6TH EAST ASIA SECURITY OUTLOOK

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Sultan Haji Hassanal Bolkiah Institute of Defence and Strategic Studies

Sultan Haji Hassanal Bolkiah Institute of Defence and Strategic Studies (SHHBIDSS) was formally formed in April 2007 as the Brunei Darussalam Ministry of Defence's Policy Research Institute. SHHBIDSS mission is to study, discuss and disseminate defence, security and strategic issues relevant to Brunei Darussalam and its surrounding environment.

SHHBIDSS invites internationally renowned academicians and practitioners to present and write on the different issues surrounding the East Asia Security Outlook. This publication is based on presentations delivered by SHHBIDSS's invited speakers on the 18 February 2014.

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Preface

This publication is the outcome of the East Asia Security Outlook (EASO) seminar conducted on the 18 February 2014 by the Sultan Haji Hassanal Bolkiah Institute of Defence and Strategic Studies (SHHBIDSS).

The main objective of EASO seminars is to share views, perspectives and outlooks on the current security environment of East Asia. The contributors in this publication have covered topics that are timely and important to the current regional security environment such as power rivalries in Southeast Asia, forming a security community in ASEAN and role of non-state actors. This year's EASO seminar also focused on maritime security where China's maritime policy, the South China Sea and strategies towards enhancing closer cooperation in the maritime domain are discussed.

SHHBIDSS would like to thank the contributors, its staff and all others who are involved in making our EASO this year a success.

Muhammad Shahrul Nizzam Umar
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List of Acronyms

AADMER	ASEAN Agreement on Disaster Management and Emergency Response
ACFTA	ASEAN-China Free Trade Area
ADB	Asian Development Bank
ADIZ	Air Defence Identification Zone
ADMM	ASEAN Defence Ministers' Meeting
AHMM	ASEAN Health Ministers' Meeting
AHN	ASEAN Highway Network
AICHR	ASEAN Intergovernmental Commission on Human Rights
ALAWMM	ASEAN Law Ministers' Meeting
AMM	ASEAN Ministers' Meeting
AMMDM	ASEAN Ministerial Meeting on Disaster Management
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
APCSS	Asia-Pacific Centre for Security Studies
ARF	ASEAN Regional Forum
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of South East Asian Nations
ASEAN CPR	ASEAN Committee of Permanent Representative
CAN	Center for Naval Analysis
CER	Closer Economic Relations
CMIM	Chiang-Mai Initiative Multilateralisation
COC	Code of Conduct
CSIS	Center for Strategic and International Studies
CZ	Contagious Zone
DOC	Declaration on the Conduct of Parties in the South China Sea
EEZ	Exclusive Economic Zone
EPEG	Eminent Persons and Expert Groups
IMO	International Maritime Organisations
ITOLS	International Tribunal on Law of the Sea
LTE	Low Tide Elevation
MIEC	Mekong-India Economic Corridor
MPAC	Master Plan on ASEAN Connectivity
NGO	Non-Government Organisations
RCEP	Regional Comprehensive Economic Partnership

SCO	Shanghai Cooperation Organisations
SCS	South China Sea
SEANWFZ	Southeast Asia Nuclear Weapon-Free Zone
SKRL	Singapore-Kunming Rail Link
SOM	Senior Officials Meeting
TAC	Treaty of Amity and Cooperation
TPP	Trans-Pacific Partnership
UNCLOS	United Nation Convention on the Law of the Sea
ZOPFAN	Zone of Peace, Freedom and Neutrality

ASEAN'S RESPONSE TO POWER RIVALRIES IN SOUTHEAST ASIA

Termsak Chalermpalanupap

Abstract

This article answers one crucial question. How did ASEAN and its Member States cope with the rivalries of external powers? The answer is in enhancing the ASEAN centrality. When they operate as a group in ASEAN, ASEAN Member States would continue to keep ASEAN neutral, constructive, proactive and innovative in promoting dialogue and cooperation with all external friends and partners. At the same time, and more importantly, ASEAN Member States have been building a peaceful, prosperous and caring ASEAN Community. Success in community-building will make ASEAN more credible and its centrality viable.

The 2013 ASEAN Security Outlook[1] states that ASEAN is facing *"increasingly complex geopolitical challenges…"* in Southeast Asia and that this trend will continue in the coming years. This article examines the interplay of these challenges and how ASEAN and its Member States dealt with them.

Calmer South China Sea in 2013

A good starting point is in the South China Sea. Although Brunei Darussalam is one of the claimants, its claims are actually minimal, limited to Rifleman Bank, Louisa Reefs, EEZ and continental shelf, but nothing in the Spratly group of islands. Since joining ASEAN in January 1984, the country has avoided clashing with China whose controversial nine-dash line envelops Brunei Darussalam's claims. Brunei Darussalam does take part in informal consultations with Malaysia, the Philippines and Viet Nam in the four-country caucus in ASEAN on the South China Sea. At the 45th ASEAN Foreign Ministers Meeting (AMM) in Phnom Penh in July 2012, Prince Mohamed Bolkiah, Brunei Darussalam's Minister for Foreign Affairs and Trade, counselled his ASEAN colleagues to avoid taking any extreme stance during their heated debates on what to include about the South China Sea and what to exclude from the draft joint communiqué.

Philippine's Legal Case against China's Claims

At the 46th AMM in Bandar Seri Begawan in June 2013, there was no political discord among ASEAN Foreign Ministers over the South China Sea. But there was some underlying disquiet caused by the Philippines' national decision to mount a legal challenge against China's ambiguous nine-dash line of massive claims in the

South China Sea. Out of the blue[2], on 22 January 2013, the Philippines ventured to bring China before an arbitral tribunal under Article 287 and Annex VII of the 1982 UN Convention on the Law of the Sea (UNCLOS). The Philippines is seeking, among other things, a declaration by the arbitral tribunal that *"China's maritime claims in the South China Sea based on its so-called "nine dash line" are contrary to UNCLOS and invalid;...," and to require "China to bring its domestic legislation into conformity with its obligations under UNCLOS;... ."*[3]

Quite predictably, China refused to participate. China also denounced the Philippine legal challenge as yet another serious violation of the 2002 ASEAN-China Declaration of Conduct of Parties in the South China Sea (DOC). Nevertheless, the International Tribunal on Law of the Sea (ITLOS) has accepted the Philippine case for consideration. On 24 April 2013, five arbitrators were appointed: Mr Chris Pinto from Sri Lanka was designated as president of the arbitral tribunal in this case, Mr Alfred Soons from The Netherlands, Mr Pierre Cot from France, Mr Rudiger Wolfrum from Germany nominated by the Philippines, and Mr Stanislaw Pawlak from Poland appointed by ITLOS President on behalf of China. On 21 June 2013, Mr Chris Pinto stepped down and he was replaced by Mr Thomas Mensah[4] from Ghana.

The arbitral tribunal has asked the Philippines to submit more information on both its case against China and its claims in the South China Sea by March 2014. This is in line with Article 9 of Annex VII which states: *"Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law."*

Chinese Pressure on the Philippines

China has been obviously quite upset by the Philippine legal challenge. Chinese Foreign Minister Wang Yi reportedly took several minutes during the meeting with ASEAN Foreign Ministers in Bandar Seri Begawan on 30 June 2013 to heap pressure on the Philippines.[5] Moreover, Beijing advised Chinese organizers of the annual 10th China-ASEAN Expo in Nanning, 3-6 September 2013, to disinvite the Philippine President. This led President Benigno Aquino to cancel his participation at the Nanning Expo and sent instead Trade Secretary Gregory Domingo. (Prime Ministers of Cambodia, Laos, Viet Nam and Thailand, and President of Myanmar attended the Expo and met with Chinese Premier Li Keqiang in Nanning.) And lastly, Chinese Premier Li Keqiang mentioned to President Aquino during a brief conversation in Bandar Seri Begawan on 9 October 2013 "China's concerns about the [Hong Kong hostage in Manila] incident6". The Chinese Premier urged the Philippines "to treat the matter seriously and offer a fair and reasonable solution as soon as possible. ..."[7].

Official Consultations on COC

After the meeting in Bandar Seri Begawan on 30 June 2013, Thailand (as ASEAN's Country Coordinator in the ASEAN-China Strategic Partnership from 2013-2015) and China issued their joint press release on the meeting, stating in part that the *"Ministers…reiterated the importance of cooperation between ASEAN countries and China on maintaining peace and stability in the South China Sea, and stressed the importance of full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) and the need to steadily move towards the conclusion of a code of conduct in the South China Sea (COC) on the basis of consensus. …"*[8]

On 9 October 2013, ASEAN Leaders and Chinese Premier Li Keqiang met in Bandar Seri Begawan. The Leaders welcomed *"the progress in the implementation of the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), the issuance of the ASEAN-China Joint Statement on the 10th Anniversary of the Declaration of Conduct of Parties in the South China Sea (DOC) in 2012, the adoption of the Guidelines to implement the DOC in 2011, and the commencement of official consultations on a Code of Conduct in the South China Sea (COC); …"*[9] *They looked forward to "the development of hotline communications in order to respond expeditiously to situations at sea, including search and rescue of persons and vessels in distress." They agreed "to promote trust, build confidence, and encourage concerned parties to prevent incidents at sea if they occur." They also agreed to "continue to strengthen the implementation of the DOC and maintain the momentum of the regular official consultations and work towards the adoption* of the COC as provided for by the DOC,…"

Positive Outcomes

ASEAN and China hailed the 9th Joint Working Group Meeting on the Implementation of the DOC and the 6TH ASEAN-China Senior Officials Meeting on the Implementation of the DOC, held in China's Suzhou, 14-15 September 2013, for producing *"positive outcomes"*. They included several new project proposals from both sides. Their proponents have been encouraged by the good prospect of getting funding support from the China-ASEAN Maritime Cooperation Fund, to which China has allocated 3 billion yuan (about US$ 480 million) to promote maritime connectivity between ASEAN and China and to fund other maritime cooperation activities, including DOC projects. So far, ASEAN and China have implemented five DOC projects[10].

Another positive outcome was the agreement for the Joint Working Group to meet as frequently as necessary. At least four meetings have been planned for 2014, to be held in Singapore, Indonesia, Thailand, and China. Normally the Joint Working Group meets only once or twice a year.

More importantly, senior officials of ASEAN and China started formal consultations on a COC in Suzhou and tasked the Joint Working Group to continue the consultations. The senior officials agreed to take steps towards establishing an eminent persons and experts group (EPEG) and/or other mechanisms to provide support to the COC consultations.

The EPEG idea was raised by Mr Wang Yi during his visits to Jakarta and Bandar Seri Begawan in early May 2013. At first some ASEAN Member States were reluctant to consider it. They were afraid that such a new mechanism could slow down the COC process. One compromise at the meeting between ASEAN Foreign Ministers and Mr Wang Yi on 30 June 2013 was to take steps *"to establish an Eminent Persons and Experts Group (EPEG) and/or other mechanisms to provide support to the above official consultations. …"*[11]

Same Prognosis but Different Solutions

Even though China has now started official consultations with ASEAN on a COC, the Chinese side has emphasized that it is doing so *"within the framework of the implementation of the DOC"*. As far as China is concerned, it has not yielded any new political concession to ASEAN in starting the COC talks.

Another crucial point on which the Chinese side seems to have prevailed is its insistence on moving step-by-step *"steadily towards the conclusion of a code of conduct in the South China Sea (COC) on the basis of consensus."*[12] The ASEAN side has called, to no avail, for *"the early conclusion"* of a COC. This is Point 3 of the Six-Point Principles of ASEAN Foreign Ministers on the South China Sea. But ASEAN Foreign Ministers have never elaborated when or how soon is *"early"*. The common ASEAN position on the South China was announced in Phnom Penh on 20 July 2012, apparently to try to repair the political damage caused by the unprecedented collective failure of ASEAN Foreign Ministers to agree to issue their customary joint communique at the end of their 45th AMM because of their serious differences on what to say and not to say about the South China Sea in the draft joint communique.

ASEAN Foreign Ministers have agreed to a list of desirable elements and a structure of a COC. In addition, Dr Marti Natalegawa has suggested that a COC should include additional confidence-building measures; ways and means of preventing unpleasant incidents at sea; and some crisis management procedure or mechanism in case a serious incident at sea occurs. The Chinese side has not informed ASEAN what it wishes to see in a COC, except that China does not want the DOC replaced by any COC.

ASEAN and China agree that the DOC has failed to prevent unpleasant incidents

in the South China Sea. But they differ on what to do about the shortcoming. ASEAN's proposed solution is to put in place a legally-binding COC. But China prefers trying to improve implementation of the DOC, and to proceed with the COC consultations step by step.

More Trouble Ahead?

Unfortunately, 2014 started on a rather unhappy note when China declared its renewed intention to enforce its unilateral fishery law in disputed waters in the South China Sea. Foreign fishing boats caught fishing in the waters claimed by China face a fine of up to 500,000 yuan (US$80,000). Foreign fishermen are advised to seek proper permission from appropriate Chinese authorities before venturing into the disputed waters. But it is unclear how such Chinese permission can be obtained and by what means. The State Oceanic Administration in Beijing seems to be in charge; it has an operational command on Hainan Island.

The new Chinese move is actually worse than a unilateral declaration of Air Defence Identification Zone (ADIZ) in the South China Sea, because the fishery law enforcement is aiming at civilian fishermen, whereas an ADIZ is normally aimed at foreign military aircraft. A US State Department spokesman described the Chinese move as *"provocative and dangerous"*.[13] Philippine President Aquino dropped a bombshell by comparing Chinese growing assertiveness in the South China Sea to Nazi Germany's aggression against its weaker European neighbours in light of Western appeasement prior to the Second World War.[14]

At the "AMM Retreat" in Myanmar's Bagan historic town on 17 January 2014, ASEAN Foreign Ministers15 discussed recent developments in the South China Sea, among other issues of common interest. The press release by the Myanmar Foreign Minister, in his capacity as the Chairman of the AMM Retreat, mentioned that the ASEAN Foreign Ministers *"expressed their concerns on the recent developments in the South China Sea. They further reaffirmed ASEAN's Six-Point Principles on the South China Sea …"*[16]

Hardening of the US position

The conventional US position on the South China Sea used to be a combination of the following: emphasizing freedom and safety of navigation and overflight (including freedom to conduct covert military activities outside the territorial seas of coastal states); not taking sides in the sovereignty/jurisdiction disputes; calling for restraint and non-use of force; showing no clear military commitment to support the Philippines in case of a serious clash with China in disputed areas in the South China Sea, in spite of the 1951 Mutual Defense Treaty between the US and the Philippines; calling for settlement of disputes through peaceful means;

and supporting ASEAN-China DOC cooperative activities, including talks on a COC.

US Secretary of State Hillary Clinton went farther at the 17th ASEAN Regional Forum (ARF) in Ha Noi in July 2010 by stating that peaceful settlement of disputes in the South China Sea has become part of the US national interest in Asia-Pacific, and the US wished to see a greater role of multilateral processes, such as the ARF, to help address issues of common concerns arising from the disputes in the South China Sea. Chinese Foreign Minister Yang Jiechi's response was immediate and forceful. Speaking in flawless English, he accused the US Secretary of State of interfering in the bilateral affairs of China and its neighbours, and trying to internalize the disputes in the South China Sea. In his impromptu rebuttal, he also gave ASEAN Foreign Ministers at the ARF meeting a quick lesson on geography, reminding them that China is a "big country" and theirs are "small countries".[17]

Recent US pronouncements indicated a further hardening of the US position. For example, Mr Daniel R. Russel, the new US Assistant Secretary of State for East Asia and Pacific Affairs, stated on 5 February 2014 that *"we [the US] certainly believe that claims in the South China Sea that are not derived from land features are fundamentally flawed....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 sea. "*[18]

China's Charm Offensive

Chinese President Xi Jinping visited Indonesia and Malaysia, and attended the APEC Economic Leaders Meeting in Bali in October 2013. Chinese Premier Li Keqiang visited Brunei Darussalam to attend the 16th ASEAN-China Summit, the 16th ASEAN Plus Three Summit, and the Eighth EAS in October 2013. After that he visited Thailand and Viet Nam. Chinese Foreign Minister Wang Yi visited all ASEAN Member States except the Philippines in 2013, even though his Philippine counterpart has extended a formal invitation to him to undertake an official visit to the Philippines for bilateral discussion on all issues of common interest.

Premier Li Keqiang went on a charm offensive during his meeting with ASEAN Leaders at the 16th ASEAN-China Summit in Bandar Seri Begawan on 9 October 2013. Among other initiatives, he called for deepening and upgrading of the ASEAN-China Free Trade Area (ACFTA) agreement[19]. The ASEAN side has agreed to task senior economic officials to start discussions with their Chinese counterparts on the upgrading of the ACFTA.

More importantly, Premier Li proposed a *"treaty on good-neighbourliness and*

friendly cooperation" between China and ASEAN Member States. This is part of the emerging new Chinese policy towards neighbouring countries which President Xi has pledged to deepen. The Joint Statement of the 16th ASEAN-China Summit on Commemoration of the 10th Anniversary of the ASEAN-China Strategic Partnership says: *"ASEAN countries note with appreciation China's proposed treaty on good-neighbourliness and friendly cooperation."*[20] However, China has yet to show ASEAN Member States details of the proposed treaty.

In 2003, China acceded to the Treaty of Amity and Cooperation in Southeast Asia (TAC),21 which includes among others, provisions on *"settlement of differences of disputes by peaceful means"* and *"renunciation of the threat or use of force"*. China and ASEAN have already agreed on these principles as early as in 1997, as stated in Paragraph 8 of the Joint Statement of the Meeting of Heads of State/Government of the Member States of ASEAN and the President of the People's Republic of China [President Jiang Zemin] in Kuala Lumpur on 16 December 1997.

The 2001 Sino-Russian Treaty of Good Neighbourliness and Friendly Cooperation included mutual commitments to refrain from joining any military alliance aimed at the other party in the Treaty, exchange of military technologies, Russian support for China on the Taiwan issue, and respect for each other's sovereignty and territorial integration. The Treaty was signed after China and Russia had settled all of their territorial issues.

Can ASEAN Member States sign a good neighbourliness treaty with China while disputes in the South China Sea remain unsettled? The Philippines and Thailand are non-NATO allies of the US; Malaysia and Singapore are in the 42-year-old Five Power Defence Arrangements with Australia, New Zealand and the UK. Brunei Darussalam has some security cooperation with the UK. Are these security ties with the US and the UK going to be phased out so that all ASEAN Member States could become good neighbours of China? If the new treaty between China and ASEAN Member States does materialize, it can render a COC redundant. Perhaps this is what China is aiming at: diverting ASEAN attention from a COC to the new and more exciting proposed treaty.

ASEAN and the US Rebalancing to Asia

The US credibility in Southeast Asia suffered a setback when President Obama had to cancel his trip to the region in October 2013. He missed attending the APEC summit in Bali, and postponed his visits to Malaysia and the Philippines. He also missed the First ASEAN-US Summit[22] and the Eighth EAS.

President Obama has re-scheduled for April 2014 his visits to Asian countries, which will likely include Malaysia and the Philippines. The breakthrough in the

US Congress on a bipartisan budget deal will prevent any government shutdown in 2014 and this will enable President Obama to attend the Second ASEAN-US Summit and the Ninth EAS in Myanmar's Nay Pyi Taw in November 2014. It is important for President Obama to go to the capital of Myanmar to show support to Myanmar's Chairmanship of ASEAN. Myanmar is also ASEAN's Country Coordinator for the ASEAN-US Strategic Partnership from 2013-2015.

In the absence of President Obama, US Secretary of State John Kerry represented the US President at the First ASEAN-US Summit. He tried to reassure ASEAN Leaders that the US interest in engaging ASEAN will continue to grow. In his opening remarks at the Summit, Mr. Kerry said: *"The partnership that we share with ASEAN remains a top priority for the Obama Administration, and the ties among our nations…strengthening those ties on security issues, on economic issues, and more on our people-to-people relationships, are a critical part of President Obama's rebalance to Asia. That rebalance is a commitment, it is there to stay, and will continue into the future. …"*[23]

Mr Kerry in mid-December 2013 visited Viet Nam, and the Philippines, including Tacloban (the Philippine city ravaged by Typhoon Haiyan). In Ha Noi, he unveiled a new US assistance programme involving US$32.5 million to boost maritime security of Viet Nam and other Member States of ASEAN in the South China Sea. *"Peace and stability in the South China Sea is a top priority for us and for countries in the region,"* he told a press conference in Ha Noi on 16 December. *"We are very concerned by and strongly opposed to coercive and aggressive tactics to advance territorial claims,"* he added.[24] The visit of Mr Kerry and the possible visit of President Obama to the Philippines in April 2014 will shore up the confidence of the Philippines in the US rebalancing to Asia at a time when the former US colony is facing growing Chinese pressure.

The US has played an active role in ensuring freedom of overflight and freedom of navigation in the South China Sea and the East China Sea. It sent two unarmed B-52s into China's ADIZ in the East China Sea on 26 November 2013 without complying with China's rules of filing flight plans in advance, or maintaining radio contact with Chinese air traffic controllers, or identifying aircraft transponder signal.

A Chinese ADIZ over the South China Sea appears to be a looming possibility. Chinese Defence Ministry spokesman Colonel Yang Yujun stated in Beijing on 23 November 2013 that *"China will establish other Air Defence Identification Zone at the right moment after necessary preparations are completed"*.[25] China might start with an ADIZ over the Paracels, where Viet Nam has been steadfastly disputing the Chinese control.[26] Later on, when its air force has the necessary long-range patrol capability, or when its aircraft carrier force is ready, China may even extend its ADIZ further southward to include the Spratlys.

On 17 December 2013, during his visit to the Philippines, Mr Kerry cautioned China against imposing any ADIZ over the South China Sea. If China proceeds to do exactly what the US doesn't want to see, how will the US respond? The US will be under increasing pressure to act and shore up confidence of its friends and allies in Southeast Asia. In early February 2014, General Herbert J. Carlisle, US Commander of the Pacific Air Force, cautioned China that imposing a Chinese ADIZ over the disputed areas in the South China Sea would be *"very provocative"*. But China dismissed his remark as *"unreasonable"*, on the ground that every sovereign state has the right to declare its own ADIZ. The ADIZ in the East China Sea, and a possible Chinese ADIZ in the South China Sea remain sensitive issues between China and the US, so much so that Secretary Kerry reportedly intended to avoid making any more public remarks on them during his five-day tour of Asia in mid-February 2014, which included a visit to Beijing. Neither was he expected to say anything more on the South China Sea disputes, or even just to reiterate what Assistant Secretary Russel already stated in a testimony to Congress on 5 February 2014.[27] Maybe Secretary Kerry wouldn't want to make China too excited around the Valentine's Day with any *"tough love"* that some hawkish US Congressmen wanted to show China.

New Proactive Security Role of Japan

The Philippines was rather disappointed that the DOC has not prevented China's alleged encroachment on Scarborough Shoals, which lie just about 130 nautical miles west of Luzon, well within the 200-mile EEZ of the Philippines. Apart from seeking legal help from the arbitral tribunal, the Philippines has also sought additional military assistance from the US and Japan. Japan has agreed to extend yen loans to the Philippines to buy 10 made-in-Japan coastguard patrol vessels.

Principle 2 in Prime Minister Abe's Five Principles of Japan's ASEAN Diplomacy states: *"Ensure in cooperation with ASEAN member states that the free and open seas, which are the most vital common asset, are governed by laws and rules and not by force, and to welcome the United States' rebalancing to the Asia-Pacific region"*.[28] After meeting President Yudhoyono in Jakarta on 18 January 2013, Prime Minister Abe emphasized at a joint press conference with his Indonesian host that relations with ASEAN form *"a supremely vital linchpin"* for Japan's diplomatic strategy.

Mr Abe invested a great deal of effort in visiting all ASEAN Member States within the first year of his premiership. He told journalists from the ASEAN region in Tokyo prior to the Second ASEAN-Japan Commemorative Summit, 13-14 December, that he hoped to receive support of ASEAN Leaders for a new proactive Japanese security role in Asia, which could include increasing security cooperation with ASEAN Member States.

However, most of the ASEAN Leaders, including Indonesian President Susilo Bambang Yudhoyono, seemed very cautious about Mr Abe's idea. *"Indonesia understands Japan's evolving interest to play a larger security role,"* said President Yudhoyono at his talk in Tokyo on 13 December 2013 organized by the Japan Institute of International Affairs, at which Prime Minister Abe also attended. *"In our [Indonesia's] view, it is important that Japan's evolving security role is pursued gradually, in a transparent manner, and in ways that would strengthen international security, regional order and enhance confidence-building,"* he added.[29]

Consequently, the joint statement issued at the end of the Second ASEAN-Japan Commemorative Summit in Tokyo on 14 December 2013 was quite subdued on the new security role of Japan. It stated in part: *"Prime Minister Shinzo Abe elaborated his security policy to proactively contribute even further to the peace and stability of the region and the international community from the perspective of Proactive Contribution to Peace…. The ASEAN Leaders looked forward to Japan's efforts in contributing constructively to peace, stability, and development in the region"*.[30]

Economic Competition with China

Japan is competing with China in infrastructure investments in Southeast Asia. The Asian Development Bank (ADB), which is widely seen as dominated by Japan, is promoting east-west connectivity in Southeast Asia (from Viet Nam and Cambodia to Myanmar through Thailand and Laos), and in linking Southeast Asia with South Asia, particularly India, through the seven Indian northeastern states. A trilateral highway linking India's Northeast with Thailand's northwestern border town of Mae Sot through Myanmar has been under construction. Japan is assisting Myanmar in improving Thiwala river port and industrial zone facilities innYangon. Japan is also very interested in having a part in the high-speed train project linking Kuala Lumpur with Singapore.
At the Second ASEAN-Japan Commemorative Summit in Tokyo, Mr Abe pledged 20 trillion yen (about US$19.2 billion) in development aid to needy ASEAN Member States over five years. Japan has also agreed to increase its currency swap arrangements with Indonesia and the Philippines under the Chiang Mai Initiative Multilateralization (CMIM).[31]

In June 2013, Japan included Thailand in its visa exemption programme, which now enables Thais to visit the country and stay up to 15 days without having to obtain a visa in advance. Brunei Darussalam, Malaysia and Singapore have already been included earlier. At the same time, visitors from Indonesia, the Philippines and Viet Nam can now obtain multiple entry visas to enter Japan. Most countries in ASEAN are still reluctant to enter into any bilateral visa exemption arrangement with China, for fear of the sudden influx of Chinese.

