

Securing the Sulu-Sulawesi Seas from Maritime Terrorism: a Troublesome Cooperation?

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Abstract

The security of the Sulu-Sulawesi Seas is of great importance for the international seafaring community. As a result, lack of adequate cooperation in this area has raised some concerns over the safety and security of navigation in the waterways. This article focuses on Indonesia and the Philippines role in securing the waters and the behaviour of these two countries when it comes to cooperation. It investigates why they have joined a number of cooperation arrangements while rejecting others. Most scholarly works point at sovereignty concern as the main reason underpinning their decision. Rather than focusing solely on sovereignty infringements, this article argues that Indonesia's and the Philippines' decisions towards cooperation initiatives are informed by the calculation of (both the sovereignty and implementation) costs and benefits, and the level of their control over the cooperation outcomes.

Keywords: Indonesia, the Philippines, maritime terrorism, Sulu-Sulawesi Seas

Introduction

The Sulu-Sulawesi Seas are not only important to facilitate cross border movement between people living in the southern part of the Philippines and northern part of Sulawesi, Indonesia, but also for international navigation. The Sulu-Sulawesi Seas that border the two countries are considered a safer route for super tankers. Bigger tankers navigating to and from East Asia and the Middle East have to divert through this waterway due to the depth constraints of the Straits of Malacca.[1]

In the aftermath of 9/11 Indonesia and the Philippines cooperation to secure the Sulu and Sulawesi Seas was put under further international scrutiny. Acts of maritime terrorism in this area generated international concern. In the Sulu Sea, the Abu Sayyaf Group (ASG) and the Moro Islamic Liberation Front (MILF), both based in the southern part of the Philippines, have been indicted for carrying out attacks against ships to generate income.[2] The waters bordering Indonesia and the Philippines have been viewed as gateways for terrorists travelling from one part of Southeast Asia to another. Members of the Jamaah Islamiyah, a Southeast Asian terrorist group, and other Islamic militant groups from Indonesia use this route to travel to training camps in the Philippines.[3] They travel from Kalimantan Timur to Sabah (Malaysia) and then proceed to Tawi-Tawi and Sulu/Mindanao (the Philippines).[4] In mid-September 2013, the Moro National Liberation Front attacks on Zamboanga City and clashes with the Philippines military in Jolo Island have forced 30,000 civilians to flee their homes, destabilising order and security in Sulu area.[5] These circumstances put more pressure on enhancing security cooperation in the Sulu-Sulawesi Seas.

External powers, particularly the United States, have pressed for greater security cooperation in this waterway. The U.S. has made a number of efforts to develop multi-national cooperation in the Seas. The U.S. Regional Maritime Security Initiative (RMSI), for instance, was introduced to Asia-Pacific countries in 2004. Indonesia and Malaysia strongly opposed the initiative after Admiral Fargo's statement before Congress was made public through various media reports. In a Congressional hearing on March 31st, 2004, Admiral Fargo explained that as part of the RMSI, the U.S. was "looking at things like... putting Special Operations Forces on high-speed vessels, potentially putting Marines on high-speed vessels...to conduct effective

interdiction.”[6] Concern over sovereignty infringement has often been pointed out both by the media and scholars as the reason underpinning Indonesia and Malaysia’s rejection of the RMSI. Although sovereignty costs can have some bearing on understanding states behaviour towards cooperation, a more comprehensive analysis on the reasons underlying their disposition is required. As an Indonesian MoD official that took part in the formulation of Indonesia’s policy on the RMSI explained, despite media reports on the U.S. plan to send its vessels, the administration understood that direct patrols by the U.S. Marines were not part of the cooperation activities that Washington offered to Indonesia.[7] Indonesia opposed the initiative because of the design of the institution that was perceived as overly militaristic and the lack of its government’s influence over the design of the initiative.

Following the failure of the RMSI, from 2005 onwards, the United States, together with Indonesia, the Philippines, Malaysia, Brunei and Australia, has been involved in a series of negotiations under the Asia Pacific Regional Security Forum to find an acceptable cooperation regime for the Sulu-Sulawesi Seas.[8] During the Multinational Interagency Maritime Security Workshop that was held in Cebu, the Philippines from 27-29 August 2007, the U.S. continued to push for formal multinational cooperation to address maritime terrorism concerns regarding the Sulu-Sulawesi Seas. Nevertheless, the U.S. anti-terrorism proposal did not gain much support from the littoral states.

Given the current difficulties to improve cooperation in the Sulu-Sulawesi Seas, it is important to look at the design of existing cooperation arrangements and the reasons underpinning Indonesia and the Philippines’ attitude towards these institutions. Many analyses point to the issue of sovereignty as the primary cause of limited cooperation.[9] By over-emphasizing sovereignty concerns, these studies overlook Indonesia and the Philippines keenness to join maritime security arrangements, including those that involve cross-border sea patrols, and provide other states access to their port facilities, airspace and land territory. This article argues that concern over sovereignty infringement alone does not determine Indonesia’s and the Philippines’ behaviour towards cooperation. The evidence shows that control over the course of negotiations and the calculation of costs and benefits play important roles in shaping cooperation by Indonesia and the Philippines. This article makes an empirical contribution to the literature by analysing how Indonesia and the Philippines secure borderless areas in the Sulu-Sulawesi Seas. Most scholarly works on maritime cooperation in Southeast Asia tends to focus on management of security in the Strait of Malacca and the South China Sea; as such there is a lack of attention given to study cooperation to address maritime terrorism in the Sulu-Sulawesi Seas.

The article begins by explaining the concept of legalisation, its relations to the calculation of costs and benefits in the International Relations (IR) literature, and the method used to assess these variables in this article. It proceeds by mapping Indonesia’s and the Philippines responses to the U.S. global war on terror. It then expands the analysis by exploring the institutional designs of cooperation initiatives in the Sulu-Sulawesi Seas, gaps in cooperation practices and ways to remedy the situation. This article then concludes with the key points to take away from the analysis presented.

