THE FUTURE OF THE SEAS IN EAST ASIA:
FORGING A COMMON MARITIME FUTURE FOR ASEAN AND JAPAN
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FIFTEEN YEARS INTO the 21st century, it is increasingly clear that the future of East Asia will be defined by how countries in the region manage the seas. Indeed, the state of maritime affairs has become a major concern for many regional countries and beyond. As the center of geo-politics and geo-economic shifts to East Asia, the region has been seen as an arena where both maritime cooperation and maritime rivalry are likely to occur. In this context, there are concerns that the shift in the center of gravity and the changing power relations among major powers would diminish the value of East Asia's seas as regional public goods. In other words, the future of the seas in East Asia is central to the maintenance of peace and prosperity in the region.

Three factors can be considered as the driving force for such concerns. The first is the competition to secure access to energy sources at sea, due to the growing needs of regional countries for energy to fuel economic development. The second factor is the unresolved maritime-based territorial disputes that, if not managed well, would become a source of serious regional tension in the region. The third factor is the growing prospect for naval rivalry among major and regional powers. At the same time, however, all countries in the region are also aware that peace and stability is critical for promoting trade flows and the sustainability of economic growth.

The essays in this book discuss ways to address this conundrum in a peaceful way. Written by leading ASEAN and Japanese academics, this collection of essays seeks to forge a common understanding that the future of the seas in East Asia will be shaped by the willingness and ability of all stakeholders to cooperate in all aspects. It is my hope that these essays would trigger and shape further regional discussions on this important issue.

Jakarta, March 2015

Rizal Sukma
Executive Director, Centre for Strategic and International Studies
The Fundamental Challenge for all East Asian countries is to ensure that peace and prosperity, which has characterized the region over the last four decades, would continue to be the defining feature of the region. The future of the seas in East Asia is central to the maintenance of peace and prosperity in the region. Indeed, the importance of the seas in East Asia has acquired a much greater degree of attention, and thus strategic significance, due to the changing nature of power relations in the region, especially among the major powers. There have been concerns that this strategic transformation would diminish the value of East Asia’s seas as regional public good, and transform it into a theatre for major powers competition and rivalry defined more by the pursuit of national strategic interests.

In that context, countries in the region are faced with the task and challenge of ensuring good order at sea and prioritizing the use of peaceful means and international law to manage and resolve maritime disputes. Achieving that objective would require common understanding of the strategic significance of the seas in East Asia as regional and global public goods, not only in security and economic terms but also in other aspects of the use of the sea for the benefits of all. Therefore, it is imperative to recognize that the future of the seas in East Asia will also be shaped by the willingness and ability of all stakeholders to cooperate in all aspects.

This study aims at exploring the ways to shift the competitive nature between states in East Asia in maritime affairs to a cooperative one. It begins by describing the significance of the seas in the region, followed by an elaboration of the maritime-related challenges that could undermine East Asia’s stability. It then looks at some examples of best practices in approaching maritime disputes, before exploring alternative measures to create more venue for cooperation in the midst of tension among the states in East Asia.
THE ECONOMIC AND STRATEGIC VALUES OF THE SEAS IN EAST ASIA

Strategically, Northeast Asia holds importance in numerous ways. First, it hosts around 9 submarine communication cables. These cables are crucial for transmitting telecommunication signals across oceans, carrying telephone, Internet, and private data traffic. Second, in 2013, three of the world’s ten largest military spenders are located in Northeast Asia, according to the Stockholm International Peace Research Institute. In descending order of their military budget size, these are People’s Republic of China (PRC), Japan, and Republic of Korea (ROK).

Economically, Northeast Asia is crucial to the world economy. First, it is home to several top trading countries in the world. Beijing, Tokyo, Taipei, and Seoul are indispensable players in global trade with Beijing being the world’s largest exporter and second largest importer. Second, consequently, this makes them massive holders of foreign-exchange reserves, thus consequently important creditors in the world’s economy. Although Japan, South Korea, and Taiwan are important players in their own right, China again stands out for being the world’s largest. Its reserves stand at around four times the size of the second largest. Third, the sub-region is estimated to hold significant oil and natural gas reserves. East China Sea is estimated to possess around 60-100 million barrels of oil and 1-2 trillion cubic feet of natural gas reserves.

The seas of Southeast Asia are just as important. Strategically, Southeast Asia possesses similar importance with its northern counterpart. First, numerous submarine communication cables also cross the region. Seven communication cables pass the South China Sea. Second, several waterways in Southeast play enormous strategic role in the world, namely the Malacca Strait and the Singapore Strait. Around 60,000 vessels transit in the Malacca Strait each year, almost half of the world’s shipping fleet. The Malacca Strait becomes more crucial for commodity-hungry countries such as Japan and China, which have to rely on imports as around 15,2 million barrels of oil passed the Strait on 2011 in one day.

In terms of economic value, Southeast Asia is also a significant sub-region in the global economy. First, countries in Southeast Asia are among the top trading countries in the world. In 2013, Singapore, Thailand, Malaysia, and Indonesia are all among the top 30 goods exporters and importers. Second, the sub-region also has significant quantities of oil and natural gas reserves. This especially concerns the international bodies of water in Southeast Asia, apart from the reserves within individual countries. South China Sea alone is estimated to hold around 11 billion barrels of oil and 190 trillion cubic feet of natural gas reserves.

1 Frank W. Lacroix, Robert W. Button, Stuart E. Johnson, John R. Wise, A Concept of Operations for a New Deep-Diving Submarine (Santa Monica: Rand Corporation, 2002), Chapter I.
5 Lacroix, Button, Johnson, and Wise, A Concept of Operations.
7 Ibid.
The context: Why the values have become more salient

Traditional Security Challenges

There is currently a tendency for countries to see the sea as a new frontier to achieve the great power status. Consequently, this creates a rivalry or competition between the status quo powers and the rising powers to control the sea, in this case in East Asia seas. Within such a context, there are three main traditional security challenges in the seas of East Asia at present: territorial disputes, modernization of military posture, and uncertainty regarding the United State’s presence in the region.

The first factor is the territorial disputes, particularly in the context of how overlapping maritime boundary claims direct regional military spending. The region boasts numerous overlapping maritime boundary disputes, a product of the geographical makeup of East Asia, with numerous semi-enclosed seas, disputed claims to sovereignty over rocks and islands, and the widespread ratification of the United Nations Convention on the Law of the Sea (UNCLOS).

The interest on sea or maritime issue is actually nothing new among countries in East Asia region. Japan has been fully aware of its characteristic as an archipelagic state surrounded by the seas. At least since 1980s, Japan has developed its national strategy towards building up its maritime capabilities and infrastructures. Other countries like China and India used to focus heavily to develop its land-based national strategy. India witnessed how major powers were seeking to build military bases in the Indian Ocean during the Cold War era in 1970s, and began paying more attention to the sea. Only in the mid-1990s China started to have a genuine maritime interest and develop a naval-based strategy, which has involved building a ‘blue-water navy’. China, for example, has clearly linked economic development and the importance of the sea as the ‘life line’ due to the tremendous increase in overseas trade via sea. More recently, in October 2013, China launched a new initiative called the “Maritime Silk Road.” With this concept, China seeks to
In this regard, there are elements of facts as non-material capability such as influence. capabilities, among others territory, as well signified with expanded acquisition of material understood, superpower or great power is to energy. However, as it is traditionally interests, such as securing markets, access naval-based strategy. Strategic and economic interests at sea create the rationale for a greater allocation of state resources on the military and on coastal enforcement vessels. In particular, many East Asian states have fielded greater numbers of modern surface ships complete with advanced air-defense capabilities and technologically advanced war-fighting capabilities. Most troubling has been the dramatic rise in the number of submarines, particularly by South China Sea claimants like Vietnam and Malaysia. Furthermore, a number of states have invested considerable funds in the development of civilian coast guard authorities.

Most governments would portray that as a “defensive strategy,” meaning that their purpose is simply to protect their economic interests, such as securing markets, access to energy. However, as it is traditionally understood, superpower or great power is signified with expanded acquisition of material capabilities, among others territory, as well as non-material capability such as influence. In this regard, there are elements of facts as non-material capability such as influence.

Table 1: Defense Expenditures and Military Procurement in ASEAN and China

<table>
<thead>
<tr>
<th>Country</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>PR China</td>
<td>111,785</td>
<td>123,338</td>
<td>147,268</td>
<td>167,712</td>
<td>188,460</td>
<td>222,000b</td>
</tr>
<tr>
<td>Brunei</td>
<td>350</td>
<td>391</td>
<td>415</td>
<td>411</td>
<td>412</td>
<td>585.6b</td>
</tr>
<tr>
<td>Cambodia</td>
<td>236</td>
<td>178</td>
<td>204</td>
<td>217</td>
<td>243</td>
<td>468b</td>
</tr>
<tr>
<td>Indonesia</td>
<td>3,304</td>
<td>4,663</td>
<td>5,838</td>
<td>7,770</td>
<td>7,840</td>
<td>8,100b</td>
</tr>
<tr>
<td>Laos</td>
<td>14</td>
<td>16.3</td>
<td>18.7</td>
<td>20</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Malaysia</td>
<td>3,964</td>
<td>3,854</td>
<td>4,807</td>
<td>4,695</td>
<td>4,842</td>
<td>5,400b</td>
</tr>
<tr>
<td>Myanmar</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>2,400</td>
<td>2,360b</td>
</tr>
<tr>
<td>Philippines</td>
<td>2,116</td>
<td>2,438</td>
<td>2,701</td>
<td>2,899</td>
<td>3,472</td>
<td>5,900b</td>
</tr>
<tr>
<td>Singapore</td>
<td>7,535</td>
<td>8,106</td>
<td>8,921</td>
<td>9,353</td>
<td>9,759</td>
<td>12,200a</td>
</tr>
<tr>
<td>Thailand</td>
<td>4,798</td>
<td>4,971</td>
<td>5,501</td>
<td>5,478</td>
<td>5,891</td>
<td>5,685a</td>
</tr>
<tr>
<td>Vietnam</td>
<td>2,401</td>
<td>2,672</td>
<td>2,686</td>
<td>3,361</td>
<td>3,387</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Note: Figures are in US$ million in 2013 prices, converted at the exchange rate for the given year.
“b” refers to the defence budget passed for the given year.
“o” refers to the official data on military spending provided by the government.
Source: SIPRI Yearbook: Armaments, Disarmaments, and International Security (Stockholm: Stockholm International Peace Research Institute, various years)

11 For more information about China’s Silk Road Initiatives see “China’s Initiatives on Building Silk Road Economic Belt and 21st-century Maritime Silk Road, Xinhua Net (updated daily), http://www.xinhuanet.com/english/special/silkroad/.
15 Ibid.
It is particularly evident that countries that are struggling with maritime disputes have shifted to focus more on developing their naval capabilities. China is one regional power that has received much attention due to its significant naval posture modernization in the past five years, along with its tremendous economic growth in the past decade. In late September 2012, China for the first time commissioned the 50,000-ton first aircraft carrier Liaoning. The acquisition of such capability enables China to conduct distant deployments, which is crucial for overseas war. Also in 2012, within the period of six months, China has launched six Type-056 corvettes to replace the outdated Jianghu I-class frigates. With the current speed owned by the Type-056, China is expected to have greater control over its coastal areas and nearby enclosed seas, as well as reduce the gap in anti-submarine warfare capability with the more advanced military such as the United States. Meanwhile, the development of a maritime patrol aircraft (MPA), possibly with the launch of Shaanxi Y-8 MPA, will significantly improve the ability of the Chinese navy to conduct surveillance mission over its littoral areas. The Chinese navy will also have the ability to detect the increasing number of submarines in the region. Such developments have been made possible through the deliberate increase in China’s defense expenditures. Within the period of 2011-2012, China’s real defense spending had a 10% to 20% increase. In 2011, for the first time, China’s share of the Asian defense expenditure reached above 30%.

It is significant to note that China is not alone in the military modernization activities, as countries in the region are actually following the same pattern. In Southeast Asia, Indonesia, the Philippines and Vietnam have visibly enhanced their military posture. Indonesia has been surprisingly the most progressive one with an increase of defense expenditures of around 137% within 2009-2013. While such increase has been allocated by the previous government to focus on developing its land-based power, it remains to be seen whether another increase under the new government will be used to develop its naval capabilities, especially after the launching of the ‘Global Maritime Fulcrum’ vision by President Joko Widodo.

For the Philippines, it is predicted that the country’s military expenditure in 2014 will almost triple from 2009. At the same time, Vietnam’s military expenditure in 2013 reached a 40% increase since 2009. Within 2009-2011, Vietnam has purchased up to six submarines from Russia. Then, by 2014, it has also purchased Su-30MK2 fighter and several types of surface vessels and missiles. In a similar vein, the Philippines has introduced its plan to purchase three submarines from the United States; a move that is clearly aimed to add more weight to its claim in South China Sea disputes. Even Malaysia has followed the same course by signing the contract to purchase Scorpene submarines from France in 2002, and later built its second Scorpene simulator training facility at Kota Kinabalu in 2012.

The fact that China’s defense spending is much higher than other Asian countries, which accounts for over half of the whole East Asian sub-regional total defense spending and is directed to develop its naval capabilities, has raised a certain degree of concern from the regional countries. Countries see such phenomenon as a direct challenge to the existing status quo and balance of power in the region. Should China’s power dominates in East


17 In 2013-2014, Indonesia purchased Apache military helicopters and Leopard tanks.
Asia seas, the United States and its alliances can no longer move freely in the region to protect its vital interests, as it assumes itself “a heavy burden as the chief guarantor of peace and security in the region,” among other to ensure freedom of navigation at sea. Therefore, through its intervention in the South China Sea tension, the U.S. attempts to rebalance the rise of China to ensure that China will not dominate, as this particular conflict will become one of the crucial entry points for China to exert control over other seas in East Asia.

Nevertheless, there is still doubt whether the U.S. will put consistent effort into establishing certain strategic balance in the region. Indeed, the third traditional security challenge concerns the feeling of uncertainties surrounding the capacity and will of the U.S. to remain the region’s hegemonic power. In 2009, at the start of the Obama administration, there seemed to be clear signs that the U.S. was “back” in the region. The inaugural visits of State Secretary Hillary Clinton to Japan, South Korea, Indonesia and China in 2009, and later to Myanmar in 2011, seemed to be aimed at materializing the “pivot strategy.” Through her famous speech “America’s Pacific Century,” published in Foreign Policy Journal in 2011, Clinton reaffirmed that the U.S. has never left Asia and it can and will remain engage with and to lead in Asia in the coming future. However, cancellations of important meetings such as the East Asia Summit and APEC in 2013 due to domestic issues have sparked criticisms from Asian fellows that the U.S. failed to meet its ‘pivot’ commitment, as it was preoccupied – if not overstretched – again to deal with issues in Syria and later on with Ukraine.

Being aware of skepticism from the Asian counterparts, the Obama administration decided to refresh the engagement with the Asia-Pacific counterparts by introducing the term “rebalancing toward Asia.” Responding to this shift, an analyst argued that the latter term makes more sense as it reflects more truth in the way policies have been taken by the US administration. While pivot has the major implication of directing almost, if not all, resources, the term ‘rebalance’ is much less dramatic as it indicates relatively greater focus to Asia with slight changes in term of resources allocation. With his Asian visits in 2014 – Japan, South Korea, Malaysia and the Philippines, and subsequently China, Burma and Australia – Obama tried to win trust again from its Asian countries.

Results remain to be seen and doubts are still evident. Obama’s foreign policy speech delivered on 28 May 2014 in West Point, while reinstating the US irreplaceable position as the world leader depicting some issues related to Asia, did not specifically mention any “rebalancing to Asia.” Obama did, nonetheless, specify the criteria of issues in which the US will not be hesitant to intervene militarily and unilaterally if necessary, that is when “our core interests demand it.” For analysts, it is interesting to compare how the U.S. views South China Sea vis-à-vis, for example, Ukraine, where the US has been so reluctant to deploy its military to intervene in that particular crisis. It is very likely that the U.S. would act in the same manner as it responds to the Ukraine crisis, by regarding that “the threshold for

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military action must be higher.”

While some countries expect the U.S. to intervene too deep in the maritime tensions in the region, the fact that the U.S. remains too aloof and less firm in its commitment is somewhat disturbing. The fact that the U.S. is applying strategy to facilitating the ascent its Asian (and potential) allies, i.e. Japan, India, Vietnam, Indonesia to the degree where these countries have the capacities to constrain Chinese move to hegemony, is not enough to ensure that the US will swiftly and decisively lend its help to match Chinese power projection in the region.

Despite the shift of U.S. naval and air force capabilities allocation into 60-40 split between Pacific and Atlantic from formerly 50-50 by 2020, the unsuccessful pivot to Asia has also been resulted from the prolonged fallout from the 2008 financial crisis, which made it impossible to finance the shift of attention to Asia-Pacific.

Furthermore, it was noted that the U.S. State Department has devoted only 8% of its diplomatic engagement budget to Asia-Pacific bureaus and only 4% of aid money went to the region, based on the 2012 Senate Foreign Relations Committee report.

Non-traditional Security Challenges

Non-traditional security (NTS) challenges have become increasingly salient, not withstanding in East Asia. As they are transnational in nature, such challenges do not discriminate based on national borders, requiring actors to act beyond conventional national measures. Indeed, Non-traditional security (NTS) issues are now considered core national security issues. The threat of transnational problems has increasingly become more lethal and pressing in recent years. Issues such as terrorism, maritime security, illegal fishing, infectious diseases, and environmental degradation have all posed serious threats to regional stability.

In relation to the main focus of this study, transnational crime at sea is highlighted. This includes, among others, armed robbery, illegal fishing, drugs and arms smuggling, and human trafficking. The two figures below show the reported criminal acts at seas in Northeast and Southeast Asia.