China, on its part, has proposed the establishment of a new Asian infrastructure investment bank – quietly obviously to compete with the ADB. China has been promoting north-south transport linkages between Southeast Asia and southern China. Two highways linking Yunnan with northern Thailand through Laos have been built. Air transport traffic between Southeast Asian cities and Chinese cities has increased steadily, especially since the entry into force of the 2010 ASEAN-China Air Transport Agreement.[32] Connecting Singapore with Kunming through rail has run into delays due to two missing links in Cambodia. China is keen to invest in Thailand's high-speed train projects and in the Thailand-Myanmar joint investment project to build a deep-sea port and a massive industrial zone in Myanmar's southern town of Dawei.

However, Japan, like the US, has been losing ground to China in trade and other economic engagements with ASEAN Member States in recent years. China clearly is taking full advantage of its geographical proximity and economic clout. China has surpassed both Japan and the US in becoming the top trading partner of ASEAN. In 2012, China's trade with ASEAN reached US$318.6 billion, compared with US$262.4 billion in Japan's trade with ASEAN, and US$200.2 billion of the US-ASEAN trade.[33] By 2015, the ASEAN-China trade is expected to reach US$500 billion. With the impending upgrading of the ACFTA, Leaders of ASEAN and China hope to see the total trade increase to US$1 trillion by the year 2020.

In tourism, the number of Chinese tourists visiting the ASEAN region has been increasing steadily, reaching 7.3 million in 2011. This was higher than the number of Japanese tourists (3.7 million) and American tourists (2.8 million) combined. In 2014, the number of Chinese tourists visiting the ASEAN region is expected to increase significantly because it is the year designated as the Year of ASEAN-China Cultural Exchanges. And starting in 2014, China will offer 15,000 government scholarships to ASEAN over three-five years as part of the increased cultural exchanges.

It is only in terms of cumulative investment inflows into the ASEAN region that Japan and the US still outdo China. From 2009-2011, the total foreign direct investments from Japan and the US amounted to US$29.6 billion, and US$24.2 billion respectively. The cumulative Chinese investment in ASEAN was only US$10.7 billion.[34]

The tensions between Japan and the RoK, and between Japan and China prevented Prime Minister Abe, South Korean President Park Geun-hye and Chinese Premier Li from their customary Plus Three meeting[35] prior to the annual ASEAN Plus Three Summit in Bandar Seri Begawan on 10 October 2013. These tensions have also slowed down the free trade negotiations among the three countries. The CJK institutionalized their trilateral regional cooperation in 2008 and set up the

Trilateral Cooperation Secretariat in Seoul in 2011. Delays in the CJK free trade talks constitutes a serious hindrance to the negotiations on a Regional Comprehensive Economic Partnership (RCEP), which ASEAN hopes to finalize by 2015. RCEP involves an ambitious merger of the five free trade /comprehensive economic partnership agreements ASEAN has had with China, India, Japan, the RoK, and Australia and New Zealand (under their bilateral Closer Economic Relations or CER).

Russians Are Coming

Russia is neither in the RCEP nor the Trans-Pacific Partnership (TPP). It is one of the 10 Dialogue Partners of ASEAN but it has little to show, even after it was included in the EAS in 2011 together with the US. President Vladimir Putin attended the Sixth EAS in Bali in 2011; but he skipped both the Seventh EAS in Phnom Penh in 2012 and the Eighth EAS in Bandar Seri Begawan in 2013.

President Putin did host the APEC Economic Leaders Meeting in Vladivostok, 8-9 September 2012, and he attended the APEC summit in Bali, 6-7 October 2013. More importantly he undertook a state visit to Viet Nam on 12 November. Undoubtedly Russia wants to revive its strategic foothold in Viet Nam. During President Putin's visit, 17 Russia-Viet Nam agreements were signed in Ha Noi. President Putin pledged to increase Russian military supplies to Viet Nam. Prior to his visit, Russia handed over the first of six Kilo diesel-electric submarines to Viet Nam. The second one is expected to reach Viet Nam in May 2014.

Russia is also assisting Viet Nam in building in the central province of Ninh Thuan one of the first two nuclear power plants with a capacity of 1,000 MW to be operational in 2020. But the project has now been suspended, pending a further review in the wake of the Fukushima nuclear disaster in March 2011. Russian oil company Zarubezhneft and PetroVietnam have formed a joint venture in exploiting Viet Nam's largest offshore oil field Bach Ho in the South China Sea. One of the new agreements signed during President Putin's visit involves exploration for oil and gas in Viet Nam's offshore block 15-1/05 in the South China Sea, and Russian investment in oil refinery in Viet Nam.[36]

Moreover, Russia will make Viet Nam the regional centre for repair and upgrading of Russian weapons37 at Cam Ranh Bay. The deep sea port, which is capable of receiving ship up to about 100,000 deadweight tons (slightly smaller than the USS George Washington) was built during the Vietnam War by the US and used by the Soviet Navy after the Vietnam War. Now Viet Nam is keen to revitalize Cam Ranh Bay and may offer increased access to the Russian Navy to it in return for additional Russian military assistance. Apparently in Vietnamese calculation, increasing energy and military cooperation with Russia (but short of allowing the

Russian Navy to set up a permanent base in Cam Ranh Bay) can help moderate China's growing assertiveness in the disputes in the South China Sea.

How Russia will play its strategic role in Southeast Asia will be interesting to watch. For Russia is also developing friendly relations with China in order to compete with the US at the global level.

Russia and China are promoting their common ideas on strengthening security in the Asia-Pacific region, which include developing bilateral and multilateral military cooperation not directed against any third countries, and establishing partnerships between multilateral organizations in the Asia-Pacific. They wish to see closer collaboration between the Shanghai Cooperation Organization (SCO) and ASEAN. But ASEAN has been cautious on engaging the SCO, because the SCO is seen putting too much emphasis on countering terrorism, separatism, and extremism (directed apparently against Muslim minorities in China and Russia).

Like China, the US, Japan and India, Russia has acceded to the TAC, and participated in the ARF, the EAS, the ADMM-Plus[38], and the Expanded ASEAN Maritime Forum. Brunei Darussalam hosted a Track-1 conference of EAS officials to exchange views on ideas for the emerging regional security architecture in mid-November. But the Russian + Chinese ideas have not gained any traction, according to one participant in the conference.

Russia, France and the UK have raised serious reservations to the Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ). They surprised ASEAN with sudden submissions of their reservations in June 2012, just a few weeks before Cambodia was going to host a ceremony in Phnom Penh on the sidelines of the 45th AMM for the five nuclear weapon states (NWSs) to sign the revised Protocol to the 1995 Treaty on SEANWFZ. The US has not come up with any reservations, but has maintained that there could be some reservations if and when the signed Protocol is submitted to the US Senate for ratification. Only China has no remaining reservations and can sign the revised Protocol when it is ready, with the political understanding with ASEAN that its support for SEANWFZ shall not affect China's claims to disputed areas in the South China Sea. The 10 Southeast Asian countries (now they are all ASEAN Member States) signed the Treaty in Bangkok on 15 December 1995. So far the stalemate created by the reservations of Russia, France and the UK has remained unresolved.

India's Look East

Construction of the India-Myanmar-Thailand Trilateral Highway is targeted for completion by the year 2016. India has provided Myanmar with a soft loan of US$500 million, part of which will be used to fund construction of the Trilateral

Highway in Myanmar. The Trilateral Highway will link with the East-West Corridor of the GMS at the Myawaddy-Mae Sot border permanent border crossing. The Trilateral Highway is part of the ASEAN Highway Network (AHN). The AHN and the Singapore Kunming Rail Link (SKRL) are the two flagship projects in land transport of the Master Plan on ASEAN Connectivity (MPAC). When ASEAN Leaders met Indian Prime Minister Manmohan Singh for their ASEAN-India Commemorative Summit in New Delhi on 20 December 2012, they stated in their Vision Statement in part that they *"are committed to assisting in the completion of the India-Myanmar-Thailand Trilateral Highway and its extension to Lao PDR and Cambodia and the new highway project connecting India-Myanmar-Lao PDR-Viet Nam as well as developing the Mekong-India Economic Corridor (MIEC)…".*[39]

New Delhi considers the Trilateral Highway a key concrete manifestation of India's Look East policy. It can also support India's new land transport link with Laos, Viet Nam, and Cambodia through the MIEC.

Increased trade, tourism, foreign investments and services brought about by the Trilateral Highway will enhance the feasibility of building railways in India's Northeast to connect with Myanmar's railways. Part of the Indian US$500 million soft loan to Myanmar will go to modernizing railways in Myanmar.

India now takes a robust position on freedom of navigation and overflight in the South China Sea and advocates the involvement of the EAS, the ARF, the ADMM-Plus, etc., in helping claimant states resolve their disputes in the South China Sea. The Indian Navy Commander, Admiral D.K. Joshi, has stated that if its joint venture with Viet Nam in offshore oil exploration in the South China Sea is harassed, India will send its warships to protect its economic interest.[40]

Power Rivalries in the Age of Globalization

Power rivalries in this age of globalization differed from those during the Cold War in several discernable ways. Because of globalization and worldwide acceptance of market capitalism, there is a high degree of economic inter-dependence among the key players in power rivalries, especially in Southeast Asia and East Asia. There are increasing people-to-people contacts. Modern ICT empowers international media and social media.

Consequently, world's opinion has growing importance and must be taken into serious consideration in diplomacy and strategic movement. At the same time political ideology and political differences have become less important in international trade and international relations.

Power rivalries in Southeast Asia and Northeast Asia have similarities and

dissimilarities.

Similarities

- China, the US and Japan are key players in both regions.
- China has the advantage of geography and time, because of more political continuity (if not stability) under the one-party rule of the Community Party of China.
- China is winning in the economic competition; China has already overtaken Japan as the world's No. 2 economic power and may within the next 20-30 years beat the U.S. to become the world's No. 1 economy.
- But China is still at least 10-20 years (?) behind the U.S. in military might.
- In both regions, Russia has some secondary role.

Dissimilarities

- Southeast Asia has ASEAN; Northeast Asia has no comparable regional cooperation process, except the Trilateral Cooperation (China, Japan, RoK, with a secretariat in Seoul since 2011), and the Shanghai Cooperation Organization or the SCO (China, Russia and four central Asian states, but not including Japan or RoK; the SCO secretariat is in Beijing).
- Southeast Asia has the SEANWFZ; under the ASEAN Charter, there is also a regional commitment to keep Southeast Asia free of all other weapons of mass destruction; Northeast Asia has no such regional commitments; and worse there is the nuke wild card in the DPRK.
- No mutually-assured destruction or MAD worst-case nuclear scenario in Southeast Asia.
- No US bases in Southeast Asia.
- Lesser security commitment of the US in Southeast Asia: the Philippines and Thailand are non-NATO allies of the US, but there is no automatic mutual defence.
- The UK has some security role in the Five Power Defence Arrangement (UK, Malaysia, Singapore, Australia and New Zealand), and the UK has an army battalion in Brunei Darussalam; but the UK has no security role in Northeast Asia.
- India has some role through its Look East policy; construction of India-Myanmar-Thailand highway is scheduled to be completed in 2015.
- Japan + ADB support linking Southeast Asia with South Asia through Myanmar and Northeast India. But the ADB has no clear role in economic development in

Northeast Asia.

- Russia has security and economic ties with Viet Nam
- No wild card in Southeast Asia; Myanmar is the ASEAN Chairman in 2014.

ASEAN and the Strategic Power Rivalry

Based on its geographical proximity and economic strength, China is most successful in promoting north-south connectivity between mainland Southeast Asia and southern China. Hence the Singapore-Kunming Rail Link, the Southern Silk Road (including Yunnan-Laos-Chiang Rai highway, and the Yunnan-Myanmar-India highway under construction), and the Shwe oil and gas pipelines41 from Kyaukphyu in Myanmar to Yunnan. China is quite agreeable to collaborating with India despite their occasional *"unpleasant"* border incidents in the disputed areas near India's Arunachal Pradesh. Part of the revived Southern Silk Road includes developing a China-India highway link. China and India signed a bilateral land transport cooperation agreement in Beijing during the visit of the Indian Prime Minister in mid-October 2013.

China is perceived to have strong influence in Myanmar and Thailand.[42] The strong Chinese influence in Myanmar will be of some security concern to India, because historically India and Myanmar have had closed ties. They were lumped together under the British Indian Empire.

The strong Chinese influence in Thailand is putting the Yingluck Administration in a difficult political position vis-à-vis the US and Japan. On the one hand, Thailand is a non-NATO ally of the US, and the Thai military still very much prefer staying with the US camp.

In this year Cobra Gold annual military exercise held in the northern Thai province of Phitsanulok, co-organized by Thailand and the US, China has been invited as an observer for the first time in the 30-year-old Thailand-US military exercise.[43]

On the other hand, China has now become one of the two most important trade and economic partners of Thailand, rivaling with Japan. China has offered and the Yingluck Administration has accepted Chinese assistance in Thailand's four high speed train projects involving a total investment of US$26 billion. At the same time, Japanese assistance has also been accepted for design and environmental impact assessment in two high speed train projects (Bangkok-Pattaya-Rayong, and Bangkok-Phitsanulok-Chiang Mai).

China has been especially warm towards Thailand lately, because Thailand represents ASEAN from 2013-2015 in coordinating the ASEAN-China Strategic

Partnership. The Thai Ministry of Foreign Affairs plays an important role in stabilizing the ASEAN-China relationship after the mishap over the South China Sea during the 45th AMM in Phnom Penh in July 2012.

The Japanese perception of the Yingluck Administration becoming pro-China could partly explain why Japan has been rather lukewarm about the massive Dawei project. Prime Minister Yingluck has tried to solicit Japanese support for the project, but apparently to no avails so far. Japan has turned to support Myanmar in developing river port and industrial zone in Thiwala in Yangon.

The US is developing closer security ties with the Philippines and Singapore to complement its rebalancing to Asia. The US has accepted the Philippine offer to return to Subic Bay, which used to be a home port of the US 7th Fleet in Southeast Asia until 1992. The US is moving in military hardware and logistic stockpiles to make Subic Bay a regional support and servicing facility centre for the US Navy. The close military ties between the US and the Philippines enabled the US to provide timely emergency response to assist victims of Typhoon Haiyan which killed more than 6,000 people in early November 2013. Taking part in the US relief operation was the USS Freedom, a littoral combat ship on a 10-month deployment at Changi Naval Base since April 2013.

Singapore has been unequivocal in welcoming the US rebalancing to Asia. Apparently, part of the US rebalancing to Asia involves strengthening the US presence near the Straits of Malacca with support from its security cooperation with Singapore. At the same time, with security cooperation of the Philippines, the US can increase its military presence in the South China Sea and frustrate China's apparent strategic goal of dominating the South China Sea. The US is now emphasizing its renewed determination to *"continue to play a role in underwriting security and stability in the Asia-Pacific."*[44]

Individually, each of the ASEAN Member States has its own national position and strategic orientation. Prime Minister Hun Sen of Cambodia, for example, has often attributed the rapid economic development in his country to generous Chinese support. The Philippines, on the other hand, is increasing security cooperation with the US and Japan in the wake of its worsening disputes with China in the South China Sea.

However, when they come as a group in ASEAN, all the 10 ASEAN Member States say they will not take sides within the ASEAN context in the power rivalry between China and the US, or between China and Japan. ASEAN Defence Ministers, for example, have carefully maintained an equidistant between China and the US. They have an annual informal consultation with the Chinese Defence Minister back to back with their regular annual ASEAN Defence Ministers Meeting (ADMM),

usually in May, and have the same with the US Secretary of Defense later in the same year, back to back with the ADMM "Retreat". When they accepted the US invitation for an informal meeting in Hawaii in 2014, ASEAN Defence Ministers have also agreed to a subsequent Chinese invitation to meet the Chinese Defence Minister in China at a convenient time in the near future.

Chinese Defence Minister General Chang Wanquan mentioned the idea of establishing *"hotlines of communications"* between China and ASEAN Member States during his consultations with ASEAN Defence Ministers in Bandar Seri Begawan on 7 May 2013. ASEAN Defence Ministers welcomed this idea. General Chang also proposed institutionalizing the ADMM-China consultations into a formal ADMM+China annual meeting. But ASEAN Defence Ministers have turned down this one. For otherwise they would have to agree to having annual meetings with most if not all of the other defence ministers in the ADMM-Plus.

ASEAN follows open regionalism, welcoming all friends and partners into constructive engagement and cooperation in the Southeast Asian region without discrimination. As a group, ASEAN Member States have made clear their collective decision to remain neutral and constructive in all power rivalries. They want ASEAN to be the promoter of dialogue and cooperation through the ASEAN centrality.

In August 2013, Indonesian Foreign Minister Dr Marty Natalegawa proposed what he called an *"Indo-Pacific Treaty"*, which essentially will multilateralize the TAC principles in wider Asia-Pacific in the wake of what he considered as harmful *"renewed assertive nationalism,"* and troubling island disputes in the East Sea and the South China Sea. The proposed treaty is aimed at non-use of force, settlement of disputes by peaceful means in order to prevent *"reintroduction of the Cold War type of fault lines"* in the Asia-Pacific.[45]

ASEAN Centrality

In a narrow perspective, ASEAN centrality focuses on securing the primary driving force role for ASEAN in all the dialogue and cooperation processes[46] it has initiated in external relations. This is to be achieved by providing constructive, proactive and innovative leadership to make ASEAN's external engagements active, outward-looking, inclusive, non-ideological, non-discriminatory, and beneficial to both ASEAN and its Member States as well as their external friends and partners. This has been included as one of the new principles of ASEAN in the ASEAN Charter, in Article 2, Paragraph 2 (m).

In a broader perspective, ASEAN centrality also includes the crucial internal dimension of integrating Member States into one coherent and cohesive ASEAN

Community, and increasing their combined political, diplomatic, security, economic, financial, and socio-cultural weights in the emerging regional entity. Successful regional integration and increased weights of the ASEAN Community will create greater gravitational force to attract more international attention, recognition, and support.

ASEAN Community Beyond 2015

ASEAN can enhance its centrality by providing constructive, proactive and innovative leadership in all the processes for dialogue and cooperation which it has initiated. At the same time, ASEAN can and should improve the quality of the ASEAN Community beyond 2015 by aiming higher. At the 23rd ASEAN Summit in October 2013, ASEAN Leaders tasked the ASEAN Coordinating Council (ASEAN Foreign Ministers) to coordinate implementation of the Bandar Seri Begawan Declaration on the ASEAN Community's Post-2015 Vision. This will involve the formation of an ad hoc working group of senior officials from each of the three Community pillars to brain storm on new goals for their respective pillars beyond 2015.

ASEAN Leaders have also called for the formation of a High Level Task Force on Strengthening the ASEAN Secretariat and Reviewing the ASEAN Organs. New and more ambitious objectives for the ASEAN Community beyond 2015 will require greater and more efficient institutional support, especially from the ASEAN Secretariat and the Secretary-General (SG) of ASEAN, the Committee of Permanent Representatives to ASEAN (CPR) in Jakarta, and the ASEAN National Secretariat of every Member State.

New ASEAN SG from Viet Nam

The arrival in January 2013 of Mr Le Luong Minh, a Vice Minister of Foreign Affairs of Viet Nam, to succeed Dr Surin Pitsuwan as the SG of ASEAN (for 2013-2017), is expected to lead to a significant change in the style of the Chief Administrative Officer of ASEAN.[4][7] Mr Minh differs from Dr Surin in many discernable ways. He is a relatively low-keyed career diplomat who has risen through the rank, with a master's degree in linguistics and English literature from Jawaharlal Nehru University; Dr Surin is a charismatic Harvard PhD political science graduate, six-time Member of Parliament from the southern province of Nakhon Si Thammarat, and a former Foreign Minister of Thailand.

The immediate challenge facing Mr Minh is to win recognition and confidence – particularly China's – that he can serve professionally as the SG of ASEAN without any national bias, even though his country has long been embroiled in serious disputes with China in the South China Sea. To be effective, Mr Minh needs to set

aside national interest and pursue common interest of ASEAN.

The operational budget for the ASEAN Secretariat in 2013 saw an increase of only 3% to about US$16.3 million, because some ASEAN Member States were unwilling to contribute more. The contribution is based on equal sharing; hence, rich or poor, large or small, every Member State contributes an equal share. In 2014, the budget now sees an increase of about 5%, to about US$17.2 million; in other words, running the ASEAN Secretariat for the whole year will cost each one in the ASEAN Community (with a combined population of over 620 million now) less than one Thai baht (US$0.28) per head.

Review of the ASEAN Charter?

The ASEAN Charter's entry into force reached the fifth year on 15 December 2013. Since then, a review may be undertaken, according to Article 50 of the Charter. The task of initiating a review of the ASEAN Charter now goes to Myanmar, the ASEAN Chair country of 2014. If Myanmar shies away from it, then the task can be taken up in 2015 by Malaysia. Malaysia has already started an active process to prepare to chair ASEAN in 2015, when ASEAN will formulate a new set of community-building blueprints and a new roadmap beyond 2015.

Review of the EAS?

EAS participants have discussed the idea of reviewing the EAS and to come up with ways and means of improving the EAS. One persistent concern of non-ASEAN participants in the EAS is the absence of follow-up mechanisms to ensure implementation of EAS decisions. The RoK has proposed a Track-2 seminar in 2014 to discuss the future direction of the EAS. Some in ASEAN want an eminent persons group to review the EAS and to submit its findings and recommendations to the 10th EAS in Malaysia in 2015, in time for the 10th anniversary of this process, which was launched in Kuala Lumpur on 14 December 2005.

During the first five years of the EAS, ASEAN Leaders met only with their counterparts from Australia, China, India, Japan, the RoK, and New Zealand. President Putin and President Obama started joining the EAS at the Sixth EAS in Bali in 2011. Over the years, the EAS has seen a steady bureaucratic growth of ministerial mechanisms to include meetings of environment ministers, energy ministers, education ministers, finance ministers, economic/trade ministers, and foreign affairs ministers. Now agriculture ministers may also have to meet because the EAS Leaders want cooperation activities on food security. The proliferation of EAS meetings seems to contradict the original wish of EAS Leaders in 2005 to keep the EAS process essentially a *"leaders-led Summit for strategic discussions on key issues affecting the region and the evolving regional architecture."*[48]

Conclusion

As a group, all ASEAN Member States have chosen to keep ASEAN neutral, constructive, and to continue to promote dialogue and cooperation without discrimination on the basis of ASEAN centrality. The ASEAN centrality is in good shape in spite of the serious worries about domestic economic problems in some Member States, such as in Viet Nam and Indonesia as reflected in their weakening currencies, and ASEAN's chronic lack of resources for its cooperative plans, such as the Master Plan on ASEAN Connectivity, and the Initiative for ASEAN Integration for narrowing development gaps in the ASEAN Community.

Occasional political turmoil in some Member States, such as Thailand, Cambodia and Myanmar, may distract their government leaders from ASEAN. But this is inevitable. It is part of the ongoing democratization in Southeast Asia, which started in the EDSA Revolution in the Philippines in 1986, continued in the *Reformasi* in Indonesia in 1998, and led to the end of military dictatorship in Myanmar in 2010. The democratization will make ASEAN stronger and more resilient in the long run.

In continuing to enhance the centrality of ASEAN, the crucial challenge is how all of its Member States will fulfil their collective commitment to building a successful, prosperous, and caring ASEAN Community beyond 2015. Failing in this, each of them will be subject to greater push and pull of the big powers wanting to advance their own strategic interests in Southeast Asia.

Endnotes

[1] See the ASEAN Security Outlook published for the first time in 2013 by the ASEAN Secretariat, p. 55.

[2] The legal action also took ASEAN and its Member States by surprise. Singapore's Ministry of Foreign Affairs issued a press statement on 23 January 2013, in response to media queries, to say :*"What the Philippines has done is a national decision. Singapore first knew about this action from media reports. … "*

[3] From the Philippines' notification and statement of claim signed by Solicitor General Francis H. Jardeleza.

[4] The 81-year-old judge was the first president of ITLOS from 1996-1999.

[5] Prior to the meeting, Philippine Secretary of Foreign Affairs Albert Del Rosario issued a press statement expressing *"serious concern over the increasing militarization of the South China Sea"* by China, which allegedly sent military and paramilitary ships to Scarborough Shoal and Second Thomas Shoal, both of which are within the Philippines' EEZ.

[6] A bus-load of tourists from Hong Kong was held hostage by a lone gunman in Manila on 23 August 2010. Eight of the tourists were killed during the rescue operation.

[7] According to Spokesperson Hua Chunying of China's Ministry of Foreign Affairs in her regular press conference on 11 October 2013. See details at www.fmprc.gov.cn/eng/xwfx/s2510/2511/t1087926.shtml

[8] The Joint Press Release is available on the websites of the Foreign Ministry of Thailand and the Foreign Ministry of China at www.www.mfa.go.th and www.fmprc.gov.cn respectively.

[9] See the full text of their joint statement at the website of the ASEAN Secretariat at www.asean.org/news at the section on Statements & Declarations of the 23rd ASEAN Summit.

[10] *Workshop on Maritime Hazard Prevention and Mitigation in the South China Sea,* proposed by China and convened in Kunming, China, 17-18 July 2012; Track-2 *Workshop on Marine Ecosystems and Biodiversity proposed by and convened in Singapore,* 31 July - 4 August 2012; *Symposium on Maritime Ecological Environment and Monitoring Techniques,* proposed by China and convened in Xiaman, China, 16-17 October 2012; *Joint Workshop in Commemoration of the 10th Anniversary of the DOC,* convened in Phnom Penh, 1-3 November 2012; and *Workshop on Cooperation in Search and Rescue of Persons and Vessels in Distress in South China Sea* proposed by Viet Nam and convened in Ha Noi, 19-20 June 2013.

[11] See the last paragraph in the Joint Press Release of the ASEAN-China Foreign Ministers Meeting issued in Bangkok and Beijing on 1 July 2013. The bold font was added by the author of this paper to underline the ASEAN preference in this matter.

[12] Joint Press Release of the ASEAN-China Foreign Ministers Meeting, 1 July 2013.

[13] AP news from Washington D.C., 10 January 2014.

[14] AFP news from Manila, 5 February 2014.

[15] Foreign Ministers of Cambodia and Thailand couldn't attend because of domestic political problems; each of them was represented by the Secretary of State for the Ministry of Foreign Affairs and International of Cambodia, and by the Permanent Secretary of the Ministry of Foreign Affairs of Thailand.

[16] See full text of the press release at Myanmar's website for Chairmanship of ASEAN in 2014, at http://asean2014.gov.mm/press-release-chairman-asean-foreign-ministers.

[17] The author was at the ARF meeting as a delegate from the ASEAN Secretariat.

