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Maritime security: a new environment following September 11

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Abstract
The Asia-Pacific region is distinctly maritime in character. When we centre a globe on the Pacific Ocean, the blue of the ocean almost obscures the littoral landmasses but spin the globe until it is centred on the mid-Atlantic and landmasses then dominate the oceans. Not surprisingly, Atlantic nations tend towards a continental view of security while Asia-Pacific nations have a maritime view. The importance of maritime security to many Asia-Pacific countries is reflected in the size of their merchant shipping fleets, a dependence on seaborne trade, expanding naval forces, and strongly promoted claims to offshore sovereignty and marine resources. Maritime security is likely to assume even greater importance in the future as economic growth proceeds, and countries become both more interdependent and more aware of the extent of their maritime interests. Events of September 11 and their aftermath have had the effect of bringing a new focus to some aspects of maritime security in the region but we should not lose sight of the enduring features that underpin maritime security.

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MARITIME SECURITY:
A New Environment Following September 11

by

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INTRODUCTION

The Asia-Pacific region is distinctly maritime in character. When we centre a globe on the Pacific Ocean, the blue of the ocean almost obscures the littoral landmasses but spin the globe until it is centred on the mid-Atlantic and landmasses then dominate the oceans. Not surprisingly, Atlantic nations tend towards a continental view of security while Asia-Pacific nations have a maritime view. The importance of maritime security to many Asia-Pacific countries is reflected in the size of their merchant shipping fleets, a dependence on seaborne trade, expanding naval forces, and strongly promoted claims to offshore sovereignty and marine resources. Maritime security is likely to assume even greater importance in the future as economic growth proceeds, and countries become both more interdependent and more aware of the extent of their maritime interests. Events of September 11 and their aftermath have had the effect of bringing a new focus to some aspects of maritime security in the region but we should not lose sight of the enduring features that underpin maritime security.

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ENDURING FEATURES

Maritime Strategic Geography

Significant features of the maritime strategic geography of the Asia-Pacific region comprise the numerous islands and archipelagos of the South and Central-Pacific and the chain of off-lying archipelagos and islands along the East coast of Asia. The world’s main archipelagic States (i.e. the Philippines, Indonesia, Papua New Guinea, Solomon Islands, Vanuatu and Fiji) all lie within the Asia-Pacific region. Large areas of the West and South Pacific are enclosed as exclusive economic zones (EEZs) or archipelagic waters. This simple fact has a strong influence on how the region approaches maritime cooperation and security.

The island and archipelagic chain in East Asia stretches from Sakhalin and the Kamchatka Peninsula through the Japanese archipelago and the Philippines archipelago to the Indonesian archipelago and northern Australia. It creates an array of enclosed or semi-enclosed seas in East Asia. From North to South, these are: the Sea of Okhotsk, Sea of Japan (or the East Sea to Koreans) Yellow Sea, East China Sea, South China Sea, Gulf of Thailand, Java Sea, Sulu Sea, Celebes Sea, and the Timor and Arafura Seas, as well as several seas lying within the Philippine and Indonesian archipelagos. There are two main implications for maritime security. The first is the number of key straits and choke-points in the region where ships, due to the density of shipping traffic and their proximity to land and coastal activity, are more vulnerable to attack by terrorists or pirates than when they are on the open sea. Secondly, agreed sovereign jurisdiction over maritime areas is extremely problematic due to difficulties with delimiting maritime boundaries. This markedly complicates cooperative activities to maintain law and order at sea in the region.

Significance of Seaborne Trade

The reliance of the region on shipping and seaborne trade is another enduring feature of the maritime security environment. Seaborne trade has driven economic growth in East Asia. International trade in the region has grown much faster than the economies of the regional countries themselves, and most of this is carried by sea. Seaborne trade is a
major strategic vulnerability of most regional countries. In the context of measures to ensure the security of seaborne trade against the threat of terrorism, it is essential that a proper balance is maintained between security on the one hand and the free movement of trade on the other.

