

Japan's Initiatives for Regional Maritime Cooperation

Tetsuo Kotani, CSCAP Japan

Reasons behind Maritime Tension in Asia

The National Security Strategy adopted by the Japanese government in December 2013 specifically identifies addressing efforts to unilaterally change the status quo by force, protecting sea lanes and ensuring freedom of the high seas and international airspace as issues pertaining to maritime security. It proclaims that, alongside better safeguarding territorial integrity, Japan should adopt an approach of taking on a leading role in maintaining/developing “open and stable seas” in accordance with international laws and rules; in other words, it should bolster the rule of law at sea.

In view of rising territorial and maritime tensions in the Asia-Pacific region, Prime Minister Shinzo Abe at the May 2014 Shangri-La Dialogue proposed “three principles for the rule of law” that called for countries to make and clarify claims based on international law, to avoid using force or coercion in resolving conflicts, and to seek to settle disputes by peaceful means.

Putting these three principles of the rule of law into practice is essential for the stability of the Indo-Pacific region. In reality, however, there is no consensus on the legal basis for maritime boundaries in postwar Asia. The national sea boundaries in Asia are based on the 1951 San Francisco Peace Treaty signed between Japan and 48 other countries, but those countries not party to this treaty are not bound by its provisions.

For example, none of Japan’s immediate neighbors are parties to the San Francisco Peace Treaty, and for that reason Takeshima and the Northern Territories, despite being recognized as Japanese territory in the San Francisco Treaty, remain occupied to this day by South Korea and Russia respectively. The Senkaku Islands are also treated as Japanese territory in the San Francisco Peace Treaty, but both China and Taiwan have voiced objections to this status.

Circumstances in the increasingly tense South China Sea are even more complex. Japan relinquished the Paracel Islands and the Spratly Islands in the San Francisco Peace Treaty. Vietnam insists that these islands be returned to it. The Philippines have claimed territorial rights over some of these islands because the Spratly Islands had become terra nullius. Both Vietnam and the Philippines were signatories to the San Francisco Peace Treaty but their interpretations of this treaty differ. Not a party to the San Francisco Peace Treaty, China has drawn a “nine-dash line” in

the South China Sea and declared territorial rights to all of the islands within based on a historical claim dating back 2000 years. These differences in the grounds on which these countries assert territorial claims make the problems surrounding the South China Sea all the more difficult.

The United Nations Convention on the Law of the Sea, sometimes referred to as the “constitution for the oceans,” is the foundation of today’s open legal order of the sea, but portions of the Convention represent compromises reached between coastal countries and user countries that are somewhat vague. Interpretations of the Convention vary by country, for example, on the extent to which coastal countries can restrict the innocent passage of foreign vessels through their territorial waters and on whether coastal countries possess jurisdiction in terms of security within exclusive economic zones. Countries interpret the Convention differently on how to delimit maritime boundaries, too. These disagreements have at times sparked diplomatic disputes and precarious encounters between military forces.

The faltering of the rule of law at sea is not unrelated to changes in the global power balance. International law must be backed by power. Indeed, it has been American power that has maintained order on the world’s seas and supported the San Francisco system. With emerging countries such as China and India on the rise, however, the US leadership in maintaining the international order has been diminishing in relative terms. This decline in US leadership has prompted some coastal countries to seek to change the status quo.

In addition, some countries do not have the concept of the rule of law. Within the international community, international law occupies a higher place than domestic law. However, China, for example, gives precedence to domestic law over international law, and the Communist Party sits even above domestic law. China’s Communist Party does not so much operate under the rule of law as conduct rule by law.

Japan’s Initiative for Maritime Cooperation

Japanese Defense Minister Gen Nakatani proposed a “Shangri-La Dialogue Initiative” (SDI) at the 2015 Shangri-La Dialogue in Singapore. To build foundation for deeper security collaboration with regional partners, Nakatani proposed crisis management through the promotion of common rules and law in the maritime and air domains, maritime and air security through the enhancement of regional maritime domain awareness (MDA), and confidence-building through the improvement of regional disaster response capability. The SDI indicates how Japan will expand its engagement in the troubled waters of the South China Sea.

There is a need for crisis management, MDA, and confidence-building to maintain good order at sea. A crisis management mechanism must be established in the region to avoid miscalculation and control escalation. Japan and China is about to agree on maritime/air communication mechanism between defense authorities. The next step is to establish a code of conduct in the maritime and air domains. Similar efforts are made between the United States and China, and between ASEAN and China. These efforts are designed to manage crises in keeping with existing international law (UNCLOS) and international rules (such as CORLEGS and CUES) and, if they prove successful, they will contribute substantially to establishing the rule of law in Asian seas.

Crisis management at sea is difficult without knowing what is going on over the horizon. The missing of MH370 indicates the lack of regional maritime situational awareness. The enhancement of regional MDA is urgent. In this regard, Japan will continue to help build capacity of regional partners. Japan has thus far limited its maritime surveillance to surrounding sea areas but, it will be also able to conduct maritime surveillance in the South China Sea and elsewhere to develop more accurate maritime situational awareness in Asia.

There is little trust among regional countries. Regional countries need to build trust by building confidence first. As the region often suffers from massive disasters, disaster relief cooperation provides lots of opportunities for goodwill exchanges, capacity building, combined trainings, and saving lives. Disaster relief cooperation is also good in terms of clearing the suspicion China and some ASEAN countries may have about Japan's new security policy and proactive engagement in the South China Sea disputes.