

Maritime Security in East Asia: Major Issues and Regional Responses

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The current maritime security environment of East Asia is a complicated mix of old and new challenges. The major issues include island and boundary disputes, naval arms build-up, protection of sea-lanes, navigational regimes and activities in the exclusive economic zone, competition over resources, and maintenance of law and order at sea. These issues, unless dealt with adequately, could pose serious threats to regional stability. The most urgent task for the region in responding to these challenges is the building of a stable and secure maritime regime as well as the implementation of maritime confidence-building measures.

Keywords: *Maritime security, East Asia, law of the sea, SLOCs*

1. INTRODUCTION

It is well known that the East Asian region is a community of maritime nations. There are few East Asian states that do not have significant maritime frontiers and strong maritime interests. The commercial and strategic significance of the sea in the region requires little elaboration. The sea is a major source of food for the region, and the sea lanes are the life-lines of the East Asian economies, heavily dependent on unimpeded access to raw materials, markets and investment opportunities throughout the region. The region also encompasses a number of strategic straits, some of which lie across the vital oil supply routes that stretch all the way from the Persian Gulf.

This strong maritime orientation dictates the security, political as well as economic outlooks of all states in the region. Any analysis of the geopolitics of the region must account for this maritime character which for long time has been taken for granted. As the economies of the region have developed and extra-regional influences have declined, so have governments turned their attention more closely to the security of their own maritime interests. As a result, maritime issues are at the forefront of current regional security concerns. Of the thirty or so conflict points in the region, more than a third involve disputes over islands, continental shelf claims, EEZ boundaries and other offshore issues. Many emerging regional security concerns, such as piracy, terrorism, pollution from oil spills, safety of the sea lanes of communication (SLOCs), illegal fishing and exploitation of other offshore resources, and other important elements of economic activities are essentially maritime. These concerns, in fact, are reflected in the significant maritime dimension of the current arms acquisition programs in the region. Unfortunately, some of these new capabilities tend to be more offensive, inflammatory and, in conflict situations, potentially prone to the possibilities of inadvertent escalation. For this reason, maritime concerns is well reflected in current proposals for regional confidence and security building measures (CSBMs), where about a third of the proposals are intended to directly address maritime matters, while others have significant maritime dimension. It is therefore important that regional mechanisms be instituted to address these maritime issues — both to address the cause of tension and to manage and reduce such tension.

This paper examines maritime issues which could pose serious threats to maritime security in the East Asian region, and then explores the appropriate measures necessary to enhance regional maritime security. Particular attention will be paid to the relevance and the role of legal rules in improving maritime security environment, as East Asia is characterized by a number of features which give prominence to certain law of the sea issues.

2. MAJOR MARITIME SECURITY ISSUES IN EAST ASIA

While there are a myriad of maritime issues in East Asia, major issues in the region can conveniently be divided into the following categories: disputes about the sovereignty of offshore islands; issues of maritime boundaries; naval arms build-up and its implication on the security of sea-lanes; navigational regimes; resource conflicts; and the maintenance of law and order at sea. The followings are a brief analysis of the issues that can pose a threat to stable maritime environment in the East Asian region.

2.1. Territorial Disputes

The most well-known island dispute in East Asia is the Spratly in the South China Sea. Within the South China Sea, the Paracel Islands and Macclesfield Bank have also been source of dispute, but the Spratly Island is contested by six different claimants and have drawn the greatest attention.¹ The question of who owns the 400-plus rocks, reefs, and islands within the South China Sea was largely ignored until 1970s. By the 1970s however, the area had become a possible target for exploration by multinational oil companies. Motivated by the desire to extend control over sea-based resources, neighboring states in the area have increasingly come into verbal conflict and even sporadic military confrontation over sovereignty in the South China Sea. During the 1980s and 1990s, most states found themselves in a race to bolster their claims to sovereignty by gaining occupation of the islands that can support a physical presence. Currently, Vietnam occupies over twenty islets or rocks, China occupies eight, Taiwan one, the Philippines eight, Malaysia three to six. The race for occupation of the Spratly has increased the likelihood of conflict, resulting in three cases of military intimidation in recent years, one of which led to military conflict. The Spratly dispute thus remains one of the most dangerous spot in the region. While all the claimants have endorsed the use of peaceful means to overcome their differences, it is worrying that all claimants, except Brunei, have stationed troops in the Spratlys. With time most of the claimants will be in a good position to project military power into the South China Sea. Progress in the informal South China Sea workshops hosted by Indonesia has been slow because of the difference in the approaches, priorities and agendas of China and the South China Sea states, but some cooperation has been achieved in non-contentious areas such as the conduct of marine scientific research, the preservation of the ecosystem and pollution control (Townsend-Gault, 1998: 21-35).

There are three major island disputes in the seas of Northeast Asia: namely the dispute over the Senkaku Islands² (or Tiao-yu-t'ais) between Japan and China; the dispute over the Dokdo (or Takeshima) between Korea and Japan; and the dispute over the Northern Territories (or Southern Kuriles) between Russia and Japan. Like the Spratly in the South China Sea, the three island disputes in Northeast Asia, unless carefully dealt with, could also

¹ For a detailed study of the Spratly dispute, see for example Valencia and Dyke (1996: 223-262).

