

The Indo-Asia-Pacific's Maritime Future: A Practical Assessment of the State of Asian Seas

A Maritime Security Community of Interest publication

Daniel K. Inouye Asia-Pacific Center for Security Studies,
in partnership with King's College London

Edited by Kerry Lynn Nankivell, Jeffrey Reeves
and Ramon Pacheco Pardo

March 2017



About the Policy Institute at King's

The Policy Institute at King's College London acts as a hub, linking insightful research with rapid, relevant policy analysis to stimulate debate, inform and shape policy agendas. Building on King's central London location at the heart of the global policy conversation, our vision is to enable the translation of academic research into policy and practice by facilitating engagement between academic, business and policy communities around current and future policy needs, both in the UK and globally. We combine the academic excellence of King's with the connectedness of a think tank and the professionalism of a consultancy.

About the Daniel K. Inouye Asia-Pacific Center for Security Studies

The Daniel K. Inouye Asia-Pacific Center for Security Studies (DKI APCSS) is a U.S. Department of Defense institute that officially opened Sept. 4, 1995, in Honolulu, Hawaii. DKI APCSS addresses regional and global security issues, inviting military and civilian representatives of the United States and Asia-Pacific nations to its comprehensive program of executive education and workshops, both in Hawaii and throughout the Asia-Pacific region.

Preface

From September 21 to 23 2016, the Daniel K. Inouye Asia Pacific Center for Security Studies (DKI APCSS) and King's College London (KCL) ran a practitioner-focused workshop on the Management of the Indo-Asia-Pacific Maritime Future. The co-hosts convened sixteen DKI APCSS senior alumni, all serving military and civilian government officials. They were joined by fourteen leading scholars from the U.K. and beyond to share perspectives, consider best practices, and identify potential focal areas for future collaboration. Discussants were drawn from Australia, Bangladesh, Canada, Chile, India, Indonesia, Japan, Malaysia, New Zealand, Pakistan, Philippines, Republic of Korea, Sri Lanka, the People's Republic of China, the United Kingdom, the United States, and Vietnam. They work for agencies across the spectrum of maritime power: including civilian, military and law enforcement organizations. The workshop agenda addressed the overall maritime security environment in the Indo-Asia-Pacific at the strategic and sub-regional levels as well as maritime economics, maritime constabulary issues, maritime rule of law and governance, and management of scarce maritime resources. Over the course of the three days, facilitators and practitioners worked to develop policy-relevant insights about the status of our maritime commons, and to explore issue areas within the maritime domain where consensus could be reached. The 'we' referred to in the text of this volume is the maritime collective represented by these experts from around the world.

The future of the maritime Indo-Asia-Pacific is a shared responsibility of the regional community that depends on it, though governments and their military organizations too often pursue it in isolation from wider regional perspectives. The intent of the workshop and the publication to follow was to fill this gap and provide an informed assessment of the state of our shared seas. The result was a candid, collaborative, strategic conversation about what policy-makers and practitioners of maritime security see as their

region's primary strengths and major challenges. Wherever possible, they also came to consensus on broad parameters for the way ahead.

This concise accounting of both our progress to date and the medium-term challenges that we face in common is meant to foster an ongoing regional dialogue that can inform the day-to-day conduct of our international relations.

The Editors
at DKI APCSS
© King's College London

Contents

Acknowledgements6

Acronyms.....7

Executive summary.....9

1. Management of the Maritime Future..... 13

2. The Indo-Asia-Pacific in Context22

3. Toward a Regional Blue Economy33

4. Good Order at Sea: Constabulary Issues43

5. Rule of Law and Ocean Governance.....49

Acknowledgements

This publication is the result of three days of discussion among colleagues of maritime security at King's College London in September 2016. The insights presented here would not have been possible without the enthusiasm of the government officials and distinguished academics who participated. LTG (ret) Dan 'Fig' Leaf, Director of DKI APCSS, as always, provided the necessary leadership to allow frank discussion of difficult issues to unfold. The editors would like to acknowledge him and all participants' generous contribution of candor, expertise, and time. In a context in which the geo-political conditions for personal dialogue between nations are becoming less comfortable, these participants did not hesitate to share perspectives in the interests of furthering our mutual understanding. We have learned a great deal from their insights.

We would also like to acknowledge the facilitation, administration and research support provided by a number of contributors whose efforts were invaluable to move these insights from the seminar room into print. Ms. Iris Lienhart and Dr. Alessio Patalano, for their contributions to agenda and themes; John Gasner, Clif Johnson and MAJ Q Nguyen for their support in bringing participants together; and Luisa Telnov, Hyunki Kim and Elsei Tellei for their research support. This report is the result of your efforts.

Acronyms

ADIZ	Air Defense Identification Zone	MSSP	Malacca Straits Sea Patrol
ASEAN	Association of Southeast Asian Nations	NLL	Northern Limit Line
CARAT	Cooperation Afloat Readiness and Training	U.S. PACOM	United States Pacific Command
CNOOC	China National Offshore Oil Corporation	PCA	Permanent Court of Arbitration
COLREGs	International Regulations for Preventing Collisions at Sea	PRC	People's Republic of China
CUES	Code for Unplanned Encounters at Sea	PSMA	Port States Measures Agreement
DoC	Declaration on the Conduct of Parties in the South China Sea	ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
DPRK	Democratic People's Republic of Korea	RFMO	Regional Fisheries Management Organization
EEZ	Exclusive Economic Zone	RIMPAC	Rim of the Pacific
EiS	Eyes-in-the-Sky	ROK	Republic of Korea
HADR	Humanitarian Assistance and Disaster Response	SEACAT	Southeast Asia Cooperation and Training
IFC	Information Fusion Center	SOE	State-Owned Enterprise
IMB	International Maritime Bureau	SOLAS	International Convention for Safety of Life at Sea
IMO	International Maritime Organization	SSPI	Sulu Sea Patrol Initiative
IONS	Indian Ocean Naval Symposium	SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
IORA	Indian Ocean Regional Association	THAAD	Terminal High Altitude Area Defense
ISC	Information Sharing Center	UN FAO	United Nations Food and Agriculture Organization
IUU	Illegal, Unregulated, and Unreported fishing	UNCLOS	United Nations Convention on the Law of the Sea
MDL	Military Demarcation Line	USGS	U.S. Geological Survey

Executive summary

Recommendations

1

Countries in the Indo-Asia-Pacific need well-developed whole-of-government maritime strategies. National maritime strategies, including naval, constabulary and economic dimensions, should be made as transparent as possible, as a means of developing trust and confidence among the region's maritime stakeholders.

3

The Indo-Asia-Pacific would benefit from a Code for Unplanned Encounters at Sea (CUES) for regional coast guards and maritime law enforcement agencies.

2

Countries involved in territorial or maritime boundary disputes should focus on engaging one another through collaboration on non-traditional challenges, rather than negotiating final resolution of disputes.

4

Maritime challenges have landward solutions. Law and order issues at sea require unity of effort involving land-based law enforcement organizations.

Maritime Asia is both a good and bad news story. Global sea lanes today are the primary source of the region's phenomenal economic rise, and the site of increasing inter-state tensions. The seeming contradiction of our mutual success and our mutual suspicion at sea undermines the long-term stability of regional sea lanes, and of the Indo-Asia-Pacific more broadly. From within this perspective, this report sets out to answer two fundamental questions. First, do the leading practitioners of maritime security in the Indo-Asia-Pacific share a long-term vision for the future of the regional maritime commons? And second, what are the primary contemporary challenges to this vision and how can these be overcome?

Senior practitioners in Asia provide an easy answer to the first question. The long-term vision of maritime security in the Indo-Asia-Pacific is one that is both prospering under economic interdependence and pursuing robust national development, including via the development of capable navies and coast guards. Striking a balance between sovereignty and mutual interdependence requires a robust set of rules, norms and laws that governs our relations at sea, sets standards of behavior, and stabilizes expectations between all actors as they pursue their legitimate self-interests. This long-term vision is uncontroversial and widely shared.

There are many obstacles to achieving this balanced, long-term vision. In order to overcome them, the contributors to this report make the following recommendations.

1. **Countries in the Indo-Asia-Pacific need well-developed whole-of-government maritime strategies.** National maritime strategies, including naval, constabulary and economic dimensions, should be made as transparent as possible, as a means of developing trust and confidence among the region's maritime stakeholders.
2. **Countries involved in territorial or maritime boundary disputes should focus on engaging one another through collaboration on non-traditional challenges,** rather than negotiating final resolution of disputes.
3. **The Indo-Asia-Pacific would benefit from a Code for Unplanned Encounters at Sea (CUES) for regional coast guards and maritime law enforcement agencies.**

4. **Maritime challenges have landward solutions. Law and order issues at sea require unity of effort** involving land-based law enforcement organizations.

The first two, as priority activities for the short-term, speak to the need to increase transparency and confidence among governments as we pursue our legitimate national interests, both economic and political. The third and fourth provide concrete avenues for strengthening the rules-based order at sea, with reference to our inter-state and intra-state legal authorities and organizational processes. These recommendations are based on experienced, practical analysis conducted by senior leaders of maritime Asia.

The five sections of this report consider five dimensions of the strategic seascape. Taken together, the chapters paint a portrait of contemporary Asia from the sea, identifying cooperative opportunities to achieve the region's long-term vision without sacrificing national interests and priorities.

In **Chapter 1**, the authors take a big picture view of our maritime commons, clearly articulating the region's success in building a widely shared agenda for continued stability and shared prosperity based on global sea lanes. While the authors lay out this vision as relatively uncontroversial in the region, they note that the rapidly evolving distribution of economic, political and military power in the Indo-Asia-Pacific is the defining challenge of our era as all regional residents work to recalibrate their national agendas within a fast-moving regional environment. This is true for the region's major maritime stakeholders, including the United States and China, whose consequential bilateral relationship remains a work-in-progress, and also for small and medium-states endeavoring to adapt to the increased pace of change with necessarily limited resources. This chapter concludes by putting forward several specific avenues available to governments wishing to mitigate some of the big picture risks associated with a more capable and confident maritime Asia.

In **Chapter 2**, the authors analyze the Indo-Asia-Pacific from within its component maritime parts. Though the global ocean is a single strategic space, the Indo-Asia-Pacific can be more precisely understood by considering its sub-regional maritime zones: the North Pacific, Southeast Asian seas, and the Indian Ocean. The chapter assesses the distinct trend lines, challenges and

opportunities evident in each zone, exhibiting considerable localized variance. For instance, while the North Pacific exists under the very troubling prospect of both nuclear confrontation and traditional conflict between competitive major players, the Indian Ocean is characterized in many ways by the opposite kind of challenge. There, under-capacity inhibits a coherent sub-regional maritime agenda, not the overweening maritime ambition of any single state. The chapter concludes by highlighting only a very narrow range of issues appropriate to pan-regional cooperative efforts, emphasizing the diversity of maritime Asia and the need for tailored policy approaches.

Chapter 3 turns to an assessment of the region's vibrant 'Blue Economy', noting that an increasingly widely shared prosperity based on global sea lanes is the strongest foundation for a region-wide long-term vision for the future. Analyzing the three major pillars of Asia's maritime economy – transport logistics, ocean resources, and sustainable food supply – the authors provide a sanguine assessment of both the region's recent successes and future prospects. They strike a note of caution though, identifying two obstacles to continued economic success. First is the lack of clear and transparent whole-of-government maritime strategies by most, if not all of the region's residents. For instance, China's ambitious investments under the Xi Administration's Maritime Silk Route and One Belt, One Road (OBOR) initiatives are broadly welcomed by all regional residents. Nonetheless, the opacity of China's State-Owned Enterprises (SOEs) and uncertainty about China's economic versus political motives generate regional concerns that are just as widely shared. Greater transparency about the intent of China's broad-ranging maritime engagements in Asia would allay these concerns. As a second obstacle, the region's many outstanding territorial and maritime boundary disputes prevent orderly and profitable exploitation of seabed resources, and seem to be increasingly mobilized as the catalyst for regional confrontation between neighbors. This is particularly true with respect to competition over fish resources in the Yellow, East and South China Seas, which is now the most common, if not the most consequential, driver of incidents at sea.

Chapter 4 moves to discussion of constabulary issues in maritime Asia. While traditional disputes and naval developments have dominated the headlines in recent years, navies and coast guards

remain seized of law and order issues as a day-to-day priority. The contributors identify piracy and illegal, unregulated and unreported (IUU) fishing as the primary challenges to good law and order in Asian seas, and discuss the factors underlying their persistence. They conclude that cooperative management of constabulary challenges is reasonably well-founded in Asia, and that momentum should be sustained. Moreover, the chapter notes that a more coherent regional governance framework to deal with traditional tensions between Asian states is most likely to grow from cooperative structures designed to address these non-traditional challenges. From this perspective, constabulary cooperation that might lead to greater understanding, transparency and coordination around the region is increasingly salient to the overall security environment.

