

Rising Tensions in the Indo-Pacific: Stabilising the Maritime Environment through Region Building and Strategic Responses

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1. Introduction

With the maritime domain so important and influential to the world's history, politics, security, and the global economy, the prosperous region of the Indo-Pacific has become a hub of activity for many states. Comprising of 24 nations in its regional framework, the Indo-Pacific is at the centre of approximately two-thirds of the global economy, and currently seven of the world's largest militaries engage in operations in the region.¹ A common interest for these states emerges, ensuring stability is maintained which allows nations to capitalise on their maritime rights without threat or coercion. However, this level of political and economic investment from multiple stakeholders who wish to capitalise on the region's opportunities has led to rising tensions and disputes from the major players, primarily the United States and China.² One of the significant challenges of the modern age, nations have a responsibility to uphold the common interests of a secure maritime environment through good order to ensure the region continues to provide resources and economic growth. This requires nations' naval and maritime capabilities to work with policy makers to foster open and free seas in the Indo-Pacific.

This paper provides contextual understanding in Part 2, examining the geographical outlay of the Indo-Pacific followed by the importance of the region for international stability. Common interests are then identified following an understanding of the region's relevance. Part 3 offers solutions to achieving the common interests through international collaboration, despite varying political climates and objectives. These solutions include both regional building measures and strategic responses. Conclusions are drawn in Part 4, which emphasises maritime stability in the Indo-Pacific through a layered approach of law, codes of conduct and collaboration, supplemented by minilaterals and freedom of navigation exercises.

2. Contextual Understanding

2.1 Defining the Indo-Pacific Region

In recent years, the term Indo-Pacific has become a broadly recognised term which has largely replaced Asia-Pacific.³ From a general, geographical understanding, the Indo-Pacific encompasses the Indian and Pacific oceans, and includes the surrounding countries.⁴

However, different states have adopted different definitions of the Indo-Pacific. The Australian 2017 Defence White Paper defined it as the:

“Region ranging from eastern Indian Ocean to the Pacific Ocean connected by Southeast Asia, including India, North Asia and the United States,”⁵

which encompasses the critical space where current disputes are arising between the major regional players. The expansion of the Asia-Pacific region to the Indo-Pacific can be seen as an effort to increase institutional structures to facilitate prosperity and improved regionalism. By this perspective, the Indo-Pacific goes beyond its geographical meaning and becomes a strategic concept, a geopolitical framework where policies and state action comes to fruition.

2.2 The Importance of the Indo-Pacific

The Indo-Pacific has been at the forefront of current political discussions due to its essentialism for countries as a mean of trade, energy resources and maritime security. The Indo-Pacific region has 65% of the world's ocean, 25% of its land, more than half the world's population, 60% of the global GDP and two-third of its global economic growth.⁶ The Indian Ocean is the most utilised and strategically important passage of trade, transporting approximately two-thirds of the globe's oil and one third of the world's cargo.⁷ It is unquestionable why the 2013 Defence White Paper described the region as ‘the geographic centre’⁸ and a key consideration for defence pursuits. The Japanese Cabinet Secretariat considered security of the Indo-Pacific sea-lanes as, regarding their economy, a ‘matter of life and death’⁹. Due to seaborne trade being more inexpensive and more efficient than land-trade, particularly regarding energy, the Indian Ocean sea-lanes carry 80 percent of China's oil, 90 percent of South Korea's and 90 percent of Japan's.¹⁰ This significant dependence on this region for economic stability creates a major strategic vulnerability, which has impacted diplomatic partnerships and naval modernisation.¹¹ Thus, it is evident that the shift from Asia-Pacific to Indo-Pacific does not just accommodate the changing influence of the Indian Ocean, and in part India, but to represent the change in security for the whole maritime environment.