² For an update of the dispute, see Su (2004: 45-61).

erupt to major threats to regional security anytime. While the island disputes in Northeast Asia raised tension between rival claimants from time to time over the past decades, its importance has considerably increased in recent times for two reasons. First, the resurgence of the territorial disputes has much to do with the regional states' moves to extend their maritime jurisdictions by establishing the 200-mile exclusive economic zones, which was in turn motivated by growing concern for resource development and environmental protection.³ One of the consequences arising from such extended maritime jurisdiction is the overlapping of competing jurisdictions, and, thus, the necessity of delimitation. In Northeast Asia where the distance between the coastal states does not exceed 400 miles, the question of boundary delimitation inevitably arises. Moreover, the extension of maritime jurisdiction also exacerbates the decade-long island disputes in the region, as the boundaries may not be delimited unless the sovereignty disputes over the islands are resolved in one way or another. Second, the disputes are deeply affected by historic grievance and identity politics, which unfortunately seem to be rising in the region. Paradoxically, the end of the Cold War and democratization in the region has made sovereignty issues more, not less, difficult to resolve. Conservative politics in Japan and a rising nationalistic tide in China and South Korea have further complicated the whole situation. Sometimes sovereignty disputes are exploited to further political ends.

The intensity of these territorial disputes cannot thus be explained entirely in terms of the economic or strategic value of the islands in dispute. The risk of a military conflict over any of the disputed islands, however, seems unlikely. The political and human costs would be huge, while the economic and security benefits would be relatively small. But there is a risk that agitators on either side may precipitate a crisis by undertaking provocative acts, which would raise nationalist passions and make conflict resolution extremely difficult.⁴

2.2. Boundary Disputes

In the Northeast Asian region, there are currently three maritime boundary agreements in force.⁵ The geographic circumstances of the area require the conclusion of a few more bilateral and trilateral agreements to complete maritime boundaries in this area. Yet two factors make the boundary delimitation in this area particularly thorny. First, it has been pointed out that there exist some very difficult territorial disputes in the region. Unless these territorial disputes are resolved, which is highly unlikely, it may not be possible to delimit the boundaries. Second, as the continental shelf dispute in the early 1970s showed, coastal states appear to be in serious disagreement as to which laws should apply to boundary delimitation in the region. Moreover, the complicated geography of the region and the uncertain nature of the seabed make delimitation an extremely difficult issue. The current dispute between China and Japan over natural gas exploration and drilling in the East China Sea is directly related to the delimitation of continental shelf between the two countries in that area (Curtin, 2005).

In the Southeast Asian region, on the other hand, there are currently over 20 maritime

³ For more on the recent developments, see Mack (1997); Paik (1997: 319-334).

⁴ This is exactly what has happened in Northeast Asia recently. See *Epinions.com* (04/22/2005).

⁵ The first boundary in the region was delimited between South Korea and Japan in the continental shelf area through the Korea Strait north of Tsushima Island in 1974. In 1986 and 1990 respectively, North Korea and the Soviet Union (now Russia) agreed on their territorial sea boundary and continental shelf and EEZ boundaries in the northern East Sea (or Sea of Japan).

boundary agreements in force.⁶ However, given the greater number of coastal states and the complicated geographical nature of the region, there still remain a number of important boundaries to be delimited. In fact, the geographical circumstances relating to the delimitation of maritime boundaries in the Southeast Asia sub-region are far more complicated than those found in the Northeast Asia sub-region. Moreover, this area also has a series of highly complicated territorial disputes involving the ownership of uninhabited islands and coral outcroppings, most of them in the South China Sea.

The absence of agreed boundary and resulting unilateral claims could be a source of uncertainty and conflict among the states concerned. Moreover, overlapping national maritime jurisdictions could pose significant problems for marine environmental management and marine resource development in the region.

2.3. Naval Arms Build-Up and SLOC Security

The East Asian region as a whole enjoyed the highest rate of economic growth in the world in the 1980s and 1990s. While the financial crisis of the late 1990s dealt a blow to the region's economic prosperity for some time, the regional economy is more dependent on trade, especially exports than ever before. For example, exports now account for an average of 64% of East Asia's GDP, up from 55% in the early 1990s (*Economist* 7/12-18/2003: 11-12). The medium of such expanded trade is shipping, which carries over ninety-eight percent of all goods traded. Except for high value cargoes carried by air, all intra-regional trade in fact goes by sea, and many regional nations lack self-sufficiency in energy, foodstuffs, and critical raw materials. Thus the increased importance of the East Asian trade means a remarkable growth in sea-borne trade that traverses the Pacific Ocean.⁷ Against this backdrop, the security of merchant shipping in the region is the subject that certainly deserves continued attention.

