



Search and Rescue at Sea – An ASEAN Security Force?

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Abstract

Malaysian officials have suggested an ASEAN security force in the South China Sea. But how would such a security force relate to controversies like land reclamation on disputed islands? This paper discusses against the background of the concepts of global commons and maritime domain security, the first European Union Maritime Security Strategy and its implementing Action Plan selected relevant aspects. In sum: Striving for an ASEAN security force in the South China Sea should be considered as a very valid undertaking, particularly because territorial disputes linger. Particularly policing against piracy and terrorism, humanitarian work in search and rescue operations are excellent fields to establish a principal regime of cooperation.

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Analysis

1. Rescue More

Malaysian officials have suggested an ASEAN security force in the South China Sea. But how would such a security force relate to controversies like land reclamation on disputed islands? As territorial disputes linger, how likely is such a force if it were limited to issues of common interest: policing against piracy and terrorism, humanitarian work in search and rescue operations? Are there any lessons or approaches the EU can offer to ASEAN?

In the past years large-scale Search and Rescue (SAR) operations caused by either natural disaster such as flooding, earthquakes and tsunamis, accidents involving large aircraft and ship incidents or man-made incidents such as terrorism, offshore oil spills and fires and hazardous material fallout have attracted global attention. All of these may occur at any time and anywhere in the world.

The loss of lives have been significant – 32 lives at the 2012 Costa Concordia disaster off the coast of Isola del Giglio; 304 lives at the sinking of the MV Sewol ferry in South Korea; thousands of drowned refugees in the Mediterranean in 2015¹; hundreds of lives at the crash of Air Asia flight 8501 in December 2014 and the disappearance of Malaysia Airlines Flight 370 earlier that year with major SAR operatives struggling to recover the wreckage.

Particularly the disappearance of MH370 caught the world's attention. While the case has highlighted the urgent requirement to review aircraft tracking and location systems, it has also underlined clearly the vital relevance of SAR to include the need to review search capabilities and techniques. Naturally, the SAR community itself has been analysing each of these events in depth to determine what is working effectively and where improvement has become necessary. The report on the Costa Concordia disaster reflects an excellent response from the Italian Coast Guard and their partners. On the other hand the Korean Coast Guard has publicly acknowledged growth potential in their response in the Sewol case. Among the core lesson is that planning for appropriate responses is of very critical importance. Successful planning means communication within and between organisations and 'ownership' of the plans at all levels.

A different, and difficult, aspect of SAR development and focus has been generated by the migrant issue. There is a huge problem of people trying to escape violence, oppression or privation – or just looking for a better life – and getting into trouble in unseaworthy vessels. This problem can only be solved at source, by addressing the factors that drive people to risk their lives in the first place. Yet, the maritime SAR system must be supported in its efforts to tackle the results.

Clearly, the maritime industries are part of the maritime SAR system. Commercial shipping and aircraft have search and rescue roles and responsibilities, by tradition and under international law. On the other hand, and as with any other resource, industry resources must be used wisely and efficiently – which is primarily a responsibility of SAR coordinators. The best course of action in this respect is to talk through the issues, locally and internationally, to build understanding and mutual confidence.

In sum, as long as there is a reliable alerting and coordination system, units have been appropriately equipped and trained for SAR, people can be rescued at sea. Yet, the question needs to be addressed how SAR forces can do more with what they have and enhance their work under universally tight budget limitations. The aim

¹ UNHCR, Mediterranean Crisis 2015 at six months: refugee and migrant numbers highest on record, UNHCR Press Releases, 1 July 2015. <http://www.unhcr.org/5592b9b36.html>



must always be to rescue more. Given the international character of such incidents and with view to tight government budgets, the requirement for increased national and international cooperation has come to the fore.

2. Maritime Domain Specifics

The issue of Search and Rescue at Sea is fundamentally linked to the Maritime Domain and its security. Along with airspace, outer space and cyberspace the Maritime Domain is one of the four global commons² – i.e. domains that are not under the control or jurisdiction of any state but are open for use by countries, companies and individuals from around the world. Their management involves complex processes to accommodate and integrate the interests and responsibilities of states, international organisations and plenty of non-state actors.

