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AUSTRALIA

2022

SEA POWER PAPER

Thresholds: Chinese Maritime Militia and Foreign Direct Investment as Non-Military Coercion in the Malacca Strait

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Cover image

HMAS DARWIN heads into a storm off the coast of Lumut, Malaysia during Exercise MASTEX, a combined maritime warfare exercise conducted in the Malacca Straits, Malaysia.

Thresholds: Chinese Maritime Militia and Foreign Direct Investment as Non-Military Coercion in the Malacca Strait

Executive Summary

States have long leveraged the ambiguities of international laws and norms in their favor, shaping them and revising them over time. In view of the larger great-power competition and evolution playing out across the Indo-Pacific, and indeed the seas of the world, it is especially important to understand the dynamics, which shift the currents of power one way or the other. Australia's economic integrity, territorial boundaries, and defense needs are inherently intertwined with the security of the surrounding seas. If Canberra, and the Royal Australian Navy, want to preserve the existing rules-based order, it must be proactive in addressing the non-military strategies used to shape operational realities in the Indo-Pacific.

In building a database to consolidate previously unconnected data, this report proposes that two types of non-military action in the Indo-Pacific—the Belt and Road investment project and the use of civilian vessels as maritime militia— should be viewed as interdependent and purposeful revisionary strategies used by China for its economic and political goals. In tracking this relationship, it lays out the ways in which littoral states are inhibited in their individual and collective responses and recommends cooperative actions to address this going forward.

By closing the operational-academic gap, communicating with littoral states, and investing in the international legal order, Australia and the United States will be able to deter and counteract the use of non-military coercive strategies in the region and protect their own interests.

Acknowledgements

I would like to thank and acknowledge all those that contributed to the development and creation of this report.

First and foremost, I am grateful for the opportunity to be an intern with the Sea Power Centre-Australia. I am very thankful to have the chance to work in such a welcoming and educational environment. I furthermore would like to thank Dr. Elizabeth Buchanan, Captain Alastair Cooper, and all the staff at the Sea Power Centre - Australia for sharing their knowledge, guidance, and input during the internship.

I would also like to thank Associate Professor Laurence Brown, the Director of the Australian National Internships Program, as well as Mrs. Julia Trembath and Ms. Julia Heather, the Administrators of the Australian National Internships Program, for the opportunity to participate in the Australian National Internships Program. I have greatly enjoyed this incredible experience during my time in Australia.

Finally, I want to thank my friends and family, here in Canberra and back home in California, for their support throughout my time in this program.

Thank you!

Introduction

The maritime dispute in the South China Sea is an emerging conflict that is based on the establishment, testing, and reevaluation of thresholds; both economic and legal. On their own, the Belt and Road Initiative (BRI) and the Chinese maritime militia have each garnered international concern. China's goals in expanding its sovereignty and global influence have led to the use of irregular and asymmetrical warfare as a counter to the established rules-based order. However, the use of these strategies together has served to undermine the responses of surrounding states, in both individual and collective forums, to grey-zones activities that threaten the regional order.

The two tools of statecraft work as a mutually reinforcing dual strategy. China uses a maritime militia's strategic maneuverability and legal ambiguity to advance its economic interests as a resource insecure state. Simultaneously, it utilizes the economic leverage created by the BRI investment to further and protect the use of militia as a security tool in service of its political interests. The operational realities and the legal frameworks in the maritime domain must shift to accommodate these changing tactics, as they occur in the context of a larger international competition between China and the status quo in the Indo-Pacific. The use of non-military coercion not only makes the sea a more dangerous place to operate, but it also erodes the existing rules-based order in the context of a larger political relationship between China and the international community.

This paper seeks to conceptualize the relationship between these actions, and the operational and legal limits that constrain state responses to this activity and puts forward a case for

increasing international attention to the ways in which these dynamics undermine regional responses to coercive behavior in the South China Sea.

These dynamics complicate the approach of navies such as the Royal Australian Navy (RAN) in participating to ensure regional stability and Australian and Western interests. Using open-source research to compile a database of suspected militia incidents in the Indo-Pacific in the last two decades, this paper compares the locations, types, and reactions of involved states to militia activities. It also uses a mapping of identified Belt and Road (BRI) investment projects¹ in the region to compare investment trends with militia use.

In view of the correlations found, the methods for research in this paper have significant limits. Open-source research itself is limited in both reach and availability of relevant information on militia, especially English-source material. This is compounded by the fact that all militia activity is suspected or alleged, and sensitive information is conditional on the transparency and goals of the governments involved. In fact, the lack of information released on maritime militia presence from countries such as Indonesia may serve as further evidence of the relationship between BRI investment and cautious responses from regional states. Scholars such as Andrew S. Erickson and Conor Kennedy have done comprehensive research translating Chinese documents outlining their strategic goals with the maritime militia, and others such as Ryan D. Martinson and Jonathan G. Odom have pinpointed and tracked the

¹ Rebecca Ray et al., "Geolocated Dataset of Chinese Overseas Development Finance," *Scientific Data* 8, no. 1 (December 2021): 241, <https://doi.org/10.1038/s41597-021-01021-7>

evolution of militia incidents in the past two decades.² However, the exact locations, full government response, and intentions of each suspected militia incident mapped is up for a measure of interpretation.

The first chapter briefly outlines the Chinese strategic literature emphasizing the strategic links between China's maritime economic and security needs and apparatuses, which have shaped Chinese actions in the Indo-Pacific. The importance of BRI investment in the Malacca Strait and the role of the maritime militia as one aspect of a larger strategic playbook is a track that underlies all behavior in the Indo-Pacific.

The second briefly introduces the alleged maritime militia as an element of China's securitization of the Malacca Straits due to its significance for Chinese economic and political interests, and its relationship to the economic BRI, which has simultaneously built a network of investment. As a route of exceeding importance for China, the role of the maritime militia around the Malacca Straits becomes a critical component of overall regional economic and political goals. In seeking to mitigate the risks of the Malacca Dilemma, BRI and the maritime militia take on dual roles as strategic tools.

The third section examines the thresholds of international law that the maritime militia tests and reshapes. The use of low-level and persistent coercion increases the chances of

² Andrew S. Erickson, "The China Maritime Militia Bookshelf: Complete with Latest Recommendations & Fact Sheet | Andrew S. Erickson," accessed October 11, 2022, <https://www.andrewerickson.com/2019/04/the-china-maritime-militia-bookshelf-complete-with-latest-recommendations-fact-sheet-3/>. Last modified 11 April 2019.

confrontation involving the militia-- but it is ambiguous enough to avoid war or armed conflict and deters from coordinated international responses.

Lastly, although the militia plays many roles in both upholding and reshaping Chinese sovereignty claims, its most pernicious effect lays in eroding the rules-based order in the Indo-Pacific. This segment will analyze the reactions to militia activity in an analysis of how BRI investment works to undermine state responses to sovereignty threats and maritime confrontations. It concludes with recommendations for the international community, regional organizations, and the RAN. As a regional power, the RAN should increase its regional engagement, focus on intelligence gathering, and emphasize on deterrent responses to grey-zone activities.

The Marriage of Economic and Strategic Needs in the Indo-Pacific

In November of 2012, Hu Jintao spoke at the 18th National Congress of the Communist Party of China before his departure as the People's Republic of China's president. In it, he outlined a strategic path to further China's economic and political development. Hu delineated the four pillars of China's incoming maritime power strategy: "enhance our capacity for exploiting marine resources, develop the marine economy, protect the marine ecological environment, resolutely safeguard China's maritime rights and interests, and build China into a maritime power".³ While the first three aspects of this strategy matched previous rhetoric regarding

³ Hu Jintao, "Full Text of Hu Jintao's Report at 18th Party Congress," Embassy of the People's Republic of China in Nepal, November 8, 2012, http://np.china-embassy.gov.cn/eng/Diplomacy/201211/t20121118_1586373.htm.

Chinese economic growth in the maritime domain, the final pillar underscored a strategic shift.

By explicitly linking Chinese “maritime rights” and their military aspects to goals of maritime economic development, Hu placed Chinese economic concerns as intertwined with security and military objectives in the maritime sphere of influence.⁴ This strategy has persisted throughout China’s continued rise in both the naval and economic landscapes. This came after a codification of what Beijing referred to as China’s “maritime rights and interests” in a series of laws which made up China’s maritime strategy since the 1990s. In asserting these rights, a figurative “nine-dash line” has been drawn to represent China’s extralegal claims in the South China Sea. The “9-dash line” encompasses over 85% of the water mass in the South China Sea and overlays the claims and Exclusive Economic Zones (EEZs) of other littoral states such as the Philippines and Japan.⁵

These contested claims have become a cornerstone of Chinese military strategy.⁶ While Chinese government documents appearing as early as 2003 note that becoming a maritime great power is a central strategic need, the growth of the Chinese maritime strategy exploded after Hu’s speech in 2012, coinciding with the announcement of the Belt and Road investment initiative in 2013 by Xi Jinping. Within a year of “maritime great power” appearing

⁴ Andrew S. Erickson and Ryan D. Martinson, eds., *China’s Maritime Gray Zone Operations*, Studies in Chinese Maritime Development (Annapolis, Maryland: Naval Institute Press, 2019), 74.

⁵ Cameron Smith, “Countering China’s Grey Zone Diplomacy – AIIA - Australian Institute of International Affairs,” February 8, 2022, <https://www.internationalaffairs.org.au/australianoutlook/countering-chinas-grey-zone-diplomacy/>.

⁶ Liza Tobin, “Underway—Beijing’s Strategy to Build China into a Maritime Great Power,” *Naval War College Review*, Vol. 71, no. No. 2, Article 5 (2018): 34.

as a significant aspect of authoritative party documents, both the rhetoric and operational strategy regarding sea power seemed to make it a priority for the Chinese Communist Party (CCP).