The importance of seaborne trade in the region is explained by geo-strategic and economic factors. First there are geo-strategic factors, particularly the "archipelagic" nature of the region and the relative lack of land transport infrastructure in East Asia. As well as inter-island shipping in the Japanese, Philippine and Indonesian archipelagos, major centres on the mainland of East Asia are linked primarily by water rather than by road or rail. This is in contrast to Europe or North America where much foreign trade is carried overland. Intra-regional trade in East Asia must be carried by sea, except for very high value cargoes carried by air and some trade by road and rail in and out of China and on the Malay Peninsula. The situation is particularly evident in the “hub and spokes” nature of contemporary container traffic.

Secondly, economic and industrial growth in the region determines increasing demand for energy and other materials that can only be shipped by sea. Many of these materials are hazardous or dangerous. The carriage of these cargoes will continue to increase and there is consequently higher risk of damage or pollution as a result of collision, explosion, fire, grounding, or piratical or terrorist attack on the ships involved. Lastly, regional countries are variously dependent on imports by sea of energy, foodstuffs, raw materials, and some manufactures. Japan in particular depends heavily on the import of critical and strategic minerals by sea. The route through the Malacca- Singapore Straits is used by about 72 per cent of the loaded tankers proceeding to Japan and elsewhere in Northeast Asia. The alternative route through Lombok and Makassar Straits, more suitable for the large, deep draught vessels, accounts for the remaining 28 per cent although in terms of deadweight tonnage and volume of oil carried, the share is about even¹.

RECENT DEVELOPMENTS

Threats to Maritime Security
Possible threats to maritime security and the free movement of seaborne trade arise from the three major regional security issues - North Korea, Taiwan and the South China Sea - as well as from piracy, terrorism and the coastal State factor (where a coastal State applies restrictions to the free movement of shipping in its adjacent waters). Following September 11, the North Korean situation and the threat of terrorism are now the leading regional security threats while in what almost amounts to a “zero-sum” game, the South China Sea and the Taiwan Straits have lost prominence.

North Korea
Most strategic analysts now see North Korea as the major threat to security in the region. Identified as part of the “axis of evil” by President Bush, North Korea has resumed its nuclear program and is feared capable of launching missile attacks on neighbouring countries. Japan has long been concerned about so-called North Korean “spy-ships” in Japanese waters and in December 2001 sank such a vessel after pursuing it into China’s exclusive economic zone (EEZ). In December 2002 during Operation Enduring Freedom, the Spanish Navy boarded the Cambodian flagged merchant ship So San in the Northwest Indian Ocean and found 15 Scud vessels from North Korea onboard destined for Yemen. While the legal basis for boarding and searching the vessel is uncertain, there is no rule of international law prohibiting the transport of conventional arms. The So San, after initially being detained, was allowed to proceed on passage.

The annual revenue of North Korea derived from trafficking in illegal drugs is reported to be between US$500 million and $1 billion. Taiwan and Japan have been the main destination of North Korea’s illegal drug trade but in April 2003, the freighter Pong Su was arrested off Sydney after having landed a quantity of high-grade heroin in Victoria.

North Korea is believed to be the world's largest source of opium after Afghanistan and Myanmar. It was also the origin of more than a third of the amphetamines seized in Japan from 1999 to 2001.

The U.S. considers that all options for resolution of the North Korean situation are "on the table" and has not ruled out the use of force. Following the interceptions of vessels from North Korea carrying drugs, counterfeit money and weapons, the U.S. and Japan are talking about a blockade of North Korean ports. However, this action would be problematic in international law and likely not be supported by China and South Korea who are more ambivalent in their approach to North Korea. Not unreasonably in view of the proximity of Seoul to the North's long-range artillery and missile batteries, South Korea is uncomfortable with a hard-line on North Korea and continues to pursue its links with the North, including recently re-opening a rail link.

