

# An Asia-Pacific Regional Maritime Security: Moving Beyond the Turmoil

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## Abstract

In this paper some of the longstanding issues are reviewed, and some fresh challenges are also identified; together with an examination of causal factors and the fundamentally divergent perspectives applied by the nations of the region, which render both types of problem highly intractable. An Asia-Pacific regional maritime security is on course to become far more dangerous in the future: with nationalistic fervor driving the expansion of maritime jurisdictions; an over-reliance upon militaristic solutions; and the intervention of external powers, however subtle it may be, provoking quarreling nations to adopt more proactive attitudes toward their adversaries. This is surely the time for the nations of the region to develop clear analysis of what constitutes appropriate regional maritime security and to agree upon a common threat perception. Preventive diplomacy is now imperative, and so clear Rule of Engagement should be established and all possible safety measures should be implemented, to avoid accidental miscalculations over incidents in the disputed seas escalating into catastrophe. There is no constructive alternative to the trust-building processes essential to ensure maritime good order and stability: finding effective solutions will inevitably require the nations of this region, and also third parties like the US, to change their attitudes and their behavior, and to commit to building a rules-based system of maritime security.

**Key words:** Regional security, Ocean policy, Maritime security, UNCLOS, Maritime policy, National security policy and strategy

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## 1. Introduction

An Asia-Pacific regional maritime security is awash with old issues and new challenges, and there are numerous urgent problems with complex causes, all of them disruptive to maritime peace and good order.<sup>1)</sup> In this paper some of the long standing issues are reviewed, and some fresh challenges are also identified; together with an examination of causal factors and the fundamentally divergent perspectives applied by the nations of the region, which render both types of problem highly intractable. The new challenges faced by the nations of the region include: action-reaction phenomena resulting from unbridled nationalism, third party involvement in bilateral maritime disputes, a lack of established norms and regimes through which mechanisms to ensure regional maritime security can be implemented, an over-emphasis upon naval forces, including law enforcement forces such as coast guards, and the overlapping and confused structure of national maritime security administrative organizations. The analysis concludes that effective solutions can only be established through rules-based accords based on recognition of the common maritime interests of individual nations, notwithstanding the deep convictions which many in the region hold about the correctness of their own positions.

## 2. Old Issues Are Still Festering in the Region

There are a number of longstanding regional issues which hamper the maintenance of maritime peace and good order, including: disagreement over what kind of maritime threats should be recognized as major issues, the lack of a common interpretation of the legal situation –especially of the United Nations Convention Law of the Sea (UNCLOS), and the overweening ambition of some states to consolidate or expand their maritime jurisdictions.

First, the nations of the region disagree on what constitutes a serious threat to maritime security. Southeast Asia seems to primarily concerned with non-traditional maritime issues like piracy, illegal fishing, and armed robbery at sea, especially in the South China Sea (SCS); whereas Northeast Asia is struggling with actual military threats at sea, South Korea is facing bellicose rhetoric from North Korea, and China and Japan are competing over maritime jurisdiction, with boundary disputes in the East China Sea(ECS)leading to frictions between China, Japan, and Taiwan. Such differences are likely to exacerbate maritime disorder and instability. For Association of South East Asian Nations

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1) For a discussion of the old issues and new challenges of the Republic of Korea's maritime security, see Geoffrey Till and Yoon Sukjoon, ed., al., *Korean Maritime Strategy: Issues and Challenges* (Seoul: Korea Institute for Maritime Strategy, 2011).

(ASEAN), non-traditional threats like piracy represent a formidable problem, which is perceived very differently by Northeast Asian nations.<sup>2)</sup>The collapse of regional fisheries in the SCS and ECS already appears to be a major issue for ASEAN countries, with the near-extinction of many species of fish and the urbanization of the poor fishing villages. China's recent strategy of sending factory fishing vessels to the Scarborough Shoal in the SCS is particularly disturbing, as an escalation the non-military threat posed by China, where by its increasing affluence could starve the rest of the world.<sup>3)</sup>