[18] Mr. Russel's testimony to the U.S. House Committee on Foreign Affairs Subcommittee on Asia and the Pacific. Text of the testimony is available at the website of the U.S. State Department at www.state.gov/r/pa/ei/speeches (Maritime Disputes in East Asia).

[19] The ACFTA was the first of its kind that ASEAN signed with an external partner in 2002. Subsequently, ASEAN has signed FTA agreements with Australia-New Zealand, the RoK, India, and Comprehensive Economic Partnership agreement with Japan. Now ASEAN is leading these free trade partners in negotiating a new Regional Comprehensive Economic Partnership (RCEP), with the initial target year of 2015 for the completion of the RCEP negotiations. Meanwhile, four ASEAN Member States (Brunei Darussalam, Malaysia, Singapore, and Viet Nam) are also taking part in the Trans-Pacific Partnership (TPP) negotiations.

[20] At first the Chinese side even suggested that ASEAN Leaders "welcome" the proposed

treaty, but ASEAN officials countered that that would be premature since China has not yet shown details of the proposed treaty.

[21] There are now 32 High Contracting Parties in the TAC: 10 ASEAN Member States, 10 ASEAN's Dialogue Partners (Australia, Canada, China, the E.U., India, Japan, the RoK, New Zealand, Russia, and the US), PNG, Pakistan, Timor-Leste, Mongolia, the DPRK, Bangladesh, Sri Lanka (these 27 are also participants in the ARF), and France, the UK, Turkey, Brazil and Norway (these last five are not in the ARF).

[22] Seven ASEAN Leaders (not including the three from Cambodia, Laos and Myanmar) participating in APEC Economic Leaders Meetings met President George W. Bush in Los Cabos, Mexico, in October 2002; in Busan in December 2005; and in Sydney in September 2007. All 10 ASEAN Leaders met President Barack Obama for the first time on 15 November 2009 in Singapore; second time on 24 September 2010 in New York; third time on 18 November 2011 in Bali; and fourth time on 19 November 2012 in Phnom Penh, where they agreed to upgrade to annual ASEAN-US Summit.

[23] From the opening remarks of Secretary Kerry at the First ASEAN-US Summit in Bandar Seri Begawan, 9 October 2013, posted on the website of the US State Department (accessed on 10 December 2013).

[24] See news report from Ha Noi in the Straits Times, 17 December 2013, Page A2.

[25] See interview with the Chinese Defence Ministry spokesman at www.eng.mod.gov.cn/Press/2013-11/23/content_4476151.htm (accessed on 12 December 2013).

[26] China seized the Paracels from South Vietnam in January 1974 by force.

[27] See "Air zone set to top Kerry's agenda in China" in the Straits Times, 13 February 2014, Page A9.

[28] The Five Principles were prepared for Prime Minister Abe to unveil in a speech in Jakarta on 18 January 2013, but he couldn't deliver the speech because he had to rush back to Tokyo to handle the hostage crisis in Algeria in which several Japanese were among a large number of foreigners working at Amenas gas plant in Algeria held hostage by some Algerian militants.

[29] Report in the Straits Times, 14 December 20123, Page A12.

[30] See full text of the joint statement at the homepage of the website of the ASEAN Secretariat www.asean.org (accessed on 16 December 2013).

[31] The CMIM is the flagship cooperation project of the ASEAN Plus Three Finance Ministers in which a pool of US$240 billion has been created for currency swap arrangements to help stabilize currencies and financial markets in ASEAN and deter speculative attacks on weak currencies like what happened in 1997-1998 in which the Thai Baht and Indonesian Rupiah fell victim during the so-called *"Tom Yum Koong"* financial crisis. The CMIM fund is managed by the ASEAN Plus Three Macroeconomic Research Office (AMRO) based in Singapore.

[32] So far only Malaysia, Myanmar, Singapore, Thailand, and Viet Nam are implementing the agreement with China, which includes unlimited third and fourth freedom capacity into and out of international airports in China, except Hong Kong, Macao, and Taiwan. In return Chinese airlines have similar unlimited third and fourth freedom to international airports of the five ASEAN Member States. Each of the other five in ASEAN can join when

it is ready.

33 See details in statistics on the website of the ASEAN Secretariat at www.asean.org under the Resources section.

[34] See Table 26 of the statistics on the website of the ASEAN Secretariat.

[35] Leaders China, Japan and the RoK (the CJK) have been meeting prior to the annual ASEAN Plus Three Summit since 1999. The first historic CJK (informal breakfast) meeting of Zhu Rongji, Keizo Obuchi and Kim Dae-jung took place in Manila on 28 November 1999. ASEAN could be credited for bringing the CJK Leaders together for the first time in modern history of relations among these three countries.

[36] See details in Wall Street Journal online news report from Ha Noi on 12 November 2013.

[37] Apart from Viet Nam, Indonesia, Malaysia, and Thailand have also bought Russian Sukhoi fighter jets and/or submarines and anti-aircraft missiles, as well as light arms because of their low-cost and good reliability.

[38] The Second ADMM-Plus in Bandar Seri Begawan in August 2013 approved the new co-chairs of the six Experts Working Groups (EWGs) as follows: Laos and Japan to co-chair the EWG on Humanitarian Assistance and Disaster Relief (replacing Viet Nam and China); Brunei Darussalam
and New Zealand to co-chair the EWG on Maritime Security (replacing Malaysia and Australia); Singapore and Australia to co-chair the EWG on Counter-Terrorism (replacing Indonesia and the US); Cambodia and the RoK to co-chair the EWG on Peace-Keeping Operations (replacing the Philippines and New Zealand); Thailand and Russia to co-chair the EWG on Military Medicine (replacing Singapore and Japan); and Viet Nam and India to co-chair the new EWG on Humanitarian Mine Action. Consequently, Myanmar, which will chair ASEAN and the ADMM in 2014, Indonesia, Malaysia, the Philippines, China, and the US will not have any co-chairmanship role in any of the EWGs until after the Third ADMM-Plus in Malaysia in 2015. Starting from the Second ADMM-Plus in Bandar Seri Begawan in August 2013, the frequency of the ADMM-Plus has been increased to once every two years instead of three. Hence the Third ADMM-Plus will be in Malaysia in 2015.

[39] From the Vision Statement at www.aseanindia.com/speeches-and-statements/asean-ss/2012/12/20/vision-statement-asean-india-commemorative-summit (accessed on 9 October 2013).

[40] See The Diplomat report on 12 October 2013 at http://thediplomat.com/2013/10india-rebukes-beijing-on-south-china-sea (accessed on 16 December 2013).

[41] Myanmar reportedly is exporting about US$900 million worth of oil and gas per year to China through the twin-pipelines.

[42] One measure of the growing Chinese influence is the number of Confucius Institutes in a third country. There are 12 of them in Thailand – the largest number among the 10 ASEAN Member States. In trade, China is competing with Japan to be Thailand's top trading partner: in 2012, Thailand-Japan trade came first, at 15.3%, of Thailand's total foreign trade (14,895,551 million Baht), Thailand-China came second, at 13.4%; however, during the eight months of 2013, the competition was getting closer: Thailand-Japan trade still came first, at 13.5% of Thailand total foreign trade (9,703,187 million baht), Thailand-China trade followed, at 13.2%. See details of Thailand's foreign trade statistics at: www.ops3.moc.go.th/infor/db_sql/gp_web_trade2.asp (accessed on 11 October 2013).

[43] China sent 17 soldiers to observe the two-week Cobra Gold exercise. Thailand has not ruled out inviting China to participate in the future Cobra Gold. The other participating militaries are from Japan, the RoK, Indonesia, Singapore and Malaysia. Other observers include Australia, India, Laos, and Viet Nam.

[44] Testimony of Mr. Daniel R. Russell on 5 February 2014.

[45] See his interview with The Jakarta Globe on 2 August 2013 at www.thejakartaglobe.com .

[46] They include Dialogue Partnership with 10 (Australia, Canada, China, the EU, India, Japan, the RoK, New Zealand, Russia, the US; the UN is also considered a Dialogue Partner of ASEAN; Sectoral Dialogue Partnership with Pakistan; the ASEAN Regional Forum (in which its 27 participants are the 10 ASEAN Member States, the 10 Dialogue Partners (not including the UN), Pakistan, PNG, Timor-Leste, Mongolia, the DPRK, Bangladesh, and Sri Lanka); the ASEAN Plus Three (with China, Japan, and the RoK); the East Asia Summit or the EAS (ASEAN Member States, Australia, China, India, Japan, the RoK, New Zealand, Russia, and the US); and the ASEAN Defence Ministers Meeting Plus or the ADMM-Plus (10 Defence Ministers of ASEAN Member States, plus their counterparts from the same eight countries in the EAS – but membership in these two processes are not directly related; the eight external partners in the ADMM-Plus were chosen in 2009 before the EAS expanded its membership in 2011 to include Russia and the US).

[47] The SG of ASEAN is assisted by four deputies: the Deputy Secretary-General (DSG) for the political-security department is Ambassador Nyan Lynn, a veteran diplomat and former Ambassador of Myanmar to Indonesia and to ASEAN; the DSG for economic department is Dr Lim Hong Hin, a former senior economic planner from Brunei Darussalam; and the DSG for the social-cultural department, Ms Alicia Rosa Bala, a former undersecretary for the Department of Social Welfare and Development of the Philippines. Lastly, Dr. A.K.P. Mochtan from Indonesia has been selected as DSG for the ASEAN Community and Corporate Affairs.

[48] See text of the Chairman's Statement of the First East Asia Summit, Kuala Lumpur, 14 December 2005, at www.asean.org/asean/external-relations/east-asia-summit-eas.

FORMING A SECURITY COMMUNITY: LESSONS FROM ASEAN

Alan Collins

This is the title of an article that I wrote, which was published in the journal *International Relations of the Asia Pacific*, in 2007 (Collins 2007). I am delighted to have the opportunity to reflect on the points that I made over six years ago and assess how far ASEAN has progressed since then with its stated desire to establish a security community (See Collins 2013). One of the first points to note is that ASEAN has since changed the name of this pillar to political-security community.

It is not actually the first part of the name – security – that matters overly to me but rather the second; community. Having said that, it is interesting that "security" appears in the title as this reveals that what ASEAN means by security has changed. From its inception ASEAN has always provided a security function, although it was implicit because the founders were aware that an explicit security function could lend credence to the charge that ASEAN was a replacement for the defunct Western inspired military alliance SEATO (South-East Asian Treaty Organisation). It was feared that the creation of a military alliance would invite countermeasures from the communist states, and thereby generate greater insecurity for the ASEAN membership. In addition, a military alliance among states that possessed few capabilities to aid one another was unlikely to help solve the security threats the founders faced.

So, why has security become explicit? Clearly not to create a military alliance, or indeed to create a military function for ASEAN and therein lies the demise of Indonesia's peacekeeping aspirations. Although the convening of the ASEAN Defence Ministers' Meeting (ADMM) once a year since 2006, and its off-shoot the biennial ADMM + since 2010, at least indicates a willingness to talk about military matters. The reason why security now appears so explicitly is because its meaning has changed. Today when security is used in academic discourse, and this is increasingly true for political elite as well, it is used to refer to a range of threats that exist to states and their societies. Security has become more holistic, or in ASEAN-speak, comprehensive. Within the remit of the APSC, in addition to the ADMM, there is the ASEAN Law Ministers Meeting (ALAWMM), the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and the ASEAN Intergovernmental Commission on Human Rights (AICHR). With threats to societies and individuals more prominent in this broadening conception of security it is not surprising that many "security" issues can also be found outside the APSC and reside within the Socio-Cultural Community pillar (ASCC). Here we find the ASEAN Health Ministers Meeting (AHMM), who are responsible for ASEAN's

response to communicable diseases, such as HIV, SARS and influenza. ASEAN's response to air pollution (the euphemistically called "haze") is also found here, as indeed is the ASEAN Ministerial Meeting on Disaster Management (AMMDM). The overlap between the ASCC and APSC is neatly captured in the topic that has been the primary focus for the ADMM; cooperation in the issue of humanitarian assistance and disaster relief.

When I think of ASEAN as a security community I do not therefore think solely of the APSC, but rather the gamut of issues and topics that fall within its pillars, and most especially the ASCC. Why especially the ASCC? Because this is where the second word in "security community" has its greatest resonance.

ASEAN is Not a Community

In the 2007 article I argued that ASEAN was not a security community, neither a nascent, ascendant or mature version (Acharya 2009). A security community, as is commonly understood within the academic literature, is one in which members enjoy dependable expectations of peaceful change. This definition belongs to Karl Deutsch and his colleagues, whose work on the North Atlantic Area published in 1957, gave the field of international relations the term security community (Deutsch et al 1957). To claim that ASEAN is not a security community because it doesn't meet Deutsch's criteria might seem unfair; surely it is for ASEAN to decide what constitutes a community for itself? I'm not that sympathetic to this position. Surely we must have an objective definition of a community so that we can make a judgement about progress towards achieving it; even if we are to call it a "community with ASEAN characteristics". However, in this instance it is clear that much of the work that underpinned the notion of an ASEAN community was heavily influenced by Deutsch. It is not so much that his work was read, although it might have been, but writers influenced by him, such as Amitav Acharya, clearly were read. This is no more so than by Rizal Sukma, who is at the Centre for Strategic and International Studies (CSIS) in Jakarta. Sukma presented a concept paper to the Indonesian Foreign Ministry on 20 March 2003 and it indicated a significant degree of influence from academic writers such as Michael Leifer and Amitav Acharya. It was subsequently presented as a draft concept paper by the Indonesian Foreign Ministry on the 9 May 2003; it was called "Towards an ASEAN Security Community" but became better known as the "Deplu Paper". The Deplu paper contained such references to the security community literature as "expectations of peaceful change", the non-use of force as a means of resolving problems, and the generation of "we feelings" (for details see Acharya 2009; 259). It contained both elements of security communities; to settle disputes peacefully and the need for collective action to address common problems. It is beyond reasonable doubt that the academic literature on security communities is deeply embedded within the ideas that underpin ASEAN's sense of what constitutes a security community.

What is often forgotten, and this is not unique to Southeast Asia, is that Deutsch and his associates were writing about the people of the North Atlantic political community, not member states (Nathan 2006; 279). What constituted evidence of the people forming a community, for Deutsch and his colleagues, was the degree to which these people had direct interactions. They measured this through international trade, mail flows, student exchanges and travel. Nowadays this would also include the various electronic discussion forums, blogs, and social networking sites that enable interaction across the internet. The necessity for interaction amongst the people constitutes one of three characteristics that Emanuel Adler and Michael Barnett identify as making a community. Adler and Barnett's edited volume *Security Communities*, published in 1998, breathed life back into the concept and since then there has been a veritable feast of works published on security communities, including with ASEAN as a case study (Ba 2005: Jones and Smith 2006: Khoo 2004: Kupchan 2010: Peou, 2005). The other two characteristics of a security community are, first, the members have shared identities, values and a common understanding of what is appropriate behaviour, and second, that the reciprocity exhibited in their relations is diffuse (Adler and Barnett 1998; 31-2). That is, it does not need to be immediate or indeed related to the same matter. That the other does reciprocate indicates that their relationship is long-term, and that reciprocity is not required indicates that assistance can appear to be altruistic. Altruism captures the sense of obligation and responsibility towards one another that exists in a community.

Those that argue that ASEAN's modus operandi, the much vaunted ASEAN Way, did create a community acknowledge that this was a community amongst the governing elite. Amitav Acharya, a key proponent of ASEAN being a nascent/ascendant security community, acknowledged that 'the true meaning of community involves identity among peoples, and not just states', but that, 'ASEAN has done little thus far to draw in the citizenry and the civil society into the ambit of regional interactions'. While he recognises that ASEAN has established a number of socio-cultural associations, 'the reach of these groups into the hearts and minds of ordinary people remains limited and they have not created a sense of community' (2004, 32-33). The argument that, nevertheless, ASEAN did create a community amongst the state elite is based on them having direct interaction, sharing an understanding of what constituted appropriate behaviour – most notably not to interfere in one another's domestic quarrels – and to support one another in limiting outside interference (ZOPFAN) or at least setting the agenda for outside involvement in the region (TAC; ARF).

In the article I argued that the political elite did not constitute a community but rather a regime. My argument was that within a community members help one another because they recognise that their own security and prosperity are inextricably tied to one another. Which is why their behaviour may appear to

be altruistic. However, ASEAN members tended to rely more on non-ASEAN members than other ASEAN members when it came to security. ZOPFAN was a ambition not a statement of fact. As important as the TAC is, it does not replace or negate the Manila Treaty, the Five Powers Defence Arrangement, or the 2006 Lombok Treaty between Indonesia and Australia. Here in Brunei of course there remains a long-standing and strong bilateral defence relationship with the UK.

So ASEAN not a community in its past because, first, the ASEAN Way was not about establishing a strong sense of commonality but rather enabling the political elite to carry out the rather messy business of nation and state building safe in the knowledge that their neighbours would not make life difficult for them and, if they did get into trouble, they would look outside the region for assistance. Second, that there was little attempt to encourage interaction amongst the people, indeed it was discouraged fearing that it would act as a conduit for communist and/or separatist sympathies to spread, and so any notion of belonging to a wider community amongst the masses was, and still is, missing. But arguably there are changes afoot.

It is All about Being People-Oriented These Days

ASEAN began talking the language of community as a reaction to the financial crisis in the latter 1990s. Originally it was part of ASEAN's Vision 2020, which describes Southeast Asia as a community 'at peace with one another' with the goal, by 2020, of the entire region being 'an ASEAN community conscious of its ties of history, aware of its cultural heritage and bound by a common regional identity' (ASEAN Vision 2020; 1997). Those are long term goals and even in the late 1990s 2020 seemed an optimistic timeframe to achieve this; the subsequent shortening of the timeframe to 2015 doesn't make it more likely to happen. People were noted as important actors in achieving Vision 2020 and since Bali II the involvement of ASEAN societies in this community building project has become more prominent. People-oriented is the phrase that has captured their involvement, although other phrases such as people-centred or even people-empowering have been mooted.

Is this significant? Of course it depends what people-oriented means. Is it no more than an identity raising exercise for an Association that for many people in Southeast Asia is either unknown or, if they do recognise the acronym ASEAN, have no knowledge of what it does. Does people-oriented simply mean enhancing ASEAN's image? An ASEAN Day perhaps? A motto? A Song of Unity? These things exist, but I think it's a bit more than that. Does it mean that ASEAN will direct its activities towards the people of its member states? That is, it is oriented towards them? If so, how does ASEAN engage in matters that must, by their very nature, be domestic issues for member states? Does it mean that ASEAN will seek to involve the people of Southeast Asia in the decision making within

the Secretariat? Are "people", or at least representatives of people, such as civil society organisations, to have a function in ASEAN decision making, and if so, what type of function? To help formulate work plans, to be consulted on work plans, or simply to be actors to help implement work plans?

I suspect it is all of these things and as regards their level of involvement in the decision making this may vary across the different issues that ASEAN engages. Civil Society Organisations (CSO) have been critical of how limited their involvement has been in AICHR's creation, its Terms of Reference and the formulation of the ASEAN Human Rights Declaration. But, a CSO is present in ASEAN's Task Force on responding to HIV, and CSOs have been prominent in helping to implement and formulate the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) work plan. Why are they being involved?

This brings me back to what I began talking about - the broader notions of security. I was not entirely honest when I said that the changing meaning of security was of less importance to me. Actually, it is the broadening of security to include such issues as communicable disease and natural disasters that gives CSOs an opportunity to be active players in ASEAN's community building project. CSOs bring two skill sets that are valuable in this regard. First, they have expertise in their area of knowledge. This knowledge enables CSOs to reinterpret or reframe the debate so that their alternative ideas resonate with the wider public and some political elite. If they are able to persuade the political elite that their interpretation has validity then their expertise could enable the CSO to play a function in framing the debate and in turn ASEAN statements, communiqués and declarations. CSOs have been credited with influencing the debate over the ASEAN Charter and the wording of AICHR's Terms of Reference. ASEAN's Work Programmes on HIV have been heavily influenced by non-state actors, such as UNAIDS and, as previously noted, ASEAN's approach to disaster management has entailed assistance from outside ASEAN's membership; this is the AADMER Partnership Group. The broadening of security into areas that have been the traditional concern for CSOs has opened a window, through which they can engage with ASEAN and thus becomes critical components in building the community.

The second function is that of advocate and watchdog. In this role CSOs can pressure the state elite by monitoring and evaluating state compliance. This is the least developed and potentially the area of greatest disagreement over what "people-oriented" means. For CSOs, it is ultimately what ensures that the community being built is for the people, because they have a role in its creation and maintenance. It is captured in the disagreement about whether AICHR should have "teeth". In terms of a security community, in which the people enjoy dependable expectations of peaceful change, it is their active involvement that creates, what Hans Mouritzen calls a "separate peace inertia". That is, because of

CSO involvement and the transnational affiliations they create and represent, 'top decisionmakers find themselves deprived of the option of mutual war. They are simply locked by the opinions of their publics and by the transnational affiliations between them' (2003; 331).

For ASEAN to truly form a security community entails not just drawing upon the expertise of CSOs but also enabling them, and through them the people of Southeast Asia, to be part of the community's creation and maintenance. Giving multiple stakeholders, who represent peoples across national borders, a function in the community building process is essential to forming a security community. It enables them to feel part of the community because they are helping to create it, and that will achieve a sense of belonging together that a motto or song about unity will not.

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COMPREHENSIVE SECURITY IN EAST ASIA: ROLE OF NON STATE ACTORS

Jim Rolfe

Introduction

We are used to using the term 'comprehensive security' as a short-hand for security that transcends the military dimension and that perhaps transcends a default focus on the state. But defining the term and setting its boundaries, if only in the negative, is only one part of the issue. To be fully effective in obtaining and maintaining comprehensive security we need also to ensure that we state the problems in a way that allows all relevant actors to contribute to achieving security outcomes; make judgments as to how best to ensure that all actors are able to contribute to their fullest ability; and organise the activities of sometimes very diverse actors. These are issues of definition, participation and governance.

The role of the state in achieving security outcomes is almost a given; especially when the security sought is protection against military threat. Direct military threat, however, is not the main issue in East Asia. Instead there is a range of non-military issues that can, do and could affect the health and safety of citizens, the stability of states and the region's overall resilience. Because of the range of issues, almost inevitably the state is probably unable, and likely to be unwilling, to address them all. That means that non-state actors will be involved in working towards comprehensive security. This has to be the starting point, but beyond that, there are still many questions about the role of non-state actors. For some state actors, non-state actors are an obstacle to be overcome as the state responds to the situation at hand. For others, non-state actors play an essential role in filling gaps in the overall security framework.

In this paper I address three very basic questions. They are:

1. What is comprehensive security for East Asia? This is important because unless we understand what we mean by the term we won't know the actors.
2. How do we achieve comprehensive security and who contributes to it?
3. How do we ensure non-state actors have an effective role in ensuring c omprehensive security?

The answer I reach is signalled in the title of a 2011 publication from what is now called the Australian Civil-Military Centre: 'Same Space: Different Mandates'.[1] From this I infer that there are many actors working in the 'space', however we define the space, and that although they may well be working to similar ends, their goals are not necessarily the same and the rules under which they work are

certainly not the same. This has significant connotations for the topic.

Comprehensive Security in East Asia: What is it?

As with all definitions of security, the concept of 'comprehensive security' is contested. For some, it relates to the intersection of economic issues with more traditional security issues,[2] for others any issue that can affect the stability or well-being of a state or its citizens becomes a security issue and therefore security becomes comprehensive in nature. This is seen clearly in a formulation from the regional track 2 dialogue, the Council for Security Cooperation in the Asia-Pacific: '...the pursuit of sustainable security in all fields (personal, political, economic, social, cultural, military, environmental) in both the domestic and external spheres...'[3]. Another line of analysis examines the security referent. Do we focus on the individual (through concepts of human security), the state, or perhaps the region? Each position has its proponents and some attempt to integrate them, for example like this: 'This broader view expands and reformulates more conventional views of state, human and environmental security, which combine to a notion of comprehensive security'.[4]

Overall though, and not the topic of this paper, we do need to consider the utility of concepts of comprehensive notions of security against our ability to analyse them effectively so that decisions as to where resources devoted to security ends should be directed can be made, especially in terms of the trade-offs necessary to privilege one security arena against another to achieve 'comprehensive' security. We need also to consider the utility of 'securitising' what might be considered to be routine questions of policy with the consequent danger of focusing on traditional 'security solutions involving the use of the armed forces in circumstances where they might not be appropriate.[5]

The point of this discussion is not to attempt to come to a 'new' or conclusive definition of comprehensive security, but instead to remind ourselves of the breadth of the concept and its all-encompassing nature. For this paper, national comprehensive security is taken to be achieved when the state is resilient, citizens are prosperous and have choice in their lives and national values are unthreatened. Individually, these are all contested concepts and legitimate debate occurs as to when they have or have not been achieved.

Comprehensive security concepts do not, of course, preclude discussion of traditional security in which the state is safe from the depredations of other states, but these issues are not pursued in this paper.

In East Asia the most salient issues of comprehensive security are[6]:

- Economic deprivation of many citizens, leading potentially to national and

regional instability;

- Resource scarcity real or potential, leading potentially to mass movements of populations seeking access to resources, with consequent national and regional instability;
- Environmental degradation leading potentially to economic deprivation and degraded quality of life;
- Poor governance, leading potentially to state and regional instability;
- Natural disasters and the immediate and long-term disruption caused by them; and
- Health issues such as pandemics with the disruptions to daily life entailed.

Most of these are transnational issues, and even the 'national' issues have the potential to cross state borders. Although these are all important as issues in their own right, they are more important as demonstrating the range of issues covered by the concept. Just as there is a wide range of issues, there is an equally wide range of actors looking to 'solve' the issues.

How do we Achieve it and who Contributes?

There are at least two dimensions to achieving comprehensive security. There is the routine 'business as usual' system which requires that the environment is 'controlled' or 'developed' by the agencies involved to achieve security outcomes and there is the 'emergency response' system where the aim is to respond the emergency as expeditiously as possible, ideally with a final recovery outcome which improves on the starting situation.

To achieve comprehensive security we manage the component factors, determining the trade-offs required to achieve, for example, health outcomes without compromising outcomes in other areas. This is extremely difficult at any level and although a number of states attempt those trade-offs, few if any are comprehensively successful. More often the individual issues are dealt with discretely without much consideration of trade-offs. In practice, full control would require a command society but we understand from economic theory and empirical experience that markets are more likely to be successful that command economies, and the same probably is so in this area, although the choice is not between hands-on and hands-off and the market place for comprehensive security solutions will involve many diverse suppliers and consumers, with sometimes the same group being both.

