

Research Paper

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Maritime Security in the Asia-Pacific

China and the Emerging Order in the East and South China Seas



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Summary

- Asia's maritime security environment has deteriorated since 2009, amid an increasingly ill-tempered discourse over competing historical and legal claims to sovereignty over maritime territories. Disputes have escalated into tit-for-tat actions at sea that have included naval skirmishes and provocative land reclamation projects.
- This research paper evaluates four fundamental dimensions of tensions in the East China Sea and South China Sea: geostrategic balance, national identity politics, regional and domestic institutions, and international maritime law. The paper's focus is on China.
- The authors argue that the maritime domain embodies unique risks that require different solutions from those deriving from a Westphalian notion of statehood and land-based projection of power. While there is no rolling back the naval modernization efforts of Asian powers, the United States and China in particular need to exercise statesmanship. They need to forge the requisite political will for cooperation by all parties, in order to expand strategic options beyond a reductive Cold War-esque calculus.
- We encourage Asian countries to explore a range of instruments and institutions of collective commitment, voluntary compliance and dispute resolution – from bilateral agreements on fisheries management to the UN Convention on the Law of the Sea (UNCLOS) – in support of shared values on sustainable development of ocean resources and freedom of navigation.
- We argue that there is no global best practice in governing maritime commons, but Asians could draw on diverse references that include the European experience with the Arctic Council.
- Asian regionalism has traditionally been weak in incorporating non-state interests. A breakthrough in maritime governance will depend on the representation of a broad constituency that encompasses trading sectors, fisheries, energy and transport industries, scientific communities, NGOs, think-tanks, environmental activists and local communities.

Introduction

The risk of relatively minor events escalating into conflict in the East China Sea and South China Sea has increased over the past five years. Dangerous skirmishes and prolonged stand-offs between military vessels from claimant states have contributed to heated nationalist discourses, and to elevated naval and coastguard capabilities. Meanwhile, the region's preeminent political, economic and security organization – the Association of Southeast Asian Nations (ASEAN) – appears divided by members' interests, and passive before increasingly alarmist US warnings over perceived Chinese aggression in land reclamation projects.

A 'realist' perspective on international affairs would regard this volatile situation as cause for pessimism – about China's rise, America's inadequate adjustments to geopolitical transitions, and the weaknesses of regional and global institutions in coordinating reactions from all parties in the region *vis-à-vis* the structural shift in power in China's favour.¹

But as Asian countries look beyond their territory in defining more globally focused interests, a 'realist' interpretation of their motivations and behaviour seems too restrictive.² As regional power dynamics and agendas evolve, governments and policy-makers are having to reconsider legal and substantive meanings of sovereignty, and reassess shared norms and protocols for governing interactions at sea.

Against this backdrop, we propose instead a historically and environmentally informed analysis of how the maritime context has shaped specific challenges and interactions in the region. Looking at underlying sources of tension in the region's maritime affairs, we examine how specific vulnerabilities create asymmetries in impact and place varying demands on domestic policies and institutions. At stake are a long list of cross-boundary issues relating to concepts of private property, common pooled resources and public goods, which require different types of governance to deter the 'free rider' problem and ensure an equitable spread of costs and benefits between states.

The tension between national history and universal law has obfuscated concepts of rights and impeded practical means of dispute resolution. Disputes over maritime sovereignty and territory have also compounded the deficit in multilateral governance in Asia. Expanding existing trade and traditional security agreements – such as ASEAN-based dialogues and confidence- and security-building measures – may have inherent limits in accommodating imperatives specific to each country and to the maritime context.

About this paper

This paper examines four dimensions of Asia-Pacific maritime tensions: the geostrategic balance, national identity politics, regional and domestic institutions, and international maritime law. The first section of the paper analyses shifting economic and power asymmetries in Asia since

¹ John J. Mearsheimer, 'The Gathering Storm: China's Challenge to US Power in Asia', *The Chinese Journal of International Politics*, 3 (2010), pp. 381–96; and Robert D. Kaplan, 'The South China Sea Is the Future of Conflict', *Foreign Policy*, September/October 2011.

² The 'realist' theory of international relations assumes that a country would leverage its national power – measured primarily in military might and economic size – through diplomacy or military threats to maximize its ability to secure territories and resolve interstate conflicts to its advantage.

the mid-1990s and the rising importance of ‘non-traditional’ security concerns that compete with traditional security priorities in diplomacy.

The second section focuses on changes in China’s national identity and the interests informing its maritime claims. We show how Chinese officials have exploited entrenched historical perspectives and prejudices to generate support for their foreign policy, and how – at the same time – China’s politicization of its maritime affairs has complicated the achievement of domestic consensus. We argue that rising popular nationalism in China may foreclose moderate options, even if it is in Beijing’s interest to negotiate with other governments in the region.

The third section evaluates the contributions of Asia-Pacific regional organizations to setting the agenda for a ‘maritime commons’ and resolving conflict. Have they been facilitators of sustained negotiations, and of crisis- and risk-management, or impediments to these processes?

The final section examines the complexities facing Asian countries when resorting to international maritime law to deal with fundamentally political problems. International law has, so far, been ineffective in resolving disputes in the East China Sea and South China Sea. This difficulty stems in part from the limitations of international law, and of agreements based on it, when applied to specific contexts in Asia. It also stems from the legal and empirical approaches that claimants have adopted in efforts to circumvent such limitations, especially in arguing over historical uses and rights at sea.

Over the next 10 years, the challenge for all stakeholders in Asia-Pacific maritime disputes will be to move from a ‘persistent crisis’ mode towards a more stable order.³ We explore potential avenues for conflict resolution and cooperation, with an emphasis on incentives for statesmanship. Of course, it may well be in the interest of more powerful countries (or their military and industrial sectors) to stay in crisis mode. In that case, secondary powers can probably hope for no better than the agreement of crisis-management mechanisms.

China is a case in point. Its former leader, Deng Xiaoping, remarked that China’s economic and global leadership aspirations are predicated on a stable regional order in the Asia-Pacific. It is possible that China’s current leadership will reaffirm this commitment to working with other Asian governments towards sustained and collective progress on issues of maritime law and security.⁴ But equally Beijing could force the pace of change in a way that leads to a less stable regional order – one that challenges two fundamental precepts of the post-Second World War Asian security environment: the supremacy of American naval security pacts with Asian powers; and the Westphalian logic of interstate cooperation based on the unproblematic territoriality of nation states. In making this choice, what would be at stake for China if it took a hard-line stance on the region’s current maritime disputes? How do domestic pressures and global influences affect China’s maritime agenda? Can the existing multilateral architecture in the region accommodate China’s core interests? And if not, what other options exist, both with regard to dispute settlement and to joint governance of an open sea?

³ Justin Nankivell, ‘China’s Use of Lawfare in the South China Sea Dispute’, in Stefan Halper, *China: The Three Warfare*, May 2013, p. 429. Available online at http://images.smh.com.au/file/2014/04/11/5343124/China_%2520The%2520three%2520warfares.pdf?rand=1397212645609 (last accessed 12 May 2015).

⁴ Yuen Foong Khong, ‘Primacy or World Order? The United States and China’s Rise – A Review Essay’, *International Security*, 38:3 (Winter 2013/14), pp. 153–75; David Kang, *China Rising: Peace, Power, and Order in East Asia*, Columbia University Press, 2007; and Robert S. Ross and Zhu Feng (eds), *China’s Ascent: Power, Security, and the Future of International Politics*, Cornell University Press, 2009.

Sovereignties on a Collision Course

The maritime tensions in 21st-century Asia continue the tortuous history of disputes between Asian littoral states, for whom sensitivity over sovereignty has been conditioned by national historiographies, cartography and geostrategic shifts; and by the regional institutions and belief systems that have emerged since the Second World War. In the postwar era, Asia has become the region not only most prone to territorial and maritime disputes but also the one most resistant to conflict settlement.⁵ This trend seems likely to continue in view of the relatively fresh memories of national encroachment and humiliation by foreign powers in the region, and of the shifting power balance among its states.

The importance of the East China and South China seas lies in their proximity to strategically important shipping lanes, and in their significant fishing grounds and oil deposits. Each year US\$5.3 trillion worth of goods, or around one-quarter of global merchandise export trade, passes through the South China Sea. Of this sum US trade accounts for US\$1.2 trillion.⁶ About one-third of global seaborne oil trade and over half of global trade in liquefied natural gas – mostly originating from the Gulf – also travel via the South China Sea.⁷ The *World Energy Outlook 2012*, published by the International Energy Agency, predicted that 90 per cent of Middle Eastern fossil-fuel exports would go to Asia by 2035.⁸ The US Energy Information Administration estimates that the South China Sea contains about 11 billion barrels of oil and 190 trillion cubic feet of natural gas rated as proven or probable reserves. The US Geological Survey estimated in 2012 that an additional 12 billion barrels of oil and 160 trillion cubic feet of natural gas might lie undiscovered in the region – crucially, only a marginal amount of proven deposits and less than one-fifth of undiscovered deposits are in contested areas.⁹

In the South China Sea, six countries contest land features in, and maritime zones extending from, three archipelagos plus the Macclesfield Bank and Scarborough Shoal.¹⁰ The Spratly Islands – which consist of roughly 230 features, including several small islands, coral reefs and shoals – have been the focus of the most heated diplomatic exchanges, with the Philippines, Vietnam, Malaysia, China and Taiwan holding various degrees of control over the area's land features.¹¹ The Paracel Islands are claimed by China, Vietnam and Taiwan. China has controlled the Amphitrite Group since the mid-1950s and consolidated control over the entire archipelago after a brief clash with South Vietnam over the Crescent Group in 1974.¹² In addition, China, Taiwan and the Philippines contest sovereignty over the Scarborough Shoal (known as Huangyan Island in China), which is located a little more than 100 miles from the Philippines, between the Macclesfield Bank and the main Philippine

⁵ M. Taylor Fravel, 'Territorial and Maritime Boundary Disputes in Asia', in Saadia Pekkanen, John Ravenhill and Rosemary Foot (eds), *Oxford Handbook of the International Relations of Asia* (Chapter 27), New York: Oxford University Press, 2014.

⁶ <http://www.cfr.org/world/armed-clash-south-china-sea/p27883>.

⁷ 'The South China Sea is an important world energy trade route', US Energy Information Administration, 4 April 2013, <http://www.eia.gov/todayinenergy/detail.cfm?id=10671>.

⁸ <http://www.worldenergyoutlook.org/publications/weo-2012/>.

⁹ Alexander Metelitsa and Jeffrey Kupfer, 'Oil and Gas Resources and Transit Issues in the South China Sea', Issue Brief of the Asia Society Policy Institute, 10 November 2014, http://asiasociety.org/files/SouthChinaSea_OilGas_brief.pdf.

¹⁰ For a regularly updated interactive map guide, see Council on Foreign Relations, 'China Maritime Disputes', http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#!/?cid=otr-marketing_use-china_sea_InfoGuide; another rich web resource is the Asia Maritime Transparency Initiative of the Center for Strategic and International Studies, <http://amti.csis.org/>.

