

Some New ‘Wicked Problems’ of the Asia-Pacific Regional Maritime Security: Can Solutions be Found?

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Abstract

Regional maritime security has clearly wanted improved structures and mechanisms since early 2010. In 2011 Dr. Sam Bateman published an article, “Solving the ‘Wicked Problems’ of Maritime Security: Are Regional Forums up to the Task?” identifying a number of intractable problems. Recently, Bateman’s list has been overshadowed by a variety of new ‘wicked problems’ and all parties continue to dig the hole deeper. These new issues faced by the East Asian nations include: the impact of domestic politics upon maritime security, the difficulty of striking a balance between the US and China, the struggle for self-reliant defense through rearming, the dearth of alternative models for maritime cooperation, the blurring of operational roles between navies and coastguards, and the reluctance to turn to legal mechanisms of dispute resolution. In Bateman’s original exposition, the ‘wicked problems’ were directly applicable to current maritime security, but denoted some negative outlook. This paper is hopeful that the nations of the region might be willing to put the past behind them, so that some of the mounting catalog of issues can be resolved. If effective solutions are ever to be found, then the nations in dispute will inevitably have to adopt a more flexible mindset and break out of the perilous and unproductive cycles of action and reaction. The key aim of this paper is to identify trust-building strategies through which the nations of the region can mitigate their quarrels and collaborate in solving the challenges of regional maritime security, including both old and new ‘wicked problems’.

Keywords: Sino-American maritime rivalry, Regional maritime security, Maritime cooperation, Naval forces & coast guard

Introduction

This article considers the implications of some new ‘wicked problems’¹ in the East Asian seas, which are affecting regional maritime security in a variety of unexpected and unwelcome ways. It analyses the specific issues and the factors impeding the realization of achievable and appropriate solutions. Remarkably, it is the looming prospect of the worst scenarios, involving widespread, intense and persistent maritime confrontations and conflicts around the region which may stimulate fresh thinking and provide the impetus required for finding alternative solutions. The new ‘wicked problems’ faced by the East Asian nations include: the impact of domestic politics upon maritime security, the difficulty of striking a balance between the US and China, the struggle for self-reliant defense through rearming, the dearth of alternative models for maritime cooperation, the blurring of operational roles between navies and coastguards, and the reluctance to turn to legal mechanisms of dispute resolution. The key aim of this paper is to identify trust-building strategies through which the nations of the region can mitigate their quarrels and collaborate in solving the challenges of regional maritime security, both old and new. Is it possible to find any grounds for optimism, and is there hope for a more peaceful and secure region in the future?

The Original ‘Wicked Problems’ of Maritime Security

In 2011 Dr. Sam Bateman published an article, “Solving the ‘Wicked Problems’ of Maritime Security: Are Regional Forums up to the Task?”, which identified a number of issues that have proved strongly resistant to solution and are seriously compromising the maritime security of the region. Bateman’s list of ‘wicked problems’ included the different interpretations of the United Nations Convention of the Law of Sea (UNCLOS), the failure to preserve good order at sea, the numerous conflicting claims to maritime jurisdiction, the implications of increased naval activity in the region, and the lack of settled maritime boundaries. He was optimistic about the prospects for solving these problems, based on some indications of a new willingness to acknowledge past mistakes, but his hope has proved vain, and his expectations have been overshadowed by some new ‘wicked problems’ not on his original list.² As well as these ‘wicked problems’ there are also long-standing problems, and all of them involve highly complex issues which are destabilizing the national and international maritime security

environment of the region.³

In Bateman's original exposition, 'wicked problems' were not directly applicable to current maritime security, but denoted some negative outlook.⁴ They could be defined as robust and divisive perspectives upon regional maritime security with a negative impact on national and regional maritime strategy and policy, especially relating to the potentially chaotic transition from the current major maritime power, the US, to an emerging maritime power, China, and to the fundamental discrepancies between preserving maritime rights and interests and securing maritime peace and good order. Such 'wicked problems' are typically compounded by deeply held suspicion and distrust left over from existing friction over long-standing problems, by extraneous domestic factors like unruly nationalism, by the inevitable involvement of third parties in maritime disputes, and by the trend toward rearming and transferring naval arms among allies.⁵

In the changing maritime environment the new set of 'wicked' maritime problems may be distinguished from traditional maritime problems such as naval rivalry from historical legacies, territorial disputes in confined seas or around islands, and various transnational maritime threats collected together under the heading of maritime insecurity. Although these long-standing problems have been managed by bilateral or multilateral maritime cooperation mechanisms formulated by established maritime actors and coastal nations with an interest in regional maritime security issues, the new 'wicked problems' may not prove as amenable to negotiation, which will have serious consequences for maritime peace and stability. There has been some movement toward addressing regional maritime security, and such developments have perhaps provided grounds for optimism. Thus, the South China Sea (SCS) disputes are the subject of talks on implementing the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC). Unfortunately very little progress has been made, due to the incompatible differences inside and outside the region, leading to a general lack of momentum.⁶

Even when progress has been made, as over the Somali pirate threats around the Gulf of Aden, it has done nothing to shake the traditional thinking on regional maritime security: the long-standing problems persist, being largely blamed on the misinterpretation of UNCLOS. Meanwhile, the region is smoldering with emerging new 'wicked problems': intractable frictions and vicious confrontations have led to

new depths of distrust, between China and Japan over the Diaoyu/Senkaku Islands dispute in the East China Sea (ECS), and between China and ASEAN over the SCS disputes; and there has also been vigorous peer competition between China and the US, and between China and Japan, to control and consolidate their use of the East Asian Seas and maintain or establish regional maritime dominion.

A Survey of Emerging New ‘wicked problems’: Maritime Security in Turmoil

A number of new and emerging ‘wicked problems’ can be identified, which are likely to disturb or disrupt maritime peace and good order in the seas of East Asia, with the prospect of a severe deterioration in maritime security, leading to potentially unmanageable or unpredictable consequences.

Hard-to-Control Domestic Factors

The nations of the region are constrained in their approach to the long-running maritime territorial disputes by strong domestic sentiments, with domestic politics, often stridently nationalistic, bearing much of the blame for regional maritime insecurity.

Recently, however, East Asia claims to have had enough confrontation and friction. Throughout the region, and also in the US, new administrations have come to power, and, remarkably, all have spoken in support of regional maritime peace and cooperation, apparently moving beyond the political clashes of 2010-2012 which proved so divisive. The most surprising convert to this new approach the young North Korean leader, Kim Jung-un, has appealed for improved relations. The new East Asian leaders are focusing on new issues, notably on ensuring increased social welfare and health provisions, despite the slowdown in their economies, which should divert the most uncontrollable displays of popular nationalism. Across the varied political systems in East Asia, the new leaders from the US, China, Japan, North and South Korea are dynastic successors, and they may feel more able to take a moderate approach to maritime sovereignty issues. Initially, they may face opposition from more conservative forces, but, with the current maritime territorial disputes becoming more volatile and violent the new leaders are seeking to restrain monolithic nationalism and other internal factors from escalating into physical confrontation.

So far, however, the new governments in the region have taken a robust attitude toward regional maritime security, following a win-all-or-lose-all strategy, especially concerning the acquisition of natural resources from the sea, as part of a broader emphasis upon maritime jurisdictional interests and historical rights, while still abiding within the regulations of UNCLOS. During the last decade, in response to their domestic constraints, the nations of the region have taken turns playing at being the “good government” or the “bad government” in their approach toward maritime disputes. In order to be perceived by their people as a “good government,” the Chinese leaders are turning towards their “blue lands,” including their maritime territorial waters and Exclusive Economic Zones (EEZs), demonstrating that that self-sufficiency is no longer an adequate strategy to ensure their national prosperity.

