



***“Asian Maritime Organization
for Security and Cooperation” (AMOSOC)
—Initial Report on Conceptual Framework—***

March 31, 2015

Institute for International Policy Studies (IIPS)





Preface

The Symposium on New Maritime Security Architecture in East Asia was held by the Institute for International Policy Studies (IIPS) with the support of the Yomiuri Shimbun in Tokyo on January 30, 2015 with the participation of 9 foreign experts from Southeast Asian countries and China, Taiwan, the U.S., and Australia. Along with the presence of more than 80 professional audience members, the experts had lively discussions.

In my opening remarks, as president of IIPS I proposed the idea of an *“Asian Maritime Organization for Security and Cooperation (AMOSC),”* pointing out that there is no regional organization with maritime domain awareness which is most urgently required for tackling the current situation.

The idea of the AMOSC is very timely, given that the Japan-China summit meeting in November 2014 was followed by the recent Japan-China High-level Consultation on maritime affairs on January 22, and the year 2015 is the year of maritime cooperation between ASEAN and China.

IIPS compiled this initial report on the idea of establishing a multilateral cooperative security framework to better manage maritime security issues in the region, reflecting the outcome of our on-going current research including consultations with a number of regional think-tanks, intellectuals, and officials and also incorporating valuable comments received from the participants during the workshop and symposium held on January 29th and 30th in Tokyo.

I sincerely hope that this report will be useful as a basis for further discussions in the years to come to promote a multilateral framework to safeguard peace and order in the region. Further, IIPS will continue to consult with all partners in the region on this promising idea which we hope will bring a sea change for regional stability.

Ken SATO
President, IIPS

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1. Major Observations on Maritime Security in East Asia

In recent years we have observed a number of dangerous incidents that led to higher tensions in the regional maritime arena. Salient characteristics of those tensions and political realities in East Asia can be summarized as follows:

- In East Asia, major disputes in the region are **not land-centric but maritime-centric**.
- There is **no agreed set of concrete principles for maritime conduct** except current negotiations on the Code of Conduct between ASEAN and China regarding the South China Sea.
- Even a **common understanding on the rule of law including UNCLOS is not fully shared**.
- **Maritime domain awareness of the ASEAN countries is insufficient** due to their limited capabilities.
- East Asia **lacks any regular forum** where diplomats, coast guard officials, and navy officers can get together and discuss maritime issues.
- There are **insufficient maritime confidence building measures** with a multilateral framework in place.
- There are **no multilateral organizations regarding maritime capacity-building** in the region.
- Given a clear trend in the region for increasing military spending, there is **no concrete mechanism to avoid a security dilemma in the future**.

In light of these distinct features of the regional security environment, it is critical to think ahead to come up with policy suggestions for safeguarding maritime security in East Asia. In an endeavor to formulate policy, it is useful to compare the realities that East Asia is faced with to those of Europe. The following conceptual comparison may highlight what East Asia lacks in the current context.

	Europe	East Asia
Disputes	Land-centric	Maritime-centric
Threat perception	Concentric	Diversified
Forms of Alliances	Multilateral such as NATO	Bilateral such as US hub-and-spokes security arrangements
Forms of Cooperative Security Organizations	Permanent and Institution-based including daily meetings, secretariat, and effective capabilities	Consultation-based but without any permanent or sufficiently effective institutions
Examples	NATO/PfP, OSCE, etc.	ARF, ADMM+, etc.

Europe has nurtured a number of security institutions over the years going through the cold war and post-cold war periods. Europe enjoys a web of institutions such as EU, NATO, and OSCE while East Asia as a whole has developed a number of consultation mechanisms without consolidating any permanent institution except for ASEAN.

Although a number of annual meetings such as ASEAN Regional Forum (ARF), Asian Defense Ministers' Meeting Plus (ADMM+), and the East Asia Summit (EAS) have been playing the role of confidence building measures, there has been limited success due to lack of any permanent secretariat. That contrasts with Europe, where NATO (Partnership for Peace) and OSCE have been serving as cooperative security mechanisms for all participating countries and both boast of independent and strong institutions with permanent secretariats.

Thus it seems high time to give serious thought to launching a maritime security institution in East Asia that could function independently and impartially as a cooperative security mechanism, bringing in all maritime players in the region and beyond.

2. The OSCE as a Cooperative Security Model for the East Asia

Among European security institutions, the OSCE stands as a good symbol of cooperative security institutions. The maritime security study group of IIPS has visited the OSCE secretariat in Vienna and also its field office in Kiev, Ukraine in September 2014 and interviewed a number of officials working in the OSCE during the course of research. This report is made on lessons learned from the OSCE experiences.

(1) History of the OSCE

In 1954, at a meeting of Foreign Ministers of the four Great Powers (U.S., U.K., France, and the U.S.S.R.), the U.S.S.R. first proposed holding a conference on security in Europe. The U.S. and its Allies rejected the proposal, since it was offered as a replacement to NATO and did not provide for U.S. participation. However, in the improved political climate of the late 1960s, NATO countries began to consider expanding the détente process in Europe.

A key NATO prerequisite for holding a conference on security in Europe was fulfilled several years later, in 1971, with the signing of the Quadripartite Agreement between the U.S., U.K., France, and the U.S.S.R. After preliminary consultations in Winter 1972/73, the first Conference on Security and Cooperation in Europe (CSCE) was convened in Helsinki in 1973, with the participation of 35 States. The Conference concluded with the Helsinki Final Act in 1975. The Helsinki Final Act is a politically, not legally, binding document that sets out principles of conduct in three areas: military-political, economic and environmental, and human rights.

From 1975 to 1990, the CSCE functioned as a series of conferences and meetings where new commitments were negotiated and their implementation periodically reviewed. In the post-cold war period, the CSCE developed into the Organization for Security and

Cooperation in Europe (OSCE) based on the Paris Charter adopted in 1990 and strengthened its institutional capacities.

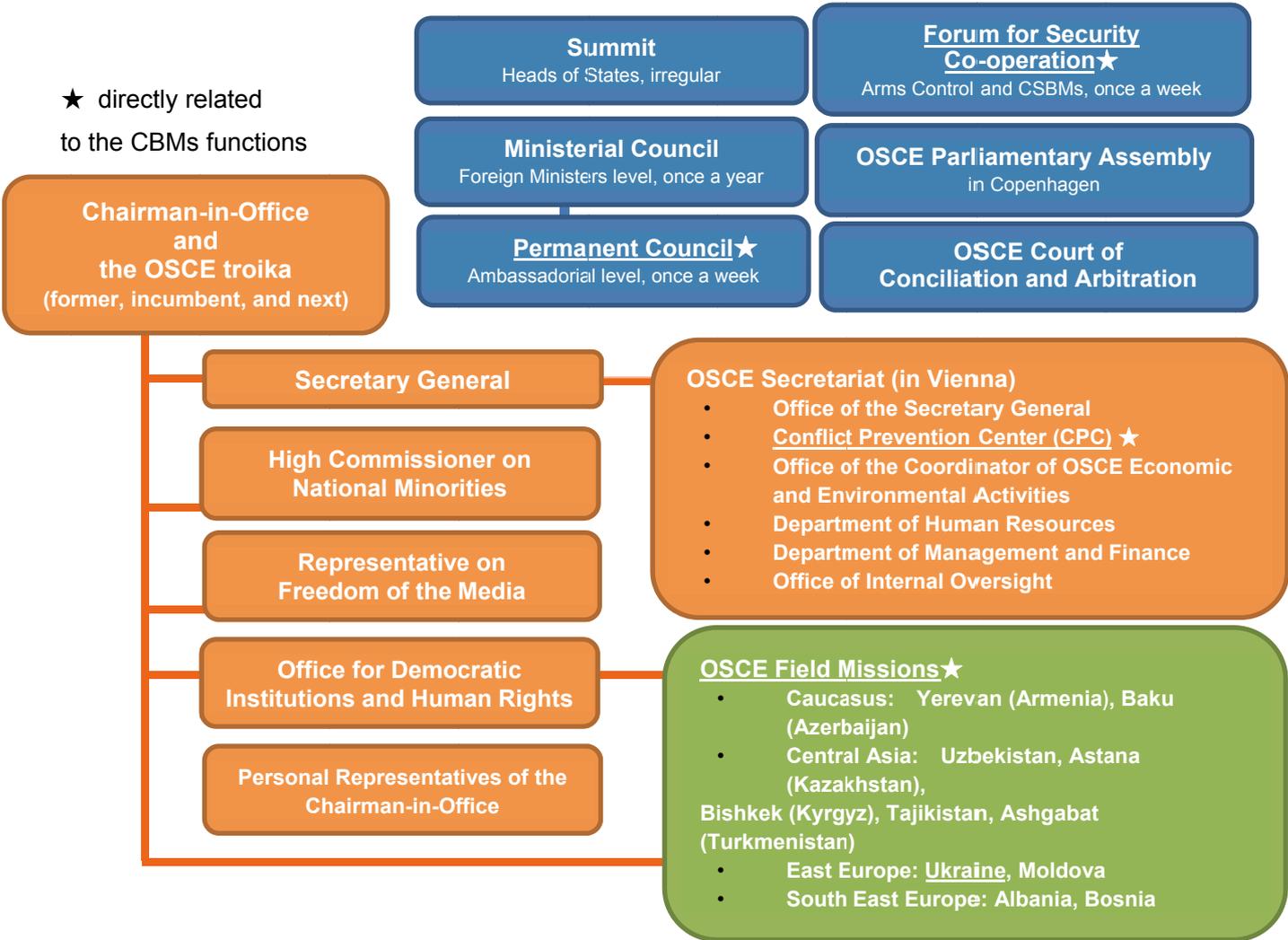
The Paris Charter established a permanent administrative infrastructure, which included a Secretariat, a Conflict Prevention Center, and an Office for Free Elections. A major arms control agreement—the Treaty on Conventional Armed Forces in Europe (CFE)—was also concluded on the margins of the Paris Summit. The Charter emphasizes the following points such as Human Rights, Democracy and the Rule of Law, Economic Liberty and Responsibility, Friendly Relations among Participating States, Security (arms control and confidence and building measures), and Unity (Europe whole and Free).

As part of this institutionalization process, the name was changed from the CSCE to the OSCE by a decision of the Budapest Summit of Heads of State or Government in December 1994.

(2) Organization and principles of the OSCE

The OSCE is composed of 57 member states and 11 partners of cooperation including 5 Asian members. The organization of the OSCE is shown in the chart below.

Organization of OSCE



Regarding the principles, the so-called “Decalogue” of the OSCE serves as fundamental common principles. The Declaration on Principles Guiding Relations between Participating States in the first basket of the Helsinki Final Act includes the following principles:

1. Sovereign equality, respect for the rights inherent in sovereignty
2. Refraining from the threat or use of force
3. Inviolability of frontiers
4. Territorial integrity of States
5. Peaceful settlement of disputes
6. Non-intervention in internal affairs
7. Respect for human rights and fundamental freedom of thought, conscience, religion or belief
8. Equal rights and self-determination of peoples
9. Co-operation among States
10. Fulfilment in good faith of obligations under international law

(3) Confidence Building Measures

The OSCE has been providing a number of various confidence building measures to the member states such as follows:

- Regular meetings at the Permanent Council in Vienna and the Forum of Security Co-operation
- Communication network among participants for the exchange of military information (Computer-based)
- Military CBMs such as exchange of military information, regulations on the specific military activities, and contacts/visiting/consultations among participants based on Vienna document of 2011
- Other Risk-reduction measures: Mechanism for Consultation and Co-operation with Regard to Emergency Situations (Berlin Mechanism), Stabilizing Measures for Localized Crisis Situations, etc.

In particular, we should note the importance of the Vienna Document. It is a very detailed document for military CBMs in OSCE since 1990. Its updated version was adopted in 2011. This document could serve as a good model for future CBM prototypes in East Asia. It is composed of 11 chapters that include Annual Exchange of Military Information, Defense Planning, Risk Reduction, Prior Notification of Certain Military Activities, and observation of Certain Military Activities, Compliance and Verification, and other measures.

The feature of the OSCE’s confidence building measures can be summarized as follows:

- Agreed basic principles
- Inclusiveness and Impartiality
- Established framework of CBMs
- Regular dialogue by the Permanent Council and the Forum for Security Co-operation

- Daily activities of Secretariat and Monitoring Missions
 - Well-supported human resources and rudimentary use of “assets” such as UAVs to monitor the situation
 - Mutual complementarity of functions with other organizations and alliances
- The OSCE has never replaced the role of NATO even after the Cold War.

(4) Monitoring Activities in case of Ukraine

The ongoing conflict in the Eastern Ukraine in particular sheds light on the importance of monitoring activities by the OSCE. The OSCE field office is playing a critical role in conveying the facts on the ground as an impartial and independent player in the conflict.

It should be noted that all resolutions at the OSCE regarding its mission in Ukraine are taken on a consensus basis that included both Ukraine and Russia as its members. For instance, President Vladimir Putin of Russia also acknowledged the important role of the OSCE by saying at the meeting of the Valdai International Discussion on October 24, 2014:

“This is true of improving the work of the UN, whose central role is irreplaceable, as well as the OSCE, which, over the course of 40 years, has proven to be a necessary mechanism for ensuring security and cooperation in the Euro-Atlantic region. I must say that even now, in trying to resolve the crisis in southeast Ukraine, the OSCE is playing a very positive role.”

It is also worth mentioning that the OSCE field mission in Ukraine used even UAVs to monitor the Eastern states in Ukraine. The following points could be of much use in envisaging possible maritime monitoring activities in East Asia.

- “Special Monitoring Mission (SMM)” from March 21, 2014. Russia also agreed on this decision.
- SMM’s main tasks are to observe and report in an impartial and objective way on the situation in Ukraine, and to facilitate dialogue among all parties to the crisis.
- Gathering information through human contacts with actors including pro-Russian separatists.
- Utilizing several UAVs: SCHIEBEL’s camcopter S-100 are used for monitoring activities.
- Setting up two check-points on the Ukraine-Russia border for monitoring Russian activities not to send illegal materials to the east region Russia could use it to justify their own actions.
- Consisting of some 250 civilian unarmed monitors from more than 40 participating states and local staff from Ukraine as of September 2014.

Most recently, the leaders of Russia, Ukraine, and Germany have agreed on concrete steps for the observers from the OSCE to monitor the situation in eastern Ukraine after the agreement on ceasefire on February 17, 2015.

3. Applicability of the OSCE model to the East Asia

It should be understood first that geopolitical environments between Europe and East Asia are distinctively different and European institutions have their own reasons why they have developed into the present forms. For this reason, any European model cannot be applied directly to East Asia. It is more realistic and pragmatic to build our idea based on realities and facts we have in the East Asia.

The following key points should be taken into consideration in this regard:

- **Basic principles** of the international society such as sovereign equality and refraining from the threat or use of force are also critical in East Asia while values-related principles such as respect for human rights or democratic values may be less applicable if the OSCE model is applied only to maritime issues.
- **Inclusiveness and openness** are needed for any cooperative security organization in East Asia. No state or region that has stakes in global commons such as East China Sea and South China Sea must be excluded. **Impartiality** is also critical for any activities by a cooperative security organization.
- **Regular contacts and dialogues in a multilateral environment** should be maintained in East Asia including in the time of maritime crisis.
- **Maritime CBMs** are urgently required in East Asia in contrast to a long history of the land-centric CBMs of the OSCE.
- **Maritime capacity building** is much needed in the case of ASEAN countries compared to activities of the OSCE.
- **Independent secretariat** is the key. Daily activities led by the secretariat in areas such as monitoring, sharing information, confidence-building, and capacity-building should play a central role.
- **Complementary relationship with the existing security cooperation and alliances** should be respected just as the OSCE has not replaced any role or mission of other organizations such as EU and NATO. Any other regional arrangements in East Asia should be mutually complementary.
- **Gradual process** in launching an idea on solid institution may be more appropriate in the East Asian context but it should be hastened given the urgency of the matter.

4. Basic Concept on the AMOSC

It would be a useful exercise to envision a new maritime security institution in East Asia that would be entrusted with various missions including maritime monitoring, maritime capacity-building, and confidence-building measures. Tentatively, we call this new institution “Asian Maritime Organization for Security and Cooperation” and its acronym reads “AMOSC.”

The AMOSC can be created, building upon “*acquis asiatique*” accumulated in a variety of fora such as the East Asia Summit, ASEAN Regional Forum, ASEAN, etc. Discussions on the AMOSC should be open to all stakeholders to Asian maritime security. Its principles, mission, and structure can be summarized as follows:

(1) Principles

First, "Asian Maritime Charter for Peace and Prosperity" should serve as principles for solving maritime disputes. The charter should contain the following elements: peaceful settlement of maritime disputes and refraining from the threat or use of force, respect of International Law including the UNCLOS, safeguarding Maritime Commons, and other basic principles acceptable to all members.

The outcome of current discussions such as one about the code of conduct between China and ASEAN should be incorporated into possible principles of the AMOSC.

For this "Asian Maritime Charter for Peace and Prosperity" to be put into practice, a maritime security organization in East Asia may be established as the "Asian Maritime Organization for Security and Cooperation (AMOSC)."

(2) Mission of the AMOSC

The mission of the AMOSC should contain at least three principal functions:

➤ **Enhancing Maritime Domain Awareness**

The AMOSC dispatches its maritime monitors by patrol boats with crew on loan from its members (or of its own) to the area where a dispute may arise and reports to the Council on the relevant situation in an impartial manner. It also gathers information on any potential maritime dispute or danger in the region and provides early-warning to the members.

➤ **Maritime Capacity Building**

The AMOSC provides funding for technical assistance to nurture and develop coast guards in the members. It could also coordinate any necessary joint exercise involving coast guards and navies of the members. The AMOSC may function as a regional clearing house for needed training and capacities for members.

➤ **Maritime Confidence-Building Measures**

The AMOSC provides the members with fora where diplomats, coast guard officials, and navy officers of the members may exchange views regularly. It also intends to nurture respect and understanding on the rule of law including the UNCLOS. The members may also agree on exchange of information on military or non-military movement such as major maritime exercises in East Asia. If conditions are met, information on major maritime military exercises could be exchanged through the AMOSC.

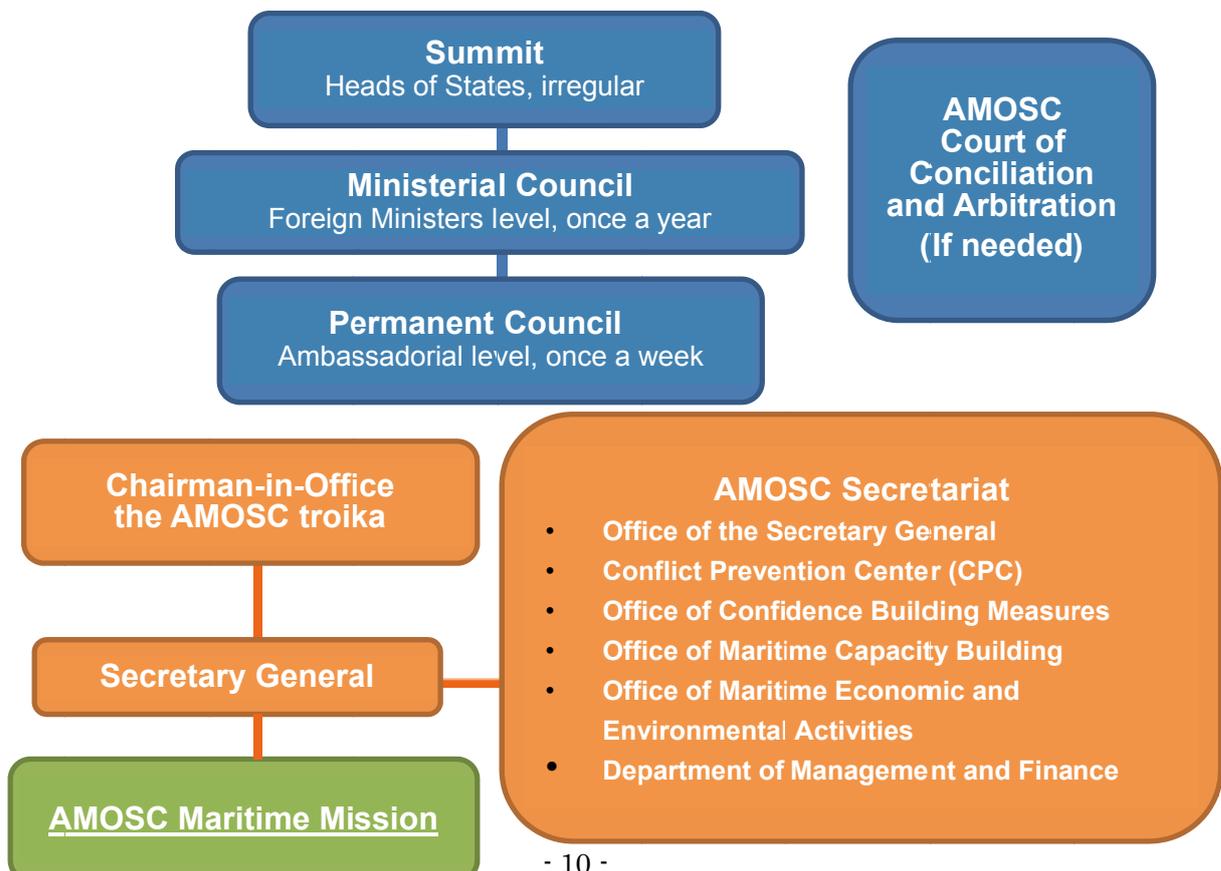
(2) Organization of the AMOSC

The organization of the AMOSC should be composed of a permanent council made up of representatives of the members, and a permanent secretariat together with necessary implementing tools such as monitoring boats with crews.

The following points may highlight some critical elements in creating an independent organization such as the AMOSC:

- The permanent council of the AMOSC will meet regularly.
- A permanent secretariat will be established in a capital of its members. It conducts necessary measures based on decisions of the council including timely dispatch of monitoring boats to a disputed area, various CBMs, and maritime capacity building.
- Staff of the secretariat initially can be seconded from the respective navies, coast guards, and foreign ministries of the members. Retired officials and officers of the members can be hired on a contract basis.
- Funding and necessary patrol boats will be contributed by the members. Staff will be contributed initially by the members. As the institution grows and matures, it can purchase its patrol boats and nurture its crew at a later stage.
- Membership in the AMOSC should be open to any stakeholder who wishes to contribute to enhancing Asian maritime security. Presence of members that can contribute financially or/and technically to the cause of the AMOSC is critical for capacity building. And the members who have stakes in global commons such as the East China Sea and South China Sea are also requested to join.
- The ASEAN centrality should be respected in the process leading to the establishment of the AMOSC. In this regard, the AMOSC can be established as an “expanded ASEAN Plus” organization under the umbrella of the East Asia Summit (EAS).
- Streamlining of ASEAN related meetings and organizations should be considered to minimize unnecessary duplication of functions with the AMOSC.
- The AMOSC functions independently but in close cooperation with existing international and regional organizations and architectures such as ARF, ASEAN, and other regional security arrangements.

