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**MARITIME SECURITY VULNERABILITIES IN SOUTH ASIA: A
STUDY OF NATIONAL AND REGIONAL GOVERNANCE
FRAMEWORKS**

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ABSTRACT

The term "maritime security" has no agreed-upon definition. Differences in political, ideological, or interest-based viewpoints are frequently cited as the reason for the variation in definitions, methods, and perceptions of maritime security. Due to the term's broad definition, Geoffrey Till contends that exist several interpretations in terms of maritime security. The world was given hope that it may be a mechanism for addressing issues relating to the sea when the Law of the Sea Convention (LOSC) was ratified by the United Nations, signed, and put into force in 1994. Nevertheless, the definition of "maritime security" provided by the LOSC is unclear. All it did was give a general concept of security. LOSC contains multiple articles that provide clarification and guidelines. These clauses cover a wide range of issues, including illicit fishing, environmental problems, and dangers resulting from military operations (arm drills, use of force, military aircraft operations, etc.). Nevertheless, neither the Convention nor these provisions define maritime security or categories them as risks only to maritime security. Different strategies are used for marine security. We will talk about the following strategies in this chapter: The defense viewpoint on maritime security is among the following:

- a. marine safety and security;
- b. risks to maritime security;
- c. non-traditional approach; and
- d. approach based on geography and national interest.

The several methods to marine security are explained in a multitude of academic papers and scholarly studies. Several of these academics, Natalie Klein, Chris Rahman, Sam Bateman, and Geoffrey Till are among those who will have their opinions highlighted in this chapter. Several regional groups that are important in tackling regional challenges, such as marine security, will

be covered in this chapter. The chapter highlights important regionally specific elements that highlight Southeast Asia's complicated marine environment.

Keywords: Maritime, Security, LOSC, Force, Threats, Mechanism

INTRODUCTION

The word "maritime," which comes from the Latin word "mare," refers to everything having to do with the sea, particularly when it comes to economic or military operations conducted at sea. The idea of maritime security can be comprehended by looking at its complex relationship to other security concepts, like collective security. Although it recognizes the application of force in international affairs, the idea of collective security opposes conventional balance of power theories and coalitions that target specific threats. To ensure that stave off any onslaught opposing the current political order, collective security promotes the UN's continued existence as an international organization. This idea serves as the foundation for the international maritime alliance of the US Navy project, the country's national security in the sea policy, and its marine policy from 2007.

But in practice, group safety is more often used as a catchphrase and a technical term than it is as a true implementation. Gwyn Prins shares this opinion and thinks that having a UN standing naval force and an "ocean guard" force would be a tool used to put the true meaning of maritime collective security into practice. The Ocean Guard seeks to handle maritime issues relevant to its mission while functioning under the direction of an internationally renowned institution.

Although there are various security ideas, not all of them are appropriate or simply implementable in conjunction with marine security due to its particular characteristics. Comprehensive security is another security principle that is utilized in the maritime sector. Inclusivity, not the strict application of security, is the foundation of the notion of comprehensive security. Though the enclosed or somewhat enclosed character of the waters in Southeast Asia may seem to make this concept work, it is difficult for States to give up their marine jurisdiction due to the fictitious boundaries that divide national sovereignty.

Furthermore, it is not feasible to enforce the preservation of fish and other marine resources in a certain area or to restrict the activities of terrorists and other criminals to a single location. In the Asia Pacific region, the idea of comprehensive security has been accepted, according to the Council for Security Cooperation in the Asia Pacific Region (CSCAP) Memorandum (Guidelines for Regional Maritime Cooperation). The text addresses the "building of maritime confidence and security, as well as preventive diplomacy measures" as highlighted by the ASEAN Regional Forum (ARF) and demonstrates the region's strong support for UNCLOS.

Additionally, "since UNCLOS was made available for signature, State practices regarding advancements in ocean management and international law have influenced the Guidelines, which are consistent with UNCLOS."

