

JAPAN REVIEW

Vol.3 No.1
Summer 2019
ISSN 2433-4456

Asia and Europe: One Hundred Years from the Paris Peace Conference

**One Hundred Years after the Paris Peace
Conference: A Welcomed Change in Mutual
Perceptions**

Valérie Niquet

**Japan at the Paris Peace Conference of 1919:
A Centennial Reflection**

Naoko Shimazu

**The Wilsonian Vision for a New Liberal
International Order: Symbolic Diplomacy
at the Paris Peace Conference**

Naoko Shimazu

**Hundredth Anniversary of the Treaty of
Versailles: Meanings and Implications**

Kerry Brown

**The Rise and Fall of the Liberal International
Order: 1919-2019**

Yuichi Hosoya

Restructuring the Maritime Order

Shigeki Sakamoto

**The Obligation of Self-Restraint in Undelimited
Maritime Areas**

Kentaro Nishimoto

**The Present and Future of Multilateralism and
Expectations for Japan**

Izumi Nakamitsu

**The Role for Middle Powers in the Free and
Open Indo-Pacific: Looking at Opportunities
for Canada and Australia**

Jonathan Berkshire Miller and Thomas Wilkins

THE JAPAN
INSTITUTE OF
INTERNATIONAL
AFFAIRS

JIIA

The Japan Institute of International Affairs (JIIA), founded in 1959, is an independent nonpartisan policy thinktank specializing in foreign affairs and security policy. On top of a wide range of research programs, the institute promotes dialogues and joint studies with other institutions and experts at home and abroad, and makes foreign policy proposals to the government, and disseminates information on international relations to the public. The institute, together with a large network of affiliated scholars, aims to serve as an indispensable resource on international affairs in a complex world.

Publisher : Kenichiro Sasae, President, JIIA

Editor in Chief : Shu Nakagawa, Director of Research Coordination, JIIA

The opinions expressed in the articles in *Japan Review* do not necessarily reflect the opinions or positions of the Japan Institute of International Affairs. No article or any part thereof may be reproduced without the express permission of JIIA.

Annual subscription (four issues): ¥4,000 in Japan; US\$40.00 overseas.
Please note that delivery fee is not included.

For subscription and any other inquiries, please write to:
Japan Review, the Japan Institute of International Affairs,
3rd Floor Toranomon Mitsui Building, 3-8-1 Kasumigaseki Chiyoda-ku, Tokyo Japan 100-0013

ISSN 2433-4456

Published by the Japan Institute of International Affairs
Designed and Printed in Japan by Taiheisha.Ltd

JAPAN REVIEW

Vol.3 No.1
Summer 2019

Asia and Europe: One Hundred Years from the Paris Peace Conference

1 One Hundred Years after the Paris Peace Conference: A Welcomed Change in Mutual Perceptions04

Valérie Niquet

Valérie Niquet, Phd (Sorbonne University) is Head of the Asia department at FRS (Fondation pour la recherche stratégique), a senior fellow at the Japan Institute for International Affairs (JIIA) and a lecturer at Keio University (Tokyo) on Sino-Japanese relations. She has published extensively on Strategic issues in Asia, Japan's foreign policy as well as the evolutions of the Chinese political system. Valérie Niquet is also a consultant for the French Ministry of Foreign Affairs, Center for analysis, prevision and strategy (CAPS). Her latest publications include *La puissance chinoise en 100 questions*, Tallandier, 2017. Her latest media contributions include AFP, Le Monde, The Diplomat, the Japan Times as well as radio programs such as Radio France Internationale, France Culture or the Voice of America. Valérie Niquet is Chevaier de l'ordre national du mérite.

2 Japan at the Paris Peace Conference of 1919: A Centennial Reflection08

Naoko Shimazu

3 The Wilsonian Vision for a New Liberal International Order: Symbolic Diplomacy at the Paris Peace Conference12

Naoko Shimazu

Naoko Shimazu DPhil (Oxon), FRHist.S, is Professor of Humanities (History) and Associate Dean of Faculty at Yale-NUS College, and Professor at the Asia Research Institute, National University of Singapore. Her current major work is a monograph, "Diplomacy as Theatre: The Bandung Conference and the Making of the Third World." She has published widely on the cultural history of global diplomacy, notably in *Diplomatica*, *Modern Asian Studies* and *Political Geography*. Her major publications include *Imagining Japan in Post-war East Asia* (co-editor, Routledge, 2013), *Japanese Society at War: Death, Memory and the Russo-Japanese War* (Cambridge University Press, 2009), *Nationalisms in Japan* (editor, Routledge, 2006), *Japan, Race and Equality: Racial Equality Proposal of 1919* (Routledge, 1998).

4 Hundredth Anniversary of the Treaty of Versailles: Meanings and Implications17

Kerry Brown

Kerry Brown is Professor of Chinese Studies and Director of the Lau China Institute at King's College, London. From 2012 to 2015 he was Professor of Chinese Politics and Director of the China Studies Centre at the University of Sydney, Australia. Prior to this he worked at Chatham House from 2006 to 2012, as Senior Fellow and then Head of the Asia Programme. From 1998 to 2005 he worked at the British Foreign and Commonwealth Office, as First Secretary at the British Embassy in Beijing, and then as Head of the Indonesia, Philippine and East Timor Section. He lived in the Inner Mongolia region of China from 1994 to 1996. He has a Master of Arts from Cambridge University, a Post Graduate Diploma in Mandarin Chinese (Distinction) from Thames Valley University, London, and a Ph D in Chinese politics and language from Leeds University.

Professor Brown directed the Europe China Research and Advice Network (ECRAN) giving policy advice to the European External Action Service between 2011 and 2014. He is the author of over ten books on modern Chinese politics, history and language, the most recent of which are *The New Emperors: Power and the Princelings in China* (2014), *What's Wrong with Diplomacy: The Case of the UK and China* (2015) and the *Berkshire Dictionary of Chinese Biography* (in Four Volumes- 2014-2015). His 'China's CEO: Xi Jinping' was published in 2016. 'China's World: What Does China Want' was published in August 2017, and 'China's Dreams: The Culture of the Communist Party and the Secret Sources of Its Power' (Polity: Cambridge) in 2018.

5 The Rise and Fall of the Liberal International Order: 1919–201921

Yuichi Hosoya

Yuichi Hosoya is Professor of international politics at Keio University in Tokyo. He was a member of the Advisory Board for Japan's National Security Council (NSC) (2014-16) and was a member of several Prime Minister's advisory panels on national security. He studied international politics at Rikkyo University (BA), the University of Birmingham (MIS), and Keio University (PhD). He was a visiting professor and Japan Chair (2009–2010) at Sciences-Po in Paris (Institut d'Études Politiques), and a visiting fellow (Fulbright Fellow, 2008–2009) at Princeton University. His research interests include postwar international history, British diplomatic history, Japanese foreign and security policy, and contemporary East Asian international security. He has a number of publications, and those in English include *Security Politics in Japan: Legislation for a New Security Environment* (Tokyo: JPIC, 2019). He also gives comments in both Japanese and major global newspapers such as the *New York Times* and *Le Monde*.

6 Restructuring the Maritime Order24

Shigeki Sakamoto

Shigeki Sakamoto is a professor in the Faculty of Law Department Law at Doshisha University. Professor Emeritus of Kobe University. Doctor of Laws (Kobe University, dissertation: Theory and Practice of the Law of Treaties). Former Member of the Advisory Committee of the UN Human Rights Council (2008–2013), President of the Japanese Society of International Law (2014–2016), President of the Japanese Association of International Human Rights (2006–2009). He served as an Advocate for the Government of Japan in "Southern Bluefin Tuna" Case (Australia and NZ v. Japan) under UNCLOS Part XV.

7 The Obligation of Self-Restraint in Undelimited Maritime Areas28
Kentaro Nishimoto

Kentaro Nishimoto is Professor of International Law at the School of Law, Tohoku University, Japan, where he is also Vice Dean of the Graduate School of Public Policy. He received his Ph.D. in Law from the University of Tokyo with the thesis “Territoriality and Functionality in the Historical Evolution of the Law of the Sea.” His research focuses on the international law of the sea, including issues such as the history of the law of the sea, sustainable development of ocean resources and the settlement of maritime disputes. His recent publications in English include a contribution to Alexander Proelß (ed.), *The United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart/Nomos, 2017). He is currently Advisor to the Japanese delegation to the intergovernmental conference on marine biodiversity of areas beyond national jurisdiction (BBNJ).

8 The Present and Future of Multilateralism and Expectations for Japan39
Izumi Nakamitsu

Izumi Nakamitsu is United Nations Under-Secretary-General and High Representative for Disarmament Affairs. She assumed her position as Under-Secretary-General and High Representative for Disarmament Affairs on 1 May 2017. Prior to taking on this post, Ms. Nakamitsu served as Assistant Administrator of the Crisis Response Unit at the UN Development Programme since 2014.

She has many years of experience within and outside the UN system, most recently as Special Adviser Ad Interim on Follow-up to the Summit on Addressing Large Movements of Refugees and Migrants between 2016 and 2017. She was previously Director of the Asia and the Middle East Division of the UN Department of Peacekeeping Operations between 2012 and 2014, and Director of the Department’s Division of Policy, Evaluation and Training, from 2008 to 2012.

Born in 1963, Ms. Nakamitsu holds a Master of Science degree in Foreign Service from Georgetown University in Washington, D.C., and a Bachelor of Law degree from Waseda University in Tokyo.

She is married and has two daughters.

9 The Role for Middle Powers in the Free and Open Indo-Pacific: Looking at Opportunities for Canada and Australia44
Jonathan Berkshire Miller and Thomas Wilkins

Jonathan Berkshire Miller is a Tokyo-based Senior Fellow at The Japan Institute of International Affairs. He is also a Distinguished Fellow with the Asia-Pacific Foundation of Canada and regularly contributes to a range of media, journals and magazines on East Asian security matters. Follow him on Twitter @jbmllr

Thomas S. Wilkins is currently a Senior Fellow at the Japan Institute for International Affairs in Tokyo. He is normally based as a Senior Lecturer in International Security at the University of Sydney, Australia. He specializes in security issues in the Asia Pacific region and has published on this subject in journals such as *Review of International Studies*, *International Relations of the Asia Pacific* and the *Australian Journal of International Affairs*, among others.

