COUNTER PIRACY IN THE HORN: A MODEL FOR THE SOUTH CHINA SEA?

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Abstract- The international community has adopted multi-dimensional counter-piracy approaches to discourage piracy in the Horn of Africa (HOA) by integrating the land and sea strategies. This paper tests the HOA's counter-piracy model to the South China Sea (SCS) to draw the successful strategies of the HOA. The findings show that while a number of strategies and lessons from the HOA are pertinent to the context of the SCS, there are few challenges in fully informing the HOA's model due to the geographical scope of incidents, context, and the nature of piracy in the SCS. Thus, this paper recognizes the necessity of taking into account of the surrounding issues and facts when drawing the successful lessons from the HOA to the SCS. The paper also highlights a neutral approach through an institutional mechanism to fight against common enemies, including piracy, armed robbery against ships and terrorism in the region for the lasting solution of piracy as well as to the regional development.

Keywords- Anti-Piracy Mechanism, Armed Robbery against Ships, Horn of Africa, South China Sea, Piracy

I. INTRODUCTION

While Piracy is not a new crime in international law, the acts of pirates have recently been drawn the attention of the international community due to the increasing challenges of piracy to sea-oriented economies, including maritime trade, maritime tourism, fisheries, and energy as well as the security of humans, property and state sovereignty. This is the case in the HOA, especially off the coast of Somalia. The persistent and high profile attacks of piracy and its negative culminating effects, along with the necessity of ensuring the safe delivery of the World Food Program's (WFP) seaborne humanitarian assistance to Somalia led the international community to find an antidote to the issue of piracy in the region. Accordingly, the international community deployed multinational forces in the HOA, especially off the coast of Somalia in accordance with United Nations Security Council (UNSC) resolution of 1816(2008). The unanimous practice of the international community in the HOA shows the cooperation among the international and regional states to create the institutional arrangement through legal and political framework in order to combat against piracy and armed robbery against ships in the region effectively. Overall observation indicates the reduction of the acts of piracy and armed robbery against ships in the HOA.

Acts of piracy and armed robbery against ships, however, continue to threaten the Sea Lines of Communication (SLOC) in other regions, especially the Southeast Asian region, including the SCS and the Malacca Strait. As reported by the United Kingdom (UK) based Dryad Maritime, 120 piracy and maritime crimes related incidents have taken place between April and June 2015 in the Southeast Asia. This is the 22 percent amplification of crimes when compared with the year 2014[1]. Against this background, this article explores whether some lessons can be drawn from the counter-piracy model of the HOA to the SCS to suppress and prevent piracy and armed robbery against ships in this area, as well as build confidence among the regional states in this regards.

II. PIRACY IN THE HOA

A. Context

The HOA, such as Somalia, Ethiopia, Djibouti and Sudan is considered as one of the most complex and conflicted region in the world. The operation of Somali pirates covers some four million square kilometres, including the high seas and territorial waters of some littoral states around the Arabian Sea and the West Indian Ocean [2]. The Somali pirates were responsible for the 7.5 percent of piracy incidents in 2002 in the world. These incidents increased respectively 23 and 55.6 percents in 2005 and 2011 [2]. The nature the Somali pirates are violent as these groups operate like a criminal unit and mostly with armed [3]. Many factors contributed to the development and facilitation of piracy in a more structured form in Somalia. However, the poverty and the lack of job opportunities are the primary factors to the expansion of Piracy [3]. Other factors, such as the collapse of the Said Barre regime and internal armed conflict, the lack of law and order, state authority, law enforcement institutions and coastguards, the lack of options to reduce acts of pirates [4] and the regional instability, along with corruption [5] pave the way to be fertile ground for the breeding of piracy in Somalia. Unlike other region, the Somali piracy predominantly based on a business model in the sense that pirates normally hijack and hold hostage ships, cargo, and seafarers to

demand the ransom to exchange them[3]. Pirates use the hijacked ships as a mother ship to carry out attacks on other ships. The Somali pirates have hijacked 80 percent of ships from the worldwide between 2005 and 2011 for the above-mentioned purposes [2]. As estimated by the World Bank study, pirates in the off the coast of Somalia and the HOA claimed US$339 million to US$413 million ransoms between April 2005 and December 2012 [3].

