

**Royal Australian Navy**

**Sea Power Centre**

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**ASIAN PACIFIC SLOC SECURITY: THE CHINA  
FACTOR**

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## INTRODUCTION

Countries around the world depend on the free passage of goods across the seas, and between 90-95 percent of international merchandise trade by volume is carried on the oceans. Shipping is one the prime forces responsible for shifting the world from an essentially national system to the global economy. Maritime traffic in the Asia Pacific has undergone considerable growth in the passing three decades, and there has been a substantial shift in the balance of trade in both volume and value from the Atlantic and Western Hemisphere to the Pacific and Far East. The US trade volume in the Asia Pacific is now 1.5 times over its trade volume in the Atlantic.

As an area intimately linked with the rest of the world by the trade of energy, food and other vital raw materials and finished products, the sea lines of communication (SLOC) are a matter of life and death for the Asian Pacific countries. The guarantee of SLOC security has become a major concern and one of the priorities in regional countries' strategic thinking and policy-making. China is now one of the major players on the Asian Pacific SLOC scene. The dependence of China and other regional economies on SLOCs will be much increased in the coming decades. An uninterrupted flow of shipping will be critical to the survival and prosperity of China and other regional countries.

Given the expansion of maritime commerce, every regional country could require a navy capable of projecting power in regional waters for ensuring adequate defence of its national economic interests. But in fact, few countries have the economic resources to build and maintain a navy with true reach in Asian Pacific waters. The feasible choice for the regional countries is to seek multinational cooperation. The navy of the People's Republic of China (PRC) is no exception.

The Chinese naval force is being modernised. China could become a regional naval power or a medium naval power in the coming two decades, but not a dominant or pre-eminent naval power in the region. China cannot afford to defend SLOCs by itself, and prefers to maintain the status quo and to enjoy the free ride guaranteed by the US. China's

main strategic interests converge with those of the US in the Asian Pacific waters. In my perspective, in its relations with the US, China has “three no intentions”: no intention to dominate the Asia Pacific, no intention to push out the US, and no intention to replace the US presence. Confrontation with the US is not what China wants.

SLOCs in the Asia Pacific consist mainly of three sections: the south section in the South China Sea, the middle section in the Taiwan Strait, and the north section in the East China Sea. In all three sections there exist factors affecting SLOC security, which include: sea piracy, the emerging naval buildup, different interpretation over the freedom of the seas principle, islands’ sovereignty disputes and overlapping maritime jurisdictional claims, the unstable political relationship among regional countries, etc. All these unstable factors relate to China to a great extent. China’s clarification on some of its positions on the freedom of navigation, its flexible approach in the settlement of the Spratlys (Nansha) disputes, its early agreement with Japan on the demarcation of maritime jurisdiction in the East China Sea, and its pursuance of peaceful reunification with Taiwan would greatly contribute to the safeguard of regional SLOC security.

Overall, China’s foreign policy has been in the process of adjustment, and is becoming pragmatic, flexible, and conciliatory. The prospects of the situation in the South China Sea, the East China Sea, and the Taiwan Strait would be relatively calm in spite of occasional tension. The status quo would be maintained, and freedom of navigation would be ensured.

China’s policy on SLOC, its policies on the South China Sea, the East China Sea, and the Taiwan Strait, and its naval strategy all relate to its overall national strategy. China’s overall national strategy, in my view, is a combination of two contradictory considerations, or a mixture of two opposites. Sometimes one might be puzzled by the words said and actions taken by China, and be confused by different statements from different people.

One has to understand China’s mentality: on the one hand, China was for a long time, a powerful country with an old civilisation, which other countries could not compare with. The Middle Kingdom concept to

some extent has still been in many Chinese minds. On the other hand, China was invaded and was plunged into a semi-colonial country by foreign powers for more than one hundred years in contemporary history. China felt it was bullied and its national dignity was injured. Thus China today is very sensitive over matters of national sovereignty, unity and dignity, and wants to have its due rights and status respected or restored in international arenas.

There are two components of China's national strategy. Priority is given to economic development. The increase of comprehensive national strength and the maintenance of a peaceful environment have been at the core of leaders' minds. On the other hand, China takes a firm stand on matters relating to such issues as territorial integrity, islands' sovereignty, maritime jurisdiction, and so on. When the two contradict, the former will override the latter. According to materialist dialectics, of the two contradictory aspects, one must be principal and the other secondary, and the principal aspect is the one gaining the dominant position and playing the leading role in the contradiction. On these grounds, China's economic development is the principal aspect that is determinant. At different times and in different cases China might manifest itself differently in its actions, and different people might lay stress on different needs. But the basic factor that China wants to have a peaceful environment for the realisation of its modernisation remains dominant. When the contradiction escalates, the top leaders will come out to calm it down. On the whole, the maritime issues have not yet been on the top leaders' agenda, and at present they simply come out to make interventions when needed. Beijing now is just taking a reactive policy, not a pro-active policy.

## PART 1

### *Regional SLOC Importance and China's Growing Dependence on SLOC*

Shipping routes are the life lines of the Asian Pacific economies. Being the most export-oriented and resource-deficient, Asian Pacific countries are heavily dependent on seaborne trade, and SLOC security has been a fundamental factor contributing to Asian Pacific economic development.

At present, the volume of the world's sea-trade trade has reached 5 billion tons, and the sea-trade volume in the Asia Pacific comprises over one-third of its total, and is likely to expand considerably over the coming decades. The seas in the Asia Pacific are among the busiest in the world. Approximately 33% of world shipping moves through Southeast Asian SLOCs. "Two-way trade transiting these SLOCs is important not only for the economies of Southeast Asia but also for businesses in Northeast Asia, Europe, and the United States."<sup>1</sup> In total 99.8% of all natural resources and foodstuffs imported by Japan enter the country by sea. Four of the world's five largest ports are located in Asia, which are Singapore, Shanghai, Nagoya, and Hong Kong. The container trade in East Asian ports has consistently registered growth. Of the 20 largest containers shipping lines in the world, half are owned and based in East Asia. According to one forecast, PRC, Hong Kong, and Taiwan together could handle approximately 86 million TEUs (twenty-foot equivalent units) by the year 2010, with PRC's share exceeding those of Hong Kong and Taiwan. The combined total, much of which will come from increased cross-Strait cargo, will account for over 40% of Asia's total container cargo and about 20% of the world's total container cargo.<sup>2</sup> High trade volumes have led to significant Asian Pacific interests in developing merchant fleets and shipping facilities. Asian countries own 34% and manufacture 72% of the world's merchant fleet tonnage.

The major commodities brought on northbound East Asian SLOCs include crude oil from the Middle East as well as grain, coal and iron ore, bound for Northeast Asian countries, and those brought on



southbound East Asia SLOCs consist primarily of manufactured products bound for Southeast Asia and Europe. Generally, crude oil is the biggest single cargo in terms of volume through the regional SLOCs, while finished consumer goods are the dominating cargo in terms of value.

As Asian Pacific countries depend heavily on oil and gas and their energy consumption is much greater than production, they are increasingly dependent on imported oil from the Middle East. At present, oil imports account for almost 60% of Asian oil consumption. By 2010, oil import dependence is projected to increase to at least 75%. The rapid growth in regional seaborne energy trade has resulted in increased numbers of tankers and LNG/LPG (liquefied natural gas, liquefied petroleum gas) carriers plying regional shipping routes. LNG shipments through the South China Sea constitute two-thirds of the world's overall LNG trade. The recent rise of oil prices and of oil transportation greatly affects the majority of Asian Pacific economies, and makes regional countries much more concerned over regional SLOC security.

The Asia Pacific roughly has two significant sea lines of communication. One passing through the South China Sea to the Indian Ocean and the Middle East, the other passing through the East China Sea and the Sea of Japan to the Pacific Ocean and the Pacific coast of the US and Canada. The South China Sea provides shipping routes connecting Northeast Asia with Southeast Asia and the Middle East. In the South China Sea, there are mainly two sea lines of communication. The first is the line passing well west of the Spratly Islands from the Malacca Strait to Taiwan and then to Northeast Asia. It is divided into two sub-lines northwest of Vanguard Bank: one goes to the Taiwan Strait via southeast of the Paracels Islands and west of Pratas Islands, and the other goes to the waters east of the Taiwan Island via east of Macclesfield Bank. The second is the line along the Palawan Passage from the Malacca Strait to Eastern Malaysia, Palawan, Luzon, Hong Kong and Northeast Asian countries. Most merchant ships take the first line west of the Spratlys. Half the shipping volume passing the Spratlys is crude oil from the Middle East. "Through the South China Sea pass

more than 41,000 ships a year, more than double the number that pass through the Suez Canal and nearly treble the total for the Panama Canal.”<sup>3</sup>

The Asian Pacific sea lines of communication are constricted at several key straits, which, in time of a localised or generalised conflict, could easily affect regional transportation. The straits located in Southeast Asia are the Malacca, Sunda, Lombok, and Makassar straits. Regional sea-lanes are highly vulnerable to disruption at any one of these straits. “The major Northeast Asian powers have incentives to ensure that neither a local Southeast Asian power nor one of their number in Northeast Asia does so.”<sup>4</sup> More than half of the world’s annual merchant fleet tonnage passes through the straits of Malacca, Sunda, and Lombok, with the majority continuing on into the South China Sea.

The busiest route follows the Strait of Malacca, of which 600-mile crowded, shallow, and narrow-passages are a concern for maritime and environmental safety. The chance of colossal oil tankers with more than 250,000 dead weight tonnage running aground is high even if they attempt to sail through the strait during high tide. The navigable channel at its narrowest point in the Singapore Strait at its eastern end is only 1.5 miles wide. This creates a natural bottleneck, with the potential for collision, grounding or oil spill. If the strait were closed, transit time, freight rates, and distance would increase substantially. According to a US source, if a conventionally powered six-ship carrier battle group travelling from Japan to the Persian Gulf were denied transit through the Strait of Malacca and the Indonesian archipelago, re-routing around Australia would be necessary. This would delay the arrival of the battle group by sixteen days and result in US\$ 2.9 million additional fuel costs.

The Strait of Malacca has as many as 250-275 ship movements in both directions per day at present. A large proportion of this traffic consists of oil tankers on their way from the Middle East to East Asian countries. “About 26 tankers, including three fully loaded supertankers heading for Asian ports, pass through the strait daily.”<sup>5</sup> An average of 9.5 million barrels of oil transits the Strait of Malacca everyday. About 75 percent of Japan’s oil imports pass through the Strait. Japan is the

largest user of the Malacca strait, followed by South Korea, China, and China's Taiwan. Tankers using the waterway by 2010 will be two to three times more numerous than today. Singapore is the world's largest trans-shipment port. More than 330 shipping lines now operate services through Singapore to 610 ports in 130 countries. At any time there are about 800 ships in the port of Singapore.

As alternative routes to the Strait of Malacca, ships could take the Sunda Strait to Malaysia's East Coast, or take the Lombok and Makassar straits to the Philippines and beyond. The Sunda Strait has a tricky channel, depth limitations, and a live volcano, and is not favoured by oil tankers. For very-large crude carriers (VLCC) traffic, the Lombok-Makassar route is preferred. Lombok can take tankers of 500,000 tons with a 90ft draft and has a navigable width of 11.5 miles. The deepest channel in the Makassar Strait is even better for VLCC traffic, being 22.5 miles across. Indonesia has made a plan to prepare the Makassar Strait as an international sea-lane capable of serving as an alternative to the Malacca Strait. But shippers prefer the Malacca Strait to Makassar, "because using either the Lombok or Makassar straits would add another 1,600 nautical miles or four days' sailing."<sup>6</sup> The Lombok-Makassar route at present primarily is used in shipping Australian-origin dry bulk, coal, iron ore and grain to northern markets.

The straits located in Northeast Asia are the Tsushima, Tsugaru, Osumi, and Soya (La Perouse) straits. The Strait of Tsushima, being part of the Korea Strait, is the major link between the East China Sea and the Sea of Japan. The Strait is bisected into an eastern channel and a western channel by the Tsushima Islands. The Strait of Tsugaru, located between Japan's Hokkaido and Honshu Islands, connects the Sea of Japan with the North Pacific Ocean. The Osumi Strait is a major connection from the Yellow Sea and the East China Sea to the Pacific. The Strait of Soya (La Perouse) connects the Sea of Japan with the Sea of Okhotsk. These straits are very important to ocean transportation in Northeast Asia. Any attempt to block the straits would cause serious concerns in the region. For example, in February 1983 the Japanese Maritime Self-Defence Force held exercises in the Suo Nada, off the coast of Oita Prefecture, and dummy mines were laid in the Suo Nada

in a mock operation to blockade the Soya, Tsugaru and Tsushima straits. The purpose of blockading the straits was “aimed mainly at preventing enemy submarines from passing through the straits to the Sea of Japan or the Pacific, and secondly at preventing enemy vessels from returning to home ports for supplies.”<sup>7</sup> The actions posed a direct threat to the security of the then Soviet Union. After the exercises, “As a result of Prime Minister Nakasone’s visit to Washington, it has become clear that the US plans to transfer to Japan its military responsibilities in the area up to 1,000 nautical miles south of Japan.”<sup>8</sup> Nakasone defined this area as one enclosed with two belts. One was from Guam to Tokyo and the other from the Taiwan Strait to Osaka. This has aroused strong opposition from regional countries, as the area at issue is a broad sea zone in the Pacific that is far away from Japan’s boundary.

China is now one of the major players on the Asian Pacific SLOC scene. China, which for a long time was a self-reliant country, depends greatly today on SLOC for its trade and energy supply. With its entry into the World Trade Organisation (WTO), China’s foreign trade and its shipping business are expected to boom in the coming years. The market openings to agricultural produce, for example, will substantially benefit ocean trade. SLOC security relates to the sustainable development of the Chinese economy.