Taiwan

Although the situation is currently quiet, Taiwan remains a major "stumbling block" for regional stability, particularly due to its impact on China—U.S. relations. The cross-strait crisis of 1996 and the deployment of U.S. carrier battle groups in response to China's missile tests provided salutary lessons for China on the importance of sea power. Meanwhile Taiwan seeks to acquire the maritime forces necessary to resist any landing or blockade by the mainland. It has been able to secure some much-needed new weapons from the Bush Administration, many of which will be naval, including second-hand Kidd-class destroyers and eventually, new submarines although the latter program has run into some difficulties. Time, however, may be on Beijing's side, as the overall correlation of forces across the Taiwan Strait is coming increasingly to favour the mainland. With the economy of China booming ahead and Taiwan's economy stagnating, the mainland is moving to economic and military dominance over Taiwan.

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4 Ibid.
5 Australia is also reportedly involved in these talks. Tom Allard, "Navy Role flagged in policing Koreans", *The Sydney Morning Herald*, June 11, 2003, p.1.
More generally the war on terrorism has become a major obstacle in China's move to strengthen its influence in the region. Prior to September 11, China was pursuing an active diplomatic campaign, particularly in Southeast Asia, to win friends—both economically and strategically, and to counter the strategic dominance of the U.S. in the region. However, in the wake of September 11, the U.S. has recaptured its position as the major security player in Southeast Asia through its leadership in the war on terrorism. This development has also had the effect of lessening the attention given to Taiwan as a regional security problem.

South China Sea

The South China Sea is a strategically important part of the maritime environment of the Asia-Pacific region. It is the focus of considerable maritime activity, including important sea lines of communication (SLOCs), fishing and oil and gas developments, as well as significant levels of maritime crime, especially piracy, drug smuggling and illegal population movement. Unfortunately the disputes about sovereignty over the islands and reefs of the South China Sea have hindered the development of effective management of the area, including arrangements for marine safety, prevention of marine pollution and the maintenance of law and order at sea. The disputes will probably simmer on with occasional periods of heightened tension, such as that following the Mischief Reef incidents in the 1990s. The U.S. had adopted a neutral position on the sovereignty claims but in the last two years or so, China has been worried about the U.S. appearing to shift towards supporting the ASEAN claimants. However, the ASEAN position itself is internally contradictory with conflicting claims between the ASEAN partners.

The ASEAN-China Declaration on the Conduct of Parties in the South China Sea agreed in 2002 is theoretically a positive step. However, some scepticism exists over the extent to which it is in fact an achievement, particularly in terms of "operationalising" cooperation and reducing the risks of tension. The declaration in reality is very similar to

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8 The Paracel and Spratly Islands are claimed by China, Taiwan and Vietnam while the Philippines, Malaysia and Brunei claim particular features.
the first draft Code of Conduct tabled in the early 1990s. It is non-binding, has no specific geographical reference and is an expression of intent only. Significantly the words “a code of conduct” were avoided in reaching agreement on the declaration.

Terrorism

There is no shortage of potential targets for terrorists at sea. These might include offshore oil and gas installations, energy pipelines and undersea cables, as well as ships and port facilities. Shipping traffic continues to increase worldwide with much of the growth being in hazardous and dangerous cargoes (e.g. crude oil, petroleum products, LNG/LPG, chemicals, and even plutonium, albeit in small quantities). Ships with these cargoes could be attractive targets for terrorists to destroy directly or to hijack and use as weapons of destruction preferably (from the terrorist viewpoint) in a location where large collateral damage would result. Confirmed instances of maritime terrorism include the suicide small boat attack on USS Cole in Aden in 2000, the attack on the French oil tanker Limburg off Yemen in October 2002, and a few attacks on passenger ships. Al Qaeda has also planned to buy trawlers and other medium-size vessels that can be blown up near other vessels and to train underwater demolition teams.9