Why Cooperate?

Given the transnational nature of maritime terrorism cooperation between states that share common borders is very important. Among various strands of International Relations (IR) thoughts that have shaped the discussion of cooperation, neoliberal institutionalism provides a useful insight into states’ attitudes towards cooperation. Neoliberal institutionalism points out that the degree of legalisation associated with an international institution informs the calculation of gains and therefore, the cooperation outcome.

Neoliberal institutionalism argues that state behaviour towards cooperation is informed by the calculation of absolute gains.[10] States will cooperate if the overall benefits of cooperation outweigh the costs. The costs of cooperation are constituted by the sovereignty and implementation costs.[11] The sovereignty costs are symbolic and material costs that are associated with the lessening of national autonomy.[12] The sovereignty costs are seen as the unintended consequence of legalisation sovereignty costs.[13] Thus, in assessing the sovereignty costs this article examines the degree of legalisation associated with an institution.

Legalisation is defined by a set of characteristics that a cooperation institution may or may not possess.[14] This set of characteristics comprises of three dimensions: obligation, precision and delegation.[15] Obligation refers to the degree to which a set of rules or commitments constrain the behaviour of states.[16] Precision implies the extent to which rules define what a cooperation arrangement requires, authorizes and proscribes to contracting parties.[17] Delegation is the extent to which states delegate authority to third parties such as courts, arbitrators and administrative organisations to apply and interpret rule and to settle dispute.[18]

In this article, the degree of obligation is grouped into two categories: high and low. A high level of obligation invokes mandatory requirements for the contracting party and calls for the traditional legal formalities of signature, ratification and comes into force.[19] On the other end, cooperation initiatives with low levels of obligation have rules or regulations that serve as “recommendations” or “guidelines” and do not create legally binding requirements.[20]

The level of precision is also grouped into two categories: high and low. A high level of precision shows the presence of determinate rules that only leave narrow possibilities for contested interpretations to arise. Under this condition an agreement provides a specific intended objective and means of achieving it.[21] In contrast, a low level of precision reveals vague and general rules without specifying particular means or procedures to achieve cooperation objectives.[22]

The degree of delegation is ,ed into two: high and low. A high level of delegation implies that a state is granted authority to implement, interpret, and apply the rules, resolve disputes and make further rules to external authority.[23] Low levels of delegation take place when states do not delegate authority for monitoring, settling disputes and enforcing rules to an external authority.

The level of sovereignty costs corresponds with the strength or weakness of these three dimensions of legalisation. Sovereignty costs make states hesitate to accept hard legalisation of international cooperation particularly when it involves significant degree of delegation.[24] Sovereignty costs are measured in two categories: high and low. Sovereignty costs are high when a cooperation arrangement reveals a high degree of obligation, precision and delegation. Under the condition of high sovereignty costs, states have to accept external authority over significant decision making or, in more extreme conditions, an external authority interfering in the relations between the state and its citizens or territory.[25] The sovereignty costs are low when one or all the three components of obligation, precision and delegation are low. Under the conditions of low sovereignty costs, Indonesia and the Philippines are not required to make significant legal and governance changes at domestic level or accept external authority in its decision making process.[26]

The second component of costs that need to be considered are the implementation costs. This type of cost is incurred in “the process of putting international commitments into practice: the passage of legislation, creation of institutions (both domestic and international) and enforcement of rules.”[27] Accordingly, implementation costs are measured into two categories: high and low. High implementation costs occur when a state needs to carry out extensive policy changes, make substantial adjustments at domestic level and therefore, spend economic resources to meet cooperation requirements. Low implementation costs takes

place under a circumstance where an international commitment is already compatible with current practice. Thus, adjustment is “unnecessary and compliance is automatic.”[28]

The term *benefit* in this article is defined as the net advantages obtained by participants from cooperation. [29] While an abundance of IR academic texts devote their attention to explaining the costs of cooperation, the concept of benefits has been overlooked. The aggregate benefits of cooperation are categorised into two groups: high and low. High benefits emerge when the incentives of cooperation are tangible/concrete and are not available elsewhere. In contrast, low benefits occur when there are no identifiable benefits or if the benefits of cooperation are available elsewhere.

This article argues that another plausible explanation for the Philippines and Indonesia behaviour is the degree of control that the two countries have in shaping cooperation institutions. The level of control is high when both countries have the ability to influence the negotiations and shape the term of agreement to meet its own concerns. In cases where Indonesia and the Philippines have control over the negotiation process, the benefits of cooperation will likely exceed the costs. The level of control is low when the two countries were not involved in designing the terms of agreement and primarily face with the two options: to join or not to join a cooperation institution.

The calculation of gains and the degree of legalisation associated with it, as well as the level of control that Indonesia and the Philippines have over cooperation outcomes shape their behaviour.

Indonesia's and the Philippines' Varying Attitudes towards the War on Terror

In the aftermath of 9/11 the United States (U.S.) began to express its concern that “Muslim extremists in Indonesia, Malaysia, the Philippines and Thailand” were a possible threat to world trade navigating through Southeast Asian waterways.[30] Parallel to this the U.S embarked on a global campaign against terrorism. Identifying and intercepting maritime terrorist threats before they reach the U.S. became the goal of U.S. maritime strategy in the war on terror.[31]

Responding to the U.S. war on terror campaign Indonesia and the Philippines had different approaches to terrorism and, therefore, the way they dealt with sea robbery and maritime terrorism was different. The Philippines government treated maritime terrorism and armed robbery against ships as intertwined issues. [32] In the Philippines, militant groups such as the MILF and the ASG have both used terrorism as their method of warfare in separatist struggles. These groups conducted attacks against vessels plying through the Sulu waters. In 2000 the MILF claimed responsibility over the bombing of Our Lady of Mediatrix in Ozamis City.[33] On February 27th, 2004 the ASG announced their involvement in the explosion/fire incident on board MV Super Ferry causing the death of 116 of the 900 passengers and crew.[34] In comparison, the Indonesian government perceived sea robbery and maritime terrorism issues as not inter-related. The government carefully differentiated the two issues in order to avoid any form of internationalisation of terrorism issues that may invite foreign intervention to secure its waters. Officials also deny the presence of a maritime terrorism threat to Indonesian waterways.[35]

