

Geopolitical Change in Asia and Legal Warfare at Sea
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Maritime Asia

Asia is not rising but resurging; Asia was always one of the centers of the world. Asia is growing its economic, financial, technological, and political weight in the international system. As Japanese historian Takeshi Hamashita argued, Asia consists of continental and maritime Asia. The former is inward-looking and characterized by agricultural fundamentalism, while the latter is outward-looking and characterized by commercial networks. Today, globalization has obscured the border between continental and maritime Asia, which creates the dynamism of this region. As Robert Kaplan discussed in his *Foreign Affairs* article (March/April 2009), on a maritime-centric map of Asia, artificial land borders are becoming obsolete.

Asia faces two great oceans: the Pacific and Indian Oceans. Even landlocked Asian countries are linked with the two Oceans by road, rail, river, and pipelines. The Pacific and Indian Oceans should be regarded as a single unified theatre. The offshore island chain in the two Oceans creates a series of marginal seas along the Eurasian continent—including the Sea of Okhotsk, the Sea of Japan, the Yellow Sea, the East and South China Seas, the Andaman Sea, the Bay of Bengal, and the Arabian Sea. As geostrategist Nicholas Spykman found out, these marginal seas constitute a “maritime highway” which has contributed to the development of Eurasian coastal areas by providing easy and cheap sea lines of communication.

The geographical term “Asia Pacific” may be insufficient for describing the dynamism in this region. Given the fact that Asia occupies half the world's population and one-third of the global economy, maritime Asia along the Indo-Pacific Rim has the potential to reach an unprecedented level of prosperity, freedom, and stability in this century. However, this region faces uncertainties as well.

Today, 90 percent of global commerce and 65 percent of oil imports travel by sea. Twenty percent of global seaborne trade, 33% of global seaborne crude oil, 37% of global semiconductor trade, 57% of global shipping capacity move between the Pacific and Indian Oceans via the Malacca Straits. The “maritime highway” linking the Pacific and India Oceans constitutes the lifeline of global economy. The seas are important not only as highways but also as supplier of such marine resources as mineral, energy, and food. In short, the dynamism of this region heavily depends on the seas, and therefore future security challenges come from the seas.

Power Shift

Outbreak of piracy is a barometer of hegemonic power. History tells that piracy thrives when the power of a hegemon declines, and continues to flourish until addressed by firm measures. There were no pirates running wild in the Mediterranean during the Pax-Romana, but this Roman inland sea became a piracy hotspot after the fall of the Roman Empire. The North African states, known as the Barbary States, became virtually independent from the declining Ottoman Empire, and Barbary corsairs captured American merchant ships and sailors in the Mediterranean that lost the protection of the Royal Navy after the American independence. The United States sent the newly-established Navy and Marines to defeat the Barbary pirates under the slogan “Millions for defense, but not one cent for tribute,” and secured the safety of American merchant ships.

Almost 200 hundred years after the Barbary Wars, the threat of piracy has emerged as a destabilizing factor in the maritime domain again. Recent outbreak of piracy in Southeast Asia and then in the Horn of Africa indicates the relative decline of the U.S. sea power. The United States still maintains the strongest navy in the world, but it now has only 282 ships compared with 6,678 in 1945 and 570 in 1990. Given that maintaining one ship on station typically requires three ships—one on maintenance, one on training, and one on deployment—the U.S. Navy can never deploy more than 100 ships at sea at any given time, and these ships are spread all over the globe. Although the 2007 Cooperative Strategy for 21st Century Seapower (CS21) aims to maintain credible combat forces in the Western Pacific and the Indian Ocean, these two regions are the world's primary piracy hotspots now.

Under the U.S.-Japan alliance, the United States provides extended deterrence and long-range sea-lane protection for Japan, while Japan provides bases for U.S. armed forces. This alliance structure is premised on U.S. hegemony in Asia. However, the United States is losing its dominance, although it is still an indispensable power. Japan cannot enjoy free and safe sea-lanes any longer under the alliance. Japan is one of the primary beneficiaries of the free trade system under U.S. leadership and needs to contribute to securing the sea-lanes, taking the leadership with the United States in the "1,000-ship" navy.

Throughout its long history, Chinese rulers showed little interest in the seas with some exceptions such as Zheng He's voyages in the 15th century. China became a net oil importer in 1993 and its rapidly growing economy has turned Chinese eyes toward the seas today. Relieved of the Soviet pressure across land borders after the end of the Cold War, China has been investing a lot of resources to build up sea power for energy and sea lane security. The stability of East Asia depends on the balance between land power of China, Russia, and India and sea power of the United States and Japan. China's maritime expansion may destabilize this balance. This is literally a sea change.