The vulnerability of high value targets, such as oil tankers and vessels carrying military cargoes, in narrow straits and choke points has led to such vessels being escorted by warships through these waters. British, Spanish, Portuguese and American naval vessels are patrolling the Strait of Gibraltar on a routine basis against the threat of terrorist attack.10 Similar arrangements are in place in the Malacca Strait with joint anti-piracy patrols conducted by the littoral States (Indonesia, Malaysia and Singapore) and the USN and the Indian Navy cooperating to escort high value targets through the Strait. The Aceh rebel movement has threatened to attack ships passing through the Strait and Singapore uncovered tentative plans by the Jemaah Islamiyah (JI) movement to attack U.S, ships

10 Chris Morris, “Terror fears spark ship escorts”, BBC News - World Edition online, 17 March 2003 (accessed 20/03/03)
entering Singapore. Recently, the leader of the Singapore branch of JI admitted that the organization planned to blow up Changi naval base.

The globalization of maritime commerce and the rise of “hub ports” has led post September 11 to the school of thought that a terrorist attack on a “hub port” would be more effective than an attack on a ship, unless of course the ship provided the means of attacking the port. With respect to vulnerabilities in seaborne trade flows, we normally think in terms of focal areas and chokepoints but destroying a “hub port” could have an even more disruptive effect on seaborne trade. Ships can re-route around a chokepoint, albeit at a cost in terms of time, but “hub ports” are becoming institutionalised as an essential element in the total supply chain. These ports must be recognised as a major regional vulnerability, including their information management systems. Cyber-protection of port operations should be included in cooperative efforts to ensure the security of regional seaborne trade.

Piracy and Armed Robbery Against Ships

The number of acts of piracy and armed robbery against ships (actual and attempted) worldwide reported by the International Maritime Bureau (IMB) in 2002 was 370, a slight increase over the 335 attacks in 2001 although that represented a decrease of 134 over 2000. However, there has been a worrying trend for incidents of ship hijacking to increase with 16 incidents during 2001 as compared with eight in the previous year. Another disturbing trend in 2003 has been an increased number of attacks on chemical tankers. A significant number of piratical attacks occur in Southeast Asian waters increasing from 22 in 1997 to 164 in 2002. Indonesian waters alone accounted for 103 incidents in 2002.

Some reservations should be noted with these piracy statistics. On the one hand, there could be some under-reporting of attacks with a reluctance of some ship masters to report incidents due to concern that an investigation will disrupt the ship’s schedule and the risk

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that insurance premiums may increase. But on the other hand, over reporting is also possible. Many incidents are very minor such as unsuccessful attempts to board or petty theft of small items such as paint, mooring ropes, or outboard motors. It is also possible that before piracy started receiving high publicity (i.e. prior to the mid-1990s), many incidents, particularly the relatively minor ones, may not have been reported.

There has been much discussion in international and regional forums about measures to control piracy and armed robbery against ships. The IMO has adopted a Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships and Measures to prevent the Registration of ‘phantom ships’. ASEAN has established a special sea piracy task force that will study various areas of cooperation, including information exchange, legal matters, law enforcement, training, capacity-building and extra-regional cooperation\textsuperscript{15}. Operational measures to suppress piracy are having some effect. The Indo-Sin Coordinated Patrols (ISCP) between Indonesia and Singapore established in 1992 are an excellent example of cooperation. ISCP has contributed to a marked decline in the number of incidents in the Singapore Strait\textsuperscript{16}.

The main challenges for cooperative action against piracy and armed robbery against ships now seem to lie in the political and legal arenas. The principal problem is that virtually all attacks are in waters under the sovereignty of a coastal State, including within ports and anchorages. While the U.S. and other maritime powers will claim a right of intervention in the territorial sea or archipelagic waters when human life is at risk under the general principle of saving lives at sea, many Asian countries reject this right unless a specific agreement is in place. Similar sensitivities might well apply to actions against terrorism although the U.S. has sought bilateral agreements to allow U.S. vessels to pursue vessels suspected of terrorism into sovereign waters of another State.

Since September 11, the media and policy statements from governments and international organizations (including APEC in the APEC Counter-Terrorism Action Plan) have

\textsuperscript{15} Donald Urquhart, “ASEAN sets up sea piracy task force”, \textit{Shipping Times}, Singapore, 13 March 2002.

