ceasefire as soon as possible and save lives for all warring parties? Let us examine whether Russia has become so weak that it might be destroyed reasonably quickly.

First, compare the abilities of Russian tanks to the tanks the West are trying to mobilize for Ukraine. According to various calculations, Ukrainian and Russian tanks so far destroyed and maintained are as follows:

	Ukraine	Russia
Tank numbers before the war	539	2,047
Destroyed	340	1,282
Damaged	35	114
Abandoned	25	110
Captured	139	541

*This table relies on open-source statistics from the Oryx group and only includes destroyed vehicles and equipment of which photo or videographic evidence is available as of February 24, 2023. Therefore, the amount of equipment destroyed may be significantly higher than recorded here. Source: https://www.oryxspioenkop.com/2022/02/attack-on-europe-documenting-ukrainian.html and https://www.oryxspioenkop.com/2022/02/attack-on-europe-documenting-equipment.html.

Second, when it comes to the numbers of jet fighters, the superiority of the Russian side is obvious. There is no wonder that Zelensky is strongly pleading that after tanks, his next aid target is jet fighters. According to the statistics as of August 2022, Ukraine possessed 61 jet fighters whereas Russia had 1,188. Russian jet fighters don't compare to U.S. power, which holds 4,500 F14 jets, 3,000 of which are deployed in 25 NATO countries. But for the time being, Russian superiority over Ukraine is clear.

In terms of the number of soldiers, Zelensky stated in May 2022 that 700,000 soldiers are on the battlefield.[9] The Russian side initiated a partial mobilization of 300,000 in September 2022. But the Ukrainian side states that there can be further mobilization of 300,000 to 500,000 from spring to summer 2023. Exact pictures of troop mobilization are not clear, but given the fact that the Ukrainian adult male population consists of 20 million whereas that of Russia consists of 68 million, Russian capacity for troop mobilization looks no less weaker than that of Ukraine.

Lastly, in terms of the purpose of the war, majority views repeatedly stressed that for the Ukrainians, there was no need to even think about it because they were invaded and wanted to remove the invaders from their country. They saw Russia as having no motivation to wage war and thus was conducting an unprovoked attack against its neighboring country.

Putin's logic was entirely the opposite, and I am not trying to justify his logic at all. But in order to understand the current situation I think it is important to recognize the view of the opponent. In the latest Presidential Address to the Federal Assembly on February 21, 2023,[10] Putin made a full exposé of his position. Here is a part of it (translated from the Russian into English by the author):

> In 2015, they have tried direct attacks to Donbas and made artillery shooting and encirclements of the region. It was they who started that war and we have used forces to prevent them, and we are using them. Those who were planning to make new attacks to Donbas, Luhansk and Donetsk had as their next target Crimea and Sevastopol, but they are bound to realize that it is not possible for them to win on the battlefield against Russia. They understood it clearly and we understood it as well. That is now openly discussed in Kiev. We are protecting human life and our home. Western objectives are exertion of unlimited power. The responsibility of escalating the conflict and increasing the victims all lie in the hands of the West and the present regime in Kiev, which is essentially alien to the Ukrainian people. Present-day Ukraine is fighting not for its own national interest, but for the interest of a third country.

It goes without saying that some of Putin's logic seems a stretch intended to justify his reason for starting the invasion, and this cannot be accepted. But at the same time, there is a need to understand that some Western actions were seen by Putin as a provocation. When we contemplate an early ceasefire, particularly on the extremely difficult issue of territorial integrity and accept the reality that there is no possibility for Putin to accept complete defeat, geographic attribution in the presidential address gives an important hint. The names which appear in critical places seem to be Donbas, Luhansk, Donetsk and Crimea.

From there emerges a caution to accepting full Ukrainian territorial integrity. This cautious approach was surprisingly shared in media by Secretary of State Blinken and the RAND Corporation. *The Washington Post* as of January 25 carried an article titled "Blinken Ponders the Post-Ukraine-War Order" by David Ignatius, who is said to be "a career-long mouthpiece for the U.S. State Department."[11] A column, "Dances with Bears" by John Helmer, describes the cream of this interview as follows: "The conversation with Blinken offered some hints about the intense discussions that have gone on for months within the administration about how the war in Ukraine can be ended and future peace maintained… Crimea is a particular point of discussion. There is a widespread view in Washington and Kyiv that regaining Crimea by military force may be impossible. An all-out Ukrainian campaign to seize the Crimean Peninsula is unrealistic, many U.S. and Ukrainian officials believe."