Becoming a part of China's goal of "national rejuvenation" as a great power by 2049, has seen an intertwining China's political and economic needs.⁷ National security interests are thus dependent on naval modernization, as it has become "derivative" of both the economic and political expansion; one dealing in control of international waters and their resources, the other in the securitization of marine industries and ventures.⁸ This paper will focus on how the use of maritime militia, and investments through China's BRI serve these interdependent interests in the Indo-Pacific, and specifically how they protect China's access to the Malacca Straits by shaping regional reactions.

Maritime Militia Activities and BRI in the Malacca Strait

Maritime Militia: A Dual-Use Weapon

The use of maritime militia, while at times denied by the CCP, is a strategy that is well recorded and well-founded in the Chinese strategic literature and indicated in recent People's Liberation Army (PLA) strategy. As China's strategic focus has shifted towards maritime power projection, China's naval and maritime funding has exploded. The Chinese navy, Coast Guard, and maritime militia are now the largest of their kind in the world, with advanced

⁷ Ibid, 3.

⁸ Ibid, 22.

capabilities in both material and operative resources.⁹ This has included the growth of the world's largest fishing fleet as part of China's strategy to enhance its resource security in both near and far waters.¹⁰

Part of the process of concerted naval modernization has included a boom of subsidized and upgraded Chinese fishing fleets operating in the South China Sea¹¹, some of which make up the world's largest maritime militia.¹² The "militia" refers to the use of ostensibly civilian fishing vessels as paramilitary forces; at times working in conjunction with other official People's Liberation Army Navy (PLAN) vessels, others pursuing China's objectives alone to avoid the risk of inciting military conflict.¹³ Many of their operations and nonmilitary strategies fall under the term "grey-zone activities".¹⁴ This refers to actions lying between war and peace and remaining under escalatory thresholds.¹⁵ Other scholars have referred to China's

⁹ Erickson, "The China Maritime Militia Bookshelf: Complete with Latest Recommendations & Fact Sheet | Andrew S. Erickson."

¹⁰ Shuxian Luo and Jonathan G. Panter, "China's Maritime Militia and Fishing Fleets: A Primer for Operational Staffs and Tactical Leaders, Pt. 2 | Center for International Maritime Security," CIMSEC, April 6, 2021, <https://cimsec.org/chinas-maritime-militia-and-fishing-fleets-a-primer-for-operational-staffs-and-tactical-leaders-pt-2/>, 15.

¹¹ Erickson, "The China Maritime Militia Bookshelf: Complete with Latest Recommendations & Fact Sheet | Andrew S. Erickson."

¹² Ryan D. Martinson, "Xi Likes Big Boats (Coming Soon to a Reef Near You) - War on the Rocks," War on the Rocks, April 28, 2021, <https://warontherocks.com/2021/04/xi-likes-big-boats-coming-soon-to-a-reef-near-you/>.

¹³ Conor M. Kennedy and Andrew S. Erickson, "Irregular Forces at Sea: Not 'Merely Fishermen' —Shedding Light on China's Maritime Militia | Center for International Maritime Security," accessed October 10, 2022, <https://cimsec.org/new-cimsec-series-on-irregular-forces-at-sea-not-merely-fishermen-shedding-light-on-chinas-maritime-militia/>.

¹⁴ Conor Kennedy, "The Struggle for Blue Territory: Chinese Maritime Militia Grey-Zone Operations," *The RUSI Journal* 163, no. 5 (September 3, 2018): <https://doi.org/10.1080/03071847.2018.1552450>: 8.

¹⁵ S Cameron Smith, "Countering China's Grey Zone Diplomacy – AIIA - Australian Institute of International Affairs."

strategic intentions are more in line with the term “hybrid strategy”, in which they use military and paramilitary (e.g., militia) forces to project power and prevent others states from doing the same.¹⁶ The use of the militia in this way is well-recorded in Chinese strategic literature. Since the 1970s, the maritime militia has escalated in its presence and activities, and this increased presence (and the increasing operational significance of grey-zone operations) has resulted in encounters with the vessels and forces of other neighbouring states.¹⁷ Following the strategic emphasis on maritime power and the 9-dash line, the maritime militia has played a significant role in asserting these claims.

The maritime militia is made up of a “constellation of forces”¹⁸ that constitute a larger national defense organization.¹⁹ The maritime militia has been increasingly used as a tool of statecraft in advancing China’s sovereignty claims in the region and deterring neighboring states from responding in kind. The People’s Armed Forces Maritime Militia (PAFMM) refers to the organized sector of the Chinese militia, which falls under PLAN control as part of China’s national militia forces and includes a number of China’s many fishing vessels.²⁰ Members are sometimes trained by the PLA, although most retain their original jobs as

¹⁶ Alessio Patalano, “When Strategy Is ‘Hybrid’ and Not ‘Grey’: Reviewing Chinese Military and Constabulary Coercion at Sea,” *The Pacific Review* 31, no. 6 (November 2, 2018): 813, <https://doi.org/10.1080/09512748.2018.1513546>.

¹⁷ Derek Grossman and Logan Ma, “A Short History of China’s Fishing Militia and What It May Tell Us,” April 6, 2020, <https://www.rand.org/blog/2020/04/a-short-history-of-chinas-fishing-militia-and-what.html>.

¹⁸ Ibid.

¹⁹ Conor M Kennedy and Andrew S Erickson, “China Maritime Report No. 1: China’s Third Sea Force, The People’s Armed Forces Maritime Militia: Tethered to the PLA,” no. 1 (n.d.): 20.

²⁰ Ibid, 2.

civilian fishermen.²¹ However, this is part of its operative power. The militia is able to undermine the rules of freedom of navigation for neighboring states and extends its economic reach across the Indo-Pacific and the world by both protecting access to important Sea Lanes of Communication (SLOCs) and by engaging in illegal, unreported and unregulated (IUU) fishing.²²

In doing so, what would ostensibly be recognized as fishing fleets take on secondary roles in “border patrol, surveillance and reconnaissance, maritime transportation, search and rescue, and auxiliary tasks in support of naval operations in wartime.”²³ They have also notably been involved in harassment, intimidation, and blocking of other nations’ fleets from freely operating in the South China Sea, particularly in contested areas and near man-made islands.²⁴ Because of this, although the militia is occasionally acknowledged in Chinese media and takes a role in official Chinese strategy, its greatest advantage is their civilian clothing. Civilian vessels have greater flexibility in operating in the Exclusive Economic Zones (EEZs) of other countries than official Coast Guard or Navy vessels and can avoid retaliation if escalating maritime claims.²⁵ Even when operating unchallenged solely as “civilian economic actors” while fishing in contested waters, their presence works to validate China’s sovereignty

²¹ Su Jin Yoo and Min Gyo Koo, “Is China Responsible for Its Maritime Militia’s Internationally Wrongful Acts? The Attribution of the Conduct of a Parastatal Entity to the State,” *Business and Politics* 24, no. 3 (September 2022): 228

²² Luo and Panter, “China’s Maritime Militia and Fishing Fleets: A Primer for Operational Staffs and Tactical Leaders, Pt. 2 | Center for International Maritime Security”: 10.

²³ Luo and Panter, “China’s Maritime Militia and Fishing Fleets: A Primer for Operational Staffs and Tactical Leaders, Pt. 2 | Center for International Maritime Security”: 12.

²⁴ Kennedy, “The Struggle for Blue Territory”: 14.

²⁵ James Kraska, “China’s Maritime Militia Vessels May Be Military Objectives During Armed Conflict – The Diplomat,” *The Diplomat*, July 7, 2020, <https://thediplomat.com/2020/07/chinas-maritime-militia-vessels-may-be-military-objectives-during-armed-conflict/>.

claims and secure its access to important resources.²⁶ This dual role of civilian-militia vessel is crucial in facilitating the fleet's role within Chinese naval strategy. It allows the militia to carry out activities of strategic or military significance without being directly implicated as official PLAN vessels. The reputational and escalatory risks that China undertakes by engaging in coercive activity is mitigated by the deniability of the militia's identity as civilian mariners.²⁷

As a rapidly growing economy, China's economic dependence on Sea Lines of Communication such as the Malacca Strait has increased, along with its reliance on protecting its extra-legal sovereignty claims. China's strategy of safeguarding both its rights in the "near seas" and protecting its economic needs in the "far seas" leads it to use grey-zone and hybrid activities in this way.²⁸

²⁶ Martinson, "Xi Likes Big Boats (Coming Soon to a Reef Near You) - War on the Rocks."

²⁷ Luo and Panter, "China's Maritime Militia and Fishing Fleets: A Primer for Operational Staffs and Tactical Leaders, Pt. 2 | Center for International Maritime Security."

²⁸ Jennifer Rice and Erik Robb, "China Maritime Report No. 13: The Origins of 'Near Seas Defense and Far Seas Protection,'" *U.S. Naval War College, CMSI China Maritime Reports*, 13 (n.d.): 3.

