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# RSIS COMMENTARIES

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## **Ensuring Safety at Sea: The Southern Ocean and the South China Sea**

By Sam Bateman

### **Synopsis**

*The Southern Ocean and the South China Sea are very different marine environments but both face high risks of incidents at sea that endanger safety and damage international relations. Restraint is required for good order and amicable relations between parties involved.*

### **Commentary**

THE GOVERNMENTS of Australia, the Netherlands, New Zealand, and the United States recently issued a joint statement calling for responsible behaviour in the Southern Ocean – the sea that completely surrounds the Antarctica and designated as such in 2000 by the International Hydrographic Organisation. It was issued in anticipation of the likelihood of clashes at sea between the Japanese whaling fleet and protest vessels, particularly those of the Sea Shepherd organisation, demonstrating against the activities of the whaling fleet.

The statement called on the masters of all vessels to ensure the safety of life at sea as the highest priority and for strict observance of the international collision avoidance regulations. It expressed both disappointment at the deployment of the Japanese whaling fleet in the Southern Ocean and opposition to commercial whaling, including so-called 'scientific' whaling, particularly in the Southern Ocean whale sanctuary.

### **Incidents in the Southern Ocean**

Though they are very different marine environments, similar clashes involving vessels harassing each other have occurred in both the Southern Ocean and South China Sea. Whereas the incidents in the Southern Ocean have involved protest vessels and whale chasers, those in the South China Sea have involved patrol vessels, fishing boats or scientific research vessels of the littoral countries. The situations in the two areas are similar in that they invariably involve the flouting of international collision regulations when the vessels clash with each other, and entail high risk of the loss of life and the escalation of tension between the countries involved.

There was a serious incident in the Southern Ocean in January 2010 when the Japanese whale chaser Shonan Maru No. 2 ran down and sank the Sea Shepherd protest vessel Ady Gil. Although there was sympathy for the Japanese vessel owing to the aggressive tactics used by Sea Shepherd, the subsequent inquiry by New Zealand authorities found both vessels to be in disregard of international collision avoidance regulations. In particular, the inquiry found that the whale chaser had ample opportunity to avoid collision and should have kept clear of the other vessel. New Zealand authorities conducted the inquiry because the Ady Gil was registered in New Zealand. Unfortunately Japanese interests did not cooperate in the investigation.

Following incidents in the Southern Ocean in 2010 and 2011, the International Whaling Commission (IWC) issued a resolution calling upon governments to urge persons and entities under their jurisdiction to refrain from actions that intentionally imperil human life, the marine environment, or property during demonstrations, protests or confrontations on the high seas. It also called on all vessels to comply with the applicable instruments adopted by the International Maritime Organisation (IMO) directed at the safety of navigation, security and safety of life at sea.

Sea Shepherd has recently deployed three vessels to the Southern Ocean to protest during the forthcoming whaling season. The Japanese whaling fleet will include Coast Guard personnel and will be escorted by a fisheries protection vessel. The risk of clashes at sea is high unless all parties act responsibly. Australia, New Zealand and the United States have a common interest in avoiding these clashes because these countries, due to their search and rescue capabilities and responsibilities in the Southern Ocean, are the ones most likely to be involved in “picking up the pieces” should a serious accident occur.

Two of the Sea Shepherd vessels are registered in the Netherlands and the third in Australia. Japan has taken the unusual step of calling on these two countries to expel these vessels from their flag, but both countries rejected this demand.

### **South China Sea**

Incidents at sea involving clashes between vessels of the different bordering countries have become regular occurrences in the South China Sea. In a recent incident depicted by video on YouTube, a patrol vessel of the Vietnamese Marine Police appeared to collide with and then attempt to “shoulder” away a Chinese research vessel.

A trend towards increased incidents in the South China Sea is likely to continue unless measures are put in place to prevent and manage such incidents. While serious escalation of tensions as a consequence of these incidents has not occurred so far, the risks are high of a situation getting out of hand leading to the possible loss of life or the sinking of a vessel. This would lead to a serious deterioration in the relations between the countries involved.

Possible measures to avert this include the development of guidelines for preventing and managing incidents at sea in the South China Sea. Such guidelines might include recognition of the principle that the International Convention for Preventing Collisions at Sea (COLREGS) should always apply, and that actions that might endanger human life should not be used. The measures to avoid incidents in the Southern Ocean are a possible model for what is required in the South China Sea.

### **Outlook**

As the IWC resolution on safety at sea noted, the safety of vessels and crew, the order of maritime navigation, and environmental protection, are, and have long been, the common interests of all nations. Excessive actions to demonstrate purpose or intent involving the harassment of other vessels can easily get out of hand leading to a process of reaction and counter-reaction as tempers fray, and normal rules of the road are ignored.

There are potentially serious consequences for good order at sea and for amicable relations between the countries involved. Restraint over such incidents is an important requirement for both the Southern Ocean and the South China Sea.

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