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公益財団法人 世界平和研究所

Institute for International Policy Studies

IIPS Study Group Report to follow up on
The Yasuhiro Nakasone Proposal on Maritime Security in East Asia

Crisis Management at Sea

Urgent Proposals from the Field



Institute for International Policy Studies
Study Group on Maritime Security in East Asia

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Cover photo: Tuoi Tre Newspaper (Ho Chi Minh City, Vietnam)

N.B.: While every effort has been made to make this English translation as accurate as possible, the Japanese original shall take precedence in the event of any discrepancies.

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by

IIPS Study Group on Maritime Security in East Asia

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to follow up on

The Yasuhiro Nakasone Proposal on Maritime Security in East Asia

East Asia¹ is the world's most rapidly growing region. In order to uphold peace and prosperity, it is indispensable to secure uninhibited access to the seas and a stable maritime order through the efforts of each country and international cooperation. The "Yasuhiro Nakasone Proposal on Maritime Security in East Asia"² of December 2015 presented a comprehensive proposal for ensuring the rule of law and enhancing practical (functional) cooperation.

In order to translate the Proposal steadily into action, and taking a mid- to long-term perspective, this Study Group³ delved into issues that underlie pressing maritime security challenges. As a result, this year (in 2016) we decided to present the following recommendations:

One: Crisis Management for Maritime Security

Two: Capacity-building in the field of Maritime Security

1. Follow-up to the Yasuhiro Nakasone Proposal

(1) Uninhibited access to the seas

Maritime transport is a major pillar supporting the prosperity of East Asia, the growth center of the world today. The seas of East Asia are some of the main arteries of the world economy. Only by ensuring safety and security in these waters and guaranteeing free passage through them shall the world economy become more robust and shall the international community prosper as a whole.



The seas, just as outer space and cyberspace, compose the global commons. Uninhibited use of the seas and passage through them must be equally open to all. A global and liberal maritime order serves universal interests. Travel at sea only requires a boat or ship. Cables along the seabed allow us to connect all over the world.

The seas are a vitally important space for humanity, not only as a route for transport and communications but also for the exploitation of aquatic and other resources. Preserving the marine environment is a pressing requirement for preserving fishing resources, countering climate change, and other goals.

Amidst present-day globalization, the waters of East Asia have become an ever more central part of the world. Peace and prosperity in the region's seas now have a major bearing on the entire world.

(2) Maintenance of maritime order

Since the end of the Vietnam War, East Asia has enjoyed relative stability without large-scale conflicts. Yet since the turn of the century we have seen situations that significantly threaten the freedom and safety of the seas.



Proceedings at the International Court of Justice (ICJ), Peace Palace, The Hague, the Netherlands. (UN Photo/CIJ-ICJ/Frank van Beek)

Changes in the regional power balance are the likely cause. Two things are required in order to achieve a stable international order and make the twenty-first century “East Asia’s century”. First, the regional power balance needs to be maintained. Second, we need to reinforce the sense of obligation among states to uphold common norms such as International Law. The norms that form the bedrock of the global maritime order are manifest in the United Nations Convention on the Law of the Sea (UNCLOS). The principles of the freedom of navigation in and overflight above the high seas are unequivocally clear in this treaty.

However, in the South China Sea and East China Sea we have recently witnessed numerous unilateral claims and actions that are inconsistent with the established international legal order. The situation may well deteriorate. Along with preventing

international conflicts by upholding law and order, there is a pressing need to ensure that disputes are peacefully resolved, based on UNCLOS and other instruments.

Since the past summer enthusiasm appears to be growing among China and ASEAN states on an early conclusion of a legally-binding Code of Conduct in the South China Sea (COC). A COC would not substitute for existing International Law or dispute settlement procedures, but it would help to prevent disputes from arising. It is thus hoped that this enthusiasm would lead to an early conclusion of an effective COC.

(3) The Nakasone Proposal and its translation into action

The wisdom of many countries and peoples needs to be brought together to swiftly ameliorate this situation and to make the waters of East Asia veritable “seas of peace, cooperation and prosperity”. It was from this standpoint that the “Yasuhiro Nakasone Proposal on Maritime Security in East Asia” presented a comprehensive set of ideas to ensure the rule of law and enhance practical (functional) cooperation.

Southeast Asia and northeast Asia, along with the South China Sea and East China Sea, are all inextricably linked within the broader expanse that is the Asia-Pacific region. This is indeed the case in many respects such as politics, economics, culture, history and security. It is incumbent upon all states of the Asia-Pacific region without exception to cooperate for the peace and prosperity of the region.

Challenges in maritime security transcend national borders and profoundly affect the existence and welfare of people within the region. Hence the importance of not only international cooperation (i.e. cooperation among states) but also of a more



Devastation after 2004 Indian Ocean earthquake & tsunami and Japanese emergency medical assistance (Photos courtesy of JICA)



comprehensive endeavour—one in which the state and various non-state actors join forces to secure the survival, dignity and livelihood of each individual. Meeting such challenges as large-scale natural disasters, environmental destruction, and safe and sustainable fishery are of particular importance from this human security viewpoint. Partnership among national governments, regional (i.e. intergovernmental) organizations, civil society and others are essential for this purpose. This Study Group anticipates that the Organization for Maritime Security in East Asia (OMSEA), advocated in the Nakasone Proposal, shall serve as a focal point where such pluralistic efforts converge.

The establishment of a permanent international body for the maritime security of East Asia will also have a major bearing on regional integration in East Asia, which remains gradual. A permanent body will provide the essential infrastructure that would enable the pursuit of maritime security on a multilateral basis in a more sustained and systematic manner—a vital endeavour in a region where the sea represents a precious common asset.

2. Pressing issues regarding maritime security

Heightened tensions between states over territorial and/or jurisdictional claims now pose a serious challenge in the seas of East Asia. While evidently military force remains essential as the last resort in defending territory, states need to use other means to manage crises so that conflicts and tensions will be restricted to the lowest level possible, thus preventing them from escalating into military situations.

Maritime law enforcement agencies (MLEAs) play a highly important role in this regard. MLEAs were created in many countries in East Asia and elsewhere after the Second World War. In most cases MLEAs are police agencies whose main duties consist of law enforcement and life-saving (in the event of distress at sea).

MLEAs differ from country to country in their origins, organizational scale, asset levels and operational capacity, as well as in their (domestic) legal systems and operating procedures. Despite such differences, they are required, in conformity with International Law and the basic principles applicable to MLEAs, to enforce the law in a legitimate manner. And in waters where national claims conflict, MLEAs are expected to perform a subsidiary function as “buffers” between states, which prevents such contention from escalating into military confrontations. Establishing a crisis management framework is a matter of urgency in order to enable MLEAs to perform their “buffer” functions adequately, as is the capacity-building of these agencies.