It is generally acknowledged that with the end of the Cold War, overall strategic environment has improved in the Asia-Pacific region and the consequent threat to the security of sea lanes is rather remote. However, this does not necessarily mean that threats to the security of the sea lanes have ceased to exist in the region. In fact, while the end of the Cold War has certainly resulted in the decline of the activities of major naval powers in the region, the United States and Russia, it has also led to the rather paradoxical situation where more navies of regional powers have begun to assert themselves in regional waters, apparently to fill the power vacuum. For instance, China's naval capability has expanded over the years from a coastal defense role to an ability to project power further offshore (Kaneda 2005).⁸ Such capability has assumed greater significance in the South China Sea, where territorial disputes remain unresolved. It is known that Japan has the capability in technology and financial resources to go beyond the manifest task of protecting waters within 1,000 nautical miles from its mainland. A long-range sea lane defense strategy is in prospect, indicated by the procurement policy of Japanese defense agency.⁹ In addition, other countries in the region, including Taiwan, South Korea and most ASEAN countries, are

⁶ For details of maritime boundary agreements in force in the East Asian region, see Charney and Alexander (1993).

⁷ For shipping in the Asia-Pacific region, see Forbes (2003).

⁸ For a detailed study of China's naval transformation, see Jin (2005).

⁹ For a detailed study of Japan's naval strategy, see Takai (2005).

acquiring more powerful naval forces and developing their maritime capabilities. The cause of such naval arms build-ups in the region today stem from growing concern with strategic uncertainty and differing national interests, that is, the urge to protect and expand a sphere of influence and the fear of losing it. The states concerned thus pay heed to the geo-strategic dimension of their rivalries. The result is that despite reduction in the US and Russian maritime presence, the maritime security environment in East Asia is becoming more complicated. Consequentially, there will be more navies, and an increased risk of incidents between maritime forces, thus resulting in a potentially unstable maritime environment. Of particular concern is disruption of SLOCs by conflicts involving actions by China or others to enforce claims to Taiwan or the Spratly Islands, or to oil fields in dispute with Vietnam.

2.4. Navigational Regime and SLOC Security

The other issue related the SLOC security is navigational regime, as the security of shipping is difficult to expect in the absence of clear common rules on navigation. Three specific categories of navigational controls — innocent passage, transit passage and archipelagic sea lanes passage — are designed in the United Nations Convention on the Law of the Sea (LOS Convention) to balance the rights of user or maritime states with the interests of coastal states. Some coastal nations tend to interpret the navigation regimes differently from the maritime powers. The former are generally interested in imposing controls in waters under their jurisdiction for purposes of national security and environmental protection. The latter tend to interpret the rules to permit a maximum degree of navigational freedom. The most important unresolved issues in the Convention, which could affect the security of the SLOCs in the Asia-Pacific region, are as follows.

First, it is beyond dispute that a foreign vessel enjoys the right of innocent passage through the territorial sea of the coastal state.¹⁰ However, it has long been controversial whether the right of innocent passage applies to all ships, including warships or ships carrying nuclear or other inherently dangerous or noxious substances. In particular, the right of innocent passage for warships has been a much debated issue in the international community, and many coastal states have been reluctant to permit passage without prior authorization or at least notification. Further, general state practice remains conflicting. The history of foreign invasion and traditionally sensitive security concerns in East Asia caused many coastal states in the region to have strong reservations on the right of foreign warships to innocent passage through their coastal waters.¹¹ Despite the adoption of the Convention, this issue remains unresolved, and has become a potential source of conflict.

Secondly, under the Convention, straits used for international navigation are subject to the new regime of transit passage.¹² The transit passage is defined as the exercise of freedom of navigation and overflight solely for the purpose of continuous and expeditious transit in the normal modes of operation. It is generally understood that submarines are free to transit international straits submerged, since that is their normal mode of operation. As far as passage in the international straits is concerned, controversy appears to lie not in its military

¹⁰ United Nations Convention on the Law of the Sea, Section 3.

¹¹ The following states in the East Asian region require either authorization or notification for the innocent passage of foreign warships: Bangladesh, Myanmar, China, India, Indonesia, Republic of Korea, Democratic People's Republic of Korea, and Pakistan.

¹² United Nations Convention on the Law of the Sea., Part III.

aspect but rather in its commercial aspect. For example, a question frequently concerns the rights of a strait state to interfere with transit passage because of suspected pollution incidents, and the scope of corresponding enforcement measures that can be taken by a strait state.¹³ The strait states' regulatory response to accidents and pollution that heavy use of the straits has caused could be a serious source of conflict in the region, where there are some 20 important international straits.

Thirdly, under the LOS Convention, an archipelagic state may designate sea lanes and air routes suitable for the continuous and expeditious passage of foreign ships and aircraft through or above its archipelagic waters.¹⁴ Such archipelagic sea lanes must include all normal passage routes and all normal navigational channels. There are two important archipelagic states in the region, Indonesia and the Philippines. The Convention assigns these states for designating sea lanes in coordination with the competent international organization, that is, the International Maritime Organization (IMO). However, much uncertainty remains on the balance between maritime states and archipelagic states. Specifically, the respective roles and power of the IMO and of archipelagic states in designating sea lanes are subject to various interpretations. Given that designation of archipelagic sea lanes is a potentially potent device for regulating navigation, a source of conflict is not difficult to see unless common interpretation of an archipelagic regime is agreed (Batongbacal, 2003: 99-112).

