Chapter IV

The Problems of Ocean Management: Political and Legal

Earlier, the trend in Southeast Asia was to confine ocean issues within the preview of the individual state. Therefore, there was little or no cross-boundary cooperation. Even if there were certain issues that were common to the states in the region, they were dealt with individually. There were several reasons for this.

Prior to the Second World War, maritime issues were not a global prerogative and issues were dealt with singularly by the concerned state. Apart from this, all the countries in Southeast Asia (with the exception of Thailand) were under Western colonialism. Therefore, any more towards cross-border cooperation would have come under the responsibility of the colonial power.

Ever since maritime issues became a global concern, the need for the proper management of the world's ocean arose. Successful ocean management needs a great deal of cooperation. The Southeast Asian

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1 See Barston, R.P., and Birnie, Patricia. (eds.) Maritime Dimension (London, 1980).
countries share very similar maritime concerns and have more reason and a vast scope towards cooperation. There are several problems that confront the countries of Southeast Asia in the management of the ocean, and these problems are political and legal in nature.

The problems of ocean management in Southeast Asia are rooted in various reasons, and difference among the regional countries have been political and legal. Ocean politics, however reflect the broader politics of states. Therefore, a brief overview of the general political and security clime of the region is necessary.

The Present Political and Security Trends in Southeast Asia

With the ending of the Cold War, the ideological differences that pervaded the region are over and the present differences re more specific in nature.

About two decades ago, Southeast Asia was divided into two ideological blocs; the Socialist or China-aligned communist Soviet states of Indochina and the Western-aligned ASIAN states with a market economy. Burma remained neutral and isolated.
During the Cold War, communism (embodied in the Soviet Union, China and Vietnam) was regarded as the greatest single security threat to Southeast Asia. This is clearly revealed in a speech that Lee Kwan Yew gave to the New Zealand National Press Club on 7 April, 1975. The former Singaporean premier said.

"...the contest for influence over the people in the region will be mainly between the People's Republic of China and the Soviet Union, both of whom openly avowed their duty to help communists everywhere and to promote revolution. The fate of Southeast Asian countries is to be caught in a competitive clash between these two...Most hope to maintain equal relations with both China and Soviet Union. But this may not be possible unless these two Communist centers cease to compete for ideological and nationalistic supremacy—a prospect which appears remote."

The Post Cold War era has rewritten security in Southeast Asia. Regional security had depended much on the global rivalries of the prospect of both hopeful new developments as well as worrying uncertainties.


The term ‘new world order’ received much prominence when President George Bush, in an address to Congress on 11 September 1990 said

Out of the troubled ties...a new world order can emerge; a new era free from the threat of tension... and more secure in the quest for peace.¹

Ross Babbage surmises whether such aspirations for the future are realistic, but nonetheless outlines the major factors for change in today's world.⁵ The relative decline of the superpowers, the rise of new major powers, pressure on the global trading regime, decline in ideology leading to other tensions, nuclear warhead and ballistic missile proliferation and the rising environmental agenda are trends that will influence change.

In the Southeast Asian context, the impact of these factors can be interpreted in the disappearance of the "threat" from the Soviet Union, the rise of China as a new economic force in the Asia-Pacific, the possibility of Japan emerging as a regional power owing to its new assertiveness and the

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prospect of future security relationships that might apparently involve not only Japan but also China and India.

The end of the Cold War, the road towards a political settlement in Indochina (though fragile), relatively stable domestic orders and many ASEAN countries enjoying sustained economy growth rates are good markers for the beginning of a more peaceful era. Professor Michael Leifer of the London School of Economics stated in an interview that the diminishing presence of an internal resolution challenge and the absence of an acute sense of external threat (especially from revolutionary China) are two fundamentally important factors that have helped to bring about the new regional situation.⁶

However, there are new security concerns in the region; some are paradoxically the outcome of the end of the Cold War, and others are new issues in a changing world order.

The ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) Memorandum No.5 on Confidence Building Measures in Southeast Asia states the security problems in the region as i) the future of

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Cambodia, ii) the South China Sea Disputes and iii) Arms Build-up in Southeast Asia [still a matter of contention].

In view of these factors it is pertinent to examine the effects that they will have on ocean management and maritime security in Southeast Asia. Factor such as the South China Sea Disputes, the arms build-up in the region, the role of extra-regional powers and the environmental agenda will have direct bearings.