Blinken's interview article was followed by a publication of the RAND Corporation Report dated January 27, 2023. It was titled "Avoiding a Long War,"[12] authored by Samuel Charap and Miranda Priebe, and summarized that "in short the consequences of a long war-ranging from the persistent elevated escalation risks to economic damage-far outweigh the possible benefits. The study describes President Vladimir Zelensky's vision of victory, in which Ukraine would recover all the territories it lays claim to and force Russia to submit war crimes trials and reparations as 'optimistic' and 'improbable.'"

VII. Conditions to Realize a Ceasefire

If majority views are going to prevail, and Zelensky continues on insisting on his essential war purposes—to achieve full territorial integrity, chase out Russian troops from all Ukrainian territory, including Crimea, force Putin to accept full defeat—there is a real danger for escalation and prolongation of deadly fighting. The end game of the war may be considerable bloodshed of Ukrainians and Russians until that full victory of the West can be achieved.

But if minority views are put on trial, what would the minimal necessary conditions be to achieve a ceasefire? It goes without saying that the most difficult condition is the question of Ukrainian territorial integrity. Certainly, this is not an easy question. Consider the facts:

- Crimea and a large part of Donbas were under de facto Russian occupation and governance before February 24, 2022.
- The Ukrainian proposal on March 29 included a superb formula that Crimea and possibly Donbas (at least its essential part) could be put in a special category so that negotiations could continue without any change of de facto control.

- For Ukrainians there would be a way to justify its compromise, which is to "go back to the 2024 February 24 line."
- For Putin's perspective, the issue of Zaporizhzhia and Kherson will remain. It is hard to argue now, but at least one can differentiate that Donbas is already presented as an independent People's Republic under international law, whereas the annexation of Zaporizhzhia and Kherson are kept exclusively under Russian domestic matters. (At this point a ceasefire itself is such hypothetical question I do not consider it necessary to deepen our thoughts specifically on Zaporizhzhia and Kherson.)

Concerning another difficult issue, Ukrainian neutrality, I think that the March 29 formula is still the most attractive idea for compromise, in which Ukraine refrains from joining NATO but its security shall be guaranteed by other governments. The most difficult point is how should Russia be treated. But whatever the format, after the deadly war lasting a full year and with the possibility of its continuation for another extended period, during which Ukraine and NATO acted as virtual allies and in which Russia and Ukraine/NATO acted as a real enemy, an entirely different structure may be needed in the post-war period. One may also argue that the issue of territorial integrity is essential to introduce a cease-fire, but the issue of neutrality can be discussed more as an issue for eventual peace treaty.

VIII. The Question of a Third-Party Mediation

The question of third-party mediation does not take place unless and until the warring parties show some interest in a cease fire. But one can also argue that a ceasefire is an extremely difficult task, which can be enhanced in a very small step-by-step approach. If countries that might have the willingness and capability to act as a mediator appear, there is no reason that country can't start acting as such.

In my view there are three countries which have natural capacity to act, should the leader of that country decide so, and one more country which needs to be considered in a bracket. The first country to appear on my list is Turkey. Given the special role it played during the peace conference in Istanbul on March 29 and its complicated but independent position taken inside NATO, it may act as a mediator.

The second country which might act as an intermediary is India. India is perhaps the only country which has maintained good relations with the Soviet Union and Russia as well as the U.S., particularly during the last 10 to 20 years under the rise of China. It has a position of trust with both Russia and the U.S. That alone makes it an adequate candidate. The unknown question is whether its leadership considers this difficult task a benefit to its national interest, or those interests are best served by maintaining a neutral position without an active role.

The third country is surprisingly Japan, which has two important historical experiences that put it in a powerful mediating position.

- The first experience is its war of the Pacific, particularly how it ended. In 1941, Japan started the Pacific War with the Pearl Harbor bombing. For the first half of the following year, both the Imperial Navy and Imperial Army achieved remarkable

victory, but in June 1942, Japanese aircraft, together with fighters and their best trained pilots , experienced a smashing defeat at Midway.