Idea on possible organization of the AMOSC



5. Conclusion

An institutional approach such as the AMOSC should be given serious consideration, as currently there is no break-through in sight for any maritime dispute in East Asia.

The AMOSC may not provide a final solution to the current maritime disputes in the region, as OSCE cannot solve the Ukrainian crisis either. However, AMOSC could provide a basis for a more credible, impartial, and lasting institutional mechanism to properly manage disputes and crises in East Asia.

Patient yet steady efforts for creating a new maritime security institution are key to lasting peace in the region. The following points for instance remain open for further elaboration and discussions:

- How to draw a roadmap for the realization of the AMOSC?
- What principle could be incorporated into the AMOSC
- Does the AMOSC assume a role for non-traditional security in the maritime domain too?
- What are the criteria for membership in the AMOSC? Whether or not non-state stakeholders such as shipping enterprises should be included as contributing members?
- Would the ASEAN member states perceive the idea of the AMOSC as a matter of serious discussion?
- How does ASEAN streamline the existing various fora and institutions in establishing the AMOSC?
- How could the AMOSC tap into the potential of the existing maritime institutions such as the Information Fusion Center and RECAAP in Singapore? Could it also establish useful links with the existing maritime training center such as the one established by Malaysia Maritime Enforcement Agency for regional cooperation?
- How would other countries other than ASEAN perceive the idea of the AMOSC?
- What kind of capacity building could U.S., Japan and Australia offer to those countries in need of maritime capacity building?
- What kind of new tools can be utilized to enhance maritime domain awareness? For instance, could UAVs and other means be used by the AMOSC?

IIPS intends to consult further with regional players including both official and non-official experts on this idea of the AMOSC to concretize the concept to be adopted as a realistic basis for region-wide official consideration in the near future.

[end]

(Appendix I)

Summary of the Symposium on New Maritime Security Architecture in East Asia held by the Institute for International Policy Studies (IIPS) in Tokyo on January 30, 2015

In his opening remarks, Mr. Ken SATO, President of IIPS, proposed the idea of an “Asian Maritime Organization for Security and Cooperation (AMOSOC),” pointing out that there is no regional organization with maritime domain awareness which is most urgently required for tackling the current situation. He stressed that the idea of the AMOSOC would be a very timely proposal, given that the Japan-China summit meeting in November 2014 was followed by the recent Japan-China High-level Consultation on maritime affairs on January 22, and that this year would be the year of maritime cooperation between ASEAN and China.

In the first session, Dr. Shinichi KITAOKA, Executive Director of Research at IIPS and President of International University of Japan, served as moderator for the session entitled “Current Status and Views on Maritime Security Issues and Disputes in the East China Sea and South China Sea.” The experts from the Philippines, Vietnam, China, Taiwan, and Japan respectively expressed their views.

Mr. Roilo Golez, former Senator from the Philippines, emphasized the negative impact of China’s current reclamation activities in the South China Sea islands on the regional and global balance of power.

Dr. Zhu Feng from Nanjin University, China stressed the importance of avoiding a security dilemma in the region by pointing out that both regional states as well as China are becoming more assertive on maritime issues.

Dr. John Chuan-tiong LIM from Academia Sinica, Taiwan emphasized there would be no final solution to maritime disputes in the South China Sea without Taiwan’s participation, so Taiwan must be recognized as a claimant state.

VADM Yoji KODA, former JMSDF Officer, Japan, referred to China’s reclamation of Woody Island, Johnson South Reef, and Scarborough Shoal which would create a strategic triangle in the center of the South China Sea, thus leading to fundamental changes regarding the regional strategic landscape.

As a conclusion, Dr. KITAOKA wrapped up the discussions by emphasizing the importance of solving maritime disputes through calm discussions and consultations based on international law in a multilateral environment.

After the coffee break, Mr. Futoshi MATSUMOTO, Senior Research Fellow at IIPS, provided a detailed explanation on the idea of “AMOSOC” based on the OSCE model.

He specified the central missions of the “AMOSOC” as threefold: (1) Enhancing Maritime Domain Awareness, (2) Maritime Capacity Building, and (3) Maritime Confidence-Building Measures. The purpose of “AMOSOC” is to prevent and better manage current maritime disputes in an orderly manner, thus contributing to building and sustaining peace and order on a mid- and long-term basis.

In the second session, Mr. Ichiro FUJISAKI, Vice President of IIPS and former Ambassador to the U.S., served as moderator of discussions with the theme of the “Way Forward and Recommended Policies regarding Maritime Disputes in East Asia including a New Regional Maritime Architecture.” The experts from Indonesia, Singapore, Malaysia, Australia, and the U.S. expressed their comments and opinions.

Dr. Shafiah F. MUHIBAT from CSIS, Indonesia and Ms. Jane CHAN Git Yin from RSIS, Singapore shared some questions on the “AMOSC” proposal. They commented by saying that it might be better first to streamline the existing ASEAN architecture on maritime security rather than creating a new one, and need to better combine the AMOSC and the ASEAN centrality concept. In addition, they noted that Southeast Asians might hesitate to accept the idea if they are told to adopt any European centric model.

Dr. Balakrishnan R. K. SUPPAIAH, from Malaya University, Malaysia proposed the idea to start a more informal framework and develop it into a more formal one incrementally. To that end, he proposed the model of Pacific Economic Cooperation Council (PECC).

Dr. John LEE, from Sydney University, Australia described the three conditions for the success of the proposal: (1) it must reflect the power distribution of the system, (2) it must recognize the geostrategic reality, and (3) the cost of non-compliance must be high. He emphasized the importance of an inclusive framework in this region.

Lastly, Dr. Patrick CRONIN from the Center for a New American Security (CNAS), U.S. stressed the necessity for China to respect the rule of law in the maritime arena and commended the importance of adopting an inclusive framework such as the AMOSC in this region.

In closing, IIPS announced that it would compile the report on the desirable “New Maritime Security Architecture” based on our “AMOSC” proposal, further reflecting the comments and opinions expressed by the experts at the symposium by the end of March 2015.

With the upcoming report, IIPS is determined to continue to disseminate the idea on maritime security architecture including the AMOSC to officials and the public in regional countries and beyond with a view to promoting a framework to safeguard peace and order in the region.



(Appendix II)

List of Paper Contributors for the Symposium on “New Asian Maritime Architecture in East Asia”

Ms. Jane Chan Git Yin, Research Fellow, Coordinator of Maritime Security Programme, S. Rajatnam School of International Studies (RSIS), Singapore

Dr. Patrick Cronin, Senior Advisor and Senior Director of the Asia-Pacific Security Program at the Center for a New American Security (CNAS), U.S.

Mr. Roilo Golez, Co-Convenor, West Philippine Sea Coalition, Former Member of the Philippine Congress, and Former Philippine National Security Adviser, The Philippines

Dr. John Lee, Senior Fellow, Hudson Institute, Adjunct Associate Professor, the Strategic and Defence Studies Centre, Australian National University, Australia

Dr. John Chuan-tiong Lim, Associate Research Fellow, Institute of Modern History, Academia Sinica, Taiwan

Dr. Shafiah F. Muhibat, Senior Researcher, Centre for Strategic and International Studies (CSIS), Indonesia

Dr. Balakrishnan R K Suppaiah, Department of International and Strategic Studies, Faculty of Arts and Social Sciences, University of Malaya, Malaysia.

Dr. Tran Viet Thai, Deputy Director-General, Institute for Foreign Policy and Strategic Studies, Diplomatic Academy of Vietnam, Vietnam

Dr. Zhu Feng, Executive Director of China Center for Collaborative Studies of the South China Sea Professor of International Relations, Nanjing University, China

Strategic Map contributed by

VADM Yoji Koda (Ret.), Former Commander in Chief of the Self Defense Fleet, Japan Maritime Self Defense Force, Japan

Maritime Southeast Asia and Regimes

Jane Chan Git Yin

Research Fellow, Coordinator of Maritime Security Programme,
S. Rajatnam School of International Studies (RSIS), Singapore

1. Regional Waters

The water of Southeast Asia is both a resource and a conduit fuelling the development of its littoral states and regions further away. It is of particular importance to the growing economies of East Asia. The is host to some of the worlds's vital and busiest chokepoints; Malacca and Singapore straits, the Sunda and Lombok straits, and of course the South China Sea. These chokepoints link all the major sea lines of communication responsible for 90 per cent of world trade, and two thirds of the worlds' energy demand¹. Raw materials and vital commodities that fuel the rise of emerging economies, in particular China and India², and then the manufactured goods from the likes of China, India and some Southeast Asia countries to the rest of the world are carried along these sealanes.

The South China Sea is one of the largest seas in the world if the size of a sea is measured by its area within defined physical boundaries³. It is a *semi-enclosed sea* within the definition of such a sea in Article 122 of Part IX of the 1982 UN Convention on the Law of the Sea (UNCLOS), because it consists "entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States"⁴.

Article 123 of UNCLOS goes on to place a strong obligation on the coastal states adjacent to a semi-enclosed sea to cooperate in resource management, protection of the marine environment and marine scientific research. While these are mentioned as specific areas for cooperation, the opening sentence of Article 123 provides a more general obligation to cooperate that "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".

The countries bordering the South China Sea comprise China, Vietnam, Malaysia, Singapore, Indonesia, Brunei and the Philippines, while Thailand and Cambodia are often regarded as also having an important stake in the development of effective regimes for managing the sea and the various activities conducted at sea. The shipping routes through

¹ As asserted by the International Chamber of Shipping, www.ics-shipping.org/shipping-facts/shipping-facts; Amit Pandya, Rupert Herbert-Burns and Junko Kobayashi, *Maritime Commerce and Security: The Indian Ocean*, Stimson Centre, 2012, pp. 8-13.

² United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2012*, http://unctad.org/en/PublicationsLibrary/rmt2012_en.pdf.

³ Alastair Couper, ed., *The Times Atlas and Encyclopedia of the Sea* (London: Guild Publishing, 1989), 26.

⁴ UNCLOS Article 122.

the South China Sea have great strategic and economic significance to major non-littoral countries, particularly Japan and the United States, as well as to the bordering countries themselves.

The South China Sea holds an enormous depository of both living and non-living resources, including oil and gas, and most importantly, fish and other seafood. Technological advancement allows marine scientific research to be done in parts of the oceans previously not reached by man, it has enabled fishing vessels to sail further, oil and gas rigs to drill deeper, yet these technologies are not always accessible to all, especially not to the developing countries that can ill afford them. The ability to explore and exploit maritime resources, competition for them led by increasing global demand, and the ability to ensure safety and security in transporting the same resources could be causes for conflict, and at the same time, a source for common and collective actions.

2. Maritime Security Concerns

The problems with sovereignty over the various island groups and other features in the South China Sea are well-known⁵. Largely as a consequence of these sovereignty disputes, current arrangements for providing good order at sea in the South China Sea fall well short of what is desirable despite the strategic, economic and political importance of the sea and the need for cooperation⁶. There are few maritime boundaries and key international regimes for providing maritime safety and security are not well supported by bordering countries. For example, only China, Singapore and Vietnam are parties to the 1979 Convention on Maritime Search and Rescue (SAR) Convention, which encourages cooperation between Parties and SAR organisations with regard to search and rescue operations at sea. This means that, while SAR exercises may be carried out in the area, most of the littoral countries of the South China Sea have no formal obligation to cooperate in the event of an SAR emergency in the area.

Non-traditional maritime security challenges of concern includes piracy and sea robbery; maritime terrorism; illegal, unreported and unregulated (IUU) fishing; trafficking and smuggling of arms, people and drugs; and natural disasters. Energy security, food security and the spread of infectious disease are all major issues with significant maritime dimensions⁷.

Piracy and armed robbery at sea have been persistent problems in Southeast Asian waters. Although the number of attacks in Southeast Asian waters did increase in 2014 in absolute terms, the level of severity of these attacks was lower, being mainly petty theft. Most attacks in Southeast Asia targeted vessels at anchor, in port or entering/leaving harbour.

⁵ Sam Bateman and Ralf Emmers, eds, *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime* (Abingdon: Routledge, 2008).

⁶ Sam Bateman, "Good Order at Sea in the South China Sea", Chapter 2 in Wu Shicun and Zou Keyuan (eds.), *Maritime Security in the South China Sea: Regional Implications and International Cooperation*, (Farnham: Ashgate, 2009), 15-34.

⁷ Bateman, Chan & Graham, *ASEAN and the Indian Ocean: The Key Maritime Link*, p 11.

These attacks are usually of a minor nature and are best countered by more effective policing by port authorities, including active patrolling of ports and anchorages.

The vulnerability of the maritime sector to terrorist attacks is also a concern. The risks include targets at sea, and the use of the sea to support attacks on land. The attacks on the French tanker MV Limburg and the American destroyer USS Cole occurred in the Indian Ocean. The Mumbai attacks in 2008 demonstrated the vulnerabilities of a porous Indian coast. Key chokepoints such as the Malacca and Singapore straits, Bab el-Mandeb, the Suez Canal and the Strait of Hormuz are all considered vulnerable targets, and a successful attack on any of these key maritime routes will have a devastating effect on global shipping with its impact felt worldwide.

The sea is the preferred transportation medium for the movement of goods in large volumes, but the complex nature of the shipping industry and the volume of trade moved can be exploited to conduct illegal activity, including the trafficking of both goods and people.

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Many global fish stocks are assessed as being under major stress due to over-fishing, and IUU fishing is predicted to increase as coastal states seek to impose more stringent conservation regulations to manage their fish stocks⁹. Depletion of fish stocks by IUU fishing and degradation of coastal habitats due to climate change and marine pollution in the Indian Ocean also affect the livelihood of coastal populations that traditionally rely on fishing. Losing that main source of income has tempted some into other illegal endeavours, such as piracy and sea robbery in regional waters.

3. Regional Cooperation

The security of shipping and seaborne trade across the key sea lines of communication is a strong common interest for most regional countries, as well as extra-regional stakeholders, particularly Japan, China and the United States. Particular attention is focused on the security and safety of shipping and cooperation between stakeholder navies is required to ensure the security of regional sea lines of communication. Regional cooperation is fundamental to the maintenance of good order at sea and the security of these sea lanes in Southeast Asia. But in order to achieve this, more is required more than just the efforts of the littoral states or relying solely on the capacity of member states within established institutions¹⁰.

⁸ Pau Khan Khup Hangzo, 'Non-traditional Security Challenges in the Indian Ocean Region', in Bateman, Chan & Graham, *ASEAN and the Indian Ocean: The Key Maritime Link*, pp. 28-31.; and Centre for Non-Traditional Security Studies, 'Responding to Transnational Organised Crime in Southeast Asia: Case Study of Human Trafficking and Drug Trafficking', *NTS Alert* July 2010, Issue 2, S Rajaratnam School of International Studies, Nanyang Technological University, Singapore.

⁹ Lee Cordner, 'Maritime Security in the Indian Ocean Region: Compelling and convergent agendas', *Australian Journal of Maritime and Ocean Affairs*, vol 2, no 1, 2010, pp. 16- 27.

¹⁰ Phil Johnson, 'Security of Maritime Trade: A Cooperative and Coordinated Approach for the Indo-Pacific Region', *Australian Journal of Maritime & Ocean Affairs*, vol 4, no1, pp. 1-10.

Non-traditional maritime security threats are of common concern. However, a common threat perception or prioritisation of issues is lacking, which impede further cooperation between regional countries and extra regional stakeholders. Measures to deal with these threats offer a good rationale for engaging regional partners, so that not only will such cooperation and collaboration help mitigate the impact of threats, but also engender trust and confidence.

The need to ensure safety and security of shipping and the need to promote better regional stability are requirements that could provide the basis for maritime cooperation regional waters¹¹.

As Geoffrey Till puts it, 'The maintenance of good order at sea requires an improved level of awareness, effective policy and integrated governance'¹². To operate in such a vast and complex region alongside partners and individual states, it is important to begin with a comprehensive 'common operating picture' of the maritime domain so that all can operate safely and efficiently. Good examples include arrangements for sharing maritime data/information, which are an important contribution to maritime security, both to meet current operational needs for maritime domain awareness and as a building block for wider maritime security cooperation. Knowing what is going on at sea is a pre-requisite for doing anything constructive about it¹³. Regional navies and maritime enforcement agencies know that acquiring a comprehensive picture of the maritime domain, requires more than precise intelligence and 'state of the art' information technological tools.

Many regional countries have limited capacity to mitigate, much less eradicate, maritime threats. While it is commonsense that only when the regional states come together as one, can existing limited capacity be harnessed to deliver functional and practical solutions to mitigate regional maritime security challenges, it is their implementation that is challenging. Questions include whether regional maritime cooperation needs be premised upon existing regional security architectures and whether a collective identity is a prerequisite. Can established common interests alone bring regions and sub-regions that are so diverse together¹⁴?

4. Multilateral Institutions

From an Asian perspective, economic and strategic connectivity is most tangible in the maritime domain, reflecting the nature of Asia's maritime geography and the sea's enduring quality as a manoeuvre space. Any disruption, real or threatened, will be a cause for

¹¹ D Rumley, S Chaturvedi, M Taib (eds) *The security of sea lanes of communication in the Indian Ocean Region*, Maritime Institute of Malaysia, Kuala Lumpur, 2007.

¹² Geoffrey Till, *Seapower: A Guide for the Twenty-First Century*, (2nd edn), Routledge, 2009, pp. 306-307.

¹³ Geoffrey Till, "The Use of Seapower in the 21st Century: Implications for Maritime Security and Safety", in Joshua Ho (ed), *Realising Safe and Secure Seas for all: International Maritime Security Conference 2009*, Singapore, 2009, pp. 45-55.

¹⁴ Fredrik Soderbaum, 'Theories of Regionalism', in Mark Beeson and Richard Stubbs, *Routledge Handbook of Asian Regionalism*, Routledge, 2012, pp. 19-

concern. Hence, an observable plethora of multilateral institutions and regimes was established at both the Track I and II levels, with the hope of encouraging regional countries to address different and sometime overlapping matters of regional security concern.

At the Track I level ASEAN, the ASEAN Regional Forum, the Asia-Pacific Economic Cooperation, the ASEAN Defence Ministers Meeting (ADMM) and ADMM Plus are most prominent. There are also three separate forums under the umbrella of ASEAN that address maritime security issues, namely, the Expanded ASEAN Maritime Forum (EAMF); the ARF Inter-Sessional Meeting (ISM) on Maritime Security; and the Maritime Security Expert Working Group (MSEWG) established by the ADMM Plus.

First mooted at the 15th Meeting of the ARF in Singapore in 2008, the ISM on Maritime Security provides an annual platform for discussion of maritime security issues, including increasing cooperation and capacity-building, as well as specific concerns, such as piracy and armed robbery against ships and the smuggling of goods and persons. The ARF has endorsed a Work Plan for maritime security put forward by the ISM highlighting three priority areas: (1) Information/ intelligence exchange and sharing of best practices, including naval operations, (2) Confidence Building Measures based on international and regional legal frameworks and arrangements and cooperation, (3) Capacity Building of maritime law enforcement agencies in the region.

Launched in 2010, the AMF was envisioned to be non-security centric¹⁵. It has two tiers, with an Expanded version - EAMF, that includes all members of the EAS¹⁶. A particular role of the AMF and EAMF may be to have oversight of sectoral bodies under ASEAN or the EAS concerned with issues, such as the marine environment, eco-tourism and fisheries.

The ADMM was inaugurated in 2006 and four years later, ASEAN leaders launched the ADMM-Plus. This was a demonstration of the importance that ASEAN attaches to the open and inclusive regionalism it has long espoused¹⁷. The ADMM-Plus shares the same membership as the EAS, but is a separate arrangement with a mandate primarily in confidence-building and capacity-building¹⁸. China and the United States appear to have realised that the ADMM-Plus offers potential for building closer ties¹⁹.

The Council for Security Cooperation in the Asia-Pacific and the Network of ASEAN

¹⁵ Termsak Chalermpanupap, Director of Political and Security Directorate, ASEAN Secretariat, Jakarta. "ASEAN and Maritime Security: An Update". Paper presented at Centre for International Law Workshop on International Maritime Crimes: Legal Issues and Prospects for Cooperation in ASEAN, Singapore, 17-18 January, 2011, 3.

¹⁶ Membership of the EAS and the EAMF comprises the ten ASEAN countries, Australia, China, India, Japan, New Zealand, the Republic of Korea, the United States and Russia.

¹⁷ See Seng Tan, "Talking Their Walk? The Evolution of Defence Regionalism in Southeast Asia", *Asian Security* 8/ 3 (2012) p. 241.

¹⁸ See Seng Tan, 'Future of ADMM-Plus: Asia's Growing Defence Engagements' *RSIS Commentaries* 158/2013, 26 August 2013.

¹⁹ Termsak Chalermpanupap, 'ASEAN Defence Diplomacy and the ADMM-Plus', *ISEAS Perspective*, No. 49/2013, 26 August 2013, 2.

Defence Institutes are perhaps the most active at the Track II level. The 'plus' processes are worth mentioning as they reflect the region's acknowledgement of the need to positively engage external powers and stakeholders to the region.

While not a security community, ASEAN and its various institutions have established more than ten maritime security-related initiatives to promote regional cooperation. Whilst overlaps exist, it is important that each initiative remains relevant, functional and manageable; to meet current operational needs for maritime domain awareness and as a building block for wider maritime security cooperation.

5. Final Thoughts

Well-intended initiatives towards ensuring good order at sea would include the need to establish a new and more effective collective regime to address regional problems, particularly in the maritime domain. However, one must consider whether these efforts could and would complement existing initiatives, especially those that involved extra-regional countries. How will these regimes link to other regional institutions with overlapping members, such as those in the wider Asia-Pacific region?

In want of a regional consensus on maritime threats and priorities, maritime concerns and interests that are common to all littoral states could be the basis for a more cohesive region. Piece meal naval and maritime cooperation could be an enabler for this, creating the opportunity to build trust and confidence²⁰. A collective consensus to send more warships into regional waters is probably not what everyone has in mind, and definitely not ideal solution to regional security concerns. Building on the foundation of existing regimes, consensus amongst the littoral and extra regional stakeholders is required to re-establish a baseline to improve the unity of efforts. This starts with the establishment of a shared and common picture of the maritime domain. A working group on information sharing might create a willingness to share information through established means and processes. Issues of interoperability will take longer to resolve, and realistically not before the requisite level of trust and confidence is achieved. Port visits, bilateral and multilateral exercises, personnel exchanges are a good set of activities that will help promote this.

How well they can focus on collectively meeting these challenges without being embroiled in existing political and strategic rivalry will affect regional stability and security. Therein lies the challenge: to balance the need to engage with all stakeholders, yet not be trapped in their political and strategic rivalries.

²⁰ Geoffrey Till, 'Security concerns in the Indian Ocean: Making Waves?', *The RUSI Journal*, vol 142, no 3, 1997, pp. 16-80; and PV Rao, 'Indian Ocean maritime Security Cooperation', *Journal of the Indian Ocean Region*, vol 6, no 1, 2010, pp. 129-137.