China’s rapid economic growth and industrialisation in the passing two decades have led to a dramatic increase in the demand for maritime transportation. Its import and export volume was US\$ 474.3 billion in 2000 as compared with US\$ 135.63 billion in 1991, a 2.5-fold increase, and 90% of its foreign trade is by sea transportation. “Foreign trade ocean shipping capacity in China is projected to reach 656 million tons in 2005, compared to 383 million tons in 1998.”<sup>9</sup> China’s involvement is evident in dry bulk and liquid bulk trades with its high level of imports of oil, iron ore and grain. Asian grain imports stand at around 75mt (million tons) per year at present, of which China’s imports account for more than 20 percent.<sup>10</sup>

In tandem with a burgeoning economy, China’s domestic oil demand has risen around 4% annually, and “will continue to grow

approximately 4% to 5% per year through 2015.”<sup>11</sup> As there is a big imbalance between oil supply and demand, China has to import oil by sea. Currently around half of China’s oil imports are from the Middle East. China’s net oil imports were 22mt in 1995, 35.47mt in 1997, 40mt in 1999, and 55mt in 2000. As the gap is being widened at a rate of 7mt per year, China’s net oil imports are projected to reach 116-150mt in 2010.<sup>12</sup>

China has made significant achievements in ocean going transportation and container transportation capacity. “By the end of 1997, merchant ships had increased to 320,000 with a total dead-weight tonnage of close to 50 million, of which more than 23 million were of the fleets in foreign trade transportation.”<sup>13</sup> The numbers of ships in China and Hong Kong combined could now make up the world’s third largest shipping fleet. China now is the world’s third largest shipbuilder after Japan and South Korea, and also ranks the third in ship exports in the world. With the plan to expand its shipbuilding capacity to 3.5 million tons by 2005, China State Shipbuilding Corp expects to become one of the world’s top five shipbuilders.<sup>14</sup>

The volume of containers handled by Chinese ports has surged, increasing four-fold between 1990 and 1995. By the end of 2000, the ports of China handled more than 10% the Asian total. China plans to build new ports in Guangxi Province to open new outlets for its south western provinces. Shanghai plans to build a new deep-water container port by 2002, which will allow access to the sea for fifth-generation and sixth-generation container ships carrying between 5,000 and 6,000 TEUs.<sup>15</sup> With the rapid growth in Chinese cargoes, and improved handling capacities at mainland ports, major lines begin to experiment with direct calls at mainland ports, collecting cargoes previously transshipped through Hong Kong or Japanese ports.

The China Ocean Shipping Company (COSCO) has grown and expanded its business since 1980s. It controls around 74% of the nation’s freight shipping capacity, and is now the second largest shipping company in the world. COSCO has approximately 600 commercial vessels. Among them, 130 container ships, ranking the fifth in the world, dry bulk ships 205, the second in the world,

miscellaneous goods ships 128, the first in the world.<sup>16</sup> With more than 1,500 shipping agents across the world, COSCO has a large presence in Singapore as well as a presence in Port Klang in Malaysia. In May 2000, China finalised an agreement with Egypt, making the seaport of Port Said a Middle East distribution Centre for COSCO containers. About 100,000 Chinese containers go to the Middle East every year.

## PART 2

### *Sea Piracy and China's Anti-Piracy Actions*

Sea piracy has emerged as a growing and significant threat to maritime security in the Asia Pacific. In today's term, piracy could be called maritime terror. Growing violence on ships in the region leads to human disaster as well as a possible environmental catastrophe, such as a major oil spill. "Estimates of losses to piracy and maritime fraud run as high as US\$ 16 billion a year."<sup>17</sup> As piracy is a typical transnational security issue, cooperative measures should be worked out among regional countries to cope with it.

Piracy thrives in regions where there are numerous national jurisdictions, little or ineffective maritime law enforcement, plenty of shipping and lots of places to hide, and this definition best covers vast sections of Asia. The massive increase in regional commercial maritime traffic has provided a ready supply of potential targets, and the expansive archipelago in the region has made the monitoring very difficult.

Piracy "hot spots" are: the straits of Malacca and Sunda, offshore Vietnam and Cambodia, the Hong Kong-Luzon-Hainan (HLH) triangle, the area around the Philippines, the Indonesian archipelagic waters, the area north of Taiwan, and the Yellow Sea areas. Changes in regional economics have driven piracy from its mid-1990s hotbed in the HLH triangle further south into and around the Malacca Strait. Piracy and armed robbery in Southeast Asia has generally accounted for about 60% of the total reported piracy in the world.

According to the International Maritime Bureau (IMB), "the number of acts of piracy between 1998 and 1999 jumped by 47%. The biggest increases were in the Malacca Strait (from 6 to 37) and the South China Sea (from 94 to 136). In the first three months of 2000, there were 17 attacks in the Malacca Strait and 46 in the South China Sea."<sup>18</sup> The actual number is believed to be several times higher. Many incidents are not reported because shipowners fear investigation entailing costly delays. An IMB recent report said pirate attacks in 2000 rose by 57% to

469 incidents worldwide, and more than two thirds of such attacks occurred in Asian waters, of which 75 were in the Malacca Strait.

In Indonesian waters, the number of attacks jumped from 18 in 1997 to 59 in 1998, 113 in 1999, and 199 in 2000. In the first half of 1999, “nearly half the world’s piracy incidents occurred in Indonesian waters and the Indonesian part of the Singapore Strait.”<sup>19</sup> In the first three months of 2000, one-third of the world’s piracy incidents occurred in Indonesia’s adjacent waters. The recurring political unrest and economic recession in Indonesia have given rise to more piracy attacks there. Lack of resources is also one of the reasons. Indonesia has only 9 patrol boats to cover its sprawling archipelago.

There have been three common strategies in pirate attacks. The first approach involves simple theft at sea, a second targets the cargo in the ship’s hold, and a third is to steal the ship itself. The third approach is called “phantom ship attack”, which involves a number of serious associated crimes, including hijacking and the fraudulent registration of vessels. Highly organised and sophisticated criminal syndicates are involved in the theft of vessels and the subsequent disposal of cargo. Attacks can be planned in one nation and carried out by the nationals of a second country in the waters of a third, and the proceeds can then be disposed of rapidly in a fourth. Reports indicate “a highly organised and well-financed criminal syndicate, with connections in Hong Kong, Indonesia, and China has access to excellent shipping intelligence.”<sup>20</sup>

There are several problems that need to be solved in anti-piracy efforts by regional countries. One of the problems is the definition of piracy. Under UNCLOS (United Nations Convention on the Law of the Sea), piracy is limited to an illegal act committed on the high seas. As the majority of attacks are occurring within territorial waters, they fall outside the official definition of piracy. To provide a more functional definition, IMB defines piracy as “an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act.”<sup>21</sup>

Another problem is the lack of national law on acts of piracy and maritime violence. Even when suspects are caught, many countries lack the legislation to prosecute them. A group of leading maritime lawyers



met in Singapore in February 2001 and proposed a model national anti-piracy law to address the legal loopholes that have allowed pirates to escape without facing trial. A draft of the model law will be presented to IMB for endorsement.

The third problem is the sphere of different jurisdiction over waters. The restrictions on cross-jurisdictional rights written into most regional countries' maritime agreements have undermined the regional fight against piracy. Given the sensitivities in the region regarding maritime jurisdiction and sovereignty, there has been a conspicuous absence of cross-jurisdictional arrangements between the region's coastal states. In a number of instances, pirates have used this legal gap to their advantage, deliberately fleeing to territorial/archipelago waters, or to areas of contested jurisdiction, where it is most risky for naval vessels to operate unilaterally. Many countries in the region are unwilling to prosecute offenders for acts of piracy committed beyond their territorial waters, and prefer to deport them instead.

The upsurge of piracy in the region is driving regional countries to cooperate. The anti-piracy mission has started to climb up the list of priorities for the region's armed forces. Several states have entered into bilateral and multilateral agreements to exchange intelligence information, and allow joint anti-piracy patrols along (though not within) their common maritime frontiers. New patrol policy has been implemented by Singapore, Malaysia and Indonesia since late 1999. In June 2000, the Malaysian Navy announced its intention to increase round-the-clock patrols in the Malacca Strait in partnership with the Indonesian and Singaporean authorities.

At a Tokyo conference in April 2000, coast guard and maritime officials from 15 Asian countries (China included) reached an agreement to coordinate action against pirate gangs operating in Southeast Asia. The measures include personnel training, upgrading of equipment, and creating an international network for information and monitoring. Since early 2000, Japan has begun taking an active role in promoting closer cooperation, including joint coast guard patrols after the Japanese-owned *Alondra Rainbow* was seized off Indonesia. Some Asian countries occupied by Japan in the 1930s and 1940s have

become willing to accept a more assertive role by Japan. Singapore, for example, announced in May 2000 “It will allow Japanese forces to use its military bases.”<sup>22</sup> China, due to its worries over the revival of Japanese militarism, has some reservations regarding this active role of Japan. Actually, “Japan has been hunting for years to free itself of the opprobrium it still carries for its conquests and abuses of the 1930s and 1940s. But it has been hard to find legitimate uses for its considerable military power, which do not raise old fears. The piracy plague has provided that opportunity.”<sup>23</sup> “As it (Japan) has vital interest in protecting the SLOCs, through which bulk of its imports and exports pass through, the forward deployment of Japanese military assets cannot be discounted in the near future.”<sup>24</sup>

Multinational anti-piracy exercises are gradually being undertaken. The Japanese coast guard said it organised one test on November 9, 2000 with Indian vessels off the coast of India, and a similar one with Malaysia on November 15, 2000. Malaysia called a meeting in Kuala Lumpur on November 13-15, 2000, discussing further coordination among maritime organisations of 15 Asian countries. Singapore, Japan, South Korea and the US conducted a submarine rescue exercise in Asian waters in late 2000.

China, being a signatory to the 1988 Rome convention on illegal acts in shipping, is willing to play its part in regional combat against piracy, and is also willing to participate in multilateral efforts in the fight against piracy. As to US-led multinational exercises, China at present is afraid that it might be constrained by the US after participation. Besides, as China is unfamiliar with these anti-piracy exercises, it would take some time for China to make its decision for participation.

There have been accusations that, individuals or groups from China’s military, or other official services, were involved in attacks on shipping. The accusations were based on a series of hijackings by pirates wearing Chinese law enforcement uniforms. Shipping industry sources say “South China’s small harbours have been a popular destination for gangs wishing to offload their hijacked cargoes.”<sup>25</sup> There have also been accusations that China has been “soft” and “lax” toward piracy”. They took the hijacking by 12 Indonesians of a

Malaysian-flagged tanker *Petro Ranger* on October 29, 1998 as an example, saying China freed and deported the pirates it caught.

Under the pressure of international maritime authorities and with a domestic need to improve law-enforcement, China has taken actions to crack down on pirates and on corrupt officials in the southern provinces since early 1999. China's Public Security Ministry has ordered local police forces in dozens of cities to form anti-piracy units and to work more closely with courts, customs, port authorities and harbour masters, and Chinese courts have dealt harshly with the perpetrators. In March 1999, a Chinese court sentenced 14 men to terms ranging from death to prison for their involvement in an attack on a Taiwanese ship. The gangs were all Myanmar nationals. "The world's shipping industry has welcomed orders from Beijing for southern China's notoriously corrupt police, customs and military to stamp out the rampant piracy off the country's southern coast."<sup>26</sup> "The Chinese crackdown has begun to quiet earlier accusations that Beijing was soft on crime at sea or even colluding with the perpetrators."<sup>27</sup>

In December 1999, China tried and convicted 38 persons. Sentencing 13 of them (one Indonesian, and 12 Chinese) to death. In one particularly brutal case, the hijacking of the Hong Kong-owned freighter *Chang Sheng* carrying coal sediments on November 16, 1998 as it sailed down the coast from Shanghai. The pirates, disguised as public security officers, intercepted *Chang Sheng*, ransacked the ship, and killed all 23 crew members on board. A Vice President of the Chinese Supreme People's Court said, "the judicial departments of China will keep on handing down harsh penalties on this kind of crime."<sup>28</sup> "The trial was seen as an important message from China, both to pirates and to the rest of the world, that China isn't going to tolerate piracy."<sup>29</sup> Captain Pottengal Mukundan, IMB director, praises Chinese authorities for sending "a clear signal to these gangs that they shouldn't bring their cargo to China."<sup>30</sup>

However, China has to make further efforts in its combat against piracy. Present laws in China have no provisions dealing with piracy crimes, and the term "sea piracy" even does not exist in the laws, thus legal loopholes emerge in handling relevant cases.

## PART 3

### *A Controversial Navigation Regime*

A substantial conflict between the right of coastal states to control adjacent maritime areas and the right of maritime states to enjoy the freedom of navigation has endured for much of the history of the law of the sea. Asia Pacific is an area where the reconciliation of these two rights has caused controversy.

The freedom of the seas principle today was set out in UNCLOS in 1982, which came into force in November 1994. Apart from reaffirming the freedom of the seas principle, UNCLOS establishes three important regimes in securing the freedom of navigation, namely 'innocent passage' through territorial waters, 'transit passage' through international straits, and 'archipelagic sea-lanes passage' through archipelagoes. Different navigational rights apply depending on the different regime. Though UNCLOS contributes to the building of a stable maritime regime, including navigation regimes, it only offers general rules and principles and is ambiguous on many issues. Differences in its understanding and interpretation are prevalent in the world community.

It is acknowledged that "the navigational rights contained in innocent passage are less than those of transit passage and archipelagic sea-lanes passage."<sup>31</sup> The transit passage and archipelagic sea-lanes regimes have been a compromise between the freedom of navigation on the high seas which maritime states desired and the right of innocent passage which strait states and archipelagic states preferred.