The “Malacca Dilemma” and BRI

These strategies are contextualized by the acute strategic significance of the Malacca Strait to the CCP’s interests. As it is increasingly clear that Chinese security policy in the Indo-Pacific stems from their economic interests as a maritime power, the question regarding maritime sovereignty continues to grow in contention, leading to the use of irregular coercion

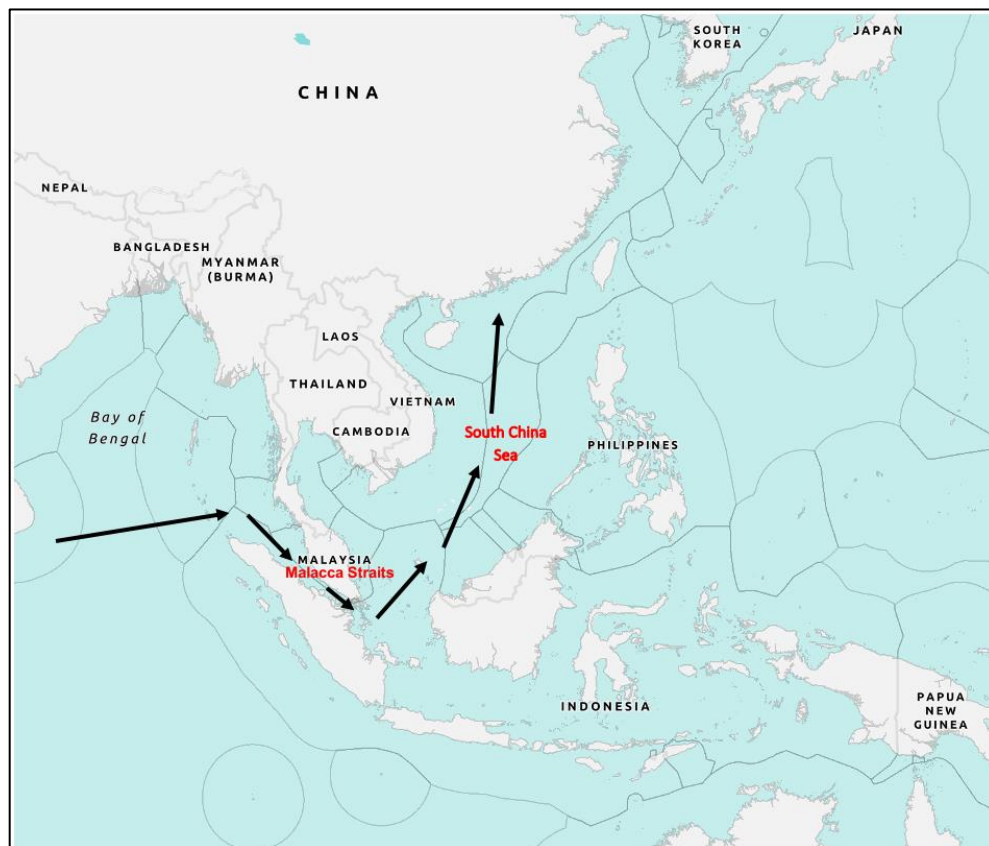


Figure 1. Strait of Malacca Trading Routes

strategies in the maritime sphere to solve the “Malacca Dilemma”. In the context of a larger international context which underlies China’s competition to grow as a great power in the Indo-Pacific, the Belt and Road initiative is a key strategic tool to help shape the region. Within the Strait, China projects state influence with high foreign direct investment and

economic relationships through the BRI. In the areas surrounding, China enforces its sovereignty claims using its maritime militia instead.

The South China Sea carries about a third of global trade and is a critical maritime crossroad for most of the littoral states—especially China, which is the top exporter through the Sea and relies heavily on the Strait of Malacca.²⁹ 40% of world trade, about 80% of China's imported energy resources, and about 80% of its exports pass through the narrow "choke point" of the Strait of Malacca, which connects the Indian Ocean and South China Sea (see figure 1).³⁰ The Strait of Malacca, although inordinately significant for world trade, is narrow, crowded, and dangerous as one of the world's busiest lanes. Imports from Europe and the Middle East reach China predominantly through the Strait of Malacca – most important of which are energy resources.³¹

China's strategic concerns hinge on the unstable nature of such a narrow stretch of water, as whoever holds influence over the Strait holds political power over the "bottleneck" of a precarious economic channel.³² This is what has been referred to by President Hu Jintao as China's "Malacca Dilemma", a commentary on China's energy security and need to construct a

²⁹ Paweł Paszak, "China and the 'Malacca Dilemma,'" *Warsaw Institute* (blog), February 28, 2021, <https://warsawinstitute.org/china-malacca-dilemma/>.

³⁰ "Internal Politics, Instability, and China's Frustrated Efforts to Escape the 'Malacca Dilemma' | Wilson Center," accessed October 10, 2022, <https://www.wilsoncenter.org/blog-post/internal-politics-instability-and-chinas-frustrated-efforts-escape-malacca-dilemma>.

³¹ Navya Mudunuri, "The Malacca Dilemma and Chinese Ambitions: Two Sides of a Coin | Diplomatist," Diplomatist, n.d., <https://diplomatist.com/2020/07/07/the-malacca-dilemma-and-chinese-ambitions-two-sides-of-a-coin/>.

³² "The Strait of Malacca: From Sultanates to Singapore | Center for International Maritime Security," accessed October 10, 2022, <https://cimsec.org/the-strait-of-malacca-from-sultanates-to-singapore/>.

“viable long-term energy security policy” independent of the Malacca Straits.³³ In light of its dependence on oil imports, the danger of external interference to “exploit this vulnerability for strategic advantage” becomes a salient national security concern.³⁴ The largest concern has emerged from China’s escalating security competition with the United States. This has emerged amongst fears that allowing the United States to remain the region’s security guarantor would allow it to build greater relationships around the Straits. Indonesia, Malaysia, and Singapore, the neighboring states with closest access to the Straits, have rejected any official presence of other foreign powers in the Malacca Straits. However, the participation of those powers in other aspects of securitization, such as trainings and intelligence exchanges, has only grown.³⁵

At present, the United States employs a major presence in the South China Sea and near the Malacca Straits. For instance, Singapore, which is a US ally, frequently participates in US naval drills at the Strait’s eastern opening.³⁶ This places China’s economic interests in a precarious position and, in the view of the CCP, validates their emphasis on building force and influence in the region. However, this also emphasizes that it’s not in China’s best interest to use any “overt” balancing behavior in this case.³⁷ A blockade or escalation of tensions in or near the

³³ B.A. Hamzah, “Alleviating China’s Malacca Dilemma,” Institute for Security and Development Policy, March 13, 2017, <https://isdps.org/alleviating-chinas-malacca-dilemma/>.

³⁴ Marc Lanteigne, “China’s Maritime Security and the ‘Malacca Dilemma,’” *Asian Security* 4, no. 2 (April 29, 2008): 143–61, <https://doi.org/10.1080/14799850802006555>: 144.

³⁵ *Ibid.*, 146.

³⁶ Chris Rahman, *Naval Cooperation and Coalition Building in Southeast Asia and the Southwest Pacific: Status and Prospect*, Working Paper No. 7 (Royal Australian Navy Sea Power Centre and Centre for Maritime Policy, 2001): 193.

³⁷ Lanteigne, “China’s Maritime Security and the ‘Malacca Dilemma.’”: 153.

Strait could prove devastating to China's economic position, especially during times of increased competition between the US and China.

To resolve the strategic and energy insecurity caused by overreliance on the Malacca Straits, China has sought to find alternate energy and trade sources. To do so, BRI aims to extend China's economic leverage worldwide and reduce its reliance on Malacca. BRI is a massive international infrastructure program, which has spanned nearly 140 countries worldwide and has consisted of over \$1 trillion in energy, transportation, infrastructure, and trade projects.³⁸ So central is it to core CCP interests that it was added to the party constitution in 2017.³⁹

BRI is often framed as a win-win project aimed to promote China's international image and bilateral good will. However, the international community has become wary of the project. Foreign direct investment projects through BRI are expensive and use low-interest loans as opposed to aid grants, use "opaque" bidding practices, and some states have come to view it as a debt trap.⁴⁰ State-owned financial institutions, such as China Development Bank have become key financiers of hundreds of projects overseas.⁴¹ This has raised international concern over the long-term economic impact of these projects on their host states and the political motives behind them. BRI is valuable to Chinese interests for its energy supplies,

³⁸ ASPI Initiative. "Weaponizing the Belt and Road Initiative | Asia Society," September 8, 2020, <https://asiasociety.org/policy-institute/weaponizing-belt-and-road-initiative>.

³⁹ "CONSTITUTION OF THE COMMUNIST PARTY OF CHINA," October 24, 2017: 8.

⁴⁰ Andrew Chatzky and James McBride, "China's Massive Belt and Road Initiative | Council on Foreign Relations," Council on Foreign Relations, January 28, 2020, <https://www.cfr.org/backgroundunder/chinas-massive-belt-and-road-initiative>.

⁴¹ Alex He, "The Belt and Road Initiative: Motivations, Financing, Expansion and Challenges of Xi's Ever-Expanding Strategy," *Journal of Infrastructure, Policy and Development* 4, no. 1 (April 20, 2020): 139, <https://doi.org/10.24294/jipd.v4i1.1180>: 4.

commodity flows and trade, and other economic factors – but on the political front, BRI provides China “international resilience”, allowing it to act more assertively while using its influence to avoid diplomatic isolation or sanctions.⁴² This is also referred to by some as “debt-trap” diplomacy to secure access to global markets and modify domestic behavior of other states.⁴³ For example, states with a large stake in BRI were those likely to support China after its rejection of The Hague ruling against its territorial claims in 2016.⁴⁴ A focus on port investments and a focus on civilian-military integration has sharpened concerns regarding BRI’s role in China’s “far seas” power projection.⁴⁵ Although their economic stakes in the sovereignty of their EEZs is significant, the leverage created by the BRI investment projects influence reactions to Chinese activity and undermine cohesive responses to the maritime militia, and indirectly the PLAN.⁴⁶

China’s grand strategy as a growing great power is legitimized by its exponential economic growth in the past few decades. As a result, disruption to China’s access to the Malacca Straits would not only pose a threat to China’s energy and food needs, but to the CCP’s overall strategic legitimacy in its ambitions to become a regional, or even world, power in the

⁴² Christer Ljungwall, “China’s Move toward Economic and Political Resilience through the Belt and Road Initiative,” in *The Belt and Road Initiative and Global Governance*, by Maria Carrai, Jean-Christophe Defraigne, and Jan Wouters (Edward Elgar Publishing, 2020), 21–33, <https://doi.org/10.4337/9781789906226.00007>: 23.

