

Roles of Norms-Based Diplomacy in the Asian Maritime Order

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The underlying principles and norms that support the current US-led security order in the region are being contested by China, which has been increasing in economic and military might. China's contestation is symbolised by its unilateral claims of sovereignty over shoals and reefs in the South China Sea (SCS) as well as its reclamation projects, which have been followed by the establishment of airstrips and military facilities. Correspondingly, China has started to tighten its control over fishing and resource exploitation by other countries in the maritime area it claims as its Exclusive Economic Zone (EEZ). In the East China Sea (ECS), China also claims sovereignty over the Senkaku/Diaoyu Islands, which are administered by Japan, and has repeatedly intruded on Japan's claimed territorial waters. China is keen to increase its financial contributions to international institutions and exhibits a willingness to contribute to economic development around the world. However, its unilateral claims and its attempts to change the maritime status quo indicate a radical form of contestation of the current maritime order.

In response to this perceived change, Japan has begun to become actively involved in SCS issues. Its approach is multidimensional, consisting of strengthening security ties with regional states, creating multinational frameworks in the maritime domain, and emphasising norms such as the rule of law. Japan's emphasis on norms culminated in the announcement of the 2016 Free and Open Indo-Pacific Strategy, which provided a framework for Japan's norms-based diplomacy. Australia also takes a normative approach by emphasising the importance of a rules-based order. Despite their attempts at reinforcing current norms, the Association of Southeast Asian Nations (ASEAN) failed to take unified action, seemingly succumbing to China's charm offensive. Does this failure indicate the limits of the norms-based diplomacy conducted by Japan and Australia? Why do these two states stress norms and rules? This article first analyses why a normative approach is important in dealing with an uncertain regional security situation. Second, it examines the conduct of norms-based diplomacy and its impact in Asia. In conclusion, it argues that norms-based diplomacy is indispensable in sustaining the current regional order. The absence of such an approach would eventually result in the appearance of different norms and, most likely, arbitrary rules.

Why Is Norms-Based Diplomacy Important?

The current Asian maritime order has been supported by two factors: US primacy and the framework of the United Nations Conventions on the Law of the Sea (UNCLOS), which provides guiding legal principles for states' behaviour in the maritime domain. However, due to China's economic and military ascendancy, the power gap between the United States and China is shrinking. While UNCLOS provides a framework for appropriate state behaviour, there is no overarching authority for enforcing it. In addition, UNCLOS

is ambiguous, allowing for various interpretations by states. For instance, when China harassed the US surveillance ship USNS *Impeccable*, which operated in the SCS in 2009, it justified its behaviour by presenting a different interpretation of UNCLOS. China argued that US military surveillance activities within its resource zone are prohibited by UNCLOS while the United States contended this is not the case. China also rejected a 2016 international tribunal's ruling that denied China's claim to what it sees as its historic right to most of the SCS. Although such behaviour bewildered other states, China justified its response by arguing that these actions were justifiable, lawful and reasonable because the disputed areas are China's maritime territory. In fact, China contests the interpretations made by other states rather than laws *per se*.¹ However, presenting a different interpretation of particular laws does not necessarily allow a contestant to take unilateral action and thereby change the status quo in a disputed area. If any interpretation is legitimate, any action can be justified, leading to a world governed by arbitrary rules.

Moreover, China presents us with a complicated picture, making it difficult for the international community to take a unified and resolute attitude. For instance, China offers a huge market to international trade, which in turn supports the economies of many other countries. Although China's militarisation of the SCS concerns many states, it also shows its readiness to maintain public goods such as freedom of navigation.² In addition, China has shown its willingness to contribute to economic development in the region by establishing the Asian Infrastructure Investment Bank (AIIB) as well as the Belt and Road Initiative (BRI). The aim is to replace the image of an aggressive China with that of benign and peaceful China. Due to the country's efforts to portray itself as a responsible power and a driver of economic development, there are no common perceptions or a common thesis of what might constitute a Chinese threat around the world.³

However, simply because Chinese behaviour does not clearly violate international law, acquiescing to such behaviour is not an appropriate response. Accepting the accumulation of debatable precedents might lead to a waning norm.⁴ This in turn would allow a different norm to emerge, leading to new rules. Acquiescing to China's unilateral behaviour would therefore weaken the current norms and shared understandings that underpin UNCLOS. It would eventually result in a different type of order favourable to China.

To maintain the current rules-based order, countries should demonstrate rejection of China's attempts by employing both normative and material power. The US Freedom of Navigation in the SCS is one example of such a position. However, simply implementing a containment strategy by force is a strategic mismatch, even if it looks effective. Any approach that takes advantage of material strength should be supplemented by a normative approach – for instance, by articulating the meaning of norms to support UNCLOS. ASEAN may otherwise accept China's interpretations, resulting in the emergence of different and arbitrarily imposed rules.