The following five measures are required:

(1) Ensuring legitimate maritime law enforcement and building a crisis management framework

An overview of maritime law enforcement activity by various states shows that there have recently been, in the South China Sea in particular, cases where MLEA vessels⁴

have been excessively violent in the course of their operations vis-à-vis private vessels. Underlying causes include differences in interpretation of International Law as well as insufficient communication among MLEAs. Such factors could result in misunderstanding/misinterpretation among MLEA vessels, both in the course of regular law enforcement activities (vis-à-vis private vessels) and in situations where MLEAs serve as “buffers” between states as described above. In the latter case, the causes above could even trigger escalation into a contingency. In order to prevent such outcomes, a more reliable crisis management framework urgently needs to be put in place through such means as: (a) ensuring that law enforcement is conducted in a legitimate manner, for example by promoting a common understanding of International Law and its basic principles; (b) securing a functioning system of communication among the vessels and headquarters of MLEAs; and (c) other confidence-building measures.

(2) Framework to avoid incidents in airspace

In airspace it is military aircraft that enforce the law, for example in the case of a violation of territorial airspace. Unlike on the sea’s surface, there is no separation between the military and law enforcement agency. Given the higher risk of escalation in the process of law enforcement, creating a framework to avoid incidents in airspace is thus an urgent priority.



Two JASDF F-15Js taking off

(3) MLEA capacity-building

MLEAs in East Asia face various educational needs in terms of assimilating the basic norms and principles that are the foundations of legitimate law enforcement activity, such as International Law and the principle of proportionality. Also a matter of urgency is to ensure that a common means of contact is in place so that a reliable system of communication functions among MLEAs.

Furthermore, the operational capacities (in both qualitative and quantitative terms) of MLEAs need to be enhanced so as to enable them to perform their “buffer” function adequately. Their capacity-building in both “hard” and “soft” areas remains an outstanding challenge before a crisis management mechanism can be put in place.

(4) Maritime situational awareness and enhanced international collaboration

Promoting a common maritime situational awareness (MSA) picture is important in parallel with MLEA capacity-building. States need to know the situation in the waters around them and the skies above those waters, and to share their awareness with other states concerned.

MSA is necessary not only to ensure a stable security environment (in the traditional sense) and crisis management. It also enables information-sharing and collaboration to meet various challenges in the realm of non-traditional (human) security. These include the prevention of and response to large-scale disasters, environmental issues and ensuring safe and sustainable fishery.

(5) The relationship between MLEAs and navies

The domestic relationship between MLEAs and the navy is determined by the organizational background of those institutions, which in turn reflects the history of the country in question. It is therefore difficult to define this relationship in a single manner, regardless of existing differences from country to country. Meanwhile, it should be noted that the navy conducts maritime law enforcement in some countries. From the standpoint of limiting confrontations and tensions between states and of crisis management, there is a future need to clarify the domestic relationship between MLEAs and the navy, with due regard to their respective duties and characteristics, so that the former can adequately fulfil their “buffer” function.

3. Crisis Management for Maritime Security (First Recommendation)

The Study Group began its consideration⁵ of the means to enhance crisis management arrangements in the field of maritime security with the idea to extend the Code for Unplanned Encounters at Sea (CUES)⁶ to non-naval vessels. CUES was agreed at the Western Pacific Naval Symposium (WPNS) and is applied to naval vessels and naval aircraft.

The conclusion reached was that “non-naval vessels” need to be considered on a category-by-category basis and that CUES cannot be applied to all types of vessels in blanket fashion. A broad-ranging set of directions is therefore proposed for crisis management according to category, including military vessels/aircraft, MLEA vessels, and private vessels.

(1) Principles governing law enforcement by MLEA vessels (vis-à-vis private vessels)

Generally speaking, an MLEA is a police agency that itself adheres to the laws and regulations of its own country and ensures that those same laws are observed by third parties. In the event an MLEA has more than a single means of achieving a law enforcement objective at its disposal, it may exercise its authority only through such means that are within the limits of proportionality to the level of difficulty in attaining that objective (principle of proportionality).⁷ It follows that fundamentally an MLEA must restrict the use of force to a minimum and exercise restraint in the execution of its duties.

In East Asian waters, the South China Sea in particular, there are many areas where territorial and/or jurisdictional claims overlap in complicated fashion and boundaries have yet to be delimited. In such zones, countries must strictly refrain from taking unilateral law enforcement action vis-à-vis private vessels engaged in fishery, research on resources under the seabed, or other activities. In reality, however, not only have there been cases of unilateral law enforcement but also instances of excessive use of force that caused extensive damage to, and in extreme cases the sinking of, the ship(s) subject to the law enforcement operation, as well as injury to those on board.⁸

Leaving aside the question which state should rightfully be entitled to exercise jurisdiction over a particular area of the sea whose borders have yet to be delimited, MLEAs are required to do the following when indeed they conduct law enforcement operations at all: (a) communicate as appropriate with the counterpart agencies of other states; and (b) observe sufficiently the principle of proportionality, which is a basic requirement for law enforcement agencies. Discussions are taking place among a number of littoral states of the South China Sea with a view to agreeing on a certain set of principles on the conduct of law enforcement operations as well as to exchange information to create guidelines based on best practice.⁹ Such discussions should by all means be further promoted.

(2) Securing a system of communication among MLEAs

The duties of most if not all MLEAs include life-saving (in the event of distress at sea)¹⁰ as well as law enforcement. As a matter of basic principle, MLEAs are inherently required to restrict the use of force to a minimum when enforcing the law (as well as during life-saving operations) and to exercise restraint. This is why MLEAs are also expected to perform the function of “buffers”, as referred to above, so that escalation is avoided beyond certain levels in situations where they compete with their foreign counterparts (over the exercise of enforcement jurisdiction). This “buffer” function is fundamentally unfamiliar to naval vessels.

CUES was adopted as an arrangement for naval vessels and naval aircraft to avoid incidents (including *any* physical contact) in the event of unexpected encounters. It is therefore inappropriate to extend the scope of CUES, in its existing form, to cover MLEAs. Nor is it suitable to apply a separate arrangement, whose content is similar to CUES, to MLEAs.

Meanwhile, in East Asia, the South China Sea in particular, we have actually witnessed cases where for example an MLEA of a particular state took law enforcement action against fishing vessels of another state operating in contested waters, and in response the MLEA of the flag state of those fishing vessels attempted to impede law enforcement by the other (non-flag) state. Some of these situations developed into a stand-off between MLEAs, at times going as far as intimidation using large-calibre weapons and the forceful retrieval of fishing vessels. Among the underlying causes was insufficient communication among MLEA vessels, which in turn resulted from differences in the interpretation of International Law or from language issues, even though communication was itself in function.¹¹

So far as the failure of certain MLEAs to operate in a legitimate manner is concerned such as in the cases above, steps need to be taken to establish a functioning system of communications among MLEAs, including a common method of contact among MLEA vessels on-site, in order to avoid misunderstanding/misinterpretation. In so doing, the duties and characteristics of MLEAs should be duly taken into account. Enhancing mutual confidence in other respects is also required.