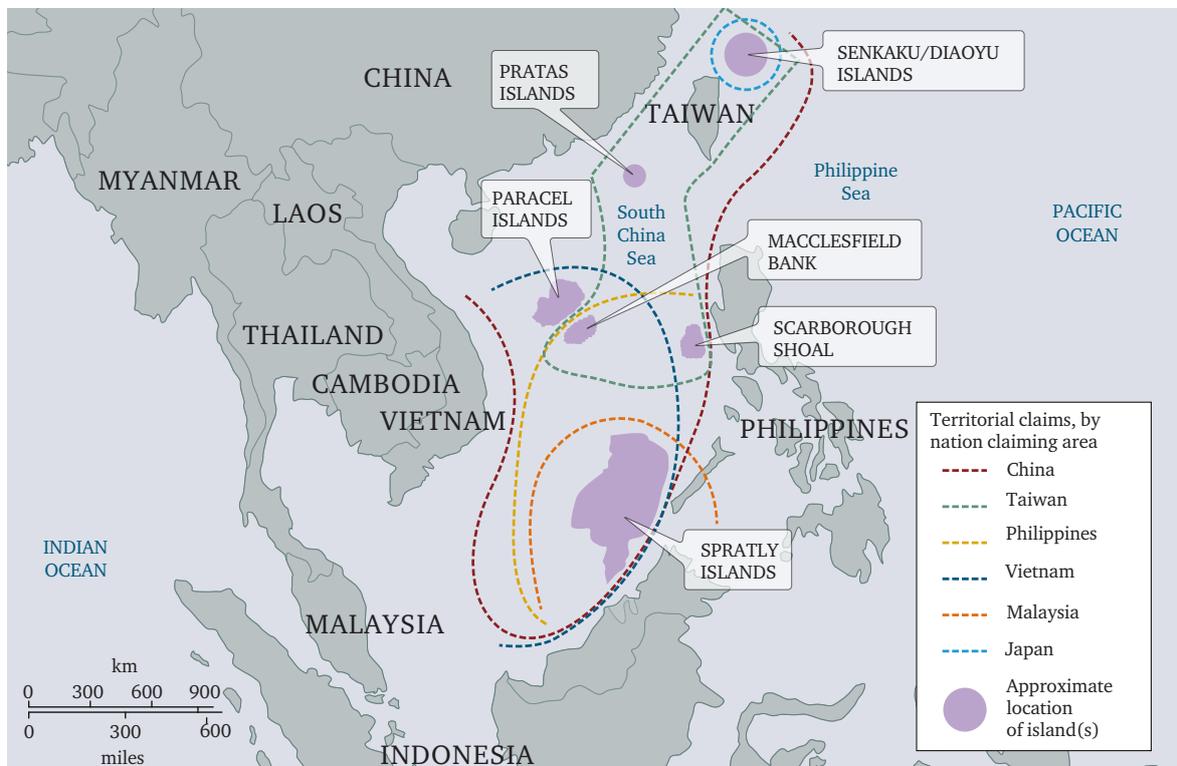
¹¹ Leszek Buszynski and Christopher B. Roberts (eds), *The South China Sea Maritime Dispute: Political, Legal and Regional Perspectives*, Routledge, 2014.

¹² M. Taylor Fravel, 'China's Strategy in the South China Sea', *Contemporary Southeast Asia*, Vol. 33, No. 3, December 2012.

island of Luzon. In 2012 the Vietnamese National Assembly passed a law incorporating the Spratly and Paracel islands within its sea borders; and the Philippine president, Benigno Aquino, issued a decree renaming maritime areas on the western side of the Philippine archipelago as the West Philippine Sea, over which the Philippines exercises 'sovereign jurisdiction'.

In the East China Sea, the Senkaku/Diaoyu Islands dispute has been a major obstacle to the development of Sino-Japanese relations since the end of the Cold War. The islands were controlled by Japan from 1895 until 1945, when they became subject to the United States Civil Administration of the Ryukyu (Senkaku) Islands until 1972. The islands were then returned to Japan under the Okinawa Revision Treaty, despite the fact that both Japan and China raised sovereignty claims over them before the UN Security Council in that year. From the 1970s until the early 1990s there was a tacit understanding between both countries to keep the dispute under wraps as they pursued diplomatic rapprochement and economic development. However, the Japanese government explicitly denied such an understanding in the 2010 and 2012 crises.¹³ The activities of Chinese naval and air forces have increased since 2012. According to Japan, the number of Chinese vessels entering the waters around the islands has jumped from around zero per month before September 2012 to upwards of 28 per month since.¹⁴ The Japanese coastguard has augmented its activities and capabilities accordingly.¹⁵

Map: Competing territorial claims in the South China Sea



¹³ Reinhard Drifte, 'The Japan-China Confrontation Over the Senkaku/Diaoyu Islands – Between "shelving" and "dispute escalation"', *Asia-Pacific Journal*, Vol. 12, Issue 30, No. 3.

¹⁴ M. Taylor Fravel and Alastair Iain Johnston, 'Chinese signaling in the East China Sea?', *Washington Post*, 13 April 2014; Ministry of Foreign Affairs of Japan, 'Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Response – Records of Intrusions of Chinese Government and Other Vessels into Japan's Territorial Sea', 18 February 2015, http://www.mofa.go.jp/region/page23e_000021.html.

¹⁵ 'Japan Coast Guard beefing up fleet for patrol of Senkaku Islands', *Asahi Shimbun*, 5 October 2014.

Box 1: Timeline of conflicts in the South China Sea since 2009

2009: China detained more than 400 Vietnamese fishermen who had ventured into the waters around the Paracel Islands. China accused the *USNS Impeccable*, a US surveillance ship, of illegal entry and surveillance activities in Chinese waters.

2011: China harassed seismic survey vessels contracted by Vietnam and the Philippines. In one incident, a ship from the China Marine Surveillance (CMS) force, a maritime law-enforcement agency under the State Oceanic Administration, severed the towed sonar cable on a Vietnamese-contracted seismic survey vessel operating roughly 100 miles from the Vietnamese coast.

2012: China National Offshore Oil Corporation invited foreign oil companies to bid on exploration blocks that overlapped with existing Vietnamese blocks within the 200-nautical-mile exclusive economic zone (EEZ) off its coast.

Apr 2012: A Philippine naval ship was dispatched to investigate reports of illegal harvesting of endangered species by Chinese fishing boats inside Scarborough Shoal. Two CMS patrol ships arrived at the scene and blocked the entrance to the shoal, thus preventing the arrest of the fishermen. China deployed at one point nearly 100 surveillance ships, fishing boats and utility craft in the area.^a The stand-off ended with the Philippine navy's withdrawal in mid-June 2012, giving China effective control of the shoal and adjacent waters. Chinese punitive actions included an import quarantine on Philippine bananas, unilateral fishing bans in the Scarborough Shoal area and the halting of Chinese tour groups to the Philippines.

Jan 2013: The Chinese government published a new map restating visually its '9-dash line' boundary, which showed China's territorial claims covering most of the South China Sea.^b

Jun 2013: China and Vietnam agreed to establish a military hotline.

May 2014: China installed drilling rigs inside Vietnam's EEZ and in another part of the Paracel Islands, a move that led to multiple collisions between Vietnamese and Chinese ships.

Aug 2014: Chinese jetfighters had a close encounter with a US reconnaissance aircraft, a Boeing P-8A Poseidon, which now patrols the South China Sea from the former Clark Air Base in the Philippines.

2014–15: China expedited land reclamation projects on Woody Island in the Paracels and Johnson Island in the Spratlys, including the building of air-strips that may allow new air defence identification zone (ADIZ) claims.^c The Japanese and the Philippines initiated joint military exercises in the summer of 2015.

Apr 2015: China started converting Mischief Reef in the Spratlys into an island.

May 2015: US Defense Secretary Ashton B. Carter called for China to halt the construction, arguing that international law did not recognize Chinese claims of sovereignty over the new territories and that US warships and military aircraft would continue to operate in the area.

^a Yu Jinghao, 'Why Philippines becomes so "radical" in the South China Sea?', *People's Daily*, 27 April 2012, <http://en.people.cn/90883/7802156.html>.

^b 'New Chinese map gives greater play to South China Sea claims', Reuters, 25 June 2014, <http://uk.reuters.com/article/2014/06/25/china-diplomacy-map-idUKL4N0P61FT20140625>.

^c Zachary Keck, 'China Naval Chief Conducts "Unprecedented" Survey of Disputed Reefs', *The Diplomat*, 17 October 2014. On 19 March 2015, four US senators from the Senate Armed Services and Foreign Relations committees released a letter addressed to Secretary of State John Kerry and Secretary of Defense Ashton Carter seeking 'the development and implementation of a comprehensive strategy for the maritime commons of the Indo-Pacific region', focusing on stopping China's land reclamation projects. See <http://www.armed-services.senate.gov/letter-to-secretary-carter-and-secretary-kerry-on-chinese-maritime-strategy>.

Box 2: Timeline – the Senkaku/Diaoyu Islands

Dec 2008: Two vessels from the China Marine Surveillance (CMS) force entered the territorial waters around the islands in an apparent bid to scuttle a gasfield agreement between Japan and China. This marked the first time that Chinese government ships had entered what Japan views as its sovereign territorial waters in the area.

Sep 2010: The Japanese coastguard arrested the captain of a Chinese trawler after the latter collided with two Japanese patrol vessels in the disputed waters near the islands.

2011–12: On three occasions, Chinese government ships entered these waters: in August 2011 (two vessels from the Bureau of Fisheries Administration), March 2012 (one CMS vessel) and July 2012 (three vessels from the Bureau of Fisheries Administration).

7 Jul 2012: Japanese Prime Minister Yoshihiko Noda announced that the Japanese government would purchase and nationalize the islands.

Sep 2012–Dec 2013: Chinese vessels entered the territorial waters around the islands 74 times and maintained a near-continuous presence in the contiguous zone just beyond the territorial boundary. Military activities escalated on both sides, including: the locking of weapons-targeting radar on 30 January 2013 by a Chinese frigate on to a Japanese destroyer, the crew of which went to battle stations; the movement of Chinese ballistic missiles closer to the coast; the use of Chinese drones; and large-scale naval training exercises by China.^a The US flew two B-52 bombers into the newly declared Chinese ADIZs in November 2013.

2014: The Japanese government built a lighthouse and wharf featuring Japanese flag insignia on the islets.

Nov 2014: The Chinese president, Xi Jinping, and Japan's prime minister, Shinzo Abe, met at the APEC Summit in Beijing for their first formal talks since 2012.

^a Chris Buckley, 'China Denies Directing Radar at Japanese Naval Vessel and Copter', *New York Times*, 8 February 2013; 'PLA Navy's three fleets meet in South China Sea for rare show of force', *South China Morning Post*, 24 June 2013.

What a difference a decade makes – Asia heating up

The World Economic Forum's *Global Risks 2015* report – an annual survey of threats of concern to world leaders and business – rates interstate conflict as the top risk in terms of likelihood. After decades of relative peace and cooperation, Asia has emerged as a main source of this risk. A recent scenario forecast by the Centre for Risk Studies at the University of Cambridge lays out the likely trauma that militarized air and sea conflicts between China and Japan would cause to the global economy. The world's second- and third-largest economies respectively, China and Japan accounted for US\$2.9 trillion worth of goods exports in 2013,¹⁶ much of which was shipped through the South China Sea. Conflict between the two countries could bring to a standstill six of the world's largest ports (responsible for half of all container traffic) and stop flights from five of the world's top 20 airports (which handle 8 per cent of all passenger traffic and 46 per cent of air freight).¹⁷

In the mid-1990s, Asian regionalism was at its post-Second World War height. Economics had underpinned international relations, with the Asia-Pacific Economic Cooperation (APEC) forum gaining momentum in support of the World Trade Organization (WTO) and supposedly proving that the 'Asian way' of non-binding, voluntary actions among mutually respectful sovereign states

¹⁶ www.wto.org/english/res_e/statis_e/its2014_e/its2014_e.pdf, p. 28.

