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ADVANCING A RULES-BASED MARITIME ORDER IN THE INDO-PACIFIC

BY JEFFREY ORDANIEL

Jeffrey Ordaniel *(jeffrey@pacforum.org) is Director for Maritime Security at the Pacific Forum. Concurrently, he is Assistant Professor of International Security Studies at Tokyo International University in Japan.*

The following is an excerpt of Chapter 1 of Issues & Insights Vol. 21-SR2, edited for length. Read the full article or download the entire volume here.

Many have called for stronger rule of law in maritime Indo-Pacific over the past decade. From Washington, Tokyo, and Canberra to the capitals of Southeast Asia, leaders and policymakers stress international law, as well as bilateral and multilateral cooperation to address maritime challenges. Year-after-year, ASEAN has repeated the same refrain regarding "the need to pursue peaceful resolution of disputes in accordance with the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea (UNCLOS)." In April 2021 US President Joe Biden and Japanese Prime Minister Suga Yoshihide also expressed shared opposition to "any unilateral attempts to change the status quo in the East China Sea," and reiterated "shared interest in a free and open South China Sea governed by international law, in which freedom of navigation and overflight are guaranteed," consistent with UNCLOS. Yet, a strong rules-based maritime order appears elusive.

Despite apparent regional consensus on the benefits of a rules-based maritime order, why do tensions keep rising and the applicability of international rules and norms to the region's maritime spaces continue to weaken? Authors of "Advancing a Rules-based Maritime Order in the Indo-Pacific," an *Issues & Insights* edited volume, provide three categories of answers: lack of good faith, inherent weaknesses in regional multilateral mechanisms, and the politics surrounding "great-power competition."

First, some countries continue to insist on maritime claims already declared invalid or without basis under international law by a competent, authoritative international tribunal. There is, therefore, a lack of good faith vis-à-vis adherence to related international legal regimes. In the South China Sea, Beijing insists on its nine-dash line, a claim rejected in July 2016 by an arbitration tribunal constituted in The Hague under Annex VII of UNCLOS. China has also sought to reverse Japan's administration of the Senkaku Islands, not through peaceful means such as judicial procedures, but coercive maneuvers in the East China Sea.

This lack of good faith and blatant disregard for international law is evident in Beijing's dispatch of fishing vessels with maritime militia to neighboring states' exclusive economic zones that fall within the discredited nine-dash line. China has also used its Coast Guard and other government vessels to question the longstanding control and jurisdiction of many Indo-Pacific littoral states over their waters, and to change the status quo. In maritime security parlance, these actions are called gray-zone operations—activities not rising to the level of an armed attack but consequential enough to achieve security or political objectives.

Regional states struggle to respond to these types of activities. For US allies, Washington's security commitment is triggered by an "armed attack," not gray-zone challenges. Hence, deterrence through collective defense has been difficult. The Philippines, for instance, lost Mischief Reef in 1995 and Scarborough Shoal in 2012 because of a failure to respond to Beijing's gray-zone maneuvers. Many in Japan have expressed concerns about China's intrusions into the waters of the Senkaku Islands as well. For instance, how to respond to Chinese government vessels, which under international law enjoy sovereign immunity, entering the territorial

waters of the Senkaku Islands and refusing to leave isn't obvious. Some actions could very well trigger war. For other regional states, dealing with an increasing Chinese presence in their waters is more difficult owing to factors such as insufficient maritime domain awareness and weak offshore law enforcement capacity.

Second, while ASEAN-led institutions remain important to advancing a rules-based maritime order in the Indo-Pacific, they are not designed to address high-stakes security issues, especially involving the great powers. The "ASEAN Way" of non-interference and consensus in decision-making constrains regional mechanisms' effectiveness in dealing with maritime disputes. They allow for discussions on some functional cooperative engagements, but do not shape the strategic environment in ways that strengthen the rule of law. For instance, the so-called South China Sea Code of Conduct never materialized despite countless meetings between ASEAN and China since 1995. Moreover, as Kyoko Hatakeyama discusses in her *Issues & Insights* piece, the Quad has struggled to achieve a united front necessary to prop up maritime rule of law because its four participating countries have different threat perceptions, priorities, and approaches vis-a-vis China.

Finally, the framing of maritime issues as part of the US-China "strategic rivalry" or "competition" has been counterproductive. Many regional states do not want to take part in that competition. More importantly, that framing has led to two narratives that prevent many states from taking stronger positions based on international law: 1) false equivalence that equates legitimate US maritime operations and regional presence as akin to China's disruptive, illegal, and domineering behavior; and 2) an impression that Washington and Beijing are forcing Southeast Asians to take sides between them—hence strong pushback from regional leaders and decision-makers. As a result, when the United States or its allies and partners insist on adherence to international law, some regional states hear an anti-China push. Instead of "competition with China," the United States and its allies and partners should focus on advancing a rules-based maritime order in which all countries, big and small, can benefit.

This volume dissects the multifaceted maritime challenges in the Indo-Pacific from multiple perspectives, and explores policy options to advance a more rules-based maritime order. Shuxian Luo surveys six maritime crises between Japan and China over the Senkaku/Diaoyu Islands, and between Japan and the Republic of Korea over Dokdo/Takeshima, arguing that crisis prevention should be a priority.

Ishii Yurika's paper explains how the unique structure of Japan's national security law has created challenges by hampering seamless coordination between Japan Coast Guard and Japan Maritime Self-Defense Force, and effective alliance between Japan and the United States. Kanehara Atsuko's chapter contends that in the maritime security context, the "rule of law" consists of three principles: making and clarifying claims based on international law, not using force or coercion to drive claims, and seeking to settle disputes by peaceful means.

Nguyen Thi Lan Huong highlights the importance of international law vis-à-vis the use of force at sea. She assesses China's new Coast Guard law and its conformity with international law. Hatakeyama Kyoko focuses on the Quad, arguing that its embrace of two contradictory goals—maintain a rules-based order based on international law and promote a prosperous region without excluding China—makes it difficult to develop a framework for cooperation and set a clear purpose.

Virginia Watson proposes several recommendations, arguing that the "intensification of China's global efforts to hard-wire geopolitical and security conditions alongside its hefty economic influence" have made the traditional alliance approach of the United States ineffective. Finally, John Bradford argues that the key to addressing the Indo-Pacific's multifaceted challenges is improved governance capacity among the region's coastal states and that maritime governance capacity-building, in particular, should be a priority for the US-Japan Alliance.

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