

The Urgent Need for Maritime Partnership between Coastal States and User States

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ABSTRACT

Maritime security is an essential aspect of regional security, and for the Asia-Pacific region this depends on maritime partnership. So what are the best policy options to reconcile the coastal and user states, and how can they all be brought squarely within the remit of the United Nations Convention on the Law of the Sea (UNCLOS)? The concept of Asia-Pacific Region Maritime Confidence Security Building Measures (APR-MCSBM) is the only productive approach available, with the primary aims being to preserve freedom of navigation, to ensure the free flow of commerce, and to uphold international law. First, despite the military posturing between coastal states and user states, there is no appetite for a serious military confrontation. Moreover, the regional nations, when not being intimidated by either of the great powers, make it clear that they are eager to discover a less volatile and more practical means of preserving stability in the disputed seas. And crucially, no country wants to see the extensive regional trade and economic relations damaged by chaotic and unpredictable crises in the East Asia Seas.

Keywords: United Nations Convention on the Law of the Sea (UNCLOS), Maritime Cooperation, Maritime Security, Coastal States, User States

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1. Introduction

Maritime security is an essential aspect of regional security, and for the Asia-Pacific region this depends on maritime partnership.¹⁾ Regional countries are not in agreement on a certain common definition of maritime security. Some include non-traditional security issues within the definition, but others are uncomfortable with including sovereignty issues and illegal fishing. A glance at a map reveals the complexity of the region's semi-enclosed seas, and makes it obvious that maritime partnership between coastal states and user states is fundamental to regional maritime security: specifically, to ensuring the unrestricted freedom of navigation required by international law.²⁾ The economic importance of the region looms ever larger, while its military situation grows ever more contentious. An intelligent approach to the region's security would surely rely upon establishing comprehensive maritime partnerships between the coastal states, which want to protect their individual maritime interests and sovereignty, and the user states, which want the East Asia Seas to remain fully available for commercial and military 'freedom of navigation'.³⁾

Both coastal and user states are heavily dependent upon large volumes of international trade which passes through the so-called 'maritime domains'⁴⁾ of the Asia-Pacific region. The continued flourishing of such trade necessitates a peaceful and stable framework of regional maritime security, which ultimately relies on the adoption of good policy choices by all parties. Many coastal states are overly concerned with highly complex legal maritime issues, making them resistant to cooperation with others. User states consider such issues an impediment which complicates their use of East Asian seas, and threatens their maritime interests, since freedom of navigation is an essential strategic and economic component of their national security. These differences pose fundamental problems for regional maritime security, which is ultimately a shared interest for all parties. So what are the best policy options to reconcile the coastal and user states, and how can they all be brought squarely within the remit of the United Nations Convention on the Law of the Sea (UNCLOS)?

1) Sam Bateman, 'Solving the "Wicked Problems" of Maritime Security: Are Regional Forms up to the Task,' *Contemporary Southeast Asia*, Vol. 33, No. 1, (2011), pp. 1-28.

2) Joachim Krause and Sebastian Bruns, 'Introduction: the changing face of twenty-first-century naval strategy and maritime security,' in Joachim Krause and Sebastian Bruns, ed. al, *Routledge Handbook of Naval Strategy and Security* (London: Routledge, 2016), pp. 3-10.

3) Sam LaGrone, 'China Upset Over Unprofessional U.S. South China Sea Freedom of Navigation Operation,' *USNI Newsletter*, January 31, 2016. See <http://news.usni.org/2016/01/31/china-upset-over-unprofessional-u-s-south-china-sea-...>(accessed February 5, 2016).

4) The maritime domain is described as "The series of jurisdictional zones that surrounds the coast of a state. It includes territorial seas and the Exclusive Economic Zone." See Royal Navy, BR 1806: *British Maritime Doctrine*, 3rd Edition (London: TSO, 2004), p. 270.