According to Sam Bateman, the nature of maritime security consists of

* maritime security and naval cooperation
* efficient management of offshore areas
* safety of sea lines of communications
* exploitation of resources
* ocean law, policy and management
* marine science and technology
* protection of marine environment.

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In contrast to the major political-security problems confronting Europe, the Asia-Pacific and Southeast Asian region are relatively calm and stable. However, the Southeast Asian waters are considered to be potential tensions areas. While there are no maritime disputes in the central and south Bay of Bengal, there are unresolved issues in regard to the South China Sea. There are also problems of piracy, environmental pollution, narcotics traffic, illegal migration and other security-related issues which call for co-ordinated efforts on the part of the nations of the region.9

However, herein lies the crux of the problem regarding cooperation in ocean management because unlike the days of the Cold War when rivalry and power alignments were more clearly defined, the disputes are now intra-regional and power configurations are more complicated. In the words of Djalal, the region is now in a state of flux and considerable fluidity.10 Professor Chulacheeb pointed out that the difficulty in ocean management, as well as other problems in the region, was the lack of

9 n.6
10 Straits Times (Singapore). 4 April, 1995.
effective cooperation saying

The question of cooperation is one of the main hurdles in tackling these problems.11

Following is an analysis of the major security concern in the region that are most consequential for ocean management in southeast Asia.

The South China Sea Disputes

The Spratly and Paracel Islands dispute involves China, Vietnam, the Philippines, Malaysia and Brunei. The Spratlys, which are almost barren atolls are closer in proximity to the Southeast Asian claimants, than to China, which so far has been the most vociferous and belligerent in its claim.

A brief look at the history of the dispute shows that sometime between 1403 and 1433 A.D., the Chinese navigator Cheng Ho recorded the location of the Spratly and Paracel Islands on a map. For four and a half centuries, the islands remained a navigational curiosity12 In 1887, a treaty

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11 Chulacheed Chinwanno, Human Resources Institute, Thammasat University Bangkok. Interviewed on July 12, 1996 at Bangkok.

12 Khoo Kay Kim The History of Southeast, South and East Asia: Essays and Documents. (Kuala Lumpur. 1977)
of delimitation, signed between China and Tonkin became necessary, and marked the beginning of a series of international disputes over ownerships of the islands which has yet to be resolved. The treaty divided the islands at longitude 105 E. On this basis, China is now claiming the Paracels and Spratlys which fall on the Chinese side of the division.

The Philippines claim is based on the Treaty of Paris' specifications on national boundaries, as well as other provisions in the 1935 Philippines Constitution. On 24 May 1956, the South Vietnamese government issued a communique stating that the Spratlys had always been a part of their country and that this claim was recognized by the San Francisco Conference in 1951. At present, Vietnam possesses the Southwest Cay, Sincome, Namijit and Sand Cay as well as the Spratly Island. Malaysia became the most recent active claimant after issuing a new official map claiming a portion of the Spratlys and part of the Palawan group. The islands included in the Malaysian delimitation are, Adraiser Shoal, the Banque Canada, Commodore Island, the Gloucester Breakers, Lizzie Webber, the Mariveles Reef, the Northeast Shoal and the North Vepa.

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13 Ibid.
14 The Nation (Bangkok) 29 April, 1994.
The importance of the Spratly and Paracel Islands is geostrategic and economic. The geostrategic functions of the Islands overarches the local and regional rivalries, and competition for territory, rights and resources. The islands are situated in the South China Sea which has been described as the geographic core of Southeast Asia. The South China Sea is almost landlocked in that 90 per cent of its circumference is rimmed by land. Lee Yong Leng has conceptualized it as a "geopolitical lake" over which competitive claims to territory, maritime and seabed jurisdiction, and fisheries bring the littoral states into a complex web of conflict and rivalries. Control over the Spratly and Paracels would give the occupant crucial influence over this strategic sealane. 15

The economic dimensions of the dispute are as important as the political and strategic implications. The South China Sea has promising off-shore oil and gas reserves, together with one of the richest fishing grounds in the world. Estimates of potential hydrocarbon reserves range from 1-2 billion barrels of oil (bn boe) to 225 bn boe. The Russians put reserves at 7.6 bn barrels, 70 per cent of which (5.25 bn boe) are likely to be in the form of natural gas, leaving approximately 2.25 bn barrels of oil. In

15 Lee Yong Leng, The Razor's Edge: Boundaries and Boundary Disputes in Southeast Asia (Singapore, 1982), p. 11.
terms of total annual marine production, a defined area of the South China Sea ranks fourth among the world's nineteen fishing zones.  