From the forgoing it seems evident that to achieve comprehensive security we need to recognise that there will be many actors with an interest in the issues

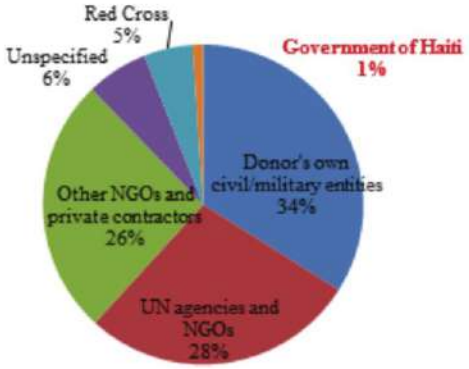
and a role in ensuring the issues do not become threats, but that we will not be able to control all the actors and the factors. This is so at the state level where there are many state actors involved at both the policy-setting and the service-delivery levels and it is so at the regional level where transnational issues require international cooperation.

Nationally, government agencies work to achieve national security and internationally, there are inter-governmental organisations devoted to managing specific issues on behalf of state members. We are not concerned about government and inter-government agencies in this paper. We are also less concerned about the roles of the plethora of UN-based international agencies (the World Food Programme, the World Health Organisation for example) and the International Red Cross/Red Crescent organisations under the International Committee and International Federation, although these organisations have many of the characteristics discussed in this paper.

As well as government agencies and IGOs there is a vast range of non-governmental agencies active worldwide. Domestically, some countries have millions of NGOs and internationally in 2005 there were some 27,000 INGOs estimated to be in existence.[7] The areas these organisations work in cover the full range of the issues covered by our understanding of comprehensive security; that is to say, in the humanitarian, health, human rights, environment, development and emergency response sectors, to name the most common. Most, but not all, NGOs at both the national and the international levels are focused quite narrowly in their core activities, be they in the health, social justice or environmental areas.

To get a sense of the potential scale of the NGO 'issue', estimates are that up to 20,000 NGOs, mostly international, responded to the 2010 earthquake in Haiti and that relief aid was disbursed overwhelmingly by the non-government sector as shown in Figure 1 below.[8]

Figure 1: Recipients of Relief Aid to Haiti



Note: Most NGOs which received support are international. Percentages in this chart are for the $2.43billion committed or disbursed as of March 2011. By December 2011, donors had disbursed 52.9 percent of the $4.5billion pledged for programme support. Source: Office of the UN Special Enovy for Haiti, "Has Aid Changed?" Report, 15.

Enhancing the Role of Non-State Actors

It is pointless to try to limit their roles of non-state actors in providing security outcomes. Throughout East Asia non-government organisations, civil society organisations, have developed to the extent that they can now, sometimes and on some issues, play a 'pressure group' role in regional security affairs.9 Such a role must be tempered with the thought that most regional governments are still very wary of 'outside' norms being introduced into 'their' area of responsibility. Especially on sensitive issues, NGOs need to be seen as 'insiders' supporting local and traditional values.10 Sometimes the desire of NGOs to promote an agenda will come into conflict with the need to work with state authorities; an issue discussed in the next section.

There is a range of roles played by non-state actors. The most obvious, not necessarily the most important, is 'presence'. Many issues of insecurity are slow to reach state agendas. By the time state actors become aware of the issue as an issue needing to be dealt with they typically find that the NGO sector has a presence and is already working to relieve poverty, fight local corruption or improve basic amenities; all components of comprehensive security at the national level. Alongside presence are 'knowledge' and 'expertise'. Presence brings knowledge of the immediate environment, and because NGOs tend to be focused on their core activity, they also often have considerably more detailed knowledge about the theory underlying their particular issue than do government agencies. This knowledge should not be dismissed by governments merely because the knowledge emanates from outside government sources and practices. Also, because of the NGOs long-term presence in their issues, they tend to have wide linkages with all the actors involved; not only with those attempting to respond to the security situation, but also with those causing it.

But there are problems, both potential and real with NGO activities, especially from a government's point of view. NGOs, like all organisations, have agendas and typically advocate a position. Such advocacy will often run counter to the government's preferred position, even though both government and non-governmental groups are intent on achieving a security outcome. When government and NGOs are after different outcomes the situation can become even more difficult. NGOs also have cultures of their own, and these cultures are often quite different from those of government agencies. At the risk of over-generalising, NGOs tend to be less hierarchical than government agencies, sometimes a problem when 'proper deference' is not shown to senior government officials, more outcome focused and more overtly 'humanitarian', which can lead them to dealing with actors or adopting positions rejected by the government.[11] Tied to the NGO , especially humanitarian, culture are a range of prejudices that may be encountered. Of these the most difficult is the prejudice against dealing

with government agencies generally and, more often, the armed forces specifically. Given that both the armed forces and NGOs are early responders to crises, this can become problematic.

Although not addressed in this paper, we should note that government agencies bring their own range of advantages and disadvantages to the table.

Given both the advantages and potential disadvantages, for Soh and Kim the major issue is how to ensure 'multilateral and multi-faceted cooperation and governance networks among individual governments, international organizations, NGOs and civil societies.[12] There seem to be some specific positions to hold and activities to undertake if government and non-government agencies are to work together effectively (which does not mean that the government controls the NGOs or that the NGOs subordinate their goals to those of the government).

The first step is for all actors to recognise that there is generally a legitimate role for other actors, both on the pragmatic grounds that no actor can achieve outcomes alone, and on the philosophical grounds that true wisdom does not reside in any one location. Government actors need to recognise that NGOs have their own imperatives and have to answer to their own funders.[13]

Once legitimacy is acknowledged all actors should be searching for synergies within and between their areas of expertise so that the combined resources can be full exploited. Partnerships need to be developed where they make sense and the partnerships need to be 'real' rather than in name only. For partnerships to be effective, the individual components need to understand each other in detail, both in terms of what they want and can do, and in what they cannot do. Partnerships require mutually agreed ends (and, ideally, means), they require trust and, at the practical level they require practice and a considerable level of information sharing (which is a sensible way of working together even without a formal partnership). Partnerships involve two-way relationships. NGOs should be sensitised to government methods of operating and cultures, perhaps by attendance at government training sessions. Government actors should similarly attend NGO activities and develop day-to-day working relationships with any NGO they are likely to meet in any security response area.

Partnerships are not always possible. A step below that is for coordination mechanisms to be developed. Coordination is, however, a two-way street. Most NGOs are happy to coordinate, they are not happy to be coordinated.[14] All of this is done between organisations with quiet different identities and cultures. These need to be recognised and respected.

Conclusion

Conceptually, there are few real issues surrounding a role for NGOs in achieving comprehensive security. The practical matter is that NGOs will be involved whether or not governments want them to be. That being the case, the issue is how best to make the relationship between government and non-government agencies work effectively. There are potential problems with the relationship, but with goodwill and the application of energy and time benefits for both government and non-government actors can be achieved.

Endnotes

[1] APCMCOE and ACFID, *Same Space Different Mandates: A Guide to Australian Stakeholders in International Disaster and Conflict Response,* Canberra, November 2011.

[2] The original Japanese concept from the 1980s. See Yoshinobu Yamamato, 'A Framework for Comprehensive-Cooperative Security System for the Asia-Pacific, Jim Rolfe, ed., *Comprehensive Security in the Asia-Pacific*, Wellington: Centre for Strategic Studies, 1995.

[3] CSCAP Memorandum 3, 'The Concepts of Comprehensive and Cooperative Security', CSCAP Working Group on Comprehensive and Cooperative Security, nd c1996, p.2. <http://www.cscap.org/index.php?page=memorandum-no-3---the-concepts-of-comprehensive-security-and-cooperative-security>

[4] Dana Firas Raad, et.al., 'From Human Security and the Environment to Comprehensive Security and Development', Working Draft paper input to the Global Commission on Human Security, Johannesburg, August 2002, p.2

[5] For an early discussion of these issues see for example, Gwyn Prins, 'A New Focus for Security Studies', in Desmond Ball and David Horner, eds., *Strategic Studies in a Changing World: Global Regional and Australian Perspectives,* Canberra Papers on Strategy and Defence No. 89, Canberra: Strategic and Defence Studies Centre, 1992.

[6] This is a personal view. For a view on security issues from a range of regional analysts see Richard W. Baker and Galen W Fox, *Asia-Pacific Security Survey 2008*, Honolulu: East-West Center, 2008, p.5 which lists security concerns in order as: terrorism,;nationalism; economic and resource issues; territorial issues; internal instability; arms issues; and tensions in bilateral relations. These are a mixture of traditional and non-traditional issues.

[7] Edward A.L. Turner, 'Why has the Number of International Non-Governmental Organizations Exploded Since 1960?', *Cliodynamics: The Journal of Theoretical and Mathematical History*, 1 (1), 2010, p.82.

[8] Taken from Vijaya Ramachandran, 'Is Haiti Doomed to be a Republic of NGOs?', Centre for Global Development, 1 September 2012. < www.cgdev.org/blog/haiti-doomed-be-republic-ngos>, accessed 10 February 2014.

[9] Vinod K. Aggarwal and Kristi Govella, 'Trade Linkages to Traditional and Non-Traditional Security: Lessons and Prospects', in Aggarwal and Govella, eds., *Linking Trade and Security: Evolving Institutions and Strategies in Asia, Europe and the United States, New York: Springer,* 2013, p. 229.

[10] Rizal Sukma, 'The ASEAN political and security community (APSC): opportunities and constraints for the R2P in Southeast Asia', *The Pacific Review,* 25 (1), March 2012, p.147.

[11] The humanitarian principles are: humanity, neutrality, impartiality and independence. See https://ochanet.unocha.org/p/Documents/OOM-humanitarianprinciples_eng_June12.pdf

[12] Chang Rok Soh and Jang Ho Kim, 'Comprehensive Security Governance in East Asia: Converging Concepts, Institutions and Approaches', Institute of East West Studies, Yonsei University, 2012.

[13] For an NGO perspective see Michele Lipner and Louis Henley, *Working Better Together: An NGO perspective on Improving Australia's Coordination in Disaster Response, Canberra"* APCMCOE and ACFID, October 2010.

[14] Governments often use their armed forces in a range of 'comprehensive security responses', especially in disaster response. The military CIMIC (civil-military coordination) system should not be used. It is designed primarily to manage civil society rather than to work with it.

CHINA'S MARITIME POLICY: THE INTERNATIONAL AND DOMESTIC CONTEXTS

Li Mingjiang

ABSTRACT

This paper discusses the changes in China's security policy, the impact of Beijing's policy on the regional security landscape, and several major factors that led to the changes in China's East Asian security policy. Many factors have contributed to the emergence of new security challenges for China in East Asia, including the US strategic rebalance to Asia, Sino-US rivalry, regional strategic realignments in the context of China's rapid rise, and rising nationalism in many regional states. But I conclude that the biggest challenge to China's regional security is Beijing's own policy. China has yet to figure out how it should prioritize and reconcile its different national interests in the region. This is particularly the case when it comes to maritime affairs.

INTRODUCTION

Significant changes have taken place in East Asian regional security outlook in the past few years. Since 2009, the region has become dramatically more volatile, with tensions and disputes arising in the Korean Peninsula, the East China Sea, the South China Sea (SCS), and occasionally in the disputed border areas between China and India. What is more worrisome is the absence of clear signs that these tensions and disputes will be mitigated any time soon. All these security flashpoints involve China in one way or another. In fact, China has been regarded as a central player in almost all of these disputes and many analysts have described China as becoming more assertive in handling these security conflicts, especially with regard to the territorial and maritime disputes in the East and SCS.

It appears that the mainstream view is that China's heavy-handed approach towards regional security has deepened many regional states' strategic apprehensions towards China. It is noted that China's relations with the rest of the region are "in a worse state" than it has ever been in the past two decades. Even the employment of China's economic power—China serving as a market, exporter of cheap goods, investor, contractor, and official aid provider—has not built a more benign and amicable image for China in East Asia.1 A minority view seems to hold that the East Asian regional security situation has not reached an alarming state. Kang argues that most regional states do not perceive China as a threat yet because "as of 2012, military expenditures in East and Southeast Asia are at the lowest they've been in 25 years".2 Kang may be right that there has not been an outright arms

race in the region, and while the prospects of an all-out war in East Asia may also be slim, the recent trend in regional security conflicts makes it difficult to completely rule out the possibility of some of the hostile encounters escalating into small scale military skirmishes.

This paper attempts to discuss the changes in China's security policy, the impact of Beijing's policy on the regional security landscape, and several major factors that have led to the changes in China's East Asian security policy. Many factors have contributed to the emergence of new security challenges for China in East Asia, including the US strategic rebalance to Asia, Sino-US rivalry, regional strategic realignments in the context of China's rapid rise, and rising nationalism in many regional states. I conclude that the biggest challenge to China's regional security is Beijing's own policy. China has yet to figure out how it should prioritize and reconcile its different national interests in the region. This is particularly the case when it comes to maritime affairs. Having traditionally been a land power for centuries, China now has a strong aspiration to become a maritime power as well. This desire, coupled with various strategic and historical relationships and China's domestic rising nationalism, is creating an enormous challenge for China itself and many countries in its neighbourhood.

REACTIVE OVER-ASSERTIVENESS

In the past few years, Chinese officials and analysts have repeatedly singled out the collusion of Washington and regional states as the bane of China's relations with its neighbors. They argue that China has mostly been reacting to the "provocative" moves of neighboring countries. In some cases, the China's reaction explanation may not be totally wrong. But it is also important to note that in many cases, China's responses have been excessively tough, which could be characterized as "reactive over-assertiveness."

Korean Peninsula

On the North Korean issue, China is not perceived as a direct perpetrator but has long been criticized as the protector of the Pyongyang regime. Many would believe that it was Beijing's economic and political support for Pyongyang that partially enabled North Korea to carry out its nuclear program. Beijing is interested in furthering the survival of the North Korean regime, denuclearization, Korean Peninsula stability, and the role of North Korea as a strategic buffer zone for China's relations with the US. Many of these goals are not convergent, especially during times of crises. It is also not clear whether Beijing has a clear idea of priorities on the North Korean issue. The policy ambiguities have often led Beijing to adopt policies that were at great variance with the policies and expectations of the outside world during North Korean provocations. This is all the more evident

in China's response to the sinking of the Cheonan warship and the bombing of the Yeonpyeong Island in 2010. Beijing's pro-Pyongyang stance in the aftermath of the two events contributed significantly to South Korea's anger towards China and US as well as Japan's distrust of China. When the US, Japan, and South Korea held naval exercises to deter further aggressive actions of North Korea, the Chinese elite, especially People's Liberation Army (PLA) leaders, ratcheted up their rhetorical opposition to the increased US military presence in Northeast Asia.

On Pyongyang's nuclear issue, China has consistently proclaimed that it wants Pyongyang to drop its nuclear weapon program. Yet for many years, Beijing has been reluctant to employ coercive means to deter North Korea's nuclear ambition. In fact, on many occasions, China has tried to block UN Security Council resolutions aimed at sanctioning Pyongyang. At the same time, Beijing has sought for denuclearization in North Korea by means of the six-party talks. These actions underscore Beijing's aspiration for a bigger regional role: "China is emerging as the big winner" because when the situation becomes seemingly hopeless, Beijing will be regarded as the "mediator".[3]

North Korean provocations have resulted in stronger US military presence in Northeast Asia vexing the PLA, and also increasing the possibility of South Korea and Japan going nuclear.4 China's handling of the North Korean challenge, to some extent, worsened Beijing's relations with South Korea in the past few years. It is only recently that Beijing's approach to North Korean nuclear issue seemed to have slightly changed. In the aftermath of Pyongyang's third nuclear test, Beijing's criticism against North Korea has become harsher. China not only agreed with the US but even helped the US to draft the new UN Security Council resolution to impose sanctions on North Korea. This suggests that Chinese decision makers may have developed a more urgent need to rein in the North Koreans' provocative actions.[5] In an unusual move, the Bank of China announced recently that it had cut off dealings with the Foreign Trade Bank of North Korea in an attempt to put more pressure on Pyongyang.[6]

But, many analysts believe that China is unlikely to change its ambiguous policy in Northeast Asia under Xi Jinping's leadership. It will be difficult for Beijing to find a way out of its predicament between wanting a nuclear-free North Korea on the one hand; without regime collapse so Pyongyang could continue as a strategic buffer zone for China on the other hand.[7] It is simply unrealistic to expect China to exercise its maximum leverage over the North by implementing UN Security Council sanctions at the expense of its economic interests. Conservative leaders—especially those in the PLA, who favour the survival of the Pyongyang regime, and local government leaders in the provinces bordering North Korea—are bent on in reaping economic gains from maintaining stable trade and investment ties with North Korea.[8]

It is interesting to note that Beijing's policy towards North Korea persists despite the fact that the vast majority of China's netizens are "profoundly disillusioned" by the North Korean regime.[9] This is an irony considering Beijing's argument that it had to react to external events assertively because of mounting domestic popular pressure. In addition to the North Korean issue, Beijing's relations with Seoul have also been marred by a flurry of bilateral contentions over historical and cultural heritages in the past decade or so.[10] It has been noted that lately, there might be an opportunity for China and South Korea to mend their ties because of South Korea's new President Park Geun-Hyes's trustpolitik doctrine that seeks to improve relations with Beijing.[11] The chances of President Park's policy will, to a large extent, depend on the contingencies of the North Korean issue in the coming years.

There are still numerous uncertainties with regard to the North Korean nuclear issue. During the most recent crisis in the early months in 2013, Pyongyang's war-mongering rhetoric and dangerous play of brinkmanship suggest that the North Korea issue will continue to be a major source of instability in Northeast Asia. China's approach may have contributed to peace in the region in the short run, but may also entail larger dangers in the long run. New policy proposals keep emerging. For instance, it has been suggested that China may become more cooperative with the US if Washington attempts to create what Beijing most fears—"greater US military presence in the region and enhanced trilateral cooperation with Japan and South Korea".[12] But it remains to be seen whether stronger US military presence would actually further harden Beijing's protective policy towards Pyongyang. Some members of US Congress attempt to impose new unilateral sanctions to penalize companies, including banks that do business with North Korea. This could be lethal measures aimed at achieving regime change in Pyongyang.[13] The impact these proposals would have on China's North Korea policy, if adopted, remains to be seen.

East China Sea

Compared to the North Korean challenge, the East China Sea territorial and maritime disputes between China and Japan are more challenging for Beijing. The disputes had been fairly well managed in the past under the precondition that Beijing was not seriously challenging Japan's administrative control over the Diaoyu/Senkaku islands. When the situation in the East China Sea was calm, the maritime law enforcement personnel of the two countries enjoyed quite good interactions to the extent that the coast guard officers of the two countries traded cigarettes and played Mahjong together during their patrol activities.[14]

In 2008, Beijing and Tokyo reached an in-principle agreement for joint development in the East China Sea, which was lauded as a major breakthrough,[15] and the two

countries held several rounds of talks on the implementation of the agreement. But so far, there has been no progress towards the implementation of the agreement. As a result of domestic nationalistic backlash in China, Beijing started to regret its agreement with Japan.

In the past few years, tensions in the East China Sea have been on the rise. A major conflict in the East China Sea occurred in 2010, when the Japanese Coast Guard arrested the captain of a Chinese fishing boat in the islands' territorial sea and wanted to employ Japan's domestic law on the captain. China reacted with strident measures, including severing high-level political exchanges and resorting to various economic tools such as blocking rare earth export to Japan and reducing tourism, to compel Japan to release the Chinese fisherman unconditionally. Japan eventually released the Chinese fisherman without taking the domestic legal approach.

A new round of tensions and disputes occurred in September 2012 when the Japanese government decided to nationalize three islets to preempt the Tokyo Governor Shintaro Ishihara from purchasing them. The Japanese government maintained that it made the nationalization decision in order to prevent Ishihara from sending people to land and building structures on the islets, which would almost certainly create bigger problems in Japan-China relations. The Chinese were never convinced by the Japanese explanation, arguing that the Japanese government could have used other administrative measures to stop Ishihara from purchasing the islets and nationalizing them. The Chinese believed that Japan wanted to create a fait accompli, anticipating that Beijing would not react in a big way since China was in the midst of a major political leadership transition.

Beijing reacted with harsh countermeasures, described as "combination punches" by the Chinese press. China suspended high-level political meetings with Japan, tolerated violent anti-Japan demonstrations in many cities in China, employed various economic penalties against Japan, added the islands in the official weather forecasting program, announced the maritime baseline of the islands, and more importantly, started an unprecedented program of regular patrols by Chinese government vessels in the waters (including the territorial sea) near the Diaoyu/Senkaku islands. According to a report issued by the Japanese Coast Guard, from September 2012 to March 2013, China's maritime surveillance ships were present in the territorial sea of the islands for 35 days and the contiguous zone of the islands for 136 days.[16]

The tense atmosphere over the Diaoyu/Senkaku islands significantly increased the possibility of naval skirmishes between China and Japan. On February 5, the Japanese Ministry of Defense disclosed that a Chinese warship had used its fire control radar against a Japanese helicopter on January 19. It did so again

on January 30 against a Japanese destroyer.[17] In response to Japanese criticism, the Chinese Ministry of Defense said that the PLA naval ship was simply using normal monitoring and warning measures without using the fire control radar in both cases. The Chinese Ministry of Defense further argued that the root cause of the incident was the short-distance tagging and monitoring behavior of Japanese jet fighters and warships during the PLA Navy's regular training exercises. China further charged that Japan had intentionally made irresponsible statements on China's normal naval exercises to play up "China threat" and denigrate China's image.[18] Zhang Zhaozhong, a military analyst at the National Defense University (NDU) and a popular commentator in the media, noted that the Chinese warship's use of fire control radar could pass as an internationally accepted and normal operation if the Japanese jet fighter or warship had entered the 10 nautical miles of the safety zone of the Chinese frigate in high sea.[19]

The truth of the fire control radar incident will be mired in mystery for some time because of the lack of technical evidence from the Japanese side. If the PLA naval ship had indeed used the fire control radar, it could become a serious issue because such "hostile intent" could be (mis)interpreted as a prelude to open firing of weapons and the other party could impulsively decide to pre-empt the imminent onslaught", escalating into unwanted higher level conflict or even full-fledged war.[20]

Ever since the Japanese government's decision to nationalize the three islets at the Diaoyu/Senkaku, China has repeatedly stated that it was Japan that first started the controversy and the dispute. Hence, all Chinese reactions were caused by Japan's unilateral provocations and their vessels and planes' illegal activities near the disputed islands.[21] China is prepared to use this rationale to exert pressure on the US to stay out of the Sino-Japanese dispute over the Diaoyu/Senkaku islands. On April 30, the Chinese Ambassador to the US Cui Tiankai made a long statement on US role in the dispute. While emphasizing that it was Japan's unilateral and coercive actions that started the tensions, Cui stated that the US should also bear some historical responsibilities for the dispute and urged Washington not to "lift and get hurt by the Japan stone".[22]

On April 23, eight Chinese maritime law enforcement vessels entered the waters of the Diaoyu/Senkaku islands and "successfully expelled" a group of Japanese nationalists trying to land on the islands.[23] Chinese military planes made as many as 40 flights in the airspace near the disputed islands on the same day.[24] It is interesting to note that Beijing took this action during Chairman of the Joint Chiefs of Staff Martin E. Dempsey's visit to Beijing.

More recently, Beijing seems to be more inclined to regard the Diaoyu Islands dispute as China's core national interest. On April 26, the PRC Foreign Ministry

spokesperson stated, "It is an issue about China's territory and sovereignty, and therefore, a matter of 'core interest".[25] But later, the official transcripts of the spokesperson's remarks removed this sentence. The edited official transcripts state only that "....China resolutely upholds the nation's core interests, including national sovereignty, national security, territorial integrity etc. The Diaoyudao issue touches on China's territorial sovereignty".[26] This change of wording indicates that China may not have made up its mind to use military force to capture the islands or to expel Japan in order to unilaterally exercise jurisdiction over the islands. But it does suggest that China is determined to sustain its presence in the vicinities of the islands and block any Japanese action that threatens Chinese interests in the area.

In another move that has stunned many Japanese, Chinese scholars close to the policy community have begun to question Japan's sovereignty over Okinawa. Very soon after the fishing dispute in 2010, Chinese scholars began to question Japan's sovereignty over the Ryukru on the grounds of WWII, post-war arrangements, and various international documents.[27] Major General Jin Yinan, Director of the Institute for Strategic Studies at the NDU, stated in July 2012, that no international treaty recognizes the forceful occupation of Ryukyu, a former vassal state of China, and thus the ownership of Ryukyu is still an open question.[28] A People's Daily article makes the argument that during the negotiations of the Treaty of Shimonoseki after the 1894/1895 Sino-Japanese war, the sovereignty issue of Ryukyu islands was not unambiguously settled. They argue that China nullified the Treaty of Shimonoseki in 1941 when it formally declared war on Japan, and that various international documents such as the Cairo Declaration and the Potsdam Declaration suggest that not only the Diaoyu islands should be returned to China, but also the unsettled Ryukyu issue could be brought back for discussion.[29] Li Guoqiang, one of the authors of the People's Daily article, explained later that he was not arguing that Ryukyu belonged to China historically, but the main purpose was to put pressure on Japan on the Diaoyu Islands issue.[30] Ironically, back in the 1950s, Beijing had strongly supported Japan's sovereignty claim over Okinawa. In an editorial published by the People's Daily in March 1958, Beijing accused the American occupants of Okinawa of fabricating news reports that China was set on claiming Okinawa. The editorial noted that China had always strongly and consistently supported the complete return of Okinawa to Japan.[31]

General Liu Yuan, Political Commissar of the PLA Department of General Logistics, opined that the Sino-Japanese contention over the Diaoyu/Senkaku Islands is "about face". Liu is at least partially correct. Beijing's handling of the dispute has been hindered by Sino-Japanese animosities over history. Japan is moving fast towards "normalization" and there has been conspicuous growth of right-wing political forces in Japan, partly prompted by the dramatic development in China's military build-up. There are very few reasons to be optimistic about the security

ties between China and Japan in the foreseeable future.