Finally, **Chapter 5** outlines the current health of the rule of law and ocean governance frameworks in Asia, identifying three major pillars of the international legal framework, international law, non-binding agreements between states (or soft law), and domestic legislation. The chapter acknowledges that while the UN Convention of the Law of the Sea (UNCLOS) and the customary law that underpins it has wide regional support, stated or signed international commitments are often not well-reflected in domestic law or current practice. The recent Tribunal Award in the South China Sea Case, decided in July 2016, put these tensions into stark relief and suggests that UNCLOS itself, or its implementing instruments need to be strengthened in order to re-establish the rule of law in Asian seas. The contributors conclude by noting that prudent management of Asia's diversity within a single legal framework to guide our operations as we pursue our legitimate self-interests remains a primary challenge in achieving a shared vision of a prosperous, capable Indo-Asia-Pacific.

The contributors to this report confirm that many parts of Asia have made incredible gains to their full-spectrum maritim development in a very short period of time. In 2017, Asia is undeniably at the center of global, sea-based economy. The report acknowledges that our primary task going forward will be to safeguard the mutual gains of our achievements – economic, political, social, and military. That said, while we share a broad vision about the ideal long-term future, much work remains to be done. More today than at any time since the end of the Cold War, Indo-Asia-Pacific seas confront the real risk of state-based

conflict due to territorial and maritime boundary disputes. These disputes have the clearest and most immediate impact on our region. They complicate our pragmatic relationships and undermine our institutions. Solutions to this problem set are not immediately obvious, nor will they be simple. That said, this report offers first steps and hopes to encourage more senior decision-makers to join the discussion.

1. Management of the Maritime Future

1. Management of the Maritime Future

An introduction to 'The Big Picture'

Today's maritime Indo-Asia-Pacific is the product of both decades of remarkable success and troubling contemporary trends. It is very promising that, in recent decades, many of the region's most influential and capable resident states have lost their 'sea-blindness'. Important regional stakeholders like China, India, Australia and others have come to view the maritime domain as integral to national and regional security. This has been driven by remarkable economic growth across Asia, as well as deeper integration of national economies into regional and global markets. Leading global economic trends have had important effects on regional security: the contemporary maritime sector is distributed world-wide, so Indo-Asia-Pacific seas must be viewed today in line with these global dynamics. Extra-regional actors will continue to be involved in Asian security as active partners for the foreseeable future and, in turn, developments in our region will have global effects.

Unfortunately, though regional economic interdependence is a strong and stabilizing force, it is not a guarantee of regional stability. Recent events – including rising tensions between Japan and China, China and the ROK, and China and rival claimants to the Spratly Islands in



Singapore, 2016
Photo credit: Singapore Budget 2016 – Partnering for the Future, http://www.singaporebudget.gov.sg/budget_2016/home.aspx

the South China Sea – demonstrate that states continue to prioritize national security interests in their approach to maritime issues, particularly territorial and maritime boundary disputes. This seems to be the case even when pursuit of those national security interests is at odds with economic priorities or relationships. While the logic of globalization suggests that conflict between major trading partners is all but unthinkable, the contemporary Asian experience suggests that we shouldn't make that easy assumption.

The primary challenge to the Indo-Asia-Pacific in the next fifteen years will be adapting to a changing regional distribution of power.

That national security priorities run counter to economic priorities raises a number of core issues. The primary challenge to the Indo-Asia-Pacific in the next fifteen years will be adapting to a changing regional distribution of power. Maritime Asia has risen, marking a break from the twentieth century. At that time, most of Asia was characterized by disconnected and underdeveloped national economies with little to no maritime capability, whether commercial, naval or



Singapore, 1945
Photo credit: Argus Melbourne, World War, 1939-1945 – Singapore – Peace; retrieved from State Library Virginia, http://search.slvic.gov.au/MAIN:Everything:SLV_VOYAGER1721760

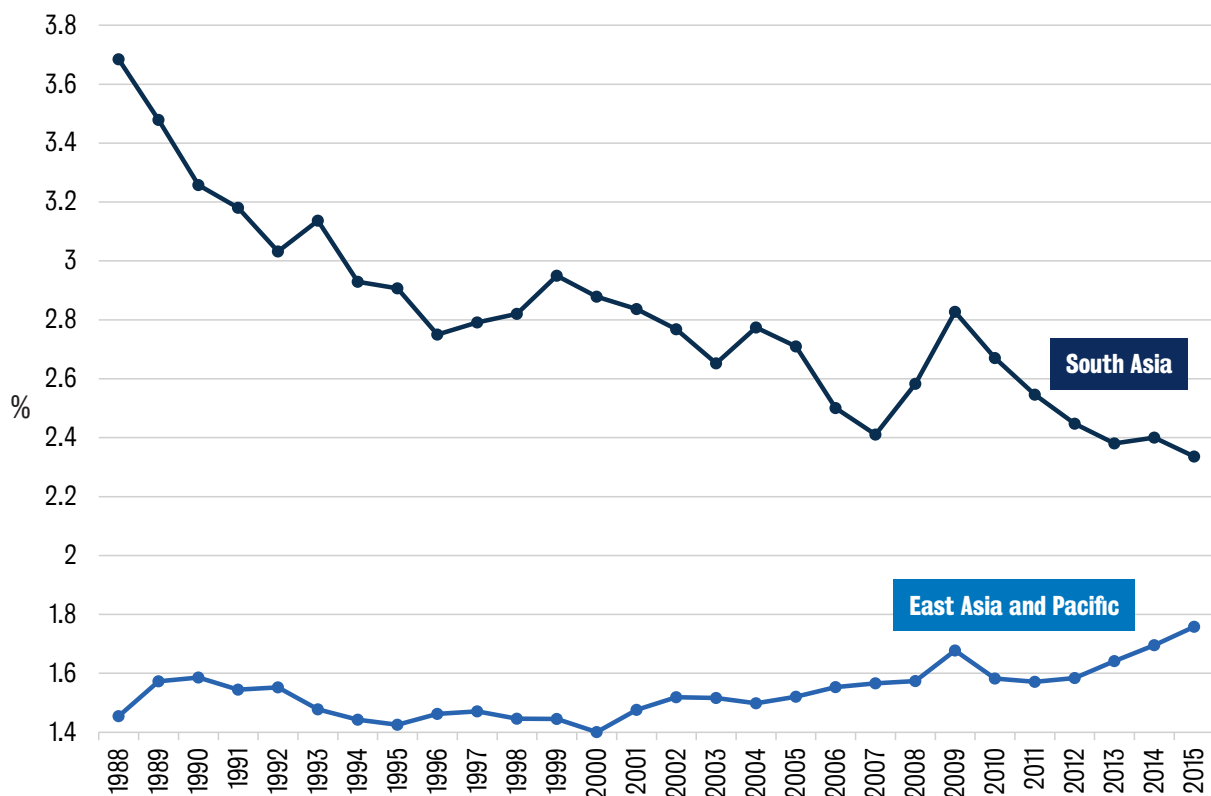
constabulary. By contrast, today, growing regional maritime capability is casting regional politics in a new mold. Specifically, the changing dynamics between the People's Republic of China and the United States is a major security concern for all Asian states. A new administration in Washington has injected new anxiety by calling into question the extent to which the United States will continue to underwrite a global economic order premised on multilateral trade. President Xi's statements at the World Economic Forum in Davos raise the prospect that the mantle of leadership on free trade might shift from Washington to Beijing. Of course, much remains to be determined. Onlookers do not yet know which, if any, of President Trump's statements on China will inform policy, and which seek to establish a negotiating posture. But whatever one concludes about the intent, methods and outcomes of shifting Sino-U.S. relations, it is already clear that regional residents will need to cope with an increasingly uncertain regional maritime order. Tensions in the South China Sea, in particular, which have ramifications not only for U.S. and Chinese interests but also for all

stakeholders, will dominate the Indo-Asia-Pacific's maritime security environment for the medium-term.

Growing Cooperation for a Stable Indo-Asia-Pacific

Security cooperation at sea is an essential feature of any successful regional order. More Asian states pursue engagement with their neighbors in the maritime domain than ever before. This is a good thing and we are witnessing progressive attitudes toward maritime cooperation in the operational domain in particular. Cooperation among the region's maritime agencies has dramatically increased over the past several years alongside growing regional awareness of the centrality of the maritime environment. Regional navies, coast guards and maritime law enforcement agencies now routinely patrol with or alongside one another in the Malacca Straits and North Pacific, for example, and information sharing on maritime developments is much more robust than in the past, even though much remains to be done to deepen this exchange. Growing naval and constabulary

Military Expenditure of South Asia and East Asia and Pacific (% of GDP) from 1985 to 2015



Source: Stockholm International Peace Research Institute (SIPRI), *Yearbook: Armaments, Disarmament and International Security*, 2016.

capabilities in Asia generally contribute to stability in the maritime domain and, as such, are both beneficial and desirable. Both navies and coast guards play important roles in maintaining good order at sea in the Indo-Asia-Pacific. Moreover, informal engagement at the tactical level between navies and coast guards is essential for state-to-state engagement, so long as the region operates without a formalized and regularized multilateral mechanism for maritime cooperation.

Of course, growing capabilities are most supportive of regional stability when they are accompanied by diplomacy, transparency and professionalism. Effective, ongoing military diplomacy, an appropriate degree of transparency in modernizing forces, as well as commitment to military professionalism is necessary to reassure all residents of the region that increased capability will translate into increased stability. Maritime Asia is more capable than ever and, where accompanied by these necessary pillars, today's regional community is operationally better able to manage conflict and respond to crisis than it has been at any time in the recent past.

Of course, growing capabilities are most supportive of regional stability when they are accompanied by diplomacy, transparency and professionalism.

Troubling Trends

Despite Asia's growing maritime success, the region faces strategic-level challenges. Many who work at, on or around the sea increasingly characterize the environment in pessimistic terms. Two trends support this view. First, the Indo-Asia-Pacific maritime environment is increasingly complex. This complexity is the result of a growing number of multi-dimensional and overlapping maritime security issues, including territorial disputes, constabulary issues such as smuggling and piracy, and environmental challenges, among others. As such, regional actors face far more difficult policy challenges than in the past. All regional governments are, to a greater or lesser degree, challenged to address the heightened complexity of the contemporary security environment with existing material capabilities and institutional frameworks. Second, there are visible fissures in the regional rules-based order, particularly in the realm of dispute resolution for competing

maritime claims. It increasingly appears that some states in the region support the United Nations Convention on the Law of the Sea (UNCLOS) only when it is in their interests to do so. This failure of commitment to the generalized rule set for the maritime domain, including UNCLOS and proceedings that flow from the treaty, is far more troubling than the existence of territorial or maritime boundary disputes alone. While it is reasonable that regional states will sometimes disagree about fundamental issues including sovereignty and sovereign rights, there can be no guarantee of stability in an environment in which there is no generalized commitment to an overarching set of rules and dispute resolution mechanisms. The UNCLOS regime continues to be our region's best bulwark against disorder, and bilateral negotiations in line with existing legal principles remain the best means of managing overlapping claims. Both require the continued support of regional governments to maintain relevance.

Of course, there can always be room for improvement in any original legal framework and its application. International institutions need to adapt to contemporary realities in ways that are not prejudicial to their original intent if they are to persevere. UNCLOS is no exception. Indeed, significant changes to available technology, new and expanded economic uses of the ocean, and broadened state and non-state capabilities are all tests of UNCLOS' enduring legitimacy as a constitutional framework for the seas.

The UNCLOS regime continues to be our region's best bulwark against disorder, and bilateral negotiations in line with existing legal principles remain the best means of managing overlapping claims. Both require the continued support of regional governments to maintain relevance.

Regional Challenges

The primary challenge to the Indo-Asia-Pacific's good order at sea is ongoing territorial and maritime disputes in the South China Sea. This single set of disputes dominates the Asian agenda today, and is likely to do so for the next decade. The disputes are not only a challenge to the stability of relations between rival claimants, but have the potential to draw in stakeholders that are not direct parties to the disputes themselves,

including the United States. As such, the South China Sea remains the most likely site of state conflict in Asia. Moreover, strained relations over the rocks, reefs and shoals of the South China Sea remain stubborn stumbling blocks for both regional diplomacy and pragmatic cooperation at sea, even toward widely shared ends. As an example, it remains very difficult for state partners to share baseline information and coordinate responses to common challenges like piracy and armed robbery, trafficking at sea, terrorism and violent extremism, or illegal, unregulated and unreported (IUU) fishing. Last, the South China Sea disputes have fundamentally challenged the rules-based order. In particular, the People's Republic of China's refusal to participate in or accept the results of the UNCLOS Arbitral Tribunal (PCA) ruling in the South China Sea arbitration is a serious challenge to the rule of law at sea with potentially far-reaching effects for all seagoing states.