⁴³ He, “The Belt and Road Initiative”: 19.

⁴⁴ YONG DENG, “HOW CHINA’S BELT AND ROAD IS REORDERING ASIA,” *Harvard International Review* 39, no. 4 (2018): 32.

⁴⁵ Daniel R Russel and Blake H Berger, “Weaponizing the Belt and Road Initiative” (Asia Society Policy Institute, September 2020), https://asiasociety.org/sites/default/files/2020-09/Weaponizing%20the%20Belt%20and%20Road%20Initiative_0.pdf: 5.

⁴⁶ Zack Cooper et al., “China’s Maritime Silk Road: Strategic and Economic Implications for the Indo-Pacific Region” (Center for Strategic and International Studies, March 2018), <https://www.csis.org/analysis/chinas-maritime-silk-road>.

context of larger geopolitical realities. External threats in the Malacca Straits, such as the United States or a Western-leaning neighborhood, thus directly threaten the core interests of China’s government and thus it requires more protection.⁴⁷ Most literature regarding the “Malacca Dilemma” has focused on the establishment of alternative trade routes that protect China’s strategic need for energy resources and exporting goods; however, the Malacca Strait remains the most efficient and profitable route.⁴⁸ This paper argues that BRI has a dual function in securitizing China’s *current* access to the Malacca Straits until economically viable alternatives can be established.

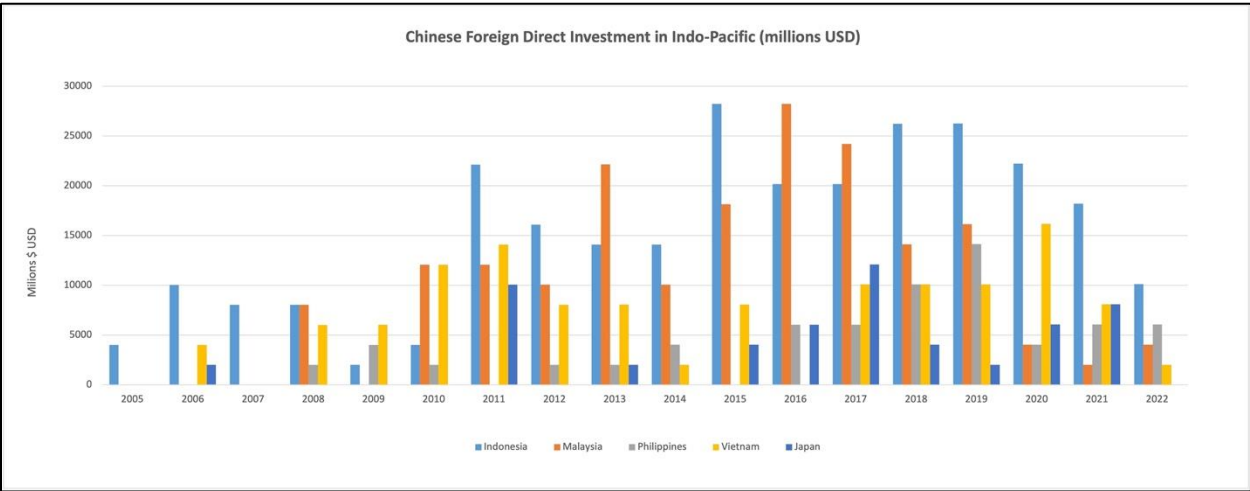


Figure 2. Chinese Belt-and-Road Foreign Direct Investment in the Indo-Pacific 2005-2022

This is best exemplified by a comparison of China’s FDI spending on the neighboring states. BRI’s role as an expansion of Chinese leverage in economic relations with other countries has can be identified in Indonesia and Malaysia, both geographically bordering Malacca and with EEZ rights in the straits. China is one of the world’s largest foreign investors, especially in Southeast Asia, but Indonesia and Malaysia have consistently been the top recipients of

⁴⁷ Lanteigne, “China’s Maritime Security and the ‘Malacca Dilemma.’”: 147.
⁴⁸ Russel and Berger, “Weaponizing the Belt and Road Initiative.”

Chinese FDI spending in the region since the inception of Belt and Road (see Figure 2). In a salient example of BRI strategy, nations including Malaysia and Indonesia have been compelled to adjust their domestic development strategies to meet BRI requirements against their ostensible national interest.⁴⁹ However, considering concerns regarding the impact of BRI projects on national economic and political interests, Malaysia has retreated slightly. The “Melaka Gateway”, a \$20 billion urban development surrounding an industrial port, was proposed as a development directly in the Malacca Straits in tandem with other transportation-based BRI projects in the country. It was halted in 2022, years after development began in 2014.⁵⁰ This indicates not only China’s intentions in gaining a significant foothold in the Straits, but a concerted step back as the ramifications of BRI become clearer.

⁴⁹ DENG, “HOW CHINA’S BELT AND ROAD IS REORDERING ASIA”; 32.

⁵⁰ Wade Shepard, “Inside The Belt And Road’s Premier White Elephant: Melaka Gateway,” Forbes, January 31, 2020, <https://www.forbes.com/sites/wadeshepard/2020/01/31/inside-the-belt-and-roads-premier-white-elephant-melaka-gateway/?sh=1a204fe3266e>.

BRI and Militia Activity as a Dual Strategy in the Straits

The influence of China's foreign investment network works as an offset to the maritime militia's promotion of Beijing's sovereignty claims, a pattern that works in service of their economic and political needs. While BRI and foreign direct investment are clustered in the littoral states of Malaysia and Indonesia, it can be noted that the reported militia activities in Figure 3 have remained predominantly internal to the South and East China Seas.

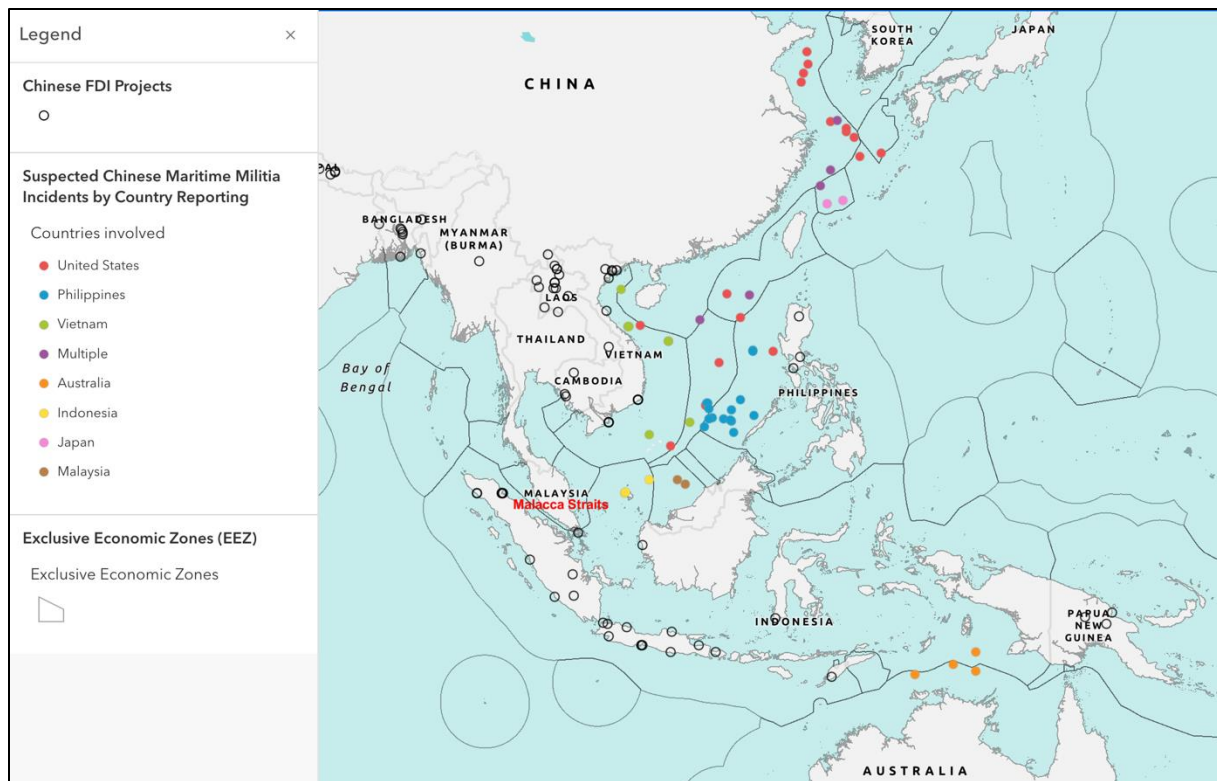


Figure 3. Alleged Militia Incidents by Country Reporting and BRI Investment Projects in Indo-Pacific

When viewing reports of militia clashes by reporting state, reports of militia clashes with Indonesian and Malaysian forces are distinctly lower than other littoral states, despite also

having ongoing sovereignty or EEZ disputes with China.⁵¹ The relationship here may be two-fold— on one hand, BRI is used as a system of incentives to maintain China’s access to the Malacca Straits’ economic resources. On the other, BRI investment is used to project soft power as a substitute and a protection for its militia activities.