The other challenges to the free passage of ships through SLOCs in the post-Cold War East Asia encompass obstruction due to maritime accidents or disasters, damage by piracy, unilateral declarations restricting the use of specific waters, and intentional obstruction of shipping by, for example, mining of critical SLOC.¹⁵ In particular, the increased carriage of hazardous or dangerous cargoes poses a higher risk of damage or pollution as a result of collision, explosion, fire, grounding or other accident involving ships carrying dangerous cargoes. There are also concerns raised in relation to the lack of notification to coastal states of the routes the shipments take, to legal issues relating to the shipment of nuclear materials through sensitive ocean areas and to the liability of the states involved in the shipments should there be an accident.¹⁶ In the case of nuclear materials, the declarations of nuclear-free zones may also raise difficult issues through inconsistency with the commitments made under the LOS Convention. While SLOC protection lends itself to cooperative regimes, some balance is needed between the concerns of maritime nations to keep the sea lanes open and as unregulated as possible and those nations whose coastlines lie about the strategically important sea-lanes and whose main concerns are associated with marine safety and traffic management issues.

2.5. Resource Conflict

Competition for scarce marine resources is another source of conflict in the region. It has been mentioned that the territorial and boundary issues are being made acute mostly because of the resources involved. In particular, fish which used to be found in abundance in the region have become very scarce due mainly to overfishing. Many national fishing grounds

¹³ For details, see Hamzah and Basiron (1996).

¹⁴ United Nations Convention on the Law of the Sea, Article 53

¹⁵ For details, see Kenny (1996).

¹⁶ For the analysis of the difficult questions raised by the transport of radioactive wastes from Europe to Japan through the Asia-Pacific region, see Hewison (1998: 93-102).

like the Yellow/East China Sea and the Gulf of Siam has long been depleted of fish. This situation has made fishery issue one of the most contentious maritime issues in the region. Currently, fishing regime in the Northeast Asia that has been in force over the past four decades is going through fundamental transformation as regional countries have established the 200-mile EEZs. New bilateral fishery agreements based on the regime of the EEZ have replaced the old treaties that had regulated the fishery relation among the regional countries.¹⁷ Although it may be an inevitable transition to the era of the EEZ, a path to the new era is riddled with many thorny issues, some of which already led to an acute diplomatic row between the countries concerned.¹⁸

In Southeast Asia, illegal fishing has become a cause of tension among regional states.¹⁹ Especially beginning from the late 1980s when the Cold War confrontation came to an end, Southeast Asian countries began to vigorously patrol their territorial seas and enforce demarcations. In addition, the complex geography of the region and changed maritime law, which introduced a 200-mile EEZ, meant that trawlers of some countries often had to intrude into the territorial waters of neighboring countries to reach their fishing locations. As a result, large numbers of trawlers of some countries, especially Thailand, were detained by neighboring countries such as Malaysia and Myanmar. The frequency of the detentions and the resulting tensions clearly identified illegal fishing as a security threat. The situation has been made all the more serious, as regional countries have been increasing their naval capabilities either to enforce their laws or to prevent their fisherman from being arrested in neighboring waters. Perhaps it may be necessary to introduce incidents-at-sea agreements to prevent the escalation of low level conflicts in the near future. Such agreements are designed to prohibit or contain the consequences of inherently dangerous or inadvertent military activities through articulating codes of conduct for military forces and mandating crisis consultation and communication (Weeks, 1996: 79-94).

2.6. Activities in the EEZ

The Exclusive Economic Zone (EEZ), like other institutions of the law of the sea, attempts to accommodate two competing interests, that is the desire of coastal states for greater control over offshore resources on the one hand, and the perceived need of maritime powers to maintain traditional freedom of action in waters beyond the territorial sea, on the other. However, a delicately balanced construct of the LOS Convention²⁰ remains subject to on-going controversy over its interpretation. Difference of views has emerged in East Asia over the rights and duties of coastal States in their EEZs vis-à-vis those of other States. One of them is the freedom of action of foreign navies within the EEZ of a coastal State; that is, whether a foreign navy is free to conduct military maneuvers within the EEZ without providing notice to, or obtaining authorization from, the coastal State; and whether a State may place military devices, such as submarine detection devices, in the EEZ of a foreign

¹⁷ For example, the new Korea-Japan fishery agreement, which entered into force in January 1999, has replaced the bilateral agreement of 1965. The new treaty has been strongly opposed by fishermen in both countries.

¹⁸ For a discussion of the dangers related to the transition to the EEZ in Northeast Asia, see Paik (1996: 171-184).

¹⁹ For details, Ganesan (2002).

²⁰ *United Nation Convention on the Law of the Sea*, Part V.