- Afterward, it took more than three years for Japan to capitulate, and then with almost all cities bombarded, including burning out the Tokyo riverside area and two atomic bombs. But finally Japan succeeded in surrendering with its land and people basically preserved.
- There was a determined cabinet, led by Suzuki Kantaro, to surrender before it was too late. But there was one condition—namely, preservation of the imperial Household—to accept the Potsdam Declaration. Americans knew about it, and it was their knowledge about their enemy that saved Japan. Without that American knowledge the full acceptance of Potsdam Declaration might not have been achieved. To that extent, a war which was once started is so hard to end.
- Japan also has historic relations with Russia. The countries went through long periods of war and peace. Japan had a great victory in the Russo-Japanese war, but in the final days of World War II it was attacked by Stalin despites the Neutrality Pact. That attack gave Stalin occupation of the Kurile Islands, which became an object of peace treaty negotiations that remains unresolved. But those negotiations gave Japan the experience of dealing with Russia in a down-to-earth manner; Putin was a hard bargainer there but not without logic.
- An early ceasefire will save possibly hundreds of thousands of people's lives. That converges so well with post-war Japanese pacifism and the traditional Japanese approach of moderation in its foreign policy.
- In relations with the U.S., continuation of this war where levels of lethal weapons are soaring dramatically, not only would sacrifices become substantially higher in both Ukrainians and Russians, but the war could trigger the beginning of a European War, intentionally or by accident. This is what Biden tries to avoid most. As a faithful allied partner, Japan is responsible in pointing out this critical danger to President Biden and urging him to avoid that risk, namely by way of an earlier ceasefire.
- We must tell Biden and Zelensky that a war once started, by whatever the reason, is so difficult to conclude, and the essential factor for the war's conclusion is knowledge of the opponent. What do we know about Putin? Is Ukraine's war conducted with sufficient knowledge and understanding of Putin?

The last country in the bracket is China. First, sheer logic of geopolitics indicates that China and the U.S. are mutually recognized arch enemies in the middle of the 21st century. In that situation, the longer the war continues in Ukraine, the U.S. shall be distracted in Europe, and China has greater room to expand its own sphere in the Indo-Pacific. So whatever verbal position it may take, it cannot be an honest broker. Second, China would need to keep Russia on its side in global competition and rivalry against the U.S. The direction in which it leads would be bound to take a pro–Russian standpoint. Third, if China would act as a truly successful mediator, it might become a humiliation for the U.S. to be so substantially helped by a future global rival and competitor. That would be another reason why its mediation proves a difficult scenario. As of February 26, China's February 24 official proposal has not been warmly received by the U.S.

IX. Conclusion

Biden, although a little more careful not to provoke Putin too much, continues to supply advanced arms to Zelensky, who is determined to fully win the war by regaining full territorial integrity, including Crimea. The situation has entered long-term war, where a perspective of a ceasefire seems to have disappeared entirely. In that situation, one thing is clearly emerging. Lives of Ukrainian citizens and soldiers and lives of Russian soldiers are continuing to be lost, with zero U.S.–NATO human casualties.

I think there is something fundamentally wrong. It goes without saying that for Ukrainian leadership, ousting Russia from all Ukrainian territory including Crimea is the best, but there is no realistic perspective that Putin will endure the humiliation of complete defeat, particularly if he sees the Ukrainian war as a proxy U.S. war. I think time has come for all parties concerned to direct their efforts toward finding an exit strategy from the war. The foundation of my proposal is *respect for human life*, which I honestly believe is important for all parties.

9.1 In Putin's Case

Perhaps the most decisive move Putin has taken was the referendum conducted that made four regions part of Russian territory. As long as attacks by Zelensky in these four regions continue, Putin has an obligation to defend those regions and continue fighting against the invading Ukraine.

But this means perpetual continuation of war, which Putin himself defined in his 2021 article as one of three Slav brothers. Russia is generally taken as the big brother, and there is something wrong with this big brother perpetually killing the younger brother. I wrote straightforwardly on Putin's contradiction in my October 2022 book published in Japanese.[13] It goes without saying that Putin also has the responsibility not to waste the lives of Russian soldiers, and in particular facing Russian mothers with missing sons.