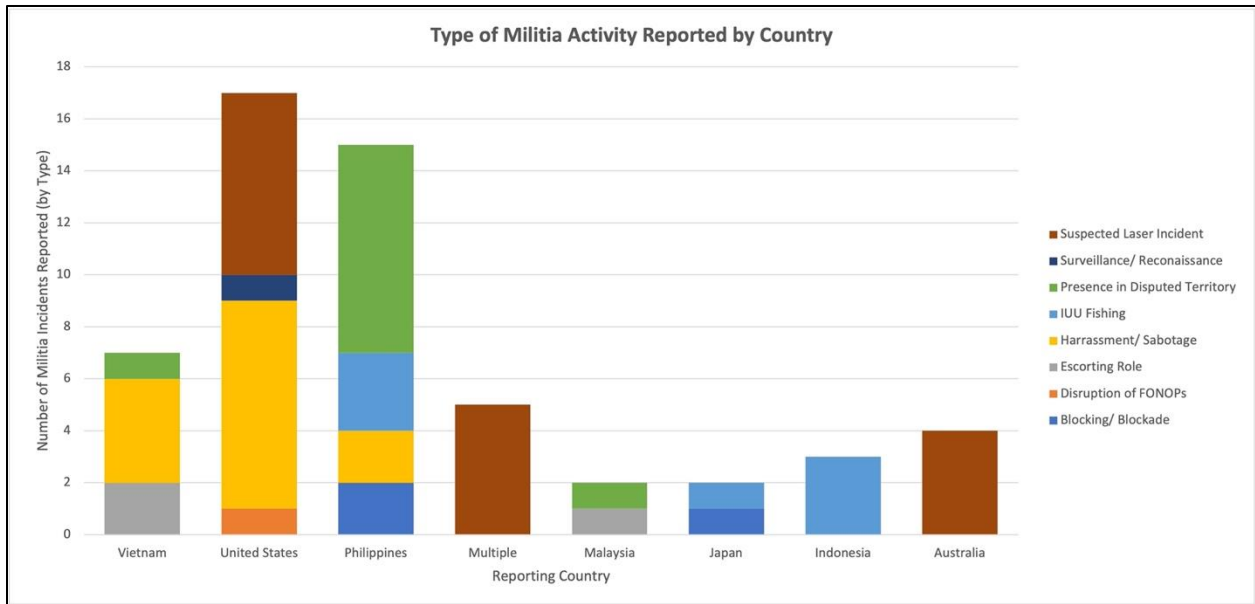


Figure 4. Type of Militia Activity Reported by Country

The view of BRI projects formulated as an economic strategy is well founded regarding the littoral states in Malacca. In an examination of BRI and militia use in the Indo-Pacific, a pattern emerges indicating a dual strategy that offsets the two strategies. Considering the limitations in gathering data regarding militia incidents as well as the assumed intentions behind specific BRI projects, the data shown in Figure 2 and Figure 3 should be considered as part of this pattern. As opposed to mapping militia presence surrounding the Malacca Strait, the map in

⁵¹ Amy Chew, “South China Sea: Why Malaysia and Indonesia Differ in Countering Beijing’s Maritime Claims | South China Morning Post,” accessed October 10, 2022, <https://www.scmp.com/week-asia/politics/article/3153932/south-china-sea-why-malaysia-and-indonesia-differ-countering>.

Figure 3 includes incidents that this paper has compiled where the militia had an interaction with the forces, vessels, or territorial sovereignty of another state. The effect of this on the research is twofold-- first, tracking escalations in violations of international law is made easier where just *presence* of militia is not inherently escalatory. Second, it serves as the basis of comparison for how different states respond. This will be further discussed later in the paper.

As shown in Figure 3, much of the BRI infrastructure is clustered in areas with lower counts of publicized militia incidents. For example, Indonesia, comes first as the largest recipient of BRI funds in Southeast Asia as China has increased its foreign direct investment (FDI) into the country by almost 600% between 2015 and 2020.⁵² Beijing is the second largest investor in Indonesia and has signed with Jakarta on a number of lucrative infrastructure, energy, and trading deals.⁵³ Indonesia has recorded only three significant clashes with the Chinese maritime militia in this database, despite ongoing EEZ disputes regarding the North Natuna Islands.⁵⁴ Malaysia, to which Chinese FDI sharply increased after the announcement of BRI as a major investor by 2014, has recorded two militia clashes.⁵⁵ Other studies regarding militia presence has recorded lower amounts of militia activity patterns around Malaysian-claimed

⁵² "China: Outward FDI Stock in Indonesia 2020 | Statista,"

<https://www.statista.com/statistics/720912/outward-fdi-stock-from-china-to-indonesia/>

⁵³ "Indonesia: Foreign Direct Investment Net Inflows 2021," Statista,

<https://www.statista.com/statistics/607478/indonesia-foreign-direct-investment-net-inflows/>.

⁵⁴ Daniel Peterson et al., "Indonesia and China: Geostrategic Implications for the ADF | The Forge," The Forge, April 13, 2022, <https://theforge.defence.gov.au/publications/indonesia-and-china-geostrategic-implications-adf>.

⁵⁵ Edmund Terence Gomez et al., *China in Malaysia: State-Business Relations and the New Order of Investment Flows* (Singapore: Palgrave Macmillan, 2020), <https://doi.org/10.1007/978-981-15-5333-2>: v.

reefs.⁵⁶ This can be compared with the Philippines, which has fewer BRI projects, and records over 15 specific instances of militia clashes (see Figure 4). Part of the explanation for this could be the vastness of the conflicting sovereignty claims between the Philippines and China regarding the Paracel and Spratly Islands and the legality of the activities being leveraged.⁵⁷ It's important to note that, although the data in Figure 4 seems to indicate that militia activity targets the United States, the type of activity reported is mainly alleged incidents regarding vessels and aircraft being targeted with lasers- activity which is unconfirmed and has more benign explanations.⁵⁸

For countries like the Philippines, which reports the highest number of incidents of all the neighboring states, activities such as harassment and disputing territorial sovereignty are fundamental threats and thus have serious consequences. However, this can still speak to multiple strategic and regional realities. First, BRI and the militia are both used to shape the regional realities in Beijing's favor. The use of BRI is significant in securing China's maritime economic needs where the militia may not. Simultaneously the militia actively enforces and reinforces China's territorial claims in the region, which have been noted to be deeply intertwined with Beijing's economic goals. Lastly, BRI may serve as a political and economic

⁵⁶ GREGORY B. POLING, "Illuminating the South China Sea's Dark Fishing Fleets," Stephenson Ocean Security Project, January 9, 2019, <https://ocean.csis.org/spotlights/illuminating-the-south-china-seas-dark-fishing-fleets/>.

⁵⁷ Renato Cruz De Castro and Paul Wesley Chambers, "The Philippines' Responses to Chinese Gray Zone Operations Triggered by the 2021 Passage of China's New Coast Guard Law and the Whitsun Reef Standoff," *Asian Affairs: An American Review* 49, no. 4 (October 2, 2022): 193–216, <https://doi.org/10.1080/00927678.2022.2121584>; 201.

⁵⁸ Jamie Seidel, "China Attacks US Pilots with Lasers," *News.Com.Au* — *Australia's Leading News Site*, June 25, 2018, sec. Military, <https://www.news.com.au/technology/innovation/military/chinese-fishing-boats-are-blinding-us-military-pilots-with-lasers/news-story/Oe4ca5befb6c21c3d7928dd8c00392a4>.

deterrent which undermines real-time state responses to militia activity. Based on a basic academic understanding of the widespread nature of the maritime militia, a lower number of reports regarding incidents of militia *clashes* with other states' forces does not necessarily indicate a lack of such incidents—so the gap between presence and reports should be explored.⁵⁹

This is an example of the ways a two-pronged, dual strategy by China, which secures and maintains sovereignty claims throughout the Indo-Pacific and directs foreign direct investment into littoral states. The use of these non-military coercive tactics is helpful as a strategic choice because it avoids direct clashes with littoral states or the United States, which would have the potential to escalate into larger diplomatic or military disputes that would further endanger China's access to critical resources.

International Legal Regime

In order to maintain access to Sea Lines of Communication like the Malacca Straits, the PLA has made use of nontraditional maritime forces, sharing the responsibility of maintaining its sovereignty claims and protecting its economic prerogatives with a decentralized fleet of nonmilitary state actors.⁶⁰ As a paramilitary tool, the militia's greatest operational strengths are 1) deniability and 2) sheer size. They are able to act in ways that the international legal regime would not overlook if they were official vessels. The defining issue of the "grey zone"

⁵⁹ "The China Maritime Militia Bookshelf: Complete with Latest Recommendations & Fact Sheet | Andrew S. Erickson," accessed October 1, 2022, <https://www.andrewerickson.com/2019/04/the-china-maritime-militia-bookshelf-complete-with-latest-recommendations-fact-sheet-3/>.

⁶⁰ Patalano, "When Strategy Is 'Hybrid' and Not 'Grey.': 810.

coercion is intense “political, economic, informational, and military competition” as deliberate activities by a state actor which fall just below the threshold of aggressive use of force that would characterize conventional war.⁶¹ In the case of China, this is represented in a gradual campaign to pursue its sovereignty and economic interests without overtly violating the conditions, or crossing the thresholds of violence, which would validate other nations from responding with war-level force. Both the militia and the economic tactics used by China take an incremental approach—to shape the regional interactions, legal responses, and eventually the tactical reality, in its favor. They do so by weaponizing the citizen status of militia in the Indo-Pacific.