2.3 Common Interest

By understanding both the scope and importance of the Indo-Pacific, a common interest emerges between the relevant state actors: a secure, stable maritime environment which enables unhindered transport and utilisation of resources due to ongoing security. Therefore, various nations have increased their naval presences in the region and engaged in militarisation, both

on land and sea, to secure their interests and uphold the prosperity of the region. A prominent example is the United States Freedom of Navigation program, which aims at creating a consistent presence of security by upholding the right, per their interpretation, of freedom of innocent passage for all ships, including military vessels.¹² However, the main source of militarisation is attributed to the People's Republic of China (PRC), who have increased their naval presence, have a permanent military base in Djibouti and continue to establish artificial islands in the Spratly Islands with the objective of obtaining sovereignty over additional waters.¹³ The PRC's latest efforts were only days ago, as they attempt to secure a military facility on the Solomon Islands, whether this will come to fruition is yet to be revealed.¹⁴ Australia states that China's "power and influence are growing to match, and in some cases exceed, that of the United States"¹⁵, naturally rising tension in the region, particularly between the US and China, and jeopardising the common interest of a stable maritime environment.

This issue is not unrecognised by other nations. PRC's actions in the South China Sea have garnered G-7 and the EU's leaders' attention in 2016¹⁶, not to mention that due to the trade dependency of most countries on the globe, maritime security is of interest to nearly all states irrelevant of their geographical location. The contention between the major players is a dangerous phase for the region and it is here where the role of navies and defence comes into play. China must be managed and balanced, rather than frustrated and restrained. Creating a strategic equilibrium in the Indo-Pacific with respect for all States' common interest of maritime security will be a significant challenge, requiring the resources and collaboration of all regional maritime players.

3. SOLUTIONS

It is undeniable that resolving the issues that threaten the common interest of prosperity, security and good order in the Indo-Pacific is challenging. All relevant states have their own international behaviour and perspectives towards their actions which has been shaped by history, culture, and geography. For Australia, its interaction with China must simultaneously respect the economic relationship, due to the reliance on trade, and reject its security threat towards regional and global law and policy. Therefore, the solutions presented focus on this need for equilibrium, proposing both region building efforts, which focus on law, good conduct and collaboration regarding military ventures, and a strategic response to oppose threats to maritime security. These propositions include direct actions by navies and policy makers, as both are relevant and important aspects of navy involvement.

3.1 Region Building

The concept behind region building efforts is to accommodate PRC into Indo-Pacific institutional understandings by fostering confidence and dialogue to achieve objectives without conflict. Lee Kwan Yew, the former Prime Minister of Singapore, observed:

“In the old concept, balance of power meant largely military power. In today’s terms, it is a combination of economic and military, and I think the economic outweighs the military.”¹⁷

China has major trading relationships with many parties in the Indo-Pacific and their economic health serves vital functions. By removing the pressure of a strategic response, a strong-working relationship could develop which allows constructive contribution from China. This approach has been adopted by ASEAN, who predominantly manages security affairs through regional building concepts.¹⁸ PRC is a strong state actor in the Indo-Pacific, intentions to shape them in accordance with a rules-based system rather than forcefully resist would be in the best interests of the regional communities. This should occur in three phases: solidifying the rule of law, strengthening and formulation of codes of conduct specific to the region, and collaboration efforts to mitigate other security threats.

3.1.1 Rule of Law

An issue which currently jeopardises peace and security in the Indo-Pacific is the unclarity and ambiguous nature of the main legal framework, the United Nations Convention on the Law of the Sea (UNCLOS). Many of the disputes which have arisen, including increased claims of sovereignty over certain waters, exclusion of vessels in different zones and restriction of navigational freedoms, largely arise due to misinterpretation. Whether this misinterpretation is accidental, due to ambiguity, or intentional, to allow states to ignore unfavourable provisions under plausible deniability, is irrelevant. This misinterpretation demonstrates that clarification needs to occur, or states will continue to engage in brinkmanship to see what actions will go unchecked. Ensuring that all states are aware of their obligations under UNCLOS and the legal standing on certain issues is the first step to ensuring peaceful coexistence in the region. While there have been multiple attempts to clarify the treaty prior and following its entry in 1994,¹⁹ with the increased focus on trade and energy resources in recent years it is paramount that a rules-based system is firmly established. Chinese efforts to prevent American military vessels in the East Asian seas²⁰ is a prime example of such interferences due to unresolved responsibilities under the treaty. It is questionable how a nation is expected to fully utilise and

secure their rights in the ocean, both for transport and military operations, when certain countries exclude their passage in waters which they have no sovereign right.