The Potential for Conflict in the South China Sea

The first armed confrontation over the dispute was between China and Vietnam in 1974 and in the ensuing naval gun battle, the Vietnamese suffered 18 dead and 43 wounded. The Paracels have been under the PRC control since January 1974. In 1988, there was another armed confrontation between the two countries navies. There followed a period of relative calm which has been interspersed with claims and counterclaims especially by Vietnam and the PRC.

On May 1989, a Vietnamese Politburo member attended the anniversary of the '14th anniversary of liberation of the Truong Sa Archipelago. The visit was immediately condemned by the PRC and the Chinese Foreign Ministry issued a statement:

...as is known to all, the Nansha Islands have been part of Chinese territory since ancient times, and China has

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indisputable sovereignty over the Nansha Islands and their adjacent waters.\textsuperscript{18}

The South China Sea Disputes has also turned into a contentious issue vis-a-vis regional relationship. In late March 1995 Taiwan dispatched armed patrol boats to the Spratlys. The move was immediately condemned by Vietnam and the Philippines. GMA-7 TV (Quezon City) in a broadcast of 3 April 1997 quoted the Philippine Defence Secretary as saying that Taiwan was fuelling tensions by sending armed patrol boats.\textsuperscript{19} When the Philippines sent more troops to contest the Spratly islands, Vietnam was silent. A Taiwanese news analysis commented:

The motive behind the SRV's strong reaction is worth pondering. SRV has expressed support for the Philippines. On the eve of (its) joining ASEAN, it is indeed necessary for us to discover its motives.\textsuperscript{20}

The Chinese claim was reiterated when on 16 April 1995, the Zhongguo Tongxun She News Agency (Hong Kong), quoting Prof. Wang

\begin{footnotes}
\item[19] GMA-7 TV, Quezon City, 3 April 1995, n.18.FE/2267 B/7, 5 April 1995.
\item[20] Ibid.
\end{footnotes}
Hengjie of the Central University of Nationalities, Beijing stated that Paracels archeological sites proved Chinese habitation.  

The dispute over the Spratly and Paracel islands began in the last century and continues to the last decade of this present century with no concrete solution in sight yet. Even if competing states themselves cannot prove intent to lay claim on the islands, they may try to demonstrate such an intent on the part of their citizens who inhabit them, and acquire title this way. At present, it is the most effective assertion of ownership over the Spratlys which will determine decisions on who shall have the right to explore and exploit the resources in the surrounding seas.  

On the question of the South China Seas Dispute, the Joint Communiqué of the Twenty Eighth ASEAN Ministerial Meeting, Bandar Seri Begawan 29-30 July 1995 stated:  

The Foreign Ministers expressed their concern over recent events in the South China Sea. They encouraged all parties concerned to reaffirm their commitment to the principles contained in the 1992 ASEAN Declaration on the South China Sea, which urges all claimants to resolve their differences by peaceful means and to exercise self-restraint.  

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21 Zhongguo Tongxun She News Agency 16 April, 1995.  

22 Joint Communiqué of the Twenty-Eighth ASEAN Ministerial Meeting Bandar Seri Begawan 29-30 July 1995 (ASEAN Secretariat, Jakarta, 1995).
The Arms Build-up in Southeast Asia

Much has been written about the arms build-up in Southeast Asia in recent years, particularly in the post Cold War period. This also includes a naval build-up in the ASEAN countries. Security considerations about the structure of the defence forces and a definition of a national defence strategy in Southeast Asian are primarily based on the following thoughts:

i) protection of its own territory including the EEZ and offshore resources.

ii) surveillance and protection of important SLOCs.

iii) change of the military doctrine from "counterinsurgency" to a conventional warfare strategy.

iv) improvement of the "national technological level.