¹⁷ Andrew Coburn, 'Planning for war: a guide for businesses', *The Conversation*, 17 February 2015, <http://theconversation.com/planning-for-war-a-guide-for-businesses-37297>.

could achieve real progress in common welfare.¹⁸ In the aftermath of the Asian financial crisis of 1997–98, China claimed its first altruistic act as a regional hegemon in holding the renminbi stable amid currency devaluations by crisis-stricken neighbours. It subsequently worked with Japan on the Chiang Mai Initiative – a regional currency-swap scheme – and other regional proposals to protect against future financial contagion. China also welcomed IMF interventions in South Korea and Southeast Asian economies, and implemented tough domestic reforms such as state-sector restructuring and the creation of a welfare state. Despite criticism from nationalist and protectionist voices within China, Beijing offered significant concessions to the US to pave the way for its WTO accession in 2001. In 2005, the new US deputy secretary of state, Robert Zoellick, spoke with cautious optimism that China might play the role of ‘responsible stakeholder’ in shaping the international agenda.¹⁹

Yet the region’s security environment has deteriorated since 2009, caught in a damaging discourse of competing historical and legal claims over maritime territory – a process that has escalated into a series of dangerous tit-for-tat actions at sea. What has changed in the past decade to stall further progress in Asian regionalism? Broadly speaking, three general factors have increased the sense of insecurity among Asian powers:

1. Increasing economic asymmetry and sensitivity among Asian economies;
2. The increasing salience of non-traditional security challenges for Asian countries; and
3. The US ‘pivot’ to Asia in the 2010s, and the resulting reactions both from China and from America’s allies in the Asia-Pacific.

While Asian economies have been lauded for their resilience in the aftermath of the global financial crisis of 2008–09 and the subsequent recessions in advanced Western economies, regional policy-makers have perceived serious issues in their economic models and growth policies.²⁰ Since the late 1990s, output growth in Asia has become even more export-dependent, underscoring a troubling trend of lagging domestic consumption and profligate government spending in times of crisis.²¹ While most Asian economies in 2008 enjoyed stronger external positions – in terms of foreign-exchange reserves relative to foreign debt obligations – than in 1997, China proved the notable exception as domestic debt rose to alarming levels.²²

Furthermore, China’s fundamental economic interest in the region may be changing. China is now the biggest trade partner for most Asian economies, including Japan, South Korea, Taiwan, the Philippines and Vietnam. The structural transformation of the Chinese economy means that economic asymmetry with other markets is growing. The process of China’s development into a more modern, market-driven economy is driving regional specialization, market integration and inter-sectoral trade. As Chinese producers move up the value chain in vertical integration, shift away from light industries to heavy and

¹⁸ Vinod Aggarwal and Kun-Chin Lin, ‘APEC as an Institution’, in Richard E. Feinberg and Ye Zhao (eds), *Assessing APEC’s Progress: Trade, Ecotech, and Institutions*, Singapore: ISEAS, 2001.

¹⁹ For a positive view of China’s engagement with, and socialization by, regional organizations as of the early 2000s, see Rosemary Foot, ‘Chinese strategies in a US-hegemonic global order: accommodating and hedging’, *International Affairs*, Volume 82, Issue 1, pp. 77–94, January 2006. For an updated view with particular attention to China’s increased involvement in peacekeeping and development assistance, see “‘Doing some things’ in the Xi Jinping era: the United Nations as China’s venue of choice”, *International Affairs*, Volume 90, Issue 5, pp. 1085–1100, September 2014.

²⁰ In 2007, Wen Jiabao characterized Chinese growth as ‘unbalanced, unstable, uncoordinated, and unsustainable’. See ‘Premier: China confident in maintaining economic growth’, www.chinaview.cn, 16 March 2007. Stephen Roach updated the assessment five years later, seeing worsening imbalances, ‘China’s Last Soft Landing’, ProjectSyndicate, 29 January 2013.

²¹ Shaun Breslin (ed.), *East Asia and the Global Crisis*, Routledge 2012; Li Cui, ‘China’s Growing External Dependence’, *Finance & Development*, September 2007, Volume 44, Number 3, <http://www.imf.org/external/pubs/ft/fandd/2007/09/cui.htm>.

²² He Yang, Kun-Chin Lin and Tao Ran, ‘Local Government Fiscal Imperative and Debt-Financing in China’, in Philip Arestis and Malcolm Sawyer (eds), *Fiscal and Debt Policies for the Future*, International Papers in Political Economy Series, Palgrave MacMillan, 2014.

high-tech industries, and seek to expand their global footprint via rapid asset acquisitions, China has become arguably less dependent on a regional production network for component trade and export linkages than it was in the 1990s.²³

Increasingly sophisticated and internationalized Chinese CEOs are building their own manufacturing and managerial know-how independent of prior Asian developmental experience.²⁴ In the 1990s, state planners modelled Chinese strategic industries on the experience of other Asian conglomerates, whether the Korean *chaebol* or the Japanese *keiretsu*; today, they refer to the parity of Chinese multinationals with Western counterparts in the Fortune 500.²⁵ In short, compared with the late 1990s, China is able to exert greater economic leverage over its neighbours, with less sensitivity to repercussions from trade retaliation or other disruptions in bilateral economic relations.

China is now the biggest trade partner for most Asian economies, including Japan, South Korea, Taiwan, the Philippines and Vietnam.

In addition to the complications arising from economic changes, the scope of non-traditional security issues has expanded greatly since the mid-1990s. Traumatic incidents have exposed inadequacies in national preparedness and regional cooperative mechanisms in meeting human needs. This was clear in a variety of contexts, including:

1. Natural disasters, such as the Indian Ocean tsunami in 2004, the Sichuan earthquake in 2008, and the earthquake and tsunami in Japan in 2011;
2. Health crises over infectious diseases, such as SARS, H1N1 and avian flu variants;
3. Environmental degradation, such as from acid rain in northeast Asia, fishery depletion and Indonesian forest fires;
4. Aviation and maritime disasters, such as in Malaysia (2014), Indonesia (2006), Australia (2012), South Korea (2014) and the Philippines (2004, 2008, 2013);
5. The inclusion of poverty and human security on APEC's agenda;²⁶ and
6. Transnational crimes and terrorism.²⁷

Amid the mounting human costs of non-traditional security breaches, there has been no multilaterally agreed definition of non-traditional security issues, and efforts to harmonize regional interests have been limited.²⁸ In the 1990s and early 2000s, APEC and ASEAN incorporated some 'human security' discussions into the regular 'Track I' agenda of official diplomacy. But they have made little headway in terms of substantive and cooperative actions, as maritime disputes have dominated the agenda.

As a result of inadequate bilateral and regional initiatives, countries have tended to subsume non-traditional security into the hierarchy of traditional security priorities. Fundamentally, many of these

²³ OECD, 'Asia and the Global Crisis: The Industrial Dimension', 1999; Shaun Breslin, 'Power and Production: Rethinking China's Global Economic Role', *Review of International Studies*, Vol. 31, 2005.

²⁴ Peter Nolan, *Chinese Firms, Global Firms: Industrial Policy in the Age of Globalization*, Routledge, 2013.

²⁵ Kun-Chin Lin, 'Disembedding Socialist Firms as a Statist Project: Restructuring the Chinese Oil Industry 1997–2002', *Enterprise & Society: The International Journal of Business History*, 7(1), pp. 59–97, March 2006.

²⁶ <http://www.apec.org/About-Us/About-APEC/Fact-Sheets/Human-Security.aspx>. Also promoted by the Japanese Overseas Development Assistance, http://jica-ri.jica.go.jp/IFIC_and_JBICI-Studies/english/publications/reports/study/topical/poverty_reduction/pdf/poverty_e02.pdf.

²⁷ 'ASEAN Documents on Combatting Transnational Crimes and Terrorism', ASEAN 2012.

²⁸ Mely Caballero-Anthony, 'Nontraditional Security and Multilateralism in Asia: Reshaping the Contours of Regional Security Architecture?', *The Stanley Foundation Policy Analysis Brief*, June 2007, <http://www.stanleyfoundation.org/publications/pab/pab07mely.pdf>.

issues bear no substantive relation – i.e. scientifically demonstrated causal linkages – to military strategies or overall foreign policy positions. Traditionally, crisis management of disaster relief, disease control and environmental protection are handled at local community level, aided by the coordination of specific state agencies and civil societal or issue-specific advocacy groups. However, recent debates have blurred the lines between civilian and military roles and forces, with the Japanese Self-Defense Forces intervening regionally, the US navy coordinating exercises and Beijing claiming the right to convert civilian vessels for military use.²⁹

This ‘securitization’ of non-traditional security issues could contribute to the politicization of interstate disputes. For example, the previously well-accepted concept of freedom of navigation and access to resources has given way to national-interest discourses on sea lines of communication (SLOC); these strategies have restrictive implications. Analysts have pointed out that national resistance to flexible airspace and timely release of relevant data hampered international coordination in search, rescue and recovery efforts for Malaysia Airlines flight MH370.³⁰ The same restrictive security approach might hamper cooperative scientific surveys, oil and gas exploration, and fisheries management.

However, the most immediate and critical driver of Asian maritime relations is the US ‘pivot’ to Asia: the 2011 strategic rebalancing of US military resources, to the effect that by 2020 some 60 percent of US naval forces will be deployed in the Indo-Pacific region. While there is debate as to whether the ‘pivot’ signals a US determination to forestall Chinese military threats to its naval dominance in the region – on this American officials typically disavow any Cold War-inspired containment policy – the perception of its contribution to regional stability is divided among Asian powers. China has regarded the move as highly provocative, whereas Japan, the Philippines and Australia have welcomed a bigger US military presence in the region. The immediate result has been a ‘bandwagon’ effect among America’s allies in the region, as they too have invested in naval capabilities and renewed security partnerships with the US.³¹ To be sure, these changes are not based exclusively on a short-term balancing calculus, but also on a complex set of trends and security needs.³² Taiwan, Japan, the Philippines and Indonesia should not be expected to remain in a state of naval atrophy even as the US strives to maintain a preponderance of naval capabilities in the Asia-Pacific.

To some extent the US ‘pivot’ is also driven by a fundamental economic logic that seeks closer integration of American corporate and trading interests in Asia – a consistent agenda established by the then US secretary of state, George Schultz, in the 1980s as an exit strategy from the Cold War,³³ and continued under Robert Zoellick, who played a central role in the negotiations that led to China’s WTO accession.

Nevertheless, from Beijing’s standpoint, the US approach has appeared deliberately exclusionary or intended to limit China’s options in the region.³⁴ For instance, the US proposal for a regional trade agreement in the form of the 12-nation Trans-Pacific Partnership (TPP) currently excludes

²⁹ ‘New rules mean ships can be used by military’, *China Daily*, 18 June 2015.

³⁰ Carl Thayer, ‘Flight MH370 Shows Limits of ASEAN’s Maritime Cooperation’, *The Diplomat*, 18 March 2014; Adrian Schofield, Jeremy Torr and Bradley Perrett, ‘MH370 Search Coordination Lapses Echo Global Issues’, *Aviation Week*, 20 March 2014. C. Raja Mohan pointed out that the Chinese military learned from the Indian navy’s rapid response in reaching the Maldives, Sri Lanka and Indonesia after the 2004 tsunami disaster. A decade later, the Chinese navy far outperformed the Indian navy in a show of non-combat military deployment in MH370 search and rescue. ‘Chinese takeaway: PLA Goes Out’, *Indian Express*, 26 March 2014.

³¹ Evan S. Medeiros. ‘The New Security Drama in East Asia: The Responses of U.S. Allies and Security Partners to China’s Rise’, *Naval War College Review* (Autumn 2009).

³² Zhu Feng, ‘An emerging trend in East Asia: military budget increases and their impact’, *Asian Perspective* (2009), pp.17–45.

