



COUNCIL FOR  
SECURITY COOPERATION  
IN THE ASIA PACIFIC

# CSCAP



## REGIONAL

# SECURITY OUTLOOK

# 2017

# COUNCIL FOR SECURITY COOPERATION IN THE ASIA PACIFIC

Established in 1993, the Council for Security Cooperation in the Asia Pacific (CSCAP) is the premier Track Two organization in the Asia Pacific region and counterpart to the Track One processes dealing with security issues, namely, the ASEAN Regional Forum (ARF), the East Asia Summit (EAS) and the ASEAN Defence Ministers Plus Forum. It provides an informal mechanism for scholars, officials and others in their private capacities to discuss political and security issues and challenges facing the region. It provides policy recommendations to various intergovernmental bodies, convenes regional and international meetings and establishes linkages with institutions and organisations in other parts of the world to exchange information, insights and experiences in the area of regional political-security cooperation.

## **Front cover image**

The Musudan missile, an intermediate range ballistic missile based on a Soviet-era design that North Korea has under development.

Source: Reuters

## **Back cover image**

Bamboo Bridge over a tributary of the Nam Song River near Vang Vieng in northern Laos.

Source: Jan Huisken

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## **LETTER FROM THE CO-EDITORS**

On behalf of CSCAP, we are pleased to present the CSCAP Regional Security Outlook (CRSO) 2017. Inaugurated in 2007, this is the tenth annual CRSO volume. The CRSO brings expert analysis to bear on critical security issues facing the region and points to policy-relevant alternatives for Track One (official) and Track Two (non-official) to advance multilateral regional security cooperation. The views in the CRSO 2017 do not represent those of any Member committee or other institution and are the responsibility of the individual authors and the Editor. Charts and images in the CRSO 2017 do not necessarily reflect the views of the chapter authors.

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# The Outlook for Security in the Asia Pacific: Adverse Trends Gaining Momentum

Ron Huisken

It is a melancholy fact that, a decade hence, security analysts are likely to cite the current period as a recent example of realism at work. It is a source of melancholy because both principals – the United States of America and the Peoples Republic of China – believed themselves to be too wise and wily to stumble into a replay of the Sparta-Athens drama but now stand exposed as international actors capable of exactly that. The first eight papers below all confirm this in various ways.

The United States saw what China could become way back in the mid-1990s but elected, as the unipolar state, to play it cool, welcoming China into the club of major powers and counselling it to find its niche in a peaceful and stabilizing manner. A decade later, when China's spectacular relative gains had become only too clear, Washington continued to feign indifference but, as a precautionary measure, began to discreetly hedge its bets, including through basing more aircraft carriers, ballistic missile and hunter-killer submarines in the Pacific rather than the Atlantic.

For its part, China matched Washington playing it cool, by stressing relentlessly that it had studied the experience of past rising powers with great care. China insisted that it had the wisdom and experience to avoid the destabilizing mistakes other rising powers had made. The associated narrative of peaceful development began to taper off rather conspicuously during the second term of President George W. Bush. From around 2009, as the Obama administration came to terms



ASEAN summit 7 September 2016. Source: ASEAN.org.

with the full economic, political and psychological fallout of the Iraq war and the GFC, it encountered a China that was more confident and more prepared to press for change.

Geopolitical contention, so stoutly denied over a number of years, intensified markedly, and was at last more openly acknowledged. Fortunately, any tilt in the balance of power and influence in Asia is likely to be neither quick nor decisive. Although the drift of the US-China relationship toward difficulty and coolness inescapably heightens the risk of inadvertent incidents, neither side has any interest in conflict. For one thing, the trade and investment relationship delivers enormous benefits to both sides. Secondly, the balance in military power remains starkly favourable to the United States. Thirdly, both powers are conscious of their exceptionalism and will strive to ensure that their future status is not stained indefinitely by perceptions of having succeeded through bullying, coercion and other practices unworthy of truly great powers.

In the broadest terms, the outlook for the Asia Pacific is for a prolonged period of geopolitical contestation that will at best yield gradual change and probably feel like a hazardous stalemate. This will occur against the back-drop of a broader sensation that the constellation of circumstances that produced decades of comparative order and stability, and managed a peaceful end to the Cold War, is now badly eroded and in need of significant repair and/or re-configuration. Russia's new prominence as a security actor as well as the on-going stresses that stem from Islamic extremism are important in this regard.

Finally, the recent elections in the US have unexpectedly transformed America into a major new source of uncertainty. President-elect Trump takes an essentially commercial approach toward the merits of alliances, is hostile to freer trade and insists that the US must counter Chinese manipulation of the value of its currency to distort trade and investment flows to its advantage. The incoming administration will almost certainly be less radical than the campaign rhetoric would suggest.

That said, we should anticipate that the United States will present a new mood and a new orientation that will in many respects be broadly representative of that rhetoric. Moreover, as the United States is still unambiguously the largest economy in the world, has championed freer trade throughout the post-war period and anchors a network of alliances still perceived to be an essential part of the fabric of security, particularly in Europe and Asia, even the serious possibility of significant change in direction or emphasis on these fundamental issues will have far-reaching consequences.

The new mood and orientation might, for example, be a more self-centred America that is less hung up on being the recognized leader of the international community and therefore more deaf to allies, friends and even others that still want to rely on a Washington that cares deeply for that role and the policy interests and postures attached to it. This America may signal a more distant and looser security relationship with wealthy allies in Europe and Asia and an associated tolerance of stronger and more independent security postures on their part, up to and including nuclear weapons. Just how such changes in American priorities would play out over time in our wider region is anyone's guess but there can be little doubt that it would test the region's capacities to preserve good order and stability. For one thing, we have in China a state that has the capacity and has clearly signaled its willingness to provide a form of leadership in the region quite different from the Pax Americana that has become so familiar over the past 70 years.

A Trump administration does not materially change the grounds we have to be confident that open conflict in the Asia Pacific is very unlikely but would it be smart to be content with such a prospect? The Asia Pacific now

has no more important business than to address what will or should be the shape of this new order and determine how to get there peacefully. The US and China have had great difficulty addressing this challenging task effectively. Indeed, as argued above, it would appear that they have been losing ground in recent years. There may be merit, therefore, in a small coalition of other resident powers offering an independent view on the desirable characteristics of a future regional order and on the modalities of both achieving these characteristics and making them durable. This would be an exceedingly difficult – and possibly politically hazardous – undertaking. There could well be a role for Track two processes such as CSCAP to help spark such an undertaking.

It can do no harm for the biggest states to be reminded that others also see 'high stakes' in the outcome. Similarly, such an exercise would help a wider group of states to appreciate the difficulties involved and to be more constructive participants in the on-going business of building a flexible but resilient regional community characterized by reassuring checks and balances on the power of individual states. Not least, it would assist states in meeting a key leadership responsibility, namely managing public expectations and public images of other states. The East Asia Summit suggests itself as a forum that could play an important part in such an enterprise.

In the meantime, we have two focal points for contestation that constitute a growing menace to the peace and stability of our region. Over the longer term, both need to be defused in a manner that develops and reflects the parameters of an enduring regional order. The more immediate priority is to agree on ways to change the current trajectory of these disputes so that they begin to trend in the direction

of dialogue, cooperation and stability.

## **Korean Peninsula**

The 1950-53 conflict on the Korean peninsula both emphatically confirmed the state of Cold War between East and West and proved to be an inexhaustible source of belligerence and tension. The Korean peninsula has long had the dubious distinction of being the most highly militarized real estate in the world. Moreover, the forces on and around the peninsula are kept in high states of military readiness and exercise sustained vigilance. The relentless hostility that has characterized relationships on the peninsula is difficult to comprehend, especially after more than 60 years. On several occasions over these decades, the peninsula has hovered at the edge of renewed open warfare, testing the patience, resolve and diplomatic skill of all the immediate players but especially that of the US.

This state of sustained anxiety in a highly militarized environment, now faces the prospect of the DPRK conducting its affairs while possessing a functioning but rudimentary and possibly quite fragile and erratic missile-based nuclear weapons capability. Setting aside the possible ramifications of this development for the integrity of the nuclear non-proliferation regime, the political and military anxieties that characterise the peninsula will then be intensified very sharply indeed and pressures to pre-empt will follow suit. South Koreans, in particular, are confused, angry but, above all, in despair. Despite a seemingly debilitating sanctions regime, North Korea is accelerating its drive for an operational nuclear arsenal while the South deals with an acute domestic political crisis, the abject failure of a sustained strategy to persuade China to get tough with the North, and the prospect that the US may find it harder to give its undivided

attention to the Korean peninsula when circumstances demand it. These are the considerations that led to the Korean peninsula being highlighted in this Outlook as the most acute security challenge confronting our region. There is an urgent need to either reverse the DPRK's nuclear weapon program or to build more resilient political relationships, especially between the two Koreas.

## South China Sea

This issue has arisen somewhat surreptitiously. Most states, if they focused on the issue at all in the period before China's 'reform and opening up' began to bear fruit, may have been doubtful that China, as the more distant littoral state, would be fully determined to pursue its historic claim to the greater part of the South China Sea. Indeed, China may itself have been ambivalent at times on whether it could or should pursue its claim with the adamancy that it felt had to attend all issues concerned with sovereignty. After all, claiming exclusive ownership and effective administration of features in a semi-enclosed sea – none of which has in all of history naturally attracted permanent human habitation and nearly all of which are submerged at high tide every day - must have been regarded with some bemusement by the other littoral communities 2000 years ago as well as more recently.

Whatever the circumstances are eventually revealed to have been, the South China Sea issue has been in the vanguard of the more assertive posture that China has presented to the world since around 2009. This assertiveness peaked in 2014-15 with the frantic but spectacular conversion of seven low-tide elevations in the Spratlys into substantial artificial islands, some with airstrips and harbours and, therefore, military potential. Then, in July 2016, came the award of the Arbitral Tribunal on issues raised by the Philippines on maritime rights in the South China Sea.

As former Australian Foreign Minister, Gareth Evans observed, the Tribunal's award 'cut the legal heart out' of China's position on these matters.

China had pre-emptively declared the Tribunal, and any judgements that it might make, to be invalid and therefore of no consequence. However, although China continued to quietly develop the capacities of its new artificial islands, it avoided any further actions in the area that symbolized exclusive ownership and control. And, for good measure, Beijing appeared to signal that it had found a new and quite different international preoccupation, namely, the One Belt, One Road initiative. The other states directly involved have been similarly careful to avoid exacerbating a tense situation. While there have been no formal changes in position, we did see positive changes in the atmospherics of some relationships, notably that between Manila and Beijing.

The region has been left holding its breath on this issue. China may see the island-building blitz as transformative and irreversible, calculating that no other interested party will find the will and the means to put these gains at risk. This is not a stable situation. Nor is it desirable as a template for how issues should be addressed and resolved in the Asia Pacific (or Indo Pacific) of the future. This issue could provide an immediate focus for the coalition of 'middle powers' mentioned above. That group might identify the rules, principles, and conventions that could underpin a stable and resilient regime for the South China Sea. The widespread hope, confirmed by the views expressed in this Outlook, is that the confluence of the Arbitral Tribunal award and the ramifications of the aggressive erection of artificial islands will alter the political calculus in key capitals and give new traction to one or more of the collegiate ways forward identified in these pages.

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## Challenges to U.S. Leadership—Abroad and at Home—Portend Greater Uncertainty for the Asia-Pacific

### Bates Gill

In 2009, on his first trip to Asia as president, Barack Obama declared, “There must be no doubt. As America’s first Pacific president, I promise you that this Pacific nation will strengthen and sustain our leadership in this vitally important part of the world.”

In the wake of that statement, America’s ‘pivot’ or ‘rebalance’ to the Asia Pacific aimed to boost American influence in the region by focusing more attention and resources on the region. This included deepened economic interaction, greater diplomatic engagement, stronger promotion of human rights and democratisation, and an increased U.S. military presence and military-to-military exchanges. The ‘rebalance’ has been one of the Obama administration’s most prominent foreign policy initiatives.

The policy has seen many successes, and it is not difficult to see why. American engagement in the Asia-Pacific is not only a strategic imperative for the United States, but is also encouraged and welcomed by most of the region.

However, the rebalance now seems stalled and that is not good news for regional stability and security. The past year has been an especially difficult one for U.S. policy in the Asia-Pacific.

Looking ahead, the next U.S. administration and Congress will have a lot of work to do to sustain and fully realise the benefits of deeper strategic engagement in the Asia Pacific. It is critically important to understand that not all the challenges emanate from the region. Many of America’s challenges are self-inflicted meaning

big changes will be needed at home as well.

Looking abroad, it is clear the Asia-Pacific has become a more difficult arena for U.S. leadership. In spite of tightening sanctions, North Korea has doggedly pursued a nuclear weapon and the means to deliver it against regional neighbours, including the United States. In 2016, North Korea conducted its fourth and fifth nuclear tests and carried out multiple ballistic missile tests, including one from a submarine.

America now faces a regime in Pyongyang with a nascent nuclear-weapons capability and next to no intention of bargaining it away. Meanwhile, Beijing has begun to show even greater reluctance to pressure Pyongyang to rollback its provocative nuclear and ballistic missile programs. The Chinese leadership continues to see the maintenance of the Kim Jong-un government and with it a modicum of ‘stability’ as the least bad of several bad options available at this stage.

As such, U.S. options toward North Korea are growing narrower by the day. If developments in North Korea continue on the current pathway, at some point in the next year or two, the U.S. administration will face a very difficult choice: either accept a rudimentary North Korean ability to deliver a nuclear weapon against U.S. and allied targets, or do something to forcibly prevent that outcome.

In Southeast Asia, newly-elected Philippine President, Rodrigo Duterte, declared his country’s ‘separation’ from the United States and appears to have thrown in his strategic lot with Beijing. Domestic politics elsewhere in the Southeast Asia—such as in

Malaysia and Thailand—are likewise moving contrary to U.S. interests. With the death of Thailand’s King Bhumibol in October the Thai military looks all the more likely to govern, undemocratically, for the long-haul and has forged closer ties with China.

In Kuala Lumpur, the Najib government is dallying with hardline Islamists in order to buttress its diminishing popular support. Prime Minister Najib was in China in November and signed on to a range of deals, including on defence and military-technical cooperation with Beijing. These agreements included a deal to purchase littoral mission ships from China.

In the South China Sea, China’s island-building and positioning of military assets on those islands have gone largely unanswered. The sweeping rejection of the basis for China’s territorial claims in the South China Sea by the arbitral tribunal in The Hague has made little difference in altering facts on the (reclaimed) ground. In spite of calls by the United States and others that China abide by the tribunal decision, Beijing over the past 12 months has achieved more in asserting its power and presence in the South China Sea than it could have possibly expected when the year began—all the more so as President Duterte discarded the arbitral ruling and cut a deal with China in return for billions in Chinese economic assistance.

Come inauguration day on January 20, 2017, President-elect Donald Trump must deal with an increasingly divided and less-predictable Southeast Asia even as the region of 640 million people becomes an arena for competition between the United



President-elect Donald Trump campaigning in Arizona, 19 March 2016. Source: Gage Skidmore, Flickr.

States and China. China's growing economic and military clout creates formidable incentives for China's neighbours to strike a balance between Washington and Beijing. A lack of commensurate leadership and incentives on America's part makes it only easier for regional governments to hew this path.

China looms large across all the important security issues in the region, and will become even more influential diplomatically, militarily, and economically in the years ahead. The conundrum at the heart of U.S. policy toward China will become even more pointed for the next U.S. president: How to strike the right balance between cooperation and competition with China, all the while ensuring that competition does not bring the relationship to the point of crisis or conflict.

More broadly, how to strike this balance in a way which reassures

regional allies and friends about the American commitment and resolve to maintain stability but does not precipitate an unwelcome downward spiral in U.S.-China relations and—in a nightmare scenario for most Asia-Pacific governments—U.S. expectations that they choose sides.

This problem is certainly not going away. Beijing will continue to assert its influence and interests, through both hard and soft power means, in ways that will challenge and look to weaken American leadership around China's periphery.

Xi Jinping and the Chinese Communist Party leadership are unlikely to do anything rash as they will be primarily focused on the 19<sup>th</sup> Party Congress at the end of 2017. Xi will want to be sure he gets a strong mandate for his second five-year term and will try to install as many trusted acolytes as he can. If, as can be expected, he is largely successful in this effort, Chinese

leaders could be even more confident and risk-taking in 2018 and beyond.

But in many respects, challenges in the region are not the biggest problems Washington faces in the Asia-Pacific. Rather, many of the biggest challenges come from home, arising out of the American domestic political scene. The U.S. election campaign exposed a deepening chasm in American politics—not dissimilar from what has been on display elsewhere around the world. On one side of the rift are those who argue for more active American engagement and leadership in the world. On the other side are those who say America is already overcommitted, underfunded, and that an "America first" retrenchment is called for.

Looking to the Asia-Pacific region, the Trans-Pacific Partnership trade agreement (TPP), the economic cornerstone of the American rebalance strategy, has been an early casualty of

this divided political landscape. Both Hillary Clinton and Donald Trump vehemently disavowed it. With the victory of Donald Trump, it became quickly clear that the TPP would not be taken up by Congress during the lame duck session. With that decision, America's role in the TPP is over. At best, with the passage of time, President Trump may try to re-open negotiations with TPP partners, strike some new understandings and return the treaty to Congress for approval—but that is mostly wishful speculation at this point.

Donald Trump's scathing disparagement of American allies generally, and Japan and South Korea in particular, also reflect an emergent body of nativist opinion in the United States. These views eschew global commitments and demean the U.S. alliance system which is one of the most fundamental pillars of American influence and power abroad, especially in the Asia-Pacific.

Unfortunately, even though the presidential election has been decided, the United States is headed for a period of continuing divisiveness at home. The Trump administration will have enormous domestic debates to tackle. It will have to do so with half of the country in opposition to his presidency. Even his own party will be wary of his intentions. Congressional Republicans will fight hard for their prerogatives and ultimately their re-elections, so will not necessarily follow his lead in all things.

This divisiveness will also extend to foreign policy—the notion that partisan politics stops at the water's edge seems quaint and old-fashioned today.

As such, not only will America likely be consumed by domestic political wrangling, it will also have trouble forging bipartisan consensus on issues of American leadership, commitment,

and resolve in the face of challenges and opportunities on the international stage.

At this point, it remains unclear how the Trump administration intends to wrestle with these big issues. While it is normal for there to be some uncertainty about incoming US administrations, a Trump presidency is an entirely different matter as the outside world knows so little about his foreign policy thinking. As such, effective American leadership in the world and in the Asia Pacific is in doubt in unprecedented ways, a situation likely to persist well in to 2017 and perhaps beyond.

Regardless of the political bickering and uncertainty which now characterise the United States, the larger strategic stakes for America and the Asia-Pacific region are crystal clear. The challenges as well as the promising possibilities in the dynamic Asia Pacific region are too important to ignore or avoid. Strong and effective U.S. engagement in the region is an enduring strategic imperative for American interests. Moreover, such engagement makes a critically important contribution to the continued stability, prosperity, and positive sociopolitical development across the region.

But the events of the past year and the prospects for U.S. politics in the years to come raise serious questions as to whether American leaders fully appreciate this. If not, we are in for some rocky times ahead.

## **Bates Gill**

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# East Asia 2016: A Year of Destabilization

**Yu Tiejun**

In recent years, China has stressed the importance of amity, sincerity, mutual benefit, and inclusiveness in its neighborhood diplomacy. But the security environment facing China in East Asia deteriorated steadily over the course of 2016.

## Troubled Neighborhood

Even though China has continually demanded a denuclearized Korean Peninsula, North Korea has continued to develop nuclear weapons, conducting its fourth and fifth nuclear test on 6 January and 9 September 2016, respectively, plus a series of missile tests, both successful and unsuccessful. The tests posed a serious challenge to regional security as well as the international nonproliferation system. As North Korea's closest neighbor and its nearly-exclusive source of economic support and energy assistance, China, again, became the focus of the world's attention. On 2 March, China voted to pass the Resolution 2270 of the UN Security Council that aims to further tighten the sanction against the North Korea. China even arrested some businesspersons suspected of smuggling banned merchandise across the China-DPRK border. These actions were regarded as a sign of real change in China's policy towards the North Korea.

