
Maritime Developments in the Asia-Pacific: Emerging Trends

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The maritime domain in the Asia-Pacific is gradually turning into a theatre for great power politics. The rise of China and its journey to reinstate its lost glory as a global power is pushing the Chinese leadership to establish China as a maritime power of the 21st century. However, before the country can increase its stakes in the oceans beyond its shores, it has to emerge as the dominant and influential power within its region. In the Asia-Pacific, disputes in the South China Sea (SCS) are creating a power struggle between China and the other claimants, with some support from the US. India too is gradually becoming engaged in the debate given its now Act East Policy and New Delhi's renewed interest in securing the established order in the maritime domain.

The territorial disputes in the SCS are not new. What is rather new is the use of these disputes by all the claimants to increase their respective strategic influence in the region. China claims almost 80 percent of the SCS in a U-shaped line challenged by five other nations: Vietnam, the Philippines, Taiwan, Brunei and Malaysia. Unilateral and assertive behaviour on the high seas—and an important trading route—is garnering international attention, with pressure building up to uphold freedom of navigation and secure critical Sea Lanes of Communication (SLOCs). In

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the geo-political tussle, China's military and economic power over its smaller neighbours and claimants is leading members of the Association of Southeast Asian Nations (ASEAN) to seek extra-regional support in their fight against Beijing. As a result, Washington, the dominant power in the Asia-Pacific, is reengaging with the littorals of Southeast Asia, pulling itself deeper into the debate.

The US rebalance or the 'pivot' to the region is a policy tool to reestablish and assure its allies and friends in the region of Washington's commitment to, and influence in, the Asia-Pacific. Strategic and political circles in Beijing are, however, perceiving the rebalance as a 'contain China' policy shot out of the fear that Beijing is competing with the US for influence and dominance in the region and may actually win the regional power struggle. The developments changing the geo-political framework of the region are giving rise to an evolving security architecture. As disputes and complexities around the islands in the SCS are intensifying, so is the need to strengthen maritime cooperation and manage tensions. This paper looks at the maritime developments in the Asia-Pacific and the scope for cooperation in the backdrop of the changing power dynamics in the region. The next section looks at the mechanisms in place to resolve and manage disputes in the Asia-Pacific, followed by a section on the issues challenging institutions and mechanisms in managing the tension. The essay then briefly looks at the current trends emerging in the Asia-Pacific for maritime cooperation, having established that none of the institutionalised mechanisms is really working in dispute resolution. The conclusion briefly looks at India's role on the subject, providing an efficient model of cooperation for the region based on its examination.

Mechanisms in Place

There is a considerable number of mechanisms in place to avoid miscalculations at sea that could lead to a possible armed conflict, big or small. Additionally, there are platforms discussing new ideas and

methods to manage tension and stabilise the maritime domain. A legal framework for nations to behave on international waters is provided by the UN Convention on the Law of the Sea (UNCLOS). However, as with most agencies of the UN, it relies on the goodwill of its member nations to uphold the norms laid out within the treaty. At the regional level, the most effective model would be a Code of Conduct (CoC) in the South China Sea which China and ASEAN members have been deliberating on since 2002. ASEAN and China signed the Declaration on the Code of Conduct (DoC) in 2002¹ but have been unable to reach a consensus on the CoC due to differences between claimants on how to establish norms of behaviour in and around the disputed waters. There is also the ASEAN Defence Ministers' Meeting (ADMM) plus and the ASEAN Regional Forum (ARF) discussing security issues in the region. However, none has the mandate to create and implement a treaty/agreement that is legally binding. The most that these platforms can do is create a structure for norms of behaviour and expect all members to respect and abide by it to stabilise the situation. Nevertheless, putting in place some sort of mechanism despite the lack of a legal consensus, is a step forward in maintaining peace and security in the region. The Western Pacific Naval Symposium in 2014 adopted the Code for Unplanned Encounters at Sea (CUES). Although not legally binding, the document is an "agreement upon which the participating nations have a standardized protocol of safety procedures, basic communications and basic manoeuvring instructions to follow for naval ships and aircraft during unplanned encounters at sea."²