The main disputes are those that pit interests of maritime states in navigational freedom against interests of coastal states in security, access to resources, protection from marine accidents, or other rationales for restricting navigation. "Protection of freedom of overflight and navigation in important sea-lanes was, and remains, a primary goal of the United States in seeking a universal Law of the Sea Convention. US defence strategy in the 1990s continues to be highly

dependent upon traditional freedoms of navigation including transit and overflight of oceans, straits, and archipelagoes.”<sup>32</sup> Freedom of navigation is important to Russia as well. Two weeks after the announcement by the Admiralty in Moscow in December 2000 that it would resume patrols in the Pacific and Indian oceans, a Russian flotilla of naval ships set sail for the first time in five years from Vladivostok “on a mission to reassert Russia’s role in Asian security after a decade of military decline.”<sup>33</sup>

As the application of the principle of the freedom of navigation directly relates to SLOC security, Asian Pacific countries need to establish an agreed definition of navigational rights to be applied in practice so as to guarantee regional SLOC security. It might be of significance for the UN body to make clarification on some ambiguous points in UNCLOS’ relevant provisions. Understanding and consensus among UN law-of-the-sea groups regarding the navigation regimes would be a contribution to regional maritime safety.

### **Different Application of Innocent Passage**

Innocent passage refers to the right of continuous and expeditious surface transit through territorial waters. Aircraft overflight and submerged passage in territorial waters are not permitted without coastal state permission. According to UNCLOS, there are two restrictions: submarines and other underwater vehicles shall navigate on the surface and display their flags, and nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances are required to carry documents and to observe special precautionary measures. “The innocent passage regime has always required a delicate balance between the rights of coastal States to control immediately adjacent waters and the rights of maritime states to navigate through these waters.”<sup>34</sup> How to strike that balance is a difficulty. The right of innocent passage also applies to the archipelagic waters of an archipelagic state. “It is not complete freedom of navigation because the coastal or archipelagic state has the right to create laws that affect vessels passing through the territorial seas/archipelagic waters and can temporarily suspend innocent passage in order to protect its security.”<sup>35</sup> These laws may govern the safety of

navigation, the conservation of living resources, environmental protection, etc.

It has been a much debated issue, for a long time in the international community, as to whether the right of innocent passage through territorial waters applies to warships. UNCLOS fails to address the question. Maritime powers have stressed its applicability. “Both the US and Russian navies have traditionally sought to exercise power within the region. In that context, the navigational freedoms guaranteed to warships have been vital.”<sup>36</sup> Coastal states have been reluctant to permit passage to warships without prior authorisation or notification. “The history of foreign invasion and traditionally sensitive security concerns in the Asia Pacific caused many littoral states in the region to have strong reservations on the right of foreign warships to innocent passage through their coastal waters.”<sup>37</sup> Actually, before World War Two and its ascendance as the premier maritime power, the US was among those states, which denied the right of innocent passage of warships in territorial seas. Later the US reversed its position.

Thirty-nine countries in the world including Bangladesh, Myanmar, India, Indonesia, South Korea, North Korea, and Pakistan require prior notification of warships in their territorial waters. Vietnam even “denies the right of innocent passage for warships not only in the territorial sea, but also in the contiguous zone.”<sup>38</sup> China formalised its position requiring permission for any foreign military vessels to enter the territorial sea in its 1958 territorial sea declaration and reiterated the position in its 1992 law on the territorial sea and the contiguous zone.

For the avoidance of misunderstanding regarding this controversial issue after the Black Sea “bumping” incident of February 1988, when two US ships entered the Soviet territorial sea in the Black Sea and were “shouldered” by two Soviet warships. The US and the former Soviet Union signed in 1989 a joint statement, agreeing that all ships, including warships, enjoy the right of innocent passage, and that neither prior notice nor authorisation is required prior to innocent passage. Other countries need to take this into consideration in formulating their positions.

### **Extent of Jurisdiction over International Straits**

UNCLOS recognises the right of transit passage for all nations to sail through straits used for international navigation, including narrower ones that lie totally within the territorial waters of bordering countries. Transit passage is defined as exercising freedom of navigation solely for the purpose of “continuous and expeditious” transit through the strait from one part of the exclusive economic zone (EEZ) and/or the high seas to another part. When in transit passage, ships and aircraft may transit in their “normal mode”, that is, formation steaming, flight operations, and submerged transits for submarines are permitted. This is the first time that the right to fly over straits was established. “This right was dramatically invoked in 1986, when France and Spain closed their skies to US warplanes. American bombers leaving Britain reached terrorist-related targets in Libya by flying over the Strait of Gibraltar.”<sup>39</sup>

However, transit passage is not complete freedom of navigation. States bordering a strait have the right to create laws and regulations that might affect vessels passing through it as long as they do not deny or hamper transit passage. The concerns of strait states focus on the security threat posed by warship transit and the threat of pollution from tankers or nuclear-powered ships. The problem is to what extent strait states can regulate certain aspects of transit passage. Indonesia and Malaysia believe that transit rights for all countries’ ships through the waterway cannot be absolute, given that their own security could be at risk from major accidents.

The difficulties are due to the ambiguity and uncertainty of some of the provisions in UNCLOS and to the substantial variations in state practice. UNCLOS fails to articulate how much control a strait state can exercise over navigation. Regarding state practice within the region, the range of controls that coastal strait states impose upon vessels passing through an international strait varies greatly.

The extent of the use of vessel traffic services (VTS) dealing with safety of navigation and environmental pollution by strait states in international straits has also been a subject of debate. Maritime powers have held that “measures to protect the marine environment from ship-

sourced pollution have continued to erode traditional navigational freedom.”<sup>40</sup> As the adoption of VTS by regional countries is a considerable possibility, the presence of US fleets in many parts of the Asia Pacific might make this a particularly volatile issue. If China uses some kind of VTS or exercises some strait management in the Taiwan Strait, it would definitely be controversial.

Whether coastal states can actually impair the freedom of navigation of vessels carrying inherently dangerous cargoes has been controversial in the Asia Pacific in recent years. Due to the perceived great environmental risk of a vessel carrying certain cargo, some states will not allow their passage through the waters of an international strait.

The definition of a strait as an international strait is another issue. Japan once intended to make the Osumi Strait as its internal strait, and later gave up due to the opposition from the US and other regional countries. The same problem exists regarding the Taiwan Strait. The Taiwan Strait has always been used for international navigation. In spite of the Chinese government’s opposition, the call among some Chinese for declaring the Taiwan Strait as an internal strait of China occasionally emerges.

### **Extent of Jurisdiction over Archipelagic Waters**

As UNCLOS recognises archipelagic states and their right to declare baselines around their outer islands, the high seas have contracted and constraints have begun to appear in areas where traditional freedom of navigation were once guaranteed. Now major shipping routes fall within archipelagic waters.

Though archipelagic states have sovereignty over the waters that fall within archipelagic baselines, their right is subject to certain accepted navigational freedoms. UNCLOS grants the right of innocent passage to all vessels within archipelagic waters, and the right of archipelagic sea-lanes passage along sea-lanes that archipelagic states have designated, or if such sea-lanes have not been designated, through routes normally used for international navigation. A vessel can only exercise the right of sea-lanes passage within a fifty-nautical-mile corridor, and the right of innocent passage applies outside of this zone. There are significant differences between the two types of



passageways, which impact most severely on military vessels. Since this is a new regime, it has led to some tension between certain archipelagic and maritime states.

Previously, the Java Sea and many other large bodies of water between Indonesian islands were treated as open seas. Under the treaty, they become internal waters under Indonesia's control as an archipelagic state. In such waters that are used normally by foreign shipping, the law of innocent passage applies. Under this regime, "submarines are supposed to travel on the surface and fly their national flag. Warships are required by some countries to shut down their surveillance radars and weapons sensors, although officials said Indonesia was only asking that there should be no unauthorised broadcasting or radio contact between passing warships and land-based transmitters to prevent spying. Military aircraft have no rights to fly over internal waters without permission from the coastal state, which can also suspend innocent passage and close areas to foreign planes and ships on security grounds, for example if it wants to hold military exercises."<sup>41</sup>

Indonesia has proposed restricting foreign ships to three north-south sea-lanes that run between Sumatra and Java islands, between Bali and Lombok islands, and through the Molucca Sea to the Timor Sea and the Arafura Sea. Foreign shipping, including military vessels traversing Indonesia, can sail freely through the designated lanes without having to seek prior permission. But they can no longer travel on routes outside these lanes. Ambassador-at-large Hasyim Jalal said, "aircraft flights would also be allowed above sea lanes, and submarines would not have to surface during their passage."<sup>42</sup> The archipelagic sea-lanes proposal was officially adopted by IMO on May 19, 1998. The US, however, is against the proposal, saying it could harm international trade and limit the strategic movement of warships, including its submarines and aircraft carriers that sail through Indonesian waters. The US would like to maximise the number of sea-lanes open for archipelagic sea-lanes passage. Australia has proposed an additional east-west archipelagic sea-lanes passage for its ships for possible emergent situations. Japan and some other Asian Pacific countries are pressing Indonesia to open its waters more widely to free passage of

ships.

The Philippines' claims that all waters within its archipelagic baselines are internal waters not subject to archipelagic sea-lanes passage present a further difficulty. Under its Constitution, the Philippines "considers all waters bound by the baselines and all waters around between and connecting the islands of the archipelago, as part of the internal waters of the Philippines",<sup>43</sup> and maintains it has the right to enact legislation to protect its sovereignty, independence and security. The US and other countries protest these claims. Until now, the Philippines has not designated its sea-lanes. "Recent scholarly debate within the Philippines has pointed to the advantages and necessity of the Philippines designating archipelagic sea-lanes or to run the risk that foreign ships might freely exercise the right of archipelagic sea-lanes passage through all routes normally used for international navigation."<sup>44</sup>

### **Extent of Jurisdiction over EEZ**

The EEZ regime attempts to accommodate the competing interests of coastal states for greater control over offshore resources, and those of maritime powers for maintaining traditional freedom of action in waters beyond territorial seas. As large areas of water in the Asia Pacific now fall within various EEZs and only a few high seas remain, the restrictive regime of EEZ has a substantial impact on certain navigational freedoms in EEZs. Many problems now exist in the implementation of the regime.

The EEZ regime poses a threat to the mobility of navies, and the ongoing controversy over the EEZ regime includes the freedom of action of foreign navies within EEZs. The issues are whether a foreign navy is free to conduct military manoeuvres within EEZ without prior notification or authorisation from the coastal state. And whether a state is free to place non-economic installations, such as submarine detection devices in the EEZ of a foreign state, which do not interfere with the coastal state's enjoyment of its EEZ rights.

UNCLOS confers rights and duties upon coastal states to protect and preserve the marine environment within their EEZs. However, it fails to detail the full extent of that jurisdiction. It is quite possible that coastal

states in the region could impose standards higher than those currently accepted internationally. “As the exercise of navigational rights can result in incidents that affect the marine environment, coastal state’s regulation of these activities may infringe upon navigational freedoms that previously existed beyond the limits of the territorial sea.”<sup>45</sup>

The current debate over the shipment of ultra hazardous goods and waste, the potential environmental impact, and the ability of coastal states to control these shipments involve the exercise and control of navigational rights in EEZs. The concerns have highlighted significant deficiencies in the existing navigation regime.

The question of whether coastal states have the capacity to declare maritime security or exclusive zones has also been the subject of debate, as these zones tend to be delimited within EEZs. Security zones in EEZs deal primarily with limitations placed upon freedom of navigation for warships and upon entry by military aircraft. Some states within the Asia Pacific have proclaimed such zones during peacetime. For example, North Korea purports to exclude foreign military forces from its 50-nautical-mile security zone. The US has protested the claim.

To what extent a coastal state could govern the passage of fishing vessels in its EEZ is also a problem. Though UNCLOS recognises the vessels of all states, including fishing vessels, to enjoy freedom of navigation in EEZs, foreign fishing vessels must have due regard to the right of the coastal states to prevent illegal fishing. For the purpose of preventing violation of its fishing laws and regulations, a coastal state would require foreign fishing vessels in its EEZ to obey its laws and regulations, which govern the passage of fishing vessels. Countries such as Canada request transiting fishing vessels to report, and the Maldives has a prior consent regime for all foreign fishing vessels entering its EEZ. For ensuring that foreign fishing vessels do not engage in illegal fishing activities, “Malaysia’s Fisheries Act of 1985 allows foreign vessels to exercise the right of innocent passage in Malaysian fishery waters which are the waters of the EEZ. Moreover, the law requires prior notification for fisheries vessels to enter the Malaysian EEZ.”<sup>46</sup> But these provisions have aroused protests from

Thailand.

### **The Interpretation of “High Seas”**

The high seas are defined as those parts of the world oceans beyond the limits of national jurisdiction. According to UNCLOS, the high seas refer to “all parts of the sea that are not in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.” Owing to the insistence of maritime powers, UNCLOS retains the provisions that freedom of navigation applies to EEZs, but under UNCLOS coastal states have sovereign rights over EEZ resources, and EEZs fall into coastal states’ spheres of jurisdiction. Thus EEZs do not belong to the high seas. EEZs are specific water areas different from the High seas.

Maritime powers then have used a new term “international waters” to replace the term of “high seas”. For example, the US holds “all waters seaward of the territorial sea are international waters where the ships and aircraft of all States enjoy the high seas freedom of navigation and overflight”. “International waters include the contiguous zone, exclusive economic zone, and high seas”. “International respect for freedom of the seas guarantees legal access up to the territorial waters of all coastal countries of the world.”<sup>47</sup> Its main purpose is to equate EEZs with high seas in freedom of navigation. But actually some differences do exist. UNCLOS recognises the continued freedom of navigation through the waters of an EEZ, subject to the laws and regulations of the coastal state that legitimately apply within that zone. Freedom of navigation and overflight in EEZs is subject to the resource-related rights of the coastal state.