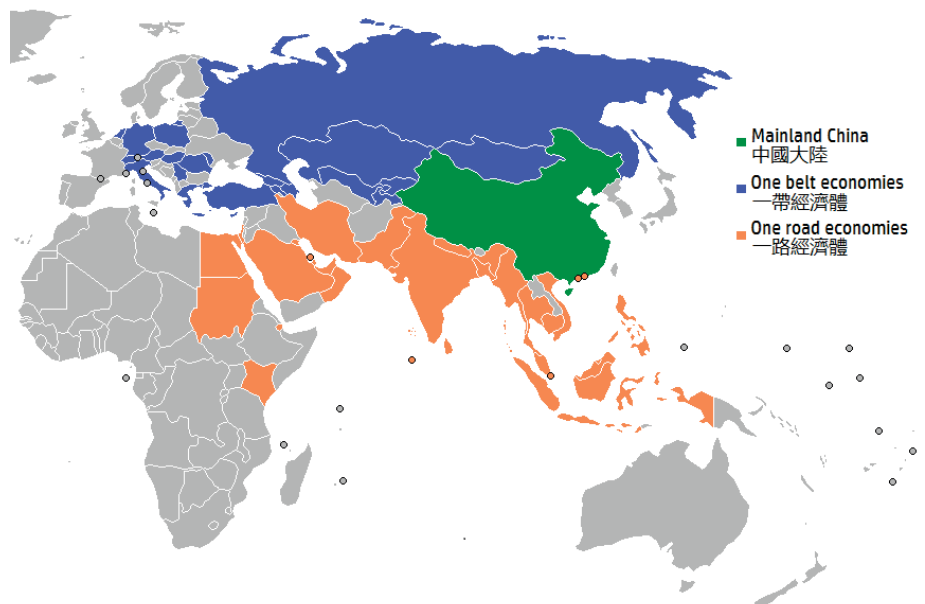
However, China's initial response to the DPRK's 4th nuclear test in January was regarded as both hesitant and weak. The hot line existing between China and the ROK seemed to not work for crisis management. It was only on February 5, 2016, almost one month after North Korea's fourth nuclear detonation that President Xi Jinping held telephone talks with Park

Geun Hye. Xi once again stressed that China was firmly committed both to realizing the denuclearization of and to safeguarding peace and stability on the Peninsula. Park replied that the ROK hoped the international community would enhance its coordination and that the UN Security Council would respond as soon as possible so as to effectively deal with the current situation on the Korean Peninsula. Worried by North Korea's increasing nuclear capability, ROK also began to consider the Terminal High Altitude Area Defense (THAAD) deployment issue with the US, which has been a security concern between China and ROK for many years.

China was deeply worried about this. On February 16, 2016, Vice Foreign Minister Zhang Yesui stated that China was gravely concerned over the announcement made by the US and the ROK to launch discussions on the deployment of the THAAD missile defense system in the ROK. Zhang said that THAAD deployment would escalate tensions in the region, damage China's strategic security interests, and

also jeopardize the security interests of other countries in this region. China was explicitly opposed to such actions and expressed hopes that the relevant parties would give China's concerns serious consideration and act with corresponding prudence.

China's warning was largely ignored. On 8 July, South Korea decided to allow the US to deploy THAAD missile defense battery on its territory by the end of 2017, which prompted harsh and immediate condemnation from China. A few days later, the ROK government disclosed that the battery would be deployed in Seongju, about 220 kilometers southeast of Seoul. From the perspective of China, the deployment of the THAAD radar raises several serious concerns: (1) the radar is clearly technically capable of observing ballistic missiles deep within Chinese territory; (2) the radar could directly observe the launches and relay information back to the US long-range national missile defense system in the event of actual Chinese missile launches; (3) China likely views the deployment of THAAD as a significant



A representation of the One Belt One Road initiative. Source: Wikimedia commons.

step toward an integrated regional ballistic missile defense system such as European Phased Adaptive Approach; (4) the THAAD deployment could be a further step towards greater cooperation in missile defense between ROK and the US and the integration of ROK into a US-led East Asian missile defense system.<sup>1</sup> These concerns are more strategic than technical issues.

The THAAD controversy is still ongoing, and the possibility that China, the US and ROK may negotiate some compromise cannot be ruled out, but the issue itself has caused significant damage to the strategic trust that had been gradually built up between China and the ROK in recent years. China's relationship with South Korea under President Xi and President Park, which had been acclaimed as the best example of China's 'neighborhood diplomacy' in the past several years began to stumble, and it is unlikely to warm up in a short term. Compared with the security situation on the Korean Peninsula, the Sino-Japanese relationship is another kind of headache. The bilateral relationship hit rock bottom in 2012 over the persistent territorial dispute surrounding the Diaoyu Islands and remained chilly until now. Although the Foreign Ministers, Prime ministers and even the supreme leaders have met with each other in several occasions, the absence of strategic trust is still very clear. According to both Chinese and international polls, strong majorities in both countries held a negative image of the other side.

Against this background, each side tends to view the other as a deliberate troublemaker and to decode the other side's policy and action with the logic of the worst case scenario in mind. The issue of Japan's new security bill, which took effect on 29 March, was regarded as threatening and destabilizing for East Asian security, fundamentally changing Japans'

'exclusive defense' policy, and possibly leading to the remilitarization of Japan in the future. The regular passage of China's navy through some channels and its accidental activities in some waters were regarded as provocative and malicious towards Japan without reason. The Maritime and Airspace Communication Mechanism Dialogue between the two militaries remained essentially dormant despite being revitalized in 2015. When President Xi Jinping met with Prime Minister Abe in Hangzhou during the G-20 Summit in September, he characterized the current Sino-Japanese relationship as having "now entered a key phase, where no progress means regression." It is really hard to make progress under the heavy trust deficit. In practice, a competitive security dynamic between the two countries is looming large in the East China Sea and even beyond.

Regarding the Cross-Strait situation, since Tsai Ing-wen took power in Taipei early this year, Mainland China and Taiwan seem to be sailing into troubled water. Unlike Nationalist Party leader Ma Yingjiu, Tsai Ing-wen declined to openly accept the 1992 consensus that Taipei and Beijing are part of one China, with each side interpreting what that means, which is regarded as the bedrock of Cross-Strait relations. As a result, cross-strait communications have encountered a political stalemate, and the way ahead is uncertain.

But the most eye-catching flashpoint of 2016 has been the South China Sea. On 12 July, 2016, the arbitral tribunal organized under the Annex VII of the 1982 UN Convention on the Law of the Sea (UNCLOS) ruled on the complaint brought by the Philippines that China's actions in the South China Sea had encroached on its maritime rights. The tribunal ruled largely in favor of Manila. Since the very beginning, China's position has been to insist that it did not accept

the arbitral process and would not participate in its proceedings, recognize any of its decisions or implement its demands. China thought that the nature of the case was, in fact, mainly about territorial sovereignty, and that sovereignty was beyond the scope of UNCLOS jurisdiction. Regarding maritime rights disputes, China filed a declaration in 2006 to exclude disputes concerning maritime delimitation from compulsory arbitration and other dispute settlement procedures. With the large-scale and fast-speed of land reclamation on several features owned by China, Beijing felt both legally and materially secure, and insisted that only direct bilateral negotiations, rather than third party mechanisms, could provide solutions to these maritime disputes.

Since Duterte became the President of the Philippines in June, the focus of the South China Sea confrontation between China and the Philippines actually began to move from the legal to the political and diplomatic arena. At the invitation of President Xi Jinping, President Duterte undertook a state visit to China from 18 to 21 October 2016. After their talks, the two leaders issued a Joint Statement which included 13 signed cooperation documents covering economy, trade, investment, production capacity, agriculture, news, quality inspection, tourism, drug control, finance, coastguard, infrastructure construction and other areas.

Article 40 of the Joint Statement was regarded as the most important because it addressed the South China Sea issue, declaring that "(b)oth sides affirm that contentious issues are not the sum total of the China-Philippines bilateral relationship. Both sides exchange views on the importance of handling the disputes in the South China Sea in an appropriate manner. Both sides also reaffirm the importance of maintaining and promoting peace

and stability, freedom of navigation in and over-flight above the South China Sea, addressing their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the Charter of the United Nations and the 1982 UNCLOS." In Article 41, both sides also commit to the full and effective implementation of the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) in its entirety, and to work substantively toward the early conclusion of a Code of Conduct in the South China Sea (COC) based on consensus.

As a consequence, China has shown some tolerance of foreign fishing activities in the waters surrounding Huangyan Dao (Scarborough Shoal). When asked by the media to comment on whether the Chinese coastguard permitted Philippine fishermen near the Huangyan Dao, China's Foreign Ministry Spokesperson Hua Chunying replied, "The Chinese side has always been exercising normal jurisdiction over Huangyan Dao. The situation there is and will remain unchanged. We have seen all-round improvement of China-Philippines relations following President Duterte's visit to China. Under such circumstances, the Chinese side makes proper arrangements based on the friendship between China and the Philippines in response to the issue of President Duterte's concern." Clearly, this posture is driven by political rather than legal considerations. It is likely that both China and the Philippines come back to Deng Xiaoping's wisdom of shelving sovereignty disputes in favor of joint development, and allowing the next generation to find a way out.

The US has continued its Freedom of Navigation operations near

the Chinese features in the South China Sea both before and after the arbitration ruling. The latest one took place on 13 Oct. 2016. Chinese naval vessels and planes took immediate action in response and warned the US warship away. Chinese Foreign Ministry Spokesperson Hua Chunying condemned it as highly irresponsible and provocative and warned that the Chinese side would continue to monitor closely the situation in relevant waters and airspace and take all necessary means to defend China's territorial sovereignty and maritime rights. It seems that both sides are unlikely to give in and thus make crisis management mechanism a useful policy instrument in their future encounters.

The arbitration ruling against Chinese claims in the South China Sea has hurt China's reputation and its relations with ASEAN countries. While holding its position on the arbitration, China started to repair its relations with ASEAN countries by signing The Joint Statement of the Foreign Ministers of ASEAN Member States and China on the Full and Effective Implementation of the DOC adopted in Vientiane on 25 July, 2016, and pledging its support for a COC in the South China Sea as well as stabilizing the region.

## **Intensified Geopolitical Rivalry, Deteriorated Security Dilemma and Increasing Internal Pressure**

How did China's supposed purpose of amicable neighborhood diplomacy and the outcome of China's East Asian policy become so disparate? Beijing blames the United States strategy of rebalancing its focus on East Asia, claiming that it encouraged its allies in this region to confront China, to keep China from challenging U.S. hegemony in this region. Instead, the United States and its allies said it was China's increasing assertiveness

that destabilized East Asia. Against this strategic background, conspiracy theories and worst case scenarios tend to thrive on both sides. This perception gap can be narrowed, if both sides choose not to see only the worst from the other side and if they pay more attention to crisis management and confidence building measures.

We are facing an East Asia blending intensified geopolitical rivalry, deteriorated security dilemma and increasing internal pressures resulting from rising populism, declining economy, fragmented societies and dis-functional decision-making mechanisms. Different countries may have different policy priorities but there can be no doubt that strategic self-restraint, especially by the major powers, strengthening crisis management mechanisms at all levels, revisiting cooperative security and CBMs, and building a multi-level, complex, open and inclusive regional security framework will all be useful objectives in a gradually destabilizing East Asia.

No country wants to be only feared by its neighbors. Americans may like to be called a benevolent hegemon, but China also wants to be a "big and amicable" country, as the late Chinese Premier Zhou Enlai said. For its part, China's overriding goal of peaceful development and national rejuvenation can only be fulfilled within a stable and prosperous East Asia.

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## The Defense Force of Japan Awakens to Address the Contemporary Security Environment

Hideshi Tokuchi

### Today's Regional Security Environment

Singapore's Ambassador Bilahari Kausikan, reminded us recently that we live in an age without inherent definition. A quarter century after the end of the Cold War, we still define our times by reference to the age that preceded it. This tells us that today's international security environment is opaque. We see not only the dark side of globalization but also traditional security challenges in the Asia-Pacific. Our region is simultaneously part of a "world society" without national borders, and of an "international society" of sovereign nation states.

Survival in this intricate environment mandates a dual approach. While traditional security challenges have to be addressed in a traditional way that recognizes that preserving a balance of power will be the basis of regional order, it is also the case that new forms of multilateral cooperation are necessary to address the dark side of globalization. This is the environment surrounding Japan.

Traditional security challenges in this region include territorial disputes in the South China Sea and the north-south division on the Korean Peninsula. When we look at this region from a non-traditional security perspective, we can point out the following:

First, proliferation of WMD and their means of delivery. North Korea's nuclear and ballistic missile developments are matters of serious concern. North Korean leader Kim Jong Un said in May 2016 that



Adm. Scott Swift, Commander of U.S. Pacific Fleet, inspects Japan Maritime Self-Defense Force sailors in June, 2016. Source: U.S. Pacific Fleet.

North Korea would consistently take the strategic line of pushing forward on the dual front of economic development and boosting its nuclear forces in terms of both in quality and quantity. On September 5, 2016, North Korea launched three ballistic missiles toward the Sea of Japan, which flew about 1,000km and fell at approximately the same point within Japan's EEZ. This demonstrated that North Korea was making important improvements in its missile capabilities and technologies. Four days later, it conducted its fifth nuclear test. North Korea later claimed said that it would be able to produce as many smaller, lighter and diversified nuclear warheads of higher striking power as it wants.

Second, this region is not free from the threat of international terrorism. In January 2015, when ISIL murdered Japanese nationals in Syria, it declared that Japanese nationals

would be their targets. The attacks in Dacca in July 2016 were a further reminder for the Japanese public that the terrorist threat remains very real.

Finally, threats to global commons originating from this region, such as the maritime domain, outer space and cyber space, are serious. In particular, recent Chinese actions on and over the East and South China Seas have caused grave concerns. China insists that the award of the Permanent Court of Arbitration (PCA) rendered in July 2016 on the South China Sea disputes between the Philippines and China is not valid and that China does not accept it. In the Sino-Japanese summit meeting in September, Japan's Prime Minister Shinzo Abe urged China's President Xi Jinping to seek peaceful settlement of the disputes based on international law, but President Xi told Prime Minister Abe that Japan was not a party to the South China Sea issue

and should exercise caution in its words and deeds in regard to that matter. Possibly in response to Japan's advocacy of the PCA award, a large number of Chinese fishing boats operated off the coasts of Japan's Senkaku Islands and China's law-enforcement vessels illegally intruded into Japanese territorial waters surrounding the islands in early August. It is difficult to expect that China will easily change its stance in respect to either the Senkaku or the South China Sea issue.

Two things could be regarded as crucial to addressing such a complex environment. One is a robust US presence based on the so-called hub and spokes security system in this region to preserve the balance of power. The other is the network of regional security cooperation.

The Japan-US Alliance is the most important spoke of the regional security system for a number of reasons. First, Japan and the US share essentially all the core security issues in play such as China, North Korea, Russia, and international terrorism. No other US ally shares all these issues with the US. Second, Japan hosts about 38,000 US troops. Japan is one of the few countries in the region which can provide a dependable stationing environment for US forces. Third, Japan is a mature democracy, and this fact constitutes the very basis of the Japan-US relationship.

The prevailing security system in the Asia-Pacific does not include the region's biggest economy, China. The stability that the system generates has become correspondingly fragile. It follows that involving China in security cooperation endeavours will be important for the region. Rapid globalisation provides an additional reason to have China in the framework of regional cooperation. As long as Chinese security interests overlap with those of others in the region, there is

no reason to exclude China.

The hub and spokes system can also provide an integral basis for a regional security cooperation network. In fact, bilateral cooperation between the tips of the spokes, such as Japan-Australia, and trilateral cooperation, such as Japan-Australia-US, is in progress. In short, the hub and spokes security system is the key instrument for regional security and the Japan-US alliance is the most critical element of that system. Accordingly, strengthening ties with the US sits at the top of Japan's security agenda.

## Reinterpreting Japan's Constitution and the New Security Legislation

The new interpretation of the constitution regarding the use of force, and the subsequent security legislation to embed the changes, gives Japanese forces authorization to engage in new missions. The more prominent examples of these new missions include, first, they can respond to an armed attack against a foreign country that is in a close relationship with Japan, although in a limited way. Second, in peacetime, Japanese forces can protect US assets engaged in intelligence, surveillance, reconnaissance (ISR) operations for the defense of Japan. Third, Japanese troops contributing to international missions, such as UNPKOs, can aid foreign troops operating in the same mission in the event they are assaulted. Fourth, Japanese forces can provide wider logistics support to foreign force units engaged in legitimate combat missions. Fifth, in emergency situations, Japanese forces may engage in operations to rescue Japanese nationals abroad.

The backdrop of these legal measures can be summarized in three crucial observations. First, the necessity to strengthen the alliance relationship with

the US. Although the US is obliged to defend Japan, Japan is not obliged to defend the US. Instead, Japan has the obligation to provide military bases to the US. The asymmetrical nature of the alliance has made it difficult to manage. It is becoming important to make it more symmetrical. Second, in today's globalized world, no country can achieve security single-handedly. This notion is particularly important for Japan, as it is heavily dependent on maritime trade. Third, preserving a balance of power requires not only the efforts of individual states but also an international effort to bring necessary forces together.

The security legislation has several important characteristics. First, this legislation, by enabling the exercise of the right of collective self-defense and also by enabling US asset protection, will contribute to making the alliance more symmetrical and thereby increase its credibility. Second, the exercise of the right of collective self-defense is limited even under the new interpretation, because it follows the basic logic of the previous interpretation. Specifically, measures for self-defense are permitted in inescapable circumstances pertaining to imminent unlawful situations where Japanese nationals' rights to life, liberty and the pursuit of happiness are fundamentally overturned, due to an armed attack by a foreign country. Here, the consistency with the previous interpretation is maintained and will help assure sceptical neighbors. Third, the new legislation not only underpins the right of self-defense and enhanced Japan-US defense cooperation, it also expands the opportunities for Japan to engage in multilateral cooperation. Importantly, this would even include cooperation with China in UNPKO's and other contexts.

The recent debate in Japan on the security legislation warrants some contextual observations. First, as noted by Professor Koji Murata, remarks by

some Japanese that glorify Japan's pre-war history cast the legislation in a negative light. However, the new security legislation has nothing to do with the history issue. The legislation is based on serious reflection on the past, but its focus and its effects lie in the future. Second, the overarching security policy of Japan had been set out in the 2013 National Security Strategy, but those who opposed the legislation often lacked a strong and comprehensive understanding of this key policy statement so the debate often became one-sided. The legislation needs to be understood as an integrated package grounded in the National Security Strategy. Third, those who opposed the legislation argued that the key concepts in it were too vague. Actually, they are abstract, but not vague. In addition, the legislation sets out strict procedures for giving orders to the Defense Forces for operations. Unfortunately, not everyone was prepared to approach it in this way.

## Strengthening the Japan-US Alliance

The Japan-US Alliance constitutes one of the basic pillars of the national security of Japan. The new "Guidelines for Japan-US Defense Cooperation", completed in 2015, could be regarded as the most remarkable achievement of the alliance in recent years. The new division of labor established by the Guidelines will make the alliance more symmetrical, and thus contribute to the strengthening of the relationship.

The US political commitment to the defense of Japan would be hollow if it were not undergirded by a framework for military cooperation. The 2015 "Guidelines for Japan-US Defense Cooperation" serve as the overarching political-military framework for alliance cooperation in the changing security environment.

The original 1978 guidelines aimed

mainly at providing the political-military framework for studies on contingency planning in the case of an armed attack against Japan. Since then, the Guidelines document has evolved, adapting itself to the changing environment. The character of the Guidelines renewed in 2015 are well expressed by five key words: "seamless," "effective," "whole-of-government," "partner," and "global." Through determined implementation, the new Guidelines will ensure that the Japan-US alliance will continue to contribute to regional peace and stability.

First, "seamless." As a means to demonstrate Japan-US joint resolve to cope with common security concerns, both countries need to cooperate in all imaginable contingencies: through peacetime, 'gray zone', and all-out military confrontation. It is increasingly important to cooperate in gray zone situations in order to avoid escalation. In addition, both countries need to expand the geographical horizon of cooperation and to include new strategic domains, such as outer space and cyber space.

Second, "effective." Timely response enabled by quick coordination and swift decision-making is critical to addressing contemporary threats. Therefore, the Alliance Coordination Mechanism is indispensable. Similarly, both sides need to give priority to laying the foundations for lasting cooperation, including interoperability and common situational awareness.

Third, "whole-of-government." Security and defense cooperation cannot be conducted by the military establishments alone. It must involve all relevant agencies of the respective governments, including law-enforcement organizations. The new Alliance Coordination Mechanism will ensure the unity of effort necessary to achieve a whole-of-government approach.

Fourth, "partner." In this globalized world, the networking of like-minded countries is more important than ever, and the Japan-US relationship must be appropriately positioned in this network. Thus, it is natural for both countries to advance shared goals by promoting deeper security cooperation with regional partners.