(3) Agreements for the prevention of incidents among military vessels and aircraft

Implementation of the aforementioned CUES has so far been satisfactory. The declaration issued at the China-ASEAN summit in September 2016, which reaffirmed the application of CUES in the South China Sea, is also a positive development.

Yet CUES applies only to naval vessels and naval aircraft. It does not apply to air force aircraft which patrol airspace, for which there is no distinct law enforcement agency. Furthermore, CUES's actual efficacy in preventing incidents is limited as it is not a binding international agreement.

INCSEAs (Agreement(s) on the Prevention of Incidents On and Over the High Seas), first signed between the United States and the Soviet Union in 1972,¹² are a successful example of international agreements to avoid incidents at sea. The US-Soviet agreement became a model for subsequent INCSEAs signed between the former Soviet Union/Russia and over ten Western countries including Japan. In addition, INCSEAs whose parties do not include the Soviet Union/Russia were signed between such states as Germany and Poland, and Israel and the United Arab Republic. The supplementary signals provided for in the original INCSEA are appended to the International Code of Signals (INTERCO), and they are in practice used widely by non-INCSEA signatories as well. Furthermore, INCSEAs apply to all aircraft, not just naval aircraft.

Japan and/or the United States should emulate the successes of existing INCSEAs in East Asia. They should first take the initiative on bilateral INCSEAs with China so as to set a precedent for agreements in the region to prevent incidents among military vessels and aircraft. Such agreements would serve as a lead towards a normative, multilateral agreement for the prevention of incidents in this region.

The understanding reached between the leaders of Japan and China at their meeting in September 2016 to accelerate discussions on promptly starting the operation of a maritime-air communications mechanism between their defence authorities can be regarded as a positive measure that precedes the above initiative. It should be followed through without delay.

(4) The issue of fishing vessels operated by such elements as “maritime militia”¹³

Attention has been cast by academics and the media on the existence in East Asia of fishing vessels that receive instructions and compensation from the state, and operate as quasi-military or quasi-MLEA vessels. Yet their details remain unclear. Examples that recently received broad media coverage include the vessels that harassed the surveillance ship USNS *Impeccable* in March 2009, and those that obstructed the USS *Lassen* as it conducted a Freedom of Navigation operation in October 2015.

Such vessels fall into a number of categories. (i) There are some that are clearly operated by official “maritime militia” organizations whose members on board are in uniform. (ii) There are others that are operated by ordinary private citizens who do not appear to be typical “militia” members, but could be regarded as “part-time militia” members who cooperate with the authorities on an *ad hoc* basis. (iii) Yet some other ships are believed to belong to independent groups that act of their own accord to protect their maritime interests.

Exploiting their appearance as regular fishing vessels, these vessels appear to be operating with the following intentions: (a) to observe the reaction of other states to a preconceived exercise of law enforcement or military activity; and/or (b) to provoke law enforcement action and/or the use of force by other states against these vessels. The



USNS *Impeccable* being harassed by apparent fishing vessels, March 2009

manipulation of fishing vessels as above not only presents a conundrum for MLEA and naval vessels of other states; it also represents a major maritime security concern, since it may well trigger unexpected consequences.¹⁴¹⁵

Furthermore, the involvement of persons in military conflict under the guise of civilian seamen, without identifying their military status, represents a material breach of a fundamental principle of international humanitarian law and cannot be tolerated. This is the principle of distinction and discrimination, whose purpose is to ensure the protection of civilians in times of armed conflict through a clear separation between military personnel and civilians.

States that employ groups such as “maritime militia” should disclose the facts concerning their activities. Other states should also exchange information and collaborate in order to shed light on the question of the vessels above.

4. Capacity-Building in the Field of Maritime Security (Second Recommendation)

A wide range of measures is required in order to ensure safety and security in the South China Sea, one of the largest “seas” in the world. These include maritime surveillance, patrolling of territorial waters, ensuring the safety of navigation and overflight, search and rescue operations, response to natural disasters, fishing regulation, combatting piracy, prevention of marine pollution and preservation of resources. Littoral states in particular bear a collective responsibility towards the international community in effectively meeting these multiple challenges. Thus they should steadily enhance the required capabilities.

There are, however, challenges that East Asian states cannot fully meet on their own when dealing with these broad and sophisticated needs. Hence a substantial amount of external cooperation continues to be required. Developed nations of the Asia-Pacific region such as Japan and the United States, along with other interested countries outside the region, need urgently to collaborate and work out an effective division of labour so as to make the best use of their respective strengths and enable other regional states to enhance their maritime security capabilities.

(1) MLEA capacity-building

For the sake of minimizing tension levels at sea, the capacity-building of MLEAs is a task of greater urgency than even that of the military (defence forces). In addition to the upgrade of hardware assets and their maintenance, (a) securing a system of communication among MLEAs as given under the First Recommendation, and (b) education in order to strictly ensure legitimate law enforcement operations in adherence to the principle of proportionality are among the indispensable areas of capacity-building cooperation for MLEAs. Cooperation should always be extended in both such “hard” and “soft” areas and in a manner that caters to various individual needs. Measures should also be taken to promote government-wide efforts on the part of recipient countries, including information exchanges between the military and MLEAs.

Cooperation to promote domestic security is also important, as it will enable recipient countries to devote more resources to maritime security.

(2) Promoting a common understanding of International Law

A common understanding and awareness of the areas of International Law relevant to maritime security, such as maritime law and aviation law, are a basic condition for a stable international order. It is thus important to assist in creating further opportunities for countries to discuss matters in these areas.

(3) Enhancing MSA

The disappearance of Malaysia Airlines Flight 370 in March 2014 highlighted the inadequacy of systems to track air traffic above the South China Sea. Enhancing MSA capacity including in airspace is an urgent priority.

Until OMSEA is able to assume an overall role concerning MSA, it is important for countries such as Japan and the United States that possess the willingness and capabilities in this area to take the lead in promoting coordination and integration among existing international frameworks. This process should not be limited to the work of governments and international organizations but should also reach out to non-state actors such as NGOs and private enterprises. It is also necessary to support the creation of (widely accessible) databases in such fields as hydrography, submarine earthquakes, marine ecosystems, marine pollution and illegal, unreported and unregulated (IUU) fishing.



Portion of main wing presumed to be of missing MH 370 plane (Photo from ATSB website)

The following points should be borne in mind in pursuing the three goals above (4 (1) to 4 (3)).