State.²¹ The provisions of the LOS Convention are silent on these issues, although various interpretations have been forward to one effect or the other. As most of the waters of concern for maritime security in East Asia are within EEZs, ambiguity on such a sensitive matter would be a potential source of conflict because the restrictive regime of the EEZ would pose threat to the mobility of navies in peacetime.²² In fact, there has been a series of incidents and disputes in the region that might have escalated into open conflict.²³

2.7. Challenging Law and Order at Sea

Piracy in a number of areas of the world has become an issue of international importance and concern. In terms of the statistics, the threat posed by piracy in East Asian waters has exhibited a marked rise since the end of the Cold War. Now the piracy incidents in both Northeast and Southeast Asia amount to more than a half of the world total. Southeast Asia is by far the most piracy-prone region of the world.²⁴ The lethality of piracy attacks also appears to be on the increase. Piracy thus constitutes a direct threat to the lives and welfare of the citizens of a variety of flag states. Particular concern has been expressed about the navigational hazards to ships often carrying dangerous cargoes, and the potential danger to navigation and the marine environment these ships may pose if left unattended, while streaming at full speed and under attack by pirates in confined waters.

Terrorism is a growing global problem, especially since September 11. Terrorist threats evolving from the sea, such as sudden attacks conducted by terrorists against vessels or maritime facilities, are new and predicting them can be extremely difficult.²⁵ A worst case scenario for a terrorist attack on shipping in the Straits of Malacca and Singapore would involve the hijacking of a tanker or chemical carrier with a large inflammable or explosive cargo. The hijacked vessel might then be used to attack a major port facility, especially one of the hub ports in the region (Richardson 2004). A completely new threat could also emerge from radio frequency weapons which can enable terrorists to attack targets at sea, resulting in lethal damage to electronic systems. The related issue includes the maritime transportation

²¹ Article 60 of the LOS Convention grants a coastal State exclusive control over all installations and structures that have either an economic function or which may interfere with the rights of coastal States in the EEZ. But the Convention is silent on the non-economic installations that do not interfere with coastal enjoyment of its EEZ rights. For more details, see Boczek (1988: 445).

²² No State in East Asia has yet officially required prior consent or notice for naval activities in their EEZs. On the other hand, Brazil, Cape Verde, Uruguay and some other States have announced that they would require prior consent.

²³ Major incidents include the March 2001 confrontation between the US navy survey vessel *Bowditch* and a Chinese frigate in China's EEZ; the April 2001 collision between a US EP3 surveillance plane and a Chinese jet fighter over China's EEZ; the December 2001 Japanese coast guard's pursuit of and firing at a North Korean spy vessel in its and China's EEZ; and Vietnam's protest against Chinese live fire exercises in Vietnam's claimed EEZ.

²⁴ According to the International Maritime Bureau's Piracy Reporting Center (PRC), in the eight years from 1995 to 2002, a total of 905 piracy incidents took place in Malaysian waters, Indonesia, the Malacca Straits, the Singapore Strait and the South China Sea. These incidents ranged from attempted boardings, petty thefts to outright hijacking of ships.

²⁵ See "Piracy and Maritime Terror in Southeast Asia", *IJSS Strategic Comments*, Vol. 10, Issue 6, July 2004.

and smuggling weapons of mass destruction and related materials. Given the extreme difficulty of detecting and identifying such risky situations, the appropriate response may require more intrusive measures such as inspection and interdiction.²⁶ However, the legality of those measures is often quite controversial.

The fight against the international drug trade now has substantial international maritime dimensions, as has the problem of the passage of illegal migrant peoples. Insurance frauds involving both ships and cargoes are another continuing source of major concern in the growing field of international crime. It has been estimated that maritime fraud costs the international community more than 13 billion pounds annually. There is particular concern in the Asia-Pacific regarding cargo deviations, that is vessels not arriving at their nominated destination, but unloading the cargo elsewhere where it is sold and the vessel scuttled or re-registered, and phantom ships, namely vessels with false identities.

3. HOW TO ENHANCE MARITIME SECURITY IN EAST ASIA

The above analysis of existing and emerging threats to maritime security in East Asian region indicates that while traditional military threat has declined, a host of new non-traditional security issues are on the rise. It should be noted, in particular, that many of those issues are directly or indirectly related with the growing uncertainties coming from the fundamental transformation of the existing political, strategic and legal order of the region. The above analysis also shows the extent to which regional security is compromised by the lack of agreed maritime jurisdiction and regime over important regional seas. This has contributed to a situation where there exist uncontrolled pollution, unregulated over-fishing, growing illegal activities at sea and excessive claims often leading to serious disputes. These problems will continue with consequent risks to regional security unless regional countries can respond to them effectively. What should be the response of the region to enhance maritime security in East Asia?

3.1. Building of a Stable Regional Maritime Regime

The most urgent task for the regional states and maritime powers with interests in the post-Cold War East Asian region is building a stable and secure maritime regime.²⁷ Such a maritime regime is a fundamental requisite not only for enhancing security at sea but also for further maritime cooperation among the states in the region. Perhaps the first and best step is agreement on a common point of reference to guide the use and protection of the ocean. In this regard, it should be noted that the global ocean regime, in terms of authoritative norms

²⁶ Fifteen states, including United States, United Kingdom, France and Japan, are currently discussing how to cooperate among themselves to prevent the proliferation of weapons of mass destruction and related materials at sea, air and land under the "Proliferation Security Initiative (PSI)."