Fifth, "global." When the first Guidelines were established in 1978, they focused on joint operations in the event of an armed attack against Japan. Today, however, the context for bilateral defense cooperation is far broader. Reflecting the global nature of the alliance, it now encompasses such areas as counter-terrorism, counter-piracy and HA/DR.

In order to address both the traditional and non-traditional security agenda, Japan has engaged in an intense political effort to establish a new security framework by reinterpreting the Constitution and renewing the Guidelines for Japan-US Defense Cooperation. Together, this will contribute to preserving the balance of power in the region, enhance the deterrent value of the alliance, and also provide a basis for an enhanced multilateral security cooperation network. Japan has pursued these innovations as essential to its own security and is confident that they will have wider positive consequences for the region.

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## Russia in Asia and in the World: Back to the Future as a Great Power

**Victor Sumsky**

For the ruling Western elites, the year of Brexit and Donald Trump's victory in the US presidential elections was a horror show. Stunned as they are by these 'impossible' events, they have plenty of reasons to add one more point to their list of frustrations: just like in 2014 and 2015, they honestly tried but failed to do away with Russia as an independent force in global affairs. Having tried every trick in the handbook of subversion – be it economic sanctions, undisguised attempts to engineer regime change, hasty military buildup on the Russian borders or a campaign of hatred unprecedented in the modern era – they have achieved nothing meaningful. More than that, the overall effect of Western attempts to subjugate Russia is strikingly counterproductive.

Under massive external pressures, the country is restoring its great power status, and doing it in a way that nobody would have anticipated at the dawn of the Third Millennium.

Before presenting the arguments to support the view that in 2016 Russia continued to improve its position in Asia and the world, the author would like to share some observations about how and why the world has moved from what it used to be in the 1990s and 2000s, to what it is in the second half of the 2010s.

The global shift towards the multipolar world order was already under way during the late Cold War era. Once this era was over, the process continued within the framework of a unipolar system. Apart from a series of East Asian economic miracles and

the emergence of the EU with unified Germany at its core, the gradual transition towards multipolarity was epitomized by the rise of such giants as China, India and Brazil, plus Russia's recovery from the chaos of the 1990s. None of these four players (joined later by South Africa to form BRICS) was in the mood to boldly challenge the status quo. After all, it seemed more or less conducive to their continued progress. Nevertheless, the very fact that they were making progress was prompting the United States to hedge its pre-eminence through a set of preemptive and interventionist moves.

Thus, the former Soviet republics were systematically drawn into the US orbit. The foundation of strategic understanding represented by the US-Soviet ABM Treaty was unilaterally



Meeting of the BRICS during the G20 conference on 4 September 2016. Source: GovernmentZA, Flickr.

dismantled. New military bases and anti-missile defense facilities were installed in close proximity to Russian territory. By means of synchronized eastward enlargement of the EU and NATO, Russia was all but squeezed out of the European security system. All this was correctly read in the Kremlin as a variation on the theme of containment and a sign that Washington was not viewing Moscow as an equal partner. Russian President Vladimir Putin declared this in February 2007, in his famous speech at the Munich Conference on Security Policy.

Retaliation came in August 2008 in the form of an exemplary proxy war. Georgia, patronized by the United States as the next candidate for NATO membership, launched an attack on Russian peacekeepers in South Ossetia – only to lose this province, as well as Abkhazia, after a Russian counteroffensive, proving that dealing with Moscow in that manner was a way to disaster. Nevertheless, those who should have been concerned with this lesson preferred to ignore it. From that time on defining Russia and Putin as ‘bullish’, ‘assertive’, ‘expansionist’ and ‘aggressive’ became the daily norm not just of Western journalism but, increasingly, of political leaders.

The conclusions drawn by the Russians – not only officials, but a great majority of the people – may be illustrated by quoting one of President Putin’s expressive remarks: “Weakest goes to the wall” (Слабых бьют). In response to these challenges, the Russian government initiated a 10-year program of accelerated military modernization; identified the task of developing the Russian Far East and Siberia as “the national project for the whole of the 21<sup>st</sup> century” (another famous Putin’s formula), continued to pursue the economic reintegration of the post-Soviet space; and started looking more pointedly for new partnerships, both economic and political, in the dynamic Asia Pacific region. While the

EU has remained, up to the present, the biggest trading partner of the Russian Federation, Moscow and Beijing were steadily increasing and diversifying their links, with China becoming a major Asian destination for Russian oil, especially after the opening in 2012 of the East Siberia- Pacific Ocean pipeline system.

Although the Obama administration initially tried to convince both Russia and China that it was willing to improve bilateral relations, it ended up focused on cutting Russia’s linkages with Europe and creating a split between China and Asia. The first of the two objectives was to be achieved by concluding the US-EU agreement on Transatlantic Trade and Investment Partnership, as well as by transforming Ukraine into an EU-affiliated and fiercely anti-Russian state. As for the second objective, Obama and his team were pressing hard for an early conclusion of the Transpacific Partnership Agreement that would leave China out. They also endeavored to exploit, to Beijing’s disadvantage, the tensions in the South China Sea and on the Korean Peninsula.

It is hard to understand why Washington pursued this course so stubbornly, particularly as it must have occurred to some that the US was driving Moscow and Beijing closer together. One explanation is that they became hostages to their old belief that Moscow and Beijing could not make it together under any conceivable circumstances, and the US had no reason to worry. Apart from that, they basically continued to judge Putin’s Russia by the metrics of the Yeltsin era, seeing it as a hopelessly weak element in the emerging Russia-China combination. In this scheme of things, the easiest way to nip the unfriendly alliance in the bud would be to break the spine of the Russian state by subjecting it to unbearable pressures, and then to deal with China one on one before it grew too strong for that.

When Russia refused to extradite Edward Snowden to America and provided support to Bashar al-Assad in the Syrian civil war, the United States and its allies went berserk. The combination of a violent coup in the Ukraine, a worldwide media campaign to demonize the Russian President, and the imposition of economic sanctions, seemed tantamount to attempted regime change.

What have they got in return? Crimea’s bloodless and joyful reunification with Russia, and later on a determined antiterrorist campaign in Syria brought Vladimir Putin’s popularity ratings to unprecedented heights. State of the art military equipment – be it Kaliber-guided missiles fired at the ISIS/Daesh targets from the Caspian Sea or testing military robots operated from Moscow on Syrian battlefields – demonstrated to the world the technological depth of Russian industry.

Deeds speak louder than words, and choruses of professional Russophobes cannot change that. By virtue of its deeds, Russia is reemerging as a great power with no reservations, one of the very few sovereign players on today’s global stage.

Russia’s head-on collision with the West has brought about yet another momentous change. The phase when the world was moving towards multipolarity in an evolutionary, step-by-step manner is over. The world in which we find ourselves now is an open struggle over the issue of multipolarity. The New Great Game is played simultaneously not just on one but on several grand chessboards. No twist in the geopolitical scenario that has started to unfold is pre-ordained. No true achievement is possible without consistent, purposeful and calculated coordination that can only come from a stable, well-functioning state and a popular, legitimate leadership.

Is Russia ready for the trials of this new phase in global affairs? Judging

by the trends and events of 2016 (and of the two preceding years), it is. The remarkable resilience with which Russia has been responding to the diverse Western pressures, would have never been there in the absence of efficient governance. Russia has used the evolutionary era in global affairs to develop new capacities in fields as varied as strategic planning and military production, information technologies (IT), agriculture, urban beautification, and diplomacy.

In his State of the Nation Address in January 2015, Barak Obama proudly announced that Western sanctions pushed Russia into isolation and left its economy "in tatters". Until today those pundits whose primary sources on Russia are the New York Times and CNN persist in the conviction that the Russian economy is backward and primitive, fully dependent on exports of hydrocarbons and immersed in endless crises. All this is said and written at the time when the share of oil and gas in the budgetary revenues of the Russian Federation is dropping below the 40 percent and the inflow of foreign investment is increasing. Signs of revitalization on a new, modern basis are observable in a wide spectrum of industries – from food production and biotechnologies to machine building, civilian aircraft construction and production of precision weapons, not to speak of IT. If in 2014 Russia was ranked 18<sup>th</sup> in the Bloomberg Index of Fifty Most Innovative Economies, then a year later it went up to 14<sup>th</sup> position, and in 2016 to 12<sup>th</sup>. Its total score is 78.85, not so far behind the US, now ranked 8<sup>th</sup> with 82.84 points.

While promoting import substitution to neutralize the impact of the sanctions and consolidate the position of Russian producers on the domestic market, the government is creating new credit agencies such as the Russian Export Center to support the growth and diversification of the country's export potential, particularly in the small

and medium business sector. At the same time, it continues to implement such future-oriented mega-projects as comprehensive improvement of facilities for commercial navigation along the Northern Sea Route, that stretches along the Arctic coast of Russia from Novaya Zemlya Archipelago to the Bering Strait, and the construction of the new spaceport in the Amur Region. Work is in full swing on the 19-kilometer rail-road and automobile bridge across the Kerch Strait that will link mainland Russia with Crimea by the year 2018, and on the Power of Siberia pipeline which will transport natural gas from Yakutia to China and other neighboring countries via Russian Far East.

In the meantime the Ministry for the Development of Russian Far East created in 2012, on the eve of the APEC Summit in Vladivostok, to coordinate the implementation of state-initiated development programs in that part of the country is setting up what is known as Territories of Advanced Development. These are enclaves with a business-friendly regime conducive to domestic and foreign investments into export-oriented manufacturing. To boost Vladivostok's transformation into a regional trade hub, it has been legally proclaimed a *porto franco* with simplified customs regulations. Since Pacific Russia has an obvious need in domestic migrants who will contribute to its economic growth, the Ministry came forward with the proposal about allocating one hectare of vacant state-owned land on a free-of-charge basis to any citizen who intends to use it productively. Last April this bill became Federal Law.

Further evidence of Russia's new energy and expanded horizons can be found in the several recently initiated forums exploring enhanced economic cooperation among the Russian Federation, its Eurasian neighbours, ASEAN, and the Shanghai Cooperation Organisation (which

now includes India and Pakistan). These examples illustrate the point that neither the Ukrainian crisis, nor the war in Syria are distracting the government of Russia from its declared priorities concerning the development of the Far Eastern areas of the country and promotion of stronger connectivity with its East Asian neighbors. Is this not another sign of Russia's strength as a proponent of the emerging multipolar world order?

Looking at these developments as a whole confirms that Russia has taken a major step toward long-term, strategic self-determination in Asia – and given further proof of its re-emergence as a great power with a clear vision of the future it seeks to build.

## Victor Sumsky

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## India in the Asia Pacific: Strengthening Asian Multipolarity

Sanjay Pulipaka\*

In the past one year, rising China's territorial assertions, an absence of robust regional security architecture, and the growing stress on the US alliance system in Asia Pacific became glaringly evident. For India, it is not the emergence of China as the second largest economy that has been a source of concern; China is one of India's biggest trading partners. It is a combination of China's economic rise coupled with double-digit growth in defence expenditure, and aggressive territorial/maritime assertions that have generated concerns in India. Further, an unwillingness to accommodate India, even when China's core interests are not at stake, amplifies Indian unease. For instance, India's application for membership into the Nuclear Suppliers Group (NSG) did not make much progress at the June 2016 plenary meeting in Seoul. There was a strong opinion in India that China sabotaged its candidature; an Indian government spokesperson referred to the "procedural hurdles persistently raised by one country". In October this year, much to the dismay of India, China extended its technical hold on designating Jaish-e-Mohammed leader Masood Azhar as a terrorist by the 1267 Sanctions Committee at the UN. The China-Pakistan Economic Corridor (CPEC) gained momentum, in spite of India's objections that the project is being operationalised through Pakistan-occupied Kashmir. As can be seen, 2016 has been a particularly challenging year for India-China relations.

This downturn in the relationship with China is happening in the absence of robust security architecture in the



India-U.S.-Japan trilateral exercise Malabar, held June 2016. Vice Adm. Bisht, Rear Adm. Manabe, Dep. Commander Hurley shake hands. Source: U.S. Pacific Fleet.

region. This became strikingly obvious after the recent the Permanent Court of Arbitration (PCA) ruling on the South China Sea. The Association of Southeast Asian Nations (ASEAN) Foreign Ministers meeting, in July this year, did not refer to the PCA decision on the South China Sea in its communiqué. This once again demonstrated that, in spite of having various frameworks such as the ASEAN Defence Minister's Meeting (ADMM) and the ASEAN Regional Forum, the region lacks robust institutions to address traditional security challenges. Further, the hope that the East Asia Summit (EAS) forum would evolve into a genuine leadership led platform to address the security concerns in the region is yet to materialise. To compound the challenges, the US alliance system in Asia Pacific is experiencing stress. During a recent visit to China, the President of the Philippines, Rodrigo Duterte, declared 'separation from the

United States.' This prompted questions as to whether Duterte's shift will have cascading effects, propelling others to recalibrate their foreign policy postures away from balancing approaches. In the recent past, India has been concerned that neighbouring countries could bandwagon with others and scaled up its engagement accordingly.

### Bay of Bengal: The New Locus of Regionalism

Prime Minister (PM) Narendra Modi's government sought to promote South Asian regional cooperation in its initial days in office. However, with the deterioration in India-Pakistan relations and improvements in India's relations with other neighbours, the locus of regional cooperation has witnessed an eastwards shift.

In 2014, Modi was the first Indian PM to visit Nepal after 17 years and

announced substantive development aid. This bilateral relationship experienced stress after Nepal adopted a new Constitution in September 2015. India's call for an inclusive Constitution was seen as an unwarranted intervention by the Nepal government headed by K. P. Oli. In August 2016, with Pushpa Kamal Dahal taking over the reins, there was a considerable improvement in India-Nepal relations.

India's relations with Bangladesh showed substantive improvements with the conclusion of the Land Boundary Agreement and coastal shipping agreement. Bangladesh is emerging as an important fulcrum for sub-regional frameworks. In the middle of the last year, Bangladesh, Bhutan, India, and Nepal (BBIN) signed a Motor Vehicles Agreement (MVA), which would facilitate easy movement of passengers, personnel and cargo vehicles between the four countries. The BBIN is gaining traction with member states now discussing the possibility of a railway agreement. In a related development, India hosted the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) Summit in October this year. The emergence of BBIN and BIMSTEC indicate growing eagerness among India and some of its eastern neighbours to develop Bay of Bengal centred cooperative framework that would also act as a bridge to South-east Asian countries.

The Bay of Bengal oriented connectivity networks are receiving significant support from other international actors as well. Two years ago, Japan launched the Bay of Bengal Industrial Growth Belt (BIG-B) to strengthen infrastructure in Bangladesh. In June this year, the Bangladesh government and the Japan International Cooperation Agency (JICA) have signed loan agreements for the construction of projects that would improve connectivity with India. Recently, JICA has also approved a soft

loan for various projects in India that may facilitate greater connectivity with Bangladesh. This demonstrates that India and Japan are collaborating in creating plurality of supply chains with Bay of Bengal as an important node in the Asia Pacific.

## **Relations with 'Rest of Asia': Established Power and New Nodes of Engagement**

The cooperation in the Bay of Bengal region indicates that Japan has emerged as a significant pillar of India's Act East Policy. Japan was the first country that PM Modi visited outside South Asia. In 2014, Japan promised to invest approximately \$US35 billion over five years and, a year later, a additional \$US12 billion into a Make-in-India Special Finance Facility. India hopes to leverage Japanese investments and technology in various sectors such as high-speed trains, industrial townships, and economic corridors. Localisation of high-speed train technologies, with spill-over impact on other industries, will be a key objective for India. In the security realm, Japan is now a regular partner in the Malabar exercises with India and the US, this year held in Sasebo, Japan. It is distinctly possible that India may purchase US-2 amphibious aircraft from Japan. Both countries are reflecting on possibilities of collaboration in the realm of new defence technologies. There is a growing mini-lateral component in India-Japan relations. The first US-India-Japan Trilateral Ministerial dialogue took place in New York last September, prompting some Indian officials to suggest identifying concrete projects which can be operationalised in India's immediate eastern neighbourhood.

In a related development, the secretary-level trilateral talks involving India, Japan, and Australia

were held in June last year. India and Australia, which have a Framework for Security Cooperation in place, also conducted their first maritime naval exercises in the Bay of Bengal. Given these developments, there have been suggestions that it is time to operationalise a quadrilateral framework involving India, US, Japan and Australia, an idea first mooted more than a decade ago. Some scholars and policymakers in India have noted that there is a dichotomy in the policy preferences of Australia's strategic community and its business community in responding to China's rise. Nevertheless, the Indian approach seems to suggest that two triangles make a quadrilateral.

As a part of Act East policy, India has expanded the area of engagement from Mongolia to Fiji. The creation and the regular summit meetings of the Forum for India-Pacific Island Countries (FIPIC) indicate the seriousness with which India is approaching the expanded area of operation. In September this year, India and Vietnam have upgraded their partnership to a 'Comprehensive Strategic Partnership.' India extended a US\$100 million Line of Credit for defence procurement and agreed to sell high-speed patrol boats. News reports suggest that India may sell Brahmos missile systems to Vietnam. In the past few months, India hosted Myanmar's president Htin Kyaw and State Counsellor Aung San Suu Kyi in quick succession, indicating an upscaling of the relationship.

India is focused on developing relationships with a wide variety of countries in Asia and this emphasis on the 'rest of Asia' is not impacting its relationships with the established powers. India and the US now characterise themselves as the 'closest partners.' Both countries have articulated a Joint Strategic Vision for the Asia Pacific and Indian Ocean

Region. Some of the irritants relating to the civil nuclear deal and divergent policy approaches on Climate Change have been addressed. India-US defence trade, which was near zero in 2005, today stands at approximately \$US13 billion. During Indian Defence Minister Manohar Parrikar's visit to the US in August this year, Washington agreed to treat India on par with its 'closest allies' to facilitate defence trade and technology sharing. Subsequently, the reports that Lockheed Martin, an American aerospace company, is interested in starting an F-16 production line for the Indian Air Force as well as for global exports indicates the growing comfort between the two countries. The acquisitions from the US have been a force multiplier for India's power projection capabilities, which was evident when India recently deployed the C-17 Globemaster in the border regions of Arunachal Pradesh. This August, both countries have agreed on bilateral Logistics Exchange Memorandum of Agreement (LEMOA). The LEMOA will enable the United States and Indian defence forces to access each others' facilities for repair and replenishment of supplies. India is leveraging the US influence to join the international frameworks such as the Nuclear Supplier Group (NSG) and the Asia Pacific Economic Cooperation (APEC).

India has consistently stressed the need for ASEAN-centred processes to address security concerns in the Asia Pacific region. The need of ensuring freedom of navigation and the rules-based order in the Asia Pacific region have figured in many bilateral and multilateral foreign policy pronouncements involving India. After the recent Permanent Court of Arbitration (PCA) ruling, India clearly stated the necessity of maintaining freedom of navigation based on the principles of international law in the

region. It should be noted that, two years ago, India abided by a PCA ruling on a maritime dispute that went in favour of Bangladesh.

Along with political and security issues, three themes dominated India's engagement with the Asia Pacific in the recent past. First, economic diplomacy became an important component with aggressive campaigns for enhanced foreign direct investment and participation in the "Make in India" initiative. It should be noted that, between 2000 and 2016, the Asia Pacific region accounted for over 31% of total FDI inflow into India. If promised investments, such as Foxconn's \$5 billion investment proposal, Japan's High-speed trains, and the US defence companies proposals materialise then the Asia Pacific region's FDI contribution in India will increase substantially. Even from the perspective of Asia Pacific countries, India is emerging as a major destination for investment. Second, there has been an emphasis on engaging the Indian Diaspora to invigorate fraternal business links and develop a constituency for enhanced ties with India. Finally, cultural assets, including Buddhism, have received a new prominence in India's outreach efforts. Given the spread of Buddhist culture across large parts of the Asia Pacific, an emphasis on shared cultural heritage is aimed at developing new nodes of engagement at the societal level.

The above discussion indicates that strengthening the natural multi-polarity of the Asia Pacific constitutes the core of India's Act East policy. In this direction, India has been working with like-minded countries to: (a) leverage strategic partnership to enhance domestic capacities in manufacturing, new technology and defence sectors (b) become proximate to global and regional powers (such as the US,

Japan and Australia) and collaborate with friendly countries in the rest of Asia; (c) develop the capacities of friendly countries in the region [eg: Vietnam] and strengthen the bilateral relationships at the societal level [emphasis on Buddhism]; (d) work to strengthen ASEAN centrality as well as the trilateral frameworks of engagement; (e) expand the areas of engagement (For example, reaching out to the Pacific island states); and (f) reiterate the necessity of rule-based regional order.