These different approaches to maritime terrorism influence the varying responses taken by the two governments. The Philippines, on the one hand, is an ally of the U.S. in the war on terror in the region. The first U.S. policy program in Southeast Asia was expressed through assistance to the Philippines. Their government received \$100 million in training assistance, military equipment, and maintenance support for the Armed Forces of the Philippines (AFP).[36] In 2002, 660 U.S. Special Forces were dispatched in the Southern Philippines to combat the ASG.[37] The Philippines and U.S. government labelled the military

operation in Luzon as a Balikatan training exercise, in order to circumvent the constitution of the Philippines which forbids the presence of foreign forces on Philippine territory, despite the fact that the U.S. forces were armed and authorised to return fire if attacked.[38] By early 2005, U.S. troops were still assisting the Philippines in their counterterrorism operation.[39] The Philippines is among the very few ASEAN member states that joined a U.S. led maritime security initiative, the Proliferation Security Initiatives (PSI) in 2005. An initiative aimed to improve international cooperation to prevent and interdict the smuggling of WMD materials. As part of the Philippines bilateral cooperation with the U.S. in 2012 in order to improve Manila's naval capabilities the U.S. pledged to transfer two vessels to the Philippines navy, deploy fighter jets and a coastal radar system.[40]

In comparison, Indonesia's counter terrorism policies have been low key and mainly focused on intelligence sharing.[41] Indonesia rejected participation in a number of U.S. led initiatives to deal with maritime terrorism, including the PSI and the Container Security Initiatives. Nevertheless, at bilateral level Indonesia cooperates closely with Washington. To formalise the bilateral defence cooperation, the two states signed the U.S.-Indonesia Defence Framework Arrangement in June 2010. The defence arrangement requires Indonesia and the U.S. to work together to improve Indonesia's capacity-building in maritime security and ensure cooperation in the area of operational support and military supplies.

From 2006 to 2008, through the defence cooperation, Indonesia received U.S. \$57 million to support the establishment of an Integrated Maritime Surveillance Systems (IMSS).[42] The IMSS covers more than 1,205 kilometres of coast line in the Straits of Malacca and approximately 1,285 kilometres of coast line in the Sulawesi Sea.[43] An Indonesian security expert confirmed that information gathered from the U.S. installed IMSS was also shared with the U.S.[44] Indonesia's willingness to increase cooperation in defence logistics with the U.S. shows that the government was willing to cooperate and was not preoccupied with sensitivity over sovereignty concerns. However, as an Indonesian former high government official explained, the government felt that it was important to maintain a careful balance between halting terrorism and cooperating with foreign countries without going against the will of the Indonesian public.[45]

Indonesia-the Philippines: Real Politics and the Existing Cooperation Institutions in Sulu-Sulawesi Seas

Terrorism is not a new issue for Indonesia and the Philippines.[46] In the Philippines, militant groups such as the MILF and the ASG have both been using terrorism as their method of warfare in separatist struggles. In Indonesia, the Free Aceh Movement, as well as other armed separatist groups in Papua (OPM), and East Timor (Fretelin/Falintil) have perpetrated terrorist violence to gain greater autonomy from the central government.[47] At least 34 bomb attacks have taken place in Indonesia since the resignation of Suharto in May 1998.[48] Since the hotel bombings in 2009, terrorist groups in Indonesia have shifted their target from attacking foreign embassies and other Western iconic symbols to local targets.[49] This can be seen in attacks against NGOs workers in Aceh, local Christian communities in Central Sulawesi (Poso), churches in Central Java, and police across various parts of Indonesia, including Poso, Purworejo, Kebumen, Hampan Perak and the south of Tangerang.[50] Police investigations reveal strong links between terrorist groups in Indonesia and their counterparts in the Philippines. Some of the perpetrators of terrorism have received training in terrorist camps in Mindanao and weapons used for training and attacks in Indonesia were smuggled from the Philippines.[51]

Despite the Indonesian and the Philippines long history of terrorist incidents it was only after 9/11 that governments around the world began to highlight the possibility of terrorist attacks in Sulu-Sulawesi waters. There is a growing uneasiness among the international community regarding the lack of cooperation in the

Sulu-Sulawesi Seas. The real politics in the region has been pointed as one of the reasons underpinning this condition. Up until now Indonesia and the Philippines have not settled their maritime boundaries in this area.

On December 13th, 1957 Indonesia laid down the country's system of archipelagic baselines. Indonesian Prime Minister Djuanda declared that "all waters surrounding, between and connecting the islands constituting the Indonesian state and therefore, parts of the internal or national waters." [52] Following Djuanda's declaration, the government enacted a national law on February 18th, 1960 to formalize the archipelagic doctrine. The act promulgated straight baselines connecting 196 outermost points of the outermost islands in its archipelago. [53] In a similar vein, the Philippines Presidential Decree No. 1599 of 11 June 1978 establishes its Exclusive Economic Zone (EEZ) of 200 nautical miles (nm) from their archipelagic baselines. The Indonesian and the Philippines' system of archipelagic states eventually gained international recognition at the Third United Nations Conference on the Law of the Sea and included in the 1982 Convention. [54]