This hard-line approach can be seen from Beijing’s formal designation of the Diaoyu/Senkaku Islands as a “core interest” opens up the possibility of the very worst scenarios in their dispute with Tokyo and makes the slide toward armed conflict harder to reverse.⁷ The sudden decision by the Japanese government to bring three of the Diaoyu/Senkaku Islands into public ownership, as well as blatant historical revisionism by the Chinese had already fanned the flames. Recently, the Japanese Prime Minister Shinzo Abe chose an awkward moment to indulge his own impulse toward historical revisionism by signaling his unwillingness to endorse the statement made by an earlier Prime Minister, Tomichi Murayama, apologizing for Japan’s wartime militarism. There was also a visit by 168 Japanese politicians to the Yasakuni Shrine, where convicted war criminals are commemorated in risking damage to relations with Seoul and Beijing – and Washington, too.⁸ Tough attitudes also prevailed in the dispute over the Kuril Islands, known as “The Northern Territories” or Chishima Islands in Japan. Facing strong internal nationalist sentiments, neither Japan nor Russia has been willing to agree a resolution.⁹ The Japanese government insists that the Northern Territories were occupied by the Soviet Union at the end of the Second World War, and, given Japanese domestic sentiment, has meant that their ownership has remained in dispute ever since, preventing these two nations from signing an official peace treaty. It is unfortunate that the US can no longer mediate from a position of strength in these deteriorating situations. In the absence of the US as a credible moderator of the competing claims, in the ECS between China and Japan, and in the SCS between China and ASEANs, domestic factors

may prove crucial in escalating tensions and increasing the chances of a military clash.

Trapped by Sino-US Maritime Rivalry

Another new ‘wicked problem’ is the challenge of striking a balance in an era of Sino-American maritime rivalry. This unwelcome development confronts the nations of the region with a dilemma, making it more difficult to maintain a strategic balance when Chinese maritime power is waxing and US maritime power is waning. Surely, relations with the US and China need not be a zero-sum game for East Asian nations, yet the rise of China and the continuing tensions with the US has already led to a reappraisal of their relations with the US. Because the US is currently rebalancing to Asia, a policy proceeding in parallel with China’s naval rise to become, potentially, a near-peer maritime competitor, the other nations of this region have been greatly influenced by Sino-American maritime hegemonic rivalry over the last decade, and the pressures can only get worse.

For these nations, strategic autonomy is essential if they are to strike a successful balance between the rise of China and the US decline, which requires a well-developed strategic sensitivity to regional maritime security. Relations with the US have historically relied heavily upon maritime security, despite the presence of US land forces in several nations, including South Korea, Japan, and Australia; meanwhile, their economic dependence upon China has never been greater, and continues to grow. The disparate interests expressed by the US and China regarding the East Asian seas have obliged the other nations of the region to strive for a balanced relationship between the two great regional powers: China regards its maritime sovereignty as a “core interest” and the US has designated the freedom of the East Asian seas as a “critical national interest”.¹⁰

At the same time as the US is beefing up its bilateral naval exercises and drills with its allies and partners in the region in keeping with its “pivot to Asia” strategy, China is displaying its burgeoning military might through gunboat diplomacy in the disputed and politically turbulent waters of the ECS and SCS. Remarkably, the US navy sent an Expeditionary Strike Group (ESG) and a Carrier Strike Group (CSG) to participate in bilateral naval drills with its allies during the maritime crises in the West/Yellow Sea, the ECS and the SCS over the last two years. And until recently, the US navy remained committed to its pivot

to Asia: with the relocation of a battalion-strength US Marine Corps to Australia on a rotational basis; and the controversial and disruptive deployment of the first US Littoral Combat Ship (LCS), the USS Freedom to Singapore in March 2013. This innovative vessel, sporting a new ‘dazzle’ camouflage scheme, has been deployed to the Asia-Pacific for an eight-month period and has already taken part in a series of bilateral naval exercises known as Cooperation Afloat Readiness and Training (CARAT) with regional coastal navies. For China, the commissioning in September 2012 of the first Chinese aircraft carrier – the 58,000-tonne *Liaoning* – together with the demonstration two months later that a Shenyang Aircraft Corporation J-15 strike fighter could successfully take off from and land on the vessel, all is evidence that the People’s Liberation Army Navy (PLAN) has evolving ambitions to conduct “Far Seas” operations, as illustrated by <map 1>. It is anticipated that the *Liaoning* will sustain a presence in the West/Yellow Sea, and, in the foreseeable future, in the ECS and SCS as well. These extraordinary Chinese efforts must be seen in the context of the Chinese government’s ambition to bring larger aircraft carriers into service in the near future, in the ECS and SCS, and to secure a dominant position in the Western Pacific Seas where ESGs and CSGs have already been visited by the US navy.

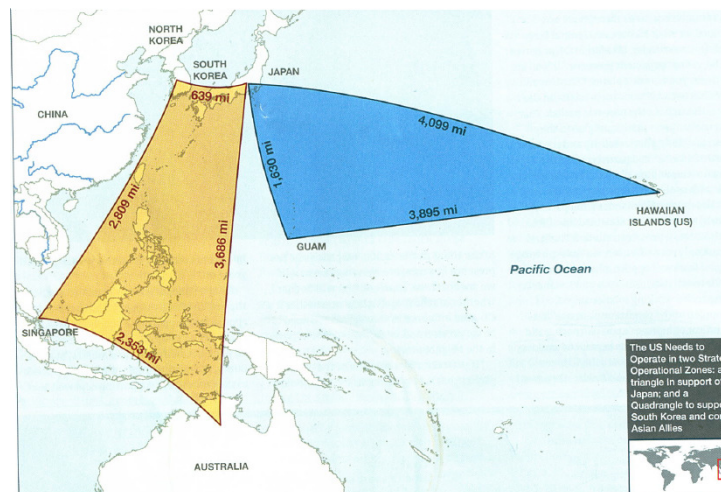
Map 1: The Chinese “First” and “Second” Island Chains



(Source: Office of the Secretary of Defense, *Annual Report to Congress: Military and Security Developments Involving the People’s Republic of China* (Washington, D.C.: 2012). p. 32)

In reality, the changing numbers tell the nations of the region the most important facts about Sino-US maritime rivalry, and these numbers are already having a marked strategic impact as the operational gaps between two naval powers are acknowledged. Recently the US navy revised its overall fleet size requirement from 313 to 306 ships – a severe downscaling which reflects the ongoing budget crisis.¹¹ The policy of “sequestration” is sure to damage the US navy’s forward deployment capability in response to crises in the Asia-Pacific, despite the US pledge of a pivot to the Asia-Pacific region. Even the existing US fleet has been forced to shrink from 285 to 235 ships, with the US navy unable to meet current expectations.¹² The navy has started gradually standing down at least four wings, beginning in April, and is already making adjustments to the number of ships at sea. Air Force flying hours for training will also be cut, and the Army will stop training all units except those deploying to Afghanistan.¹³ In fact, as <Map 2> shows, the US needs to maintain two strategic operational zones: a triangle in support of Japan; and a quadrangle to support South Korea and the core Asian allies and partners of the US.¹⁴

Map 2: US Asia-Pacific Strategic Dynamics



(Source: Robbin Laird and Ed Timperlake, “Pivot point: Re-shaping US maritime strategy to the Pacific,” *Jane’s Navy International*, April 2013, p. 22)

According to *IHI Jane's Defence Weekly*, as a result of the recent sequestration, the February deployment to the Middle East of a CSG led by the USS Harry Truman (CVN-75) has already been cancelled, leaving just one carrier in the CENTCOM area of operations instead of the usual two.¹⁵ And a recent issue of *IHI Jane's Navy International* has revealed that the ongoing budget impasse in the US Congress is causing delays to the deployment of war fighting mission modules for the LCS program: the US navy wants to acquire 16 Anti-Submarine Warfare mission modules, 24 Surface Warfare mission modules, and 24 Mine Countermeasure mission modules.¹⁶ The impact of the sequestration is so severe that Dr. Euan Graham, senior fellow with Singapore's Nanyang Technological University, suggests that the LCS deployment should be considered merely symbolic and nothing more –simply for “presence”.¹⁷