These core strands of Indian policy have been in consonance with the US Rebalance to Asia and Japan's engagement with Southeast Asian countries. However, there is some concern in India that Russia's pivot to Asia has given greater strategic space to China. The incipient Russia-China entente may get diluted with the expansion of Russia-Japan economic engagement. The recent conversations between Russian and Japanese policymakers on energy projects and the proposed visit of Putin to Tokyo, therefore, hold a promise of enhanced bilateral relations between the two. The improvement of the Japan-Russia relationship may reinforce Asian multipolarity.

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*\*These are the author's personal views.*

## Security In the Asia Pacific: A South Korean Perspective

### Jong Kun Choi

Many security observers and policy makers in Seoul could not dispel the whirl of disappointing thoughts when North Korea conducted its 5<sup>th</sup> nuclear test on September 9<sup>th</sup>. While describing the nuclear test as a “nuclear warhead detonation test,” North Korea used the terms “standardization,” “miniaturization,” “lightweight,” and “diversification.” A nuclear warhead detonation test is normally conducted with the objective of confirming a design that can be attached to a missile. The latest test made it more likely that North Korea would acquire the capacity to mass produce nuclear weapons. This means that North Korea’s nuclear tests would no longer be desperate measures; they would become, instead, a routine activity associated with improving its nuclear arsenal. As North Korea brandishes its misplaced faith in nuclear weapons, feelings of rage and helplessness are rampant in South Korean society. South Koreans are utterly sick and tired of the North’s nuclear program. Many have

started to question whether United Nation Security Council Resolution 2270 has any genuine prospect of curtailing Pyongyang’s rogue behavior. Their optimism that strong sanctions would bring Kim Jong Un back to the negotiating table has turned into into a circle of confusion, anger, and even fatigue. And it seems that the nuclear quagmire is impenetrable – there is no light at the end of the tunnel.

Ultimately, South Korea’s security environment has not improved over the past year. Rather, a variety of developments have further complicated the security landscape on the Korean Peninsula: North Korea continues to develop its nuclear and missile technologies, the UN sanctions regime appears ineffective, South Korea’s acceptance of the US THAAD (Terminal High Altitude Area Defence) system has soured relations with Beijing and South Korea’s messy domestic politics with President Park’s “shaman advisor” scandal. All of these problems can be expected to endure into 2017 suggesting that the forecast for security

on the Korean Peninsula should read ‘grey and gloomy’.

### UNSC 2270 and THAAD

The UN Security Council condemned North Korea in the strongest terms following its fourth nuclear test on 4 January 2016, declaring that the test constituted a dire challenge to the Treaty on Non-Proliferation of Nuclear Weapon (NPT) and to peace and stability in Northeast Asia. In that spirit, the 15-member Council unanimously adopted resolution 2270 and also criticized North Korea’s launch of a long-range rocket on February 7, which was using ballistic missile technology. Resolution 2270 authorised the toughest sanctions yet imposed, including mandatory inspections of cargo leaving and entering North Korea by land, sea or air; a ban on all sales or transfers of small arms and light weapons to Pyongyang; and expulsion of North Korean diplomats who engage in ‘illicit activities.’ The resolution also banned the export of natural resources such as coal, iron



THAAD missile interceptor battery. Source: Mark Holloway, Flickr.

and iron ore allegedly being used to fund North Korea's weapons of mass destruction programs, only exempting natural resources for general economic purposes. It also explicitly prohibited all exports of gold, titanium, vanadium ore, rare earth minerals, and restricted aviation fuel exports including kerosene-type rocket fuel. The resolution required UN member states to freeze the financial assets of companies and other entities linked to North Korea's nuclear programs. It essentially choked the money route to Pyongyang by prohibiting all countries from opening new branches, subsidiaries, and representative offices of North Korean banks, and banned any financial institution from setting up joint ventures or conducting financial transactions with these banks. Moreover, the resolution mandated that member states close all North Korean banks within 90 days. The sanctions regime was intended to send a harsh final message to bring Pyongyang back to the negotiating table on denuclearization.

To show North Korea that this time was very different, South Korea shut down the Gaeseong Industrial Complex (GIC) on February 11 despite fierce opposition from opposition parties and the factory owners in the GIC. The South Korean Government showcased its commitment to bear the cost of shutting it down so that the North could be in no doubt about its determination and resolve. But many critics in Seoul argued that the Park government cut this last point of strategic leverage vis-à-vis Pyongyang too early and that its impact would not be substantial. With the launch of North Korea's long range missiles, the Park government formally announced the decision to accept the request to deploy THAAD from the United States on the grounds that South Korea and the United States needed an enhanced missile defence shield to weaken North Korea's capacity to engage in nuclear blackmail. The military logic

stipulated that THAAD would be able to intercept North Korean missiles.

To date, South Korea, fearful of upsetting China, had dodged the American request to host the THAAD missile defense system on its soil. Instead, Seoul has long deployed the Patriot system, which intercepts missiles at lower altitudes. President Park's decision essentially reversed South Korea's regional security policy and invited China's fierce opposition. Foreign Minister Wang of China warned, "I will hear what kind of practical actions South Korea will take to protect the unwavering relations between us." China indicated that South Korea's acceptance of the deployment of THAAD system "has undermined the foundation for our bilateral trust." China's cold-hearted resentment filled the air of Sino-Korean relations.

Moreover, President Park's decision to host THAAD in South Korea worsened relations with China at a time when its collaboration was needed on enforcing sanctions on North Korea and encouraging Pyongyang to end its development of nuclear weapons. China perceives the U.S. Missile Defense (MD) system as a threat to its own limited nuclear second-strike capability. China and Russia insist that the deployment of the THAAD system by the U.S. Forces Korea (USFK) not only exceeds the defense needs of South Korea, but also shatters the strategic balance among the U.S., China, and Russia. In other words, they consider that the US is using the North Korean threat as a pretext to accomplish this strategic objective. As a result, South Korea's policy coordination with China on reinforcing the sanctions regime was derailed. The focus of the policy debate in Seoul has been diverted away from sustaining the sanctions regime on the North toward the importance of THAAD to the security of South Korea.

## Breaking the Nuclear Taboo

Disturbingly, the argument that South Korea should also acquire its own nuclear weapons to counter North Korea began to emerge not from the far right but rather from the ruling Saenuri Party. A group of 31 Saenuri Party lawmakers, including floor leader Chung Jin-suk, formed a policy forum to find a solution to the North Korean nuclear issue. The group released a statement on Sep. 12 arguing that South Korea "should mobilize all available means, including nuclear armament, to guarantee the safety of the Republic of Korea and its people." While calls for nuclear armament run the gamut from an independent nuclear deterrent for the purpose of self-defense to having the US deploy tactical nuclear weapons in South Korea, they are all arguments for blocking nuclear weapons using nuclear weapons. These arguments appear to have the support, not only of Saenuri Party leader Lee Jung-hyun, but also of leading presidential contenders in the party, including Kim Moo-sung, Kim Moon-soo and Oh Se-hoon. Nationalistic nuclear scientists and conservative nationalistic security experts have also supported an independent nuclear weapons program. These pro-nuclear views have not attracted nation-wide support, but they do reflect how frustrated some South Koreans are about the inability to resolve the North's nuclear problem. One may wonder how South Korea, which once believed that unification on the peninsula was desirable and within reach, could get to a mental state so desperate that responsible opinion leaders are even entertaining the idea of a counter-vailing nuclear weapon capability. This highlights the desperate need for a new and bold approach to North Korea to put an end to what may become a very dangerously uncontrollable situation.

## Political Mess and Nuclear Stalemate in 2017

Now that it has been 10 years since the North's first nuclear test in 2006, and with Pyongyang showing almost zero signs of retreat, are there any grounds on which Seoul could expect fundamental policy changes from Pyongyang? It is very hard to lay out a clear outlook for 2017 on the Korean peninsula because South Korea's messy domestic politics will hinder the crafting of any bold approach to Pyongyang. This is because the recent scandal means that the very legitimacy of President Park's presidency will be harshly challenged on legal and moral grounds. South Korean President Park will be in deep political trouble as her so called "shaman advisor" Choi Soon-sil is expected to be the source of a corruption scandal that fatally undermined the legitimacy of the Park regime and the credibility of her leadership in her final year as president. A tablet PC drive, allegedly belonging to Choi, was found to contain classified documents, including foreign policy materials, and major speeches with her written corrections. What has shocked the nation was that President Park relied on Choi's advice for different issues, ranging from such trivial matters as coordinating her dress codes, to whom to appoint to public office roles.

Many key decisions in the national security arena - such as shutting the GIC, changing the F-X project's final choice from Boeing's F-15SE to F-35 JSF, and accepting the US request for the deployment of THAAD - which were made without systemic consultations with her cabinet, are now under critical scrutiny both from the general public and the political opposition. In short, President Park's leadership, especially in national security arena, will be critically constrained.

The ruling Saenuri party must also contend with a fierce power struggle,

which in fact started with the loss of its majority in legislative elections in April, 2016 - the first time in 16 years. This poses a further risk to policy momentum. For example, even if the government wants to finalize the deployment of THAAD by the end of 2017, two opposition parties - the Democrat Party and National People's Party, have already insisted that this commitment requires parliamentary ratification. The South Korean government and US Force Korea planned to have the THAAD battery set up by December 2017, which is when South Koreans are going to elect their next president. Currently, South Korean presidential hopefuls, especially from the opposition parties, maintain policy platforms calling for THAAD to be subject to more rigorous assessment in terms of its military usefulness, diplomatic implication and environmental impacts on the local site. All these domestic circumstances will spill over into the national security areas, especially when people question who actually made the decisions - President Park or her shaman adviser Choi.

If South Korea seems unlikely to come up with bold new approaches, a new administration in Washington will also need some time to review its options on the Korean peninsula and the strategies to achieve them. This means the likely absence of energetic diplomacy, leaving the US, in particular, to depend on little more than the hope that sanctions will eventually topple the regime, a regime which to date has survived famine, leadership change, failing food supply, economic crises and continuous unilateral sanctions. In short, a genuinely fresh policy track from Seoul and Washington to engage North Korea in negotiation for denuclearization is unlikely to occur in 2017.

China will maintain its economic linkage with North Korea since China's strategic interest is not to cause a North Korean collapse but to

create conditions under which it could maintain some levels of influence over Pyongyang even if the US alliances with South Korea and Japan are further intensified. This could mean that 2017 will be distinguished as a year of sharper regional security divisions: North Korea with China and in turn Russia, South Korea with the US and Japan. Such a regional environment could be expected to strengthen Pyongyang's determination to accelerate its nuclear and missile programs.

The failure to discourage the North from conducting nuclear and missile tests even after the most powerful sanction imposed on Pyongyang has led Seoul to beef up its alliance posture with the US while damaging its relationship with Beijing. As Pyongyang's nuclear and missile technologies progress, a sense of helplessness in Seoul will grow along with antagonism towards Kim Jong Un. Any policies advocating some sort of negotiation are likely to encounter strong public skepticism and opposition. Presidential hopefuls cannot even comment that the current sanctions have not generated the desired outcome, let alone speculate on why this might be the case. Voices echoing hardline policies will be rampant while those promoting engagement with the North will be very marginal. Thus, the stalemate in respect of the North Korean nuclear program will continue. Unless a formidable political entrepreneur emerges, someone who can formulate a roadmap that bravely argues for security assurances in exchange for denuclearization as an end goal, any processes to stop a future where North Korea emerges as a state with an operational nuclear weapons arsenal may be not possible.

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## Defence Outlook: Australia

**Andrew Carr and Stephan Frühling**

One of the most pressing questions for analysts of the Asia Pacific is how to understand the interaction of domestic and regional political trends. Populism, demagoguery, and debates over the legitimacy of democratic governance are on the rise in many states, most notably the Philippines, Thailand, the United States as well as many European countries. These domestic changes are also playing an increasingly important role in the development of state security strategies. Understanding how leaders manage and balance domestic and external pressures is therefore an imperative for assessing the behaviour of all regional states—including outwardly stable countries such as Australia.

Australia's domestic politics is famously rambunctious. There have been five Prime Ministers in the last six years. A landmark eight-week election campaign in mid-2016 left the conservative government with a one seat majority in the House of Representatives. In the Senate, the government fell 6 seats short of a majority, which forces it to rely on a coalition of independent and populist parties from the centre-right to pass its legislation. While Australian politics is traditionally 'bipartisan' when it comes to national security and defence policy, domestic politics can still influence defence policy. This influence seems to be increasing.

The Abbott government assumed office in late 2013 and commenced a sweeping review of defence policy and organization, starting with the development of a new Defence White Paper as well as a 'First Principles Review' of the defence department itself. It was vocal in its willingness

to confront Russia after the downing of MH17 over Ukraine; one of the first countries to commit forces to fight the Islamic State or 'death cult', as Tony Abbott liked to refer to it; and it quickly built a close rapport with Japanese Prime Minister Abe that promised much closer security and defence links. The incoming Abbott Prime Ministership therefore promised a more muscular, engaged and risk-tolerant approach to defence than Australia had displayed before. A similar spirit extended to defence industry. As the government was willing to let Australia's car industry wither on the vine, it was no great surprise that the Coalition Government looked offshore for two new supply vessels for the Royal Australian Navy (RAN), and was attracted by the promise of an easy off-the-shelf purchase of Japanese Soyu submarines.

When it came to naval shipbuilding however, the government found itself increasingly at odds with public opinion. In February 2015 Tony Abbott had to abandon his ambition to buy Japanese Soyu submarines in order to stamp out an internal challenge to his leadership. In the face of dipping polls, the government also overhauled its approach to defence industry. In September 2015 it announced the 'historic' domestic build of 12 new frigates, reportedly forcing a re-write of parts of the capability plans in the then-still-forthcoming Defence White Paper. That same month Abbott faced a second party room challenge. He lost the vote, with Malcolm Turnbull replacing him as Prime Minister on 15 September. Turnbull's central argument for change was the domestic unpopularity of the government, particularly in key states such as South Australia. This domestic

focus was also compounded by the crucial position of South Australia's Nick Xenophon in the Senate—the upper house of parliament—who strenuously advocated for domestic shipbuilding. The shipbuilding plan released in April 2016 was an almost complete turnaround of the Coalition's original policy settings. There was a decision to build all 12 new submarines in South Australia, to commence a 'continuous build' programme of surface combatants, and to construct new and significantly larger Offshore Patrol Vessels to replace the Armidale-class patrol boats.

After much delay, the Turnbull government under its Defence Minister Marise Payne released the new Defence White Paper on 25 February 2016. Given the trajectory of defence policy and debate over the previous years, and Turnbull's need to position himself—with an eye to the internal machinations in his own party—as both strong on defence but also less prone to 'captain's calls' like his predecessor's reported plans for Japanese submarines, it is perhaps not surprising that the document combines both orthodoxy and seeming radicalism in Australian defence policy.

On the one hand, none of the major shifts in defence capability that had been subject of the Australian defence debate for several years could be found in the White Paper: Despite significant investment in new armoured vehicles, Army did not acquire the heavy armoured structure that would be required for conventional manoeuvre warfare in the Middle East or on the Korean peninsula. Nor does the ADF intend to transform into a force focused on humanitarian disaster-relief to



A Collins Class submarine in Sydney Harbour. Source: Royal Australian Navy, Flickr.

deal with natural and man-made disasters, away from state-on-state warfighting. There was no doubling-down on amphibious capabilities, through a marine brigade, marinized helicopters, amphibious tanks or the like. Nor were the two new amphibious assault (LHD) ships that had just joined the RAN converted into mini-aircraft carriers for use by Australian or US STOVL JSF, as had been reportedly mooted as part of the White Paper process.

On other hand, there is seemingly radical change in the way the White Paper describes Australia's defence priorities: For the first time, it raises the importance of global security, and of the security of its Indo-Pacific neighbourhood, to the same level as that of Australian territory itself. By linking these priorities to repeated strong endorsements of the 'global rules-based order', the government also found a way of articulating

the nature of Australia's global and regional interests in a way that more closely linked it to current conflicts and great power behaviour—be it in Ukraine, the Middle East or the South China Sea—than before.

In decoding these conflicting signals, it is as usual necessary to follow the money. The signalled increase in Australian defence engagement in the region is a continuation rather than departure from the trajectory already set—although not funded—in the previous Labor government's 2013 Defence White Paper. Australia now has a bipartisan commitment to increase defence spending significantly to 2% of GDP, and the Turnbull government included in the White Paper a table of defence budgets out to 2025-2026. Major areas of growth in the ADF force structure are in the doubling of the submarine fleet to 12—now also a bipartisan commitment— and an

increase in the various airframes that replace the ageing P3C Orion maritime patrol aircraft, which may end up constituting a 50% larger fleet with significantly expanded capability. There was also significant investment into Australia's basing infrastructure, air defence command and control system, and the return of the Australian Army's coastal defence role, through the planned acquisition of land-based anti-ship cruise missiles. The investment decisions of the White Paper demonstrate an increasing concern that Australia must prepare for the possibility that the strategic trend-lines in the Asia Pacific may directly threaten its own security—rather than 'merely' regional order—in coming decades.

One of the key sentences in the document is that "The future force will be more capable of conducting independent combat operations to defend Australia and protect our

interests in our immediate region.” The term ‘self-reliance’ and its political connotation of distance from Australia’s allies, which had been so prominent in Australian defence policy from 1976 to 2009, has largely disappeared from the White Paper and official discourse. Yet the 2016 White Paper also did not contain any significant new commitments to the 2012 US Force Posture Initiative, whose slow implementation is in some contrast to Australia’s vocal support for the United States strategic posture in Asia. And as tensions in the South China Sea rose in early 2016 in the lead-up to the 12 July International Tribunal ruling on the dispute, Australia’s government was notably reticent to heed US calls for joint ‘Freedom of Navigation Patrols’ in the disputed waters.

If there has been an increasing concern about China’s rise and assertive policies, the focus in Australia in many ways remains on the domestic manifestations of this development. Chinese commercial investments in Australia, especially farm land and the leasing of the port in Darwin raised significant media coverage. Concerns about the defence implications of Chinese investment in critical infrastructure fed into populist aversion to foreign ownership. In addition, there are increasing concerns about the influence of the Chinese Communist Party (CCP) in Australia. This is occurring in the political arena with controversies over donations; in the media where there is growing CCP advertising and messaging; and in the attitudes of Australia’s Chinese community towards the legitimacy of the CCP and China’s place in the world. While each of these trends is manageable and unlikely to lead to significant policy shifts, they represent an important domestic political challenge in the development of a coordinated and coherent Australian approach to China.

Such coherence has long been a challenge. The domestic considerations of Australia’s political parties do not always neatly mesh with their foreign policy perspectives. The governing Liberal Party remains close to—largely China-friendly—business, whereas their rural-based National coalition partners are more opposed to ‘selling out the farm’. The minority Greens combine scepticism about the US alliance with aversion to China’s domestic political system and human rights record. The Opposition Labor Party has argued for greater acceptance of China’s growing status in the international system, while also trying to wedge the government with calls for a more robust policy opposing Chinese expansion in the South China Sea.

Overall, Australian foreign and defence policy remain an elite preoccupation. The bipartisan consensus around major policy settings is as much the result of similar approaches to neutralize varied domestic pressures as a convincing strategic approach to the uncertainty facing Australia and its strategic environment. Although Australia is now undertaking an impressive expansion of its maritime capabilities, the political imperative for a domestic build means that much of the capability is still decades away from launch. The appointment after the 2016 election of South Australian Senator Christopher Pyne as Minister for Defence Industry has created an almost unprecedented situation where Australia now has two Cabinet ministers for the defence portfolio with somewhat unclear hierarchy and responsibilities.

Polling before the US election suggested that Donald Trump’s success could signal a substantial shift in public attitudes against the alliance. However, in the absence of truly radical change in US policies in Asia, uncertainty and aversion

to the US president is likely to reinforce Australia’s commitment to the three main pillars of its defence policy: The maintenance of a robust Australian Defence Force capable of independent operations if necessary, economic and political engagement with Asia where possible, and support for a combination of US military presence and multilateral incentives to manage the emergence and rise of new powers in the international order. The degree to which all three continue to remain in line with domestic political opinion will, however, be a crucial factor in determining Australia’s defence outlook in coming years.