9.2 In Zelensky's Case

So far Zelensky's only policy has been to regain Ukrainian territorial integrity including Crimea, but there is inherently another responsibility for the Ukrainian president: to protect the life of Ukrainians. This is not only legitimate but also an extremely important responsibility. To my knowledge Zelensky has not spoken about this second responsibility. Has not the time come for him to start thinking seriously about this second responsibility as well? In terms of public opinion, every Ukrainian man I have heard states that he is ready to fight (i.e., to risk his life) to defend his country against the invader. It may well be so. But all the more so, Zelensky is in a position to think about his dual responsibility to territory and people, and to think hard where his optimum balancing point is.

9.3 In Biden's Case

The majority view is that Biden is letting Zelensky continue to fight, to the extent that Zelensky wants to fight. Biden has been a little more cautious not to provoke Putin too

much, but within this limitation Biden has never backed away from meeting Zelensky's will to beat down evil Putin. The result is continued expansion of the war. Biden knows too well that Zelensky wants to oust Putin from all of Ukraine, including Crimea, and let him suffer total defeat. But Biden surely knows that Putin will never accept that defeat and the result is just expansion and indefinite prolongation of the war. Not only will human life be wasted on an unprecedented scale, but there also might emerge a genuine risk that the war would extend to a total war between Russia and NATO even if tactical nuclear weapons are not employed.

Zelensky needs to be informed that beating down Putin is not possible, and that such an expectation leads only to the prolongation of the war with unending loss of human life for all warring parties. Biden alone can inform Zelensky that the outcome of the expansion of the war is just terrifying.

9.4 Final Thoughts

1. Over a full year has passed since February 24, 2022. The Ukrainian War is just expanding. Nobody knows the extent of this expansion.
2. This means constant loss of human life is taking place. The time has come to stop it.
3. Putin and Zelensky, who are directly fighting, but also Biden, who is supplying advanced weapons to Zelensky, have a stake in stopping this unending destruction of human life.
4. All parties to the war should point their minds toward finding a common exit strategy and common end game for an early ceasefire. The justification and objective of this exit strategy is respect for human life.
5. I am aware that logics of geopolitics also exist. But I am deeply convinced that in the case of the Ukrainian War, respect for human life gives the only clue for a common exit strategy from which all parties concerned will benefit deeply.

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Biographical Statement

Kazuhiko Togo (Ph.D. 2009, Leiden University) is a visiting professor at the Global Center for Asian and Regional Research, University of Shizuoka. He graduated from Tokyo University in 1968 and served in the Japanese Foreign Ministry until 2002. Half of his career was devoted to Russia. After retirement he moved to academia and taught in foreign universities, including Princeton and Seoul National University GSIS. He served as Professor and Director of the Institute for World Affairs, Kyoto Sangyo University, from 2010 to 2020. His publications include *The Inside Story of the Negotiations on the Northern Territory* (2007, in Japanese); *Japan's Foreign Policy 1945–2009* (2010, in English); *Japan and Russia: Comparative Analysis of Historical Identity* (2016, co-edited with Alexander Panov, in Japanese and in Russian).

Submitted: 2-26-2023 • Sent for Review: 3-1-2023 • Decision: 3-21-2023

Book Reviews

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Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 97–101 /
ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.97 / © 2023

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Anna Sergi, Alexandria Reid, Luca Storti, and Marleen Easton. *Ports, Crime and Security: Governing and Policing Seaports in a Changing World*. Bristol University Press, 2020. ISBN: 978-1-5292-1771-1. 144 pp. USD 83.95

Ports, Crime and Security: Governing and Policing Seaports in a Changing World consists of an introduction, four parts and a conclusion. This book was created by four authors whose academic qualifications reflect the interdisciplinary nature of port management, as the authors include a professor of public governance, a researcher of organized crime, a sociologist specializing in criminology and a professor of economic sociology.

The authors divided the introduction into ten mini-parts. First of all, the origin of the book is presented, which was a seminar of practitioners and researchers held in May 2020 and funded by the British Academy. Then follows a theoretical, problem-based rationale for the book. The authors distinguish local and global development vectors of modern ports. Key port security risks are briefly discussed, including cyber security, corruption, and the intersection of international trade and security. The statement in the authors' introduction can be critically evaluated: many ports rely on a low-skill and labor-intensive workforce (p. 8). It is likely that this is still the case, but what I see around the ports of the Baltic States in my own personal experience suggests that ports are investing more and more in automation and the need for highly qualified specialists is only growing, because the rising cost of labor and its shortage forces it to do so. At the end of the introduction, the structure of the book is described.