One Hundred Years after the Paris Peace Conference: A Welcomed Change in Mutual Perceptions*

Valérie Niquet**

Abstract

The First world war and its sequels had long term consequences at the global level, including in Asia and its perception in the world. The Versailles Treaty established the premises of a value-based liberal international system. For the first time, a non-European nation, Japan, fully participated and played a major diplomatic role in the debates and negotiations of the peace conference. However, the Western centric dimension of the Paris Peace Conference and the Versailles Treaty as well as the opposition of the United States to racial equality clause also resulted in frustrations and future strategic instability related to the refusal of Western nations to fully integrate Japan, one of the allies, as an equal and legitimate power in the new concert of nations.

Western historiography has long neglected the importance of the Versailles Treaty for Asia. When there was an expression of interest, it was often exclusively focused on the consequences for China, including the issue of the 21 Demands made by Tokyo to the Chinese authorities of the time and the emergence of an anti-Japanese nationalism with the May 4th Movement in 1919.

In Asia itself, the focus was at the time also very much on the disillusion, both in China and in Korea, but also in Japan, that followed the settlement of the Versailles Treaty and the establishment of the League of Nations.

However, the Versailles Treaty signed on June 28, 1919 also played a significant role in the constitution of a new international order, based on liberal values, and the establishment of an international organization to solve international relations issues, in which Japan had initially fully participated. It was also the first time that, in a departure from the traditionally exclusively Eurocentric posture of the Great powers, Asian powers became full actors of the global international system.

Different perceptions of the Versailles Treaty in Europe and in Japan

One hundred years after that event, the interest expressed in Japan for the Versailles Treaty, however, has been growing and is particularly significant in a contemporary context where the international liberal order is under threat. For Japanese analysts today, the participation of Japan in the Paris Peace Conference constitutes the first manifestation of Tokyo's engagement alongside the powers that defend multilateralism and a liberal international order threatened by the temptation of some states to use coercion to change the status quo as well as by the rise of populism and temptations of isolationism in Western democracies.

* The Basis of this Policy Brief is a Conference organized in Paris by JIIA-JIC and FRS, on January 28, 2019 on "Asia and Europe from the Versailles Treaty to the Present."

** Valérie Niquet is Senior Visiting Fellow at the Japan Institute of International Affairs and Head of the Asia program at Foundation for Strategic Research.

However, one cannot but note the differences in the assessments of the consequences of the Treaty in Europe and Asia. In Europe, among politicians as well as historians, the analysis of the consequences of the Versailles Treaty is more negative.¹ For most of these analysts, the Versailles Treaty bore the germ of the Second World War. The will to “punish” Germany as the only responsible actor for the war, the financial demands, followed by French occupation of the Ruhr in 1923 contributed to the emergence of Nazism and the rise of Hitler. The League of Nations is often criticized by some for its intrinsic weaknesses, while, for others, it is the “idealism” that presided over the Paris Peace Conference, and particularly the issue of “punishing” the defeated nations as “culprits” of the war that led to lingering enmities and tensions.

In Japan, the only non-Western power among the signatories, however, the rediscovery of the Versailles Treaty and the significant role played by Japanese diplomats at the time, is an essential element of contemporary historiography. It shows that, as early as the 1920s, Japan could assert itself as a legitimate actor of the post-First World War concert of nations.

However, the deficit of understanding of the international role of Japan under the Taisho Democracy (1912–1926), including its role as one of the signatories of the Versailles Treaty and its participation—contrary to the United States who never ratified the Treaty—in the League of Nations, still dominates European historiography. This lack of knowledge weighs not only on past appreciations but also on the understanding of contemporary issues and possible cooperation between Europe and Japan. It results from an analysis of the building process of the international system after the First World War that remained almost exclusively Western-centric.

The importance of the Versailles Treaty for Japan and the ambiguity of Western powers

Japan was a critical player at the Paris Peace Conference, after taking control, as a legitimate actor alongside the Allies, of Germany’s concessions in the Shandong Peninsula in China and the Pacific Islands that were part of the German Empire in the Pacific.

Concerning Asia, the Versailles Treaty is often considered through its most damaging consequences that led to growing tensions with China. However, that approach is an anachronism and Japan’s position at the time, differed little from that of the other great powers, whose primary objective was also in preserving their own interests in Asia, and especially in China.

The United States, in particular, initially fully supported Japanese claims on the Shandong Peninsula, as well as the mandate given to Tokyo on the Pacific Islands under the control of the League of Nations. Nonetheless, when Japanese demands on Shandong were subsequently rejected, it was mainly because they contravened the interests of other Western powers present in China, worried by the emergence of a new competitor in the region.

Despite these limitations, the Versailles Treaty marked for the first time the entry of an Asian actor in the diplomatic concert hitherto monopolized by the European powers. Japan’s participation in the Paris Peace Conference constituted a paradigm shift with the first steps of a globalization process that still expands to our days.

However, from the very beginning, this globalization, which was based on the concept of universal values, was tainted with limits that became the source of future frustrations.

The first and most important of these limits was the refusal by some Western powers, and more specifically by the United States in spite of the principles defended by President Wilson, to accept the amendment of article 21 of the constitution of the League of Nations imposing the principle of racial equality proposed by Japan and supported by China. The rejection of the amendment, defended by France, was particularly damaging as it had received a majority of

¹ Georges-Henri Soutou, *La grande illusion, quand la France perdait la paix, 1914-1920*, Paris, Tallandier, 2015.

votes.

Similarly, while in Europe, the Washington Conference of 1923 is still perceived as the first step towards arms control mechanisms, for Japan it translated into the will of the United States and Britain to deny the legitimacy of Japanese positions and to contain the development of Tokyo naval capacities.²

In both cases, it was the very principle of common values and equal rights that had been encouraged and at the same time ignored by Western powers. However, despite these initial failures, the question of common values remains critical for the international community despite the evolutions of great power relationships and political systems since the Second World War and the end of the Cold War.

The contemporary relevance of the issues raised at the Paris Peace Conference

In Asia today, the challenge of ideological bi-polarization, amplified by the increased overall power of the People's Republic of China, remains an essential part of the strategic calculus of democracies. On one side there is a qualified system of liberal democracies, attached to a set of principles based on the attachment to the universality of specific values, the rules of international law and the rejection of the use of force to change the status quo; on the other side authoritarian systems reject these principles of universality and common values. In that context, it is worth remembering that, contrary to the expectations raised by the theories of the end of history 30 years ago, these fundamental issues—and these constraints—are still relevant and cannot be ignored in Europe, despite the geographical distance that separates the two continents.

Moreover, the lessons of the Versailles Treaty are also pertinent when addressing the issues of appeasement and pacifism. The First World War, its destructions and its industrial-size number of victims opened the way to pacifism and the temptation of appeasement at any cost. This also led to the Munich Conference, the annexation of the Sudetenland in Czechoslovakia by the Third Reich and the emergence of an uncontrollable German power, animated by a desire for revenge and ready to destroy the post-First World War status quo. In Asia today, the situation is less dramatic than in 1938. However, the fear of being involved in any conflict and the temptation of disengagement or appeasement could also lead to more severe tensions resulting from miscalculations on the part of certain powers, also driven by a revanchist posture and a desire for “reparation.”

To answer these threats, taking into account the ideological dimension of the shared values that underlie the liberal world order, we witness the emergence of new concepts. These concepts must be inclusive and open to all States and entities that support these universal values.

The need for a value-based order and new concepts

This is the case with the concept of “free and open Indo-Pacific,” which establishes a bridge between Asia and Europe, the Pacific Ocean and the Indian Ocean, and is also an answer to the more grandiose projects of the Belt and Road Initiative whose objective—beyond economic interests—is to be used as an instrument of China's great power policy in its region and beyond. There again, history, with references to the Chinese traditional tributary system, as well as contemporary international strategy, is at the almost exclusive service of a policy whose first and most important goal is to preserve a regime in needs of legitimacy.

However, this “free and open Indo-Pacific” concept also poses several challenges, that are also opportunities for cooperation. The first of these challenges is that of inclusiveness.

The inclusion of Europe—despite its limitations—is necessary, not only because this it is in Europe that the universal values that establish the liberal order emerged, but also because

² Pierre Grosser, *L'histoire du monde se fait en Asie*, Paris, Odile Jacob, 2017.

Europe possesses, by itself and through some of its States, capabilities that go far beyond “soft power.”

The inclusion of all States bordering the Indian Ocean, from South East Asia to South Asia and the shores of Africa, is also a necessity. These territories, particularly in Africa, open new prospects for external powers looking for economic opportunities, easy access to resources but also a source of support for the ideological battles fought in international institutions for the control of globalization and the imposition of a set of new norms challenging the liberal order.

However, for a country like Japan—in cooperation with other partners—these challenges are also an opportunity. It is the opportunity to play a more significant and more active role, on the basis of common values, in favor of a more balanced model of development. This is what would constitute the first element of long-term stability, especially in Africa.

This opportunity also supposes a capacity for opening up, including opening up to new partnerships, as is already the case with countries like France. Japan has a strategic partnership with France, based on the sharing of common values and fueled by a yearly 2 + 2 dialogue between foreign and defense ministers of both countries. Beyond France and the United Kingdom, in 2018, the European Union and Japan have also signed a strategic partnership, alongside a free trade agreement, which also expands Tokyo’s margin of manoeuvre.

This, of course, does not question the preeminence and the essential role played by the United States, Japan’s most important security partner since the 1950s. However, as at the time of the Versailles Treaty and the League of Nations, the United States seems to be again tempted by isolationism and an “America First” posture. This posture can be particularly uncomfortable for its allies, even if we can be confident that this would not withstand a direct and immediate threat to the United States interests or those of their allies, particularly in Asia.