While a general academic consensus agrees that grey-zone activity works counter to the naval rules-based order and violates both customary international law, ambiguities in international law allow militia activity to fly under the radar.⁶² The use of ostensibly civilian ships, and the strategic use of grey-zone activities rather than official operations, are intentionally used by the PLAN to deter neighboring states from effectively responding. The type of militia activity varies, at times, based on the location and the claimant state with which the militia vessel is encountering. In the light of enhanced maritime capabilities and the shored-up responsibilities and structures of the maritime militia, China’s strategy has hinged greatly on the use of “coercion” in preventing harm to Chinese sovereignty or rights in the East and South China Seas. Designed to fall below the thresholds of high-end conflict, it is a

⁶¹ Frank G. Hoffman, “The Contemporary Spectrum of Conflict: Protracted, Gray Zone, Ambiguous, and Hybrid Modes of War,” The Heritage Foundation, <https://www.heritage.org/military-strength-topical-essays/2016-essays/the-contemporary-spectrum-conflict-protracted-gray>: 26.

⁶² Joseph L. Votel et al., “Unconventional Warfare in the Gray Zone,” 2016, 102.

restructured form of competition that pursues Chinese interests in undermining the maritime status quo while avoiding the liability of war.⁶³

Coercion functions as both a protectionary and inhibitory strategy—China’s “hybrid” strategy using military and paramilitary forces preserves China’s ability to project power and its titular “rights and interests maintain” and prevents other states from projecting their own.⁶⁴ The literature also identifies the ways in which China utilizes its political and legal rhetoric, in addition to military and para-military coercion, to deter other states’ responses. This paper will further argue that economic coercion joins this toolbox as a method of shaping regional reactions to China’s geostrategic actions and objectives, specifically avoiding responses to its use of maritime militias.

⁶³ Patalano, “When Strategy Is ‘Hybrid’ and Not ‘Grey.’: 812

⁶⁴ Ibid. 813

At the very base of the issue is that the international legal regime does not recognize most of China's sovereignty claims in the South China Sea, which serves as an additional motivation for the PLA to use non-military forces as enforcers of extra-legal claims. Militia activities range from relatively benign presence (when acting in their civilian professions as fishermen), to harassment or sabotage campaigns.⁶⁵ While the exercise varies, the very nature of China's use of a maritime militia hinge on the careful weighing of legal thresholds. As shown in Figure 5, China's maritime militia engages in a vast range of activities, from relatively benign fishing to sabotage or even acts of aggression in another states' EEZ.⁶⁶

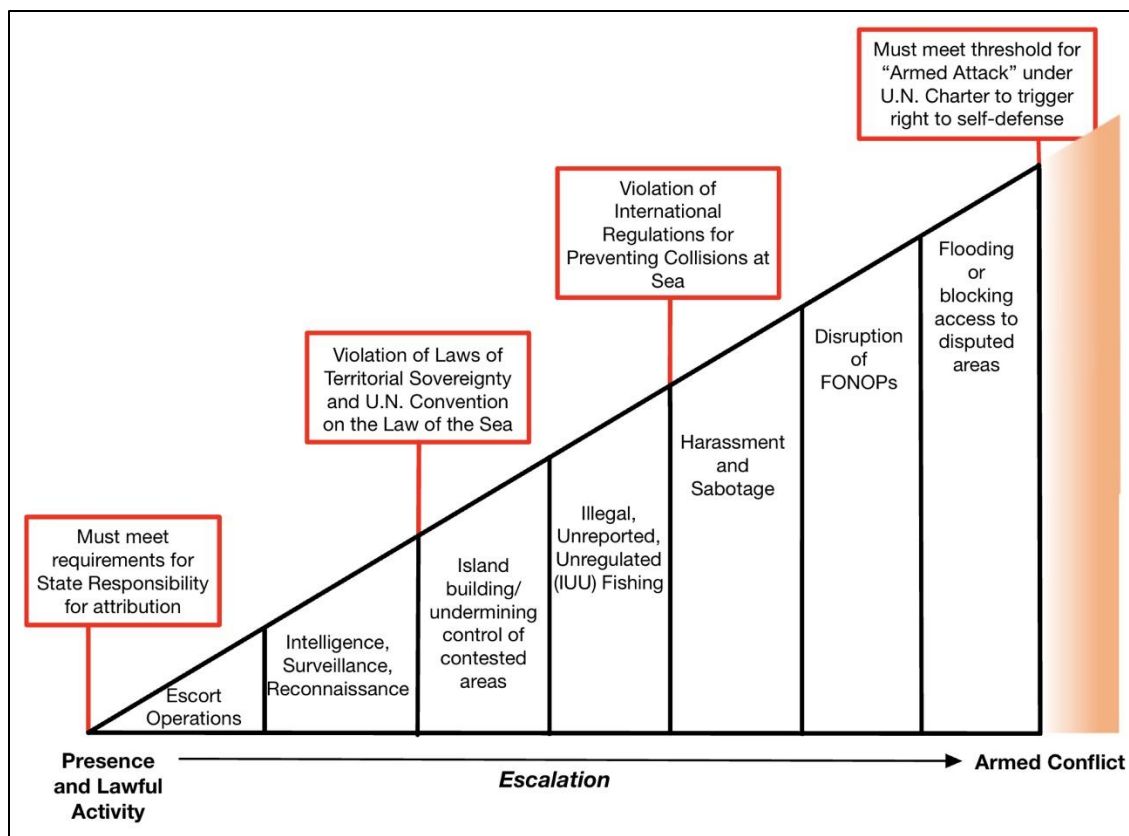


Figure 5. Escalation of Militia Activity and Violation of International Law

⁶⁵ Ibid. 91

⁶⁶ Jonathan G. Odom, "Guerrillas in the Sea Mist: China's Maritime Militia and International Law," *Asia-Pacific Journal of Ocean Law and Policy* 3, no. 1 (June 8, 2018): 31–94, <https://doi.org/10.1163/24519391-00301003>.

First, based on the 2001 Articles on Responsibility of States for Internationally Wrongful Acts, China's direct instruction and use of maritime militia and its activities has been considered as a parastatal entity, rather than an independent actor, establishing China's state responsibility for the militia's activities.⁶⁷ Having crossed the first threshold in Figure 5, the found state responsibility means that China, by way of the militia, has been found to violate multiple international obligations, such as "(1) due regard for other states, (2) maritime safety, (3) marine environment protection and preservation, and/or (4) the overfishing ban."⁶⁸ The first threshold indicated in Figure 5 indicates that the attributability of the militia to China is the first step in identifying the violations of international law suspected from its activities. The academic consensus has come to see that the militia is indeed commanded under the CCP.

However, the international legal regime's ambiguity regarding states' rights to respond to "armed attack" is vague enough to protect the militia from most concerted states responses. Article 51 of the United Nations Charter distinguishes the criteria by which states can respond in self-defense to an act of "armed attack". China's actions violate other bodies of international law and norms, such as the Laws on Territorial Sovereignty (by encroaching on the EEZs of other states), and Violations of Regulations to Prevent Collisions. The militia is generally considered to be attributable to the PLAN because of the direct communication and training between them.⁶⁹ However, while the militia conducts activities in violation of international law forums, it carefully and deliberately avoids crossing the "gap" between the

⁶⁷ Yoo and Koo, "Is China Responsible for Its Maritime Militia's Internationally Wrongful Acts?"; 278.

⁶⁸ Ibid, 278.

⁶⁹ Jonathan G. Odom, "The True 'Lies' of the Impeccable Incident: What Really Happened, Who Disregarded International Law, and Why Every Nation (Outside of China) Should Be Concerned," *Asia-Pacific Journal of Ocean Law and Policy*, n.d.

use of armed force and “armed attack” that would cause an escalation.⁷⁰ Low-level and persistent coercion raises the chances of maritime confrontations but is ambiguous enough to avoid war or armed conflict and serves as a deterrent for states to respond forcefully, especially those with deepening economic stakes in their relationship with Beijing. On a diplomatic level, the deniability afforded to the PLA by the militia is valuable. The militia can use its civilian role (or façade) to intimidate, harass, blockade, or otherwise impede foreign vessels in pursuit of China’s maritime claims. In response to any incident, the PLA can step in and deescalate as a seemingly unaffiliated government body. This activity can be dangerous and definitely escalatory. However, none of these have reached a threshold of “use of force” under international law in a way that would justify a state to use force against what is ostensibly a civilian vessel.⁷¹

As the types of militia activity being deployed in the Indo-Pacific has varied based on China’s operational needs, so have the responses of neighboring states in the face of a threat to their EEZ rights and sovereignty claim conflicts. Seven countries currently hold competing sovereignty claims in the South China Sea. Their challenge in engaging with these fishing boats is two-fold. On one hand, other states are aware that Chinese fishing vessels have possible affiliations with the militia and Chinese government organizations. The risk of becoming enmeshed in a diplomatic incident or invoking a response from the PRC deters “weaker” states from engaging effectively with Chinese vessels in contested areas.

Simultaneously, states that would otherwise engage with official Chinese vessels, such as the

⁷⁰ Erickson and Martinson, *China’s Maritime Gray Zone Operations*: 89

⁷¹ Franz-Stefan Gady, “‘Little Blue Men:’ Doing China’s Dirty Work in the South China Sea,” November 5, 2015, <https://thediplomat.com/2015/11/little-blue-men-doing-chinas-dirty-work-in-the-south-china-sea/>.

United States or Japan, face a challenge in positively identifying fishing boats as militia.⁷²

Avoiding unintentional escalation is necessary for navigation to remain free and safe in the Indo-Pacific; the littoral states are thus forced to consider their economic stakes when dealing with fishermen/suspected militia.

