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MARITIME ISSUES IN SOUTH CHINA SEA

A Survey of Literature



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INTRODUCTION

If controlling the seas is a direct reflection of the leverage and hierarchy of a country in the international community, then the South China Sea is the epicenter of an emerging maritime regime. Here, nation-states (regional and extra-regional), non-state actors and international governmental organizations attempt to determine the rules of maritime trade.

While all players have the common goal of establishing enduring influence over this strategically significant sea, most have diverging views on what constitutes as a 'threat' to maritime trade. This review of literature highlights the common themes explored in existing research work on maritime security in the South China Sea.

I THE MALACCA AND SINGAPORE STRAITS: STRATEGIC IMPORTANCE

Most journal articles put the hype in perspective by first enumerating some statistics on the straits. Major Victor Huang of the Singapore Navy commences his article *Building Maritime Security in Southeast Asia*¹, by stating that, "A third of the world's trade and half its oil transits through the Straits of Malacca and Singapore alone." (Huang, 2008)

While he acknowledges the importance of this route to international trade, he emphasizes that it is the littoral states of Malaysia, Indonesia and Singapore whose economies shall be most harmed by any blockages to trade, because of their utter

¹ Major Victor Huang, Republic of Singapore Navy, *Building maritime security in Southeast Asia: Outsiders not welcome?* Naval War Review, winter 2008.

dependence on maritime traffic for sustenance. According to Jin Cheng and Kevin X.Li's report '*Maritime Law and Policy for energy security in Asia*², "Nearly 50 percent of the world's crude oil, 66 percent of its natural gas and 40 percent of the world's trade is transported through this narrow waterway". (Li, Cheng 2006)

Although, exact statistical accounts vary by writer, there is clear consensus among research scholars on the strategic importance of these straits. For the extra-regional states such as China, Japan, USA and India, these straits mean vital unavoidable sea routes, whereas for the littoral states competitive tensions are compounded due to reports that this region is also rich in hydrocarbons. Moreover, it is the internationally acknowledged importance of these straits and their openness to western countries and its allies that also makes it susceptible to a maritime terrorist attack.

Writer, Yun Yun Teo estimates in his report *Target Malacca Strait*³: "Singapore has the most to lose if a terror attack took place. With its deep harbor port and strategic location in the strait's southern tip, Singapore is a regional oil-refining hub and home to the world's busiest container port."(Teo, 2007)

² Kevin X. Li and Jin Cheng. *Maritime Law and policy for energy security in Asia: A Chinese perspective*. Journal of Maritime Law and Commerce, Vol 37, No.4, October 2006.

³ Yun Yun Teo, St Andrews, Fife, United Kingdom, *Target Malacca Straits: Maritime Terrorism in Southeast Asia*. Studies in Conflict and Terrorism, 30:541-561, 2007.

Despite outlining a grim scenario, Mr. Teo ultimately arrives at a neutral conclusion by purporting that maritime terrorist attacks which are targeted mostly at US/western ships are not likely in the Straits Malacca and Singapore due to the presence of the local populace in and around ports and on passenger vessels.

II

A CAMARADERIE BETWEEN PIRACY AND MARITIME TERRORISM

While piracy may have existed since the first ships set sail, it is in the present-day context of weapons of mass destruction, the twin tower attacks and USS Cole style suicide terrorism that, maritime security has been analyzed by most scholars. As mentioned earlier, states differ on their judgments of threat perceptions in the South China Sea. Most writers have attributed these differing priorities to strategic foreign policy interests as well as domestic pressures. Another factor seen as contributing to the lack of precedence on maritime terrorism as an issue in Southeast Asia is the tone and tenor of ASEAN. According to writer, Yun Yun Teo, "ASEAN is adamant not to link terrorism with any religion or race due to the organization's collegial approach that stresses consensus and unity within the group." (Teo, 2007)

The writer also underscores that ASEAN is willing to undertake an anti-terrorist policy only if it is in conjunction with other initiatives, targeted at winning the support and favor of the local populations. This is the only approach that ASEAN sees as practicable towards combating terrorism in Southeast Asia where being insensitive to ethnic/religious identities is likely to have serious repercussions. Mr. Teo also brings to light that a maritime terrorist attack is likely in South China Sea not only due to its internationally indispensable status but also because it is where Al-Qaeda linked Islamic group, the Jemaah Islamiyah (JI) is based. Indeed a few articles on maritime terrorism in the South China Sea also make a reference to the point that, as early as 2001, US forces found a video in

Afghanistan, scrutinizing the routes and travel patterns of Malaysian naval vessels. In addition, instances of piracy in the South China Sea wherein the hijackers of naval vessels were not as interested in stealing as much they were in learning how to steer and maneuver the ship have panicked the international community due to parallels with the 9/11 attackers.