(A) A coordination forum of partner (donor) countries should be set up (or designated) so that sustained and consistent support is offered under a common policy which is formulated from a strategic and mid- to long-term perspective. While bilateral capacity-building cooperation to meet individual needs will remain important, a multilateral setting to exchange views and coordinate among partner and recipient countries would also be useful. In the near term, the use of existing frameworks such as ADMM+¹⁶ should be considered.

(B) In parallel to urgent capacity-building support to the littoral states of the South China Sea, attention should also be paid to the maritime security needs of all ASEAN and other recipient countries, and tailored help should be provided to suit their individual requirements. This region faces common security challenges in areas other than maritime security *per se*, such as natural disasters. Meeting the diverse needs in each country will lead to stability in this region as a whole, which in turn will contribute to maritime security.

5. Efforts on the part of Japan

As part of these international efforts, it is incumbent upon Japan to contribute proactively to the capacity-building of the military and MLEAs of ASEAN and other countries, and thereby to stability in East Asia's security environment. In so doing, it should make effective use of the capabilities and know-how that the Japanese Ministry of Defense (MOD)/Japan Self-Defense Forces (JSDF) and Japan Coast Guard (JCG) have hitherto accumulated.

(1) The Japanese government as a cohesive partner

A system needs to be created under the Cabinet (*Naikaku Kambou*: Cabinet Secretariat) through which the government can provide consistent and effective support in well-coordinated fashion.

In so doing, it is particularly important that: (a) the capabilities and know-how of the MOD/JSDF and JCG should be well shared within the government; and (b) capacity-building cooperation by MOD/JSDF should be coordinated well with official development assistance (ODA), mindful that the peace and prosperity of the international community serve as the foundations of economic development.

(2) Easing restrictions on capacity-building assistance

Judging from the examples of other countries, and other factors, non-ODA as well as ODA schemes are required to extend international cooperation in the field of maritime security. In order to assist the capacity-building of developing nations with limited financial means, Japan should establish a legal framework that enables flexible forms of non-ODA cooperation that do not require financial compensation from recipient countries, as with grant ODA. In parallel, the system of overseas transfers of defence

equipment and technology should be employed in a flexible manner, given that these forms of international cooperation contribute to the peace of the region as a whole.

(3) Cooperation through JCG

For many years JCG has supported the formation of MLEAs in the Asia region and has extended capacity-building cooperation through programmes held at home and abroad. JCG remains prepared to do its utmost to meet the needs of recipient countries.



Japan-Singapore joint exercise on suppression of piracy
(Photo courtesy of JCG)

In Japan, since October 2015, institutions such as the JCG Academy in Hiroshima and the National Graduate Institute for Policy Studies (GRIPS) in Tokyo are running a master's-level course titled "Maritime Safety and Security Policy Programme" which offers lectures on subjects such as International Law and international relations. The course aims to heighten

awareness of the importance of a maritime order governed by law and rules, and is being offered to young executive MLEA personnel from Asian countries. It is highly important to improve and enhance this programme to assist the development of human resources that will serve at the helm of MLEAs of various countries in the years to come.

(4) Assistance through MOD and JSDF

A capacity-building programme is being offered in Vietnam in the field of underwater medicine in the context of Japan-US-Australia trilateral defence cooperation. This is a flagship example of multilateral security cooperation in which Japan takes part today. Such projects assist recipient countries not only in maritime fields but also help to strengthen the overall security capabilities of these countries. They also contribute to network-building on the side of partner countries. Therefore, the momentum of such cooperation must be kept robust.



JMSDF underwater medicine cooperation with Vietnam
(Photo from Japan Ministry of Defense website)

(5) Effective use of human resources

Being a country prone to natural disasters, Japan should further utilise the vast know-how and capabilities in disaster relief (and prevention) that it has accumulated at home and abroad for the capacity-building of ASEAN and other countries. As part of such efforts, it should step up cooperation in the areas of post-disaster medical care and livelihood assistance. The on-site roles of female SDF personnel and retired government officials of relevant ministries should be further promoted.



Female JSDF member offering emergency medical assistance as part of International Disaster Relief Operations in the Philippines (Photo from JGSDF website)

6. The case for OMSEA: streamlining pluralistic efforts and promotion of regional integration

This report presents a set of recommendations on urgent challenges regarding maritime security in East Asia. Continued work in this field is required in various forms. In order to achieve further progress multilaterally, we need to install the essential infrastructure that would enable more sustained and systematic efforts to be made. It is for this reason that the Nakasone Proposal advocated the formation of OMSEA.

An authority from ASEAN has suggested likewise.¹⁷ Given prevailing realities including the gradual pace of regional integration in East Asia, the idea should be considered a mid- to long-term goal. An initial step would be to exchange opinions through existing ASEAN-led mechanisms (such as the EAS, ARF, ADMM+ and EAMF), other multilateral fora such as HACGAM,¹⁸ and other bilateral, Track 1.5 and Track 2 channels. We should thereby engage in further discussion on ways to integrate the dialogue and cooperation in the maritime security area that is currently dispersed over numerous fora. The functions that a permanent multilateral organization could effectively perform, as well as practical questions such as the size, location and budget of the organization (secretariat), should also be addressed. An idea would be to appoint a coordinator (group of coordinators) and request that role to consolidate views over a certain period of time and to prepare a concrete plan on OMSEA's foundation. We consider that dialogue and cooperation through OMSEA should not be mandatory on all members/participants but ought to be conducted on a voluntary basis both with regard to the adoption and attainment of particular goals. A central role by ASEAN in both the establishment process and function of the organization would be welcome. The permanent body should establish an appropriate organizational relationship with mechanisms such as EAS.

The Japanese government should extend financial cooperation for OMSEA's establishment and participate as appropriate from the preparation process.

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Notes

¹ This proposal uses the term “East Asia” with a certain flexibility. In a geographic sense, it primarily encompasses the South China Sea and the East China Sea, as well as the areas of land surrounding them (southeast Asia and northeast Asia, including landlocked states). Yet depending on the context, it also includes, for instance, other member countries of the East Asia Summit that have close and legitimate interests in the region, not least the United States.

² The “Yasuhiro Nakasone Proposal on Maritime Security in East Asia” is attached as Annex 1.

³ The members and participants of the Study Group on Maritime Security in East Asia at the Institute for International Policy Studies are given at the end of this report.

⁴ *Kousen*, stated here in the Japanese original and which literally means “public vessel(s)”, are government vessels other than those of the military. They are primarily law enforcement vessels of the Coast Guard, Naval Police, Fishery Patrol and other government authorities. The same applies hereafter.

⁵ See Part 1 of reference section (Annex 2) for further background.

⁶ See Part 2 of reference section.

⁷ See Part 3 of reference section.

⁸ See Table A of cases referred to in Part 4 of reference section.