The extent of Chinese naval assets, in contrast, has been growing with marked increases in the Maritime Surveillance Agency (MSA) vessels and aircraft used to protect China's aggressive territorial claims over the East/South China Sea. The MSA is equivalent to the US Coast Guard, and it operates under the direction of the State Oceanic Administration (SOA) in cooperation with the PLAN. The MSA has recently announced a remarkable long-term strategy known as “the 700 ships plan,” the number to be achieved by 2020, to safeguard Chinese maritime rights and interests by guarding approximately 6,400 islands in about 1.9 million km of ocean.¹⁸ Then, there is the semi-indigenous aircraft carrier, the *Liaoning*, the newly refurbished Dazhu Shan naval base operating out of Qingdao on the Yellow Sea, the homeport of China's North Sea Fleet. The *Liaoning* (pennant number 16) has been seen accompanied by a support vessel, the *Xi Xiake* (pennant number 88), together with some frigates and the PLAN's new trimaran vessel, in a 9 January 2013 image taken by DigitalGlobe.¹⁹ The PLAN is also intending to build twenty of a new corvette, the Type 056, to use for “offshore” control –within the area known to the Chinese as the “first island chain,” and the first of these corvettes, the *Bengbu*, was built at the Hudong-Zhonghua Shipyard in Shanghai and entered service on 12 March 2013.²⁰

These developments, and the ongoing Sino-US naval rivalry in the disputed waters, threaten to overwhelm the nations of the region. They hardly know what strategy to adopt, after the “Chinese Version of the Monroe Doctrine” which for the last few years has sought to convince its neighbors to accept the Chinese maritime territorial claims as a fait

accomplish, and the US “Rebalancing to Asia” strategy which was instrumental in provoking a truculent “militarism,” notably in Japan.²¹

Of all the new ‘wicked problems’, this one should surely encourage the nations of the region to embrace a more collective burden-sharing approach to mitigate regional maritime insecurity. Despite the US efforts to reassure its allies and partners and assert its long-term interest in the Asia-Pacific region through its rebalancing initiative, a growing body of opinion is questioning whether the US can actually retain its capability to assure peace and stability in the region, particularly in the maritime domain, in the manner which the allies and partners of the US have come to expect since the end of the Cold War.²² Thus, the April 2013 issue of *IHI Jane’s Navy International* carried an article titled “Pivot point: Re-shaping US maritime strategy to the Pacific” which pointed out that “the rise of China’s maritime power indicates that allies and partners have to reconsider whether that assumption [of the US role] may be true or not”. Others have gone further, stating that “without enabled allies or partners in the Asia-Pacific region, the US will not be able to exercise its naval capabilities and execute an effective maritime strategy”.²³ In another example Indonesia has expressed concerns about choosing the “least bad” option to maintain its geographically strategic position of thwarting its Archipelagic Sea Lanes (ASL), without obviously picking sides in the big power game.²⁴ Already, the PLAN’s “patrol and training missions” in the vicinity of regional transit passages, such as the ASL, may be proving too close for comfort.²⁵ While it is the prerogative and right of Beijing to conduct naval and maritime activities in international waters within the provisions of international law, China’s gunboat diplomacy in areas also claimed by other nations is inflammatory, and will only serve to heighten tensions. If the US is to retain its access and the ability to project its naval power, then it is only a matter of time before US allies and partners are obliged to take on more responsibility, with unpredictable consequences for their future prosperity and for peace in the East Asia seas. Amid the ongoing SCS territorial disputes, the economic development of Southeast Asia has fuelled naval modernization and expansion of the region’s navies.²⁶ Thus, Sino-US maritime rivalry traps the nations of the region in a predicament: how can they maintain a strategic balance facing the unwelcome decline of the US and troubling rise of China?

Deficient Policy Guidelines and Operational Protocols

The lack of clear policy-based guidelines and operational protocols for on-scene commanders to follow is a potential trigger for the escalation of current maritime conflicts in confined seas. This is another new and serious ‘wicked problem’ which seems likely to have a negative impact upon regional maritime security. In disputed waters, both navies and civilian administrative authorities often assert their military might, and these frequent patrolling and safeguarding activities lead to increased tensions between the rival claimants. It seems entirely possible that war-like confrontation could arise as a result of miscalculation or misunderstanding during the ongoing military and physical posturing between the quarrelling parties. In peacetime, navies should adopt a single unified command and control structure and implement a “no first use policy.” Unfortunately, there is a culture of militarism which pervades the Asia-Pacific region, exerting significant influence upon official policy of nations like Russia, China, South Korea, North Korea and Japan; so there is a tendency to conduct opaque and misleading naval operations in the vicinity of the disputed areas, as can be seen from the examples in the following paragraph. To ensure maritime security, the use of armed force by naval powers should be rationalized and standardized in two respects: Operational Plans (OPLANs) should be formulated to identify the Area of Operation (AO), and clear-cut Rules of Engagement (ROE) should be promulgated. Whenever the nations of the region formulate any operational decree, the extent of the AO must be clearly specified and all naval operations should be restricted by detailed OPLAN manuals.

Two recent, dangerous confrontations have demonstrated the urgency of this problem: between the PLAN and the Japanese maritime self-defense force (JMSDF) near the Diaoyu/Senkaku Islands in early 2013²⁷; and between Taiwan and the Philippines west of the Philippines island of Batan on May 9, 2013, in which the Philippines coastguard shot and killed a Taiwanese fisherman.²⁸ To ensure maritime security, both Japan and China should identify which parts of the disputed areas have been designated as AOs. According to the nature of the operations assigned by high command to the on-scene commander specific ROE apply, and the AO should be determined by the Area of Interest (AOI) and ROE protocols, rather than the Area of Responsibility (AOR) and war-fighting manuals which apply during wartime naval operations. The sea area in which the navies of China and Japan are drawing closer to

war is, effectively, the high seas, so it is legitimate for them to conduct peacetime operations pursuing their political and diplomatic objectives. An AO in which the PLAN turned their fire-control radar on and off, presumably without any input from their supreme command, is not an AOR, but an AOI. In the case of Taiwanese-Philippines dispute in May 2013, the use of military weapons and systems could not be properly sanctioned, even as a response to hostile actions by their opponents, such as collision maneuvering and moving gunnery to aim toward ships at sea. This problem arises from the “Fog of War,” following Clausewitz’s aphorism that “war is the continuation of policy by other means”.

Given the blurring of lines between peacetime and wartime operations in the disputed seas, there is reason to be seriously concerned about the escalation of maritime territorial disputes, such as the Diaoyu/Senkaku Islands altercation between the PLAN and the JMSDF, into full-blown military confrontations. Actual physical skirmishes have already occurred; in 2001 there was a collision between a US EP-3 navy plane and a Chinese PLA Air Force J-8 jet fighter off the coast of Hainan, and in 2009 the USNS *Impeccable* clashed with Chinese *quasi*-governmental vessels in the SCS. Naval assets deployed in near the Diaoyu/Senkaku Islands in the ECS include relatively heavy guns, missiles, and air assets such as ship-borne helicopters which provide targeting. In this prolonged standoff between China and Japan, which has continued for a year without any diplomatic consultations, a sound top-down chain of command system with clear-cut operational regulations including ROE and OPLANs should provide the on-scene commanders with clear guidance, resulting in more prudent behavior from individual units in chaotic situations. Apparently, rigid and ambiguous command and control systems have apparently seriously misled on-scene commanders in the recent incidents.

Both Japan and China should designate the Diaoyu/Senkaku Islands AOR a joint operation of their land, navy and air forces and remove their naval assets from the joint chain of command. This would allow effective unity of command for the joint forces. Japan has established a Joint Chief of Staff of Self-Defense Forces for joint operations and challenges, such as providing humanitarian assistance to victims of tsunamis and other natural disasters, with operational control over land, sea and air forces; but this helpful innovation has not been applied to the JMSDF’s operations in disputed waters, such as the Diaoyu/Senkaku Islands. It is imperative, given the lack of definite wartime OPLANs or

peacetime ROE manuals, that naval operations be placed under a single command and control apparatus. Well informed sources suggest that the JMSDF was primarily to blame for misleading the Japanese Joint Chief of Staff, the JMSDF, in the dangerous confrontations between the JMSDF and the PLAN on the high seas near the Diaoyu/Senkaku Islands in early 2013.²⁹ For China, because of the embedded linkages between the Chinese Communist Party (CCP), the PLA and the Chinese government, it is inherently unclear who is in charge; and many China-watchers have highlighted the consequences of these confused power structures. The overlapping authority between the CCP and the PLA is surely a recipe for chaos when China uses military force in the disputed areas.