An example of the controversial stand on the interpretation of “international waters” between maritime powers and coastal state is the collision between a US EP-3E surveillance aircraft and a trailing Chinese jet fighter 70nm southeast of Hainan Island on April 1, 2001. The Chinese pilot was killed, and the US damaged plane had to make an emergency landing at Lingshui airbase on Hainan. The US says its surveillance plane was flying in international waters and had the freedom of navigation, whereas China says it was flying in China’s EEZ, and should be subject to the laws and regulations of China. China

demands that the US halt its surveillance off the Chinese coast, but the US says the flights are standard and legal.

The freedoms of the high seas comprise the freedom of navigation and overflight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations, freedom of fishing, and freedom of scientific research. But when these freedoms are applied in EEZs, they are subject to relevant laws and regulations of coastal states.

Regarding scientific research, “The scientific community in developed countries is concerned over what they see as anti-scientific provisions contained in the Law of the Sea.”<sup>48</sup> The US holds “military surveys in EEZ—a high seas freedom—sometimes are mistaken for marine scientific research, which is subject to coastal state consent”.<sup>49</sup> “Marine scientific research is subject to coastal state jurisdiction in the EEZ, but the LOS Convention fails to define the term. A particular problem because hydrographic surveys and the collection of marine environmental information for military purposes are considered by the US to be high seas freedoms that are not subject to coastal state jurisdiction, even when conducted in the EEZ.”<sup>50</sup>

### **Clarification of China’s Position**

China supports the principle of the freedom of navigation, and holds that the freedom of navigation is in the interests of China, Japan, the US, and other regional countries. But it needs to clarify some of its positions. Such clarifications would be in China’s long-term interests. For example:

- China states it will fulfil its duty of guaranteeing freedom of navigation in the South China Sea. In view of the concerns in the world community over the disruption of SLOCs in the South China Sea after the Mischief Reef incident. China’s foreign Ministry issued a statement in May 1995, saying “while safeguarding its sovereignty over the Nansha (Spratly) Islands and its maritime rights and interests. China will fulfil its duty of guaranteeing freedom of navigation for foreign ships, and air routes through and over the international passage of the South China Sea according to

international law.”<sup>51</sup> China needs to make clear that this statement applies to both the sea areas under its jurisdiction (innocent passage in territorial waters and freedom of navigation in its EEZ) and to the remaining high seas. As some circles in the world community think that China’s stated freedom of navigation only applies to the high seas.

- In submitting UNCLOS to the Chinese People’s Congress for ratification on May 11, 1996, a representative of the State Council said, “Overall, the ratification is in China’s interests. But in certain aspects, China needs to formulate corresponding countermeasures and to adopt follow-up actions.”<sup>52</sup> What these corresponding countermeasures and follow-up actions are, and how they relate to freedom of navigation are unclear.
- In its law on EEZ and continental shelf promulgated on June 26, 1998, China affirms its adoption of the 200nm EEZ regime and the continental shelf regime, and states its continual implementation of certain historical rights.<sup>53</sup> In the law China also states that, it has exclusive right of jurisdiction over artificial islands and installations in the EEZ and continental shelf, and while exercising its sovereign rights over living resources in the EEZ, can adopt necessary measures such as boarding, inspection, detaining, hot pursuit, arrest, and judicial procedures.<sup>54</sup> The historical rights, the exclusive right of jurisdiction, and the necessary measures referred to here are unclear and undefined.
- According to Wang Shuguang, Director of China’s Maritime Affairs Bureau, “on the basis of the law of territorial sea and contiguous zone and the law on EEZ and continental shelf. China plans to formulate a series of implementation regulations, such as, measures on the management of innocent passage in territorial waters, regulations on contiguous zone, regulations on protection of living resources in EEZ, regulations on natural resources in continental shelf, etc.”<sup>55</sup> These coming regulations would definitely relate to and affect the issue of freedom of navigation. What these regulations are and how they accord with international practice remains a question.

- Chinese naval activities in the East China Sea (passing through the Tsugaru Strait, cruising in the Japanese EEZ) accord with the principle of freedom of navigation. These activities may not be necessarily notified beforehand. But since China practices in this way, China should not ask other countries for prior notification of their activities in China's EEZ.
- Due to its sensitivity over foreign warships, China requires prior notification of foreign warships for innocent passage. Thus, with the expansion of Chinese naval activities in offshore areas, China should also notify others beforehand in implementing innocent passage.

## PART 4

### *PLA Navy—To Be A Medium Naval Power*

Over the past two centuries, China was invaded seven times by foreign troops from the sea. Learning from the past, China has to defend itself at sea. However, China is not going to build a blue-water navy, and will not dominate the maritime scene of the Asia Pacific. China's maritime strategy is to be a medium naval power in Asian Pacific waters capable of resisting aggression from the sea, defending territorial integrity and offshore islands' sovereignty and their due maritime rights and interests, and defending sea lines of communication for its economic buildup.

China's ongoing defence buildup, including naval buildup, is for active defence. As Defence Minister Chi Haotian said, "China pursues a national defence policy which is defensive in nature."<sup>56</sup> Active defence means that the Chinese People's Liberation Army (PLA) would not simply adopt pure defensive actions, but stand for a combination of defensive and offensive actions. "Such defence combines efforts to deter war with preparations to win self-defence wars in time of peace, and strategic defence with operational and tactical offensive operations in time of war."<sup>57</sup>

Since the mid-1980s the PLA navy's strategy has been shifted from coastal defence to offshore defence. Admiral Shi Yunsheng, PLA naval commander, said in 1999, "the PLA navy will persist in pursuing offshore defence strategy in the next century, and will be prepared to win local naval wars under the conditions of modern technology especially high technology."<sup>58</sup>

There are mainly two reasons for this strategic shift. The first is the need to defend its offshore islands and its maritime rights and interests in adjacent sea areas under its jurisdiction, which amount to 3 million square kilometres as acknowledged by UNCLOS. The second is the guarantee of regional SLOCs to secure its oil supply. China has a driving concern to assure its oil import by sea, where the potential for



interference makes the supply vulnerable. “China’s green-water naval development will become increasingly crucial as the county shifts toward reliance on the sea-lanes to supply its energy needs.”<sup>59</sup> .

The offshore defence strategy was first initiated by one of the PLA navy’s ex-commanders Liu Huaqing. He made known in 1987 the navy’s modernisation plan, which included “the transformation of the Chinese navy from a coastal defence force into a force capable of limited ocean-going operation.” According to Liu’s plan, “the outmost defence approaches of the Chinese navy will be spanned around the China seas: to the Korean Strait in the north, to Liuqiu islands in the east, and to Nansha islands in the south.”<sup>60</sup> These outermost defence approaches are what ‘limited ocean going operations’ refer to. It is generally interpreted that this shift demands a defence perimeter extending from coastal waters out to between 200nm and 400nm, and even further when the Spratly Islands are included. Some US analysts said, “Beijing will seek to increase its strategic depth by first trying to deny a possible enemy access to areas adjacent to China’s borders and later it may seek to develop the capability to control these areas in time of conflict. Beijing may wish to achieve victory at some distances from its borders. This does not necessarily signal any aggressive intent by Beijing, but it could be perceived in this way.”<sup>61</sup>

With the strategic shift, the PLA navy has stepped up its modernisation drive, focusing on the increase of its power projection abilities. “The navy has made great progress in enhancing missile availability, three-dimensional operation capability, and information capability, and it thus has acquired the capability of offshore defensive operations.”<sup>62</sup> An emerging military-technological revolution has increased China’s urgency for acquiring the capability to fight a high-technological war. The ‘Gulf War Shock’ clearly showed that only an armed force exclusively designed for high-tech warfare sufficiently meets the requirements of modern warfare.

The Chinese fleet has over 1,100 warships, but its major vessels (submarines and major combatants) make up only 10% of the total. It has around 50 submarines: among them, only one Xia class nuclear-powered ballistic missile submarine, five nuclear-attack torpedo-armed

Han class submarines, and four Russian-built Kilo class submarines. Its major surface combatant force numbers 55 vessels, including 17 destroyers and 38 frigates. They are all fitted with surface-to-surface missiles, but only 35% have surface-to-air missiles. In 1997, a contract was signed with Russia for the purchase of two Sovremenny class destroyers, which are the most modern and sophisticated war ships in China's navy. The first was delivered in December 1999, and the second was delivered in late 2000. The bulk of the PLA navy comprises around 1,000 patrol craft, amphibious ships, and minesweepers.

China is mainly importing advanced technology from Russia. As there is a gap between Russian technology and western technology, the level of the PLA navy is at least twenty years behind that of the US navy. Officers and men of the PLA navy have been shocked, by the sinking of the Russian Kursk submarine into the Barents Sea on August 12, 2000. Besides, for the PLA navy, the absorption and integration of Russian technology, is a complex task. "For all Beijing's acquisition of military hardware, maintenance and integration remain problems."<sup>63</sup> Regarding the Sovremenny destroyer, the "PLA could face a steep learning curve in acquiring the necessary skills to operate the vessels effectively."<sup>64</sup>

It is reported that China started to construct the first type-094 missile-carrying submarine in late 1999. The first is expected to be formally deployed in about 2005 to replace the ageing Xia-class nuclear submarine that now rarely leaves port. The vessel will carry between 12 and 16 new missiles with an expanded range of 11,906km.<sup>65</sup> China plans to have six 094 submarines in the future. According to military experts, only a submarine is able to operate in China's entire maritime areas of interest. Submarines can fulfil their tasks independently to the greatest possible extent.

As an interim solution to power projection, China conducted manoeuvres involving several small missile craft more than 250nm from the Chinese mainland in early January 2000. It was the first time these types of vessels, including fast guided-missile ships, escort vessels, submarine chasers and corvettes, had conducted exercises outside coastal waters. It gives China the ability to project forces out.

But for small warships to be effective in future wars at sea, they must have the logistical support to enable them to move to and sustain themselves in the open sea. “In this scenario, the tactical realities of a long supply tail may outweigh the strategic necessity of the PLAN to extend its reach.”<sup>66</sup>

As for aircraft carriers, China believes it needs a carrier to complete its naval modernisation plan. It seems that the decision has been made to build one in China rather than to buy one from abroad. It is reported that the first light conventionally powered aircraft carrier has been under construction since the end of 2000. Its displacement would be 48,000 tons, carrying 24 air planes. It would be completed in three years’ time, and enter into service in 2005.<sup>67</sup> In view of the carrier’s vulnerability to submarines, surface ships, and missiles, a carrier would require substantial protection. The shortfalls of the Chinese navy’s missile defence and anti-submarine capabilities would leave a carrier dangerously exposed. The navy would have to build these capabilities, train the personnel, and form a battle group to protect the carrier.

Given these developments, the PLA navy would definitely be expanded, but it would not be a blue-water navy. China would become a regional naval power or a medium naval power in the coming two decades, but not a dominant or pre-eminent naval power in the region. “China could emerge as a formidable power, one that might be labelled a multi-dimensional regional competitor.”<sup>68</sup> “China is forty to fifty years away from the type of comprehensive, across-the-board technological modernisation of its naval and air forces that could directly challenge American power or the status quo in the Asian-pacific region.”<sup>69</sup> “The recent attention to the alleged development of a Chinese blue water naval capability has been disproportionate and misleading. Disproportionate to the extent that the procurement and modernisation programs of other regional navies—India and Japan, for instance—have not received so much attention, misleading because it has typically been under contextualised and has privileged quantitative bases for evaluation over qualitative ones.”<sup>70</sup>

It is widely propagated that “in the nearer term, Chinese strategists hope that by the turn of the century, they will have achieved a ‘green-

water' capability. This, they define, as the ability to operate out to 'the first island chain'. This area includes Japan, the Senkaku islands, Taiwan and the West Coast of Borneo. By 2020 they aim to have expanded this to a 'blue-water' area reaching 'the second island chain', probably embracing the Kurils in the north, the Bonin and Marina islands and Papua New Guinea in the south."<sup>71</sup> This is an exaggerated view. The distance from the Chinese mainland to Papua New Guinea is about 2,000nm, to the Kuril 2,500nm. China would not have the ability and necessity to extend so far. It is commonly understood that a medium power navy means that it could operate beyond 200nm with a limited range of 1,000nm. China might reach that level, but not further. Actually, the escalation into a medium power navy is a trend in many countries such as Italy, India, etc. The Chinese navy would manoeuvre in the waters around 'the first island chain', but not to 'the second island chain'.

As to the view that China will be a 'two-ocean maritime power' (the Pacific Ocean and the Indian Ocean),<sup>72</sup> it is also exaggerated. China has interests in securing a safe sea-lane in the Indian Ocean, but has no intention to confront India in the Indian Ocean. Some analysts say, "China's naval strategy seeks to secure its oil supply and trade routes through the Indian Ocean to the Malacca Strait and the South China Sea. This is why Beijing is heavily investing in developing the Bandar Abbas base in Iran, the Gwadar deep-sea port in Pakistan, and the naval bases in Myanmar."<sup>73</sup> It is true that China has friendly relations with Iran, Pakistan and Myanmar, but it is evident that China's relations with them are not targeted at India. "Access to Myanmar's shoreline would give China an alternate outlet to the Indian Ocean. In the event of conflict, this would make it more difficult for an enemy to sever China's sea lines of communication", "The freedom to operate in ports like Myanmar's Sittwe would enable China to maintain a presence on both sides of the Straits of Malacca."<sup>74</sup>

India is the dominant power in the Indian Ocean, and China will not challenge India's dominant position there. India might feel that a Chinese presence in the Indian Ocean, even the presence of a few Chinese patrol boats with missile capacity diminishes the security of

India's shipping routes. Actually, India is expanding its role and influence in the region, including the South China Sea. India's Defence Minister George Fernandes said, "with high stakes in the uninterrupted flow of commercial shipping, the Indian navy has an interest in the ocean space extending from the north of the Arabian Sea to the South China Sea."<sup>75</sup> With the objective to play a more active role in regional affairs, the Indian navy has expanded its capabilities and modernised its technology. India's relations with Vietnam, Malaysia, Singapore, and Japan have been much developed, including naval visits, joint naval training and exercises.<sup>76</sup> India's entry into the South China Sea seems to confront China.