The international community adopted a multi-dimensional approach on the land and sea to discourage piracy in the HOA. The inevitability of addressing the root cause of piracy, along with the aspiration of the international community to establish the peaceful Somalia and the region led to espouse different strategies through various mechanisms in the HOA. These mechanisms consist of a variety of institutions and actors, including "State and non-State actors from a wide geographical area, and covering a large area of expertise, both civilian and military."[1] Some estimation shows that the engaging entities in countering piracy in the HOA range as minimum 60 governments and 20 established and ad hoc international organizations[2].These entities involve in a number activities, including maritime operation, coordination, information-sharing, rule of law and capacity building, prosecution and industry self-protection to discourage piracy and armed robbery against ships in the HOA.

The UN and its specialized agencies implement numerous projects in cooperation with regional and other local partners in the land to strength the political, legal and economic institutions of Somalia and other coastal states in the HOA. Simultaneously the international coalition has been patrolling at seas to suppress and prevent piracy. In addition, shipping industry has taken self-defense measures by closely working with the UN specialized agencies and other organizations to develop the Best Management Practices (BMP), Vessel Protection Detachment and deployment of the Private Armed Security Guard to ensure the safe transit of merchant vessels in off the coast of Somalia.

UN Security Council: The UNSC has expanded the scope of international law to fight against piracy and armed robbery in the HOA by adopting a number of resolutions (the UNSC has unanimously adopted twelve resolutions from June 2008 to November 2013 to tackle the issue of piracy in the area). This is the first time in history that the UNSC has linked acts of piracy and armed robbery against ships with the threat of international peace and security in the region in accordance with UNSC resolution 1816 (2008). The UN authorized to the international response for such crimes under the Chapter VII of the UN Charter. The SC permitted escorting international navies to enter into the territorial waters of Somalia with the advanced notification and consent of the TFG of Somalia and use "all necessary means to repress acts of piracy and armed robbery."[2]Further, any action by the participating states should be "consistent with action permitted on the high seas with respect to piracy under relevant international law."[3]

Maritime Operation: The maritime military operation mainly aims to repress and prevent piracy in the HOA. Three international naval missions, including the European Union Operation Atalanta for the European Naval Force Somalia (EUNAVFOR), Operation Ocean Shield from the North Atlantic Treaty Organization (NATO), and the Combined Maritime Task Forces 151 (CFT-152), as well as independent naval forces from several countries, such as China, India, Iran, Japan, the Republic of Korea and the Russian Federation deployed their forces in the HOA. The task of Military and naval forces of escorting the commercial ships at the high-risk areas are highly appreciated as they ensure the safe passage of vessels and the protection of seafarers in the HOA. Pirates and armed robbers have been discouraged in disturbing and hijacking commercial vessels and crew members by international forces [6].

Coordination -The Contact Group: The coordination and information sharing are one of the key counter-piracy instruments in the HOA. While many institutions involve in these tasks, the Contact Group on Piracy off the Coast of Somalia (Contact Group) is one of the core coordination mechanisms in the HOA. The Contact Group mainly concentrates on coordinating and building confidence among diverse actors involved in counter-piracy. The voluntary and an ad hoc international forum of the Contact Group includes nearly 70 countries, and 20 international organizations, shipping industries and seafarers' representatives, NGOs and other international actors, which were interested to suppress piracy off the coast of Somalia[7] [8]. The informal and non-binding coordination mechanism of the Contact Group brings down barriers among various actors that engage in countering piracy in the HOA.

Industry's Self-Protection Measures: The BMP was adopted with the support of the shipping industry for seafarers' self-protection. The BMP is one of the main mechanisms to response piracy developed by shipping industry in cooperation with naval missions in the HOA in order to help vessels to avoid, deter or delay attacks in the high-risk areas [9].

Rule of Law and Capacity Building: The rule of law and capacity building strategies aim to find a sustainable solution for the issue of piracy and armed robbery against ships in the domestic and regional levels. Many international organizations, such as IMO, INTERPOL, the Office of Legal Affairs, UN Development Programme (UNDP), UN Office on

[1] Report of the Secretary-General pursuant to Security Council Resolution 1950(2010), S/2011/662 (25 October 2011), para.75.

[2] S/RES/1816 (2008), 2 June 2008, para.7(b).

[3] Ibid, para.7 (a) (b).

Drugs and Crimes (UNODC) and others have carried out a wide range of programs to reform and strength the domestic legal and enforcement mechanisms of states in line with international norms to deal with piracy and armed robbery at sea[10].

The UN encourages land-based response to piracy off the coast of Somalia through its country team and UNODC. At the same time, the technical assistance, facilitation of dialogue among member states, as well as ensuring a coordinated approach of different actors on the ground to avoid the repetition are carried out by the UN Secretariat[11] [10].