Third Party Intervention and Involvement

External intervention in regional maritime disputes is emerging as an important new challenge, which complicates the attempt by individual countries to assert their national maritime jurisdictional rights and duties, in particular concerning EEZs. Third party involvement in the bilateral or multilateral disputes in the East Asian Seas is aggravating matters by adding further layers of complexity. The recent ratcheting up of Sino-American maritime rivalry, rather than simply maintaining the regional status quo, has led to more frequent direct and indirect intervention and involvement by China in maritime affairs, with the US response also playing a more disruptive role.

Despite the fact that third parties have no legal rights or interests in bilateral maritime disputes in confined seas, the US has recently become actively involved in the quarrels between China and Japan, and between China and ASEAN members like Vietnam and the Philippines.³⁰ While one might hope for the US to set an example by acting responsibly, and avoiding behaving in such a way as to make regional maritime security problems more intractable, it seems that US treaty obligations established during the Cold War, specifically the San Francisco Peace Treaty (SFPT) security commitment to Japan, have persuaded the US to support Japan in its ongoing Diaoyu/Senkaku Island dispute with China, and may be causing the US to react more and more robustly to what it sees as provocations by a near-peer adversary, China. When the US expressed its concern about maritime escalation in both the ECS and SCS, giving unexpected verbal assurances to its allies and partners by reiterating its treaty commitments, especially the SFPT, there was an immediate

deterioration in the regional maritime security environment. In the case of the Scarborough Shoal stand-off between China and the Philippines in April 2012, the US navy dispatched hi-tech Intelligence Surveillance and Reconnaissance (ISR) assets, such as unmanned aerial vehicles (UAVs), to monitor activities by Chinese factory fishing vessels. Reacting to the SCS disputes, the US navy also conducted joint naval exercises with the navies of weaker nations, such as Vietnam and the Philippines. During 2012, the US conducted more than 170 military exercises in the Asia-Pacific region, with its Marine Forces Pacific involved in more than 100 exercises and events, spreading across 48 countries both inside and outside the AOR; though the US's imminently anticipated defense cuts will likely have a negative impact on its allies and partners.³¹

Recently there have been several dangerous flare-ups around Diaoyu/Senkaku Islands, and Beijing has vehemently denounced Japan's decision to nationalize the ownership of these disputed ECS islands, but the situation became more serious after Washington expressed its support for the status quo, acknowledging Japanese sovereignty over the Diaoyu/Senkaku Islands. Third party interference, in this case from China, also undermined ASEAN's attempt to reach agreement on a joint communiqué implementing a Declaration on the Conduct of Parties in the South China Sea (DOC).³² At the July 2012 ASEAN Ministerial Meeting, Cambodia, which held the rotating chair, strongly defended China's position.³³ It is believed that Cambodia had come under heavy pressure from China to block this protocol, which was intended to constrain further encroachments upon ASEAN members' maritime sovereignty, particularly by China. ASEAN is now fragmented on SCS issues, especially over the illegal fishing at the Scarborough Shoal already mentioned and the award of oil concessions inside Vietnam's EEZ by the China National Offshore Oil Company (CNOOC).³⁴ For ASEAN, the complex management mechanisms envisaged for DOC in the implementation guidelines drawn up in 2012, with their legally binding "Code of Conduct (COC),"³⁵ represent the last best hope of resolving such problems.³⁶

Any US involvement in bilateral territorial disputes is very likely to provoke a counter-response from China, which complicates the situation further and has a negative impact on relations between China and its neighbors.³⁷ Indeed, the effect of these developments has been magnified by the maritime rivalry between the US and China.³⁸ During the recent Chinese power transition, the PLA was the dominant influence

in China's dealings on maritime issues with Japan and also with some ASEAN members: planes were dispatched to the Philippines and Vietnam for maritime geographical survey purposes, and to safeguard the MSA operations near disputed waters in the ECS and SCS. The PLA clearly interprets recent US involvement with the bilateral maritime territorial disputes as an aggressive stance, and is therefore treating the disputing parties in an adversarial manner, systematically seeking to counter US naval activities in East Asian seas.

Blurring the Operational Roles of the Navy and Coastguards

There has been a recent tendency for the distinction between the nature and functions of different kinds of maritime assets, especially between navies and coastguards, to be obscured. The relationship between maritime law enforcement and security forces has also become more complex, which has impacted situations with overlapping claims to disputed islands in the East Asian seas. The standard arrangement is for the coast guard to protect civilian fisheries and sea-borne commercial activities within a legal framework, while the navy concentrates on sea control duties. The enhancement of national coastguard fleets across the region, and the expansion of their role, is taking place for a variety of economic, legal and constitutional reasons. Bateman mentions several: to relieve an overburdened navy from missions and roles in which neighboring countries might perceive it as threat, to sidestep the restrictions of a pacifist constitution by deploying more "sensitive" coast guards rather than the navy in disputed waters, and to allow budgetary resources not allocated to defense spending to be diverted to a country's maritime operational assets.³⁹

To some extent, however, the practice of employing coast guards to protect maritime sovereignty and for jurisdictional issues is a misuse of naval assets, with coastguards overstretched by the functions and roles of the navy. In theory, the coastguard provides support for navies in their military role, whereas navies support the coastguard in their policing and law enforcement duties. Recently, some nations in the region, especially China, have deliberately blurred the distinction between the two, which has made maritime operations in the disputed waters of the ECS and SCS increasingly complex. China has highlighted the active role of its coast guard through its long-term plans to build coast guard vessels for use in the disputed waters. This has also been shown by the overextended roles and missions of China's Maritime Surveillance Force (CMSF) operating

under the SOA, which has been used to bolster naval deployments to protect Chinese core interests in the ECS and SCS. Indeed, the CMSF is as much a political tool as the PLAN in promoting China's vision for a renewed "Middle Kingdom" regional order. So, while the US navy and coastguard are struggling to fund extended operations, laboring under their unachievable fleet plans, the Chinese SOA is building strong and capable MSA vessels, planning 700 ships by 2030, to protect their self-defined maritime rights and interests in the region.⁴⁰ This calculated blurring of the distinctions among major maritime forces, between the roles of navy and coastguard in the disputed waters, is another new 'wicked problem' undermining the maritime security of the region.

Advanced Missile Technology and WMDs in Regional Seas

There is a growing problem with advanced missile technology and weapons of mass destruction (WMD), which a number of nations have begun deploying in East Asian seas. The maritime dimension of the rebalancing of US military powers involves the shifting of more scalable expeditionary forces, whether air, naval or marine units, into the theater of the surface seas, and enhancing them to allow a more agile and flexible response, but still basing them in preventive positions, such as Guam, Hawaii, Australia, and Singapore. In consequence, the strategic importance of the regional seas is increasing; a prime example of this is the US reaction to the North Koreans conducting a successful long-range three-stage rocket test, and also its third nuclear test. The airspace over the high sea has become a main theater in which both offensive and defense postures are vulnerable to long-range missile threats, so the US decided to deploy its "strategic missile patrol" assets to the region, and Japan and South Korea became a part of these networks.⁴¹

China, for its part, has successfully launched its first ever ship-based long-range tactical weapon known as the DH-10 cruise missile (similar to a Tomahawk) and is operating an ex-Russian aircraft carrier, which lacks first-class naval technology or capacity, however, and is building more carriers to achieve its objective to be seen as a strong nation.⁴² Furthermore, the Chinese asymmetric warfare strategy, designed to counter US naval supremacy, is a hybrid of various naval strategies known as Anti-Access(A2)/Area Denial(AD) and aims to push US naval forces out of Asia, most importantly beyond the so-called "first island chain." As part of this strategy, China has developed an indigenous long-range ballistic nuclear missile known as the DF-21 or the "Anti-

Ship Ballistic Missile (ASBM)”.