In today's interconnected world, any limitations on access to the commons would be highly disruptive. Militaries rely on access to the commons to pursue safety, security and defence objectives in domains outside their sovereign control. Economic actors rely on the commons to trade and conduct business. Access denial to the commons may disrupt commerce and security. Shared rules regarding the usage of – and access to – the global commons encourage their peaceful and cooperative use.

Over the last decades, the US has led in the creation of a liberal international order setting mutual beneficial rules. With the rise less liberal powers – particularly China – the durability of the existing processes for managing the global commons comes under pressure. With regard to the maritime domain, since ancient times norms for access to and passage on the seas have developed and evolved over many years as the primary avenue for international commerce. Only in recent decades, however, have there been agreed regulatory frameworks and institutions to manage them.

The UN Convention on the Law of the Sea (UNCLOS), first initiated in 1956 though not legally in force until 1994, is the primary international treaty regarding the sea, laying out rules for territorial boundaries (22km from shore), resource management and the rights of states within their exclusive economic zones (370km from shore). The International Tribunal for the Law of the Sea (ITLOS), created by UNCLOS, has the power to resolve disputes by States Parties. Except for the US, most countries and all global powers – including the EU-28 – have signed and ratified UNCLOS. The UN International Migratory Organization (IMO), created in 1948, regulates international shipping and rulings on safety, environmental and technical cooperation issues.

As the world's only global sea power, the United States has historically seen itself as the protector of free movement on the seas. US support for the creation and respect of transparent international regulations for use of the sea – the reason why they have not ratified UNCLOS – has allowed for the stable management of access to the seas. Access to the seas is generally a smooth and well-regulated process. Global responses to localised piracy problems have highlighted the impressive regional and global capacities to handle disruptions of this type.

The South China Sea is home to one of the world's most important Sea Lines of Communication (SLOCs), connecting the economic powerhouses of North-East Asia with the Middle Eastern oil terminals and European markets. The need to keep regional waters safe, stable and open is therefore in the interest of all players. Considering the density of maritime traffic – encompassing commercial ships, fishing vessels and law

² Gerald Stang. „Global commons: Between cooperation and competition“. Brief Issue 17/13. European Union Institute for Security Studies. Brussels. April 2013



enforcement agencies – the risks of accidental collisions, oil spills or shipwreck are real. The growing concentration of naval hardware in the region, including submarines, is an additional source of concern. Finally, there are risks of accidental and incidental oil spills from offshore construction and infrastructure.

There are also territorial disputes in places like the South China Sea. They relate to historical boundary disagreements rather than conflict over rules of sea access. Principally, no state has an interest in disrupting sea trade. Even in times of crisis, while individual states may wish to deny their opponents access to certain regions, they are unlikely to harm their own interests by disrupting traffic on the world's oceans. Yet, the lack of trust, coordination and cooperation in maritime affairs leads to problems of a practical nature. As seen recently in the cases of Typhoon Haiyan or the search for missing flight MH370, regional partners struggle with an effective response in the event of natural disasters or large SAR operations.

3. Europe's Interest and Responsibilities in the Maritime Domain

Europe's maritime interests are fundamentally linked to the well being, prosperity and security of people. On a global scale, the EU has interests and responsibilities in the maritime domain. The Sea is a valuable source of growth and prosperity for the European Union and its citizens. The EU depends on open, protected and secure seas and oceans for economic development, free trade, transport, energy security, tourism and good status of the marine environment. European citizens expect effective and cost-efficient responses to the protection of the maritime domain, including borders, ports and offshore installations, in order to secure sea borne trade, address potential threats from unlawful and illicit activities at sea.