Second, the nations of the region give very limited recognition to the ambiguities implicit in UNCLOS, and indeed, regional maritime disputes are primarily concerned with delimiting boundaries. UNCLOS is a large and complex convention which underpins the individual maritime jurisdictions, but it is not easy to exercise its principles in confined seas. Furthermore, there have been serious disagreements between coastal states and other countries making use of the regional seas, notably between the US and China, over freedom of navigation in Exclusive Economic Zones (EEZs); and also between neighboring coastal states, notably between ASEAN members and China, over what the rights and duties of coastal nations are, particularly in respect of EEZs. Thus, UNCLOS article 56 clearly states that a coastal nation exercises jurisdiction over "marine scientific research" in its EEZ, but unfortunately does not define this term, nor other similar terms like "survey activities", "hydrographic survey" or "military survey". Robert Beckman, who is based in Singapore, has argued that all nations enjoy freedom of navigation and overflight of EEZs where territorial claims overlap in the semi-enclosed geographical situations along the shores of the East Asian Seas.<sup>4)</sup>

Third, historical precedence has always dominated the rules-based regime and norms applying to disputed seas. Thus, the Chinese authorities have made a unilateral claim to all-encompassing maritime jurisdiction in the SCS based on the so-called "nine-(or sometimes eleven-) dashed line",<sup>5)</sup> regarding the entire SCS as indisputably Chinese territorial waters.<sup>6)</sup> Vietnam has also claimed historical rights to maritime jurisdiction in

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2) For example, the statistics for piracy in the region are under-reported for Northeast Asia because ship owners are concerned to avoid increased insurance premiums as a result of piratical attacks. These are therefore reported as robberies on board ship, or as goods being illegally transferred to other ships. Thus piracy is not seen as a major problem of maritime security for Northeast Asian nations, but it is for the ASEAN countries, impacting their prospects for social improvement, environmental management, and poverty alleviation.

3) Zhang Hongzhou, "China's Food Security"RSIS Commentaries, No. 045/2013 dated 14 March 2013.

4) Robert Beckman, "Military Activities in the Exclusive Economic Zone: Towards a Common Understanding", Yang Razali Kassim, ed., al, Strategic Currents (Singapore: Institute of Defence and Strategic Studies, Nanyang Technological University, 2006), p. 42.

5) In 2009, China documented its claims to indisputable sovereignty over the South China Sea by officially tabling a map with nine dash lines to the United Nations Commission on Extended Continental Shelves.

6) A typical Western perspective is: "*China claims indisputable sovereignty over the islands, reefs, and shoals of the SCS and their surrounding waters, demarcating a "tongue-shaped claim" on "Chinese maps" extending hundreds of miles from mainland China*". See China Raising 2012 Defense Spending to Cope With Unfriendly 'Neighborhood' by Bloomberg News, March 5, 2012 and

the SCS where its claims overlap with those of Brunei and Malaysia. The current situation in the ECS is also deteriorating, and will probably continue to worsen for the foreseeable future. Japan bases its claim to maritime jurisdiction of the Diaoyu/Senkaku Islands on the 1951 San Francisco Peace treaty (SFPT), from which the People's Republic of China was excluded. China utterly rejects this claim, and has called vehemently for Japan to abide by the 1943 Cairo Declaration and the 1945 Potsdam Proclamation.<sup>7)</sup> In practice, none of these treaties says anything helpful about potential natural resources under the disputed seas, and they can therefore contribute little to their solution of the jurisdictional disputes over the Diaoyu/Senkaku Islands. The actual amount of deep seabed reserves available remains unclear while surveys remain incomplete and until results are published, but the likely quantities of oil and gas under the disputed seas are certainly attractive to resource-poor nations like Japan. And also to China, which is now a world economic powerhouse and no longer self-sufficient in resources, especially the energy essential to the livelihood of ordinary people. At this moment of political transition across East Asia, and in the US, the prospect of establishing a new and cooperative vision of maritime security seems to be receding into the distance.

Fourth, nearly all East Asian countries are striving to expand the area over which they exercise maritime jurisdiction. It is not uncommon for the freedom of navigation to be disrupted, which is the fundamental basis upon which maritime order and peace, as well as national and regional economic prosperity, depends. Unfortunately, the principles and norms of regional maritime security have yet to be established by mutual agreement, particularly in specific zones, such as EEZs. UNCLOS is the only regime available and competent to resolve such disputes, as nearly all the parties concerned are members of this convention, excepting only Cambodia and North Korea. The multiplicity of overlapping maritime jurisdictions and boundaries across the chain of seas from the West Sea (a.k.a. Yellow Sea) to the ECS and SCS are virtually all between countries claiming legitimate maritime rights and duties under UNCLOS.<sup>8)</sup> In the case of North Korea, it unilaterally and illegally claims its Military Zone, ignoring the long-established maritime demarcation line between the two Koreas following the Korean War of 1950-53, the Northern Limit Line.<sup>9)</sup>

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<http://www.bloomberg.com/news/2012-03-04/china-says-defense-spending-will-incre...> released 2012-10-31.