Underneath the strategic challenges of the South China Sea disputes, sub-regional partners across Asia remain focused on maritime security threats most salient to them and their people. In each of these sub-regions, the Indian Ocean or the North Pacific for example, localized security threats like IUU or trafficking are often more immediate than region-wide ones. This variance in strategic- versus sub-regional priorities mean that sub-regional maritime security communities continue to operate in a somewhat local context. Any assessment of the maritime Indo-Asia-Pacific needs to take careful stock of the operation of sub-regional maritime security communities that make up the wider whole.

Regional Opportunities

In an uncertain era, where are the best opportunities for regional cooperation for common security? Though it is not sufficient to guarantee regional stability, successful regional economic integration is a necessary component of a cooperative future. Without shared prosperity, the states of the Indo-Asia-Pacific have little incentive to build a shared security architecture. It should not be surprising then, that the majority of Asian officials continue to emphasize that growing economic linkages around the region provide the most support to regional security. Where there are disparities between developed and less developed nations in Asia, work needs to be done to include less developed partners in a more meaningful

economic partnership. Shared economic benefits represent continuous joint interests between residents of Asia, including the United States. Deepened engagement and fostering an expanded circle of trade and investment will support a secure and stable Asia going forward.

Government collaboration to respond to crisis and national disasters also represents a major success story in contemporary Asia. Since 2010, the regional community has responded generously and in the spirit of collaboration to several crises: the Japanese triple disaster (2011), Super Typhoon Haiyan in the Philippines (2013), the search for Malaysian airliners MH370 in March 2014 and AirAsia nine months later. Each crisis was an opportunity for neighbors and partners to extend support despite disputes or traditionally-rooted tensions. Although these crises are episodic, they are complex and demanding periods of partnership. The experience of operating in close proximity, in complex conditions and with considerable time pressure is an opportunity to gain trust and learn lessons together. These unfortunate experiences can be translated into opportunities to apply those lessons to more generalized cooperation across a wider range of issues.

While no one would prefer a return to the previous century, when low- or no-growth economies and under-resourced governments played too little role in regional maritime security, a more capable, credible maritime future carries challenges that cannot be ignored.

Glass Half Empty, Glass Half Full?

Maritime Asia is both a good and bad news story. While no one would prefer a return to the previous century, when low- or no-growth economies and under-resourced governments played too little role in regional maritime security, a more capable, credible maritime future carries challenges that cannot be ignored. The first is increasing regional complexity, which puts unusual demands on regional governments struggling to deal with complex dynamics with finite material and political resources. The second is the increasing pace of change, which offers many promising avenues to deepen productive relationships but also requires constantly updated regional understanding to identify and exploit those opportunities as they arise. The last is diminished support for UNCLOS,

which calls into question the stability of the rule set that has been the foundation for our shared prosperity. These challenges do not discount our successes. They do suggest that we will need to be proactive in addressing them as a necessary support to sustaining regional growth and development.

2. The Indo-Asia-Pacific in Context

2. The Indo-Asia-Pacific in Context

Seafarers and strategists know that the world ocean is a unified whole. It remains important to view developments in maritime Asia with reference to global causes and consequences. That said, strategic-level challenges discussed in Chapter 1 are not equally salient in all parts of Asia, nor do their effects manifest in uniform ways. The Indo-Asia-Pacific, as an object of study, is too large to do justice to the many intricacies of regional maritime politics. The Indian Ocean region, Southeast Asian seas and the North Pacific are all equally important as mediums of global trade and arenas for interstate relations. But they are each the site of discrete trends, pressures and opportunities, and therefore require separate consideration.

The North Pacific

The North Pacific is complex and challenging and is driven by a number of issues at the political level. Three major traditional security challenges continue to dominate the regional agenda and contribute to ongoing regional uncertainty. Instability on the Korean peninsula, the Democratic People's Republic of Korea's (DPRK) ongoing nuclearization program (including its pursuit of submarine-launched ballistic missile capability), multiple bilateral territorial and maritime disputes in the East China Sea, and Russia's unpredictable role in the sub-region all contribute to heightened risk of instability in the North Pacific.

Of these important security challenges, the most pressing is Pyongyang's unpredictability together with the state's continued development of nuclear and launching technologies. Today, North Korea presents the most tangible risk to Northeast Asia and requires immediate response. Between April and September 2016, Pyongyang conducted five ballistic missile tests. Though not all were fully successful, North Korea did register some provocative 'firsts': it successfully fired into the Japanese Air Defense Identification Zone (ADIZ) twice, reached the highest-recorded

altitude for a North Korean missile, the farthest-recorded distance for a North Korean missile, and executed a successful submarine launch. These tests also confirmed the DPRK's disregard for global and regional diplomacy: the September 2016 missile test was conducted as China's President Xi Jinping hosted the G20 Summit in Beijing. The DPRK's continued nuclear and missile development presents a conventional threat to ROK and Japan, and makes a regional arms race more likely. Many question the effectiveness and robustness of U.S. extended deterrence over the ROK and Japan, particularly in light of recent developments in the DPRK's missile technology. As the DPRK continues to develop its capability, it remains possible that targets of the North Korean program, such as the Republic of Korea (ROK) and Japan will eventually feel compelled to develop their own weapons systems for the sake of defense and deterrence. This is especially so if U.S.-led initiatives in Northeast Asia meet regional resistance. Chinese, Russian and North Korean reactions to the agreed Terminal High Altitude Area Defense (THAAD) anti-missile system are a case in point. While no one wants to see a more militarized Northeast Asia, continued North Korean assertiveness and suspicion about U.S.-led responses may yet contribute to that outcome. On the other hand, it also remains possible that China or Russia might play a leading role in engaging Pyongyang in a cooperative regional framework. Heretofore, Beijing has been unwilling or unable to do so, but this may change as China evolves from a regional to a global player, taking on new roles and responsibilities as a result.

In addition to the threat of conflict on the Korean peninsula, the many territorial and maritime disputes in the North Pacific carry the potential to drive sub-regional conflict and to prevent deepened integration. In particular, both the ROK and Japan note growing concern over the PRC's use of commercial fishing boats and maritime militias in the East China Sea to challenge other states' administrative control over

disputed areas. The areas of primary concern in this regard include the waters around the Senkaku/Diaoyu Islands (administered by Japan and claimed by the PRC) and the waters between the UN-imposed Northern Limit Line (NLL) and North Korea's declared access corridors farther south. In both areas, tense and sometimes violent confrontations between administering coast guards and Chinese fishing vessels have become commonplace. This increased engagement between coast guards and commercial fishing vessels of unclear status raises the potential for inadvertent conflict between rival claimants. A notable exception is the waters around the disputed Dokdo/Takeshima islands, which are administered by the ROK and claimed by Japan. Despite both parties' firm commitment to their claim on the territory, the dispute is not the subject of regular operational confrontation. This case might serve as a sub-regional model for state restraint, particularly if progress can be made by the parties on the ultimate resolution of the competing claims.

Despite important and ongoing traditional challenges between the littoral states of the North Pacific, non-traditional security challenges are also integral to the sub-region's security agenda. While the DPRK, Russian activities, and territorial and maritime disputes all contribute to insecurity that might lead to state conflict, serious non-traditional security challenges also require intervention. These

include climate change, human trafficking and illegal migration, natural and manmade disasters, and regional epidemics. These lower-order security challenges are both sources of insecurity in the North Pacific and potential avenues for state-to-state engagement. More can be done by navies, coast guards and civilian ministries to exploit these opportunities for coordination and cooperation.

Operating close-in will always carry risk where there aren't agreed upon rules of behavior, stable expectations of the others' motives and operations, and communication mechanisms in place to clarify misunderstandings or discuss incidents at sea.

In particular, Humanitarian Assistance and Disaster Response (HADR) operations have an important role to play in building confidence in this challenging sub-region. Policy alignment and operational planning to support coordinated HADR is an important platform for the development of institutional ties, norms for engagement and cooperation at sea, and relationship-building between maritime counterparts. As a single case in point, the U.S. Pacific Command-hosted (U.S. PACOM) Rim of the Pacific (RIMPAC) biennial exercise remains an important mechanism for confidence building between North Pacific states. Other major exercises including CARAT and SEACAT are similarly valuable opportunities to invite Northeast Asia navies to join standing cooperative activities. Such periodic multi-national activities can be a building blocks for more predictable regional relationships at sea. However, increasing opportunities to operate alongside one another will not be sufficient to allay the risk of inadvertent conflict between rivals unless they succeed in building confidence and mutual understanding between parties. Operating close-in will always carry risk where there aren't agreed upon rules of behavior, stable expectations of the others' motives and operations, and communication mechanisms in place to clarify misunderstandings or discuss incidents at sea.

Southeast Asian Seas

Southeast Asia has been the site of remarkable economic and political progress in the last fifty years. Compared to the Cold War period,

Figure 1. Map of disputed zones around the Senkaku/Diaoyu Islands (Source: Stratfor, 2012)



Southeast Asia is a stable and prosperous sub-region. However, as Southeast Asia transforms from an insular, fragmented and land-centric region to an open, integrated and sea-conscious one, littoral states will confront an increasing amount of uncertainty. The multiple complex and overlapping territorial and maritime boundary disputes in the South China Sea are the overriding security challenge in Southeast Asian Seas, and they contribute significantly to regional risk. These disputes involve multiple actors and many policy dimensions. Moreover, it has drawn in the attention of external stakeholders, which are both a stabilizing and de-stabilizing force. On the one hand, external stakeholders provide needed security assistance and diplomatic support to those claimants with limited capacity to pursue their claims against the PRC, whose nine-dashed-line represents the most geographically ambitious and jurisdictionally expansive claim in the region. On the other hand, the involvement of external parties

increases the level of diplomatic complexity and greatly complicates Southeast Asia's relations with China. Taken together, the number of national agendas converging in maritime Southeast Asia introduce much risk to a sub-region that is in the process of a fundamental political, economic and societal transformation.

Southeast Asian Seas are the site of four primary challenges, the erosion of the rule of law first among them. China's unwillingness to participate in proceedings or adhere to the Arbitral Tribunal's findings dealt a severe blow to the regional reliance on rules-based processes and agreements in Southeast Asia. While UNCLOS remains an essential tool for state engagement and conflict resolution, it and its associated mechanisms have been fundamentally weakened. For the rule of law to persist in Southeast Asia, there is a need to reconsider both international maritime law and regional diplomacy in light of post-tribunal state responses.

Figure 2. Map of claimed zones in the Yellow Sea. (Source: adapted from Van Dyke, Valencia and Miller Garmendia, 'The North/South Korea Boundary Dispute in the Yellow (West) Sea', *Marine Policy*, (2003) 27:2, 144.)