Chinese maritime expansion began with encircling the resource-rich South China Sea to make it a Chinese lake. After the Philippines kicked out the U.S. Navy from Subic Bay in 1991, Beijing reasserted territorial claims over the Paracel and Spratly archipelagos. Then, China seized Mischief Reef in the Spratlys in 1995.

China is creating a wider strategic buffer in the western Pacific vis-à-vis U.S. Seventh Fleet. Chinese strategy conceived two "island chains" as China's maritime defense barrier. The "first island chain" along the Ryukyus, Taiwan, the Philippines, and Borneo is no more than 400 nautical miles from Chinese coast and, China has enhanced anti-access/area-denial (A2/AD) capability up to the "first island chain by purchasing from Russia Su-30 ground-attack aircraft, Kilo-class attack submarines, Sovremenny-class destroyers with SS-N-22 missiles—all of which the Soviet Union had developed to target U.S. carrier strike groups—spending some one billion dollars annually. China is also introducing Shang-class ultra-quiet nuclear-powered attack submarines. Chinese navy has also expanded operational areas into the high seas toward the "second island chain" running along the Bonins and Marianas.

While encircling the South China Sea, China is developing naval facilities (or "pearls") in and diplomatic ties with countries such as Pakistan (Gwadar), Burma (Sittway) and Bangladesh (Chittagong) for sea lane and energy security. This "pearls string" strategy may not be led by Beijing but these Chinese efforts to press on both sides of the Malacca Straits, is clearly against strategic interests of Washington. Since its commercial and political interests overlap with China, India also fears being encircled by those "pearls."

Today, the vibrant global economy heavily rests on free and fair access not only to the sea, but also to the air, space and cyberspace. The United States has guaranteed their free and fair use, and U.S. military operations also require stability in those global commons. On the other hand, globalization

has proliferated advanced military technologies and doctrines around the world, and some states are acquiring asymmetric weapons for a sudden attack against overwhelming U.S. military power. In the Western Pacific, China not only develops conventional weapons such as surface ships, 5th generation fighters, and aircraft carriers, but also acquiring asymmetric weapons such as anti-ship ballistic missiles, anti-satellite attack capabilities, advanced sea mines, and cyber and information warfare capabilities

Naval Arms Race

The first and largest challenge is naval arms race stimulated by growing importance of the seas, the decline of U.S. sea power, and growing Chinese maritime ambition.

Given the relative decline of U.S. sea power and growing Chinese maritime ambition, regional countries from Japan to Southeast Asia and to Australia and India are increasing their naval power, especially power projection capabilities. Several countries have acquired or are acquiring aircraft carriers or large amphibious ships. As Richard Bitzinger pointed out, Asian-Pacific navies are acquiring greater range, speed, operational maneuver, firepower, versatility, and flexibility. Reflecting this trend, for example, Australian government published a defence white paper calling for reinforcement of sea and air power in 2009. Japan reviewed its mid-term defence policy program in December 2010 and introduced a new concept of “dynamic defence,” that will increase the operational level and tempo of Self-Defence Force.

Given the growing importance of the seas, naval arms race will continue in Asia. Submarine buildup is the most serious concern. China has almost 60 submarines. But since China lacks reliable anti-submarine warfare capability, regional navies are introducing more submarines. Australia will introduce 12 new submarines. Japan will increase its submarine fleet from 16 to 22. Indonesia has a plan to build 12 submarines to patrol its large sea areas by 2024. India, Singapore, Thailand, Malaysia, Vietnam, South Korea, and Bangladesh will also introduce submarine. The sole mission for submarines is sea denial, and freedom of navigation in this critical maritime highway is being jeopardized.

Is a naval arms control regime possible in Asia? A model can be the 1922 Washington Treaty. Under the Treaty, the status quo in the Pacific was maintained by arms control and non-fortification agreements. The capital ship tonnage ratio was set among the major naval powers, including United States, Great Britain and Japan. There was a ten-year holiday on capital ship building as well. But no naval arms control regime is feasible today because China has no reason to accept such a mechanism. Also, the problem is Chinese A2/Ad capabilities rather than Chinese naval buildup itself. Overestimation of Chinese naval power is another problem because that intensifies naval arms race in the region. Chinese naval power is still much inferior to U.S. naval power. So the region needs confidence building rather than arms control.

Preserving Good Order at Sea

The second challenge is the preservation of good order at sea.

Good order at sea ensures the safety and security of shipping and permits countries to pursue their maritime interests in accordance with agreed principles of international law. Threats to good order at sea include piracy and armed robbery against ships, maritime terrorism, illicit trafficking in drugs and arms, people smuggling, pollution, illegal fishing, marine natural hazards, and interstate maritime conflicts.