³³ G. P. Shultz, ‘The U.S. and East Asia: A partnership for the future’, Washington, DC: US Department of State, Bureau of Public Affairs, Office of Public Communication, Editorial Division, 1983; Paul Godwin in *East Asian Security in the Post-Cold War Era*, edited by Sheldon W. Simon (1993), p. 124.

³⁴ Zhu Feng, ‘U.S. Rebalancing in the Asia-Pacific: China’s Response and the Future of Regional Order’, CSS Discussion Paper No. 12, 2012, Centre for Strategic Studies, New Zealand, <http://www.iiss.pku.edu.cn/ueditor/net/upload/file/20140814/6354362322579381653954899.pdf>.

China, even though its accession standards in principle allow China to join.³⁵ While not ruling out membership of the TPP, China is currently touting an alternative called the Free Trade Area of the Asia-Pacific (FTAAP).³⁶ China's leadership of the new Asian Infrastructure Investment Bank (AIIB) is widely seen as a rebuke to the US dominance of the IMF. At the time of the official founding of the AIIB, Japan and the US were not members of the bank even though many of their traditional allies had enthusiastically joined in this initiative.

These fundamental transformations in economic relations, expanded security imperatives and 'great power' strategic competition are generating instabilities in interstate relations among Asian powers. Concerns on this account have been reflected in the agendas for high-level meetings between US President Barack Obama and Chinese President Xi Jinping (at Sunnylands, in the US, in 2013); and between President Xi and Japanese Prime Minister Shinzo Abe (at the ASEAN Summit in November 2014). While convergent diplomatic efforts seek to prevent diplomatic tensions, this is often at odds with the confusing or superficial signals from individual leaders on their countries' willingness to negotiate on core interests. This renders it difficult to forecast clear scenarios for cooperative actions in the medium to long term.

In several respects, China's primary economic relations are largely mediated by sea lanes. Most of China's oil imports are transported through SLOC controlled by foreign navies – most notably that of the US.³⁷ Non-traditional security issues are more salient at sea, and the US 'pivot' to Asia and the security alliances associated with it ensure superior air/naval capabilities for countering China's bid for regional influence. Some commentators have gone so far as to propose that, in contrast to its moderating effects on land-based territorial disputes, Chinese regime insecurity is unlikely to create incentives for cooperation in offshore island disputes.³⁸ In other words external, not internal, factors are the main determinants of the likelihood of compromise in such disputes. Hence the importance of incentive-shaping mechanisms and arenas discussed below.

There are two ways of analysing how and why states become more insecure. One is to examine sources of insecurity specific to certain state and non-state actors, embedded in institutional contexts such as a national bureaucracy, a given industry, local communities, etc. The other is to consider what international relations theorists call the 'security dilemma' for Asian powers – a situation in which a state that wishes to increase its security through, for example, alliance-building or boosting its military capabilities can inadvertently encourage other states to respond in kind, thereby escalating rivalry and increasing the possibility of accidental conflict.³⁹

Three central enquiries arise from this perspective:

First, is it accurate to understand maritime disputes in the region – either in aggregate or as independent events – as mainly reflecting a struggle between the US and China for regional hegemony? This interpretation minimizes variations in China's relations with its neighbours and the specificities

³⁵ This comes as no surprise in the light of the US record of unilateralism in APEC. Vinod Aggarwal and Kun-Chin Lin, 'Strategy without Vision: The U.S. and Asia-Pacific Economic Cooperation', in Jurgen Roland, Eva Manske and Werner Draguhn (eds), *Asia-Pacific Economic Cooperation (APEC): The First Decade*, London: RoutledgeCurzon, 2002.

³⁶ Donald Kirk, 'China Promotes Its Own Asian Eco Zone After Obama At APEC Fails To Press For Trans-Pacific Partnership', *Forbes Asia*, 14 November 2014. The Chinese are also engaged in negotiating the Regional Comprehensive Economic Partnership (RCEP), which involves the 10 ASEAN members and the six states with which ASEAN has existing free-trade agreements. Rohit Sinha and Geethanjali Nataraj, 'Regional Comprehensive Economic Partnership (RCEP): Issues and Way Forward', *The Diplomat*, 30 July 2013.

³⁷ Andrew Mertha, 'Domestic Institutional Challenges Facing China's Leadership on the Eve of the 18th Party Congress', *Asia Policy*, Number 14, July 2012, p. 5; Roland Dannreuther, 'China and global oil: vulnerability and opportunity', *International Affairs*, Volume 87, Issue 6, 2011, pp. 1346.

³⁸ M. Taylor Fravel, 'Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes', *International Security*, Vol. 30, No. 2, 2005, pp. 46–83; 'Power Shifts and Escalation', *International Security*, Vol. 32, No. 3, 2007/08, pp. 44–83.

³⁹ Robert Jervis, *Perception and Misperception in International Politics*, Princeton, N. J.: Princeton University Press, 1978, pp. 58–113.

of the maritime context.⁴⁰ It emphasizes the US's relations with its allies as an insurance policy against China failing to live up to the American vision of China as a 'global stakeholder' (measured by Chinese contributions to regional stability and cooperation with the US agenda in global affairs). If true, it would imply a marginalization of the autonomy and efficacy of secondary powers in seeking alternative means of conflict resolution, leading to a greater likelihood of militarization of conflict.

Second, have new power asymmetries and sources of insecurity reconfigured priorities in foreign relations in Asia? Have policy-makers genuinely accepted the rising importance of non-traditional security issues relative to traditional ones – which could allow for issues amenable to cooperation to be elevated to ministerial agendas, and for non-state and subnational stakeholders to be engaged? Or is there a 'realist ceiling' that prevents cooperation on non-traditional security from taking hold? Do we see a return to the 'gunboat diplomacy' of the late 19th century undoing the progress of the 1990s on human security and the nascent movement towards collective security?⁴¹

Do we see a return to the 'gunboat diplomacy' of the late 19th century undoing the progress of the 1990s on human security and the nascent movement towards collective security?

Third, do we detect significant evolutions in the national strategic cultures of the US, China and other Asian countries, which would significantly affect the threshold for military actions in response to the security dilemma? Setting aside the US 'pivot' and the debatable shift in US naval strategies, Chinese and Japanese military doctrines have undergone significant changes since the end of the Cold War. In China, the People's Liberation Army (PLA) has clamoured for enhanced naval capabilities, justified by the change in military doctrine initiated by former president Jiang Zemin, and developed under his successor, Hu Jintao. This push has been backed by double-digit annual increases in defence expenditure. Instead of a land-centric focus on all-out foreign invasion, the PLA has been retooled for high-tech, multifunctional warfare.⁴²

The US 'pivot' to Asia has supplied Chinese officials and scholars with ample rhetorical ammunition to push for accelerated naval modernization. As a consequence, China has designed a modernization strategy to undermine the US's power-projection capabilities in the region. In symbolic terms, the launch of one large aircraft carrier signifies a threat to the American defensive position. According to Harry Kazianis: 'Beijing's anti-access/area-denial strategy (A2/AD)[...] if fully deployed could have tremendous ramifications for U.S. defensive doctrine in the Asia-Pacific, the Air-Sea Battle concept, and beyond.'⁴³ China's increasing maritime capabilities limit US options, even if China is incapable of defeating the US in a maritime or continental conflict. Indeed, US force planners have based their own plans on China's growing capabilities, even if China's intentions are benign and purely defensive.

⁴⁰ Zhu Feng, 'Chinese Perspectives on the U.S. Role in Southeast Asia', *Southeast Asian Affairs*, Volume 2013, pp. 51–60.

⁴¹ This term has cropped up repeatedly in recent characterizations of Chinese actions, e.g. Mark Landler, 'A New Era of Gunboat Diplomacy', *New York Times Sunday Review*, 12 November 2011; Michael Richardson, 'China's gunboat diplomacy', *Japan Times*, 30 July 2012; Matthew R. Costlow, 'Gunboat Diplomacy in the South China Sea', US Air Force Academy, January 2013, <http://www.usafa.edu/df/inss/Research%20Papers/2012/Costlow%20South%20China%20Sea%20%2822%20Jan%202013%29.pdf>.

⁴² Li Mingjiang, 'The People's Liberation Army and China's Smart Power Quandary in Southeast Asia', *Journal of Strategic Studies*, Volume 38, Issue 3, 2015, pp. 359–382.

⁴³ Harry Kazianis, 'China's Underwater A2/AD Strategy', *The Diplomat*, 6 May 2014. Available online at <http://thediplomat.com/2014/05/chinas-underwater-a2ad-strategy/> (last accessed 12 May 2015).

Other American security analysts have argued that China has developed a strategy of achieving domination in phases. In phase one (2000–10), it was to control the waters within the First Island Chain that links Okinawa, Taiwan and the Philippines. In phase two (2010–20), China would control waters within the Second Chain that links the Ogasawara island chain, Guam and Indonesia. In phase three (2020–40), China would end US military dominance in the Pacific and Indian oceans.⁴⁴

Chinese naval strategic development suggests consistent themes. First, while the primacy of territorial integrity and the army's priority in resource allocation have never been in doubt, maritime security has been repeatedly recognized (if not always appropriately funded). But a booming economy has enabled a number of long-held naval aspirations to be fulfilled, partially through local development, but also through interaction with foreign navies, purchases of foreign equipment and reverse engineering. Second, increasing naval capability has been accompanied by greater political will to employ naval force in pursuit of national security priorities, even against superior forces. China did not take the traditional route of a weak state by pursuing regional military alliances, nor did it adopt the Cold War superpower approach of a zero-sum competition for loyalty among neighbouring states. China has taken a largely autonomous route to regional primacy, partly in recognition of the unresolved disputes with many of its South China Sea neighbours often disparagingly characterized as 'smaller countries'.

Today, in the absence of major threats to China's land borders, the government's external security concerns are primarily maritime ones: containing and recovering Taiwan, and winning sovereignty disputes and resource extraction rights. Even the arguably greater security threat, that of internal instability, has a major maritime strand since the economic growth deemed necessary to offset perceived political and social deficits is hugely dependent on the import of raw materials and the export of manufactures via constricted trade routes vulnerable to interdiction. Although piracy has been an enduring problem in Southeast Asia, and in the Malacca Straits in particular, it was the growth of piracy off the coast of Somalia that finally drew China into recognizing the benefits of military engagement as a means of protecting trade, enhancing the PLA Navy's image and creating opportunities for bilateral exchanges.⁴⁵

If China remains bound by a Cold War mentality in pursuit of anti-hegemonic objectives, one would expect flexibility in its dealings with 'secondary powers' – as its foreign policy in this area would be tactically oriented so as to gain information and exploit divisions within the US alliance.⁴⁶ If that is the case, China's recent cooperation with Japan in anti-piracy actions should not be interpreted as a willingness to compromise over maritime claims. Nor would it signal that China has learnt from the negative regional feedback it received as a result of its assertive actions in the East and South China seas. In fact, it would be more plausible to evaluate this cooperative venture as an exercise in information-gathering, image-enhancement and capacity-testing for China's military power projection.⁴⁷ Fundamentally, if political and military leaders in Beijing see the actions of Japan,

⁴⁴ Stacy A Pedrozo, 'China's Active Defense Strategy and its Regional Impact', Economic & Security Review Commission, Council on Foreign Relations, 27 January 2011, p. 2.

⁴⁵ See Andrew Erickson's numerous analyses, <http://www.andrewerickson.com/2014/11/chinas-blue-soft-power-antipiracy-engagement-and-image-enhancement/>. For the implications of Chinese doctrine for non-intervention, see Allen Carlson, 'More Than Just Saying No: China's Evolving Approach to Sovereignty and Intervention', in Alastair Iain Johnston and Robert S. Ross (eds), *New Directions in the Study of China's Foreign Policy*, Stanford, 2006; Bates Gill and James Reilly, 'Sovereignty, Intervention, and Peacekeeping: The View from Beijing', *Survival*, 42:3, Autumn 2000, pp. 41–59; P. K. Lee, G. Chan, L.-H. Chan, 'China in Darfur: humanitarian rule-maker or rule-taker?', *Review of International Studies*, 38:2, April 2012.