Furthermore, the continue disputed claims to maritime jurisdictions further creates contention in the region. The Indo-Pacific is one of the most geographically complex areas due to its number of archipelagos and states sharing adjacent waters, such as the overlapping jurisdictional claims of China and Japan regarding their EEZ.²¹ Formal claims, rather than just physical occupation, need to be established. This is particularly true of islands where nations are attempting to invoke sovereign right, but they, per the treaty, may not classify as an island but rather rocks or atolls. Whilst an imposing concept for states desiring to utilise their legal right of a 200 nautical mile EEZ, or even 12nm territorial sea, if hostility was to cease due to codes of conduct and open dialogue (discussed in Parts 3.1.2 and 3.1.3), supported by collaboration and information sharing, such clarification would not be as burdensome.

The argument arises that while law is the only mechanism to regulate maritime disputes on an equitable basis, it is another matter to enforce compliance. The concern is that China will not follow the laws as outlined in UNCLOS, or respect the rules as adopted by the region's major powers.²² This was shown by China's rejection of the Arbitral Tribunal ruling regarding the South China Sea in 2016, undermining confidence in international law.²³ Yet, clarifying this law removes the defence of misinterpretation and blatantly labels China as a state which breaks international law, a position which leads itself to a strategic response (Part 3.2). However, prior to strategic responses it is important to support the strengthening of international law with explanation and mobilising like-minded communities to support legal findings. Every country has different perspectives and histories which result in variances in what laws mean in practice. China may view such lawful clarifications as targeted restrictions, whereas it should see international law as a stabiliser which supports its economy and prosperity thus meaningful communication is required for understanding. This is not impossible for China, who already benefits from trade laws outlined in the World Trade Organisation and from the UN charter, where it has a permanent seat on the Security Council.²⁴ A prosperous and secure Indo-Pacific must be dedicated to peaceful dispute resolutions with respect to international law and the UN charter whilst rejecting unilateral, forceful activities.

3.1.2 Indo-Pacific Codes of Conduct

Due to geopolitical complexity of the region, an Indo-Pacific code of conduct which specifically targets the needs and disputes of the area may be beneficial to supplement the generality of UNCLOS. This has already been accepted, and implemented in some countries, with Japan's Foreign Minister Hayashi proposing an Indo-Pacific treaty of friendship and cooperation, and Indonesia creating the IORA Concord to promote economic cooperation and commonality.²⁵ Yet, these instruments have evidently not addressed the major disputes and requirements of the region. A de-politicised space with a third-party mediator where parties can engage in open dialogue to achieve their aims, or at the very least bearable compromises, which focuses on policies which will stabilise the region. This includes defining militarisation and what acts states consider as aggressive, and identifying red lines which, if crossed, would be significantly destabilising, factors which Australia, the US and ASEAN have all identified as high priority.²⁶ This is not an impossible feat, as the 2014 APEC summit between Beijing and Tokyo showcased bilateral agreements can be drafted when the climate is so turbulent that to ignore it would be highly detrimental to both states.²⁷

It is noted that with the increasing nationalism, domestically motivated politics, economical investments, and competition over maritime resources, such as hydrocarbons and fishing, that compromises will be difficult to obtain. However, these factors just emphasis how important it is to implement confidence and regional building measures to secure the region as a prosperous hub of international cooperation. These discussions and development of procedures could involve crisis management, navigational safety measures for naval encounters and rules of engagement, presented in a formal code of conduct. It has been suggested that strengthening existing codes and including additional parties, namely the Code for Unplanned Encounters at Sea and the Declaration on the Conduct of Parties in the South China Sea, may also be useful.²⁸ A legally endorsed code, which increases the parameters of the existing instruments to better reflect the current environment and what actions will be considered hostile, will be beneficial for the unique international security concerns relevant to the region.