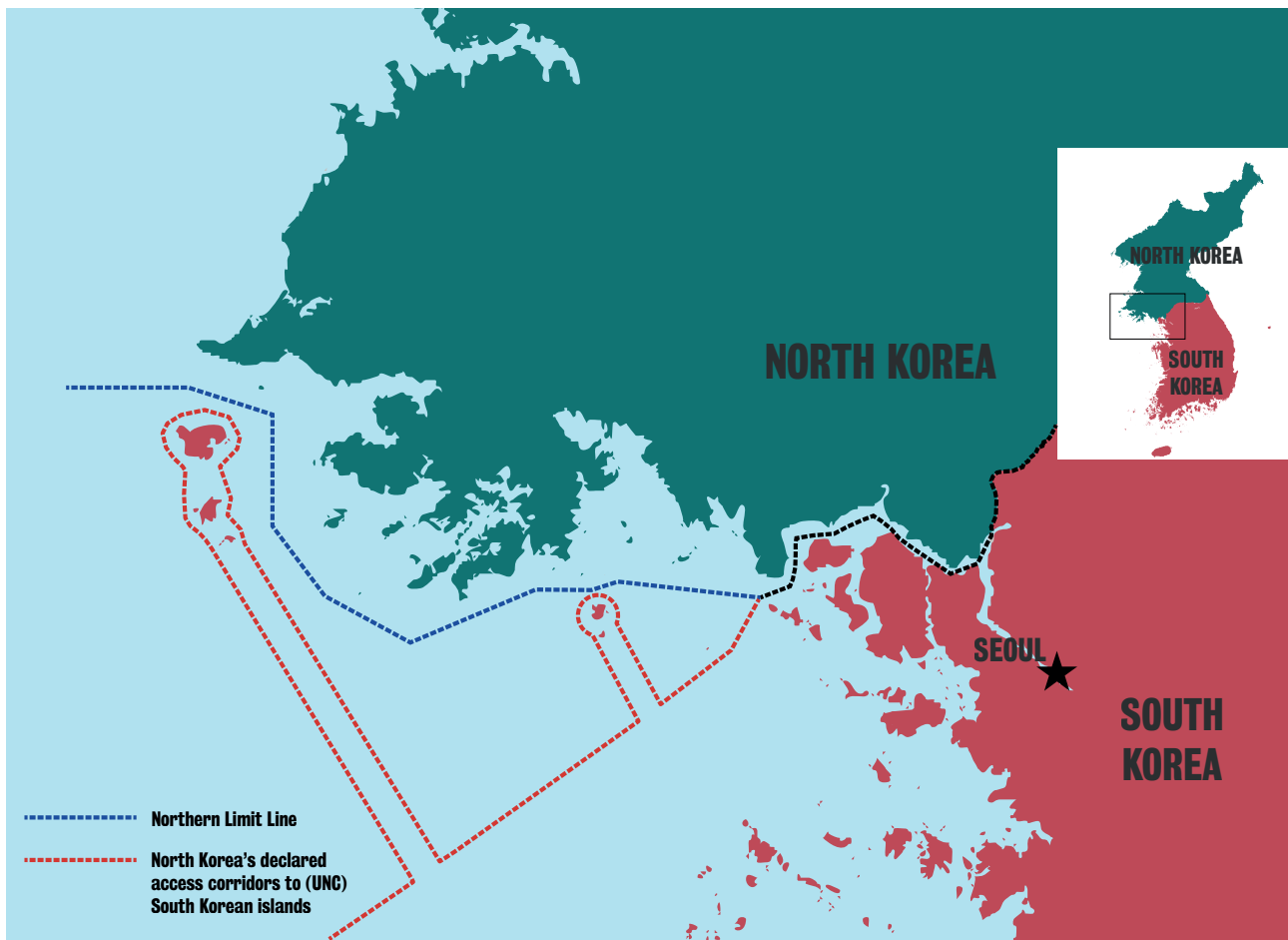




Figure 3. Liaison officers from participating countries review a training brief to prepare for SEACAT at Yankee Station, August 19, 2016. Source: U.S. Pacific Command, 2016

Southeast Asia Cooperation Training (SEACAT)

is a multilateral maritime security exercise addressing security challenges like smuggling, and piracy, including Singapore, Brunei, Indonesia, Malaysia, the Philippines, Thailand, Bangladesh, Cambodia, and the United States. SEACAT began in 2002, organized by Commander, Task Force 73 and Destroyer Squadron 7 staff. During the five-day command post exercise, liaison officers collaborate and execute maritime responses to multiple realistic scenarios. After receiving and sharing information from Singapore's Information Fusion Centre, Malaysia's International Maritime Bureau, or the Philippines' Coast Watch System, liaison officers will conduct on scene boardings. This year marks the 15th annual SEACAT in which coast guard personnel from the U.S., the Philippines, Bangladesh, Indonesia, and the Malaysian Maritime Enforcement Agency are also participating in the exercise.

Second, and closely related, Southeast Asian trust in the PRC is diminishing in the wake of the Tribunal's award. China's intentions in the South China Sea remain vague. The exact nature and basis for its claim remain unclear. Both international legal mechanisms and regional diplomatic forums have so far failed to influence Beijing's behavior. Troubling military developments continue apace, beginning with the land reclamation projects in the Spratly Islands in 2014 and continuing through operational assertion of rights in disputed maritime areas throughout 2016. Assertive military and constabulary construction and operations without the expected engagement with relevant regional and international forums contributes to instability in

regional seas. Last, the pace and scope of change in the maritime domain present unique difficulties to regional states which, despite their impressive development in recent decades, remain constrained by limited resources. Southeast Asia is a region of growing military budgets, particularly in the naval realm, and as more regional governments re-orient their policy to the sea, the political dynamics of maritime affairs are importantly affected. As a case in point, Indonesian President Joko Widodo's multi-dimensional Maritime Fulcrum policy has impelled adaptations by Indonesia's neighbors, who are reacting to changes to Indonesia's diplomatic, economic and operational approach to maritime affairs. This includes Indonesia's increased enforcement operations against illegal fishing boats in particular (which has caused some regional discomfort), but includes other elements as well. Fast-changing policy alignments supported by changing material capabilities contribute to complexity in Southeast Asia's maritime sector. Though many of the sub-region's leading actors have more experience and capability in maritime affairs than ever before, most still register concern that they have not yet developed effective means to deal with fast-paced regional change.

Amid all this challenge, there remains considerable room for optimism in Southeast Asian seas. Military and maritime law enforcement modernization means that more partners can make credible contributions to maintaining good order at sea. Numerous coordinated initiatives provide evidence of this, including the Malacca Straits Sea Patrols (MSSPs) and the attendant Eyes-in-the-Sky (EiS) cooperation, as well as the newly announced Sulu Sea Patrol Initiative (SSPI), but also information sharing platforms like the Information Fusion Center (IFC) and ReCAAP Information Sharing Center (ISC) in Singapore. Increasing capabilities around the littoral provide an opportunity for a greater number of partners to engage in information sharing, systems integration and operational coordination or cooperation in future. Ideally, incremental cooperation will enable the Southeast Asian community to coordinate a response to the changing regional context, especially if it can be coordinated through existing ASEAN mechanisms. Not only do these first steps create space for confidence building between governments but they also provide a means for increasing Southeast Asian domestic publics' understanding of maritime issues and the role they play in the regional relations among states.

The South China Sea Case Award Summary

No.1	UNCLOS defines the scope of maritime entitlements in the South China Sea and these entitlements do not extend beyond the limits imposed by the Convention.
No.2	China's claims to historic rights, or other sovereign rights or jurisdiction, within the 'nine-dash line' are contrary to UNCLOS and have no lawful effect. UNCLOS supersedes any historic claims.
No.3	The high-tide features at Scarborough Shoal are rocks that have no EEZ or continental shelf.
No.4	Scarborough Shoal, Cuarteron Reef, Fiery Cross Reef, Johnson Reef, McKennan Reef, and Gaven Reef (North) are high-tide features in their natural condition. Hughes Reef, Gaven Reef (South), Subi Reef, Mischief Reef, and Second Thomas Shoal are low-tide elevations.
No.5	Mischief Reef and Second Thomas Shoal are part of the EEZ and continental shelf of the Philippines.
No.6	High-tide features of Gaven Reef (North) and McKennan Reef are rocks that have no EEZ or continental shelf.
No.7	High-tide features at Johnson Reef, Cuarteron Reef, and Fiery Cross Reef are rocks that have no EEZ or continental shelf.
No.8	China has breached the Philippines' sovereign rights over its continental shelf. China's 2012 fishing moratorium violates the Philippines' sovereign rights in its EEZ.
No.9	China has breached the Philippines' EEZ rights by failing to exercise due diligence in preventing fishing by Chinese vessels in May 2013.
No.10	China has unlawfully prevented Filipino fishing activity in the Scarborough Shoal from May 2012 onwards.
No.11	China has failed to prevent Chinese fishing vessels from harvesting endangered species near the Spratly Islands and Scarborough Shoal.
No.12	China has breached the Philippines' sovereign rights in its EEZ and continental shelf by construction of artificial islands at Mischief Reef.
No.13	Chinese law enforcement vessels in the vicinity of Scarborough Shoal created risks of collision and danger to Filipino vessels and personnel.
No.14	China has aggravated the disputes through artificial island building, endangering marine life, and construction activities.
No.15	China and the Philippines are obliged to comply with UNCLOS.

DKI APCSS original adaptation from the Permanent Court of Arbitration, Arbitral Tribunal Award, July 12, 2016.

The Indian Ocean

The Indian Ocean is the site of a very different kind of ocean politics and military dynamics. At the current time, the Indian Ocean is stable and regionally compartmentalized. Though the Indian Ocean is affected by competing interests over maritime boundaries and transboundary resources, its relative naval and economic underdevelopment means that no single state has the capability to fundamentally shape the sub-region through force projection or coercion. In many cases, the littoral states of the Indian Ocean are unable to engage meaningfully with one another at all. States like Sri

Lanka, Pakistan, Bangladesh and even (to a lesser extent) India, cannot provide enough persistent naval or coast guard presence to support sustained regional interaction. For many of the littoral and small island states, including the Maldives, Mauritius, Seychelles and Madagascar, interaction with other regional navies and coast guards is a virtual impossibility. This lack of capacity is symptomatic of limited budgets and resources, but is also driven by general 'sea blindness' or lack of maritime awareness among regional governments and populations. In contrast to many other parts of Asia, residents of the Indian Ocean continue to under-appreciate the value of the oceans for

national development, both economic and military. The Indian Ocean is relatively peaceful, the result of the continued prioritization of land forces over fleets, and under-development of regional maritime economies.

There are some that fear that China pursues economic relationships [in the Indian Ocean] with ulterior motives. Though there is much debate and disagreement on this point, Beijing could gain much confidence in the region by practicing more transparency about its investment and development practices, and its overall strategic intentions ...

The most capable user states of the Indian Ocean are non-residents. With the notable exception of France (resident at Réunion), the U.K.

(resident at Diego Garcia, currently under lease to the U.S.), and India, the most frequent users of the sea lanes are resident elsewhere. The United States, the European Union, Japan, and the PRC all have bases, command posts and/or logistical support facilities in the Indian Ocean, and many more states use the Ocean for regular transit. These activities of user states have, on balance, not been disruptive. The coalition of coalitions that came together in 2009 under authority given by the United Nations Security Council to suppress rampant piracy off the Somali coast is an illustrative example where the activities of external stakeholders have made a net contribution to Indian Ocean security. However, as East Asia's ocean politics have come under greater strain, states of the Indian Ocean have become more concerned about the intentions and potential consequences of the activities of outside actors.

03 August 2016
Press Release
Department of National Defense, Republic of the Philippines

Defense Ministers affirm Trilateral Cooperative Arrangement

The defense chiefs of the Philippines, Malaysia, and Indonesia met in Bali yesterday, 02 August 2016, to further discuss the current security challenges in the region, especially in the maritime areas of common concern.

Philippine Defense Secretary Delfin N. Lorenzana, Indonesian Defense Minister General (R) Ryamizard Ryacudu and Malaysian Defense Minister Dato' Seri Hishammuddin Tun Hussein reiterated their commitment to the Trilateral Cooperative Arrangement signed in Jakarta on 14 July 2016.

The three defense leaders agreed to encourage the operationalization of the Standard Operating Procedure (SOP) for Maritime Patrol and Rendering Immediate Assistance; Operating Guidelines on Information and Intelligence Sharing; and Combined Communication Plan.

Recognizing the mutual trust and high responsibility from all parties, the defense chiefs agreed to further explore coordinated activities among the Armed Forces of the three countries, a trilateral database sharing mechanism, and the concept of the Malacca Strait Patrol (MSP) to address maritime security concerns, among others.

During the meeting, the leaders also reiterated their stand against violent extremism and terrorism, and concern over the repeated incidents of armed robbery and kidnapping at sea in the maritime areas of common concern to the three countries. The defense ministers reaffirmed their commitment to address such threats.

The Trilateral Meeting was conducted in accordance with the ASEAN's principles of equality, mutual trust and respect for sovereignty, territorial integrity, non-interference in the internal affairs of one another, and good neighborliness.

Source: <http://dnd.gov.ph/PDF%202016/Press%20-%20Trilateral%20Meeting%20Statement.pdf>

In particular, littoral states are uniformly attuned to the disputes in the South China Sea. Within that paradigm, there is heightened interest among Indian Ocean states to better understand China's overall intentions in the larger Indo-Asia-Pacific domain. This is particularly true of India, who has long-standing land boundary disputes with China, but is generally true of the smaller states in the region as well. Concern about Beijing's activities and objectives is not limited to the naval domain. China's motives for engaging in large-scale port development in Sri Lanka, for example, is subject to much speculation. There are some that fear that China pursues economic relationships with ulterior motives. Though there is much debate and disagreement on this point, Beijing could gain much confidence in the region by practicing more transparency about its investment and development practices, and its overall strategic intentions in the Indian Ocean *writ large*.