v) compensation of the 'strategic retreat' of the US navy.23

According to Michael Morris, in a table showing the Third World Naval hierarchy with 6 being the highest and 1 as the lowest, the Southeast Asian navies would fall under such categories.24

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<tr>
<th>Country</th>
<th>Rank</th>
<th>Capability</th>
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<tbody>
<tr>
<td>Thailand, Indonesia</td>
<td>4</td>
<td>Offshore territorial defence</td>
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<tr>
<td>Malaysia</td>
<td>3</td>
<td>Inshore territorial defence</td>
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<tr>
<td>Singapore</td>
<td>2</td>
<td>Constabulary navy</td>
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<td>The rest</td>
<td>1</td>
<td>Token navy</td>
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Many, defence officials in the region deny an arms race is under way saying increased military spending is needed to modernize their forces.

The following data gives the defence expenditure of the Southeast Asian countries:

Brunei B $ 496 (94) US $ 1 = 1.3975

Burma 9,126,000 Kyats (94) US $ 1 = 2,246K

Cambodia 219,000 m riels (95) US $ = 2,300r

Indonesia 338,800 m rupiah (93-94) US $ 1 = 2246

Laos N.A.

Malaysia 5367m ringgit ('94) US $ 1 = 2,438
Philippines 26,231,000 pesos ('92) US $ 1=25.5

Singapore S $4,700 m ('94) US $ 1=1.39

Thailand 86,695 m bahts (93-94) US $ 1=24.66

Vietnam 4,9000,000m dong (94) US $ 1=11,040


Much of the spending is on the navy and submarines are the latest in line for acquisition. Exports are of the opinion that within 10 to 15 years, Southeast Asian nations are likely to have upto 20 submarines in services (from the present two belonging to Indonesia). The Indonesian navy which has the best capability in the region consists of two regional fleets (East and West) one marine corps and are military sealift Command.

An analysis based on a study by Forecast International (Connecticut, USA) for the Conventional Submarine Market 1997-2006 shows the following data.
## Potential New Construction Contracts

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<th>Minimum</th>
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<td>0</td>
<td>0</td>
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<td>2</td>
<td>3</td>
<td>Malaysia</td>
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<td>0</td>
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<td>Singapore</td>
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<td>4</td>
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<td>India</td>
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<td>China</td>
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<td>4</td>
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<td>Japan</td>
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<td>6</td>
<td>6</td>
<td>Russia(^\text{25})</td>
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Protection of SLOCs and fishing grounds are the key explanations for acquiring submarines. According to Captain Sutat of the Royal Thai Navy, a submarine "acts as a major mental obstacle to any potential

aggressor".  

Malaysia, Thailand and Indonesia respectively placed orders for MIG-29 fighters from Russia and ships from the former East German Navy. Such arms build-up cannot be seen purely as defence measures. The 'enemy' in post Cold War Southeast Asia is vague and undefined. Mak states that in the absence of common political aims and common defence objectives, the old intra-ASEAN rivalries are beginning to re-surface.  

The Regional naval build-up has the greatest potential impact on the internal balance. Much of it has been attributed to contingency planning. Michael Leifer asserts that countries very often increase their defence spending because they can afford to. Bunn Nagara shares a similar opinion and even the reasons he gives are, enlarged defence budgets, search for better technology transfer, channel for corruption, kickbacks, and the question of national prestige.

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26 Captain Sutat, Royal Thai Navy. Interviewed on 1 August, 1996 at Bangkok.


28 n.6.

The Role of Extra-regional Powers in Southeast Asia

The role of extra regional powers has always in Southeast Asia, and the end of the Cold War has not changed this. The ASEAN-ISIS memorandum No.5 states.

As a global transition to a new strategic order unfolds, the more begin international environment wrought by the end of the super power competition is faced with perils either of recent vintage or latent in old sources of conflict. Great power response to these perils is vitally crucial. In the Asian Pacific these powers are the United States, China, Japan and even Russia and India.30

The withdrawal of the US Seventh Fleet from the naval bases in the Philippines, (even though the presence was benign) has caused concerns regarding who will fill the 'vacuum', and this factor plays upon the threat perceptions of the region very substantially. Even before the Cold War had come to an end, Prime Minister Goh Chok Tong of Singapore had warned