China does not intend to confront the US in the Pacific Ocean. China's main strategic interests converge with those of the US in the Asian Pacific waters. Given China's dramatic shift toward oil-importer status, its convergence with the US centres on the free flow of strategic goods such as oil and gas. China benefits from the free and unrestricted flow of energy resources. The situation is different with the US-Soviet relationship in the cold-war period. The US needs to understand this objective reality. If the US neglects this fact and takes China as its potential adversary, this convergence of interests would be of no avail and significance to the bilateral relationship.

As China's ability in defending SLOCs is limited, China prefers to maintain the status quo and to enjoy the free ride. The present status quo in regional SLOCs with the US playing the dominant role is in the interests of China. If instability or some military conflict takes place in the sea lines, China's own oil lines would be disrupted. "Any threat to China's strategic goods supply—not just through US intimidation, but even through a US draw down that would allow Japan, Korea, and the ASEAN states to become more assertive—would directly threaten China's strategic trade in energy and other resources."<sup>77</sup>

Some US analysts have said that companies under the influence of Beijing's military are "using trade to establish a strategic presence in the world's major waterways."<sup>78</sup> The fact is that merchant companies are running their own businesses, and are different from naval activities. Their presence in some of the world's waterways does not

mean that the PLA navy would be accessible to the waterways under the jurisdiction of the countries concerned, which could take actions for their own safety in time of crisis.

China will not threaten others' security. Actually, it is China who feels that it is being threatened by other big powers, especially after NATO's eastward expansion and the new US-Japanese Security Guidelines. China is faced in the back with NATO's expanded influence in Central Asia, and in the front with Japan's expanded roles in areas surrounding Japan. In the aftermath of Kosovo, "a wide range of China's elites point to US intervention in Kosovo as setting a dangerous precedent for eventual US military operation against China in Taiwan Strait or South China Sea conflict scenarios."<sup>79</sup>

## PART 5

### *What China Exactly Claims in the South China Sea*

The South China Sea occupies a unique and vital strategic position for littoral states and for extra-regional powers. It is a very important sea-lane of communication between East Asia, Southeast Asia and the Middle East. There are four archipelagoes in the South China Sea: Pratas (Dongsha), MacClefield Bank (Zhongsha), Paracels (Xisha), and Spratlys (Nansha). The South China Sea continues to be one of the flashpoints in the region, particularly the situation around the Spratly Islands. Conflicting claims and possible confrontation over the islands have the potential to affect navigation and to disrupt peace and stability in the region. China's position on the South China Sea is critical to the resolution of the territorial and maritime disputes in the South China Sea.

The Spratly Islands have been claimed wholly by China and Vietnam, and partly by the Philippines, Malaysia, and Brunei, based on various historical, geographical and legalistic grounds. Except for Brunei, all the claimants have established a military presence there, and a jagged, interlocking and crazy-quilt pattern of occupation has been formed. The claimants are interested in generating extended maritime zones for the island groups. The disputes embrace the sovereignty issue over the islands and the delimitation of maritime boundaries in the sea areas adjacent to the islands. There are three reasons for the disputes: territorial integrity, access to resources and strategic location.

Deposits of oil and gas are reported to lie below the seabed around the islands, and the sea is also rich in fish. But the main value of the Spratlys is strategic. What is truly at stake is control of the strategic location of the South China Sea. Any country controlling its waters could potentially threaten the flow of trade to and from Northeast Asia. While sovereignty over the Spratlys would not mean direct control over the vital Strait of Malacca, it would mean control over the South China Sea and hence indirect control over the shipping en route to and from

the Strait of Malacca.

Freedom of navigation and safety of navigation in the South China Sea is in the interests of China, the US, Japan and other regional countries. There are worries in the world that China's control of the Spratly Islands would affect freedom of navigation. "China claims all of the South China Sea which has raised concerns throughout the region that the passage of vessels through that area could be affected if China tries to enforce its claim."<sup>80</sup> China has repeatedly said it respects free right of navigation through the area's crucial shipping lanes, and has assured ASEAN countries that it would not take steps to impede freedom of navigation through contested areas of the South China Sea. In fact, China has never interfered in foreign vessels navigating in the area and will not do so in the future. There has been nothing to suggest that China would obstruct freedom of navigation. "Given that, there is not much motivation for powers like the US and Japan to take a strong position backing Southeast Asian claims."<sup>81</sup>

The guarantee of freedom of navigation in the South China Sea is the major concern of extra-regional powers. Countries like the US and Japan greatly concerned about free and safe access through the sea-lanes and air corridors there. Free passage through the sea-lanes is vital to the US for movement of its warships between the Pacific and Indian oceans. The former State Department spokesman, James P. Rubin said, "while we take no position on the legal merits of competing claims to sovereignty in the area, maintaining freedom of navigation is a fundamental interest of the United States. Unhindered navigation by all ships and aircraft in the South China Sea is essential for peace and prosperity of the entire Asia Pacific region, including the United States."<sup>82</sup>

So long as navigation and passage for the major trading nations and maritime powers is not impeded. Extra regional powers, especially, the US would not intervene. There is little risk that the United States would interfere if China seeks a solution that ensures freedom of navigation. "Washington is not prepared to risk damaging its relations with China by involving itself in the South China Sea disputes, unless and until freedom of navigation is at stake."<sup>83</sup> If during any military action in the



Spratlys, any nation threatens to inhibit the free flow of maritime traffic along these critical SLOCs, the US would almost certainly become involved. “Other nations heavily dependent on maritime commerce could be expected to at least endorse, if not actively participate in, any US-led enforcement of freedom of navigation along the South China Sea’s heavily travelled sea-lanes.”<sup>84</sup>

Due to the growing concern with freedom of navigation issues in the South China Sea, “Washington’s policy has evolved from active neutrality to active concern. Active involvement is likely to be the next step.”<sup>85</sup> The former Secretary of State, Madeline Albright said at the 1999 annual meeting of ministers from the ARF, “the United States cannot simply sit on the sidelines and watch.” But what ‘active involvement’ might be is a noteworthy question. Any US active involvement would result in a new source of tension with China. If the US considers the deployment of sea-based components in the South China Sea for launching missiles as part of its national and theatre defence systems, as reported in the press, that would definitely arouse strong opposition from China. China has already expressed its dissatisfaction over the joint military exercises near the Spratlys held between the US and the Philippines in March 2000.

For minimising conflicts, Indonesia has initiated Workshops on Managing Potential Conflicts in the South China Sea since 1990 with the support of the Canadian International Development Agency. The Tenth Workshop was held in Bogor, West Java in December 1999. “This is being attempted by means of confidence-building, brought about by the encouragement of maritime cooperation. Following this formula through, the workshops move from an essentially negative to a very positive concept, from prevention of conflict to promotion of cooperation.”<sup>86</sup> The Workshops have achieved progress as indicated by agreements to discuss and develop concrete programs of cooperation, exercise self-restraint in the settlement of disputes and develop confidence-building measures.

Faced with the complexity in the Spratlys, China puts forward the suggestion of “shelving the disputes and working for joint exploration”. It is evident that China is more interested in conciliation

than conflict. One might see China's different attitude to sovereignty problems in the cases of Hong Kong, Taiwan, Tibet as compared with the Spratlys. China stands for a peaceful settlement of the Spratlys disputes through negotiations based on UNCLOS and international law. "Since 1995, China has announced that it will use international law and law of the sea to examine the claims and indicated that whatever it does in the South China Sea, it will not threaten the security of the seelanes."<sup>87</sup> During his visit to Indonesia in July 2000. Chinese Vice-President Hu Jintao said before the Indonesian Council on World Affairs, "as for the differences left over from history between China and its neighbouring countries. The Chinese government has always proceeded from the overall interests of all parties concerned and stood for a peaceful solution of their differences through consultation on an equal footing."<sup>88</sup>

China has been ambiguous in its stand on the issues of 'the nine-dashed intermittent line' and 'the historic waters' in the South China Sea, making outsiders think that China takes the South China Sea as its 'domestic lake', and builds a 'Great Sea Wall' across the South China Sea. China's ambiguous position has given rise to the assumption that China is asserting sovereignty over virtually the entire South China Sea as 'historic waters'. China needs to make clarifications on these issues, since uncertainty over its claims complicates the efforts to find a solution to the disputes. As the nine-dashed line and the historic water claims do not conform to the provisions of UNCLOS, it is expected that China would abandon them in the coming years. China's giving up them would serve as a breakthrough to the process of settlement.

What does China exactly claim in the South China Sea? In my perspective, what China claims are the islands and their due maritime rights and interests these islands are entitled to have. Apart from the islands, China's claims are not related to the nine-dashed line and the historic waters, but are only related to the EEZ and continental shelf based on the internationally accepted rules. It is a misconception that "what China claims are the islands and their adjacent waters within the (nine-dashed) line" said by a Chinese scholar on legal affairs.<sup>89</sup> China's claims have mainly focused on the islands within the line rather than on

the water areas, and the water areas China claims are what the islands should have according to the law of the sea, without any relation to the line. The PRC delegate said at the Economic Commission of the 56<sup>th</sup> Session of the UN Economic and Social Council On May 6, 1974 that “Nansha (Spratlys) as well as Xisha (Paracels), Dongsha (Pratas), and Zhongsha (MacClesfield) Islands have always been China’s territory and that the PRC has indisputable sovereignty over these islands and the sea areas around them.” China has no intention to take the whole South China Sea as its own, and to make the South China Sea its domestic lake. China does not want to ‘monopolise’ the South China Sea, and to be its sole master.

The nine-dashed intermittent line has been used on Chinese maps, the line drawn in 1947 by China as its maritime boundary line. China had long claimed sovereignty over the four archipelagoes within this line. The line encompasses the majority parts of the South China Sea, just offshore from the other littoral states. The line itself is vague and ambiguous in terms of exact geographical location, and is not well grounded legally in accordance with UNCLOS. Until now China has not officially dropped the line, causing a lot of fears and apprehensions in the region. “China’s ‘U-shaped line’ has assumed an almost threatening character with the passage of time, because Beijing refuses to explain its significance, adding to the belief that China regards the vast expanse of ocean as an inland lake.”<sup>90</sup> “Beijing could be intent on transferring large areas of the South China Sea from a region in which warships have immunity from its jurisdiction to one in which permission is required for entry.”<sup>91</sup> China needs to clarify as early as possible that it simply claims the sea areas the islands are entitled to have according to the law of the sea.

In its 1958 declaration on China’s Territorial Sea on September 4, 1958, China said that between the mainland and the archipelagoes in the South China Sea there exist certain areas of the high seas. This shows that China does not regard the nine-dashed line as its maritime boundary line. China has drawn archipelagic baselines for the Paracel Islands in May 1996, which remove the enclosed waters from the freedom of navigation regime, and declares 12nm territorial seas from

the closing baselines, and has declared foreign warships cannot enter these waters without permission. The publication of the Paracels baselines also indicates that China does not consider the nine-dashed line as its maritime boundary line, for it would be redundant to draw the Paracels baselines as there is already the nine-dashed boundary line. In declaring the archipelagic baselines for the Paracels, China says it will announce the remaining baselines “at another time”, indicating it may do the same with the Spratlys. This is another example showing the nine-dashed line is not the Chinese boundary line. As the archipelagic line for the Spratlys will for sure arouse strong opposition from other countries, in my view, in the foreseeable future China will not announce the Spratlys archipelagic baselines. A Filipino scholar said, “nor has China declared straight baselines around the Macclesfield Bank and other submerged parts of the South China Sea. Thus the opportunity remains for exploring a cooperative framework for addressing ocean concerns in the South China Sea region.”

In respect of the ‘historic waters’, the basis for China’s claims of historic waters is the nine-dashed line on the Chinese maps. As the line is questionable, the historic waters claim is ever more questionable. China knows it is unjustified and unfeasible, but has not clarified its stand. China simply does not use the terminology in its official statements. It is a misconception that “China is asserting sovereignty over virtually the entire South China Sea as ‘historic waters’.” It is a widely accepted view in China now that the claims based upon the EEZ concept are more forceful and valid than the claims derived from historic waters.

In the law on EEZ and the continental shelf promulgated in June 1998, China states the provisions of this law shall not affect the historic rights enjoyed by China. The exact implications of the historic rights referred to are unclear. Usually the term ‘historic rights’ is the general framework, and under it is the term ‘historic waters’. “Historic waters are waters over which the coastal State, contrary to the generally applicable rules of international law, clearly, effectively, continuously, and over a substantial period of time, exercises sovereign rights with the acquiescence of the community of States.”<sup>92</sup> The concept of historic

waters is usually applicable to bays and gulfs, but as an exception may be applicable to open seas. Once established as historic waters, the waters referred to are regarded as internal waters with full sovereignty. In the face of wide spread regional opposition, it is totally impossible and unrealistic for China to take the South China Sea as its internal waters.