Larger concerns about strategic stability aside, the regional agenda is dominated by several important non-state-centric security challenges,

some of which are acutely felt by regional residents. The daily realities of ongoing crime at sea (including IUU fishing), environmental degradation, and seasonal natural disasters are the top priorities of many of the region's small states. For some, such as the Maldives and Sri Lanka, threats to the sustainable national maritime economy, including IUU fishing and smuggling are the most important issues faced by their navies and coast guards. There are many obstacles to mounting much-needed coordinated responses to these challenges, including the limited reach of regional navies and coast guards already noted, an insurmountable liability in the Indian Ocean's vast geography.

For that reason, the best opportunities for cooperative management of the region's maritime domain are found in the commercial maritime sector. This might include investment and trade, or harmonized regulation to facilitate legitimate trade in the maritime sector; it may also include increased and coordinated land-based law enforcement measures to deny port entry to

Figure 3. Map of naval bases in Indian Ocean (major navies only) (Original compilation, DKI APCSS)



illegally procured or traded products. Existing regional organizations may or may not be helpful in fostering cooperation in these areas.

... the best opportunities for cooperative management of the [Indian Ocean's] maritime domain are found in the commercial maritime sector.

The Indian Ocean Naval Symposium (IONS) provides a useful venue for discussion, particularly because it remains the only regional forum that draws together all Indian Ocean States from East Africa to Southeast Asia and Australia. On the other hand, many smaller members of IONS note that the organization remains too India-centric. The Indian Ocean Rim Association (IORA) provides an alternative, more trade-focused forum, but this body has traditionally not focused on security. Whatever venue is chosen for deepened

discussions about the ways and means to cooperate to provide security for the regional maritime economy, discussion should be inclusive of all regional players, regardless of capacity or relative size. There is particular value in including East Africa's Indian Ocean states, including France. They bring not only added capabilities, but also valuable experience in multinational responses to piracy and other transnational threats at sea, particularly Somalia, Ethiopia, Kenya and Tanzania.

As ocean politics become increasingly pointed in parts of East Asia, the Indian Ocean remains somewhat removed. Nonetheless, the current period of stability may be misleading. At the moment, the Indian Ocean is enjoying a period of calm. There is no single dominant actor in the region and the threat of Somali piracy is receding. But this stability may be the result of limited capacities, rather than benign intentions. If that assessment is accurate, any stability the Indian

IORA Maritime Cooperation Declaration 2015

1. To promote sustainable development of coastal and small island areas through, among other ways, sustainable coastal and maritime tourism, and leisure activities and enhancing economic activities of small and medium enterprises including capacity building and empowerment of farmers, fishermen and women;
2. To encourage increased investment in and development of sustainable and resilient maritime infrastructures to promote shared economic growth that will contribute to narrowing the development gap and facilitating the movement of peoples.
3. To encourage cooperation in the field of shipping, logistics and allied industries with the view to promote well-being and employment generation, including of sea-farers;
4. To enhance cooperation in sustainable marine economic development and food security through the promotion of sustainable and responsible fisheries management and the protection and preservation of marine resources and the environment
5. To support and strengthen regional cooperation in accordance with universally recognized principles of international law, to address maritime challenges such as Illegal Unreported and Unregulated fishing, piracy, irregular movement of people, marine pollution, drugs trafficking, illegal trafficking in wild life, disasters and climate change by:
 - Enhancing coordination and communication between and among national maritime agencies and authorities and other relevant fora
 - Promoting the region's capacity for disaster risk management and search and rescue operations
 - Enhance cooperation on maritime safety, marine environmental protection and maritime security
6. To encourage increased engagement between research institutions on maritime issues and collaboration amongst IORA member states on maritime education, research, development and innovation, including the Second International Indian Ocean Expedition (IIOE-2) from 2015 – 2020.

Source: Indian Ocean Rim Association, 2015. http://www.iora.net/media/160000/iora_maritime_cooperation_declaration_2015.pdf

Ocean is experiencing could easily be transient if sub-regional actors (or external users) develop the means to challenge one another within the currently under-developed maritime domain.

Parts of the Whole: The Indo-Asia-Pacific in Local Context

Though there is a single global ocean, there is considerable localized variance across the Indo-Asia-Pacific. Southeast Asian seas are both the most dynamic and unpredictable at the moment, and all Asian states are to a lesser or greater extent cautiously following events there as a harbinger of things to come in their own backyard. The North Pacific and the Indian Ocean are in some ways contrasts in extremes: the spate of North Korean nuclear tests over the Sea of Japan, including Pyongyang's first successful submarine-launched ballistic missile test mean that the states of that sub-region will remain focused on providing stability against traditional state-based threats for the foreseeable future. In a region with many undefined or contested territorial and maritime boundary disputes, this presents no small challenge. The Indian Ocean, by contrast, remains focused on the need for capacity development, both through investment and good management of national maritime economies, and commensurate investment in regional navies and coast guards. The Indian Ocean's stability is the result of low capacity among most of the region's actors. Many Asian states are unable to implement an effective national maritime strategy as a result of capability or capacity deficits, and this in turn inhibits regional cooperation. This weakness may make the region vulnerable to manipulation by a single dominant actor in that space, should one eventually emerge.

Under this variation, there is a shared vulnerability. With very few exceptions, all of the states of the Indo-Asia-Pacific are either deeply economically dependent on sea lanes or are actively working to grow their overseas trade and become so. If the maritime environment is not well-managed going forward, viability of independent national development premised on open markets and vibrant trade will come into question. This is well understood, and drives the widespread fascination with maritime security issues in the contemporary political context. In this context, the challenge becomes how to translate broadly shared concerns into broadly mobilized action.

Most attempts fracture under the weight of Asia's diverse perspectives and capacities. There are few thematic areas common to the Indo-Asia-Pacific as a whole. Natural disasters requiring navy and coast guard-supported HADR operations are the most tangible region-wide threat and opportunity for broad cooperation. In the widest possible terms, all of the states of the region, small and large, are facing the challenge of a maritime environment of unprecedented complexity and change. This is a new and permanent feature of the regional seascape and requires a multi-national, multi-focal response, a real challenge given currently available budgets, institutional mechanisms, and political will.

3. Toward a Regional Blue Economy

3. Toward a Regional Blue Economy

Maritime consciousness is on the rise in the Indo-Asia-Pacific. To the extent that this is true, it is due to spectacular rise of a maritime-based economy in places like Japan, ROK, the PRC (first on Hong Kong and Taiwan, then expanding to the mainland), and Singapore. An effective maritime economy is well-integrated with a continental or hinterland economic development plan, particularly where territorial landmasses are great, as in China, India, Europe or the United States. Ports, for instance, are entirely dependent on internal logistics corridors for their management and maintenance, use domestic labor, and facilitate international trade, which is of course influenced by domestic manufacturing and consumption patterns. Understanding the linkages between the maritime and continental economies of a given state is very important for both explaining economic performance and for designing maritime economic policy. In many national contexts, the health of steel markets, for example, has a direct relationship to the national shipbuilding sector. While there is always some risk in overvaluing dichotomous distinctions like the ‘maritime’ vs. ‘continental’ regional economy, the story of Asia’s economic rise has a strong maritime pillar. The Blue Economy can and should be considered a central enabler of the wider land-based economy, albeit with unique characteristics and management challenges. In the Indo-Asia-Pacific, the Blue Economy’s central pillars are in transport logistics, ocean resources, and sustainable food supply.

Transport Logistics

The Blue Economy in the Indo-Asia-Pacific region, as elsewhere, is predicated on the efficient transportation of goods across long distances. This capability requires capital-intensive infrastructure investments to develop and ongoing competitive innovation to maintain. It includes port building and management, intermodal shipping, shipbuilding, insurance and financing, and others. As a region, a few states in the Indo-Asia-Pacific

have made game-changing progress in this field in the last twenty-five years; China in particular now plays a leading role in several key global maritime industries, such as port handling, and a fast-growing role in others, like marine insurance. In many cases, the PRC’s dominance of key sectors of the global maritime economy has provided opportunities for regional partners to leverage its success through trade, investment and partnership. In others, the PRC’s unlikely story of development provides an attractive economic model in an increasingly well-capitalized, well-resourced regional market. Particularly in port development, transport logistics, shipping and ship-building, the PRC has developed a long-term maritime economic strategy that is paying dividends with regard to not only its national bottom line, but also to its regional presence and influence. In an Indo-Asia-Pacific that suffers a broad infrastructure investment deficit, Chinese leadership in regional maritime investment patterns is welcomed by many regional partners. Most Asian states cannot compete with the scope and efficiency of China’s development in these sectors and, as such, view partnership with Beijing as both an opportunity and a challenge to national industries, where they exist.

With respect to investments made by Chinese State-Owned Enterprises (SOEs) in foreign markets, greater transparency would generate much-needed confidence and reduce political barriers to future Chinese economic activities.

That said, there is region-wide concern about Chinese State-Owned Enterprises (SOEs) investments in and operation of critical infrastructure (ports or energy grids) and national assets (basic commodities) outside of China. The obscure working relationship between Chinese SOEs and the Chinese government make it difficult to determine whether China’s regional economic activity operates along commercial

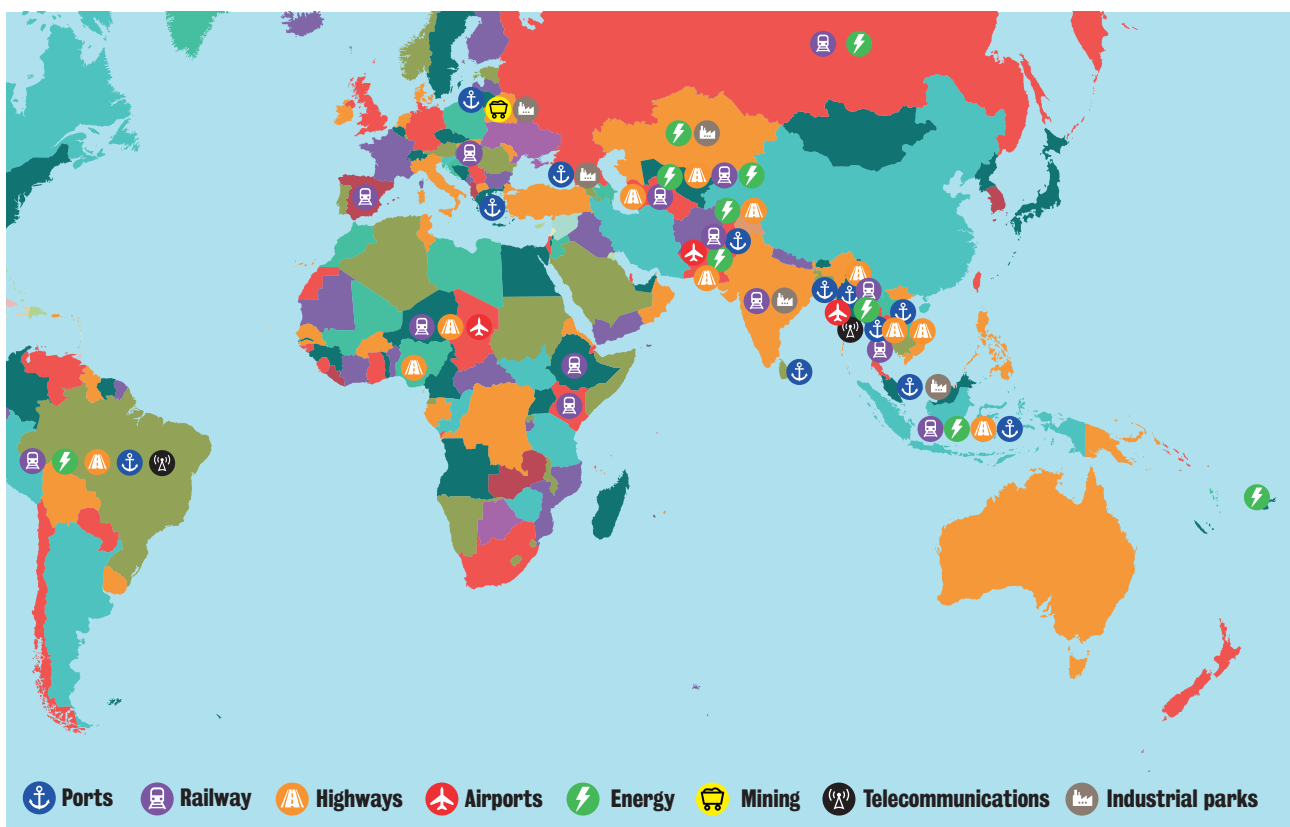
logic, or whether it supports a strategic logic quite apart from profit calculation. Much of this can be easily explained, and is characteristic of more than one industry player. For example, despite a well-acknowledged over-capacity in global shipbuilding markets, Indo-Asia-Pacific firms continue to construct ship types in numbers that are not justified by regional demand. The surge in shipbuilding is the result of excess capacity within domestic commodities markets (mainly China) such as steel, and the perceived need to provide continued economic growth and employment in a time of economic stagnation. Shipbuilding, as one illustrative example, is a regional industry aimed at both providing short-term profit and long-term socio-economic stability by providing stimulus to local economies. Port development and management is another such industry. Neither should be expected to respond to current demand signals at all times. Because of these linkages between market logic and the considerations of governance in some of the major, capital-intensive industries in the transport logistics sector, greater transparency in decision-making wherever possible would reduce international misunderstanding about investor motives. In particular, and with

respect to investments made by Chinese State-Owned Enterprises (SOEs) in foreign markets, greater transparency would generate much-needed confidence and reduce political barriers to future Chinese economic activities.