The first EU Maritime Security Strategy³ and its implementing Action Plan⁴ were adopted on 24 June and 16 December 2014 as a response to modern risks and threats to global maritime security. Both, the Strategy and the Action Plan have been anchored in a cross-sectorial approach to global maritime security, bringing together all the relevant maritime sectors (maritime safety, marine environment protection, fisheries control, customs, border control, law enforcement, defence, research and development and others) and all relevant EU policies, strategies and instruments into a single strategic approach. The strategy is global in scope and will be implemented both at the local and at the regional level. Consequently, the EU has already been engaging in a dialogue with the African Union, the Southern African Development Community and last, but not least, the ASEAN Regional Forum.

The innovative approach of the strategy aims at promoting better civil-military cooperation and coordination between internal and external security actors such as the police and defence. The aim is that this 'joined up' approach to maritime security promotes closer cooperation between different maritime sectors. This has made the EU's maritime security policy particular coherent, effective and cost efficient.

The Strategy identifies four guiding principles:

- **Cross-Sectorial Approach**

All partners need to cooperate better, while respecting each other's internal organisation – from civilian and military authorities and actors (to include law enforcement, border control, customs and fisheries inspection, environmental authorities, maritime administration, research and

³ COUNCIL OF THE EUROPEAN UNION. EUROPEAN UNION MARITIME SECURITY STRATEGY. Brussels, 24 June 2014 (OR. en) 11205/14

⁴ European Union External Action. The EU Maritime Security Strategy and Action Plan. Brussels 2015. http://eeas.europa.eu/maritime_security/docs/maritime-security-information-toolkit_en.pdf



innovation, navies or other maritime forces, coast guards, and intelligence agencies), as well as EU agencies, to industry (to include shipping, security, communication, and capability support);

- **Functional Integrity**

Build upon existing policies and instruments and make best use of existing capabilities at national and European level, while avoiding to create new structures, legislation, additional administrative burden, as well as the requirement for additional funding. The mandates, responsibilities and interests of Member States are fully taken into account. The strategy is without prejudice to the competences, sovereign rights and jurisdiction of Member States over maritime zones in accordance with relevant international law, including UNCLOS;

- **Respect for Rules and Principles**

The cornerstone of the European Strategy and key principle for rules-based good governance at sea is the respect for international law, human rights and democracy in full compliance with UNCLOS, the applicable bilateral treaties and the respective values. The EU and its Member States support the settlement of maritime disputes arising from the interpretation and application of UNCLOS through competent international courts and tribunals provided therein, as they have an important role in implementing the rule of law at sea;

- **Maritime Multilateralism**

Cooperation with all relevant international partners and organisations is essential, in particular the United Nations and NATO, and coordination with existing international and regional fora in the maritime domain. This cooperation is based on respect of the institutional framework and the decision-making autonomy of the EU.

These focus areas have been highlighted in the action plan:

- **Better Civil-Military Cooperation**

Civil and military maritime authorities in the EU need to work much more closely together and share more information and resources with each other than before. Of particular importance is to share surveillance information with each other instead of collecting them each separately and to also share resources such as radar stations, patrol vessels, etc. Among key technologies to this end are multipurpose or dual-use technologies such as remotely piloted aircraft systems, satellite communications or high-resolution satellite imagery.

- **Improved Internal-External Security Coordination**

There needs to be improved coordination between internal and external aspects of maritime security, in order to build a holistic and coordinated approach to maritime security. This would help to ensure consistency between existing and future activities.

- **Maritime Routes of Migrations**

The internal and external security nexus is evident when it comes to tackling irregular migrations, such as the current challenges in the Mediterranean. Irregular migration is already addressed by a comprehensive set of EU legislation, including cooperation within the EUROSUR framework, which ensures cooperation in order to improve situational awareness and increase reaction capability at the external borders for the purpose of detecting, preventing, and combating irregular migration and saving the lives of migrants.



- **Better Policy Coherence**

The Action Plan relies and builds on other strategies and policies, such as the Integrated Maritime Policy for the European Union (10 October 2007), the European Security Strategy (12 December 2003), and promotes in particular improved coherence and maritime security dimension in EU's regional strategies.