Shoring Up Asia's Maritime Order

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Asia's maritime order is becoming more turbulent. Over the past several years China's determination to build comprehensive maritime power is challenging the post-World War II order undergirded in large part by the United States in general and the U.S. Navy in particular. This competition between a rising revisionist China and a relatively declining status quo United States will play out over the coming decades. In the meantime, however, China's neighbors are on the frontlines of preserving the rules of the road and maintaining good order at sea. Frontline states such as Japan in Northeast Asia and the Philippines and Vietnam in Southeast Asia are simultaneously seeking to bolster their own defenses while mobilizing wider public support, especially among major seafaring nations, to dampen coercion, deter force, and advance cooperative security.

1. The Problem of Maritime Coercion

In the absence of strong support for a rules-based approach to regional order and security maintenance, incremental changes to the present order will become the new norm for maritime Asia. Resisting marginal acts of intimidation is extremely difficult when states must consider their larger interests at risk. Bearing in mind the desire to avert open conflict and expand major trade with China, this report focuses on the potential ends, ways, and means of cost-imposition policies and strategies to curb tailored coercion in the East and South China Seas and beyond. Tailored coercion refers here to the spectrum of assertive policies and actions designed to augment territorial and resource control. These measures vary and are often practiced in combination, including forceful diplomacy, targeted economic and trade carrots and sticks, propaganda and psychological warfare, domestic and international legal measures, and military, paramilitary, law enforcement, and even civilian maritime and air maneuvers and reinforcement to advance unilateral changes to the status quo over disputed waters, islands, and airspace. China is not the only actor resorting to coercive means, but its decision to contest long-dormant disputed maritime areas and otherwise seek to reassert influence over its periphery appears to be the main driver of maritime tensions. No country invests as much time and treasure in expanding its footprint in the East and South China Seas as does China.

Basic international norms--such as the peaceful resolution of disputes and the observance of the United Nations Convention on the Law of the Sea (UNCLOS)—are gradually yielding to heightened competition and glaring if gradual unilateral actions. A pariah state like North Korea has often resorted to brinkmanship and rule-breaking to protect its regime and extract concessions from regional actors. But until about seven years ago, China had opted for a general policy of shelving disputes and advancing development. China thrived with this policy. Today China appears to its neighbors to be more risk-tolerant

than risk-averse. President Xi Jinping appears to desire to avoid a major military confrontation as suggested above, but when it comes to growing Chinese claims on its periphery he is decidedly more bold with respect to pressuring other countries to make way for China. It is a boldness matched by President Xi's unprecedented internal crackdown on corruption, his call for the realization of the "China Dream," and other initiatives designed to preserve the Chinese Communist Party and reassert China as the major regional actor in Asia.

Nonetheless, it is important to keep the maritime competition in perspective. After all, even after some seven years of growing maritime friction, leaders in virtually all capitals remain focused on economic development and domestic issues. This why finding effective ways to grapple with grey-zone challenges is so significant. China is counting on others continuing to place a higher priority on stability than on confrontation, as it presses forward on its claims. China takes two steps forward with respect to expanding its influence and control, and occasionally one diplomatic step back when reputational costs and tensions appear to threaten Beijing's objectives. China also seeks to craft a sphere of influence by reaching a "new type of great power relationship" with the United States. U.S. allies fear that Washington may succumb to China's entreaties to overlook coercive diplomacy on its periphery. Like bad weather, local pressure appears less menacing from a distance. Yet the United States, in turn, must be concerned that allies and partners would like a blank check for security, even while they become increasingly reliant on China for economics. China will seek to maximize these differing perspectives to keep expanding its regional power.

Growing anxiety about sovereignty and assured access to the global sea, air, cyber, and space commons, is precipitating a low-level but palpable strategic competition. In the East China Sea, Japanese Prime Minister Shinzo Abe is determined to preserve Japan's standing as a major power, including through a more "proactive contribution to peace," and the United States is committed to Japan's defense. These issues may well ascend into new levels of competition as Japan enacts new legislation regarding collective self-defense rights and the U.S.-Japan alliance unveils new Defense Guidelines. Defense Guidelines that further integrate the U.S. Armed Forces and the Japan Self-Defense Forces may also be the harbinger of Prime Minister Abe's renewed push to rewrite its pacifist Constitution. China will seize on each of these moves, whether enacted or not, to justify its military modernization and assertive periphery diplomacy.

In the South China Sea, where China's creeping acts of sovereignty face fewer hard hurdles, claimants are pursuing a range of military and diplomatic steps to protect their interests. The Philippines and Vietnam are in direct confrontation with China, but Indonesia, Malaysia, and Brunei are also progressively concentrating on maritime security issues as a result of rising tensions. Moreover, Southeast Asian countries are collaborating with external powers, including Australia, India, Japan, the United States and others, to upgrade their defensive capabilities. Unfettered territorial nationalism will almost surely destabilize a region so utterly connected by sea and air lanes of communication.

Asian maritime tensions have ebbed and flowed throughout past decades, with both

the use of deadly force apparent in China's seizure of the Paracels from Vietnam in 1974, during the 1979 Sino-Vietnamese border war, and the 1988 naval clash with Vietnam over Johnson South Reef in the Spratly Islands. China used a mixture of deception and coercion in the period around 1995, when it said it was building up fishing facilities on Mischief Reef that might be shared with others; those temporary fishing shelters turned to permanent and exclusive Chinese military fortifications. The growing intrusions into the waters around Japanese-administered islands in the East China Sea and the seizure of Scarborough Shoal in 2012 have both been acts of assertiveness, but even these acts fit into a recent pattern of behavior that might be considered less lethal than the aforementioned Chinese use of force in the 1970s and 1980s. In this limited sense, China appears to be slightly more sensitive to reputational costs of appearing too aggressive, which has in turn compelled it to exercise gradual control over its near seas in more subterranean ways. Despite considerable international attention and some positive if limited steps to reverse this competition in the past several months, attempts to change the status quo through tailored coercion and assertive diplomacy that fall short of war seem likely to endure in regional interactions in the years ahead. While policy efforts to alleviate tensions must include engagement to cooperate over norms and binding rules, a comprehensive approach should include ways to counter coercive on bad behavior.

Cost-imposition strategies have a particular niche within a larger category of competitive strategies. They focus on raising the costs of a target actor in order to change his policy, usually for a specific or limited objective in peacetime and in situations short of war. Given the importance of responding grey-zone challenges, including a range of low-level, carefully calibrated and mostly non-military moves encompassing the various ideas implied by rubrics such as "tailored coercion," "salami slicing," "cabbage strategies," and "talk and take," we have been less concerned with confining our recommendations to a theoretical category used by strategists than identifying potentially effective ways for U.S., allied and partner policymakers to respond to what appears to be an immediate and protracted part of the regional security environment. In other words, this report also concerns itself with ways not only to impose costs, but also to deny and offset the gains sought by unilateral changes to the status quo, and to do so, hopefully, without jeopardizing the overriding and shared goal of peacefully integrating a rising China. A combination of cost-imposition, denial, and offset policies, coupled with effective engagement and cooperation, would appear to offer the best means of blocking maritime coercion before it upends the regional order.

These conclusions emerge from a series of papers and workshops organized by the Center for a New American Security, often in tandem with other leading institutions and scholars, but for which the authors take full responsibility. It is far more fashionable in China-watching circles to worry about the classic theoretical problem known as the security dilemma. We acknowledge the reality that distrust and competition can feed an action-reaction dynamic that could, left to its own devices, spin out of control and create a self-fulfilling prophesy of war. However, we call to task those who think this is the only dynamic at work or that leaders lack the ability to regulate their moves, turning up and down coercion and pressure when it suits their interests to do so. Put differently, if China were embarked on a one-way campaign to dominate its near seas, regardless of the reputational

costs and hedging strategies of its neighbors, then a purely accommodating approach would guarantee Beijing's success. A realistic engagement strategy must recognize the limits of our power. The United States, Japan and other regional actors can only create an environment conducive to peace; they cannot make China's choices for it. That is why engagement alone is not enough; there must also be tools for countering coercion. A durable, steady, flexible array of policy tools designed to both engage and curb China's appetite for influence will require keeping one's eye on the long-term goal when undertaking short-term steps to stem unilateral changes to the status quo through coercion. In short, we need a diplomatic, economic, informational, and security response to regional maritime order.

2. Countering Maritime Coercion

Diplomatically, we need to work on improved peacetime engagement in several ways. It is important for major regional actors to become more actively engaged in critical discussions affecting security and rules of the road. For an American, that means persevering with the rebalance to Asia, a gradual, long-term effort to step up comprehensive engagement in the Indo-Asia-Pacific region. But it also means bringing other significant actors into support norms and laws. This is why it is useful for Japan to be more active in working with Southeast Asia nations as well as Australia and India. Korea, too, has an important constructive role to play in asserting its middle-power influence on the regional order. The United States should be encouraging the creation of what I have referred to as an intra-Asian power web, a set of bilateral and trilateral security arrangements short of alliance but beyond mere diplomatic talks.

A key facet of diplomacy should be direct and enhanced engagement with China. China is critical to our national and regional prosperity, and we do not want China's rise undermine a system from which so many are benefitting. Given that our aim is to integrate not contain a rising China, it is imperative that the United States, Japan and other regional actors improve communications, seek to avert miscalculation, establish common standards for operational safety, and where possible reduce mistrust. Such engagement with China should focus on effective results and not simply process. Because military-to-military relations between the United States and China are easily put on hold by often quite separate political events, we should try to further institutionalize this facet of Sino-American (and Sino-Japanese) relations. That is, professional contacts on a regular basis should carry on despite other tensions that may exist. But the metric for their success ought to be tangible progress on important, not trivial issues, such as how to avoid midair collisions, accidents at sea, and dealing with illegal fishing, to cite just three recurring concerns.

Another way to counter maritime coercion is to step up diplomatic and legal efforts in the face of clear violations of existing rules and norms. Thus, the United States, Japan and others should be swift to mobilize regional and international opinion when there are changes to the status quo through coercion or force. China's ongoing building of artificial islands within its so-called nine-dashed line claim on the South China Sea is a case in point. At the same time, we should be just as attentive when it comes to mobilizing support around exemplary behavior that supports a rules-based community. Supporting the Philippine

arbitration case before the International Tribunal for International Law (ITLOS) is an excellent test case for supporting positive behavior that we wish to encourage throughout the region.

China's reclamation efforts in the South China Sea are becoming widely known because of the sharing of overhead imagery. This fact points to the need to counter coercion through the build up of regional maritime domain awareness and information sharing. The United States and Japan can help to build a robust network for maritime situational awareness. This can be used as a regional public good to help with everything from humanitarian assistance and disaster response, to dealing with illegal fishing and trafficking, and responses to unilateral attempts to change the status quo. Transparency can help put a brake on coercive action by raising the reputational cost of any actor whose actions run against regional norms, including those within the Declaration on the Conduct of the Parties to the South China Sea agreed to by China and the members of the Association of Southeast Asian Nation (ASEAN) in 2002.

This highlights the fact that ASEAN has been unable to conclude a binding code of conduct in the South China Sea because China prefers bilateral approaches that give it more leverage over neighboring states. In addition, ASEAN is easily divided on maritime issues, not least because of the diverse geography and history of its members. Hence, one idea is not to wait on unanimity but instead to push forward with a maritime coalition of the willing with respect to diplomacy. These like-minded countries could coalesce and announce their own binding code of conduct, build greater situational awareness in the maritime domain, and foster greater cooperation on the full range of issues emanating from the maritime domain. This coalition could extend beyond ASEAN's four claimant states in the South China Sea (Vietnam, the Philippines, Malaysia and Brunei). Indeed a leading role might be played by Indonesia. Indonesian President Joko Widodo has spoken of a maritime fulcrum to help that country recognize just how vital the sea is for the welfare and safety of its citizens. Japan, the United States, Australia and India could and should be part of that maritime grouping.

This maritime group would need greater security assistance and support for development, including the shoring up of coast guard and law enforcement capacity. The United States and Japan both need to adapt their security and development assistance to support efforts that reinforce the regional order and the rule of law.

These chiefly diplomatic and legal steps can help to stabilize maritime order in Asia. They can reassure the region that the United States fully intends to preserve rules so that all can benefit from assured access to the global commons. Such stability would at once help to bring about greater long-term confidence at a time when the United States and Japan are on the cusp of completing the Trans-Pacific Partnership.

3. Implications for a Maritime OCSE for the Asia-Pacific

All of these steps are consistent with the innovative idea of building a new maritime security architecture in East Asia and the Pacific. This is a noble goal. But it raises at least

five major challenges.

First, it should be understood that regional security will not be guaranteed by a forum mostly interested in multilateral dialogue. The Organization for Security and Cooperation in Europe (OSCE) has hardly prevented a resurgence of Cold War-like behavior with Russia in Europe. This is not to say that the OSCE is without its uses. But we need to keep enhancing our national and alliance capabilities at the same time we attempt to build region-wide order and trust. There is inevitable tension between these two directions, between hedging and engaging, yet they are inextricably linked.

Second, the United States and Japan and other major states need to be proactive about supporting innovative approaches to order. Japan is underappreciated for its remarkable post-war contributions to regional and international order.

Third, a multilateral regime can only work if all major powers are taking part. Thus, while I support working with like-minded states, we should not stop seeking to find ways to bring China into this enhanced search for regional maritime order. China must be encouraged and occasionally prodded into accept that it must also get along with all of its neighbors, not just one at a time or on China's terms alone. We want and need China as part of the regional and global order. We even have to accommodate a rising China. But we do not have to, nor should we, excuse bad behavior.

Fourth, a maritime OSCE for the Asia-Pacific would have to be based on the realities that there is no substitute for building on existing ASEAN-centered institutions such as the ASEAN Regional Forum, the ASEAN Defense Ministers Meeting Plus, and the East Asia Summit. Indeed, we should build on the East Asia Summit process in particular to buttress the most inclusive and top-level regional forum where it is possible to help steer regional security issues into a helpful direction.

Fifth and finally, we also need to recognize that some aspects of security may not be cooperative. Every nation has a slightly different, or even markedly different, security dilemma. Thus, individual nations will be more reassured by strong bilateral commitments or practical mini-lateral cooperation, than by region-wide diplomatic gatherings. Over time, regional institutions that are effective and fair may reduce the need for such fragmented security arrangements. We should share a long-term vision for seeking to build order and maintain security through an inclusive, rules-based order based on international law.

Why fight over some small rocks in the middle of the ocean?

Roilo Golez

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Former Philippine National Security Adviser

One of the most challenging aspects in the South China Sea issue is to address the skepticism of some government policy makers such as members of Congress, and even those at the highest levels of the executive branch, those in the opinion making business like media, and of course businessmen, who ask the question: “Why fight over small rocks in the middle of the ocean?”

I believe that all of us here in this Workshop and Symposium are convinced that those “small rocks” in the ocean are crucial in the regional and global balance of power.

A big challenge is to address our own domestic audience and the world audience, to convince skeptical folks that the small rocks within the South China Sea will affect our regional and global security in a very decisive way.

Allow me therefore to present my position on these “small rocks.” I have long voiced out this position since the mid-90s when I first took this up as a Member of the Philippine Congress when China seized Mischief Reef, a feature well within our Exclusive Economic Zone. My position has become more relevant in the light of the ongoing massive reclamation projects of China in the South China Sea which accelerated last year.

I am saddened, nay, shocked, when some ask the question, “Why fight over small rocks in the middle of the ocean?” when referring to the West Philippine Sea situation now approaching boiling point. To some, Mischief Reef, Scarborough Shoal, Pag-Asa, and now, Ayungin Shoal, are small rocks not worth fighting over.

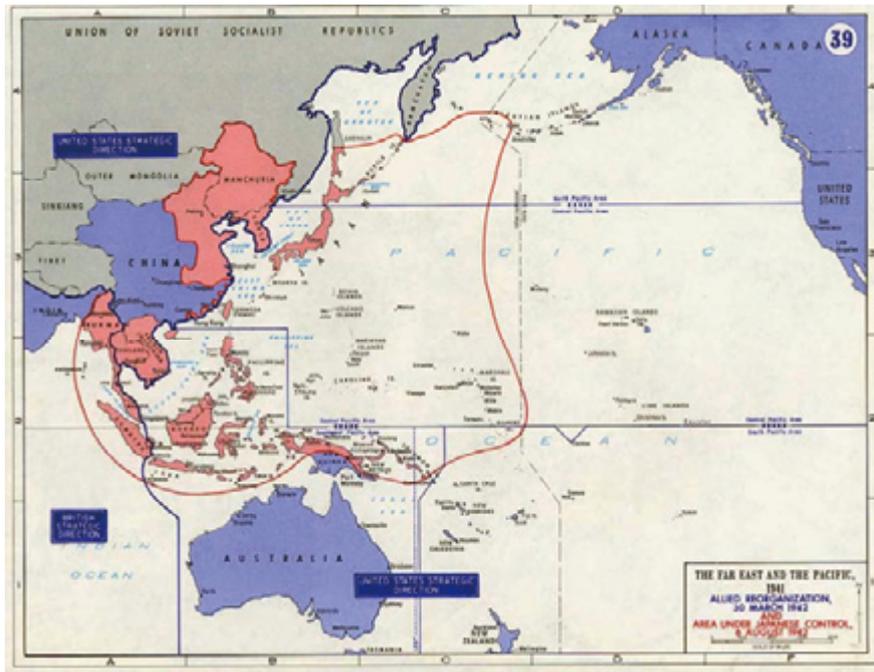
I don’t know if such comments are driven by naiveté’ about geopolitics and warfare or just dictated by their plain desire to preserve the status quo because the status quo for them means:

1. Peace at all cost in the face of a rising China or
2. An ideologically based intestinal interlock with China or
3. Fear, not wanting to antagonize the dragon for fear of being devoured.

In warfare and geopolitics, the potential force of a territory is not necessarily proportionate to the size of that territory. It is the location that determines how much potential and, in the end, kinetic force can be brought to bear from that territory.

In other words, how well one can project power, gain access to a bigger objective or, conversely, prevent access or deny access using that piece of territory, however small.

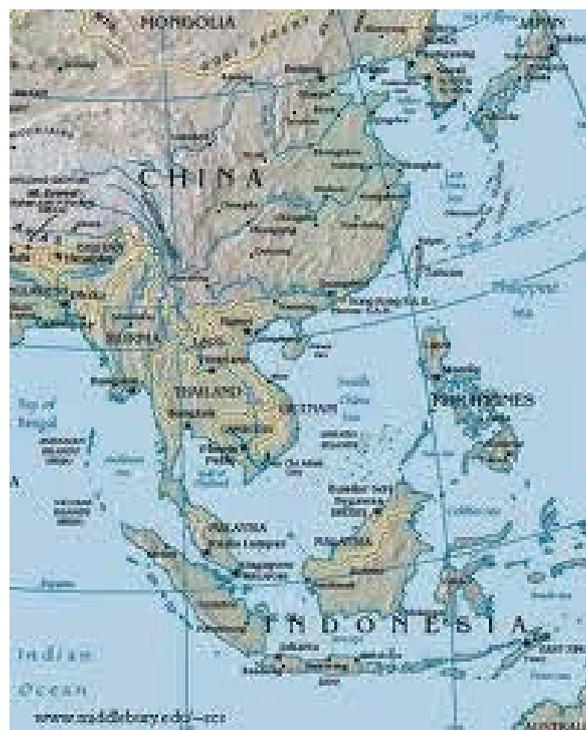
We should learn from history. Note how the Pacific War was won using tiny atolls, rocks, islets, with names like Truk, Tulagi, Saipan, Kwajalein Atoll, Tarawa Atoll, etc., dotting the vast Pacific Ocean as shown by this map:



The West Pacific area in 1941-1944

Now we are looking at a smaller part of the West Pacific: The South China Sea. The South China Sea today is considered by all strategic think tanks as the convergence point of the world's three most powerful economic powers: The United States, China and Japan. Add to that India, Australia, South Korea and Indonesia. Then the minor powers that are now joining the arms race: Vietnam and the Philippines. In the periphery, her intentions unclear, is Russia. It is without doubt the convergence point of the greatest powers, in absolute and relative terms, in the history of mankind.

Note the strategic location of the Philippines in the South China Sea theatre. The Philippines is athwart the eastern periphery of the South China Sea. As such, every speck of Philippine territory is strategic in peace and in conflict.



China is fanning the flame of conflict with its nine-dash line, which only China respects and the rest dismisses as irrational and without legal and historical basis. And the Philippines has assumed center stage with China's brazen grab, using raw, naked power, of Mischief Reef in 1995 and Scarborough Shoal in 2012. And now they are positioning to grab Ayungin Shoal as well. These territorial claims defy Common Sense, as shown by the following map, those "rocks" being way within the Philippine EEZ and so distant from the Chinese mainland.



Those who dismiss Scarborough Shoal as just small rocks in the middle of the ocean do not or refuse to appreciate the Shoal's strategic importance. It is only around 120 nautical miles from the shores of Zambales and so close to the country's vital economic and military installations: Subic, Clark, Metro Manila, primary airports and sea ports, power plants, Calabarzon and our Army, Navy and Air Force bases.



Scarborough is not small. Including the huge lagoon inside, it has an area of 150 square kilometers, almost the size of Quezon City. With little engineering works, its channel can be widened and deepened to make the lagoon accessible to navy ships. The lagoon's depth is sufficient for China's destroyers. A country with advanced construction capability and financial muscle can transform this into a naval base. One can easily visualize how many ships can be anchored in a lagoon almost the size of Quezon City.

Converted into a naval installation, Scarborough Shoal can be used to project power and monitor strategic and tactical communications of the Philippine government, the military

bases, including the assets of our treaty ally, the US, once the rotational bases access agreement is made operational.

Missiles can be installed in Scarborough Shoal that can reach in just a few minutes targets in Central Luzon, Metro Manila and Southern Tagalog.

Under the control of China and once militarized, Scarborough Shoal could be transformed into an unsinkable aircraft carrier permanently parked in our front yard, well within our EEZ.

If anyone doubts the convertibility of Scarborough Shoal for military purposes, consider this: More than 60 years ago, the US Navy converted a similar atoll around 1,200 miles from the Philippines into a staging area for the invasion of the Philippines. This was the Ulithi Atoll, with features similar to Scarborough, only around four times bigger.

Here's Ulithi Atoll:



Just some small rocks in the middle of the ocean, but transformed to house part of Admiral Halsey's huge Third Fleet that was the vanguard in the invasion of Japan-occupied Philippines in 1944.

This was how Ulithi looked on the eve of the Battle of Leyte Gulf:



(Note: the carriers and battleships and cruisers and destroyers anchored among those "small rocks.")



Now, the January 6, 2015 article "Maginot Line in the South China Sea" in the NextBigFUTURE blog, states:

"A mature network of military facilities in the Spratlys, including an expanded Fiery Cross presence, would effectively extend China's ability to project power by over 800 kilometers (500 miles), particularly through Chinese Coast Guard patrols in contested areas and potentially even air operations. Similar to its relative economic supremacy, China's relative advantages in military size, modernization, and professionalism suggest that it is the only South China Sea claimant that is potentially capable of establishing de facto air and sea denial over tiny islet networks in a maritime setting as vast as the Spratly archipelago."