1 Ian Hall and Michael Heazle, 'The Rules-Based Order in the Indo-Pacific: Opportunities and Challenges for Australia, India, and Japan Policy Brief', *Regional Outlook Paper*, no. 50, Griffith Asia Institute, 2017, <www.griffith.edu.au/data/assets/pdf/file/0023/108716/Regional-Outlook-Paper-50-Hall-Heazle-web.pdf> [Accessed 13 January 2019].

2 Statement by China's Foreign Minister. See, Wang Yi, 'Statesmen's Forum: Wang Yi, Minister of Foreign Affairs, PRC', CSIS, 25 February 2016, <www.csis.org/events/statesmens-forum-wang-yi-minister-foreign-affairs-prc> [Accessed 1 July 2018].

3 Kai He, 'Three Faces of the Indo-Pacific: Understanding the "Indo-Pacific" from an IR Theory Perspective', *East Asia*, vol. 35 (2018), pp. 149–61.

4 Alan Bloomfield, 'Norm Antipreneurs and Theorizing Resistance to Normative Change', *Review of International Studies*, vol. 42, no. 2 (2016), pp. 310–33.

How, then, can we reinforce a norm? A state that has sufficient power resources is liable to act as an ‘antipreneur’ to defend an entrenched norm against a challenger.⁵ Measures a norm protector may use include articulating the norm, arguing in its favour, and implementing practical actions that embrace the norm.⁶ Articulating an embedded norm and arguing for it help contribute to restating its existence and clarifying its meaning. Implementing concrete support such as joint training and education contributes to installing standardised procedures, everyday practices and routine tasks. Such measures may seem trivial and unrelated. However, existing norms are underpinned and cyclically reproduced by the specific routinised actions that embrace them. These measures therefore reinforce a normative structure.

Norms-Based Diplomacy in Asia

As a beneficiary of the current maritime order, Japan, which possesses ample power resources, is apt to play a role as a norm defender. Norms emphasised by Japan are the rule of law, refraining from coercion, and the peaceful settlement of disputes.⁷ However, due to its aggressive history before and during the Pacific War, some may see Japan’s active involvement in the SCS as suspicious. Therefore, alignment with countries such as Australia or India would be helpful in reassuring regional states and enhancing the legitimacy of Japan’s position. Like Japan, Australia has underscored the concept of a ‘rules-based order’ over the past decade. This emphasis was accentuated in the 2016 Defence White Paper, in which ‘rules-based order’ was mentioned no fewer than forty-eight times. This stands in clear contrast to the country’s past posture given that the term was not used at all in foreign policy or defence white papers prior to 2009.⁸

However, mere articulation is not sufficient. Such efforts should be supplemented by practical actions such as joint training, technical support and education. This support then serves to install standardised operations, routine tasks and everyday practices, which in turn buttress the normative structure. For example, the practical support provided by the Japan Coast Guard (JCG) not only strengthened the capacities of the coast guard agencies of regional states as law enforcement institutions; it also enabled Japan to convey the importance of the rule of law through communication.⁹ Similarly, Australia stepped up its support, revealing a plan to set up an Australia-Pacific Security College to strengthen the ability of Pacific governments with which Australia has strong long-term ties to enforce laws and protect their sovereignty.

5 Ibid., p. 321.

6 Antje Weiner, ‘A Theory of Contestation: A Concise Summary of Its Argument and Concepts’, *Polity*, vol. 49, no. 1 (2017), pp. 109–25.

7 For an example, see ‘The 13th IISS Asian Security Summit: The Shangri-La Dialogue, Keynote Address by Shinzo Abe, Prime Minister of Japan’, Ministry of Foreign Affairs Japan, 30 May 2014, <www.mofa.go.jp/fp/nsp/page4e_000086.html> [Accessed 15 June 2017].

8 Nick Bisley, ‘Australia’s Rules-Based International Order’, Australian Institute of International Affairs, 27 July 2018, <www.internationalaffairs.org.au/australianoutlook/australias-rules-based-international-order> [Accessed 3 February 2019].

9 For details, see Kyoko Hatakeyama, ‘Middle Powers’ Roles in Shaping East Asian Security Order: Analysis of Japan’s Engagement from a Normative Perspective’, *Australian Journal of Politics and History*, vol. 65, no. 3 (2019), pp. 466–81.