South China Sea

China's response to the SCSdisputes seems less emotional than its response to the dispute with Japan in the East China Sea. But Beijing's actions in the SCS have been at least equally heavy-handed, especially from the perspectives of many regional states in Southeast Asia. In 2009, China submitted the nine-dashed line map to the UN Commission on the Limits of Continental Shelf. This was the first time that the Chinese government had ever presented this map to the international society. The submission raised the concern in many capitals in Southeast Asia that China was bent on controlling the entire maritime zone within the nine-dashed line, which is about 80 percent of the whole SCS area. During the ASEAN Regional Forum meeting in July 2010, in response to American statement on the SCS made by the former Secretary of State Hillary Clinton, China's former Foreign Minister Yang Jiechi lost his temper and said that "China is a big country and other countries are small countries, and that's just a fact".[32]

Over the years, disputes concerning fishing activities and energy resource exploration have been frequent. Beijing has been particularly accused of using forceful means to intervene in the oil and gas exploration activities of Vietnam and the Philippines in their EEZ. In 2012, Vietnam passed a maritime law which declared sovereignty and jurisdiction over the Paracel and Spratly Islands. To counter this, China announced that it has set up a prefectural-level city, Sansha, to administer the islets, sandbanks and reefs in Xisha, Zhongsha and Nansha islands. State-owned China National Offshore Oil Corporation (CNOOC) invited exploration bids for nine offshore blocks in the SCS. In late 2012, the local government in Hainan announced that it had passed a revised regulation that would allow Chinese vessels to board and search ships that violate Chinese laws and regulations in contested waters. In the same year, it was also reported that China's new passports were imprinted with maps claiming sovereignty over the SCS, inciting strong protests from Philippines and Vietnam.

A major event in the SCS disputes in 2012 was the conflict between China and the Philippines over the Scarborough Shoal, which has now resulted in China unilaterally controlling the reefs. During the standoff, Chinese Vice Foreign Minister Fu Ying warned the Philippines that China has "made all preparations to respond to any escalation of the situation by the Philippine side". Global Times, a populist Chinese newspaper affiliated to the official People's Daily, followed up Madam Fu's remarks by saying that China did not rule out the possibility of using force to resolve the conflict with the Philippines. It added that China should teach the Philippines a lesson and that "if the standoff escalates into a military clash, the international community should not be completely surprised".[33]

Another major development in 2012 was the failure of ASEAN under Cambodia's chairmanship to make any progress in the management of the security situation in the SCS. The 45th ASEAN Foreign Ministers Meeting held in Phnom Penh in July failed to issue a joint communiqué (for the first time in 45 years) due to disagreements on handling the SCS disputes. Later, at the ASEAN Summit, Cambodia's pro-China stance significantly split ASEAN on the SCS issue.

For sure, China is unlikely to fundamentally change its policy in the SCS disputes. On March 20, 2013, Chinese patrol boats confronted a Vietnamese fishing boat near the Paracel Islands. According to the Vietnamese Foreign Ministry, two Chinese patrol vessels chased and fired at a Vietnamese fishing boat named QNg96382, causing a fire that destroyed the boat's cabin. Chinese authorities acknowledged that the Chinese vessels had fired, but called the discharges "warning shots". Two days later, a PLA Navy South Fleet flotilla moved into waters near the James Shoal (zeng mu an sha) which is located only 80 kilometers (50 miles) from Malaysia's coast, and began a combined arms amphibious exercise. The crew also held a ceremony to declare their vows to defend China's sovereignty in the SCS. Right before the May 1 Labour Day Holiday, the local authorities in Hainan began to organize cruise tourism to the Paracel Islands *(Xisha)*. Out of the 300 or so tourists on board the Coconut Fragrance Princess, 200 were government officials from Hainan Province. The Vietnamese did not interpret the Chinese action as tourism "but something more like imperialism".[34] The cruise voyage indicates a major step towards the implementation of the policy proposal that many Chinese elite have advocated for many years: increasing China's presence and utilization of the resources in the SCS.

In the mainstream policy circle in China, the US simply has no rights to intervene in the SCS issue. Chinese opposition to US intervention is evident in the frequent Chinese official statements targeted at Washington. China has strongly opposed the intervention of non-claimant powers in the SCS issue. At the 2011 East Asia Summit in Bali, former Premier Wen Jiabao warned external forces against getting involved in the SCS dispute, regardless of any excuse. He said that SCS dispute has been going on for many years and should be resolved through peaceful negotiations among direct claimant states.[35] In August 2012, the US Department of State reiterated that "as a Pacific nation and resident power, the United States has a national interest in the maintenance of peace and stability, respect for international law, freedom of navigation, and unimpeded lawful commerce in the South China Sea".[36] China lashed out immediately with "strong dissatisfaction of and firm opposition" to the US statement, saying that it "showed total disregard of facts, confounded right and wrong, and sent a seriously wrong message". The Chinese Foreign Ministry spokesperson asked, "Why has the US chosen to speak out all of a sudden to stir up trouble at a time when countries concerned in the region are stepping up dialogue and communication in an effort to resolve disputes and calm

the situation?".[37]

China has already regarded the tensions and disputes in the SCS in recent years as attributable to the "collusion" of the US and regional claimant parties such as Vietnam and the Philippines. Further defense cooperation between the US and regional states could be viewed by Beijing as growing threat to China's national security (similar to the context surrounding the Moscow-Hanoi 1978 security treaty), which could lead to China making a decision "to threaten a military confrontation in order to change a US course of action [which] Beijing perceived as threatening its interests in the South China Sea".[38]

FACTORS BEHIND CHINA'S NEW SECURITY POLICY

A major security challenge for China in the past few years and perhaps in the near future as well is maritime security. This challenge is multi-faceted, involving strategic rivalry among major powers, territorial disputes, maritime resources, international law, and historical animosities. Many analysts would agree that China has become more assertive in handling maritime disputes in recent years. Some good understanding of the factors that led to China's heavy-handed approach would give us some clues on how the new leadership in Beijing will deal with these challenges in the coming years.

It is widely believed that resource competition is an important factor that has led to the tensions and disputes in the SCS. It has been argued, for instance, that "resource competition is the result of deeply-rooted, long-term trends of coastal urbanization, rising consumption, export-oriented industrialization and the resulting competition for vital resources, especially fisheries and hydrocarbons".39 This view would be particularly applicable to China, driven by its energy thirst since its rapid economic growth in the 1990s.

Other analysts stress the strategic and geopolitical importance of the maritime domain for China's national security interests. They argue that China is bent on constraining US influence in the Indo-Pacific region by exercising control over the waters near the first island chain (from Okinawa, Taiwan to the Philippines) and the second island chain (from the Ogasawara island chain and Guam to Indonesia). SCS is thus a strategic priority for China. From this perspective, China's heavy-handed approach to the disputes in recent years is no surprise.[40]

It has also been argued that the US "pivot" or "strategic rebalancing to Asia" has also been a factor that has led to the rising tensions in East Asia in the past few years. This is particularly a popular view among Chinese analysts. But many observers also believe that Sino-US strategic rivalry has been a significant factor in the SCS disputes. In the words of one analyst, Sino-US strategic competition has

led to the SCS becoming a prominent stage that showcases the jostling for influence between China and the US. From China's perspective, US military intelligence and surveillance activities close to China's maritime territories, its strong military ties to China's immediate neighbours, and the intervention in regional issues … make for an unsettling situation.[41]

Another theory speculates that China's new leader Xi Jinping has planned to mobilize the PLA for war preparation and taking the assertive path in various territorial disputes in order to further consolidate his political power within the Chinese political system. This is similar to what Deng Xiaoping did in the late 1970s when he decided to launch a war against Vietnam.[42]

New Strategic Thinking

For many years, China's international strategy and regional security policy have been guided by the so-called "low profile" preference. But in recent years, especially in the context of the 2008 global financial crisis, Beijing's strategic thinking began to gradually shift. In the past, Chinese decision makers had tried their utmost to preserve the Important Period of Strategic Opportunity (zhongyao zhanlue jiyu qi) by maintaining stability in China's neighborhood as the top priority. This explains why China adopted a more or less moderate security policy in much of the 2000s, both in the East China Sea and SCS. But in recent years, a policy consensus seems to have emerged in the Chinese foreign policy community that China should play an active role in preserving the Important Period of Strategic Opportunity and at least make equal effort to simultaneously protect its maritime interests and maintain regional peace and stability.

According to an article in the Global Times in early February by Liu Yuan, Political Commissar of the PLA Department of General Logistics, the Chinese military should try its very best to refrain from taking impulsive military actions. He explains that while this is aimed at preserving the Important Period of Strategic Opportunity (zhongyao zhanlue jiyu qi) for sustaining China's economic development, China should not exclude the possibility of striking out when necessary (gai chushou shi yao chushou). Liu argues that China's participation in the Korean War in the early 1950s and the war against Vietnam in the late 1970s and early 1980s served to prolong peace for China.[43] Liu's view may well represent many elite in China's foreign policy community.

In this context, there are now new limits to developing new strategic thinking: it is more difficult for senior decision makers to appear weak or to advocate moderation in China's national security policy. On January 29, 2013, PLA Deputy Chief of Staff Qi Jianguo met US Congressman Rick Larsen. The official China News Agency reported Qi telling Larsen that "China would never initiate any maritime

dispute and conflict".[44] But two hours later, China News Agency withdrew the first report and deleted that statement in the new report.[45] We do not know exactly what happened in the discussions among the top echelon of the PLA leadership or between the military and the civilian leaderships during those two hours. But the end result of this action does suggest that China's decision makers are prepared to be seen as tough.

The new strategic thinking has also been reflected in the notable increase of Chinese rhetoric of the "core interests" notion in recent years. The increased frequency of Chinese official documents referring to "core interests" perhaps is a reflection of Chinese decision makers' own assessment of China's growing power. According to Wang Yizhou, the growing discussion on "core interests" and the expanding parameter of "core interests" in China reflect the impact of China's rising power on the public and elite's self-confidence.[46] The Chinese elite may not be totally groundless in their assessment of the balance of power in the region. A Carnegie Endowment study notes that China's growing coercive power (including Chinese military capabilities) could enable Beijing to influence or attempt to resolve disputes with Tokyo in its favor short of military attack. An increase in the People's Liberation Army's presence in airspace and waters near Japan and disputed territories could also heighten the risk of destabilizing political-military crises.[47]

This new strategic thinking has made a direct impact on China's policy towards the East and South China Sea disputes in recent years. There are reasons to believe that Beijing is unlikely to reverse this trend given its intensifying rhetoric and aspiration of transforming China into a maritime power. The latest China Maritime Development Report proclaims that China would attempt to accomplish the goal of becoming a major power in global oceanic affairs in 20 years. The report also concludes that maritime security has become a major strategic concern for China's national security, and the current major threat is the possibility of territorial disputes over the islands escalating into military conflicts.[48]

Nationalism

Numerous signs indicate that the Chinese society has become more nationalistic in recent years. A survey jointly done by the International Herald Leader and three prominent internet content providers in April 2009 revealed that as many as 90.4 percent of the respondents were dissatisfied with China's efforts in protecting its maritime interests. When asked to identify the biggest threat to China's maritime security, 26.9 percent of respondents said it was China's insufficient attention to maritime security, 32.4 percent mentioned anti-China forces, 20.7 percent referred to states with disputes with China.[49]

In a survey conducted by Global Times in November 2010, over one-third of the respondents noted that they would support the use of force to resolve the territorial disputes.[50] Twenty days after the Sino-Philippines standoff over the Scarborough Shoal in April 2012, a Global Times survey found that nearly 80 percent of the respondents supported military means in response to "provocations" and "aggressiveness" of other regional states in the SCS.[51] In another survey among urban residents in seven cities, the Global Times found that about 90 percent of the respondents support adopting all necessary means, including the use of force, to protect the Diaoyu Islands.[52]

It seems that Chinese leaders are conscious of the dangers of the growth of ultra-nationalism and even xenophobia in China. During the anti-Japan demonstrations in September 2012, the Chinese government did take actions to curb the violence that was taking place in many cities in China. A few days before the traditional Chinese New Year, fireworks with sensationally nationalistic names were popular in Beijing. But a few days later, it was reported that the merchants had been told by the authorities to stop selling the fireworks with anti-Japan names, such as "Bombing Tokyo".[53]

But at the same time they have to keep nationalism at a high level for other political purposes. China's new leader Xi Jinping seems to be keen to drum up his political rhetoric centred on the "China dream" to cope with a society that is becoming even more devoid of ideology. There is concern that Xi's "China dream" political campaign might stir up a new surge of nationalistic sentiment that has already been on the rise in the past few years.[54] This might be a serious concern as the Chinese military has begun to say that a "strong army dream" should be part of the "China dream". The authorities' political mobilization activities that urge all Chinese people to subscribe to the "China dream" notion will certainly cause the Chinese society to be more vigilant against the undesirable actions of regional states in territorial disputes. As a result, they will scrutinize the Chinese government for any compromise it makes or weakness that it may demonstrate.

Bureaucratic Politics

The evolving strategic thinking and rising nationalism have provided ample room for bureaucratic politics to come into play. Generally speaking, the nationalistic environment has made it easy for those agencies favoring assertive actions to justify their policy as politically correct. During the Scarborough Shoal standoff, China and the Philippines seemed to have reached an agreement that both parties would withdraw their official vessels from the area to reduce the tensions. But soon, the Philippines found that China was not willing to honor that agreement and in fact, China began to deny that such agreement had ever been concluded. Could this be because of pressure from other actors in China?

During the 18th Party Congress, international media was widely reporting China's expanding maritime interests. In the report, it is stated that China is committed to "increase its capabilities in exploring marine resources, develop marine economy, protect the marine bio-environment, resolutely safeguard national maritime rights and interests, and build a strong maritime power".[55] Interestingly, these sentences appeared neither in the section regarding the military and defense nor in the section regarding foreign policy, but in section 8 of the political report dedicated to the efficient usage of national resources and environmental protection (issue areas that are under the jurisdiction of the Ministry of Land and Resources and the Ministry of Environmental Protection). Very likely, these statements on maritime issues were provided by the State Oceanic Administration (SOA), under the jurisdiction of the Ministry of Land and Resources. The Party Congress report is supposed to be the guiding document for China's macro-level policies in the coming years. Once the resolve to protect China's maritime interests is written in the report, it becomes a national policy. More importantly, the various agencies that are inclined to be more assertive could justify their policy proposals and actions as politically correct on the grounds of the Party Congress report.

In dealing with all these regional security challenges, the Ministry of Foreign Affairs had to face tremendous pressure from forces in China and the outside world. In fact, it had to stand firm on China's sovereignty claim, and yet at the same time, make minor diplomatic concessions. For instance, in July 2012, China reluctantly agreed to conclude the implementation guidelines of the DOC with ASEAN. On the COC issue, even though the mainstream view in China is against discussing and signing a legally binding code of conduct with ASEAN, the Ministry of Foreign Affairs had to openly state its willingness to move towards the direction of concluding a COC with ASEAN. To mollify domestic opposition, the Ministry of Foreign Affairs is set on playing delay tactics on the COC issue. The Ministry officials have repeatedly stated that the implementation of the DOC is at least as important as the negotiation on the COC. They have noted that the implementation of the DOC and the talks of the COC must take place simultaneously. Also, senior Chinese diplomats have stressed that the COC process could be started only when certain conditions are ripe. Even though the officials have never openly specified the conditions necessary for the initiation of the COC process, it is commonly understood that China wanted the other claimant countries to stop "provoking" China and "colluding" with outside powers, especially the US.

Other actors in the Chinese foreign policy community have very different views and policy preferences. The Chinese PLA leaders, especially the naval leaders, have a fairly expansive view of China's maritime security interests. In the words of Jiang Weilie, Commander of the PLA Navy's South Sea Fleet, the more than 3 million square kilometres of maritime territory is important for the realization of China's sustainable development, the grand revival of the Chinese nation, and the

China Dream. He further emphasizes that unlike traditional view of the Chinese map (a rooster), China's territory now looks like a torch (with the territory in the SCS being the handle of the torch).[56] If Beijing were to follow the PLA Navy's interpretation of Chinese national interests, its decision makers would have very limited room to exercise flexibility.

Likewise, the SOA has been strongly pushing for the expansion of China's interests in the maritime domain. For instance, the SOA has persistently labelled the nine-dotted line in the SCS as SOA's outer limit of law enforcement *(zhi fa xian)*. Contrary to outside assessment that China's assertive actions in the maritime domain have disadvantaged its regional position, the SOA seems to believe that China has made significant achievements in protecting China's maritime interests, citing the fact that China has now established regular patrol over the waters near the Diaoyu islands and effective control over the Scarborough Shoal.[57]

Conclusion

A Chatham House report on the impact of China's leadership transition on Beijing's international policy concludes that China will most likely work within the existing policy approaches but adopt a more serious approach towards issues that concern China's "core interests".5[8] The findings of the report seem to corroborate with recent developments in China's international relations and regional security policy. We may have few reasons to be concerned about severe conflicts breaking out because of contingencies pertaining to the Taiwan, Xinjiang, and Tibet issues, traditionally deemed as China's national "core interests". But regarding various maritime security issues (territorial disputes and maritime resources which Beijing has been ambivalent in calling them China's "core interests"), things may go awry.

In fact, the regional disputes in recent years have already significantly damaged China's relations with various countries in the region. As a result, China's image has suffered significantly. Genron NPO, a private Japanese group, and the East Asia Institute, a South Korean think tank, conducted their annual survey between March and April, 2013. When asked which of the two countries they feel closer to, 45.5 percent of the Japanese selected South Korea, while only 5.9 percent chose China.[59] For years, China has remained the lone regional power. Apparently, as a result of growing strategic anxieties over China's power and behaviour in recent years, defense and security ties have improved among various regional states, for instance, Japan, India, and Australia. Japan has committed an impressive sum to improve Philippines' maritime capabilities. Tokyo has pledged to train Vietnam's coastal guard personnel and improve its coastal defence capabilities.[60] More recently, political leaders in Southeast Asia have been calling for India to play a more active role in regional political, economic, and security affairs. In December 2012, ASEAN upgraded its relations with India to that of a "strategic partnership".

According to some analysts, ASEAN's intention to further strengthen its strategic ties with India was at least partly attributed to China's growing assertiveness. Some regional states wanted to develop stronger relations with India in order to reduce the leverage that China could exploit in the asymmetric interdependent economic ties between China and ASEAN countries, in order to secure Beijing's security interests in the SCS disputes.[61]

Tensions and disputes in recent years in China's neighbourhood arose because of a variety of factors. Beijing is certainly not solely to be blamed. But as noted, China's ambivalent strategic priorities, evolving domestic politics, and traditional strategic doctrines (for instance, victim mentality) also contribute to Beijing's excessively assertive approach to regional security matters. Beijing may need to better understand the impact of the growth of China's military power in intensifying the regional security dilemma. Regardless of the condition of the SCS disputes, Chinese political elite may need to understand that the sheer impact of China's rapidly rising military capability. Its growing naval presence in Southeast Asian waters has generated significant amount of strategic pressure on regional states, such as Indonesia.[62]

More importantly, Chinese leaders will need to better understand that some of their maritime claims, for instance, the claim that all the maritime zone within the nine-dashed line in the SCS is China's maritime territory, are not supported by historical and legal grounds. Beijing may need to be more cautious that its pursuit of national interests is not achieved at the complete expense of the interest of regional states.

China seems to have a sincere desire to maintain stability in its surrounding neighbourhood. This is evidently shown in the Central Government's meeting on China's neighbourhood policy on 24-25 October 2013. At the meeting, Chinese President Xi Jinping emphatically stressed that China needs to do its best to create and maintain a stable environment in its neighbouring regions in order to allow the country to focus on the grand national rejuvenation drive.63 But at the same time, there is growing will among the Chinese policy community that China should also be more prepared to employ heavy-handed means to safeguard what Beijing views as its legitimate interests in the region, in particular sovereignty over disputed islands and maritime rights in the East and SCS. It is thus a big challenge for Chinese decision makers to strike a fine balance, which would necessitate Beijing to more clearly prioritize its interests and adopt a coherent strategy to accomplish those different objectives.

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SOUTH CHINA SEA: UNDERSTANDING MARITIME BOUNDARIES

Professor Dr Vivian Louis Forbes

ABSTRACT

In terms of its coastal geography the South China Sea is complex. This semi-enclosed sea with its coastal States and two island and two Archipelagic States is a geopolitical hotpot. When viewed cartographically it is presented as a series of confusing delineated lines – either symbolised or colourcoded, albeit, depicting jurisdictional claims and counter-claims. Are these claims – jurisdictional lines – in accord with the 1982 Convention on the Law of the Sea?

Delimitation of maritime boundaries is a more difficult exercise than demarcating land boundaries. The first step towards defining the maritime limits of a coastal state is the establishment and proclamation of the territorial sea baseline. It is from this baseline system or datum that the suite of maritime claims will be measured. The waters landward of the baseline system are termed 'internal waters'. The normal baseline of a coastal state is the Low-Water Mark along the coast as delineated on the authorised large-scale chart of the State, however, determining that mark can be difficult, particularly in areas with a gently shelving shoreline, a high tidal range, or when the coastline tends to change. A suite of jurisdictional zones may then be claimed when the datum is determined.

Understanding the process, appreciating the geographical reality and comprehending the legal and political factors that come into play are important. A territorial sea or territorial waters zone of a maximum width of 12 nautical miles (M) seaward of the baseline (Article 3) may be claimed by a coastal state. An additional 12M adjacent to and seaward of this belt, referred to as a Contiguous Zone (Article 33) may also be claimed by the coastal state. A coastal state may also claim an Exclusive Economic Zone (EEZ) to a distance of 200M measured from the baseline (Article 57). Within this zone the coastal state may permit aliens to operate a particular fishery venture or carry out scientific or exploratory research and in certain instances assist in the exploitation of marine mineral resources. Only the resources within this zone are to the exclusivity of the coastal state.

A fifth maritime regime is that of the continental shelf (Articles 76-85). The precise delimitation of the outer edge of the continental shelf of a coastal state is a complex issue. The problem is compounded when other states in close proximity share the shelf and in instances when the distance between opposite neighbours is less than 400M. A continental shelf boundary may therefore need to be negotiated. The delimitation of such a line is generally based on the principle of a median line or equidistant line. Geographical reality dictates that determining such a line is not so easy. The precise boundary-marking becomes

difficult when there are off-shore islands, deeply-indented bays and other geographical features other than a smooth straight coastline as witnessed in the determination of the maritime boundaries in numerous bi-lateral treaties.

Thus, the continental shelf boundary between two coastal/island States will in most instances be a line or a series of lines on the chart(s) connecting all points, which are equidistant from the nearest land feature, or baseline from which the territorial sea for each country is measured. Whatever its function, the determination of the seabed boundary between coastal states is a vexing problem. This paper offers some pointers towards a better understanding of the manner and processes by which maritime boundaries are delimited.

KEY WORDS: maritime boundary delimitation; territorial sea base point; straight baseline

INTRODUCTION

In terms of its coastal geomorphology the South China Sea (SCS) basin is complex. This semi-enclosed sea with its coastal States and two island and two Archipelagic States is a geopolitical 'hotspot' and strategically a military 'flaspoint'. When viewed cartographically it is presented as a series of confusing delineated lines – either symbolised or colour-coded, albeit, depicting jurisdictional claims and counter-claims. Are these claims – jurisdictional lines – in accord with the 1982 Convention on the Law of the Sea? Many are and few are questionable; and will remain, until resolution is achieved on the territorial status of the marine features.

International political boundary creation, whether it is maritime or terrestrial, is a process of inter-actions between geography, law and politics and importantly, of the inhabitants of the States that are party to the negotiation (or series of negotiations). The central objective of the process is a general acceptance of the boundary and for the maintenance of peace, security and stability to prevail in the region. Since the 1950s, the rationale is also on the delineation of lines of allocation for marine biotic and mineral resources, In order to achieve the primary and secondary objectives, the boundary has to be negotiated – defined or determined – and agreed upon by the neighbouring countries and more importantly to be publicised and delineated on topographical maps and nautical charts.

History dictates that imposed boundaries never achieve general acceptance. Consider, for example, the terrestrial boundary between Indonesia and Malaysia on the island of Borneo; the border dispute between Iraq and Kuwait in the early 1990s; the ongoing disputes between India and Pakistan in the Rann of Cutch, and India and Bangladesh in the Gangetic Delta; and generally, the international political terrestrial boundaries on the Arabian Peninsula and on parts of the African continent. Many are awaiting complete resolution. The negotiators of an

international boundary are the politicians and statesmen, who state their point, stake their claim and eventually reach an agreement on the choice of the boundary site and alignment, and then delimit in the case of a maritime boundary or demarcate in the instance of a terrestrial boundary within the framework of the negotiation. In this process, they are assisted by diplomats, lawyers and political advisers whose educational and professional backgrounds may be in economics, history, law and political science – characteristics of boundary architects, rather than in cartography, spatial sciences, geodesy, geography and geology – characteristics of boundary engineers.

THE FOUR 'Ds'

Definition, Delimitation, Demarcation and Delineation

In defining an international political boundary a distinction is made on these four steps. Delimitation provides the separating line between the authority of the neighbouring states through a verbal description of the location of the boundary, sometimes accompanied by maps and sketches. Demarcation is the process of marking out the boundary on the ground according to verbal definition contained in the agreement or treaty. There is a clear difference between the two processess. The mission of demarcation is generally non-political in nature; however, there are many instances where the works of surveyors have been hindered due to political interference. It should be noted that in some places demarcation is not feasible, for example, in areas of swamps, sand storms, and at any appreciable distance from the shore. Delineation of the alignment of an international political boundary by means of internationally recognised symbols and/or colours depicted on maps, charts or satellite imagery, in hard copy or electronic format, utilising the branded computer software, is just another step of the treaty arrangement. The maps should be drawn to a stated scale to and with the greatest accuracy as is feasible, and ideally, should NOT be labelled "For ILLUSTRATIVE PURPOSE ONLY". The map is to all intents and purposes a legal document when attached to a Treaty. Another commonly found statement on such documents in the past has empathetically stated: "This is not to be considered an authoritative source".

GRAPHICS FOR MARITIME BOUNDARY DELIMITATION

Maps, Charts, Aerial Photographs and Satellite Imagery

A map or chart is a scale model of a representation of the Earth's surface. Traditionally, they were two-dimensional (plane) representations of a three dimensional surface of the Earth, however, with the utilisation of computer-assisted cartography this process becomes virtual reality and may even enable 'real-time mapping'. Maps and charts are portrayal of geographical facts, but

they are also of political importance. Such graphics are heavily relied upon in all stages of boundary making and map evidence plays an important role in questions concerning boundary alignment.

Maps and charts constitute an important part of the infrastructure for boundary creation and map evidence is essential in answering queries pertaining to boundaries. Aerial photographs and satellite imagery are important technical tools to take to the negotiation table, as products, which complement maps or serve as alternative to maps. The former have been an acceptable product for the last 80 or more years; whilst the latter, is a relatively new product in use since about the mid-1970s. Maps illustrate the course of the boundary in different stages of boundary making.