7) David D. Chen and Cary C. Chen, "China/Japan Dispute Is No Gordian Knot," US Naval Institute Proceedings, December 2012, p. 10 & Gao Hong, "Diaoyu will remain China's," China Daily, September 14-20, 2012, p. 14.

8) As of 10 December 2012 there were 164 parties to UNCLOS. See

<http://www.un.org/News/Press/docs/2012/ga11323.doc.htm>.

9) For a discussion for the NLL between the two Koreas, see Andrew Forbes and Captain Yoon Sukjoon, "Old and New Threats from North Korea Against the Republic of Korea," in Geoffrey Till and Yoon Sukjoon, ed., al., *Korean Maritime Strategy: Issues and Challenges* (Seoul: Korea Institute for Maritime Strategy, 2011), pp. 26-29.

### 3. New Challenges Are Undermining Regional Maritime Security

Such long-running issues of regional maritime security have lingered, due to the diversity of the region's maritime geography and to historical legacies which have led to a marked trust-deficit among East Asian states. Meanwhile, a variety of new challenges has emerged, driven by regional geopolitical circumstances which include: action-reaction phenomena resulting from unbridled nationalism, third party involvement in bilateral maritime disputes, a lack of established norms and regimes through which mechanisms to ensure maritime security can be implemented, an over-emphasis upon naval forces including law enforcement forces such as coast guards, and the overlapping and confused structure of national maritime security administrative organizations. A number of new and emerging challenges can be identified, which are likely to disturb or disrupt regional maritime peace and good order in the East Asian Seas, with the prospect of a severe deterioration in regional maritime security, leading to potentially unmanageable consequences.<sup>10)</sup>

First, in some specific and discrete sea areas, most notably in the EEZs, some coastal states have allowed nationalistic fervor to get out of hand, adding further layers of complexity to existing problems.<sup>11)</sup> Some previously non-political maritime issues have become politicised as a consequence of internal political struggles. For Japan, in December 2012, against the backdrop of angry maritime territorial disputes with China, a rising tide of nationalism displaced all other electoral issues, resulting in a strong vote for the conservative Liberal Democratic Party (LDP), which had been kicked out of office three years previously after more than five decades of political dominance. In March 2012, the LDP-led government had suddenly declared its intention to nationalise the ownership of the Diaoyu/Senkaku Islands, for dubious reasons, and in September 2012 the Chinese government responded by announcing the baseline of the territorial waters of the Diaoyu/Senkaku Islands.

Although the new governments which have recently been installed in South Korea, Japan, China, Russia, and even in the US have sought for peaceful processes and dialogue to resolve the outstanding disputes, in all these countries there are influential conservative factions resisting any policies through which the new leaders might try to change their attitude on the maritime disputes to replace an assertive approach by a more prudent and constructive one. Governments are being pressured by such forces, moving from "reluctance" to "resentment" when reacting to situations arising around maritime disputes in the region; and where national resources may be at stake the situation has grown steadily

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10) The author would like to thank one of the anonymous reviewers for making this argument clear.

11) Wendell Minnick, "Responding to Beijing: Asia Markets Strengthen As China Turns Bully," *Defense News*, February 11, 2013, pp. 11-12.

more serious. There has been a vicious cycle of action and reaction, with recurring maritime confrontations and conflicts, and recently a groundswell of nationalistic emotions has led to more assertive actions by various parties, notably the US Senate's rejection of President Obama's proposal to ratify UNCLOS because of the maritime threat represented by the Chinese military.<sup>12)</sup>

Second, external intervention in regional maritime disputes is emerging as an important new challenge, which complicates the attempt by individual countries to assert their national maritime jurisdictional rights and duties, in particular concerning EEZs. Despite the fact that third parties have no legal rights or interests in bilateral maritime disputes in confined seas, the US has recently become actively involved in the quarrels between China and Japan, and between China and ASEAN members like Vietnam and the Philippines.<sup>13)</sup> It seems that Sino-American rivalry in the East Asian Seas has rendered regional maritime security more complex than ever before. While one might hope for the US to act responsibly, by avoiding behaving in such a way as to make regional maritime security problems more intractable, it seems that US treaty obligations established during the Cold War, specifically its SFPT security commitment to its allies, Japan, may be causing the US to react more and more robustly to what it sees as provocations by a near-peer adversary, China.