The first part of the book examines three important aspects for ports: the economy, institutions and society. The authors emphasize that in this section they applied the approach of economic sociology, which allows them to present a broader picture of the port economy, not limited to the areas of port activity, but also including society and institutions. The authors adhere to the traditional paradigm of political economy, claiming that everyone is interconnected in the world economy. They provide quantitative evidence of the scale of various seaborne cargoes and substantiate these claims by visualizing the growing dynamics of containers in ports. Continuing, the authors present various classifications of how the capacity of ports can be increased, which allows them to distinguish between different types of ports: isolated, connected and integrated (p. 23). Isolated ports have no socioeconomic ties, connected ports are superficially involved in the socioeconomic context, and integrated ports are deeply involved in the social structure and economic dynamics.

It is becoming clear that the increasing automation, securitization and privatization of ports has closed off access to ports for many traditional stakeholders. The port's innovativeness, special economic zones, and close cooperation between stakeholders (academia, business, government, and community) made it possible for Chinese ports to overtake previously leading European ports. The authors recognize that ports are now not only investing in hard infrastructure, but also in soft capabilities such as research, education, training, maritime culture and heritage (p. 30). Urban planning becomes innovative as ports provide planning vectors for local economic development (p. 33). The increased environmental focus on ports and the renewed urban landscape are transforming ports from former urban "black holes" into centers of entertainment, culture and technology.

In the second part of this book, the authors examine forms of organized crime in ports and their manifestations, including corruption. The authors acknowledge the dominant opinion in the criminogenic literature that ports are places where drugs and other illegal goods are placed on the market, where specific mafia-type groups operate. This is also determined by the fact that ports are often connected to nearby cities, which creates challenges and opportunities for their development. According to the authors, port security is usually hybrid in nature, meaning that there are many security objectives and a constant tension between port security as a matter of national security and day-to-day lower-level control (pp. 53–54). Therefore, the authors take the position that the international securitization

regime alone is not enough for ports; they need specialized access in which various police units, municipalities, and national and international law enforcement institutions work together. All these stakeholders must maintain mutual relations at strategic and professional levels.

This section concludes by introducing the cases of six ports, which examine the following topics: the fight against illegal circulation; infiltration and organized crime; and control of illegal management. It is true that the authors of the book did not explain the reasons for their choices, but two cases are dedicated to discussing each topic. The cases of the first topic show that cooperation on a global scale is necessary, where different state institutions work in tandem with the institutions of another state. The cases of the second topic prove that organized crime groups are often local and represent a city that is close to the port. The cases of the third theme reveal the tendency that ports are power centers around which political and financial interests converge, so it is natural that mafia-type structures are formed here. Historically, they look for opportunities to influence trade unions and port authorities.

The third part examines security governance in ports. This part begins with relevant information for the layperson, as the authors outline the vocabulary of this topic that is relevant for students or a wider readership. Lessons learned in port security management are discussed below. The geopolitical importance of ports is recognized as they usually occupy strategically important locations. The uniqueness of ports is presented through their hybridity. On the one hand, the population has the possibility to reach certain places inside the ports; on the other hand, the ports remain high-security areas (p. 88). The authors focused on the governance of the ports of Antwerp and Brisbane and highlighted the lack of knowledge about the capabilities of private sector security providers in these ports. It is noted that the reputation of the port depends on the security of the port. This rings true because port authorities that invest in anti-corruption really win. The customers choose these ports because of transparency. Human capital risks are relevant for businesses because criminal actors can infiltrate their agents. Furthermore, the current study confirmed earlier evidence that port security is a matter of local and national security.

In the fourth part of the book, the authors aim to outline the future of port security. The impact of the ISPS Code on ship and port security is discussed. Considering the dominant work from other authors, it is recognized that the effect of this measure is limited. Criticisms are presented regarding the application of the ISPS Code to the issue of illegal fishing. It is argued that the current regime is highly politicized, representing a neoliberal agenda and the Americanization of port regulation. The discussion continues by mentioning the importance of the Blue Economy. The potential of the doctrine for the EU and African economies and the need to develop appropriate maritime security capacity programs are highlighted. In continuation, the security of small and informal ports is considered to be equally important in the security architecture. Evidence suggests that small ports are smugglers' havens and need to be examined in the context of global and local crime impacts. The issue of cyber security will remain important as previous studies have shown that ports are not prepared for large-scale cyber security threats (p. 124). Many ports use the same software, which can face the same dangers. The application of anti-corruption measures contributes to the growth of competitiveness of ports, as criminal groups use

technology to infiltrate white-collar workers to reinvest criminal profits into the legitimate economy in ports (p. 131).