Nor is Japan willing to be left out: when military indications revealed that North Korea was moving missiles to the east coast of the Korean Peninsula, Japan seemed to relish the prospect of shooting down a North Korean missile. With much publicity, the Japanese government deployed its PAC-3 advanced Patriot missile system in central Tokyo to deter and target North Korea’s three-stage missiles, the debris from which presumably fell somewhere on or around the Japanese islands during the launch in early 2013.⁴³ The US also supported Japan’s installation of an AN/TPY-2 early warning radar in western Japan to improve monitoring of North Korea’s ballistic missile launches; and, on May 16, 2013, the US Missile Defense Agency successfully conducted a flight test of the Aegis Ballistic Missile Defense (BMD) system from the USS Lake Erie (CG-70), resulting in the interception of a separating ballistic missile target over the Pacific Ocean by the Aegis BMD 4.0 Weapon System and the SM-3 Block 1B guide missile.⁴⁴

As for South Korea, the planned deployment of about 50 Rafael Spike NLOS electro-optical guided missile systems to the West/Yellow Sea is public knowledge. This is intended to deter long-range artillery attacks, especially to protect the Yeonpyeong Island from a repeat of the 2010 shelling by North Korea, which asserts a territorial claim close to the Northern Limit Line (NLL), believing that the NLL was imposed unilaterally by UN officials after the 1950-1953 Korean War.⁴⁵ North Korea recently fired several KN-02 surface-to-surface short-range missiles off its east coast on three consecutive days.⁴⁶ In fact, these missiles are essentially conventional weapons and systems to cover the littoral area, rather than ballistic missiles able to be launched against continental opponents beyond the horizon, but, taken together with North Korean long-range/short-range ballistic missiles, some operational and some under development, which may be capable of carrying nuclear warheads, it is clear that regional maritime territorial disputes have expanded beyond the surface of the seas to the airspace above them. This enlargement of the theater of conflict constitutes another ‘wicked problem’ for regional maritime security.

Lack of New Maritime Security Initiatives

In recent times the Asia-Pacific region has failed to generate any new maritime security initiatives applying to the common maritime security, and this deficit now appears to present another emerging new ‘wicked

problem': the region desperately needs to come up with a new approach toward maritime security. Existing policies have produced persistent friction and confrontation, and the new political leadership must try to alleviate the traditional problems of maritime security as part of a broader strategic détente with their rivals and potential adversaries, whilst remaining close to their chief ally, the US. Over the past few years, the ROK, Japan and those ASEAN members involved in maritime territorial disputes in the ECS and SCS have made behaved in a fragmented manner, which has constrained their policy choices and allowed the US and China to play games of "good cop" and "bad cop." In this moment of political transition across East Asia, and in the US, a new and cooperative vision of maritime security initiatives is urgently needed.

If either the US or China were truly a good cop, they would surely be presenting some definite new maritime security initiatives. The Asia-Pacific region is in dire need of new strategic guidance, different maritime security settings, and improved sharing of maritime capabilities. When Hu Jintao was Chinese president, he put forward the concept of the "Harmonious Sea," but this is hardly what the nations of the region have witnessed, and, in reality, they have good reason be suspicious of the PLAN and the SOA, given recent demonstrations of their maritime prowess, and their ability to dominate weak and vulnerable nations. President Hu also declared that the Chinese fleet should stand ready to uphold Chinese interests, and the current president, Xi Jinping, has emphasized the importance of safeguarding a strong country with a strong navy.⁴⁷ So far as the US is concerned, its present maritime strategy was announced in 2007: "A Cooperative Strategy for 21st Century Sea Power" also called "CS-21" or "The 2007 Maritime Strategy." Unfortunately, it fails to grasp the new maritime geopolitical reality, ignoring new threat perceptions and the prospect of new regional maritime partnerships. It was intended to replace the obsolete Global Maritime Partnership, which aimed at a 1,000-ship navy, but critics noted that it did not explicitly acknowledge the rise of China or any threat represented by this development. The new strategy was widely seen as an attempt by the US to leverage the capability of its allies and partners to ease its own budget burden. It has also been interpreted as a way for the US to exploit regional actors' familiarity with the intricacies of their maritime environs, and to extract detailed data from its allies and partners about the hydrology and meteorology of local waters, thus

aiding US naval operations; and also to enhance information sharing and establish joint command and control structures, thus speeding up US responses to shifts in regional affairs.⁴⁸

As a consequence of resource constraints, however, both China and US may face a strategic challenge, driving them toward more innovative thinking and the formulation of new maritime security initiatives. The US is already refocusing its 21st century strategy away from Europe with its pivot to Asia strategy, and China has already executed its infamous A2/AD defensive strategy, and is conducting for “Far Seas Operations.” Concerns over the threat of China’s naval build-up is the primary driver shaping the defense policy and strategy of East Asian nations who have responded by striving for more self-reliant defense policies, rearming and investing primarily in their naval forces. These new approaches which have been made possible by decades of economic growth and development.⁴⁹ The US sequester involves a huge defense cut, approximately \$46 billion, and this has raised concerns among its allies about the effect on US arms exports: whether and how these cuts will delay planned deliveries of weapons and systems built by the US manufacturers.⁵⁰ Asian nations have proved willing to expand their defense capabilities in spite of economic constraints, and according to *Defense News*, “the Asia-Pacific will comprise 26% - nearly US \$200 billion – of global naval and maritime security builds in the next 20 years as complex relationships and rivalries drive procurements designed for particular regional challenges”.⁵¹ With Asia becoming increasingly mired in strategic uncertainty at sea, there are several indications of the regional rearming trends: increasing defense budgets, enhancing power projection capabilities, procuring modern weapons and systems from outside the region, and recapitalizing defense industries to produce a variety of indigenous platforms. Although the pivot to Asia is a welcome contribution by the US, the East Asian nations need to exploit the consequent momentum and take bold steps to advance their intra-regional relationships. For example, maritime security cooperation between Japan and the Philippines has been reinvigorated, with various new joint initiatives, due to their shared perception of the threat from China.⁵² None of the nations in the region can afford to ignore the fact that China’s defense budget continues to enjoy extraordinary double-digit growth.⁵³ Some commentators have argued that China’s defense modernization is a natural outcome of its economic development, but others remain troubled by the lack of transparency and the prospect of

China's military prowess expanding far beyond the regional theater.

The table below presents the various maritime security regimes implemented by the US in the Asia-Pacific area, but none of them is really appropriate for the current regional maritime security environment, and this threatens to become another new 'wicked problem'. It is surely time to develop a new overarching maritime security structure to ensure maritime peace and stability in the Asia-Pacific region.

Table 1: US Maritime Security Regimes in the Asia-Pacific Maritime Region

Title	PSI ⁵⁴	MDA ⁵⁵	RMSI ⁵⁶	1,000-Ship Navy / GMP ⁵⁷	CS-21 / 2007 Maritime Strategy
Agency	US Dept. of State	US Coast Guard	USPACOM	US Navy	US Navy, Marine Corps, Coast Guard
Area	Worldwide/ Global	Littoral	Asia-Pacific Region	Global	Worldwide/ Global
Focus	Deter & Disrupt WMD	Safeguard maritime safety, security and access	Unity of effort to prevent transnational threats	Implement a concept of 1,000-Ship Navy to deter non-military threats	Promote maritime security and prosperity across the globe

Reluctance to Resort to Legal Solutions

The reluctance to seek to resolve maritime disputes through legalistic mechanisms is another new 'wicked problem' afflicting the East Asian region. Historical legacies, Cold War frictions and confrontations, and regional rivalries between peer competitors, such as between China and Japan, have caused fundamental and intractable maritime insecurity problems; but, until recently, it was possible to hope that these long-standing problems could be addressed by legal means, through the application of UNCLOS.