⁹ See “Outcome Document, Fourth Experts Meeting on Confidence-Building in the Spratlys Area, May 25-27, 2016, Cebu, Philippines”, co-hosted by the Foreign Service Institute (FSI) of the Philippines and Centre for Humanitarian Dialogue (a Swiss NGO).

¹⁰ Among the recent life-saving operations that received widespread attention was the search and rescue conducted by a Japan Coast Guard (JCG) patrol vessel(s) and airplanes on 11 August 2016. The operation was in response to a collision between a Greek cargo vessel and a Chinese fishing vessel in the high seas to the northwest of Uotsuri Island, of the Senkaku Islands. Six Chinese crew members were rescued, and the search for further survivors was continued thereafter.

¹¹ See Table B in reference section given in note 8.

¹² See Part 5 of reference section for details.

¹³ “China’s Maritime Expansion and Maritime Militia Organizations”, *NIDS Commentary*, no. 53 (15 July 2016) by Masaaki Yatsuzuka of the National Institute for Defense Studies (NIDS) is informative on fishing vessels operated by “maritime militias”.

<http://www.nids.go.jp/publication/commentary/pdf/commentary053.pdf>.

China’s Military Service Law states that “[t]he militia is an armed organization of the masses not divorced from production and is an assisting and reserve force for the Chinese People’s Liberation Army”. Simply put, they are “part-time officers and soldiers” who are normally engaged in other occupations but serve as military personnel when the need arises. Katsuya Yamamoto, “Maritime Militias and China’s Fishermen”, *JMSDF Command and Staff College*, Column, no. 56 (8 December 2014).

<http://www.mod.go.jp/msdf/navcol/SSG/topics-column/col-056.html> (accessed on 12 August 2016).

¹⁴ See Table C in reference section given in note 8.

¹⁵ James Kraska & Michael Monti, “The Law of Naval Warfare and China’s Maritime Militia,” U.S. Naval War College, *International Law Studies*, Vol. 91, 2015, pp. 450-467.

¹⁶ See note 18 below.

¹⁷ PDP Osman Patra, “Strengthening Maritime Cooperation in East Asia” in Rizal Sukma and Yoshihide Soeya eds, *Navigating Change: ASEAN-Japan Strategic Partnership in East Asia and in Global Governance*, Centre for Strategic and International Studies (CSIS), Jakarta and Japan Center for International Exchange, 2015, pp. 116-132.

¹⁸ See Part 6 of reference section for details of these multilateral fora.

(Annex 1)

Yasuhiro Nakasone Proposal on Maritime Security in East Asia

I. Context

East Asia represents the world's most populous and dynamically growing region in this century. The East China Sea and the South China Sea, which interconnect countries in this region, serve also as a great artery of the world economy through which an enormous amount of trade flows ceaselessly.

Thus freedom of the seas and maritime security in East Asia are preconditions for global peace and prosperity. They are matters of crucial interest for countries both within and beyond the region. Regrettably however, developments that call for concern in this regard have recently increased in frequency and seriousness, making them the subject of intense discussion at intergovernmental and private sector meetings on the world stage.

Against this backdrop I submit the following proposal for the sake of upholding the East China Sea and South China Sea as veritable "Seas of peace and prosperity." This call is made to various parties in the region and beyond, including governments, research institutions and academic circles, and the media, all of which contribute to the discussion and policy formulation on this matter.

II. Adhering to international rules and promoting practical cooperation

1. In order to ensure freedom of the seas and maritime security in East Asia, all parties need to re-affirm and fulfil their commitment to faithfully observe established common rules, namely international law and other international norms of behavior. Foremost among these are the principles of freedom of navigation and overflight as enshrined in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Many of these rules are also stated in such regional instruments as the 1976 Treaty of Amity and Cooperation in Southeast Asia and the 2002 Declaration on the Conduct of Parties in the South China Sea.

2. Conversely, all parties need to refrain from the self-righteous assertion of claims that are inconsistent with such rules, as well as from unilateral actions that heighten mistrust and tensions. It is essential that any differences of opinion or disputes that exist should be managed peacefully and be resolved through such established means as diplomatic negotiation and arbitration.

3. Meanwhile, collective efforts should be further promoted in such practical areas as the following in order to strengthen the sense of reassurance and mutual confidence among relevant parties and thereby enhance maritime security in East Asia:

- (1) strengthening the maritime domain awareness (MDA) capabilities of regional states and organizations;
- (2) coordination and capacity-building assistance in the fields of law enforcement and humanitarian assistance/disaster relief (HA/DR);
- (3) dialogue between countries concerning their respective national maritime policies as well as the organizational structure and operations of the implementing agencies of such policies;
- (4) dialogue in order to enhance mutual understanding on national positions and issues related to the interpretation and implementation of maritime international law;
- (5) an early conclusion of a meaningful Code of Conduct (COC) in the South China Sea, and adherence thereto;
- (6) establishing and expanding communication mechanisms, as well as rules of behavior for the safety of air and maritime encounters such as the Code for Unplanned Encounters at Sea (CUES) adopted in April 2014;
- (7) cooperation in such non-traditional security (human security) areas as marine science technology, marine resource management, environmental monitoring and preservation, as well as disaster risk reduction.

III. East Asian Maritime Security Charter

I propose that countries in the region and beyond adopt an East Asian Maritime Security Charter in order to jointly and comprehensively re-affirm the aims, rules and measures above. Such an instrument would provide a focused political framework for improving the current climate in East Asian waters and an impetus for further advancing cooperation.

IV. Organization for Maritime Security in East Asia (OMSEA)

1. As a major means to enhance maritime security in this region, I further propose the creation of an Organization for Maritime Security in East Asia (OMSEA) in parallel with adoption of the Charter in Section III above. The objectives of OMSEA would include:

- (1) providing a permanent and open forum for exchanging information, views and ideas concerning maritime security;
- (2) the collection and integration of information from an impartial standpoint, and sharing the results thereof; and
- (3) taking collective steps in order to promote or complement existing efforts in the areas given in Section II.3 above and to formulate policy recommendations.

2. This proposal concerning an OMSEA represents an evolution of an earlier concept which the Institute for International Policy Studies (IIPS) introduced in January 2015. Modifications have been made over the past year so as to reflect the discussions with various interlocutors, including those from the ASEAN region and beyond East Asia.

3. Membership as well as the operational activities of OMSEA should be open to countries within and beyond the East Asia region. The mandate and other details of OMSEA should be determined by an early date, and IIPS stands ready to work with other parties for this end. A central role by the ASEAN region would be welcome in this process.

4. OMSEA should establish an appropriate relationship with the East Asian Summit (EAS), taking note of the confirmation by EAS leaders at their tenth anniversary meeting in November 2015 that the inclusion of maritime cooperation among priority areas of cooperation merits further consideration.

Note: Mr Yasuhiro Nakasone is Chairman of IIPS and served as Prime Minister of Japan from 1982 to 1987.