The principle of “openness” also applies to Japan, with all the risks of uneasiness it can involve. It is precisely the strength of democracies, on the domestic as well as on the international scene, to be able to accept and feed on the debates they may involve. It is at this price that real partnerships, based on mutual understanding, can be put in place. In the case of Japan, these partnerships can also be based on the fact that Tokyo remains the only power in Asia to have followed, from the end of the nineteenth century to the present day, a path very similar to that of its European partners.

Japan at the Paris Peace Conference of 1919: A Centennial Reflection*

Naoko Shimazu**

Abstract

The military engagements during the First World War earned Japan a seat as a victor at the Paris Peace Conference, as the fifth great power, after the United States (as the first superpower), Britain, France, and Italy. At the peace conference, Japan made three peace demands. The first two were territorial in nature. The racial equality proposal—the third Japanese peace term—became the most hotly debated peace topic in Japanese public debate during the peace conference in 1919. What is important to remember is that racial politics played a significant part in some of the politico-military calculations made by the Allied powers. The Japanese sensitivity to what they regarded as discriminatory treatment of Japan and Japanese nationals surfaced as a formal peace term at the Paris Peace Conference, and became known as the racial equality proposal. In reflecting on the issues raised by the Japanese at the Paris Peace Conference on its centenary, one is struck by the continuity in terms of the issues that matter—such as racial politics and immigration—in international relations today. Moreover, the continued relevance also of the nation-state as the basic unit of international relations in the early twenty-first century global affairs remains strong, in spite of the rapid increase in many non-state actors. No doubt, we continue to deepen our historical understanding of the Paris Peace Conference, hopefully, in ways which may not have been imaginable hitherto.

This year marks the centenary of the Paris Peace Conference of 1919, and this symposium is one of the events to commemorate the occasion in France. This short piece revisits the Japanese peace conference policy in the light of its involvement in the First world War.

During the First World War, Japan was engaged in three main military expeditions. First, Japan declared war on Germany on 23 August 1914, which resulted in the joint expedition with the local British force to occupy the German concessions on the Shandong Peninsula, to capture Qingdao where the German East Asiatic Squadron, the largest concentration of German navy outside of Europe, was based.¹ The Jiaozhou (Kiaochow) Bay by 1909 had become the second largest commercial port in China after Tianjin. In this battle, Japan mobilised nearly 52,000 troops,

* This article is based on a presentation made by the author at the symposium “Asia and Europe from the Versailles Treaty to the Present: The Legacies of Post War-Endings and Peace-making between Constraints and Forward Looking” held by JIIA and FRS (Foundation for Strategic Research) on Jan. 28, 2019.

** Naoko Shimazu DPhil (Oxon), FRHist.S, is Professor of Humanities (History) and Associate Dean of Faculty at Yale-NUS College, and Professor at the Asia Research Institute, National University of Singapore.

¹ Hew Strachan, *The First World War, Vol.I: To Arms* (Oxford: Oxford University Press, 2001), 447.

Britain 870 troops, in addition to about 450 Indian troops.² Although it may have appeared like a neat little manoeuvring to gain a foothold in China on the peninsula in proximity to Tianjin and Beijing, the Japanese move backfired later at the peace conference when Japan's successful claim to have the German rights in Shandong transferred to Japan, caused a diplomatic furore with the United States and China. This came as a complete surprise to the Japanese who expected the transfer to be conferred without a question based on the secret agreements signed with Britain, France, Italy and Russia before the Chinese entered war in August 1917. Ultimately China refused to sign the treaty, and this whole episode ignites the May Fourth Movement in China. In the end, Japan had agreed to return Shandong to China at the Washington Conferences of 1921–1922.³

The second military expedition pertained to the Japanese occupation of the German islands in Micronesia (Marshalls, Carolines, and Marianas) the north of the equator, which the Japanese Second South Seas Squadron had managed to complete by 14 October 1914. The outbreak of the war had set off a mini-scramble for German territories in the Pacific—and in this New Zealand had led the way by occupying Samoa by 30 August, followed by the Australian occupation of German New Guinea and the Solomon Islands by 15 September. On the surface, the Japanese conquest of the Micronesian Islands might have come across as a costly enterprise, which primarily helped to boost Japan's fragile ego as the newest great power, a belated Japanese bid for the late nineteenth-century Western scramble for the Pacific of the late 1890s. Nevertheless, from the geopolitical point of view, the success of this naval expedition could be considered as the most significant gain by Japan during the war, because it helped to substantiate the geopolitical imaginations of Japan's future as a significant Pacific power, in the way that Japan's previous imperial wars had not been able to do. The occupation of the Micronesian Islands, given as class "C" mandates at the Paris Peace Conference, had turned the Japanese presence in the Central Pacific as a semi-permanent geopolitical reality. If one looks at the map of the Asia-Pacific, one can see the "Arc" of the Japanese empire coming substantially down into the Central Pacific, stopping just at the equator, above Papua New Guinea. It does not require a great leap of imagination to see that the perimeter defence of Japan's wartime empire in the first one hundred days after the Pearl Harbor, followed that same "Arc" except that it was expanded by being pushed landwards into the Southeast Asian territories of the British, French and Dutch colonial empires.

Moreover, our understanding of the significance of the Japanese occupation of Micronesia is enhanced through adopting a global historical perspective. In Japanese historiography, the Japanese occupation of the Micronesian islands is generally treated as a minor colonial issue relative to the larger Taiwan, Korea and the Liaodong Peninsula, with the exception of naval history. Recent scholarship has focused on Micronesia as part of Japan's League of Nations diplomacy.⁴ What may have appeared to be a symbolic expansion into the southern Pacific from the Japanese perspective, came to assume much graver practical implications for the British Dominions, and the defence of the British Empire in the post-1919 world.⁵ According to the Australian House of Representatives debate on the peace treaty in September 1919: "Australia has taken its frontiers northward to Rabaul, but the frontiers of Japan has been brought southward

² Yamamuro Shin'ichi, *Fukugosenso to soryokusen no danso: Nihon ni totteno daiichiji sekai taisen* (Kyoto: Jinbun shoin, 2011), 57.

³ Bruce A. Elleman, *Wilson and China: A Revised History of the Shandong Question* (New York: M. E. Sharpe, 2002) sheds new light on the complex issue of the Shandong Question, which questions the orthodox interpretation of the "wronged China" view.

⁴ Tōmatsu Haruo, *Nihon teikoku to inin tōchi: Nanyō guntō o meguru kokusai seiji, 1914-1947* (Nagoya: Nagoya daigaku shuppankai, 2011).

⁵ For instance, Hew Strachan, *The First World War, Vol. 1: To Arms* (Oxford: Oxford University Press, 2001), 481-483.

3,000 miles to the equator, until their front door and our backdoor almost adjoin.”⁶ Arguably, therefore, the significance of the Japanese naval expansion southward was felt most keenly, not by the Japanese themselves, but Australia and New Zealand whose heightened sense of threat contributed to hardening the perception of Japan’s new role as a Pacific power.⁷ Ultimately, the Japanese expansion into the Pacific during the First World War can be regarded as setting out a preliminary “blueprint” for what later became the Greater East Asia Co-Prosperty Sphere.

The third military expedition was politically and diplomatically the most fraught, on the question of a joint Allied expedition to Siberia in 1918. Japan had been asked to send 7,000 troops to make up the Allied intervention, and responded to it by mobilizing 73,000 troops. The Japanese decision took place under a hawkish prime minister, General Terauchi, whose government failed due to the Rice Riots of 1918, only to be replaced by the moderate, pro-Western prime minister, Takashi Hara. (The Japanese navy also sent warships to the Mediterranean to defend Allied shipping in 1917.) The Siberian troop deployment, like the Shandong occupation, became a thorn in the Allied camp.

The military engagements above earned Japan a seat as a victor at the Paris Peace Conference, as the fifth great power, after the United States (as the first superpower), Britain, France, and Italy in that order of hierarchy of great powers. The story of Japan’s participation at the peace conference underlines difficulties the Japanese faced in having to operate for the first time as a major power in a multilateral framework of international diplomacy.

At the peace conference, Japan made three peace demands. The first two were territorial in nature, emanating from the military victories made against the former German concessions and territories held in Shandong and the Central Pacific. The Japanese government had signed a series of secret treaties in 1917 with the key states to secure these territories, and hence, was taken aback when the question of the retrocession of Shandong to China was raised at the peace conference. In some sense, the cost to Japan for obtaining Shandong at Paris, albeit temporarily, was the racial equality proposal—the third Japanese peace term, which became the most hotly debated peace topic in Japanese public debate during the peace conference in 1919. The failure of the racial equality proposal became symbolic of the failure or the weakness of Japanese peace diplomacy, and incurred a substantial cost to the Foreign Ministry in terms of its reputation. Strictly speaking, however, foreign policy decision-making was not made in the Foreign Ministry at the time as it had been taken over by a transcendental body called the Diplomatic Advisory Council, in which the Foreign Ministry officials played a relatively minor role.

What is important to remember is that racial politics played a significant part in some of the politico-military calculations made by the Allied powers. Japan as the only non-white great power on the Allied side, was distrusted in particular by the United States. Racial tensions particularly between Japan and the United States reached its peak in 1913 with the passing of the Californian Alien Land Law. In fact, the tension was such that President Wilson had discussed with the cabinet the mobilisation of the fleet in the Pacific in preparation for a possible conflict against Japan.⁸ Although Britain had to contend with anti-Japanese sentiment expressed by its Dominions, especially Australia, it did not overshadow the British military decisions vis-à-vis the Japanese during the First World War. In fact, Britain was often put in an awkward position having to appease the stringent anti-Japanese sentiment held by the Americans which derived not only

⁶ “Between the wars,” Chapter 1, <http://static.awm.gov.au/images/collection/pdf/RCDIG1070314-1-PDF>, accessed 5 January 2014.