"Infrastructure improvements are enhancing China's ability to sustain its naval and maritime law enforcement presence in the South China Sea. This is particularly the case at Fiery Cross Reef, where a five-square mile project has been under construction intermittently since 1988. According to IHS Jane's, Chinese facilities there serve as "base" for conducting land reclamation projects elsewhere in the Spratly Islands and host communications equipment, a greenhouse, a wharf, a helipad, and coastal artillery. Andrew S. Erickson, associate professor at the U.S. Naval War College, and Austin M. Strange, PhD student at Harvard University, suggest Fiery Cross Reef could eventually sustain a PLA Navy command and control center twice the size of Diego Garcia, a U.S. naval base in the Indian Ocean. China also appears to be constructing an airstrip at Johnson South Reef.

"China in 2014 made significant progress on various land reclamation projects on Johnson South Reef, Johnson North Reef, Cuateron Reef, Gaven Reef, and Fiery Cross Reef, all of which are Chinese-controlled outposts in the disputed Spratly Islands. In addition to dredging sand to make islands where there previously were none, China appears to be expanding and upgrading military and civilian infrastructure—including radars, satellite communication equipment, anti-aircraft and naval guns, helipads, and docks—on some of the islands."

Figure 4: China's Major Land Reclamation Projects in the South China Sea



Locations are not exact. Map adapted from James Hardy et al. "China Goes All Out with Major Island Building Project in Spratlys." *ITIS Asia's View*, June 30, 2014. <http://www.james.com/article/39716/china-goes-all-out-with-major-island-building-project-in-spratlys>.



"China is building an island at least 3,000 meter long on Fiery Cross Reef that could be the site for its first airstrip in the Spratly Islands in the South China Sea.

"Satellite imagery of the island taken on 8 August and 14 November shows that in the past three months Chinese dredgers have created a land mass that is almost the entire length of the reef.

"Fiery Cross Reef lies to the west of the main Spratly island archipelago and was previously under water; the only habitable area was a concrete platform built and maintained by China's People's Liberation Army Navy (PLAN).

"The new island is more than 3,000 m long and between 200 and 300 meter wide: large enough to construct a runway and apron. The dredgers are also creating a harbour to the east of the reef that would appear to be large enough to receive tankers and major surface combatants.

"The land reclamation at Fiery Cross is the fourth such project undertaken by China in the Spratly Islands in the last 12-18 months and by far the largest in scope. China has built new islands at Johnson South Reef, Cuateron Reef, and Gaven Reefs, but none are large enough to house an airstrip in their current form."

Principles for building effective maritime institutions in East Asia

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1. Introduction

There is no shortage of pre-existing maritime architecture ranging from Association of Southeast Asian Nations (ASEAN) led regimes to those initiated by regional great powers such as China. Although the region is often criticised for having too many regimes or institutions, the appetite for such architecture stems largely from the fact that there are both elements of promising cooperation and worrisome competition in East Asia. The role of such architecture is to encourage cooperation, whilst restraining or at least regulating competition. In this sense, there is broad and reasonable agreement that building better existing and new institutions is required if East Asia is to remain as stable and prosperous this century as it was during the second half of the previous century.

In light of the important role that institutions and architecture will play in East Asia, especially when it comes to maritime security and cooperation in East Asia, this paper offers some guidelines and principles designed to ensure more effective institutional building in the region. While some of the suggestions will be critical of the ineffective nature of some attempts at institutional building, the paper is not designed to denigrate the role of institutions or advocate for an abandonment of the institutional approach. Instead, the paper is designed to help ensure that institutions more effectively play the role of enhancing peace and security into the future.

2. Multilateralism versus bilateralism in dispute resolution

There are differences in the region as to whether maritime disputes, especially in the East and South China Seas, ought to be negotiated bilaterally or multilaterally. China, in particular, has consistently insisted that its various disputes be discussed and negotiated bilaterally, while Southeast claimants in the South China Sea prefer a multilateral approach. The paper begins by offering a number of reasons why maritime disputes ought to be treated as a multilateral issue, especially when it comes to the need to build effective architecture to manage such disputes.

First, maritime geography is an unalterable reality of East Asia. All countries in the region depend heavily on maritime trade for economic growth and development. More broadly, maritime commerce has underpinned the rise of Asia over the past six decades and will continue to do so. Such trade traverses waters in or near disputed land features and related maritime boundaries and territories. In this sense, every trading country has an inherent interest in a fair and negotiated outcome.

This has the consequence that even if disputants agreed to proceed on a bilateral basis, other countries would certainly not watch ongoing negotiations impassively. Many countries would take a proactive diplomatic and strategic stance in case bilateral negotiations proceeded in a way that was seen to be detrimental to their core interests.

For example, non-claimant countries in the South China Sea such as the United States, Japan, Australia and Singapore have an inherent interest in the outcome of negotiations in disputes between China, the Philippines, Vietnam, Brunei and Malaysia. If it appeared that China was likely to gain control over large areas in the South China Sea in accordance with some version of Beijing's more extensive claim, these countries would respond strategically and militarily in such a way as to ensure that China is 'contained' or 'restrained' from threatening or impeding their collective maritime interests. If such strategic and military jostling and positioning took place, we are more likely to suffer a more destabilising environment than we are currently experiencing now.

Moreover, how a pair of claimants resolve one particular dispute may well affect expectations and viewpoints as to how other disputes between other countries are likely to be discussed and resolved. For example, the legal principles put forward by China in discussing the dispute over the Paracel Islands in any future discussion with Vietnam will be of immense interest to the Philippines in discussing the latter's dispute with China over Scarborough Shoal. In order to rely on legal principles, interpretations and processes that are consistent and broadly accepted by all countries, it is more conducive to overall stability that the disputes be discussed and negotiated multilaterally.

This has the added implication that disputants in the South China Sea have an inherent interest in how disputes in the East China Sea are managed and resolved – and vice versa. In terms of maritime architecture relevant to resolving disputes in East Asia, it is artificial to completely divorce how things are managed in the East China Sea to the South China Sea – since the legal principles and processes applicable, and the conduct of parties in disputed areas ought to apply to both regions.

Second, there is high interest in maritime architecture not just for the sake of it but because the region is interested in maritime architecture that can help stabilise and resolve outstanding disputes. This means that there has to be broad acceptance and buy-in from all major countries as to how the maritime order is to work and be discussed in East Asia. If discussion of maritime architecture and dispute resolution processes – rules of the road, how disputes are managed etc., - is restricted to just two countries, there is unlikely to be sufficient buy-in from other countries.

Third, the reality of processes and agreements between countries is that they are enforced through a combination of good faith and good will – but also via pressure placed on countries by other countries to honour processes and agreements. Such pressure can be diplomatic, political, strategic or even coercive. Countries tend to follow agreed processes and agreements because carrots exist to make it attractive to do so and sticks exist to make it

costly not to do so. And carrots and sticks are provided by not just disputants themselves but also other countries with an interest in the region. Once again, it makes less sense that decisions and processes requiring multilateral support and enforcement are conducted bilaterally.

3. The purpose of institutions in East Asia

The high interest in enhancing existing institutions or building new institutions is based on the hope that such entities can regulate three basic things: actual behaviour, resolution and settlement processes, and enforcement.

When it comes to actual behaviour, actions by non-governmental entities in addition to state entities should be regulated and explicitly considered the responsibility of the state from which those non-governmental entities come from. For example, there are increasing complaints by claimants in the South China Sea about Chinese para-military and non-state entities engaged in coercive or disruptive behaviour in disputes maritime areas. Although it is a welcome development that disputes have not been extensively ‘militarised’ through the use of People Liberation Army Navy (PLAN) vessels, ongoing harassment by non-PLAN vessels is of little reassurance or comfort to governments in Manila or Hanoi. Official explanations that such actions are being initiated by ‘rogue’ PLA officers, provincial officials or else private citizens is an insufficient defence since such actions – rogue or otherwise – may lead to consequences that will be adverse for regional peace and stability.

Indeed, the reasoning that non-military vessels are not the responsibility of the state from which they come from are not plausible. If such reasoning was accepted, the embarrassing and debilitating inference would be that the particular government would have to admit that they are not in control of entities emanating from their sovereign territories and jurisdictions – or have no desire of controlling them.

When it comes to resolution and settlement processes, one also need to clarify claims (what a particular country is claiming and on what basis) in a manner that can be established according to accepted principles and processes of international law – particularly the United Nations Convention of the Law of the Sea (UNCLOS). In particular, claims based on ‘history’ that sit outside international law ought to be collectively frowned upon. If there is no clarity of claims according to legal principles and processes, then one can draw one implication and also one inference. The former is that there is no possibility of resolving disagreements; the latter is indication of a lack of desire by that country to genuinely want to resolve disputes.

If something is not capable of being considered by international law, then every argument in principle is equally valid or invalid meaning that no lasting or enduring maritime order is likely to be possible without the threat or actual use of force. In an environment where material power and preparedness to use it become the ultimate and only factors for resolution, the prospect that East Asia will descend into a spiral of competition leading to major conflict (between claimants and involving non-claimants with alliance obligations and strategic interests in the outcome) become far more probable.

When it comes to enforcement of agreed principles and processes, the overwhelming preference is that enforcement be based primarily on non-military measures agreed upon by all countries. When it comes to non-military measures to increase pressure on claimant countries, there is effectiveness and diplomatic comfort in numbers. For this reason, disputes and the institutions used to manage and resolve them need to be multilateral rather than bilateral. This is also a further reason why behaviour and policies in the East and South China Seas ought to attract region wide interest and action in order to maximise the numbers of states involved.

4. Multilateral architecture – who should lead?

Almost all the countries in East Asia, including great powers the United States, Japan and China pay at least lip service (if not more) to the notion that ASEAN should primarily lead institutional building in the region.

It is clear that ASEAN is a convenient organisation for the great powers to perform such a task. For one reason, ASEAN is not collectively large or powerful enough to override the preferences and interests of the great powers even if its ten members were to behave in a more coordinated strategic and political fashion. This means that ASEAN is large enough to be significant but not powerful enough to be a threat or a competitor.

Furthermore, ASEAN's lack of material clout means that it cannot impose an agenda on the great powers. At best, ASEAN is able to facilitate discussion of an agenda and perhaps pursue a particular emphasis. But it cannot change great power strategy or behaviour by itself.

Additionally, ASEAN is valuable and useful to big powers because it can confer an element of legitimacy to institutions and actions. In particular, the occasionally criticised 'ASEAN way' of consensus building and norm building has played some role in regulating competition and defining the shape of cooperation even if the 'ASEAN' way has not managed to actually solve major disputes between great powers, or even disputes between ASEAN members and great powers. In particular, ASEAN has had considerable recent success in persuading China that engaging with its processes and norms offered Beijing an opportunity to demonstrate that its rise would be a peaceful and non-threatening one – an opportunity Beijing seized gratefully from the late-1990s onwards.

Even so, the future of ASEAN centrality and the 'ASEAN way' is unclear. It is now obvious that China's attitude to ASEAN has changed. Once seeing ASEAN as a vehicle to advance its diplomatic interests, Beijing now seeks to neutralize ASEAN in order to advance its strategic and territorial interests more assertively. Nowhere is this more evident than China's go-slow on a binding Code of Conduct that would prohibit the use of force in settling maritime disputes. While China has ensured that progress is virtually non-existent, Chinese state and ostensibly non-state entities continue to coercively consolidate China's de facto control and administration of contested regions through 'changing facts on the ground'.

Although other claimants such as Vietnam and the Philippines have also engaged in such tactics, China's far greater capacity to do so makes its approach qualitatively different to that of the smaller claimants.

In response, non-ASEAN powers such as the U.S., Japan and Australia continue to pay increasingly superficial homage to the ASEAN process, all the while knowing that ASEAN's insistence on consensus decision-making too easily leads to paralysis as China simply needs to convince or coerce one ASEAN member to dissent from any declaration or action that would be against China's interest. In other words, China seems glad about ASEAN's paralysis as such paralysis actually serves Beijing's interest.

The equation is different for America and countries such as Japan. Although all maritime capitals seek a greater American and allied presence in the region to maintain peace and security, the exercise of authority and power still needs the cover of legitimacy that multilateral organizations such as ASEAN can offer. It is for this reason that Washington and Tokyo continue to support ASEAN centrality in regional institution building.

This then is still ASEAN's strength. It has the power to acquiescence but also to criticize. This is not immaterial. If it were, Beijing would not have bothered to strong arm Cambodia into blocking a communiqué that would have raised concerns about tensions in the South China Sea at the foreign ministers meeting in Phnom Penh in July 2012.

5. Making ASEAN centrality work

In raising the diplomatic costs of non-compliance, ASEAN also has the power to exclude when it comes to the largely symbolic agreements that it seeks to underwrite. Besides ensuring that a binding Code of Conduct will remain stalled, Beijing will continue to exploit ASEAN's self-demands for unanimity by convincing at least one member to veto any measure that would be detrimental to Beijing's interests.

To overcome these obstacles, ASEAN could consider two measures. First, there is nothing to stop ASEAN from signing a declaratory Code or some such that would prohibit the use of force in settling any disputes with other nations in the region such as the U.S. and Japan. All countries including China would be warmly invited to sign up to the new declaration. If any country such as China refuses to do so, Beijing may well be isolated and suffer some diplomatic cost as a result. The Code – backed fully by ASEAN – becomes formal declaratory policy for signatories when they sign and do not need the signatures for all players in East Asia to come into play. For those who are reluctant to sign, the onus can be placed on them to argue the case why they would not wish to or why they disagree with the principles. As the experience with the Trans-Pacific Partnership agreement shows, one must sometimes first exclude China in regimes that include other regional great powers before Beijing is willing to consider sitting at the negotiating table. The opt-in Code therefore provides a diplomatic device with which countries can use to reaffirm certain rules and norms, and criticise deviant behaviour by any country.

Second, and for ASEAN to play such roles, it would have to abandoning its cherished convention of decision-making by consensus or unanimity, and perhaps allow decision-making through agreement by a quorum of seven or eight member states. Such a change is not prohibited by the ASEAN Charter but would initially be resisted by many members. But the alternative is paralysis, irrelevance, and continued Chinese manipulation of the organization – placing into doubt the future of ASEAN centrality. Since ASEAN is a critical vehicle for smaller Southeast Asian powers to enhance their relevance and standing vis-à-vis great powers, the loss of ASEAN centrality would be a significant blow to individual Southeast Asian states and to their collective interest and standing. Moreover, a loss of ASEAN centrality will do nothing for the five member states in terms of managing and resolving their contested claims in the South China Sea.

In the absence of an organising entity like ASEAN, the region's great powers would have to agree on another setting and process for institutional building. Given the reality of deepening strategic competition between China on the one hand, and the United States and Japan on the other, institutional building will be even more difficult to achieve.

6. Conclusion

The debate about which entity ought to lead institutional building to enhance maritime security and stability, whether existing or new institutions are the way to go, and what the institution should look like will persist.

No matter which position one takes on these questions, any relevant and effective organisation has to reflect realities in international politics, of which the distribution of power and influence is all important. In this light, any organisation without eventual buy-in from the great powers – the United States, Japan and China – will be less relevant and effective.

Moreover, one must be mindful that geo-politics and geo-strategy can never be superseded or replaced. This means that any organisation must be understood within the framework of cooperation but also competition between regional powers. Institutions cannot ignore or avoid the realities of geo-political and geo-strategic competition. But they can modify and regulate competition between regional powers. This means that institutional building must proceed on the basis that regional powers will see any organisation – new or existing – as another avenue to pursue their objectives; and some objectives will not favour cooperation but will be pursued at the expense of the interests of other powers.

Finally, and given the above conditions, one needs to be cognizant of the behaviour of states and governments. In this context, and to regulate or even change behaviour, the role of proverbial carrots and sticks is paramount. Countries have to gain rewards for behaving according to an organisation's norms and rules, and suffer losses or sanction (whether they be diplomatic or reputational) for not behaving according to these norms or rules.

This means that in order to use institutions effectively, member countries need to be prepared to use political capital and suffer occasionally tense relations with other powers

(including great powers) in praising or condemning the behaviour of other states within the organisation according to that institution's rules, norms and expectations. If member states are not prepared to do that, then any regime is at best a talk shop. At worse, that regime becomes a potential obstacle to creating a region that is stable and governed according to an agreed set of rules and norms.

Finally, all of this is not meant to denigrate the importance of institutions and institutional-building. On the contrary, these principles are designed to enhance the role of institutions in promoting stability and peace in what could still be a fraught 'Asian Century'.

Taiwan's Stance and Role at the Territorial Disputes over the East and South China Seas

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1. Taiwan's stance on the territorial disputes over the East and South China Seas

(1) ROC Taiwan's Geographic Location

In terms of their geographic setting, the East China Sea and the South China Sea are both "semi-closed sea". The East China Sea covers a total area of around 482,000 square miles, bordered by the South China Sea and Taiwan at the South. In addition, the South China Sea, with an area of more than one million square nautical miles, is bounded by Taiwan Strait on the north. The littoral states, in a clockwise order, are Taiwan, the Philippines, Malaysia, Brunei, Indonesia, Singapore, Thailand, Cambodia, Vietnam, and the PRC.

In other words, Taiwan is located between the East China Sea and the South China Sea, thus rendering its geographic location very important from the perspective of geopolitics not only for maintaining peace in the East and South China Seas, but also for the security of the whole East Asian region.

(2) Taiwan is one of the claimant states in the East and South China Seas

In the East China Sea area, as all of you may know, there has been a sovereignty dispute over Diaoyutai Islands/islets or the so-called Senkaku Island between Japan, Mainland China and Taiwan for decades. Furthermore, Taiwan is also one of the six claimant states; including Mainland China, Vietnam, the Philippines, Malaysia and Brunei in the South China Sea area. Moreover, Taiwan has been holding Taiping Island, the biggest island in Spratly Islands, with effective management for decades since the end of WWII, as well.

In short, Taiwan is objectively but deeply involved in the territorial controversy in East Asia, and should actively participate in the dialogues for seeking solutions over the territorial disputes in the East and South China Seas.

2. Taiwan's fundamental policy towards the disputes over the East and South Seas

(1) President Ma's *East China Sea Peace Initiative*, 2012

In considering the goals of fostering regional peace and stability, economic prosperity and sustainable development of the marine environment, as well as finding a path to coexistence and mutual prosperity, President Ma declared *the East China Sea Peace Initiative* on August 5, 2012 and called on all parties concerned to:

- A. Refrain from taking any antagonistic actions;
- B. Shelve controversies and not abandon dialogue;
- C. Observe the international law and resolve disputes through peaceful means;

- D. Seek consensus on the code of conduct in the East China Sea; and
- E. Establish a mechanism for cooperation in exploring and developing resources in the East China Sea.

What I want to emphasize here is that the *East China Sea Peace Initiative* is not only applicable to the East China Sea, but also to the South China Sea.

(2) The meaning of “peace” and “shelving disputes, and working on joint development”

Nothing is more important than “peace” and the territorial controversies in the East and South China Seas are surely no easy matter. The countries surrounding the region pay too much attention to the issue of sovereignty over the islands/islets, expanding their maritime areas, as well as their exploration of resources. They seem to forget the very notion that nothing will be secured if peace is not maintained.

The other keywords of the Initiative are “shelving disputes, and working on joint development”.

The East China Sea Peace Initiative would be meaningful in the current situation since “promoting joint development” might be a better way to ease off the disputes. On the other hand, it is also important to see how Taiwan could and might play its role within which it is in a leverage position. The enactment of the *Taiwan-Japan Fisheries Agreement* is a good example of the Initiative.

In addition, under the controversial situation of the continental shelf over the East China Sea in 1970, Japan, Korea and ROC (Taiwan) had reached a historical agreement declaring to “shelve disputes of continental shelf, and work on joint petroleum exploration”. This significant historical event tells us that “promoting joint development” is possible, not only in the past, but also for now and the future!

(3) *Taiwan-Japan Fisheries Agreement*, a successful practice

Regarding the “joint development”, it actually could include living resources and non-living resources such as hydrocarbons.

Among the living resources, fishery is considered the most important and attractive in the East and South China Seas. It is generally a known fact that the living resources in the area, especially those highly migratory species, such as tuna and other shared stocks, migrate from one EEZ to another. Each country might already have its own assessment of its living resources in its EEZ, assuming that the definition and delineation of each EEZ is clear. The problem is that many of the EEZ boundaries are hardly well defined or mutually agreed upon by the relevant parties, not to mention the much more difficult issue about the sovereignty of the islands/islets. Likewise, there are various conflicting claims to islands that complicate and defer the determination of EEZ boundaries.

On April 10, 2013, the *Taiwan-Japan Fisheries Agreement* was signed. It is a significantly noteworthy example of the “shelving disputes, and working on joint development”

which are the keywords of *East China Sea Peace Initiative*. It sidesteps the issue of sovereignty and focuses exclusively on a common interest shared by the two concerned parties. Upon setting a wider “Agreement Application Zone”, fishermen from both sides could conduct fishing operations without the fear of disturbance from the other party.

The fishery issue might be considered minor compared to other strategic issues of security importance. However, I reckon that the United States is positive towards the conclusion of the Agreement. Furthermore, the *Taiwan-Japan Fisheries Agreement* also signifies a marked development of amiable relations between Japan and Taiwan.

I do believe that such a practical and successful fisheries agreement could also be reached amongst other relevant countries in the South China Sea area. I also expect the concept could be extended to co-operation in other fields such as petroleum exploration and even security maintenance in both the East and the South China Seas.

3. Taiwan’s security views and its relations with Mainland China and the US

(1) Taiwan will not co-operate with Mainland China on the territorial disputes

Some countries still doubt and ask whether Taiwan will co-operate with the Mainland on the territorial disputes over the East China Sea and the South China Sea. Again, I would like to clarify here that ROC (Taiwan) will not co-operate with the Mainland on the territorial sovereignty issues over either the East China Sea or the South China Sea. At this stage, as I am aware of, talks on such territorial issues have never been held before.

It is because, in my personal opinion, the most serious threat to Taiwan’s security comes from Mainland China. Beijing would not likely give up annexing Taiwan by military force. Furthermore, more than 1,000 missiles located in Eastern China are still being leveled at Taiwan.

Obviously, the relations of the Cross Strait have improved since the inauguration of President Ma’s administration in 2008. However, agreements have not been reached on the issue of the political status of the Cross Strait as yet.

(2) Taiwan supports US’s proposal of peace settlements for the disputes in the South China Sea.

Undoubtedly, the United States is the most important supporter and friend of Taiwan’s security in the past decades, and it has also been playing a significant role in the security of Asia Pacific region since the end of WWII. Hence, it is understandable that Taiwan would welcome the United States’ strategies of “returning to Asia Pacific” and fostering “rebalance toward the Asia-Pacific” region.

On July 11, 2014, the US Deputy Assistant Secretary of State, Michael Fuchs, called on claimants in the South China Sea to freeze construction, land reclamation, establishment of new outposts and other alterations to the status quo of disputed islands and reefs, and to create a milieu for negotiations on the "code of conduct of the South China Sea". Taiwan

welcomes the “Freeze” proposal, but it needs all the other claimants, in particular, Mainland China to work together.