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# DPRK's Nuclear Deterrent: The Magic Bullet for Peace and Security on the Korean Peninsula and in Northeast Asia

Choe Un Ju

2016 has been marked by an unprecedented intensification of nuclear confrontation between the DPRK and the US in the Korean peninsula. Entering the 2<sup>nd</sup> half of 2015, the US and its military subordinate, South Korea, clamored about a 'decapitation raid' targeting the DPRK supreme headquarters and threatened to practice it in the joint military exercises of 2016. Such moves by the US and South Korea have been successfully deterred by the DPRK with a series of measures to bolster its nuclear deterrent.

This paper seeks to explore the strategic background of the DPRK-US nuclear confrontation and the outlook for the future.

## Strengthening Nuclear Deterrence is an Inevitable Choice for the DPRK for its Self-defence

It rings true to many people that the Korean peninsula issue is a vicious cycle of the DPRK's nuclear and rocket tests, aggravation of tension, sanctions and another round of DPRK nuclear and rocket tests. However, these people fail to see or simply turn a deaf ear to the reality that each link of the cycle is directly connected to the hostile policy of the US and the consequent nuclear threat against the DPRK.

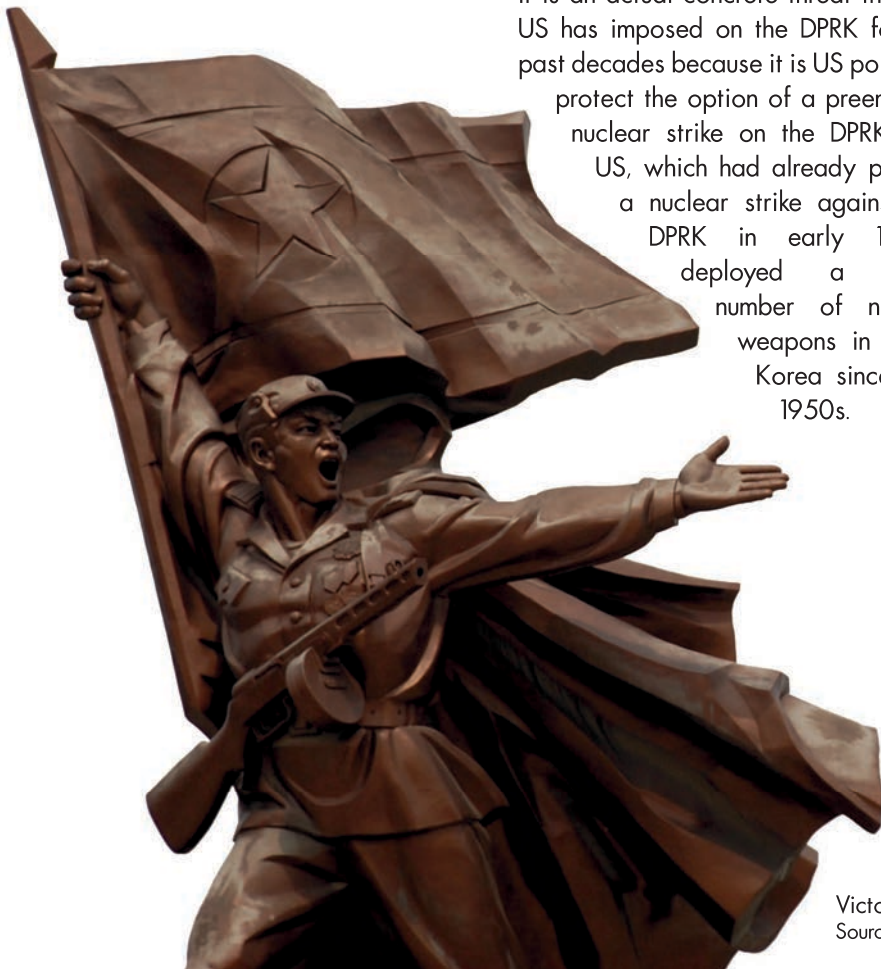
The US nuclear threat against, and blackmail of, the DPRK is neither a temporary phenomenon that has started recently nor a fictional concept. It is an actual concrete threat that the US has imposed on the DPRK for the past decades because it is US policy to protect the option of a preemptive nuclear strike on the DPRK. The US, which had already plotted a nuclear strike against the DPRK in early 1950s, deployed a large number of nuclear weapons in South Korea since late 1950s.

Since the late 1960s, it has conducted joint military drills with South Korea in which they exercised the practical use of those weapons. These annual US-South Korea joint nuclear war exercises have continued for more than 40 years.

The DPRK has made strenuous efforts to eliminate the US nuclear threat. To this end, it has tried dialogue and negotiation for the establishment of a denuclearized zone and reliance on the international laws. Despite these efforts, the US has not withdrawn its nuclear threat toward the DPRK but, instead, it has gone so far, in 2002, as to officially designate the DPRK as a target for its nuclear preemptive strike. Given the fact that neither dialogue nor international laws helped, and faced with the world's biggest nuclear threat from the world's biggest nuclear power, the DPRK was left with no other choice but to resort to nukes to cope with nukes.

Even after acquiring a nuclear capability, the DPRK left no stone unturned to establish a solid peace regime and realize the denuclearization of the Korean peninsula. It has participated in several rounds of 6-party talks, disabled its nuclear facilities and agreed to a moratorium on nuclear tests.

Nevertheless, US hostility and the nuclear threat it posed has increased rather than diminished. In April 2010, the Obama administration excluded the DPRK from the list of states that the US pledged would not be targeted with nuclear weapons, again revealing its ambition of a nuclear preemptive strike against the DPRK. The US has since made further official statements to this effect.



Victorious Fatherland Liberation War Monument.  
Source: (stephan), Flickr.

The spearhead of the Asia Pacific pivot policy initiated by the Obama administration in 2012 is directed towards northeast Asia with the DPRK as its first target. Both the scale and the frequency of the US-South Korea joint military exercises have increased dramatically in recent years. Before 2012, the joint military exercises involved 400,000 troops and were staged around 30 times annually. However, since 2012, the scale increased to 500,000 personnel and the frequency to more than 40 times. Since 2012, the frequency of US aircraft carrier visits to waters around the Korean peninsula have increased to 3-4 times per year from 1-3 times. Special operations targeting the DPRK supreme headquarters were openly included in the 2012 joint military exercises. In 2013, they made public, for the first time, the air raid drills for nuclear strategic bombers and the movement of nuclear submarines, thus impregnating the exercises with the atmosphere of a real war. The 'Tailored Deterrence Strategy', agreed upon by the US and South Korea in 2013 aimed at a nuclear preemptive strike against the DPRK and was first introduced in the 2014 joint military exercises. The strategy constituted the '4D OPLAN' concept in 2015 and was further broken down into a 'decapitation raid' and 'precision strike' in 2016. Accordingly, the masks of 'annual' and 'defensive' military exercises have been torn off to reveal the true colors of nuclear attack exercises. Today, US nuclear strategic bombers dare to conduct air raid drills just tens of kilometers from DPRK territory.

The US plans to dissipate a trillion US\$ in the coming 30 years to upgrade its nuclear arsenal which is already the most advanced both in quality and quantity because the US has conducted the greatest number of nuclear tests in the world.

In these grave circumstances, with the US going on the rampage against the DPRK while upgrading its nuclear weapons ferociously, the DPRK is forced to accelerate the development of its own nuclear weapons to defend its social system and national security.

It stands to reason that the DPRK seeks to develop its nuclear arms in quality and quantity to match the increasing level of nuclear threat from the US.

## **Security Impact of the DPRK's Nuclear Deterrent on the Korean Peninsula and Northeast Asia**

The US pursues two major purposes through constantly aggravating tension in the Korean peninsula.

One is to provide an excuse for the reinforcement of its armed forces in and around the Korean peninsula. During the Cold War, the US increased its military deployment in South Korea, including nuclear arms, under the pretext of deterring the former Soviet Union's 'southward invasion'. Having lost this excuse with the end of the Cold War, the US consistently poses a military threat to the DPRK and uses the tension to justify enhancing its military presence. The US considers that constant tension in the Korean peninsula provides conditions most favorable to its Asia Pacific pivot strategy, by justifying the introduction of more strategic assets, to contain the DPRK and the neighboring countries.

The other purpose is to create a favorable environment for the formation of the US-Japan-South Korea triangular military alliance which has a key role in its Asia domination strategy. With détente, Japan and South Korea would hardly come together in a military alliance owing to the historical and territorial issues that complicate their relations. Apprehensive of this, the US seeks a 'shock remedy', namely the aggravation of tensions. If the triangular

military alliance becomes fully-fledged, the ongoing US-South Korea and US-Japan military exercises could develop into US-Japan-South Korea tripartite military exercises and thus increase the radius of the US-led military operations and its offense capability in northeast Asia. The deployment of 'THAAD' in South Korea, in particular, a practical development of the triangular military alliance, would only mean implanting the root of evil that would make the Korean peninsula a regional showdown site.

Given all the facts, had the DPRK been devoid of war deterrence, it would only provide the US with conditions favorable to its strategy and undoubtedly threaten the regional security balance. In this sense, the DPRK's strengthening of nuclear arms ensures peace and security in the peninsula and the region by containing the arbitrariness of the US.

Meanwhile, the US is effectively exploiting the north-south confrontation policy of the current South Korean authorities to help realise its Asia Pacific pivot policy. In the initial period of their term, the current South Korean authorities, at least paid lip service to notions like 'unification diplomacy', the 'northeast Asia peace and cooperation initiative', 'Trustpolitik' and the 'Dresden declaration'. But today they have thrown away their deceptive masks and openly pursue 'pressure diplomacy' towards the north and recklessly seek 'system unification', which totally violates existing north-south agreements. However, the South Korean authorities have neither the capacity nor the courage to confront the DPRK on its own. Just as mariners will accept any port in a storm, they rely on foreign forces. For this reason, the South Korean authorities fanatically reject transfer of war-time military control, approve the introduction of more US military equipment including 'THAAD' and stage larger-scale joint war drills more frequently. The US is taking advantage of this tendency to

speed up its Asia domination policy. All told, South Korea's aspiration for 'system unification' accelerates US military deployments and endangers the peace and security of the peninsula and the region.

The strategic nuclear forces of the DPRK emasculate such reckless maneuvers by the US and South Korean authorities, thus promising a bright future for the peaceful reunification of an independent Korea. It also enables the peninsula to serve as a buffer zone that will prevent a nuclear war in the region. To all intents and purposes, the stronger the DPRK's strategic nuclear arms become, the more securely will the peace and security of the peninsula and the region be guaranteed.

It is contradictory and self-defeating for the neighboring countries to oppose the US aggravation of tension while joining the US-led 'sanctions' against the DPRK. This will only help the US push its strategy to weaken the DPRK and contain the neighboring countries.

There will be administration changes in the US and South Korea in 2016 and 2017 respectively. However, as long as the hostile anti-DPRK policies remain unchanged, the US nuclear threat and the move to form the triangular military alliance will continue. It is quite obvious that these will only stimulate the DPRK to further strengthen its nuclear deterrent both in quality and quantity.

No matter how the situation and the surrounding structure may change, the principled position of the DPRK will be constant. As long as the nuclear threat against the DPRK by the hostile forces continues, the DPRK will hold fast to its nuclear deterrent, an invincible sword, and make every possible effort to defend its sovereignty and security, strive to realize the independent reunification of the Korean peninsula and ensure regional peace and stability.

In a nutshell, developments on the Korean peninsula in 2017 will depend largely on whether the US and other regional countries squarely recognize the DPRK's nuclear weapon status and adopt reasonable policies, or not.

## Choe Un Ju

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## DPRK Nuclear Developments and the ROK Response: Looking to 2017

**Cho Namhoon**

North Korea is proceeding with its nuclear development at an accelerated rate. On Sept. 9, North Korea conducted its fifth nuclear test, less than a year after the fourth test on Jan. 6. It appears that the 'three-year cycle principle' of nuclear testing in North Korea no longer holds.

At the same time, the development of missile systems for the delivery of nuclear warheads is also proceeding at a rapid pace. North Korea has been conducting test firings of various missiles this year with each test confirming new capabilities in such terms as range, accuracy and reliability. For example, on June 22, the Musudan missile, flew 400 km, despite being launched at a high angle. On Aug. 24, North Korea's submarine launched ballistic missile (SLBM), the Pukkuksong-1, flew 500km, bringing the country a step closer to the successful development of an SLBM capability.

In addition, in September 2016, North Korea's media unveiled a new rocket engine with propulsion power of 80 tons. If the success of the rocket engine development is confirmed, it could be said that North Korea has acquired the engine technology necessary for the development of an ICBM. Furthermore, 38 North, a U.S.-based website specializing in North Korea, claims that the DPRK is developing a new type of submarine capable of loading several SLBMs. It is apparent that North Korea is working toward the deployment of mid- and long-range nuclear weapon systems.

Expert opinion is divided on the evaluation of North Korea's capacities. Some argue that it will take more time for North Korea to



The United Nations Security Council unanimously adopts resolution 2276 on 24 March 2016, extending sanctions on the DPRK until 24 April 2017. Source: UN News & Media.

actually deploy nuclear missiles because it still lacks core technologies such as reentry technology. On the other hand, others argue that North Korea's development of nuclear weapon systems is proceeding at a rate much faster than most people expected, as can be seen in the examples of the Musudan missile or SLBMs. Despite such differences of opinion, both sides agree on the fact that miniaturization of nuclear warheads is imminent. Indeed, 2017 could be decisive as the year in which North Korea's nuclear weapons development program reached a basic level of maturity.

The ROK, U.S., and Japan will feel the greatest threat from North Korea's nuclear weapons deployment. It is not clear, however, that these countries have responded with an urgency commensurate with the pace of North Korea's nuclear accomplishments. It is hard to erase the impression that they have put forward the "virtue of waiting" within the frame of "strategic patience." As the deployment of North Korean nuclear weapon systems

becomes imminent, such an indulgent posture cannot be sustained.

In Korea and the U.S., the demands to prioritize the North Korean issue and to seek new ways of dealing with it are becoming more vocal. With a new American administration imminent, active discussions are taking place on options available for dealing with North Korea. Furthermore, U.S. presidential candidate Donald Trump's assertion that ROK and Japan should be allowed to acquire their own nuclear weapons if North Korea cannot be diverted from its current path has been linked to the issue of nuclear non-proliferation, raising numerous controversies.

A year after the U.S. presidential election, a presidential election will occur in the ROK. It will be a year in which Koreans will have to choose between progressive and conservative options, following 10 years of conservative rule. It seems inevitable that the North Korean nuclear issue will be prominent and controversial in this process. Both the

progressives and the conservatives in Korea agree on the principle of North Korea abandoning nuclear weapons. However, the two sides differ on the methods to achieve this objective, such as acquiring of tactical nuclear weapons, deployment of Terminal High Altitude Area Defense (THAAD), sustaining sanctions against North Korea and attempts at inter-Korea dialogue. ROK policy toward North Korea could change significantly depending on who is elected as president in 2017. In the meantime, if North Korea conducts another nuclear test, public opinion in ROK in favor of redeployment of tactical nuclear weapons along with strong North Korea sanctions will grow.

While it is true that a review of options is likely to be a priority issue for the new US administration, this cannot be expected until well into 2017 at the earliest. We therefore have a situation where the current policy of 'strategic patience' cannot be maintained but where no realistic alternative can be expected in the short-to-medium term. By default, therefore, U.S. sanctions against North Korea will continue for the time being. Even if the new U.S. administration feels the need for a dialogue with North Korea, it will take considerable time to review the procedure and the alternatives.

The situation in both the U.S. and South Korea in 2017 points to continued support for the sanctions regime against North Korea. Indeed, the ROK government may have little choice but to enact even stricter sanctions in the lead up to the presidential elections simply because North Korea is unlikely to change course and sanctions will be the only policy tool available. A hastily agreed dialogue is improbable because it risks being seen as an acknowledgment of North Korean nuclearisation. Furthermore, the ROK government thinks that the strict sanctions that began to be imposed

by the international community in early 2016 should be given time to take effect. In light of all these considerations, international sanctions against North Korea led by the U.S. and Korea will continue even stronger in 2017.

For the North Korean sanctions regime to be continued, it must be deemed, eventually, to be working. If no noticeable effects are observed, not only China, which is hesitant on strong North Korea sanctions, but also ROK and US public opinion, may demand other policy measures. This makes it prudent for the ROK and the US to develop other policy measures as soon as practicable and not rely solely on sanctions.

It cannot be said that the current North Korea sanctions are yielding clear results. North Korea's trade with China, which accounts for about 90% of its foreign trade, has in fact increased since the adoption of the UN Security Council Resolution 2270. Also, the foreign exchange rate and price levels in North Korean markets are relatively stable. Hence, if sustaining sanctions is to be politically viable, it is imperative that they have an impact over the course of 2017.

The consensus among experts is that the development of nuclear capacity has been integral to the North Korean government's plans for a long time. Under Kim Il-sung and his successor Kim Jong-il, North Korea pursued clandestine nuclear development under the guise of "Byeongjin (parallel development) Policy of Economy and National Defense Capability" and "Seongun (military first) Policy". However, the current leader Kim Jong-un has brought nuclear weapons development to the fore with "Byeongjin (parallel development) Policy of Economy and Nuclear Weapons". Nuclear capacity may have been a negotiating lever for North Korea in the past but this no longer seems to be the case. It now appears that North Korea simply has

a strong and direct interest in acquiring an operational nuclear arsenal.

As a result, the argument that North Korea will never give up the development of its nuclear capacities until it possesses an operational nuclear arsenal is persuasive. In fact, North Korea will attempt to gain greater leverage through achieving nuclear weapons development and recognition as a nuclear weapon state. This is because North Korea views this as the only way to deter U.S. attacks and to force the US to accept guarantees of regime security for North Korea as a quid pro quo for any negotiated controls or limitations on its nuclear forces.

In light of these judgments, we can be confident that North Korea will focus on nuclear development in 2017. The North Korean government will publicize the strengthened international community's pressure and sanctions as something that must be endured for nuclear development, demanding the perseverance of North Korean residents already facing impoverishment. Under such circumstances, North Korea will not respond to Korean and U.S. proposals for dialogue on abandoning nuclear development in 2017. Even if North Korea does engage in dialogue, it will remain a formal gesture.

People who face imminent difficulties often dream of a dramatic last minute overturn of events. However, in the present case, such possibilities are virtually nil given the conditions on the Korean peninsula and the behavior of the Kim Jong-un government. In fact, North Korea may respond to the international community's pressure with a direct military provocation in 2017. It could strike at the five islands on the West Sea, or cross the Northern Limit Line (NLL) and attack ROK Naval vessels. However, the possibility of such provocations may be reduced the closer North Korea gets to achieving its nuclear weapon objectives. This

is because military provocation at a point when it is close to completing its nuclear development could be counter-productive if it triggered a decisive response from the international community and the ROK. The possibility of limited provocations will remain, depending on who is actually leading North Korea's nuclear development. If it is a non-military agency, such as the Organization Guidance Department in the Workers' Party of Korea, which is in charge of nuclear development, this may be resented by the military and incline the generals to agitate for limited military provocation to protest the sanctions regime. In summary, while the risk of limited military provocation by North Korea in 2017 appears small it is not zero.

Despite Kim Jong-un's "Byeongjin (parallel development) Policy of Economy and Nuclear Weapons", it is indisputable that North Korea's nuclear aspirations are depriving the civilian economy of a minimum level of resources. Furthermore, the acceleration of the nuclear program inevitably leads to reductions in funding for conventional weapons procurement. This could also act to raise dissatisfaction in the North Korean military, becoming an element that may cause the North Korean military to attempt limited military provocation. However, if Kim Jong-un's control over the military is firm and if he prefers to avoid limited military provocations as the nuclear program matures, the possibility of a limited military provocation would be significantly lessened.

Military and civilian elites in North Korea experienced considerable turmoil in 2016 giving rise to opposing opinions on the stability of the regime. There is a view that Kim Jong-un is still in the process of solidifying his rule, based on the fact that several elites in the Workers' Party of Korea and North Korean military were executed or demoted in 2016. On the other hand, there are those who interpret the same

events as evidence of Kim Jong-un's firm grip on power.

It is uncertain which side is correct. What is clear, however, is that the stronger the the sanctions on North Korea become, the more difficult it will be for North Korea to obtain the funds needed for its nuclear program, making desperate and riskier efforts to circumvent sanctions more likely. Under such circumstances, it is only inevitable that unrest and conflict in the elite class will increase and this may aggravate instability in North Korea in 2017. Despite this, however, the well-structured surveillance system and the strong governmental authority of the North Korean regime will likely prevent such unrest and conflict from being actually acted out and escalating into clashes.