### Table 2: Reported Criminal Acts at Sea in Northeast Asia, 2009-2013

<table>
<thead>
<tr>
<th>Year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: International Maritime Bureau, Piracy and Armed Robbery Against Ships (Annual Reports and Quarterly Reports, Various Issues 2009-2013). Figures include actual and attempted attacks.

### Table 3: Reported Criminal Acts at Sea in Southeast Asia, 2009-2013

<table>
<thead>
<tr>
<th>Year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malacca Straits</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Singapore Straits</td>
<td>9</td>
<td>3</td>
<td>11</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>South China Sea</td>
<td>13</td>
<td>31</td>
<td>13</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>36</td>
<td>25</td>
<td>10</td>
<td>14</td>
</tr>
</tbody>
</table>

Source: International Maritime Bureau, Piracy and Armed Robbery Against Ships (Annual Reports and Quarterly Reports, Various Issues 2009-2013). Figures include actual and attempted attacks.

The two graphs above paint a mixed picture for transnational crime at sea. Reported crimes have increased and fallen in various waterways of East Asia, with no clear trend. Yet, prosecution...
of individuals within the syndicate hierarchy, adoption of a regional best management practices, and further cross-border cooperation between maritime law enforcement agencies in can go a long way, especially in Southeast Asia.33

Another significant NTS challenge is energy security. East Asian countries are consuming increasingly vast amounts of energy every year. At the same time, they are facing increasingly serious energy security concerns, and are likely to escalate. According to British Petroleum, the Asia-Pacific region consumes 39 percent of global energy, but has less than three percent of global oil resources and eight percent of global gas resources.34 The South China Sea contains 190 trillion cubic feet of natural gas, the importance of which will grow as Asian economies look to gas to power their economies.35

Not only the issue of having energy resources, the issue of access to energy supply is also as important, in particular in the context of securing the transport lines. The vast majority of energy imports are transported by sea. This suggests an increasingly strong energy dimension to issues of freedom of navigation via key sea lanes of communication through the South China and East China Seas. Supply-side threats to Asian energy security are vast, and can include non-state threats such as disruption of the supply chain due to criminal acts, natural disasters and demand fluctuations in energy-importing states.

**GROWING CHALLENGES AT SEA: FROM COOPERATION TO COMPETITION AND TENSION?**

While the sea should ideally be treated as common heritage of all mankind, which then should lead to cooperation to share the benefits together, it is unfortunate to see how the interactions among states tend to be competitive and leading into tensions. Due to the increasing demand to anticipate of food and energy scarcities that are likely to take place in the future, states could be easily driven to think within a zero-sum mindset in order to guarantee the provision of those resources. As a result, states are left with limited policy options, if not directed, to take various measures in order to increase their powers up to the stage where they can maintain control and secure access to the seas as the one of their energy and food supply.

Referring to the elaboration on traditional security challenges above, within these past few years, we witness some incidents to describe the transition from cooperative into competitive, or even conflicting nature of interactions in the East Asia region. This is the basic premise of this study, that even though disputes have existed in the region for decades, the tension is higher now because of the competition for resources.

The claims to maritime space are in most cases driven by the material importance of rent from the ocean in countries’ national development goals, including oil, gas, minerals and fisheries exploitation. Maritime space is seen as a source of revenue for most countries. Asia leads the world in fish consumption and production, and in the number of people employed in fisheries industries, including aquaculture. Asia boasts 74 percent of the world’s fishing vessels and China alone is responsible for 34 percent of global fish production. And as energy consumption continues to increase, the competition to secure energy resources found in maritime space will also increase.

The broad and underexplored areas of overlapping claims in South China Sea and East China Sea therefore represent prospective areas to seek such resources. Indeed, these areas are considered energy-rich, and thought to host substantial reserves of seabed energy resources.
As a consequence, states have resorted to dangerous endeavors in strengthening their territorial claims, which we argue is more the result of more competition for resources than other factors.

One particular incident that has raised a lot of concerns not only from the claimant, but also non-claimant states as well as major powers, was the tension between China and Vietnam over the self-imposed placement of China National Petroleum Corps’s HYSY 981 offshore oil rig in the Vietnam EEZ in May until mid-July 2014. This can be underlined as one of the most dangerous incidents, which has led to massive anti-China protests in Vietnam and even almost daily naval confrontations between the two countries’ coast guards and fishing vessels.

Even more worrisome, some states are seeking, or has even already sought, to arm their civilians, particularly fishermen, as part of their strategy to strengthen their territorial claims and to involve as many elements as they can to wage this conflict with their opponents. There has been report earlier of some armed Chinese fishermen landed in disputed Senkaku/Diaoyutai islands between China and Japan.36 The Chinese government has also strongly criticized the way the Philippines government, through its coast guard, as “armed men” boarded onto Chinese fishermen vessel, after which China claimed that eleven fishermen went missing.37 In a similar vein, on 29 July 2014, the Vietnamese government issued a regulation to enable the use of weapons by fishery surveillance. It will be subsequently followed with the armament of Vietnamese fishing vessels under the Vietnam Fishery Surveillance Force starting on 15 September 2014, which is considered as serious violation against international conventions. Despite the fact that such maritime enforcement is not on par with China’s, they argue, “It is better than nothing.”38

In addition to energy resources, there are valuable marine living resources as well.39 The rich fishing grounds of the East and South China Seas are also critical to many countries’ food security (See Table 3). The South China Sea alone accounts for one-tenth of the world’s global fisheries catch, and play host to a multi-billion fishing company.40 With wild fish stocks in decline while the demand keeps rising, fish has become a strategic commodity to be protected.41

Indeed, competition for access in a situation of declining fish stocks has been one reason for some of the recent clashes in the area. Diminishing fisheries around coastal areas and long-range commercial fishing have pushed the fishing frontier further into the disputed waters of the South China Sea. As a result, fishing has now become a politically sensitive national security issue for claimant countries. Fishermen across the region are now receiving increased government and public support; of which one of the negative consequences is that they are increasingly viewed as agents of their governments and security objects in the maritime policies of their respective states.


38 Comment made by Le Van Xinh, the captain of a Vietnamese fishing vessel in an interview with VOA’s Vietnamese service. See “Vietnam intention to arm fishing vessels breaks maritime conventions: expert,” Global Times, 5 August 2014, http://www.globaltimes.cn/content/874270.shtml

39 There are views that the South China Sea’s oil and gas supplies are overhyped; instead, it is the region’s fisheries that have the potential to ignite a regional conflict. See Nicholas Owen and Clive Schofield, “Disputed South China Sea Hydrocarbons in Perspective,” Marine Policy Vol. 36(3) (2012); and Lucio Blanco, Pitlo III, “Fishing Wars: Competition for South China Sea’s Fishery Resources,” PacNet Newsletter No. 57 (2013).

40 Ibid.

Lastly, not only competition for resources, the current state of regional cooperation is highlighted by a sense of competitive regionalism. China and Japan advance distinct models of regionalism, with the former advocating a developmental regionalism that focuses on inclusive economic development, while the latter advocates a regulatory regionalism that seeks to standardize business and economic practice across states and regions. This competitive regionalism is exacerbated by the region’s maritime boundary issues and by the growing Sino-US strategic rivalry.

### Approaches to Managing Disputes: Some Best Practices

The feature of the evolving Asian system is oriented not around security affairs or major power relations; rather, it evolves around an increasingly thick web of economic, technological, cultural, social, educational and other ties being forged among Asians. When put into the context of maritime affairs in East Asia, the snowball of the feature is the current system of marine management and resource exploitation in the region that is based mainly of national interests. Hence, concerns of state sovereignty and territorial claims are much more highly regarded compared to efforts to cooperate. Asian countries are generally not sufficiently aware of the seriousness of the need for a stronger cooperative action in the management of maritime security in the region. Basically, there is no strong constituency in the region for ocean management, and that when countries in Asia think maritime, they think first and foremost about boundary disputes; not the protection of environment or management of resources.

The management of conflict and disputes are imperative in international relations. Some publications have presented some dispute

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42 Manicom, "Sources of Tension."
management experiences in East Asia. The following section will highlight some examples that are considered worthy for the discussion of this study.

The Philippines-Indonesia EEZ Boundary Treaty

On 23 May 2014 the foreign ministers of Indonesia and the Philippines signed an historic agreement defining the maritime boundary between their overlapping Exclusive Economic Zones (EEZs) in the Mindanao Sea and Celebes Sea. The dispute was resolved after 20 years of negotiations.

The Treaty of Paris of 1898 had not specified clear maritime boundaries between the Philippines and Indonesia, but rather drawn a rectangular line through the maritime territory between the countries. Indonesia disputed the rectangular line because it did not conform to principles contained in the United Nations Convention on the Law of the Sea (UNCLOS), to which both countries are party. After negotiation, the Philippines aligned its boundaries with UNCLOS principles, allowing for the peaceful settlement. The settlement includes annexed charts showing the EEZ boundary of the Philippines and Indonesia in the Mindanao Sea and the Celebes Sea in southern Philippines and in the Philippine Sea in the southern section of the Pacific Ocean.

The settlement was a “good example” of the peaceful resolution of sovereignty claims, as it reflects peaceful and equitable settlement of maritime concerns. Indeed, the settlement is the result of a rules-based negotiation to peacefully resolve maritime issues between two archipelagic states.

A clearly defined maritime boundary between the Philippines and Indonesia is expected to promote greater cooperation in the EEZ to advance the common interest of the two countries in managing and preserving their resources for the benefit of their peoples. It will open opportunities for closer cooperation in the preservation and protection of the rich marine environment in the area. It will lead increased trade and greater maritime security. Moreover, it will clarify issues for both Filipino and Indonesian fishermen. The intervening maritime area addressed by the agreement is not only rich in fish and hydrocarbon resources, but also encompasses key international shipping lanes (ISL). Coast guards and law enforcers of the two countries may implement rules with clear jurisdictional area and the extent of their respective EEZs.

The Malacca Strait Patrol (MSP) Initiative

In the framework of ASEAN, there have been efforts to establish stronger cooperation to secure the main Sea-Lanes of Communication in Southeast Asia, particularly with regards to the Straits of Malacca and Singapore. The ASEAN Special Ministerial Meeting on Terrorism adopted in 2002 a work program to implement the ASEAN Plan of Action to Combat Transnational Crimes, which explicitly include matters of maritime security. The work program lays out several projects in information exchange, legal matters, law enforcement matters, training, institutional capacity-building and extra-regional cooperation in response to sea piracy problems in Southeast Asia.

In 2004, extra-regional states that have great interest in the security of the Straits of Malacca embarked on two new and controversial efforts. The US proposed the Regional Maritime

43 See, for example, Ramses Amer and Keyuan Zou (Eds.), Conflict Management and Dispute Settlement in East Asia (Farnham: Ashgate, 2011).

Security Initiative (RMSI) and Japan pioneered the establishment of the Regional Cooperation Agreement of Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). These efforts, particularly the one by the US, ignited controversies due to sovereignty concerns and competing priorities. On the other hand, there have been cooperative efforts from Japan that are less controversial and more welcomed.

Specifically on the Straits of Malacca, efforts of multilateral cooperative security have been the most impressive. This is particularly due to the drastic increase of concern, mostly from the business sector, when the area was named a War Zone by a London-based insurance in 2005. The growing concern succeeded in pushing the three littoral states to sit together and find a cooperative solution. In fact, amid threats that navies from other countries would begin patrolling the Strait, the littoral countries sat aside long-simmering border issues and began sharing information and conducting joint patrols of the area. It was clear that a comprehensive maritime security regime in the region is required. Bilateral efforts to combat crime at sea include a series of bilateral agreements among Indonesia, Malaysia, and Singapore to conduct joint exercises at sea and to coordinate naval patrols in the Straits of Malacca and Singapore.

In 2004, a trilateral agreement between the littoral states was signed to establish the Malsindo (Malaysia-Singapore-Indonesia), a coordinated patrol in the Malacca Straits involving the navies of Indonesia, Malaysia, and Singapore. It serves as a joint special task force to safeguard the Straits and provide effective policing along the waterway, and comprises seventeen warships from the three littoral states, and the patrols were planned as year-round.

Despite the initial optimism for Malsindo, severe resource constraints mitigate the usefulness of the arrangement. Moreover, the contiguity of territorial seas in the Straits hinders law enforcement due to the almost impossibility of hot-pursuit activity. Malsindo entails the coordination of patrols by a littoral state in its jurisdiction and sovereignty area with patrol partners in other areas, with the command centered in the respective countries. The unlikelihood of hot-pursuit more than often results in criminals escaping into the adjacent state’s waters. In this regard, efforts of law enforcement in the area are hindered by the sensitivity of the littoral states over the issue of sovereignty.

A year later, to increase the coverage of the patrols, combined coordinated air patrols over the Straits were introduced, named the Eye in the Sky (EiS). EiS features the combined maritime air patrol by the armed forces and maritime enforcement agencies of the littoral states and invited international participating states that provide their respective air assets to conduct operations involving flight profile, pre-flight administration, operation centres, monitoring and action agencies and communication. Under the EiS each of the three littoral states allocates maritime patrol aircraft to conduct two air sorties per week along the Straits of Malacca and Singapore. Every flight carries a combined maritime patrol team consisting of military personnel from each of the participating states. As a team, the combined maritime patrol team establishes a comprehensive surface picture over the patrol area, and reports suspicious activities to ground-based maritime law enforcement agencies. Depending on whose territorial waters the incident takes place, the

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respective agency can activate patrols to follow up with action. In this regard, what makes the EiS unusual is that it forces “shoulder-to-shoulder” teamwork in a security context, which means that despite long-standing secretiveness and suspicion among the three participants, team members must share information and reveal closely guarded capabilities.\(^49\) EiS had, however, been criticized for the low number of actual flights taking place and the limited resources available to respond to incidents spotted from the surveillance airplanes. Indeed, the EiS had been considered to still be in a delicate operational formative years; however, it was clear that the focus of the EiS is to get the spirit of endeavour at the various levels.

With criticisms directed at the existing initiatives, more standardised operating procedures were in demand. In 2006, the Malsindo initiative was renamed as the Malacca Straits Sea Patrols (MSSP). Together with EiS, the sea patrols were brought together as the Malacca Straits Patrol (MSP) Network, along with the signing of standard operating procedures. So since 2006 the MSP comprises three elements: MSSP, EiS, and the Intelligence Exchange Group (IEG). A joint coordinating committee made up of officials from the three littoral states meet twice a year, and a number of working groups have been established to augment the committee's work. Intelligence is also shared among the participants. The IEG went on to develop the MSP Information System to improve coordination and situational awareness. Under clear initiatives, littoral states cooperate under a coordinated hotline command structure. Two years afterwards, in 2008, the armed forces of the three littoral states plus Thailand participated in the inaugural of the Malacca Strait Patrols (MSP) Information Sharing Exercise, held in Singapore. In September 2008 Thailand was formally admitted to the MSP. Under revised arrangements, Thailand started its participation in the MSSP in October 2008 and the EiS in January 2009. Thailand’s area of operations is the northern approaches to the Malacca Strait in the Andaman Sea. The second MSP Information Sharing Exercise was later held in June 2010.

The MSP is arguably the most effective cooperative security mechanism to suppress maritime security challenges in the Straits of Malacca and Singapore. One supporting argument for this is the fact that the number of piracy incidents has declined in the years directly following the initiative.\(^50\) In its 2008 third quarter report, the International Maritime Bureau highlighted the importance of the MSP when it praised the littoral states “for the continued and enhanced cooperation that has been in existence since 2004 which is directly attributable to keeping the overall number of incidents in this important strategic choke-point down.”\(^51\) It is equally important, however, to note that the actions undertaken domestically by each of the littoral states to improve their security capacity have contributed just as greatly as their cooperative efforts. Another interesting note is that this decrease in attacks was achieved despite a 10 percent increase in cases worldwide.

The MSP, despite its obvious inadequacies, is an example of what governments can do once they decide to devote real resources to tackling a serious common problem. It is definitely not an apple-to-apple comparison with the territorial disputes in the East Asia Sea, because the threats are absolutely different. Yet, this proves that cooperation can indeed be nurtured in cases where there are sensitivities regarding sovereignty issue.


\(^{50}\) ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships* (London: International Maritime Bureau, various years)

Joint Development Arrangements

A series of joint development agreements (JDAs) for hydrocarbon resources have already been successfully negotiated and implemented in East Asia. These include JDAs between Japan and South Korea (1974), Australia and Indonesia (1989), Malaysia and Thailand (1979 and 1990), Malaysia and Vietnam (1992), China and Vietnam (2000), Cambodia and Thailand (2001), Australia and Timor Leste (2002), and Brunei and Malaysia (2009).

As argued by one study, “the joint exploration of resources combined with the temporary shelving of the sovereignty question is generally discussed as the only feasible option to enhance cooperation and stability in the South China Sea.” Key here is the possibility for the joint exploration and development of resources as a means to reduce tensions and perhaps even resolve boundary disputes.

It is worth mentioning that some cases have been less successful. In the South China Sea, the prospect for the joint development of hydrocarbon resources has been under discussion since the early 1990s, and has come across various obstacles. In fact, energy considerations have repeatedly escalated the situation. One example is the Joint Marine Seismic Undertaking (JMSU) between China, the Philippines, and Vietnam, which took effect on 1 July 2005, designating their state-owned oil companies to conduct a joint seismic study in the South China Sea. It was a commercial between companies, rather than a political agreement, and was at first heralded by the parties involved as a significant breakthrough. The JMSU expired on 30 June 2008 and was never extended by the parties involved. The Philippine opposition parties had criticized the JMSU as an illustration of how the government had undermined its claims in the South China Sea and violated the Philippine Constitution. The failure of the JMSU is therefore a reminder that such undertakings can be undermined by domestic politics.