4. The importance of Taiwan's participation in the dialogue on the South China Sea

(1) Without Taiwan, the issue over the South China Sea will not be solved successfully and completely

Tai ping Island, the biggest island of Spratly Islands, has been held and managed by Taiwan since the end of WWII. We understand that China, Vietnam, the Philippines, Malaysia and Brunei, are trying to find solutions for the disputes. The problem remains that Taiwan has never taken any part in such dialogues since the disputes arose. We have to realize the reality that Taiwan is one of the claimant states. Hence, all the issues would not be solved successfully and completely without Taiwan’s involvement, which thus means that we need to rethink the legitimacy of them more carefully.

(2) Taiwan is always a peacemaker, not a troublemaker

Taiwan has been playing an important role of a peacemaker in the East and South China Seas. I would say Taiwan, despite being one of the claimant states, demonstrates the determination of peace enactment through President Ma’s *East China Sea Peace Initiative*, 2012. Still we all know that the challenges are always there since these complex and intricate disputes actually correspond with the territorial sovereignty issues simultaneously.

5. Conclusion: Taiwan supports building up a mechanism for the maritime security architecture in East Asia

The territorial controversy in East Asia is threatening the peace in Asia. Conflicts are increasing, but they are not inevitable. At this stage, I reckon that the lack of an effective mechanism to maintain peace could be the main challenge ahead. Since an effective mechanism will be paramount and essential for all parties, I appreciate that IIPS holds this meaningful workshop. At the meantime, I think it would be mutually beneficial if Japan could play a more important role on new maritime security architecture in East Asia in the near future.

As a Taiwanese representative attending this conference, I feel also grateful to IIPS for inviting me. I think Taiwan would be actively looking forward to joining in the project for the New Maritime Security Architecture in East Asia in order to achieve more productive contributions.

Searching for a Comprehensive Maritime Cooperation in East Asia

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The fundamental challenge for all East Asian countries is to ensure that peace and prosperity would continue to be the defining feature of the region. Indeed, East Asia should remain peaceful and stable, even as military modernisation occurs against a backdrop of occasional tensions arising from maritime and territorial disputes.

The maritime domain of East Asia is central to the maintenance of peace and prosperity in the region. East Asia is home to important sea-lanes and straits. Some of the world's busiest ports are located in the area, or rely on maritime traffic through the region's sea areas. Many other vessels, including fishing boats and passenger vessels pass through and overwhelm the regional waters. In addition to the strategic location, the seas of East Asia are also rich in gas, oil and mineral resources. Both onshore and offshore energy installations operate in the region, making it home to a large number of mining sites and oil and gas fields. These companies depend on offshore platforms and/or terminals along the coast from which the extracted goods are shipped to numerous international destinations.

In this regard, peace and stability in the seas of East Asia means the safeguard of international maritime waterways that serve as the lifeline of global trade and the highways for military and non-military vessels. 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 transform it into a theatre for major powers competition and rivalry defined more by the pursuit of national strategic interests.

1. Current Issues

(1) Territorial Disputes

Maritime disputes date back to the colonial period, yet still prove to be a challenging task and have led to a number of territorial disputes. 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).

Maritime disputes in the region could spiral out of control and threaten the stability of the region. These cases and the building of tension in the South China Sea and the East China Sea make a clear message about how sensitive pending maritime boundaries could be. The disputes are generally more political rather than military; nonetheless, the ongoing inability to settle some disputes creates concern in the longer run.

Territorial disputes becomes more significant when seen in the context of how overlapping maritime boundary claims direct regional military spending. There is a growing asymmetry of naval power in East Asia to the advantage of China¹. The nations of Southeast Asia are building up their militaries, buying submarines and jet fighters at a record pace and edging closer strategically to the United States as a hedge against China's rise and its claims to all of the South China Sea. Weapons acquisitions in the region almost doubled from 2005 to 2009 compared with the five preceding years². Overall, Asia's defence spending continues to grow and could account for 32% of global military spending by 2016, or US \$480 billion, up from 24% in 2007 unlike North America, the biggest spender in 2007 with 39% of the world arms market would account for 29% or \$435 billion³. Further, Asian military spending will be led by China (from US \$120 billion in 2007 to \$255 billion by 2016) and India (about US \$100 billion for procurement in the next five years)⁴.

(2) Non-traditional Security Threats

Non-traditional security (NTS) issues are now considered core national security issues. The threat of trans-national problems has increasingly become more lethal and pressing in recent years. Issues such as terrorism and criminal acts at sea such as armed robbery to ships, illegal fishing, drug trafficking, human trafficking and piracy have all posed serious threats to regional stability. Most of these threats pass through the seas of East Asia. The need to respond to the growing salience of non-traditional security in the region has become a matter of urgency to regional states.

NTS presents challenges to the development of regional security architecture. There remains a genuine regional interest in deepening multilateral and bilateral security cooperation, which has resulted in the strengthening of security cooperation on NTS issues despite the absence of formal security architecture.

(3) 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. 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.

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 farther into the disputed waters of the South China Sea. As a result, fishing has now become a politically sensitive national

¹ See, for example, Ralf Emmers, "The Changing Power Distribution in the South China Sea: Implications for Conflict Management and Avoidance," *Political Science*, Vol.62, No.2, (2011) pp.118-131.

² Stockholm International Peace Research Institute, *SIPRI Yearbook 2009: Armaments, Disarmament and International Security*, (Oxford: Oxford University Press, 2009).

³ *Ibid.*

⁴ *Ibid.*

security issue for claimant countries. The rich fishing grounds of the East and South China Seas are also critical to many countries' food security. The South China Sea alone accounts for one-tenth of the world's global fisheries catch, and play host to a multi-billion fishing company⁵. With wild fish stocks in decline while the demand keeps rising, fish has become a strategic commodity to be protected.

2. Existing Frameworks for Maritime Cooperation

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-help⁶. 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 options⁷.

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 Asians⁸. 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 resources⁹.

A large number of scholarly works have turned to constructivism to explain regionalism in East Asia, particularly the development and role of Association of Southeast Asian Nations (ASEAN) in Southeast Asia. Since the mid-1990, the study of or regional security and regionalism in Southeast Asia, plus the debate over the "ASEAN Way" or the

⁵ Lucio Blanco Pitlo III, "Fish the Real Hazard in South China Seas," *Asia Times Online*, 25 July 2013.

⁶ Harald Müller, "Security Cooperation," in Walter Carlsnaes, Thomas Risse-Kappen, and Beth A. Simmons, eds., *Handbook of International Relations* (London: Sage, 2002), p. 370.

⁷ *Ibid.*

⁸ David L. Shambaugh, "Asia in Transition: The Evolving Regional Order," *Current History*, Vol. 105, Issue. 690, (2006) pp. 153-159.

⁹ Mark J. Valencia, "Multilateral Management of Northeast Asian Seas: Problems and Prognosis," in Hance D. Smith ed., *The Oceans: Key Issues in Marine Affairs* (Dordrecht: Kluwer Academic, 2004), p. 255.

“ASEAN” Model, have stimulated various scholarly works with a constructivist nuance¹⁰.

The ASEAN Regional Forum (ARF) was the highlight of the ASEAN-centred security cooperation in the 1990s and early 2000. Security cooperation in the region has been influenced by two sets of approaches: bilateral alliances on the one hand, and cooperative security on the other. Post-Cold War multilateral security cooperation in the region thus seemed to prefer an extension of the ASEAN model, which espouse strict adherence to state sovereignty. Such preference brought about the establishment of the ARF in 1994, which until the present day can be seen as the only “official” multilateral security forum of its kind serving the Asia Pacific region.

Realising the importance of closer security cooperation, ASEAN has sought to establish an ASEAN Security Community (later renamed as ASEAN Political and Security Community). In October 2003, the heads of state of Southeast Asian Nations declared another milestone in ASEAN history, the Declaration of ASEAN Concord II. This endeavor emphasises the importance of forming an action plan to achieve ASEAN’s dynamic, resilient and cohesive regional association and signals ASEAN’s move towards building an ASEAN community which is based on three pillars, namely political and security cooperation, economic cooperation, and socio-cultural cooperation which are closely intertwined in order to ensure durable peace, stability and shared prosperity in the region. This document also introduces the idea of comprehensive security in the sense of having broader definition of security, namely political, economic, social and cultural aspects. However, the most important thing to note is that, although embedded with so many optimistic promises of a security community, the whole effort was built upon the basis of the traditional ASEAN Way of non-interference, sovereignty and consensus, which have been the most important principles in the ASEAN official documents for the last four decades.

At present, the number of ASEAN-centred multilateral forums has multiplied. Maritime cooperation has been promoted through ASEAN Ministerial Meeting (AMM), where ASEAN foreign ministers discuss visions and broad directions of ASEAN on maritime issues. The ASEAN Transport Ministers Meeting (ATM), ASEAN Ministers Meeting on Combating Transnational Crimes (AMMTC), ASEAN Defence Ministers Meeting (ADMM and ADMM+), thematic forums promoting maritime cooperation in respective areas. AMMTC focuses maritime cooperation in the forms of information sharing, tactical exercise and harmonized policies to suppress transnational crimes, while ATM focuses on promoting dialogues and cooperation to facilitate maritime transport by various measures, such as the integration of maritime transport sectors, provision of assistance and training to seafarers, enhancement of safety and freedom of navigation through cooperation on marine transport management and security, search and rescue operations, and environmental protection. And finally, the East Asia Summit the most representative high-level forum in Indo-Pacific Asia, involving the leaders of the 10 ASEAN countries, plus China, Japan, South Korea, India, Australia, New

¹⁰ See, among others, Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (New York and London: Routledge, 2000); See Seng Tan, *The Role of Knowledge Communities in Constructing Asia-Pacific Security: How Thought and Talk Make War and Peace* (Lewiston: Edwin Mellen Press, 2007).

Zealand, Russia and the United States. The EAS is rightly mandated to consider region-wide strategic issues.

In terms of areas of cooperation, the most advanced activities are those that include functional cooperation in very specific areas to address very specific issues were promoted in many fields from fisheries, environmental protection, marine scientific research to transnational crimes, search and rescues. Certain areas in non-traditional security are considered relatively easy to reach the agreement for cooperation, as they do not threaten any sovereignty issues, as opposed to traditional security challenges. In relation to this, most successful forms of maritime cooperation among states in East Asia in the past two decades were mostly rooted from economic development. Economic and trade expansion in the region raised the need for expansion into the sea in order to maintain connectivity and acquire resources.

3. Prospects for A Comprehensive Maritime Cooperation

Robert Axelrod once asked: Under what conditions will cooperation emerge in a world of egoists without central authority¹¹? In his book “The Evolution of Cooperation” Axelrod argued that the evolution of cooperation requires that individuals have a sufficiently large chance to meet again so that they have a stake in their future interaction¹². Long-term interaction is important for the stability of cooperation¹³. The development cannot take place if it is tried only by scattered individuals who have no chance to interact with each other. One specific implication is that if an actor is unlikely to be around much longer because of an apparent weakness, then there is less stability for cooperation. Moreover, it is easier to maintain the norms of reciprocity in a stable small neighborhood¹⁴. Even though there are possibilities of defection by some actors, cooperation can still emerge, as long as they have even a small proportion of their interactions with each other¹⁵.

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. The national capacity to promote a stable and safe maritime domain is compulsory. The littoral states have the added responsibilities to ensure their maritime domains under the effective control are protected from various threats. Before any kind of regional cooperation could take place, such commitment from the countries involved is a prerequisite. Moreover, cooperation should be established not only with the goal to resolve territorial disputes per se – albeit it is a big goal. Rather, it should also intended to manage the repercussions of the disputes.

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

¹¹ Robert M. Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984), p. 3.

¹² *Ibid*, p.20.

¹³ *Ibid* p.60.

¹⁴ *Ibid*.

¹⁵ *Ibid*, pp.61-69.

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 form a new maritime security architecture. We should all welcome all these endeavors, 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.

The major achievement of ASEAN to date in terms of maritime security and cooperation has been to forge a common understanding among its members on various issues and aspects of maritime security¹⁶. Indeed, maritime security issues, in particular the South China Sea, are likely to continue to be a major topic of discussion at the various ASEAN summits in the coming years. Specifically on the South China Sea, the conclusion of the Code of Conduct is crucial.

Nonetheless, there is still great obstacle in finding the right format for such exchanges of views. It seems that none of the endeavors that have been made thus far has proven fruitful. Indeed, the current maritime cooperation in East Asia are confined to only dialogues and information-sharing, which are all the while important, but are still far from the establishment of a cooperative institution.

I would like to suggest that the East Asia Summit (EAS) has the potential to be the right forum for the next real talks on South China Sea. As mentioned above, EAS is rightly mandated to consider region-wide strategic issues. So far, EAS promotes maritime cooperation in suppressing sea piracy, conducting search and rescue, protecting marine environment, maritime security, maritime connectivity, freedom of navigation and other areas¹⁷.

When EAS was established by ASEAN in 2005, the ASEAN members were keen to further institutionalise great power relations within a multilateral cooperative structure. This was expected to secure the commitment of the great powers to the promotion of regional peace and security. Instead of adding more groupings in the region, EAS was justified as a process of streamlining the ASEAN+ meetings¹⁸.

We have to admit that, unfortunately, this framework is stopped short of making

¹⁶ Nguyen Hung Son, "ASEAN-Japan Strategic Partnership in Southeast Asia: Maritime Security and Cooperation," in Rizal Sukma and Yoshihide Soeya, eds., *Beyond 2015: ASEAN-Japan Strategic Partnership for Democracy, Peace, and Prosperity in Southeast Asia* (Tokyo: JCIE, 2013).

¹⁷ Chairman Statement of the 7th East Asia Summit (2012).

¹⁸ Ralf Emmers, Joseph Chinyong Liow, and See Seng Tan, "The East Asia Summit and the Regional Security Architecture," Maryland Series in Contemporary Asian Studies No. 3 (2010).

tangible outcomes. One notable example is how the South China Sea dispute was missing the Chair's statement of the 2014 summit. Therefore, there needs to be a new design for the EAS in order to revamp the framework. This includes finding the mechanisms, the language, and the platform to reduce the tension, and building concrete, practical measures.

Cooperation builds confidence and mutual understanding, which in turn helps to prevent incidents spiraling out of control because of miscalculations or misunderstandings on the ground. Nonetheless, EAS should be viewed not only as a confidence building enterprise, but also a potential venue for substantive cooperation¹⁹. In this regard, EAS will need to transcend to a regional mechanism armed with a thematic and problem-oriented agenda. Countries in the region must continue to build on these concrete, practical measures for de-escalating tensions, as we work towards long-term solutions for peaceful dispute resolution.

¹⁹ *Ibid.*

China's Strategy and Expansionism into the South China Sea: The Possibility for Regional Maritime Security Architecture

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1. Introduction

Malaysia is the Chair of ASEAN in 2015. The expectations are high indeed on Kuala Lumpur to deliver something. Even the US Assistant Secretary of State for East Asian and Pacific Affairs, Daniel Russel visiting Kuala Lumpur on 23-25 January 2015 had expressed interest and hope in seeing Malaysia being able to conclude the long-delayed maritime Code of Conduct (CoC) in the South China Sea. This clearly indicates that the US too is looking at ASEAN for being able to do something about the South China Sea' especially in toning down China's rise as a military power. The US is clearly on the decline as a Pacific power. Its rebalancing or pivot is not working in deterring China to adhere to best practice in the maritime zone which once was dominated by the US Pacific Fleet during the Cold War. A significant power shift is taking place. Major Powers like the US, Australia, India, Japan and ASEAN are caught in a strategic scenario of not having the best solution in the maritime zone of the South China Sea and the East China Sea. China has its own strategy which the others have no answer.

ASEAN too is caught by surprise with the intensity of China's military and coast guard activities in the South China Sea since 2012. The expansion was taking place in 1974, 1988, 1995 and finally 2012 at the Scarborough Shoal and surveillance in 2013-2014 up to James Shoal, an area that is very far from mainland China. Land reclamation and military fortification of China have been rapidly growing. The Senkaku (Diayotai) dispute too had sent Japan-China relations to the worse in the last two years. Japan too is looking at ASEAN. A clear strategy to deal with China is not emerging. The US pivot is not effective at the moment. This paper will look at the strategic dilemma facing ASEAN and others in the maritime zone caused by China's military rise and expansionism in the South China Sea in recent years. It will also discuss on ASEAN's limitations in establishing a Regional Maritime Security Architecture. Finally, it will touch very briefly on a few Strategic Options on maritime security cooperation or possible architecture in this regard.

2. Strategic Dilemma in Dealing with China: ASEAN's Dilemma for a Strategy.

Examining China's strategy and expansionism into the South China Sea, and evaluating ASEAN's approach to managing such a gigantic threat to its maritime security is critical and timely. Given the kind of brinkmanship game which has been all the way one

¹ This paper is the author's own opinion, not of the governments or agencies associated with author.

sided in recent years, especially so with the expansion of China's naval capability, it is unlikely the trend of the PRC threat in the South China Sea can be reversed. This seems to be similar in the case of the China's dispute over the overlapping maritime zones in the East China Sea with Japan and South Korea. Pessimism is slowly creeping in, when comes to dealing with China's military and foreign policy assertiveness. China-Japan relations too have not been normalized after the Japanese government initiative to officially take over Senkaku.

The worsening of relationship with Vietnam and the Philippines too became conspicuous between 2012 and 2015. Malaysia's maritime zone is also not that calm where the monitoring of the PRC's vessel movement is vital. Only Malaysia's top leadership has some good things to say about China given the kind of billion dollar long term economic projects and investment activities already been growing positively. Visa waiver for China tourist is upcoming since the Thai and Indonesian counterpart had done so. Cambodia, Laos and Myanmar too are states that can succumb to China's economic diplomacy. This has been the case for South Asia where all key states surrounding India are now a part of the PRC's "string of pearls" lake because of the economic rise of China and checkbook diplomacy. With the end of the Cold War, it appears, only China is the most successful great power which combines effectively both its economic power with growing military strength. The PRC's military activities abroad are also growing in Africa and eventually into Latin America. This challenges more the US preeminence as a global power. Unilateralism is already being dealt with a blow.

ASEAN's regional security approaches and architectures are now baffled when comes to solutions to this growing challenge of both foreign policy and the military assertiveness of China. The ASEAN Regional Forum, ASEAN-China Dialogue, ASEAN Defence Ministerial Meeting (ADMM Plus), ASEAN Maritime Forum, Asia Pacific Economic Cooperation and the East Asian Summit (EAS) have all no answers to the problem. The United States pivot and rebalancing too is not working to contain China. Washington officially acknowledges the fact the all her treaties with the Asian states does not cover on sovereignty dispute in the overlapping disputed waters. This gives the PRC an additional impetus. Nothing can the US do about China's military muscle in maritime zone in East Asia. The Americans have gone bankrupt on ideas of strategy and have no choice but to invite PLAN (Peoples' Liberation Navy) to participate in CBM activities. This is an act of 21st century face saving dilemma faced by the US.

The only thing the PRC gives ASEAN is an opportunity for dialogue and diplomacy, where nothing move beyond that. Behind closed doors, ASEAN thinkers have lost for greater ideas, except to think about how to keep believing in the so called ASEAN way and also continuously engage the US, Japan, Australia and if possible even India. The situation on the ground has worsened since the end of the Cold War. Within the last two decades, China has had a clear strategy of expansion in strategic points of maritime sea lanes and SLOCs, with additional occupation of islets, aggression, construction, military fortification, landing facilities, "anti-access and area denial" strategy applied on other claimants in the maritime waters.

Its assertive foreign and defence policy after the Beijing Olympic in 2008 is obvious. The Communist Party has discussed sufficiently on the kind of policy to be adopted in East Asia on how to deal with its neighbours and to challenge the sole Superpower. After a massive success and victory in hosting the Olympic, which gave the administration in Beijing a kind of pride which was never before, both the intelligentsia and officials in China agreed that assertiveness is the way forward to overturn the period of so called 'humiliation' in China's history at one time caused by the rise of the Western world. It is so obvious that China is rewriting history with more vigilance and a carefully chosen craft. The 'winning without doing battle' as the way of the Sun Tze's Art of War is in action. Anti-Access and Area Denial (A2/AD) will be vital in China's maritime strategy. If its economy continue to grow, another aircraft carrier will be in the pipeline. The submarine force and other surface combatants are already doing its part in checking all the players in the maritime zone. The air force is more ready for extended duties to cover the maritime zone with a sizeable number of aircraft to implement ADIZ.

China's active use of the media to publicize her recent activities in the maritime zone is conspicuous. Besides that, the dangling of the economic assistance as carrot can be also very tempting in recent years. It was so obvious in which a joint communique was not issued at the ASEAN Ministerial Meeting in Phnom Penh in 2012 when the Scarborough Shoal issue was at the height of the problem between the Philippines and China. It indicated that China's promise of billion dollar investments in Cambodia had influenced the Chair from issuing statement which was deemed offensive, by the Hun Sen regime. A similar trend may emerge as China continues to lure ASEAN in its 'maritime silk route' idea that can be tempting. Already some in ASEAN have mellowed on criticizing the PRC in the South China Sea. This will make the US rebalancing or pivot toothless. The US-China Strategic Dialogue is another platform which only weakens the US. The US too is caught in a game of pacifying China by inviting PLAN (Peoples' Liberation Navy) for maritime exercise. Gone are the days when the PRC can be challenged or checked. China is also good at dividing ASEAN on certain issues, especially on the South China Sea, by stating it prefers a bilateral approach. China sometime prefers ASEAN not united on the maritime disputes and put more pressure. The dilemma for an effective strategy to contain China is not working at the moment. ASEAN is lost for an idea and still keeping hope that the 'ASEAN way' diplomacy would work.

3. China's Strategy in the South China Sea: A Continuous Expansionism and Show of Force

It is indeed crucial to explain and expose the PRC's defence, military and foreign policy strategy in sustaining its interest and expansion for decades now in the South China Sea. The challenge for the ASEAN states comes from all front. The following could elaborate on China's long term strategy and explain the tactics.

- (1) Publication of maps and printed documents and the new international passport which includes the vast maritime zone.

Researchers, scholars, policy officials and media have often discussed about the nine dash-line map which is being used by China and appears in the international media. There is

a concern over the distribution of maps including the nine dash-line among diplomats. The use of such map is confusing because it conveys the message the entire South China Sea is an internal lake. In fact, there is a view in China that the map was an eleven dash-line map which was published in 1947. Some argues, from dot-line, the map has become dash-line. What irks many is that the PRC has published such map in its new international passport which publicized that entire South China Sea as its new sovereign territory. Besides that, the PRC's Information Office of the State Council had also published pamphlet stating Diaoyu Dao (Senkaku) as its inherent territory.