²⁷ Regime can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations (Krasner 1995: 2). Thus a maritime regime includes formal or informal principles, rules, norms, and practice related to the use and protection of ocean. The most important, though not the only, component of maritime region is the LOS Convention, to which most countries in East Asia are parties.

for the jurisdiction and use of the ocean, received its most complete expression in the United Nations Convention on the Law of the Sea. As such the LOS Convention may serve as a good basis for building a stable maritime regime in the region.²⁸ While the LOS Convention obviously does not resolve all the outstanding maritime issues, it will surely play a long-term stabilizing role by clarifying and refining the rules applicable to ocean affairs and preventing the growth of state practice which is at variance with established universal norms.

However, despite the seemingly strong support for the LOS Convention in the region, there are considerable doubts concerning the precise rules for governing the use of the ocean since many provisions lack clarity and are subject to different interpretation. In this sense, a stable maritime regime for East Asia like elsewhere requires agreement on how to apply the terms of the LOS Convention. In fact, the necessity to develop a uniform, coherent maritime regime through commonly acceptable interpretation is more acute in this part of the world than any other regions, mainly because practice on the important aspects the ocean uses substantially diverges among the coastal states in the region. In this respect, the following points deserve mentioning.

First, it is important to enhance the openness and transparency about maritime regime and practice of regional states. In fact, the LOS Convention requires coastal states to give due publicity to the charts or lists of geographical co-ordinates related to their baseline or jurisdictions and to deposit a copy of each such charts or list with the Secretary-General of the United Nations.²⁹ Considering that several unfortunate incidents that had happened before was mainly due to the uncertainty on such matters, this is essential to building a stable regional ocean regime.

Second, the LOS Convention offers a pacific settlement system which would substantially contribute to the development of uniform practice and interpretation of the Convention.³⁰ The LOS Convention also provides the basis for further development of law by providing general principles and framework for such issues as marine environment and marine scientific research. The regional state should make the best of the mechanism and framework provided in the LOS Convention to settle their future disputes and to promote cooperation among them.

Third, the regional states make efforts to develop a more harmonious and solid maritime regime. In particular, regional states could negotiate agreed understandings regarding those controversial rules of the law of the sea which are inconsistent with the policies of certain states. For instance, the United States and the Soviet Union in 1989 signed a joint statement on innocent passage of warship in each other's territorial seas. Attached to the joint statement, the two governments issued the uniform interpretation of the rules of international law governing innocent passage which sets forth in more detail the common interpretation of the Convention governing the innocent passage in the territorial sea.³¹ Similar measures could be taken among regional states with respect to various controversial issues. In addition, regional

²⁸ Strong support for, and commitment to, the LOS Convention is evident in the East Asian region. The following states are now parties to the LOS Convention: Australia, China, Indonesia, India, Japan, Malaysia, Mongolia, Myanmar, New Zealand, Marshall Islands, Philippines, Palau, Russia, Nauru, South Korea, Singapore, Samoa, Solomon Islands, Sri Lanka, and Vietnam.

²⁹ Articles 16, 75 and 84 of the LOS Convention.

³⁰ Part XV of the LOS Convention.

³¹ For the text of the statement with the attached Uniform Interpretation of Rules of International Law governing Innocent Passage, see *International Legal Materials*, Vol. 28, No. 6, pp. 1444-1447.

maritime councils or other coordinating bodies could be established for the purpose of coordination and strengthening cooperation among regional states.

3.2. Implementation of Maritime Confidence-Building Measures

Along with these efforts to build a stable regime, various maritime confidence and security building measures should be explored, taking into consideration the changing maritime security context. With the gradual changes to the maritime security environment, the importance of naval cooperation is growing. Naval cooperation has wide scope and may be bilateral or multilateral. At the lower level are low-key confidence-building measures such as ship visits, fleet reviews, personnel exchanges, navy-to-navy talks, and multilateral naval conferences. More ambitious activities might include information/intelligence exchanges, joint doctrine development, and combined exercise. The top end of naval cooperation might include cooperative maritime surveillance, standing regional naval forces, cooperative SLOC protection, and mine-countermeasures. One idea which deserves more attention is a regional agreement for the purpose of preventing incidents at sea. The need for such agreements has become real, due mainly to the greater naval presence of many states in the region's waters. Moreover, agreement would subsequently facilitate development of more important issues in the future. While it will take some time for regional countries to develop more substantive forms of naval cooperation, naval cooperative activities are now much more common in the region than they were just a few years ago.

Along with naval cooperation, coast guard cooperation is another important area for maritime confidence-building. In fact, coast guard cooperation has a great potential for success in East Asia, because the regional countries prefer to deploy coast guard ships and personnel in sensitive situations at sea rather than naval ships and personnel and to use coast guards for cooperative activities with other countries. Currently cooperation between regional coast guards is expanding rapidly at both bilateral and multilateral levels.³²

3.3. Separation of Territorial/Jurisdictional Issues from Resource Issues

With respect to the territory/boundary and resources issues, the prospects for resolving territorial disputes are slim. Given the enormous difficulties related to resolving ongoing sovereignty disputes, it is better to divorce the question of sovereignty from the more technical boundary negotiations. Furthermore, in light of the complexities of the geographical and other situations in the region, a more function-oriented approach is preferable to a jurisdiction-oriented approach such as boundary delimitation. Regional states should be encouraged to resolve pressing issues of environmental protection and resource development without incorporating underlying sovereignty and boundary issues. For instance, the states may address fishery problems, which motivated them to establish the 200-mile zones, from a regional perspective by promoting a coordinated policy of conservation and effective enforcement procedures. They may also work out cooperative arrangements for the