Recently there have been several dangerous flare-ups around Diaoyu/Senkaku Islands, and Beijing has vehemently denounced Japan's decision to nationalise the ownership of these disputed islands in the ECS, but the situation has become more serious after the US expressed its support for the status quo: this unwelcome development confronts the nations of the region with a dilemma, making it more difficult to maintain strategic ambiguity in a time of increasing Chinese and declining US maritime power. This was reflected in ASEAN's failure to reach agreement to issue a joint communiqué on the implementation of their Declaration on the Conduct of Parties in the South China Sea (DOC)<sup>14)</sup> at the July 2012 ASEAN Ministerial Meeting Retreat in July 2012.<sup>15)</sup> This protocol was intended to constrain further encroachments upon ASEAN members' maritime sovereignty, including China, but ASEAN is now fragmented on SCS issues, especially over the "two references" to the stand-off at Scarborough Shoal where there have been illegal fishing issues between China and the Philippines since April 2012, with the Chinese

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12) See Sukjoon Yoon, "Sino-American Rivalry in the South China Sea: Time for the ROK to Project its Middle-Power Role", presented at the *4th International Workshop, "The South China Sea: Cooperation for Regional Security and Development"*, 19-21th November 2012, at Ho Chi Minh City, Vietnam.

13) Ian Storey, "Asean Is a House Divided," *The Wall Street Journal*, Friday-Sunday, June 15-17, 2012, p. 11.

14) Terms of Reference of the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct Parties in the South China Sea:

<http://www.aseansec.org/16888.htm> and <http://www.aseansec.org/16885.htm> and

<http://www.aseansec.org/documents-20185-DOC.pdf>. released April 23, 2013.

15) Don Emmerson, "ASEAN Stumbles in Phnom Penh," *PacNet #45*, Tuesday, July 19, 2012.

dispatching huge factory fishing vessels and numerous trawlers to the area and the award of oil concessions inside Vietnam's EEZ by the China National Offshore Oil Company (CNOOC).<sup>16</sup> For ASEAN, the complex management mechanisms envisaged for DOC in the implementation guidelines drawn up in 2012, with their legally binding "Code of Conduct (COC)",<sup>17</sup> represent the last best hope of resolving such problems.<sup>18</sup>

Third, the US strategy of "rebalancing" toward the Asia-Pacific – which the Obama administration previously dubbed the "pivot" – has some potentially worrying aspects. Rather than simply maintaining the regional maritime status quo, the US appears to be moving towards taking a more disruptive role. Sino-American maritime rivalry entered a new phase with the USNS Impeccable incident in 2009 which involved a clash with Chinese quasi-governmental vessels in the SCS. This was the first direct maritime confrontation between China and the US over the respective rights and duties of the coastal countries and other nations using their EEZs. At issue is UNCLOS Article 56: the parties dispute whether the US was conducting marine scientific research and therefore whether prior notification or authorization was required – the US asserts that freedom of navigation cannot be regulated by any coastal countries.

Since this incident, the US has continued to be involved, directly or indirectly, in regional maritime disputes: deploying the controversial and disruptive Littoral Combat Ship-1(LCS-1)USS Freedom to Singapore in March 2013, enhancing its bilateral naval exercises with its formal allies near the SCS/ECS, and making clear that its security treaties include a commitment to protect disputed waters such as the Diaoyu/Senkaku Islands. The US exercises with China's neighbors, South Korea, Japan, Vietnam and the Philippines have included joint naval drills based upon scenarios involving the recapture of various islands, to which China has responded emphatically. The Chinese government has declared its resolve to "absolutely make no concession on issues concerning its sovereignty and territorial integrity", and its navy has continued to conduct frequent large-scale "rights to protection" or "patrolling and training" naval exercises near disputed sea areas in the SCS and ECS.<sup>19</sup> China sees this matter as a "core interest"<sup>20</sup> which is beyond debate, whereas

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16) For a detail of DOC, see Carlyle A. Thayer, "ASEAN's Code of Conduct in the South China Sea: A Litmus Test for Community – Building?" *The Asia-Pacific Journal*, Vol. 10, Issue 34, No. 4, August 20, 2012. For CNOOC's deal with issue, see <http://en.cnooc.com.cn/html/news/2012-06-23/english.322127.html>.

17) For ASEAN, "Regional Code of Conduct in the South China Sea(Draft)" in March 2000 and People's Republic of China, "Code of Conduct on the South China Sea (Draft of the Chinese side) in March 2000, see <http://www.scribd.com/doc/103248217/Thayer-Challenges-to-ASEAN%E2%80%99s-Cohesion-The-Policy-of-Constructive-Engagement-and-a-Code-of-Conduct-for-the-South-China-Sea>.