Addressing the Challenges: Managing Resources

Natural resources and energy needs have traditionally influenced the foreign policy objectives of states. When considering the finite nature of such resources, the implications for conflict are obvious. The increased demand coupled with the ever-diminishing availability of resources has the potential to aggravate existing tensions and instigate violent conflict. As one study suggests, cooperation between and among countries in East Asia should be encouraged to set up regimes for the effective use of natural resources, perhaps starting with the management of fishery resources, with the hope of having a spillover effect on other areas of collaboration.

The parties should actively investigate successful agreements for joint fishing management zones, protection of diminishing coral reefs, and hydrocarbon exploration, as well as more general nature conservation zones, especially those administered by independent or multilateral agencies.

The need for cooperation in the conservation and exploitation of marine resources is critical to address illegal and over fishing, coral reef

54 See Emmers, Resource Management.
57 Ibid.
damage, coastal pollution and poor fishing practices detrimental to the marine ecosystem. Yet, the declining trends and environmental concerns have increased rather than reduced fishing activity in the South China Sea, both as an attempt by countries to exploit what they see to be their sovereign resources and to defend their claims against others. The lack of progress thus derives from the fact that the fisheries issue is clearly weaved into the sovereignty question.

Some efforts of joint development mechanisms have been mentioned above. Some have been fruitful. Nonetheless, there are of course still challenges that limit the possibility of establishing joint development. Robert Beckman and Leonardo Bernard outlined three main conditions necessary for the success of joint development. The first is the recognition of overlapping territorial claims. Simply put, the negotiation for joint development cannot exist in the first place without this. Joint development negotiations also move in tandem with the strength of overlapping claims as assessed by international law. This relates to the size, location, and revenue sharing of the arrangement. Second, there must be political will. Negotiations of joint development take years to bear fruit. Considerable expertise and commitment of time and resources are needed to achieve this. The third concerns the domestic political opinion. A highly charged domestic audience can make any joint development negotiation difficult to move forward. JMSU experience within the Philippines is a case in point.

Beckman and Bernard also touched upon other factors that might come into play, namely: historical, economic, availability of third party dispute resolution, and the number of states involved. One way or the other, these conditions can positively and negatively affect the success of joint development arrangement. Unfortunately, the available literature and circumstances regarding disputes in East China and South China Sea warrant a cautious view on whether joint development can be an answer. In the case of East China Sea, both parties do not de jure recognize the other’s overlapping claims and domestic audience within each are sensitive. The case of South China Sea mirrors this complication, coupled with a larger number of states involved.

Hence, currently, due to the high economic costs and interests at stake, it is perhaps unsurprising that little progress has been made towards the joint development of resources in the South China Sea, for example. For fisheries, the multilateral nature of the disputes and the differences in fishing capacity explain the absence of a cooperative agreement, while oil and gas exploration in off-shore areas is a capital-intensive activity with no guarantee of commercial success.

Nonetheless, fishing agreements have proven to be a much more feasible alternative to joint development mechanism. In the Sea of Japan and the East China Sea, successful bilateral fisheries agreements have been reached despite the sovereignty disputes involving respectively South Korea and Japan and China, Japan and Taiwan. The arrangements on fisheries cooperation established in the Sea of Japan and the East China Sea can partly be explained by the fact that China, Japan and South Korea have similar commercial fishing capabilities easing the reaching of an agreement.

Concluded in 2000, the Vietnam-PRC agreement constitutes the one exception, as it succeeded in establishing fishery and

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58 Beckman, “Legal Regimes for Cooperation.”
60 Ralf Emmers, “Natural Resources and Inter-state Cooperation and Competition in the South China Sea,” in Wu Shicun and Nong Hong (Eds.), Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime (Oxon: Routledge, 2014), p. 168
management zones in the Gulf of Tonkin (Beibu). Beijing and Hanoi have failed, however, to reach a similar agreement covering other parts of the South China Sea where their claims overlap. This is particularly due to their sovereignty dispute over the Paracel Islands. Similarly, Indonesia and Malaysia signed a memorandum of understanding in January 2012 that stipulated that their respective fishermen would no longer be arrested by the other party when fishing in their disputed maritime territories, including in the South China Sea. Such agreements constitute an important step to defuse fisheries incident before they escalate into diplomatic crises.

All the East Asian seas are included in the Western and Central Pacific Fisheries Commission (WCPFC), and the Southeast Asian states have also signed a Code of Conduct for Responsible Fisheries (CCRF) and established an ASEAN-Southeast Asian Fisheries Development Center. A more recent endeavor is that, interestingly, food security, and more specifically in this regard fisheries, has been a major focus at the East Asia Summit (EAS) Track 2 level. The EAS Track II Study Group is to be established by the Foreign Affairs Ministry in ASEAN for the purpose of deliberation and study of enhancing food security in the East Asia through sustainable fisheries management and marine environmental conservation during the 2013-2014 intercessional year.

For hydrocarbon resources, the issue is more complex. China has over the years developed its own capabilities to explore and exploit hydrocarbon resources in the South China Sea, and China’s deep water oil and gas exploration technologies have continued to advance rapidly.61 China has simultaneously called for the joint development of resources in the South China Sea. The Southeast Asian states have in principle supported the idea of joint development in disputed areas defined in accordance with the UNCLOS principles.62 The Malaysia-Brunei JDA negotiated in 2009 constitutes a successful example of joint management of hydrocarbon resources. While all the claimants have rhetorically been committed to joint development and various proposals have been tabled, no JDA has so far been signed between the PRC and a Southeast Asian claimant state.

Not only in the management of resources, cooperation should also be maximized in humanitarian activities. EastAsiaisnostrangerto natural and human-related disasters. The 2008 Sichuan earthquake, the 2011 Tohoku tsunami and earthquake, the ensuing Fukushima Daiichi nuclear disaster, and the 2013 Typhoon Haiyan are just a few natural disasters in East Asia. The disappearance of Malaysian Airlines MH370 and the crash of Indonesia AirAsia QZ8501 are the most recent human-related ones. The response towards these disasters can be an exemplary form of cooperation between countries at sea. In particular, the comparison between the responses towards the MH370 disappearance and the QZ8501 crash can be illustrative. First, the significance of coordination and transparency in maritime cooperation during search operations cannot be stressed further. The coordination between Indonesian national authorities was relatively smooth in QZ8501 after early adaptation.63 They were also quick in producing a search plan after assistance requests pouring in from Australia, Malaysia, Singapore, and many more.64 In turn, the search response towards QZ8501 fared better than MH370 because the Indonesian authorities were more straightforward in communicating compared to the opaque communication by Malaysian authorities in the initial stages of

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62 Ibid.
63 The national authorities were the Indonesian Navy (TNI-AL) and the National Search and Rescue Agency (BASARNAS).
MH370 search. Second, it is crucial for the cooperation to succeed that countries refrain from unnecessary politicization.

In sum, given scarce resources and rising stature of countries in the region, it is inevitable to eliminate competition between countries at sea in East Asia. It is possible, though, to manage such competition by maintaining channels of communication open and strengthening mutual trust. These can be achieved by exploring and expanding venues of cooperation between countries in the region. These cooperative venues hold lessons crucial to be understood in order to maintain security and prosperity at sea in East Asia.

**ADDRESSING THE CHALLENGES: MAXIMIZING COOPERATION**

In terms of the “management of resources,” the cooperative dimension tends to be socio-economic. The idealistic goal is to make sure that the sea will benefit all stakeholders in the region, thus reducing the sense of competition. However, in terms of “maximizing cooperation,” there is the even more complicated political-security dimension.

Regional security approaches refer to the orientations and predispositions of member states towards the means of achieving regional security. A region’s approach to security is often reflected in how member states structure their relations among other states within and outside the grouping in pursuing the goal of regional security. Security cooperation implies relying for an essential objective, national survival, on the resources, intentions and activities of other states, which is hard to reconcile with the notion of security being guaranteed exclusively by self-help. In addition, security cooperation entails some loss of freedom of action, some constraint on one’s ability to accumulate as much military power as resources permit, some sacrifice in options. What is significant to underline is that there is no question that countries prefer to end disputes through cooperation than through competition. Cooperation builds confidence and mutual understanding, which in turn helps to prevent incidents spiralling out of control because of miscalculations or misunderstandings on the ground.

Looking ahead, maritime security will remain a critical challenge for East Asia. To date, the major achievement of ASEAN in terms of maritime security and cooperation has been to forge a common understanding among its members on various issues and aspects of maritime security.

1. On the principles guiding maritime activities, which include the necessity to build and maintain a maritime order in SEA that is based on international law, and particularly on UNCLOS.
2. On the commonality of maritime security threats to the region as a whole, meaning that these threats are transboundary in nature and therefore countries must cooperate in order to eliminate the threats.
3. Maritime security involves both traditional and non-traditional threats, requiring both comprehensive and distinct solutions to each type of threat.
4. Extra-regional countries are stakeholders with legitimate interests and therefore a cooperative framework must be established.

This study argues that, even though competition is rising, the situation is not necessarily “zero-sum.” Even through there is more competition, it does not mean there is less cooperation. The question is, how do we ensure

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66 Ibid.

that more competition in the region does not mean less cooperation between the states in East Asia. Consequently, the next question is, how do we create more venues of cooperation in the middle of this tension and competition among the states in East Asia. Competition is natural because resources are limited and states have to compete to secure their resources, so we cannot eliminate it, but we can find ways to manage it, and in turn maximize cooperation.

In the maritime affairs in East Asia is always based on national interest. Thus, there is less nature of cooperation between states in East Asia because everything is centered on national interest. Cooperation between states in East Asia should be encouraged to set up regime for effective view of resources. There are several areas where ASEAN and its Northeast Asian partners can collaborate further. Both sides need to develop the concept of Maritime Domain Awareness and network together in order to increase the operational and monitoring capabilities to protect the sea and collaborate to find strategies to protect the sea. Nonetheless, “mistrust” is a fundamental problem in the region. Therefore, actions to build confidence and trust building are essential.

There is no denying that we urgently need maritime security governance in the region. And indeed, all countries in the region are expected to contribute ideas to resolve the existing maritime security problems. The more ideas and alternatives are thrown on the table, the better. Since the past few years, various initiatives have been presented by the partner countries of ASEAN about ways to establish new frameworks for maritime security cooperation. We should all welcome all these endeavours, while at the same time continuing the exercise to formulate an acceptable framework.

Ideally, any region-wide security framework should adhere to ASEAN’s central principle of inclusivity. Therefore, joint measures to strengthen cooperation should avoid coalition building against particular countries. It must also provide stable and regular platforms for dialogue and cooperation; and have mechanisms for a peaceful resolution of disputes and tensions.
Maritime Boundary Disputes in the East and South China Seas

Robert Beckman and Leonardo Bernard

The FUNDAMENTAL LEGAL disputes in the East and South China Seas are about which state has the better claim to sovereignty over the disputed offshore islands. Such disputes are governed by the rules and principles of customary international law on the acquisition and loss of territory. A dispute over which state has the better claim to territorial sovereignty over offshore geographic features can only be resolved if the claimants either agree to settle the dispute through direct negotiations, or agree to refer the dispute to an international court or international arbitral tribunal.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) does not prescribe procedures for the determination of sovereignty. UNCLOS assumes that it is known which state has sovereignty over the land territory and islands. Instead, UNCLOS sets out what maritime zones may be claimed from land territory, as well as the rights and jurisdiction of states in such maritime zones.

UNCLOS AND MARITIME BOUNDARY DISPUTES

UNCLOS provides guidance on how to resolve maritime boundaries where there is an overlap of maritime zones between two states. A state is entitled to establish a territorial sea out to 12 nautical miles (M) measured from baselines along its coast. Article 15 of UNCLOS specifically provides that where the territorial seas of two states overlap, neither State is entitled to extend its territorial sea beyond the median line between the two States, unless special circumstances exist.

Under UNCLOS, every coastal state is entitled to claim an exclusive economic zone (EEZ) extending to 200 M from the baselines from which the territorial sea is measured. When the EEZs of two countries overlap, Article 74 of UNCLOS provides that delimitation shall be effected by agreement on the basis of international law to achieve an equitable solution. This provision in effect leaves it to international courts and tribunals to set out the international law governing the method of delimitation. The International Court of Justice (ICJ) has developed a method for delimiting the EEZ called the three stages approach, which requires (i) drawing a median line, (ii) making


any adjustments to the median line based on relevant circumstances, and (iii) ensuring that the final result is equitable for both parties. The ICJ has used this method consistently, most recently in the delimitation between Peru and Chile in 2014.4

The EEZ regime gives the coastal state sovereign rights and jurisdiction to explore and exploit the natural resources of the seabed and subsoil as well as the water column. However, the continental shelf regime in Part VI of UNCLOS permits a coastal state to extend its continental shelf beyond 200 M. A coastal state can claim an ‘extended continental shelf’ only if it receives a recommendation from the Commission on the Limits of Continental Shelf (CLCS) determining the existence and extent of its outer continental shelf. Any claim to an extended continental shelf must be made in accordance with the CLCS’s recommendation.

MA R I T I ME B O U N D ARY D I SPU T E S I N T H E E A ST C H I NA S E A

The East China Sea is a semi-enclosed sea bordered by China to the west, South Korea to the north, Taiwan to the South and Japan to the east. Since the widest point between China and Japan in the East China Sea is only 345 M, there exists an area where each country’s EEZ projection overlaps.

Japan argues that the boundary should be the median line between the coasts of the two states. China, on the other hand, claims that it is entitled to an outer continental shelf beyond its EEZ that extends to the Okinawa Trough, located up to 277 M from its shores.5 Japan counters that it is just as entitled to the continental shelf in the East China Sea as China is because the Okinawa Trough does not constitute a break in the continental shelf (in which case would give a greater outer continental shelf to China) but is instead a continuous continental shelf between both States, meaning that the median line should be the boundary.6 This dispute could be resolved by the CLCS, which is a scientific committee that determines the existence and limits of outer continental shelf claims based on scientific evidence.

In 14 December 2012, China made a submission to the CLCS requesting a determination of its outer continental shelf in the East China Sea;7 however, Japan objected to China’s submission.8 The CLCS is unable to consider China’s submission because of Japan’s objection. Since no coastal state can unilaterally claim an outer continental shelf without the recommendation of the CLCS, the issue will remain unresolved until both China and Japan ask the CLCS to determine whether the continental shelf in the East China Sea consists of one continuous shelf or of two distinct continental shelves separated by the Okinawa Trough.

Nevertheless, such a determination regarding the continental shelf in the East China Sea may not be relevant to the delimitation of the maritime boundary between the two countries. This is because the ICJ has ruled that, where the distance between two opposing coastal States is less than 400 M, the distance factor, and not the geophysical factor, should be considered in determining the boundary.9 This means that in the East China Sea, regardless of whether China has an outer continental shelf beyond 200 M, the boundary should be based on the distance factor, which would be the median line between China and Japan.10

Some writers argue that, under UNCLOS, China is entitled to more than the median

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4 Maritime Dispute (Peru v Chile), [2014] ICJ Rep 137.
5 “China to submit outer limits of continental shelf in East China Sea to UN,” Xinhua News, 16 September 2012.
7 “Outer Limits of the Continental Shelf beyond 200 nautical mile from the Baselines: Submission to the Commission,” Executive Summary, Submission by the People’s Republic of China to the Commission on the Limits of the Continental Shelf (CLCS), 14 December 2012.
8 Communications Received from Japan with regard to China’s CLCS Submission, 28 December 2012.
9 Continental Shelf (Libya v Malta), [1985] ICJ Rep 13 at paras 39-40 (Libya v Malta).
10 Indeed, this distance criteria is argued by Japan when they sent an objection to China’s CLCS Submission, ibid. See also Suk-Kyoon Kim, supra note 6.
line because China is the larger country. This statement is inaccurate for two reasons. First, nowhere in UNCLOS is it stated that a larger country is entitled to a larger maritime zone due to its size. Second, the ICJ has stated repeatedly that the size of the land mass of a coastal state is not a factor that can justify the adjustment of the median line. Rather, the determining factor is the length of the relevant coast. Thus, a median line adjustment may be in order if China can show that it has a longer relevant coast in the East China Sea than Japan.

The Senkaku/Diaoyu Islands are located on Japan’s side of what would be the probable median line in the East China Sea. Land generates maritime zones, not vice versa, and the effect of these islands on the EEZ boundary will depend on whether they are entitled to an EEZ of their own. This determination would be based on the interpretation of Article 121(3) of UNCLOS, which provides that islands that cannot sustain human habitation or economic life of their own are only entitled to a 12 M territorial sea. Such an action can be brought in front of an international court or tribunal.

If it were determined that the Senkaku/Diaoyu Islands were not capable of sustaining human habitation, these islands would only be entitled to a 12 M territorial sea, which would have a minimal impact on the maritime boundary between China and Japan. However, a determination that the islands were capable of sustaining human habitation might create a larger EEZ area for whichever State were determined to have sovereignty over the islands.

**MARITIME BOUNDARY DISPUTES IN THE SOUTH CHINA SEA**

In the South China Sea, China, Malaysia, the Philippines, Taiwan, and Vietnam have sovereignty claims to some or all of the islands in the Spratly Islands, while Brunei’s EEZ projection includes one or two reefs in the Spratly Islands. China, Taiwan and Vietnam also claim sovereignty over the Paracel Islands.