2. Different Views of Maritime Security: The Origins of Distrust

Maritime security involves several types of stakeholder: coastal or archipelagic states, and also user states, any of which may or may not be party to the UNCLOS.⁵⁾ Accordingly, international laws entail different kinds of rights and duties in their maritime domains, and any bilateral or multilateral maritime partnerships must avoid any prejudice or misrepresentation of these rights and duties in the various maritime zones, including their claims of legal jurisdiction.⁶⁾

Any attempt to establish maritime partnerships is therefore complex and controversial, and the only coherent approach is an integrated and comprehensive strategy, offering real benefits to all, and based on their shared and overlapping interests. The maritime security of East Asian seas requires enhanced regional maritime cooperation, so a way must be found to satisfy all parties. Coastal states have typically sought to expand their legitimate rights and jurisdiction in the various types of legally specified maritime zones, while the user states have prioritized freedom of navigation, justifying their presence as maintaining regional maritime peace and stability, but also attempting to leverage this to gain geopolitical power or influence.

For the coastal states, there is established practice, with specific legal standards applying to the various maritime zones, such as 200-mile Exclusive Economic Zones (EEZs).⁷⁾ Unfortunately, however, the language of the UNCLOS is distinctly, some would say deliberately, ambiguous when applied to the confined seas of East Asia. The coastal states and the user states therefore make different interpretations of the UNCLOS, both between them and amongst themselves, which has resulted in a number of acrimonious disputes in bordering seas where maritime boundaries have not been delimited, with the recurrent threat of serious conflicts breaking out.⁸⁾

The user states have a quite different perspective on maritime security: their focus is much broader, encompassing the prevailing geopolitical circumstances, so that non-maritime factors (characterized as national core interests) are also taken into account, in some cases prompting unilateral claims to sovereignty and jurisdiction, and provoking substantial misunderstandings and distrust from other parties. Unless and until some cooperative mechanism can be devised to ensure maritime peace and stability in the region, these differences between types of stakeholder will remain completely intractable and an ever-increasing cause for concern.

5) As of January 2, 2015 there were 167 parties and the European Union to UNCLOS. See http://www.un.org/Depts/los/reference_files/chronological_list_of_ratifications.htm (assessed June 9, 2016)

6) Even establishing maritime status is problematical, with Japan rejecting the label of 'archipelagic', as for Indonesia and the Philippines, believing that its interests are better served by the status of 'coastal'.

7) Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *United Nations, The Law of the Sea: United Nations Convention on the Law of the Sea Agreement relating to the Implementation of Part XI of the United Nations Convention of the Law of the Sea with Index and excerpts for the Final Act of the Third United Nations Conference on the Law of the Sea* (New York: United Nations, 1997), part V.

8) One of the best examples would be the fact of how coastal States can allow user States to adopt the freedom of navigation rights and marine research survey.

3. Maritime Partnership: The Best Policy Option

As a coastal state, China is bent on strengthening its jurisdiction over its EEZ, claiming that user states should not undermine its maritime sovereignty; as a user state, the US argues for a liberal interpretation of its rights and freedoms by using the expression “international waters” to describe collectively the high seas, the EEZs and the contiguous zones.⁹⁾ Unfortunately, these legal and procedural discrepancies have already given rise to competitive struggles intended to maximize political advantage, with many countries staking out extreme positions. Major maritime powers believe that military activities in the international waters are freedoms that the coastal state cannot regulate in its high seas under the Article 87. As such, Article 87 of the UNCLOS describes freedoms of the high seas as follows:

- *The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:*
 - (a) *freedom of navigation;*
 - (b) *freedom of overflight;*
 - (c) *freedom of lay submarine cables and pipelines, subject to Part VI;*
 - (d) *freedom of construct artificial islands and other installations permitted under international law, subject to Part VI;*
 - (e) *freedom of fishing, subject to the conditions laid down in section 2;*
 - (f) *freedom of scientific research, subject to Parts VI and XIII.*
- *These freedoms shall be exercised by all States with due regard for the interests of other States in the exercise of the freedom of the high seas and also with due regard for the rights under this Convention with respect to activities in the Area.¹⁰⁾*