Piracy and other acts of violence against maritime navigation endanger sea lines of communication and interfere with freedom of navigation and free flow of commerce. Just as the oceans are avenues for global commerce, they are also highways for the import and export of unlawful commodities, including WMD and related materials. Trafficking provides organized crime syndicates with a huge amount of fund to conduct other crimes or terrorist activities. Intentional acts of pollution or unlawful fishing have negative impact on regional economy and ecosystems. Competition for seabed resources, territorial disputes at sea, and environmental nationalism encourage states to exert wider claims over international waters.

The 1982 U.N. Convention on the Law of the Sea (UNCLOS)—the “constitution for the world’s oceans”—is the key to good order at sea. It provides a legal and policy architecture for conduct on, over, and under the world’s oceans as well as a mechanism for peaceful solution of disputes. Freedom of the seas were captured in the grand bargain between the rights of the international community to freedom of navigation and the rights of coastal states to a discrete territorial seas and limited jurisdiction beyond the territorial seas.

Preservation of good order at sea requires regional cooperation and leads to confidence building. It is important to note that cooperation among regional coast guards is well advanced. For example, the Japan Coast Guard (JCG) has bilateral agreements with its counterparts in South Korea, China, and Russia on coordinated enforcement of illegal fishing and smuggling, rescue, and mutual visits of ships and personnel. Bilateral mechanism is important especially where there are contested waters.

In addition to bilateral cooperation, there are multilateral mechanisms emerging. For instance, coast guards of Japan, the United States, Russia, Canada, China, and South Korea form the annual North Pacific Coast Guard Forum (NPCGF). The NPCGF has become a useful confidence-building mechanism, producing practical outcomes such as joint operational guidelines, combined training for counter-smuggling and fishery enforcement patrol. There is another annual forum called the Head of Asian Coast Guard Agencies Meeting, involving 18 Asian countries to enhance response capabilities for antipiracy and counter-terrorism. Another multilateral mechanism is the ReCAAP (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships), the first intergovernmental antipiracy agreement adopted by 16 regional countries, including Japan, South Korea, China, India, and ASEAN member countries. ReCAAP went into force and an Information Sharing Centre was established in Singapore in 2006.

Confidence building among regional navies remains low-key compared to coast guard cooperation, and tend to be influenced by political circumstances. For instance, mutual port calls between the Japanese and Chinese navies was agreed in 2000, but the first call was postponed until 2007 due to the deteriorated bilateral relations. The Western Pacific Naval Symposium (WPNS), and the Indian Ocean Naval Symposium (IONS) are the main multilateral mechanism among regional navies. Interestingly, there are increasing number of bilateral and multilateral naval exercises among like-minded nations such as Japan, the United States, India, Australia, South Korea, Singapore, and Vietnam. These are in part a response to Chinese naval assertiveness. Regional navies are also reinforcing cooperation in humanitarian assistance/disaster relief (HA/DR).

On the other hand, transnational efforts to promote greater coastal state jurisdiction even beyond the national territorial seas endanger freedom of the seas. This legal warfare or “lawfare”—the efforts to reshape the navigational regimes in UNCLOS, and particularly those efforts that have the effect of a diminution of transit passage through international straits and high seas freedoms in the EEZ and high seas—destabilizes and weakens the treaty structure.

For example, China is conducting “lawfare” as part of anti-access strategy. China persists in a series of excessive maritime claims by requiring Chinese approval for innocent passage in the territorial seas by foreign warships or by failing to recognize the airspace above its Exclusive Economic Zone as international airspace. The U.S. Navy has challenged Chinese “lawfare” under the Freedom of Navigation Programme, which led to the Hainan EP-3 incident in 2001 and the recent USS Impeccable incident. The “lawfare” could not only disturb freedom of navigation but also could lead to regional armed conflicts.

China claims the “nine dotted,” “U-shaped” line in the South China Sea, and Chinese “marine surveillance” and “fishery control” boats protect Chinese fishermen while suppressing other countries fishing boats with threat and even use of force. China has been reluctant to negotiate with other claimants in the South China Sea—Vietnam, the Philippines, Malaysia, and Brunei—on a multilateral basis, and the 2002 Declaration on the Conduct of Parties in the South China Sea (2002 DOC), the only agreement between ASEAN and China addressing the disputes, is not legally binding. Given recent Chinese assertiveness in the South China Sea, U.S. Secretary of State Hillary Clinton emphasized U.S. interest in freedom of navigation in the South China Sea at the July 2010 ASEAN Regional Forum meeting.

China is also taking assertive actions in the East China Sea. China does not recognize the medium line in the East China Sea and claims jurisdiction up to the Okinawa Trough. Although China and Japan reached an agreement on joint development of gas fields along the medium line in 2008, China refuses to make it into a treaty. After Japan arrested the skipper of a Chinese trawler that rammed into Japanese coast guard cutters near in Japanese territorial waters around the Senkaku Islands in September 2010, China criticized this and stopped the export of rare earth metals to Japan in retaliation.