⁴⁶ Kun-Chin Lin, 'Rhetoric or Vision? Chinese Responses to U.S. Unilateralism', in V.K. Aggarwal, M.G. Koo, S. Lee, C. I. Moon (eds), *Northeast Asia: Ripe for Integration?*, Berlin: SpringerVerlag, 2008.

⁴⁷ Andrew S. Erickson and Austin M. Strange, 'No Substitute for Experience: Chinese Antipiracy Operations in the Gulf of Aden', *China Maritime Studies*, No. 10, November 2013, US Naval War College. Also see an update by Erickson, <http://www.andrewerickson.com/2014/11/chinas-blue-soft-power-antipiracy-engagement-and-image-enhancement/>.

Taiwan, the Philippines and Vietnam as an attempt, in coordination with American bases, to encircle China, then the aim of the latter's maritime claims would be to secure territory in support of US–China bipolarity in the Asia-Pacific power landscape. There would be no room for negotiation then.

Recent military development appears to be putting China on a collision course with Japan, the Philippines, Vietnam and other Asian countries that are pursuing military modernization. In July 2014 the Japanese cabinet, enacting Prime Minister Abe's doctrine of 'proactive pacifism', passed a decision on collective self-defence (CSD) that may turn out to be the most crucial change in the country's military doctrine since the Second World War.⁴⁸ It allows Japanese forces to be involved in CSD activities with other states when the security of Japan (broadly defined to include the security of its citizens and access to resources, as well as territory) is threatened. The new doctrine is controversial, representing 'a sharp departure from the postwar political consensus, codified in Article 9 of the Japanese constitution, which explicitly limits Japan's use of military force to the defence of its sovereign territory and its people' and does not allow it to engage in offensive military activity.⁴⁹

CSD is not primarily intended to strengthen US–Japan defence cooperation, which is also happening independently through revised security guidelines. As argued by John Swenson-Wright, '[i]t will also open the door potentially to more active defence co-operation with other countries in the Asia-Pacific region, such as Australia and the Philippines'.⁵⁰ Predictably, Chinese officials and media have been quick to condemn the decision on CSD, along with other arguably provocative political acts such as Japanese politicians' continuing visits to the Yasukuni Shrine in Tokyo, as evidence of rising Japanese nationalism with echoes of imperial Japan's militaristic past.

⁴⁸ While politicians downplayed the potential operational changes, this decision signals the Japanese claim to a 'normal state' identity. Kawasaki Akira and Céline Nahory, 'Japan's Decision on Collective Self-Defense in Context', *The Diplomat*, 3 October 2014.

⁴⁹ John Swenson-Wright, 'What Japan's Military Shift Means', BBC News, 2 July 2014. Available online at <http://www.bbc.co.uk/news/world-asia-28122791> (last accessed 12 May 2015).

⁵⁰ *Ibid.*

Changing Chinese Identity and Interests Driving Maritime Claims

Commentators have often spoken of the increasing foreign policy assertiveness of Chinese leaders, as shown by the country's active sovereignty and territorial claims as well as its quasi-military manoeuvres in the East China and South China seas.⁵¹ Whether or not these actions, taken together, amount to a trend of increasing militarism is debatable.⁵² But it is clear that Chinese officials and the public alike appear to favour political/rhetorical brinkmanship and unilateral actions, despite the risk that such approaches will inject significant uncertainty into the politics of Asian maritime affairs. History and culture are important factors in underpinning domestic positions, which in turn can be used to define the national interest in domestic political and bureaucratic processes.⁵³

Reinforced by a historical sense of entitlement, China's leaders and populace have gained increasing confidence in the country's economic clout and the centrality of its role in global governance.⁵⁴ As a result, the attitude underlying Chinese foreign policy has shifted from self-restraint to one of patronizing smaller powers in the region. Much has been made of the notion of the 'G2', a grouping through which the US and China might settle Asian geopolitical affairs between themselves.⁵⁵

Predictably, this has provoked negative reactions from the Philippines and Vietnam. However, surveys show that Chinese public opinion tends to view compromise with another foreign power as an unacceptable sign of weakness. If China's leadership is seen as 'settling' over contentious regional issues, rather than perpetuating a hard-line stance, it risks inflaming public opinion and undermining its domestic legitimacy.⁵⁶ If, by contrast, the Chinese leadership chooses to play the role of 'spoiler' in US-mediated institutional channels, it may boost its popularity at home.⁵⁷ For now China's leaders, at the helm of what remains an authoritarian state, enjoy relative autonomy *vis-à-vis* social interests. This limits the impact of public opinion on foreign policy. To a certain extent, none the less, popular attitudes make ostensibly hard-line positions more likely on many issues.

⁵¹ Michael D. Swaine, 'Perceptions of an Assertive China', *China Leadership Monitor*, No. 32 (May 2010), p. 10; M. Taylor Fravel, 'China's Strategy in the South China Sea'; Michael D. Swaine and M. Taylor Fravel, 'China's Assertive Behavior, Part Two: The Maritime Periphery', *China Leadership Monitor*, No. 35 (Summer 2011).

⁵² Michael Yahuda, 'China's New Assertiveness in the South China Sea', *Journal of Contemporary China*, Vol. 22, Issue 81, 2013, pp. 446–459; A. J. Johnston, 'How New and Assertive Is China's New Assertiveness?', *International Security*, 37:4, 2013.

⁵³ Ja Ian Chong, 'Popular narratives versus Chinese history: Implications for understanding an emergent China', *European Journal of International Relations*, 0(0) 1–26; Jean-Marc Blanchard and Kun-Chin Lin, 'Contemplating Chinese Foreign Policy: Approaches to the Use of Historical Analysis', in 'Special Issue: Chinese Foreign Policy: The Quest for Power, Security, and Status', *Pacific Focus*, 28(2): 145–169, August 2013.

⁵⁴ William Callahan, *China: The Pessoptimistic Nation*, Oxford, 2012; Susan L. Shirk, *China: Fragile Superpower*, Oxford, 2008; Alastair Iain Johnston, *Social States: China in International Institutions, 1980–2000*, Princeton, 2007; Mingjiang Li (ed.), *China Joins Global Governance*, Lexington Books, 2012.

⁵⁵ Even Henry Kissinger touted this view in a recent visit to Beijing, 'When Kissinger met Xi: "entire world" a topic for China, US', AFP, 16 March 2015.

⁵⁶ Political pressures of popular nationalism built from 2006 to 2011, as activists from China, Taiwan and Hong Kong on the one hand, and Japan on the other disembarked on disputed insular features. There were large-scale public protests in all four countries/territories, e.g. 'China struggles to curb anger as protesters denounce Japan', Reuters, 16 September 2012. For a summary of Chinese and Japanese attitude surveys showing animosities in 2014, see James J. Przystup, 'Japan-China Relations: A Handshake at the Summit', *Comparative Connections*, January 2015, http://ccsis.org/files/publication/1403qjapan_china.pdf.

⁵⁷ Robert S. Ross, 'The Domestic Sources of China's "Assertive Diplomacy," 2009–10', in Rosemary Foot (ed.), *China Across the Divide*, Oxford University Press, 2013.

That said, the government's uncompromising postures mask a considerable pluralism of internal opinions, expressed by influential academics.⁵⁸ Reflecting cleavages in world views among the Chinese elite, and variations along the political/ideological spectrum, the range of influential voices in China encompasses anti-imperialist leftists, nationalists dwelling on China's 'century of humiliation', realists arguing that China's re-emergence in the global theatre has reduced the need for cooperation, internationalists hoping for rational solutions supporting the welfare of the people, and liberals blaming aggression abroad on inadequate democratic reforms at home. Chinese policy-makers seek to balance the interests underlying these contending perspectives, fully cognizant that divisive domestic politics could spark conflict escalation.⁵⁹

One only needs to look at Japanese politics for a cautionary tale. In 2012, to pre-empt the nationalist and outspoken governor of Tokyo, Shintaro Ishihara, from acquiring three islands in the disputed Senkaku/Diaoyu chain from a private Japanese owner, the then prime minister, Yoshihiko Noda, had to 'nationalize' the islands. The purchase was an attempt to defuse a potentially explosive alteration of the status quo, but given the diplomatic and military complications it caused, the original intent hardly mattered.

China sees the retaking of rocks and islets – whether through forcible seizure or land reclamation – as defending the status quo of its historical rights and titles. It thus depicts the Philippines and Vietnam as revisionist in challenging China's regional leadership.

Given the complexities in its domestic politics and national identity, China's advancement of maritime claims transcends the typical 'status quo versus revisionist' characterization of a state's orientation towards the global order.⁶⁰ China may accept US global hegemony in naval power yet at the same time adopt a revisionist attitude towards the law of the sea – for example, questioning its jurisdiction and ignoring its decisions, or alternatively using UNCLOS against US allies. China sees the retaking of rocks and islets – whether through forcible seizure or land reclamation – as defending the status quo of its historical rights and titles. It thus depicts the Philippines and Vietnam as revisionist in challenging China's regional leadership. It is worth keeping in mind that in Chinese public discourse, maritime claims have persisted to the present day even as land territorial claims have all but disappeared.⁶¹ As a result, recent claims are not viewed as new, but rather as asserting China's unfulfilled status quo rights.

China's complex and evolving national self-image is but one case among many. Claims to sovereignty in the region draw on diverse cultural and psychological underpinnings, which encourage jostling over the details of history. Thus China and its neighbours compile ancient maps, defunct treaties with ambiguous language, occasional official pronouncements, and sympathetic references by mariners and scholars to advance competing historical claims over zones in which they have had marginal prior activities or control over long periods of history. Central to this politicization of history

⁵⁸ Yan Xuetong, 'From Keeping a Low Profile to Striving for Achievement', *The Chinese Journal of International Politics*, 7:2 (Summer 2014); Zheng Bijian, 'China's "Peaceful Rise" to Great-Power Status', *Foreign Affairs* (Sep–Oct. 2005), 18–24; Yong Deng, *China's Struggle for Status: The Realignment of International Relations*, Cambridge University Press, 2008.

⁵⁹ Li Mingjiang sees only a broad consensus among Chinese analyses on a South China Sea policy of 'non-confrontational assertiveness', 'Chinese Debates of South China Sea Policy: Implications for Future Developments', RSIS Working Papers No. 239, 17 May 2012. For a comparable historical episode, see John W. Garver, 'China's Push through the South China Sea: the Interaction of Bureaucratic and National Interests', *The China Quarterly*, 132 (1992), pp. 999–1028.

⁶⁰ Alastair Iain Johnston, 'Is China a Status Quo Power?', *International Security*, 27:4 (Spring 2003).