The US, as an extra-regional state, insists on the freedom to conduct military activities within East Asian EEZs, out of concern that other states might obtain a military advantage if the US is denied naval and air access and maneuvering to these significant portions of the confined East Asian Seas. However, the coastal states are concerned that uninvited military activities by user states represents a potential threat to their national security and may undermine their maritime sovereignty, so there has been a global trend towards increasing control over EEZs. China takes a very different stance, as an emerging maritime power it contends that user states are not able to carry out any military activities in or over its EEZ without its permission,

9) See Ben Dolven, Jennifer K. Elsea, Susan V. Lawrence, Ronald O'Rourke, Ian E. Rinehart, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options* (Washington, D.C.: Congressional Research Service, June 18, 2015) & The State Council Information Office of the People's Republic of China, *China's Military Strategy* (Beijing: The State Council Information Office of the People's Republic of China, May 2015).

10) Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *United Nations, The Law of the Sea: United Nations Convention on the Law of the Sea*, pp. 53-54.

basing this argument on Article 56(1)(b)(ii) of UNCLOS, which specifies that a coastal state has jurisdiction over, and must give permission for, marine scientific research in its EEZ. Article of the Convention projects the evolving rights, jurisdictions, and duties of the coastal State in the EEZ:

- *In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) other rights and duties provided for in this Convention.¹¹⁾*

The disagreement between China and US on the freedom of navigation is a source of particular concern.¹²⁾ Of course, the US is not a party to the UNCLOS (it is an unratified signatory), though its stated policy is to respect the international maritime regime of which UNCLOS forms the major part. The only interest which the US officially asserts in East Asian Seas is to safeguard the freedom of navigation. By contrast, China seems determined to set aside the existing legal regime in the South China Sea, replacing the current uneasy status quo by “Chinese characteristic international law and conspicuous legal principles”, such as the nine-dashed line and China’s historical rights and usages.¹³⁾

This standoff between China and the US has recently produced several dangerous encounters in East Asian Seas between US naval vessels or aircraft and Chinese aircraft or maritime security vessels.¹⁴⁾ These problems have also been reflected in recently published maritime-related policy documents: the US National Military Strategy, the US Maritime Strategy and the US Asia-Pacific Maritime Security Strategy, all issued in 2015, and China’s Defense Policy, released in May 2015, appear to indicate that a political tug-of-war is underway between them for dominance of the East Asian maritime domain, which could set an unfortunate precedent for relations between coastal states and user states. China’s new maritime policy, the ‘Maritime Silk Road Initiative’ is ostensibly about building infrastructural interconnections, but since President Xi Jinping has also declared his intention that China should become

11) Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *United Nations, The Law of the Sea: United Nations Convention on the Law of the Sea*, p. 40.

12) David Larter, ‘Tension Builds Over Islands,’ *Defense News*, April 11, 2016, pp. 8-9.

13) Lee Kuan Yew, China’s unfettered redefining of the Rules of the Seas, *Forbes Asia*, April 2014, p. 14 & Ridzwan Rahmat, ‘SCS dispute becomes test case for US-Chinese ties,’ *IHS Jane’s Defence Weekly*, 17 June 2015, pp. 24-25.

14) Sam LaGrone, ‘Independent U.S. Rebalance to the Pacific Report Calls for Study of Second Carrier Based in 7th Fleet,’ USNI Newsletter, February 3, 2016; Dean Cheng, ‘How to Oppose China’s Bid for Maritime Dominance,’ *The National Interest*, February 26, 2016; Sourabh Gupta, ‘Philippines v. China arbitration: be careful what you wish for,’ PacNet, No. 28, March 17, 2016.

a 'True Maritime Power', which has clear resonances to China's historical maritime hegemony, it is unsurprising that some perceive both these policies as a counter to the much-trumpeted US military policy of 'Rebalancing to Asia'.¹⁵⁾

Indeed, the US has not responded with any obvious diplomatic finesse to China's assertive and often preemptive actions in recent years, but while China may have behaved more shrewdly, both countries remain obsessed with their narrowly defined 'national core interests'. For China, this means its historical maritime rights and interests; for the US, it means ensuring the right of freedom of navigation in international waters. This exclusive focus on who is right or wrong, with what the legitimate rights and duties of coastal states and user states actually should be in EEZs or disputed waters, has caused both China and the US to choose inferior policy options: they have preferred to depend upon their naval strength, by using intimidation and preemptively establishing 'facts on the ground', rather than seeking a consensus based upon their mutual interests, and cooperating to negotiate a comprehensive accord which takes into account the ambiguities and different views on regional maritime security.¹⁶⁾