⁷ Neville Meaney, *Australia and World Crisis, 1914-1923: A History of Australian Defence and Foreign Policy 1901-23: Volume 2* (Sydney: Sydney University Press, 2009).

⁸ Naoko Shimazu, *Japan, Race and Equality: The Racial Equality Proposal of 1919* (London: Routledge, 1998), 76. This book still stands as the most comprehensive treatment of Japan’s participation at the Paris Peace Conference, and in particular, the racial equality proposal, to date.

from their distrust of the Japanese, but also from their support of the newly found “Young China.” Moreover, the highly expansionist Twenty-One Demands of 1915 which attempted to turn China into a semi-colony of Japan, had exacerbated the bad will which had already existed between Japan and the United States. Therefore, even with regards to the Siberian intervention, the American opposition to the Japanese troop deployment which had been pressed by both Britain and France, was not only due to geopolitical concerns, namely that the Japanese troops might use this as a pretext to station troops in the region east of Lake Baikal. But, I have argued elsewhere that “the American government was principally concerned about the effects of Japanese troop deployment on American domestic opinion” seeing that it had been deeply sensitised with the anti-Japanese immigration policy as well as by the Twenty-One Demands of 1915 against China.⁹ Sir William Wiseman summed up the underlying American sentiment: “The American hatred of all yellow races is thinly, if at all, disguised. Any thought of the yellows being brought in to redress the balance of the whites is repugnant to them, especially when it may involve the consequent loss of commercial advantages in the new and lucrative mark of East Russia.”¹⁰ In fact, the Japanese sensitivity to what they regarded as discriminatory treatment of Japan and Japanese nationals surfaced as a formal peace term at the Paris Peace Conference, and became known as the racial equality proposal as mentioned above.

In reflecting on the issues raised by the Japanese at the Paris Peace Conference on its centenary, one is struck by the continuity in terms of the issues that matter in international relations today. Particularly, the relevance of issues such as racial politics, and immigration, is striking, to say the least. Moreover, the continued relevance also of the nation-state as the basic unit of international relations in the early twenty-first century global affairs remains strong, in spite of the rapid increase in many non-state actors. In any case, the centennial years have given rise to a swathe of new scholarship and the dominant trend can be defined as the “global turn.” And, in these new globally-led narratives, the Japanese participation as one of the great powers plays a prominent role in anchoring the globality of the war itself. And, with this global turn, we begin to see exciting new historical insights unravelling in the centenary of the peace conference, such as Japan’s involvement in the Catholic network of informal diplomacy.¹¹ No doubt, we continue to deepen our historical understanding of the Paris Peace Conference, hopefully, in ways which may not have been imaginable hitherto.

⁹ There is a notable new research on the topic of the Twenty-One Demands of 1915 by Naraoka Sochi, *Taika niju-ikkajo yokyu to wa nani dattanoka: Daiichiji sekai taisen to nicchu tairitsu no genten* (Nagoya: Nagoya daigaku shuppankai, 2015).

¹⁰ As quoted in Shimazu, *Japan*, 109.

¹¹ Patrick Houlihan’s unpublished paper “The Other Admiral Yamamoto: Catholic Globalism at the Paris Peace Conference of 1919,” presented at an international conference on The Paris Peace Conference and the Challenge of a New World Order, German Historical Institute, Paris, June 2019.

The Wilsonian Vision for a New Liberal International Order: Symbolic Diplomacy at the Paris Peace Conference*

Naoko Shimazu**

Abstract

When the Allied Powers gathered in Paris in the first half of 1919, to discuss the peace terms, President Woodrow Wilson was welcomed as “a prophet,” “a saviour,” who came to rescue Europe from the ravages of the war, promising a brave new world where there would be an equitable international order to engender peace for all peoples. The Paris Peace Conference represented the climax of the American war propaganda campaign as the First World War was fought in the media as well as in the trenches. Wilsonian liberalism as it became known, was a paradoxical mix of visionary idealism and political pragmatism. The ‘saviour’ himself began to recognise his mortality and realise the limits of his ideals during the Paris Peace Conference. Yet images of diplomacy constructed largely by the media during the Paris Peace Conference tended to inform contemporary perceptions of the success of peace conference diplomacy at Paris. To this end, ‘public diplomacy’ constituted an integral aspect of peace conference diplomacy. In the end, Wilson himself faced a personal defeat in his own country which had failed to ratify the Treaty of Versailles. Nonetheless, the international order or the League of Nations which was born out of his brand of idealism survived its difficult birth, and ventured to live a short but eventful life.

It is opportune to reconsider the liberal international order of the interwar period, as we face the centenary of the end of the First World War. When the Allied Powers gathered in Paris in the first half of 1919, to discuss the peace terms, President Woodrow Wilson was welcomed as “a prophet,” “a saviour,” who came to rescue Europe from the ravages of the war, promising a brave new world where there would be an equitable international order to engender peace for all peoples. Some of the top brass in the American delegation worried that his personal presence in Paris would break the sacred halo with which he had to come to be regarded by some of the people.

Wilsonian liberalism as it became known, was a paradoxical mix of visionary idealism and political pragmatism. The “saviour” himself began to recognise his mortality and realise the limits of his ideals during the Paris Peace Conference. In the end, Wilson himself faced a personal defeat in his own country which had failed to ratify the Treaty of Versailles. Nonetheless, the international order or the League of Nations which was born out of his brand of idealism survived its difficult birth, and ventured to live a short but eventful life.

In this presentation, I’m going to focus on the symbolic diplomacy of Wilson’s at the Paris Peace Conference because it helps us shed an alternative light on Wilson and what “he” and his

* This article is based on a presentation made by the author at the symposium “Japan and the World in the 20th Century” held by JIIA on March 29, 2018.

** Naoko Shimazu DPhil (Oxon), FRHist.S, is Professor of Humanities (History) and Associate Dean of Faculty at Yale-NUS College, and Professor at the Asia Research Institute, National University of Singapore.

vision for a new world might have represented at Paris Peace Conference.¹

Let us begin with a quotation from the *New York Times* on December 16, 1918

“It is far worse than when the Czar of Russia visited Paris—you would think every Parisian had determined not to rest happy until he had a close personal view of President Wilson.” The speaker was a veteran gendarme attached to the force guarding the entrances of the Rue de Monceau, where Prince Murat’s house is situated, from the overcurious crowds.... Somehow the news had spread yesterday... that the president had been to church and would return at about noon. The result was an enthusiastic gathering before the police barriers—hundreds of people, quiet and well-behaved, in their Sunday clothes, but resolved not to leave the spot before the President had passed.... Suddenly, the boy on the outskirts of the crowd cried: “Le voila!” as a limousine turned a corner. Hats came off, flags and handkerchiefs were waved, and the air rang with shouts of “Vive Wilson! Vive le President!” Smiling with unaffected pleasure, the members of the Presidential party passed through the hedge of spectators down the street.... Not the least striking feature of the President’s popularity is Parisians have learned how to cheer in order to greet him properly.... There has been another change in the city during the last few weeks. Paris is recovering its old gaiety.... Now with illuminations in Wilson’s honor, confetti have reappeared on the boulevards, until the pavements are covered with the bright-hued jetsam.

The above reporting tells us many things: the symbolic linking of Wilson with the French aristocracy, heroic stature of Wilson amongst Parisians, and added to this was the smugness evident that even the French have had to change their old ways and learn to do things in an American way in order to please the president. Indeed, the media covered Wilson’s activities with a paparazzi-like zealotry—such as Wilson was seen at the races, Wilson was seen on his daily round of motoring in the Bois de Boulogne, and so on. The amount of media attention that Wilson attracted was a reflection, at one level, of how the world was changing and how Wilson was seen to symbolise the new configuration of power in international relations that placed the United States at its helm.² Most of all, the piece is an excellent example of how effectively the American propaganda machine was working in Paris—in presenting Wilson and the influence of the US in Europe, by appealing to popular penchant for heroic figures. Arguably, the Paris Peace Conference represented the climax of the American war propaganda campaign as the First World War was fought in the media as well as in the trenches.³

What I attempt in this brief presentation is to suggest the importance of the symbolic in diplomacy; or more precisely, how images of diplomacy as constructed largely by the media during the Paris Peace Conference tended to inform contemporary perceptions of the success of peace conference diplomacy at Paris.⁴ To this end, “public diplomacy” constituted an integral

¹ For the fuller treatment of the topic, refer to my ‘A Cultural History of Diplomacy: Reassessing the Japanese “Performance” at the Paris Peace Conference’, in Urs Matthias Zachmann, ed., *Asia after Versailles: Asian Perspectives on the Paris Peace Conference and the Interwar Order, 1919–33* (Edinburgh: Edinburgh University Press, 2017), 101–123. I have excerpted a substantial part of this paper from my article above.

² Lloyd C. Gardner, *Safe for Democracy: The Anglo-American Response to Revolution, 1913–1923* (New York: Oxford University Press, 1984), 6.

³ For an interesting account of American war propaganda, cf. James R. Mock and Cedric Larson, *Words that Won the War: The Story of the Committee on Public Information 1917–1919* (Princeton: Princeton University Press, 1939).

⁴ For a fuller treatment of the idea of ‘performance’ in diplomacy, cf. Naoko Shimazu, ‘Diplomacy as Theatre: Staging the Bandung Conference of 1955’, *Modern Asian Studies*, 48:1 (January 2014), 231–4.

aspect of peace conference diplomacy.

A brief analysis of the American delegation will provide us with helpful insights into how the most powerful state in the world saw the workings of symbolic power. Americans were very aware of the symbolic importance of their representation at the peace conference, and this can be seen in many details of the American presence. Paris was being “liberated” by the Americans, as the American Mission to Negotiate Peace, with a vast entourage of well over 1,000 staff, occupied the geographical centre of Paris, taking Hotel Crillon which faced Place de la Concord as its headquarters. And the above-mentioned mansion of Prince Murat, that is, Wilson’s temporary “home,” became known as the “Paris White House.”⁵ The positioning of Americans in the centre of Paris is significant because it reveals much about their self-perception. What is important to emphasise here is that even the physical positioning of the American headquarters can project its sense of national power. Moreover, the fact that Wilson was hosted at the mansion of a French aristocrat was doubly significant if not ironic.