3.1.3 Confidence Building Measures

To progressively stimulate the region, confidence needs to be built between the regional players through international collaboration which is motivated by communal objectives surrounding resources and security. ASEAN supports region building which will proactively engage China.²⁹ By identifying common interests and promoting joint progressive schemes, Indo-

Pacific states could meaningfully contribute and work towards creating a foundation of trust. Some common interests, as discussed in Part 2.3, include security for sovereign waters, primarily shipping lanes, for economic gains. Piracy, armed robbery, illegal drug trafficking and other transnational crimes are all threats which collectively impact the economy of Indo-Pacific states. Open-communication and joint efforts from naval forces to target and remove illegal activity in the Indo-Pacific benefits all participatory states, by improving security whilst increasing inter-state confidence. Additional confidence-building projects could include joint military exercises surrounding disaster relief, search and rescue operations, marine scientific research, and environmental protections,³⁰ which involve communication and cooperation spanning across all levels, from policy makers to naval personnel.

Other ideas have included maritime hotlines³¹ and/or a shared maritime communication platform. This would create transparency and help mitigate potential conflict through information sharing and transparency on matters such as planned construction activities and weapon testing. Navies, and to an extent non-military vessels, would largely be responsible for these undertakings and voluntary communications, due to their physical presence in the domain and accumulation of information during their passage. Furthermore, it would be their responsibility to uphold the agreed upon codes, making decisions which respect the rule of law, the desire for international collaboration and the security of the region. The ReCAAP Information Sharing Centre in Singapore is an example of utilising shared information and acting upon it in the maritime environment, targeting piracy and armed robbery.³²

These joint projects, which could employ shared expenses and equal participation without de-emphasising jurisdictional claims, would reduce and transform maritime security enforcement and naval activities. Rather than combating each other, the states redirect resources to collaboratively reducing common terrorisations to the region. While sovereignty claims cannot realistically be ignored long-term, these collaborative, confidence building tasks create a foundation to positive negotiations with a focus on resource incentives.

3.2 Strategic Response

While continuously endorsing region building efforts and negotiations to achieve the common interest of prosperity and security, there is a necessity to consider strategic responses to the tensions arising in the Indo-Pacific.

3.2.1 Minilaterals

The overarching aim for the Indo-Pacific region is to deescalate tensions; thus, the formation of an overly powerful, democratic alliance may be seen as a threatening action and further inflate China's aggressions. Therefore, minilateral agreements are a solution which sees regional stakeholders improving their strategic position while maintaining a balance of power across the region. Minilaterals are defined by Erica Moret, a Senior Researcher at the Centre for Global Governance, as the:

“Diplomatic process of a small group of interested parties working together to supplement or complement the activities of inter- national organizations in tackling subjects deemed too complicated to be addressed appropriately at the multilateral level”.³³

This solution allows regional players to form multiple minilaterals with various countries which adopt common interests and mentalities, such as nuclear warfare and freedom of navigation, without aligning on areas of discrepancies. For example, Australia has been forming minilaterals with India and Indonesia, both of whom do not wish to be part of a large alliance with overarching powers.³⁴ Australia has also formed minilaterals with Japan and United States, developed as a trilateral to endorse maritime security through an “innovative security triangle” which converges “interests, defence capabilities and maritime geography”.³⁵ The QUAD also engages in security dialogue and joint military exercises, with some referring to it as the ‘Asian NATO’. However, there is no NATO in Asia, with some scholars suggesting this is due to the lack of a common enemy, as while China is considered by many as a threat to the region, it does not incite the unification needed to form a military alliance to balance against it.³⁶ Yet, this is where the influence of the minilaterals emerge, as they go beyond military alliances and begin creating an institutionalised network of support and cooperation which endorses security while neither being an overwhelming presence which threatens China nor too widespread to inhibit consensus building.