ASEAN has not challenged this in the United Nations. The Philippines is only ASEAN country which brought a case on China at UN ITLOS challenging Beijing to clarify its international maritime boundaries after China took over the Scarborough shoal by 2012 effectively and started fortifying its position. However that is rejected by China. It rejects arbitration as a method of resolving the conflict in the South China Sea. ASEAN did use the numerous meetings with China to question and protest on such issue because of the fear that agreements with China in many other gatherings or forum will be stalled, especially on economic matters and regionalism. China is a member in ARF, APEC, EAS and ADMM Plus and several other platforms where ASEAN relies on China's diplomatic and foreign policy support favoring the developing states.

(2) Invasion, Effective Administration and Military Installations to Boost Legality and Sovereignty, 1974-2014.

Since the 1974 seizure of the Paracels group of islands from Vietnam, the PRC's aggression in the South China Sea was carefully planned. At a time when the USSR was weak in Cam Ranh Bay and Danang, Chinese ship attacked Vietnam's occupation of the Johnson Reef in 1988. The massive killing of the Vietnamese and sinking of its ships at that time were not challenged by Vietnam or the USSR. Since then, China strengthened its position at that atoll. Today, Johnson Reef is fortified by a massive land reclamation work with concrete installations and possibly an air strip is currently under construction as publicized widely in the international media. The tussle with the Philippines over the Scarborough Shoal in 2012 also eventually led to a full control of China over the area including on fishing rules and the chasing of the Filipino fisherman. Concrete blocks were also thrown into this area as markers. In 1995, it was widely publicized that China was already in the Philippines doorstep by occupying and constructing octagonal structures and the stationing of gun boats. The structure has grown much bigger now with a construction building. It has become the PRC's important military naval base to control and supervise the Philippines' activities in the Kalayaan (Spratlys) group. The Mischief own by China now, was reported to have a helicopter pad, gun turrets, sophisticated communications and electronic equipment. Mischief Reef is 1600km away from the mainland PRC. Military and non-military measures to block other claimants from fortifying their position is also underway. In 2014, China has attempted to block supply ships from giving support to the Philippines own atoll.

Effective administration is further enhanced by the construction of hotel and school in the Paracels. This is to improve its legal standing on effective administration in line with UNCLOS given the past cases of territorial maritime disputes referred at the International

Court of Justice stressed on effective administration as pertinent. China has announced to the world it has established an administrative capital for the South China Sea. These are often explain as Sasha City and Nasha City administration. In addition, the capability of ocean surveillance and administrative staff capabilities have gone up to 10,000 personnel. All together it is argued that the PRC has some 17 agencies work closely in monitoring the maritime affairs. Measures are being taken on coordination of the various maritime agencies. Rule and regulations to fishery are publicized in the media. Similarly, it has been blocking any potential oil exploratory works of the other disputants. In 2014, it stationed an oil rig in Vietnam's water where it resulted in diplomatic row. Chinese ships have spotted in the Philippines' oil exploration areas. Relationship with Vietnam and the Philippines is low because of the massive challenged posed by China.

The PRC's coastguard ship's surveillance activities and naval exercise into the Malaysian waters is also a problem as pointed out in the media. But the Royal Malaysian Navy has officially denied any such intrusion as published in the media. This is understandable as Malaysia prefer to be more precise when it issues statement. Malaysia still believes in ASEAN diplomacy with a hope of sustaining a strong bilateral relations that can help better to pacify China. So far, China has been reciprocating the goodwill of Malaysia. Peace between the two continues to exist because of the relationship is being nurtured by the leadership and bilateral relations keeps growing from strength to strength. Thailand, Indonesia and Singapore too in recent years working on improving bilateral ties with China for long term economic reasons. China is also popularly known for dangling the economic carrots by via speeches of President Xi Jinping specifying on themes of establishing a 'maritime silk route' in South China Sea zone. Almost a similar strategy to that of 'string of pearls' in South Asia for future access and long term control of Southeast Asia so that the US presence will be controlled effectively.

(3) Show of Force, Enhanced Surveillance and Power Projection into the South China Sea and East China Sea and the introduction of Aerial Defence Identification Zone (ADIZ).

PLAN's activities of show of force in recent years has increased. Not only the numbers of visits and intrusion by the ship from the coast guard, fishery authority and survey vessels have been spotted more often by the ASEAN littoral states, number of fishing boats intrusion into the EEZ of ASEAN countries are a common phenomenon.

The military dimension of the show of force is also heavily publicized by the Chinese and international media. For example, since the Scarborough Shoal tussle in 2012 with the Philippines, its aircraft carrier, Liaoning has successfully completed its training expedition in the South China Sea between December 2013 and January, 2014, escorted by both the surface and sub-surface combatants, clearly indicating there is more to come. China also publicized its massive nuclear submarine capabilities which can challenge the US and other great power. Regular patrol of the South China Sea and the East China Sea is now a normal part of its military strategy focusing on Anti-Access and Area Denial. Prior to the Liaoning's training expedition, another flotilla of ship visited up to James Shoal 80km of the Sarawak, Malaysia's coast. China has been known for dropping steel or concrete markers in submerged reefs or outcrop in the South China Sea. This has been done for years. PLAN's military threat and

patrolling will be on increase. The Chinese coast guard ships have become a regular feature in the ASEAN's EEZ waters. Since 2011, military or naval visits to ASEAN ports have increase to display China's state of art vessels. Military fortifications have grown because of the strengthening of the naval base in Woody islands and the Paracels.

China's overall military power is constantly expanding given its double digit defence budget between the 1990s till 2014. All elements such as the air power, space, cyber, naval, and army have grown significantly. This has created a scenario in which other great powers can't check the PRC's military strength in South China Sea. The US-Japan and the Philippines-US Defence Treaty could not cover too ward off China military presence and fortifications in the South China Sea. Since November, 2013, China announced an area for Aerial Defence Identification Zone (ADIZ). This has forced most civilian and commercial airlines to submit to China's rule. Even the American and western airline are obeying the rules. There is a concern now that this type of rule can come into effect in the South China Sea zone in future. Even though the US, Japan and South Korea's military aircraft tested China's patience by sending jet fighters, the PRC's air force is now moving freely in the ADIZ to show that they also mean business.

4. Weaknesses in the ASEAN Way and the Existing Regional Security Architecture.

With the end of the Cold War, the concern over that regional conflict could flare-up prompted ASEAN to take a look at maritime security conflict and the possibilities for security cooperation. ASEAN started to officially discuss on the security challenges in the South China Sea in 1992 at the ASEAN Ministerial Meeting (AMM) in Manila. It issued a joint communique at that time with the hope of sending a strong message to China and others to adopt a peaceful approach in the South China Sea. Vietnam was not a member in 1992 as it joined ASEAN only in 1995. Laos and Myanmar joined as member in 1997 and Cambodia in 1999. Prior to that, Indonesia played a role in encouraging participants to the Bandung Workshop on South China Sea in 1991. There was a hope that the Bandung workshop will result in a series of ASEAN Informal Meeting on the South China Sea. But it did not take off. Indonesia too was frustrated with China after witnessing expansionism with the 1995 Mischief Reef occupation. There was a meeting held in China after the 1995 incident, which also failed as China only hosted a meeting to clarify her own position of sovereignty as indisputable and did not give an inch in the negotiation to ASEAN.

For example, many in ASEAN, including the Indonesian officials who wanted to be an honest broker were also frustrated with China's attitude to extend unilaterally her maritime zone in the South China Sea, which also affected Indonesia's Natuna island. By 1996, Jakarta too realized it was vital to strengthen its military presence and exercise at the Natuna waters in the South China Sea. The Suharto regime signed an official defence cooperation with Australia during this period. This was a surprise given Jakarta's non-alignment (NAM) status. Malaysia and Singapore too have their own Five Power Defence Arrangement (FPDA) with Australia, New Zealand and United Kingdom which was established since 1970. In fact, Japan has shown interest in the FPDA (in 2014), which has its own military exercise, training and dialogue process.

The dialogue on the South China Sea did not progress as expected till 2002. ASEAN did put in efforts to discuss on the potential security challenge, published joint communiques on the security concerns, and succeeded in signing the Declaration on the Conduct of the Parties in the South China Sea (DOC) in 2002. But the DOC of the year 2002, did not stop the parties involved in fortifying their position in the Spratlys. All disputants have upgraded their position with activities and claims.

Generally, ASEAN is lost for a coherent approach. It has been successful to cooperate between the ASEAN states in the maritime zone but could not get China on the board the way the claimants expected. ASEAN has no clear strategy in dealing China's military rise, expansionism and assertiveness in the South China Sea, except to move from DoC to negotiate a CoC. China too is good at keeping ASEAN divided on this issue. However, further efforts to pursue the Code of Conduct (CoC) for the South China Sea has failed. The only option they have secured thus far from China is the willingness to discuss or dialogue on the Code of Code. But China has explained that not to expect much to happen in the near future. This will affect Malaysia's role as Chair of ASEAN. Already, Cambodia, Brunei and Myanmar had failed in securing the CoC signing ceremony.

Looking at the actual reality on China's demand and strategy, the CoC will not become an agreed document due to PRC's reasons of history, geography, geopolitics and strategy. If at all that the CoC on the South China Sea could materialize in the coming years, it will be a watered down 'face saving' document that can please some ASEAN members without any legal bite. China is not a player that will move an inch on sovereignty over the South China Sea. It prefers, a strategy of keeping every other claimant's possession disputable so that it has an upper hand into their maritime EEZ zones. This is an obvious strategy, while China does everything possible to constantly upgrade her presence, occupation, surveillance and sustain a consistent pressure so that other claimants will not fortify further on their position.

While the above strategy is maintained, the PRC will ensure the claimants are treated differently so that a united front will not take shape within ASEAN in challenging China. However dialogue process are encouraged to buy more time, explain its position and to ensure more gains are made from the ASEAN regionalism that can be reaped on the economic front. China often stated openly that it prefers a bilateral solutions so that it can have an advantage in keeping ASEAN divided and weak on issues of overlapping claims. The use of carrot and stick is selective, and applied selectively depending on the type of relationship the PRC has with the respective ASEAN states.

ASEAN too has its own inherent weaknesses. Individual ASEAN states adopt a different degree of diplomacy and approach in dealing with the China. Malaysia, for example, is always in the forefront in luring the PRC since historically it had to face the communist threat from China, which supported the Communist Party of Malaya. In 1974, Prime Minister Abdul Razak was the first in ASEAN started the official relationship with Peking. This was later enhanced by Prime Minister Dr Mahathir with the end of the Cold War. Razak's son

Datuk Seri Najib is now the strongest leader in ASEAN in luring China economically and celebrating on the bilateral relations each time, to an extent China leaders openly state that Malaysia-China relations is a special relationship. This is a win-win diplomacy for Malaysia. However, the Philippines, Vietnam, Malaysia and Brunei have differing policy and approaches to a certain degree. One can be loud and the other can be silent. One look towards the US and international law and the other is careful in not trusting the Americans fully in this type of regional problem. One condemns the PRC and the other praise and capitalize on China. One is ready to severe relations whereas the other is thinking long term. These dynamics and dilemma will continue.

It appears that ASEAN too has its own dilemma in creating a Security Architecture on South China Sea. It has broadened so much on security where the ARF (ASEAN Regional Forum), ADMM Plus (ASEAN Defence Ministers Meeting) set up, ASEAN Forum on Maritime Affairs and the East Asia Summit have not specifically focused on the South China Sea. The old way of confidence and security building measures are encouraged but have little effect on the Spratlys, Paracels and the Scarborough Shoal disputes. So far ASEAN is hoping that the ASEAN-China dialogue on the Code of Conduct for the South China Sea will be a solution. While this may bring some minor results for sustaining temporary peace, it is unlikely to stop China's expansionism in the South China Sea.

5. Strategic Options for Regional Maritime Architecture and Their Limits.

The suggestion in Tokyo in IIPS meeting on Asian Maritime Organisation for Regional Security in January 2015 is indeed positive. But it must be geared towards an agreeable path either through the ARF process or EAS mechanism. This can help to make ASEAN to become more efficient so that it can move forward while waiting for a Code of Conduct (CoC) to be fully initiated and agreed. It is also important to understand that the challenge for China is not just the ASEAN claimants. The other players like the US and its alliance system in the region can also affect the PRC's military and non-military power projection in the maritime zone. Some has highlighted to start a separate discussion on **areas of possible cooperation** in the South China Sea via **an informal dialogue**. This is not taking off because of the conflicting positions, activities on the ground and growing tension in the maritime zones. There are efforts underway to alter the status quo.

Multilateralism, international law and joint development are important options if the ARF and East Asia platform can be used effectively. It is important to remind China that it is a signatory of the **Treaty of Amity and Cooperation (TAC)** with ASEAN. China is also into the **ACFTA** (ASEAN-China Free Trade Zone). ASEAN and other major powers can enhance these two forum to inculcate confidence and security building measures (CSBM) and to constantly remind on China to reduce military and non-military coast guard activities, which are increasingly provocative. It is important to remind China on the **use of International Law** and go towards **arbitration and joint development**. China's strategy to come up with the idea of maritime silk route for economic cooperation must be used to inform China that her expansionist activities are not the right approach in securing a long term cooperation. Multilateral diplomacy must be fully utilized by all players including ASEAN in enticing

China.

Multilateral diplomacy at the military level must also **engage the military via the ADMM Plus activities** on numerous cooperation initiative. It is important to reduce tension via security cooperation on HDAR (Human and Disaster Relief Cooperation) and Search and Rescue operation type of cooperation, which was witnessed from the MH370 incident. This can help interaction and friendship between navies and other enforcement agencies of regional countries.

A **Code of Conduct** on the maritime zone must be agreed and signed to avoid regular encroachment and shootings in the disputed waters. A **New Military Pact** in the maritime waters involving the US, Japan, Australia, India and ASEAN specific to maritime surveillance and exercise and possible response must be design to curb China. Since the US rebalancing or pivot is not working well, it is timely to sign a new military pact against China. This will definitely upset China and Russia. But there is no other option stronger than this **military pact** to send the message to China. But ASEAN has its limits because it will not want to be parties to any military pact as it prefers not to be seen as a military alliance.

In the past, a few others have contributed to **the idea of joint development**, but it has not gone well with China because of her nine dash-line that is too vast and legally not respected. Some even spoke about the Antarctica model and making the South China Sea **a common heritage for cooperation**. But this has not been looked at by conflicting states as possibilities. A strategy of **rule base** game must be inculcated in the South China Sea. China must be reminded to play by the rules of the UNCLOS, ICJ, ITLOS and etc and not to constantly use its power projection strength to deny the smaller players in their EEZ rights by using a self-created old map and constantly sending ships of all type to enforce or do surveillance.

6. Conclusion

The demand for oil and the possibilities of vast energy resources have made the issue of the dispute in the South China Sea difficult for China to listen to ASEAN, or others when comes to signing a Code of Conduct. Fishery resource is another strategic resource. The location is also militarily so vital for China's power projection against the US and its allies. China is already very active in reclamation and fortifications of the reef and islands occupied thus far. ASEAN too see it in this manner when comes to its own national interest. The maritime issues in the South China Sea is actually larger than just sovereignty dispute. It is also about the clash of national interest of the various claimants. For the PRC, its history, geography, geopolitics and strategy are all intertwined. It does not want another humiliation in the contemporary era. So long as the waters are calmer, prosperity is assured for long term. Otherwise, another Cold War is obviously in the pipeline. ASEAN is only 'an association of nation states' with their own national interest along with some regional themes. The ADMM and ADMM plus are only for CBMs and can't stop states from using their own strategy. ASEAN is not unified as the EU (European Union) and therefore, not much can be expected of it immediately. Time will tell more. Ultimately, this is a global issue. It requires a greater

pressure for creating a regional security architecture in the South China Sea. ASEAN diplomacy has its limits. The decline of the US is also giving impetus to China to stand stronger to fulfil the power vacuum. A new Asian Maritime Security Architecture must be structured before it is too late for smaller countries to have much say on the issue. Peace in East Asia and the Pacific is very much hinge on a New Regional Maritime Security Architecture. Being exclusive too has its own pitfall. Somewhere, the balance must be structured for all parties. Constant attempts to maritime security architecture can eventually bring a breakthrough. China too is fully aware that it needs friends to survive than, surrounded by more opposing states.

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The Situation on South China Sea in 2014: A view from Vietnam¹

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1. Attributes of the situation on South China Sea in 2014

The situation on the ground in South China Sea in 2014 once gain intensified with events escalating tensions to the highest level within the past 20 years. The situation can be viewed from three vantage points: (i) the status quo on South China Sea continued to be altered; (ii) new measures in the legal front continued to arise; (iii) and thereby, spurring new developments on the political-diplomatic front.

(1) On the ground, the HD-981 oil rig crisis escalated tensions between Vietnam and China over South China Sea to the highest level since 1988 when China used force to occupy the John South reef and some other reefs, almost triggering a military confrontation between the two countries. This was the first time that China unilaterally and brazenly deployed a modern deep-water oil rig into Vietnam's exclusive economic zone (EEZ) in disregard of international law, especially UNCLOS 1982. At the same time, China sent a large contingency, at times reaching 130 vessels of various types, including modern military ships and aircrafts, and showed signs of a large-scale military exercise with the joint participation of numerous armed forces. On the other hand, China also mobilized its military ground forces combined with tension-inducing maneuvers on land, banned tourism and trade activities, etc., fomenting a situation of crisis in the bilateral relation that has not been seen since the 1979 Vietnam – China border war.

In the Spratlys, China urgently carried out its artificial reclamation work on a large scale, increasing the total reclaimed area by eleven-fold. There have been signs indicating that China would install a 3,000 meter-long air-strip, enough for medium-sized military aircrafts to take off and land. China's continued tactic of "isolating" the Second Thomas Shoal (occupied by the Philippines), forcing the latter to, for the second time, have to airlift supplies to garrisoned troops on the shoal, is a new escalating step in China's "salami-slicing" tactic in South China Sea.

Taiwan also made efforts to consolidate Itu Aba (or Taiping) island, constructed new bridges and ports, reinforced runways and installed heavy artilleries on the island. In 2014, military activities in South China Sea have been carried out on a larger scale and more upfront in challenging international law. When the Liaoning aircraft carrier held military drills in South China Sea, China issued a ban for all ships within the vicinity and came close

¹ The view point in this paper is belonging to the author, and does not necessarily reflect the official position of the government of Vietnam.

to clashing with the USS Cowpens, which was operating in the nearby water. The number of exercises with live ammunitions from China and Taiwan has increased significantly. Oil and gas exploration and exploitation works in South China Sea's deep-water zones took place with higher frequency and much deeper into the south.

In 2014, China enacted various policies and regulations aiming at realizing its sovereignty claims in South China Sea. One typical example is that in early 2014, China's Hainan province issued a fishing law in South China Sea, allowing the Chinese authority to stop and check any fishing ships they can catch with the Chinese media explaining that the law will be applied in an area of 2 million square kilometers in South China Sea. China continued to "threaten" to establish an Air Defense Identification Zone (ADIZ) in South China Sea, which may cause concerns around the region. According to some sources, China may have already put in place an ADIZ in South China Sea but has yet to come forth publicly to avoid international criticism. In the Paracels, China kept building government office building, schools, organizing tours between Hainan and Paracels and reinforcing the plane strip on the Woody Island.

In 2014, regional cooperation activities became unprecedented in size in South China Sea, especially coordinated efforts to search for Malaysia's MH370 and Indonesia's AirAsia passenger aircrafts. Air and naval forces from many countries in the region such as Vietnam, Malaysia, China, Singapore, the U.S., Australia, Thailand, Indonesia, Russia, etc., coordinated with one another to engage in search and rescue in a fairly effective fashion.

(2) On the political-diplomatic front, South China Sea was and continued to be a prominent issue. At the beginning of the year, ASEAN foreign ministers' closed meeting "broke off" the rule by issuing a press release expressing concerns over the situation on South China Sea after Hainan enacted its fishing law. In May 2014, on the sidelines of ASEAN summit, ASEAN's foreign ministers released a separate statement on South China Sea, expressing deep concerns over the HD-981 oil rig incident. This was the first time that all ten ASEAN members issued a separate statement on South China Sea (in 1995, six ASEAN members released a statement after the Mischief Reef incident); and was the first time that ASEAN presented a unified and strong position concerning the Paracels, reflecting an important progress in the Association's common thinking and position with regard to the issue of South China Sea. South China Sea was also a dominant topic in regional forums with wide-ranging participation such as the EAS, ARF, ADMM+, APEC, Boao forum, ASEM, the Francophonie Summit, etc. In 2014, numerous suggestions and initiatives aimed at increasing cooperation on South China Sea issue were made, such as the Philippines' three-step initiative, the U.S.'s "freeze" proposal, implementing Article V of the DOC and a host of cooperative initiatives from China such as the "21st Century Maritime Silk Road" and the "dual track approach" regarding the South China Sea issue.

It is important to note that China and ASEAN agreed to speeding up COC talks and conducting "early harvest" measures, but still yet produced any tangible outcomes so far. Moreover, the meeting mechanism for the four ASEAN countries with claims in South China Sea (ASEAN-4) continued to be working effectively. Three meetings were held at ministerial

level and efforts were made to further consolidate the mechanism at the SOM-ASEAN level. Indonesia emerged as a new factor in South China Sea after declaring the “maritime pivot” doctrine with Indonesia at the center, attaching the maritime security issue to an area that stretches from the Indian Ocean to the Pacific Ocean.

(3) On the legal front, the end of 2014 witnessed many new and interesting developments, especially regarding the Philippines’ lawsuit. Vietnam released a statement affirming that the court has jurisdiction over the case. Nearly at the same time, China declared that it would not participate in the arbitration case but did not ignore the court and international public opinion. The country still participated in de facto “hearings” through a position paper rejecting the court’s jurisdiction. Various circles in China continued to maintain China’s “legal rights” to reclaim rocks and low tide entities in the Spratlys and showed their intention of claiming waters surrounding the artificial island after completion. China expressed its view that international law cannot judge the nine-dash line because China has yet to make clear what the nine-dash line claim is. Meanwhile, the U.S. published the “Limits in the Seas” report in early December 2014, in which it clearly pointed out that the nine-dash line lacked legal foundations and was inconsistent, marking it be the first time that a foreign government objected to the nine dash line in a detailed manner with convincing legal scrutiny. From another viewpoint, Indonesia and the Philippines completed demarcation works for overlapping waters claimed on the basis of UNCLOS 1982. This is a very good referring point for any future solutions among claimants in South China Sea.

At the various forums of the United Nations, on the HD-981 incident, both Vietnam and China issued position papers. What could be visibly seen is that with these declarations (along with internationally published articles by Chinese diplomats), it is China who officially internationalize the issue of South China Sea and China seems to have accepted the internationalization of disputes in South China Sea at all levels, from regional to international levels.

2. Policy assessments of concerned parties on South China Sea in 2014

(1) **China:** In 2014, with regards to South China Sea, China’s policy was “firm in changing the ground status quo, soft but resolute in diplomacy, employing many mega-initiatives to progress towards the establishment of a new order at sea”.