\textsuperscript{16} Colonel Kevin Santa Maria RSN, “Safeguarding the Singapore straits”, \textit{Jane’s Navy International}, May 2002, p.32.
tended to see some connection between piracy and the terrorist threat. To some extent this link is valid. Similar tactics might be used for ship boarding and hijacking and some of the causes of piracy (e.g. poverty, political instability and ineffective enforcement) might be similar to those that lead to terrorism. However, there are also significant differences. Terrorists are seeking publicity and wish to create as much damage as possible but pirates want to avoid attention and will inflict only as much harm as necessary to achieve their objective.

Important jurisdictional and definitional differences are also involved. Piracy is conducted for private ends by a private ship or aircraft against another ship or aircraft, while terrorism has political motives. Legal jurisdiction over piratical acts depends on whether they are committed within the sovereignty of a coastal State (i.e. internal waters, territorial sea or archipelagic waters), or on the high seas (including EEZs). By strict definition, piracy occurs only on the high seas. Legal jurisdiction over offshore terrorism varies depending on the nature of the target and its location. For example, other countries could claim a right to intervene against an actual terrorist attack on a ship within the EEZ of a coastal State but the law would be different with an attack on an offshore oil and gas platform.

Coastal State Interference
Shipping routes in East Asia generally pass through coastal or archipelagic waters and are thus vulnerable to coastal State interference as a consequence of national security concerns, domestic instability or local conflict. Furthermore, coastal States could introduce restrictions on coastal shipping traffic ostensibly on the grounds of marine environmental protection but there could also be a hidden security agenda. Unfortunately some aspects of the law of the sea relating to rights and freedoms of navigation are less than clear and certainly not agreed in the region. A coastal State may temporarily suspend the right of innocent passage through its territorial sea. Indonesia has recently taken such action in respect of waters off the troubled province of Aceh.\textsuperscript{17} However, some uncertainty relates to how long a “temporary” suspension might last and also with regard to how this suspension might impact on the freedom of navigation that is normally available through an international strait such as the

\textsuperscript{17}“Aceh waters closed to foreign ships”, \textit{The Jakarta Post}, June 4, 2003.
Malacca Strait adjacent to Aceh.

The EEZ regime has some contentious aspects with some coastal States attempting to place restrictions on military operations, including oceanographic surveying and intelligence collection, by other States in their EEZs. States have declared security zones that extend into the EEZ, or have specifically claimed that other States are not authorised to conduct military exercises or manoeuvres in the EEZ without their consent. As a result of concern over the U.S. “spy plane” incident off Hainan in 2001 and more recent incidents involving U.S. “military survey” ships operating in its EEZ, China enacted new legislation in 2002 restricting surveying and intelligence collection activities in its EEZ\(^{18}\).

**Naval Developments**

East Asian countries generally have resumed their naval development programmes after the economic crisis of 1997-99\(^ {19} \). This trend has more serious overtones than was the case with the increased spending of the early and mid-1990s. The “first round” of naval expansion was argued away on the basis that it was part of a process of modernisation. This does not appear to be the case with the “second round” of naval expansion that appears to be more posited on assessments of threats posed by other regional countries. A *naval arms race* could be emerging in the region\(^ {20} \). The development of naval capabilities includes submarines, anti-shipping missiles and sea-based, land attack cruise missiles. These are not the types of capability will help ensure the security of the region against the threat of terrorism!

Along with these force structure developments, there has also been a surge in naval activity in the region largely led by the U.S. as part of the war on terrorism. This includes a more ambitious program of bilateral and multilateral exercises. However, there are some undesirable consequences. By demonstrating the utility of high technology weapons systems and where gaps in capability might exist, increased naval activity

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provides an incentive for regional countries to increase their defence spending. It is not surprising that in this environment, European and North American arms manufacturers have been more aggressively seeking business in the region in recent years.