Preservation of good order at sea presents both opportunities and challenges. Regional nations should promote cooperation in nontraditional security issues while reaffirming the provisions of the Law of the Sea to preserve good order at sea.

Confidence Building

CONFIDENCE building is the third and last challenge, but it is also a solution to the challenges discussed above. Today’s naval power plays three key roles: power projection, preservation of “good order at sea,” and naval diplomacy/partnership-building. Naval arms race and “good order at sea” can be managed only through partnership building. There are multiple frameworks and institutions—including U.S. alliance network, WPNS, IONS, Heads of Asian Coast Guard Agencies Meeting, the ReCAAP, ARF, and the PSI—which can contribute to maritime security. Multilateral counter-piracy effort off Somali coast is another example.

Confidence building brings both risks and opportunities. Generally speaking, confidence-building among regional navies has just begun, while regional coast guards are developing substantive cooperation in nontraditional security issues such as counter-piracy. Membership or who to invite makes a difference in partnership building. A partnership can be sometimes hostile to non-members. It is possible that U.S. maritime alliance network and the Shanghai Cooperation Organization can be opposed to each other. Also, a partnership is ineffective unless key members join. An example is the ReCAAP. Although major powers in this region such as Japan, South Korea, India and China are the members of the ReCAAP, Malaysia and Indonesia have not joined it yet. Some Japanese call for a league of maritime democracies, namely Japan, the United States, India and Australia, based on “common values,” but this is not an appropriate approach as long as it excludes China.

Instead countries in this region should establish a multilateral framework of sea faring nations to avoid naval arms race while preserving good order at sea. Under the framework, member nations should establish crisis management measures and deepen confidence building. Member nations should also deepen cooperation for nontraditional security issues while reaffirming the provisions of the Law of the Sea. In this regard, regional nations should adopt a guideline for military activities on the high seas reaffirming the UNCLOS provisions while establishing hot-lines. Regional nations also should reinforce the ReCAAP not only as counter-piracy measures but also for other maritime crimes such as terrorism, illegal fishing and smuggling and trafficking.

Each state, even “rogue” state such as Iran or North Korea, has an intrinsic interest in the effective functioning of the global system of trade, while al-Qaida and its associated groups have endemic hostility to the system. Any multilateral framework should be inclusive. There are only two conditions to join this. First, respect for free trade. Second, respect for freedom of navigation. Regime type does not matter here. The seas are highways, not barriers. China is standing at the crossroads between continental power and sea power. Continental powers regard the seas as barriers, while sea powers regard the seas as highways. China needs to learn that the seas serve best for it when they are regarded as highways.

Then how can such a framework be established? There are at least three layers of multilateral security cooperation. The first layer is traditional power-based mechanism such as the hub and spokes U.S. alliance network in the region. The second layer is ad-hoc and/ or functional mechanism such as the ReCAAP, the WPNS, and the IONS. The third layer is comprehensive and overall mechanism such as the ASEAN Regional Forum (ARF), the ASEAN Defense Ministers’ Meeting Plus (ADMM+), the East Asia Summit, and the United Nations.

The first layer mechanism can be used to hedge against any aggression and violation of international law. The second layer mechanism can provide venues for functional cooperation. The third layer mechanism can be used to promote the multilateral framework of seafaring nations. The East Asia Summit is the most appropriate mechanism since it is a summit level forum including all the major players.

Conclusion

Today’s geopolitics can be described as power struggle over EEZs. Ever since the Western powers reached the Far East in the 15th century, the island chains along the Asian continent played an important role in Asian geopolitics. Since those island chains are occupied by independent countries today, China attempts to establish sea control in contiguous seas along the island chains, namely the Yellow Sea, the East and South China Seas, and the Philippine Sea. Those seas are EEZs of littoral countries and therefore China conducts “legal warfare” to obtain uninhabited islands as EEZ base points while denying other countries’ possession of those islands. China also interprets the Law of the Sea in an arbitrary manner and denies freedom of navigation and overflight by foreign militaries in its EEZ as part of anti-access strategy. Other regional states than China such as Vietnam and Malaysia are also making excessive claims in their EEZs.

To ensure regional security, regional states should share the understanding of freedom of the seas and free navigation in EEZ under UNCLOS. To that end, regional states should launch a “freedom of the seas initiative” under the East Asia Summit. The freedom of the seas initiative can be a venue for regional states to discuss various maritime issues, including the right of free navigation in foreign states’ EEZ, law enforcement, marine resource development, and marine environmental conservation. The East Asia Summit is an appropriate forum since heads of states get together.