All the states bordering the South China Sea claim an EEZ measured from the baselines along their mainland coasts or, in the case of the Philippines and Indonesia, from archipelagic baselines. It is generally agreed that the archipelagic baselines employed by Indonesia and the Philippines around their main archipelago are consistent with UNCLOS. Although some of the straight baselines used by China, Malaysia, Taiwan and Vietnam may be of questionable legality and may have an impact on the areas subject to the regimes of internal waters and territorial sea, they will have a minimal impact on the outer limit of the EEZ claims measured from those baselines. Therefore, the questionable use of straight baselines is relatively unimportant in identifying the areas of overlapping maritime claims.

None of the Claimants have issued charts or coordinates of the baselines of the islands from which they measure the territorial sea, as required by Article 16 of UNCLOS. They also have not clarified which low-tide elevations can be used as basepoints because they are located within the 12 M territorial seas of an island.

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12 Libya v Malta, supra note 9 at para 40.
15 Ibid, pp/ 76-82.
16 This is permitted under Article 13(2) of UNCLOS.
the Paracel Islands (‘Xisha Islands’ in Chinese), but such baselines are not consistent with UNCLOS because only ‘archipelagic States’ can draw straight baselines around mid-ocean archipelagos. None of the States bordering the South China Sea have issued official charts or lists of geographic coordinates showing the outer limit lines of their EEZs claimed from their mainland. However, the outer limits of the EEZ claims of Malaysia and Vietnam are shown on the maps contained in their submissions to the CLCS, together (interestingly) with the EEZ limits of the Philippines.

Several of the states bordering the South China Sea are adjacent to each other and agreements will be required to clarify their adjacent EEZ boundaries. Brunei is reported to have worked out their adjacent boundaries with Malaysia in an exchange of letters, and China and Vietnam have reached a partial boundary agreement in the Gulf of Tonkin. The adjacent boundary between Malaysia and the Philippines is especially challenging because of the historic sovereignty claim of the Philippines to the Malaysian State of Sabah.

**EEZ AND CONTINENTAL SHELF CLAIMS FROM OFFSHORE GEOGRAPHIC FEATURES**

The offshore geographic features in the South China Sea that meet the definition of an island in Article 121(1) are entitled in principle to a territorial sea, EEZ, and continental shelf of their own. While islands are automatically entitled to a territorial sea, Article 121(3) provides that those islands that constitute ‘rocks which cannot sustain human habitation or economic life of their own’ are not entitled to an EEZ or a continental shelf.

If a State claims an EEZ from an island or from other land territory, it must make a formal claim. Making such a claim gives the claimant sovereign rights to explore and exploit the natural resources of both the seabed and subsoil and the superjacent waters within its EEZ.

Although China claims an EEZ from the Paracel Islands under its national legislation, it has not clarified the outer limits of its claim. China has stated that the Spratly Islands are entitled to an EEZ and continental shelf, but it has not indicated the baselines from which its maritime zones are measured, nor has it defined the outer limit of its EEZ claim or continental shelf claim from the Spratlys.

None of the other Claimants have indicated whether they are claiming an EEZ or continental shelf from any of the islands in the Spratly Islands, and Vietnam has not indicated whether it is claiming an EEZ or continental shelf from the Paracel Islands. However, the fact that Malaysia and Vietnam have made EEZ claims only from their mainland coasts implies that they are not intending to claim an EEZ or continental shelf from any of the disputed islands over which they claim sovereignty.

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17 Declaration of the Government of the People’s Republic of China on the Baselines of the Territorial Sea of the People’s Republic China (15 May 1996). See also Roach and Smith, supra note 14 at 98.
18 China is not an ‘archipelagic State’. See UNCLOS, supra note 2, Arts 46 and 47(1).
19 UNCLOS, supra note 2, Art 75.
20 “Outer Limits of the Continental Shelf beyond 200 nautical miles from the Baselines: Submission to the Commission,” Executive Summary, Joint Submission by Malaysia and the Socialist Republic of Viet Nam to the CLCS, 6 May 2009.
21 “Brunei Darussalam’s Preliminary Submission Concerning the Outer Limits of its Continental Shelf,” Preliminary Submission of Brunei Darussalam to the CLCS, 12 May 2009, at para 10.
23 Republic of the Philippines Department of Foreign Affairs, Official Gazette, No 2587, 2 February 1996, Appendix XVI.
24 UNCLOS, supra note 2, Art 121(2).
25 UNCLOS, supra note 2, Art 56(1).
26 China’s Law on Territorial Sea and Contiguous Zone, supra note 13, Art 2; China’s Law on Exclusive Economic Zone and Continental Shelf, supra note 13, Art 2.
27 Communications Received from China with regard to Malaysia and Viet Nam’s Joint CLCS Submission, 14 April 2011; Communications Received from China with regard to the Submission made by Viet Nam, 14 April 2011.
28 However, they are not precluded from claiming an EEZ from the islands at some point in the future if they decide it is in their interests to do so.
HISTORIC TITLE OR HISTORIC RIGHTS INSIDE THE NINE-DASHED LINE

When China attached its nine-dashed line map to its Note Verbale of 6 May 2009 to the UN Secretary-General, questions arose as to the significance of the map to China’s maritime claims in the South China Sea. The Note Verbale states that “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters.”29 The question has arisen as to whether China is claiming rights and jurisdiction only in the EEZ measured from the islands, or whether it is claiming rights and jurisdiction in all the waters inside the nine-dashed line. With respect to jurisdiction, some national legislation of China states that it applies not only in China’s maritime zones, but also in all other seas under the jurisdiction of the PRC.30 Some commentators have suggested that the “other sea areas under the jurisdiction of the PRC” could refer to all the sea areas inside the nine-dashed line.31

China issued a second Note Verbale on 11 April 2011, which seems to suggest that China is also claiming historic rights to resources in all the areas inside the line. However, the Note Verbale does not use the phrase ‘historic rights.’ Also, there appears to be no other official statement from the Chinese Government claiming that it has historic rights to the waters inside the nine-dashed line. The only reference to historic rights in any official document is that found in Article 14 of China’s national legislation on the EEZ, which states that “[t]he provisions of this Act shall not affect the historical rights of the People’s Republic of China.”32 However, that Act gives no indication as to where China may have historical rights.

Nevertheless, there have been writings by academics from China, Taiwan and other countries in which it has been asserted that China claims historic rights and jurisdiction in the waters inside the line.33 Some academics have opined that, in practice, China has been asserting not only historic rights to fish in the waters inside the nine-dashed line, but also historic rights to other maritime activities, including the right to explore and exploit oil and gas.34

The Philippines and Vietnam have taken the position that, under UNCLOS, States can only claim the sovereign rights to explore and exploit natural resources in and under the water if they claim maritime zones from land territory, including islands.35 They do not recognise the legitimacy of any other claim to historic rights to resources in and under the waters inside the nine-dashed line. They presumably take a similar position with respect to the assertion of claims to jurisdiction over activities in the waters inside the nine-dashed line that are not consistent with the jurisdiction of coastal States in the EEZ as provided in Article 56 of UNCLOS.

It is unlikely that the ASEAN Claimants would recognise China’s claim of historic fishing rights within the areas the ASEAN States claim as their EEZ. They would maintain that they have sovereign rights to exploit the living resources.

29 Communications Received from China with regard to Malaysia and Viet Nam’s Joint CLCS Submission, 7 May 2009; Communications Received from China with regard to the Submission made by Viet Nam, 7 May 2009.
32 China’s Law on Exclusive Economic Zone and Continental Shelf, supra note 13, Art 14.
in their EEZ, and that they need only to take into account “the need to minimize economic dislocation in States whose nationals have habitually fished in the zone” when granting access to any surplus in their EEZ.36

Further, when a State claims historic rights to fishing activities, the specific activities and the species of fish must be clearly described. For example in Qatar/Bahrain, Bahrain claimed historic rights of pearling;37 in Barbados v. Trinidad and Tobago, Barbados argued that it had historic rights of fishing for flying fish in the waters of Trinidad and Tobago;38 and in the Jan Mayen case, Norway claimed that its fishermen had traditionally conducted whaling, sealing and fishing for capelin in the waters between Jan Mayen and Greenland.39 The State making such a claim must show a continuous and effective exercise of such rights, with no protest from the international community.40 It would be very difficult for China to prove that these requirements were met in the South China Sea, as it would have to show that it formally claimed historic fishing rights in the EEZ of the other Claimant States and that those States acquiesced to its claim by knowingly not fishing in their EEZ. It would be even more difficult for China to assert historic rights to explore and exploit hydrocarbon resources in the EEZ of other States.

CONCLUSION

International law and public relations remain the best tools for small countries in the conflicts in the East and South China Seas. However, if states are to use international law, they should follow international law in its entirety, and not just when it suits their interests. When there are overlapping marine claims, States have an obligation to negotiate a boundary or to make every effort to enter into provisional arrangements of a practical nature to promote cooperation, while taking no action that might jeopardise or hamper a final agreement on the boundaries. This obligation is often violated, as States attempt to exploit the resources in disputed areas in an attempt to solidify their claim.

China's claim to all the waters inside the nine-dashed line could possibly be considered and ruled upon in the pending arbitration case between the Philippines and China.41 Otherwise, the only other prospect for resolving the maritime boundary disputes in the South China Sea would be for the Claimant States to enter into Joint Development Agreements (JDAs), which spell out the right of the Claimant States to exercise rights to resources in the areas subject to the JDAs. Such JDAs might be possible if they sidestep the difficult legal issues by not specifically mentioning either the nine-dashed line or the historic rights of China.

This solution is also a viable option to resolve the maritime boundary disputes in the East China Sea between China and Japan. In 2008, President Hu of China and Prime Minister Fukuda of Japan concluded an agreement on the East China Sea, where they identified a bloc for joint development.42 Since it is unlikely that the issue of which State has a better claim of sovereignty over the Senkaku/Diaoyu Islands can be resolved by negotiation or adjudication, establishing a JDA might be the answer to maintain peace and stability in the region.

36 UNCLOS, supra note 2, Art 62(3).
37 Maritime Delimitation and Territorial Questions between Qatar and Bahrain, [2001] ICJ Rep 40 at paras 235-36.
38 Barbados v Trinidad & Tobago (2006), 45 ILM 798 at para 247.
39 Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway), [1993] ICJ Rep 38 at para 15.
Non-Traditional Security at Seas: Select Issues and Concerns

Jaime B. Naval

GP: “What happened? One minute, everything’s fine... What went wrong?”
Bud: “Nothing went wrong. People change.”
GP: “People change?”
Bud: “Yeah, people change.”
GP: “Can they change back?”
Bud: “I don’t know. I think it’s harder.”
- Exchanges between George Parker and son, Bud, from the film “Pleasantville”

This paper consists of three main parts. First will be a re-examination of basic terms relating to security, their theoretical roots and distinctions. Second will come a discussion on select non-traditional maritime security concerns in our region. Third, I will share some of my own ruminations and, perhaps, suggest a possible range of policy options and practicable actions that concerned regional states may pursue to promote new re-thinking, if not a new order, in our region.

DE-COMPLICATING THE CONCEPT OF SECURITY

A universally accepted definition of the concept of security remains elusive. Some would invoke a “Tower of Babel” notion with regard to the term. Others would postulate that it is “in the eye of the beholder.” Generally, however, it is described along the lines of being “not in danger” (as stated by Lippman), as “the absence of threat” (as expressed by Buszynski), or as “freedom from threat” (according to Buzan). These definitions all point to a counterfactual to explain the concept—i.e. eliciting the affirmative by underscoring the adverse. Solidum departs from the mainstream “threat-oriented” definitions by positing that security “consists of the feeling that accompanies actual, perceived, or sustained satisfaction of values and/or reasonable and stable expectation of their realization.”

There is extensive acquiescence, nonetheless, on the significance of security and its multi-dimensionality.

“Yet there is no reason why a potential “national emergency” must always be at the same time “a threat to national security;” threats such as floods or earthquakes, which...

are not deliberately inflicted by an external or internal agent, could be usefully described as the former but not the latter. A region that is peaceful but prone to hurricanes does not face a security threat. As Mohammed Ayoob notes, the “all-inclusive definition of security . . . runs the risk of making the concept so elastic as to detract seriously from its utility as an analytical tool.”


Traditional and Non-Traditional Security: Distinctions and Complexities

The traditional security paradigm belongs to a realist construct wherein nation-states are the referent object of security, and are motivated by the appropriation of military and economic power rather than by the pursuit of ideals or ethics. Traditional security is clearly state-centric, relying heavily on the military and other agencies for power, and being projected to satisfy the requirements of the institutions and values of the nation-state rather than the interests of individuals or mankind as a whole. This situation consequently leads to disputes between states.

On the other hand, in the non-traditional security setting, the actors or sources of insecurity or threats are non-state entities. Security concerns are more expansive and cover the environment, drug trafficking, pandemics, and terrorism, all of which occur through some action deliberately instigated by non-state actors. Under this paradigm, the spread of pandemics like AIDS, SARS, MERS-COV or Ebola, though having humans as usual conduits, are not the result of direct action from the state. The exception to this would be if a state, acting as a rogue, were to employ diseases in its arsenal of weapons (i.e. bacteriological or biological warfare).

Non-traditional security issues are rarely confined to a single locality. They transcend or ignore political boundaries. Environmental problems, living resources challenges and acts of nature, especially, as they turn out to be very violent, massive or fatal in their effects may be categorized as non-traditional security issues.

SELECT NON-TRADITIONAL MARITIME SECURITY CONCERNS IN SOUTHEAST ASIA

Many non-traditional security concerns can be considered to be what former UN Secretary General Kofi Annan described as “problems without borders.” Non-traditional maritime security concerns are intrinsically transnational in nature and have consequences that have “no physical boundaries and shared spaces, including the global commons of the high seas.”

We are often told that fish do not recognize boundaries. The same goes for smugglers, terrorists, traffickers, and pirates who not only ignore the imaginary lines on the water, but who also “actively exploit the complex and often disputed jurisdictional arrangements to their own advantage.”

What follows are select issues and concerns relating to non-traditional maritime security in the Southeast Asian region.

Acts of Nature and Humanitarian Crises

Humanitarian crises caused by nature—such as the tsunamis that ravaged, Indonesia in particular, but also Thailand and Japan, as well as the devastation wrought by Typhoon Haiyan—very well illustrate how the waters surrounding us may require us to classify acts of nature, especially on a massive scale, as comprising a non-traditional maritime security concern.

We are told that the Indian Ocean tsunami of December 2004 was caused by an earthquake that is estimated to have packed the energy of 23,000 Hiroshima-type atomic bombs.


The massive earthquake cum tsunami that ravaged Japan in March 2011 directly yielded no less than 15,800 fatalities and led to economic damages estimated at US$235 billion—giving it the record of being the most expensive natural disaster in world history, according to the World Bank.\(^\text{11}\)

For its part, Haiyan (locally called Yolanda), which pummeled the Philippines’ eastern seaboard in November 2013, set the record as the strongest and highest level tropical cyclone to ever make landfall. It impacted more than 16 million people and destroyed 70 to 80 percent of the area along its path.\(^\text{12}\)

**Piracy and Armed Robbery Against Ships**

Data provided by the Information Sharing Centre of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia Piracy (ReCAAP) show that 150 attacks occurred in “the maritime trading hub of the Malacca Straits.”\(^\text{13}\) A disaggregation of the data, however, shows that three types of vessels are subject to attack: ships at anchor, small product tankers, and tugs and barges. Of the 150 incidents, 110 involved ships at anchor or in port. Seventy of these incidents occurred in or near ports in Indonesia (for example, 16 incidents in Belawan and 11 incidents in Samarinda), mostly concerning petty theft. Twelve attacks involved tankers undertaking ship-to-ship transfer operations off Pulau Nipa in the western part of Singapore Strait.\(^\text{14}\)

Small product tankers of 1,000 gross tons are very common in the regional waters. They are vulnerable to attacks because of their size, relatively slow speed and low freeboard when laden. Their vulnerability further increases if they do not adhere to the security requirements prescribed by the International Ship and Port Security (ISPS) Code. RSIS’ Sam Bateman narrates that:

in recent years, some small product tankers have been hijacked for several days while some or all of their cargo, usually marine gas oil, is siphoned off into another vessel. This is a form of transnational organized crime with suspicions of an ‘insider job’ and possible corrupt officials. It may also be significant that some ships attacked in this way are not fully complaint with necessary international standards of security, safety and crew qualifications.\(^\text{15}\)

Bateman cites a 2012 SIPRI report that found that sub-standard vessels were more likely to be involved in smuggling activities than quality ships; he considers that “this could be the case with some small product tankers in Southeast Asian waters.” Bateman then recalls an Australian investigative journalist’s report on people smuggling that stated that most illegal boat arrivals in Australia passed through Malaysia, with some using “the so-called bunker ships which idled in international waters and gathered asylum seekers in their hulls for delivery to Indonesia.”

Tugs and barges, also, are vulnerable to attack in view of their small size and speed. These vessels have increased in number in the region in recent years and some of them transit the “South China Sea from Cambodia and Vietnam to Singapore with sand and gravel for the construction industry and reclamation works.”\(^\text{16}\)

It is noted that attacks on tugs and barges mostly entail theft of cash and valuables from the ships and crew. Some involved more serious cases of ship hijacking—a barge would usually be recovered but tugs mostly would not be. They are likely to be re-used and be re-employed under another name. This is possible because

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\(^14\) Ibid.  
\(^15\) Ibid.  
\(^16\) Ibid.
most of these small vessels are not required to comply with the ISPS Code.17

Accidents in and Crimes against the Maritime Environment

Accidents at sea involving military or civilian vessels pose injury to fragile ecosystems. The damage brought about by the grounding on 17 January 2013 of the USS Guardian, a minesweeper, in the Philippines’ Tubbataha Reefs in the Sulu Sea iterated the need to comply with basic national and international protocols. Tubbatha is a UNESCO World Heritage Site and is considered the “crown jewel of Philippine seas.” The USS Guardian obliterated 2,345 square meters of coral reefs when it crashed into the protected marine park.18 The minesweeper was eventually dismantled on site so as not to cause further damage to the reefs. (What was the USS Guardian doing in the site?).