IMO was the primary actor in adopting the Djibouti Code of Conduct on 29 January 2009 [12]. The Djibouti Code of Conduct is considered an important initiative to suppress piracy and armed robbery, as well as to build confidence among the regional states in the HOA. This code gives attention in promoting and implementing some features of UNSC resolutions 1816 (2008), 1838 (2008), 1846 (2008) and 1851(2008) and UNGA resolution 63/111 [13]. The purpose of the Djibouti Code of Conduct is to cooperate fullest possible extend among the participants in line with their capacities in terms of resource and priority, as well as domestic laws and regulations and applicable international law to suppress piracy and armed robbery against ships[13].

While the deployment of international forces off the coast of Somalia reflects the short-term vision of the international community in order to halt acts of piracy immediately, the long-term vision is to build domestic and regional mechanisms in the HOA to deal with piracy and armed robbery against ships, as well as to address the root cause of piracy. There are a number of programs initiated in these regards. In general, it has been appreciated the success of the international community in discouraging piracy and armed robbery against ships in the HOA.

III. SOUTH CHINA SEA AND PIRACY

A. Context

The SCS Sea is surrounded by China, Vietnam, the Philippines, Malaysia and Brunei and constitutes an area nearly 3.5 million square kilometres [14]. The location of SCS makes it as a strategically important route to the international transport. The major economic power of Asia, including China and Japan depend on receiving their raw materials and shipments pass from Malacca Strait to SCS [15]. For instance, China depends on importing 90% of seaborne trade and more than 80% of energy through these sea lines [16]. Further, in the long-term perspective, the SCS gained importance for seaborne trade in the region for last few years for a number of reasons. These encompass the enlargement of maritime trade among the regional states due to the rapid growth of economies, mounting demand of energy and importation of energy from the region, and embracement of cargo automation terminal [17].

The direct and indirect nature of piracy and armed robbery against ships give the logic to regional states in multiple ways to deal with the issue. The recent trend in the SCS obviously exemplifies uncoordinated and unilateral approaches of the SCS's states towards the issue of piracy and armed robbery against ships. The unilateral approach towards the issue of piracy and armed robbery against ships shows the concern of individual states to ensure the security and national interest, as well as to sustain the power in the region. The factual situation, along with the counter-piracy experiences from the HOA, however, suggests that the unilateral approach towards piracy and armed robbery against ships would not create the environment to find the durable solution to the issue, as well as, to boost development and to promote peace and security in the region. Recognising a neutral approach through an institutional mechanism is indispensable to fight against common enemies, including piracy, armed robbery against ships and terrorism in the region for the lasting solution, as well as to the regional development.

B. HOA's Counter-Piracy Model to SCS: Lessons, Opportunities and Challenges

Indeed, adopting the HOA counter-piracy model to the SSC constitute both challenges and opportunities. There would be no many challenges in informing some 'soft' approaches towards countering piracy and armed robbery against ships used in the HOA. Those lessons may include the coordination; the rule of law; capacity building and self-protection measures. However, drawing some 'hard' approaches, especially the deployment of international military forces is a hardly smoking gun in the context of the SSC.

I. Lessons and Opportunities

A number of 'soft' approaches, which follow in the HOA can, also, be applicable to the context of the SSC. First, the coordination mechanism of the Contact Groups is one of the best lessons from the HOA to other region, including the SSC. The regional states of the SCS can also adopt the same model to coordinate the anti-piracy efforts, as it is not politically subjected. The various issues can be managed through the Contact Group in the SSC since the Contact Group provides lessons: to manage complexity; to cope up with multiple entities; to build reliable confidence; to bridge the execution gaps and to ensure regional and national ownership [18].

Second, the rule of law and capacity building tactics of the HOA is also relevant to the context of the SSC. These approaches follow in both sea and land through the institutional reforms and capacity building in the domestic and regional levels in view of the fact that piracy and armed robbery against ships are the symptom of the land-based issue. For instance, the higher incidents of piracy during the late 1990s have been noticed in the Southeast Asia. Many people living in the ashore of Indonesia and Malaysia were compelled to engage in piracy to substitute their

income due to the bad economic situation. The issue of piracy was further fuelled owing to the pervasive political instability due to the financial crisis of 1997, especially in Indonesia [19]. Hence, addressing the root causes of piracy and armed robbery on the land of regional states is necessary to find the sustainable solution.