Due to its vast scope and assumption that all interested parties will be included in activities, there are differing views on whether the CSCAP Memorandum is feasible. A criticism made by Jim Rolfe was that the Memorandum's attempt to relate all of the aforementioned elements is not entirely compelling. The waters are undoubtedly interconnected and have a transnational character, nonetheless, it is not feasible to attribute every facet of marine safety in order to a single location—for instance, the way people are treated in West Java and the Bay of Bengal differs from one another.

Cooperative marine security is another security strategy for maritime security that suggests substituting new multilateral security mechanisms for the current regional ones. For this strategy to work, governments with similar goals must agree on everyone must work together to maintain safety and security while ensuring access to the maritime commons.

APPROACHES TOWARDS MARITIME SAFETY

The Concept for US Naval Operation employs the first strategy, which views maritime security from a defense standpoint and ensures both the preservation of ocean resources and the ability to navigate freely when conducting business. The idea also addresses protecting "the maritime domain from nation-state threats, terrorism, drug trafficking and other forms of transnational crime, piracy, environmental destruction and illegal seaborne immigration," among other things. When referring to maritime enforcement operations in the US, especially those involved in combatting terrorism and the spread of WMDs, the phrase "maritime security operation" is widely used. According to this idea and the US National policy for Maritime Security's emphasis on counterterrorism, the US maritime policy acknowledges the significance of maritime security.

To protect interests on a national and worldwide level, the Royal Navy defines maritime safety as "actions performed by military units in partnership with other government departments, agencies, and international partners in the maritime environment to counter illegal activity and support freedom of the seas." The commercial sector, including those involved in the maritime sector, has attempted in order to characterize marine security, concerns pertaining in relation to the maritime transportation system, encompassing the guarantee that cargo shipping is devoid of illicit activities. The maritime industry also views maritime security as encompassing the prevention of marine violence in general rather than distinguishing between specific types

of criminal activity like piracy, armed robbery, and terrorism. According to this strategy, marine security seeks to guard against piracy, sabotage, seizure, pilferage, irritation, and surprise, according to Hawkes. Those who manage, control, and possess ships, harbors, offshore installations, and further marine institutions implement measures to ensure their safety from such issues.

THREATS OF MARITIME SECURITY

By avoiding both term definition and idea discussion, this method concentrates on the examination of the various risks to maritime security. The theory behind this method is that the best way to comprehend marine security is to identify what risks it faces. As per Sadurska's definition, a threat is defined as "an act intended to instill in the target a psychological state of unease, tension, and ultimately terror, thereby weakening their resistance to alteration or compelling them to uphold the existing state of affairs." According to the 2008 Report of the UN Secretary-General on Oceans and the Law of the Sea, terrorist activity and ship-borne attacks are recognized, along with piracy, weapons and drug trafficking, illegal fishing, and environmental problems that pose a risk to maritime security. The UN Secretary General stated in the Report—as mentioned in Chapter 1—that there isn't a single, widely accepted definition of maritime security. The study also described many risks to maritime security in detail. Directly or indirectly, States are impacted by each of these dangers. Certain hazards also impact individuals and businesses that are private victims. This report expressed the concerns of numerous connected parties, including government, the shipping sector, operators, the armed forces, researchers, and analysts since it addresses a wide range of marine issues. According to this methodology, Klein proposed that the best way to identify marine security is to be aware of the "commonly perceived" risks and the actions that have been or ought to be taken in order to counter them.

MARITIME SAFETY AND MARITIME SECURITY

Other organizations likewise don't adhere to the two strategies listed above. As an illustration, the International Maritime Organization (IMO) has been understanding marine safety since 1980 from the standpoint of its Committee on Maritime Safety, which develops and clarifies the idea. The Cooperative makes a distinction between safety and security in the marine. Preventing mishaps that typically result from inadequate vessels, untrained crew members, or mistakes made by operators is known as maritime safety. On the other hand, marine security measures are taken to prevent illegal activity. Even though the two terms are distinct, the International Maritime Organization (IMO) only has distinct phrases for "security" and "safety"

in additional foreign languages, like French (protection maritime) and Spanish (surety maritime), since the International Convention for the Safety of Life at Sea (SOLAS Convention) Chapter XI was amended.