Ocean Resources

The oceans are a potential source of enormous wealth for national governments. The creation of the Exclusive Economic Zone (EEZ) in the 1982 UNCLOS represents the firmest possible confirmation of that fact. While the creation of the EEZ gave coastal authorities the sovereign right to harness that wealth for overall national development, two major obstacles remain. First, outstanding territorial and maritime boundary disputes prevent profitable exploitation of seabed resources, oil and gas in particular. Indeed, many outstanding disputes are driven as much or more by the desire for exclusive access to resources than by nationalism or sovereignty concerns. As energy resources are finite, competition over natural resources within the maritime economic sector is a source of ongoing tension. The persistence of these boundary disputes, and the increasing

One belt, One Road Initiative: Infrastructure Investments (actual and projected, 2016)



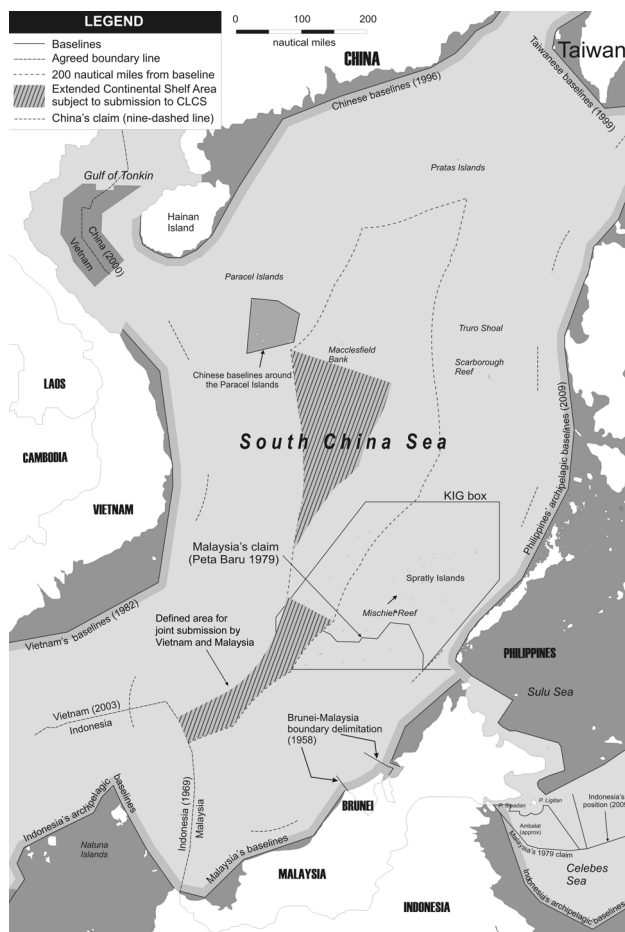
One Belt, One Road Initiative: Projected Infrastructure Investments by China

Bangladesh	Deepwater port, Payra.
Belarus	Mining and processing infrastructure, Starobinskoye; Sino-Belarus Industrial Park.
Ethiopia	Addis Ababa-Djibouti railway
Fiji	Hydroelectric plant.
Georgia	Deepwater port, Anaklia; International economic zone, Tbilisi.
Greece	Upgrade of Port of Piraeus
Hungary	Hungary-Serbia high-speed railway
India	High-speed rail cooperation; industrial parks; Gujarat and Maharashtra.
Indonesia	Jakarta-Bandung high-speed railway; coal mining and transport infrastructure, Papua and Kalimantan; road and port infrastructure, Kalimantan; ferronickel plant, Sulawesi
Kazakhstan	China-Kazakhstan oil pipeline; special economic zone Khorgos-East Gate at Kazakhstan-China border
Kenya	Nairobi-Mombasa railway
Kyrgyzstan	China-Kyrgyzstan-Uzbekistan highway; China-Uzbekistan railway; power grid upgrades, southern Kyrgyzstan; power plant refurbishment, Bishkek;
Lithuania	China Merchants Group letter of intent with Port of Klaipeda
Malaysia	Malaysia-China Kuantan Industrial Park, including deepwater container port
Myanmar	Bangladesh-China-India-Myanmar transport network, including waterways, roads, rail and airports; Kyaukphyu-Kunming oil and gas pipelines; Myanmar-Yunnan optical cable
Nigeria	Coastal road project
Pakistan	China-Pakistan economic corridor and railway; port upgrades, including airport, power plant and roads, Gwadar; Lahore-Karachi highway; coal mine and power plant, Gadani; Karot Hydropower Plant; soft loans for two nuclear power plants near Karachi
Sri Lanka	Deepwater port in Hambantota; China Merchants Holdings International investment in Port of Colombo
Russian Federation	Kazan-Moscow high-speed railway; Siberian gas pipelines
Spain	China-Spain cargo railway (12,875 km)
Thailand	Kra Isthmus Canal; Kunming-Bangkok highway; railway between Nong Kahi, Bangkok and proposed China-Lao PDR railway
Tajikistan	Central Asia-China gas pipeline; power substation reconstruction, Tursunzoda; Dunshan-be-Chanak highway upgrades
Turkmenistan	Islamic Republic of Iran-Kazakhstan-Turkmenistan road and rail network
Uzbekistan	Uzbekistan-China gas pipeline
Vietnam	Port upgrades, Haiphong; Lang Son-Hanoi highway
African Union	Agreement with African Union to help build railways, roads and airports;
Central and South America	Proposed transcontinental railway between Brazilian coast and Peru; natural gas development, pipelines, power generation facilities, highways, ports and telecommunications

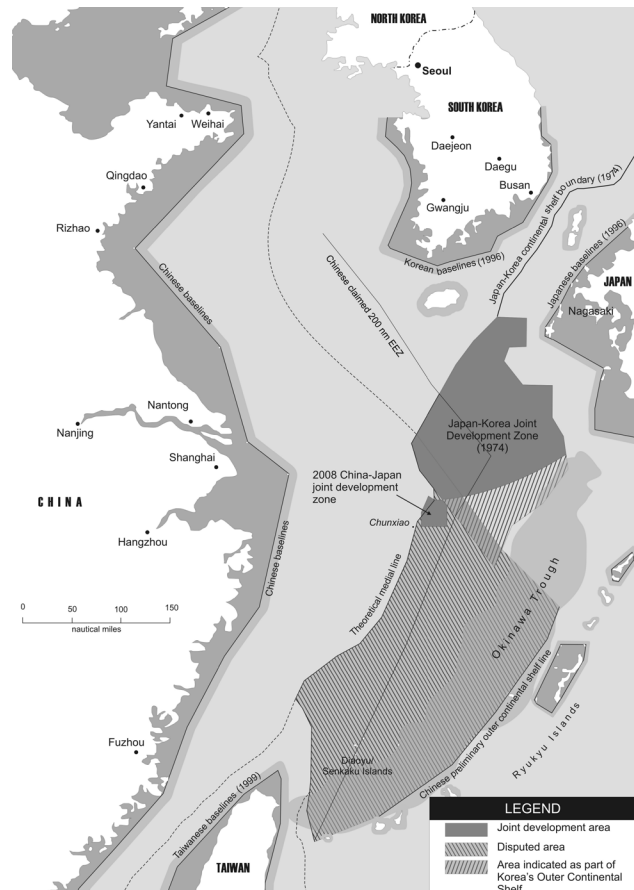
Source: Adapted from UNCTAD *Review of Maritime Transport*, 2016.

... where boundary disputes are long-standing and politically charged, joint development negotiations without final boundary resolution remain the most feasible means to move the economic agenda forward.

militarization of them, crowds out investment and even precludes proper assessment of stocks. For example, estimates of the amount of oil and natural gas supplies in the South China Sea vary widely. China National Offshore Oil Corporation (CNOOC) estimates there to be 125 billion barrels of oil and 500 trillion cubic feet of natural gas while the U.S. Geological Survey (USGS) estimates the same area to contain only 2.5 billion barrels. The U.S. Energy Information Administration publishes its estimates at 11 billion barrels of oil and 190 trillion cubic feet of natural gas. Without verifiable assaying and independent confirmation of these figures, it is virtually impossible to use any of these estimates with any degree of confidence. As long as



Source: Clive Schofield, editor: *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*. NBR Reports (Feb 2012), iv.



Source: Clive Schofield, editor: *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*. NBR Reports (Feb 2012), iii.

parties remain unwilling to engage in independent third-party data collection of oil and gas stocks in the South China Sea due to ongoing tensions over boundary delimitation, large-scale and stable exploitation of those resources is impossible.

Lack of investment presents another, related obstacle to large-scale exploitation of sovereign resources. Investment decisions in marine industries often rest with the market rather than national governments. In an environment characterized by political tensions, lack of clarity about sovereignty, and ongoing and contested operational activities by more than one flag, investment risk is too high to attract most commercial actors. Any region relies on rule of law to provide a framework for commercial activity, for law enforcement response, and for state engagement. The rule of law promotes the confidence and stability necessary for capital investment and research and development of new technologies, both of which are necessary elements of large-scale exploitation of seabed resources. Without stable expectations about sovereign

jurisdictions and activities, large private investors will remain unwilling to launch meaningful regional development projects.

An obvious solution to this state of affairs is for parties to a dispute to seek out joint development frameworks. Joint development carries the dual benefit of stabilizing the environment to make it suitable for investment, and to build confidence and even a degree of integration between national economies. This might involve co-development and production, but might also include one state's acquiescence to another state's unilateral development of a hard-to-reach resource in exchange for negotiated terms. Of course, this negotiated unilateral model could result in coercion of middle or smaller states by great powers. Any bilateral or multilateral engagement on these terms must be made in line with prevailing international law and without prejudice to unresolved competing claims. These arrangements between states are encouraged by UNCLOS (Articles 122 and 123 under Section IX) and should be viewed as the solution of first resort.

Considering cases of active joint development in the Indo-Asia-Pacific, China, Vietnam, Philippines, Malaysia, Thailand, and Japan have all pursued joint development at various times, without final delimitation of disputed boundaries. In many cases, joint development provides opportunity for cooperation where arguments about the law are persistent and unproductive. Even in cases where maritime boundaries are agreed, practical considerations of geology recommend joint development as a pragmatic approach. Seabed energy resources often lie across boundary lines, complicating any one state's ability to develop reserves alone. Of course, joint development is subject to the vagaries of regional politics, and there are as many unsuccessful examples of this kind of cooperation as there are successful ones. Political realities often preclude states from engaging in joint development, even when doing so would clearly benefit both states. The case of South Korea and Japan – a bilateral relationship full of historical and political tension – demonstrates how neighbors with inherent interest in joint development of disputed areas can be held back by concerns unrelated to economic development. Similarly, joint development in the South China Sea has become hostage to regional political and security concerns, many of which are related to unilateral desire to secure exclusive resource access. Nevertheless, where boundary

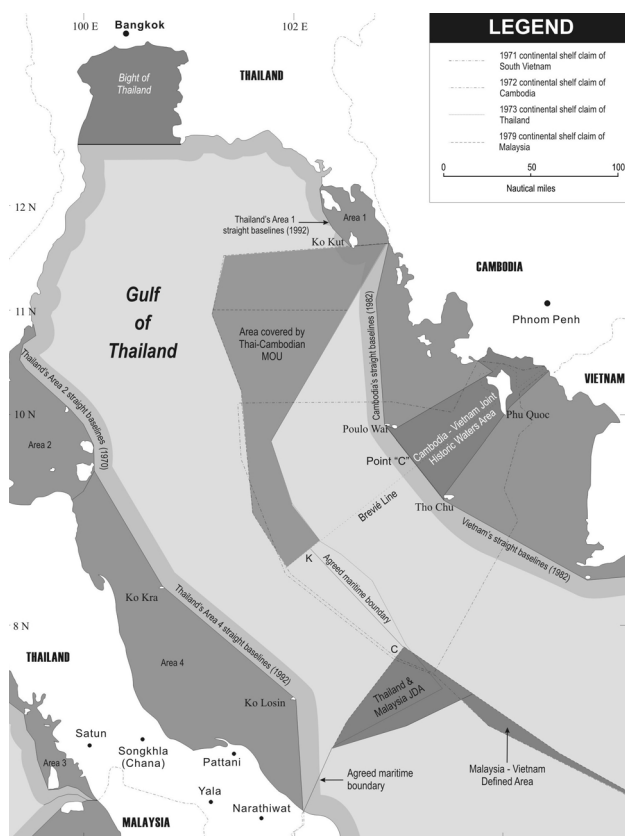
disputes are long-standing and politically charged, joint development negotiations without final boundary resolution remain the most feasible means to move the economic agenda forward.