It was reported that the arrival of Wilson as a “saviour” of war-ravaged Europe was symbolic not only for Americans and Europeans but also for the many oppressed peoples of the world.⁶ The Italian minister, Francesco Saverio Nitti later wrote of Wilson: “I have seen Wilson come to Europe in 1918 acclaimed as the apostle of the new civilisation and the liberator of the peoples...” An American press photograph of Rue Royale immediately after the passing of Wilson’s cavalcade illustrates the fervour which gripped Paris on his arrival, and acts as a visual testimony to the press write-up. Even the choice of the location in the photograph that includes the sign of Maxim’s with “Vive Wilson” blazoned across the photograph is significant as the restaurant is synonymous with Parisian high life.⁷ Moreover, the entire pictorial composition suggests not only the victor’s entry into the city but, even a moral victory of the New World over the Old World. The frequent biblical allegory used to capture popular enthusiasm for Wilson implied that the American president was represented as an embodiment of “sacred” political values of contemporary times. One could even argue that traditional notions of monarchical sanctity were being put into use to “legitimise” the political authority of Wilson. In some sense, it was ironic that the Old World had to rely on the idioms of traditional, monarchical absolutism to privilege the political leader from the New World.

The decision taken by Wilson to attend the peace conference was not without its problems. Wilson was personally very keen to come to Paris as he believed that he alone commanded the moral authority necessary to create the League of Nations. However, there were those like Secretary of State Robert Lansing, who argued strongly against it on the grounds that his personal presence would diminish the near-mythical quality of Wilsonian idealism.⁸ As the main part of the peace conference lasted the first six months of 1919, there was also the problem of dual track diplomacy which began to evolve at Paris: the last two months of the peace conference was characterised by the summit diplomacy of the Big Four where the major political decisions were made (more on this later), and in parallel, “peace conference diplomacy” through bureaucrats and diplomats who laboriously panned out the details in the special commissions. Not surprisingly, the lack of diplomatic knowledge by the Big Four led to behind-the-scene criticisms

⁵ ‘Interview with President Wilson’, *The Times* (London), 21 December 1918. 7.

⁶ Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford: Oxford University Press, 2007).

⁷ Princeton University Library, Woodrow Wilson Coll., box 42, folder 5.

⁸ Robert Lansing, *The Peace Negotiations: A Personal Narrative* (London: Constable, 1921), 14; Inga Floto, *Colonel House in Paris: A Study of American Policy at the Paris Peace Conference* (Princeton: Princeton University Press, 1980), 70.

of the bosses by their diplomats.⁹ In a political cartoon entitled “Diplomats and the Shadow on the Blind” featured on 21 December 1918 in *The Herald* it underlines bureaucratic jealousies felt by diplomats who must have resented being marginalised by the presence of their top statesmen who would invariably turn the peace conference into a political pageantry and “hog” the limelight. Strikingly, it is Wilson himself who was portrayed as a “problem of peace” by diplomats.

What becomes evident is that the role of the media in the new age of “public diplomacy” was of paramount importance, necessitating state actors to either create their own news agencies and/or to cultivate good working relations with commercial presses. To this end, the United States government was well ahead of the game, having created the Committee on Public Information in April 1917 with George Creel as its head. As the work of CPI has been covered in the existing literature, it will suffice here to emphasise that the successful “packaging” of Wilson underlined the success of the CPI’s propaganda activities.¹⁰ Woodrow Wilson even had his own press secretary at the peace conference in Ray Stannard Baker. Excessive reliance on press campaigns was not altogether without its own problems either. The fact that the American delegation was divided internally resulted from time to time to the dispatching of separate and ill-coordinated messages between the offices of Wilson, Colonel House and Robert Lansing.¹¹

Visual images of Wilson in press photographs and newsreels distributed globally came to assume great importance, often becoming the key reference point of the event for the public at large. Indeed, it is not an overstatement to say that “the power of images [worked] as substitutes for reality.”¹² The over-exposure of Wilson resulted in over-expectations—and this meant that his downfall was so much greater when he failed to deliver the “goods”—national self-determination—to the colonised world.

For one, the rising importance of “public diplomacy” at Paris can be accounted for by the change in the political environment of the states represented. One of the most important characteristics of the Paris Peace Conference, which marked it out from previous peace conferences such as the Congress of Vienna, was that it was predominantly a gathering of the top *elected* representatives of the newly emerging liberal democratic world. In Woodrow Wilson’s very own words, Vienna was “a Congress of ‘bosses’” whereas “Versailles...must be a meeting of the servants of the peoples represented by the delegates.”¹³ By 1919, apart from Japan, all the other great powers had universal male suffrage, the oldest being France in 1792 (re-enacted in 1848), the US in 1869, Britain and Italy in 1918, and Japan in 1925. Added to the fact that the First World War had mobilised and resulted in such an enormous number of casualties, a sense of crisis pervaded in many Western polities, aggravated by the threat of communism in the Bolshevik Revolution. As the first total war, the First World War was a paradigm-shifting experience at least in so far as political accountability was concerned, as popular expectations placed on political leaders were much greater than at any other time. Greater media scrutiny of their political leaders in 1919 reflected the changing nature of the relationship between the political elite and the ever-expanding electoral body.

⁹ Curzon to Derby, 2 April and 7 April 1919, FO 608/124, f 6445, National Archives, London.

¹⁰ George Creel, *Complete Report of the Chairman of the Committee on Public Information*, (Washington, D.C.: U.S. Government Printing Office, 1920); George Creel, *How We Advertised America: The First Telling of the Amazing Story of the Committee on Public Information that Carried the Gospel of Americanism to Every Corner of the Globe* (New York: Harper and Brothers, 1920); Manela, *The Wilsonian Moment*, 48–52. 13.

¹¹ I discuss the American delegation and its internal division in my Japan, *Race and Equality: The Racial Equality Proposal of 1919* (London: Routledge, 1998), especially Ch. 6.

¹² Robert Elwall, *Building with Light: The International History of Architectural Photography* (London: Merrell, 2004), 9.

¹³ ‘Interview with President Wilson’, *The Times*, 21 December 1918, 17.

Therefore, all statesmen at Paris were, to varying degrees, “performing” for the benefit of domestic audience back home. In lieu of monarchical pageantry, the public became interested in a new diplomatic pageantry of the grandest kind as it unfolded in Paris, and climaxed symbolically in the Hall of Mirrors of the Palace of Versailles, now filled with politicians and bureaucrats who were the new ‘royalties’ in the age of popular democracy.¹⁴

Conclusions:

What we can see from the explanations of how Wilson and the US delegation attempted to exert the symbolic importance of their representation at Paris, in the way Wilson himself was presented as a media narrative, underlined the significance which American diplomacy attached to their symbolic presence at the Peace Conference. In the end, Wilson became too vested with symbolic power, and his “demise” exposed, partly, an overly ambitious CPI’s bid to stake out US’s newly acquired superpower status.

¹⁴ Ursula Stark Urrestarazu, “‘Theatrum Europaeum’ or: the Presentation of International Identity Relations at Peace Congresses”, working paper presented at the workshop, ‘Anthropology meets IR: potentials, prospects and pitfalls’, 29–30 November 2012, Peace Research Institute Frankfurt, 25–32.

Hundredth Anniversary of the Treaty of Versailles: Meanings and Implications*

Kerry Brown**

Abstract

The year 2019 marks the centenary of the signing of the Treaty of Versailles in Paris. The First World War, which the Treaty arose from, does not present a palatable and easily digested set of issues. Despite this, it is worth attending to what the Versailles Treaty meant, and what lessons might even today be drawn from it. One of the often neglected aspects of the First World War was that it did involve Asian partners. Japan's involvement in the Versailles Treaty discussions may not have been prominent, but that it was there at all showed a shift in geopolitical forces. It showed that Japan and Asia had an irrevocable role in European affairs, rather than it simply being the other way around. The second issue to reflect on when one looks at the meaning of Versailles in the present is how to assess and understand alliances, and their advantages and disadvantages. The complex mishmash of different alliances and treaty obligations across the continent in 1913 has been one of the issues frequently blamed for what unravelled in 1914. It was probably to this issue that Prime Minister Shinzo Abe referred when he spoke in 2014 of the dangers of Asia today duplicating the situation of Europe almost a century before. The Treaty, moreover, addressed issues which continue to have importance today—migration is one such issue, and that of values is another. In the 21st century, reflecting on the Versailles Treaty signed a hundred years ago finally allows us to reflect on the journey over the period between then and now that globalisation has taken. The legacy of Versailles is alive and well.

The year 2019 marks the centenary of the signing of the Treaty of Versailles in Paris. It will be a low-key event in Europe. The Treaty is associated with a complex period of history which is still not properly understood. Whereas the moral and geopolitical issues that arose from the Second World War a generation later have been more widely and easily assimilated into public consciousness, the First World War, which the Treaty arose from, presents a far less palatable and easily digested set of issues. Its origins such as historian Christopher Clark and others have shown in recent years, were multifarious and hard to explain in an easily comprehended way.¹ We understand better the causes of the European 1939 war. For the 1914–1918 war, the widespread carnage, the often static quality of the conflict, and the ways in which it rose from an intricate and hard to unpick set of alliances and the commitments they involved make for a far less neat account of history.

Despite this, it is worth attending to what the Versailles Treaty meant, and what lessons might

* This article is based on a presentation made by the author at the symposium “Asia and Europe from the Versailles Treaty to Present: The Legacies of Post War-Endings and Peace-making between Constraint and Forward Looking” held by JIIA and FRS (Foundation for Strategic Research) on January 28, 2019.

** Kerry Brown is Professor of Chinese Studies, and Director of the Lau China Institute at King's College, London, and Associate Fellow at Chatham House.