As long as this situation persists, with both China and the US attempting to implement such inferior policy options, things can only go from bad to worse. A recent egregious example is the carelessly provocative remarks made by several US forward deployed combatant commanders, while attempting to reassure vulnerable US allies and partners, which have sent some very unfortunate messages to China.¹⁷⁾ The US has also taken a variety of other ambiguous actions including: dispatching advanced maritime patrol aircraft and deploying modern multi-purpose naval platforms, such as Littoral Combat Ships (LCSs), which are controversial, because the way in which their missions will replace those of the current surface combatants is poorly defined.¹⁸⁾ The US is also stepping up joint naval exercises, such as Cooperation Afloat Readiness and Training (CARAT) and Southeast Asia Cooperation and Training (SEACAT), and applying diplomatic pressure, and recently began to deploy naval task units and maritime surveillance air patrols over China's land reclamation activities in the South China Sea.¹⁹⁾

15) Sukjoon Yoon, 'Implications of Xi Jinping's "True Maritime Power": Its Context, Significance, and the Impact on the Region,' *US Naval War College Review*, Vol. 68, No. 3 (Summer 2015), pp. 40-63 & Evan N. Resnik, 'The Rebalance and the Dangers of America's Creeping Containment of China,' Geoffrey Till, ed. al., *The Changing Maritime Scene in Asia* (Basingstoke: Palgrave, Macmillan, 2015), pp. 22-36.

16) James C. Billing, 'Greater Cooperation Is Needed Between China and the United States,' *US Naval Institute Proceedings*, February 2016, p. 10.

17) Jim Gomez, 'Admiral assures Asian allies US forces ready for contingencies,' *The China Post*, July 18, 2015, p. 13.

18) The US Navy plans to build 32 multi-mission-oriented LCSs, including 3,188 tonne aluminum trimarans and single-hulled ships with a beam of 31.6 m and a draught of 4.45 m. These will be assigned for littoral operations such as Mine Countermeasures Warfare, littoral Anti-Submarine Warfare, Anti-Surface Warfare and in support of Anti-Aircraft Warfare.

19) James Hardy, 'US ramps up South China Sea rhetoric, outlines force posture', *IHS Jane's Defence Weekly*, 20 May 2015, p. 4 & Dzirhan Mahadzir and James Hardy, 'ASEAN leaders express concern over South China Sea island building,' *IHS Jane's Defence Weekly*, 6 May 2015, p. 15.

4. Asia-Pacific Region Maritime Confidence and Security Building Measures

The Asia-Pacific region is currently so polarized that, whatever official policies or strategies are adopted by China or the US they would likely be found completely unsatisfactory by the other country, or by some significant political faction within it, or by other maritime nations in the region. Since the ultimate aim is to establish comprehensive and sustainable maritime security partnerships throughout the region, there needs to be a process which allows all parties to move gradually toward mitigating hardline approaches, and encouraging them to pay more attention to implementing the best long-term policy options. Hence the urgent and inescapable need for Asia-Pacific Regional Maritime Confidence and Security Building Measures (APR-MCSBM).²⁰⁾ The concept of APR-MCSBM can be defined as follow: respect for fundamental principles such as no threat of or use of force, and eschewing any action which undermines peace and stability at sea.²¹⁾

The countries of the region need to develop a broad understanding and recognition of what kinds of maritime cooperation will be most appropriate and effective for East Asian Seas. In particular, APR-MCSBM between coastal states and user states are absolutely fundamental to maritime security, with the most pressing issues being preventive diplomacy, confidence building, and crisis management. As mentioned earlier, there must be a dialog which transcends entrenched prejudices and distrust: APR-MCSBM should be regarded as building a path toward maritime partnerships which will realize the best policy options for both coastal states and user states, collectively, rather than just another forum for the unilateral assertion of the rights of individual states. Article 123 of the UNCLOS uses language such as “should cooperate” and “should endeavor”, which makes clear the general obligation incumbent upon all parties to implement APR-MCSBM as a mechanism for maritime cooperation. The Convention clearly illustrates the cooperation of States bordering enclosed or semi-enclosed seas:

- *States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization: (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area; (d) to invite, as appropriate,*

20) There are various similar terms pertaining to maritime cooperation: Maritime Capacity Building Measures, Maritime Confidence/Trust Building Measures, Maritime Regime Building Measures and Maritime Security Building Measures. See Sukjoon Yoon, ‘South Korean Contributions to Maritime Capacity Building Measures (MCBMs) in Northeast Asia,’ *Maritime Institute of Malaysia (MIMA) Bulletin*, Vol. 22 (2), 2015, pp. 32-44.

21) *Ibid*, p. 33.

other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.²²⁾

There are currently two promising tracks which support APR-MCSBM, namely intergovernmental and interagency approaches, and both should be followed in parallel. Intergovernmental maritime security cooperation in this region has been driven by various ad hoc bi- and multilateral arrangements for maritime crisis management. A good example is the Code for Unplanned Encounters at Sea (CUES) agreed by the members of the Western Pacific Naval Symposium in Qingdao in 2014, which was hosted by the Chinese People's Liberation Army Navy.²³⁾ CUES has set a precedent in demonstrating the good intentions of many parties with widely contrasting views, and showing that it is possible to reach a negotiated settlement from which they all benefit. There are some case studies of expanding navy-oriented CUES to coastguard vessels in the Asia-Pacific region that have traditionally been less risk than naval operation. However, shifting maritime security and threats are changing, coastguard may need crisis management mechanism to tackle out the high-level of situation by escalating a water cannon and ramming contest between them into physical skirmishes.²⁴⁾ Other useful contributions on the intergovernmental track include conducting strategic dialogues, establishing hotlines, and defining prior notice obligations for naval exercises: these are all constructive tools for improving government-to-government maritime partnerships.

Another example concerns Search and Rescue (SAR) operations in the region, which are now multilaterally coordinated through the International Maritime Organization and the Heads of Asian Coast Guard Agencies. The recent disappearance of a Malaysian Airlines passenger plane in the South China Sea has underlined the importance of more effective regional cooperation for maritime SAR operations.²⁵⁾ A major advance in the management of South China Sea issues is anticipated from the multilateral agreement on the Declaration on the Conduct of Parties in the South China Sea (DOC), signed in 2004, and especially from the binding Code of Conduct (COC) which it is hoped will be finalized in the near future between China and the Association of Southeast Asian Nations (ASEAN): a successful conclusion of the COC negotiations, which have long been stalled, would represent an outstanding example of best practice in developing crisis management mechanisms, and a welcome spur for further APR-MCSBM.²⁶⁾

22) Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *United Nations, The Law of the Sea: United Nations Convention on the Law of the Sea*, p. 64.

23) Lt Lauryn Dempsey, 'USS Fort Worth Conducts CUES with Chinese Navy,' *America's Navy*, See <http://www.navy.mil/submit/display.asp?story-id=85767> (accessed April 23, 2016).

24) Ridzwan Rahmat, 'White hull expansion: Regional coastguards tackle new threats,' *IHS Jane's Navy International*, April 2016, pp. 26-31; Prashanth Parameswaran, "What Did the 3rd ASEAN Defense Minister's Meeting Plus Achieve?" *The Diplomat*, November 6, 2016.

25) See papers presented at the 4th MIMA South China Sea Conference 2015 on "Conflict Prevention and the Rule of Law: Reassessing the SCS Conundrum in the 21st Century", InterContinental Hotel, Kuala Lumpur, Malaysia, 8th-9th September 2015.

26) See papers presented at the Regional Maritime Security Conference on "Indo-Pacific Maritime Security and Cooperation: Opportunities & Challenges", Beijing, China, April 18-20, 2016.