+ *On the ground*, China increased its military, paramilitary and civilian presence, widened the range of activities, was prepared to implement new tactics on a larger scale and higher level of complexity, undaunted by “confrontation” with the U.S., raised the frequency of direct “challenges” to the U.S.², tested India in the Indian Ocean³. China was more confident and willing to internationally cooperate, for the first time joining the RIMPAC exercises hosted by the U.S. and participated in joint drills with Russia in the Black Sea; collaborated with the U.S. in science projects (the Joides Exploration ship). Notably, China reached an

² The incidents of the P8 aircraft and the Cowpens are clear examples.

³ For the first time, China docked a strategic nuclear submarine at Sri Lanka’s Colombo port and bringing the HD-981 to the Indian Ocean.

agreement with the U.S. regarding “military-to-military confidence-building mechanisms” on the sidelines of APEC, including the building of rules to avert confrontation at sea.

+ *On the diplomatic front*, via bilateral and multilateral channels, on the one hand, China continued to display a staunch position, more proactive in using multilateral forums, official and unofficial, to safeguard its position and distort public opinion. China no longer “avoided” South China Sea issue and proactively mentioned it at Boao forum in Hainan province; was prepared to “verbally clash” in ASEAN and APEC-based forums; proactively took part in “information wars” by organizing various track 1.5 and track 2 fora to discuss issues related to maritime security and South China Sea. On the other hand, China proactively put forth numerous maritime cooperation initiatives, most notably the “21st Century Maritime Silk Road”, considered 2015 to be the year for maritime cooperation between ASEAN and China, established the Silk Road Fund worth 40 billion USD.

(2) **The U.S.:** In 2014, the U.S. largely looked to “maintain presence on the ground, increase diplomatic and legal pressure” vis-à-vis China.

+ *On the ground*, the U.S.’s policy has the following striking characteristics: (1) The U.S. maintained its presence but sought to minimize direct confrontations with China. In one aspect, the two countries regularly engaged in military diplomacy, including high-level exchanges. The two sides reached a short-term agreement to set up a code of conduct to minimize military collisions in the air and sea domains; (2) The U.S. still closely monitored Chinese activities on the ground via naval and air, especially in hot spots such as military exercise areas and during the oil rig incident, reclamation sites in the Spratlys and the Reed Bank; (3) step up assistance to some countries to increase their defense capacity – especially in raising their maritime domain awareness and maritime defense capability. (4) More manifest regarding the responsibility to protect allies⁴.

+ *On the political and diplomatic front*, the U.S. exhibited a firmer posture and had many, hitherto, strongest reaction regarding South China Sea⁵. The U.S. has persuaded the G7 to issue a Declaration on South China Sea. Both chambers of U.S. Congress ratified its own resolutions on South China Sea. The State Department’s report on the nine-dash line was the U.S.’s most public, straightforward and direct objection to the line’s legality.

+ In 2014, the U.S. laid special emphasis on using legal reasoning to exert pressure on China on South China Sea. All of the U.S.’s statements, actions and posture encouraged concerning parties to consider the legal dimensions in South China Sea disputes, especially the nine-dash line’s validity, and welcomed the use of legal means in settling disputes⁶.

⁴ The US reaffirmed its commitment to safeguard Japan in accordance with the mutual defense treaty and to help protect the Philippines as enshrined in the 1951 mutual defense treaty between the US and the Philippines.

⁵ Evan Meideros denounced the ADIZ in an interview with Kyodo News, Daniel Russel’s testimony before the Subcommittee on Asia and the Pacific – House Committee on Foreign Affairs. Particularly, during the HD981 incident, officials at the highest levels made public their views on South China Sea.

⁶ Daniel Russel: “maritime claims must derive from land features”; “Disputes must be resolved

(3) **ASEAN countries:** During Myanmar and Thailand's terms as ASEAN Chair and coordinator for ASEAN-China relations, respectively, ASEAN reached new and higher consensus on South China Sea, with some areas unprecedented in ASEAN, both in principle and concrete documents, in terms of the Association as a single entity and the views of majority of member countries. However, in dealing with specific issues, in situations of competition and cooperation with China, new unpredictable factors surfaced, especially Brunei and, to some extent, Laos and Cambodia.

For the first time, ASEAN as one single body and with all ten members issued a separate statement on South China Sea (in May 2014); had a statement related to the Paracels issue; held a Foreign Minister meeting that did not officially give a press release, which partially addressed the public's criticism that ASEAN was too dependent on official working agendas and could not respond in the absence of a meeting. 2014 was the first time that the mechanism of ASEAN-4 Foreign Ministers meeting was kept effectively. At Thailand's urging, ASEAN reached its internal consensus on the draft COC major components to propose to China. This was a new step towards reestablishing ASEAN's shared and detailed position after completing the June 2012 joint draft, especially after the Association's "collapse" in July 2012 during Cambodia's chairmanship. This was also a more improved document compared to the June 2012 draft in terms of position and legitimacy as it was formulated based on an agreement by China and ASEAN at the SOM level.

As individual country, a number of ASEAN countries signaled policy adjustments concerning South China Sea. Notably, the Philippines continued to vehemently denounce Chinese actions in South China Sea but also presented a softer diplomatic stance by attaching more attention to ASEAN, vividly shown in their three-point initiative in ASEAN and being more flexible before and after APEC. Militarily, the country signed a new defense pact with the U.S., which allows the latter to use its military bases in the Philippines's territory and received surveillance vessels from Japan and South Korea, announced a two billion USD defense budget until the year 2015.

Malaysia proceeded with its "quiet diplomacy," a policy heavily influenced by the fact that 2014 was the 60th anniversary of the establishment of bilateral relations with China as well as the MH370 incident and the country's role as 2015 ASEAN Chair. At the same time,

based on the legitimate claims by China and other countries in accordance with international law and norms"; Michael Fuchs: "International law, not power or an ambiguous sense of historical entitlement, should be the basis for making and enforcing maritime claims in the [South China Sea]". State Department spokesperson Jen Psaki: "The oil rig incident has highlighted the need for claimants to clarify their claims in accordance with international law to reach a shared understanding on appropriate behavior and activities in disputed areas." White House spokesperson Patrick Ventrell in a press briefing on May 22: "The United States supports the use of diplomatic and other peaceful means to manage and resolve disagreements, including the use of arbitration or other international legal mechanisms." When China circulated a vertical map with the ten-dash line, U.S. Ambassador to the Philippines Philip Goldberg said that "any use of the nine-dash line now becoming ten-dash-line based on historical argument that China is invoking to claim maritime rights is not based on land-based feature and will be inconsistent with the international laws."

Malaysia continued to set up naval bases in Bintulu and kept consultation and working closely with concerned parties and ASEAN in general.

Indonesia continued to convey the hope of serving as intermediary for reconciliation in South China Sea, but, due to the election, was not able to meaningfully play the role. Meanwhile, a different view regarding South China Sea surfaced within military and diplomatic circles. President J. Widodo laid special emphasis on maritime issues in his election campaign and, after assuming the presidency, proposed the “maritime pivot” doctrine, which aspires for Indonesia to become a maritime power. Notably, Indonesia’s new president’s decision to sink foreign ships that infringe into the country’s waters further showed a greater sense of decisiveness when it came to safeguarding sovereignty. Militarily, Indonesia is also expected to increase defense spending to 20 billion USD by 2019, which would account for at least 1.5% of GDP instead of the present rate of under 1%.

Although Thailand faced domestic political problems, it still managed to play an active and proactive role on South China Sea issue, but only primarily owing to the individual undertakings of Mr. Sihasak. Myanmar completed well its duties as ASEAN Chair, helping to maintain the Association’s principles and sided well with ASEAN despite internal and external pressures.

Notably, Brunei was more cautious and hesitant in 2014 in the common endeavors of claimants and ASEAN. Laos and Cambodia stuck to minimal positions, but “gave in” almost completely in the face of China’s economic charm offensives.

(iv) Taiwan continued to proactively take advantage of South China Sea issue to increase its diplomatic standing in the region and the world through measures on the ground and diplomatic initiatives. On the ground, Taiwan stepped up the construction of bridges and ports, reinforced runways, installed heavy artillery, deployed unmanned aircrafts to monitor the Itu Aba island, held drills with live ammunition and considered the possibility of putting missiles on Itu Aba. Taiwan also engaged in civilian activities, including bringing sixty students from six universities to the island. Diplomatically, Ma Ying-jeou continued to push forth initiatives in South China Sea, including bilateral cooperation in fishery work; called for negotiations to resolve the issue of overlapping ADIZ and establish a COC. Moreover, Taiwan also suggested the use of Itu Aba island for shared disaster relief and rescue operations in South China Sea. As Taiwan knew that the world paid special attention to its role in explaining the nine-dash line, Ma Ying-jeou talked about the line to attract public attention but in fact, made no further clarifications about it.

In sum, it can be assessed that the situation on the ground in South China Sea in 2014 worsened fairly rapidly with long-term strategic implications. Meanwhile, South China Sea issue’s political-diplomatic-legal landscape is considered quite favorable towards Vietnam. However, these political-diplomatic-legal “advantages” are quite fragile, short-term and has yet to substantially affect the situation on the ground. Regarding the general regional conjuncture, while South China Sea continues to attract public attention, the sense of “crisis” and “urgency” seems to have deflated (especially after China removed the HD981 oil rig). At

the same time, China's sea or island-related economic and trade cooperation initiatives will create new and graver challenges for Vietnam.

3. Causative factors

- *In the global domain*, 2014 witnessed great and deep changes in great power relations; the crisis in Ukraine and Crimea further delineated the East-West divide that had been gradually blurred in the post-Cold War period. Generally speaking, tension between Russia and the West placed greater burdens upon the U.S. and affected the country's "rebalancing strategy" to the Asia-Pacific region, and, at the same time, elevated China's position in the international arena. This conjuncture made China more confident and emboldened in the implementation of the country's "dream" of redrawing the regional order through mega-ideas and initiatives with special focus on economics, finance and trade, and concurrently, and in furthering encroachments on the ground in South China Sea. It can be said that on the ground, the military balance is slowly tilting towards China. This trend is very difficult to reverse and is the primary reason why China has been more confident and emboldened on the ground. The trend will continue to be the major catalyst for increased cooperation by the major external powers, with one another and with ASEAN, for a better security and stability in the region.

- *In the regional domain*, ASEAN made certain steps forward and showed a higher degree of consensus, partially owing to Myanmar's principled maneuvers, Thailand's responsible implementation of its duties as coordinating member, and the ASEAN countries. Furthermore, external factors also made important contributions, for instance, the U.S. and Japan's increased lobbying in ASEAN, which helped trigger shifts in ASEAN.

- *In the domestic domain*, the most notable and consequential factor was China's internal situation. Xi Jinping's rapid concentration of power, holding high the slogans of "Chinese dream" and "national rejuvenation", were the most important factors shaping China's increased firmness in territorial sovereignty disputes as well as encouragements and facilitating measures for the navy, law enforcement authorities and fishermen to expand sea-based activities. This, in the past times, has been the primary reason for China's extensive maritime activities and the absence of "forces" and voices of "restraint."

Domestic politics in the Philippines also heavily impacted President Aquino's policies. After the Scarborough incident in 2012, Aquino was strongly criticized and thus, had to adopt a policy of counter-measures and confrontation vis-à-vis China.

The presidential election in Indonesia prompted a number of circles in the country to be "tougher" in maritime issues, affecting the attitudes of other circles with regards to South China Sea issue.

Meanwhile, the political situation in Malaysia continued to progress in a complex manner in the aftermath of the 2013 elections, making Prime Minister Nazib even more cautious when he comes to relations with China.

4. Some forecasts for 2015

In 2015, the international, regional and domestic situations in many countries are expected to undergo new changes, directly and indirectly, affecting the situation on South China Sea. The most noteworthy aspects are as follows:

In the international domain: The trend of “conciliation” and de-escalation of tensions in U.S.-China relations may continue throughout the election year due to increasing interdependence, although pressure from the Republican-controlled House and Senate may be on the rise. This trend will cause the U.S.’s reactions to China’s actions on South China Sea, both on the diplomatic table and on the ground, to stay within a limit and to be moderated by the Administration so as to not reverse the trend. However, the nuances in U.S.-China relations will bear new unpredictable factors in the election year with the introduction of a new Defense Secretary and an increased need for cooperation in combating terrorism and radical organizations such as IS. For China, the fall in oil price may temporarily ease oil’s pressure but will not exert a substantial impact on its strategic objectives and methods in the maritime domain currently being implemented.

In the regional domain: The fact that China continues to step up its maritime power strategy, implementing the maritime silk road initiative, beginning to disburse the Silk Road fund worth 40 billion USD and carrying out the constituent parts of the “China-ASEAN Year of Maritime Cooperation” in 2015 will strongly impact the regional political-diplomatic environment. The Philippines’ lawsuit may witness major developments in 2015 and will be a foreseeable turning point. Indonesia’s bringing to substance and regionalization of the “maritime pivot” doctrine will affect Indonesia’s role and position in ASEAN in South China Sea issue. If Indonesia puts forth visions and principles that are in concert with ASEAN’s common position (UNCLOS, connectivity, etc.), it is highly likely that the country will serve as a positive factor in the promotion of ASEAN solidarity with regards to South China Sea issue. The next pair of Malaysia – Singapore (ASEAN Chair – coordinator in China-ASEAN relations) may create “some surprise” in 2015 because the two are representatives of claimant and non-claimant countries respectively, but also have great interests in South China Sea and in relations with China. Malaysia will infuse ASEAN into its principle of “quiet diplomacy.” It may use the existing level of confidence with China to create breakthroughs, given that it skillfully handles the situation and is able to take advantage of the trust and cooperation between ASEAN countries.

In the domestic domain, aside from the U.S. election, it is essential to continue to carefully monitor domestic elements in China, Xi Jinping’s ability to control internal conditions, especially in the dormant period after APEC and before the Boao forum and ASEAN Summits. Internal factors in the Philippines (Aquino’s policy adjustments the latter half of his term) and the Indonesian President and Thailand’s new government’s emerging foreign policy will all bear significant impacts on ASEAN in 2015.

In closing, for China, the “charm offensive” trend of 2014 will continue to stress the

“charm” aspect on the political-diplomatic front through the intensification of mega-initiatives, and the “offensive” aspect on the ground through the continued increase in capacity and determination to expand the scope of activity by “intervening factors” such as the navy, oil rigs, fishermen, all the while in the absence large major events that can serve as restraint over these forces. On the legal front, 2015 is expected to be a suspenseful year with the court’s ruling on the Philippines’ lawsuit nearing. COC consultation work will carry on throughout the year and may see some progress during Malaysia’s term; nevertheless major breakthroughs are unlikely.

The South China Sea and Maritime Security Efforts in Asia-Pacific: A Revisit

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The South China Sea contains one of the world's busiest international sea lanes and is home to a handful of the world's largest shipping ports. The fact that the South China Sea connects the Pacific and Indian Oceans further adds to the strategic weight in the calculus of big powers. Exactly for this matter, when the end of the Cold War brought about a fundamental restructuring of the global geopolitical environment in the 1990s, the South China Sea emerged to become a flashpoint of potential conflict in the Asia-Pacific region. Situation in the South China Sea was relatively tranquil during the first decade of the new millennium, following the successful conclusion of the Declaration on the Conduct of Parties in the South China Sea in 2002 as a result of several years of strenuous negotiation between China and the ASEAN. This trajectory of the South China Sea suddenly began to shift gear in 2009, after the Obama administration declared the high-profile "rebalance towards Asia". Tensions began to boil up again, are increasingly taking a more direct tit-for-tat way. This contentious region seems to be sliding into a dangerous trap of great power rivalry, a situation every involved party is worried about but either unwilling or unable to forestall.

This paper aims to give an appraisal of the latest development in the SCS since 2013, which is unfolded in three parts. It starts with a brief overview of the intimate policy interactions between the United States and its Asia allies in response to growing tensions in the region. The second part of this paper looks at the enhancing partnership between U.S. alliance system and Vietnam and the Russia-India-Vietnam triangle that is quickly developing over the course of the past few years. The third section focuses on China's policy in dealing with the geopolitical flux in South China Sea region.

1. Consolidation of the U.S.-led alliance system in the South China Sea region

The South China Sea region is witnessing an increasing consolidation of the US-alliance system and the strengthening of cooperation between the claimants and extra-regional non-claimants. In the period of 2013-2014, the U.S. continued its efforts to enhance the capability of its Asian ally—the Philippines in defending its position. In response to Chinese naval patrols in the vicinity of the Second Thomas Shoal, a feature occupied by the Philippines in 1999 during the DOC negotiation between China and ASEAN, the U.S. sent P-3C Orion aircraft to flying reconnaissance over the shoal to assist Manila's maritime domain awareness¹. The U.S. also promised to provide the Philippines with \$40 million to strengthen maritime security and considered to locate U.S. troops on a rotational basis, just

¹ "DFA: Spy Planes to Gather Evidence vs China," *Rappler*, August 1, 2013, <http://www.rappler.com/nation/35327-dfa-spy-planes-evidence-china>.

as it has done in Australia—another U.S. ally².

In the meantime, the U.S. started to publicly endorse the Philippines' approach in dealing with China. In the beginning of 2014, Daniel Russel, U.S. Assistant Secretary of State for East Asian and Pacific Affairs, for the first time testified in congressional hearings that the U.S. government would “fully support the right of claimants to exercise rights they may have to avail themselves of peaceful dispute settlement mechanisms,” and directly mentioned the Philippines' case as an example³. These remarks demonstrated the increasing resolve of the U.S. to back up its allies U.S. position in the South China Sea. On August 9, 2014, the U.S. state secretary John Kerry put forth a proposal of freezing provocative acts in the South China Sea during the ASEAN Regional Forum. The Philippines echoed the freeze proposal, signaling a coordinated position between Washington and Manila. This proposal was rejected by Le Luong Minh, secretary-general of ASEAN on the basis that there was already a mechanism in place to curtail sensitive action such as land reclamation and building on disputed islands⁴.

The American and Philippine leaders have also become more vocal in directly confronting China. In the February 5 Congressional hearing, Daniel Russel directly challenged the legitimacy of China's “nine-dash line” claim, saying “maritime claims in the South China Sea must be derived from land features. Any use of the “nine dash line” by China to claim maritime rights not based on claimed land features would be inconsistent with international law. The international community would welcome China to clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea⁵.” In an interview with the New York Times on February 4, a day before Russel's testimony, Philippine president Benigno Aquino derided China by likening Beijing to Berlin on the eve of World War II⁶. On May 7, Philippine authorities arrested 11 Chinese fishermen near Half Moon Shoal in the Spratlys. Despite demands from Beijing for their release, Manila charged 9 of the 11. The other two were released as juveniles⁷.

Similar pattern is identified in the defense relationship between U.S. and Japan, another US long-term ally. Washington and Tokyo made the decision in October of last year to revise their alliance's mutual defense guidelines. The last time the two countries revised the guidelines was in 1997. In December 2013, The Abe government in Tokyo adopted its first

² Opening Statement of Representative Steve Chabot, House hearing on “Maritime Sovereignty in the East and South China Seas,” January 14, 2014.

³ Testimony of Daniel Russel, Assistant Secretary of State Bureau of East Asian and Pacific Affairs, U.S. Department of State Before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific Wednesday, February 5, 2014.

⁴ Paul Mooney and Lesley Wroughton, “U.S. Call for South China Sea 'Freeze' Gets Cool Response from China,” *Reuters*, August 9, 2014, <http://www.reuters.com/article/2014/08/09/us-asean-southchinasea-idUSKBN0G904O20140809>.

⁵ *Ibid*.

⁶ Keith Bradsher, “Philippine Leader Sounds Alarm on China,” *New York Times*, February 4, 2014, <http://www.nytimes.com/2014/02/05/world/asia/philippine-leader-urges-international-help-in-resisting-chinas-sea-claims.html? r=0>.

⁷ Gregory B. Poling, “Recent Trends in the South China Sea and U.S. Policy,” CSIS Publication, July 2014.

“National Security Strategy” aimed at eliminating restrictions of its pacifist constitution, paving the way for the revision of US-Japan mutual defence treaty. Last month, Washington and Tokyo officially started the process of updating their defense cooperation guidelines “in response to new threats extant in the world”, hinting that the revision was aimed at countering China and situation in areas beyond the immediate region of Japan⁸. An interim five-page planning document was released by US and Japan, which specifically called for the two countries to pursue “a more expansive partnership” through “enhanced capabilities and greater shared responsibilities⁹.” The two sides expected to finalize all revisions and publish the new guidelines by the end of this year.

Meanwhile, following the step of American to build up Philippines’ security capacity, Japan also increased its military assistance to the Philippines. Tokyo is set to provide 10 patrol ships to Manila, and on Oct. 2 it joined for the first time in the U.S-Philippine PHIBLEX amphibious landing exercise that simulated seizing an island under attack by enemy forces¹⁰. Japan's participation in the PHIBLEX is viewed “a first step in deciding the future role for the SDF following a Cabinet decision in July to reinterpret the Constitution to allow Japan to exercise the right to collective self-defense¹¹.”

2. Tightening U.S alliance system-Vietnam ties and rising Russia-India-Vietnam triangle

The consolidation of bilateral and trilateral bonds within the US alliance system expounded above is accompanied by concerted efforts taken by the US alliance system to building a more intimate partnership with Vietnam. Over the course of 2013-2014, U.S. and Japan complemented each other in providing military assistance to Vietnam. In early 2013, Japanese Prime Minister Shinzo Abe offered \$500 million loans to Vietnam. In September of 2013, Japan’s Defense Minister Itsunori Onodera visited Vietnam. Onodera and his Vietnamese counterpart, General Phung Quang Thanh agreed to expand cooperation in maritime training, modernization of maritime enforcement agencies and military technology¹². In December 2013, the U.S. State Secretary Kerry pledged \$18 million in maritime assistance to Vietnam. In March 2014, Shinzo Abe and Vietnamese President Truong Tan Sang declared to elevate their relationship to an Extensive Strategic Partnership. Echoing the tone set forth by Daniel Russel a month earlier, Abe and Dung reaffirmed “the importance of ensuring peace, stability and development in the region, especially the guarantee of maritime and aviation peace, freedom, security and safety based on international law as well as the 1982 UNCLOS.” In particular, Abe expressed Japan’s willingness to assist Vietnam in enhancing its capacity in maritime law enforcement. In June 2014, the Japanese landing ship Kunisaki docked at Tien Sa port, Da Nang as part of a U.S.

⁸ Jim Garamone, “Officials Discuss Report on U.S.-Japan Defense Guidelines,” *DoD News*, Oct. 8, 2014, <http://www.defense.gov/news/newsarticle.aspx?id=123362>

⁹ See Ankit Panda, “US, Japan Overhaul Mutual Defense Guidelines,” *The Diplomat*, October 9, 2014, <http://thediplomat.com/2014/10/us-japan-overhaul-mutual-defense-guidelines/>

¹⁰ “SDF Observes Island Defense Exercise in Philippines, Aimed at Countering China,” *Asahi Shimbun*, October 3, 2014, http://ajw.asahi.com/article/behind_news/politics/AJ201410030061.