18) For details, see Carlyle Thayer, "Deference/Defiance: Southeast Asia, China and the South China Sea", a paper presented to panel entitled "on Difference/Diffusion, Deference/Defiance: Unpacking China-Southeast Asia Relations at the 2013 *International Studies Association Annual Convention*, Hilton San Francisco Union Square, San Francisco, April 5, 2013.

19) Grace Jean, "Freedom unleashed," *Jane's Defence Weekly*, 3 April 2013, p. 24.

20) For a detailed critical examination of the core interest issue, see Michael D. Swaine, "China's Assertive

the US claims that the central issue concerns freedom of navigation, which serves the interests of all the nations in the region.<sup>21)</sup> The US has no formal role in these maritime disputes, except as a party to UNCLOS (assuming the US ratifies the convention), and its involvement as a third party makes very little sense other than as a deliberate policy to thwart China's unilateral claims to maritime jurisdiction. Ongoing Sino-US maritime rivalry in the disputed waters threatens to overwhelm the nations of the region.

Fourth, there is a new emphasis upon military solutions which is becoming a problem in itself. Although the US defense budget has been reduced, defense spending in the East Asian region has increased significantly, including an 11% rise in the Chinese defense budget for 2013. The ongoing enhancement of naval forces and civilian law enforcement agencies seems to present a new threat likely to disrupt of maritime peace and stability.<sup>22)</sup> In theory, maritime security entails maintaining good maritime order in the region to ensure the freedom of navigation and allow innocent passage through territorial seas. In practice, however, disagreements over the applicability of UNCLOS to maritime jurisdictions, together with the US defense budget crisis resulting from internal political wrangles, have prompted the nations of region to rely more upon their own naval power rather than trusting in allies or external parties.<sup>23)</sup> One might expect the East Asian nations to prefer to put more weight on social improvements, environmental management, and poverty alleviation instead of investing such large sums in building independent defense capability. Understandably, they are keen to ensure that they are prepared for maritime disputes, but their willingness to become more self-reliant and share more of the defense burden is surely suspicious when they are expecting to see the implementation of the US "rebalancing to Asia" strategy.<sup>24)</sup> Since November 2012 regular naval patrols by the Chinese People's Liberation Army Navy (PLAN) and the Japanese Maritime Self-Defense Force (JMSDF) have taken place, including air surveillance activities over the disputed areas, and the PLAN raised the stakes in the ongoing confrontation by staging activities against a mock-up JMSDF warship near the disputed seas in January and February 2013.<sup>25)</sup> Quite

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Behavior, Part One: On 'Core Interest',” *China Leadership Monitor*, No. 34, 2011, pp. 1-25.

21) Jeffrey A. Bader, *Obama and China's Rise: An Insider's Account of America's Asia Strategy* (Washington, D.C.: Brookings Institute Press, 2012), p. 105.

22) For the continuing Chinese defense budget increases, see Grace Jean, "China plans next-gen carriers," *Jane's Defence Weekly*, 20 March 2013, p. 10. For the US defense budget reduction, see Daniel Wasserbly, "DoD revisiting strategy amid potential \$889 bn shortfall," *Jane's Defence Weekly*, 27 March 2013, p. 10 and Grace Jean, "US Navy reduces fleet goal," *Jane's Defence Weekly*, 13 February 2013, p. 12. For the Japanese defense budget rise, see Kosuke Takahashi and James Hardy, "Japan announces first budget rise in 11 years," *Jane's Defence Weekly*, 6 February 2013, p. 20. For increases to the defense budgets of ASEAN members, see Guy Anderson and Jon Grevatt, "Rich pickings," *Jane's Defence Weekly*, 19 September 2012, pp. 20-29.

23) Wendell Minnick, "Responding to Beijing," *Defense News*, February 11, 2013, p. 11 & 12.

24) J. Randy Forbes, "Rebalancing the Rhetoric," US Naval Institute Proceedings, October 2012, pp. 16-21 & Robbin Laird and Ed Timperlake, "Pivot Point: Re-shaping US maritime strategy to the Pacific," *Jane's Navy International*, April 2013, pp. 22-29.