Interestingly enough, less than four months after the incident, the Chinese F/V Min Long Yu ran aground on the Tubbataha marine park and destroyed some 3,900 square meters of corals.19 (We ask, why are they spying on our reefs?) Some of the massive corals that were pulverized were estimated to be about five centuries old. But making the accident even more lamentable was when Philippine authorities discovered that the Chinese vessel was carrying more than 10 tons of dead endangered pangolin anteaters in some 400 boxes. The pangolins were believed to have been sourced from Malaysia or Indonesia.20

In another case, in early May 2014, Philippine maritime police seized a Chinese vessel found carrying some 400 live sea turtles off Hasa-Hasa (Half Moon Shoal), which is part of the area being claimed by both China and the Philippines. China claimed, however, that the fishermen were apprehended by “armed men not far from the Philippines.”21

Similarly, Philippine-Taiwan relations deteriorated following the death of a Taiwanese fishing boat captain whose vessel was fired upon by members of the Philippine Coast Guard in overlapping exclusive economic zones in May 2013. The incident imperiled Manila-Taipei ties as it sparked protests in Taipei, and caused Taiwanese officials to threaten to carry out sanctions. Following an official investigation, which pointed culpability on the Philippine Coast Guard, Manila issued an apology to Taipei. The coast guard members are now undergoing a trial.22

Energy and Marine Resources Contentions

Energy and marine resources figure prominently in the Western Philippine Sea/South China Sea dispute. The semi-enclosed sea is believed to contain offshore energy resources (oil and gas), although appraisals as to how much the volume is vary. The US Energy Information Administration estimation is at just over 11 billion barrels of oil, and 190 trillion cubic feet of natural gas.

Marine resources, however, are a settled issue. The West Philippine Sea/South China Sea is estimated to account for one-tenth of the world’s global fisheries catch, and plays host to a multi-billion dollar fishing industry. Fish protein accounts for more than 22% of the average Asian diet and growing incomes across Asia will inevitably raise demand.23

The series of assertive posturings by China since 2009 and the counteractions, especially by Vietnam and the Philippines, have proved

17 Ibid
inauspicious to the precarious regional order. The dispute has become more expansive as it now effectively entails multi-level campaigns. Expansion of territories in the olden days less poetically amounted to land-grabbing. Nowadays, however, with the recent trends of intensifying adventurism on disputed maritime claims, and of provocative unilateral declarations of air defense identification zones, the East-Southeast Asian region could invariably project a kaleidoscopic picture of land, sea, and air-grabbing.

**Figure 1: The APCN 2 Network**


**Cyberspace Connectivity and Security at Sea**

Natural and human-related factors can conceivably undermine non-traditional security at sea. Modern technology, and especially the Internet has indeed metamorphosed trade, telecommunications, and other transactions around the world. Not even the most authoritarian regimes of the world could escape the transparency and conveniences of the intensively interconnected world. In the Asia-Pacific region, not even North Korea or China can ignore or disengage from the developmental backbone provided by the cyberspace infrastructure.

Despite the great benefits afforded by the Internet, the system depends ultimately on a most basic assumption and condition: the physical security of the submarine cables, a basic building block of the network. The continuity of Internet connections are dependent on the fiber-optic lines that are laid across the vast waters in between countries and continents. Perhaps not known to many, even though it is not really classified information, is that our very own regional frontier serviced by the Asia-Pacific Cable Network 2 (APCN 2) counts on China, Hong Kong, Japan, South Korea, Taiwan, the Philippines, Malaysia, and Singapore as a consortium linked by a submarine telecommunications cable system. APCN 2 not only serves, but connects the region to the rest of the world through its transoceanic network links.
Since 2006 to 2014, however, the APCN 2 has had five landmark interconnectivity disruptions. Though these disruptions may be attributed to reasonable wear-and-tear, technical glitches and natural causes such as earthquakes and tsunamis, coordination to ensure the integrity of the network and its underwater fiber-optic system are a primary security concern. There is need for concerted, proactive multi-national government and private sector effort at precluding or resolving potential threats to this vital cyberspace backbone.

REFLECTIONS AND RECOMMENDATIONS

The world today is embedded in a new normal. In the case of security, the traditional confronts the non-traditional. However things are not as that binary, given that overlaps, hybrids, and new combinations of forces are taking place.

We noted that security, as a concept, is already loaded with meaning and can be subjective depending on the frame one is using. One might be tempted to easily depict traditional and non-traditional security as the extremes of the security spectrum. However, they are not necessarily mutually exclusive as they have overlaps and can merge into composites depending on the nature of the concern and, perhaps, the intensity attached to them by the concerned nation-states. The issues selected and iterated in this presentation represents a sample of the concerns presently persisting, and of others that are evolving in relation to non-traditional security at sea.

Undoubtedly, non-traditional security concerns at sea are a subset of a wider order, weaving through the individual to the national to international security. East-Southeast Asian nations face the challenge of maintaining this tenuous order while promoting cooperative engagements that, hopefully, will yield relative equity and inclusiveness amidst rival and, even, indifferent, posturing.

Non-traditional maritime security at sea would have to include environmental security. Given that the “workshop of the world” is located rather more actively in our East-Southeast Asian region, particularly, with China’s sustained economic boom and very active manufacturing base, we cannot deny that regional states contribute a large environmental footprint. This footprint is manifest in the intense maritime activities and even wanton disregard for the rare and precarious biosphere in our regional neighborhood.

Sanskrit has a term for war or battle. It reputedly originated from *gavasti* and refers to a desire for more cows, a past symbol of power and wealth. Some today may be consider maritime security in our region to mean a desire for more cows or, worse, the desire to monopolize the grasslands. It may be easy to fall into any of these temptations. Yet, even if this can be done, one should raise the point the point of asking whether this would be sustainable. Like the proverbial challenge hurled by the tragedy of the commons, the littoral nations in East-Southeast Asia would have to reckon the inevitable fact that there is need for a new regionalism or new rethinking, as opposed to a conventional realist yet myopic-looking order.

There is need to continue with dialogue on how to pursue inclusivity aimed at generating consensus, particularly among the regional stakeholders, and on how to cope with overriding security concerns and find specific ways to address them. Daunting though this may be in view of certain intransigent actors and *gavisti*-oriented interests, there is a need to recall that we all live in a common regional pond and, except if the tectonic plates were to shift, our people are bound by the super-ordinate goal to co-exist. The opposite option is definitively most undesirable.

There is truth in the Pleasantville father’s view that it would be harder for people to change back. Changing back, however, is not necessarily impossible. It is our best option.

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24 The Sanskrit word for war, *gavasti*, literally means a desire for more cows. This comes from the pastoral period of the Vedic society, during which cattle were a main source and symbol of wealth. During this time, many inter-clan wars were fought over getting and keeping cattle, and the warrior class of the society, known as Kshatriyas, were largely responsible for stealing cattle from other clans, and protecting their own clan’s cattle.
Japan’s Maritime Security Policy

Futoshi Matsumoto

T HIS PAPER DISCUSSES the major challenges for Japan’s maritime security are, and on what all of us should think about when facing this huge challenge, basing my argument on my personal engagement with this issue over the past few years.

“A GRAY ZONE BETWEEN WAR AND PEACE”

Something new in China’s policy appeared in around 2008. In the beginning, it was a very small change. However, not only it has eventually grown into a tectonic shift in China’s maritime behavior, but it also prompted huge reactions from countries in the region and beyond.

For a number of reasons, China slightly modified its principle of “Tao Guang Yan Hui,” which literally means “hide brightness and nourish obscurity,” in favor of a more active and assertive external policy toward the end of 2008. China has also began to emphasize its “core interests” in the East China Sea and the South China Sea at around the same time.

The first incursion of Chinese official vessels into Japanese territorial waters around Senkaku Islands took place at the end of 2008. Other provocative acts in the South China Sea followed from that year on. In 2010, for example, China sent a drunken fisherman to the waters of Senkaku Islands, which led to further tension with Japan.

Another critical date is that of 11 September 2012, when the Japanese government announced the purchase of three of the small Senkaku Islands from a private citizen in order to avoid any possible political tension. Ever since that date, Chinese assertive actions have escalated to the point that we have to anticipate, at any minute, a possible collision at sea or in the air not only between the Japanese Coast Guard and Chinese China Fisheries Law Enforcement Command (CFLEC) or China Maritime Surveillance (CMS), but also even between the Japanese Maritime Self-Defense Force (JMSDF) and the Chinese Navy (PLAN).

We have begun to acutely feel the sentiment of being close to a real war situation in one way or another. To be precise, we have been suddenly cast into “a gray zone between War and Peace” by Chinese assertive actions. In this regard, the terminology “Gray Zone” has since become a key word to describe the encroaching assertiveness of China in Japan’s maritime domain.
The main challenge that we are faced with now is to decide how to defend our territorial waters through non-military means, while restraining from possibly resorting to the use of our military forces—even though China’s assertiveness is increasingly stemming from the PLA’s aggressive military support.

Eventually, near-daily incursions into the territorial waters of Japan by Chinese official vessels have become routine. The Chinese have placed the PLAN’s frigates and destroyers at a certain distance from the Senkaku Islands, meaning that their anti-surface missiles sufficiently cover the Senkaku Islands. They have also flown their fighter jets close to the Senkaku Islands so regularly that the JASDF’s fighter jets F-15s are now flown regularly from their bases in Okinawa in order to scramble Chinese fighter jets.

Another interesting phenomenon that has appeared on our horizon is the frequent use of UAVs. China now boasts of having taken pictures of Senkaku Islands by UAVs. Stopping the UAVs certainly poses a serious security challenge for Japan.

To add to these new activities by China’s military and non-military organizations, frequent passages of PLAN vessels have been observed passing Japan’s South Western islands. Such passages have grown to be part of a regular routine for the PLAN over the past few years. In one word, they have achieved a “new normal” for their military activities in the waters both near and inside the Japanese territorial and contiguous waters.

A number of dangerous Chinese acts have been observed over the past two years. Radar lock-on incidents in January 2013 against a JMSDF destroyer was considered to be one of the most dangerous acts ever conducted by the PLAN on the high seas. The flying of Chinese fighter jets so close to JASDF planes on two occasions in May and June 2014 were another example of such dangerous acts.

The declaration of a Chinese ADIZ on 23 November 2013, which was very apparently different in context from the practices of other countries, clearly violated international law—particularly regarding free passage of international flights over high seas.

All in all, China uses multiple tactics to achieve its strategic goal. Most confrontations narrowly follow the line between peace and war, using small steps to achieve a large goal—a strategy often referred to as salami tactics. It should also be emphasized that China has been using Sun Tzu’s three forms of warfare (psychological, legal, public opinion) during the course of all these events.

China is using its increasing maritime power both to allow for its creeping expansion, and to try to probe what they can successfully achieve on the way. So it is only natural that, when countering China’s assertiveness, the response from ASEAN and others will eventually require refined and calibrated systemic actions.

Lastly, I would also like to stress that the PLA has been utilizing fishermen as “maritime militia” for their organized operations on the

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sea. Their training of these “maritime militia” during the course of this year has become more robust, organized, and managed increasingly directly under the control of the PLA.

These approaches taken by China are very much similar to what it has been doing in the South China Sea. China’s actions certainly vary according to which country it is dealing with. In the case of Japan, their actions are severely curtailed and frustrated by Japan’s steadfast counter-measures—including disciplined acts by Japan Coast Guard crews in relevant waters. Meanwhile, China has been dealing with Vietnam and the Philippines with more high-handed and forceful approaches, as we have witnessed in the two cases of Chinese forceful actions around Scarborough Shoal, and in the sudden placing of a gigantic oil rig by China west of the Paracel Islands.

China’s next moves in the South China Sea are expected to revolve around its territorial claims over the vast sea. China is now on the way to completing land reclamations on seven atolls under China’s control in the South China Sea; it seems that it intends to establish anti-air radars on these locations. In addition, their land reclamation activities suggest that they intend to establish airstrips where possible. Finally, China is eventually expected to declare the South China Sea to be its sovereign territory along with an ADIZ declaration over the area.

Thus, in coming years, China may achieve “a fait accompli” on those atolls in the South China Sea under the Chinese control, regardless of any possible progress in the negotiations over the Code of Conduct with the ASEAN, or in the outcome of discussion of legal procedures that are currently under way at the Permanent Court of Arbitration, as requested by the Philippines.

Lastly, the assertive tendencies of China in the East China Sea and in the South China Sea will likely continue in the near future, as long as it fits the strategic planning of the PLA as China continues to suffer from a variety of domestic difficulties due to its economic slow-down. We should keep this in mind while we devise our approach to dealing with the regional maritime security issue.

JAPAN’S NEW POSTURE ON MARITIME SECURITY POLICY

It is vital to emphasize that Japan attaches so much importance to the sea. Japan consists of more than 6,000 islands, and its exclusive economic zone covers approximately 4.47 million square kilometers—which is about 12 times its land area, making it the country with control over the sixth largest amount of oceanic area.

It is only natural that, over its long history, Japan has projected itself as a seafaring nation. Thus, freedom of navigation and freedom of aviation over high seas both in the East China Sea and the South China Sea are critical to the interest of Japan and all neighboring countries.

The maritime security policy of Japan has steadily evolved in the recent years due to the tension exacerbated by China. We are definitely taking counter-measures against China’s assertive actions, using Japan’s individual actions as well as concerted efforts between Japan and U.S. based on the Japan-U.S. security treaty.

It must be noted that Japan is currently engaged in various efforts to promote security dialogues and exchanges with China with a view to avoiding unexpected dangers. In one word, Japan maintains a calm but firm stance in dealing with the rapid expansion and intensification of Chinese assertive actions in the sea and air surrounding Japan.

The following are some of characteristic
developments that Japan is using to foster its seamless deterrence against China’s assertive actions. First, strengthened maritime security operations in the sea. The Japan Coast Guard has strengthened its warning and surveillance operations through the use of its patrol ships and aircrafts, and demands that the Chinese ships that intrude into Japanese territorial waters leave immediately. Even after China’s establishment of the “ADIZ” in East China Sea in November 2013, the JSDF has been implementing warning and surveillance activities as before, and will continue to take rigorous airspace anti-intrusion measures.

Second, there is overall change in Japan’s defense posture. This year’s reinterpretation of the Japanese Constitution regarding the right to collective defense being decided in the cabinet reflects the normalization of Japan’s defense posture. The establishment of the National Security Council together with the issuing of the National Security Strategy in December 2013 also symbolizes a fundamental shift in Japan’s security policy.

Third, there is enhanced Japan-U.S. security cooperation. Just as Japanese and American presence in the western Pacific region has been increased, Japan is building seamless cooperation with the U.S. on issues ranging from situations on a day-to-day basis to more complex situations, including cooperation in responding to “gray-zone” situations. To that end, Japan intends to expand joint training and exercises, joint Intelligence, surveillance, and reconnaissance (ISR) activities, and the shared use of facilities and areas with the U.S.

Fourth, Japan made the decision to abandon the policy of non-export of arms. On 1 April 2014, the Government of Japan, in accordance with the National Security Strategy adopted on 17 December 2013, set out the “Three Principles of Transfer of Defense Equipment and Technology” as a set of new guidelines on overseas transfer of defense equipment and technology. This new policy reflects the change in the overall security environment surrounding Japan. In it, the government carefully examines to which countries it will export Japanese arms in the future. For instance, Japan and Australia signed an agreement on July 8 concerning the transfer of defense equipment and technology, with the former’s submarines technology at the center of the latter’s interests.

Fifth, measures to protect national territories have been strengthened. Japan will proactively engage in the protection, management, and development of remote islands near its national borders, as well as study land use on remote islands near national borders and areas surrounding defense facilities, from the standpoint of national security.

Sixth, there is a steady build-up of the Japanese Coast Guard (JCG). A JCG special team composed of 12 patrol boats and 600 officers devoted to the Senkaku Islands Operation was recently created while 10 new boats are planned to be built within two years of the end of the fiscal year 2015.
Japan’s Maritime Security Policy

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eventh, Japan seeks to establish coalition of like-minded regional partners and rendering support to capacity building for enhancing regional maritime awareness. The Japanese government has, over many years, been rendering robust support to the building-up of regional maritime awareness—particularly to countries such as Malaysia and the Philippines, and now with Vietnam and other Asian countries. This past summer, the Japanese government provided the Vietnamese government with the 6 patrol boats it requested.

Current Maritime Security Situation in East Asia

The current security situation in East Asia can be summarized as follows. First, enhanced deterrence based on the U.S.-initiated hub-and-spoke security arrangements made with a number of Asian countries are not sufficient to counter the assertiveness of China. It is natural to observe that there has been an urgent call in the region for a strengthened U.S. presence in East Asia. Although Japan welcomes the U.S. policy of rebalance toward the region, there remains a sense of uncertainty in the region regarding the extent to which the U.S. might actually engage itself in East Asia, given the existence of increasingly serious global issues that requires further U.S. attention such as tension in East Ukraine and the rise of the “Islamic State” in the Middle East.

Second, behind the call for stronger U.S. presence in the region, there exists shared recognition that the extent and depth of regional security cooperation, including in terms of ASEAN unity, has a long way to go. ASEAN is not constructed as regional security organization like NATO, and it is weaker as integrated regional organization than the EU.

Third, ASEAN countries’ awareness of maritime domain is severely limited; a number of countries even lack coast guards. In case of Malaysia and the Philippines, although their coast guards are being nurtured with the help of the Japanese Coast Guard, among others, in the past years, they have yet to be fully capable of monitoring in the near seas. Furthermore, countries such as Vietnam and the Philippines who insist on their sovereignty over a number of atolls and islands lack coastal radars.