Ultimately, 2017 will be a year when North Korea continues to defy growing sanctions and remains focused on its nuclear program in circumstances devoid of significant dialogue with the international community. Unfortunately, any internal momentum in North Korea that might potentially be strong enough to be a game changer and arrest the nuclear program will remain immature in 2017.

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# North Korea's Nuclear Weapon Capabilities: The Emerging Escalation Ladder

Hideya Kurata\*

## No First Use Revoked

North Korea ushered in 2016 with an alleged hydrogen bomb (H-bomb) test on 6 January. Although this is doubtful, the government issued a statement following the test, as it had done after its first test in 2006 but not for the two subsequent tests, suggesting that device was different from those tested earlier. North Korea may have attempted a boosted fission test wherein a limited nuclear fusion component is incorporated to enhance the explosive force of the device. If this was the case, it would suggest that North Korea's nuclear

fission technologies have become more advanced and reliable.

Beyond questions about its technical nuclear competencies, North Korea has made important but ambivalent statements about how it intends to wield its nuclear forces. A Foreign Ministry statement announcing its first nuclear test on 3 October 2006 gave an unconditional commitment to no first use (NFU) of nuclear weapons. This commitment, however, was overturned by the Law on Consolidating Position of Nuclear Weapons State, adopted by the Supreme People's Assembly in April 2013. The law stipulated that North Korea's nuclear weapons could be

used "to repel invasion or attack from a hostile nuclear weapons state and make retaliatory strikes." This statement left open the option of first use of nuclear weapons provided 'hostile' nuclear states attacked North Korea even with conventional forces. In the same vein, a statement following the nuclear test in January 2016 pledged that North Korea would not be the first to use nuclear weapons as long as hostile aggressive forces did not encroach upon its sovereignty. This statement also protects the option of first use of nuclear weapons.

Some have labelled North Korea's emerging nuclear posture as one of 'minimum deterrence,' under which



Japanese PM Shinzo Abe shaking hands with US President Barack Obama at the Hiroshima Peace Memorial, 31 March 2016.  
Source: IIP Photo Archive, Flickr.

nuclear weapons will be used only for second strikes in retaliation for nuclear first strikes. The statements characterized above clearly suggest a more ambitious nuclear posture. Moreover, leadership remarks over the course of 2016 seemed to be intended to ensure that opposing governments remained uncertain and unsettled. Specifically, in opposition to the US-South Korea joint military exercise in March, Kim Jong-un stated that a policy switch would be made from military counter-action to preemptive attack, followed by Foreign Minister Ri Su-yong's declaration that the switch had been made. Shortly afterwards, however, in a report to the 7<sup>th</sup> Congress of the Korean Workers' Party in May, Kim Jong-un stated that North Korea would not use nuclear weapons unless its sovereignty was encroached upon by an aggressive hostile force *with nukes* (emphasis added). Unlike the Law on Consolidating Position of Nuclear Weapons State in 2013, Kim Jong-un confined the first strike to nuclear weapons. Although Kim Jong-un's remarks can be regarded as a NFU pledge in themselves, he has spoken a number of times of a nuclear preemptive strike, even after the Party Congress. North Korea's nuclear posture, therefore, appears to be a murky duality, aspiring simultaneously to both credible preemptive and second strike capabilities.

## Dual Capabilities

Credible second strike capabilities consist of survivability and readiness in addition to an assured delivery capability. North Korea has pursued these capabilities with great energy and determination, particularly over the course of 2016, and recorded some significant successes.

With respect to warheads with an assured delivery capability, a laboratory experiment in mid-

March reportedly confirmed that North Korea had the design and the materials to withstand the heat and pressure of ballistic re-entry. After a series of test failures with the *Musudan (Hwasong-10)* intermediate range ballistic missile, there was a success on 22 June 2016. North Korea reported that the test was conducted using 'the high-angle fire system' and that the warhead had landed in the targeted waters 400km away after flying to a maximum height of 1413.6km. Though North Korea could not salvage the warhead, it attempted to monitor its resistance to the stresses of re-entry to the atmosphere.

For second-strike readiness, it is desirable that ballistic missiles be solid-fueled. North Korea currently possesses short-range *Toksa*, code-named KN-02 solid-fuel missiles. Applying these technologies to longer-range missiles, North Korea conducted a ground test of a high-powered solid-fuel rocket engine and its cascade separation in March 2016. Kim Jong-un has stressed the need to be able to make nuclear strikes from anywhere on the ground, in the air, at sea and underwater, and solid-fuel engine technologies are necessary to support such versatility. The ability to launch missiles underwater is especially important to survivability. After demonstrating successful pyrolysis and control, North Korea applied these technologies to the *Bukgeukseong (Polaris)-1*, code-named KN-11, Submarine-Launched Ballistic Missile (SLBM) tests in April, July and August.

Under the concept of 'minimum deterrence,' second-strike capabilities threaten larger, easier to strike, counter-value targets, rather than aspire to destroy the adversaries' forces (so-called counter-force targeting); threatening intolerable retaliatory damage to adversaries

in order to deter a first strike. Taking assertion of nuclear preemptive strikes into consideration means North Korean capabilities are not necessarily confined to second strike. It would appear that North Korea is not disposed to distinguish clearly between first and second strike nuclear capabilities.

The aforementioned *Musudan* would be one case in point. Converted from the former Soviet Union's SLBM R-27, it was fired from a mobile Transportable Erector Launcher (TELs) without any prior notification or assertion of the right to the peaceful use of space. Kim Jong-un as well as Ri Su-yong might have had the *Musudan* in mind in March 2016 when they referred to switching North Korea's military posture from retaliation (counter-action) to preemptive attack.

The *Musudan's* effective range is estimated to be 2000-4000km, allowing it to reach Guam as well as all of Japan. Though Guam is inhabited, its Andersen Air Force Base (AFB) is regarded as a base for bombing North Korea in a contingency. A few days before the successful *Musudan* test-fire, North Korea's National Defense Commission spokesman labelled Andersen AFB as 'a logistic base for invading the DPRK', hinting at nuclear first-use. Given its range, mobility and readiness, the *Musudan* straddles the capabilities called for by a posture of retaliation or second strike and the much more demanding aspiration to be able to threaten a preemptive or first strike. The missile could be characterized as a counter-force weapon against Guam and a retaliatory counter-value capability in the case of Japan.

## Escalating and De-escalating

Paradoxical though it might be, North Korea contends that its demonstrated preparedness to escalate tensions

both horizontally and vertically, is in fact a manifestation of its will to de-escalate tensions in a contingency. Given its absolute inferiority in conventional as well as nuclear forces *vis-à-vis* the US, the domains in which North Korean forces might have a meaningful advantage are limited to irregular warfare at the tactical level.

It could be said that North Korea is seeking to convince its adversaries that it has the capability and will to establish escalation dominance over them, especially through nuclear capabilities and a deliberately hazy doctrine on nuclear use that negates US conventional and nuclear superiority, leaving the DPRK's preparedness to engage in irregular warfare to tip the scales in its favor. From a DPRK perspective, establishing escalation dominance amounts to the ability to de-escalate tensions in a contingency.

In March 2016, furthermore, Kim Jung-un foreshadowed a period of intensified ballistic missile and nuclear tests, and this is precisely what transpired. The SLBM tests in June were followed by a series of test-fires of the *Rodong* intermediate ballistic missile that landed inside Japan's Exclusive Economic Zone (EEZ) in August and September, that is, within 200 nautical miles of Japanese land territory.

Furthermore, on 9 September 2016, North Korea's national foundation day, the DPRK conducted its fifth nuclear test, marking the first time two nuclear tests were conducted in the same year. The explosion is estimated to have had a yield of approximately 10kt, some 5-10 times bigger than that of the first nuclear test a decade before, and approaching the force of the nuclear weapon dropped on Hiroshima in August 1945.

According to the statement released by North Korea's Nuclear Weapon Institute, the test was conducted to

determine the power of a nuclear warhead newly developed and manufactured by its scientists. The statement also referred to the 'standardization' of warheads mounted on the strategic ballistic rockets of the *Hwasong* artillery units of the Korean People's Army (KPA)'s Strategic Force and to the 'miniaturization and diversification' of the warheads. This suggests that the test device had the weight and dimensions of an operational missile warhead. It is estimated that North Korea's nuclear technologies have developed to the level where warheads could be produced steadily and delivered to the KPA Strategic Force.

In parallel, North Korea has displayed its intention to deter an attack with conventional forces. In the midst of the US-South Korea *Ssangyong* exercise in March, North Korea conducted tests of its *Chuje-100* (code-named KN-09), 300mm multiple rocket launcher system modeled on Russian BM-30 *Smerch*. North Korea has extended the range of this system to approximately 200km, enough to cover not only the South Korea Gyeryongdae complex and Gunsan AFB, but Osan AFB and Pyongtaek, where the bulk of US forces are planning to move. North Korea deters use of these bases for a conventional attack by threatening KN-09 saturation attacks with 'fragmentation mine shells', 'underground penetration shells', and 'scattering shells'.

A rather clear process of action-reaction is visible here. In 2011, the US and South Korea agreed to extend the range of the latter's ballistic missile to 800km which would allow all of North Korea to be targeted even from the southern tip of the Korean Peninsula. The KN-09 was developed in response to a Kim Jung-un directive in 2012. Following this, from 2014, North Korea took steps to extend the

range of the KN-09 to enable it to threaten US/ROK forces in most of South Korea.

North Korea clearly hopes that demonstrating its determination to use nuclear weapons first in response to a US attack with conventional forces and concurrently threatening saturation attacks on US-South Korea combined forces, will deter US-South Korea's use of force and help prevent escalation in the event of a crisis. At the same time, setting out to deter war and discourage escalation in a crisis, by displaying a stronger appetite for brinkmanship, is just as much a high-risk venture that could end in all-out war with all available weapons.

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\*For further details on the issues addressed in this paper, see, Hideya Kurata, Formation and Evolution of Kim Jong Un's 'Nuclear Doctrine': Current State of North Korea's 'Minimum Deterrence' in Comparison," The Kim Jong Un Regime and the Future Security Environment Surrounding the Korean Peninsula, Tokyo: National Institute for Defense Studies, 2017 (forthcoming).

## Dealing with the DPRK: Exploring the Trump Administration's Options

Ralph A. Cossa

One of the major challenges facing president-elect Donald Trump will be what to do about the challenge to Northeast Asia peace and stability posed by the growing nuclear weapons capability of the Democratic People's Republic of Korea (DPRK or North Korea). Pyongyang has made it clear that it will not even begin to discuss the prospects of denuclearization unless Washington agrees to a bilateral peace treaty, which DPRK interlocutors insist must include an end to the ROK-US alliance and a withdrawal of US forces from the nuclear umbrella from the Korean Peninsula. Washington has steadfastly (and, in my view, rightly) refused this condition, insisting that the price of normalization of relations and Pyongyang's acceptance into the community of nations is denuclearization.

Pyongyang, under its "*byungjin*" or "simultaneous pursuit" policy, has proclaimed the dual goals of economic development and nuclear weapons. The US – indeed the international community, including the DPRK's primary benefactor, China – has said the North can't have both. The long list of UN Security Council sanctions is aimed, in part, at leading Pyongyang to make the right choice. As US Deputy Secretary of State Anthony Tony Blinkin has observed, Washington is "working every single day to build a comprehensive and sustained pressure campaign on North Korea. Not to bring Kim Jong-un to his knees, but to bring him to his senses and back to the table to engage meaningfully on denuclearization." But US Director of National Intelligence James Clapper recently opined what most Korea watchers have believed for years,

that "the notion of getting the North Koreans to denuclearize is probably a lost cause." So where does this leave President Trump as he tries to determine what's next?

The Korean Peninsula has been called the "land of bad options." If there was a simple or easy solution to the North Korea nuclear weapons challenge it would have been pursued by now. But doing nothing, while waiting for the North to either relent in the face of sanctions or collapse – the so-called "strategic patience" approach attributed to the Obama administration – has thus far failed to work. And, as Pyongyang rushes toward the ability to miniaturize a nuclear warhead and fit it on a ballistic missile capable of reaching the United States – a "game changer" that some assess as perilously near (and a few, including Pyongyang, claim is already here) – it would appear that time is on the DPRK's side.

A range of options – *the two extremes being to yield to Pyongyang's demands or to pursue a final military solution* – must be examined by the new US administration, with the understanding that no option will work unless Washington and Seoul are in lock step and others like China and Russia are, if not enthusiastically supportive, at least not working to undermine the effort. Japanese support is also crucial but much easier to assume.

First let's rule out the two extremes. No US administration could or should enter into any bilateral peace accord negotiation with Pyongyang that cuts Seoul out of the discussion. Normalizing relations with a still nuclear weapons-equipped DPRK would, in all probability, sound a death knell for the Nuclear Non-Proliferation Treaty as other dominos will likely fall:

ROK, Japan, Taiwan, etc. Likewise, a march on Pyongyang to once and for all remove the toxic regime, while within US/ROK capabilities, would result in unacceptable levels of collateral damage and should only be contemplated in response to an egregious DPRK military provocation. The solution, if there is one, lies somewhere between these extremes. Let me offer a few alternatives without pretending my list exhausts all future possibilities.

### Leap Day Two

At times, DPRK interlocutors have hinted that Pyongyang would be willing to return to a "freeze for humanitarian assistance" agreement along the lines of the ill-fated 2012 Leap Day Agreement, announced on Feb 29 and undermined 16 days later when the North announced its intention to launch a satellite. We should have no illusions: a new agreement will not solve the problem, nonetheless, it potentially helps stop things from getting worse. Even then, the only verifiable freeze would be a halt to missile and nuclear tests, which are easily detected, and perhaps a freeze on reprocessing at Yongbyon (halting the known plutonium and uranium enrichment efforts), which can be monitored. Most analysts believe there are additional uranium enrichment sites outside Yongbyon which would not be affected and, of course, scientific research and laboratory work would continue virtually unimpeded. Nonetheless, one can argue that a new freeze is better than where we are today, is most likely to be supported by Beijing, and could potentially lead to deeper cooperation down the road, but only if it is seen as the first step toward a genuine process of denuclearization, which at some



US-ROK 2+2 ministerial meetings on 19 October 2016: US Secretary of State Kerry, Secretary of Defence Carter, ROK Foreign Minister Yun and Defense Minister Han. Source: U.S. Department of State, Flickr.

point must include intrusive verification measures and North Korea normalizing its regional relationships.

### **Simultaneous US-DPRK and ROK-DPRK dialogues leading to step-by-step normalization**

Another approach might be to propose simultaneous dialogue efforts aimed at both denuclearization and normalization with the US taking the lead on the denuclearization front while Seoul takes the lead on peace treaty discussions. This could take place within the context of the currently moribund Six-Party Talks, which had a number of simultaneous working groups, or could proceed along parallel bilateral tracks. A “freeze for humanitarian assistance” could be the first step for either or both of these efforts. In the past, Pyongyang has been reluctant to discuss a peace

treaty with Seoul but without direct North-South rapprochement, it seems impossible to achieve a normalization of relations with Washington, which realistically speaking can only come after denuclearization. This approach would immediately test Pyongyang’s sincerity and its willingness, finally, to treat the Seoul government as a sovereign equal.

### **Creation of a North-South Federation or Confederation**

Another approach would be to encourage Seoul and Pyongyang to take the first step by substituting the current hostile policies toward one focused on peaceful coexistence. Both countries have had leaders who in the past offered similar proposals including former ROK President Kim Dae-Jung and DPRK Founder Kim Il-Song. A

willingness by each side to accept the other’s existence and to agree to respect the other’s right to exist would create a positive atmosphere that would make all other things possible. The odds of this happening I must admit are rather slim but it is an approach worth considering and encouraging. It does not directly address the nuclear issue but could set the stage for more meaningful discussions or pursuit of one of the other options.

### **Serious tightening of financial sanctions to bring the North’s economy to the brink of economic collapse**

This could be called the “much, much more of the same” approach but with a greater sense of urgency and comprehensiveness; it’s the logical

extension of the current administration's policy, and with the recognition that perhaps the only way to "bring him to his senses" is to bring Kim Jong-un literally to his knees. There are certainly stronger economic, political, and diplomatic steps that the US, ROK, and Japan can take unilaterally and that the United Nations Security Council (UNSC) could, but probably won't, take multilaterally that could really tighten the screws on the North's economy and really force it to choose between continuing to develop nuclear weapons or face economic collapse. Chinese interlocutors have told me Beijing is indeed prepared to support such an approach in the face of continued DPRK recalcitrance and defiance, but so far Beijing's actions have fallen short of its words. As long as Pyongyang is convinced that Beijing will not turn off its life support, it is hard to have much confidence in this approach. Fortunately, the reverse is also true, but one wonders what Pyongyang has to do to finally convince Beijing that enough is enough. The North Koreans seem to believe that China needs them more than they need China. Unfortunately, Chinese actions to date reinforce this belief. This approach could still work without active genuine Chinese participation and support, but it would obviously be harder and take a lot longer.

## **Regime change by other than overt military means**

Regrettably, the time is rapidly approaching, if not already here, that a policy of actively pursuing and promoting regime change also needs to be clearly put on the table as a serious option worth considering. All too often, regime change is equated to military action but there are a number of overt and covert steps that can be taken aimed at destabilizing and ultimately replacing the Kim Jong-Un regime that need to be considered if

the US, ROK, and others have really reached the conclusion that nothing will stop Kim Jong-Un from pursuing nuclear weapons and his ability to hold the US mainland at risk is rapidly approaching or is already here. The concern here is not that the US will suddenly fear a surprise DPRK nuclear attack. Such an action is the equivalent of instant suicide for the North Korean state. The concern is that Kim will think he has Washington deterred and will then start stepping up provocative actions that could lead us down a slippery slope. Likewise, in a period of increased tension, if it was determined that the North had a long-range missile potentially equipped with a nuclear warhead on a launch pad, preemption by the US would have to be considered a likely option, again with escalatory consequences.

For such an effort to work (or at least to increase the prospects for success), the US and ROK would have to coordinate with Beijing and Moscow in advance and indicate that, if they cooperate, the US/ROK would be open to the possibility of the survival of the North Korean state, but not the current leadership.

To be clear, I am not recommending that the new administration pursue this option . . . at least not yet. This is a potentially risky strategy that should not be taken lightly. But neither should it be taken completely off the table. Circumstances may make it the only viable option short of war to ensure future peace and stability. If the North continues to steadfastly refuse to give up its nuclear weapons and continues to demand it be accepted as a nuclear weapon state, it condemns its neighbours to live with an explosive situation and leader and potentially be subjected to nuclear blackmail or worse. The risks associated with not taking more dramatic steps in dealing with the North may shortly exceed the risks of doing nothing and continuing to hope for the best.

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## China's 'Island-Building' in the South China Sea: Implications for Regional Security

**Robert Beckman**

The Award of the Arbitral Tribunal in July 2016 in the *Philippines v China* case was a resounding victory for the Philippines on the issue of its maritime rights in the South China Sea.

First, the Tribunal ruled that China does not have historic rights in the exclusive economic zone (EEZ) of the Philippines.

Second, the Tribunal held that Scarborough Shoal and five of the features occupied by China in the Spratly Islands (Johnson Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef [North] and McKennan Reef) are "rocks which cannot sustain human habitation or economic life of their own" within article 121(3) of the United Nations Convention on the Law of the Sea (UNCLOS). Consequently, these features are entitled to a 12 nautical mile (M) territorial sea, but they are not entitled to an EEZ or continental shelf of their own.

Third, the Tribunal held that all of the other features in the Spratly Islands group that meet the definition of an "island" under Article 121(1) of UNCLOS (a naturally formed area of land surrounded by and above water at high tide) are "rocks which cannot sustain human habitation or economic life of their own" under article 121(3) of UNCLOS. This ruling applies not only to the features occupied by China, but also to the features occupied by the other claimants. Notably, the Tribunal ruled that the largest natural island in the Spratly Islands, Itu Aba, which is occupied by Taiwan, is also a "rock" entitled to no EEZ or continental shelf of its own. Fourth, the Arbitral Tribunal ruled that four of the features in the Spratly Islands that are occupied by China (Subi Reef, Gaven Reef [South], Hughes Reef and Mischief Reef) are "low-tide elevations". Low-tide elevations are not subject to a claim of sovereignty and not entitled to any maritime zones of their own.

Jurisdiction over low-tide elevations belongs to the state in whose EEZ, or continental shelf, they are located.

In reaching the above conclusions on the status of the features, the Arbitral Tribunal only considered evidence of the status of the features in their natural state. It did not take into account any man-made activities that enlarged the features, brought them permanently above water at high tide, or otherwise altered their natural condition.

