US FONOP – India-US Relations

What is the issue?

- The US Seventh Fleet announced that one of its warships, USS John Paul Jones (DDG 53), had carried out a Freedom of Navigation operation (FONOP) west of Lakshadweep Islands.
- In this context, it is imperative to understand the intent and interpretations of the incident by both sides and the further implications.

What is the U.S.'s intent in this regard?

- The U.S. defended the military operation off India's waters terming it "consistent with international law".
- For the U.S. Navy, FONOPs are a way of showing that the maritime claims of certain states are incompatible with international law.
- India's requirement of prior consent, U.S. officials believe, is a violation of the United Nations Convention on the Law of the Sea (UNCLOS).
- Articles 56 and 58, Part V of the UNCLOS, entitle U.S. warships to high-seas freedoms in the 200-nautical mile EEZs of another coastal state.
- To guard against any misreading of its intent by India, the U.S. Navy coupled its FONOP in Indian waters with another sail through the territorial seas of the Maldives.
- The idea was to signal to China that the U.S. Navy is committed to uphold the rules-based order in the waters of opponents and partners alike.

How does India view this?

- India interprets the maritime convention differently.
- India understands that the UNCLOS provisions do not explicitly authorize other States to carry out in the EEZ and on the continental shelf military exercises or manoeuvres.
- This position is consistent with India's domestic law - the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones of India Act of 1976.

Why was FONOP not an area of conflict so far?

- Despite disagreements over navigational freedoms, however, India and the U.S. have refrained from a public airing of differences.

- India understands U.S.'s FONOPs as part of its military and diplomatic strategy that gives the U.S. Navy leverage in the contest with China in the South China Sea.
- U.S., too, knows India's real concern is the possibility of greater Chinese naval presence in Indian waters.
- Even now, U.S. FONOPs in Indian EEZs have been relatively low key.
    - Since 2016, the U.S. Navy has carried out three forays through Indian EEZs keeping well outside Indian territorial waters.
    - In contrast, U.S. warships challenged excessive Chinese claims thrice in 2016, four times in 2017, six in 2018, eight in 2019, and nine in 2020.
    - Most patrols are said to have come within 12 nautical miles of the territorial sea limit around China's islands.
- So, U.S.'s choice now is mainly to check a box on the U.S. Navy's record of activity in Asia.

Why Lakshadweep?

- Maritime boundaries around the Lakshadweep are more settled than the Andaman and Nicobar Islands.
- In the latter, straight baselines on the Western edge of the islands have, in the past, raised uncomfortable questions.
- U.S. planners are thus likely to have known that a U.S. naval foray close to the 'strategic' Andaman and Nicobar Islands would be controversial.
    - Besides necessitating a response from New Delhi, that could have exposed the disagreement over interpretation of the UNCLOS.
- So, the choice of Lakshadweep for the FONOP seem to be a conscious move; Indian officials could even afford to ignore the operation here.

What does the conflict indicate?

- The U.S. Navy sail through the waters off Lakshadweep highlights a gap in the Indian and American perception of navigational freedoms.
- This is complicating an already complex domain of international maritime law.
- There are lessons for both India and the U.S. from this.
- **U.S.** - The U.S. must recognise that FONOPs have implications for India that go beyond the infringement of Indian jurisdiction in the near seas.
- Such operations normalise military activism close to India's island territories that remain vulnerable to incursions by foreign warships.
- The U.S. Navy's emphasis on navigational freedoms in the EEZs encourages other regional navies.
- They might violate India's domestic regulations in the waters surrounding the Andaman and Nicobar Islands.

- **India** - U.S.'s stance on the subject is not acceptable as Washington is yet to ratify the UNCLOS.
- But New Delhi, too, must rethink its stand on freedom of navigation in the EEZs.
- The reality is that India's domestic regulation is worryingly out of sync with international law.
- India's declaration of straight baselines delineating zones around the Andaman and Nicobar Islands (on the Western edge), in particular, is a discrepancy.
- This cannot be explained as a minor departure from the provisions of the UNCLOS.

Source: The Hindu

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