Fourth, there is increased recognition that the current negotiations on the Code of Conduct (COC) between ASEAN and China may lead, nowhere even after China agreed to resume the negotiations with the ASEAN. Many in Southeast Asia perceive that China may be biding its time by engaging in prolonged negotiations over the COC.

Fifth, there is a strong need to avoid an ultimate security dilemma with China in the long term given that a number of the countries in the region are determined to catch up with the speedy military modernization of China. The question of how to avoid further escalation of military rivalries in the region remains fundamental for all of us.

The Need for a Shared Vision Toward Strengthening the Existing Maritime Order

It is high time to think through the issue of maritime security with a view to provide the region with a set of ideas on how to improve the maritime security situation when faced with these challenges. The following can be an example of measures that could be considered for regional countries.

First, the current situation requires the consolidated of a concerted approach toward China on all fronts, given that the increasing
maritime assertiveness of China is not in accordance with international norms, and particularly international law.

Second, in this vein, legal and public opinion warfare approaches remain valid and effective for regional countries, while a multilateral approach for involving the U.S., India, and other external powers will enhance global coalition against unlawful maritime acts. The importance of the rule of law should be emphasized during every incident in which international law is not respected by any state.

Third, the unity of ASEAN is essential given the importance of strengthened dialogue with non-claimant states amongst ASEAN countries. Japan and other countries should do more to cooperate with the ASEAN as a whole in order to nurture common understanding regarding the importance of the rule of law, including UNCLOS, and to eventually unify their ranks when approaching maritime issues.

Fourth, increasing capacity building for ASEAN members’ coast guards and navies should be undertaken in a number of ways with the cooperation of Japan, the US, and others.

Fifth, intelligence sharing between ASEAN countries and Japan should be seen as critical for filling gaps in the reconnaissance capabilities of ASEAN countries since current maritime challenges in the East China Sea and the South China Sea share similar traits.

Finally, in order to achieve a common understanding on regional maritime security, and to realize peace on the high seas through a practical means, it is high time that we seriously think about a new regional maritime architecture that builds on the existing organizations and regional security conferences, including the East Asia Summit, the ASEAN regional forum, or the ADMM plus meetings. We need to think ahead in order to safeguard our regional long-term security before security dilemmas in the region get out of control.

In short, a cooperative security arrangement that focuses on maritime issues should be considered afresh in a creative fashion involving all Asian countries, as well as other countries with stakes in global commons such as the East China Sea and the South China Sea and who are willing to contribute to this purpose. A new regional architecture should be impartial and open to all.

In this regard, the experience of the OSCE may provide a good model for all of us in the region. A new maritime security organization should play a meaningful role in propagating the criticality of a maritime order based on international law in the region. It should do so by using confidence building measures, and by enhancing maritime domain awareness by dispatching monitoring boats to disputed areas as necessary, and by strengthening regional countries’ coast guards and navies through capacity building.

If we could achieve a consensus to create a new regional maritime architecture based upon a spirit of cooperative security, we may be able to achieve peace and prosperity for this region as a whole in the long run.
Prospects of Maritime Cooperation in East Asia

Nguyen Thi Lan Anh

East Asia is among the most dynamic regions of the world. Countries in the region prioritize economic development. Maritime spaces therefore play an important role in the development strategy of many states. Maritime spaces not only provide the much-needed resources to fuel the economies, but also provide the connectivity vital for the flow of commodity and trade. A peaceful, stable and functioning maritime space is in every state’s interests, and calls for cooperation in order to maintain good order at sea. This paper will explore the context for maritime cooperation, the current maritime cooperation frameworks, and maritime cooperation prospects in East Asia.

Context for Maritime Cooperation

East Asia is surrounded by two major oceans: the East China Sea and the South China Sea. Maritime space plays a vital role in the development of the region, bringing both opportunities and challenges. With regards to opportunities, maritime space provides resources and connectivity. The Energy Information Agency (EIA) revealed impressive estimates for the amount of hydrocarbon resources available in both the East China Sea and South China Sea. First, the agency estimates that the East China Sea has between 1 and 2 trillion cubic feet of proved and probable natural gas reserves, and about 200 million barrels of oil in proved and probable reserves. The EIA also estimates that the South China Sea contains approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable reserves. Conventional hydrocarbons mostly reside in undisputed territory.

These figures are very modest in comparison to the statistics from unverified Chinese sources which state that the East China Sea may contain 250 trillion cubic feet in undiscovered natural gas resources, and 70 to 160 billion barrels of oil (mostly in the Okinawa trough) while the South China Sea may holds around 125 billion barrels of oil and 500 trillion cubic feet of natural gas in undiscovered resources. These resources are very significant for the dynamic economies of the region, particularly for China and Japan, the respective second and third largest net oil importers of the world.

Fisheries are also another important resource. Asians consume a large amount of

2 Ibid.
3 Ibid.
fish, 16 percent higher than the global average.\(^4\) This figure is even higher in East Asia, as fish is a popular source of food for many countries in the region where fishing is a tradition and vital profession. Countries in East Asia, namely China, Indonesia, Thailand, Vietnam, Japan, Philippines, South Korea, and Malaysia, are the world’s leading producers, exporters and importers of fish products.\(^5\) In East Asia, even though hydrocarbon resources are vital for the development of industry, fisheries are even more vital since they contribute to the livelihood of dense populations along the coastlines of the region.

Oceans in East Asia cover 80 percent of the region’s geographical surface and are home to the busiest international sea lines of communications.\(^6\) Annually, half of the world’s merchant tonnage passes though the water of Southeast Asia, with the majority continuing on to the South and East China Seas.\(^7\)

Given the significance that resources and connectivity bring to the region, it is the imperative that the countries in the region foster cooperation to optimize existing opportunities and sustainably exploit these resources.

With regards to challenges, these maritime spaces contain threats to the stability and prosperity of the region. The most severe challenge, according to many observers, is the numbers of bilateral and multilateral territorial and maritime disputes, because these disputes hamper cooperation efforts and cause frictions between the states concerned. In the East China Sea, disputes existing over the Dokdo/Takashima between South Korea and Japan, as well as over the Senkaku/Diaoyu between Japan and China, caused the establishment of maritime boundaries to remain unresolved. In the South China Sea, similar disputes exist over the Paracels between Vietnam and China; the Spratlys between China, Vietnam, Malaysia, Brunei, the Philippines, and Taiwan; and the Scabourough between China and the Philippines. These disputes have turned this ocean into a hotspot that could ignite a hot war at anytime if the disputes are not properly managed. The existence of ambiguous claims over these territories without sound legal foundation—such as the so-called nine-dash line claim by China—adds to the complexity of the situation in the South China Sea. Territorial disputes over mid-ocean islands have led to a nexus of maritime disputes. Once the territorial disputes remain unsettled, the maritime disputes are protracted. Meanwhile, the conduct of parties attempting to fortify territorial and maritime claims has triggered a series of tensions that have eroded confidence and stability in the region.

Second, since territorial and maritime disputes have not yet been settled, environmental responsibilities have also been neglected. Overfishing or irresponsible fishing practices are happening in the absence of effective prevention and punishment measures. Furthermore, fishing is being used as a means for the fortification of territorial and maritime disputes. Environmental pollution is on the rise due to industrial and scientific research activities, as well as due to accidents such as oil spills and other incidents at sea. Meanwhile, construction at a massive scale at sea has recently been used to fortify territorial and maritime claims, and has also caused the destruction of coral and marine ecosystem. In addition, the East and South China Seas are prone to natural disasters such as earthquakes, tsunamis, storms, and hurricanes. These disasters have been made more severe by climate change, because of which the frequency and intensity of tropical typhoon have both been increasing in recent years. Combined, all these factors have resulted in a higher probability that a humanitarian crisis

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could affect more than one country and require for greater regional cooperation if it is to be resolved.

Last but not least is transnational crime. The busiest sea-lanes in the world, are vital for merchants while also being located in the world’s most pirated sea. After a period of relative calm, piracy in the Strait of Malacca has been back on the rise since 2010, and reached a peak number of 161 incidents in 2013. In addition to piracy, the South East Asian seas also serve as transit routes for terrorists. It consequently increases the risk for transnational crimes, the proliferation of weapons of mass destruction, and a threatened nuclear safety and security via sea-born trade.

An effective and successful response to these transnational maritime threats will require international cooperation. Whether a country wants to reap the opportunities available in these marine areas or wishes to tackle the challenges of seaward expansion, cooperation will always be one of the most viable options. To say that cooperation is the precondition for maintaining peace and prosperity of the East Asia region is therefore not an exaggeration.

CURRENT FRAMEWORKS FOR MARITIME COOPERATION

Maritime cooperation has been highlighted in the agenda of a number of bilateral and multilateral frameworks in the region. At the multilateral level, ASEAN has been active in promoting maritime cooperation in various mechanisms including the ASEAN Ministerial Meeting (AMM), ASEAN Regional Forum (ARF), ASEAN Transport Ministers Meeting (ATM), ASEAN Ministers Meeting on Combating Transnational Crimes (AMMTC), ASEAN Regional Forum (ARF), ASEAN Defense Ministers Meeting (ADMM and ADMM+), ASEAN Plus Three (APT), and the East Asia Summit (EAS). Among these mechanisms, the AMM is the place for ASEAN foreign ministers to discuss visions and broad directions of ASEAN on maritime issues.

The ATM, AMMTC, ADMM, meanwhile, are thematic forums promoting maritime cooperation in their respective focus areas. The ATM, for example, focuses on promoting dialogues and cooperation in order to facilitate maritime transport through various measures including the liberalization and the integration of maritime transport sectors; the provision of assistance and training to seafarers; the enhancing of safety and freedom of navigation through cooperation on marine transport management and security, search and rescue operations; and the protection of the environment through enhanced regional preparedness and collaborative responses to environmental accidents such as oil spills. The AMMTC focuses on maritime cooperation in the form of information sharing, tactical exercises and harmonized policies to suppress transnational crimes such as piracy, and human, drug and weapons trafficking at sea. The ADMM highlights maritime cooperation as one of its five priorities, and thus promotes cooperation between naval forces through defense diplomacy.

The ARF, APT and EAS expand forums between ASEAN members and dialogue partners. ARF members work to “build confidence, raise awareness and common understanding on maritime security, and promote cooperation using information sharing, policy coordination, and joint exercises.” The EAS promotes maritime cooperation to suppress sea piracy, the conducting of search and rescue, the protection of marine environments, maritime security, maritime connectivity, and freedom of navigation.

At tracks 1.5 and 2, ASEAN is also active in promoting discussions on maritime cooperation through the ASEAN Maritime Forum, the Extended ASEAN Maritime Forum (AMF and EAMF), and The Council for Security

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Cooperation of the Asia Pacific (CSCAP). These are expected to provide recommendations for an official track. The CSCAP has produced, to date, two memorandums—one on the Guidelines for maritime cooperation in enclosed and semi-enclosed seas, and the other on the Basic Foundations of Maritime Security, which served to enhance knowledge and awareness on maritime cooperation.

Outside ASEAN, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), the Western Pacific Naval Symposium (WPNS), the Information Fusion Center (IFC), Partnerships in Environmental Management for the Seas of East Asia (PEMSEA), the Coordinating Body on the Seas of East Asia (COBSEA), and the South East Asian Fisheries Development Center (SEAFDEC) are also active multilateral mechanisms concerned in functional areas of maritime cooperation.

ReCAAP was established in November 2004 as an agreement between sixteen countries, and has now expanded to include a total of 20 Contracting Parties. ReCAAP serves as a platform for information exchange with the ReCAAP Focal Points via the Information Network System (IFN), and thereby facilitates communications and information exchange among participating governments to improve incident response by member countries, and analyses and verifies statistics on piracy and armed robbery incidents in order to foster a better understanding of the situation in Asia. ReCAAP also facilitates capacity building efforts that help improve the capability of member countries to combat piracy and armed robbery in the region, and cooperates with organizations and like-minded parties on joint exercises, information sharing, and other forms of cooperation deemed as appropriate by the Contracting Parties.\footnote{10}{http://www.recaap.org/AboutReCAAPISC.aspx}

WPNS was inaugurated in 1988 in order to create a forum for leaders of Western Pacific navies to meet and discuss cooperative initiatives concerning regional and global maritime issues. As of 2014, the WPNS comprises of 21 member countries and four observers in the region. WPNS was inaugurated in 2009 as a regional maritime information hub that could be used to enhance maritime situation awareness and provide early warning triggers and accountable information that could cue timely regional responses.\footnote{11}{See more at the ReCAAP Website, http://www.recaap.org/AboutReCAAPISC.aspx}

The IFC was inaugurated in 2009 as a regional maritime information hub that could be used to enhance maritime situation awareness and provide early warning triggers and accountable information that could cue timely regional responses.\footnote{12}{See more at the COBSEA Website, http://www.cobsea.org/aboutcobsea/background.html} The IFC has promoted intelligence and information sharing, and has connected 64 authorized agencies of 34 countries with 15 standing international liaisons officials. The IFC also conducts information sharing workshops and training courses in order to facilitate capacity building among member states.

COBSEA is the coordinating body for the Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the East Asian Seas Region. COBSEA's function is to help member states assess the effects of human activities on the marine environment, control coastal pollution, protect mangroves, sea grasses and coral reefs, and provide waste management. The COBSEA Secretariat is in fact the lead agency of the United Nations for marine environmental matters in East Asia, responsible for coordinating the activities of governments, NGOs, UN and donor agencies, and individuals in caring for the region's marine environment.\footnote{13}{See more at the COBSEA Website, http://www.cobsea.org/aboutcobsea/background.html. Members of COBSEA consisted of South Korea, China, Philippines, Indonesia, Singapore, Malaysia, Cambodia, Thailand and Vietnam.}

ReCAAP was established in November 2004 as an agreement between sixteen countries, and has now expanded to include a total of 20 Contracting Parties.\footnote{10}{The 20 Contracting Parties to ReCAAP are: Australia, the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Kingdom of Denmark, the Republic of India, Japan, the Republic of Korea, the Lao People's Democratic Republic, the Republic of the Union of Myanmar, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the United Kingdom, the United States of America, and the Socialist Republic of Vietnam.}
PEMSEA is a forum in which various stakeholders—including national and local governments, civil society, the private sector, research and education institutions, communities, international agencies, regional programs, financial institutions, and donors—participate. PEMSEA aims to build joint policy, reduce capacity disparities, and foster implementation for sustainable coastal and ocean development and management in East Asia.15

SEAFDEC is an autonomous inter-governmental body established in 1967 with the mandate “to develop and manage the fisheries potential of the region by rational utilization of the resources for providing food security and safety to the people and alleviating poverty through transfer of new technologies, research and information dissemination activities.”16

In addition to multilateral frameworks, at the bilateral and trilateral level, some arrangements have been established to foster maritime cooperation. Concerning fisheries, several joint fishing agreements have been concluded between China and South Korea, China and Japan, and China and Vietnam. Concerning hydrocarbon resources, agreements have been made between China and Japan, and Vietnam and Malaysia, while Malaysia and Thailand have also jointly developed overlapping maritime zones. Concerning marine scientific research, Vietnam and the Philippines cooperated to create the Joint Oceanographic and Marine Scientific Research Expedition in the South China Sea (JOMSRE-SCS).17 Concerning the suppression of marine transnational crimes, Malaysia-Singapore, Singapore-Indonesia, and Malaysia-Indonesia have coordinated patrols in the Strait of Malacca, where Singapore, Indonesia, and Malaysia run a program of trilateral coordinated patrols.

The examination of various models of maritime cooperation in East Asia indicates that, in the last two decades, maritime cooperation has been blossoming across various fields and forms using several different mechanisms and frameworks.

**PROSPECTS OF MARITIME COOPERATION**

Based on the diversity of current maritime cooperation frameworks in East Asia, several conclusions can be made:

1. Although maritime cooperative activities have been discussed in a wide range of mechanisms and frameworks, coordination mechanisms are not yet included among them. Even in those frameworks led by ASEAN, there exist neither information concerning follow-up mechanisms that would improve existing recommendations, nor supervision mechanisms that would review the implementation of frameworks.

2. Maritime cooperative activities have been conducted in various forms and levels. Generally speaking, there are four levels of cooperation: dialogue, capacity building, rules and norms development, and operational cooperation. At the dialogue level, countries identify the issues that they have in common, and share initiatives for cooperation. Cooperation at this level may also be fostered during dialogues through shared information and the use of good practices. At the capacity building level, the provision of technical assistance, the holding training courses, and the coordination of policy are the main areas of cooperative. The level of rules and norms development is a higher level of cooperation wherein parties create an agreement forming new rules governing the cooperative activities for a better order at sea. The highest level of cooperation is where standing cooperative institutions are built to manage the
implementation of cooperative activities on the field on a regular basis. The current maritime cooperation in East Asia are almost entirely confined to the first and second levels, and only cover cooperation to promote transparency, dialogue, confidence building, and pledges of greater future cooperation.\textsuperscript{18} Cooperation over the development of rules and norms is emerging, but is still limited to making proposals and recommendation over the interpretation and application of agreed rules in specific contexts—for example, the conclusion of CUEs, WPNS, or the DOC between ASEAN and China. Cooperation at the highest level has only taken place in limited area, and mainly in the form of bilateral cooperation—for example, during ReCAAP or bilateral joint fishing agreements.