Under the 1982 United Nations Convention on the Law of the Sea, both Indonesia and the Philippines are allowed to claim a 12 nm territorial sea and a 200 nm EEZ measured outward from their archipelagic baselines. Nevertheless, no part of the sea reaches more than 200 nm from the nearest coast. [55] It would be difficult for Indonesia to enter into negotiation as long as the Philippines asserts its claim over all the waters within its treaty limit. [56] This is because Indonesia's Pulau Miangas (Palmas Island) is located within the treaty limit. [57] The International Court of Justice decision in the late 1920s confirmed Miangas as part of Indonesia. [58] Yet, the borders on waters surrounding the island have not been settled. Despite the absence of open confrontation over the waters between the two governments, in February 2009, the issue concerning Miangas became the centre of attention during a coordination meeting held by the National Central Bureau and the Interpol Indonesia, at the National Police Headquarters in Jakarta, on February 11th, 2009. [59] Deputy Head of North Sulawesi Regional Police, John Kalangi pointed out that the Philippines Tourism Authority has published a map that included Indonesia's northern most islands in Sangihe and Talaud Regencies including Miangas, Marore and Marampit as part of the Philippines. [60] Indonesian Minister of Foreign Affairs, Hassan Wirayuda toned down the debate by pointing out that the Philippines government has not made any official claim. [61] Currently there has been no maritime border settlement agreement between the two countries. Despite the absence of maritime boundaries arrangement Indonesia and the Philippines have embarked on a series of cooperation agreements to address maritime terrorism. These include a defence agreement, two sub-regional arrangements and a regional convention to counter terrorism. The following part of this section examines the sovereignty costs resulted from the degree of legalisation of each agreement, the implementation costs, the benefits of cooperation and the two countries' ability to influence the terms of agreement in the three cases.

Indonesia-the Philippines' Bilateral Defence Cooperation Agreement (DCA)

On August 27th, 1997 Indonesia and the Philippines Ministry of Defence enhanced the security cooperation between the two countries by signing the Agreement on Cooperative Activities in the Field of Defence and Security. It requires parties to carry out joint and combined military training and exercises, border patrol operations, and exchange of information.

Assessment of the obligation, precision and delegation of this agreement highlights the low level of sovereignty costs. Despite the high degree of precision, this agreement only has low degrees of obligation and delegation. Based on the cooperation requirements it is argued that the agreement has non intrusive

obligations. The agreement only creates weak legal responsibility because it requires parties mainly “to endeavour” to take measures to cooperate, “to encourage” cooperation, and “to promote” bilateral relations. [62] It introduces soft commitments since it does not regulate a responsibility to make reparations when breaches of an agreement cause losses to the other party. In addition, the agreement has escape clauses that enable parties to avoid their legal responsibility. Under the agreement participants are allowed to review and amend the agreement at any time through mutual consent. The bilateral agreement between Indonesia and the Philippines also enables states to file their withdrawal after giving the other 90 days notice.

The agreement was drafted with a high degree of precision. It articulates mandatory duties for each state, the forms of cooperation that states can perform under the bilateral cooperation, procedures regarding exchange of intelligence information, methods to exchange classified information and equipment, and measures to solve disputes and publications to the media. This agreement explains courses of action that governments cannot take. Such actions include exercising any competence or functions that exclusively belong to the other party’s authority, interfering in internal affairs of the other state, and transferring intelligence information to a third party without written approval from both states.

The level of delegation of the agreement is low. Although it establishes a Joint Defence and Security Cooperation Committee to deal with any matter arising from the interpretation, application or implementation of the agreement, this committee does not operate independently from the two governments. A group of individuals that form the committee are nominated by concerned states. The tasks of the committee are limited only to identifying potential cooperation activities, recommending policies and procedures, implementing mutually agreed policies, coordinate, monitor, and evaluate policies and activities to improve future programs. Settlement of any dispute arising from interpretation and implementation of the agreement is managed through consultation and negotiation between the participating governments.

The agreement also poses low implementation costs. Most activities governed by the defence agreement are not new to Indonesia and the Philippines. The two countries’ maritime agencies have carried out these activities prior to the signing of the agreement.[63] Bilateral cooperation between the two countries to address maritime terrorism has been established in the form of the Indonesian and the Philippines Joint Border Committee forum since 1975. The JBC cooperation forum covers a broad range of issues including armed robbery against ships, smuggling, illegal fishing and illegal immigration.[64] The two countries carry out various activities under this forum, including a Marine Policing Exercise that involves the Indonesian Ministry of Transport and the Philippines Coast Guard, the two navies coordinated patrol called CORPAT PHILINDO, joint search and rescue exercise, information exchange and border crossing control.[65] The coordinated maritime patrol involving patrol vessel and maritime reconnaissance aircraft to secure the waterway between Southern Mindanao and northern Sulawesi, for instance, has been established since 1989, many years before maritime terrorism receives worldwide attention after 9/11 attacks.[66] A Philippine official claimed that the two countries have carried out cross border pursuit to deal with armed robbery attacks at sea for many years. This mechanism allows a vessel from each country’s maritime agency to transgress to the other’s territory when pursuing sea robbers although such vessel is not equipped with power of arrest.[67]

The defence agreement brings high benefits for Indonesia and the Philippines. A former Indonesian Navy official explained that “for Indonesia the bilateral agreement with the Philippines is important to increase law enforcement presence in our common maritime borders... to deal with illegal fishing and smuggling.”[68] Cooperation with the Philippines’ authority was seen as central strategy to assure the success of Indonesia’s national attempts to curb smuggling of weapons to those provinces that have experienced ethnic and sectarian conflicts. When the agreement was introduced in 1997 communal and sectarian conflicts had flared

up in a number of locations in Indonesia.[69] Smuggling of arms from the Philippines to the North Sulawesi (Miangas Island) has been responsible for exacerbating violence in the conflicts across the country.[70] For the Philippines cooperation with Indonesia is required to intensify sharing of information and address weak points in their anti terrorism efforts. The Philippines military has identified that a number of Indonesian JI leaders have assisted the ASG members in creating security disturbances in western part of Mindanao and trained them, particularly in making explosive devices.[71] The JI was responsible for two bombs in 2003 at the Philippines Davao airport that killed 38 people and injured 200.[72]

Indonesia and the Philippines expected a high degree of influence over the terms of agreement in the negotiation of the defence agreement. The bilateral agreement was discussed exclusively among these countries. Governments of the two countries specifically shaped the terms of cooperation to add value to their counter terrorism and sea robbery operations and efforts in dealing with undocumented migration and smuggling.[73] Both agreements took into account Indonesia's and the Philippines' needs in gaining support for its maritime patrol, dealing with arms smuggling to its territory, and developing defence technology.[74]