Maritime security within the region could surely be more effectively sustained through rules-based solutions, following legal judgments under UNCLOS, rather than the current model which depends upon competing through power politics. On 22 February 2013, the Philippines, being no longer willing to tolerate unilateral Chinese actions in occupying numerous reefs in the West Philippines Sea, submitted a claim against China to UNCLOS. China justified its occupation and building upon Mischief Reef, McKennan Reef, Gaven Reef and Subi Reef, by referring to a map from the 1940s with nine dashes, “the nine-dashed line,” which covers almost the entire SCS.⁵⁸ The Philippines was careful in its Notification and Statement of Claim to say “it was not seeking arbitration over sovereignty disputes to islands or delimitation of maritime boundaries that China had excluded from arbitral jurisdiction,” stating that its maritime disputes with China were “about the interpretation and application by State Parties of their obligations under the UNCLOS,” and could therefore be submitted for resolution. In response to this proposal, however, China rejected the Philippines’ request for an UNCLOS arbitral tribunal constituted in accordance with Annex VII and insisted that bilateral negotiations were the only solution appropriate for such maritime territorial disputes.⁵⁹ The Chinese have asserted that the Philippines’ Statement of Claim “was historically and legally incorrect and contained unacceptable accusations against China.”⁶⁰

The delimitation of overlapping maritime jurisdictions in the region has also become more contentious after a new expansionary move by China. In December 2012, China made a partial submission to the United Nations Secretariat concerning the outer limits of its continental shelf in the East China Sea, declaring that its continental shelf naturally extends into the Okinawa Trough. This broadens China’s legal claims beyond the Diaoyu/Senkaku Islands, as the trough runs just north of Japan’s southern Ryukyu Islands and would overlap Japan’s 200 nautical miles EEZ. These extravagant Chinese claims have sparked significant Sino-Japanese tensions recently.⁶¹ By relentlessly pursuing such hypothetical rights, ignoring the opportunity to obtain legal resolution of intractable problems and inciting profound resentment among their rivals, the individual nations of the region are creating a new ‘wicked problem’ and aggravating the existing maritime insecurity.

The Urgent Need for a Common Approach to Regional Maritime Security

For the time being, maritime security seems critical to individual national security for the East Asian region, and for some nations it merits first place on their national security agenda. However, the region seems still unready for maritime cooperation, with lingering tit-for-tat games between neighboring countries disrupting maritime peace and good order. Several tracks exist for discussing regional maritime security mechanisms: the ASEAN Regional Forum (ARF) and its various sub-committees; the Heads of Asian Coast Guard Agencies (HACGA); and the Council of Security Cooperation in the Asia Pacific (CSCAP) working together with the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). These forums take a variety of approaches and are likely discussing the old issues, but they are very reluctant to talk about the new challenges and have produced very little of immediate use in terms of defined plans of action – there is an urgent need to secure the common maritime interests of the region, specifically to ensure the freedom of shipping and to deter the recurring bilateral conflicts and confrontations.⁶²

The best course would be for every nation in the region to agree to work together to preserve their common interests at sea, defining regional maritime security along the lines of: national and multinational efforts to maintain good and peaceful order at sea, and the safety and security of shipping, so as to permit countries to pursue their maritime interests and to develop their marine resources in an ecologically sustainable and peaceful manner in accordance with international law. Any such consensus must also establish agreement that illegal and unilateral activities at sea or inadequate arrangements for the safety and security of shipping are detrimental to good order at sea and should not be tolerated.

Unfortunately, since UNCLOS came into effect as the customary international maritime law of this region after receiving the necessary ratifications in 1997, there have been so many different concepts of maritime security among the nations of the region that they have been quite unable to agree upon any conceptual basis for a common approach to regional maritime security. Given the essential importance of seaborne trade, which is fundamental to the economic growth and prosperity of the region, it seems obvious that most nations share an interest in safeguarding the freedom of navigation and ensuring the safety of

shipping, but constructive agreement has proved elusive. Some blame the unfortunate complexity of the region's geography and the ambiguities which arise in the application of UNCLOS to the semi-enclosed seas of East Asia.⁶³ Others blame third party involvement in the region's bilateral disputes, so that the rights and duties of the coastal countries are not in full accordance with the international law, but are determined by alliance obligations which are constrained by geography.⁶⁴

Fortunately there are very few countries, only Taiwan and South Korea, in fact, whose approach to maritime issues adheres to rigid traditional attitudes; where the national defense agenda is dominated by military threats from enemies or historical adversaries, and the protection of national interests and sovereignty at sea.⁶⁵ Indeed, since the end of the Cold War, such traditional maritime security concepts have gradually become less significant around the seas of the region; so it is an appropriate time, in fact it is rather urgent, for the nations of the region to agree upon a common definition of regional maritime security so as to safeguard their common interest in peace and stability upon which their economic prosperity depends.

Looking at the general timeline of the maritime conflicts and tensions during the last few years, from 2010 through the start of 2013, it is clear that existing institutional mechanisms have failed to address the new 'wicked problems' arising between the coastal nations and the users of specific areas, most obviously the EEZs and disputed sea areas like the Diaoyu/Senkaku Islands in the ECS and Scarborough Shoal in the SCS. There has been a general reluctance to address the direct causal factors affecting maritime security, so the region remains blighted by a plethora of highly complex challenges which have so far defied solution, and all of these 'wicked problems' are exacerbated by Sino-US maritime rivalry. Unfortunately, very few regional initiatives for common maritime security have been produced by the relevant existing multilateral forums and their various sub-forums and committees, principally the Western Pacific Naval Symposium, CSCAP, ARF, the ARF Inter-Session Meeting on Maritime Security, and the Maritime Security Expert Working Group established by the ASEAN Defense Minister Meeting Plus.⁶⁶ What can be done to address this deficit? How can robust institutional mechanisms be established to resolve both the longstanding maritime issues and the new 'wicked problems' of regional maritime security? This author, perceiving the opening of a rare window of opportunity promising possible progress, offers the following

recommendations:

First, action-reaction phenomena should be defused through discreet bilateral negotiations between the quarreling parties. From time to time, official views on disputed issues become distorted by popular reaction, especially by nationalistic movements and heated public antipathy against perceived insults to sovereignty by rival nations. Such trends have proved particularly destabilizing over recent years, affecting maritime environments throughout East Asian Seas ranging from the West/Yellow Sea, and the ECS to the SCS. To limit the negative impact from such reactions, the best course would be to internationalize the maritime jurisdictional and boundary disputes of the region. This would give the disputing parties some breathing space, and allow them to muster the political will to play a more constructive role in contributing to regional maritime good order and stability. Beyond the official and formal dialogues, there is a real opportunity for Asian countries to address many outstanding issues. Since 2010 some very assertive attitudes have prevailed, and it is time some lessons were learned: expanding maritime jurisdictional claims to the limits of continental shelves has produced only trouble and instability.

Second, multilateral forums should urgently consider the suitability of international law to strengthen regional peace and stability. This should involve disputing parties in a process whereby they accept joint responsibility for implementing a new concept of consensual regional maritime security, integrating policy suggestions from all sides. In this way gray areas of UNCLOS could be addressed by international forums, and extended or amended as appropriate. In its present form the convention seems inadequate for resolving regional maritime disputes, being capable of too-flexible a range of interpretations, and it is therefore essential to begin by developing a common understanding of the limitations of UNCLOS, which may then help to ease

the recurring tensions. Of course, it is crucial for the US to ratify UNCLOS as soon as possible, so that, instead of being a mere observer the US can play an active part in the dialogue to build a new maritime regime. US participation in UNCLOS will surely contribute to maintaining maritime peace and stability in the Asia-Pacific region, by helping to provide credible international regulation and sound principles for maritime security.⁶⁷ Among the benefits of updating the conventional context of maritime jurisdiction in the ECS and SCS and the rights and duties of coastal states in maritime zone, particularly relating to the EEZs, would be a welcome reduction in the likelihood of a miscalculation leading to serious maritime conflict.