Although the main objective of the Philippines' arbitral proceedings against China was to decide on the extent of China's maritime entitlements in the South China Sea, the Award contains several findings which have significant implications for China's reclamation and island-building activities.



USS John C. Stennis moves through the South China Sea on 3 May, 2016. Source: U.S. Pacific Command, Flickr.

## China's Reclamation and Island-Building Activities

After the commencement of arbitral proceedings by the Philippines in January 2013, China took major steps to change the physical landscape and create a new status quo concerning its physical presence in the South China Sea. China engaged in major land reclamation and construction activities that converted seven features (Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef) into large artificial islands that are several times larger than the natural islands occupied by the other claimants. China in effect built large artificial islands with airstrips, port facilities, buildings, and other installations.

China's land reclamation and construction activities sent a clear message to the other claimants, and the international community at large, that it was very serious about its claim to sovereignty over the Spratly Islands, and that the other claimants would have to adjust to a new status quo concerning China's physical presence in the Spratly Islands.

## Award of the Tribunal on Legality of China's Activities

The Philippines was permitted by the Tribunal to amend its pleadings in order to take into account China's large-scale land reclamation and construction activities. However, the Arbitral Tribunal only had jurisdiction over disputes relating to the interpretation or application of the provisions in UNCLOS. There are no express provisions in UNCLOS setting out what activities States can undertake on disputed offshore islands and reefs under their occupation and control.

That said, the Tribunal made two rulings with respect to China's land reclamation and construction activities. First, it ruled that by engaging in these activities

while the case was before the Tribunal, China had violated its obligations under UNCLOS and general international law to refrain from activities that would aggravate or extend the dispute. Second, the Tribunal ruled that China had violated its obligations under UNCLOS to protect and preserve the marine environment with respect to fragile ecosystems and the habitat of depleted, threatened or endangered species in the waters surrounding the Spratly Islands.

Commentators have suggested that China is openly defying the Award of the Tribunal by continuing to occupy the artificial islands and by continuing to build installations and structures on them. However, the Tribunal made no ruling on whether China's reclamation activities were in principle illegal. Nor did it make any ruling limiting the types of installations and structures that China could place on the islands or stating that it would be illegal for China to militarize the islands. These issues are not governed by UNCLOS, and the Tribunal did not consider them.

However, special legal issues arise as a result of the Tribunal's ruling on Mischief Reef. The Tribunal ruled that Mischief Reef is a low-tide elevation within the EEZ of the Philippines, and that consequently, it is legally under the jurisdiction of the Philippines. Therefore, China would have no right under international law to occupy or carry out activities on Mischief Reef without the consent of the Philippines. Also, since it is a low-tide elevation, it is not entitled to any maritime zones, including a 12 M territorial sea. Therefore, foreign military vessels can legally navigate very close to Mischief Reef and engage in activities such as reconnaissance that would normally be prohibited under the rules governing innocent passage in the territorial sea.

## Militarization of the Artificial Islands

China has maintained that its land reclamation works and construction activities have been solely for civilian purposes, a characterization which the Tribunal accepted. However, there are allegations that China is taking steps to militarize the islands in order to change the balance of power in the South China Sea. Such actions would pose a threat to the security interests of the United States as well as the security interests of other States in the region. Other claimant States are likely to respond by taking measures to enhance security on the features they occupy, and Vietnam has reportedly already done so. Also, the United States and its allies are likely to take measures to counter any security threat that they perceive arises from such actions. The result could be a series of "actions and reactions" that would create a serious threat to maritime security in the region.

## US Freedom of Navigation Operations

A threat to maritime security could also be triggered by actions of the United States and its allies. The United States has conducted several freedom of navigation (FON) operations in the waters surrounding the Spratly Islands over the past two years. The FON operations were intended to send a message to China that the United States intends to exercise traditional "high seas freedoms" in and above the waters in the South China Sea as is permitted by international law.

Threats to maritime security could arise if the United States decides to undertake FON operations in the waters surrounding Chinese artificial islands because China believes these operations are both a security threat and illegal. China maintains that military vessels must seek authorization before exercising the right of innocent passage

through the territorial sea, whereas the United States maintains that military vessels may exercise the right of innocent passage without seeking authorization or giving prior notice. Further, the United States supports traditional ‘freedoms of the seas’ in the waters beyond the limits of territorial seas, including freedom of navigation, freedom of overflight, and the freedom to conduct military activities including reconnaissance. China takes a different view and argues that such activities are contrary to international law if they threaten the security interests of the coastal state. Notwithstanding whose view of international law is correct, FON operations in the waters near China’s artificial islands pose a potential threat to maritime security. Hopefully, China and the United States will be able to reach a negotiated compromise that minimizes the risk of conflict at the operational level without requiring either State to accept the other’s interpretation of international law.

Additionally, China could threaten maritime security if it were to take measures in the waters and airspace surrounding the disputed islands: areas that the US and other powers believe amount to “excessive maritime claims” in defiance of international law. For example, if China were to draw straight baselines connecting all or some of the features in the Spratly Islands and claim a territorial sea, many states are likely to challenge the legality of such a claim; the United States is likely to conduct FON operations while other states may take action through diplomatic protests. Similarly, if China were to declare either an Aerial Defense Identification Zone (ADIZ) in the South China Sea, it is very likely to be challenged by the United States both diplomatically and through FON operations.

## Prospects for Managing Threats to Maritime Security

In the weeks and months immediately following the Award of the Arbitral Tribunal there is little evidence that threats to maritime security have increased. Both China and the ASEAN States appear to be making a serious effort to refrain from actions that would increase existing tensions. China has denounced the Award of the Tribunal as null and void, but it has refrained from assertively defying the decision. The Philippines and the other ASEAN claimants were likely to have been very pleased by the Award, but they have acted with caution so as not to enflame relations with China. In fact, all the states concerned seem to be taking the time to absorb the changes that have resulted from the fundamental two changes in the status quo. In addition, the election of Rodrigo Duterte opened an opportunity for China and the Philippines to develop a new bilateral relationship.

There have been no reports of incidents between vessels of China and the ASEAN States. In fact, reports in late October suggest that talks between the Philippines and China have resulted in Philippine fishing vessels returning to Scarborough Shoal. This is consistent with the Award of the Arbitral Tribunal.

If China is able to demonstrate to the ASEAN claimants that it is interested in developing practical measures to enhance economic and political cooperation, and that its artificial islands are not a threat to their security or to the natural resources in their EEZ, there is a good chance that relations between China and the ASEAN claimants will improve. Any cooperative measures that are agreed upon are likely to take into account both the new status quo on the legal issues and the new status quo on physical presence. However, neither of these issues would have to be mentioned

in the negotiations or in documents setting out the cooperative measures.

The most serious security issue is whether tensions between China and the United States can be reduced. China’s artificial islands do not necessarily pose a threat to freedom of navigation or freedom of overflight in the South China Sea, especially for commercial vessels and aircraft. However, if the United States concludes that the artificial islands are part of an effort by China to challenge the military dominance of the United States in the region, threats to maritime security in the region are likely to increase. Therefore, it is hoped that the United States and China will engage in discussions and negotiations which enable them to accommodate each other’s interests and manage potential conflicts.

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## The South China Sea Tribunal's Award: New Prospects for Cooperation?

**Nguyen Thi Lan Anh\***

Some view the South China Sea Tribunal's Award as a win-lose solution that would not contribute to long-term dispute settlement in the South China Sea. Others consider this assessment to be a spontaneous and subjective reaction to the award. A closer look that moves beyond the interests of particular parties in the South China Sea may offer a more benign strategic picture where prospects for cooperation in the South China Sea look feasible and where the Award may actually facilitate the Code of Conduct negotiation process.

### A benign strategic picture

The South China Sea has loomed as a contentious choke point on the world security map since 2009. The situation further deteriorated in recent years with the massive construction and militarization of artificial islands. The main cause of tension is the different views contesting parties hold on the capacity of maritime features to generate maritime rights and, hence, about the authority to enforce these rights in the South China Sea. China, on the one hand, insists that its claims have a historical foundation. Others rely solely on international law, as is stipulated in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Award resolved this difference through determining that UNCLOS was decisive in defining the limits of maritime zones for coastal states.<sup>1</sup> The Award also found that China's claim to historical rights to living and non-living resources within the 'nine-dash line' has no legal basis (Merits Award, Para 262). Nationalist sentiments make it hard for any country to give up territorial

and maritime claims, particularly those related to their history like the nine-dashed line. In this regard, the award will be helpful in providing clarity for all parties and an objective basis for Chinese leaders to make concession based on international law.

From a broader perspective, the South China Sea is a test case for the peaceful rise of China. If China shows its goodwill to adhere to international law and become a responsible power, the current world order, which all have enjoyed since the end of the Second World War, will be preserved. The Award offers a legal foundation for other countries to voice their support for international law and persuade China to rise in accordance with what most of the international community desire. This will help to build a stable strategic security environment for the region.

### Feasible prospects for cooperation

To date, the disputes over territories and maritime rights have led to mismanagements of the precious resources and the common heritage of the South China Sea. Depleted fish stocks, a degraded marine environment, insecure sea-lane of communication and a heightened risk of incidents are among the more prominent challenges that have emerged in the South China Sea. The Award has opened new prospects for cooperation to address these challenges.

The South China Sea has long been known as a popular fishing ground for littoral states. Unfortunately, fishing has been politicalized as a tool for asserting maritime claims. Fishing

incidents occurred frequently in the areas near the Paracels, Scarborough and the EEZs of littoral states.

The Award clearly ruled on fishing rights by distributing maritime zones into three legal regimes, namely traditional fishing zones, EEZ and high sea. In each regime, the sovereign right and jurisdiction of coastal states are provided for under customary international law and UNCLOS. This legal basis will be helpful in promoting fishing cooperation within the region.

Regarding traditional fishing zones, the Award clearly stated that the Scarborough Shoal has been a traditional fishing ground for many nations, including the Philippines, China (including Taiwan), and Viet Nam (Merits Award, Para 805). This conclusion opens the possibility of cooperation to preserve traditional fishing practices in the Scarborough Shoal. Furthermore, given the nature of fishing practices in the Paracels and Spratlys, the parties may establish an analogical model of joint traditional fishing within 12nm of high tide features.

Beyond 12nm of the high tide features of the Scarborough, Paracels and Spratlys, the maritime zones in the South China Sea has been definitely attributed to coastal states' EEZs or classified as high sea. Within the EEZ, coastal states have sovereign right over living resources. This sovereign right, however, does not preclude sharing access to fish stocks with other countries where feasible. This may give rise to the establishment of joint fishing arrangement in the South China Sea.

In addition, based on the conclusions of the Tribunal that no high tide



US President Obama and Vietnamese President Quang speak at a press conference in Hanoi 23 May 2016. Source: IIP Photo Archive, Flickr.

features in the Spratlys is capable of generating an EEZ and continental shelf, a high sea will exist in the South China Sea and create a common fishing ground for all states under the principle of freedom of the sea. The existence of various fishing regimes in a semi-enclosed sea, like the South China Sea, further raises the need for fishing cooperation.

Another widespread practice in the region which is not only threatening law enforcement, but also the sustainable management of fishing stocks, is illegal, unregistered and unreported fishing (IUU fishing). The conclusions of the Award have provided the parties with clear limits on their fishing zones which should facilitate law enforcement efforts to address IUU fishing. This also opens up the possibility of joint patrols between law enforcement to police their jurisdiction in overlapping or adjacent EEZs.

Besides fishing resources, hydrocarbon and minerals may well be the subject for cooperation either under the model of joint ventures in places within the continental shelf of coastal states or under regulation of the International Sea Bed Authority in applicable areas of the South China Sea.

Regarding the marine environment, the Award confirmed that bad fishing practices in the South China Sea, including the harvest of endangered species, the usage of explosives, poisons, electricity, and the mass destruction of coral reef for harvesting giant clams or for the construction of artificial islands did impair fishery resources. The Award cited a recent evaluation by Professor McManus that showed that almost 70 square kilometers of coral reef had been damaged by giant clam harvesting using propellers, a practice that is more thoroughly damaging to marine

life than anything the author had seen in his four decades of investigating coral reef degradation (Merits Award, Para 958). This factual information constitutes an urgent call for environmental protection in the South China Sea. So far, the Coral Triangle Initiative (CTI) has proven its effectiveness in gathering high-level political will and adopting many actions to strengthen the management of seascapes, promote an ecosystem approach to fisheries management, establish and improve the effective management of marine protected areas, improve coastal community resilience to climate change, and protect threatened species. Further, the professional literature includes a number of recommendations to establish national and transnational Marine Protected Area (MPA) or Particular Sensitive Sea Area (PSSA) to better protect the marine environment of the South China Sea. With the

clarity afforded by the South China Sea Tribunal's Award, the littoral states now have firm legal basis to establish national and transnational MPA, in which 12 nm surrounding high tide features of the Paracels, Spratlys and Scarborough. Even the high seas in the South China Sea may well be eligible for the establishment of a transboundary MPA, following the CTI model of cooperation.

Beyond the destructive consequences for the marine environment, the Award also addressed the legality of construction activities on Mischief Reef. The Award determined that only the Philippines has the right to construct artificial buildings on Mischief Reef, a low tide elevation located within its EEZ. Several other low tide elevations like Subi Reef, Gaven South Reef and Hughe Reef which also have constructions are within 12 nm of Sand Cay, Gaven North, Nayit Reef, Kennan Reef, and Sincow Island. This proximity made the right to construct on these features subject to a determination on sovereignty and any subsequent delimitation of overlapping territorial seas which was outside the jurisdiction of the South China Sea Award. Pending such settlement, it would be desirable and certainly sensible that the massive constructions be shared for civilian purposes, notably search and rescue, humanitarian assistance and disaster relief. These are most desirable of the common interests of the parties concerned given the vulnerability of the region to natural disasters and climate changes.

Last but not least, there are many other non-traditional threats to maritime security in the South China Sea, especially transnational maritime criminal activity including smuggling, armed robbery, and piracy. These threats require more coherent coordination and cooperation among law enforcement forces. In this regard, the model of cooperation in

the Malacca Straits in the form of joint maritime and air patrols and joint exercises can also be applied to the South China Sea to better suppress transnational maritime crimes and maintain the safety of navigation.

## Facilitation of the Code of Conduct (COC) Process

Initiated since the 1990s, the endeavor to conclude a COC in the South China Sea for dispute management and cooperation has encountered strong headwinds. The agreement, in 2002, to conclude the more general and non-binding Declaration on the Conduct of Parties in the South China Sea (DOC) did not significantly improve the outlook for the COC. In 2013, China and ASEAN countries resumed efforts to conclude the COC by initiating a consultation process. In the last three years, the consultation process has proceeded slowly with no substantial achievement. Fortunately, the Award could impart new momentum to the COC process.

First, the COC's scope of application had always been a primary stumbling block. The Award, however, has narrowed the disputed area in the South China Sea to the 12 nm surrounding the high tide features of the Spratlys and Scarborough Shoal. An analogical application of this conclusion to the Paracels will have a comparable effect. Pending final settlement, these legal clarifications provide a sharper focus for provisions to regulate the conducts of parties under the condominium regime.

Second, the legality of a wide range of activities conducted by the parties has been analysed and assessed in the Award. Among them, the obligation to respect the sovereign rights and jurisdiction of coastal states within their EEZ and continental shelf have been elaborated in details. For example, not respecting the sovereign

rights of coastal states on fishing resources, conducting construction within a coastal state's EEZ without the consent of that coastal states were ruled to be grave violations of international law. Beyond sovereign rights and jurisdiction, the parties concerned are also obliged to respect the provisions of UNCLOS on safety of navigation and marine environment protection. These obligations apply regardless of the legal regime for the maritime zones. In addition, pending final settlement, the parties are obliged to exercise self-restraint and not exaggerate the disputes. This dimension of the Award can be utilized to enrich the list of "DOs and DON'Ts" as the first step in a road map for drafting the COC. Third, the clarity of the Award also offers the prospect of additional cooperation in a number of important fields as part of the implementation of the DOC, a process that would, in turn, impart momentum to conclusion of a COC.

Like it or not, the South China Sea Award is a decision made by a credible arbitration panel authorized by UNCLOS. The arbitrators have generated new opportunities. It now depends on the parties to use the Award to open the knot of the disputes and aspire to build a foundation for stability in the South China Sea that helps realise the dream of every littoral state.

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\*The views expressed in this paper are strictly those of the author and do not necessarily reflect any official position of the institution where she works.

<sup>1</sup>Para 321 of the Award on the Merits in the matter of the South China Sea Arbitration before an Arbitral Tribunal constituted under Annex VII of the UNCLOS between the Philippines and China, <http://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf> (hereafter referred to as the Merits Award)

## On Pivots and Puzzles in the South China Sea

Jay L Batongbacal

In the four short months since the landmark arbitral award in *Philippines v. China*, the situation in the South China Sea has taken rather unexpected turns. The award was announced just weeks into the term of newly-elected Philippine President Rodrigo R. Duterte. At his very first Cabinet meeting, Duterte declared that his government would not “taunt or flaunt” the ruling and instead seek a “soft landing” with China on the issue. How soft he wanted it became clear at the ASEAN Summit in September, when, despite expectations to the contrary, the Philippines no longer pushed hard on giving the issue prominence in the traditional communique. In a surprise turn of events, Duterte also began throwing expletive-ridden tirades at US President Barack Obama and the US, at one point also signaling an intention to end the Philippine-US alliance.

The following month, after an “icebreaker” meeting spearheaded by former President Fidel V. Ramos to identify matters of common concern, President Duterte followed up with a visit to China at which he met personally with Chinese President Xi Jinping, and made a grandiose announcement of “separating” the Philippines from the United States “economically and militarily,” sending jitters throughout the region and the US. As soon as he returned to Manila with USD 24 Billion in Chinese aid and investment pledges, however, he began to qualify this statement, saying that he only meant that he wanted to have a foreign policy that was “independent” and less attuned with the US. Two weeks later, on a visit to Japan, he described his statement as being merely “personal” and not having anything to do with government. He also signed a joint statement with Japanese Prime Minister Shinzo Abe which included a much more strongly worded paragraph



The arbitral court ruled 12 July 2016 in favour of the Filipino claims in the South China Sea. Source: Permanent Court of Arbitration.

reiterating the importance of the arbitration award.

At the end of October, Duterte’s visit to China bore its first tangible fruit in the SCS when Philippine fishermen, in the presence of the China Coast Guard, were no longer prevented from fishing on Scarborough Shoal. This was followed by Philippine Coast Guard vessels “testing the waters” and conducting patrols near the feature, despite Duterte’s previous announcement in August that the Philippines would no longer patrol its EEZ. Later, Duterte backtracked on his previous declaration that the Philippine US joint exercises in 2016 would be the last, and instead announced its continuation, albeit bereft of its external defense capability-building aspects.

Donald Trump’s upset win in the US presidential elections generated a new wave of uncertainty. Trump’s wild and provocative campaign, with its frequent jabs at free trade and Asia-based competitors in manufacturing, sent a pall throughout the region. But Duterte immediately changed his formerly antagonistic tune toward the US, and

welcomed the US President-elect, even comparing himself favorably to him. He also reiterated the strong friendly ties between the Philippines and the US, emphasizing that he would maintain the alliance.

Duterte’s famously-described “pivot to China” has been portrayed by some observers as an astute strategy to play off the principal geopolitical competitors, China and the US, against each other in order to extract greater concessions from both sides. But neither China nor the US have bought into the story, with China’s lack of enthusiasm for his “separation” and the US not convinced of a major split in alliance in the absence of concrete follow-up. Both China and the US perceive the Philippines’ well-entrenched economic, social, and political relationships to be more resilient than the firebrand’s frequent tirades, and have carefully calibrated their responses. For now, China appears to be ahead: by declaring Sino-Philippine relations to have been fully repaired, pledging a considerable amount of economic assistance, and not obstructing Philippine fishing in

Scarborough Shoal, China has almost completely removed the standing cause of tensions with the Philippines that served as the basis for an increased US military presence and activities on the western flank of the SCS since 2012. China remains unimpeded in its ability to finish and bring to full operational status all of its brand-new artificial islands for both military and civilian purposes. Indeed, the increased tempo of its military and para-military maritime presence has normalized, and its expanded fishing and marine research operations remain ongoing, and are still being conducted within Philippine EEZ waters. America's rotational military presence similarly appears to have remained essentially constant as Philippine-US military cooperation has not yet been directly affected, even though officials on both sides fretted each time the Philippine President issued another invective-laden threat to the alliance.