The 'crisis management' and danger of escalation is increased and complicated by the use of non-naval assets. Regardless of whether they are militia, the dangers of incidents regarding Chinese fishing boats are escalated by the use of the militia as a military tool.⁷³ The grey zone between law enforcement action and military action is complicated when using the militia, as their use of force must be well calculated. The militia is an attractive tool, but a dangerous one for both China and regional stability. It may provide deniability and domestic legitimacy in pursuit of a grand strategy, but the dual-use technologies, the inconsistency of tactical command, and the frequency with which the militia is employed simultaneously make it a liability, increasing the risk of escalation during an interaction with foreign vessels.⁷⁴

⁷² Ryan D. Martinson, "No Ordinary Boats: Identifying China's Maritime Militia," CIMSEC, May 18, 2021, <https://maritime-executive.com/editorials/no-ordinary-boats-identifying-china-s-maritime-militia>.

⁷³ Luo and Panter, "China's Maritime Militia and Fishing Fleets: A Primer for Operational Staffs and Tactical Leaders, Pt. 2 | Center for International Maritime Security."

⁷⁴ Ibid.

State Responses and Case Studies

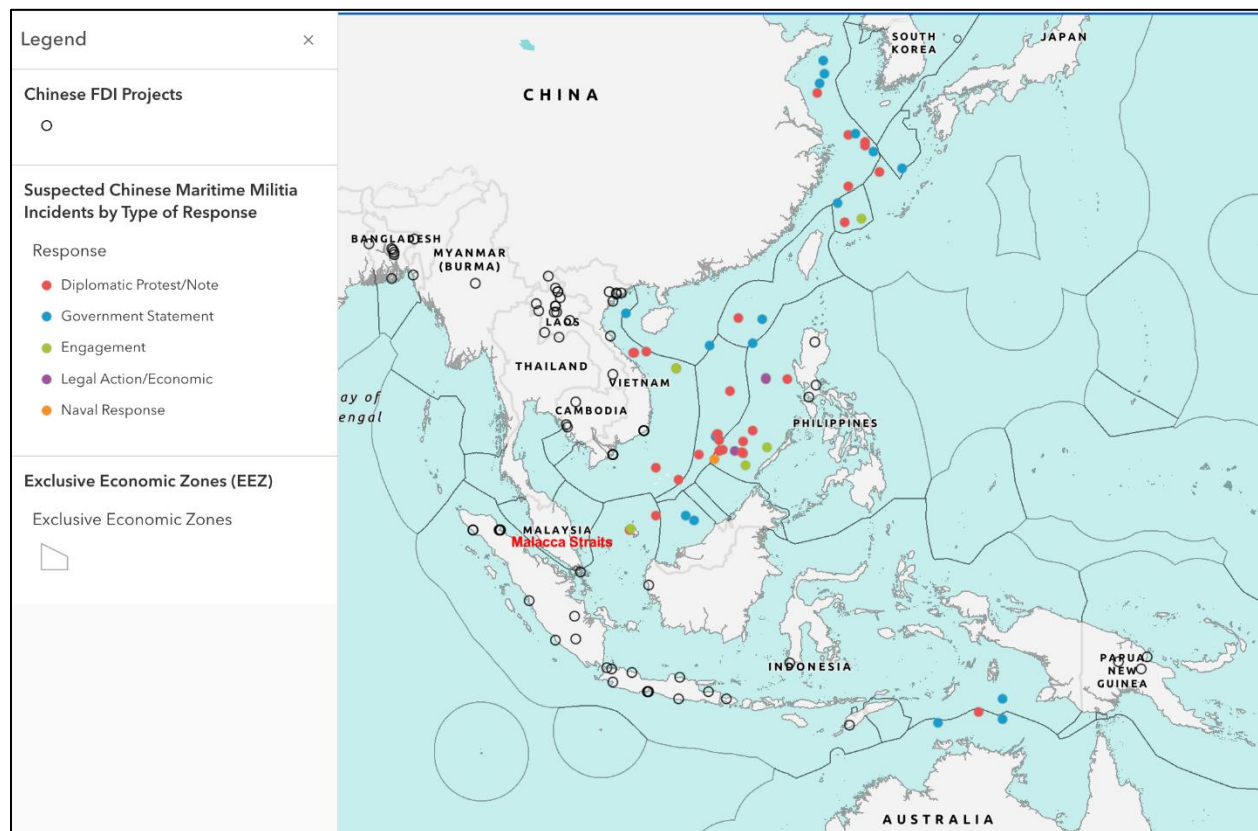


Figure 6. Alleged Militia Incidents Mapped by Type of State Response and BRI Investment in Indo-Pacific

States have used various military and diplomatic recourses to respond to China's maritime militia. These have ranged from diplomatic protests, legal action, strategic compartmentalizing, and the use of their own militia forces (see Figure 6 and Figure 7). The research in this paper shows that each states' response is partly shaped by the economic influence of BRI investment on those countries. As noted earlier, the use of coercive economic diplomacy on this issue has effectively restrained states in their response to maritime militia—especially in those states who have benefited the most from BRI investment near the Malacca Strait. To analyze these differences, this section will look comparatively at the

reactions of multiple actors, examining the case studies of the littoral states to the Malacca Straits, the Haiyang Shiyou-981 oilrig standoff, and ASEAN’s collective response.

Response to Militia Activity by Reporting Country

Country	Diplomatic Protest/Note	Engagement	Government Statement	Legal Action/Economic	Naval Response	Grand Total
Vietnam	4	1	1		1	7
United States	10		7			17
Philippines	9	2		3	1	15
Multiple	1		4			5
Malaysia			2			2
Japan	1	1				2
Indonesia	2	1				3
Australia	1		3			4
Grand Total	28	5	17	3	2	55

Figure 7. Response to Militia Activity by Reporting Country

In the same way that China secures its access to important Sea Lanes of Communication, it uses the same strategies to protect its extra-legal sovereignty claims in the South and East China Seas through blockades, harassment, and other militia activity.⁷⁵ Fearing economic and political consequences from BRI commitments, and constrained by the international legal regime, states find it hard to respond adequately to threats to their territorial and resource rights. It can also be noted that state responses are predominantly diplomatic in nature—relying on government statements or filing diplomatic protests as a response to belligerent militia activity (see figure 7). This can be due to their calculations that engagement with the militia vessels would be too costly considering political and economic relationships with China, or that complaints are a low-cost way to make public record of clashes.

⁷⁵ Franz-Stefan Gady, “‘Little Blue Men:’ Doing China’s Dirty Work in the South China Sea,” November 5, 2015, <https://thediplomat.com/2015/11/little-blue-men-doing-chinas-dirty-work-in-the-south-china-sea/>.

Alternatively, they may be motivated by the understanding that previous attempts at legal deterrents, such as the 2016 Hague ruling against China in the Spratly Islands, is ineffective and counterproductive at worst, indicated by China's refusal to acknowledge the ruling.⁷⁶

Malacca Strait: Indonesia and Malaysia

For states with distinct economic relationships with China such as those in the Malacca Strait, "compartmentalizing" their economic, security, and fishing interests has been a way to address both issues simultaneously, if unsatisfactorily. Indonesia, as a primary recipient of BRI funds, arguably takes on more risk by responding harshly to militia activity. Indonesia has no official territorial disputes with China, as its territory is not included in the 9-dash line claim—however, it maintains EEZ disputes regarding the North Natuna Islands and fishing areas, where both countries claim a historical right to fish.⁷⁷ According to Ristian Atriandi Supriyanto at RSIS in Singapore, Indonesia avoids discussing incidents publicly out of concern that it "may tarnish the image of a neutral party in the disputes."⁷⁸ While the statement is vague, the extent of Indonesia's relationship with China underscores the importance of their *diplomatic* relationship as well.

⁷⁶ "The Hague Tribunal's South China Sea Ruling: Empty Provocation or Slow-Burning Influence?," Council of Councils, August 18, 2016, <https://www.cfr.org/councilofcouncils/global-memos/hague-tribunals-south-china-sea-ruling-empty-provocation-or-slow-burning-influence>.

⁷⁷ Chew, "South China Sea: Why Malaysia and Indonesia Differ in Countering Beijing's Maritime Claims | South China Morning Post."

⁷⁸ RSIS, "Indonesia's South China Sea Dilemma: Between Neutrality And Self-Interest – Analysis," *Eurasia Review* (blog), July 18, 2012, <https://www.eurasiareview.com/18072012-indonesias-south-china-sea-dilemma-between-neutrality-and-self-interest-analysis/>.

Although the North Natuna waters are disputed and have been the subject of IUU fishing, encroachment of the EEZ by Chinese fishing boats, the Indonesian response has been muted at best. Indonesia's lack of public or strategic pushback against China's tactics in the North Natuna Sea has emboldened Chinese gray-zone activity in the region.⁷⁹ Indonesia's close economic ties with China has led to a lack of governmental transparency regarding Chinese incursions, and a weak maritime response.

As can be seen in Figure 6 above, diplomatic protests have gone publicly undisclosed for fear of inflaming tensions.⁸⁰ In attempting to "compartmentalize" Indonesia's bilateral economic relationship with Beijing from its response to Chinese coercive activity, the government's response rather makes the *impression* of dealing with the problem while effecting an underwhelming response. China's offset use of the militia by economic investment, evidenced earlier in this paper, is strategically leveraged not only to protect its access to the Malacca Straits, but to protect against harsher responses as it pursues its political goals. This relationship is further evidenced by direct exchanges of money—for example, a US\$6 billion loan arrived in state-owned Indonesian Banks "not long after the 2016 conflict associated with Chinese incursions into the EEZ of Indonesia's Natuna Islands appeared to resolve

⁷⁹ Evan A. Laksmana, "Indonesia's Response to China's Incursions in North Natuna Sea Unsatisfactory: Indonesian Academic," ThinkChina - December 10, 2021, <http://www.thinkchina.sg/indonesias-response-chinas-incursions-north-natuna-sea-unsatisfactory-indonesian-academic>.