Sustainable Food Supplies

Last, the Blue Economy in the Indo-Asia-Pacific is still importantly about the fishing and aquaculture industries, as well as the sustainable management of the ocean environment that supports both. On the one hand, fishing and aquaculture are important economic sectors in many countries of the Indo-Asia-Pacific, with PRC (the world's largest fishing nation), Indonesia, Vietnam, Japan and ROK all important players in global markets. Unlike energy markets, fisheries and aquaculture resources are renewable, but they are fragile and dependent upon sound stewardship. Environmental degradation, overfishing for short-term gain, and illegal disposal of waste are practices that are too common on both the high seas and inside sovereign EEZs. Where these activities take place in undisputed sovereign EEZs, they also constitute an abrogation under UNCLOS, domestic law and other applicable instruments. The United Nations Food and Agriculture Organization (UN FAO) confirms that much of the Indo-Asia-Pacific's fish stocks are in urgent need of remediation measures. In some areas, key fish stocks are already over-exploited. Even those regions with room for growth (including parts of the Indian Ocean for some species) are advised by the UN FAO and encouraged under UNCLOS to take regionally-appropriate, enforceable measures to maintain the sustainability of those national assets.

Of course, the ability of states to secure and manage their EEZ is a persistent challenge in the Indo-Asia-Pacific, particularly among developing states that lack the enforcement capacity to patrol and monitor their expansive maritime jurisdictions. Illegal fishing, coral and wildlife poaching and trafficking are particularly egregious and persistent EEZ violations around the region. Fast-developing technologies can assist developing states to monitor their EEZs, even where their at-sea capabilities remain modest. Some of these technologies are already in use, and many more are in development. There is much room for modernization and growth of surveillance capabilities for EEZ protection in the Indo-Asia-Pacific.

Among the region's more well-resourced states, many governments are mounting more



Source: Clive Schofield, editor. *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*. NBR Reports (Feb 2012), v.

robust responses to EEZ violations above and beyond simple monitoring. Indeed, growing and more capable coast guards around the Indo-Asia-Pacific are transformational forces within the region. While governments need to secure their sovereign resources and ensure the sustainability of these areas, there is concern about particularly aggressive implementation of these authorities in some cases. There is widespread regional concern about aggressive law enforcement activities in areas of EEZ that are claimed by more than one government. Of particular note, aggressive operations by China Coast Guard and ostensibly commercial vessels operating under the Chinese flag in waters also claimed by other states are a destabilizing factor in East Asia. In some cases, many observers believe that Beijing directs commercially-flagged vessels to harass or intimidate the commercial and law enforcement vessels of its rival claimants. This practice is noted throughout the disputed areas of the South China Sea and the areas around the Senkaku/Diaoyu Islands farther north. In other places, like the area in the Yellow Sea between the UN-imposed NLL and North Korea's declared access

corridors, the presence of large groups of Chinese commercial vessels is believed to be undirected but also unimpeded by national authorities. Many countries in the region believe that the Chinese government could do more to regulate this activity, if Beijing thought it were in its interest to do so. The use of maritime militia to pursue national objectives in disputed waters is not conducive to eventual resolution of these disputes, nor to broader, harmonious regional relations.

As with seabed energy resource exploitation discussed above, joint management of fish stocks in disputed waters or across adjacent EEZ jurisdictions represents best practice. The existing management regime between China and Vietnam in the Gulf of Tonkin is one example of such best practice. For states to successfully engage in joint development there needs to be reciprocity between actors, careful orchestration of political statements by both sides, the use of joint commissions, and supporting mechanisms to ensure momentum and manage political sensitivities as they arise. In this way, successful joint development regimes can contribute to a larger regional governance structure reinforced by, but not necessarily dependent on, international legal instruments.

Port State Measures Agreement, 2016

The FAO Agreement on Port State Measures aim to prevent, deter, and eliminate illegal and unreported fishing through the implementation of robust Port State measures. This agreement was adopted in 2009 by the FAO conference and entered into force in July 2016. The Agreement envisages that party states, in their capacities as port states, will apply the Agreement when foreign vessels are seeking to entry to ports or are in port, making it more difficult for illegally caught fish from entering into commerce worldwide.

Source: FAO 2012-2016. *Port State Measures – Web Site*. *Port State Measures Agreement*. FI Institutional Websites. 17 October 2016.

Taking a New Approach to the Blue Economy

Governments in the Indo-Asia-Pacific, as elsewhere, are gradually becoming more aware of the need to develop national strategies to develop the Blue Economy and leverage regional trends.

Both China and Indonesia have relatively well-developed maritime strategies, understanding that any national strategy for the maritime domain will be complex and multi-faceted. It seems eminently clear that all governments would benefit from the development of a strategy for the Blue Economy, and that transport logistics and efficient maritime access are the basic building blocks. In pragmatic terms however, it is exceedingly difficult to write a maritime economic development strategy both because of the inherent complexity of the task, and also because investors, not governments, set economic priorities. Nonetheless, it remains an important, and largely underappreciated need for most Indo-Asia-Pacific states.

4. Good Order at Sea: Constabulary Issues

4. Good Order at Sea: Constabulary Issues

Beyond the headline issues of naval development and sovereignty disputes, for many residents of the region, the day-to-day practice of maritime security remains focused on constabulary issues. As noted in the introduction, a range of non-state challenges persist, despite decades or even centuries-old attempts to suppress them. With the notable exception of Somali piracy from the period 2008-2011, constabulary issues have been managed well enough to insulate the global maritime system from their effects. That said, law and order threats to the maritime domain are a persistent challenge to those responsible for local maritime law enforcement.

Beyond the headline issues of naval development and sovereignty disputes, for many residents of the region, the day-to-day practice of maritime security remains focused on constabulary issues.

The Threat: Piracy and Armed Robbery at Sea

The question of whether the threat of piracy and armed robbery at sea is well-managed in the Indo-Asia-Pacific is much debated among practitioners from various parts of the maritime security sector. For some, piracy and armed robbery remains a major threat for maritime Asia. Publicly available data show a sharp increase in attacks and attempted attacks in key maritime areas, including the waters around Indonesia and India. After a long period of quiet following the Asian Tsunami in 2004, Southeast Asia in general is now witnessing an uptick in incidents of piracy and armed robbery, according to independent data gathered by the International Maritime Bureau (IMB) in Kuala Lumpur. A reasonably high number of incidents are consistently recorded in the Bay of Bengal, largely unchanged from previous years, but incidents there are more notable now that the Gulf of Aden's hotspot has virtually dissipated.

Many maritime law enforcement agencies, however, lack the material capacity to address [piracy and armed robbery]. Regional initiatives might help these states build indigenous capacities to identify, track, confront, and prosecute vessels and crew known to be involved in armed robbery.

The global community's successful experience in combating high-seas piracy in Aden provides lessons learned for other regions. Though the data remains open to interpretation, it is difficult to refute the view that the use of private security firms has made an important contribution. Though the International Maritime Organization (IMO) does not recommend or encourage the use of private security firms to protect commercial vessels, it is an oft-quoted claim that no vessel employing private security has been hijacked in the Gulf of Aden. If true, this may mean that the best measures to take to counter rampant piracy are already well-known, though they are not widely practiced.

On the other hand, it is unclear whether current piracy and armed robbery trends are a regional issue, or whether they should be treated as domestic concerns of affected states only. These attacks most often take place within the territorial seas, formally classifying them as armed robbery, not piracy. The difference is more than semantic: armed robbery and piracy are different in both legal and operational terms, and require very different responses. While incidents of armed robbery at sea have increased, true incidents of piracy in the Indo-Asia-Pacific have not. This fact is widely recognized. It suggests that local maritime law enforcement agencies are most suited to deal with this security challenge. Many maritime law enforcement agencies, however, lack the material capacity to address it. Regional initiatives might help these states build indigenous capacities to identify, track, confront, and prosecute vessels and crew known to be involved in armed robbery. Though this falls short of a

regional threat, cooperation between developed and developing states along these lines might be an appreciated means of building both capability and confidence around the region.

The Threat: Illegal, Unregulated and Unreported Fishing (IUU)

Illegal, Unregulated and Unreported (IUU) fishing is universally acknowledged as a widespread challenge affecting virtually all the states in the Indo-Asia-Pacific. Among all the law and order challenges at sea, it has the most immediate and important impact on economic development and environmental sustainability. For smaller, developing states, particularly those with limited land territory, loss of revenue from IUU fishing is significant. Exactly how significant is hard to quantify: states publicize different national figures and regional and global accounting is hampered by lack of hard data. The Maldives, Sri Lanka, Indonesia and many of the Pacific Island States, for instance, estimate their loss to be several percentage points of their annual gross domestic product (GDP). Oceana, one of the world's largest ocean NGOs and advocacy groups puts the aggregate global loss between \$10 and \$23 billion USD. The wide margin between the low and high end of the estimate demonstrates the need for independently-verifiable research on the size and scope of the IUU market.

While some IUU fishing is perpetrated by nationals within their own nation's jurisdiction, much of it is perpetrated by vessels flying foreign flags, whether their national flag, or under open registries (also called 'flags of convenience'). However, not all illegal activity can be attributed to flags of convenience. It should be noted that a lot of IUU fishing is conducted by properly registered and maintained vessels, who may be engaged either in overfishing or fishing by prohibited methods. Both overfishing and use of prohibited methods are not only violations of law and unfair competition to legitimate fishing interests, but they also undermine sustainability. Dynamiting, use of high-seas driftnets, and destruction of coral reefs lead to the destruction of marine habitats and the overall maritime environment for the long-term. IUU fishermen's disregard for fishing quotas or endangered species regulations is a leading cause of fish die-offs and depleted fish stocks. Long-term degradation of the ocean environment due to overfishing has severe implications for food security

of island nations such as the Philippines, Indonesia, or Malaysia, and among all the smaller nation states of the littoral.

Proper regulation and enforcement of standards for the Indo-Asia-Pacific's huge fishing industry remains a significant challenge to all regional governments. On the one hand, many of the region's most developed fishing economies, including Japan, ROK, Vietnam and particularly China (including Taiwan) are known to be engaged in distant-water IUU. Moreover, particularly in China's case, as discussed above, some of these distant-water vessels operate in disputed waters, perhaps under the direction of central authorities. But whether centrally directed or not, it is clear that many governments do far too little to prevent or punish owners and crew of vessels flying their flag and engaging in illegal activity in foreign waters. This state of affairs can lead to friction in otherwise friendly regional relationships, if left unaddressed. For instance, the presence of Chinese-flagged fishing vessels in the sensitive areas of South Korean EEZ and the area around the UN-imposed Northern Limit Line (NLL) near the DPRK coast has become the subject of Presidential and Ministerial discussions between ROK and China. Though both parties are careful not to escalate the issue beyond what is required to maintain law and order in the Yellow Sea, the South Korean Coast Guard's reported average daily presence of 100 to 300 unlicensed Chinese-flagged fishing vessels in South Korean waters are a persistent test of Seoul and Beijing's bilateral relationship at sea. These vessels have been subject to unilateral South Korean crackdowns, but have not yet been addressed by bilateral activity.

Of course, controlling the large number of licensed fishing vessels in a given jurisdiction is an overwhelming challenge; identifying, monitoring, and enforcing regulations on unregistered or unlicensed vessels even more so. However, there are already regional and global instruments in place intended to facilitate greater transparency, information sharing, and law enforcement cooperation among states to close the seams between various jurisdictions at sea. The Port States Measures Agreement (PSMA) and regional 'black lists' published by Regional Fisheries Management Organizations (RFMOs), are two among many such available instruments.