If the rapprochemeent between the super powers comes though... the US presence in this part of the world would diminish... If this happens who will be the regional leader then?...It will be left to China, India and Japan to contest for the leadership of the region.31

30 n.7, p.4.
31 Straits Times, (Singapore) 2 July, 1992.
The United States still maintains logistics facilities in Singapore. Malaysia has also offered service and repair facilities in Lumut. Brunei, Indonesia and the Philippines have offered the use of facilities and Thailand maintains its former defence arrangements (with the US). There is a perception that an increasingly inward-looking United States will gradually scale down its commitments to the region, in particular to Southeast Asia. The powers that could fill the vacuum are China or Japan. Singapore, which has always believed in the regional presence of a larger power (as a means of a balance of power) is least averse to the idea of India filling in the vacuum. According to Baker, the social impact of the presence of US militarymen in the region (such as the case of a rape in Japan), and possible cuts in defence spending are probable reasons that will eventually lead to US withdrawal from the region. However, the US still has enormous stakes in maintaining a presence in the region. Admiral Richard C. Macke, commander of the US Naval Forces in the Asia Pacific reiterated this when he stated categorically in an interview.

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32 The Nation, (Bangkok) 7 June, 1994.
33 Baker, Bernard, Dy, Secy, Ministry of Foreign Affairs, Govt. of Singapore. Interviewed on 26 June, 1996 at Singapore.
...We are here to stay. Our interests economically, strategically and in every other sense, are very high in this area.\textsuperscript{34}

The decline of super power activity has led to a focus on the presence and the maritime power projection capabilities of China, Japan and even India to a certain extent. China's aggressive stand on the Spratly dispute is one of the primary reasons for the rising concern in Southeast Asia over China's threat potential. There have been claims that China is building a "maritime reconnaissance facility" of some kind on Burma's Great Coco Island in the Bay of Bengal.\textsuperscript{35} The ASEAN members are already fearful of China's growing power and influence and would see any move towards building a deep water port in Burma as another example of Chinese expansionism. According to Andrew Selth, the ASEAN countries do not want to be drawn into a strategic competition between India and China.\textsuperscript{36} Malaysia, Singapore and Indonesia want to avoid any development that would jeopardies the free passage of ships through the Malacca Straits.

\begin{itemize}
\item \textsuperscript{34} \textit{Time}, 3 July, 1995, p.14.
\item \textsuperscript{35} \textit{The Hindu} (Chennai) 7 October 1994.
\item \textsuperscript{36} Selth, Andrew, "Burma and the Strategic Competition between China and India", Research Paper, Australian National University, (Canberra 1995), p.8.
\end{itemize}
The actual capabilities of the PLA navy are still unclear, but it does not pose any threat to the US Seventh Fleet owing to outdated equipment and technology. However, China's maritime strategy has changed from 'Coastal Defence' to 'Active Off-Shore Defence' which includes a switch from coastal operations near their shore to open waters operations. The building of a modern submarine force is one of the key factors in the achievement of this capability. Hamzah dismisses any potential conflict over the Spratlys. Beckman supports this by saying that China would avoid open conflict at any cost and its strategy (regarding the Spratlys) is to keep the issue open and make it drag along on so that it can gain what little is possible without conceding defeat or making adversaries gain anything. Whatever perceptions there may be of the seriousness of a threat of China, there is evidently an underlying concern about China's role in regional affairs. This is summed up by Professor Snitwongse when she remarked, "It is big and it is near".

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38 Beckman, Robert. Faculty of Law, National University of Singapore. Interviewed on 20 June 1996 at Singapore.

Japan's role in Southeast Asia is paradoxical in that while its wartime activities during World War II will never be forgotten in the region, and there are fears of rising Japanese militarism, its industrial and economic success has benefitted Southeast Asia in many ways and from the ASEAN's point of view. Japan could be used as a countervailing power to China's military might. Japan has sought to allay Southeast Asian fears several times. In a speech delivered by Kiichi Miyazawa in Bangkok on 16 January 1993, the Japanese premier concluded.