The second track through which APR-MCSBM are progressing is through the agency of non-governmental organizations, which can help the region by formulating non-binding recommendations from which useful lessons can be learned. The Council for Security Cooperation in the Asia-Pacific (CSCAP) offers a very valuable opportunity for discussing sensitive issues which are difficult to arise at a government level, using a series of study group meetings and working groups addressing various aspects of regional maritime security. Even the ongoing naval build-up has been debated: the CSCAP Group Study Meeting has issued a recommendation to the ASEAN Regional Forum expressing its concerns about the regional trend toward a naval arms race. At a recent meeting hosted by CSCAP-Malaysia, good progress was made on updating the International Aeronautical and Maritime SAR Manual, and the next meeting is scheduled to be held in 2016 in New Delhi, under the auspices of the India National Maritime Foundation. Furthermore CSCAP-Philippines hosted its 1st Study Group on Marine Environment Protection held in Manila, Philippines on April 4th-5th 2016 and there is general consensus on how to implement how the regional marine environment should be preserved in accordance with the international law and legal principles.²⁷⁾

In addition, there are also track-two publications related to maritime policy and strategy which have made a valuable contribution to maritime security cooperation. These are published by various maritime security conferences and seminars which discuss naval issues and provide forums where approaches to naval cooperation between coastal and user states can be formulated by academic and military experts on maritime policy and strategy. One such recent event was the 9th International Sea Power Symposium held October 19, 2015, co-hosted by the Republic of Korea Navy, the Korea Institute for Maritime Strategy, and the Sea Lanes of Communication Study Group-Korea: discussion centered around the concept of an 'Asian Fleet', intended to improve the effectiveness of multilateral humanitarian assistance and natural disaster relief operations.²⁸⁾

Although these APR-MCSBM regimes, both official and unofficial, have made a very useful beginning, it is too early to say whether they can be successfully expanded: there are still lingering prejudices and distrust, so that states are reluctant to accept that the concept of APR-MCSBM can play anything more than a marginal role in diffusing tensions. Many issues divide the nations of East Asia, but surely the most urgent task to be resolved is to establish a common understanding of coastal states' rights and user states' duties in EEZs.

In fact, there has already been some helpful research which tried to balance freedom of navigation against jurisdiction and sovereignty in the EEZs of the semi-enclosed East Asia Seas.²⁹⁾ With regard to the military uses of the EEZs, the UNCLOS

27) See papers presented at the 1st Meeting of the CSCAP Study Group on Marine Environment Protection, Manila, Philippines, April 4-5, 2016.

<http://www.facebook.com/media/set/?set=a1112239178808390.107741831.112613908770927&type=3>
(accessed April 12, 2016)

28) Lee Choon-kun, 'A proposal for Running "Asian Fleet": Collective Response to Transnational Threats, a paper presented at the 12th International Seapower Symposium 2015 hosted by ROK Navy, KIMS and SLOC Study Group-Korea held on October 19th 2015 in Busan, Korea. See Proceedings of the 12th International Seapower Symposium 2015 entitled as 'Changing Maritime Security Environment in East Asia and Measures to Enhance Multilateral Cooperation'.

would not clarify whether military activities are included in the freedom of the high seas under Article 56 and 87 of the UNCLOS. Article 56(1)(b)(ii) of the Convention provides that the coastal State has jurisdiction over marine scientific research in its EEZ. However, the Convention does not define the controversial terms “marine survey activities,” “hydrographic survey,” or “military survey”. For instance, in 2008, a Japanese organization known at the time as the Ocean Policy Research Foundation (OPRF) published “Guidelines for Navigation and Overflight in the EEZ”.³⁰⁾ These guidelines set out broad principles of common interpretation regarding certain rules of navigation and overflight in EEZs, including for military and intelligence gathering activities.³¹⁾ Despite representing a plausible way forward, they were unfortunately rejected out of hand by many regional nations, and the US was particularly dismissive of these recommendations.³²⁾ Nevertheless, some mechanism has to be found to try and resolve the differences and disagreements of coastal states and user states; somehow the ambiguities of international laws and legal standards must be clarified; somehow the entrenched opposing attitudes must be reconciled: it is incumbent upon all those nations who rejected the OPRF guidelines to explain how they can be improved upon.