3. One of the more blossoming maritime cooperative activities was functional cooperation. Cooperative activities addressing very specific issues were promoted in many fields from fisheries, environmental protection, and marine scientific research, to transnational crimes, and search and rescues. However, the focus of this cooperation went mostly to issues of non-traditional maritime security. The issues of the suppression of transnational crimes and of search and rescues were ones where it was relatively “easy” to reach an agreement for cooperation. Meanwhile, traditional maritime issues, which are usually promoted mainly at the bilateral or trilateral level, were harder to promote through multilateral cooperation due to territorial and maritime disputes.

4. In regards to participation, maritime cooperative activities indicated that cooperation can be promoted either at track 1 or track 1.5 and track 2. For sensitive issues, the model starting at track 1.5 and track 2 while making recommendations for track 1 ensured better cooperation prospects. The conclusion of the DOC was a good example to illustrate this point. The Technical Working Group on Legal Matters of the Workshops on Managing Potential Conflicts in the South China Sea (a track 1.5 process initiated by Indonesia and Canada) reported taking the lead in formulating the early ideas and content of the DOC.\textsuperscript{19} In addition, in some areas, particularly non-traditional issues, the combination of the states and the industries or international organizations concerned can strengthen the implementation of the cooperative activities. ReCAAP and the International Fusion Center in Singapore are examples of successful cooperative frameworks that followed this model. The sources of information of ReCAAP and IFC largely depend on coordination and cooperation with the transportation industry, including merchant operators and seafarers.

5. The reasons maritime cooperation has been fostered between states in East Asia over the past two decades were mostly rooted in economic development. Economic and trade expansion in the region increased the need for the expansion of cooperation into issues dealing with the sea in order to maintain connectivity and acquire resources. In a new context of many trans-boundary threats, including environmental pollution, natural disasters, or maritime crimes and terrorism, cooperation is imperative to maintaining the stability and security required for economic development.

Given the current level of maritime

\textsuperscript{18} Bradford, \textit{supra}, note 7, p.66

cooperation that has taken place, the limitations of current maritime cooperative frameworks, and given the potential common interests for maritime cooperation, future maritime cooperation in East Asia should be promoted in the following ways. First, priority should be given to overcoming territorial and maritime disputes. This is an unavoidable issue, and is the only way to foster substantial cooperation in other maritime topics. Cooperation over territorial and maritime disputes could be conducted from the lowest level, wherein dialogue between and among the disputants is conducted. Territorial and maritime disputes should be a serious topic of conversation during regional maritime dialogues, and should be included on the agenda of current maritime cooperation frameworks. The initial purposes of such dialogue should be the sharing of information and promotion of transparency. With greater awareness, mutual understanding, and mutual respects built into such dialogues, the parties might move to the next level of cooperation, wherein they would try to reach a common understanding and interpretation of rules, norms, and principles that all parties should abide by when governing territorial and maritime disputes. This level of cooperation is very important for reducing differences and narrowing the scale and scope of disputes, thus creating more space for cooperation.

Second, countries should make use of best practices concerning maritime cooperation over non-traditional security issues. The recent surge of transnational threats—particularly piracy in the Malacca Straits, the risk of proliferation of mass destruction via sea-lanes, and the increase of natural disasters, and spread of contagious diseases—gave rise to a need for broader and deeper maritime cooperation. Maritime cooperation in these areas would be more effective with the expanded participation of either states or non-states actors in such forms as tabletop simulated activities or actual operations on the field.

Third, in addition to the sensitivity and complexity of territorial and maritime disputes, contemporary traditional security issues such as nuclear tests, naval modernization, or arms dynamic in limited maritime domains, have increased the risks of incidents and confrontation between naval, para-military, and civil maritime law enforcement forces across the East and South China Seas. To reduce such risks, maritime cooperation should be conducted at all levels. At the dialogue level, information-sharing schemes—such as those pushing actors to voluntarily inform other parties about military exercises that will take place in disputed zones—should be promoted. The common understanding and interpretation of legal obligations for all actors should be encouraged through joint operations, such as the building of common databases of regional legal frameworks and agreements. At the capacity building level, technical assistance for the improvement of software—through such activities as providing training courses for maritime law enforcement officials—should be conducted in order to build confidence and common behaviors between actors in accordance with international standards. Furthermore, technical assistance in the forms of hardware—such as patrol boats, surveillance equipment, or telecommunication equipment—should also be provided to increase enforcement capacity. With regards to building rules and norms, codes of conduct and other rules of the road should be designed in order to reduce the risks of tension and incidents. All of this will help parties reach the highest level of operational cooperation in the forms of joint activities, joint patrols, and exercises in broadened areas at the multilateral scale.
HE SEAS IN the region have increasingly been more turbulent due to both natural and “unnatural” forces. The latter refers to the increasingly forceful and destructive calamities that strike coastal areas. The man-made storms in the South China Sea and East China Sea have attracted wide attention and caused the two seas to be viewed as potential flashpoints that could imperil regional security and stability. The disputes and contestations have resulted in political and diplomatic storms, and dominated the regional security discourse. The seas that had heretofore united the region through trade, fishery, and other peaceful endeavors have slowly evolved into seas that divide. Sino-Japanese relations are frayed by the Senkaku/Diaoyu issue.

At the same time, ASEAN and China have been trying to find a way to manage interactions in the South China Sea for more than two decades although efforts to move beyond the Declaration on the Conduct of Parties in the South China Sea (DoC) and into an enhanced framework and binding arrangement have thus far failed to materialize. While efforts to work through and migrate from the DOC to a binding Code of Conduct in the South China Sea continue and should be given the space and opportunity to conclude, it is vital to be cognizant and recognize that there are a multiplicity of issues and interests involved beyond territorial disputes.

Recognizing that these territorial issues and disputes are not going to be resolved in the near future, it is important for the region to ensure that the disputes do not escalate to a point of “no return.” Cooperation in non-traditional security issues may serve to enhance security and stability by providing the region with mechanisms and opportunities to cooperate. In this regard, “good order at sea” takes on a different significance in which, in addition to supporting and nurturing a stable maritime environment, it may contribute to the dampening of strategic animosity arising from territorial issues. This paper discusses the dynamics of ASEAN-Japan cooperation in maintaining a stable and security maritime domain.

THE SEA AS A PUBLIC GOOD AND MECHANISM FOR COOPERATION

The provision of public goods is one of the most urgent, but very often undersupplied, phenomenon in international affairs.¹ The fact that public goods, by definition, are to be openly shared by one and all diminishes the incentive

for potential benefactors to contribute to the provision of this good. As one party waits for others in the international system to step up and provide the good, the first party is often disappointed as others, acting in a rational manner, remain inactive as they too wait for others to provide the public good. This strategic behavior often leads to the under-provision of public goods. An example of this strategic, but suboptimal behavior, is seen in the fight against Somali piracy in the Gulf of Aden. Why would a non-contributing state join the Combined Task Force 150 to patrol the waters in the Gulf of Aden when it enjoys the enhanced security provided by these patrols without any obligation to pay it? On the other hand, when and if the public good is provided by an altruistic or benevolent actor, others in the system have a tendency to free-ride on the good will of the provider. Therefore, in cases where a public good is indeed provided, the issue of sustainability comes into play unless the provider accrues a strategic benefit to continue in its altruistic ways. It may well be that the provider’s altruism is driven by self-interest, and that in the course of providing the good, might exclude others from benefiting from its actions. In this case scenario, the public good will continue to be produced as long as the provider sees and derives an interest to do so.

It follows that the provision of public goods is tied to two factors. The first concerns the capacity and resources available to prospective providers to draw on to underwrite public goods. The second relates to the political will of prospective providers. Capacity and ability are necessary but insufficient conditions for the provision of public goods. Political will is needed to allocate resources to provide and sustain public goods. The second condition is vital as providers of the public good have to withstand and deflect scrutiny and complaints concerning goods being exploited by opportunistic members of the international community.

The structural dynamics of the provision the East China Seas as a regional/global public good and the role of ASEAN and Japan needs to be clarified in order to ascertain how the two entities could best collaborate to foster a peaceful and secure regional maritime domain. The ASEAN-Japan relationship is one characterized by asymmetry. Japan’s GDP is more than two and half times larger than that of ASEAN. The divide is more pronounced if the ASEAN states are disaggregated and the comparison is made on country-to-country basis. Indeed, the Japanese economy in 2012 was 6.7 times larger than that of ASEAN’s largest economy, Indonesia (ASEAN Secretariat 2014).

Japan has engaged the ASEAN institution and the individual ASEAN states across a wide spectrum of areas of potential functional cooperation. Japanese ODAs, trade, and investment were pivotal in ensuring the growth and prosperity that underpins ASEAN community-building processes. Over the decades, Japanese economic interests have diligently cultivated and built a network across the region, which has resulted in Japan having a large and visible socio-economic footprint in ASEAN. Its engagement on the security front had lagged behind for reasons related to history. However, Japan has been making inroads to engaging and expanding its security ties and linkages in the region. Japan’s most visible contribution to maritime security to date was the establishment of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) in the wake of high incidences of piracy and sea-robber in the Straits of Malacca. Entering into force in September 2006, ReCAAP established the Information Sharing System a month later to establish a region-wide response to better manage threats to maritime trade.

The process leading to the establishment of ReCAAP and its subsequent entrenchment as a pivotal node in the region’s maritime security architecture is an important model and could serve to inform future ASEAN-Japan collaboration. The membership of ReCAAP currently stands at 20, but is marked by the absence of two ASEAN member states: Indonesia and Malaysia. Engaging the region
outside the ASEAN framework allowed Japan and other regional parties to move forward in establishing ReCAAP. Likewise, this model and precedent could be replicated in other forms of functional cooperation that do not require the unanimous approval and participation of all ASEAN member states. While Japan's priority is to engage and work with all ASEAN member states, it and ASEAN should not be averse to using 'minilateral' approaches. As Japan broadens its engagement with ASEAN in the security domain, it may encounter incidences where unanimity might be elusive. When discussing the practical approach of minilateralism, Moises Naim advocated "bringing to the table the smallest possible number of countries needed to have the largest possible impact on solving a particular problem" as a possible solution to gridlock and overcoming ASEAN's high threshold of consensus decision-making. The minilateral approach may be an effective mechanism to foster and sustain cooperation, and more importantly could overcome the problem of the under-provision of public goods.

"Good order" in the East Asian seas covers two inter-related but differentiated dimensions. In the first instance, it refers to the maintenance and safeguard of international maritime waterways that serves as the lifeline of global trade and the highways for military and non-military vessels. The modus operandi governing the maritime regime is laid out in the UN Convention of the Law of Sea (UNCLOS) and international laws. ASEAN and Japan could cooperate to affirm and ensure that these protocols and the established maritime regime are adhered to. It follows that Japan and the ASEAN states—and more so the littoral states—should have a clear understanding of the provisions and responsibilities of UNCLOS and existing maritime regimes. To ensure that "order" prevails, it is critical that the rule of law reigns supreme and that these laws and customs be understood uniformly throughout the region. Thus, it would be useful to understand the application of international laws and conventions as they pertain to the usage of the maritime domain, and to identify how they may differ from one locality to the next. The announcement of the agreement to establish the Code for Unplanned Encounters at Sea (CUES) at the 14th Western Pacific Naval Symposium (WPNS) in April 2014 was an example of yet another potential area of cooperation between Japan and the ASEAN states, in which the former could coordinate training and exercises with the regional navies during its implementation.

The second dimension refers to national capacities to promote and ensure a stable and safe maritime domain. Littoral states have the added responsibility to ensure that maritime domains under their effective control are free from threats that would endanger and threaten good order. For instance, as most of the incidences of sea robbery and piracy either happen within exclusive economic zones (EEZ) of states or are perpetrated by groups that are based within these EEZs, the ability of states to deal with and mitigate these threats becomes more important. Japan could undertake a two-pronged approach to cooperate with ASEAN states wherein they could build and strengthen their capacities to foster a safer maritime environment. The first prong would build on Japan’s existing programs and initiatives in extending technical assistances to ASEAN littoral states. For instance, Japan played a pivotal role in the establishment of the Malaysia Maritime Enforcement Agency (MMEA) and has recently extended material assistance to

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3 Ibid, p. 135.
strengthen the Philippines Coast Guard. The strengthening of national capacities enhances littoral states’ capacities to not only deal with sea robbery and piracy, but also provide the ability to arrest and deter transnational crime, human trafficking, illegal and overfishing, and environmental degradation.

Japan’s material contributions and assistance to ASEAN has been acknowledged and appreciated. Nevertheless, the cautionary tale of “giving someone a fish as opposed to teaching him how to fish” should be taken seriously. As the impact of material contribution may be short-lived, the hardware component should be supplemented with software training and “upgrades.” For example, Japan should leverage on the Japan Coast Guard’s vast and diverse operational experience to link up with their ASEAN counterparts in sharing best practices and standard operating procedures. Japan could consider building on its initiative in the establishment of the Heads of Asian Coast Guard Agencies (HACGAM) and endeavor to form an Asian Coast Guard Academy that would provide sustained and long-term training and capacity building that would help to improve the operational effectiveness of the ASEAN Coast Guards and maritime enforcement agencies, while providing an institutionalized mechanism to discuss and develop norms of behavior, and engender mutual understanding and trust. The ability of ASEAN member states to effectively manage and respond to non-traditional threats and trans-border crimes enhances regional security and indirectly reduces the burden and need for Japan to devote resources to perform these roles. In short, increasing the capacity and capability of the ASEAN member states is a form of burden-sharing and fulfills ASEAN’s contribution to the regional public good of having a safer maritime domain.

ASEAN and Japan should endeavor to not just explore avenues for cooperation, but to also work together. In addition to enhancing relations between Japanese and Southeast Asian coast guards and maritime enforcement agencies, the other two obvious areas of cooperation are humanitarian assistance and disaster relief (HADR), and search and rescue (SAR) operations. The objective is not only for Japan to provide assistance through the Japan Self-Defence Force (JSDF) in times of emergency, but also to develop a framework in which the JSDF and the JCG could train, conduct exercises, and design on pre-agreed plans that would be implemented in times of emergency. There is a need to move away from an “ad hoc” approach as the preferred mechanism for cooperation, and to move towards one that provides a higher level of expectation and responsibility to the partners in terms of their contributions and commitments. The benefit that ASEAN would derive from undergoing such a framework is a clarification of duties and contributions to the parties concern. On the other hand, for Japan, it would serves as a mechanism for it to establish a strategic relationship with the region as Tokyo contemplates becoming a security partner with ASEAN.

CONCLUSION

ASEAN and Japan share a common interest in keeping “good order” in the region’s maritime areas. Joint measures to strengthen cooperation should steer clear from any hint of coalition building against China. Ideally, any region-wide agreement should adhere to ASEAN’s central principle of inclusivity; cooperation should be open and inclusive. It is thus important to insulate the budding strategic rivalry between China and Japan from infecting Japan’s regional engagement. The Abe administration’s effort to deepen Japan’s regional security role would fall on supportive ears in the region only if these overtures come without any strategic encumbrances.
Japan’s Rebalancing to Southeast Asia:
In Search of ASEAN-Japan Cooperation on Maritime Security

Tsutomu Kikuchi

Japan is rediscovering that ASEAN and the ASEAN countries can be important partners for protecting the Asian maritime commons. Japan, as a maritime nation with global trade networks, has an enormous interest in the safety and security of sea-lanes of communication (SLOC) in Southeast Asia, which is located on strategically important sea-lanes of communication for Japan. ASEAN and the ASEAN countries are thus pivotal players in Japan’s strategic assessment.

An Asian maritime order that has supported the intensive economic interactions among Asian economies is being seriously disturbed today. The disruption of the free flow of maritime trade seriously damages Japan’s economic prosperity. In this regard, Japan has expressed growing concern at rising tensions in the South China Sea and the lack of progress by the claimants to negotiate effective conflict management mechanisms that would be agreed on in the ongoing consultations over the Code of Conduct (COC) in South China Sea.

Japan has strongly and consistently argued that the territorial and maritime disputes should be resolved according to internationally endorsed rules and norms such as the United Nations Convention of the Law of Sea (UNCLOS). Existing international legal norms should not be undermined. Japan has also opposed resorting to the unilateral coercive measures to resolve the disputes. The rule of law must be observed.

In response to rising tensions at sea, Japan has taken a variety of policy measures, such as expanding Japan’s capabilities such as upgrading the Japan’s law enforcement capability and strengthening the defense posture in Southwestern islands, or strengthening its alliance with the United States to quickly respond to emergencies (Japan and the US are negotiating to revise the US-Japan Defense Cooperation Guideline to respond to the new security challenges).

Japan has strong and longstanding positive ties with Southeast Asian countries and shared interests in promoting political stability, regional security, economic growth, and good governance in the region. Japan has been deeply
engaged in international relations of Southeast Asia for the last four decades, especially in trade and investment.

Japan is approaching the ASEAN countries multilaterally and bilaterally. Multilaterally, Japan has been actively engaged in the ASEAN-led multilateral institutions. Bilaterally, Japan has been providing, among others, capacity-building support to the ASEAN countries.

Japan is now re-discovering the importance of Southeast Asia for maintaining Japan’s peace and prosperity. Japan’s cooperation with the ASEAN countries is one of its top priority areas for addressing maritime security in the region. Japan is pursuing a number of cooperative policy measures with the ASEAN countries. Japan is eager to rebalance itself towards Southeast Asia not just as an economic player, but also as a security co-provider with the ASEAN countries for Asia.

ASEAN AS A PIVOTAL PLAYER: THE IMPORTANCE OF “THE REST OF ASIA”

Why are ASEAN and ASEAN countries so important for Japan? It is quite popular to examine the future of Asia in the perspective of a “power transition.”1 According to this perspective, the key players defining the future of Asia are the US and China. Actually, there are many scenarios of how US-China relations will be structured, from a possible G-2 structure (with a US-China condominium), or a Cold War type of confrontation.