(Annex 2)

Reference

1. Background (note 5 of Report)

(1) In East Asia and the Western Pacific, no agreements on the prevention of incidents at sea among navies (INCSEAs; see section 5 below) have been concluded, with the sole exception of an agreement between Japan and Russia. An adequate framework for preventing accidents and unforeseen conflicts does not exist. Against this backdrop, naval leaders from twenty-five countries—many located in the Western Pacific—including from the Japan Maritime Self-Defense Force agreed to a Code for Unplanned Encounters at Sea (CUES; see section 2 below) at an April 2014 meeting of the Western Pacific Naval Symposium (WPNS) held in Qingdao, China.

(2) Meanwhile, China has been rapidly stepping up its maritime expansion in recent years, and in so doing it has made extensive use of vessels from its maritime law enforcement agencies (MLEAs). As a result, there have been frequent encounters between vessels of the US Navy and China's MLEAs, heightening concerns about the risk of an unforeseen contingency. The situation has led a number of senior US Navy personnel and others to suggest, since 2014, the idea of extending CUES to MLEAs. These developments prompted the Study Group to consider the merits of this idea as part of this report.

(3) There are very few pre-existing international agreements on crisis management mechanisms for MLEAs, or judicial precedents that have directly ruled on details concerning such mechanisms.

(4) In view of the importance of MLEA vessels in the seas of East Asia, this report addresses pressing issues regarding maritime security and proposes a broad-ranging set of directions for crisis management. The latter was considered on a category-to-category basis, considering military vessels/aircraft, MLEA vessels, and private vessels separately.

2. CUES (Code for Unplanned Encounters at Sea: note 6 of Report)

CUES is a maritime code of conduct that promotes communication and offers means of avoiding danger when one navy's vessel or aircraft inadvertently encounters a vessel or aircraft of another country's navy. (It provides for communication methods and safety procedures.) CUES applies to the vessels and aircraft of the navies of countries that have adopted (implemented) the code. However, it does not apply to other vessels or aircraft (such as those belonging to MLEAs or the air force). Moreover, unlike international agreements, it is non-binding.

CUES adopts English as the standard language of communication and designates radio frequencies to be used between naval vessels and aircraft. Additionally, it stipulates coded signals to be used in case of lack of proficiency in radio communication in English. CUES further advises against such actions as flashing a searchlight on the bridge of a vessel or the cockpit of an aircraft, simulating an attack by aiming guns, missiles or fire-control radars on vessels of other countries.

3. The principle of proportionality in the conduct of maritime law enforcement (note 7 of Report)

In the course of law enforcement operations, MLEAs are required both to perform their duties pursuant to the law (including both International Law and domestic laws) and, as police agencies, to abide by the so-called “principle of proportionality”.

(1) In this context, “the principle of proportionality” refers to the idea that “in the event an MLEA has more than a single means of achieving a law enforcement objective at its disposal, it may exercise its authority only through such means that are within the limits of proportionality to the level of difficulty in attaining that objective”.

(2) There is no internationally-recognised document expressly stating this principle. Considering international judiciary precedents and past state actions, MLEAs are nonetheless expected jointly to adhere to this principle and thereby to conduct law enforcement operations in a legitimate manner, regardless of differing circumstances in each instance. Such law enforcement demands that the use of force be limited to the bare minimum required, and that the situation be prevented from escalating, whatever the situation.

(3) The 1999 judgement of the M/V “SAIGA” (No. 2) Case by the International Tribunal for the Law of the Sea (ITLOS) is a relatively recent judicial precedent concerning this matter. The tribunal ruled in paragraphs 155 to 156 of the judgement as follows:

I. Paragraph 155

(i) [I]nternational law ... requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances.

(ii) Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.

II. Paragraph 156

This paragraph states that “[t]he normal practice used to stop a ship at sea” is as follows:

(i) [F]irst to give an auditory or visual signal to stop, using internationally recognized signals.

- (ii) Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship.
- (iii) It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force.
- (iv) Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered ...

4. Cases of maritime law enforcement operations considered to have been conducted in a less than legitimate manner in waters where differences over territorial and/or jurisdictional claims overlap and whose boundaries are not delimited, and of problematic conduct at sea by fishing vessels believed to be operated by “maritime militia” or other such groups (notes 8, 11 and 14 of Report)
See attached table.

5. INCSEA (Agreement on the Prevention of Incidents On and Over the High Seas: note 12 of Report)

On 25 May 1972, an Agreement on the Prevention of Incidents On and Over the High Seas (INCSEA) was signed in Moscow between the United States and the Soviet Union. This agreement was not only the first military agreement signed between the two Superpowers after the Second World War, but it also came to serve as a model for subsequent INCSEAs, covering naval vessels and naval aircraft at sea and in airspace, between the Soviet Union (later Russia) and other states having adversarial relations with it, as well as between third states with tense relations.

(1) US-Soviet INCSEA

The military expansion of the United States and the Soviet Union turned into an arms race after the Second World War. As the Soviet Union expanded the area of its navy’s operations and this extended to the vicinity of US territory in the late 1960s, the level of provocative actions between vessels that approached each other during reconnaissance activities began to escalate. These operations were conducted in such ways as manipulating the status of stand-on vessels and give-way vessels as provided for in the COLREG Convention. (*reference details below) For example on 10 May 1967, USS *Walker*, a destroyer that was taking part in a joint Japan-US anti-submarine training mission in the Sea of Japan, collided with a “Kotlin”-class Soviet destroyer. The following day, the same US destroyer was hit by another Soviet naval vessel. These incidents were likely caused by clashes between the Soviet Navy’s close observation of US Navy exercises and counteractions by US vessels.

Various forms of psychological and physical provocations were exchanged between US and Soviet vessels during these encounters and their intensity rose. Concrete methods included: throwing dangerous objects such as ropes, drums in the way of passage of other vessels; dazzling by the use of powerful searchlights; spraying water in dangerous

directions; discharging signal shells; designating guns, missiles and fire-control radars; aircraft approaching at very low altitude; dumping waste and filth; and the flaunting of insulting acts from visible distance. Such acts were exchanged not just between vessels of the United States and the Soviet Union but also those of their respective allies. Fears grew that they could trigger all kinds of military clashes, large and small.

The concerns were raised in the US Congress. The point was made that the acts above could not be prevented merely by international regulations for preventing the collision of vessels, and that some form of special regulation was required to cover also the use of arms and dangerous acts that were deliberate. As a result, in 1968, the United States first proposed negotiations on an INCSEA. Initially the Soviet Union declined, and friction between the naval vessels and aircraft of the two states continued. In September 1970, US and Soviet vessels that were sent to waters off Lebanon during the Jordanian crisis aimed fire-control radars at the other's aircraft, each side with their missiles loaded. Tensions almost reached a flash point. This development prompted a change in the Soviet attitude and negotiations on INCSEA were started.

