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CLASHES AT SEA: When Chinese vessels harass US Ships

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Recent clashes between Chinese patrol vessels and US ocean surveillance ships operating in China's exclusive economic zone (EEZ) highlight differing views on the rights and duties of countries in an EEZ. With the increasing naval capabilities of Asian navies, there is a risk of such incidents becoming more frequent in the future.

THE PENTAGON has reported that five Chinese ships harassed an unarmed US ocean surveillance vessel on 8 March in the South China Sea about 120 kilometres south of Hainan. This is in a similar area to where a Chinese fighter crashed after colliding with a USN intelligence collection aircraft in April 2001.

The Chinese vessels in the recent incident comprised a naval intelligence collector, two civil agency patrol vessels and two small trawlers, some of which approached within 15 metres of the American vessel. The US ship was the USNS *Impeccable*, a civilian-manned unit of the Special Missions Programme of the Military Sealift Command (MSC). Ocean surveillance ships, such as the *Impeccable*, directly support the US Navy by using passive and active sonar arrays to detect and track undersea threats. They normally tow a long towed array and often operate with a submarine.

Chinese vessels had harassed the *Impeccable* for several days prior to the latest and more serious clash. Also, a sister-ship, USNS *Victorious*, had earlier experienced harassment by a Chinese patrol vessel and maritime surveillance aircraft in the Yellow Sea.

Differing Views

Different interpretations of the rights and duties in an exclusive economic zone (EEZ) are the root cause of recent incidents. The EEZ is a relatively new concept in the international law of the sea introduced with the 1982 United Nations Convention on the Law of the Sea (UNCLOS). It brought nearly one-third of the world's oceans under coastal state jurisdiction, including all of the seas of East Asia.

The EEZ is a zone of shared rights and responsibilities. It is neither territorial sea nor part of the high seas. A coastal state has sovereign rights over the living and non-living resources of the EEZ, and jurisdiction in relation to artificial islands, installations, and structures; marine scientific research; and the protection and preservation of the marine environment. However, other states also have rights and duties in an EEZ, including freedoms of navigation and overflight, and other internationally lawful uses of the sea related to those freedoms.

In exercising its rights and duties in its EEZ, a coastal state is required by UNCLOS to have 'due regard' to the rights and duties of other States. In turn, other states should have 'due regard' to the rights and duties of the coastal State.

The EEZ regime is a source of dispute between coastal states and major maritime powers. Key difficulties arise from defining the balance between the rights and duties of the coastal state and those of other states, and in devising operational tests to distinguish between actions that have due regard to the rights and duties of the other party, and those that do not. Part of the problem is that UNCLOS does not define key terms, such as 'military activity', 'marine scientific research', or 'military survey'.

Differing views have emerged with regard to the rights of other states to conduct activities such as military operations, military surveying, intelligence collection and hydrographic surveying in the EEZ of a coastal state without its permission. Some coastal states, including China, require that their consent be given to such activities while others, particularly the US, argue strongly that these activities are part of the freedoms of navigation and overflight that are available to other states in an EEZ.

A Pentagon spokesman has claimed in relation to the recent incidents that the US military is free to conduct activities in an EEZ of another country without the consent of that country. However, this is not entirely correct: such activities must be conducted with due regard to the rights of the coastal state.

Assessment

There are good grounds for the US feeling justified in claiming the right of the *Impeccable* to work in the South China Sea. It was not marine scientific research under the jurisdiction of the coastal state and requiring prior permission of that state. Rather it was part of the high seas freedoms of navigation that UNCLOS specifically extends to an EEZ.

The work by the *Impeccable* involved marine data collection for military purposes. Such data is important for effective submarine operations, anti-submarine warfare, and mine warfare. This is particularly so in waters such as the South and East China Seas where oceanographic and underwater acoustic conditions vary widely with uneven bottom topography, fast tidal streams and much marine life. While the means of data collection used in military surveys may sometimes be the same as that used in marine scientific research, information from such activities is intended only for use by the military.

The situation with the *Impeccable* and the *Victorious* is different to that of the USNS *Bowditch*, another MSC vessel harassed on several occasions by Chinese patrol vessels in 2000 and 2002, and the subject of diplomatic protests to the US from China. The *Bowditch* is classified as an "oceanographic survey ship", and the work it undertakes is ambiguous and open to interpretation as marine scientific research. By definition, oceanography is part of marine scientific research and under the jurisdiction of a coastal state in its EEZ.

In comparison, the tasking of the *Impeccable* and *Victorious* is more clearly military in nature. Military uses of the seas are a recognised right under international law, and it would be difficult for China to sustain an argument that the activities of these ships posed a direct threat to its national security.

Looking to the Future

Two matters stand out. First, it is likely that incidents such as the recent ones may increase in the future. They may also come to involve countries other than just the US and China. Regional countries are acquiring more submarines and will seek better oceanographic knowledge to ensure effective submarine operations. This knowledge will not just be about their own EEZs. Due to the geographical configuration of East Asia with overlapping EEZs, the search for knowledge will extend to the EEZs of neighbouring countries. At the same time, regional countries, mainly due to their increasing dependence on offshore oil and gas, are becoming more sensitive and more protective of their rights in their EEZs.

Secondly, it is important that incidents such as the recent ones are not allowed to escalate. In a scenario not unlike that of the USS *Pueblo* off North Korea in 1968, China could be tempted to seize an unarmed MSC survey vessel in its EEZ. Or in a similar provocative action, the US might begin to escort its survey vessels with naval warships. There is a pressing need for confidence-building measures, such as a code of conduct or incident at sea agreement, to ensure that such incidents do not escalate.

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