³² The North Pacific coast guard summit was launched in 2000 as an initiative of Japan. Participating countries are Canada, China, Japan, South Korea, Russia and the United States. The most recent summit was held in Kobe, Japan in September 2005, and discussions included steps to fight terrorism, smuggling and other crimes.

development of seabed natural resources.³³ Since such arrangements could be established without prejudice to underlying territorial and maritime boundary issues, they might constitute optimal solutions that would defer more politically charged issues to the indefinite future. Given the rather sensitive political relations between various regional states, this approach may be more constructive.

3.4. Regional Cooperation for Maintaining Law and Order at Sea

Maintaining law and order at sea requires close cooperation among regional countries. There has been substantial progress in this regard in the region, especially since the September 11 terrorist attack. Currently, the four Southeast Asian countries that are adjacent to the Malacca Strait, namely Malaysia, Singapore, Indonesia and Thailand, have launched a joint security-initiative to provide cooperative air surveillance and situational awareness of what is happening in the Strait. This project, known as the “Eyes in the Sky”, involves routine patrols of designated areas of the Strait by maritime patrol aircraft from the participating countries (Ong and Ho 2005). While the major users of the Strait, the United States and Japan, still criticize the strait’s States for not doing enough to ensure the security of the shipping in the Strait, such initiative shows how far regional cooperation in maintaining law and order at sea has progressed.

Despite such progress, however, there is not much enthusiasm in the region at this stage for proceeding with a full-blown regional maritime surveillance regime. Moreover, East Asian countries were neither enthusiastic about the initiative to interdict shipments of weapons of mass destruction flowing to and from state or non-state actors of “proliferation concern”.³⁴ Short of a structured maritime surveillance or interdiction regime, arrangements for the exchange of maritime information and data would be very important as potential maritime confidence and security building measures in their own right and a prerequisite for to the forms of maritime security cooperation including maritime surveillance. Given the growing awareness of the serious risks of threats of terrorism and proliferation of weapons of mass destruction, how to maintain law and order at sea is expected to draw more focused international attention.

4. CONCLUSION

Maritime security issues are by nature transnational, and thus coordinated and cooperative approach to them is essential for enhancing regional maritime security. While the benefits of close regional cooperation are clear, there are major barriers to effective maritime cooperation in East Asia. For one, the notion of sovereignty is still so firmly entrenched in the minds of regional countries that they are generally reluctant to agree to cooperative activities if such activities appear to compromise or qualify their national

³³ Perhaps the best and the only way to resolve the current dispute between China and Japan over natural gas exploration and drilling in the East China Sea is joint development.

³⁴ Only two East Asian States, Japan and Singapore, are full members of the Proliferation Security Initiative. Other East Asian States that are key to the successful implementation of the initiative, notably China, South Korea, India, and Indonesia, have deferred active involvement despite pressure from the United States.

sovereignty. In addition, the fact that regional countries are not equally capable of participating in cooperative process, another obstacle to regional cooperation. In such situation, “weaker states” may be reluctant to cooperate if they perceive that the cooperative processes would be dominated by “stronger states”. More generally, the prevailing sense of distrust and the lack of political framework in East Asia hinder regional countries to develop a more substantial form of cooperation at sea.

While the main paradigm of maritime politics remains largely state-centric, regional states need to understand its limitation. Regional states should consider a more function-oriented approach to the sovereignty or jurisdiction-oriented approach. They should also work out cooperative arrangements for various impending issues such as the development of ocean resources and protection of marine environment. Since such arrangements could be established without prejudice to the underlying territorial and jurisdictional issues, they might constitute optimal solutions that would defer the more politically charged issues to the indefinite future. While such approach may be put aside as naïve idealism, regional countries need to understand that there is no better place for idealism than ocean, and that East Asia is no exception in this regard.

REFERENCES

- Bateman, Sam and Stephen Bates (eds.), 1996a, *The Seas Unite: Maritime Cooperation in the Asia-Pacific Region*, Australian National University.
- Bateman, Sam and Stephen Bates, 1996b, *Calming the Waters: Initiatives for Asia Pacific Maritime Cooperation*, Australian National University.
- Bateman, Sam and Stephen Bates, 1998, *Shipping and Regional Security*, Australian National University.
- Batongbacal, Jay, 2003, “Archipelagic Sea-Lanes and Transit Passage through Straits: Shared Responsibilities Are Essential to Implementation,” In Andrew Forbes, ed., *The Strategic Importance of Seaborne Trade and Shipping*, University of Wollongong Press: 99-112.
- Boczek, B., 1988, “Peacetime Military Activities in the EEZ of Third Countries,” *Ocean Development and International Law* 19(6): 445 ff.
- Charney, Jonathan and Loui Alexander (eds.), 1993, *International Maritime Boundary Vols. 1 and 2*, Martinus Nijhoff Publishers.
- Council for Security Cooperation in Asia-Pacific (CSCAP), 2001, *Cooperation for Law and Order at Sea*, CSCAP Memorandum 5.
- Council for Security Cooperation in Asia-Pacific (CSCAP), 2002, *The Practice of the Law of the Sea in the Asia-Pacific*, CSCAP Memorandum No. 6.
- Council for Security Cooperation in Asia-Pacific (CSCAP), 2004, *The Weakest Link?: Seaborne Trade and the Maritime Regime in the Asia Pacific*, CSCAP Memorandum 8.
- Curtin, Sean, 2005, “Sea of Confrontation: Japan-China Territorial and Gas Dispute Intensifies”, *Japan Focus* (available at <http://japanfocus.org>).
- Forbes, Andrew (ed.), 2003, *The Strategic Importance of Seaborne Trade and Shipping*, University of Wollongong Press.