5. The Way Ahead

The nations of the region take a variety of stances on the UNCLOS, but all claim to be generally supportive of the principle that maritime security should be maintained by an international legal framework, to the benefit of all parties. So what are the best policy options to reconcile the coastal and user states, and how can they all be brought squarely within the remit of the UNCLOS? In practice, before answering these questions, a way must be found to cope with the long-standing prejudices and distrust which pervade the region, and for this the concept of APR-MCSBM is the only productive approach available. For China and the US there are additional geopolitical considerations, but for every other nation in the region their primary concerns are threefold: preserving freedom of navigation, ensuring the free flow of commerce, and upholding international law; and it is obvious that military confrontations play no constructive part in these issues. Any implementation of APR-MCSBM must acknowledge the vital regional importance of the EEZs for

29) Robert Beckman, ‘Military Activities in the Exclusive Economic Zone: Towards a Common Understanding,’ in *Strategic Current*, edited by Yang Razali Kassim (Singapore: Institute of Defence and Strategic Studies, Nanyang Technological University, 2006), p. 42.

30) See Kazumine Akimoto, ‘Reconciliation of the different interests over military and intelligence gathering activities in foreign EEZs,’ a papers presented at the 3rd Asia Maritime Security Forum on “Can the Interests of Coastal States and User States be Reconciled?” Ottawa, Canada, On November 13th 2015.

31) Military activities can cover a range of naval operations from non-delaying and inoffensive passage exercises by transiting warships through to major exercises or operations involving ships, submarines and aircraft, including surveillance and intelligence collection.

32) Sam Bateman, ‘Solving the “Wicked Problems” of Maritime Security: Are Regional Forms up to the Task,’ p. 10.

commercial shipping routes, and as a medium of economic interconnection underpinning the region's essential role as the primary nucleus of global manufacturing. Having once acknowledged these facts, the conclusion should be obvious: a comprehensive maritime partnership between coastal states and user states needs to be established, for there is simply no other way to address these profoundly intractable problems which are threatening to seriously affect a maritime zone through which roughly a third of the world's shipping passes.

But what are the prospects for such a cooperative approach: is it actually achievable? By comparison with the current situation, in which obsolescent theories of power politics are threatening to undermine the peace and prosperity of the region, there has to be another way. And there are several reasons to be optimistic that the APR-MCSBM approach is really feasible. First, despite the military posturing between coastal states and user states, there is no appetite for a serious military confrontation. Moreover, the regional nations, when not being intimidated by either of the great powers, make it clear that they are eager to discover a less volatile and more practical means of preserving stability in the disputed seas. And crucially, no country wants to see the extensive regional trade and economic relations damaged by chaotic and unpredictable crises in the East Asia Seas.

Only by expanding the circle of interested parties to encompass many more of those countries whose economies and geopolitical interests really do depend upon the precarious balance in the Asia-Pacific Seas is there any prospect of formulating a feasible solution: the coastal states and user states must take a step back from narrow and outdated perceptions of national core interests to take proper account of the undeniable fact that in today's world they are mutually interdependent. This is not to understate the difficulty of mitigating deeply entrenched policy positions so that better long-term choices become available to parties long polarized by intractable differences and misunderstandings. But the first essential is a more cooperative mindset, and the benefits of the APR-MCSBM approach need to be more widely acknowledged throughout the region: there is simply no alternative methodology capable of building consensus and stabilizing the regional maritime security environment.

Acknowledgements

The author would like to thank Dr. Nong Hong, executive director of Institute for China-American Studies (ICAS), Washington, D.C. an independent, non-profit academic institution launched by the Hainan Nanhai Research Foundation and Dr. Hao Duy Phan, senior research fellow, Centre for International Law, National University of Singapore, Singapore, for their insightful comments on this manuscript. They made some very valuable and thought-provoking points which have tightened and strengthened the arguments herein. Following their suggestion, the policy of institutional mechanism recommended for the region has been termed an 'Asia-Pacific Region Maritime Confidence and Security Building Measure (APR-MCSBM)'.

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