Maps are used as an integral part of the treaty, judgement or arbitration award by incorporating the graphics into the text to which they are annexed. If a map is incorporated into the text, it serves as part of delimitation, if it is not; it serves merely as an illustration of the text. Maps solely by their existence cannot constitute a title to land, which establishes legal rights. The legal force of the maps and charts can only be acquired by their incorporation into the text of the treaty, or judgement, otherwise they remain merely a source of information, the accuracy of which varies as a function of the technical quality of the maps or charts.

Nautical Chart, Chart Scales and Nautical Mile

The nautical chart depicts the sea areas together with the adjacent land in a standard format. The chart, shows by means of appropriate symbols the depths of water, the low and high water marks, the offshore features such as islands, isolated rocks, the nature and extent of seabed elevations (that is, reefs, shoals, low-tide elevations), navigable channels and recommended shipping routes as well as aids to navigation and other pertinent information vital to the safety of navigation. Nautical charts are generally compiled on the Mercator map projection and depict a graduation of Latitude and Longitude to determine a feature's or mariner's geographical position.

The unit of distance and length of measurement specified in the provisions of the 1982 Convention is the nautical mile (M). A value of 1,852 metres was approved for the 'international nautical mile' by the International Hydrographical Conference of 1929. In the context of maritime boundary delimitation it is important to bear in mind that distances obtained from nautical charts on the Mercator projection, by reference to the border latitude, are in sea miles. A sea mile is defined as the length of one minute of arc, measured along the meridian of latitude of the particular geographical position. This length, therefore, varies with latitude and increases as the position shifts to higher latitudes. Nautical charts based on the Mercator map

projection are, therefore, not considered entirely suitable for delimitation purposes to distances further than the 12M specified for the breadth of the territorial sea. This is particularly the case in high latitudes or when the boundary extends for some appreciable distance in a north and south direction. Certain technical aspects need to be examined; however, in this context of this presentation word limitation prohibits an in-depth discussion on the topic.

TERRITORIAL SEA BASE POINTS

A datum is a commencement point, or mark from which measurements may be taken; or a standard set. In the context of the 1982 Law of the Sea Convention, prominence is given to the establishment of a territorial sea datum. A State's sovereign maritime area extends to the outer limit of its territorial sea, which is defined as being a maximum of 12M from the closest point on that State's territorial sea baseline.

The datum point for measuring the width of the suite of maritime jurisdictional zones extending from the coast seaward is the Territorial Sea Baseline. The normal baseline of a coastal state is the *low-water mark* as delineated on the large-scale charts adopted by the coastal states (The 1982 Convention's Article 5). Reference to Article numbers relate to those in 1982 Convention unless otherwise stated. The baseline may deviate from the low-water line along the coast. Wherever possible, the Lowest Astronomical Tide (LAT) will be adopted, as this will give the coastal state the advantage of using the low-water line of a
low-tide elevation (LTE).

In the instance of islands situated on atolls or of islands with fringing reefs, the datum is the seaward low-water line of the reef, as portrayed by the appropriate symbol on charts which are officially recognised by the coastal state (Article 6). The rules for defining and delineating baselines to suit various geographical coastal features, for example, across the mouth of rivers, enclosing bays, and connecting offshore islands, are contained in Articles 7 to 14 inclusive.
Coastal states may determine baselines by any method, or a combination of methods as provided in Articles 5 - 14, and these must be shown on a chart of a scale or scales adequate for ascertaining their positions. Alternatively, a list of geographical coordinates of the base points and the nominated geodetic datum may be substituted.

The normal baseline is the basic element from which the territorial sea and other maritime zones are determined. It is defined as the low water line along the coast, as marked on largescale charts of the coastal state (1982 Convention, Article 5). Straight baselines are defined by straight lines that join points on the coastline which have been selected according to the criteria listed in Article 7 of the 1982

Convention. They delineate internal waters from territorial seas and other maritime zones. The territorial sea baseline comes in two fundamental types: the normal baseline and the straight baseline. The latter type is supposed to be applicable only when the coastline is deeply indented or fringed by islands.

The 1982 Convention has set restrictions on base point selection. For example, the drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast; any baseline of archipelago cannot exceed 125M, and other criteria as mentioned in the 1982 Convention. However, in the conventional manual selection of base points, as restricted by technical condition, it is very difficult to set up the mathematic model of base points selection which accord with these prescription, so the selected base points cannot ensure optimization (maximum internal water area) in accordance with these prescription.

Straight baselines are a system of straight lines joining specified or discrete points on the low-water line, usually known as straight baseline turning points, which may be used only in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity (Article 7).

Article 47 of the 1982 Convention contains nine paragraphs which set the rules for delineating archipelagic baselines, safeguards for neighbouring states which might be affected and for the documentation and publication of archipelagic baselines. These rules stand in contrast to those defined in the provisions of Article 7 for the establishment of straight baselines along mainland coasts. The first three paragraphs of Article 47 set out five tests which archipelagic baselines must satisfy. They must include the main island; they must enclose an area of sea that is at least as large as the area of enclosed land but not more than nine times that land area; no segment of baseline may exceed 125M in length; not more than three per cent of baseline segments may exceed 100M in length; and the baseline must not depart to any appreciable extent from the general configuration of the archipelago.

The territorial sea baseline comes in two fundamental types: the normal baseline and the straight baseline. The latter type is supposed to be applicable only when the coastline is deeply indented or fringed by islands. However, many States have officially defined straight baselines that some hydrographical and legal practitioners, and some States, find rather perplexing. One could be forgiven for thinking that the territorial sea "normal" baseline, which is defined as the Low-Water Mark along the coast, would be free from any abuse similar to those of straight baselines.

TERRITORIAL SEA

The sovereignty of coastal and island States as well as archipelagic States is limited only by the fact that this sovereignty must be exercised in accordance with the 1982 Convention and with international law (Article 2:3). The concept of a territorial sea foresees full sovereignty of coastal and island states in this zone (Article 2) with the restriction that the "right of innocent passage" for foreign ships as provided by the Convention (Articles 17 – 32). The full text of these articles is reproduced in this document.

The 1982 Convention's Article 3 makes provision for every coastal and island State

> *... the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from the baselines determined in accordance with the Convention.*

Thus most states claim this maximum width, in conformity with international standards. Indeed, as states ratify the Convention, they appear to adapt their maritime limits to the provisions of the Convention, either by extending their present limits or pegging back their previously excessive claims.

The territorial sea, the airspace above it, its bed and substratum remain under the sovereignty of the coastal state (Article 2), which, however, has an obligation to accord the right of innocent passage to foreign shipping (Article 17). Although a signatory to the 1982 Convention, the Republic of Iran in 1982 reserved the right to require prior authorisation for warships to exercise right of innocent passage through its territorial sea, and to limit the right of transit passage through straits used for international navigation to the shipping of those states which had signed the 1982 Convention. Many States have similar declarations. The United States protested against this declaration. However, The United States of America has not ratified the 1982 Convention and therefore not a party to the Law of the Sea Treaty. It does insist on its rights to claim it suite of jurisdiction.

The *territorial sea* refers to that part of the ocean immediately adjacent to the coast of a state and is subject to that State's territorial jurisdiction. The State possesses both the jurisdictional right to regulate, police, and adjudicate the territorial sea and the proprietary right to control and exploit natural resources in those waters and exclude others from them. Territorial Sea differs from other maritime jurisdictional zones, which are common to all nations and are governed by the principle of freedom of the seas. The High Sea is an area of the ocean beyond national jurisdiction and is not subject to appropriation by persons or states but are available to everyone for navigation, exploitation of resource with some reservations, and other lawful uses. The legal status of territorial sea also extends to the seabed and subsoil under them and to the airspace above them.

CONTIGUOUS AND EXCLUSIVE ECONOMIC ZONES

Seaward of the Territorial Sea's outer limit the coastal and island State may claim two additional zones: these are the Contiguous Zone (CZ) and the Exclusive Economic Zone (EEZ). The latter, as the name implies, offers the claimant State exclusive rights to the natural resources within the prescribed area – in the water column and on the seabed; the former, has a more administrative and legal function. In this section, we examine the role of these two zones and analyse States' practice in determining the outer limits of these zones, and if a dispute arose, how the neighbouring States delimit their maritime boundaries. There are obligations and rules that go with the privilege of claiming and administering these zones for the coastal and island States as well as by users within these zones.

Article 24 of the 1958 *Geneva Convention on the Territorial Sea and Contiguous Zone* entitled a coastal state to claim as a CZ waters extending out to 12M from the baseline; to operate in such waters in order to prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; and to punish infringement of the above regulations committed within its territory or territorial sea. In other words the coastal State was given partial jurisdiction over a limited area of what were conceived as international waters.

Article 33 of the 1982 Convention contains a similar provision except that the width of such waters has been extended to 24M measured from the baseline, and the words, "in a zone contiguous to its territorial sea, described as the contiguous zone" have been used, to indicate that this zone is no longer a part of the high seas. Within the CZ of a coastal state, aliens have full navigation rights provided they do no not infringe regulations relating to the territorial sea. By contrast, overflight rights may be restricted. Aliens also possess the rights to conduct scientific research in the water column and to fish for all but sedentary species, if the coastal state has not proclaimed a fishing zone or an EEZ extending beyond the seaward limit of its territorial sea. They may also lay submarine cables within this zone, but do not possess any mining rights.

A coastal state may impose environmental legislation over the CZ provided it is overlapped by an EEZ or underlain by a continental shelf. In the first instance, the coastal state has authority over the seabed and the water column; in the second, it can only legislate for the seabed (Article 194).

The 1982 Convention is to be commended for granting special status to the CZ with reference to the control of traffic and trade in archaeological and historical objects. A coastal state may presume that the removal of any such objects from the CZ without the state's approval violates the laws provided in Article 33. The CZ thus enjoys specific legal status only as long as the coastal state has not proclaimed an EEZ (Article 57) exceeding the outer limits of the CZ.

Although the *Truman Proclamation* (1945) of the Continental Shelf provided for dominion over the land beneath the sea, it was not sufficiently specific about the exploitation of living non-sedentary marine resources. Concern over this issue during the 1960s and 1970s gave rise to the concept of an EEZ, which became a specific legal regime created by the 1982 Convention. Initially proposed by Kenya at Lagos in 1972, the concept of the EEZ had its origins in the claims of Chile, Peru, Costa Rica and El Salvador to 200-M fishing zones in their respective adjacent waters in the late 1940s. Article 57 of the 1982 Convention gives a coastal state the right to establish an EEZ extending up to 200-M seawards from the baseline and requires the state to provide details of its outer limits. Within the zone the State has preferential fishing rights and exclusive control over the exploitation of mineral resources. Archipelagic states and many coastal states would gain substantial advantages in claiming the full width of such a zone, which is defined as an area beyond and adjacent to the territorial sea. Many exhaustive studies of the regime of the EEZ have been compiled, however, two independently and informative publications are by David Attard (1989) and another by Barbara Kwaitkowska (1989).

If a conflict arises between the interests of the coastal state and any other state or states, Article 59 provides for a resolution on "... the basis of equity and in the light of all the relevant circumstances ..." and Article 60 states that within the EEZ the coastal state has exclusive rights to construct, operate and maintain artificial islands, installations and other structures.

Article 61 of the 1982 Convention requires the coastal state to implement conservation and management measures to ensure the maintenance of fish population levels which can produce the maximum sustainable yield as qualified by relevant environmental and economic factors. The coastal state, under Article 62, is also required to "... promote the objective of optimum utilisation of the living resources in the exclusive economic zone ..."

The article further notes that

> *... where the coastal state does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements, give other states access to the surplus of the allowable catch, having particular regard to the provisions of Articles 69 [Rights of landlocked states] and 70 [Rights of geographically disadvantaged states], especially in relation to the developing states mentioned therein.*

The 1982 Convention, however, does not attempt to elaborate on the meaning of the objective "optimum utilisation", the definition of which is likely to change with technological development and is left to the discretion of the coastal state.

Perhaps the most vexing question concerning the EEZ is its delimitation between states with opposite or adjacent coasts. In order to achieve an equitable solution, Article 74 proposes that the delimitation **"be effected by agreement on the basis of international law"**, and cites Article 38 of the Statute of the International Court of Justice, in order to achieve such a solution. A provisional arrangement of a practical nature, without prejudice to the final delimitation, would be preferable to failure to proclaim the outer limits of an EEZ. However, where there is an agreement in force between the coastal states, the delimitation issue should be determined in accordance with the provisions of the existing agreements (Article 74, para. 4).

The expanse of each nation's EEZ varies with the length and configuration of its coastline. India, with its long coastline and numerous island territories, could claim a zone of about 588,000 square nautical miles, whereas Kenya, with the shortest coastline of Africa's Indian Ocean littoral states, could claim a zone of about 34,000 sqM. The island state of Singapore, being zone-locked by its coastal neighbours of Indonesia and Malaysia has, not surprisingly, consistently opposed the establishment of the EEZ, for it could only claim a very modest area of the seas beyond its territorial jurisdiction. However, by May 2008, an EEZ limit for this island State was being considered with sincerity.

Coastal states that fringe the Andaman Sea and the Persian Gulf likewise maintain that, by the very proximity of their neighbours, they cannot claim the maximum allowable width. Nevertheless, such states are more fortunate than those that are landlocked, even though provisions in the 1982 Convention have been made for the landlocked and the geographically disadvantaged states to have access to coastal states' zones. The archipelagic states of Indonesia, Maldives, Mauritius and Seychelles appear to have the most to gain by the establishment of such zones.

An EEZ is a maritime space prescribed by the 1982 Convention over which a coastal and island State has special rights over the exploration and use of marine resources, including energy production from water and wind. It stretches from the baseline out to 200M from its coast. In informal usage, the term may include the territorial sea, the CZ and even the continental shelf within the 200-M limit. There are disputes between the littoral and island States over the extent of their respective EEZ. Often disputes between the States concern the different applications of the 1982 Convention which the States to the dispute have generally ratified. A single maritime boundary is the preferred option; however, in instances where a continental shelf has been previously established, one of the States party to the agreement may now request the other party to delimit a water column boundary, as in the example of the 1997 Agreement between Indonesia and Australia. The topic of the continental shelf is the focus of attention in the following section.

CONTINENTAL SHELF

The definition of the continental shelf and the criteria by which a coastal State may establish the outer limits of its continental shelf are set out in Article 76 of the 1982 Convention. In addition, the Convention adopted on 29 August 1980 a 'Statement of Understanding' which is contained in Annex II to the Final Act of the Conference.

The term 'continental shelf' is used by geologists generally to mean that part of the continental margin which is between the shoreline and the shelf break or, where there is no noticeable slope, between the shoreline and the point where the depth of the superjacent water is approximately between 100 and 200m. However, this term is used in Article 76 as a juridical term. According to the 1882 Convention, the continental shelf of a coastal State comprises the submerged prolongation of the land territory of the coastal State - the seabed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin, or to a distance of 200M where the outer edge of the continental margin does not extend up to that distance. The continental margin consists of the seabed and substratum of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the substratum thereof.

According to Article 76, the coastal State may establish the outer limits of its juridical continental shelf wherever the continental margin extends beyond 200M by establishing the foot of the continental slope, by meeting the requirements of Article 76, paragraphs 4-7, of the Convention.

The natural continental shelf is generally accepted as the isobath of 200m as depicted on bathymetric maps and nautical charts. The extended legal continental shelf – the natural prolongation of the land mass – that a coastal and island State may claim is defined by a complex set of rules of the outer limit of the seabed and substratum resource regime on continental margins is a complex blend of legal, geomorphological, geological and geodetic concepts that can be confusing even to experts in the individual fields.

DETERMINATION OF A MARITIME BOUNDARY

Whatever its function the determination of the seabed boundary between coastal states is a vexing problem. This is particularly the case where the opposing coasts of the parties in the dispute are less than 400M apart. In order to achieve an equitable solution, Articles 74:1 and 83 propose that the delimitation between States with adjacent or opposite coasts "shall be effected by agreement on the basis of international law", and cites Article 38 of the Statute of the International Court of Justice (the Court) to obtain the required results. The recommendations of the

1982 Convention, however, do not provide any definitive solutions to the problem (Forbes, 1995a: 113).

A provisional arrangement of a practical nature, without prejudice to the final delimitation, would be preferable to failure to proclaim the outer limits of the coastal state's maritime jurisdiction. However, where there is an agreement in force between the coastal states, the delimitation issue should be determined in accordance with the provisions of existing agreements (Article 74: 4).

Historically, the determination of maritime boundaries between states was rare. However, in the past 60 years or so, ocean resource development has prompted coastal and island States to define/delimit their maritime boundaries more precisely. Charney (1992: xxiii) observes that "the primary force behind the move to establish these boundaries has been the development of technology to recover highly valuable hydrocarbons and other non-living resources of the seabed and subsoil".

The evolution of the concept on single maritime boundary delimitation stems from the *North Sea Continental Shelf Case* 1969. Most importantly, this was the first jurisprudence relating to continental shelf delimitation that entails the principles and rules of international law as follows:

(i) delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other;

(ii) if, in the application of the preceding sub-paragraph, the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a regime of joint jurisdiction, user, or exploitation for the zones of overlap or any part of them.

Eight years later, the leading principles as stated above, were reaffirmed in the continental shelf case between the United Kingdom and France. These two cases were linked to the principles in the 1958 *Geneva Convention on the Continental Shelf* or better known as UNCLOS I.

The development of international maritime law has progressed since then and this was proved with the birth of the Third UNCLOS 1982. Under the 1982 Convention, the significance of delimitation on single maritime boundary was applied, this time

in the *Tunisia/Libya Case*. A paradigm shift in terms of jurisprudence principles since the North Sea
Continental Shelf Case, has emerged whereby, the Court had turned to the question of whether principles and rules of international law applicable to the delimitation may be derived from, or may be affected by, the new accepted trends which have emerged at the 1982 Convention. As a result of the 1982 Convention, the Court looked at the delimitation of the continental shelf based on natural prolongation both under Articles 76 and Article 83 of UNCLOS 1982.

Article 76 (1) states:

> *...the continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.*

The first part of paragraph 1 mentions the natural prolongation of the land territory as the main criterion. Whilst, the second part of paragraph 1 suggests that the distance of 200M is in certain circumstances the basis of the title of a coastal State. Thus, the term "natural prolongation" from the geographical sense has now been enumerated into distance criteria.

The paradigm shift as mentioned earlier is in relation to the term "natural prolongation" from the geographical sense has now been enumerated into distance criteria.

In addition, based on the 1982 Convention, the Court must also look at the provision under Article 83 (1) in relation to the delimitation of the continental shelf with opposite or adjacent
coasts. The provision reads as follows:

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution. The concept of single maritime boundary refers to the delimitation process and the delimitation result. The drawing of a single line for sea-bed, substratum and superjacent waters and the drawing of two coincident lines for sea-bed and substratum on the one hand and superjacent seas on the other can be fraught with problems. State practices, such as those between Australia and Indonesia and Australia and Timor-Leste have demonstrated the grave issues that reared their ugly heads since 2012. It is beyond the scope of this paper to offer

further explanation; however, it could be discussed during the conference.

We will now consider select regional examples of delimited maritime boundaries. Some of the agreements were negotiated before the 1982 Convention that related to the delimitation of seabed boundaries (read: continental shelf); two specifically defined the territorial sea
boundaries between the states that were party to the respective agreements; and since 1982 the delineation of boundaries were being considered as lines of resource allocation. The narrative continues with a discussion on the areas that are presently contentious and that await determination either through negotiation, or, through third party arbitration. The former is naturally the preferred option, however, if one of the parties to the dispute prolongs or procrastinates there could be serious delays. One of the earliest maritime boundary agreements of the modern era was the continental shelf boundary between Indonesia and Malaysia; however, there were two earlier maritime boundary delimitations: one off the coast of Brunei and another in the Strait of Johor.

The territorial waters boundary between Malaysia and the Republic of Singapore was described in Article 1 of the 1927 Agreement which defined straight lines joining the points, the geographical coordinates of which were specified in Annex I of the Agreement. The latitude and longitude of the geographical coordinates specified in Annex I have been determined on the Revised Kertau Datum, Everest Spheroid (Malaya), Malaysian Rectified Skew Orthomorphic Projection (Projection Tables published by Directorate of Military Survey, Ministry of Defence, United Kingdom-March 1965). Chart Datum used are as described in the Joint Hydrographic Survey Fair Sheets 1980/1982 listed in Annex II.

INDONESIA AND MALAYSIA CONTINENTAL SHELF BOUNDARY, 1969

The geographical coordinates of 25 turning points define the continental shelf boundary between Indonesia and Malaysia in the Malacca Strait and in the SCS. The delineated boundary represents an attempt at dividing the continental shelf equally between the territorial sea baselines of the two states. It consists of three separate segments. The overall length of the boundary is 974M and lies in depths of less than 200m.

The first segment, represented by turning points, numbered 1 to 10, is located in the Malacca Strait. Its length is 400M. The average distance of the mid points from the Indonesian and Malaysian baselines is 18M along this segment. The other two segments lie in the SCS. Points 11 to 20 comprise the second segment. Geodesic lines connect these points. Point 11 is located in the eastern margin of the Straits of Singapore and Point 20 is in the SCS. The total length of the geodesics is 310M. The third segment, consisting of Points 21 to 25, measures 264M. Point 25 is located on

the land border of Indonesia and Malaysia on the north-western coast of Borneo Island. The agreement entered into force on 7 November 1964.

INDONESIA AND SINGAPORE TERRITORIAL SEA LIMITS, 1973 and 2009

The territorial sea boundary between Indonesia and Singapore employs the equidistance principle for three turning points and negotiated positions for three other points. Five of the six turning points lie on the Indonesian side of an Indonesia-Singapore median line. Point 2 was located inside the Indonesian straight baseline system and was therefore in Indonesian internal waters. This anomaly was subsequently corrected when Indonesia revised its base point numbering system and straight baselines to take advantage of the provisions of Article 47. The total length of the five geodesic lines connecting the six points is 25M. Water depths along the boundary vary from 35 to 50m.

The agreement to establish a territorial sea boundary in the Straits of Singapore between the two countries in May 1973, noted that extensions to the west and east of the nominated terminal points would require further negotiations. The pending negotiations resumed in February 2005. On 10 March 2009, delegations from Indonesia and Singapore negotiated over a four years a western extension to the territorial sea separating the two countries in the western sector of the Straits of Singapore signed an Agreement. Three points were identified in that Agreement and their geographical coordinates, referenced to WGS 84 datum, were published. The list of geographical coordinates of the points is shown in the Annex, below. These relatively short lengths of geodesics extend the Territorial Sea boundary by an additional 5.5M in a westerly direction from Point 1 of the May 1973 Agreement.

CHINA AND VIETNAM, 2000

On 25 December 2000, The Governments of China and Vietnam signed an agreement in which a list of geographical co-ordinates delimited a Territorial Sea, an EEZ and Continental Shelf in the Gulf of Tonkin (*Beibu Bay* in Mandarin and Bac Bo in Vietnamese) in an area that had been the subject of a dispute between the two countries for many years, in part due to its actual and potential marine biotic and mineral resources. The Agreement also incorporated a co-operative fishery arrangement. This was China's first maritime boundary. The fishery co-operation agreement established in the Gulf of Tonkin contained many of the essential legal elements commonly included in joint development agreements on joint developments of offshore hydrocarbon resources.

In the instance of the co-operative fishery agreement, it included, amongst others, the creation of a common fishery zone in parts of the EEZ of the two countries and also a a Sino-Vietnamese Joint Committee where each country is represented.

This Committee has the important task of adopting regulations and implementing measures on preservation and management of marine biotic resources in the common fishery zone, even though it does have the ability to enforce such regulations or measures.

INDONESIA AND VIETNAM CONTINENTAL SHELF BOUNDARY, 2003

On 26 June 2003, the Governments of Indonesia and Vietnam established a boundary of the continental shelves between the two countries in the SCS. (Appendix Part 2 -18) The geographical coordinates of the four negotiated points are listed in the text of the agreement. The two terminal points employed in the 1969 Indonesia/Malaysia Continental Shelf Boundary Agreement, namely, Points 20 and 25, have been used as the west and east anchor points, respectively, in the Indonesia/Vietnam Agreement. The text, drafted in three languages, noted that in the event of a discrepancy, the text in English language will prevail and also notes the geodetic datum that was utilized in defining the points. The agreement would not in any way affect any future agreement which may be entered into between the Parties relating to delimitation of the EEZ boundary and each would consult with the other with a view to coordinating their policies in accordance with international law on the protection of the marine environment. Any dispute between the State Parties arising out of the interpretation or implementation of the agreement would be settled peacefully by consultation or negotiation.

The total length of the five short line segments that define the boundary is about 265 M. Commencing from Point 20 the boundary has a north-easterly trend to the limits of the 200-metre isobath then changes to a south-easterly alignment to meet Point 25. The signing of this agreement infers that the two countries respect the terminal points negotiated by Indonesia and Malaysia in 1969 for the Sunda Shelf.

The Sunda Shelf, an area that underlies the seabed of the southern sector of the SCS, the Java Sea the Gulf of Thailand and the Malacca Strait, has a surface area in excess of two million square kilometres. It also includes the contiguous narrow continental shelves that extend off the southern coast of Sumatra, off the south coast of Java and around Palawan Island and parts of East Borneo. Water depths of the sea and straits of the Sunda Shelf vary; generally averaging about 50 metres. There are numerous sedimentary basins, many of which have proven reserves of hydrocarbon resources, with some already developed and other potential fields awaiting exploitation. The Sunda Shelf is also a productive area for marine biotic resources that local fishers have harvested for centuries. Defining and delimitating national maritime jurisdictional limits over the maritime space and resources of the Sunda Shelf required diplomacy of the most delicate nature and technical expertise of the highest order.

With the signing of the June 2003 Agreement, and ratification in 2007, the delimitation of continental shelf boundaries for Indonesia is nearly complete but for two small 'grey areas' at the eastern and western approaches to the Straits of Singapore between Indonesia, Malaysia and Singapore; and in the northern portion of the Gulf of Thailand between Cambodia and Thailand. The international research community and others will be keen to follow developments as they unfold with particular reference to the claims over the legal limits to a continental shelf in the eastern sector of the SCS, the Sulu and Sulawesi Seas and of course, the Timor Sea where rights to marine biotic and mineral resources in the water column, on the seabed and in the substratum are strenuously debated despite the fact that treaties are in place notwithstanding the 'grey areas' that have been created (Forbes, 2014).