¹¹ *Ibid.*

¹² Carl Thayer, “Vietnam's Extensive Strategic Partnership with Japan,” *The Diplomat*, October 14, 2014, <http://thediplomat.com/2014/10/vietnams-extensive-strategic-partnership-with-japan/>

Navy-supported Pacific Partnership. On August 1, Japan announced that it would provide Vietnam with six vessels to boost its security capacity, scheduled to be delivered by the end of this year¹³. A month later, the US announced that it would partially lift its decades-old embargo on providing lethal military support to Vietnam as part of its effort to help improve the latter's maritime apparatus¹⁴.

Bilateral relationship between the Philippines and Vietnam also greatly enhanced, in spite of their conflicting maritime claims. During the meeting of the Philippines-Vietnam Joint Commission for Bilateral Cooperation on August 1, 2014, Foreign Secretary del Rosario and Foreign Minister Minh pledged to work closely together to convince the rest of ASEAN to push China harder on a timely conclusion of a COC. The two government officials met again in Manila on August 25-27, where their discussions also focused on joint security concerns in the South China Sea¹⁵.

Concurrently, Russia and India have been quickly deepening their involvement in the South China Sea, in particular through the enhancement of Russia-India-Vietnam triangle. The three countries are closely cooperating in the defense sector. India's efforts to build close ties with Vietnam are largely motivated by its Look East policy¹⁶. And Russia is a major arms supplier to Vietnam. Vietnam purchased a package of 6 Kilo-class submarine in 2009. These submarines are due for delivery in November of this year. In 2013, India agreed to provide training to over 500 Vietnamese sailors to help Vietnam make better use of the submarines and submarine-launched anti-ship missiles newly acquired from Russia¹⁷. In August this year, Vietnam purchased from Russia 12 Su-30MK2 fighters, an aircraft known for long-range maritime strike, while India is set to provide training for Vietnamese Su-30 pilots. Last year, Vietnam also requested India to supply BrahMos supersonic anti-ship missiles manufactured by a Russian-India joint venture¹⁸. In the meantime, Moscow and Hanoi have been developing a joint missile analogous to Russia's Kh-35 Uran¹⁹.

¹³ Martin Petty, "Japan Offers Vessels to Vietnam to Boost Its Sea Strength," *Reuters*, August 1, 2014, <http://www.reuters.com/article/2014/08/01/us-vietnam-japan-idUSKBN0G13EA20140801>.

¹⁴ Antik Panda, "United States Lifts Vietnam Arms Embargo (With a Catch)," *The Diplomat*, October 3, 2014,

<http://thediplomat.com/2014/10/united-states-lifts-vietnam-arms-embargo-with-a-catch/>

¹⁵ Gregory B. Poling, "Recent Trends in the South China Sea and U.S. Policy," CSIS Publication, <http://csis.org/publication/recent-trends-south-china-sea-and-us-policy>.

¹⁶ Harsh V. Pant, "India and Vietnam Add a Punch to Their Ties," *Japan Times*, November 29, 2013,

<http://www.japantimes.co.jp/opinion/2013/11/29/commentary/world-commentary/india-and-vietnam-add-a-punch-to-their-ties/#.VFYuZTSUcj>.

¹⁷ Carl Thayer, "How India-Vietnam Strategic Ties Are Mutually Beneficial," *The Diplomat*, December 3, 2013,

<http://thediplomat.com/2013/12/how-india-vietnam-strategic-ties-are-mutually-beneficial/>

¹⁸ Ankit Panda, "India-Vietnam Supersonic Missile Talks in 'Advanced Stage'," *The Diplomat*, September 15, 2014,

<http://thediplomat.com/2014/09/india-vietnam-hypersonic-missile-talks-in-advanced-stage/>

¹⁹ Alexander Korablinov, "Vietnam Looking to Purchase BrahMos Cruise Missiles," *Russia & India Report*, December 3, 2013,

<http://in.rbth.com/economics/2013/12/03/vietnam-looking-to-purchase-brahmos-cruise-missiles-31321.html>

India's involvement in the South China Sea is not limited to defense cooperation with Vietnam outlined above. Indian energy companies have been working closely with Vietnam in hydrocarbon exploration in the South China Sea. More recently, India demonstrates an increased willingness to exert greater impact in shaping the South China Sea dynamics. At the end of September, India's Prime Minister Narendra Modi during his inaugural state visit to the U.S. issued a Joint Statement with US President Obama which, for the first time, specifically mentioned the situation in the South China Sea, expressing their concern about "rising tensions over maritime territorial disputes" in the region²⁰.

Altogether, the entanglement of Vietnam, Russia, India and the U.S. alliance system including U.S., Japan and Philippines in the South China Sea tensions and the strengthening of bilateral and multilateral ties among these countries are casting a very complicated light on the future trajectory of the South China Sea region.

3. China's policy towards the South China Sea

China's handling of the South China Sea could be unpacked into two sets of policy initiatives. Falling in the first set are law enforcement measures, which are often used as, not only by China but also other claimants. These law enforcement measures have been used as a means to assert China's sovereign claims or block opposing parties' efforts to fortify their claims. In the summer of 2013, China began to patrol Second Thomas Shoal, a feature also claimed by the Philippines. The shoal stations a Philippine navy ship BRP Sierra Madre since 1999 with a handful of Filipino marines to enforce the Philippines' claim to the reef²¹. In March 2014, Chinese coast guard vessels blocked two Filipino civilian vessels from resupplying marines located on the Second Thomas Shoal. China perceived the Philippines activities as building structures on the Second Thomas Shoal in a bid to consolidate its claims of sovereignty over the disputed reef²². In January 2014, one amphibious landing craft and two destroyers patrolled near the disputed James Shoal. Chinese personnel on the ships also held a ceremony at the shoal swearing to defend China's sovereignty. China has also tried to defend Scarborough Shoal. In 2013-2014, Chinese surveillance vessels have blocked several attempts by the Philippines' to use fishing vessels to approach the Scarborough Shoal²³.

On May 2, the Chinese National Offshore Oil Corporation (CNOOC) placed a deep-water drilling rig in waters south of the Paracel Islands disputed by Vietnam. Vietnam dispatched over 20 coast guard and fisheries surveillance ships to harass the oil rig and prevent its operations. On the Chinese side, over 80 Chinese ships were deployed to surround the rig, using water cannons to prevent Vietnamese ships from getting close to the oil rig. China's action triggered deadly anti-Chinese demonstrations in Vietnam. The drilling rig was

²⁰ U.S.-India Joint Statement, the White House, September 30, 2014, <http://www.whitehouse.gov/the-press-office/2014/09/30/us-india-joint-statement>.

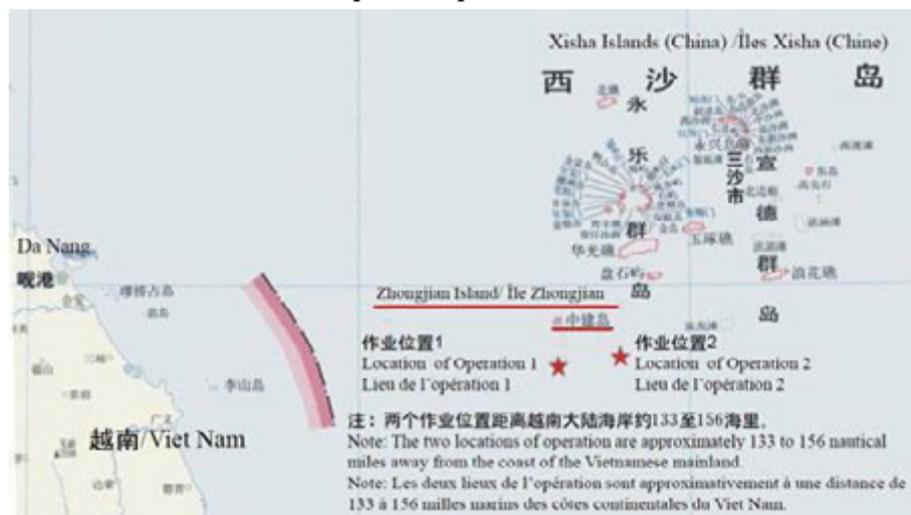
²¹ Darshana M. Baruah, "Second Thomas Shoal: The New Battleground," *The Diplomat*, April 30, 2014, <http://thediplomat.com/2014/04/second-thomas-shoal-the-new-battleground/>

²² Zachary Keck, "Second Thomas Shoal Tensions Intensify," *The Diplomat*, March 13, 2014, <http://thediplomat.com/2014/03/second-thomas-shoal-tensions-intensify/>

²³ Gregory B. Poling, "Recent Trends in the South China Sea and U.S. Policy," CSIS Publication, <http://csis.org/publication/recent-trends-south-china-sea-and-us-policy>.

withdrawn on July 16 after two months of operation.

Location of the Chinese enterprise's operation²⁴:



While the law enforcement activities mentioned above are designed purposefully as a response to the policy actions outlined in previous sections, there are also other law enforcement measures devised for dual-use, in the sense that these policies not only are tools to assert sovereignty but demonstrate a considerable level of continuity in China's effort to address increasing environmental challenges. Take for instance the new regulation promulgated by Hainan province to implement new fisheries law. In December 2013, Hainan province promulgated new regulations to implement 2004 national fisheries law, which took effect on January 1, 2014. New regulations requested that all vessels seek permission from Chinese authorities before fishing or surveying in waters under Hainan's jurisdiction. While this policy was used to bolster China's administration over the claimed waters, it was also part of a series of adjustments attempted by the Chinese government to tackle the issue of fisheries depletion in the South China Sea waters.

Back in the 1980s and 1990s, China's fishery policy in the South China Sea was designed for economic purpose, to encourage exploitation of fisheries resources. The overall aim of the 1986 Fisheries Law was to promote the development of fishing capacities. It did not provide powerful enough penalties to tackle the problems of unsustainable use of fisheries resources and non-compliance. This resulted in the failure to deter illegal and unregulated fishing²⁵. As the conservation of fisheries resources and marine ecosystems became a growing concern for fisheries management, Chinese authorities began to address these issues²⁶, resulting in a series of legislation including the Amendment to Fisheries Law which passed on 31 Oct 2000 and entered into force in 2004²⁷. In the meantime, the Chinese

²⁴ Source: Foreign Ministry of P. R. China, "981 Oil Rig: Vietnam's Provocation and China's Stance," Annex 1, http://www.fmprc.gov.cn/mfa_chn/zyxw_602251/W020140608602937493159.jpg

²⁵ Zheng Liu, "How to Establish and Improve the Fisheries Legal System in China," *Chinese Fisheries Economics*, 4 (1999), p.19, in Chinese.

²⁶ Xue Guifang, *International Fisheries Law and China's Practice*, (Qingdao: China Ocean University Press, 2008), p.104.

²⁷ For the text of 2000 amended law, see *Gazette of the Standing Committee of the National People's Congress of the People's Republic of China*, 6 (2000), pp.608-615, in Chinese.

government began to implement fishing ban, starting in 1998, in the area to the north of 12°N in the South China Sea (including the Gulf of Tonkin) from noon 1 June to noon 1 August²⁸. Based on experience accumulated in the first ten years of implementing the fishing ban (1999-2008), the Ministry of Agriculture (MOA) observed that climate change had moved up the maturing period of many fisheries from the summer to late spring, and revised the fishing ban policy in February 2009²⁹. The new policy moved up the starting date of the fishing ban from 1 June to 16 May³⁰. The new policy also extended the fishing ban to include foreign fishing boats³¹, out of concern that the effect of protecting fishery resources would be discounted if not applied to increasing foreign fishing activities in the same period³².

China's response to the U.S. military reconnaissance activities in the South China Sea belongs to the second policy category. Over the past year, Chinese policy makers became more straightforward in confronting reconnaissance activities conducted by the U.S.. On December 5, 2013, the People's Liberation Army Navy (PLAN) intercepted a US Navy guided missile cruiser USS Cowpens which was forced to make an "all stop" order in the water³³. At that time, the USS Cowpens, a Ticonderoga-class guided missile cruiser, was closely monitoring the activities of China's aircraft carrier Liaoning and the carrier group in the South China Sea. A PLAN ship made radio contact with the Cowpens, requesting it to leave the area. After Cowpens declined to change course, a PLAN Amphibious Dock Ship that suddenly crossed its bow at a distance of less than 500 meters and stopped in the water. The USS Cowpens was forced to take evasive action to avoid a collision³⁴. Similar confrontations also occurred in the airspace. It is reported that since March 2014, U.S. and Chinese aircraft have had several close encounters³⁵. A more recent case took place in August. On August 19, the U.S. navy P-3 anti-submarine plane and P-8 aircraft conducted a reconnaissance flight within 220 kilometers (137 miles) of Hainan Island. Chinese fighter jet J-11 and a US Navy surveillance aircraft P-8 made a close encounter³⁶. Nevertheless, there has also been some

²⁸ The Ministry of Agriculture of China, *Circular on the Enforcement of the Summer Moratorium in the South China Sea*, 1999.

²⁹ Zhuang Wu, "The Tenth Anniversary of Fishing Ban: a Review and Reflection," *China Fisheries*, 8 (2008), in Chinese.

³⁰ "Fishing Ban of the South China Sea Region Extends to 77 Days in 2009," *Xinhua News*, 22 April 2009, accessed 2 January, 2014, http://www.gx.xinhuanet.com/dtzz/2009-04/22/content_16329712.htm.

³¹ Michael D. Swaine and M. Taylor Fravel, "China's Assertive Behavior—Part Two: The Maritime Periphery," *China Leadership Monitor* 35 (2011): 5.

³² Bin Che and Tao Xiong, "Impact of the South China Sea Dispute on Fisheries and Countermeasures," *Research of Agricultural Modernization* 30, no. 4 (2009): 416, in Chinese.

³³ Barbara Starr, "U.S., Chinese Warships Come Dangerously Close," December 13, 2013, CNN, <http://www.cnn.com/2013/12/13/politics/us-china-confrontation/>

³⁴ Carl Thayer, "USS Cowpens Incident Reveals Strategic Mistrust Between U.S. and China," *The Diplomat*, December 17, 2013, <http://thediplomat.com/2013/12/uss-cowpens-incident-reveals-strategic-mistrust-between-u-s-and-china/>

³⁵ "China Urges U.S. to Halt Close Air Surveillance After Encounter," *Bloomberg News*, August 24, 2014, <http://www.bloomberg.com/news/2014-08-24/china-urges-u-s-to-halt-close-air-surveillance-after-encounter.html>

³⁶ Chen Weihua, "US surveillance near Chinese coast a growing concern," *China Daily USA*, August 25, 2014, http://usa.chinadaily.com.cn/epaper/2014-08/25/content_18480883.htm

positive achievement in managing such risky encounters. On April 22-23, the Western Pacific Naval Symposium (WPNS) was hosted in Qingdao China. It was the first time that China had hosted WPNS forum. A significant achievement from this symposium was the creation of a new naval code of conduct, called CUES—the Code of Unplanned Encounters at Sea—which aims to avoid dangerous situations among navies in the Pacific Rim. On October 29, during the Dialogue on Sino-Japanese Airspace Crisis Management in the East China Sea (Track II), the applicability of CUES in regulating dangerous encounters in the airspace was hotly discussed³⁷.

As regards the COC negotiation, in 2013, Brunei assumed the ASEAN chair and Vietnamese diplomat Le Luong Minh became the new ASEAN secretary general. Both are claimant nations of the SCS and pledged to place priority on kick-starting discussions with China on a COC³⁸. However, this progress was overshadowed by the Philippines' decision to initiate an international arbitration process in the beginning of the 2013, which caught China and other ASEAN countries by surprise. China publicly refused to take part in the arbitration process. Concern was expressed by Chinese Foreign Minister Wang Yi in August 2013 during his visit to Vietnam. Wang Yi attributed the earlier failure of developing a COC to "disturbances from certain parties" (presumably the Philippines)³⁹, while calling for parties to "make efforts that are conducive to the process so as to create the necessary conditions and atmosphere [for negotiation]⁴⁰".

³⁷ "Disclosing the Dialogue on Sino-Japanese Airspace Crisis Management (Track II)," October 30, 2014, <http://military.people.com.cn/n/2014/1030/c1011-25939718.html>.

³⁸ Carlyle A. Thayer, "New Commitment to a Code of Conduct in the South China Sea?" *The National Bureau of Asian Research Commentary*, 9 October, 2013, accessed 6 March, 2014, http://nbr.org/research/activity.aspx?id=360#_Uxk0E84z3KQ.

³⁹ Richard Javad Heydarian, "Dual Track Trouble in the South China Sea," *Asia Times*, August 13, 2013, <http://www.atimes.com/atimes/Southeast Asia/SEA-01-200813.html>

⁴⁰ Wang Yi raised four points. The third point called on relevant countries to eliminate interferences and create the necessary conditions and atmosphere, not going the opposite way, which presumably was referring to the Philippines' recent action to invoke dispute settlement procedures of the LOSC. The four points are as follows:

1) Reasonable expectations. Some countries are talking about "quick fix," like reaching consensus on COC within one day. It is an attitude neither realistic nor serious. COC involves multilateral interests from different parties, and its formulation is a process of sophisticated and complex coordination.

2) Consensus through negotiations. We should refer to the experience of reaching DOC to move forward COC, to seek consensus as broadly as possible and to keep the comfort of all parties in mind. Wills of individual countries or of a few countries should not be imposed on other countries, as an old Chinese saying, nothing forcibly done is going to be agreeable.

3) Elimination of interference. China and ASEAN countries tried several times to hold discussions on COC before, but got stuck due to interference. All parties concerned should do more to help move forward the process of COC, and create the necessary conditions and atmosphere, not going the opposite way.

4) Step-by-step approach. The formulation of COC is stipulated in DOC. COC is not to replace DOC, much less to ignore DOC and go its own way. The top priority now is to continue to implement DOC, especially promoting maritime cooperation. In this process, we should formulate the road map for COC through consultations, and push it forward in a step-by-step approach.

See "Foreign Minister Wang Yi on Process of 'Code of Conduct in the South China Sea,'" Ministry of Foreign Affairs of the People's Republic of China, 5 August, 2013, available on MFA website at <http://www.fmprc.gov.cn/eng/zxxx/t1064869.shtml>, last accessed on 6 March, 2014.

During the Asian Regional Forum held in early August this year, Foreign Minister Wang Yi rejected the “freeze” proposal put forth by the American participants while proposing instead a “dual-track” approach to ministers of ASEAN countries. Wang expounded that the "dual-track" approach consists of two elements. Consultations and negotiations by countries directly concerned are the most effective and viable way to resolve disputes, which also conform to international law and common practices and constitute one of the most important provisions in the Declaration on the Code of Conduct of Parties in the South China Sea (DOC). Meanwhile, China and ASEAN countries need to work together to uphold peace and stability in the whole South China Sea region⁴¹.

4. Conclusion

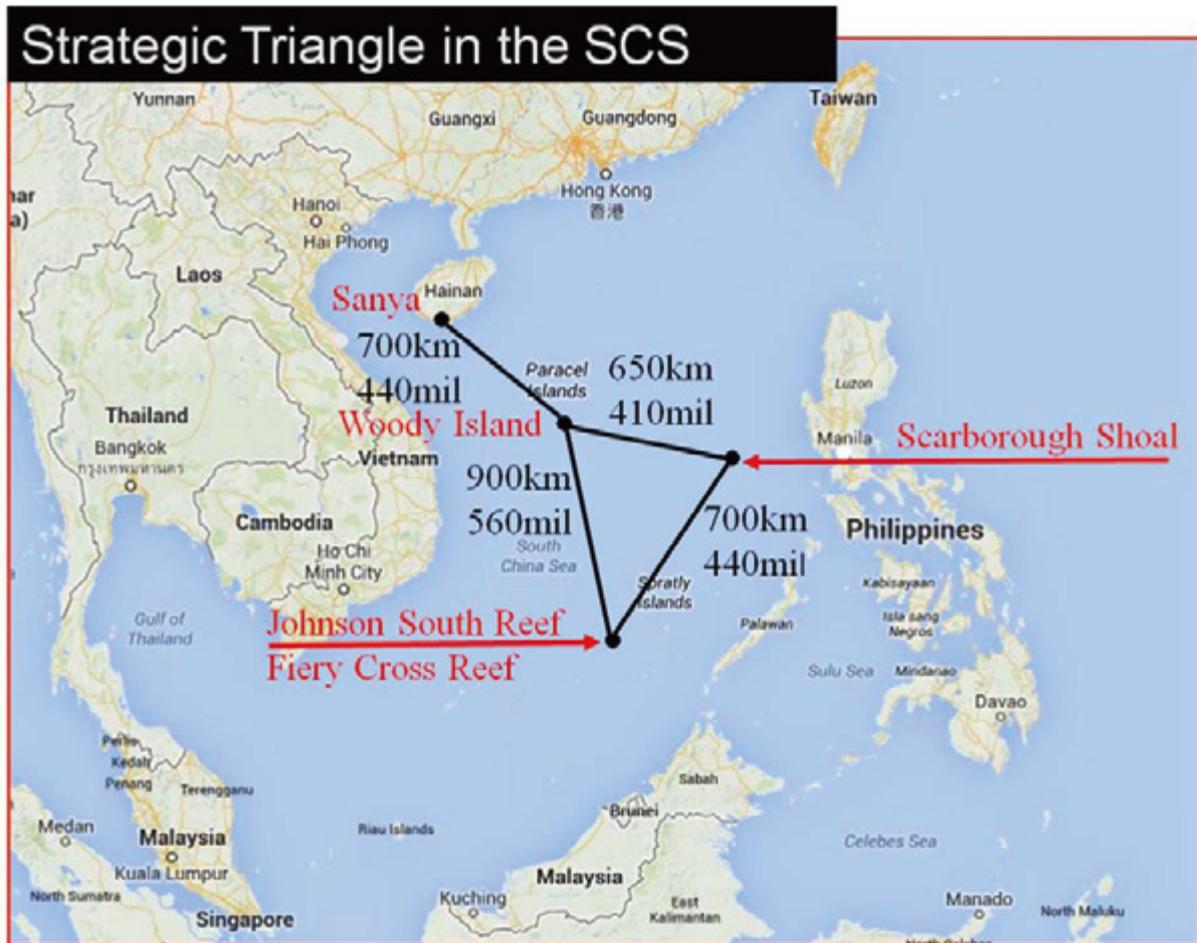
Over the course of 2013-2014, the U.S. alliance system is fully geared to assert a more influential role in shaping the trajectory of the South China Sea dispute. In the meantime, China’s South China Sea policy is also viewed by many as embarking on a more assertive track. The new leadership in China seems to have become more willing to use law enforcement activities to strengthen China’s sovereign claims and more direct in responding to policy actions of other countries. Tensions between China and the U.S. alliance system are increasingly dragging the whole region into the trap of great power rivalry to the benefit of no party. The entanglement of India and Russia further dims the prospect of a peaceful resolution of the dispute.

⁴¹ “China Supports 'Dual-Track' Approach to Resolve Dispute,” *Xinhua News*, August 10, 2014, http://www.chinadaily.com.cn/china/2014-08/10/content_18280181.htm

Strategic Triangle in the South China Sea

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This strategic map showing “The Strategic Triangle in the South China Sea” was presented by VADM Yoji Koda during the Symposium



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