¹ Christopher Clark, *The Sleepwalkers: How Europe Went to War in 1914* (London: Allen Lane, 2012).

even today be drawn from it. At the time, participants like the economist John Maynard Keynes were rightly critical and sceptical of the sustainability of the Treaty.² And yet, the settlement had been entered in good faith, and it gave rise to the era of multilateralism which was, painfully and slowly, to emerge in the following decades, and which lies at the heart of the world we still live in.

One of the often neglected aspects of the First World War was that it did involve Asian partners. Japan after all was an ally of the British through the Anglo-Japanese Treaty of 1902. It was also one of the key participants of the Versailles meeting itself. The symbolic importance of this, whatever its actual practical meaning (Japan's inheritance of the formerly German concessions in China was to prove short-lived in their enjoyment, and created a legacy for Sino-Japanese bilateral relations which stretched over the following decades), is what is worth attending to today. The peripheral nature of Asia in Western intellectual and cultural life at the time was striking. Japan had only started to figure as a country to understand and know better on its own terms after the 1860s' Meiji Restoration. It started to matter more as a geopolitical player with the military victories over China in 1895 and Russia a decade later. These events showed the ways in which Japan had progressed as an industrial, modernising country, and one that represented a new phenomenon—Asian modernity. It also illustrated the ways, particularly through the victory against Russia, that this was able to impact directly on European interests and had visibility in their worlds.

Japan's involvement in the Versailles Treaty discussions may not have been prominent. But that it was there at all showed a shift in geopolitical forces. An Asian nation was no longer viewed as passive, and relegated to the sidelines. It was able to take an active part in international diplomatic discussions. The ways in which Asia had figured almost as a place which existed simply to passively receive Western attention, be it commercial or political, which had been the case since the first waves of colonial attention in the 16th and 17th century, were disrupted by the existence of a Japan which was able to exercise more active agency. And it showed that Japan and Asia had an irrevocable role in European affairs, rather than it simply being the other way around.

The second issue to reflect on when one looks at the meaning of Versailles in the present is how to assess and understand alliances, and their advantages and disadvantages. It was probably to this issue that Prime Minister Shinzo Abe referred when he spoke in 2014 of the dangers of Asia today duplicating the situation of Europe almost a century before.³ The complex mishmash of different alliances and treaty obligations across the continent in 1913 has been one of the issues frequently blamed for what unravelled in 1914. Small events, because of the architecture of obligations and commitments around them, escalated quickly. It is probably for this reason that a hundred years later the region now looks at two very different major powers—that of the US and the People's Republic of China—with radically different views of alliances. America, at least until recently, maintained a strong commitment to perhaps the most extensive set of security and trade alliances across the Asia Pacific but also globally. It enjoys treaty-based arrangements with Japan, South Korea, Singapore, Malaysia, Australia, and New Zealand. The predictability this gives is, of course, balanced by the ways in which it ties Washington into obligations that sometimes restrict or curtail its options. It is perhaps for this reason that the presidency of Donald Trump has been keen to start working outside the framework these provide.

For the People's Republic of China, the situation is the opposite. It has only one current treaty—that with North Korea, signed in the early 1960s. Otherwise, it operates on a level of

² John Maynard Keynes, *The Economic Consequences of the Peace* (New York: Harcourt, Brace and Howe, 1920).

³ See, *Abe comments surprise Chinese at Davos*, January 23rd 2014, Financial Times, at <https://www.ft.com/video/1d28bc50-ea9f-3b83-b41b-3c001d6c093d>

informality, disliking the impositions and restrictions placed on it by obligations spelt out in treaties. That does give it great flexibility in the way in which it arranges diplomatic space around it, setting up abstract ideas like “strategic partnership.” But it also lays it open to complaints that it is not a full stakeholder, that it is parasitical on a rules-based system put in place by others, and that it operates as a free loader. As the world’s second largest economy, these are obviously not good characteristics, and its future as a treaty-averse power has to be questionable.

The Versailles Treaty addressed issues which continue to have importance today, and mean that it is easier to relate to and understand the world in which this agreement grew. Migration is one such issue, something that carries the same potency in the domestic affairs of Europe, and now increasingly in Asia. This relates to the ways in which the Treaty reinforced the notion of what it is to be a nation state, and what belonging to such an entity actually meant, in a geographical area where the conceptual history and understanding of this term were not deep. While an island nation such as Japan understands well the importance of boundaries and had a stronger and clearer identity, this was less so for a collection of states which were to emerge through the rest of the century, many of them working off the influence of colonisation and other forms of external influence. Political scientist, the late Benedict Anderson captured this process in his term “imagined communities.”⁴ Unlike in Europe, where from the 1648 Westphalian Treaty, there had been a stronger sense of what a nation was, and what its political and economic identity might be, the concept at the heart of this, “sovereignty,” was not one that had properly existed in Asia, and in particular North East Asia, where the notion of vassal states and tributary relations flowing from the dominance of imperial Chinese entities had prevailed. Versailles can be seen as a key moment when China at least, or the Republican version of it that existed in 1919, started to wrestle with this issue. The emergence of a Chinese version of nationalism through the May 4th Movement which occurred just after the Versailles Treaty as a reaction to some of its stipulations and of what China was as a modern nation state has been an unfolding story since this era. It has also reordered the political geography of the region, embedding a more bounded sense of what the powers, and responsibilities, of nation states are, and what it is to be a member of these.

The other issue that Versailles allows us to contemplate is that of values. It was, after all, a treaty which was meant to exemplify the victory of one set of values over another—the facing down by a free market, laissez-faire set of alliances around Great Britain and its allies against German militarism and statism. That the Treaty was an attempt to embed these values in international practices, whatever its shortcomings, is an important thing to recognise. That process of how to accommodate very different legal and civil society values in the international community also continues to this day. With the rise of China it has perhaps grown even more urgent. Versailles wrestled with an emerging sense of multilateralism, giving birth to the League of Nations which is often seen as the precursor to the United Nations in the 1940s. It also marked the emergence of the US after the Second World War as a global player again after its years of “splendid isolation.” The one clear lesson one can draw about this whole area from Versailles is that the issue of values is one of immense complexity, but it cannot be ignored. In 2019, with the US and China now involved in an increasingly fractious trade war, and the underlying strategic competition between the two based on different views of the world order and the principles that underlie it, the contentiousness about which values in the end prevail, and how very different visions can co-exist beside each other without conflict has come back with vengeance.

The forces and processes of globalisation and the painful and often tragic route that the global order today emerged from, involve taking Versailles’s contribution into account. Liberal order, after all, was what the Treaty was meant to defend and embed in a young global system. Over

⁴ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983).

the ensuing decades, of course, there were many setbacks to that process. But that does not invalidate the mission that the conference tried to achieve. The language of multilateralism, of self-determination and of what a liberal order means remains with us.

In many ways it is the legacy of this order that China now stands accused of disrupting. Often figured as a contesteer of the status quo, issues are perhaps not so straightforward. One can broadly categorise state actors in their relationship to the global set of largely US-led norms as norms observers, norms contesters, or norms entrepreneurs. The US and its allies have, at least until recently, sat in the first group. Russia in recent years, and of course an outside player like North Korea occupy the second. But for the People's Republic things are evidently more complex. In the years since under President Hu Jintao in the 2000s it was a norms observer through its successful desire to join multilateral forum like the World Trade Organisation (WTO) which it became part of after a 14-year-long epic of negotiation in 2001. It also remained an important member of the International Monetary Fund (IMF), and the World Bank. But with the onset of the Global Financial Crisis in 2008 eroding some of the prowess and prestige of the global rules-based system in China's eyes, it started to move towards a more distinctive posture. In the era of Xi Jinping since 2012 it has been more proactive in trying to create what some have seen as a parallel order—a kind of shadow international system, around the Belt and Road Initiative and organisations it has proactively set up such as the Asian Infrastructure Investment Bank (AIIB). These have served to carve out a world away from the US, where China has more strategic space and autonomy, and we can see what an order based on Chinese values might look like.

China's attitude as a norms entrepreneur shows a pragmatic acceptance that the ability of it to relate to others with its unique political system, and its distinctive geopolitical space and stance, is not straightforward. Versailles can be seen in some ways as an act of public diplomacy—an attempt to rectify and address core international issues that had arisen from the First World War. It occurs in the narrative of attempts to create a liberal, multilateral order. China's rise now contests that—seeming to usher in an era after the high tide of multilateralism when the global situation is more complex, and a country is emerging that does not sit easily into the structures that already exist. In the categories of soft and hard power too, China does not slot easily. Its attempt to address this issue of how to communicate its values to the wider world as it has become more prominent and a more important player has led to the need to talk of a new concept—"sharp" power. This falls somewhere between the already extant categories, something falling short of overt use of military power, but definitely not soft, persuasive and reassuring because of the ease with which it is willing to use covert and overt threats and pressure points to those outside on issues that matter to it, like the South and East China Sea, and Taiwan.

In the 21st century, reflecting on the Versailles Treaty signed a hundred years ago finally allows us to reflect on the journey over the period between then and now that globalisation has taken. It has not been an easy path. The narrative of globalisation, however, continues, as much by necessity as desire. This is something that places restraints and parameters on China too. Like it or not, the options for its future are to be dominant in a contested global order where it finds itself exposed, unable to convince partners around it of the attractiveness of its visions for order and progress, or through inner transformation and a change of attitude in the world around it able somehow to occupy a more stable, and accepted place. The history for the reasons why Versailles happened, and what its impact on history was are therefore ones that the PRC needs to reflect on. The fact that the Treaty was also occurring in the year in which the May 4th Movement in China occurred, with its student-led call to promote Mr Science and Mr Democracy, with the unease that this creates in the contemporary country stands as an issue rich in symbolism. In that respect, at least, the legacy of Versailles is alive and well. It should be better understood and contextualised, certainly, but it is still there.