Like the HOA's regional states, the SCS regional states can also take require steps to revise their domestic legislations to deal with piracy and armed robbery against ships since the existing legislations of the regional states are not adequate to deal with the contemporary piracy and armed robbery against ships [20]. In the case of China, the word "piracy" does not appear in the criminal law of the People's Republic of China [21] despite the fact that China is a party to a number of international treaties that deal with piracy and armed robbery. Therefore, the regulations provided in international instruments, such as criminalization, jurisdiction, arrest and seizure of pirates and armed robber against ships, international coordination and human rights regulation to ensure the rights of the victim and accused can be institutionalized in the domestic legislation of the regional states of the SCS. This is the primary role of international organizations' land based approach in the HOA's regional states.

The regional anti-piracy mechanism developed by the international community encompasses legal and enforcement measures, such as the arrest, detention, prosecution and extradition of perpetrators, as well as the rights and obligations of the contracting parties in these regards in the HOA. The regional states of SCS can seek assistance from the international community to build their capacities, including legal and judicial capacity to have a coordinated and integrated action against piracy and armed robbery against ships. This would strength the confidence among states due to the inter-dependency of regional state with each other, as well as on the seas for their sea-oriented economy.

Similar to the Djibouti Code of Conduct adopted by the regional states of the HOA, the regional states of SCS can adopt the same mechanisms pertinent to SCS's context to address the issue of piracy and armed robbery effectively. It is necessary to include all the SCS's regional states in such a mechanism. Further, ensuring the joint patrolling is very crucial to have a successful counter-piracy mechanism, as well as allowing the regional states under the hot pursuit with their consent would strengthen the counter-piracy mechanism. It is crucial to ensure that states' patrolling does not affect by any action in the land, especially in the ashore. For this purpose, some provisions can be included to use the same rules of the high sea to the territorial seas as it has been contextualized by UNSC in the context of the HOA. In addition, the counter- piracy mechanism also clearly includes provisions with respect to monitoring, preventing and responding to such threats, information sharing, prosecution, extradition, and capacity building of regional states' domestic law enforcement mechanisms and other institutions.

The legal and enforcement mechanisms of the regional states can be reinforced through this mechanism to prosecute the suspected pirates and armed robbers against ships. In order to achieve this purpose, the regional states can agree to formulate the policy option to enhance the willingness and capacity of regional states to fulfil their obligations in line with their national interest. The regional states of the SCS seek some assistance from the UN, regional and civil society organizations to build the capacity of the law enforcement sectors.

There are a few multilateral regional anti-piracy mechanisms in Asia. However, none of them exclusively focuses on SCS's region as they originated from the outside the SCS's region. For instance, the coastal states of the Malacca Strait signed the MALSINDO (Malaysia-Singapore-Indonesia)to patrol the Malacca Strait in July 2004 and it was renamed as 'Malacca Strait Patrol' (MSP) in April 2006[22]. MSP includes provisions to strength the mechanism by including 'hot pursuit' provision. In 2008, Thailand also joined with this mechanism [22]. Further, Malaysia, Singapore and Indonesia agreed to have a cooperative mechanism on Safety of Navigation and Environmental Protection in the Malacca Straits and Singapore in the same period [22].

Apart from these regional multilateral mechanisms, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), a Japanese initiative anti-piracy mechanism is in place in Asia. ReCAAP is the first regional inter-governmental agreement in Asia to "promote and enhance cooperation against piracy and armed robbery."[4]The mounting occurrence of piracy and armed robbery against ships and their complex nature in Asia led to the adoption of ReCAAP on 11 November 2004 and which entered into force on 4 September 2006 [23] [24]. At present, there are 20 states parties to ReCAAP, including Australia, Bangladesh, Brunei, Cambodia, China, Denmark, India, Japan, Korea, Lao, Myanmar, Netherlands, Norway, Philippines, Singapore, Sri Lanka, Thailand, United Kingdom, United States and Viet Nam [24]. While the most prone coastal states of the Southeast Asian region, such as Malaysia and Indonesia are not parties to ReCAAP, some states outside the region became a party to the agreement as stated above.

In general, ReCAAP's strength has been appreciated in terms of limiting piracy and armed robbery against ships in the region. However, it also faces some limitation in terms of substantial and procedural regulations to deal with piracy effectively [25][26]. ReCCAP is also not ratified by both Malaysia and

[4] ReCAAP Information Sharing Centre, About ReCAAP, available at http://www.recaap.org/AboutReCAAPISC.aspx (last accessed 3 August 2015).