The four parts of the book are summarized at the beginning of the conclusion. The authors indicate possible directions for future research and do not doubt the importance of port security research. It is considered important to study the impact of Covid-19 on the exchange of illegal goods outside the ports, the U.S.–China trade dispute, and the formation of different customs regimes after Brexit. However, there is no mention of studies covering sustainability and security in ports. Finally, it can be said that this book will be interesting for students and practitioners interested in port security, criminalistics, and governance issues, as it provides specific and clear lessons about functioning port security.

—Prof. Jaroslav Dvorak,
Klaipėda University, Lithuania

Call for Papers and Style Guide

JTMS Winter/Spring 2024 Issue Call for Papers

The *Journal Territorial and Maritime Studies* (*JTMS*) is soliciting submissions for its Winter/Spring 2024 issue. *JTMS* is an interdisciplinary journal of research on territorial and maritime issues sponsored by the Northeast Asia History Foundation with editorial offices hosted by Yonsei University in South Korea. The journal provides an academic medium for the announcement and dissemination of research results in the fields of history, international law, international relations, geography, peace studies, and any other relevant discipline as they pertain to terrestrial and maritime territorial issues. The journal covers all continental areas across the world, and it discusses any territorial and maritime subjects through the various research methods from different perspectives; moreover, practical studies as well as theoretical works, which contribute to a better understanding of terrestrial and maritime territorial issues, are encouraged.

For consideration in the Winter/Spring 2024 issue, Manuscripts should be submitted electronically to *jtms@yonsei.ac.kr* by September 1, 2023. Submitted papers should include four major sections: the title page, structured abstract, main body, and references. The title page should contain the title of the paper, the author's name, the institutional affiliation, and keywords. To be considered, Manuscripts must follow the *JTMS* style guide available on our website. A length of maximum 9,000 words is preferred for an article, including endnotes, and approximately 2,000 words for a review. Inquiries may be sent via the email address provided above.

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The blog of *Journal of Territorial and Maritime Studies* welcomes submissions for blog entries. This forum is intended to discuss topics related to recent territorial and maritime news, research, and policy. It is hoped that this blog will help bring a fresh perspective on how to deal with territorial and maritime issues and the complexities these issues present.

McF

Journal of Territorial and Maritime Studies / Volume 10, Number 2 / Summer/Fall 2023 / pp. 102–106 /
ISSN 2288-6834 (Print) / DOI: 10.2307/JTMS.10.2.102 / © 2023

Those wishing to submit a blog post can send their post to jtms@yonsei.ac.kr along with the author's contact info, bio, and a recent photo.

Style Guide

General Guidelines

JTMS is a scholarly journal. Paragraphs must be fully developed without contractions, first and second person pronouns, repetition, jargon, sexist language, awkward syntactical constructions. Use a limited number of succinct headings and subheadings that are underlined or italicized as appropriate. Carefully honed style that is in a mellifluous prose is as important as substantive content. *JTMS* recommends authors ask colleagues whose writing style they respect for help with review and revision. Please note that all accepted material is subject to editorial emendation.

Length: Research articles should be no more than 9,000 words, commentary essays no more than 4,000 words and Book Reviews no more than 2,000 words.

Format: Research should be saved as Microsoft Word document formatted Times New Roman, 12 point font, double-spaced. There should be generous margins, no right-hand justification, and pages numbered consecutively.

Title Page: Title page must include 1.) the title of the paper, 2.) author's contact information including name, affiliation, address, phone number, fax number, email address 3.) A structured abstract (see samples below) and few key words of the paper.

Biography: Author's biographical statement (75 words or less)must be underneath his/her contact information. This will be edited and published in the *Journal of Territorial and Maritime Studies*.

Headings: *JTMS* uses three levels of headings. Major headings (heading level 1) are center justified in bold with no indentation of the first sentence following the heading. Secondary heading (heading level 2) is left justified in italic with the first sentence after the heading indented. Tertiary heading (heading level 3) is left justified in italic with the first sentence after the heading beginning on the same line.