These minilaterals create an essential equilibrium, conveying to China a willingness to form institutions which respect peaceful resolutions and maritime sovereignty but also endorsing strategic stability which will not allow breaches of maritime law to go unchecked. This aims to encourage a balance of power to occur, as coalitions of regions rise, the opposition will adjust in response. Similarly, minilaterals will help dissipate the Sino-US rivalry, as multiple

minilaterals are established between other middle powers aiming to ease tensions in the region, as both China and US are powerful entities that attract dependence but also apprehension from other states. The India-Australia-France meeting in September 2020 was politically significant for these reasons, which stated a desire to balance their relationship with China by avoiding confrontation but maintain stability in the region.³⁷ It is even more so effective as many of these middle powers can tread in maritime zones where others cannot, such as Japan, which is often seen as a non-controversial partner in security relationships.³⁸ It is aspects such as these, notwithstanding the collaborative projects, which allows 'weaker' states to effectively contribute to a partnership and undercuts sentiments of imbalance which may jeopardise a security relationship. Additionally, these coalitions support nations in particularly vulnerable areas by allowing them to increase their autonomy and influence to successfully contribute to the stability of the region, an important aspect when Tribunal and legal bodies decisions need to be enforced by the majority of the region.

3.2.2 Freedom of Navigation

While these minilaterals serve as a strategic deterrence, it is important to emphasise such objectives with reinforcing initiatives, namely freedom of navigation exercises. The United States' Freedom of Navigation program aims to challenge excessive maritime claims by upholding its right to freedom of navigation per customary and international law. However, interestingly, the US is not a party to UNCLOS,³⁹ despite asserting its rights under the act. As stated above, there is a necessity to clarify under UNCLOS what 'freedom of navigation' entails for warships and ensure parties asserting such rights are bound by international regulations. A nation exercising their right to innocent passage and free navigation serves as a stabilising effort which asserts rules-based order during unsanctioned maritime expansion. The minilateral system will aim to create partnerships which counteract egregious actions and negatively influence regional development. This is particularly important regarding the conception of artificial islands and reconstructing existing low-tide elevations to prompt them to island status, as has been witnessed by the PRC particularly in the South China Sea. Islands attract maritime rights due to sovereign jurisdiction which will limit passage for many nations and restrict the free flow of goods. This has already been observed in recent years, with one example being China's maritime militia coordinating in Japan's EEZ surrounding the Diaoyu Islands to assert China's claims, despite China opposing the same actions in their EEZ with threats of force.⁴⁰ Laws need to be clarified regarding what is acceptable for passage of

warships, codes of conducts must be developed for the specific region and efforts to coordinate with regional players must be endorsed. When these actions fail and military opposition begins restricting navigation and trade routes, the minilaterals need to engage naval capabilities to ensure that the seas remain open and stable, as such principles are at the core of the international community.

4. Conclusion

The Indo-Pacific is a strategically pivotal region which will continue to see tensions arise unless nations undertake policy talks and naval cooperation to achieve the common interest of a prosperous, open maritime region which fosters multilateral collaboration. This mutual objective can be archived through a layered approach which endorses both region building activities and dialogue, supported by formations of minilaterals to strategically reject unilateral actions which threaten the freedom of navigation. To build the region, international law regarding the maritime environment under UNCLOS must be solidified to ensure no state may use the treaty's ambiguity to bypass responsibilities. This clarification should be supplemented by a code of conduct which specifically addresses the geopolitical complexity of the Indo-Pacific region. International law and regional policies should be supported by naval collaboration in various maritime activities to facilitate international relationships built on trust, confidence, and transparency. Whilst region building approaches to the Indo-Pacific disputes are essential, they must be accompanied by strategic responses which support peaceful resolutions and strongly reject unilateral, destabilising actions. The formations of minilateral agreements between states will ensure that nations, primarily China, who seek to exceed their maritime rights will be counterweighted by a network of nations who wish to uphold good order in the seas. Continual utilisation of a state's freedom to navigate the seas, following a clarification of UNCLOS, will present a strong, united force which rejects militarisation of the Indo-Pacific. Whilst a Herculean feat, it is imperative nation's leaders and defence forces work in unison to uphold the long-held principle of open, free seas and protect the prosperous Indo-Pacific which facilitates the livelihood of 60% of the global population.

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