NON-TRADITIONAL APPROACH

There are other ways to tackle the problem of maritime security from an unconventional standpoint. Because of its statist focus, the traditional approach to maritime security primarily uses States as the primary players as well as analytical units. The unconventional method, on the other hand, takes an arbitrary and non-exclusive non-strategic approach to maritime security. The explanations occasionally overlap, are related to one another, and occasionally describe the same issue while looking at it from a different angle. Rahman identified the following alternate viewpoints: maritime order protection, ocean governance, security of the sea itself, military actions at sea and maritime transportation security oversight system. First, the security of the sea itself is the goal of maritime politics, according to which the "ocean" should be protected for its own sake rather than because it affects human existence, progress, or security for sake. Protecting both living and nonliving marine resources as well as the maritime environment is the fundamental goal of this strategy. Not the implications the safety of the marine environment for individuals and their political connections, but the ocean itself is the focal point of this discussion.

The concept of ocean governance, which contends that the international legal and political system is crucial to the management of the ocean, is another potential strategy for maritime security. To create a stable maritime regime, LOSC is also incorporated into this strategy as the central concept that must be maintained and put into practice. This strategy emphasizes that governments should design and carry out the laws and norms that control the ocean. The laws and standards would serve as a means of resolving disputes and issues that arise at sea, functioning as a tool for ocean governance. Since there isn't a single authority that can rule the entire world, it is up to the States to determine and agree what regulations can improve stability and trust in a specific area—in this example, the ocean. Though the LOSC serves as the main remedy in this method, this does not imply that it will always be effective.

Relationships between coastal states and other states in maritime regions rich in natural resources, such as the deep-sea bed, the exclusive economic zone, and high seas, may be impacted by the restrictions in the LOSC, which had a significant impact on coastal state authority. Moreover, the increasing prevalence of illicit operations in other global regions, including the Caribbean, Indian Ocean, Southeast Asia, the Gulf of Aden, the Gulf of Guinea,

and the Caribbean, may prompt states in those areas to take notice and take appropriate action. As a result, stricter laws are required to address this problem on a national and international scale.

Protecting marine borders is the third possible strategy. This method contends that in addition to multilateral frameworks (regional and worldwide), efforts should be made to ensure effective ocean governance incorporate the coastal states' contribution to the upkeep of their maritime domain. Coastal States must be conscious of their rights to sovereignty and autonomy at sea as the LOSC has expanded their jurisdiction, particularly in regards to the EEZ's exploration and utilization. Additionally, the idea List States with an archipelago—which is pertinent to nations like Indonesia and the Philippines—will affect national security since they must maintain control over ships that navigate their archipelagic waterways.

Rahman continues with an explanation of an alternate strategy: military operations at sea. By explaining maritime security in terms of shared security, this method emphasizes the idea of arms control. There is no established policy regarding a state's limitation of its armaments, despite the fact that weaponry is still being limited. Nonetheless, this endeavor is in conflict with some navies that still lack constraints on armaments, especially the leading naval nations. The Worldwide Independent Commission on Ocean Affairs attempted to encourage reduction of arms, demilitarization, and removal of nuclear weapons deployed at sea.

GEOGRAPHICAL AND NATIONAL INTEREST METHODS

States' geographical locations and national interests may also influence how marine security is defined. States frequently have different ideas on what exactly maritime security is, making it difficult to define it in a given region. Some States might prefer not to categories conventional threats to maritime security as such, while others include them in the definition. Traditional risks to marine security include military action, the defense of national interests and the claim to maritime sovereignty. unconventional dangers include environmental concerns and illegal fishing. Only traditional dangers are categorized as national issues.