US President-elect Trump currently presents a new uncertainty. It is not clear what his Asia-Pacific policy would feature, other than to scuttle the Trans-Pacific Partnership which comprised the economic component of the US pivot to Asia. With an axe to grind against China, which Trump has accused of currency-manipulation and unfair trade, future US Asia-Pacific policy may be skewed toward being primarily military-strategic in character. Trump is said to want to again build-up the US Navy, which has shrunk in numbers due to US budget sequestration policies, and to never again allow economic considerations like trade to override US strategic interests. What this means for the Asia-Pacific, including the South China Sea, remains to be seen. In the absence of more concrete information and actions, it may be assumed that his "America First" policy will cause some friction with key Asia-Pacific countries like China, South Korea, Japan, and the Philippines that face the possibility of tougher trade relations due to

initiatives to re-negotiate or adjust the terms of existing agreements in a way that brings jobs back to the US. Long-standing US interests in the freedoms of the seas and overall regional peace and stability will keep the US military active in the region, but the realities of its resource limitations will mean that it will continue to try to hand-off much of its stabilizing role to regional allies and partners. This will be manifest in continuing pressures to have Japan, Australia, and South Korea become more active in regional strategic affairs, as well as the cultivation of lower-profile strategic partnerships with countries like Vietnam.

This could become a source of tension with China, especially if Japan does indeed become more active in the South China Sea. However, this is probably not feasible in the near-term, as Japan is still very cautious about taking on a more prominent regional security role. For the near term, it appears to be content with providing support and capacity-building assistance to like-minded countries or strategic partners like the Philippines. As part of its initial strategic outreach, Japan is providing the Philippines with civilian maritime law enforcement vessels and training, and maritime patrol aircraft. Japan's soft strategic outreach is nevertheless causing consternation in China, which is extremely allergic to any increased Japanese role in the South China Sea and has pointedly threatened Japan to not get involved.

The sudden reduction of tensions in the South China Sea has been a relief for ASEAN, as the group is no longer under immediate pressure to deal squarely with the issue and thereby implicitly take geopolitical sides. The presence of China's artificial islands, however, calls into question ASEAN efforts to agree on a Code of Conduct, the idea for which was borne under extremely different circumstances back in the late 1990s and early 2000s. The marked change

in the status quo would likely limit the utility of the Code of Conduct as far as dispute resolution is concerned but it may be productively redirected toward conflict management and avoidance. With the Philippines having turned back toward the path of quiet bilateral diplomacy with China, followed by Malaysia's renewal of close relations with Beijing and Vietnam's multi-track approach toward the dispute, it seems that the ASEAN Code of Conduct will have to find a new role in a greatly changed regional geopolitical seascape. If the Southeast Asian claimants continue this trend toward individual bilateral dealings with China, and if the key geopolitical competitors, China and the US, decide to de-prioritize the South China Sea interactions, middle powers like Australia, India and Japan could choose to play more active roles in molding the regional dynamics. However, it appears that none are inclined to do so beyond what they are doing now.

In sum, the massive victory of the Philippines in its arbitration case over the South China Sea, and the remarkable legal clarification that it has brought to the status and allocation of its waters is indeed a turning point in the legal discourse over littoral countries' legitimate rights. But clarification of the geopolitical situation has obviously not followed, and in fact has become even more problematic and uncertain in light of changes in the political landscape and in the absence of immediate strong follow-through on the award. The year 2016 will be remembered as the year of upsets, and the coming twelve months will likely be marked by tentative and uncertain readjustments as the region comes to grips with a new and unsettled economic and political balance in the Asia Pacific.

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## Solving a Puzzle in the South China Sea

### Fu-Kuo Liu

The U-shaped line (also known as China's 9 dashed line/Taiwan's 11 dashed line) in the South China Sea has been very much at the centre of discussion and debate in recent times. Most recently, it was among the issues clearly addressed by the arbitration tribunal that considered Philippine maritime rights in the South China Sea. When the United States and China accelerate strategic competition in the region, the South China Sea becomes a core issue, the crux of which happens to be the definition of the 9-dashed line. Many, including the United States and China, have already engaged in talks and debates on the South China Sea where a core issue is the content and intent of the U-shaped line. Yet, most people do not have clear understanding of how it came about, why it appears this way, and what function it has performed. The complicated and unsettled relationship in the Taiwan Strait between China and Taiwan has also contributed to comparatively few people having detailed knowledge of the origins of the U-shaped line.

In the overarching context of great power strategic interests, the current trend in the region of questioning the legality of the U-shaped line is unfortunately very misleading and distorted. This is especially true as the line is always linked to China's assertiveness in the region, as if the line is exclusively an expression of power politics. The U-shaped line has roots in history, a firm legal base, and a clear diplomatic purpose. The process that gave rise to the line should not be forgotten; its existence as part of the status quo in the South China Sea for more than seventy years cannot be ignored. It is important to appreciate that the claim to maritime rights inside the U-shaped line has a firm rationale rooted in



A satellite image of Itu Aba, Spratly Islands, taken 20 May 2016.  
Source: CSIS Asia Maritime Transparency Initiative.

history because such an understanding suggests that the arbitration tribunal's award is counterproductive to regional stability. The most critical point to be realized is that the U-shaped line has been part of the politics of the South China Sea since the end of WWII. The line did not come out of nowhere, as much commentary tries to suggest. Rather, it is very much based on the accepted rules of international law and diplomatic practice in place at the time of its inception. To be more precise, beyond claiming sovereignty over all maritime features, China (both the ROC and the PRC) assert that the line also refers to historic rights including fishing, navigation, and exploration, and exploitation of resources. Although there were no clear rules on the maritime rights of coastal states beyond the extent of their territorial seas at that time, this does not rule out Chinese historical rights under traditional international law. The U-shaped line should not be assessed only against the

1982 UN Convention on the Law of the Sea (UNCLOS). Over the last seventy years, the U-shaped line has generated certain practices in the South China Sea. As such, interpretation of the line should be a more balanced process taking into account both customary law and UNCLOS.

### Rationale of the U-shaped Line

Those unfamiliar with how the U-shaped line came about can be prone to jump to conclusions based on a general understanding of UNCLOS, and to criticize China's assertive posture on its claims inside the line. Before and after WWII, when Asia's modernization process was still in its infancy, the national boundaries surrounding the South China Sea were indefinite and undecided. For various natural and historic reasons, large parts of the maritime features in the South China Sea were uninhabited, even though

the Chinese had records of their fishery and commercial activities on some islands dating back hundreds of years. Until comparatively recently, the issues of sovereignty and maritime order and engaging in maritime delimitation as a matter of routine were underdeveloped in Asia. Later, conflicting claims of sovereignty over some maritime features among claimants did threaten regional peace from time to time. As a way of reducing military conflict over territorial disputes and in an effort to clarify national boundaries, the then-Chinese government (the Republic of China), used historic facts and other rationales to develop the 11-dashed line as a preliminary legal regime for the South China Sea.<sup>4</sup> In the immediate post-WWII environment, the Chinese government was unable to negotiate delimitation agreements with any neighboring countries, as Vietnam, Malaysia, Brunei and the Philippines were still either under colonial control or just newly exercising their independence. To prevent further complications with these neighboring countries, the line was originally intended to serve national security and diplomatic purposes.

The U-shaped line does seek to address a range of security, diplomatic and legal interests. First, based on traditional international law and customary law, the 11-dashed line was left as an open dashed line. It was primarily intended as an islands attribution line claiming sovereignty over all maritime features and defining the status of the waters inside the line. Most importantly, it left room for future negotiations on maritime boundaries with neighboring countries. The origins of the line show that the Chinese government had always had the clear intention to solve territorial disputes through diplomatic negotiation. Second, immediately after the end of WWII, French troops tried to occupy some islands in the South China Sea, which made protecting sovereignty an urgent priority for

the Chinese government. In order to discourage such advances by its neighbours, the Chinese government decided to publish the U-shaped line map as a formal declaration of sovereignty. Third, the U-shaped line was based on the traditional international law regime under which islands could generate nothing more than three nautical miles of territorial sea. The line indicated that all maritime features inside it belonged to China but it did not attempt to regulate the waters beyond three nautical miles. Most particularly, it did not give a specific meaning to the term “adjacent waters.” Since then, however, commentators often claim that the Chinese government regards the adjacent waters inside the U-shaped line as in some sense an internal sea or part of its territorial seas. It is clear that the world is waiting for China and Taiwan to update the nature of adjacent waters in accordance with UNCLOS. Fourth, every dash of the 11-dashed line was drawn according to the base of median lines between the islands within the line and the opposite coasts of the neighboring countries.

Today, while many criticize the line as incompatible with UNCLOS, its historic foundations are almost disregarded. Much of the argument against the legality of the line focusses narrowly or exclusively on a legal interpretation of UNCLOS in respect of historical titles. According to UNCLOS, only under certain exceptional conditions would the historic rights of coastal states be accepted. Since the U-shaped line was not established by treaty law but was presented as a preliminary legal regime derived from customary law and state practice, any judgements should weigh all these contributing considerations in the balance. Obviously, UNCLOS should be the main legal basis for dispute settlement, but it should not become the exclusive point of reference. As such, it is not correct to judge the U-shaped line exclusively from a narrow legal and political perspective. Nor is it correct

or acceptable to judge the U-shaped line based on the strategic interests of an individual state.

The U-shaped line is certainly not indisputably clear. Nor is it easy to reconcile with UNCLOS. Its existence, however, connects the earlier (circa WWII) regional order with today's maritime legal regime, and this deserves the careful attention of the policy community in the region. The regional maritime order needs to take both treaty law and customary law into account.

## Significance for Regional Stability

Much of the current debate on South China Sea issues leans toward a provocative American posture of resisting and minimizing Chinese gains. Based on different interpretations of the U-shaped line and the related maritime rights claimed, the US and China have accelerated their strategic competition to a point that almost overshadows the original nature of the territorial disputes among claimants. As strategic competition continues, regional players find it much more difficult to stand independently between these two great powers. In some instances, the US-China competition has even forced the regional players – ASEAN members for example - to take sides. This suggests that provocation at this moment is counterproductive to regional stability.

While the arbitration tribunal award focused interest on the legality of the U-shaped line, hardly any attention has been paid to the ongoing process and diplomatic efforts directed at the negotiation of a Code of Conduct in the South China Sea between China and ASEAN. The arbitration case as presented may not be as useful as originally hoped for settling the territorial disputes. Strategic competition and the legal campaign against China may have unhelpfully twisted the focus of the effort to address territorial disputes in the South China Sea. What the region

should recognize is the reality that the U-shaped line derives from a historical process, and that the six South China Sea claimants have quite different perspectives on it. While China and Taiwan base their position on historic facts, traditional international law and customary law, and insist that the line has legitimacy, the remaining four claimants look essentially to UNCLOS and have a contrary view.

It is obvious that there are clear differences in the sovereignty claims in the South China Sea. The territorial disputes in the South China Sea will not have an easy solution, while the different interests of claimants and non-claimants complicate the situation even further. The arbitration tribunal's award reminds us that a legal campaign should not be the only approach to resolving territorial disputes on the ground. Rather, the key will be a process of diplomatic negotiation. After all, understanding and consideration is the Asian way of settling disputes.

### Taiwan, China, and Discourse on the U-shaped Line

The historical validity of the U-shaped line was rejected by the arbitration tribunal. The award was seriously prejudiced, leaning as far as it could toward the interests of the Philippines and the United States and displaying little interest in the historical and official evidence available that supported the Chinese view. This made it inevitable that China and Taiwan would reject the award. Basically, the Chinese government has defined the U-shaped line with clear elements: sovereignty over maritime features within the line, sovereign rights over surrounding waters as defined by UNCLOS, and historic rights over fishing, navigation, and resource exploration and exploitation. Taiwan has traditionally taken a similar position. According to UNCLOS, claiming "historic rights" within the

U-shaped line could be challenging. In response to the arbitration award, the Chinese government clearly highlighted that China has historic rights in the South China Sea. This is the core issue that China and Taiwan have yet to elaborate clearly to the international community.

Although the historical process of promulgating the U-shaped line back in the 1940s may not have been fully completed from a legal standpoint it does, however, make clear, then and now, China's position on all features within the line. It is obvious that both Taiwan and China will continue to insist on their claims, perhaps in a different manner. On strengthening the legitimacy of the U-shaped line, Taiwan and China would seem to be on the same page. However, political transformation in Taiwan may in due course challenge its conventional policy stance. Especially, when the pro-Taiwan independence Democratic Progressive Party is in power, it could become a political issue between China and Taiwan. As the DPP rejects the "one China" foundation, there is a high political risk that it may step away from its traditional claim in the South China Sea. Such a change may make the future of the U-shaped line more uncertain.

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<sup>1</sup> For additional information on the main themes of this paper see Zhiguo Gao and Bingbing Jia, "The nine-dashed line in the South China Sea: history, status, and implications," *American Journal of International Law*, vol. 107, (2013), pp. 98-124.

# The Future of Dispute Resolution and Management of the South China Sea: A Post Arbitration Analysis

**Haryo Budi Nugroho**

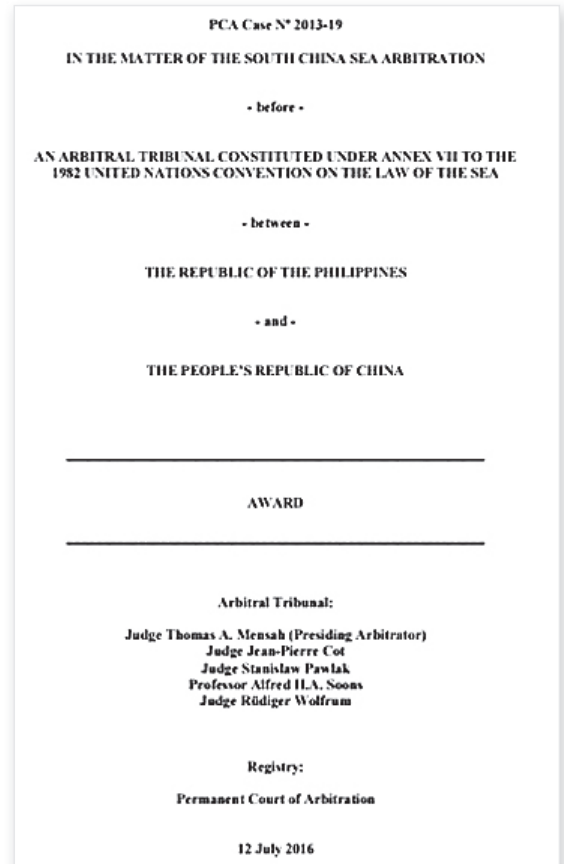
The Award of the Arbitral Tribunal instituted by the Philippines against China under the United Nations Convention on the Law of the Sea (UNCLOS), rendered on 12 July 2016, marks a new chapter in the South China Sea question. Unsurprisingly, China, which had refused to participate in the proceeding, has also refused to acknowledge the Award. Following the Award, China has reaffirmed its position that it will settle the dispute through negotiations with other claimants, and that it will continue to participate in the negotiations for the early conclusion of the Code of Conduct in the South China Sea.

China's affirmation to settle the dispute with other claimants needs to be respected. Indeed, the South China Sea dispute can only be resolved by the claimants, if they settle the ownership issues over the maritime features and determine the maritime boundaries in accordance with international law. However, before starting the negotiation, all claimants will need to clarify their position on the features to which they claim ownership. Not all features in the South China Sea are claimed by all claimants. This clarification will help to identify the negotiation counterpart for China, in order to solve the dispute.

While acknowledging there are features requiring trilateral or multi-claimant negotiations, negotiation can begin with features that are claimed by two claimants only. The features in the Paracel group currently claimed by China and Vietnam, and the Scarborough Shoal that is claimed by China and the

Philippines, can therefore be resolved through bilateral negotiations. Thitu, presumably not claimed by Malaysia or Brunei, can be resolved through trilateral negotiations between China, the Philippines and Vietnam. It is best to work through the disputes with the least parties involved first, beginning with the bilateral disputes, and working up through the rest.

In continuing the negotiation route, China, as well as other claimants, needs to be prepared for a process that will be neither smooth nor short. The experience of Indonesia and Malaysia, in resolving the ownership of Ligitan and Sipadan, demonstrated that decades of negotiations would not guarantee a solution. Both claimants, after having relentlessly defending their claim of original title since 1969, eventually decided to settle the dispute through the International Court of Justice (ICJ) in 1997. It took another five years before the ICJ made its decision in 2002. The case of Gibraltar is also a stark example of how a territorial dispute can remain unresolved for more than 300 years. Other examples of the long list of ownership disputes yet to be resolved include the Falkland/Malvinas Island between Argentina and the United Kingdom, the Abu Musa, the Greater Tunb and the Lesser Tunb between Iran and the United Arab Emirates, as well as Hans Island between Canada and Denmark.



Arbitral Tribunal award released 12 July 2016.  
Source: Permanent Court of Arbitration.

The Pedra Branca dispute between Malaysia and Singapore provides a different insight. The dispute involved the question of transfer of ownership, which claimants in the South China Sea may also face. The determination of transfer of title can be done only through an adjudication process, as no claimant would admit that a territory it once held, has changed ownership. After the ICJ rendered its award on ownership in 2008, Malaysia and Singapore have yet to delimit the maritime boundaries, which will involve a trilateral process with Indonesia. Eight years have passed, and the three countries have not started the negotiation.

With regard to the South China Sea situation, it is highly likely that claimants will face a long debate over historical facts, and rather unlikely that they will agree to settle the dispute through the ICJ or another international adjudication body. Even if the dispute is resolved, the domestic repercussions are an additional factor that claimants need to consider because solving the ownership dispute is not a win-win situation, it is, in fact, a win-loose situation.

It has to be expected that sooner or later, bilateral negotiations to determine ownership of the features likely will face a deadlock, and claimants will need to explore other options. A plausible alternative is to split the disputed features. While it is possible to split Paracel group given that it consists of a number of different features, it is difficult to split a small isolated feature such as the Scarborough Shoal. In such cases, joint ownership, joint management, or even the creation of a joint authority to develop the disputed feature may become options. Nevertheless, these options are mainly political in nature, a cosmetic overlay to hide the unresolved ownership dispute. For example, Germany and the Netherlands took this route to end the delimitation in the Ems River. In 2014 both states signed an agreement that regulates the disputed maritime areas without drawing a definitive boundary line. It is not a bad result, as long as both claimants are satisfied with the arrangement. As noted above, there are many ownership disputes that are left unresolved for various reasons.

As the claimants continue their endeavors to solve the ownership dispute, the effort to maintain regional stability should continue to be pursued. The early conclusion of the Code of Conduct is the most anticipated outcome in this regard. Indeed, the ideal time for the conclusion of the

Code of Conduct, which was soon after the adoption of the 2002 Declaration on the Conduct of Parties in the South China Sea, has passed. However, China appeared to signal that the process is still on-going even after the Award, taking the position in the Philippine-China Joint Statement of 21 October 2016, and elsewhere, that it was committed to the full and effective implementation of the 2002 Declaration and would continue to work substantively towards the early conclusion of the overdue Code of Conduct.

Despite this affirmation of China's commitment, the Code of Conduct process will be no less difficult than it has been over the past 14 years. The Code of Conduct negotiation process will be dominated by debates on the Award of the Arbitral Tribunal. China will seek to simply ignore the Award, while the ASEAN member states will remain split. Indonesia and Singapore would probably honor the Award, or at least strive to ensure that the Code of Conduct is not drafted in contradiction with the Award. The Philippines, whose government initiated the Arbitral Tribunal but where the domestic situation has changed since Duterte came into power, would be more lenient and appears to be leaning toward Beijing.

Taking into account these fundamental differences in position and perspective as well as giving weight to the Award, the discussion of the Code of Conduct would be limited to issues that are not affected by the Award. Thus, the only part of the 2002 Declaration on the Conduct of Parties that can be further elaborated in the Code of Conduct is the issue of self-restraint. Practically, all other forms of cooperation, will involve discussion as to what can or cannot be done in a specific maritime zone, and necessarily trigger the debate over UNCLOS and the Award.

Over the coming year, China's commitment to seek negotiated outcomes to solve the South China Sea dispute will be tested. The Philippines continues to demonstrate its willingness to consider a negotiated resolution, particularly with China. Additionally, the ASEAN states will likely wait to see if and how China intends to move forward in the Code of Conduct negotiations. China is developing its signature Maritime Silk Road initiative, which places the incredibly difficult task of resolving the South China Sea disputes or at the very least, managing them constructively – squarely in China's best interest.

### **Haryo Budi Nugroho**

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