In contemplating such cooperation between Japan and the ASEAN,... there are two premises: the first is that Japan shall never again become a military power... the other point is that Japan will attach particular importance to the very process of talking with the ASEAN countries. This means that Japan will think and act together with ASEAN. 40

Inspite of such reassurance, Japan's defence strategy of its surrounding sea areas has often been viewed with concern in Southeast Asia. Japan relies heavily on imported raw material for its industries so securing the safety of maritime traffic are pivotal for the island

40 n.8, F5589 A2/1 18 January, 1993.
kingdom. A Report by the Japan Times newspaper *The Defence of Japan*, states that:

> While patrolling Japan's territorial waters and escorting ships, the Maritime Self-Defence Force (MSDF) will wage antisubmarine, anti surface ships and air defence warfare.  

The role of the Maritime Self-Defence Force (MSDF) in Japan has essentially been secondary and passive. However, under Nakasone's premiership, Japan responded to US demands for defence burden sharing agreeing to assume a sea-lane defence mission that extended to 1,000 miles from Japan. The MSDF was allowed to operate to protect Japan's vital SLOCs 1000 nautical miles from Honshu, and to engage in combat in coastal waters beyond. Such a development was received with alarm in Southeast Asia. In the last leg of his Southeast Asian tour, the visiting Japanese Prime Minister, like his predecessors had to reiterate his country's stand.

He said:

> We are concerned only about self-defence and that Japan will not become a military power.  

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According to Yoshihide Soeya, Japan's post-war policy towards Southeast Asia has been shaped by Japan's aspiration for 'autonomous diplomacy' and by the stake of the US - Japan relationship in the international system. During the Cold War years, Japan's policy was absorbed by the American strategy in the Asia-Pacific. Japan was able to achieve 'autonomy' in its policy towards Southeast Asia owing to its increasing economic power and the enunciation of the Nixon doctrine in 1973. Japan's eagerness to follow active diplomacy in the region is evident in its contribution in the Cambodian peace process, the revival of the Fukuda Doctrine and the fact that the Japanese government counts on the ASEAN - Post Ministerial Conference and APEC as forum for dialogue.

Japan and Southeast Asia are dependent on each other very substantially. In 1991, Japan was dependent upon ASEAN for almost all of its natural rubber and tin and tin alloy, 15.8 percent of crude oil and numerous other minerals. According to a Japanese official, a Japanese

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44 Soeya, Yoshihide, "Japan's Policy Towards Southeast Asia", in Colin, MC Innes and Rolls, Mark (ed.) Post Cold War Security Issues in the Asia Pacific Region. (Essex, 1994).

factory opens almost very other day in Malaysia, and every three days in Thailand (where there are about a thousand). Singapore has 2,000 Japanese companies, and Malaysia, Indonesia and the Philippines, 1,200, 1,500 and 700 respectively. 16

As for its potential role as an external hegemon, Japan is a constrained power today owing to its postwar 'peace Constitution', and Southeast Asia's antipathy towards the country. Apart from these factors, any attempt by Japan to dominate the region may trigger off a hostile Chinese reaction which could possibly lead to increased tensions and an arms race.

India's size has tended to have an intimidating effect in the regions and it is often included as a potential rising power. However, this is more of a conjecture owing primarily to the relatively large size of the Indian Navy and its possessions of submarines. Snitwongse dismisses India's aircraft carriers (Vikrant has since been decommissioned) as obsolete and ineffective. 17 This is compounded by the problem that have confronted India's shipbuilding programme in recent years. However, Beckman

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46 The Statesman (New Delhi) 24 June, 1994
47 n.40.
assents that Indian destroyers have been sighted around the mouth of the Malacca Straits, and opines that Malaysia is playing down the Indian presence by choosing to ignore or denying such sightings.\textsuperscript{48} Sherwood says that Indian maritime ambitions and operations have the potential to affect the maritime balance in Southeast Asia, owing to the operational facilities in the Andaman and Nicobar Islands.\textsuperscript{49} He concludes by surmising that were there to be a dispute over trade routes or perhaps Chinese interest in Southeast Asia... Indian maritime preponderance would more than balance any advantage some South Asian navies might enjoy in new maritime technologies.\textsuperscript{50}

However, India is not viewed as attempting to be a regional hegemon as its political system is based on democracy, which discounts military adventurism and promotes prudence.\textsuperscript{51}

\textsuperscript{48} n.39.


\textsuperscript{50} \textit{ibid}.