Apart from regional frameworks, nations also cooperate at a bilateral level to avoid miscalculations at sea. Vietnam and China are keen on establishing a maritime hotline to manage incidents at sea as are China and the US.³ Incidents between Chinese vessels and those of the Philippines, Vietnam and the US are on the rise. In the last five years, Chinese naval vessels have blocked the Philippines Navy from reaching its own

garrison stationed at the *Sierra Madre* ship anchored near the Second Thomas Shoal, shot water cannons at Vietnamese vessels and placed an oil rig in disputed waters, among other acts. What is of concern to the international community is the increase in territorial sentiments in the People's Liberation Army (PLA) Navy regarding movement of military ships through waters it considers its own. Despite a number of structures and frameworks being in place, the chances of a misunderstanding leading to a conflict, only continue to rise. The next section briefly examines the issues challenging the successful implementation of the mechanisms already in place to better understand the developments in the Asia-Pacific.

Challenges in the Maritime Domain

The most fundamental challenge facing any sort of conflict resolution mechanism is Beijing's refusal to acknowledge the existence of any dispute in the SCS. Stating its position regarding the disputed islands in the SCS, the Chinese Ministry of Foreign Affairs released a statement noting, "China has indisputable sovereignty over the South China Sea islands and adjacent waters. This is supported by clear historical facts. Moreover, China set up the office governing the Xisha, Nansha and Zhongsha Islands under the Province of Guangdong in 1959 to exercise administrative jurisdiction over the islands and reefs of the Xisha, Nansha and Zhongsha Islands and adjacent waters. The recent establishment of the Sansha City is a necessary adjustment made by China to the existing local administrative structure and is well within China's sovereign rights."⁴

China's approach to disputes and claims on the same goes well beyond established norms and international law. According to UNCLOS, a nation enjoys 200 nautical mile (nm) of an Exclusive Economic Zone (EEZ) from its shoreline. However, many of China's claims on the islands fall well within the EEZ of other states and much beyond its own EEZ. The Philippines, in January 2013, initiated proceedings against China at a tribunal court under the UNCLOS in an effort to resolve their dispute.⁵

Beijing then issued a statement claiming that “it will neither accept nor participate in the arbitration thus initiated by the Philippines”.⁶ Moreover, Beijing stated that the “the arbitral tribunal” established under UNCLOS has no “jurisdiction” over the matter.⁷ The court has proceeded without China’s participation and the Philippines continues to make its arguments. Although regardless of the nature of the verdict, neither China nor the Philippines is legally bound to accept it. The developments around this case have rendered international law and established norms insignificant in managing tensions in the region. Having successfully bypassed a well established mechanism, China’s actions in the SCS continue to mount on aggression and are unilateral in nature.

The differences in the interpretation of international law comprise another factor adding to tensions in the SCS. The US government is of the view that a coastal state does not have the right to regulate foreign military vessels beyond its territorial sea which is 12 nm from its shore. China’s version of this law is that a coastal state has all rights to regulate foreign military vessels beyond its territorial sea and up to its EEZ. This difference in interpretation is bringing the US and China into a separate dispute, as China’s version of the law restricts US movement in the Asia-Pacific. More so, if China manages to regulate its own version of the law in the artificial islands being created in the SCS, freedom of (military) navigation through the SCS will see some serious changes in the region. In effect, this will change the status quo of the security architecture. Again, under the UNCLOS, however, states are allowed to create artificial islands within their own EEZ, but these islands do not have a territorial sea. Article 60 of the UNCLOS (*Artificial islands, installations and structures in the exclusive economic zone*)⁸ states:

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
 - (a) artificial islands;

- (b) installations and structures for the purposes provided for in Article 56 and other economic purposes;
 - (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone....
8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

The problem is in China creating artificial islands way beyond its EEZ and claiming that these having their own EEZ. This is leading to another power struggle between the US and China where Washington—much to the relief of its Asian friends—has challenged China’s construction of artificial islands. US Secretary of Defence Ashton Carter, reassuring US partners and allies in the Asia-Pacific remarked, “There should be no mistake: the United States will fly, sail, and operate wherever international law allows, as US forces do all over the world ... with its actions in the South China Sea, China is out of step with both the international rules and norms that underscore the Asia-Pacific’s security architecture, and the regional consensus that favours diplomacy and opposes coercion”.⁹ While China is focussed on emerging as the dominant power in the Asia-Pacific, pressure on Washington is increasing to sustain its influence in the region as a resident and dominant power.