These scenarios will not happen in the foreseeable future. Given the huge gaps in policy preferences and basic political, economic, and social values between the US and China, the creation of a firmly consolidated G2 providing the basic structure for the entirety of Asia will be impossible, even if some cooperative joint actions were possible in some areas. One the other hand, given the deepened economic interdependence and the dense bilateral institutional mechanisms for policy coordination between the US and China, the Cold War type of confrontation would also be difficult to imagine.

In addition, the US and China have a lot of vulnerabilities and constraints both internally and externally. In particular, the instability of domestic politics of both countries will prevent them from exercising their powers externally. The US is no longer a fully-fledged hegemon, while China is not a fully-fledged rising power.

Apart from the US and China, there are several countries with substantial political, economic and military weight in Asia, who are not just pawns in the struggle between the US and China. These countries have capabilities and a willingness to be engaged in the struggle over the future of Asia. The US and China need the support of these countries in order to realize their respective policy goals. This gives “the rest of Asia” a room for maneuverability to strengthen their bargaining position in relations with the US and China.

Furthermore, Asian economies are interconnected through dense networks of cross-border production and distribution. Without joining these region-wide cross-border production networks, no Asian country could benefit economically. China is not the exception in this regard. China has been able to develop economically only by joining these networks since late 1970. To sustain these networks, the US and China need the support of other major countries.

Put simply, the future of Asia will largely depend upon how “the rest of Asia (except the US and China)” will respond to the emerging challenges facing the region. The policies of the “rest of Asia” will have grave impacts on the future of Asia. In this regard, “the rest of Asia” will play the critical role in determining the future directions of the Asian international relations. ASEAN is a critical part of “the rest of Asia.”

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As US President Obama outlined in a speech at West Point in May 2014, US leaders are going to be increasingly reliant on strong regional allies and partners. Nowhere is this more true than in Asia. China is conducting a charm offensive by proposing to establish the Asian Infrastructure Bank (AIIB) and a “Maritime Silk Road.” The focus of these proposals is to promote closer relations with Southeast Asian countries.

Japanese Prime Minister Abe’s visits to all ASEAN member countries within a year of his second inauguration demonstrates the emerging recognition of the increased importance of the ASEAN for Japan’s engagements in regional and international affairs. Japan’s renewed approach to ASEAN is based upon five pillars: (1) the protection and promotion of universal values, such as freedom, democracy, and basic human rights; (2) cooperation with ASEAN to ensure that the free and open seas are governed by laws and rules instead of by force, and to welcome the United States’ rebalancing to the Asia-Pacific region; (3) the further promotion of trade and investment, including flows of goods, money, people, and services, through various economic partnership networks, in order to ensure Japan’s economic revitalization and the prosperity of both Japan and ASEAN member states; (4) the protection of Asia’s diverse cultural heritages and traditions; (5) the promotion of exchanges among young generations to further foster mutual understanding.  

Only one of these pillars specifically outlines security issues, but they all encompass a more strategic recognition from Japan that the future of ASEAN—and the direction in which it tilts—will have an enormous impact on its own future as well as that of Asia as a whole. Japan’s active engagement is meant both to diversify and complement Japan’s dependence on the United States as its principal security partner in the Asia-Pacific region.

**JAPAN’S SUPPORT TO THE ASEAN POLITICAL-SECURITY COMMUNITY (APSC) BUILDING**

Since the 1970s, Japan has consistently supported the unity of and cooperation between ASEAN countries. Japan has thought that an institutionally integrated and politically, economically, and socially harmonious ASEAN will contribute to the peace and prosperity not just of Southeast Asia but also of the entirety of Asia. The “Fukuda Doctrine” announced in 1977 by late Japanese PM Fukuda paved the way for the Japan-ASEAN cooperation to consolidate ASEAN’s unity and cooperation.

ASEAN countries have been engaged in the construction of the ASEAN Community, and Japan has fully supported their endeavors. As far as maritime security is concerned, it is critically important for ASEAN to promote closer political and security cooperation under the auspice of an ASEAN Political and Security Community (APSC).

The APSC has three dimensions: as an intra-ASEAN dimension, a broader East Asian dimension, and the security community dimension.  

**APSC’s intra-ASEAN dimension**

A security community refers to a region in which the use of force to resolve interstate disputes and conflicts has become very unlikely or even unthinkable. How can a security community be created? There are two ways to achieve such an aim. One is to share the norm of not using force to resolve interstate disputes and conflicts between people (especially the elites in charge of foreign policy decision-making) of the countries in the region. According to this perspective, a

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security community could be formed even among nations with non-democratic and authoritarian political institutions. Once a regionally endorsed common norm of not using military means to resolve interstate disputes is shared among authoritarian political leaders, a security community can be created. The critical point in the perspective is whether the norm of not resorting to military means to resolve interstate conflicts is shared among political elites of the involved countries. Internal values and institutions, such as democracy and human rights, have nothing to do with the formation of a security community in this regard.

The other way is to create a security community through harmonizing domestic values and institutions among the countries in the region. According to this perspective, sharing liberal norms and institutions such as democracy and human rights is critically important in creating a security community, because democratic institutions encourage exchanges of people across national boundaries, and promotes mutual understanding that could contribute to sharing a sense of community among these people. The argument of a “democratic peace” (in which democracies do not resort to wars between themselves since democracies resolve conflicts through peaceful means) is applicable to this perspective.

The concept of an APSC emphasizes the second way of forming a security community. Indeed, Rizal Sukma, a key Indonesian proponent for an APSC, emphasizes the importance of sharing basic internal values such as democracy and human rights as preconditions for ASEAN to move towards a more stable security community. The sharing of domestic values and institutions among the ASEAN member countries is expected to enhance the consolidation of an ASEAN security community.

**APSC’s broader East Asian dimension**

APSC has a policy dimension beyond the geographically defined ASEAN or Southeast Asian region. The APSC is a concept for promoting peace and prosperity among ASEAN member countries and Southeast Asia. To realize this, ASEAN has to put itself in a broader regional context and devise policy instruments to strengthen ASEAN’s role as a driving force in emerging international relations in the Asia-Pacific in general, and institution building and management in such regional forums as the ASEAN Regional Forum (ARF) and ASEAN Defense Ministers Plus (ADMM+).

Thus, ASEAN has to project its future in a broader regional (East Asian) context. In spite of internal difficulties, ASEAN has to enhance its institutional capacity as the main driver for regional cooperation in East Asia, as demonstrated in the formation of such ASEAN-centered regional frameworks as ASEAN+3 (ASEAN plus Japan, China, and South Korea) and ASEAN+6 (ASEAN+3 plus Australia, India, and New Zealand; also called the East Asia Summit).

Although ASEAN-related regional institutions are still in their infancy, they could provide venues for restraining their members from taking erratic measures that would further increase tensions.

**APSC as A Security Community**

APSC has a dimension that derives from the traditional understanding of a security community in the study of international relations. The Action Plan for APSC refers to a variety of joint collaborative projects to be implemented by ASEAN member countries. This implies that the APSC is trying to enhance ASEAN’s institutional capacity to jointly respond to those security-related issues now facing ASEAN countries. In his pioneering essay that stimulated the discussion on the APSC
concept, Rizal Sukma presented the idea of the “comprehensive security” that an APSC should pursue to realize security and political cooperation using ASEAN. He proposed a variety of concrete measures to be jointly undertaken by ASEAN countries, such as the establishment of a regional PKO center, and the enhancing of the capability to respond to conflict prevention.6

There are many political and security related issues that require the collective response of ASEAN countries. In particular, cross-border transnational issues require enhanced regional collective responses. Tackling regional issues collectively is expected to contribute to another task: enhancing confidence building among ASEAN member countries. Because of political sensitivities of security-related issues, ASEAN has avoided tackling regional security issues on a collective basis, leaving them to be handled on a bilateral basis.

Therefore, in order to enhance the regional capacity to respond to pressing regional security issues, ASEAN needs more enhanced confidence building between its members. By taking concrete measure to respond to regional security-related issues, the APSC is expected to enhance confidence building among the members as well as contributing to resolving regional security issues, including maritime security.

JAPAN AND THE SOUTH CHINA SEA

Japan as a global trading nation has a huge stake in sustaining safety and freedom of navigation and over-flight in the South China Sea. Japan is closely watching the developments concerning the territorial and maritime disputes in the South China Sea. How China addresses these disputes will have enormous implications on the future of the maritime commons, as well as the ongoing disputes over the Senkaku Islands in the East China Sea, as these issues are interconnected.

Given the disturbances at sea, Japan is prioritizing SLOC safety in its national security agenda, as shown in the first National Security Strategy document published in late 2013.7 Japan's basic approach towards dealing with territorial and maritime disputes is to respect the rule of law. Unlike land, the seas and oceans are subject to internationally endorsed rules and norms. Nevertheless, there is a country in Asia that sees the oceans like lands. It seems that China regards oceans as "blue lands," where China can exercise exclusive control of territory at its own discretion within this area. This is totally against the universal understandings on the international laws and practices.8

Internationally endorsed rules and norms require that relevant countries to be engaged in disputes in a peaceful manner, and that their clams be underlined by international laws, and not by 'historical facts;' unilateral coercive measures should not be taken to address disputes.

Japan has been following the basic approach of respecting internationally endorsed rules and norms, especially those embedded in the UNCLOS, through bilateral summits with ASEAN countries and ASEAN-led regional institutions. In this regard, Japan has supported the Government of the Philippines when it filed a case with China at the Permanent Court of Arbitration at The Hague. In a Joint Statement of April 25, 2015, Prime Minister Abe and President

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Obama fully supported the use of legal means, including international arbitration, to settle maritime disputes in the South China Sea.9

It is deeply regrettable that China has long rejected arbitration, insisting it would resolve disputes bilaterally. The best case scenario for the region would be a situation wherein China clarifies its nine-dashed line claim and provides a legal argument consistent with the rules and principles of the UNCLOS as to why Chinese claims are underlined by the law. However, this scenario is not going to happen. China’s clarification would only invite more severe criticism about it not complying with the rules and norms of international law.

CODE OF CONDUCT: SOME ALTERNATIVES FOR ASEAN COUNTRIES

Japan and ASEAN countries should continue to argue that maritime affairs have to be addressed according to the universally endorsed rules and norms and that the principle of the freedom of navigation should be respected bilaterally and multilaterally by ASEAN-led multilateral institutions.

A legally binding COC in the South China Sea is quite important to moderate the tensions and address the disputes peacefully and legally. However, the negotiations over a Code of Conduct are likely to be long and daunting and will not produce any tangible result in the foreseeable future. China has not shown any accommodative stance on discussing the disputes in a multilateral context. China has not been willing to talk on the COC with ASEAN countries.

There are some alternatives. The first would be that ASEAN countries agree to the “ASEAN Code of Conduct in the South China Sea” first, then open it up to accession by other countries. ASEAN adopted such an approach in the case of the Treaty of Amity and Cooperation (TAC), which was originally an agreement among ASEAN member countries, but which was then opened up later to non-ASEAN countries, thereby allowing for the expansion of ASEAN’s rules and norms beyond Southeast Asia. The 1995 Treaty on the Southeast Asia Nuclear Weapon Free Zone is another precedent. “The ASEAN Code of Conduct in the South China Sea,” if realized, could demonstrate the determination of ASEAN countries to peacefully address the disputes according to international laws. This will greatly contribute to upgrading the ASEAN’s status as an effective regional institution in the world.

The second alternative would be to use former Indonesian foreign minister Marty Natalegawa’s idea of constructing an “Indo-Pacific version of TAC,” where he proposed to conclude the Indo-Pacific treaty that includes the basic rule and norms embedded in the TAC.10 Marty’s idea was accepted as an agenda to be further discussed among ASEAN countries. The ASEAN countries should design an Indo-Pacific version of TAC that includes the basic items to be put into the COC. With this, and with the support of other major powers, the Indo-Pacific version of the TAC that includes the basic rules, norms and concrete confidence-building measure on the South China Sea will greatly contribute to tension-reduction in the South China Sea. This will create effective pressures for claimant countries to comply with the COC (embedded in the expanded TAC). Indonesia should take a lead in this context, although the current government may not be so eager to push an idea presented by the previous administration.


JAPAN’S ENGAGEMENT: CAPACITY-BUILDING OF ASEAN COUNTRIES

ASEAN countries need to enhance their own capacities to deal with the challenges facing them in maritime security domains. Although ASEAN countries cannot obtain the military and law enforcement capability equal to that of big countries with competing claims in the South China Sea, they can get the capabilities to effectively respond to unilateral bullying behaviors, and can thereby obtain some capability of denial against bullying actions. The gap in maritime and naval capabilities between claimant states is widening. China has been modernizing its law enforcement and naval capabilities for the last few decades. This gap between ASEAN claimant states and China must be narrowed by enhancing the capacities of relevant ASEAN countries.

Peaceful negotiations to resolve the disputes are important, but difficult if not supported by substantial maritime capabilities. ASEAN countries need substantial maritime capabilities to engage in a peaceful consultation and negotiation with China. This is critically important given the fact that China has been talking peaceful but coercive unilateral measures.

Although Japan is a latecomer in defense and maritime cooperation with ASEAN countries, Japan expects to construct a network of like-minded countries’ coast guards/defense agencies/armed forces in Southeast Asia. Indeed, the 2010 Defense Guidelines details the necessity of constructing a security network with US allies and ASEAN countries.

There have been changes in Japan’s arms exports policy. Japan has strictly prohibited the export of defense equipment and technology to foreign countries, although Japan’s defense industry has the capability to manufacture sophisticated defense equipment. Japan has provided military-related technology only to the United States. The arms export ban policy was relaxed to some extent in December 2011. This allowed Japan to provide and sell defense equipment for peaceful and humanitarian purposes. Additional revisions made in April 2014 further relaxed the export of defense equipment overseas, although some conditions are still imposed. According to the new guidelines, Japan will not export defense equipment to the countries involved in conflicts and those violating existing United Nations resolutions. While maintaining the basic philosophy of restraining the export of defense equipment, overseas transfers of defense equipment are now allowed in principle. The Japanese government now plans to set up a new agency within the Ministry of Defense (MOD) in charge of the development, procurement, and export of defense equipment.

The Japanese MOD established a special division in charge of engaging in capacity-building support activities a few years ago. This is quite a new development in terms of the involvement of the Special Defense Forces (SDF) abroad, given that the engagement of the SDF had been concentrated on cooperation.
with US forces under the alliance with the US. Although the project has only recently started and the budget and resources allocated to the division are small, the MOD has been gradually expanding its cooperative programs for capacity building, especially to Southeast Asian countries.

The SDF has been expanding its engagement in joint exercises with the military forces of ASEAN countries, mostly for humanitarian assistance and disaster relief missions. More defense attaches were dispatched to the Japanese missions in Southeast Asian capitals to get access to the defense agencies of the countries concerned. In addition, the MOD set up a new senior post (vice-minister level) in charge of international security. This official is expected to consistently engage in a variety of talks with its counterparts in foreign countries.

Helping to build ASEAN’s maritime security capacity is becoming a key policy focus for the Japanese government. Such capability-enhancement would also sustain the status quo that creates better conditions for ASEAN’s collective diplomatic negotiations vis-à-vis China. Two of the main focus of Japan’s capacity building programs are, first, enhancing Coast Guards. From the Japanese perspective, ASEAN countries’ own strength and resilience against China’s growing maritime pressure is an important vanguard for denying China’s creeping penetration to the contested territorial waters in the South China Sea. Japan has become more strongly supportive of ASEAN’s security capacity by providing coast guard ships and equipment to its members, especially those with competing claims with China.

Second, the strategic use of Official Development Assistance (ODA). Japan has been gradually providing ODA-funded support to enhance maritime law enforcement capabilities of ASEAN countries. Japan has provided coast guard vessels to some countries as Indonesia, the Philippines, and Vietnam, and has offered training programs and seminars to share common understanding.

**CONCLUDING NOTES**

There are new areas of possible cooperation between Japan and ASEAN countries. Japan and ASEAN countries may cooperate to strengthen the Intelligence, Surveillance and Reconnaissance (ISR) capabilities of ASEAN countries. Moreover, depending upon the developments in South China Sea, Japan may consider joining joint air and sea patrols with ASEAN countries in the South China Sea, though there are currently no such plans.

Japan’s training programs for ASEAN countries should be expanded to include the training of officers in charge of submarine operation, given that many Southeast Asian countries are now introducing fleets of submarine to protect marine resources and respond to an uncertain security environment. Lastly, Japan and ASEAN countries can consider the transfer of Japan’s defense equipment to ASEAN countries.
The fundamental challenge for all East Asian countries is to ensure that peace and prosperity, which has characterized the region over the last four decades, would continue to be the defining feature of the region. The future of the seas in East Asia is central to the maintenance of peace and prosperity in the region. Indeed, the importance of the seas in East Asia has acquired a much greater degree of attention, and thus strategic significance, due to the changing nature of power relations in the region, especially among the major powers. There have been concerns that this strategic transformation would diminish the value of East Asia’s seas as regional public good, and transform it into a theatre for major powers competition and rivalry defined more by the pursuit of national strategic interests.

In that context, countries in the region are faced with the task and challenge of ensuring good order at sea and prioritizing the use of peaceful means and international law to manage and resolve maritime disputes. Achieving that objective would require common understanding of the strategic significance of the seas in East Asia as regional and global public goods, not only in security and economic terms but also in other aspects of the use of the sea for the benefits of all. Therefore, it is imperative to recognize that the future of the seas in East Asia will also be shaped by the willingness and ability of all stakeholders to cooperate in all aspects. Creating an opportunity for regional thinkers, especially between ASEAN and Japanese scholars and policy-makers, to engage in research and dialogues on the issue would provide a platform to explore ideas and ways on how to ensure the future of the sea as common public good.