Much of the work on maritime terrorism in the South China Sea is cognizant of the fact that out of all the littoral states, Indonesia has downplayed most the threat of maritime terrorism whereas Singapore has been the most receptive towards initiatives on this matter. Although, Indonesia is the most populous Muslim country, its lack of activity on curbing terrorism is peculiar in light of the fact that it has suffered considerably under terrorist violence, i.e. namely the 2003 and 2005 Bali attacks. The government's lack of decisive action against terror suspects has been attributed to fears of a public back-lash as the extremists in Indonesia are believed to have a vociferous following.

According to writer Teo, it would be imprudent to rule out the idea of a nexus between piracy and terrorism. He feels that while the lines may be blurred on the question of whether perpetrators of maritime hijackings are terrorist sponsored pirates or pirate trained terrorists, the threat nevertheless is large and looming. Another good yet disconcerting observation that Mr. Teo makes is that gangs of pirates are, more often than not, better equipped than naval authorities, and in recent times their greed, daring and comfort level with violence has increased drastically. This implies that there is not much stopping a pirate from doing a terrorist's bloody labor, provided that the price is right. Exacerbating the precarious situation is the fact that the Jemaah Islamiyah (JI) has still had no punitive action taken against it let alone be outlawed.

However, while the West is understandably looking with renewed vigor into matters of maritime security in the South China Sea,

the littoral states do not see terrorism as their battle and have other more pressing concerns. According to Rosenberg's and Chung's report, '*Maritime Security in the South China Sea*⁴: "There are some less dramatic maritime security concerns of growing importance among coastal states. They include managing the steady growth of the region's vital shipping industry, protecting the extensive environmental zones as well as modernizing naval and coast guard forces to meet these objectives."(Rosenberg, Chung, 2008)

Nevertheless for user states such as USA, Japan and India, the two big thorns in the garden of maritime security remain piracy and terrorism. While the littoral states do put a premium on security, they are less concerned about terrorism and are more interested in making sure that the development of their seas and coastal areas is well regulated, optimal and sustainable. Keeping these goals in mind, what they perceive as a greater threat to their well-being are problems of marine pollution, oil spills, transnational crime, poor resource management etc.

III ROLE OF THE UNITED NATIONS (UN) AND OTHER INTER-GOVERNMENTAL ORGANIZATIONS

The work of most research scholars suggests that the UN has served to both improve upon as well as aggravate tensions among the littoral states on maritime issues. The *United Nations Convention on the Law of the Sea* (UNCLOS), a treaty that was concluded in 1982 and ratified in 1994 constitutes international maritime law and lays down protocol on the use of the oceanic expanses by nation-states.

⁴ David Rosenberg and Christopher Chung. *Maritime Security in the South China Sea: Coordinating coastal and user state priorities*. Ocean Development and International Law, 39:51-68, 2008.

According to Li and Cheng, the UNCLOS definition of piracy is problematic to international cooperation. They say: "The limitation of the UNCLOS is its definition of piracy which is only applied to piracy taking place on the high seas or outside of the jurisdiction of any State. This means that the international obligation to combat piracy is unenforceable when the pirates have moved into the jurisdiction of any coastal state". (Li, Cheng, 2006)

Similarly Mr. Teo notes in his report *Target Malacca Straits* that: "Although ships have the right of free passage through the straits under the UNCLOS, waters out to 12 nautical miles remain under the sovereignty of the coastal states. The international legal definition of piracy applies only to international waters. This means pirates can hijack a ship in Singapore waters and escape prosecution once they enter Malaysian or Indonesian waters". (Teo, 2007)

Another maritime treaty by the UN, the *Convention for the Suppression of Unlawful Acts(SUA) against the safety of maritime navigation*, which was concluded in 1988 and enforced in 1992, is presented by the various scholars as being more sensible and congruent with international cooperation than UNCLOS. A key aspect of this protocol, according to Mr. Teo, is that it makes the coastal areas/seas under a country's jurisdiction accountable to international maritime law and lays down the modus operandi for extradition and legal action when the crime has been committed in another state. Article 3 of the convention in fact categorically requires signatories to cooperate with one another in the prevention of maritime offenses. Authors Li and Cheng find this treaty unique for its use of the terms 'unlawful acts' and 'intentional attacks'. However, an interesting detail with regards to Southeast Asia, also mentioned by Li and Cheng, is that while countries such as Brunei Darussalam, China, India, Japan, and Myanmar are signatories, other crucial littoral states, such as Indonesia, Malaysia and Thailand, have not ratified it. This

observation leads them to the conclusion that the efficacy and purpose of this treaty has been partially defeated due to the absence of some crucial coastal states.