25) Sarah McDowall and James Hardy, "China to survey disputed East China Sea islands," *Jane's Defence*



the reverse trend is occurring in Europe, according to Jane's Defence Weekly(European) and Defense News(US):while the Asia-Pacific region has been increasing defense budgets, mainly focusing on building naval strength and promoting law enforcement services such as coast guards, the European nations have begun to cut their defense spending to reallocate more money toward social improvement and coping with the economic downturn.<sup>26)</sup>

Fifth, the overlapping and confused structure of national maritime security administrative organizations, especially for China, will likely hinder the implementation of any bilateral agreements or international legal regimes, should these become established in due course. The International Crisis Group's 2012 Special Report on China lists more than 9the ministries or agencies with some degree of maritime responsibility locked in a struggle for influence in the central communist party and national council in order to secure budgetary and other resources.<sup>27)</sup> Recently the Chinese government announced that the National People's Congress had restructured the diverse and inconsistent organization of ministry of maritime affairs into a single unified maritime apparatus subordinate to the State Oceanic Administration (SOA).<sup>28)</sup> This is a very welcome development in Chinese maritime affairs, which will likely help with the present tensions and reduce the possibility of accidental conflict in the disputed sea areas. The establishment of a single unit responsible for managing national maritime affairs will send a goodwill signal to China's adversaries in its maritime disputes, implying that negotiation processes will be quicker and more effective. Although some critics have argued that the restructuring of the Chinese maritime authorities is more superficial than real, the Chinese have still demonstrated to their neighbors that they are seriously committed to implementing appropriate management of maritime affairs beyond their territorial waters to ensure regional maritime security. Of the new responsibilities which China's SOA has taken on, no task is more urgent than the management of maritime jurisdiction in the ECS and SCS.As China's defence doctrine includes legal warfare, China has developed its "maritime law enforcement strategy" that adopted a policy of "rights protection" in the SCS and the ECS –surely from China's perspective. Asserting greater control over maritime resources and jurisdiction by the law enforcement forces is the latest iteration of this reconstruction of the diverse and inconsistent organization of ministry of maritime affairs to single one.

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*Weekly*, 23 January 2013, p. 14 & Kosuke Takahashi and James Hardy, "Chinese frigates Locked on to JMSDF ship, helo," *Jane's Defence Weekly*, 13 February 2013, p. 16.

26) For the increasing Chinese law enforcement capability, see <http://news.usni.org/news-analysis/news/chinas-700-ship-navy>, released February 6, 2013.

27) For details, see International Crisis Group's *Special Report on China*, March 2012.

28) Gavin Goh, "China realigns maritime agencies," *Jane's Defence Weekly*, 20 March 2013, p. 16.

## 4. The Urgent Need for a Common Approach to Regional Maritime Security

For the time being, maritime security seems critical to individual national security for the East Asian region, and for some nations it merits first place on their national security agenda. However, the region seems still unready for maritime cooperation, with lingering tit-for-tat games between neighboring countries disrupting maritime peace and good order. Several tracks exist for discussing regional maritime security mechanisms: the ASEAN Regional Forum (ARF) and its various sub-committees; the Heads of Asian Coast Guard Agencies (HACGA); and the Council of Security Cooperation in the Asia Pacific (CSCAP) working together with the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). These forums take a variety of approaches, and are likely discussing the old issues, but they are very reluctant to talk about the new challenges and have produced very little of immediate use in terms of defined plans of action – there is an urgent need to secure the common maritime interests of the region, specifically to ensure the freedom of shipping and to deter the recurring bilateral conflicts and confrontations.<sup>29)</sup>

The best course would be for every nation in the region to agree to work together to preserve their common interests at sea, defining regional maritime security along the lines of: national and multinational efforts to maintain good and peaceful order at sea, and the safety and security of shipping, so as to permit countries to pursue their maritime interests and to develop their marine resources in an ecologically sustainable and peaceful manner in accordance with international law. Any such consensus must also establish that illegal and unilateral activities at sea or inadequate arrangements for the safety and security of shipping are detrimental to good order at sea and should not be tolerated.

Unfortunately, since UNCLOS came into effect as the customary international maritime law of this region after receiving the necessary ratifications in 1997, there have been so many different concepts of maritime security among the nations of the region that they have been quite unable to agree upon any conceptual basis for a common approach to regional maritime security. Given the essential importance of seaborne trade, which is fundamental to the economic growth and prosperity of the region, it seems obvious that most nations share an interest in safeguarding the freedom of navigation and ensuring the safety of shipping, but constructive agreement has proved elusive. Some blame the unfortunate complexity of the region's geography and the ambiguities which arise in the application of UNCLOS to the semi-enclosed seas of East Asia.<sup>30)</sup> Others blame third party

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29) Sam Bateman, "Solving the 'Wicked Problems' of Maritime Security: Are Regional Forum up to the Task," pp. 17-20.