The Rise and Fall of the Liberal International Order: 1919–2019*

Yuichi Hosoya **

Abstract

Reflecting on 100 years anniversary of the Paris Peace Conference, we need to focus on the two connections—the connection between Asia and Europe, and the connection between the past and the present. This century beginning in 1919 and ending in 2019 can be remembered as the rise and fall of the liberal international order. The impact and the meaning of 1945 in this time beginning in 1919 and ending in 2019, as well as the importance of the legacy of 1945 upon the current international order cannot also be ignored. The Cold War division is the first phase of the post–Second World War international order, and the second phase signifies the consolidation of the liberal international order. We are now seeing emerging challenges caused by the retreat of the belief in the future of the liberal democracy. In that sense, we are now clearly facing the limits of the liberal international order, as well as the future of a liberal democratic regime. That is why, much more than before, European powers such as France and the UK are key for Japan to collaborate in defending the liberal international order.

The year 2019 marks a good opportunity to reflect on 100 years anniversary of the Paris Peace Conference. First, we need to focus on the two connections—the connection between Asia and Europe, and the connection between the past and the present—1919 and 2019.

Second, we should focus on the importance of the year 1945 as the most important turning point.

This century beginning in 1919 and ending in 2019 can be remembered as the rise and fall of the liberal international order. There are several reasons for reminding of the fall of such an international order. One of the reasons for this is that the UK, which has the mightiest military power within the European Union, is now leaving that group. The European Union has long exemplified the rise of the liberal order that brings both peace and stability in the region. However, the rise of both nationalism and populism so often weakens the perception that multilateral cooperation is essential for the region as well as for the member states. If the UK leaves the European Union by concluding it is no more relevant for the UK, this would damage the foundation of the liberal order in Europe.

Likewise, in the end of 2018, President Donald Trump decided to leave UNESCO, one of the key organizations of the United Nations. It is often reported that President Trump is interested in retreating from the most important multilateral organizations which the United States belongs to such as NATO, WTO, or even the United Nations. It does not seem probable that the United

* This article is based on a presentation made by the author at the symposium “Asia and Europe from the Versailles Treaty to the Present: the Legacies of Post War–Enging and Peace–Making between Constraints and Forward Looking” held by JIIA and FRS (Foundation for Strategic Research) on January 28, 2019.

** Yuichi Hosoya is Professor of International Politics at Keio University, Tokyo.

States government decides to leave these organizations soon, but the United States, particularly the current administration, is considering seriously that some of these multilateral institutions are harmful for American national interest.

These perception can have an important ramification for the future of the liberal international order. Thus, it can be argued that the century beginning in 1919 and ending in 2019 will be remembered as the rise and fall of the liberal international order. It is also important to link two regions, Asia and Europe. The Paris Peace Conference became an important link between the two regions, as Japan became one of the five great powers that won the war.

It is also important to remind that both Japan and France played, and are now playing, an important international role in these two years, namely 1919 and 2019. Both Japan and France were among the five great powers that created the Paris Peace Treaties. However, Japan's rose was not equal to French one, as France hosted and presided over this great conference.

We also need to remind that a non-European power, Japan, was included in the conference, and began to expand its international influence. In 2019, Japan hosted the G20 Summit meeting in Osaka, and France did likewise the G7 Summit meeting in Biarritz. Japan and France faced serious challenges, as they needed to prepare for agendas for the future of international order. If France and Japan can tackle these difficult tasks of responding to the challenges we face appropriately, we can perhaps enhance and strengthen the current liberal international order.

Then, we need to look at the importance of the year 1945, as well as the importance of the legacy of 1945 upon the current international order. First, it is important to recognize that there exist two phases in the post-Second World War international order. The first phase of the post-Second World War international order relates to the Cold War division. After 1945, we have seen the division of the world into the two camps—the Western camp led by the United States, and the Communist camp, which was mainly controlled by the Soviet Union.

The second phase signifies the consolidation of the liberal international order among Western countries. In other words, the meaning of the end of the Cold War is that we no longer see the division of the Cold War. After the end of the Cold War, we have seen the enhancement, and also enlargement of the liberal international order. In the 1990s, we were quite optimistic about the future of the liberal international order. We thought that we could continue to see the expansion of the liberal international order. But we were wrong.

In the last ten years, we clearly see the limits and the difficulty of expanding the liberal international order, largely because of the rise of authoritarian regimes such as China and Russia. Both China and Russia are now powerful enough to revise the current international order by using the threat of their huge military forces. Chinese government has been repeatedly arguing that the current international order is created by Western powers and China needs to modify it to be fitted to the current multipolar world.

We are now seeing emerging challenges caused by the retreat of the belief in the future of the liberal democracy. Many developing countries are attracted by the alternative vision of governance, the authoritarian regime. They see that authoritarian regime can be effective to promote their own economic growth, as they are fascinated by China's rapid economic growth. These developing countries have also been seeing that liberal democracies are now facing serious deadlocks in, for example, the United States, the UK, and many other European countries. As a result, we are now disillusioned by liberal democratic regime. It is natural for those countries to think that liberal democracy is not the only answer to their future. In that sense, we clearly see the limits of the future of the liberal international order as well as of the future of a liberal democratic regime. The year 2019 will possibly be the year in world history when many countries abandon their strong will to defend them.

There exist several remnants of the Second World War, and these have caused difficult problems among countries in East Asia. On one hand, Japan and the United States have solved

and settled difficult problems at the San Francisco Peace Conference of 1951. However, on the other hand, some of the major powers, such as the Soviet Union and China, did not sign the Treaty. South Korea also was not a participating country in the Peace Conference.

As these countries did not join in the postwar settlement in San Francisco, they tend to consider that the San Francisco system brought justice to them. After the San Francisco Peace Conference, Japan needed to negotiate individually with these countries. In 1965, Japan concluded the Treaty on Basic Relations with the Republic of Korea. In 1978, Japan concluded the Treaty of Peace and Friendship with the People's Republic of China. On the other hand, the Japanese government is yet to conclude a peace treaty with the Russian government because the treaty is still needed to be drafted.

These are the remnants of the Second World War, and they make Japan's political relationships with these countries difficult. The San Francisco Peace Conference was just a partial settlement of the Second World War in Asia, and still, Japan needs to tackle some of these questions which arise from the difficulty of the remnants of the Second World War.

In the end, it would be valuable to look at the prospect of defending the liberal international order. Japan's historical experience is quite indicative, as Japan has experienced both authoritarian regime and liberal democracy in the last century. In the 1930s, Japan became a challenger to the international order. But after 1945, Japan has been trying to become a defender of the liberal international order. In the latter 1940s and the 1950s, Japan was not powerful enough to defend the liberal international order.

However, after the end of the Cold War, Japanese government has been always aware that Japan can no longer remain a free-rider in the international community. Japan had been number two economy in the world until China occupied that place in 2010. Today Japan is number three economy in the world after the United States and China. As the US and China tend to act unilaterally, Japan becomes one of the major powers that respect and defend the liberal international order.

The largest problem that we face is that our alliance partner, the United States, is now much less interested in defending the liberal international order than before. That is why European powers such as France and the UK become major partners for Japan who are willing to defend the liberal international order. That would be the main reason why we have seen the rapid development in the security cooperation between Japan and France, and also Japan and the UK.

This year marks the beginning of Economic Partnership Agreement (EPA) and Strategic Partnership Agreement (SPA) between Japan and the European Union. These forward-looking developments can best be understood as an important cornerstone to defend the liberal international order.

Restructuring the Maritime Order*

Shigeki Sakamoto**

Abstract

International maritime order which in recent years has been underpinned by the UN Convention on the Law of the Sea (UNCLOS) has been the foundation of the global peace and prosperity for the last centuries. Due to the rise of emerging maritime powers, such as China, and the expansion of maritime issues, however, the maritime order is currently under various challenges. This paper explores the new challenges existing on the tension between China and the Philippines, due to China's extraordinary demands in the South China Sea and dispute settlement mechanisms and the roles and jurisdiction of UNCLOS in biodiversity and sustainable use of resources. While the paper points out some limitations of the existing order, it also argues the importance of sustaining the existing maritime order based on UNCLOS with bringing out necessary reforms.

1. New challenges confronting the law of the sea

For centuries, the maritime order governing the world's oceans, which cover 70% of the earth's surface, consisted of a dual structure, divided between the narrow bands of territorial waters deemed necessary for the security of coastal states and the vast high seas beyond, which all countries were free to navigate and use as they saw fit. The law of the sea, which codifies this order, is one of the oldest fields of international law.

Freedom of navigation on the high seas for maritime trades was understood to be in the general interest of international community. Accordingly, the pirates who threatened this common good were regarded as "enemies of mankind" (*hostis humani generis*). As early as the seventeenth century, piracy was defined as an offense of "universal jurisdiction," punishable at the discretion of each state. More recently, however, international human rights law, which has developed significantly after World War II, has taken a stand on the enforcement of anti-piracy laws, calling for suspects to be brought before a judge within 48 hours of the initial detention where possible. In this way, one of the classic problems addressed by the law of the sea has emerged as a new human rights challenge.

Migration issues have led to similar tensions. The law of the sea imposes on ships of all nations a duty to rescue, if possible, any persons in distress whom they encounter at sea. This naturally includes the obligation to transport the distressed persons to a safe place. However, in recent times, a growing number of states have been evading their responsibility to protect distressed persons if they were found to be undocumented migrants or refugees on overcrowded boats. They do this by barring the entry of rescue ships into their territorial waters. The reason is that, once migrants enter a country's territorial water, they fall within the scope of the Convention

* This essay was originally published on *Kokusai Mondai* [International Affairs], No. 674, Sep. 2018

** Shigeki Sakamoto is a professor in the Faculty of Law Department Law at Doshisha University.

Relating to the Status of Refugees, which requires contracting states to provide migrants with refugee hearings and prohibits them from returning refugees to a country in which they could face persecution (the principle of non-refoulement). With the law of the sea calling for rescue and protection of persons in distress, and international human rights law demanding that the distressed persons' rights be upheld, these states are responding by attempting to limit the spatial scope of their duty to protect human life (to their own territories, including territorial waters), bringing them into conflict with protection of the human rights of the individual. Underlying many of these new, twenty-first-century challenges, from the Somali piracy crisis to the flood of refugees from regions destabilized for a long time by the so-called Islamic State, is the failure of national governments—entrusted with safeguarding the lives, persons, and property of the people—to exercise effective control over their own territories.