Another example of this methodology is to examine the response and structure of states that have extensive coastal regions. As archipelagic States with extensive maritime jurisdiction, Indonesia and the Philippines, for example, would probably be in favor of a more expansive definition of maritime security. These States would take into account adding topics like illegal fishing and environmental protection. This strategy may find backing from nations such as China, whose maritime notion of a "harmonious ocean" aligns with it. In terms of naval might and security reactions to non-traditional dangers like environmental preservation and disaster

assistance, this idea strengthens their maritime security. On the other hand, states with restricted access to the sea and little control over large marine areas can accept the idea that non-traditional threats should not be included in the definition of maritime security. The same would probably apply to small nations like Singapore, which has jurisdiction over a relatively small marine area.

Nonetheless, the States in the area share a common concern that maritime security encompasses matters pertaining to the safety and security of seaborne trade and shipping. States also have a common interest for combating maritime terrorism and piracy, as well as for search and rescue (SAR) and other marine safety services. Even so, regional states continue to be very hesitant to integrate security issues in regional accords, such as the Cooperative Mechanism for Safety and Environmental Protection in the Malacca and Singapore Straits. Malaysian and Indonesian worries over their sovereignty were the reason for the hesitancy in this instance. Southeast Asian states participate in a range of initiatives pertaining to marine cooperation, such as:

a. Maritime Border Patrols and Cooperative Anti-piracy

The responsibility of preventing maritime robberies, pirate attacks, and other illegal acts at sea falls to a number of cooperating marine border patrols. An excellent illustration of this collaboration is the Coordinated Patrols between Indonesia and Singapore (ISCP), which was founded in July 1992. with the goal of preventing maritime thefts in the Singapore Straits. In 2004, the ISCP was renamed as the Malacca Straits Patrols (MALSINDO).

b. Exchange of Maritime Information

The establishment of data exchange systems and databases for maritime information promotes regional collaboration. Examples of data that can be included in a database are oceanographic data, information about ports and shipping, and information about piracy and other illicit maritime activities that could endanger commercial ships. ReCAAP and The International marine Bureau (IMB) of the International Chamber of Commerce (ICC) and the International Piracy Reporting Centre are two prominent examples of marine information exchange in the region.

c. Meetings on Track I, including the Forum for the ASEAN Region (ARF)

The ARF offers a forum for the sharing of opinions and concepts between navies and other maritime-related bodies. Additional discussion boards that address the East Asia Summit, APEC, the ASEAN Defense Ministers' Meetings (ADMM) and ADMM-Plus, the ASEAN

Maritime Forum and Expanded ASEAN Maritime Forum, and the ASEAN Maritime Forum are a few of the maritime security obstacles.

AREA-SPECIFIC ARCHITECTURE

Southeast Asia is replete with regional multilateral bodies. ASEAN is the most well-known and well-recognized. Nonetheless, there exist alternative establishments like the forum for Asia-Pacific Economic Cooperation (APEC) and states in Southeast Asia make up the core membership of the ASEAN Regional Forum (ARF). Since its founding, ASEAN has developed into a forum for discussion of shared concerns and communication among its members. The ASEAN Charter is the constitution that ASEAN adopted to establish it as a rule-based organization. The legal platform serves as a basis for the development of a more united ASEAN and was created to make the process of resolving disputes amongst member states more effective.

In particular, ASEAN is involved in the architecture of regional security in Asia. The nations of ASEAN, together with neighboring states such as India and Pakistan, have established a platform known as the ASEAN Regional platform. The purpose of this forum is to foster collaboration and improve security conversations among the participants states. The ARF has concentrated on matters including marine security, terrorism, and non-proliferation. Additionally, the East Asia Summit, comprising states from South Asia, Southeast Asia, Northeast Asia, and Australasia, heavily relies on the ASEAN countries. Security concerns are also discussed in this forum. The ASEAN Maritime Forum was yet another forum that ASEAN established. Within this forum, participating states talk about a variety of maritime security and safety issues, such as piracy, the preservation of the marine environment, and freedom and safety of passage. The majority of the members of APEC, a regional conference for economic cooperation, are nations in the Asia-Pacific area. The goal of this 1989-founded regional organization is to promote sustainable economic growth among its constituents. Approximately 50% of international trade and gender accounts for 60% of the world's gross domestic product (GDP). individual countries. Its quick development has a significant impact on institutional capacity building as well as mechanisms for boosting regional confidence. But there are a lot of obstacles when many States participate in a regional organization. A hurdle in the European Union is the intrinsic diversity of its member states with respect to political systems, economics, population, and income level reaching a consensus that all members can live with. Therefore, in order to