Third, the best way to avoid such dangerous accidents in the ECS and SCS is to define clear ROE for maritime forces and law enforcement agencies. Recent clashes over fishing rights, such as those between and Japan over the Diaoyu/Senkaku Islands, and between China and the Philippines over the Scarborough Shoal, in which the Chinese MSA and fishery protection agency were involved, have demonstrated the importance establishing ROE covering how to deal with non-military maritime threats. In the clash with Japan, the Chinese government responded by conducting large-scale naval contingency exercises near the disputed seas which provoked a crisis when the PLAN targeted JMSDF naval vessels and helicopters with fire-control radar in January and February 2013.⁶⁸ In January 2012, the Philippines government made a good start in moving to reduce the chances of unintended conflict by promoting a COC in which the SCS was defined as a Zone of Peace, Freedom, Friendship and Cooperation, which is a good model for other nations operating in disputed waters to emulate. It would be useful for all parties in the region to continue discussing the further implementation of the DOC guidelines in the near future, with the deliberations of the “Expert Committee on Safety of Navigation and Communication at Sea”

being especially significant due to its contentious nature.⁶⁹

Fourth, international legal regimes should be reserved as a last resort, when bilateral means have failed to bring about a peaceful resolution and settlement of disputes. The involvement of external powers in regional maritime security only tends to muddy the waters, with the reactions inevitably provoked, making the disputed issues more complex and intractable. Bilateral discourse on maritime cooperation should become the customary approach to these matters, rather than relying upon military tools to rationalize legitimate rights and duties, and transparent, effective and appropriate methods must be devised to resolve the recurrent tensions. It is unfortunate that the implementation of the DOC protocol has been held up by multilateral negotiations within ASEAN identity or central and with China. Individual bilateral settlements are not sufficient to resolve all the issues, however, as shown by the recent unofficial agreement on fisheries between Taiwan and Japan: at a time of heightened tension between China and Japan over the Diaoyu/Senkaku Islands, this agreement upset China further, adding more fuel to the fire. It was also disappointing that the Philippines and China were unable to reach agreement to bring the nine-dashed line issue before an international tribunal subject to UNCLOS arbitration.⁷⁰ Although the Philippines avoided making their claim specific to their sovereignty disputes with China, phrasing it in terms of clarifying the obligations of states under UNCLOS, China rejected even this careful approach as invalid and offensive. International legal regimes tend to produce winners and losers, and so should be reserved as a last resort.

Some Suggestions: The Challenges for 2013 and Beyond

Further suggestions should be considered for the future of Asia-Pacific regional maritime security. Is there a way to persuade both the US and China to accept a new conception of rules-based maritime peace and stability? Are there any useful stepping-stones toward maritime

cooperation, and curtailing the tit-for-tat power games? The other nations of the region certainly have good reason to sustain and even expand their contributions to maritime security in support of the common welfare. Much depends on whether the stakeholders in the Asia-Pacific region make any progress in the directions suggested below. The US and China are not working well together to resolve the new ‘wicked problems’, East Asian countries are divided among themselves, and there is a general lack of respect for international regulatory norms like UNCLOS. Dire as the situation seems, we must hope that the intractable territorial disputes, with the threat they present of wider conflict, will provide an impetus to formulate a basic “code of cooperation” under which a future region maritime security mechanism can be designed.

Looking first at the US: the Senate should approve UNCLOS and moderate its stance on treaty obligations established during the Cold War, such as the 1951 SFPT. As a non-member of UNCLOS, the US can take no position on the legal merits of the competing claims to sovereignty, and as long as it maintains that the only US national interest is in protecting the freedom of the seas, there is nothing that the US can do to protect its allies’ claims in the disputed areas. Both these policies undercut any US attempts to mitigate the ‘wicked problems’ of the East Asian seas. President Barack Obama’s administration has recently sought to persuade the US Senate to approve the UNCLOS, but this has proved contentious.⁷¹ Critics are opposed to China’s expansive maritime territorial claims, especially in the SCS. It seems unlikely that US approval of UNCLOS will limit US naval operations or constrain its naval capability, but perhaps it will dissuade the Chinese from their attempts to implement a Chinese version of the Monroe Doctrine and expand their maritime territorial claims in East Asian Seas. Merely adopting UNCLOS, implying a clearer US commitment to freedom of the seas in the region, is far from being a solution; in fact, it may lead to renewed tensions and increasing Sino-American maritime rivalry. Yet, as a party to UNCLOS, the US will have a formal role in these maritime disputes, and could therefore implement a deliberate policy, rather than simply falling back on its Cold War security commitment to its allies in the disputed waters. Washington would have to find a way to compromise over the disputed issues; otherwise they would become a geopolitical constraint for the US pivot to the Asia-Pacific region. Also, as a member of UNCLOS, the US might reactivate its “Regional Maritime Security Initiative,” already in abeyance for two decades. This

was intended to permit the US to help willing nations enhance their naval capabilities, and, by cooperating, to leverage their ability to identify, monitor and intervene in regional maritime territorial disputes.

Turning next to China: the Chinese should tone down their shrill claims to historical precedents which have always overshadowed rules-based regimes and norms in their approach toward the disputed seas. This would be a low-cost, low-risk regional strategy to show goodwill to their neighbors, including the US. Although the Chinese have, broadly, pursued the restoration of the middle kingdom regional order, they have given no specific details. China is widely regarded as a “rising great power,” but the Chinese government has not publicly set out any grand strategy for the direction it is taking. China should acknowledge that the parts of the SCS which are within the EEZs of ASEAN members are not relevant to its historical sovereignty. Most importantly, Chinese authorities should provide a clear-cut clarification of their unilateral claim to all-encompassing maritime jurisdiction in the SCS, based on the nine-dashed line, explaining how this infamous line can be reconciled on the navigational charts of the SCS with UNCLOS regulations. Further constructive steps which the Chinese might take include apologizing to their weaker neighbors for their inconsistent and assertive attitudes which have sometimes betrayed an outdated imperial mindset, and addressing their neighbors’ concerns about recurring disputes over “core interests” in the ECS and the SCS.

As for the other nations of the region: there is a clear need for a senior-level regional meeting at which strategic consultations can take place, gradually building capacity for larger steps, until, ultimately, establishing regional regulatory norms with enduring stability through bilateral and multilateral cooperation. Recent conflicts between China and the US in the SCS, represents a game of “tit-for-tat”: one player reacts to the actions of the other player, and that one responds in turn. From the East Asian perspective, the only way to attain all-inclusive stability in the regional security environment may be to acknowledge jointly the significance of the new ‘wicked problems’, so that by acting together they can play a decisive role in deterring such tit-for-tat games between the US and China in the confined seas.

Finally, a new “code of cooperation” is needed in East Asia: only in this way can trust be rebuilt, the trap of Sino-American rivalry can be avoided, and the disparities and differences among the nations of the region can be bridged. Such a code could do much to alleviate East

Asian pessimism, and also to square China's unyielding concern for its sovereignty and territorial integrity with the right of the US to conduct frequent naval exercises near the disputed sea areas. Trust is essential if a balance is to be struck between the "allies" and "enemies" of one or other great powers, and thus reduce the threat to regional security. In particular, adapting to a discrete new code of cooperation may engender new security environments. A successful articulation of a common code of cooperation requires significant steps from many parties in the region, including:

- To lessen the chances of great power confrontations in the East Asian seas, they should behave consistently and reliably. In particular, the US should be clear, in its relations with long-standing allies and partners, to avoid misleading them about long-term strategic considerations, or forcing them into a provocative posture where they feel obliged to start building up their military capabilities to defend against a potential Chinese adversary.
- To improve the current situation in the ECS and the SCS, nations in the region should identify existing avenues to mitigate the 'wicked problems' and seek to develop new ones. Bateman has already suggested a list of useful forums for intergovernmental security cooperation in the Asia-Pacific: the ARF, the East Asia Summit (EAS), ASEAN Plus Three (APT), the ASEAN Defence Ministers Meeting Plus (ADMM Plus), the ARF Inter-Sessional Meeting (ISM) on Maritime Security, and the Maritime Security Expert Working Group (MSEWG) established by the ADMM Plus. Various regional multilateral mechanisms already exist, at least in embryo, and these bodies should be properly utilized to address the new 'wicked problems' in so far as they intersect with the appropriate mandates.⁷²
- To moderate tit-for-tat games between the US and China, the nations of the region should distance themselves from any use of force by the two great powers to support claims of territorial sovereignty. A good example is the ROK's successful dual track strategy pursued despite the threats from, and stand-off with, North Korea. China, in particular,

should express its scrupulous commitment to scrupulously respecting existing international laws and regulations, instead of continuing with its inconsistent and assertive stance.