30) Sam Bateman, "UNCLOS and its Limitations as the Foundation for a Regional Maritime Security Regime,"

involvement in the region's bilateral disputes, so that the rights and duties of the coastal countries are not in full accordance with the international law, but are determined by alliance obligations which are constrained by geography.<sup>31)</sup>

Fortunately there are very few countries, just Taiwan and South Korea, whose approach to maritime issues adheres to rigid traditional attitudes; where the national defense agenda is dominated by military threats from enemies or historical adversaries, and the protection of national interests and sovereignty at sea.<sup>32)</sup> Indeed, since the end of the Cold War, such traditional maritime security concepts have gradually become less significant around the seas of the region; so it is an appropriate time, in fact it is rather urgent, for the nations of the region to agree upon a common definition of regional maritime security so as to safeguard their common interest in peace and stability upon which their economic prosperity depends.

## 5. Moving Beyond the Turmoil

Looking at the general timeline of the maritime conflicts and tensions during the last few years, from 2010 through the start of 2013, it is clear that existing institutional mechanisms have failed to address the tensions arising between the coastal nations and the users of specific areas, most obviously the EEZs and disputed sea areas like the Diaoyu/Senkaku Islands in the ECS and Scarborough Shoal in the SCS. Unfortunately, very few constructive outcomes have been produced by ASEAN and its various sub-forums and committees like ARF, the ARF Inter-Session Meeting on Maritime Security, and the Maritime Security Expert Working Group established by the ASEAN Defense Minister Meeting Plus.<sup>33)</sup> What can be done to address this deficit? How can robust institutional mechanisms be established to resolve both the longstanding issues and the new challenges for regional maritime security? Some recommendations and suggestions follow.

First, action-reaction phenomena should be defused through discreet bilateral negotiations between the quarreling parties. From time to time, official views on disputed issues become distorted by popular reaction, especially by nationalistic movements and heated public antipathy against perceived insults to sovereignty by rival nations. Such trends have proved particularly destabilizing over recent years, affecting maritime environments

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*The Korean Journal of Defense Analysis*, vol. 19, no. 3 (Fall 2007), pp. 27-56.

31) Li Mingjiang and Zhang Hongzhou, "Restructuring China's Maritime Law Enforcement: Impact on Regional Security," *RSIS Commentaries*, No. 050/2013 dated 1 April 2013.

32) SebastienFalletti, "South Korea delays Spike NLOS deployment," *Jane's Defence Weekly*, 28 November 2012, p. 14.

33) Sam Bateman, "Solving the 'Wicked Problems' of Maritime Security: Are Regional Forums up to the Task?," pp. 17-21.

throughout East Asian Seas ranging from the West Sea (a.k.a. the Yellow Sea), and the ECS to the SCS. To limit the negative impact from such reactions, the best course would be to internationalise the maritime jurisdictional and boundary disputes of the region. This would give the disputing parties some breathing space, and allow them to muster the political will to play a more constructive role in contributing to regional maritime good order and stability. Beyond the official and formal dialogues there is a real opportunity for Asian countries to address many outstanding issues. Since 2010 some very assertive attitudes have prevailed, and it is time some lessons were learned: expanding maritime jurisdictional claims to the limits of continental shelves has produced only trouble and instability.

Second, multilateral forums should urgently consider the suitability of international law to strengthen regional peace and stability. This should involve disputing parties in a process whereby they accept joint responsibility for implementing a new concept of consensual regional maritime security, integrating policy suggestions from all sides. In this way gray areas of UNCLOS could be addressed by international forums, and extended or amended as appropriate. In its present form the convention seems inadequate for resolving the regional maritime disputes, being capable of too flexible a range of interpretations, and it is therefore essential to begin by developing a common understanding of the limitations of UNCLOS, which may then help to ease the recurring tensions. Of course, it is crucial for the US to ratify UNCLOS as soon as possible, so that instead of being a mere observer the US could have a formal role in the dialogue to build a new maritime regime.<sup>34)</sup> US participation in UNCLOS will surely contribute to maintaining maritime peace and stability in the Asia-Pacific region, by helping to provide credible international regulation and sound principles for maritime security.<sup>35)</sup> Among the benefits of updating the conventional context of maritime jurisdiction in the ECS and SCS and the rights and duties of coastal states in maritime zone, particularly relating to the EEZs, would be a welcome reduction in the likelihood of a miscalculation leading to serious maritime conflict.