⁶¹ Allen Carlson, *Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era*, Stanford, California: Stanford University Press, 2005, p. 47.

is the anachronistic application by current governments of the attributes of Westphalian nation states, interstate treaties and norms of *mare liberum*. This ignores the true historical nature of Asian suzerainties of all types, which typically lacked essential capabilities for regulating the movement of goods and people overseas, combating piracy and organizing naval forces – functions that were typically left to private actors.⁶²

The post-colonial era brought a political window of opportunity for introducing and establishing European-type sovereignty claims. A cohort of sophisticated, Western-trained diplomats and legalists in Asian countries worked hard to negotiate political transitions with Western powers. At this critical historical moment, numerous maritime territorial claims were not explicitly addressed in crucial handover treaties, mis-transcribed in official documents, or poorly disseminated and responded to by potentially competing claimants. This led to a legal morass that has hampered the application of UNCLOS in Asia today. The imperative to conform to a Western legal regime further took hold in the aftermath of the Cold War, as influential American and Western voices called for binding multilateral political and institutional forces to discipline rising powers.⁶³

Furthermore, the official focus on rare maps, diplomatic statements and the like categorically neglects the historical contributions of non-state stakeholders in maritime governance. Indo-Pacific seas have been populated by Chinese migrants, Malay trading and commercial networks, European trading companies, colonial governors, ship financiers and pirates, etc. – all have contributed far more to maritime governance than actual governments.⁶⁴ Generating an accurate picture of their current counterparts in this story would help policy-makers to understand the economic interests and social realities that would be affected if diplomacy continues to be driven by strategic and military considerations. It may well be that transnational shipping, insurance and trading companies do not care much about interstate disputes, but that they have a clear interest in regulatory harmonization on issues such as environmental protection in ports and marine zones. Such areas of capacity-building could serve as starting points for depoliticized interstate cooperation.

Regional history also offers political and psychological capital for promoting cooperation. For example, shared experiences of imperialism and misery following several major geopolitical upheavals – from the late 19th century to the post-Second World War era – have established a region-wide consensus on respect for sovereignty among the ASEAN states. Similarly, recalling the trauma of encountering formidable Western navies and the clash of superpowers during the Cold War could encourage Asian governments to imagine and invest in a cooperative governance structure. But it would be a tough political choice for leaders in the region to view disruptions of Asian sovereignties in the past as justification for flexible diplomacy, especially when it is often easier (and politically more expedient) to dwell on memories of national humiliation and ethnic strife. The more enlightened choice certainly has not been forthcoming since the turn of the 21st century; instead, states have primarily used historical and identity discourses against their neighbours, rather than in the service of domestic reconciliation and diplomatic cooperation.

⁶² Chung-In Moon and Chaesung Chun, 'Sovereignty: Dominance of the Westphalian Concept and Implications for Regional Security', in Muthiah Alagappa (ed.), *Asian Security Order: Instrumental and Normative Features*, Stanford, 2003.

⁶³ Amrita Narlikar (ed.), *International Affairs*, Special Issue entitled 'Negotiating the Rise of New Powers', 89: 3, May 2013.

⁶⁴ Leonard Blussé, 'No Boats to China. The Dutch East India Company and the Changing Pattern of the China Sea Trade, 1635–1690', *Modern Asian Studies*, Volume 30, Issue 01, February 1996, pp 51–76; François Gipouloux (ed.), *The Asian Mediterranean: Port Cities and Trading Networks in China, Japan and South Asia, 13th–21st Century*, Edward Elgar, 2011.

Reassessing the Role of Regional Institutions

At present, there is no domestic elite or scholarly consensus within China on the characteristics of a regional architecture that would best harmonize the country's commitment to economic/military development and its preference for a stable regional security environment.⁶⁵ Similar concerns regarding the limits of regional security arrangements have been expressed by Japan, the US, the Philippines, Vietnam and other countries engaged in military and strategic modernization.

Fundamentally, Asian sovereignty and territorial claims appear not only ill suited to regional cooperation, but also irreconcilable with international legal regimes. Each party to a given dispute is able to provide justifications for a particular position that appear convincing and persuasive to itself, but not to its counterparts. Aside from a few promising precedents in maritime territorial delineation (discussed in the section on international maritime law), the region is politically resistant to the establishment of international arbitration as a norm. In promoting UNCLOS, the US and Japan might have instilled caution in China and possibly other Asian countries regarding instrumentality and power implications in the domain of international law. Given the current legal and political impasse, what is the role of regional agreements in dispute settlement and joint governance of an open sea? More to the point, could such agreements sidestep existing sovereignty and territorial disputes?

It is often noted that Asian integration and institutionalization have produced a complex but shallow form of regionalism – based on pragmatism in addressing the technical needs of the majority states while remaining sensitive to sovereignty issues, and all based on voluntary implementation.⁶⁶ The ideal situation would be to convince states to cooperate in managing maritime disputes with a view to realizing tangible and relatively equitable benefits such as resource development, environmental protection and control of high-seas crimes. A few bilateral and multilateral treaties in the 1990s and early 2000s – such as Sino-Japanese agreements on joint development of resources (2008) and fisheries (1997) – have been put forward as the potential basis for further cooperation.⁶⁷ But no regional or bilateral agreements in Asia have required a pooling of sovereignty (i.e. supranationalism) or rule-based and institutionally enforced commitments that typify Europe's security order.⁶⁸

There are numerous issues on which joint provisions could produce shared benefits, and ample opportunities for action in a diversity of forums, many of which centre on ASEAN.⁶⁹ But China is an obstacle. While the country has espoused the principle of peaceful settlement of disputes

⁶⁵ David Shambaugh, 'China Engages Asia: Reshaping the Regional Order', *International Security*, 29:3 (Winter 2005); Nicholas Khoo, Michael L. R. Smith and David Shambaugh, 'Correspondence: China Engages Asia? Caveat Lector', *International Security*, 30:1 (Summer 2005); Ian Storey, 'China's Bilateral and Multilateral Diplomacy in the South China Sea', in Patrick M. Cronin (ed.), *Cooperation from Strength: the United States, China and the South China Sea*, Center for a New American Security, January 2012.

⁶⁶ Christopher Hemmer and Peter J. Katzenstein, 'Why Is There No NATO in Asia? Collective Identity, Regionalism, and the Origins of Multilateralism', *International Organization*, 56:3 (Summer 2002); Amitav Acharya, *Constructing a security community in Southeast Asia: ASEAN and the problem of regional order*, Routledge, 2014.

⁶⁷ Zhang Xinjun, 'Why the 2008 Sino-Japanese Consensus on the East China Sea Has Stalled: Good Faith and Reciprocity Considerations in Interim Measures Pending a Maritime Boundary Delimitation', *Ocean Development & International Law*, Volume 42, Issue 1–2, 2011: 53–65; James Manicom, 'Sino-Japanese Cooperation in the East China Sea: Limitations and Prospects', *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, Volume 30, Number 3, December 2008, pp. 455–478; Suisheng Zhao, 'China's Global Search for Energy Security: cooperation and competition in Asia-Pacific', *Journal of Contemporary China*, Volume 17, Issue 55, 2008, pp. 207–227; Zou Keyuan and Wu Shicun (eds), *Maritime Security in the South China Sea: Regional Implications and International Cooperation*, Ashgate, 2013.

⁶⁸ Peter J. Katzenstein, *A World of Regions: Asia and Europe in the American Imperium*, Ithaca, N.Y.: Cornell University Press, 2005, p. 36.

⁶⁹ Mainly, the expanded ASEAN Maritime Forum (EAMF); the ARF Inter-Sessional Meeting (ISM) on Maritime Security; and the Maritime Security Expert Working Group (MSEWG) established by the ADMM Plus.

enshrined in UNCLOS and the Declaration of the Conduct of Parties in the South China Sea (2002), its priority until very recently has been to keep South China Sea disputes off the agenda in meetings of multilateral organizations (such as the East Asian Summit, ASEAN Regional Forum and ASEAN Summit). The likely reason is a fear of loss of control over the agenda and misgivings about the potential influence of non-claimant interests allied to the US.

These concerns reinforce Chinese foreign policy's traditional preference for bilateralism. In meetings with Chinese think-tanks and officials, the repeated message is that 'there is no real problem other than the one that outsiders are artificially creating to pursue agendas of their own'.⁷⁰ It was China's pressure, through bilateral diplomatic channels, that was suspected to have caused the failure of ASEAN foreign ministers to issue a joint communiqué after a summit in July 2012 – the first such failure in ASEAN's history. Participants were unable to agree on a text that included mention of the South China Sea disputes. However, as demonstrated in the 2012–14 Shangri-La Dialogues and ASEAN Regional Forum meetings, there might be a limit to China's ability to ignore regional preferences. During these meetings, China had to repeatedly make counter-offers on a proposed regional Code of Conduct, after failing to dismiss the regional proposal altogether.

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A useful starting point for enabling regional cooperation to sidestep sovereignty and security debates could be the recent investment by Asian countries in various infrastructure-related financial institutions. China has injected initial finance into the US\$100 billion Asian Infrastructure Investment Bank (AIIB), intended as an alternative source of project funding to international financial institutions such as the World Bank and Asian Development Bank (which already have members from Southeast Asian and European countries). The AIIB initiative builds on ongoing and past schemes, by China and ASEAN states, targeting growth sectors of importance for regional economic interdependence and competitiveness. Projects have covered areas such as transport and poverty alleviation, and have typically been financed by vast government expenditure or through public-private partnerships. Examples have included the ASEAN Infrastructure Fund, the China–ASEAN Investment Cooperation Fund, the Asian Highway System and Trans-Asia Railway networks, and the US\$10 billion China–ASEAN Fund on Investment Cooperation that supported infrastructure development in the aftermath of the 2008 global financial crisis.

Critics are quick to raise suspicions about the strategic calculus behind China's leadership and financial generosity on such projects, which many interpret as evidence of a region-wide strategy to project network power. This view is further supported by China's commitment of US\$40 billion to a 'Silk Road infrastructure fund' to strengthen the country's connections with Central and South Asia. Such initiatives could logically also cover maritime infrastructure.

New regional organizations also could be developed to promote maritime cooperation and reduce the risk of conflict. For example, a science and public policy institution, similar perhaps to the Stockholm International Peace Research Institute (SIPRI), could develop regional reviews on issues such as preventative diplomacy in potential areas of conflict and sound geological

⁷⁰ Sara Raine and Christian Le Miere, *Regional Disorder: The South China Sea Disputes*, International Institute for Strategic Studies, The Adelphi Series, March 14, 2013, p. 60.

arguments for joint resource exploration.⁷¹ The advantages of such bodies would include their resilience to political volatility, both between and within countries. Once in existence, they could continue to provide basic research, dialogue and capacity-building for member states even if 'Track I' initiatives such as the Shangri-La Dialogue – run by the International Institute for Strategic Studies – run into political difficulty.

Furthermore, critical issues such as high-seas crimes, disaster relief and the proliferation of nuclear and biochemical materials remain largely unaddressed in current discussions. A key part of the problem is the prevalence of underdeveloped bureaucratic capacities in individual states and regional bodies; and a lack of coherent and well-functioning models of national coordination on traditional and non-traditional security issues. China has recently elevated the status of its central State Oceanic Administration, but at local levels the regulation of maritime zones and port authorities remains chaotic.

The history of EU institutionalism on maritime governance emphasizes the importance of the development of a set of well-articulated issue linkages, procedural representation of domestic and transnational interests, relevant scientific diagnoses and applications, and policy solutions that could be coordinated across national regulators. These needs involve two basic questions of institutional design. Firstly, who should lead joint actions in the short term? Should it be those with stronger existing capabilities? Secondly, in the longer term, how should states deliberately move beyond institutions based on the conception of continental territorial control? For example, nuclear non-proliferation is a promising platform for cooperation in the South China Sea, and has a basis in the Proliferation Security Initiative. The South China Sea and East China Sea are home to a mix of actors with nuclear ambitions and capabilities. Some, such as China, have nuclear weapons. Some have advanced civilian military industries. And others are actively seeking more energy resources and a closer energy relationship with the US. Vietnam, for example, is seeking a nuclear agreement similar to the contentious US–India civilian nuclear deal of 2006–08; and South Korea seeks reprocessing technology. How persuasive would Japan be in leading a regional commitment to non-proliferation?