guarantee that member States achieve shared economic and trade objectives, APEC must be resilient and flexible enough to tolerate differences and divergences in interests.

THE COMPLEXITY OF SOUTHEAST ASIAN SEAS

There are a number of regionally specific aspects that contribute to Southeast Asia's marine complexity. Many international transportation routes that cross the jurisdictional waters of various States are located in this region. The Malacca Strait, for instance, travels across Indonesian and Malaysian territorial waters. More than two States share a number of maritime areas. The tri-border region encompassing Indonesia, the Philippines, and Malaysia, for example, influences the escalation of national security protocols in each of the three nations. A further factor contributing to this region's complexity is the absence of a single, uniform regional language. Since each of the region's states has a recognized national language, communication between them is done in English which is a second language. However, other states—like Indonesia, Malaysia, and Brunei—have linguistic commonalities. The region is home to a multitude of political formations. While several nations have democratic systems, Thailand maintains a monarchy, in which the king still has authority over the State's priorities. Moreover, two communist states exist in Southeast Asia, specifically Laos and Vietnam. The variations in political frameworks may also provide difficulties that impact the bilateral and multilateral relationships between states.

Southeast Asia's ports add further significance to the region. This region has a number of ports that rank among the busiest worldwide. Singapore is a good example, as numerous vessels that travel through the area stop to visit and engage in operations like fueling and unloading. One reason for the high volume of the area's traffic is the existence hub ports within countries like South Korea, Japan, Hong Kong, and Taiwan. Thus, it is possible to consider the marine complexity of Southeast Asia to be both "internally" and "externally" generated.

Finally, the region's abundance of installations offshore that harvest gas, mineral resources, including oil is another important issue that should be mentioned. However, a number of these platforms are situated in undeveloped regions. Therefore, in order to maximize the use of these platforms, security measures are crucial.

CONCLUSION

In conclusion, as the previous discussion demonstrated, it is possible to comprehend marine security by looking at the idea from several angles. The perception and management of maritime security are ultimately influenced by the diversity of people's backgrounds, interests, and concerns. Depending on their areas of expertise and interests, government officials,

operators, researchers, policymakers, business sector participants, analysts, and defense personnel would all have different perspectives on the matter. According to Klein, the term "maritime security" is rarely used in a categorical sense and is instead regularly used to characterize specific settings. Thus, maritime security cannot be defined by a set of universally accepted components.

Clearly, there are a lot of regional organizations who are especially worried about the marine security problems that the area is facing. However, the persistence of several marine dangers might be attributed to the region's complexity and the insufficiency of these regional organizations to deal with the problem. Thus, five vulnerabilities to Southeast Asian maritime security were identified in this chapter.

REFERENCES

- U.S. Commission on Ocean Policy, 'An Ocean Blue Print for the 21st Century' (2004)
- C. Brolan, 'An Analysis of the Human Smuggling Trade and the Protocol Against the Smuggling of Migrants by Land, Air and Sea (2000) from a Refugee Protection Perspective' (2003) 14 International Journal of Refugee Law 562, 562-596.
- 'Report of the Special Rapporteur on Sales of Children, Child Prostitution and Child Pornography: Mission to Morocco' (2001)
- John Bradford, 'U.S. Strategic Interests and Cooperative Activities in Maritime Southeast Asia' (2010)
- Ian Storey, 'Securing Southeast Asia's Sea Lanes: A Work in Progress' (2008) 6 Asia Policy