The final critical challenge is the difference in approach to dispute resolution between claimant nations. While China insists on a bilateral dialogue to clear misunderstandings regarding the disputes, countries like Vietnam and the Philippines prefer a multilateral platform, with the presence of other regional powers, while discussing these issues. China has refused to participate in any regional/multilateral platform to address the issue and vigorously opposes the discussion of SCS disputes at any international forum. As complexities surrounding the SCS disputes

increase, the geo-political landscape of the Asia-Pacific continues to change. The differences over opinions and methods are creating the space for new trends and norms to emerge in an effort to maintain peace and security in the region.

Current Trends

One critical development in dispute resolution in Asia has been the case of India-Bangladesh-Myanmar. India and Bangladesh resolved a long standing maritime dispute in 2014 as a result of Bangladesh initiating arbitration over its dispute with India in 2009.¹⁰ The Permanent Court of Arbitration under the UNCLOS completed its hearing in late 2013 and awarded its verdict in July 2014. The verdict awarded was in favour of Bangladesh and both parties have accepted the outcome. Similarly, Bangladesh and Myanmar too resolved their dispute in the Bay of Bengal in 2012. Since the same approach has failed in the SCS, the countries of the Asia-Pacific region are increasingly citing India's role in stabilising the maritime domain.

China too is keen on stabilising the region but in its own way. Beijing's goal is to emerge as the security provider for which it must first weaken America's alliance in the region. The Chinese leadership is working on an "Asia for Asians" model which is led, sustained and secured by Asian powers—mainly by Beijing itself. Xi Jinping, in May 2014, outlined a "New Asian Security Concept", noting, "It is for the people of Asia to run the affairs of Asia, solve the problems of Asia and uphold the security of Asia. The people of Asia have the capability and wisdom to achieve peace and stability in the region through enhanced cooperation."¹¹ Hinting at the security order established by the US, Xi mentioned, "One cannot live in the 21st century with the outdated thinking from the age of Cold War and zero-sum game."¹² The idea behind this is simple, China is rising and the current security framework has no space for it to play the role of a great power. So, it must create its own frameworks and security

networks, if not break the existing ones, to change the status quo and go ahead in its desire to be a global power of the 21st century. Although Beijing insists it is on a path to ‘peaceful development’, its actions in the maritime domain are pushing its neighbours to develop closer ties with extra-regional powers.

This brings us to the third developing trend in the region: multilateral frameworks for cooperation. China has challenged every nation’s interest in collaborating and operating in the SCS, be it India’s economic cooperation with Vietnam or US strategic interests. As a result, like-minded nations are coming together to collaborate on issues of maritime security in the region. Additionally, the rise of China and its actions in the region are also helping foster bilateral relations between nations such as Vietnam and the US—which are otherwise strained by history. Changes in the Asia-Pacific are also seeing the emergence of the Indo-Pacific as a single strategic space where we are seeing an increase in trilateral collaborations such as India-Japan-Australia, India-Japan-US. There is a considerable amount of concern over the Chinese presence in the Indian Ocean as well. The 2015 Chinese White Paper¹³ emphasises on “open seas protection” which will enable China to contribute to the Indian Ocean security structure and secure its trade routes instead of relying on US and Indian forces for protection.

Rapid developments in the maritime domain throughout the Asia-Pacific are beginning to shake the existing security foundation. It is unclear whether China ultimately aims to topple the existing order or just tweak it enough to seat itself at the great powers table. Whatever the end result, the process will continue to stir the maritime domain. The region is now faced with new challenges and developments, and nations are coming up with new strategies or revising the old ones to adapt to these changes. How the middle powers of the region react and accommodate to these changes will define the end game of the changing security dynamics in Asia’s waters.