Naval officers, who had first-hand knowledge of on-site realities, took part in these talks. Agreement was reached after two rounds, first in October 1971 in Moscow, and the second in May 1972 in Washington. The US-Soviet agreement was signed in conjunction with the Moscow summit meeting between President Richard Nixon and General Secretary Leonid Brezhnev in May 1972.

Taking lessons from dangerous acts in the past, the agreement provides for the following: (a) manoeuvres and concrete procedures to avoid collision; (b) radio frequencies for mutual on-site communications; (c) special signals to supplement the International Code of Signals (INTERCO) which are used for communications among all kinds of vessels; (d) exchange of information in the event of incidents through military attachés of the two sides; and (e) meetings at least once a year to review the implementation of the terms of the agreement.

Following the conclusion of the US-Soviet agreement, similar instruments were concluded between the Soviet Union/Russia and at least the following twelve countries: the United Kingdom, West Germany (Germany), France, Italy, Canada, the Netherlands, Norway, Spain, Portugal, Greece (all the above in NATO) as well as Japan and the Republic of Korea. In addition, INCSEAs whose parties do not include the Soviet Union/Russia were concluded between Germany and Poland, Turkey and Greece, India and Pakistan, and Israel and the United Arab Republic (presently succeeded by Egypt).

The supplementary signals annexed to the US-Soviet agreement is also appended to INTERCO and serves *de facto* as a universal set of signals that is used also among the vessels of non-INCSEA parties.

(2) Japan-Russia INCSEA

This agreement was one of the sixteen documents on practical matters signed between Japanese Foreign Minister Tsutomu Hata and Russian Foreign Minister Andrey Kozyrev during a meeting held simultaneously with the summit meeting between Russian President Boris Yeltsin and Japanese Prime Minister Morihiro Hosokawa during the Russian president's visit to Japan in October 1993. The agreement entered into force on 12 November that year.

The agreement differs little from other INCSEA agreements, but separate wording is used to accommodate the fact that (technically) a military force does not exist in Japan.

6. Existing multilateral fora (note 18 of Report)

(1) East Asia Summit (EAS)

This forum was inaugurated in December 2005 in Kuala Lumpur, Malaysia. Its purpose is to enable the leaders of the ASEAN countries and those of the organization's dialogue partners to engage in candid talks on crucial issues facing the East Asia region and the international community. Currently, eighteen countries participate (the ten ASEAN member states, Japan, China, Republic of Korea, Australia, New Zealand, India, USA and Russia; USA and Russia joined in 2011.)

At the inaugural meeting, the following were established as priority areas for cooperation: energy, finance, education, measures for combatting avian influenza and other infectious diseases, and disaster prevention. In addition, the Declaration of the Sixth East Asia Summit on ASEAN Connectivity was adopted in 2011, adding "connectivity" to the list of priority areas. Leaders affirmed that endeavours in the areas of politics and security would be strengthened when the US and Russia began their official participation in 2011.

(Source: Japanese Ministry of Foreign Affairs (JMFA) website)

(2) ASEAN Regional Forum (ARF)

The ARF has been held since 1994, and its purpose is to improve the security environment in the Asia-Pacific region through dialogue and cooperation on political and security issues. This has the longest history and the largest number of participating countries among the various fora (including the EAS and ADMM+) that attach importance to ASEAN centrality. The ARF aims to achieve incremental progress through a three-stage approach consisting of the promotion of confidence-building, progress in preventive diplomacy, and the elaboration of approaches to conflicts. Participants consist of 26 countries and one organization: the ten ASEAN member states, Japan, China, Republic of Korea, Democratic People's Republic of Korea, USA, Australia, New Zealand, Canada, India, Pakistan, Bangladesh, Sri Lanka, Papua New Guinea, East Timor, Russia, Mongolia and the EU.

(Source: JMFA website)

(3) The Expanded ASEAN Defence Ministers' Meeting (ADMM+)

The forum was inaugurated in October 2010 with the addition of eight countries outside the ASEAN area (Japan, China, Republic of Korea, the United States, Australia, New Zealand, India and Russia) to the ASEAN Defence Ministers' Meeting (ADMM), which had been held since May 2006. The ADMM+ aims to bolster cooperation among the militaries of participant countries, as well as to promote strategic dialogue at the ministerial level.

(Source: the websites of the Japanese Ministry of Defense and JMFA)

(4) Expanded ASEAN Maritime Forum (EAMF)

At the November 2011 East Asia Summit (EAS), Japan presented a proposal to establish a venue for the countries participating in the EAS to discuss the modalities of maritime cooperation, emphasising the importance of such a setting. After consideration within ASEAN, the decision was taken to hold meetings that include ASEAN and non-ASEAN EAS participants (Japan, China, USA, Australia, New Zealand, India and Russia), in conjunction with ASEAN Maritime Forum (AMF) meetings which had been held among ASEAN member states. The first EAMF meeting was held in October 2012 and there have since been three further meetings.

(Source: the websites of the JMFA and the ASEAN Secretariat)

(5) Heads of Asian Coast Guard Agencies Meeting (HACGAM)

The Asian region is home to some of the world's most important maritime routes, not least the Strait of Malacca and the Singapore Strait. HACGAM is a Japanese-led meeting that has been held nearly every year since 2004, whose purpose is to bring together the heads of the maritime safety agencies of the Asian region in order to strengthen regional cooperation on the administration of maritime safety. Nineteen countries and one entity (the ten ASEAN member states, Japan, China, Republic of Korea, Hong Kong, Australia, India, Bangladesh, the Maldives, Pakistan and Sri Lanka) currently take part in this forum.

* COLREG Convention: International regulations for preventing collisions at sea have been repeatedly agreed and revised, starting from the rules of the Washington conference of 1889 to the current "Convention on the International Regulations for Preventing Collisions at Sea (COLREG)" of 1972. These regulations are applicable on the high seas, in EEZs and territorial waters that are navigable by seagoing vessels. They are also applicable in internal waters and archipelagic waters connected to territorial waters navigable by seagoing vessels. They cover all vessels, naval, MLEA and civilian, including seaplanes on water and surfaced submarines. COLREG came into effect in Japan in July 1977 as a result of approval by the Diet. The "Act on Preventing Collision at Sea" was passed in June of the same year in conformity with the convention.

(Attachment)

Cases of maritime law enforcement operations considered to have been conducted in a less than legitimate manner in waters where differences over territorial and jurisdictional claims overlap and/or whose boundaries are not delimited (A and B), and of problematic conduct at sea by fishing vessels believed to be operated by “maritime militia” and other such groups (C)

Note: Cases involving naval vessels are included.