The maritime boundaries negotiated by Indonesia in most instances apply only to the seabed delineation of resource and spatial allocation. Accordingly, Indonesia seeks to determine EEZ boundaries with not only Vietnam but also with Malaysia and Papua New Guinea similar to the dual regime established in the March 1997 Agreement with Australia for the Arafura and Timor Seas.. Indonesia's official map of 2010 and the MMAF map of 2009 depicts the nation's unilateral claim to an EEZ which extends well to the north and east of the agreed continental shelf/ seabed boundaries established with Malaysia in 1969 and with Vietnam in 2003 in the vicinity north of Natuna Archipleago in the SCS. (Arsana and Schofield, 2013: 62-66; Forbes, 2013 160-161).

BRUNEI AND MALAYSIA

The maritime boundaries between Brunei and Malaysia out to 200M from the respective baselines of each country were delimited in two series of agreements. The first, in a British Orders in Council in 1958, defined the limit of the territorial sea and the continental shelf to the 100-fathom isobath (or about 200 metre depth). In the second agreement, the territorial sea, the EEZ and the continental shelf out to a distance of 200M were delimited, the details of which are contained in an Exchange of Letters dated 16 March 2009, the contents of which are not, at the time of writing (March 2014) are not in the public domain.

JOINT SUBMISSION BY MALAYSIA AND VIETNAM

On 6 May 2009, Malaysia and the Socialist Republic of Viet Nam submitted jointly to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of the 1982 Convention, information on the limits of the continental shelf beyond 200M from the baselines from which the breadth of the territorial sea is measured in respect of the southern part of the SCS. The 1982 Convention entered into force for Malaysia on 13 November 1996 and for Viet Nam on 16 November 1994.

In accordance with the Rules of Procedure of the Commission, a communication is being circulated to all Member States of the United Nations, as well as States Parties to the Convention, in order to make public the executive summary of the joint submission, including all charts and coordinates contained in that summary. Upon completion of the consideration of the submission, the Commission will make recommendations pursuant to Article 76 of the Convention.

CONCLUDING REMARKS

The coastal geography the SCS is complex and when viewed on maps portraying its actual and perceived maritime boundaries it presents itself as a series of confusing delineated lines of claims and counter-claims. To this concoction add excessive claims to baselines and expansive and historically-inspired unilateral maritime claims and the level of complexity increases considerably, leading to substantial, though not entirely certain, areas of overlapping maritime claims and, indeed, overlaps of overlaps where the same maritime space is subject to the claims of multiple States, especially in the vicinity of the 'Dangerous Grounds' an affectionate name given to the Spratly Archipleago.

There are many factors that must be taken into account in the delimitation of a maritime boundary and these include: political, strategic and historical considerations; the legal regime of maritime boundary agreements; economic and environmental considerations; geographical configurations; offshore geographical features; the methods of baselines employed by the states to the agreement; and the geophysical, that is, geological and geomorphological factors of the seabed, although in the held that there must be a better way of delimiting maritime boundaries than by contradictory speculation about geological and geomorphological phenomena. Having taken the above factors into account, then the States that are party to the agreement must determine the methodology to employ to delimit the boundary. Six alternative methods are offered here and are exemplified by state practice in the Southeast Asian region.

The efforts between China and Vietnam in 2000; that of Malaysia and Vietnam in establishing an Agreed Common Area, and their joint submission to the CLCS; and Brunei and Malaysia Letters of Intent relating to maritime jurisdictional and resource sharing offer some of the positive aspects of maritime boundary delimitation in the troubled SCS. These arrangements demonstrate the acceptance of both large and small States – China that is a dominant factor in the region and the influence of Brunei and Malaysia – to seek ways to delimit maritime boundaries.

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http://www.un.org/Depts/los/index.htm

For the Judgements of numerous Cases relating to maritime boundary delimitation, for example, the *Libya/Malta Case,* (ICJ Report 13, 1985) the reader is directed to the website of the International Court of Justice (I.C.J). http://www.icj-cij.org/

Likewise, there are cases brought to the International Tribunal for the Law of the Sea, in which the issue of maritime boundary delimitation comes to the fore.

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ANNEX

Agreement between the Government of Malaysia and the Government of Indonesia on the Delimitation of the Continental Shelves between the Two Countries of 27 October 1969

Geographical Coordinates of the Points for the Alignment of the Boundary

The boundaries of the Malaysian and the Indonesian continental shelves in the Straits of Malacca and the South China Sea are the straight lines connecting the points specified in column 1 below whose coordinates are specified opposite those points in columns 2 and 3 below: -

A. *In the Straits of Malacca:*

(1)	(2)	(3)
Point	*Longitude E.*	*Latitude N.*
1.	98° 17.5′	05° 27.0′
2.	98° 41.5′	04° 55.7′
3.	99° 43.6′	03° 59.6′
4.	99° 55.0′	03° 47.4′
5.	101° 12.1′	02° 41.5′
6.	101° 46.5′	02° 15.4′
7.	102° 13.4′	01° 55.2′
8.	102° 35.0′	01° 41.2′
9.	103° 03.9′	01° 19.5′
10.	103° 22.8′	01° 15.0′

B. *In the South China Sea (Western Side - Off the East Coast of West Malaysia):*

(1)	(2)	(3)
Point	*Longitude E.*	*Latitude N.*
11.	104° 29.5′	01° 23.9′
12.	104° 53.0′	01° 38.0′
13.	105° 05.2′	01° 54.4′
14.	105° 01.2′	02° 22.5′
15.	104° 51.5′	02° 55.2′
16.	104° 46.5′	03° 50.1′
17.	104° 51.9′	04° 03.0′
18.	105° 28.8′	05° 04.7′
19.	105° 47.1′	05° 40.6′
20.	105° 49.2′	06° 05.8′

C. *In the South China Sea (Eastern Side - Off the Coast of Sarawak):*

(1)	(2)	(3)
Point	*Longitude E.*	*Latitude N.*
21.	109° 38.8′	02° 05.0′
22.	109° 54.5′	03° 00.0′
23.	110° 02.0′	04° 40.0′
24.	109° 59.0′	05° 31.2′
25.	109° 38.6′	06° 18.2′

Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Strait of Singapore

The boundary line of the territorial seas of the Republic of Indonesia and the Republic of Singapore in the Strait of Singapore shall be a line, consisting of straight lines drawn between points, the co-ordinates of which are as follows:

Points	*Latitude North*	*Longitude East*
1	1° 10′ 46.0″	103° 40′ 14.6″
2	1° 07′ 49.3″	103° 44′ 26.5″
3	1° 10′ 17.2″	103° 48′ 18.0″
4	1° 11′ 45.5″	103° 51′ 35.4″
5	1° 12′ 26.1″	103° 52′ 50.7″
6	1° 16′ 10.2″	104° 02′ 00.0″

Geographical Coordinates of the Turning Points of the Boundary Extension

Point Number	*Latitude (N)*	*Longitude (E)*
1	1° 10′ 46.0″	103° 40′ 14.6″
1A	1° 11′ 17.4″	103° 39′ 38.5″
1B	1° 11′ 55.5″	103° 34′ 20.4″
1C	1° 12′ 43.8″	103° 34′ 00.0″

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM CONCERNING THE DELIMINATION OF THE CONTINENTAL SHELF BOUNDARY

The boundary between the Indonesian and the Vietnamese continental shelves

is defined by the straight lines connecting the following points specified by coordinates and in the sequence given below:

Point	Latitude	Longitude
20	06° 05′ 48″N	105° 49′ 12″E
H	06° 15′ 00″N	106° 12′ 00″E
H1	06° 15′ 00″N	106° 19′ 01″E
A4	06° 20′ 59.88″N	106° 39′ 37.67″E
X1	06° 50′ 15″N	109° 17′ 13″E

The boundary line shall thence run straight to the point at the coordinate of latitude 06° 18′ 12″N, longitude 109° 38′ 36″E (Point 25).

Chronology of Negotiated Maritime Boundaries within the East Asian Sea basins

(See Figure 1, below)

Signature	*Parties*	*Boundary Type*	*Entry*
27-10-69	Indonesia/Malaysia	Continental Shelf	07-11-69
17-03-70	Indonesia/Malaysia	Territorial Sea	08-10-71
25-05-73	Indonesia/Singapore	Territorial	29-08-74 & 10-3-2010
05-06-92	Malaysia/Vietnam	Agreed Common Area	
07-08-95	Malaysia/Singapore	Territorial Sea	
24-10-97	Malaysia/Thailand	Continental Shelf /JDA	
25-12-00	China/Vietnam	TS/EEZ/CS/Fishery Zone	
26-06-03	Indonesia/Vietnam	Cont. Shelf/EEZ	Ratified

Date of Signature nominated first, that of Entry into Force next.
Terr. Sea = Territorial Sea
Cont. Shelf = Continental Shelf

List of Geographical Coordinates of the Points Agreed by the Governments and China and Vietnam for the Delimitation of a maritime Boundary in the Gulf of Tonkin on 25 December 2000

Point No.1:	latitude 21° 28'12.5"North	Longitude 108° 06'04.3"East
Point No.2:	latitude 21 ° 28'01.7"North	Longitude 108 ° 06'01.6"East
Point No.3:	latitude 21° 27'50.1"North	Longitude 108° 05'57.7 "East
Point No.4:	latitude 21° 27'39.5"North	Longitude 108° 05'51.5"East
Point No.5:	latitude 21° 27'28.2"North	Longitude 108° 05'39.9"East
Point No.6:	latitude 21° 27'23.1"North	Longitude 108° 05'38.8"East
Point No.7:	latitude 21° 27'08.2"North	Longitude 108° 05'43.7"East
Point No. 8:	latitude 21° 16'32"North	Longitude 108° 08'05"East
Point No. 9:	latitude 21° 12'35"North	Longitude 108° 12'31 "East
Point No.10:	latitude 20° 24'05"North	Longitude 108° 22'45"East
Point No.11:	latitude19° 57'33 "North	Longitude 107° 55'47 "East
Point No.12:	latitude 19° 39'33 "North	Longitude 107° 31'40 "East
Point No.13:	latitude 19° 25'26"North	Longitude 107° 21'00"East
Point No.14:	latitude 19° 25'26"North	Longitude 107° 12'43 "East
Point No.15:	latitude 19° 16'04"North	Longitude 107° 11'23 "East
Point No.16:	latitude 19° 12'55 "North	Longitude 107° 09'34"East
Point No.17:	latitude 18° 42'52"North	Longitude 107° 09'34"East
Point No.18:	latitude 18° 13'49"North	Longitude 107° 34'00"East
Point No.19:	latitude 18° 07'08"North	Longitude 107° 37'34"East
Point No.20:	latitude 18° 04'13 "North	Longitude 107° 39'09"East
Point No.21:	latitude 17° 47'00"North	Longitude107° 58'00"East

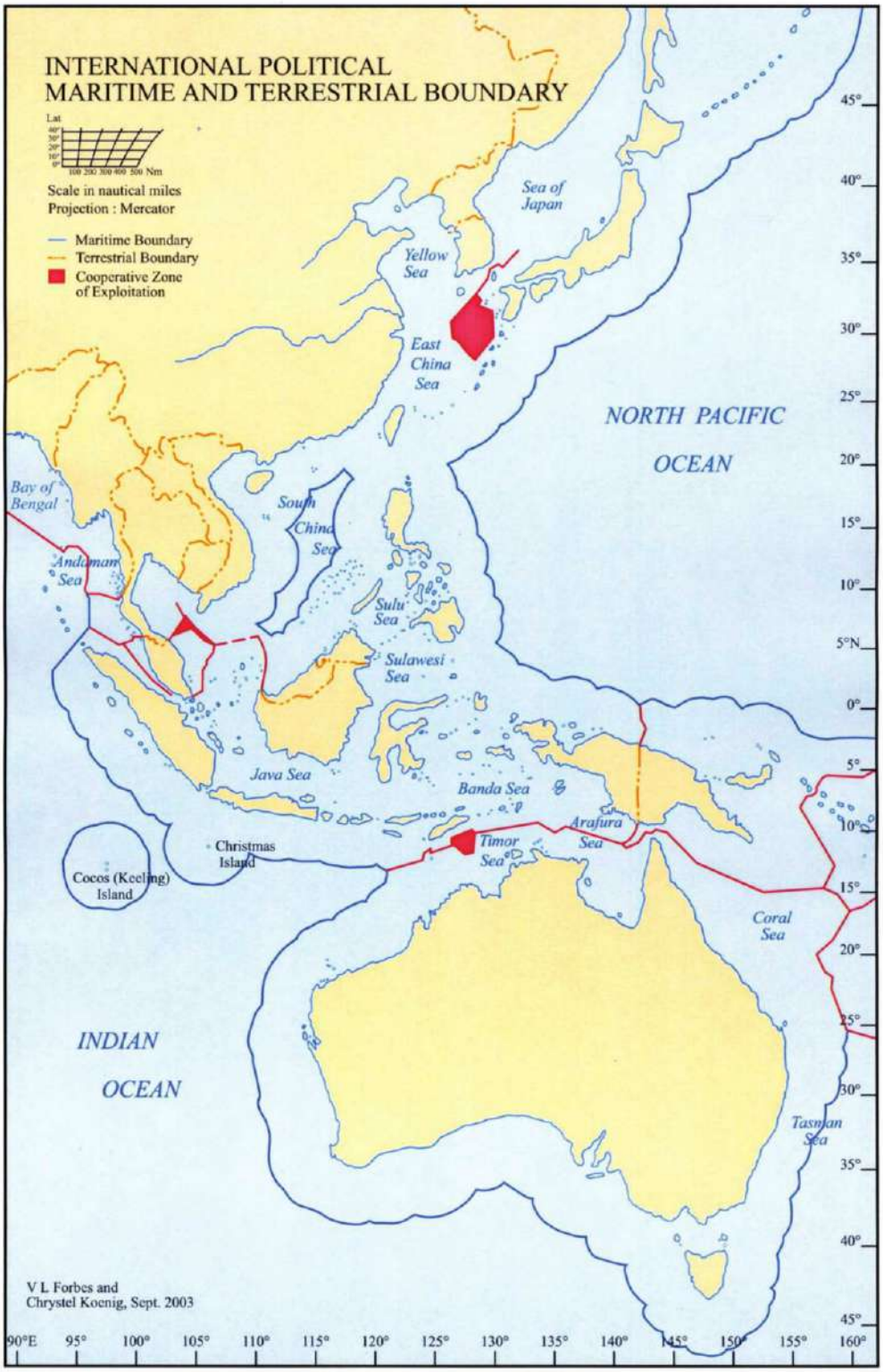

Figure 1: Claimed and potential limits in the South China Sea and adjacent seas

RETHINKING THE COASTAL STATES AND USER STATES' INTERESTS IN THE SOUTH CHINA SEA: BRIDGING THE PERCEPTION GAP AND SHARING THE RESPONSIBILITIES

Dr. Nong Hong

ABSTRACT

The South China Sea (SCS) has received much attention for various reasons, namely geopolitics, shipping, resource competition as well as multiple sovereignty and maritime claims. The recent developments in the SCS since 2009 raise the risk of new rounds of competition, and inject uncertain elements to the security of both regions. This paper aims to bridge the perception gap between coastal states and user states of these two regions, by analyzing the post-2002 development in the SCS dispute through both the claimant states and external states' perspective. This paper chooses the international navigation regime as a case study in order to explore the gap between coastal states and user states. The author suggests four steps in bridging the gap of the different interpretation on the navigation regime. First, a bilateral coordination mechanism should be initiated between relevant states to build up mutual confidence. Second, third party compulsory forums under the United Nations Convention on the Law of the Sea (UNCLOS) should play its role in defining the scope of freedom of navigation in a foreign state's Exclusive Economic Zone (EEZ) to address the ongoing contention due to advanced development in military technology. Third, there is the convergence of interests of both the littoral states and user states, calling for charting a maritime security cooperation mechanism which encourages the awareness of shared responsibilities among the littoral states and user states in order to achieve short term and long term security and safety of navigation in the SCS. Fourth, 'transformation of ways of thinking theory' should be introduced to the policy makers and scholars on the SCS as a foundation to lead their policy and research direction in seeking for maximizing consensus and bridging the gap on many issues including international navigation.

INTRODUCTION

The SCS has received much attention for various reasons, namely geopolitics, shipping, resource competition as well as multiple sovereignty and maritime claims. The recent developments in the SCS since 2009 raise the risk of new rounds of competition, and inject uncertain elements to the security of this region. This paper aims to bridge the perception gap between coastal states and user states of these two regions. It analyzes the post-2002 development in the SCS dispute through both the claimant states and external states' perspective. The international navigation regime is analyzed as a case study in order to explore the gap between

coastal states and user states. In the concluding remark, the author suggests four steps in bridging the gap of the different interpretation on the navigation regime.

POST-2002 DEVELOPMENT OF THE SOUTH CHINA SEA DISPUTE

Development Since 2009

In November 2002, China and the 10 member of Association of Southeast Asian Nations (ASEAN) adopted a Declaration on the Conduct of Parties in the South China Sea (DOC), laying a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region. Though the DOC has been criticised for a number of weaknesses, as many argue, e.g. neither a binding treaty, nor a formal code of conduct, the signing of this document helped keep the SCS quiet for a couple of years, at least before 2009.

The year of 2009 has seen several major developments that stirred up controversy in the SCS all over again, and highlighted the difficulties of maintaining stability in the region. In mid-February 2009, the Philippines Congress passed a territorial Sea Baseline Bill, laying claim to Scarborough Shoal (sovereignty claimed by China) and a number of islands in the SCS. Another event is the clash on 8 March between Chinese vessels and a US ocean surveillance ship "Impeccable" in China's EEZ. On 6 May 2009, Malaysia and Vietnam lodged a joint submission with the United Nations Commission on the Limits of the continental Shelf (CLCS). Vietnam also lodged a separate submission in relations to the north-western part of the central SCS. These extended continental shelf submissions have served to highlight existing disputes and appear likely to add an extra dimension to them. Indeed, there are already indications that the situation is escalating.

2010 witnessed the escalation of the controversy in the SCS, with US's increasing presence in this region, and with a serial of US-Sino spats on the SCS dispute. In March, as first reported by a Japanese media and followed by US medias, Chinese officials told two visiting senior Obama administration officials that China would not tolerate any interference in the SCS, now part of China's *"core interest"* of sovereignty. In July, US Secretary of State Hillary Clinton made a statement at the 10th ASEAN regional forum (ARF) that the disputes over the highly sensitive SCS were a "leading diplomatic priority" and now "pivotal to regional security".[1] This backdrop certainly contributed to increasing concerns in Beijing who sees Hillary's statement as a signal that US will change its neutral position on the SCS dispute and back other claimant states, especially Vietnam.

The tension in the SCS has continued to escalate in 2011 with a series of events. Vietnam in May accused China of cutting the exploration cables of an oil

survey ship. In a similar incident in June, it claimed a Chinese fishing boat had "intentionally rammed" the exploration cables of another of its boats. Yet, China insisted that its fishing boats were chased away by armed Vietnamese ships in the incident. According to China's Foreign Affairs spokesman, the fishing net of one of the Chinese boats became tangled with the cables of a Vietnamese oil exploring vessel, which was operating the waters claimed by China, and was dragged for more than an hour before it was cut free. China accused Vietnam of "gravely violating" its sovereignty and warned it to stop "all invasive activities." In June, Vietnam held live-fire exercises in the SCS amid high tensions with China over disputed waters. Chinese state-media denounced the exercises as a military show of force to defy Beijing. Representatives of China and Vietnam met in Beijing on June 25 and agreed to resolve their maritime territorial disputes "peacefully."

Standoffs have also taken place in 2012 between Chinese and Philippine vessels. Starting on April 10, 2012, China and the Philippines became embroiled in a standoff in disputed waters in the SCS. The standoff occurred when eight Chinese fishing boats, while taking refuge in a lagoon near Huangyan Island (Scarborough Sho*al) due to harsh weather, were harassed by the Philippines' largest warship, the Gregorio del Pilar*. Shortly after, two unarmed China Marine Surveillance vessels, which were conducting routine patrols in the area, appeared and interposed themselves between the fishing boats and the frigate, thus, preventing any arrest of the fishermen.[2]

The Philippines, losing patience in the ASEAN way of solving the dispute, has stepped forward with a serials of provoked movements, including changing the name of the SCS to the West Philippine Sea, starting the stand-off in the Scarborough Shoal with China by engaging its naval ships. The most recent step was its notification on January 22, 2013 to China that it will sue this largest claimant state by establishing an arbitration tribunal according to Annex VII of UNCLOS. As a response, China, on January 31, rejected this request. The formal institution of the arbitration started in August 2013 with five arbitrators in place.

The Philippines' action is an interesting practice in the SCS, given that China insists that direct negotiation between and among claimant states is the best way to solve the difference. China holds that the arbitration has a negative impact on the process of the consultation of the Code of Conduct (CoC). While talks on implementing the DOC continue, more urgent task of framing a binding CoC between ASEAN and China comes to the agenda. The CoC is designed, ideally to establish "rules of the road" and prevent potential conflict.[3] By mid-2012, the ASEAN member states had agreed on a set of "proposed elements" as the basis for a CoC.[4] "Even though ASEAN's suggested mechanisms for resolving disputes arising from violations or interpretations of the code seemed unworkable or inappropriate, it was a start."[5] China Foreign Minister Wang Yi, during his meeting with Le Luong

Minh, Secretary-General of ASEAN in May 2013, emphasized the importance of ensuring full and effective implementation of the DOC and moving towards the conclusion of a CoC.[6] At their formal meeting, on 30 June 2013, the ASEAN foreign ministers expressed that they looked forward to "formal consultations between ASEAN and China at the Senior Officials' Meeting (SOM) level on the CoC with an aim to reach an early conclusion of a CoC in the SCS." On the other hand, shortly after the ASEAN and Chinese foreign ministers had agreed to engage in "official consultations" on the code "within the framework of the implementation of the DoC", Xinhua news agency quoted Wang Yi, China's new foreign minister, as warning against rushing work on the CoC.[7]

Perception Gap between Coastal States and User States

China's "Core Interest" vs. US's "National Interest": Who has Changed?

There is concern about the possibility that China's claim to "core interests" in the SCS conflicts with the claims of the US about "national strategic interests".[8] The concern from international community is that Chinese for the first time labelled the SCS a core interest, on par with Taiwan and Tibet. Chinese scholars argue that China never publicly declared a "South China Sea = core interest" policy, it came first from Japanese media and followed by US journalists which served as the subtext for the whole "US defends freedom of navigation in the South China Sea" story. Zhu Feng, a Chinese political scientist, in an International Institute of Strategic Studies (IISS) workshop in Singapore in November 2010, gave another explanation on the "core interest". He said the Chinese officials did use the term "core interest", but the original text is that "the peaceful resolution of the SCS is the *core interest* of Chinese government", which was misinterpreted by the media.

Chinese concern over Hillary's statement that "United States has a national interest in resolving the claims" indicates that Obama Administration has changed its SCS position since 1990s from neutral to active engagement. In a Sino-US workshop on the SCS in Hawaii 2010, some scholars from think tanks like Rand, Asia-Pacific Center for Security Studies (APCSS), Center for Naval Analysis (CNA) argue that Hillary's remarks may be in response to what many US Medias' report on China's recent statement in March when Beijing defined the SCS as one of its "core interests".

"Freedom of Navigation": A Political Excuse or a Legal Ambiguity?

Hillary Clinton's calling "freedom of navigation in the sea" a US "national interest" is challenged by many military officers and scholars in China. A high-ranking Chinese military officer has responded to Washington's demand for more involvement in the SCS to ensure navigation, by saying that freedom

of navigation is never a problem in that region. Liu Jiangyong, an Asia-Pacific studies specialist at Beijing's Tsinghua University, said he didn't see any sense in people worrying about or interfering in matters that didn't concern them.[9] Wang Hanling, a specialist in maritime law at the Chinese Academy of Social Sciences, said that China has never interfered in the normal activities of any ship crossing the SCS or any aircraft flying over it, especially those for commercial use. "What the US calls 'national interest' is not freedom of navigation but rather its presence in the Western Pacific, or military superiority and political influence, to be more specific," Wang elaborated.[10] His comment stands for that of the majority of Chinese scholars. China's active participation in the anti-piracy in the Gulf of Aden is often cited as one example to show that freedom of navigation is also the interest of China.

The different views on 'freedom of navigation' have already resulted in several incidents in the EEZs of the Asia-Pacific region. Major incidents include the March 2001 confrontation between the US Navy survey vessel Bowditch and a Chinese frigate in China's EEZ; the April 2001 collision between a US EP3 surveillance plane and a Chinese jet fighter over China's EEZ and the most recent "Impeccable Incident". The disagreements between US and China, and between costal states and user states in general, on the interpretations of 1982 UNCLOS provisions generally relate to the exact presumed meaning of the terms in the convention, as well as the meaning of specific articles. For example, there are specific differences with regard to the meaning of 'freedom' of navigation and overflight in and above the EEZ, i.e., whether such freedoms can be limited by certain regulations - national, regional or international - or whether such freedoms are absolute.

Internationalization, Multilateralism and Bilateralism

China expressed concern over US's increasing engagement in the SCS, adding that it opposes the internationalization of the maritime issue. China holds that the SCS issue is a sovereignty dispute about territory and maritime rights between the relevant countries, and not an issue between China and the ASEAN, nor a regional or international issue.

Some US scholars argue that China's opposition to the "internationalisation" of the SCS issue is tantamount to an attempt to de-internationalise an international sea. Once the SCS has been de-internationalised, China will be able to bring its strength to bear on the Southeast Asian countries and impose its own rules, rather than internationally accepted ones from international law on these waters.[11]

In the workshop on US-China relations on the SCS issues in September 2010, some Chinese scholars tried to clarify the interpretation of "bilateral approach" which China always insists on in solving conflict with relevant states. In the context of

SCS issues, China believes that the best approach to solve islands sovereignty and maritime delimitation is through direct negotiation with the countries involved. On other issues on non-traditional security, such as safety and security of sea lanes, anti-piracy, marine environmental protection, China is open for multilateral approach for cooperation. One best example is the DOC signed in 2002 and other regional agreements with ASEAN.

CLASH OF INTERESTS: PERCEPTION GAP ON INTERNATIONAL NAVIGATION REGIME

How costal states and user states view the navigation regime in different maritime zones remains a debate question for decades.

