

## ASEAN's Next Challenge: Preventing Incidents at Sea

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## **ASEAN'S Next Challenge: PREVENTING INCIDENTS AT SEA**

Kwa Chong Guan

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*A series of standoffs and confrontations between different navies in the South China Sea and the waters of Southeast Asia indicates that conventions of regional security and ASEAN norms of not threatening the use of force to resolve disputes may not be working in the maritime environment. This failure to manage our maritime security means that ASEAN may have to move into crisis management.*

ON 31 May 2009 the Indonesian Navy's *KRI Untung Surapati-872* warship, according to Indonesian press reports, drove the Malaysian *KD YU-3500* out of the disputed waters around the Ambalat area off the southeast coast of Sabah. This incident is the latest in a series of standoffs between the Indonesian and Malaysian navies over the seas around the Ambalat Block.

Three months earlier, on 8 March, five Chinese ships harassed the US Navy's *Impeccable* ocean surveillance vessel in the South China Sea some 120 kilometres south of Hainan. Again, this is the latest in a series of standoffs between the Chinese and the US navies, the most serious of which is the 1 April 2001 Chinese interception and downing of a US EP-3 surveillance plane on Hainan. The Chinese have also confronted Vietnamese vessels in the disputed waters around the Paracel Islands in the South China Sea.

Why are such naval standoffs occurring in an era of improving security cooperation and when ASEAN is working towards becoming a Security Community whose members renounce the threat to use force, as enunciated in ASEAN's 1976 Treaty of Amity and Cooperation? Will we see more such standoffs as navies in the region modernise and upgrade their capabilities?

### **History of Standoffs at Sea**

Such naval confrontations and standoffs during an era of rising naval power are not new. In the late 1960s, there were several incidents between forces of the Royal Navy or US Navy and the Soviet Navy. These included planes of the two nations passing near one another, ships bumping one another, and both ships and aircraft making threatening movements against those of the other side.

In March 1968 the United States proposed talks on preventing such incidents from becoming more serious. The Soviet Union accepted the invitation in November 1970, and the talks were conducted in two rounds – 1 October 1971, in Moscow and 17 May 1972, in Washington, D.C. The Incidents at Sea Agreement (INCSEA) was signed by Secretary of the Navy John Warner and Soviet Admiral Sergei Gorshkov during the Moscow summit meeting in 1972. The procedures in this Agreement for direct naval-to-naval dialogue and a non-political focus on safety appeared to have worked during the Cold War.

With this hindsight, why have the US and China not been able to work out a similar INCSEA? In January 2001 the Malaysian and the Indonesian navies worked out and signed a *Malaysia-Indonesia Prevention of Incidents at Sea Agreement (MALINDO INCSEA)*. But this INCSEA has not worked in preventing naval standoffs between the Malaysians and the Indonesians, as seen in the Ambalat incidents.

### **Building Confidence**

One possible reason why the US-Soviet INCSEA worked was that it was about pre-empting incidents on the high seas which neither the US nor the Soviets claimed. In contrast, the standoffs between the Indonesian and Malaysian navies are in contested waters, the sovereignty of which is claimed by both Indonesia and Malaysia. Similarly, between the US and the Chinese, or the Chinese and a number of its maritime Southeast Asian neighbours, the issue is rival claims to islands and coral reefs and rocks around which they hope to claim a 200-mile Exclusive Economic Zone provided for in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). China and some ASEAN countries also claim blocks of the South China Sea as part of its continental shelf provided for in UNCLOS.

At stake in the naval standoffs and confrontations in the South China Sea and Southeast Asian waters is the safeguarding of national sovereignties over disputed maritime boundaries and seas. In contrast to the land, where territorial boundaries are well-defined and disputes more manageable, the sea is a frontier zone where rival claimants must be challenged.

The disputes over Sipadan, Pedra Branca, the Paracels, or the Spratlys and Ambalat, among other disputes, are consequences of unresolved marine boundaries left by the colonial powers. The challenge for us in ASEAN today is how to build confidence and trust for good order at sea in spite of these unresolved marine boundaries. Common sense and rational choice argue that it should be in our self-interest to put in place conventions and institutions which promote good order at sea to benefit us all. Unfortunately, defending national integrity and sovereignty often overrides most other concerns and interests.

There are consequences of this failure to agree on how to prevent incidents at sea or to accept that such incidents are a result of the need to defend and protect national sovereignty and integrity. One major upshot is that we are going to see more naval standoffs and confrontations. The challenge for ASEAN and its regional partners will then be how to put in place procedures to manage the crisis that will follow a clash of navies.

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