A third branch of international maritime conventions examined by Li and Cheng is extra-UN. These are the IMO's (International Maritime Organization) relevant documents pertaining to piracy and armed robberies on the high seas. Most substantial of these documents are: *Recommendations to Governments for preventing and suppressing armed robberies and piracy against ships: Code of practice for the investigation of the crimes of piracy and armed robbery against ships*. Li and Cheng note that, like the UN treaties, most IMO documents also encourage international cooperation, but they go the extra mile to recognize that a major hindrance to combating piracy has been a lack of effective legislation and an inability to make international maritime conventions obligatory. Moreover, there are clauses in the IMO documents that specifically egg on coastal and neighboring states to enter into cooperative agreements with one another. It is this detail-oriented approach of the IMO documents that lay down specific stipulations on matters ranging from efficient communication to protocol for joint operations that sets it apart from its counterparts.

All the same, it is each and every one of these documents together that have laid the founding stone for the *International Center for Maritime Safety and Security (ICMSS)*. This alliance on maritime cooperation emphasizes information sharing and coordinated patrols at sea. Interestingly, the location of the ICMSS is a matter that needs some deliberation and Li and Cheng stress that Hong Kong shall be ideal for its neutrality in terms of strategic interests.

Apart from international agreements, there is another approach to combating maritime terrorism and piracy that Li and Cheng delve into. It involves simply bypassing the straits of Malacca and Singapore. This is of

course with Chinese interests and not a multilateral perspective in mind. To this effect they bring to the fore projects such as the *Myanmar pipeline*, *Thailand land bridge* and the *Kra canal*. These projects have not reached the construction phase, perhaps because their assembly entails long-term coordination, commitment and funds from its user states. It is also plausible that such projects shall throw the status quo of strategic economic interests in the South China Sea off kilter and so lose appeal. A case in point illustrating the delicate balance of strategic interests is the Chinese proposals for an oil pipeline. According to Li and Cheng's account: "The first pipeline was from Tibet to Bangladesh which was ruled out because it would have to pass through Indian Territory. By comparison the pipeline from Myanmar to South West province of Yunan was more appealing". (Li, Cheng 2006)

While all such projects may very well be a universal remedy in the long-term, they do not address the current instability caused by piracy and maritime terrorism in the Southeast Asian waters and the possible danger that they pose to the economies of a host of countries. As mentioned earlier the United Nations has played a significant role in paving a way for states to collaborate in dealing with these problems. However, as articulated by various experts on this region, issues of sovereignty and strategic interests interplay with the international law apparatus and often interfere in the resolution of piracy and terrorism related matters. The diplomatic debacle in recent times between Indonesia and Malaysia best illustrates this view. Relations between the two soured after the UN's International Court of Justice's (ICJ) 2002 decision which awarded dominion of the *Sipidan* and *Ligitan* islands to Malaysia, much to the ire of Indonesia. Malaysia's exercise of authority through regular patrolling of the islands is what fell in favor with the ICJ and got it the verdict it wanted. According to Clive Schofield and Ian Storey, authors of *'Energy Security and*

*Southeast Asia*⁵: “This situation has led to worries over potential loss of territory due to neglect and the Indonesian Navy’s inability to mount a real presence, let alone provide effective enforcement throughout such a vast archipelago”. (Schofield, Ian 2005)

Given such a foreign relations record, the hesitant and non-committal stance of Indonesia in involving itself in international maritime agreements can be accounted for. Definition of maritime boundaries and coordinated patrolling may be construed as infringing upon a state’s sovereignty; to which all littoral states are very sensitive. However, more than aggravate, the UN’s involvement in South China Sea maritime territorial disputes has in fact laid down some clear rules. According to D. Rosenberg and C. Chung, authors of ‘*Maritime Security in the South China Sea*’: “Countries with extensive coastlines on the South China Sea such as Indonesia, Malaysia, Vietnam and China want to protect their recently declared sovereign rights and resource control over an exclusive economic zone (EEZ) up to 200 nautical miles off their coastlines as provided by the United Nations Convention on the Law of the Sea (UNCLOS)”. (Rosenberg, Chung 2008)

However, despite such a specific establishment of territorial boundaries, there are still border skirmishes not only between the littoral states but also user states. This was tragically demonstrated by the 2001 collision between a US and Chinese plane over the South China Sea. A spokesman for the US Pacific command in Hawaii, Lt Col Dewey Ford stated that⁶:

“The plane was based out of Kadena Air Force Base in Okinawa, Japan. Ford said it was over international waters when the incident occurred about 9:15 a.m. Sunday”.