\textsuperscript{51} Capt. S.Amrpala, Royal Thai Navy; Interviewed on 2 April, 1996 at New Delhi.
The Legal Problems of Ocean Management in Southeast Asia

Unlike UNCLOS I (1958) and UNCLOS II (1960), the Third UN Law of the Sea Conference (1982) had a profound impact on maritime regime, especially in Southeast Asia. UNCLOS III addressed the fundamentally important issues regarding the breadth of territorial waters and fisheries. While UNCLOS III, through exhaustive sessions, succeeded in enunciating a new regime of the oceans, it gave birth to new problems. These problems are either intra-regional such as boundary problems caused by the 200 mile EEZ, or they involve other powers, particularly maritime nations, over the question of navigation through territorial waters (specifically straits).

A brief discussion of the most relevant issues follows:

Boundary Disputes

The South China Sea islands dispute is a conspicuous example of the territorial disputes that occur in Southeast Asia. According to Lee Yong Leng, the evaluation of Southeast Asian boundaries did not follow the

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52 Tangsukul, Phiphat, "ASEAN and the Law of the Sea" (Singapore 1982) p. XIII.
classical model of international boundary, emerging only after a political frontier had been whittled away by encroachments from either side. It was political decisions made by the colonial masters in European capitals that decided where a boundary should be.

The extension of coastal state jurisdiction at UNCLOS III created both problems as well as opportunities in East and Southeast Asia. The countries of the region have had to deal with the issues of ocean boundary delimitation between opposite and adjacent states.

Most of Southeast Asia is encompassed within the South China Sea, which is as good as a semi-enclosed sea since 90 percent of its perimeter consists of the 200 mile EEZ, the whole of the South China Sea has become a jigsaw of territorial waters, EEZ's, areas of overlapping claims and a minuscule portion of joint development zone. Differences over the ownership of islands, rocks and reefs are responsible for most disputed boundaries in the region but continental shelf determination has led to a number of disputes too. Various claims to the continental shelf have been

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made by all the countries in Southeast Asia, with the exception of Singapore. When Malaysia published its new map in 1979, in relation to its continental shelf claim, Thailand made a series of protests because of their respective overlapping claims.55

Many of these boundary disputes have been settled in that the contesting parties have come to a working agreement. The Memorandum of Understanding between Thailand and Malaysia (1979), on joint development in the Gulf of Thailand, and the Treaty on the Zone of Cooperation in the East Timor Sea between Australia and Indonesia (1989) are two of the successful settlement. However, as long as there is no settlement to a serious dispute such as the one in South Seas, Southeast Asia will suffer from boundary and territorial claim disputes.

Navigation: Straits Used for International Navigation

Owing to the location of the Malacca Straits and the Indonesian straits of Lombok-Makassar and Ombei-Weter, the issue of navigation through straits is of utmost importance to Southeast Asia. The concern of

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the coastal states is primarily based on security, safety in navigation, pollution.

The regime of straits is contained in Part III (Art. 34 to 44) of the UNCLOS III text, but it has not been incorporated into the legislation of any country in the region. However, regional initiatives regarding the use of straits have been undertaken by Indonesia, Malaysia and Singapore in the Malacca Straits. On 16 November 1971, the governments of these three states declared in a joint statement that

... the safety of navigation in the straits of Malacca and Singapore [was] the responsibility of the coastal states concerned;

... [they agreed] that the Straits of Malacca and Singapore are not international straits while fully recognizing their use for international shipping in accordance with the principles of innocent passage.  

The de-internationalization of the Straits evoked sharp reaction from maritime nations such as the US. This was articulated by a Defence Department official:

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56 Department of Foreign Affairs, Republic of Indonesia, Joint Statement of the Governments of Indonesia, Malaysia and Singapore, 16 November 1971.
... nations which depend on their merchant marine and navies for economic and national security... can be strangled by having access to oceans limited or delayed when passing through narrow international straits.\(^7\)

He went on to say that if right of passage depended on the "good grace of the coastal states or states bordering on the strait in question", such a result would be "unacceptable to any country with global interests, a global foreign policy, a large merchant marine and a large navy and air force".

During the negotiations of UNCLOS III, navigation through straits and the military uses of the sea was a contentious issue. The maritime powers opposed any move to limit free transit while coastal states opposed it. The Indonesian delegate opposed free transit on the grounds that it would entail loss of sovereignty and jeopardise the security of the coastal states. The Malaysian delegate supported this when he said.