**Development of Coast Guards**

The last ten years or so have seen major developments with the emergence, evolution and employment of coast guards in the region\(^{21}\). These developments have been particularly rapid since about 1998 and may receive a further boost with the war on terrorism. The explanation of this trend is fairly simple. Asian countries in particular are preferring to deploy coast guard ships and personnel in sensitive situations at sea rather than naval ships and personnel and to use coast guards for cooperative activities with other countries. Coast guard vessels may also be cheaper than naval vessels and developing countries may be able to access aid funding to develop a coast guard whereas this would not be possible for a navy.

Bangladesh, the Philippines and Vietnam have all established coast guards. Malaysia is also establishing a Coast Guard with the renaming of the Marine Police and the reallocation of some functions between the Navy and other organizations\(^{22}\). Japan and Taiwan have each recently changed the name of an existing service into a coast guard\(^{23}\). Since 2000 Japan has been actively using the Japan Coast Guard (JCG) in Southeast Asian waters to help combat piracy. The use of the Japanese Maritime Self Defense Force (JMSDF) would be unacceptable for this activity for Japan constitutionally, as well as being politically sensitive to regional countries. Japan is also assisting Indonesia with the establishment of a coast guard\(^{24}\).

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\(^{21}\) For a further discussion of these issues see the author’s “Coast Guards: New Forces for Regional Order and Security”, *Asia Pacific Issues: Analysis from the East-West Center*, No. 65, January 2003 (available for downloading at: www.EastWestCenter.org)

\(^{22}\) Muhahmad Muda, “Coast guard to boost maritime surveillance”, *New Straits Times* online 16 April 2002; and Maizatul Nazlina, “Coast guard to fight sea threats”, *The Star* online 19 April 2002.


CONCLUDING COMMENTS

Several major barriers inhibit the development of an effective response to the threat of terrorism at sea and the maintenance of maritime security more generally. The first is strong adherence to independence and sovereignty in the region with regional countries generally reluctant to agree to cooperative activities if they appear to be compromising or qualifying national sovereignty or sovereign rights. This restraint is particularly significant in the maritime domain with the extended jurisdiction allowed by the contemporary law of the sea; numerous overlapping or conflicting claims to offshore areas, islands and reefs; and relatively few agreed maritime boundaries, particularly in the chain of seas along the East coast of Asia.

Issues of jurisdiction at sea have been a major concern for the U.S. in the conduct of operations at sea in the war against terrorism. For example, in early December 2001, the Singapore-chartered ship Kota Sejarah was aggressively boarded and searched using “precautionary force” by USN Seals and Marines in international waters off Pakistan leading to the injury of two crewmembers and subsequent protests from Singapore.²⁵ The U.S defended this action in terms of the war on terrorism and the right of self-defence under Article 51 of the UN Charter. Suffice to note that the right to visit and search foreign vessels on the high seas (and in the EEZ) seems at least superficially to be directly contrary to Article 110 of the 1982 UN Convention on the Law of the Sea (UNCLOS) and remains uncertain under international law.

There is a certain lack of political commitment to many cooperative activities. This is manifest in the failure to ratify important international conventions, such as the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (the Rome Convention) (or SUA Convention) and its Protocol dealing with fixed installations

offshore. Countries can sign up for these conventions but then have little capacity for, or intention of implementing the requirements at the national level. Problems of capacity seem likely to inhibit many of the regional efforts to provide greater maritime security. This places a considerable premium on effective cooperation, especially that between developed and developing countries.

This paper concludes on a pessimistic note. It is proving extremely difficult to establish effective levels of maritime cooperation and some of that which is occurring may be more self-serving than for the common good. Regional seas will become even busier in the future with higher levels of shipping traffic and increased naval activity as regional navies expand and acquire more capabilities, including greater numbers of submarines. Rough seas may lie ahead unless fundamental changes in direction occur. The great challenge is to build a regional security environment in which countries are more prepared to cooperate and less prepared to adopt self-serving policies that are contrary to the common interest.