A. MLEA vessel(s) vs civilian vessel(s) (note 8, section 3(1) of Report)

	Date	Location	Incident	Source
1	May 26, 2011	East of Vietnam	Chinese MLEA vessels, equipped with cable slashing devices, severed the exploration cables of a PetroVietnam resource survey vessel searching for oil.	Vietnamese MFA Media (<i>Sydney Morning Herald</i>)
2	January 27, 2013	Scarborough Shoal	Chinese MLEA vessels repelled Philippine fishing vessels that were stationed at the shoal or taking shelter there during stormy weather, spraying them with water cannons. According to the DFA of the Philippines, there were nine similar incidents.	Media (<i>Inquirer</i>)
3	March 20, 2013	Near Paracel Islands	A Chinese navy vessel approached from astern the starboard side of a Vietnamese vessel engaged in fishing. It fired four flares from a distance of 40 meters without warning. The top part of the fishing vessel’s cabin burst into flames and burned down. The Chinese authorities claimed that: (a) after unsuccessful demands by whistle-blowing, shouting, hand flag guiding for the fishing vessel to stop its activity and leave Chinese territorial waters, the Chinese vessel fired two red signal shells; and (b) the flares burst and went out in the air, hence the burning of the fishing vessel was a fabrication.	Media (<i>Asahi Shimbun</i> ; <i>The Guardian</i> ; <i>BBC News</i>)

4	May 16, 2014	Near Paracel Islands	A Chinese MLEA vessel threw rocks at a Vietnamese fishing vessel in operation. The Vietnamese vessel raised its speed and fled the scene, but all its windows were broken. The same Chinese MLEA vessel violently assaulted two crew members of another Vietnamese fishing vessel, of a twelve-passenger capacity, and destroyed nearly all the equipment on the Vietnamese vessel.	Vietnamese MFA Media (<i>Asahi Shimbun</i> ; <i>Tuoitre News</i>)
5	September 29, 2015	Near Paracel Islands	A Chinese MLEA vessel intentionally rammed a Vietnamese fishing vessel carrying ten crew members. Five crew members from the Chinese vessel, armed with knives, forcibly boarded the Vietnamese vessel and took away navigational devices, fishing gear, and the fish that had been caught. The fishing vessel sank twelve hours later.	Media (<i>Taipei News</i>)
6	March 6, 2016	Near Paracel Islands	A Chinese MLEA vessel approached a Vietnamese fishing vessel in operation with ten crew members onboard. Eleven persons from the Chinese vessel boarded the Vietnamese vessel and forcibly took control of the Vietnamese vessel. They seized food and fuel and destroyed fishing gear.	Media (<i>Jiji Press</i> ; <i>Tuoitre News</i>)
7	July 9, 2016	Near Paracel Islands	A Vietnamese fishing vessel was chased by two apparent Chinese MLEA vessels, and was rammed and overturned by two other ships. Five crew members had to wait rescue in the water by clinging on to the capsized vessel. The Chinese vessels obstructed their rescue.	Media (<i>The Hindu</i>)

B. MLEA vessel(s) vs MLEA vessel(s) (note 11, section 3(2) of Report)

	Date	Location	Incident	Source
1	April 2010	Swallow Reef	Malaysia dispatched two destroyers and a maritime patrol aircraft to the Swallow Reef (within the Malaysian EEZ) when three armed patrol vessels were sent there from China under the pretext of “protecting fishing vessels”. The ships faced each other down intermittently, with guns at the ready, for 17 hours.	Media (<i>The Yomiuri Shimbun</i>)
2	June 23, 2010	Near Natuna Islands	One Chinese fishing vessel, out of a fleet of at least ten, was captured for illegal operations by an Indonesian patrol vessel. Two Chinese MLEA vessels appeared and demanded the release of the fishing vessel, claiming on radio that China does not recognize the area as being within Indonesia’s EEZ. The Indonesian patrol vessel released the fishing vessel. The following morning, the patrol vessel re-captured the fishing vessel after an Indonesian naval vessel arrived on the scene, but released the fishing vessel again after threats were made by one of the Chinese MLEA vessels, which aimed a heavy machine gun at the Indonesian ship. Similar incidents occurred on May 15 of this year and March 26, 2013.	Media (<i>Mainichi Shimbun</i> ; <i>The Strategist</i> on ASPI website)
3	May 2014 to July 2014	Waters near Paracel Islands	A Chinese oil rig was moved into waters near the Paracel Islands in May 2014, with a naval vessel, MLEA vessels, fishing vessels and other ships around the rig’s perimeter for protection. These ships prevented Vietnamese MLEA vessels from approaching the rig. Many of the Chinese MLEA vessels rammed the Vietnamese MLEA vessels and sprayed them with high-pressure water guns. See also C3 below.	Vietnamese MFA Media (<i>Tuoitre News</i>)

	Date	Location	Incident	Source
4	March 19, 2016	Natuna Islands	An Indonesian Maritime Affairs and Fisheries Ministry patrol vessel detained a Chinese fishing vessel involved in illegal fishing. After the crew was arrested and during escort of the fishing vessel, a Chinese MLEA vessel rammed the towed fishing vessel, presumably to turn off the engine and prevent the vessel from being towed. When another Chinese MLEA vessel demanded that the Indonesian patrol vessel release the Chinese vessel within 30 minutes, the patrol vessel complied. The Chinese MFA claimed that the fishing vessel had been attacked and obstructed by an armed Indonesian vessel and that the MLEA vessel had assisted the fishing vessel.	Chinese MFA Media (<i>Jakarta Post</i> ; <i>The Guardian</i>)

C. Fishing vessels believed to be operated by “maritime militia” and other such groups (note 14, section 3(4) of Report)

	Date	Location	Incident	Source
1	March 8, 2009	South of Hainan Island	Activities of US Navy ocean surveillance ship <i>Impeccable</i> some 75 nautical miles from Hainan Island were obstructed by a frigate, two MLEA vessels and two fishing vessels. The fishing vessels veered dangerously close to the <i>Impeccable</i> to try to steer it off course, threw lumber in its way and attempted to snag the <i>Impeccable</i> 's acoustic equipment in the water.	Media (<i>CNN</i>)

	Date	Location	Incident	Source
2	June 9, 2011	South of Vietnam	A resource survey vessel chartered by PetroVietnam was towing an exploration cable, when it was approached by two Chinese fishing vessels that were equipped with cable slashing devices and supported by two Chinese MLEA vessels. The resource survey vessel fired signal shells as a warning, but a Chinese fishing vessel came into contact with the cable. The vessel became entangled and received help from Chinese MLEA vessels and several other fishing vessels.	Vietnamese MFA
3	May 2014 to July 2014	Waters near Paracel Islands	During situation B3 above, the Chinese fishing vessels, supported by MLEA vessels, made dangerous approaches to the Vietnamese fishing vessels.	Vietnamese MFA Media (<i>Tuoitre News</i>)

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