The Brunei Darussalam- Indonesia- Malaysia- The Philippines East ASEAN Growth Area (BIMP-EAGA)

Indonesia and the Philippines together with Brunei Darussalam, and Malaysia launched the EAGA in 1994 to address the development gap within the member countries.[75] Although the cooperation initiative is driven by economics, after 9/11 efforts to strengthen both transport security and maritime borders became one of the focuses of the BIMP-EAGA.[76]

In 2007 the member states of the EAGA signed a Memorandum of Understanding (MoU) on Establishing and Promoting Efficient and Integrated Sea Linkages. The 2007 Sea Linkages MoU requires parties to: designate their gateway ports for facilitation of maritime trade and movement of people, update each other on latest Customs, Immigration, Quarantine and Security (CIQS) facilities, procedures and requirements, establish a database on the EAGA maritime trade, produce a projection report for maritime flows and coordinate the establishment and modernisation of the CIQS facilities in gateway ports.

Following the implementation of the MoU on Sea Linkages, the four states launched the MoU on Transit and Interstate Transport of Goods in 2009. It requires member states to ensure that vehicles engaged in cross-border traffic are registered in their home country, bear identification marks, carry a valid certificate and comply with safety and equipment requirements of transit and host countries.

The two EAGA initiatives brought low sovereignty costs. The Sea Linkages MoU and the Transit and Transport of Goods MoU introduce weak legal responsibilities. The two MoUs allow parties to withdraw from these agreements after a six month notice period. Neither MoU includes a responsibility to compensate others when one party breaches the agreement, bringing injury or loss to other parties.

The MoUs' requirements show a high level of precision. These agreements articulate regulations on designation of EAGA ports in great detail. They stipulate implementing arrangements for contracting parties in various cooperation activities. These agreements also regulate procedures to conduct consultations, reviews and amend the MoU, settle disputes and terminate cooperation.

Both MoUs also display a low degree of delegation. These agreements do not delegate authority for dispute resolution arising from interpretation and implementation of the MoU to an independent third party or a tribunal. Review processes, amendments of the agreement and dispute settlement are conducted through negotiation and consultation.

As explained above regarding the degree of obligation, levels of precision and delegation associated with both MoUs confirms low sovereignty costs. The two agreements also do not pose high implementation costs to Indonesia and the Philippines. The MoUs are built on existing bilateral cooperation links between member states customs, immigration and law enforcement agencies.[77] Indonesian officials confirmed that Indonesia has long standing cooperation with the neighbouring EAGA states to curb various illicit activities including the smuggling of goods, arms and people.[78] The two agreements are already in line with both governments' policies in dealing with maritime terrorism and in developing the central and eastern part of Indonesia for Jakarta and the Southern Mindanao for Manila.[79] These two MoUs serve as both legal frameworks that govern cooperative activities between Indonesia, Malaysia, Brunei and the Philippines and burden sharing initiatives to secure waters along their common borders.

Not only do the two MoUs bring low costs, the BIMP maritime initiatives are beneficial for Indonesian and Filipino maritime agencies capacity-building as it provides training and exercise opportunities. These activities are important to ensure the success of actual coordinated border patrols as well as customs and immigration cooperation between the maritime agencies of participating states.[80] By January 2010, under the CIQS forum, member countries had held 11 maritime exercises to enhance coordination, partnership and improve their capacity to deter terrorism and secure their ports.[81] Under the BIMP framework Indonesia, Malaysia, the Philippines and Brunei also regularly hold joint cross-border patrol exercises to strengthen their response against terrorism and smuggling.[82] Through this cooperation the Indonesian and Filipino Navy and other maritime agencies received support during patrols along the coast of Sulu-Sulawesi Seas. This included vessels and aircraft accompanying ships on patrol and coastal coordination provided by customs, immigration and security agencies of Brunei and Malaysia.[83] Cooperation arrangements under both MoUs fitted with pre-existing goals that Indonesia and the Philippines had been unable to successfully achieve. Coordination and designation of points and ports of entry and exit and transit routes among the four member states assists Indonesia and the Philippines in monitoring the illegal movement of people and goods. The two MoUs help to identify, detect and prevent "movement and possible apprehension of undesirable travellers" and goods.[84]

The two EAGA MoUs confirm the ability of the Philippines and Indonesia to influence the terms of agreement. Indonesia and the Philippines were able to explore potential cooperation activities, formulate agreement drafts, propose new sea routes and project plans, choose its designated gateway ports and convey its disagreement towards other states' request under the EAGA framework.[85]

The Agreement on Information Exchange and Establishment of Communication Procedures

The Philippines, Indonesia and Malaysia formalised a tripartite cooperation agreement to strengthen maritime security cooperation in the tri-border sea areas of the Sulu and Sulawesi Sea by signing the Information Exchange and Establishment of Communication Procedures agreement on May 7th, 2002, to which Thailand and Cambodia later acceded.[86]

The agreement obliges each party to establish communication networks, share information, inform the arrest of a national of other parties, and establish a Joint Committee to carry out administrative and operational tasks. The agreement requires parties to share passenger lists, provide access to each other's fingerprint databank, consult each other on visa waiver lists of third country nationals, share blacklists at visa-issuing offices, strengthen border control through designating entry and exit points and sea lanes, harmonise legislation to combat terrorism and conduct joint public diplomacy to counter terrorists' propaganda.

The degree of obligations, precision and delegation shows that the agreement poses low sovereignty costs. The

requirements of the agreement show that it has non intrusive obligations. The agreement reserves the right of each party to refuse to exchange “any particular information or intelligence for reasons of national security, public order or health.”[87] It enable parties to escape from legal responsibility as it allows states to suspend the agreement “temporarily, either in whole or in part” after providing 30 days notification.[88] In addition, the agreement does not include any obligations for a party to compensate others if a breach of the agreement causes loss and injury to others.