However, it could be argued that ASEAN's failure to take unified action illustrates the limited impact of norms-based diplomacy. Partly because of its promotion of the 'ASEAN way', which emphasises consensus among members, as well as ASEAN neutrality, the organisation has proved unable to find an effective solution to maritime disputes with China. In 2012, the ASEAN Foreign Ministers' meeting failed to issue a joint statement for the first time in forty-five years because Cambodia, which has close ties to China, opposed criticising that country. When Laos was ASEAN Chair in 2016, the organisation again failed to issue a statement supporting the 2016 tribunal ruling. Despite winning the ruling, the Philippines also modified its approach towards China and began improving bilateral relations. By setting the dispute over the Scarborough Shoal aside, Manila regained access to fishing grounds near the shoal and obtained economic assistance from China. For the Philippines, even though the number of its fishermen is small, fishing is a traditional and symbolic industry that attracts public attention.¹⁰ Recovering access to fishing grounds appeared more important than adhering to the rule of law.

Moreover, China has taken initiatives to deepen maritime cooperation with ASEAN. It established a China-ASEAN Maritime Cooperation Fund in 2011. It also concluded a maritime partnership with ASEAN to promote cooperation in areas such as safety of navigation, maritime environment, and search and rescue operations.¹¹ In 2016, China launched the China-ASEAN College of Marine Science.¹² By providing such inducements, China vigorously tried to appease ASEAN countries vexed by its unilateral actions.

Nevertheless, ASEAN does not totally accede to China's actions. This is illustrated by ASEAN's attempt to conclude a Code of Conduct with China to curb the latter's unilateral actions. Security ties between ASEAN and Japan continue to deepen. In particular, JCG's grassroots support has borne fruit to some degree. The Philippines Coast Guard has begun to sail far out to sea and patrol its EEZ for law enforcement purposes using vessels provided by Japan. Such law enforcement operations should lead to internalisation of the norm, which translates to resistance to China's unilateral actions. The 2015 ASEAN declaration indicated its concern over a perceived change in the regional maritime order and its inclination to underline the importance of the rule of law as a norm. It also stated its readiness to utilise the Expanded ASEAN Maritime Forum (EAMF), a multilateral framework that embraces the United States, Australia and India.¹³ ASEAN's willingness to seek a solution within EAMF implies that member states are ready to sustain the current rules-based order. More recently, the 2018 ASEAN summit declaration was more assertive, highlighting the need for 'respect for the rule of law' and stating its apprehension at China's unilateral actions in the SCS.¹⁴

10 Interviews with academics at the University of the Philippines Diliman and researchers at the National Defence College in the Philippines, December 2016.

11 Cai Penghong, 'China-ASEAN Maritime Cooperation: Process, Motivation, and Prospects', China Institute of International Studies, 25 September 2015, <www.ciis.org.cn/english/2015-09/25/content_8265850.htm> [Accessed 3 February 2019].

12 'China-ASEAN College of Marine Sciences', College of Ocean and Earth Sciences, Xiamen University, 19 July 2016, <coe.xmu.edu.cn:82/ContentShow.aspx?Id=COEE_4_1> [Accessed 5 July 2018].

13 ASEAN, ASEAN 25: Forging Ahead Together (Jakarta: ASEAN Secretariat, November 2015) <www.asean.org/wp-content/uploads/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf> [Accessed 2 February 2018].

14 ASEAN, 'Chairman's Statement of the 32nd ASEAN Summit', Singapore, 28 April 2018, <asean.org/storage/2018/04/Chairmans-Statement-of-the-32nd-ASEAN-Summit.pdf> [Accessed 20 January 2019].

Conclusion: Implications for Future Strategy

The current regional maritime order underpinned by US primacy and UNCLOS is being weakened as a result of China turning its contested claims into a *fait accompli*. While China is contesting the interpretations of rules embodied by UNCLOS, it waits for a chance to replace the United States and change current rules in a way that serves its national interests. However, simply adopting a balancing strategy in order to sustain the regional maritime order is not proving as effective as expected given current competition in the area of interpretations. Some states such as Japan and Australia therefore embarked on norms-based diplomacy in order to underpin the normative structure of the current order. Acquiescing to the challenge would lead to a change of the regional order. Relying on norms-based diplomacy, while supporting the current US presence in the region, is essential to underpinning the current maritime order even though it may not produce immediate or tangible results.

As the Philippines' turnaround illustrates, less powerful states tend to be attracted by the provision of incentives. Although ASEAN was launched to prevent interventions by major states, it is susceptible to foreign pressure. Sitting back and watching China's charm offensive may well result in existing norms weakening. It then allows for a new norm to emerge, leading to the emergence of a different regional order. Countries possessing sufficient resources therefore need to remind ASEAN of the importance of the embedded norms through articulation, argument and practical measures. Such support will not only boost ASEAN's confidence but also reinforce the normative structure underpinned by UNCLOS. Rules are not immutable; however, change should be sought by peaceful means and produce benefits to all parties.

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