⁷¹ Sam Bateman suggested Brunei as the location for an Asian Peace Research Institute, having the advantage of being relatively neutral and well financed for supporting research. 'Solving the "Wicked Problems" of Maritime Security: Are Regional Forums up to the Task?', *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, Volume 33, Number 1, April 2011, pp. 1–28.

On the Cusp of Irrelevance? Applying International Maritime Law

Asia and the West share common economic interests and political objectives in desiring stability, peace and prosperity in the region. Both broadly accept a vision of an Asia-Pacific that supports regional powers' aspirations to be responsible geopolitical players; and that promotes multilateralism and international legal norms, such as UNCLOS. However, the principles of UNCLOS can be problematic, as they have largely been generated outside the Asian context. UNCLOS lacks sensitivity towards the region's historical inter-sovereign and tributary relations, and ignores the traumatic colonial experiences of most Asian powers.

Without recognizing the underlying economic interests and social realities of maritime governance, as well as the complex historical circumstances, the centrality of UNCLOS in settling sovereignty and territorial disputes is insufficient as a means for adjudicating contending national interests.⁷² Over the past four decades, the International Tribunal for the Law of the Sea (ITLOS) – which is arbitrating on the Philippines' case against China, despite the latter's refusal to participate – has encountered difficulties in adjudicating similar disputes involving historical titles and rights in other regions.⁷³

At present, Asian claimants do not appear to be trying to create new regimes through their state practices. Rather, they are challenging differing interpretations and applications of the law.⁷⁴ Notwithstanding dismissive statements on all sides, most national claims are not illegal or unfounded under international maritime law.⁷⁵ The development of the international maritime governance regime centred on UNCLOS and its supportive institutions has complicated the nature of disputes by adding three dimensions to the simple issue of ownership: 1) what territory can be claimed; 2) who has the right to claim it; and 3) how sovereignty can be exercised or what sort of sovereign rights can be generated by ownership of a given piece of territory. The central problem of UNCLOS is that it does not deal with territorial sovereignty disputes, only maritime zone delimitation.⁷⁶ It allocates maritime rights and jurisdictions on the basis of defined land rights. However, Asian territorial disputes centre precisely on the question of the rightful ownership and definition of the rocks and islands involved. The Philippines has cleverly sidestepped this limit in its arbitration case against China by asking the tribunal whether its EEZ, as guaranteed under UNCLOS, can be nullified by China's '9-dash line'. Beckman and Scofield (2014) have argued that even if ITLOS rules against Chinese claims, there most likely will remain large overlaps in maritime claims between China and Philippines. The International Court of Justice (ICJ), in contrast, has jurisdiction over territorial claims but needs all parties in the dispute to participate.

⁷² Wu Shicun and Zou Keyuan (eds), *Securing the Safety of Navigation in East Asia: Legal and Political Dimensions*, Elsevier 2013.

⁷³ Philippe Sands, 'ITLOS: An International Lawyer's Perspective', *Philippine Law Journal*, Vol. 75, p. 455 (2000–01); Ruth Mackenzie and Philippe Sands, 'International Courts and Tribunals and the Independence of the International Judge', *Harvard International Law Journal*, Vol. 44, No. 1, p. 271 (2003).

⁷⁴ Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea*, New York: Routledge, 2012; Rosalyn Higgins and Loretta Malintoppi, 'Stepping out of the Politics – Legal Solutions to Maritime Disputes in Asia', Proceedings of the Annual Meeting – American Society of International Law, Vol. 107, Annual 2013.

⁷⁵ A basic distinction should be made between the East China Sea and the South China Sea. The Japanese claim to maritime zones around the Senkaku/Diaoyu Islands would directly encroach on China's continental shelf claims, which is a more serious issue than the overlapping claims of EEZs in the South China Sea. Hence Japan has to date bluntly refused to acknowledge the existence of a dispute, whereas Southeast Asian claimants are openly contesting each other's claims. Japan has also relied on the argument of effective control, which is irrelevant if not contradictory to the spirit of UNCLOS.

⁷⁶ S. Jayakumar, Tommy Koh, Robert Beckman (eds), *The South China Sea Disputes and Law Of The Sea*, Edward Elgar, 2014.

More fundamentally, delimitation is not a geometric exercise: relevant circumstances, equitable principles, and considerations of history and country size have to be factored into UNCLOS tribunal and ICJ decisions.

Two additional cases of maritime delimitation in Asia offer promise: the China–Vietnam dispute over the Tonkin Gulf (or Beibu); and the Malaysia–Singapore dispute over Pedra Banca (or Batu Puteh), Middle Rocks and South Ledge.⁷⁷ Both territorial disputes started in the 1970s, and were resolved in the 2000s. The Tonkin Gulf dispute was resolved via bilateral negotiations between China and Vietnam covering territorial sea, the EEZ and continental shelf delimitation, and came with a bonus agreement on fishery cooperation. The negotiations produced the first maritime boundary agreement for China.⁷⁸ The Pedra Banca dispute went to the ICJ, which ruled in Singapore’s favour.⁷⁹ All the parties involved accepted the results. Perhaps a deeper examination of the precedents set by the Tonkin Gulf and Pedra Branca cases can help clarify the circumstances that steered these disputes towards formal settlement, while other disputes have been left unresolved or settled through force.

Western legal scholars have often pointed out that the Chinese government has yet to fully specify its claims under the ‘9-dash line’. It does not make separate and explicit its territorial claims versus those in respect of maritime zones; nor does it offer less encompassing claims for Chinese sovereign waters based on internationally accepted principles. It may be that China is merely playing a delaying strategy to extend its claims while it builds up its military capabilities. However, at least in maritime law, China has been continually exploring the legal framing of its claims since the 1990s, in line with the development of international maritime law.⁸⁰ Yet these efforts have resulted in minimal convergence of legal norms, and nowhere near a consistent application and development of rules and procedures around these norms by regional powers. This is in contrast to other issues, for which similar processes have resulted in procedural compliance from China, and sometimes even in more meaningful engagement and self-restraint of its realist impulses.⁸¹

In this context, we argue that a critical point of institutional development has now been reached, at which China and other Asian powers will decide whether or not to forgo international legal options in settling claims in favour of bilateral negotiations or more drastic military options. If UNCLOS tribunals are unable to provide legal solutions that fit the Asian context, there is a risk that UNCLOS will become ineffective and lose legitimacy among regional powers. The Arbitral Tribunal in The Hague is currently considering the jurisdiction aspect and merits of the Philippines case, and may be pragmatically inclined to allow the Chinese government to submit supporting documents without backing down from its 2006 proclamation that UNCLOS does not cover sea boundary limitations based on China’s historic claims.⁸²

Unlike the free-trade principles of GATT and the WTO, the international maritime laws had been established only recently as a recourse for adjudicating maritime disputes in Asia. Although UNCLOS was concluded in 1982, it did not take effect in Asia until most countries had ratified the treaty over a decade later. It is interesting to note that Malaysia and Brunei, which based their South China

⁷⁷ The Malaysia–Indonesia maritime dispute over Sipadan–Ligitan is another possible case to examine. As in the Pedra Branca case, both sides agreed to refer the case to the ICJ. The ICJ ruled in 2002 that Malaysia possessed sovereignty over the islands on the grounds of its (and before it, the British colonial rulers’) display of ‘administrative assertions of authority’ from the 1940s.

⁷⁸ Guifang Xue, *China and International Fisheries Law and Policy*, Martinus Nijhoff Publishers, 2005.

⁷⁹ S. Jayakumar and T. Koh, *Pedra Branca: The Road to the World Court*, National University of Singapore Press, 2009.

⁸⁰ Wu Shicun, *Solving Disputes for Regional Cooperation and Development in the South China Sea: A Chinese Perspective*, Elsevier, 2013.

⁸¹ Ann Kent, *Beyond Compliance: China, International Organizations, and Global Security*, Stanford, 2010.

⁸² Ellen T. Tordesillas and Tessa Jamandre, ‘Philippines–China dispute to continue despite UN tribunal case’, PHILstar.com, 6 July 2015. Richard Javad Heydarian, ‘China vs. the Philippines: Will International Law Resolve South China Sea Disputes?’, *Huffington Post*, 9 July 2015, http://www.huffingtonpost.com/richard-javad-heydarian/china-vs-the-philippines-_b_7766406.html.

Sea claims solely on UNCLOS, without resort to any historical claims, have been the most reticent in promoting their respective national claims during recent disputes. As UNCLOS has, by and large, rejected ‘historically based’ claims while narrowly interpreting historical *titles* in non-Asian precedents, China would be emboldened to challenge any judgment that ITLOS might make on the Philippines–China arbitration case.⁸³ If the decision were against Chinese claims, China would likely continue to claim that ITLOS lacks jurisdiction. It would further contend that prior Japanese and Philippine occupations of the disputed islands were not legally justified to start with, given complications in the post-Second World War and post-colonial handover procedures. In any case, there is no clear rule for allocating sovereignty and land rights, and thus an EEZ cannot be established.⁸⁴

One should not underestimate the possibility of using bilateral agreements and codes of conduct as stopgap measures to build confidence in specific areas of cooperation.

Might China practically opt out of UNCLOS, with the assertion that historical claims in the East and South China seas are beyond the jurisdiction of UNCLOS? Would the effect on UNCLOS be similar to the aftermath of the US’s refusal to ratify several major international conventions on account of domestic political concerns? Without a universally accepted ‘constitution of the sea’ to externalize dispute settlements, would countries renew their efforts in bilateral and multilateral negotiations? Regional solidarity would be seriously undermined if non-claimant states were forced to choose a side in such disputes. Indeed, to date ASEAN countries have been wary of multilateralizing the disputes between Vietnam, the Philippines and China, partly in response to Beijing’s warnings but also out of fear of testing members’ collective commitments to existing agreements. In light of this, one should not underestimate the possibility of using bilateral agreements and codes of conduct as stopgap measures to build confidence in specific areas of cooperation. The ‘bicycle theory’ in trade liberalization, which argues that continued negotiations and cooperative agreements build confidence and political momentum for higher-level multilateral action, might apply here.

What is at stake more generally is the potential of the rule of law to end the cycle of distrust and conflict. But Asian powers are unlikely to heed the rule of law if it is externally imposed, whether by the US in cooperation with its Asian allies or as an instrument of a ‘charm offensive’ by the Chinese.⁸⁵ Regardless, the Chinese authorities have an exit strategy – in contrast with the US, China has ratified UNCLOS.⁸⁶ Interestingly, American analysts have opened up the discussion to consider pooled sovereignty and collective management of territories and marine zones by claimants, or a ‘disarticulation’ of the sovereignty title from access to resources – i.e., other claimants would cede primary sovereignty to China in exchange for secure permission to benefit from resources in a given area.⁸⁷

⁸³ Peter A. Dutton, ‘The Sino-Philippine Maritime Row: International Arbitration and the South China Sea’, *CNAS East and South China Seas Bulletin*, No. 10, 15 March 2013.

⁸⁴ Robert Beckman, ‘The Philippines v. China Case and the South China Sea Disputes’, in Jing Huang and Andrew Billo (eds), *Territorial Disputes in the South China Sea: Navigating Rough Waters*, Palgrave MacMillan, 2014.

⁸⁵ Stefan Halper, ‘China: The Three Warfares’, A Report for the Office of Net Assessment, Washington, DC, May 2013, http://images.smh.com.au/file/2014/04/11/5343124/China_%2520The%2520three%2520warfares.pdf?rand=1397212645609; Joshua Kurlantzick, *Charm Offensive: How China’s Soft Power Is Transforming the World*, Yale, 2008.

⁸⁶ China’s defence of its territorial claims as ‘beyond the scope of the United Nations Convention on the Law of the Sea and the jurisdiction of the Arbitral Tribunal’ attempts to maintain consistency with its UNCLOS obligations. ‘Chinese government releases position paper on matter of jurisdiction in South China Sea arbitration initiated by Philippines’, [English.news.cn](http://english.news.cn), 7 December 2014.

