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Countermeasures against China's Maritime Militia Operations in the South China Sea

Gilang Kembara

SYNOPSIS

China has actively employed its maritime militia to support the Chinese coast guard, as well as navy, in asserting the country's claims in disputed waters, particularly in the South China Sea. Countering China's maritime militia requires a combination of political, operational and legal countermeasures.

COMMENTARY

In 2012, a group of Chinese fishing vessels anchored at Scarborough Shoal in the South China Sea. Philippine attempts to arrest the fishermen led to a standoff that culminated in a complete seizure of the shoal by China and a blockade against Filipino fishing communities attempting to exercise their right to fish in their country's own exclusive economic zone. The control of the shoal, and many other disputed features in the South China Sea, has been chiefly conducted by China's maritime militia.

Although Beijing has always denied any responsibility for the actions of its maritime militia, these forces are recognised by the state as a component of the People's Liberation Army (PLA). The militia is mentioned in [Article 55 of the People's Republic of China Constitution](#), [Article 4 of the Military Service Law](#) and [Article 22 of the National Defence Law](#).

China's maritime militia policy has seemingly evolved into a strategy that moves the status quo in favour of China without crossing the threshold into a full-scale military conflict. To advance China's interests, there are three operations that the maritime militia commonly conducts in disputed waters. First, it cements China's claimed rights

through fishing. [Beijing encourages its fishermen](#) to protect, contest, and occupy its contested maritime space as much as possible. Chinese fishermen and their activities thus serve as a tool of Beijing's policy to protect its fishing rights.

Second, maritime militia groups are often stationed in and around China's offshore outposts in the South China Sea to [collect intelligence](#). Indeed, the maritime militia groups spend far more time anchored or in transit than fishing.

Third, the maritime militia advances China's interests through intimidation. The maritime militia is deemed to be an effective paramilitary force to [deter outside forces](#) from undermining the sovereignty and sovereign rights of China. The militia obscures the core principles of international humanitarian law calling for a distinction to be maintained between civilian and military elements.



The BRP *Cabra* of the Philippine Coast Guard and two vessels of the Bureau of Fisheries and Aquatic Resources approach Chinese-flagged ships at Whitsun Reef (known as Julian Felipe Reef in the Philippines) on 13 April 2021 during maritime patrol operations. *Image from Wikimedia Commons.*

Countermeasures against Maritime Militia

China's continued use of the maritime militia to maximise its claims in the South China Sea creates a conundrum for Southeast Asian claimant states on the proper way to counter these forces. Using grey-hull vessels, or warships, in the disputed waters of the South China Sea could be misinterpreted by other claimant states, further destabilising the overall situation. This paper analyses three areas of countermeasures that could directly and indirectly mitigate the maritime militia threat from China.

The political countermeasure

The continued deterioration of the situation in the South China Sea reflects an absence of political trust, predominantly between the Southeast Asian claimant states and China, which has led to an increase in the politicisation and securitisation of economic rights and territorial claims. Capitalising on the lack of trust, Beijing has increasingly used its maritime militia to assert its claims of sovereignty and sovereign rights. Such use has led to a situation of tactical securitisation, where low level political issues – fisheries in this case – are linked with the survival of the nation.

The absence of trust between China and the other claimant states would have the unfortunate result of perpetuating the presence of the Chinese maritime militia in the area, which could in turn give enhanced “legitimacy” to external actors to involve themselves in the South China Sea to counter what they perceive as China’s coercive actions. Therefore, the claimant states would need to cement a greater level of trust among themselves in order to defuse the situation.

The operational countermeasure

The Chinese maritime militia’s continued use of grey-zone activities – actions short of all-out warfare – has frustrated efforts to establish an understanding between parties that is critical for advancing cooperative fisheries management. Consequently, claimant states often consider using short-term operational countermeasures against China’s growing use of the maritime militia. To that end, we have seen examples such as [Japan’s assistance](#) in developing the Philippine coast guard’s patrol vessels through its overseas development assistance (ODA) loan, as well as the [transfer of US Coast Guard Hamilton-class cutters](#) to the Vietnamese coast guard.

The legal countermeasure

Notwithstanding Beijing’s denial of any responsibility for the actions of its militia, it is possible to attribute those actions to China through several international legal frameworks. Based on the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the conduct of China’s maritime militia at sea is attributable to the Chinese government since the militia could be categorised as a state organ based on China’s internal law.

Furthermore, according to the UN Convention on the Law of the Sea (UNCLOS), to which China is a party, the conduct of its militia in intimidating other vessels into leaving disputed areas can be considered a breach of due regard by a user state of those waters to ensure the freedom of navigation for all states. Lastly, the conduct of the maritime militia in deliberately causing harm to other vessels is not in conformity with China’s obligations for maritime safety, as stipulated in the International Regulations for Preventing Collisions at Sea (COLREGs).

Tipping the Scales

Although evidence on China’s use of the maritime militia is substantial, we must be mindful that China is not the only state that relies on such forces. To support and protect its claims and activities in the South China Sea, Vietnam established [its own maritime militia](#) in 2009. Its role has been mainly to assist Vietnamese authorities in collecting information and intelligence, conducting search and rescue operations, and protecting against maritime crimes. Since 2019, the Vietnam maritime militia has been made a permanent unit under the Vietnam People’s Armed Forces.

In contrast, the Philippines does not possess an active and permanent maritime militia unit. However, it has often relied on its fishermen and civilian vessels to assert its sovereignty and sovereign rights in the South China Sea. For example, a recent

resupply mission to Filipino fishermen in the South China Sea was conducted by a Filipino NGO named "[Atin Ito](#)".

Such reliance on civilian and fishing vessels to assert a claimant state's sovereignty and sovereign rights has become a dominant feature in the long-running South China Sea dispute. As South China Sea littoral states progressively enhance their maritime domain awareness capabilities, more details about these activities are likely to come to light.

Conclusion

The growing use of the maritime militia by China serves to blur the line between fishing/civilian boats and paramilitary/enforcement vessels. These units are empowered to perform essential functions for the Chinese government, as provided by Chinese internal laws, including defending China's claimed maritime frontier and maintaining public order in disputed waters.

However, it is important to note that other Southeast Asian claimant states are also using or considering the use of civilian units or maritime militia to strengthen their claims. Such use is seen as a proportional response to China's activities without resorting to the use of grey-hulled or other enforcement vessels. This dynamic underscores the complex and evolving nature of the South China Sea disputes, where both military and paramilitary strategies are employed to advance national interests and territorial claims.

Gilang KEMBARA is a Research Fellow in the Maritime Security Programme at the S. Rajaratnam School of International Studies (RSIS).