The language of this statement expressed USA’s stance that it was not at fault. Subsequently, the US gave a carefully worded apology, which conceded regret over the incident although not blame for the collision. This had to be done for the Chinese had made the return of the detained US crew and plane conditional upon it. Although speedily resolved, such incidents illustrate that there is a fine line between testing the limits of international waters and infringing upon a state’s sovereignty.

IV MARITIME SECURITY VS. REGIME BUILDING IN THE SOUTH CHINA SEA

Sovereignty is the most frequently cited reason by the littoral states, in cutting down to size certain zealous proposals by user states for making the straits of Malacca and Singapore safer. A good example of this was Japan’s scheme for creating a joint patrolling police force in the straits that was vehemently opposed, particularly by Indonesia and Malaysia, who were uncomfortable with direct patrolling by any user state. However, according to Rosenberg and Chung: “Bilateral approaches by the Japanese Coast Guard (JCG) have enjoyed considerable success. The JCG has provided training, equipment and funding to all the coastal states of the South China Sea”. (Rosenberg, Chung 2008)

A similar ‘wary’ attitude is expressed towards other bigger user states such as China and USA on their proposals. For the United States the two cornerstones for its involvement in the South China Sea are maintaining the smoothness and openness of trade and in the post 9/11 era, ensuring that maritime terrorism is halted in its tracks. With regards to these endeavors the Bush administration put forward three major initiatives. These are: 1) The

⁵ Clive Schofield and Ian Storey. *Energy Security and Southeast Asia: The impact on maritime boundary and territorial disputes*. Harvard Asia Quarterly 2005

⁶ CNN White House Correspondent Kelly Wallace and Hong Kong Bureau Chief Mike Chinov contributed to this report. *US surveillance plane lands in China after collision with fighter*. April 1st 2001. Web posted at 10:25 am EDT. <http://archives.cnn.com/2001/US/04/01/us.china.plane>

Container Security Initiative (CSI), 2) The Proliferation Security Initiative (PSI), and 3) the Regional Maritime Security Initiative (RMSI). The last is designed specifically for the Straits of Malacca and Singapore and it was out rightly rejected by the littoral states particularly Indonesia. In response to a report that the US cited, the Indonesian Naval Chief (Adm. Bernard Kent Sondakh) described the US move as⁷: “Baseless. He said reports from the Malaysia-based International Maritime Bureau (IMB), on which the US based its suggestion, were inaccurate”.

This report identified the Malacca Strait as being prone to terrorist activities and pirate attacks and in doing so was meant to persuade Indonesia to allow USA to patrol the region under the auspices of the RMSI. The Proliferation Security initiative (PSI) on the other hand, sought to combat the spread of weapons of mass destruction (WMD). According to a news report⁸, in 2006, the Indonesian Foreign Secretary questioned USA’s insistence on urging it to join the initiative. He stated: “We also questioned the connection between the PSI concept and the UN Convention of the Law of the Seas. Participants of the initiatives can interdict ships, so we want to know whether interdiction is only allowed in the ocean or within the Exclusive Economic Zone of a country.”

According to Rosenberg and Chung, “Despite considerable pressure from Washington to fully and publicly participate in the PSI, key maritime nations such China, India, Indonesia, Malaysia and

South Korea have thus far not joined. (Rosenberg, Chung 2008)

Understandably, such initiatives bring to the fore fears over USA acting as the world’s policeman and monitoring not only activities of terrorists but also the international maritime trade activities of individual states. Monitoring the illegal underground proliferation of WMD by terrorists could easily mutate into scrutinizing the technology and materials import for nuclear program of individual states. A chief reason cited by various writers on this initiative is the fact that it is extra-UN and not multilateral in scope, but actually to be led by the United States, who most still regard as oriented towards world hegemony. Thus, although littoral states generally welcome technical assistance, training and information sharing, they oppose direct on the ground involvement of user states and have a preference for a regional ASEAN based solutions to the scourge of piracy and maritime terrorism.