Promoting respect for rules and principles is at the heart of the EU's maritime security strategy. Maritime multilateralism and rules-based good governance in the maritime domain are the manifestations of that value driven approach in the maritime domain. It also means that the EU promotes the dispute settlement mechanisms in accordance with the United Nations Convention in the Law of the Sea (UNCLOS), including the International Tribunal for the Law of the Sea (ITLOS), in the political dialogues of the EU with third countries and regional organisations.

In terms of external action, the Action Plan enables the EU to promote further cooperation and identify commonalities with international partners, including International Organizations (such as the UN, NATO and regional organisations) and third countries in the field of maritime security. Cooperation with international partner countries and Organizations includes the areas of exercises and training, for example, but also exchanges of expertise in different maritime sectors, as IUU fishing, or protection of critical maritime infrastructures, including cyber security and port security.

In sum:

- The EU Maritime Security Strategy is clearly a partnership document. Consequently it identifies areas of commonality between the EU and regional fora, such as the African Union and sub-regional African organisations, the Union for the Mediterranean, the Gulf Cooperation Council, the Association of South East Asian Nations (ASEAN) as well as international organisations such as the IMO, ILO, INTERPOL and UNODC. It seeks for improved partnerships in the field of maritime security.
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The Action Plan builds upon the existing work of the EU. Many of the actions foreseen in the Action Plan are based on on-going projects and already existing achievements in EU legislation, such as the legislative framework on border management, the legislative framework managing maritime transport issues and the legislative framework combating IUU fishing. But also beyond legislation, there are on-going activities that have fed into this process, such as the lessons learned from the Comprehensive Approach to the Horn of Africa.

4. Room for Multilateral Cooperation

Striving for an ASEAN security force in the South China Sea is a very valid undertaking, particularly because territorial disputes linger. Policing against piracy and terrorism, humanitarian work in search and rescue



operations are excellent fields to establish a principal regime of cooperation.⁵

Should there be one lesson, which Europe could convey to improve stability in the South China Sea, it is that successfully dealing with the past is crucial for establishing cordial relations in the future. The Mediterranean Action Plan (MAP) has often been cited as an initiative, which brings together countries with strikingly different political and economic backgrounds in order to address marine pollution. In the Baltic Sea, disputes have been mitigated through bilateral and multilateral agreements initiated by marine experts and scientists, and then approved by policymakers. Last but not least, the Antarctic Treaty Meetings (ATM) framework has banned all military activities on the basis of environmental concerns.

Effective global commons management works best if there are binding treaties, institutionalised management bodies, and real enforcement mechanisms. Collective action remains one of the major challenges of international relations, especially when countries with differing sizes, political systems, levels of economic development and strategic interests are involved. Cooperation in any functional area – such as piracy, terrorism, humanitarian relief and disaster response – can serve as building block to achieve more ‘traditional’ security – provided its benefits are sufficiently understood by all parties.

The EU has plenty of experience in giving value to existing multilateral frameworks and in developing new ones for international cooperation in these domains.⁶ It should and could share more of it with the ASEAN members. Of course, the EU has limited leverage to push China in various issues. Yet, it can help develop international institutions in such a way that limit the appeal of any attempt to disrupt existing cooperative arrangements. This will increasingly involve both the language of ‘responsibilities’ – often used by Western countries to pressure developing states to change their approaches to multilateral issues – and the language of ‘rights’, which will stress the entitlements of states and individuals to access and protection.

Remarks: Opinions expressed in this contribution are those of the author.

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⁵ Eva Pejsova. „The South China Sea’s commons: Behind and beyond sovereignty disputes“ Issue Alert 30/14. European Union Institute for Security Studies. Brussels. April 2013

⁶ Lennart Landmann „The EU Maritime Security Strategy Promoting or Absorbing European Defence Cooperation?“ Clingendael. April 2015



About the Author of this Issue

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