The Super Powers were clamouring for freedom of transit for their warships through territorial straits. Malaysia could not be expected to invite potential calamity by encouraging their war of nerves.\(^8\)

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Security in the Cold War perspective was the main concern of the coastal states. Now security entails safety in navigation and pollution.

The congestion in the Malacca Straits led to a situation where navigation became close to perilous as vessels not only travelled along the waterway, but also criss-crossed between the coasts of Indonesia and mainland Southeast Asia. A study of traffic movement of ships revealed that 33,982 vessels transited the One Fathom Bank point in 1993 - excluding the traffic that plied between the ports of the littoral states.59 With Asia becoming one of the busiest hubs of business in the world, the volume is expected to increase at a rate of 8 percent every year. Between 1977 and 1993, there were at least 71 marine accidents involving 12 oil tankers.60

On 24 February 1977, the foreign ministers of Indonesia, Malaysia and Singapore issued a joint statement on safety of navigation in the Malacca Straits, in which the delineation of the Traffic Separation Scheme (TSS) along the critical areas of the Straits was one of the recommendations. On 14 November 1977, the Inter-Governmental

60 ibid.

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Maritime Consultative Organization passed a resolution regarding rules for vessels navigating through the Straits especially on the passage of Very Large Crude Carriers (VLCC).\(^{1}\)

The Malaysian Government has been most active about implementing navigational safety rules and pollution standards, and has often complained about the lack of support it receives from other states. The attempts to make the Straits a part of territorial waters has always been unsuccessful.

**Other Problems in Ocean Management Piracy**

Piracy is terrorism at sea. Article 15 of the Convention on the High Seas, Geneva, 29 April, 1950 states that piracy consists of:

1. any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft directed

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\(^{1}\) n.57. IMO\textsuperscript{1} Resolution on Navigation Through the Straits of Malacca and Singapore, 14 November, 1977.
on the high seas, against another ship on aircraft ... outside the jurisdiction of any state.\textsuperscript{62}

Today, the most cases of piracy in the world are (in order of the number or occurrences) (a) Indonesian ports (b) East African waters (c) Triangle between Hongkong, Luzon in the Philippines and Hainan in China. Pirate attacks in Indonesian waters occur off Bintan Island and the Philip Channel near Singapore.\textsuperscript{63}

In the early 1990s, the Malacca Straits was a hotbed for piracy, but the high vigilance of littoral states has forced pirates to go further east. This did not mean that the problem had abated because pirate attack on the high seas nearly doubled in 1995; 1994 - 92 attacks, 1995 - 170 attacks (an increase of 84 percent).\textsuperscript{64} In the Far East and Southeast Asia there were 55 and 48 attacks respectively. The problem became such that in May


\textsuperscript{64} The Nation (Bangkok) 15 February. 1996.
1996, President Fidel Ramos stated that piracy posed a threat to the Philippine economic recovery.65

Piracy is a major concern to governments in the region. Apart from the normal need to suppress crime, there is a very considerable risk of pollution. Ships are often left adrift, when navigation equipment is destroyed or its crew tied up and they run aground or collide with other ships. Owing to their extensive coastlines, Indonesia and the Philippines must stretch their resources to protect their waters. The Indonesian navy is supported by the national customs, Maritime Security Agency and water police but these are insufficient for the vast and maze-like expanse of Indonesian waters. As a result, piracy in Indonesian waters remains a major concern to international ship owners. A lot of unreported cases of piracy take place in Philippine waters. Lack of funding has handicapped the Philippines navy. it has prepared a long term plan to modernize its defence forces but funds also have to be allocated for vessels to protect the Philippines South China Sea claims.66

65 The Bangkok Post, (Bangkok) 4 May, 1996.
A working international anti-piracy force is yet to be formed. Unfortunately the littoral states of the areas where piracy is most rampant are still incapable of containing the problem owing to lack of vessels and funds. Meanwhile, nations (such as Japan, Korea and India) which have a suitable naval capacity but no piracy problem in their home waters appear almost disinterested in the problem. The primary international anti-piracy body is the International Maritime Bureau's Regional Piracy Centre in Kuala Lumpur. So far, their actions are limited to the collection and distribution of reports.