In China's practice, China treats the Bohai Gulf as its historic bay and the Qiongzhou Strait as its internal strait in its 1958 declaration on the territorial sea. China's main reason is that the Bohai Gulf and the Qiongzhou Strait were the historic waters of China. China's claim of the Qiongzhou Strait has met with some opposition from the US side, but is basically effective. In the case of the Gulf of Tonkin, which is a semi-enclosed bay surrounded by territories of China and Vietnam, China had never claimed it as historic waters and had disputed the Vietnamese claim of it as Vietnamese historic waters. According to Vietnam, the Gulf should be regarded as the shared historic waters of Vietnam and China. Both sides finally concluded years of negotiation and signed the agreement on the delimitation of the territorial sea, EEZ, and continental shelf in the gulf of Tonkin on December 26, 2000.

There can be no negotiated solution to the disputes of the South China Sea as long as China keeps an ambiguous and vague stand on the nine-dashed line and historic waters. China's early clarification would be a contribution to the peaceful settlement of the disputes and to the maintenance of regional SLOC security. Taiwan's position regarding the nine-dashed line and historic waters has retreated. Taiwan's final adopted Law on the Territorial Sea in January 1998 does not mention "historic waters", though it officially stated that dropping such a reference is not an abandonment of the official position of Taiwan that the water areas within the line are historic waters of China.

Another issue related to China's attitude towards the Spratlys disputes arises from the view that China is pursuing a policy of "creeping assertiveness", and a dual strategy of negotiation and occupation in support of its expansionist claims in the South China Sea. Some analysts in the region say that China will back off under the glare of negative international opinion and make promises only to take new

unilateral actions later. They are not sure whether China will abide by the code of conduct now under discussion, because they say there has not been much improvement since China first reached a code with Philippines in August 1995 after the Mischief reef incident.

China did not support the formulation of a regional code of conduct at the beginning, but under the pressure of ASEAN countries as well as proceeding from its requirements of maintaining a good-neighbourly relationship. China has adjusted its stand, and agreed to frame with ASEAN a common code of conduct for disputed territorial claims in the South China Sea. In a joint statement signed by China and the Philippines in May 2000, the two sides pledged to contribute to the formulation and adoption of the regional code of conduct. Now China and ASEAN have issued separate draft codes of conduct. The latest consultation was held in Hanoi in October 2000, and the two sides are still divided over several points. Apart from the disagreement over the geographic scope of the code, ASEAN and China are split over Beijing's concern about "any military exercises directed against other countries" in or near the Spratlys and "dangerous and close-in military reconnaissance".

In spite of the present differences, they will soon reach an agreement on the code. Once the code is agreed upon, China is committed to abide by it. In fact, the code is a political rather than a legal document, and the will to implement it is important. The observance of the code of conduct is the principle of good will. The maintenance of a good-neighbourly relationship is the overriding concern of the Chinese leaders, who would have the good will to implement them. A Filipino scholar warned, "there are possible harmful consequences for Southeast Asian countries in treating China as an enemy and a threat rather than as a potential partner."<sup>93</sup> The scholar suggests both China and ASEAN should intensify their efforts to expand mutual trust and establish a constructive partnership.

With political will to compromise on all sides, prospects of settlement are forthcoming. In recent years, China's insistence on direct bilateral discussion of the Spratlys disputes among the directly concerned claimant countries has been gradually adjusted. China has shown

willingness to have a broader dialogue on South China Sea issues. China's foreign minister Tang Jiaxuan stated at the fifth ARF ministerial meeting in Manila in July 1998 "China will participate in the multi-tiered and multi-channelled dialogues and cooperation in the security field of the Asia Pacific region." The changes in the Chinese attitude would have positive impacts on future developments. "While Beijing insists that sovereignty disputes cannot be subjected to negotiation in principle. It is however, possible for Beijing in the long run to resolve these disputes with the claimed states on a compromise basis as it has done with other disputes with Myanmar, Afghanistan, Pakistan and Mongolia, and perhaps with India, Russia and Vietnam in time to come. Since Beijing's stand on sovereignty disputes may not be as rigid as it appears."<sup>94</sup> China's signing of three bilateral agreements on fishing rights in 2000 with three of its four littoral neighbours show, "Beijing's apparent willingness to grant generous terms to its neighbours."<sup>95</sup> Because the Chinese Ministry of Agriculture estimates that one million people in the fishing and fish-processing industries will lose their jobs as a result of the three new agreements, which will reduce China's annual catch by roughly one million tons. "China's policy in the South China Sea has not been as chauvinistic or aggressive as is often claimed."<sup>96</sup>

As to the development of the Spratlys disputes, in my perspective, the status quo would be maintained, no high-profile tension would take place, and freedom of navigation would be ensured. China will not use force to gain control of the whole Spratlys even when its naval force becomes stronger. "It is doubtful that even China would come out 'a winner' given the attendant costs in the longer run about how its professed intent matched with its operational commitment would lead all to view it with suspicion at best, hostility and rigidity more likely."<sup>97</sup> Some analysts say that the situation in the South China Sea has grown increasingly tense, that the current fragile stand off, "could result in military strife and the involvement of outside powers". Probably this is a too pessimistic view.

The settlement of the Spratlys disputes should be worked out taking UNCLOS as the basis and a starting point for negotiations and taking

into account relevant factors such as historical title, geo-morphological features, economic interests, unity of mineral deposits, and present status so as to achieve an equitable result. In the final analysis, the Spratlys will have to be shared among all the claimants, and not a single country will be unilaterally entitled to the disputed areas in the Spratlys for its own interests. The following approaches are preferable to be taken:

- To jointly foster political will among the relevant parties for the settlement of the disputes. It is in the interests of all parties to seek to create the political will necessary to reduce the likelihood of conflict in the South China Sea. All sides concerned need to show flexibility and to make concessions, which requires political will and courage.
- For the purpose of helping settle maritime delimitation and jurisdictional disputes in the area, the UN body and its legal groups might get involved in the South China Sea territorial disputes by clarifying the legal status of those islands, atolls, reefs, shoals, cays, or banks. Such a clarification could help deter the claimant countries from making excessive maritime claims to bolster their sovereignty and maritime jurisdictional claims.
- To split the ownership problem and the question of navigation and flight. Ownership is a difficult problem to resolve, while navigation and flight are less difficult and solvable. This separation might be a good approach in the interests of international transportation.
- The acceptance of the adjudication of the International Court of Justice (ICJ) for the settlement of disputes on the Spratlys disputes. Asian countries usually are not accustomed to appeal to the International Court of Justice for adjudication, but with their growing interaction, their stand is changing. In fact the Court has settled maritime boundary delimitation questions in every region of the world except East Asia. Since 1994, Malaysia and Singapore have agreed to submit to the ICJ their disputes over Batu Putih Island on which the Horsburgh Light stands. In May 1998 Malaysia and Indonesia agreed to go to the ICJ to determine the ownership of two islands (Spidan and Ligitan) in the Sulawesi Sea.



## PART 6

### *China's Increased Activities in the East China Sea*

The sea lines in the East China Sea are of vital importance to Northeast Asian countries like China, Japan, and South Korea, and to North American countries like the US, and Canada. Since 1978, the Japanese Defence Agency has deployed surveillance systems in the Tsushima, Tsugaru, and Soya (La Perouse) straits. In 1980s, the Soviet warships passing through the straits were well monitored by Japan. China's maritime activities in the East China Sea relate to regional SLOC security. China is willing to guarantee the SLOC security in the East China Sea together with Japan and other Northeast Asian countries.

The East China Sea Basin is about 300,000 square kilometres, and is shallow with water depths of less than 200m, except in the Okinawa Trough along the coasts of Japan. The East China Sea has good prospects for oil and gas, and is thought to contain 10 to 100 billion barrels of oil. Many geologists believe that below the continental shelf to the west of the island chains of Okinawa are deposits of oil. As the oil and gas potential in the East China Sea have not been well explored, many oil conglomerates have shown much interest in it. Here the distance from one piece of land to another does not exceed 400 miles, and unilateral claims of EEZ naturally overlap.

Regarding the continental shelf demarcation in the East China Sea, China adheres to the principle of the natural prolongation of land territory, and Japan stands for the equidistant line. Thus a large overlapping area occurs between China and Japan claims. The Chinese continental shelf claims extend all the way to the axis of the Okinawa Trough, enclosing essentially all of the petroleum potential in the East China Sea. However, in its efforts for offshore oil development since 1980, China has limited its exploration mainly to its side of an equidistant line. China has been prospecting for hydrocarbons in the western part of the East China Sea, and has drilled successful gas wells in the shelf area contested with Japan and adjacent to an equidistant

line.

Moreover, the ownership of the Senkaku (Diaoyudao) Islands directly affects the boundary delimitation. China and Japan both claim sovereignty over the islands, and stick to their own arguments. The Senkaku Islands, consisting of five uninhabited islets and three barren rocks, are strategically located, straddling the sea-lanes in the East China Sea. There is also the controversy over the maritime rights the Senkaku Islands are entitled to have. In consideration of the existing disputes over continental shelf demarcation in the sea areas where the islands situate, China holds that it is preferable that the islands are not to have EEZ and continental shelf claims. Since limiting the islands to only a 12nm territorial sea would have no significant legal effects on the boundary demarcation, thus making the settlement process much easier. But Japan holds the islands should have EEZ and continental shelf claims, and intends to use them as base points for EEZ and continental shelf claims on the East China Sea. Possession of the islands would confer on the owner title to over 11,700 square nautical miles (about 30,000 square kilometres) of the continental shelf.<sup>98</sup> If Japan owns the Senkakus, much more of the East China Basin would fall to it.

Disputes have existed between China and Japan for decades over each other's activities in the contested and overlapping areas in the East China Sea. The latest round of tension has followed a sharp rise in the number of Chinese survey and naval vessels entering the disputed waters in the past two years. The activities of Chinese maritime research vessels in areas that Japan considers within its own EEZ as well as the operations of Chinese naval warships in international waters off Japan have increasingly drawn the attention of the Japanese government and media.

As reported by Japan, Chinese research ships started to be spotted around 1994, and there has been a rapid increase since 1999. According to Japanese officials, Chinese survey ships were spotted within Japan's EEZ 16 times in 1998, 33 times in 1999, and 24 times up to September 10, 2000, "operating in the restricted waters without prior notification to the Japanese government."<sup>99</sup> The Japanese defence agency said in its

annual white paper on July 28, 2000 that there were 28 sightings of Chinese naval vessels in 1999 as compared with just two in 1998. In the first five months of 2000, there had been 14 sightings.<sup>100</sup> These naval ships were found cruising in the vicinity of the Senkaku Islands.

Japan voiced particular concern over a Chinese 4,420-ton Yanbin-class surveillance ship passing through the Tsugaru Strait in late May 2000. The ship was spotted by Japan off the Tsushima Island in the Korea Strait on May 14, and travelled in the Pacific Ocean after passing through the Tsugaru Strait during the night of May 23. Japan thought it was an intelligence gathering ship aimed at mapping the seabed for submarine operation, and expressed concern over the Chinese naval intelligence activities off the Japanese coast. “While Chinese surveillance vessels are not unusual around Japan, this was the first time one travelled through the strait that separates Japan’s northern island of Hokkaido and the main island of Honshu.”<sup>101</sup>

Over the years, the naval exercises held by the Chinese navy in the East China Sea have caused concern in Japan. For example, in late 1996 the Chinese navy conducted a 20-day live-fire exercise and simulated sea blockades and amphibious tank landings under air cover in the East China Sea, and in mid-July 1999 ten Chinese naval vessels conducted exercises in the waters near the disputed Senkaku Islands. These exercises have aroused strong reaction in Japan.

The Japanese side has interpreted China’s actions as pursuing “expansionary policy” and “seeking to demonstrate its military power in the region”, and has called the May transit of the Tsugaru Strait by a Chinese naval vessel “an openly provocative act”. Japanese officials say China’s exploration of marine resources without prior notice to Japan has “encroached on its territorial waters and exclusive economic waters”, and Chinese naval vessels have gathered information off the Japanese coast, constituting “a threat to Japanese sovereignty”. The *Nihon Keizai Shimbun* reported. Under the Law of Sea treaty, Tokyo should be given prior notice of the activities of Chinese maritime research ships in Japan’s EEZ. As for the activities of the Chinese navy in international waters around Japan, “Japan viewed such actions not as violations of international law but as regrettable, coming as they did

from a friendly neighbouring country.”<sup>102</sup> Japan suspects that most of the Chinese ships were conducting a survey of the sea as an attempt to claim the waters as their economic zone. Some Japanese military people said, “taking into account Chinese sea power advancement to the South China Sea. The following of the Chinese pattern to the advancement to the East China Sea should be predicted”,<sup>103</sup> that is, the first step is the announcement of sovereignty over the Senkaku Islands and its maritime rights regarding EEZ and continental shelf. The second step is the demonstration of maritime power presence by naval vessel cruising and maritime surveys. And the third step is the landing of Chinese troops on the Senkaku Islands and construction of military installations.

China holds that the maritime research activities are in accordance with international law, and does not recognise the exclusive economic zone unilaterally announced by Japan. Chinese Foreign Minister Tang Jiaxuan said, “it is normal for Chinese research ships to conduct scientific investigation in the East China Sea in accordance with international law and practice”. He points out “the core of the matter is that China and Japan have not yet reached a common understanding on the demarcation of boundary lines in the East China Sea.”<sup>104</sup> Prime Minister Zhu Rongji said that neither the activities of China’s research ships nor those of the PLA navy near Japan should be considered as expressions of hostile intent, and that China’s research activities were not inappropriate and reflected no ill will toward Japan. China also said that the operation of the Chinese Yanbing-class vessel was “normal”, as foreign naval vessels have the right of transit passage in the Tsushima and Tsugaru straits and the freedom of navigation in Japan’s EEZ. China maintains its actions are legal because the two countries have yet to sign a treaty on their economic zone.