South Korean IUU-Enforcement Trends, 2011-2016

	2011	2012	2013	2014	2015	2016 (first half)
Total	534	467	487	341	568	118
Crackdown Cases (EEZ)	504	426	447	316	543	88
Crackdown Cases (NLL)	30	41	40	25	25	30

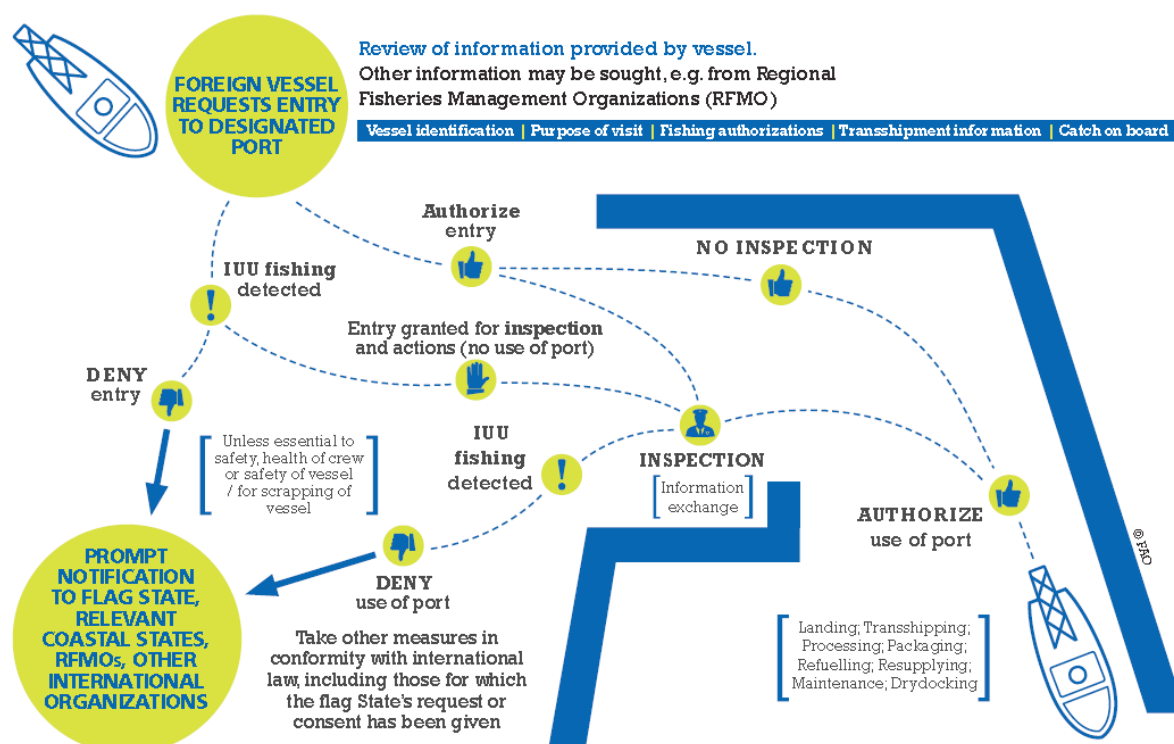
Source: Republic of Korea Coast Guard, 2016. Direct communication translated from original.

The Challenge: Mounting an Effective Coordinated Response

Effective region-wide monitoring and control of law and order challenges must start with each state's commitment to police its own territorial seas and EEZs, as well any firms or individuals operating under its flag. National responses are a first step to regional stability. At the regional level, working-level interaction between national maritime law enforcement is an ideal next step to provide a basis for higher-level coordinated or cooperative exchange. Informal engagement between local maritime law enforcement agencies on issues such as trafficking, smuggling, and IUU fishing does already take place, for example

between states like Philippines, Indonesia, and Malaysia. These experiences in coordination provide examples of regional best practice.

It should be noted that responsibility for maritime law enforcement might fall to a nation's navy, coast guard, or both as national circumstances require. The development of more regional coast guard forces would, however, make it easier for maritime law enforcement agencies to work informally together as it is sometimes hard for states' navies to engage each other outside of the larger military-to-military cooperation framework. That said, for many states, including constabulary authorities under the navy's mission continues to be the most efficient and effective use of limited financial and human resources.



Source: UN FAO 2016. *Illegal, unreported and unregulated fishing*, 4.

In addressing constabulary challenges, maritime law enforcement agencies should not operate separately from land-based counterparts. While maritime law enforcement agencies can act to stop and punish those engaged in illegal activity, they cannot act to effectively prevent crimes. To effectively fight piracy and armed robbery, for example, states have to empower land-based agencies to undertake comprehensive actions such as community policing, developing alternative livelihoods, and educating populations on maritime issues. Absent this land-based component to a national response, navies and coast guards will only be able to act as enforcement mechanisms with no ability to treat root causes.

The Pay-Offs: Traditional and Non-traditional Security

Law and order at sea is currently not a strategic-level concern, though it remains a day-to-day priority for most states. For now, traditional tensions, primarily surrounding outstanding territorial and maritime boundary disputes, remain at the top of the regional agenda. From within that reality, regional cooperation on constabulary issues can provide much-needed confidence and stability to overall regional relations. Wherever possible, states should seek to reach agreement on common low-level challenges, exchange training, information or personnel, and develop more familiarity about one another's enforcement operations. By creating more opportunity for this kind of cooperation, states of the Indo-Asia-Pacific may reduce tensions related to the most intractable issues in their relationships with their neighbors.

5. Rule of Law and Ocean Governance

5. Rule of Law and Ocean Governance

The rule of law, including UNCLOS, contributes to stability in the Indo-Asia-Pacific and it is currently undergoing challenging times. Law provides a rules-based order for state engagement at sea and conflict resolution between parties. At the regional level, bodies of law and international treaties such as UNCLOS, SOLAS, COLREGs, the SUA Convention and others serve the important purpose of regulating state behavior around otherwise sensitive issues areas, such as territorial and maritime boundaries disputes. But there are important sources of law that go beyond UNCLOS and other formal treaties. Stakeholders in the global maritime commons need to pay regard to all of the instruments that contribute to the rule of law at sea, rectifying any discontinuities or discrepancies in their legal obligations and reconciling them with their operations at sea.

There remain discrepancies, however, between some Asian states' domestic legal systems and the international legal treaties to which they've acceded. This state of affairs weakens international regimes, and builds contradictions into a state's legal obligations and behavior.

In the Indo-Asia-Pacific, regional actors rely on a number of 'soft' legal instruments to set non-binding regional standards. When abided by in good faith, these instruments create shared understanding of intent and stable expectations of acceptable behavior at sea. The Code for Unplanned Encounters at Sea (CUES) adopted by the Western Pacific Naval Symposium in 2014 is an illustrative example, as is the ASEAN Declaration on the Conduct of Parties in the South China Sea (DoC) adopted in 2002. Ignoring or abrogating these soft legal instruments without formally withdrawing is not a legal violation, but does weaken our shared understanding of what standard should be applied to state behavior. It contributes to regional unpredictability and erodes confidence in maritime stability.

States' domestic laws also play an important role in ensuring stability and security in the region. With respect to many issues in fact, robust domestic laws are more important than international treaty law as they provide a more tangible means of ensuring the rules-based order within and between states. The interplay of international instruments and domestic legislation is important. International treaties are crucial as they not only confirm an acceptable international standard, but they encourage states to develop their domestic legal institutions to meet those standards. There remain discrepancies, however, between some Asian states' domestic legal systems and the international legal treaties to which they've acceded. This state of affairs weakens international regimes, and builds contradictions into a state's legal obligations and behavior. In some cases, it's the result of lagging capacity (a state ratifies a treaty but lacks the capacity or resources to undertake the necessary implementation measures); in others, it seems to be the result of ambivalence to the rule (a state ratifies a treaty to bolster its international image or further its relations with other state parties, but does not intend to implement its provisions domestically). In either case, this discontinuity weakens the rule of law at sea in the region and creates unhelpful uncertainty with respect to key security concerns.

Recent developments in the South China Sea have had particularly destabilizing effects regionally and globally. The circumstances surrounding the Permanent Court of Arbitration's 12 July award in the South China Sea Arbitration is a troubling indicator of the health of the rule of law. In 2013, when the Philippines submitted its request for arbitration, it demonstrated that signatory states can resort to law rather than military force to solve their disputes in the face of what they believe to be external aggression. China's failure to accept the Arbitral Tribunal's findings and its subsequent efforts to discredit the authority of the arbitration process *in toto* are a clear indication that Beijing is intent on ignoring

international law when it is in its interest to do so, regardless of any negative impact it might have on regional stability or its reputation abroad. This calls into question China's self-proclaimed 'peaceful development', suggesting that China will use force where necessary to achieve its aims. As a result of its behavior, China may find itself more isolated from the regional community, particularly in the security sector.

In terms of the Arbitral Tribunal ruling's wider impact on the integrity of the rule of law in Asian seas, China's non-adherence raises important and troubling questions about the authority of UNCLOS. The treaty regime seems imbalanced: it has gained general (though not problem-free) compliance among the majority of the world's states but has been set aside by two of the most important ones: China with respect to the ruling

Treaty Ratification Status For Major Maritime Instruments

Country \ Treaty	IMO Convention 48	SOLAS Convention 74	COLREG Convention 72	SAR Convention 79	IMSO Convention 76	INMARSAT OA 76	MARPOL 73/78 (Annex I/II)	SUA Convention 2005	UNCLOS
Australia	X	X	X	X	X	X	X		X
Bangladesh	X	X	X	X	X	X	X		X
Brunei Darussalam	X	X	X		X	X	X		X
Cambodia	X	X	X				X		
Canada	X	X	X	X	X	X	X		X
Chile	X	X	X	X	X	X	X		X
China	X	X	X	X	X	X	X		X
Cook Islands	X	X	X	X	X		X	X	X
India	X	X	X	X	X	X	X		X
Indonesia	X	X	X	X	X	X	X		X
Japan	X	X	X	X	X	X	X		X
Malaysia	X	X	X		X	X	X		X
Maldives	X	X	X				X		
Myanmar	X	X	X				X		
Nauru								X	X
New Zealand	X	X	X	X	X	X	X		X
Pakistan	X	X	X	X	X	X	X		X
Papua New Guinea	X	X	X	X			X		X
Peru	X	X	X	X	X	X	X		
Philippines	X	X	X		X	X	X		X
Republic of Korea	X	X	X	X	X	X	X		X
Russia	X	X	X	X	X	X	X		X
Sri Lanka	X	X	X		X	X	X		X
Thailand	X	X	X		X	X	X		X
Timor-Leste	X								
United States	X	X	X	X	X	X	X	X	
Viet Nam	X	X	X	X	X	X	X		X

Source: International Maritime Organization, 2016.

and the (non-) application of law in its South China Sea disputes, and the United States, who, despite robust adherence to the rules contained within UNCLOS and active diplomacy on the subject of the rule of law, remains outside the treaty framework. A legal regime that gains compliance from middle and small powers but allows great powers to opt in or out when it is in their interest to do so cannot be authoritative in the long term. It is unclear how to address this imbalance, but there seems an obvious need to do so. This might include convening formal discussions to negotiate implementing protocols or enforcement mechanisms as addenda to the treaty. Alternatively, it may mean formally or informally revising acceptable interpretations of the treaty to better reflect changing state preferences and contemporary developments. UNCLOS does contain mechanisms for its revision, though these revisions must be in keeping with the spirit of the treaty. That said, any significant change will be exceedingly difficult to pass. Given recent developments in the South China Sea, there appears to be a clear need for regional dialogue to identify weaknesses and explore opportunities to strengthen the rule of law at sea, including with respect to adherence to UNCLOS.

The Indo-Asia-Pacific is notable for its incredible diversity, which includes diversity of values as well as of types of governments, languages and cultures. Governing frameworks underpinning the rule of law in this region need not be based on a common definition of the rule of law beyond what pragmatism requires. At the most fundamental level, the region needs to agree that the law provides an architecture within which all regional residents pursue their legitimate interests at sea, and that establishes a baseline standard for acceptable behavior. The challenge for our region is to develop a legal framework that supports those stable expectations, while also remaining adaptable over time. Defining precisely what that requires is difficult, but is perhaps unavoidable if the states of the Indo-Asia-Pacific hope to safeguard the gains made in the legal institutions already operating in the region, including UNCLOS, soft legal instruments and domestic law.

www.kcl.ac.uk/sspp/policy-institute
[@policyatkins](mailto:policyatkins@kcl.ac.uk)