Third, the best way to avoid such dangerous accidents in the ECS and SCS is to define clear Rules of Engagement (RoE) for maritime forces and law enforcement agencies. Recent clashes over fishing rights, such as those between and Japan over the Diaoyu/Senkaku Islands, and between China and the Philippines over the Scarborough Shoal, in which the China Marine Surveillance agency and Chinese fishery protection agencies were involved, have demonstrated the importance establishing RoE covering how to deal with non-military maritime threats. In the clash with Japan, the Chinese government responded by conducting large-scale naval contingency exercises near the disputed seas which provoked a crisis when the PLAN targeted JMSDF naval vessels and helicopters with fire-control radar in January and February 2013.<sup>36)</sup> In January 2012, the Philippines

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34) The author would like to thank the anonymous reviewers for making this argument clear.

35) See Sukjoon Yoon, "Sino-American Rivalry in the South China Sea: Time for the ROK to Project its Middle-Power Role".

government made a good start in moving to reduce the chances of unintended conflict by promoting a COC in which the SCS is defined as a Zone of Peace, Freedom, Friendship and Cooperation(ZOPFF/C) – this is a good model for other nations operating in disputed waters to emulate. It will be good for all parties in the region to continue to discuss the further implementation of the DOC Guidelines in the near future, significantly including “expert committee on safety of navigation and communication at sea” due to its contentious nature.<sup>37)</sup>

Fourth, international legal regimes should be reserved as a last resort, when bilateral means have failed to bring about a peaceful resolution and settlement of disputes. The involvement of external powers in regional maritime security only tends to muddy the waters, with the reactions inevitably provoked making the disputed issues more complex and intractable. Bilateral discourse on maritime cooperation should become the customary approach to these matters, rather than relying upon military tools to rationalize legitimate rights and duties, and transparent, effective and appropriate methods must be devised to resolve the recurrent tensions. It is unfortunate that the implementation of the DOC protocol has been held up by multilateral negotiations within ASEAN identity or central and with China. Individual bilateral settlements are not sufficient to resolve all the issues, however, as shown by the recent unofficial agreement on fisheries between Taiwan and Japan: at a time of heightened tension between China and Japan over the Diaoyu/Senkaku Islands this agreement upset China further, adding more fuel to the fire. It was also disappointing that the Philippines and China were unable to reach agreement to bring the nine-dashed line issue before an international tribunal subject to UNCLOS arbitration.<sup>38)</sup> The Philippine was careful in its Notification and Statement of Claim to say “it was not seeking arbitration over sovereignty disputes to islands or delimitation of maritime boundaries that China had excluded from arbitral jurisdiction. The Philippines claimed that its maritime disputes with China were “about the interpretation and application by States Parties of their obligations under the UNCLOS,” and therefore could be submitted for resolution. By contrast, a Chinese responded that the Philippines’ Statement of Claim “was historically and legally incorrect and contained unacceptable accusations against China.”<sup>39)</sup>It is suffice to say that international legal regimes should be reserved as a last resort is not a “win-or-lose ”for only one certain party, but a “win-win” resolution for all parties.

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36) Kosuke Takahashi and James Hardy, “Chinese frigates Locked on to JMSDF ship, helo,” p. 16.

37) An agreement of the implementation of the DOC guidelines at a China-ASEAN senior officials meeting held in Beijing in January 2012 set up four expert committee on maritime scientific research, environmental protection, search and rescue, and transnational crime.

38) James Hardy, “China Rejected Philippines’ Arbitration Tribunal on South China Sea Issues,” *Jane’s Defence Weekly*, 22 February, 2013, p. 8.

39) Carlyle A. Thayer, ‘China at Odds with U.N. Treaty,’ *USNI News*, Monday, March 11, 2013.

## 6. Conclusion

Regional maritime security is on course to become far more dangerous in the future: with nationalistic fervor driving the expansion of maritime jurisdictions; an over-reliance upon militaristic solutions; and the intervention of external powers, however subtle it may be, provoking quarreling nations to adopt more proactive attitudes toward their adversaries. This is surely the time for the nations of the region to develop clear analysis of what constitutes appropriate regional maritime security and to agree upon a common threat perception. Preventive diplomacy is now imperative, and so clear RoE should be established and all possible safety measures should be implemented, to avoid accidental miscalculations over incidents in the disputed seas escalating into catastrophe. There is no constructive alternative to the trust-building processes essential to ensure maritime good order and stability: finding effective solutions will inevitably require the nations of this region, and also third parties like the US, to change their attitudes and their behavior, and to commit to building a rules-based system of maritime security.

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