On China’s side, the lack of centralised and coordinated mechanisms in maritime issues is also a big problem. Inter-governmental coordination is weak. Each institution takes its actions independently, and top leadership is unaware of the events. During his visit to Japan in early October 2000, Zhu Rongji said the details of such activities were not known among China’s top leadership. It is further reported that news of

the navy's activities had not reached upper reaches of the party leadership. "The navy really does not think at all about the effect of its actions on Sino-Japanese relations and is totally separate from the government." The PLA is under the authority of the Central Military Commission. "Thus differences between the PLA and the government often develop and problems arise because it is difficult for these differences to reach the upper levels of party leadership."<sup>105</sup>

The need to explore oil and gas resources is one of the main reasons for China's increased activities in the East China Sea. China is keen to step up gas exploration and production in the East China Sea, where it gained the first field (Pinghu) production in the Xihu Trough in April 1999. China New Star Petroleum Company announced in January 2001 that the exploration project of the biggest gas field in the East China Sea, the Chunxiao Gas Field (with verified gas reserves totalling 54 billion cubic meters) will be launched soon. The company has discovered eight oil and gas fields and a group of oil and gas bearing structures in the East China Sea with total proven and controlled reserves of about 200 billion cubic meters.<sup>106</sup> As it is said, "the real battle is for control of seabed oil reserves that are reported in the region."<sup>107</sup> For Chinese naval activities, the reasons are the transformation of its strategy from coastal defence into offshore defence and the need of familiarising itself with regional straits and sea-lanes. China neglected the oceans for decades, and neighbours are sensitive over its behaviours that are different from the past.

It is said that the rise of nationalism in both countries is one important reason for the conflicting situation. Nationalist groups in both countries are insisting that their governments lay claim to a large portion of the sea. "The Senkaku Islands are a favourite cause of nationalists in both countries, and there is no apparent resolution in sight."<sup>108</sup> Tension over the Senkakus has occurred now and then during recent decades. For example, there was a 'protect the Diaoyudaos Movement' among Chinese communities in Taiwan, Hong Kong and in major metropolitan centres of North America in September 1970. And protests against Japan's claims to the Islands by permitting the renovation of a lighthouse on one of the islets mounted in Taiwan, Hong Kong and

Macao in October 1990. In the face of the 'Protect The Diaoyudaos Movement' prevalent in Hong Kong and Taiwan, and knowing that China's nationalism has extreme, xenophobic, and strident elements, Chinese leaders have adopted a cautious attitude towards this tendency in the mainland. They fear that such developments might affect domestic social and political stability and its foreign relations. One has to know that there are complex factors regarding China's nationalism. In past centuries, China's nationalism was a combination of national pride with the concept of being the Middle Kingdom and national inferiority owing to foreign aggression. China's new nationalism has risen since the early 1990s. Two factors have caused this tendency. The first is the growing strength along with economic achievements, and the second is the growing pressure exerted mainly by the US on China on issues such as human rights, weapons sales, etc. The Chinese feel they are humiliated and are treated as an outcast nation, and thus they should rise to resist. The eruption of nationalist demonstrations after the May 1999 bombing of the Chinese Embassy in Belgrade is an example, however the demonstrations were still under the leaders' control.

During Japanese Foreign Minister Yohei Kono's visit to Beijing in August 2000, China and Japan agreed on the need to develop a prior notification mechanism and details would be worked out between working-level officials. Both countries also agreed to hold expert level talks on a long-standing border dispute. Tang Jiaxuan stressed, "mutual information is an independent act of either side, which could not affect China's position on the demarcation of boundary lines in the East China Sea."

In mid-February, 2001 China and Japan reached an agreement on a mutual prior notification mechanism for maritime research activities in respective Chinese and Japanese EEZs. The agreement requires that each government, two months prior to the beginning of maritime research activities, inform the other of the purpose and content of such activities as well as the designated ships and expected period of operation. But due to the difficulty in the demarcation of the boundary line between each other's continental shelf, the geographic area to

which prior notification will extend is left deliberately vague. China agrees to prior notification in the “seas near Japan of concern to the Japanese side”, while Japan agrees to such notification in the “seas near to China”. A Japanese Foreign Ministry source explains that the text implicitly includes Japan’s EEZ.

Actually the disputes in the East China Sea are comparatively easier to be solved than the disputes in the South China Sea. The Senkaku Islands disputes could be enclaved and put aside first so as not to affect the demarcation of EEZ and continental shelf. The differences over each other’s base points of the baselines of territorial waters, and over the principle on the continental shelf demarcation could be negotiated. With political will on both sides, the East China Sea should go first for an equitable settlement.

China does not intend to confront Japan in the East China Sea, and does not intend to compete with Japan over the control of Asian Pacific waters. In its relations with Japan, China is on the defensive and is often worried over Japan’s expansionist actions. China hopes to work together with Japan for the guarantee of regional SLOC security.

## PART 7

### *A Relative Calm in the Taiwan Strait*

The Taiwan Strait is part of the sea lines from Northeast Asia to Southeast Asia, and dominates the northern entrance to the South China Sea. Maritime traffic traversing from Japan and South Korea to the south needs to transit through either the Taiwan Strait or the Bashi Channel between Taiwan and the Philippines. The breadth of the Taiwan Strait is approximately from 69nm to 140nm. The Strait is shallow, averaging about 80 meters.

The Taiwan Strait has long been used for cross-Strait shipping and international shipping. Many Chinese and foreign vessels use the Strait, US and Russian naval ships also use it. A Taiwanese source reports that more than 500 foreign ships including more than 200 from Japan use the Strait each day,<sup>109</sup> and one Taiwanese politician says that more than one trillion Japanese yen could be saved if foreign vessels could use the Taiwan Strait instead of other navigation routes. Each year, Taiwan-owned vessels ply between Taiwan and Hong Kong ports more than one thousand times. In May 1998, Beijing and Tokyo reached an agreement on fighting against smuggling of drugs and weapons as well as stowaways, under which ships of both sides will enter the Taiwan Strait to catch criminals under the hot pursuit principle. In November 1974 four PLA naval ships on their way to the Paracel Islands for the first time sailed through the Taiwan Strait, and in Spring 1998, a PLA nuclear submarine passed through the Strait for the first time to join military exercises in the South China Sea. In February 2000 and January 2001, the two Sovremenny class destroyers China purchased from Russia sailed through the Strait to join China's East China Sea Fleet.

In its 1958 declaration on territorial sea, China acknowledges that there are high seas in the Taiwan Strait, which separate Taiwan from the mainland. With the right to claim the 200nm EEZ granted by UNCLOS, there are actually no high seas in the Taiwan Strait as the



Strait is no more than 200nm wide, but as an international strait, the Strait offers the right of transit passage to other countries. China has never considered the Taiwan Strait as its historical waters, though some Taiwanese say that “the Taiwan Strait can be rightly called Chinese historical waters.”<sup>110</sup> Some Chinese in Hong Kong not long ago suggested that the Taiwan Strait be declared as an internal strait of China, but the central authorities in Beijing have not agreed to the suggestion. It is mistaken that “China claims that the Strait is an inland waterway.”<sup>111</sup> China will not adopt casually any measures that might blockade the transit passage in the Strait.

Both Beijing and Taipei have set up special zones in the Taiwan Strait for security reasons. Beijing designated decades ago its three offshore areas as military zones, and one of them was the military operation zone south of the 29<sup>th</sup> north latitude and north of Taiwan. In recent years, Beijing has enlarged its fishery protection zones along the coastal area to 50nm, but has neither declared new military zones or a “no fly zone” in and over the Strait. Taiwan declared in 1992 its rights to protect the 24nm restricted sea and air zones surrounding Taiwan and islands under its control.

The US has seen the Taiwan Strait as an international waterway, and its naval forces have insisted on the right of sailing through it. In their perspective, ‘failure to regularly transit the Taiwan Strait would complicate the ability to operate there in times of crisis.’<sup>112</sup> The US particularly demonstrated its stand when its aircraft carrier Nimitz passed through the Strait in December 1995. China was infuriated over the Nimitz transit, but admitted the US had the right. Liu Huaqing of the Central Military Commission in Beijing referring to the Nimitz transit said, “recently, the United States has intentionally displayed its naval strength in the Taiwan Strait ... although the United States has the right to carry out activities on the high seas, we will fight back if the US military forces carry out military provocation on our Navy and Air Force on the high seas.”<sup>113</sup> According to a Taiwanese source, from 1995/1996 to November 1998, US naval ships have used the Taiwan Strait more than 100 times.<sup>114</sup> In March 1996 a US naval battle group including the USS Independence retreated 100nm from the Taiwan

Strait after a warning issued by the PLA navy, which ordered its seven nuclear submarines out to sea.

The Taiwan Strait as a natural barrier has served to impede the reunification process between the mainland and Taiwan. After the civil war broke out in China, some 2.6 million mainlanders followed the Kuomintang on board vessels to Taiwan along with 33.68 tons of gold plus other precious metals, and the Chinese Communist Party was unable to take over Taiwan because of the Strait. The deployment of the Seventh Fleet by the US in the Strait two days after the outbreak of the Korean War in June 1950 has served as another impediment to the reunification. The US Seventh Fleet “has, in effect, ruled out the military option in the Taiwan Strait since 1950.”<sup>115</sup> In the Taiwan Strait, there were military demonstrations of force over Jinmen in 1958 and over Taiwan in 1995 and 1996.

For the purpose of avoiding accidents and minimising confrontation, there is a de facto ‘dividing line’ or middle line between the mainland and Taiwan. “According to Taiwan scholars and experts, the United States thought about using the term or drawing this imaginary line after signing the Sino (Taiwan)-US Mutual Defence Treaty in December 1954.”<sup>116</sup> Taiwan would try to shoot down any mainland aircraft before they fly across the middle line. “As a goodwill gesture to Taipei and to further ease tension since January 1979, Beijing indirectly confirmed the existence of this line.”<sup>117</sup> In January 1984 Fujian Provincial Service broadcast the news that Chinese oceanographic scientists would conduct a comprehensive survey of the Taiwan Strait and the maritime area to be surveyed was the area between the Fujian coast and the line connecting six points.<sup>118</sup> A tacit agreement exists between the two sides that these coordinates constitute the non-political middle line.

The Mainland Affairs Council in Taiwan stated in 1992 the PLA navy had recently stipulated that its vessels must not sail east of the middle line nor enter into waters within 10nm of the baseline of the Taiwan-controlled islands. In March 1996 when tension escalated during Taiwan’s election, the US was worried that PLA exercises would cross the middle line, but it did not happen. The PLA third triphibious military exercises bordered the middle line, but did not cross it, and

only PLA missiles splashed into zones near Gaoxiong Port and Jilong Port. To avoid confrontation, the two sides have also exercised some self-restraint in the Strait. PLA naval vessels usually patrol in waters 24nm from the baseline, and Taiwan naval vessels do the same 12-24nm from the baseline. PLA naval vessels reportedly are required to keep a distance of 10nm from Taiwanese naval vessels in the Strait.

Despite the absence of political dialogue and occasional tension, cross-Strait trade and investments have expanded rapidly. Over 45,000 Taiwan businessmen have invested in the mainland, with a total investment exceeding \$45 billion. The cross-Strait trade has developed to \$25 billion annually, and reached \$32 billion in 2000. By November 2000 the cross-Strait trade has totalled \$188.22 billion as compared with \$46 million in 1978. This makes China the second largest importer of Taiwanese goods after the US, and Taiwan enjoys the biggest sum of trade surplus among all main land's trade partners.<sup>119</sup> Due to a low-cost production base in China, nearly 30 percent of Taiwanese computer related products are manufactured in main land China. According to Taiwan's Institute for Information Industry, over 70 percent of information technology (IT) hardware produced in the mainland is from Taiwan invested plants, and the PRC would surpass Taiwan in 2000 to become the third largest IT hardware producer after the US and Japan.<sup>120</sup> The Taipei press reported that firms of both sides have been actively discussing a common standard for third generation mobile phones for common use. The Shanghai press has reported that the PRC has agreed to Taiwan's China Airlines acquisition of a 25 percent stake in Shanghai-based China Cargo Airlines, and Taipei is considering authorising Taiwan banks to establish representative offices on the mainland.<sup>121</sup> Under the intense pressures from industries in Taipei, the Taiwanese authorities are considering a liberalisation of the regulations governing investments on the mainland.

As with the trade and investment ties, transportation links between the two have evolved gradually. As early as 1979, Beijing called upon Taipei to conduct direct shipping. In 1988 Taiwan authorities permitted both foreign freight and passenger ships travelling between Hong Kong and Okinawa to ply the Strait. In 1995 Taiwan allowed mainland

containers to enter Taiwan on foreign ships. In April 1997 the so-called “point-to-point” cargo transportation link across the Strait began, with six Taiwan ships and five mainland carriers approved to use the link. In August 1998 the mainland’s foreign-registered vessels began to operate a route from the mainland to Jilong, and on to Hong Kong, Manila and Wellington. A significant step recently is the “mini three links” legalising trade, mail, and transportation links between the offshore islands (Jinmen and Mazu) and adjacent mainland ports. On January 2, 2001, ferries from Jinmen and Mazu made round trips to nearby Xiamen and Fuzhou—the first legal transits since 1949.

With political dialogues stalled, the reunification of the two sides of the Taiwan Strait remains a big problem, affecting regional security as a whole and regional SLOC security in particular. Three scenarios exist regarding its future developments. Scenario one is the maintenance of the status quo. Taipei will not declare independence, and Beijing will not resort to force. But without any confidence-building measures, any existing unstable factor will cause tension. Scenario two is an incremental process towards reunification from economic integration to political integration. But it is a very long process, and would take several decades. Thus patience is needed. Scenario three is Taiwan’s unilateral independence leading to mainland’s resort to force and military confrontation. This would certainly have devastating effects on Asian Pacific security including SLOC security. American military involvement would further exasperate the case. It is clear that serious efforts should be made to avoid scenario three, which is not in anyone’s interests.