- Ganesan, N., 2002, "Illegal Fishing and Illegal Migration in Thailand's Bilateral Relations with Malaysia and Myanmar," in Andrew T.H. Tan and Kenneth Boutin, eds., *Non-Traditional Security Issues in Southeast Asia*.
- Hamzah, B.A. and Mohamad Nizam Basiron, 1996, *The Straits of Malacca: Some Funding Proposals*, Malaysian Institute of Maritime Affairs.
- Hassan, Monamed Jawhar and Ahmade Raffie, 1997, *Bringing Peace to the Pacific*, Institute of Strategic and International Studies, Malaysia.
- Hewison, Grant, 1998, "Return Shipments of Radioactive Wastes from Europe to Japan," in Sam Bateman and Stephen Bates, eds., *Shipping and Regional Security*: 93-102.
- Institute of International and Strategic Studies, 2004, "Piracy and Maritime Terror in Southeast Asia," *Strategic Comment* 10(6).
- Jin, You, 2005, "China's National Defense Strategy and Naval Transformation," a paper presented at the 9th International Sea Power Symposium held in Seoul (July).
- Kaneda, Hideki, 2005, "China's Rapid Rise as a 'Sea Power'," *Korea Herald* (September 12).
- Kenny, Henry, 1996, *An Analysis of Possible Threats to Shipping in Key Southeast Asian Sea Lanes*. Center for Naval Analysis.
- Krasner, Stephen (ed.), 1995, *International Regimes*, Cornell University Press: 2.
- Mack, Andrew, 1997, "Island Disputes in Northeast Asia," *Working Paper No. 1997/2*, Australian National University Press.
- Ong, Graham Gerard and Joshua Ho, 2005, "Maritime Air Patrols: The New Weapon Against Piracy in the Malacca Straits," *IDSS Commentaries 70/2005* (October 17).
- Paik, Jin-Hyun, 1996, "Exploitation of Natural Resources: Potential for Conflicts in Northeast Asia," In Sam Bateman and Stephen Bates, eds., *Calming the Waters: Initiatives for Asia Pacific Maritime Cooperation*: 171-184.
- Paik, Jin-Hyun, 1997, "Territorial Disputes at Sea: Situation, Possibilities, and Prognosis- With Particular Reference to Northeast Asian Seas," In Mohamed Jawhar Hassan and Ahmade Raffie, eds., *Bringing Peace to the Pacific*: 319-334.
- Richardson, Michael, 2004, *A Time Bomb for Global Trade: Maritime-related Terrorism in an Age of Weapons of Mass Destruction*, Institute of Southeast Asian Studies.
- Ship and Ocean Foundation (SOF) and East-West Center (EWC), 2003, *The Regime of Exclusive Economic Zone: Issues and Responses*, A Report of the Tokyo Meeting, 19-20 February 2003, East-West Center.
- Su, Steven Wei, 2004, "The Territorial Dispute over the Tiaoyo/Senkaku Islands: An Update," *Ocean Development and International Law* 36: 45-61.
- Takai, Susumu, 2005, "National Defense Policy and Maritime Security of Japan," a paper presented at the 9th International Sea Power Symposium held in Seoul (July).
- Tan, Andrew T.H. and Kenneth Boutin (eds.), 2002, *Non-Traditional Security Issues in Southeast Asia*.
- Townsend-Gault, Ian, 1998, "Preventive Diplomacy and Pro-Activity in the South China Sea," *Contemporary Southeast Asia* 20(2).
- United Nations, 1983, *United Nations Convention on the Law of the Sea*, UN Publication.
- Valencia, Mark and Jon Van Dyke, 1996, "Comprehensive Solutions to the South China Sea Disputes: Some Options," in Sam Bateman and Stephen Bates, eds., *The Seas Unite: Maritime Cooperation in the Asia Pacific Region*: 223-262.
- Weeks, Stanley, 1996, "Incidents at Sea Agreement and Maritime Confidence-Building Measures," in Sam Bateman and Stephen Bates, eds., *The Seas Unite: Maritime Cooperation in the Asia-Pacific Region*: 79-94.

Economist, 2003 (July 12-18: 11-12).

Epinions.com, 2005 (April 22), "Japan, China and Korea: Recent Disputes in East Asia,"
<http://www.epinions.com>.

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