Tables & Figures: Insert each table or figure on a separate page at the end of the text. Indicate the position of the table or figure in the text (e.g., Insert Table 2 here). The page containing the table or figure should be placed after the page that first references the table/figure in the text. Authors have the responsibility of providing high quality grayscale figures and images in tiff format and a resolution of 800dpi or higher. Supporting materials may be submitted as hard copies for scanning or through e-mail submission. Please forward all materials to the editor.

Endnotes: Use full citation endnotes with no bibliography or reference list. Endnotes should be brief, used sparingly, and consecutively numbered with subscript Arabic numbers. Please convert all footnotes to endnotes.

Book

1. Robert Jervis, *The Meaning of the Nuclear Revolution: Statecraft and the Prospect of Nuclear Armageddon* (Ithaca, NY: Cornell University Press, 1989), p. 167.

2nd non-consecutive endnote

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Journal

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Footnote

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Gap in the Nuclear Proliferation Debate," *The Journal of Strategic Studies* 35(4) (2012), pp. 573–600.

One File: Submit the paper as one file in the following order: Title, Structured Abstract, Text, Endnotes, Tables and Figures, and Biographical Statement.

Structured Abstract

Article Classification: JTMS categorizes articles into 6 of the following classifications: Research Paper, Viewpoint, Technical Paper, Conceptual Paper, Case Study, and General Review. Please write *one* of the categories in which your paper belongs on the article title page.

The article title page must include a structured abstract with 4–5 of the following subheadings: 1.) Purpose, 2.) Design/Methodology/Approach, 3.) Findings, 4.) Practical Implications, 5.) Originality/Value. The structured abstract, including keywords and article classification, must be 200 words or less.

Structured Abstract Samples

Sample 1

Article Type: Research Paper

Purpose—Some scholars imprint an academic discipline by their contribution to the manner in which people think and research, namely, by putting forward novel concepts and insights. The purpose of this paper is to examine the impact of Sumantra Ghoshal's work on the study of subsidiaries and multinational enterprises and organizational formats for foreign operations.

Design, Methodology, Approach—A bibliometric study on Bartlett and Ghoshal's well-known book *Managing Across Borders: The Translational Solution* is performed to assess its impact in international business (IB) research. The entire record of publications in the top leading IB journal, Journal of International Business Studies (JIBS), is examined.

Findings—Theoretically supported, Ghoshal's work was keenly influenced by his corporate experiences and his constant questioning of the dominant theories and assumptions. The analyses in this paper show the impact of the work on the "transnational solution," namely, on the understanding of multinationals and subsidiaries, thus being one of the most notable contributions for IB research over the past 20 years.

Practical Implications—Useful for graduate students and in writing a literature review, this paper presents an interesting manner to examine a scholar's and a theory's impact on a discipline.

Originality, Value—This paper presents an extensive bibliometric analysis of research published over a time-span of 22 years in international business studies.

Sample 2

Article Type: Research Paper

Purpose—While many studies on institutional environment have primarily focused on the influence of the host country environment, limited insights have been offered on

how the different dimensions of home institutions affect firm internationalization. This paper aims to fill this gap by investigating the effects of regulatory institutions at home.

Design, Methodology, Approach—Using country governance quality to proxy quality of regulatory institutions, this study attempts to reveal how regulatory institutions at home facilitate a multinational enterprise's (MNE's) international expansion and why the influence differs in different country clusters. Using hierarchical linear modeling and cluster analysis, proposed hypotheses were tested with a three-year panel 511 firms from 38 countries.

Findings—The results provide substantial support for authors' hypotheses that MNEs with high governance quality at home are more engaged in internationalization than those with low governance quality at home. Moreover, differences in institutional effect do exist between country clusters.

Practical Implications—This study provides evidence that while country difference exists, governance quality at home can facilitate MNE's expansion into foreign markets. This finding will help managers of any MNEs to consider country-level factors and evaluate the governance quality at home before committing resources into foreign operations.

Originality, Value—Building on the institutional environment literature, this theory and results make original contributions by underscoring how the consideration of regulatory institutions at home can significantly improve understanding of institutional influence on MNEs. The findings have important implications for both international business researchers and managers of MNEs.