China sincerely hopes for a peaceful reunification with Taiwan, but in the face of growing separatism in Taiwan, it is also making military preparations in case of need. China has been engaged for some time in a military buildup across the Strait. Its army reportedly has deployed increasing numbers of M-9 and M-11 short-range ballistic missiles opposite Taiwan, with 50 added each year to the 200 already in place. China’s military buildup mainly serves as a deterrent to Taiwan’s independence.

Several military options exist for Beijing to take, but they are actually

limited in effects. Option one is the invasion and occupation of Taiwan. It involves achieving secure sea-lane control of the Taiwan Strait, and air superiority over the battlefield. China might face not only Taiwan's own air force, but also US forces. "Thus, the question of a Chinese invasion of Taiwan is predicated on China's ability to suppress air activity originating in Taiwan, to force US naval forces out of effective operational range of the theatre, and to render non-Taiwanese based aircraft ineffective."<sup>122</sup> It is neither clear that the Chinese military has the ability to achieve the precondition for an invasion—sea lane control, nor clear that China is in a position to secure its own airfields, which are within the Taiwanese theatre of operations, from US/Taiwanese air attacks and cruise missiles.

Option two "would be a short, Kosovo-like missile campaign intended to devastate Taiwan's economy—either by direct strikes on sites in Taiwan, or by disrupting shipping lanes."<sup>123</sup> But the economic shock that would follow would be huge. China would be isolated diplomatically and most exports to the US and other major markets would halt.

Option three is naval blockade. China has enough ships to enforce a quarantine, but coordinating such an action is very complex, and blockades are easier to circumvent than to sustain. A Rand report released in December 2000 argued a submarine blockade or missile attack against Taiwanese ports, to strangle the export-import based economy, could be maintained for only a short period.<sup>124</sup> Moreover, the blockade would affect international navigation, and American naval forces might intervene.

Option four is to wage information warfare. Following the 1991 Gulf War, China initiated a full-scale campaign to develop its information warfare capability at strategic, operational and tactical levels as part of its overall military modernisation efforts. But it involves risks for China. Taiwan possesses sophisticated information warfare capability of its own, making China's own computer networks vulnerable to potential counterattack. The PLA lags behind a number of militaries in the computerisation and integration of combat systems.

All these options would not solve the reunification problem, but rather

would produce counterproductive effects on the reunification. It would arouse opposition from the world community and hurt the mainland's own economy and modernisation. In fact, the nature of PRC policies toward Taiwan is political rather than military. The March 2000 election of the Democratic Progressive Party (DPP) candidate Chen Shui-bian in Taiwan pushed Beijing to keep up the pressure on Taiwan, but the rhetoric is no indication of real action. Some military people in the mainland might prefer military action, but the political leaders have to balance the gains and losses. A fundamental principle is that reunification should not override modernisation. Beijing sources report that after re-evaluating its stance toward Taiwan at the annual retreat at the seaside resort of Beidahe in early August 2000. Chinese leadership reached consensus that as long as Chen Shui-bian does not declare independence there would be no need to apply military pressure on Taiwan and Beijing could continue to watch Chen's actions.

The new Bush Administration, while holding in abeyance the sale of Arleigh Burke-class destroyers outfitted with the top-of-the-line Aegis radar, announced on April 25, 2001 that it will sell advanced weaponry worth \$ 4 billion to Taiwan including four Kidd-class destroyers, eight diesel-powered submarines, and 12 P-3C Orion submarine-hunting aircrafts. This is the biggest batch of arms sales by the US since 1992. The provision of this weaponry might help harden Taiwan's stand on the refusal of reunification, precipitate an arms race between Taipei and Beijing, and ignite another crisis in the Strait. US arms sales to Taiwan have remained at high levels in the 1990s, and have amounted to \$ 20 billion since 1992. Washington needs to be aware that Taiwan, following the Israeli model, wants to gain a certain level of self-determination through an expanded military capability. "Taiwan doesn't want to have to rely on the political vagaries of a divided US government for its national survival," and "Taiwan wants to be free of Washington's leash."<sup>125</sup>

Big differences exist between China and the US on the Taiwan issue, but common points exist between them, and actually override their differences. They both hope for a peaceful solution of the issue, and stand for an avoidance of direct confrontation. The common points

offer them room for negotiation. If US enmeshed in a war with main land China by Taiwan, it would hurt both the US and Chinese interests. There is no reason for them to enter into military confrontation. As Lee Kuan Yew of Singapore said, “if the relationship between China and the US remains stable, Asia would continue to enjoy economic growth for the coming two to three decades”.<sup>126</sup>

Though peaceful dialogues between the two sides of the Taiwan Strait might not take place soon, tension in the Taiwan Strait remains rather low, and there is no reason to expect serious friction to recur in the foreseeable future. In recent months, Beijing has shown several flexibilities regarding the Taiwan issue. The significant one is the flexible three-point position formulation on one China by Vice Premier Qian Qichen: “there is only one China, Taiwan and the Mainland are both part of China, and China’s sovereignty is indivisible.” This shows Beijing’s respect for Taiwan’s demand for equal status, and could become an important element in the search for resuming reunification dialogue on an equal basis. Besides, Beijing states that once dialogues resume, all issues could be discussed. Academics in China now are very active in making suggestions for a breakthrough. It was reported that a conference was held in mid-November 2000 in Hangzhou with the participation of more than 20 specialists on the Taiwan issue. The conference focused on discussing the contents of the one China principle. They suggested it should include three elements: “the sovereignty of China belongs to the mainland and Taiwan, and is shared by the people on the two sides of the Taiwan Strait, before the reunification. The administration of sovereignty should not reach Taiwan, if Taiwan clearly recognises one China and pledges to give up all independence ideals and separation activities. Beijing will be committed to achieve reunification by peaceful means, thus giving up the resort to force for reunification.”<sup>127</sup>

Overall, the situation in the Taiwan Strait would be predictably calm, the status quo would be maintained, and regional SLOC security would be guaranteed. With confidence-building measures, occasional tension in the cross-Strait relations would be diffused. Those who claim the inevitability of military confrontation in the Strait are too pessimistic

and over-worried.



## PART 8

### *Regional SLOC Security Cooperation and China's Initiatives*

As almost all of the Asian Pacific countries depend on the seas for survival and well-being and share their key sea lines, the safeguard of regional SLOC security is in the interests of all and regional SLOC security cooperation is the ideal front for initiating regional security cooperation.

Only by collective cooperation among regional countries, can regional SLOC security be guaranteed. As oceans are an integral whole, no country can defend the wide radius of the sea lines by itself. In many ways, SLOC is the classical multilateral maritime security interest, and provides the most basic demonstration of how a nation's maritime security interests extend beyond its own waters. Japan needs secure sea lines between itself and Southeast Asia and the Middle East, and "no one in Asia, including the Japanese, wants Japan itself to do the job of guaranteeing the security of those sea lanes."<sup>128</sup> China needs the sea lines, and no one wants China to defend the sea lines either, not to mention China's inability to do the job. China has shared security interests and the willingness to work together with others in defending SLOCs.

There have been several regional official and semi-official organisations engaged in maritime security issues. APEC has been involved in recent years in furthering cooperation in shipping and maritime safety. The Transportation Working Group under APEC has taken a number of initiatives to facilitate maritime commerce. The ARF has also started to move into the area of maritime cooperation. It invited the US and Thailand to co-chair an ARF Maritime Specialists meeting in Honolulu in November 1998. The Western Pacific Naval Symposium and its associated workshops have led the way in operationalising maritime cooperation including SLOC protection among regional navies since its inception in 1988. The Council for

Security Cooperation in the Asia Pacific (CSCAP), which is supposed to be the premier institution of track-two processes to support ARF, has been rather active in promoting maritime cooperation. The Maritime Cooperation Working Group under CSCAP drafted in December 1997 “Guidelines for Regional Maritime Cooperation” and forwarded the Guidelines to the ARF chairman as CSCAP Memorandum No.4. The Guidelines establish general principles of regional maritime cooperation in various maritime areas, and lay the basis for further development of regional cooperation.

But what lacks in the region is a region-wide institutionalised and authoritative maritime cooperation mechanism taking SLOC security as its priority. In spite of its deficiencies, ARF at present is the main pan-Asia-Pacific official multilateral security dialogue and cooperation forum, and has successfully brought together regional leaders. My suggestion is that regional SLOC security cooperation might fall within the framework of ARF, and that the regional maritime cooperation mechanism could be set up under it.

Regional maritime cooperation could be focused firstly on maritime confidence-building measures, including information and transparency measures, and incidents-at-sea (INCSEA) agreements, and then gradually proceed to deal with territorial disputes and overlapping claims. As Asian navies have generally moved further offshore over the past decade to protect the SLOCs, INCSEA agreements merit serious consideration. In consideration of the geographic disparities in the region, multilateral subregional INCSEA agreements are needed for Northeast Asia, Southeast Asia, and the Indian Ocean.

China supports regional security dialogue and cooperation and stands for enhancing mutual understanding and trust through governmental and non-governmental channels in a step-by-step manner. Chinese representatives have attended official or unofficial meetings within the framework of ARF. “China has proposed to establish an ARF marine information and data centre, encouraged exchange of high-level military visits and port calls by naval vessels, as well as exchanges of military personnel, and supported cooperation in emergency rescue and disaster relief, safety in maritime navigation and marine environmental

protection.”<sup>129</sup>

Some misunderstanding exists in world circles regarding China's attitude in participating in multilateral security cooperation. Some doubt China's support of multilateral dialogue, and some doubt China's sincerity in observing internationally acceptable rules. In fact, as China has just begun to be integrated into the world community, it takes time for China to be accustomed to rules-based systems of international issues management. Besides, China's foreign policy is under adjustment. It is true that China has traditionally shied away from the multilateral approach, but things are changing, just as is China's attitude toward UN peacekeeping operations. China has dispatched 15 civilian policemen to the UN Transitional Authority in East Timor, the first time China has ever done so.

In defending regional SLOCs and in bringing about regional SLOC security cooperation, China is duty-bound to play an active and positive role and to make its due contributions. The following are my suggestions for China to take:

- China should clarify its interpretations over relevant UNCLOS stipulation, reconsider those of its positions not in conformity with UNCLOS, and contribute towards a unified understanding and interpretation of UNCLOS among regional countries. For example, China needs to reconsider and give up the nine-dashed intermittent line in the South China Sea. China might also reconsider its position on the principle of natural prolongation of land territory in delimiting the continental shelf in the East China Sea in view of the present world emphasis given to the application of the median or equidistance line in the continental shelf demarcation. China needs to clarify its stand on 'certain historical rights' mentioned in its law on EEZ and continental shelf. China might as well reach a consensus with regional countries regarding the application of freedom of navigation, especially the application of the regime of innocent passage, transit passage, and archipelagic passage in regional waters.
- China should take the initiative to negotiate and sign agreements on maritime boundaries with its neighbouring countries. Until now, the

first maritime boundary agreement China has is the one with Vietnam in the Gulf of Tonkin signed in late December 2000. China might step up its efforts to negotiate and reach a maritime boundary agreement with Japan in the East China Sea. The Senkaku (Diaoyudao) Islands could be enclaved and put aside first so as not to affect the boundary demarcation. Differences over each other's baselines of territorial seas could be first solved during the boundary negotiations.

- In respect of the Senkaku (Diaoyudao) and the Spratlys (Nansha) disputes, China might consider the acceptance of third-party assistance for the settlement of disputes. This would be much better than indefinite procrastination. Third-party assistance may take several forms: the adjudication by the International Court of Justice, the arbitration by an arbitral tribunal or an arbitrator, and the mediation by a conciliation commission or a conciliator. Since China holds that it has enough evidence supporting its sovereignty claims, it may go to the International Court of Justice for the adjudication. This move of China would allay the suspicions and apprehensions of the world community. If China could show its flexibility in this regard, it would be a great step forward in the settlement of regional islands' sovereignty disputes, and in the safeguard of regional SLOCs.
- China should spare no efforts to solve the reunification with Taiwan by peaceful means. At present the two sides of the Taiwan Strait should try to set up a mechanism for confidence-building measures and crisis-prevention.
- China should further increase its military transparency regarding defence policy, military doctrine and strategy, security concerns, military organisation, force structure, military expenditures, military deployments, weapons acquisition, future development plans, etc. Information on its naval buildup and naval strategy should be particularly transparent. China should actively support and implement the maritime confidence building measures (CBMs) which have already been agreed upon or been discussed. Bilateral and multilateral naval exchanges among regional navies need to be

promoted. The US-China “INCSEA” (avoidance of incident at sea) agreement should be well implemented, and similar agreements with other countries be signed.

- China should work out with other regional countries detailed cooperative approaches for the maintenance and protection of sea lines. They might include humanitarian assistance, search and rescue (SAR), anti-piracy, maritime surveillance, and mine counter-measures. China should actively participate in joint naval exercises and joint patrol, which is now under discussion, to deal with piracy and drug-trafficking in the South China Sea. China should strictly abide by the coming Code of Conduct in the South China Sea.
- As the supply of energy and its unimpeded transportation becomes one of the major security concerns in the region, the ways of guaranteeing oil and gas import transportation should be given a special attention in regional SLOC security cooperation. In time of crisis, regional countries are likely to take separately strong and decisive actions to maintain the flow of their energy imports. Thus earliest agreements on cooperative approaches are preferable.
- A stable and amicable tripartite political relationship should be maintained among US, Japan, and China for regional peace and security as a whole and for regional SLOC security in particular. Confrontation among them would only make the Asia Pacific destabilised and regional SLOCs insecure. Apart from the initiatives from the US and Japan, China should do its part in making the trilateral relationship secure and smooth. China should support the establishment of a regular security consultation mechanism among the three.

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