The agreement shows a high degree of precision. It provides a detailed account of states’ rights and duties, administrative and organisational procedures to set up communication between parties, logistical and funding arrangements, duties and the line of reporting for the Joint Committee, procedure to settle disputes, amend and terminate the agreement. The agreement explains what parties to the agreement are allowed and not allowed to do. It does not allow a party to disclose confidential documents, information and other data received from other parties. The agreement has a low degree of delegation. Any disputes regarding the interpretation and the implementation of the agreement are settled through friendly negotiation. The agreement points out that the enforcement of rules is made “without reference to a third party of international tribunal.”[89]

The agreement also does not introduce high economic costs to participating states. Since the early 1960s the concept of Maphilindo (Malaysia- the Philippines- Indonesia) cooperation has been introduced.[90] Before the establishment of this agreement in 2002, the three governments have carried out various cooperation activities in the field of maritime security.[91] It does not require Indonesia and the Philippines to make substantial changes on the national level because the two countries had installed radars and allocated maritime agencies personnel, patrol vessels and surveillance aircraft to monitor its shared maritime borders with Malaysia.

The agreement is beneficial to Indonesian and Filipino law enforcement agencies, including the Navy, Police, Customs and Immigration agencies because they receive support in carrying out counter terrorism efforts from their Malaysian counterparts. These supports include information exchange, sharing of airline passenger lists and access to databases on fingerprints, visa waiver lists of third country nationals and issues related to forged or fake documents. Support from the Malaysian authorities is the most useful cooperation to prevent, detect and capture JI members and other Islamic militant groups travelling to training camps in the Philippines via Indonesian Kalimantan Timur and Sabah, Malaysia.[92] This cooperation initiative provides capacity-building opportunities for both Indonesian and the Philippines maritime agencies. These include the establishment of joint training and exercises on combating terrorism and other transnational crimes. Such exercises are expected to increase the security presence in the region and improve the degree of cooperation during maritime patrols.[93] The agreement aims to set up formal and direct communication channels between these states to enable a rapid response and improve coordination among them.[94] It formalises and improves logistical arrangements for exchanges of information and communication between the three countries to uncover terrorist networks.[95]

Indonesia and the Philippines anticipated high degree of influence over the course of negotiations. The two governments shaped the terms of cooperation to add value to their counter sea robbery efforts and assist in dealing with illegal seaborne migrant and smuggling.[96] The agreement took into accounts their needs for gaining support for maritime patrol and dealing with arms smuggling to its territory. Article III of the agreement shows that areas of cooperation covered by the initiative take into account not only terrorism but also various maritime security issues deemed important by the two countries including smuggling, marine resources theft and illegal immigration. The text of the agreement brings to attention concerns related to smuggling of firearms and illegal immigration. The agreement repetitively mentioned the two issues using

different terms such as “smuggling of goods including explosives and arms”, “illicit trafficking in arms”, “smuggling of persons”, “trafficking of persons”, and “illegal entry [of migrants]” under different categories of cooperation[97].

ASEAN Convention on Counter Terrorism

In November 2007, the ASEAN member states including the Philippines and Indonesia signed the ASEAN Convention on Counter Terrorism. The Convention requires participating states to take measures to establish jurisdiction over criminal acts of terrorism in their land or a vessel flying their flag, guarantee fair treatment to any person who is taken into custody, carry out investigations, prosecute or extradite alleged offenders, notify the ASEAN Secretary General regarding incidents and detention of offenders, establish channels of communication between agencies, share best practices on rehabilitative programs, provide mutual legal assistance, designate a coordinating agency at national level, and preserve confidential information, documents and other records.

The assessment of the degree of legalisation required by the agreement shows that it generates low sovereignty costs. This is because the Convention poses a low degree of obligation, precision and delegation. Requirements of the convention show non-mandatory obligations. This agreement provides room for parties to avoid the strictures of the cooperation requirements. It obliges parties to carry out their duties under this convention in a manner consistent with the principles of sovereign and territorial integrity. It reserves the right of each state to perform counter terrorism actions in its own territory. The Convention also enables states to withdraw from the agreement after 180 days notification to the ASEAN Secretary General. In addition, there are no provisions on compensation regarding breaches of the agreement.

The cooperation requirements show a high degree of precision. The Convention outlines: obligations for states, scope of the agreement, state jurisdiction over any terrorist offence, procedures to deal with an alleged offender, rights of the alleged offender; mechanisms to inform the ASEAN Secretary General and other parties, procedures to grant refugee status, provide assistance in investigations and criminal proceedings, extradition of an alleged offender, review and monitor the implementation of the agreement, solve disputes, and withdraw from the arrangement. The agreement also explains exceptional conditions that render the agreement irrelevant. Article five of the Convention for instance explains that this agreement is not applicable where the offence is committed in a single state, and both the offender and victims are citizens of this state.

The Convention displays a low degree of delegation. The document does not delegate the dispute settlement function to an independent third party or an international tribunal. The Convention articulates parties' commitment to preserve the principles of sovereignty and non-interference, and maintains that the authority to implement and settle disputes lies solely with participating states to this Convention.

Economically, this agreement is not costly for Indonesia and the Philippines. The two countries had intensively cooperated in the area of counter maritime terrorism with other states in the region through bilateral and sub regional channels. As early as December 2002 Indonesia and the Philippines had discussed possible inclusion of marine police and immigration agencies in border monitoring, primarily involving the Navy and the Coast Guards.[98] Before the establishment of the ASEAN Counter Terrorism Convention, a number of counter terrorism institutions in the region have facilitated cooperation among states. These institutions include the Southeast Asia Regional Centre for Counter-Terrorism which was established in Malaysia in 2003 and Jakarta Centre for Law Enforcement Cooperation and Bomb Data Centre, both set up in Indonesia in 2004. These institutions serve as a regional hub to carry out counter terrorism training, as well as monitor and disseminate intelligence information.