- To build momentum to effectively address the ‘wicked problems’ of regional maritime security, a wide variety of divergent stances must be accommodated among the claimants in the territorial disputes. All the nations of the region should therefore show good faith by taking every opportunity to engage in meaningful participation in future bilateral or multilateral dialogues.

Conclusion

In his original analysis, Bateman was hopeful that the nations of the region might be willing to put the past behind them so that the ‘wicked problems’ could be resolved. Unfortunately, there is no sign of such peace and harmony breaking out anytime soon; on the contrary, Bateman’s list has been overshadowed by a variety of new ‘wicked problems’ and all parties continue to dig the hole deeper. As should be clear from the recommendations and suggestions made in this article, however, Bateman was correct in suggesting that if effective solutions are ever to be found to mitigate the ‘wicked’ maritime problems, the nations solved in dispute will inevitably have to adopt a more flexible mindset and break out of the perilous and unproductive cycles of action and reaction.

It can be seen from the recent rifts between China and Japan over the Diaoyu/Senkaku Islands, that domestic factors are probably the most intractable of the new ‘wicked problems’, both for individual nations and for regional maritime security. Also, there has been a general failure to reflect the view from within the region itself in recent developments affecting East Asian maritime security, and disturbingly few resolutions and/or initiatives which contain any long-term perspective. Since 2010 the nations of the region have been confronted by a strategic dilemma in which regional maritime security has been held hostage to Sino-US rivalry. Thus, maritime disputes have continued to fester, becoming ever more raucous and intractable, and increasingly threatening to break out into serious and violent confrontation.

This is a time of political transition in the US and across Northeast Asia, and, although the US has recently updated its policy toward East

Asia with the pivot/rebalance, other new governments have yet to indicate their approach to maritime affairs. They should seize the opportunity to encourage a fresh and cooperative vision: now is the moment to demonstrate restraint and cultivate trust. In this context, it would be very helpful if a “Senior Dialogue for Maritime Affairs” could be established among the nations of the region (like that between China and the US). Such a forum is surely essential if the ‘wicked problems’ of regional maritime security, both old and new, are to be resolved. There is such a confusing tangle of strategic problems: with overlapping issues and multiple challenges to be unraveled; with power shared between strong and weak states, and between nations in dispute and third parties. A new forum in the mold of the Sino-US Senior Dialogue, but with a broader membership, might be able to balance the interactions between chronic threats and acute issues, to address the ‘wicked problems’ of maritime security without disrupting existing bilateral maritime legal arrangements. Somehow, the nations of East Asia must find a way to cooperate in building new structures of regional maritime security appropriate for the twenty-first century. In conclusion, there is still hope that we can reverse the current trend, in which the regional maritime environment becomes ever more insecure; but this will require all parties to work much harder at building a deeper bond of trust. Simply stated, however, there will never be a better time for it.

Notes:

¹ The phrase “new ‘wicked problem’” was inspired by an earlier analysis of major, complex and long-term issues: See Sam Bateman, “Solving the ‘Wicked Problems’ of Maritime Security: Are Regional Forums up to the Task?” *Contemporary Southeast Asia*, Vol. 33, No.1 (2011).

² See Sukjoon Yoon, “Regional Maritime Security: Old Issues and New Challenges,” a paper presented at the *Joint Workshop on Common Concerns for Maritime Security and Safety* co-hosted by the Korea Institute for Maritime Strategy (KIMS), the SLOC Study Group – Korea, and the Institute of East and West Studies (IEWS) on April 30 2013, at KIMS, Seoul, Korea.

³ See Vijay Sakhujia, *Asian Maritime Power in the 21st Century: Strategic Transactions China, India and Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2011), and Geoffrey Till, Yoon Sukjoon, et al. (eds.), *Korean Maritime Strategy: Issues and Challenges* (Seoul: Korea Institute for Maritime Strategy, 2011).

⁴ The characterization of ‘wicked problems’ in this paragraph draws from Sam Bateman, “Solving the ‘Wicked Problems’ of Maritime Security: Are Regional Forums up to the Task?” pp. 1-28.

⁵ See Sukjoon Yoon, “Sino-American Rivalry in the South China Sea: Time for the ROK to Project its Middle-Power Role, a paper presented at the *4th International Workshop, “South China Sea Cooperation for Regional Security and Development”*, November 19-21 2012, at Ho Chi Minh City, Vietnam,

⁶ See Carlyle A. Thayer, ‘China at Odds with U.N. Treaty,” *USNI News*, Monday, March 11, 2013.

⁷ According to *Japan Times*, 26 April 2013, the Chinese government officials asserted that the disputed Diaoyu/Senkaku Islands are one of China’s “core interests.” See Royal Canadian Navy, *International Outlook*, 30 April 2013.

⁸ Kelly Gershaneck, “Xi and Abe on the Brink: Can the US Help Avert Armed Conflict?” *PacNet*, #31, Friday, May 3, 2013.

⁹ James Hardy, “Abe, Putin to start peace treaty talks,” *Jane’s Defence Weekly*, 8 May 2013, p. 14.

¹⁰ Concerning Chinese policy, see Michael D. Swaine, “China’s Assertive Behavior, Part One: On ‘Core Interest’”, *China Leadership Monitor*, No. 34, 2011, pp. 1-25; and, Royal Canadian Navy, *International Outlook*, 30 April 2013. For US policy, see Jeffrey A. Bader, *Obama and China’s Rise: An Insider’s Account of America’s Asia Strategy* (Washington, D.C.: Brookings Institute Press, 2012, p. 105.

¹¹ Christopher P. Cavas, “U.S. Navy Cuts Fleet Goal to 306 Ships,” *Defense News*, February 11, 2013, p. 23; and, John T. Bennett and Marcus Weisgerber, “Three Weeks To Craft a Deal,” *Defense News*, March 4, 2013, pp. 1, 8; and, Grace Jean, “US Navy reduces fleet goal,” *Jane’s Defence Weekly*, 13 February 2013, p. 12.

¹² Andrew Tilghman, “Adm. To Congress: Act Now or We Lose 50 Ships,” *Defense News*, May 14, 2012, p. 13.

¹³ Robbin Laird and Ed Timperlake, “Pivot point: Re-shaping US maritime strategy to the Pacific,” *Jane’s Navy International*, April 2013, pp. 22-29.

¹⁴ *Ibid*, p. 26.

¹⁵ Ben Sheppard, “The cruelest cut,” *Jane’s Defence Weekly*, 10 April 2013, p. 31.

¹⁶ Grace Jean, “First LCS deploys, but US fiscal challenges will delay mission modules,” *Jane’s Navy International*, April 2013, p. 5.

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- ¹⁷Euan Graham, "Freedom Arrives: What Next for the LCS?" *RSIS Commentaries*, No. 074/2013, 24 April 2013.
- ¹⁸<http://news.usni.org/news-analysis/news/chinas-700-ship-navy>, released February 6, 2013.
- ¹⁹Joseph S. Bermudez Jr. & James Hardy, "China's carrier makes home at new North Sea Fleet naval base," *Jane's Navy International*, April 2013, p. 6.
- ²⁰"PLAN names first Corvette," *Jane's Navy International*, April 2013, p. 5.
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