While USA’s approach is more campaign style in terms of pressing various states to join its bandwagon, China on the other hand has wisely kept a low profile. Indeed it has made many efforts to keep its sovereign Southeast Asian neighbors at ease especially in light of its growing preeminence in its maritime infrastructure and overall economic development. According to writer Teo, “Whoever controls the Straits of Malacca and the Indian Ocean could threaten China’s oil supply route. For now 60% of its oil import from the Middle East and Africa pass through the Straits”. (Teo, 2007)

As discussed earlier, the littoral states that have a slightly differing view on maritime security also feel that the United States is inflating the cause of maritime terrorism to use it as a pretext for counter-balancing China’s sway in the South China Sea. By keeping the waters open to both, perhaps the littoral states can enjoy the security that the presence of the two colossal states may

⁷ US initiative in Malacca Strait ‘baseless’: Indonesia. Behind the News. April 19, 2004. <http://news.indiamart.com/news-analysis/us-initiative-in-mal-1950.html>

⁸Posted on: Thursday, 16 March 2006, 03:03 CST. Text of report in English by Ivy Susanti, carried by Indonesian newspaper The Jakarta Post website on 16 March. *Indonesia questions US proposal on Proliferation Security Initiative.* http://www.redorbit.com/news/international/430553/indonesia_questions_us_proposals_on_proliferati_on_security_initiative/index.html

guarantee i.e. if only they can contain the hegemonic tendencies of the two.

Despite the obstacles and hindrances created by the competitive geo-strategic foreign relations in the South China Sea, there have been strides made in achieving better maritime security. The US engineered PSI initiative managed to get on board Japan, Singapore and Australia only. By contrast, the Marine Electronic Highway (MEH) Demonstration Project for the straits of Malacca has both multilateral signatories and sponsors including the World Bank. This program seeks to prevent the occurrence of ship collisions in the narrow and congested straits by facilitating sophisticated communication and information sharing between the maritime companies of various countries. The project in its entirety shall come to fruition by 2011. On November 24th 2008, a conference was held in Kuala Lumpur, charting the progress of this initiative. The Malaysian Transport Minister, Datuk Seri Ong Tee Keat said⁹: "We believe the cooperative mechanism offers an excellent opportunity to engage user states, the shipping industry and other stakeholders to participate and share the responsibility of maintaining and enhancing the safety of navigation and protection of environment in the straits".

Thus, despite considerable obstacles to collaboration the international collaboration towards greater maritime security in the South China Sea is slowly moving forward.

VI CRITIQUE ON EXISTING LITERATURE

Maritime exchanges are an extension of foreign relations dynamics and directly reflective of commercial and diplomatic fluctuations among nation-states. Therefore,

⁹ *Maritime Electronic Highway Demonstration Project in the Implementation Stage*. November 24, 2008 19:50 PM.
<http://www.bernama.com/bernama/v5/newsindex.php?id=374016>

be it current speculations on the shifting international balance of power, the growing pre-eminence of China, transfer of nuclear technologies to terrorist outfits or search for valuable hydrocarbon resources; the maritime arena particularly the South China Sea has become the front line of action. Security and strategic interests in this region have multiple stakeholders as well as spoilers.

Much of the work on maritime security in the South China Sea provides statistics on the trade aspect in terms of what's at stake for various user states vs. the littoral states. However, there isn't as much data available on maritime security matters. A lack of specific information on actual incidents of piracy and maritime terrorism makes it harder to gauge with certainty the gravity of security hazards in this crucial sea. In outlining the need for greater maritime security in the South China Sea, particularly the Malacca and Singapore straits, a manifold pool of statistics would have helped. It would have put matters in perspective by providing a chronological account of the worsening of safety for shipping vessels.

Moreover, while there is a sufficient analysis of the major international maritime treaties, laws and conventions in journal articles, there is not as much debate in print news media. This possibly makes it more challenging to illustrate the conflict of strategic interests in the South China Sea as ongoing and pertinent to current world affairs. Thus, unless one takes the trouble to research strictly the academic journals one would not grasp that maritime security and trade in the South China Sea has been the source of considerable tension among nation states not only bilaterally but on a multilateral platform. Maritime exchanges represent an assertion of a country's territorial sovereignty or its entitlement to an international trade route. Maritime policies and shipping vessels become a country's tool for making its presence felt and possibly increasing its influence beyond its own shores. Interestingly, non-state actors such as pirates and terrorist outfits

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also partake in this lucrative strategic contest. This view is acknowledged, favored and explained well by most experts on the South China Sea.

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