SCS Coastal States' Perspective on International Navigation Regime

Indonesia has been the coastal state least receptive to external states' involvement in the Malacca Strait and the SCS security, e.g. US RMSI[12] and Japanese anti-piracy proposals.[13] They strongly reiterate their unwillingness to allow Japanese forces to patrol Indonesian waters and have been hesitant to engage in joint training exercises. Cooperation is also perceived as costly to Indonesia's sovereignty, especially over its archipelagic waters, which is a particularly sensitive issue in Indonesia. Preserving sovereign control over these waters is not just of symbolic value, but is also practical. Not only do Indonesian waters hold vast resources, but exercising exclusive jurisdiction has been of continued importance in securing the state against both external threat and irredentist movements.[14] Intense sensitivity to maritime sovereignty issues has made Indonesia perceive cooperation with foreign forces in its waters as coming at exceptionally high cost. Even cooperative ventures which do not directly undermine sovereignty, such as joint exercises, are viewed with caution out of fear that such activities might lead to creeping infringement. Indonesia has replaced its original archipelagic legislation, which accorded foreign ships a right only of innocent passage through its archipelagic waters (which were referred to as internal waters), in express recognition of the fact that the original legislation was contrary to the UNCLOS: the new legislation fully conforms to the Convention.[15] Indonesia is also the only State so far to have designated archipelagic sealanes in accordance with the Convention by submitting them to the International Maritime Organisation (IMO) for adoption.[16]

Malaysia highly values protection of its sovereignty and the maintenance of legal control over its sea territory. Malaysian policymakers are not only concerned about violations of sovereignty, but any agreements which might potentially erode their exclusive control. Therefore they also cite sovereignty concerns as impeding multilateral cooperation and stress the importance of tackling piracy at the national rather than transnational level.[17] Malaysian policymakers also

consider dealing with the problem of piracy in its territorial waters to be a matter of national prestige.

China has granted navigational rights to foreign vessels in its jurisdictional waters. However, the degree and extent of the rights are different in accordance with the different status of the sea zones.[18] Where a certain sea zone is much closer to the coast of China, such rights are more limited as manifested. Under the 1992 law on the Territorial Sea and the Contiguous zones[19], merchant ships enjoy the right of innocent passage through China's territorial sea but foreign warships are subject to the requirement of prior permission.[20] According to China's Law on the EEZ and the Continental Shelf, foreign vessels including warship can enjoy the freedom of navigation in China's EEZ provided that they comply with the relevant Chinese laws and regulations as well as international law.[21] Although there is no substantive difference, the navigation under the EEZ regime may not be as free as under the high seas regime simply because of the sovereign rights and jurisdiction of the costal state over its EEZ. For example, the Chinese EEZ Law provides that China should have the right to take necessary measures against violations of Chinese laws and regulations, and to investigate according to the law those who are liable, and may exercise the right of hot pursuit.[22]

There are several Chinese laws and regulations on navigation, such as the Regulations with Respect to Sea Port Pilotage of 1976,[23] and the Regulations Governing Supervision and Control of Foreign Vessels of 1979.[24] The Maritime Traffic Safety Law of 1983 is the most important so far on the safety of navigation, and provides for survey and registration of vessels, manning of vessels and installations, navigation, berthing or carrying out operations, assurance of safety, carriage of dangerous goods, salvage and wreck removal, maritime traffic accidents, and legal responsibilities.[25] In 1990, the Regulations Governing the Investigation and Settlement of Maritime Traffic Accidents was promulgated,[26] and has become a supplement to the above law in dealing with the maritime traffic accidents.

User States' Perspective on International Navigation Regime

How user states interpret the notion of international navigation regime in the SCS remains as an interesting question for debate. The US government has repeatedly defined freedom of international navigation as one key aspect of its security concerns. For the US government, such freedom also includes that for the warships of the US navy. Given the history of US military involvement in East Asia, US demands for innocent passage (i.e. without having to inform the governments of countries immediately bordering the ocean) of its warships is usually used as an assurance that none of the Asian governments can have the right to demand it.[27] As such, the geography of the SCS area means that its legal ownership and the right to use it are open for contention not just for the countries that directly border the water

areas alone. Outside powers such as the US and Japanese governments are equally important actors in the dispute due to their identification of possible threats to commercial and military interests. China is the dominant power in Southeast Asia and has maintained its claim to the historical water in the SCS and sovereignty of the Spratly Islands contained therein. US therefore holds that China's excessive maritime claims in the SCS are adversely affecting freedom of navigation regional stability in Southeast Asia.[28] China, however, in many occasions announces that the SCS dispute will not affect the international shipping in this region.

Japan is either the world's third or fourth largest military spender, depending on the PRC estimate.[29] The revised 1997 US-Japan defence pact[30] envisaged Japan assuming an expanded role in support of US operations in East Asia, seemingly including the Taiwan Strait – a plan to which the PRC did not respond favourably at all.[31] Moreover, under pressure from the US, Japan has accepted greater responsibility for the defence of its own sea lanes of communications (SLOCs), some of which run through waters also claimed as vital by the PRC. Japan in September hosted delegates from the ASEAN for talks on simmering tensions in the SCS. On Nov. 2, Japanese Defense Minister stressed in a meeting with his Indian counterpart that Japan and India can contribute to the peace and the stability of the Asia-Pacific region by deepening their defense cooperation, including holding joint drills and reciprocate port calls by their vessels. The move is interpreted as a part of Japan's efforts to counter China's maritime advance, a key security issue of the new government of Japan.

Clash of "Freedom of Navigation" and Coastal States' Interests

The different views on 'freedom of navigation' have already resulted in several incidents in the EEZs of the Asia-Pacific region. Major incidents include the March 2001 confrontation between the US Navy survey vessel Bowditch and a Chinese frigate in China's EEZ; the April 2001 collision between a US EP3 surveillance plane and a Chinese jet fighter over China's EEZ; the December 2001 Japanese Coast Guard pursuit of and firing at a North Korean spy vessel in its and China's EEZ. The most recent case with similar nature is the clash on 8 March 2009 between Chinese vessels and a US ocean surveillance ship in China's EEZ, which is similar area to the 2001 EP3 event.

The disagreements between US and China, and between costal states and user states in general, on the interpretations of the UNCLOS provisions generally relate to the exact presumed meaning of the terms in the convention, as well as the meaning of specific articles. For example, there are specific differences with regard to the meaning of 'freedom' of navigation and overflight in and above the EEZ, i.e., whether such freedoms can be limited by certain regulations - national, regional or international - or whether such freedoms are absolute.

There are also different interpretations regarding the precise meaning of the convention's phrase allowing 'other internationally lawful uses' of the sea in the EEZ. For example, some argue that it clearly does not include warfare in the EEZ of a non-belligerent, while others would insist that under certain circumstances such as the right of self defense, such activities are allowed.[32] The interpretation of this phrase will in turn be affected by the interpretation of such terms as 'due regard', non-abuse of rights, 'peaceful use', 'peaceful purpose', and the obligation not to threaten or use force against other countries. In this context, questions arise as to whether some military and intelligence gathering activities are a lawful exercise of the freedom of navigation and overflight, whether they are a non-abuse of rights, whether they pay 'due regard' to the interests of the coastal countries, and whether they are a threat to peace and security as well as the interests of the coastal countries.[33]

What is clear is that it is no longer accurate to say that the freedom of navigation exists in the EEZs of other countries to the same extent that it exists on the high seas.[34] Coastal states have acted to control such navigation to protect their coastal living resources, to guard against marine pollution, and to protect the security of coastal populations, and it can be anticipated that such assertions of coastal state control will continue. In many cases, these claims have been approved by the IMO and by other regional and global organizations. As Van Dyke claims, the balance between navigation and other national interests continues to develop, and navigational freedoms appear to be disappearing during this evolutionary process,[35] at least in the EEZ.

The author had interviewed a few scholars and government officials from China and US on the question whether the third party forum of UNCLOS plays an important role in addressing the clash of freedom of navigation and coastal states' interests. Chinese scholar on the SCS Wu Shicun denies the role of third party mechanism would help solve the Sino-US conflict in China's EEZ, such as the cases discussed above.[36] Likewise, Ramses Amer points out that major powers, in particular the US do not want any third party to interfere its security policies. The US wants the freedom to go everywhere with its military fleet while China is very keen to uphold its claims in the SCS.[37] Wu Jilu, an official from the China Institute of Maritime Affairs (CIMA) says that, China insists that any military activities relating to military investigation, military survey, and military information gathering fall into the category of ocean scientific research which requires prior persimmon from the coastal states. However, he also points out that China should also consider the necessity in the future of conducting surveys in foreign states' EEZ in the future. John Moore, likewise also points out the fact the China is growing into a maritime power in the future and will encounter the same dilemma as US, such as how to balance freedom of navigational and its interest as a coastal state.[38]

THE WAY AHEAD

Mutual Confidence Building

China and US have been interacting in various occasion in the context of 'freedom of navigation', e.g., EP 3 in 2001 and Impeccable in 2009. Aware of the possibility of future events occurring in similar areas, the two states have tried to solve the problem of different perception. In March 2010, the China-America Maritime Strategic Dialogue was held in Beijing, at which participants from both countries agree that both countries should clear the misunderstanding and enhance further mutual confidence. Peter Dutton, a professor from US Naval war College, at his testimony at the United States Senate Committee On Foreign Relations Hearing On Maritime Disputes And Sovereignty Issues In East Asia, pointed out that, because the SCS represents strategically important zones for both China and the US and friction in the region is therefore likely to continue, cooperation is more likely to occur between Chinese and American naval forces the further away they operate from the East Asian coastal regions.[39] As he suggested, "the more that China works with the US and like-minded states away from East Asian shores, the greater the chance that the essential factor of trust will begin to enter into the equation of US-China relations in East Asia."[40]

The Role of Third Party Forums

Despite the efforts through various channels,[41] there is no consensus on whether all the military activities are legitimate in a foreign country's EEZ. The highly political nature of naval activities on the high seas has typically meant that the role of courts and tribunals has been marginal in the legal regulation of military uses of the ocean.[42] Article 298 1 (b) provides the States the right to exclude 'military activities' from compulsory dispute settlement. The minimal substantive regulations along with an optional exclusion covering military activities on the high seas and in the EEZ are indicative of a preference on the part of States not to use compulsory third-party procedures for resolving disputes about military activities. The optional exclusion is beneficial to naval powers not wishing to have their military activities questioned through an international process. The exclusion satisfies "the preoccupation of the naval advisors…that activities by naval vessels should not be subject to judicial proceedings in which some military secrets might have to be disclosed".[43] An optional exclusion is also beneficial to coastal States that could use the exception to prevent review of any of their interference with naval exercises in their EEZ.

Klein argues that the want of precision as to what military activities are permissible on the high seas and in the EEZ may give the third-party dispute settlement a role to play.[44] A court or a tribunal could set out the appropriate legal standards based

on UNCLOS provisions and specify what conduct is or is not acceptable under the convention.

Maritime Security Cooperation Derived from Convergence of Interest

Maritime security in the SCS should be collective in character; there is a need to take shared responsibility. Sensitivities need to be respected and the interests of many parties need to be carefully balanced. There is a need for synergizing regional forces to combat commonly held non-state threats. A classic dilemma of regionalism versus globalism exists in the SCS regions. Many littoral states lack the capacity for managing and protecting the safety of navigation in this region. Many external powers have significant interests in the SCS region including freedom of navigation, flows of trade and concerns about issues like environmental health. Some SCS states express the view that the responsibility for the SCS maritime security should rest primarily with the littorals states. However, external powers have legitimate interests to protect and they have the capacity to contribute. The seeds for maritime security cooperation lie in dealing with this dilemma.[45] Common interests in non-military security concerns may offer the greatest scope, at least initially, for states to cooperate and work collectively than would more contentious security matters. The anti-piracy experience in the Gulf of Aden proves there is a need for international and regional cooperation, in addition to efforts from respective littoral states.

Transformation of Way of Thinking

A radio report titled as "China & the Arctic" on Canadian Broadcasting Corporation (CBC) on March 9 2010 has triggered my thought on a question - how to objectively interpret a state' intention in hot spots of international security like the Arctic and the SCS. This radio segment interviewed Linda Jakobson,[46] the author of a report - "China Prepares for An Ice-Free Arctic" released by the Stockholm International Peace Research Initiative. Though, Michael Byers, author of *"Who Owns The Arctic?"*, said the reassuring tone of the Swedish report "contradicts some of the fearmongering" surrounding China's interest in the Arctic and its resources,[47] the following remark from the commentators raised a lot of concern and even suspicion on China's Arctic Policy.[48]

Current research on the Arctic and the SCS regions seems, if not at all, to have neglected a grey area: the lack of clear communication and objective interpretation of some gestures and activities in these regions. The above example preciously pointed to this grey area. As two of Canada's leading Arctic experts say they are impressed with China's commitment to investing in Arctic science and both say it's clear that Asian giant plans to respect the territorial sovereignty of the Arctic coastal countries while angling for a greater role in polar research, Arctic

governance and, ultimately, economic development.[49] Obviously, the suspicion on China's 'ambition' in the Arctic is misleading.

Patriotism and nationalism play a critical role in the SCS dispute development. The disputant states in the SCS are more or less indulged in national pride or nationalism sentiment. There are major 'stumbling blocks' that inhibit progress with functional cooperation and joint development in the SCS. Michael notes most of these, especially the strong element of nationalism that pervades the disputes.[50] Public expressions of nationalism destroy political will and militate against cooperation and Geoffrey Till has observed previously that "claims to the sovereignty of islands can be important symbolically, perhaps especially in times of national difficulty".[51] The unrest in the Philippines over the Joint Maritime Seismic Undertaking (JMSU), because it appeared to weaken Philippine sovereignty claims, is a clear manifestation of nationalism at work.[52] The popular demonstrations of support in the Philippines for the Baselines Bill are another example.[53]

Those who interpret China's claims in the SCS as a threat to the regional stability and the potential to use her increased military power to achieve her objectives in open conflict with its neighbours should read Chinese nationalism sentiment carefully before jumping to the conclusion. National humiliation[54] is a common and recurring theme in Chinese public culture. The discourse takes many forms: public histories, textbooks, museums, mass movements, romance novels, popular songs, prose poems, feature films, national holidays, and atlases. All these are part of a modernist narrative in its most basic sense of a linear progressive history that prescribes the unity and homogeneity of the nation-state. Transformation of ways of thinking theory can be applied in pushing for positive utilization of China's nationalism in the SCS. In order to avoid triggering Chinese nationalism sentiment which might lead to the escalation of the SCS dispute and, Chinese government should carefully direct the trend of its nationalism movement, trying to lead to the assertive nationalism, rather than assertive or aggressive nationalism. On the other hand, other disputant states in the SCS should also change their way of thinking - understand positively China's nationalism movement, and express sympathy for China's bitter history of "century humiliation",[55] since most SCS states had gone through similar experience of being invaded or colonized. Outsiders, such as US, should also play an objective role in the SCS dispute, rather than propagandising the 'China threat theory.

China is not the only country whose foreign policy is affected by nationalism sentiment. Vietnam and China have much in common. They share a Sinitic cultural background, communist parties that came to power in rural revolutions, and current commitments (China since 1978, Vietnam since 1986) to market-based economic reforms.[56] Vietnamese, in their entire schooling, have been taught that Hoàng Sa (Paracel Islands), and Truròng Sa (Spratly Islands) belong to Quãng Ngãi District.

There are two famous museums in Vietnam, one of which is War Moemorial Museum to memorize the Vietnamese War, the other is titled as "Hoàng Sa and Truròng Sa: Vietnames Islands". This museum obviously intends to enhance the 'national land awareness' among Vietnamese, especially the younger generation. Incidents in the SCS do not now lead to the public confrontations that occurred even in the 1990s, but they are watched closely as signs of possible encroachment.

'Transformation of ways of thinking theory' should be introduced to the policy makers and scholars on the Arctic and SCS as a foundation to lead their policy and research direction. Diplomatic communities and academics need to change their tunes and reinterpret the situation at hand, re-examine the SCS conflict, its origins and evolution, the roles of military confrontations and ASEAN multilateralism in that evolution, and behaviours and rhetoric of the countries involved.

CONCLUSION

The SCS has become and will continue to be a hot spot in the international security spectrum in the 21 century. The most recent development in the SCS since 2009 seems to be the driving force for stirring up this trouble water again after its calmness since 2002 when the DOC was signed by China and ASEAN states. This paper analyzes the recent events by looking into the external states' interests in this region, especially the disagreement between the US and China on "freedom of navigation" and the "internationalization of" the SCS issues. The dispute among the claimant states of the SCS is also explored, adding to the old disputes a new dimension
international navigation regime is analysed to explore the gap between among the coastal states and user states. The different interpretation of the international navigation regimes in various maritime zones, and the notion of 'freedom of navigation' unavoidably cause such unpleasant events as 'EP-3' and 'Impeccable'. Many states, e.g. China, US, Russia, play a duel role of both a coastal state and a user state. Their positions on the navigation regime in various maritime zones are unavoidably contradictory while playing different roles.

The SCS are encountering the same challenge to the safety and security of navigation, such as marine environment degradation caused by shipping, effect of shipping on human security, and unclear jurisdiction and law enforcement. In order to solve the common challenge, and bridge the perception gap, a bilateral coordination mechanism should be initiated between relevant states to build up mutual confidence and reach consensus. Meanwhile, third party compulsory forums of UNCLOS should play its role in defining the scope of freedom of navigation in a foreign state's EEZ to address the ongoing contention due to advanced development in military technology. A classic dilemma of regionalism versus globalism exists in the SCS regions. Many external powers have significant

interests in the SCS region including freedom of navigation, flows of trade and concerns about issues like environmental health. The seeds for maritime security cooperation lie in dealing with this dilemma of how to balance the interest of coastal states and user states. As a foundation, 'transformation of ways of thinking theory' should be introduced to the policy makers and scholars on the SCS and the Arctic as a foundation to lead their policy and research direction in seeking for maximizing consensus and bridging the gap on many issues including the international navigation.

Endnotes

[1] Ernest Z. Bower, "Hillary Clinton – A Secretary of State Fluent in ASEAN, July 20, 2010, CSIS, at " http://csis.org/publication/hillary-clinton-secretary-state-fluent-asean

[2] Wu Shicun, "The Huangyan Island Standoff: A Review of the Claims and the Prospects for the Future," available online: <http://www.nanhai.org.cn/en/cg_detail.asp?newsid=2282&lm=cg>.Haikou, May 10, 2012.

[3] Ian Story, "Slipping Away? A South China Sea Code of Conduct Eludes Diplomatic Efforts", *East and South China Seas Bulletin*, #11, March 20, 2013

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[6] Foreign Minister of The People's Republic of China Visits ASEAN Secretariat on Thursday, 02 May 2013. ASEAN *Secretariat News.*

[7] Rodolfo C. Severino, "How much can ASEAN do for a South China Sea code of conduct?", East Asia Forum, October, 2013. At http://www.eastasiaforum.org/2013/10/30/how-much-can-asean-do-for-a-south-china-sea-code-of-conduct/

[8] Li Xiaokun, "Navigation in South China Sea 'not a problem", China Daily, October 23, 2010

[9] Ibid.

[10] Ibid

[11] Workshop on US-China relations on the South China Sea issues in September 2010, Hawaii.

[12] According to Admiral Thomas B. Fargo, then commander-in-chief of US Pacific Command in 2004, RMSI would involve not only closer intelligence-sharing with Southeast Asian states, but also deployment of US Marines and Special Forces on high-speed vessels to interdict maritime threats, particularly from terrorists. This initiative aims to combat the transnational threats of maritime piracy and terrorism in the Strait of Malacca and the Singapore Strait by introducing joint naval exercises and other mechanisms for information sharing and cooperation on law enforcement operation. An additional objective of the RMSI is to monitor, identify, and intercept suspected vessels in national and international waters.

[13] Initially, Japan made a sweeping proposal for tackling maritime security, an ocean peacekeeping (OPK) fleet to conduct multinational naval and coast guard patrols in both territorial and international waters. After successfully conducting bilateral exercises with the Indonesian Coast Guard and Marine Police in March 2002 and the Singapore Police Coast Guard in December 2003, the JCG proposed a trilateral anti-piracy exercise involving maritime law enforcement agencies from Indonesia, Singapore, and Japan.

[14] Stefan Eklof, *Pirates in Paradise: A Modern History of Southeast Asia's Maritime Marauders* (Copenhagen: NIAS Press, 2005). p498

[15] See respectively, *Law No.4 of 1960 concerning Indonesian Waters*, 1960 (United Nations, the Law of the Sea: Practice of Archipelagic States (United Nations, New York: 1992)), and *Law No.6 of 1996 concerning the Indonesian Territorial Waters* (1998) 38 LOSB 32)

[16] See *IMO News 1998*, No.2, p.27. For comment, see C. Johnson "A Rite of Passage: the IMO Consideration of the Indonesian Archipelagic Sea-Lanes Submission" (2000) 15 *IJMCL*, pp.317-332 at p.332

[17] Ibid.

[18] Zou Keyuan, *China's marine legal system and the law of the sea*, (Leiden/Boston: Martinus Nijhoff Publishers, 2005), p.47

[19] The English version may be found in Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State, *Limits in the Seas*, No. 117 (Straight Baselines Claim: China), July 9, 1996, 11– 14.

[20] Zou, *China's marine legal system and the law of the sea*, ch.3

[21] See art.11 of the Chinese EEZ Law.

[22] Art. 12 of the Chinese EEZ Law. It is based on Article 111 (2) of the LOS Convention.

[23] See *Office of Laws and Regulations*, pp.52– 55, quoted by Zou Keyuan, in *China's marine legal system and the law of the sea.*

[24] Ibid. pp.5-29

[25] Ibid. pp.235-249

[26] Ibid, pp.268-282

[27] Daojiong Zha, "Writing Security in the SCS", working paper at International Studies Association Conference, Los Angeles, California, March 2000, at www.ciaonet.org/isa/zhd01/ (accessed on February 20, 2007)

[28] Brent E. Smith, "China's maritime Claims in the SCS: The Threat to Regional Stability and U.S.", at http://www.stormingmedia.us/73/7369/A736983.html (accessed on February 26 2007).

[29] Bjoern Moeller, "The Military Aspects of the Dispute", in Timo Kivimaki (ed.) *War or Peace in the South China Sea* (Nais Press, 2002), p.74

[30] Tokyo responds to repeated US admonitions that Japan ought to assume a greater part of the burden of upholding the world order from which it benefits so much, as well as make more of an effort with regard to its own national security, thereby producing a more equitable burden-sharing.(See Kenichiro Sasae, "Rethinking Japan-US Relations", Adelphi Paper, no. 202 (1994); Gerald L. Curtis (ed.), The United States, Japan and Asia. Challenges for U.S Policy (new York: W.W. Norton& Cp., 1994)

[31] *The Times*, 25 September 1997

[32] Mark J. Valencia and Kazumine Akimoto, "Guidelines for navigation and overflight in the exclusive economic zone", *Marine Policy Volume 30*, Issue 6,November 2006,pp. 704-711.

[33] Ibid.

[34] J.M. Van Dyke, "The disappearing right to navigational freedom in the exclusive economic zone", *Marine Policy*, Volume 29, Issue 2, March 2005, p.121

[35] Ibid.

[36] Wu Shicun is the president of the National Institute for the South China Sea Studies. He is one well-known Chinese expert on the South China Sea.

[37] Dr. Ramses Amer , Senior Research fellow Department of Oriental Languages, Stockholm University, Sweden

[38] Professor John Moore is the Walter L. Brown Professor of Law at the University of Virginia School of Law, Director of the Center for Oceans Law and Policy, and Director of the Center for National Security Law.

[39] See Testimony Of Peter Dutton, Associate Professor, China Maritime Studies Institute U.S. Naval War College, at United States Senate Committee On Foreign Relations Hearing On Maritime Disputes And Sovereignty Issues In East Asia July 17, 2009

[40] Ibid.

[41] E.g. Conference serial on "Legitimacy of Military Activities in Foreign Countries' EEZ", Bali 2002, Honolulu 2003, Shanghai 2004, Tokyo 2005), "Freedom of Seas, Passage Rights, and the 1982 Law of the Sea Convention" - The 32nd Annual Conference of the Center for Oceans Law and Policy held January 9-10, 2008 in Singapore.

[42] The constrained judgments in the Nuclear Tests cases are exemplary in this regard. See Nuclear Tests (Australia v. France; New Zealand v. France), 1974 ICJ 253, 457 (December 20); see Klein, 2005, p.291

[43] United Nations Convention on the Law of the Sea 1982: A Commentary, 5, at p. 135l, see also Noyes, "Compulsory Adjudication", at p.685 (noting that an exception was required for military activities because naval advisers were concerned about exposing military secrets in the course of judicial proceedings); see also, Klein, 2005, p.291

[44] Natalie Klein, *Dispute settlement in the UN Convention on the Law of the Sea* (Cambridge : Cambridge University Press, 2005) p. 290

[45] Proceedings From The Indian Ocean Maritime Security Symposium Australian Defence College
Canberra, Australia, 15-17 April 2009

[46] Linda Jakobson is the author of the report. She's the Acting Programme Director and the Senior Researcher for the Institute's Programme on China and Global Security. And she was in Shanghai.

[47] Randy Boswel,"China moves to become major Arctic player" , *Canwest News Service*, March 1, 2010, at http://news.globaltv.com/world/China+moves+become+major+Arctic+player/2629032/story.html

[48] According to Gordon Chang, China is likely to press its interests in the Arctic as far as it is able to ... something he says Canada should keep in mind in the coming years. Gordon Chang is a writer with a weekly geo-political column for Forbes.com. He has lived and worked in China and Hong Kong. He's also the author of The Coming Collapse of China. And he was in New York City this morning. Michael Byers, the Canada Research Chair in Global Politics and International Law at the University of British Columbia, shared his thoughts on whether Canada is equipped to impose its own prescence in this equation or defend its Arctic interests.

[49] Rob Huebert, University of Calgary political scientist, and Michael Byers, University of British Columbia political scientist.

[50] Michael Richardson, see Sam Bateman, "Commentary on Energy and Geopolitics in the South China Sea by Michael Richardson", at http://www.iseas.edu.sg/aseanstudiescentre/ascdf2c1.pdf

[51] Geoffrey Till, "The South China Sea Dispute: An International history", in Bateman and Emmers, *Security and International Politics in the South China Sea*, p. 38.

[52] Mak Joon Num, "Sovereignty in ASEAN", p. 121

[53] T.J. Burgonia and Joel Quinto, "Arroyo signs controversial baselines bill", *Philippine Daily Inquirer*, 12 March 2009, http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20090312-193661/Arroyo-signscontroversial-baselines-bill (accessed 13 March 2009).

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[55] A major theme about 19th century Chinese history is humiliation. China was in great strife-external and internal. Externally China was humiliated by Western powers, as the Chinese were

forced to sign unequal treaties. Internally the moribund Qing dynasty was ridden with corruption, intrigues and violence.

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