⁸⁷ Bonnie S. Glaser, ‘Armed Clash in the South China Sea’, Contingency Planning Memorandum No. 14, Council on Foreign Relations, April 2012, <http://www.cfr.org/world/armed-clash-south-china-sea/p27883>.

International maritime law is not limited to UNCLOS. In the 1970s China ratified the Inter-governmental Maritime Consultative Organization (IMCO) Convention and its associated treaties. The latter included the 1973 Convention for the Prevention of Pollution from Ships; bilateral and multilateral maritime boundary agreements; and treaties dealing with matters such as access to ports and fishing rights, including current anti-piracy issues being developed under International Maritime Organization (IMO) sponsorship. China has approved most international measures on safety, fishing and marine environments; this suggests it may be open to third-party arbitration on these issues. However, until China has accepted decisions against it, it is unlikely to be regarded by its neighbours as a sincere follower of international norms.

Additional consideration should be given to the implications of adopting the international legal regime for non-state stakeholders (i.e. corporate and civil-society interests) and non-traditional security issues (e.g. piracy, migration, environmental protection) in maritime governance. The goal should be to open up more inclusive participation, not just as a political ideal or public relations exercise, but also as a practical means of generating positive feedback for domestic legitimacy and interstate socialization processes.

Non-traditional security issues and domestic capacity-building

Maritime security goes beyond naval power and territorial delineation.⁸⁸ Other crucial risks stem from economic activities such as transport, resource extraction and fishing. All require sustained investment in infrastructure: both in terms of hardware such as ships, harbours and communications links; and in terms of elements such as safe and competent navigation, and a stable environment for commerce, not just in coastal waters but elsewhere on the high seas. But the risk of escalating tensions remains. For example, the UN Food and Agriculture Organization reported in 2012 that most fish stocks in the South China Sea were fully exploited or overexploited, but that the region continued to report bigger catches.⁸⁹

Incidents at sea remain one of the major concerns in the South China Sea. This is due to the potential for clashes of interests among many state and non-state actors, including navies, law-enforcement agencies, private fishing vessels, and oil and gas companies. Territorial and maritime disputes are seen as the main causes of aggressive action by navies and law-enforcement agencies in support of national claims. This raises the risk of further conflict. However, the rise in ship and submarine traffic, and the complexity of various military surveillance activities, means that confrontations often go undisclosed in official accounts. In reference to the 2009 incident in which a Chinese PLA Navy frigate and other vessels intercepted the *USNS Impeccable*, one US naval scholar commented that China's claims that the *USNS Impeccable's* monitoring mission was illegal was disingenuous – as Chinese naval units routinely conduct submarine operations, military surveys and surveillance/intelligence-collection operations in foreign EEZs throughout the Asia-Pacific.⁹⁰ What's more, the maritime domain for military operations is expanding in multiple dimensions, from sub-surface to the sea surface, upwards into the airspace above the South China Sea and even as far as outer space (reflecting the potential and importance of satellite technologies).

⁸⁸ For an authoritative overview of the issues, see Wu Shicun and Zou Keyuan (eds), *Non-Traditional Security Issues and the South China Sea: Shaping a New Framework for Cooperation*, Ashgate, 2014.

⁸⁹ *The State of the World's Fisheries and Aquaculture 2012*, Food and Agriculture Organization, Rome, 2012, p. 59.

⁹⁰ Raul Pedrozo, 'Close Encounters at Sea: the USNS Impeccable Incident', *Naval War College Review*, Vol. 62, No. 3, Summer 2009, p. 102.

There is also rising demand for search-and-rescue (SAR) capabilities in the South China Sea. Since SAR is humanitarian in nature, it usually lends itself more easily to intergovernmental cooperation even where territorial and maritime disputes exist. Recent calamities involving migrants at sea and commercial aircraft accidents support the case for further cooperation.

Yet current instruments – such as the International Convention on Maritime Search and Rescue (SAR 1979), the International Convention for Safety of Life at Sea (SOLAS 1974), and the ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea (2010) – display a number of limitations that hinder joint SAR operations in the South China Sea. First, only a few of the littoral states are members of SAR 1979, and they have not yet fulfilled their responsibilities to enter bilateral SAR agreements. Second, SOLAS covers only merchant ships and cannot fully address the need for wider-reaching SAR capabilities in the South China Sea. Third, there is no mechanism for SAR cooperation between ASEAN and China. The recent SAR efforts following the disappearance of Malaysia Airlines flight MH370 showed many operational problems, including lack of inter-operability and coordination among multiple forces, untimely information-sharing and a lack of preparedness on the part of national SAR forces in the region. According to Carl Thayer, ‘A review of ASEAN efforts to forge SAR cooperation reveals agreement on policy objectives, progress in implementation and capacity building but few large-scale practical exercises. None of ASEAN’s SAR activities addressed the kinds of issues that emerged following the disappearance of flight MH370.’⁹¹

Similarly, natural disasters should present an opportunity to tackle regional problems without security objections. More Asians have died from natural disasters in the 21st century than from other accidental causes or conflicts. Escalating risks from increased sea traffic and climate change challenge Asian countries to improve and increase the use of regional cooperation mechanisms. In the Asian context, US and Japanese military forces and the humanitarian community have assumed leading roles in response and recovery efforts.⁹² Yet their interventions have raised, and been hindered by, anxieties over sovereignty, inadequate force protection and weak regional governance structures. For hardliners in Asian politics, ASEAN-based mechanisms have not dispelled mistrust of other countries’ military presences. Partnering with multilateral forces and developing the capacities of domestic SAR agencies would reduce barriers to cooperation. But this would take time and, in the short term, would adversely affect the very countries with weak SAR capacities that stand to benefit the most from rapid external responses. Political acceptance of Japanese and Chinese forces is central to enabling regional SAR mechanisms in the South China Sea.

⁹¹ Carl Thayer, ‘Flight MH370 Shows Limits of ASEAN’s Maritime Cooperation’, *The Diplomat*, 18 March 2014, available online at <http://thediplomat.com/2014/03/flight-mh370-shows-limits-of-aseans-maritime-cooperation/> (last accessed 12 May 2015).

⁹² Ryo Sahashi, ‘New Common Strategic Objectives for the US-Japan Alliance: Continuing Quiet Transformation’, *Asia-Pacific Bulletin*, No. 125, 26 July 2011; ‘The Rise of China and the Changing Regional Security Architecture’, JCIE US-Japan Papers, December 2011.

Conclusion and Recommendations

This research paper has reviewed the maritime security challenges for Asian states. The challenges arise from both general and specific factors: those related to broad shifts in national power and economic interdependence; and those specific to the maritime domain. An examination of the challenges has exposed limitations in existing legal and regional institutional arrangements for interest harmonization and conflict resolution.

While diplomatic efforts remain the primary determinant of regional stability, Asian countries have made progress in exploring maritime law and regional mechanisms for conflict resolution and cooperation in resource management.

We support the call for a multilateral scientific and public policy advisory body. Dr Sam Bateman, professorial fellow at the Australian National Centre for Ocean Resources and Security (ANCORS), has suggested the name 'Asian Peace Research Institute' or APRI, modelled on Sweden's SIPRI. Such an advisory body would work alongside a wide range of stakeholder interests and could provide new perspectives and analysis to inform Track I and Track II diplomacy in this field.⁹³

Most important, the convergent goal for various tracks is to shift the focus of interstate discussions towards a set of 'maritime commons', which would include: joint resource development strategies; freedom of navigation that addresses invasive security concerns; collective security provisions in anti-piracy and anti-terrorism policies, and in measures to prevent the proliferation of weapons of mass destruction; and national maritime bureaucratic capacity-building on SAR and other human security issues.

We hope that this expanded framework and multi-agent process could help to create a unifying agenda for statesmen to adopt when they are ready to cooperate in disputed maritime areas, without prejudice to individual sovereignty or territorial claims. In the meantime, as demonstrated by the joint statement by Prime Minister Abe and President Xi at the APEC meeting in November 2014 – which prefaced resumed talks on East China Sea disputes – Asian claimant states can broadly agree to disagree while pursuing different venues in maritime law, regional forums, confidence-building mechanisms and cross-regional maritime dialogues that would enable them to compare experiences in solving similar issues.

Looking ahead, it is likely that it will soon be necessary to discuss China's role in the Arctic Circle and Indian Ocean.

Last but not least, political expediency may require that US interests be kept at arm's length from bilateral negotiations between Asian powers. Ultimately, however, the US position will need to be fully integrated in long-term regional solutions.⁹⁴ This time frame for US engagement has been compressed

⁹³ Sam Bateman, 'Solving the "Wicked Problems" of Maritime Security: Are Regional Forums up to the Task?', *Contemporary Southeast Asia*, pp. 1–28.

⁹⁴ Jisi Wang, 'China's Search for Stability with America', *Foreign Affairs*, 84:5 (Sept/Oct 2005); Victor D. Cha, 'Winning Asia: Washington's Untold Success Story', *Foreign Affairs* (Nov/Dec 2007); Rosemary Foot, 'China and the United States: Between Cold and Warm Peace', *Survival*, 51:6 (Dec 2009–Jan 2010); Thomas Fingar and Fan Jishe, 'Ties that Bind: Strategic Stability in the U.S.-China Relationship', *The Washington Quarterly*, 36:4 (Fall 2013); Kenneth Lieberthal and Wang Jisi, *Addressing U.S.-China Strategic Distrust*, Brookings Institution, March 2012, http://www.brookings.edu/~media/research/files/papers/2012/3/30-us-china-lieberthal/0330_china_lieberthal.pdf.

by a strongly worded letter to US Secretary of State John Kerry and US Defense Secretary Ashton Carter from members of the Senate Armed Services and Foreign Relations committees in March 2015, which condemns Chinese land reclamation projects on South China Sea islets as a direct challenge to the interests of the US and the region. This has led to a series of heated exchanges between US, Chinese and other Asian leaders and officials.

In order for powers such as the US, Australia and Europe to play a constructive role, we suggest the following starting points for better understanding the challenges of maritime governance in Asia:

1. **Asian states need to recognize the limits of Westphalian preconceptions of maritime sovereignty.** Countries in the region are close geographically, and linked by critical maritime spaces. But they are far apart in terms of national identity, and divided by traumatic historical antagonisms.
2. **Contending states need to show greater respect for the claims of disputants, without necessarily accepting the legitimacy of these claims.** For example, beyond pointing out China's underdefined territorial claims, we suggest that the origin of these claims should be explored in detail and their effects on domestic political discourse in China and other states observed.
3. **Stronger incentives are needed to promote the use of UNCLOS/ITLOS/the ICJ as means of dispute management.** This would involve recognizing the maritime law regime's problems rather than touting its universality, and encouraging Asian nations (in particular, China) to accept and apply UNCLOS principles and rules.
4. **Greater coordination of policy should be sought.** There is no global best practice in maritime governance, only a diverse set of references drawing on common challenges and tried options. In particular, the European experience with the Arctic Council and other cooperative mechanisms provides a rich set of practices for consideration. When exploring options, policy-makers should keep in mind from the outset the importance of harmonization to avoid 'nesting' problems (such as in free-trade agreements), and to minimize burdens on commercial agents who would be subject to these regulatory and institutional requirements.
5. **The success of maritime governance depends a great deal on securing the representation of, and contributions from, non-state actors** such as industries, fisheries groups, scientific communities, NGOs, think-tanks and local communities. While Asian regionalism has traditionally been weak in incorporating non-state interests, the nature of issues involved in the maritime domain necessitates this approach.

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