Indonesia. In addition, ReCAAP does not offer capacity building at domestic level in terms of legal and law enforcement mechanisms to strength the domestic legislation of regional states.

Therefore, the commencement of a regional mechanism in SCS is pivotal to sustain the interest of the regional states. It would strength their sense of ownership over the mechanism and it would give intensives for the regional states. Further, it will reduce the outside interference in the region. Notwithstanding, SCS's region can learn some lessons from ReCAAP. ReCAAP was also a role model for the adoption of the Djibouti Code of Conduct.

II. Challenges

There are a number of challenges in informing the deployment of international military forces in the context of the SCS due to numerous factors. First, the geographical scope of incidents, context, and nature of piracy in the HOA vary from the SCS. The Somali pirates hijack vessels and seafarers in the high seas (most cases) as defined in Article 101 of UNCLOS. On the other hand, pirates and armed robbers often involve stealing something from vessels in the SCS and this crime often take place in the territorial waters of coastal states (though not always). Therefore, the crime often falls under the crime of armed robbery as defined in Paragraph 2 (2) of the IMO's Code of Practice. Second, Somalia is a failed state in the sense that it does not have the effective law enforcement mechanism or security force to deal with the issue of piracy. Third, Somalia has been facing other protracted issues, such as internal armed conflict and famine for many years.

Given this context, the deployment of international missions by the international community was not complicated for countering piracy in the HOA. However, the SCS's context differs from that of Somalia because there is no failed state in the region. Further, unlike the HOA, the SCS's states are well established in terms of their political, economic and military powers. China is a leading power of South China Sea and China claims many parts of the SSC.[5]

Finally, some other strategic issues, such as overlapping claims of the territorial seas, interest of outside states and priority of national states on their national interest negatively affect on having an effective counter-piracy mechanism in the region of SCS. The sovereignty over some SCS areas is claimed by some countries as territorial boundaries' dispute did not solve yet. The strategic interest of the outside power in the SCS and the Chinese's government perception towards such an interest further complicate the issue. According to the view of China, the regional states, such as the Philippines and some other ASEAN states internationalize the issue to be involved some outside power, including the USA in order to counter the balance of its growing power. Further, China believes that the USA has been taking advantage of expanding and strengthening its presence in the region by using the SCS's issue [15].

Therefore, China is more concern with the involvement of outside power, especially USA and perceives it would internationalize the territorial dispute and isolate, as well as impede in achieving its expected outcome [15]. Thus, this factual circumstance disqualifies in informing the deployment of the international forces in the SCS.

CONCLUSION

The international community follows the multidimensional approaches in the land, as well as at sea to response piracy in short and long-term perspective in the HOA. This model seems to be a role model for other regions to deal with piracy. However, the success of the lessons and opportunity depend on the specific context. The examination shows that the SCS' regional states would draw some lessons from the HOA's counter-piracy model in terms of domestic and regional capacity building, coordination and self-protection measures. Nevertheless, informing the deployment of international forces seems to be a hardly smoking gun in the context of the SCS due to the different nature of the geographical scope of incidents, the context and nature. The divergent views of the SCS's states in terms of strategic and material interests, diverse position with respect to the counter-piracy strategy, overlapping claims over some parts of the SCS and interest of outside power in SCS are further complicating the issue.

Therefore, it is necessary to take into consideration of the surrounding issues and facts when drawing the successful lessons from the HOA's counter-piracy model. Thus, regional states can develop a regional mechanism that is pertinent to the SCS. This is the best and useful option for the SCS since the regional arrangement in combating against piracy and armed robbery against ships has been widely recognised by the international community. The IMO's Code of Practice invites states "to develop, as appropriate, agreements and procedures to facilitate cooperation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships."[6]

Further, it is essential to solve the issue over the territorial boundary at seas by means of peaceful negotiation. As already agreed by the regional states, China with other regional states should fully implement the Declarations of the Conduct of Parties in the SCS. Although the Declaration was signed in 2002, parties only agreed to the implementation of the Declaration in 2011. It is very crucial progress

[5] According to the Chinese nine-dash line, China encompasses the majority of the South China Sea.

[6] IMO, *Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships*, IMO Doc.A26/RES.1025 , 2 December 2009, para.4.

among the regional states, though it is necessary to develop this Declaration into a binding agreement [15]. This would be a very crucial step to implement the regional counter-piracy mechanism in SCS. Considering establishing a special court of piracy and armed robbery against ships by including international and domestic measures would help to prosecute pirates and armed robbery against ships effectively in the region of the SCS.

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