Conclusion

There is an urgent need to establish norms of behaviour and a code of conduct in the region. Although it is unlikely that any of the involved parties will, directly or indirectly, engage in a military conflict, a misunderstanding or a miscalculation could incomprehensibly spiral out of control. Additionally, the strategic competition is spreading out into the Indian Ocean. China and India have never clashed in the maritime domain as both nations have been occupied with their disputes along their land borders. Therefore, competition over strategic space in the Indian Ocean will create more tension and room for conflict, with further uncertainties for the region. In the Indian Ocean, however, apart from its geographic location, the advantage lies in the support New Delhi is already receiving from other regional powers to shape the discourse on the evolving security architecture. The issue is no longer about keeping China out of the Indian Ocean, it is about managing the emerging security framework rising out of the developments discussed in this essay. India too is keen on maintaining its influence in the Indian Ocean region and may finally be ready to play an active security role in the Asia-Pacific. As a result of the shift in its maritime strategy, New Delhi is strengthening its bilateral engagements and focussing on developing multilateral networks while engaging with the Navies of the region.

Multilateral engagements are the best way forward to balance the power dynamics in the Asia-Pacific. If the Navies of the region come together and establish norms of behaviour on the high seas, it will be difficult for any single country to come in and disrupt the order. It must, however, be noted that the situation in the Indian Ocean is very different from the one in the SCS but for strategic purposes, the two are being defined as a single space under the Indo-Pacific concept. Maritime cooperation amongst key powers of the region is the best way forward in managing tensions. A stronger coalition mechanism

among India, Japan, Australia, US, should be developed. Indonesia too is emerging as an important player. India has a huge geographical advantage in the Indian Ocean and its experience of operating in the Indian Ocean waters only boosts its capabilities. Now, India needs to take the lead in shaping the discourse in the evolving security framework in order to sustain its own interests as well as the current security order.

As China continues to march forward toward being a great power nation, the challenge for the region will be in finding ways to accommodate Beijing's needs. In the evolving security architecture, strengthening its own network of collaborations will be an effective way of managing tensions for the region rather than challenging China's initiatives. The key is in balancing between Beijing's ambitions and sustaining the current security order. Such a model, incidentally, can be achieved only through a medley of collaborations between nations to create a balance of power rather than a unipolar or a bipolar security order.

Notes

1. ASEAN, "Declaration on the Conduct of Parties in the South China Sea", November 04, 2002 available at <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>
2. "Navy Leaders Agree to CUES at 14th WPNS", The United States of America, July 23, 2014, available at http://www.navy.mil/submit/display.asp?story_id=80532
3. US and China signed the "US-China Memorandum of Understanding (MOU) on the Rules of Behavior for the Safety of Air and Maritime Encounters" in 2015.
4. Ministry of Foreign Affairs of the People's Republic of China, "Statement by Spokesperson Qin Gang of the Ministry of Foreign Affairs of China on the US State Department Issuing a So-called Press Statement on the South China Sea", August 04, 2012, available at http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/t958226.shtml
5. Department of Foreign Affairs, "SFA Statement on the UNCLOS Arbitral Proceedings Against China", Republic of the Philippines, January 22, 2013, available at <http://dfa.gov.ph/index.php/newsroom/dfa-releases/311-sfa-statement-on-the-unclos-arbitral-proceedings-against-china-2>

6. Ministry of Foreign Affairs of the People's Republic of China, "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines", December 07, 2014, available at http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml
7. Ibid.
8. Part V, Exclusive Economic Zone, UNCLOS, available at http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm
9. US Department of Defence, "Secretary of Defense Speech: IISS Shangri-La Dialogue: A Regional Security Architecture Where Everyone Rises", May 30, 2015, available at <http://www.defense.gov/News/Speeches/Speech-View/Article/606676/iiss-shangri-la-dialogue-a-regional-security-architecture-where-everyone-rises>
10. Haroon Habib, "Bangladesh Wins Maritime Dispute with India", *The Hindu*, July 09, 2014; also see, C. Raja Mohan, "Drawing Lines in the Water", *The Indian Express*, July 14, 2014.
11. Ministry of Foreign Affairs of the People's Republic of China, "New Asian Security Concept For New Progress in Security Cooperation", Remarks at the Fourth Summit of the Conference on Interaction and Confidence Building Measures in Asia, Xi Jinping, President of the People's Republic of China, May 21, 2014.
12. Ibid.
13. White Paper, "China's Military Strategy", Ministry of National Defence, People's Republic of China, May 2015.