The benefits gained from joining the Convention far exceed the costs. It facilitates exchanges of information and provides assistance to prosecute and extradite terrorist perpetrators. [99] A number of successful attempts to capture terrorist ring leaders have already confirmed the importance of cooperation among the Southeast Asian states. In February 2003 the Indonesian police arrested Mas Selamat Kastari, head of the Singapore branch of JI, after they received information from their Singaporean counterpart.[100] Similarly, the arrest of Umar Patek, a JI senior leader in Pakistan in 2011 was also derived from information sharing between Indonesian and Philippines authorities.[101]

In the case of the ASEAN Convention Indonesia and the Philippines took part in negotiating and drafting the agreement.[102] Through Indonesia's and the Philippines' involvement in the negotiation they could shape the agreement to assist them in investigating incidents, extraditing alleged perpetrators, developing de-radicalisation programs and dealing with other security concerns including illegal seaborne immigration that it deemed as closely linked to terrorist activities. The porous borders in the Sulu-Sulawesi Seas are often used as a staging point for refugees from the Middle East and South Asia that travelling to Australia. [103] Indonesia particularly raised concern that some of these refugees may have links with terrorist organisations. Concerns over the linkage between these two issues were taken into account as the Convention obliges participating states to "take appropriate measures...before granting refugee status for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist attacks." [104]

Gaps and Way Forward

There are two main gaps in the existing maritime cooperation in the Sulu-Sulawesi Seas. These are the absence of a multilateral coordinated patrols and a lack of a cooperation institution that incorporates extra-regional states.

Multilateral Coordinated Patrol Arrangement

Currently there is no cooperation institution that regulates coordinated patrol procedures among the littoral states of the Sulu-Sulawesi Sea. In August 2012 during a meeting between the Philippine Defence Secretary Voltaire Gazmin and his Indonesian and Malaysian counterparts, the idea of coordinated patrol was mentioned.[105] The Philippines, Indonesia and Malaysia are still considering coordinated patrol along their shared borders in the Sulu-Sulawesi Seas.

In order to fill this gap a similar arrangement to the Malacca Strait Patrol (MSP) agreement in the Straits of Malacca and Singapore could be emulated to govern cooperation in the Sulu-Sulawesi Seas. The MSP coordinated patrol entails year-round sea patrols. The agreement allows patrol ships from a participating country to enter into another country's territorial waters up to five miles when pursuing a ship involved in maritime crime, provided the patrol ship does not open fire or conduct any form of military action.[106] As part of the MSP agreement Indonesia, Malaysia and Singapore are also required to undertake a combined air patrol. Under this program each state is obliged to take turns in providing two maritime patrol aircraft each week to patrol the Straits seven days a week.[107] Personnel from all member states must take part in each air patrol. Like the sea patrol, the air patrol will be able to transgress boundaries, flying up to three nautical miles inside the territorial waters of other participating states.[108]

If the littoral states of the Sulu-Sulawesi Seas are willing to draw a lesson from the coordinated patrol arrangement in the Straits of Malacca and Singapore, the establishment of multilateral patrol agreement can be accelerated. The MSP arrangement is not a form of costly cooperation. It does not introduce many changes

to existing counter sea robbery cooperation among the littoral states of the Straits of Malacca and Singapore.

Nor does the initiative introduce intrusive obligations. It does not entail duties to make reparation or restitution if a party fails to deliver on its commitments or causes loss to the other. The MSP is mainly built on the network of bilateral patrols between the three states. In the context of the Sulu-Sulawesi Seas the coordinated patrol arrangement can be set up using networks of existing bilateral and sub-regional cooperation. Two littoral states of the Sulu-Sulawesi Seas: Indonesia and Malaysia are also parties of the MSP agreement. Therefore, the two countries are very familiar with the MSP code of conduct in the field. A coordinated patrol agreement in the Sulu-Sulawesi Seas can serve as an avenue for Indonesia, Malaysia, the Philippines and Brunei to share the burden of improving the security of the Seas.

Multinational Engagement

There is not much by way of multinational initiatives introduced to secure the Sulu-Sulawesi Seas. As explained earlier the RMSI was an exception. However, when it was launched in 2004, Indonesia strongly opposed this initiative. Scholars point to concerns over sovereignty infringement as the reason underpinning Indonesia's non-cooperation in the initiative.[109] In contrast to this argument a careful examination of the institutional design of the RMSI shows that the initiative introduced low degree of sovereignty costs.

The requirements of the RMSI indicate that the initiative has non intrusive obligations. Duties of states were articulated as shared intentions. The initiative points out that the conduct of activities, including "information sharing with other states or acting against a threat remains voluntary and sovereign for each participating nation." [110] Therefore, the ultimate decision for member state to join any maritime security activity including information sharing and intercepting threats is entirely voluntary.[111] The RMSI is imprecise. The initiative does not specify the procedures or expected behaviour for member states in terms of the sharing of information, conducting of maritime exercises and training, coordinating policies particularly when interception at sea takes place as well as punishing member state for acts of non-cooperation. The RMSI shows a low degree of delegation. It does not delegate autonomy to interpret and enforce rules to a third party or a tribunal.[112] Viewed as a whole, the assessment of obligations, precision and delegation confirms the low sovereignty costs generated by this initiative. This suggests that concern over sovereignty costs cannot explain Indonesia's rejection of the RMSI.

Following the failure of the RMSI, despite the growing interest of user states including the United States, Australia and Japan to assist in the maintenance of security in this waterway, however, there is no cooperation institution set up to incorporate these states. Most assistance from these countries to improve the security of the Sulu-Sulawesi Seas is provided through bilateral channels. An inclusive model of cooperation where users and littoral states can share information and contribute to improve the safety and security of the Sulu-Sulawesi Seas is required. This form of institution is not without a precedent. In the region, the Co-Operative Mechanism for the Straits of Malacca and Singapore was already established since 2006.