⁸⁰ RISTIAN ATRIANDI SUPRIYANTO, "INDONESIA'S RESPONSE TO CHINA'S GREY ZONE STRATEGY: Diplomacy, Defence, and Law Enforcement," *Institute of Defence and Strategic Studies of the S Rajaratnam School of International Studies* No. 038 (July 13, 2022), <https://www.rsis.edu.sg/wp-content/uploads/2022/07/IP22038-Supriyanto-masthead-final.pdf>.

itself.”⁸¹ While still relying slightly on speculation, this partly confirms the persuasive nature of BRI investment in muting state responses to other undesired behavior.

Historically, Malaysia has fared similarly to Indonesia—some describing its reaction as “willful ignorance” of China’s militia tactics in mutually disputed waters.⁸² However, it has very recently taken a more “robust” approach.⁸³ Malaysia and China engage in a sovereignty dispute over the resource rich Luconia Shoals, which sees consistent militia presence (although notably a lower number of official reports of clashes).⁸⁴ However, the difference is that Malaysia’s government has turned its gaze on the BRI instead, downsizing on projects such as the theorized Melaka gateway project that was cancelled. It has yet to be seen if reduced reliance on BRI funds will allow the government to react differently to militia incursions in the future.

Vietnam

As shown in Figure 7, Vietnam is one of two states to take a slightly more frontal approach with the maritime militia. Its naval response in the case of the 2014 Haiyang Shiyou-981 oilrig standoff, a case which also exemplified China’s use of the militia as dual-use fishing fleet and tool of coercion, is an example of a slightly more aggressive approach as compared with that of Indonesia and Malaysia. Vietnam, which has an EEZ that overlaps with China’s 9-

⁸¹ Daniel Peterson et al., “Indonesia and China: Geostrategic Implications for the ADF | The Forge.”

⁸² Erickson and Martinson, *China’s Maritime Gray Zone Operations*: 214.

⁸³ Chew, “South China Sea: Why Malaysia and Indonesia Differ in Countering Beijing’s Maritime Claims | South China Morning Post.”

⁸⁴ Erickson and Martinson, *China’s Maritime Gray Zone Operations*. 157.

dash line, is the only other neighbor state to make use of a maritime militia—however; China’s militia has been more forcefully used in asserting control over contested territories.⁸⁵

Much of the conflict between the two states deal, critically, in energy rights in the region. HYSY 981, a Chinese deep-water oil platform owned by a state-owned drilling company, was ordered to drill in Vietnam’s EEZ. This provoked both a domestic and military response in Vietnam, and Vietnamese fishing fleets reacted aggressively against the oilrig. However, none of the Vietnamese vessels was able to penetrate the security cordon surrounding the rig, and Chinese fishing boats in the militia responded using water cannons, electronics sweeping, and even ramming Vietnamese fishing boats. There was at least one Vietnamese casualty.⁸⁶

However, the continued Vietnamese opposition led China to withdraw its militia vessels and the oilrig.⁸⁷ Vietnam’s strategy, while costly for itself, was also reputationally costly for China, and militia activity in Vietnam’s EEZ has continued, although an event like that with HYSY 981 has not repeated.⁸⁸ Vietnam’s FDI from China, historically, has been somewhat lower than that received by Indonesia and Malaysia. Its response to Chia’s militia, however, is far more direct. While this showed that even aggressive action by Vietnam’s own forces would not be a deterrent completely to China’s actions—indicating that a larger-scale, multi-lateral response may be needed—China’s rollback of the incident indicates that it did take notice of

⁸⁵ Dr Huong Le Thu “Vietnam’s Approach to the South China Sea Disputes And the Test of The Haiyang Di Zhi 8,” *Australian Institute of International Affairs*, <https://www.internationalaffairs.org.au/australianoutlook/vietnams-approach-to-the-south-china-sea-disputes-and-the-test-of-the-haiyang-di-zhi-8/>.

⁸⁶ Ibid.

⁸⁷ Erickson and Martinson, *China’s Maritime Gray Zone Operations*; 180.

⁸⁸ Ibid 216.

these events. While international legal responses, like that leveraged by the Philippines, serve as little more than “moral guidelines” for behavior, brinkmanship in this case has proven slightly more effective.⁸⁹ As this trend continues, the Indo-Pacific becomes a more dangerous place to operate.

ASEAN

As an important multilateral institution, ASEAN has faltered in its response to the maritime militia. Hindered by divisions over its collective responsibility to protect individual state maritime rights and internal politics over interpretations of the law and various economic and political commitments to China, it undermines its own affirmation of UNCLOS. Thus, “mini-lateral” discussions like those between Indonesia and the Philippines may bear more fruit in building a consensus on how to deal with the maritime militia.⁹⁰ The structure of ASEAN practices, which require a consensus, have been hard to come by. As a result, cooperation with littoral states regarding this issue is limited. These limits have created a pattern of operational disconnect, in which the academic literature is well-supported in consensus regarding militia activity, its sources, and its strategic functions-- but the naval and governmental responses in real-time fall short of addressing or deterring it.

However, mini-lateral agreements, such as those between Vietnam and Malaysia addressing EEZ and fishing issues, may be a more effective way forward.⁹¹ By using smaller forums, the

⁸⁹ Erickson and Martinson, *China's Maritime Gray Zone Operations*; 218.

⁹⁰ Michael Heazle, “Boosting Maritime Law Enforcement in Southeast Asia and the South China Sea,” *The Strategist*, February 3, 2022, <https://www.aspistrategist.org.au/boosting-maritime-law-enforcement-in-southeast-asia-and-the-south-china-sea/>.

⁹¹ Heazle, “Boosting Maritime Law Enforcement in Southeast Asia and the South China Sea.”

operational deadlock of ASEAN is addressed and external powers, such as Australia or the United States, can lend their support and strength.

Uneven responses, diverse economic relationships and stakes, and the strategic ambiguity of some Indo-Pacific states undermine a cohesive reaction from important regional forums such as ASEAN. While Western countries such as the United States and Australia have begun recognizing the militia's role in sovereignty claims in recent years, a complete response has yet to be levied. This will, in some ways, require external actors to affirm the rights and legal standards regarding maritime behavior. Affirming UNCLOS as a set standard and placing responsibility for escalation on Beijing by supporting the responses of littoral states is critical when it comes to grey-zone operations.⁹²

Recommendations and Conclusions

Australia has an increasingly critical role in the resolution and deterrence strategies employed against China. As it seeks to strengthen its relationships with neighborhood states, including those who face the actions of a maritime militia's aggression and increased economic stakes in Chinese funds, Australia must also take a stance regarding the use of the militia. In upholding the standards of UNCLOS and lending rhetorical and operational support against IUU fishing and other violations of maritime rights, it can help to place the onus of responsibility on China if situations are to escalate—in considering the weapon of ambiguity served by the militia, this may serve as a deterrent. This is becoming an ever more salient issue considering reports of suspected militia activity against Australian and American

⁹² Ibid.

pilots—what is a regional issue now may increasingly become a national security issue for Canberra.⁹³

There is also place for examination of the operational disconnect caused by uneven responses to the maritime militia. The academic consensus regarding the legal attributability and the ability of states to respond does not necessarily respond to the needs of practitioners, who rely on shorter identification guides and shorter-term strategies to identify Chinese capabilities.⁹⁴ This contributes to a weak international response, from individual responding states and from forums like ASEAN. In solving this disconnect, states like Australia should:

1. Engage in mini-lateral forums to strengthen relationships with affected states and reiterate support in the face of Chinese belligerent behavior.
2. Record and publicize all instances of encounters with Chinese maritime militia and encourage publication in international forums to increase conversation regarding deterrence strategies for militia activity.
3. Deepen focuses on accurately identifying maritime militia vessels in real-time and narrowing the operational disconnects between academic identification of the strategic use of the militia and reasonable measures to deter and react to militia incidents.

⁹³ "Lasers Blinding US Pilots Fired from Chinese Fishing Boats | News.Com.Au — Australia's Leading News Site," accessed November 21, 2022, <https://www.news.com.au/technology/innovation/military/chinese-fishing-boats-are-blinding-us-military-pilots-with-lasers/news-story/0e4ca5befb6c21c3d7928dd8c00392a4>.

⁹⁴ Luo and Panter, "China's Maritime Militia and Fishing Fleets: A Primer for Operational Staffs and Tactical Leaders, Pt. 2 | Center for International Maritime Security."

To conclude, the maneuverability and legal ambiguity of the maritime militia employed by China allows it to advance its economic interests as a resource insecure state. At the same time, economic investment in the region protects the use of the militia by deterring other states from reacting in a way that might escalate tensions in the region. The data compiled in this report exemplifies not only the relationship between two seemingly distinct nonmilitary strategies, but the consequences they have on the domestic decision-making of states constrained by legal or economic considerations. In this way, they are working exactly the way they were designed to—in tandem, and as a concerted solution to create access for China to the Malacca Straits to solve its most pressing energy dilemma.

The relationship between China's need for access to the Malacca Straits, and its grey zone activities in the Indo-Pacific, become clearer especially considering Chinese maritime militia use in the region. China's goals in undermining pre-existing security guarantors for its own purposes is indeed for the purpose of maintaining its own security, but also to protect from economic loss. Case studies such as those of Indonesia, Malaysia, Vietnam, and the ASEAN serve to show this relationship; deterrents for response are heightened with increases in investment, and regional responses are muted by legal ambiguity and disagreement. This non-military coercion undermines the safety of navigation in the Indo-Pacific and erodes the rules-based order that countries like Australia have relied on for their own territorial and economic integrity. The legal regime in place, while protective until now, needs to adapt to the reality of hybrid and grey-zone warfare in the near future, as the competition in the Indo-Pacific heats up and begins to renegotiate all the thresholds that were previously in place.