The Co-Operative Mechanism is a key institution in the Straits of Malacca and Singapore for the Strait states, user states and businesses to discuss and share costs to improving navigational safety and marine pollution control.[113] Although this cooperation mainly focuses on the safety of navigation and pollution control and prevention, littoral states can gain tangible assistance from user states and businesses. Prior to the establishment of the Co-Operative Mechanism the burden for maintaining the safety of navigation and pollution prevention was primarily left to the Strait states (Indonesia, Malaysia and Singapore); for example these states are required to allocate resources to prevent and deal with the aftermath of accidents caused by the high volume of traffic in the Straits. The substantial burden sharing provided by user states through the

Cooperative Mechanism means that the government can have greater flexibility to use its budget and invest more resources to improve the capacity of Indonesian maritime agencies.[114] Burden-sharing cooperation in the Sulu-Sulawesi Seas is important. The littoral states bordering the Sulu-Sulawesi Seas, particularly Indonesia and the Philippines, are developing countries that do not have sufficient resources to equip their naval forces and finance their round-the-clock operations. If maritime agencies of these states struggle to fund their operations, the safety and security of the Sulu-Sulawesi Seas also suffers.

Conclusion

The discussion in this article has shown that securing the Sulu-Sulawesi Seas is complicated by the rampant illicit cross border activities and the disputed maritime boundaries in this area. Yet, despite these challenges, the two littoral states cooperate closely through bilateral, sub-regional and regional arrangements, both with other littoral states and also with external power, particularly the U.S. In doing so, the evidence presented in this article challenges the argument which points to the littoral states, especially Indonesia's reluctance in dealing with the issue of maritime terrorism because of its alleged concern over sovereignty infringement.

There are three institutional features that can be seen from the existing bilateral, sub-regional and regional cooperation. These are: first, the existing cooperation in the Sulu-Sulawesi Seas shows a low degree of legalisation and consequently, a low degree of sovereignty costs. Second, all successful cases of cooperation in the Sulu-Sulawesi Seas show that the benefits offered by these cooperation initiatives exceed the costs. Finally, Indonesia and the Philippines joined those agreements where they could exercise a high degree of control over the course of negotiations.

The existing cooperation to secure the Sulu-Sulawesi Seas, including bilateral cooperation between Indonesia and the Philippines, the two EAGA MoUs, the trilateral exchange of information and the ASEAN Convention on Counter Terrorism – these all pose low sovereignty costs due to the near absence of legal sanctions in case of non-compliance. Most of these agreements do not set compulsory obligations for its participating states and do not delegate authority to enforce rules or settle disputes to an independent third party. Given the unsettled maritime boundaries between Indonesia and the Philippines, a loose form of legalisation is the preferred solution for the two littoral states. Low degree of legalisation is a strategy chosen by the littoral states of the Sulu-Sulawesi Seas to share burdens in securing their waters without complicating the status of their disputed maritime boundaries.

All successful cases of cooperation to secure Sulu-Sulawesi Seas provide substantial benefits and generate low implementation costs. These benefits include assistance to trace terrorist movements, support to deal with smuggling of weapons and people across their border from neighbouring states, and opportunities to improve their maritime agencies capabilities through training and exercises. There is a significant continuity in Indonesia and the Philippines existing counter terrorism practices. The bilateral, sub-regional and regional initiatives do not require Indonesia and the Philippines to make substantial adjustments or investments at domestic level to comply with the arrangement. This leads to the conclusion that the initiative posed only low implementation costs.

The Philippines' and Indonesia's degree of influence over the terms of agreement is another feature familiar from other successful cases of cooperation. In the bilateral defense agreement, the sub-regional EAGA initiatives, the agreement on exchange of information and the ASEAN Convention on Counter Terrorism, Indonesia and the Philippines were able to negotiate every aspect of these agreements, propose drafts and tailor these initiatives to address not only maritime terrorism but other transnational crimes that they deemed as pressing security concerns. These states' control over cooperation outcomes have increased the

likelihood to gain desirable benefits.

Despite the success of the existing cooperation currently in the Sulu-Sulawesi Seas, a cross-border patrol arrangement and an institution that can incorporate external powers are still lacking. In comparison to the Philippines government which has been a strong supporter of U.S. led maritime initiatives, Indonesia has refused to join Washington's sponsored arrangements such as the RMSI and the PSI. In contrast to scholarly arguments regarding concern over sovereignty infringement, Indonesia's rejection of a cooperation agreement was not always compatible with the sovereignty costs posed by such agreement. As shown in the case of the RMSI, the initiative brought low sovereignty costs because of its low degree of legalisation. Yet, Indonesia was unwilling to join the initiative because the benefits offered by the initiative were not much better than the status quo, the implementation costs were high and the government has low ability to tailor the terms of cooperation. Indonesia could gain the benefits offered by the RMSI from existing cooperation with the U.S. Through bilateral cooperation with the U.S., Indonesia can exercise greater influence to tailor the terms of the agreement to meet its security needs. More importantly, the implementation of this initiative would bring high costs as the government anticipated problems generated by societal actors. Radical factions such as the Majelis Mujahidin Indonesia had stated their intention to expel American troops from Indonesia's key Straits.[115]

Jakarta's attempt to prudently placate domestic politics concerns could be problematic in the future as it provides room for terrorist groups to maneuver. As explained in this article, in recent years terrorists that have carried out attacks against local Christians and police in various parts of Indonesia that have strong links with terrorist organisations and arms suppliers in the Philippines. As a matter of urgency, Indonesia needs to exercise decisive intervention to secure the Sulu-Sulawesi Seas either through coordinated patrols with the littoral states, greater multinational cooperation, or both in order to halt terrorists' cross-border operations. Lack of decisive responses would deepen grievances in deeply segregated communities, particularly in Central Sulawesi which has experienced sectarian violence since the late 1990s and continues to witness violent attacks from extremists. More worryingly, lack of determination may contribute to increased terrorist attacks beyond the Central Sulawesi region, as shown in a range of attacks against local targets such as churches and police stations that have occurred in Java and Sumatra after 2009.

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