2. UNCLOS and its elaboration via case law

Similar tensions surround the exploitation of marine resources in the East and South China Seas. The Chinese government, having embraced the goal of becoming a “great maritime power,” is determined not only to become a major naval power but also to secure their maritime interests. Having become the world's second largest economy, China needs marine resources to support its economic development. One focus of this drive is the East China Sea, where China and Japan have yet to agree on the delimitation between their exclusive economic zones (EEZs) and continental shelves. Despite the absence of an agreement, China has unilaterally pushed ahead with development of gas fields in a section of the East China Sea that lies on the Chinese side of the median line proposed under Japan's Act on Exclusive Economic Zone and Continental Shelf. As of this writing, Japan has confirmed the presence of 16 drilling structures in that area.

The UN Convention on the Law of the Sea (UNCLOS) states that the delimitation of the EEZ and the continental shelf between states with opposite or adjacent coasts “shall be effected by agreement on the basis of international law . . . in order to achieve an equitable solution” (Article 74, paragraph 1 and Article 83, paragraph 1). It also requires that parties to a dispute exercise restraint, stipulating that “pending agreement as provided for in paragraph 1, the states concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement” (Article 74, paragraph 3 and Article 83, paragraph 3). In August 2006, before embarking on its unilateral gas exploration and development program in the East China Sea, China lodged a declaration with the Secretary General of the United Nations, stating that it would not accept the compulsory arbitration process provided for in Part XV of the Convention, Settlement of Disputes, to disputes relating to interpretation or application of the provisions in Article 74 and Article 83. In the Guyana-Suriname case awarded on September 17, 2007, under that same arbitration process, the court ruled that unilateral exploitation of oil and gas reserves in an undelimited maritime area constituted an action to “jeopardize or hamper the reaching of the final agreement” as well as a breach of the obligation to exercise restraint. In the light of this award, it seems clear that China's current activity in the East China Sea is in violation of UNCLOS.

In January 2013, the Philippines, making use of the aforesaid compulsory arbitration, brought a case against China, known as the South China Sea arbitration. Recognizing that China had opted out of arbitration on delimitation disputes, the Philippines did not seek a decision establishing the maritime boundary but instead brought an “entitlement dispute.” Specifically, it challenged the legality of China's “nine-dash line” on the grounds that the reefs and low-tide elevations, including the Spratly Islands, over which China exercised de facto administrative control could not by definition have their own territorial waters, EEZs or continental shelves. This approach overcame jurisdictional obstacles, and on July 12, 2016, the arbitral tribunal ruled that China has no

historical right based on the nine-dash line and was in violation of UNCLOS. In the same case, the arbitral tribunal took on the interpretation of Article 121, which deals with the legal definition of an island. Whether or not one agrees with the arbitral tribunal's interpretation, it does clarify the provision, which had previously been criticized as "intolerably imprecise" and "a perfect recipe for confusion and conflict." In this way, the judicial process is gradually developing and fleshing out the normative content of UNCLOS.

3. Biodiversity and sustainable use of resources beyond national jurisdiction

As a "living treaty," UNCLOS also develops and evolves its content through various implementing agreements elaborated in response to new issues and challenges.

The first UNCLOS "implementing agreement" was the 1994 Agreement Relating to Implementation of Part XI of the Convention, which established the International Seabed Authority. The second was the 1995 UN Fish Stocks Agreement, which elaborated on the UNCLOS principle of adopting a precautionary approach to the management of straddling and highly migratory fish stocks, embraced an ecosystem approach to management of those stocks (whose habitats span the artificial boundaries of the 200-mile EEZ), and introduced consistent conservation and management measures straddling in the EEZ and on the high seas. In addition, an intergovernmental conference established to negotiate a new UNCLOS implementing agreement was convened in the United Nations in September 2018.

Despite these developments in the twentieth century, the twenty-first century has witnessed the emergence of challenges that the drafters of UNCLOS never anticipated. One is the exploitation of marine genetic resources (MGRs). Another is the establishment of marine protected areas (MPAs).

At present, only a limited number of industrially advanced nations have access to marine genetic resources and entities capable of utilizing them. This has raised concerns among developing countries that the principle of freedom of the high seas will be applied to the exploitation and utilization of MGRs. The developing countries note that the ocean floor and its resources in areas beyond national jurisdiction are considered part of the common heritage of humankind, and they argue that the same should apply to marine organisms dwelling in those areas. Accordingly, they argue that, since MGRs from the deep seabed are the common heritage of humankind, any benefits from their use should be distributed fairly and equitably among members of the international community.

Marine protected areas are not defined under the provisions of UNCLOS. Amid a growing need for steps to protect the marine environment and its biodiversity, individual countries have been taking steps to establish MPAs within their own territorial waters and EEZs, with each country establishing its own definition and regulatory regime in accordance with domestic law. The 1992 Convention on Biological Diversity incorporates the concept of protected areas to achieve its objectives, which include not only the conservation of biological diversity but also the "sustainable use of its components" (Article 1). The International Union for Conservation of Nature has established various categories of protected area, classified according to their management objectives, and it mentions "ecosystem services" in its definition of MPAs. Japan is promoting its own type of MPA that would maximize the potential role of ecosystem services, with the aim of both protecting and utilizing biological diversity.

On June 19, 2015, the UN General Assembly adopted a resolution (69/292) on "development of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction." It calls for international negotiations to address, together and as a whole, marine genetic resources, including the sharing of benefits; area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and transfer of marine technology. Thus the UN

campaign began to put together an international agreement on marine biological diversity beyond areas of national jurisdiction, or BBNJ. The effort began with the formation of a preparatory committee, which met four times between March 2016 and July 2017.

In the “non-paper on elements of a draft text” issued at the final meeting of the preparatory committee, the committee chair offered an extensive compilation of ideas, proposals, and options for a new agreement, including a host of matters on which the delegations had failed to reach any consensus. For example, with respect to the scope of the instrument, there was disagreement as to whether it should encompass just the seabed beyond national jurisdiction or both the seabed and high seas and whether it should apply only to *in-situ* MGRs (in their original habitat) or also to *ex-situ* resources (such as genetic material stored in gene banks and laboratories) and even *in-silico* resources (such as information in databases and resources created through computer simulations). Even more basically, opinion remains sharply divided as to whether the governing principle should be freedom of the high seas or the common heritage of humankind.

The first session of the Intergovernmental Conference (IGC) on BBNJ was held on September 4–17, 2018. At that time it was decided that three more sessions would be held by the first half of 2020. Prior to the first session, an organizational meeting was held in New York on April 16–18, 2018. Among the top agenda items at this initial meeting was the election of a president. The post went to Rena Lee of Singapore, Ambassador for Oceans and Law of the Sea Issues and Special Envoy of the Minister for Foreign Affairs, who had served as facilitator for capacity building and technology transfer on the preparatory committee. The delegates also exchanged views on the best way to structure the IGC's deliberations, scheduled to begin the following September. It was agreed that the president would draft an “aid to discussions” paper in preparation for the first session to serve as a starting point for deliberations, but that she would not prepare a “zero draft,” which might have the effect of rushing the negotiations. President Lee subsequently prepared and submitted the President's Aid to Discussions (A/CONF.232/2018/3).

Will the international community embark on a major restructuring of the existing maritime order, embracing the conservation and sustainable use of BBNJ as a new common goal of that order? Or will it rally around a solution that upholds the existing order, in accordance with the UN resolution on BBNJ (72/249) adopted on December 24, 2017, which “reaffirms that the work and results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea”? Only time will tell.

As the foundation of the maritime order, UNCLOS has taken the approach of dividing the oceans into discrete zones to determine the rights and obligations of coastal and inland states vis-à-vis those waters. It has also created separate regulatory regimes governing navigation, fishing, resource development, marine conservation, and scientific research. On the high seas, enforcement of regulations follows the flag state doctrine. Yet UNCLOS itself affirms the need for unified regulation in its preamble, which states that “the problems of ocean space are closely interrelated and need to be considered as a whole.” It was the inability of regional fishery authorities to control illegal, unreported, and unregulated (IUU) fishing on the high seas that led to the conclusion of the Agreement on Port State Measures, which expanded port states' jurisdiction over foreign vessels engaged in illegal fishing. Here we see a new attempt to unify international marine regulation through a coordinated effort to keep illegally caught fish off the market.

As the IGC proceeds, it will bear close watching to see how the pursuit of new common goals, namely, the conservation and sustainable use of marine biodiversity, impacts the framework for separate regulatory regimes and how the existing maritime order is restructured as a result.

The Obligation of Self-Restraint in Undelimited Maritime Areas*

Kentaro Nishimoto**

Abstract

As recent developments between Japan and China in the East China Sea show, unilateral activities in undelimited maritime areas can give rise to tension. Articles 74(3) and 83(3) of the United Nations Convention on the Law of the Sea (UNCLOS) provide an obligation for the States concerned not to jeopardize or hamper reaching of the final agreement (“the obligation of self-restraint”). However, the extent to which the obligation prohibits unilateral activities has been a subject of discussion. This article addresses this issue by mainly examining the relevant case law of international courts and tribunals. It finds that a consistent standard for distinguishing permissible and impermissible activities is yet to be developed, but there is a noticeable trend where the obligation of self-restraint is increasingly viewed as an obligation not limited to refraining from specific types of activities that could be identified in general and in the abstract. The article further addresses questions concerning the appropriate responses to be taken by coastal States in the face of a violation of the obligation of self-restraint by another State, including whether the compulsory dispute settlement procedure of UNCLOS could be invoked against a State that has made an optional exception declaration under Article 298(1)(a) of UNCLOS.

Introduction

China has been accelerating its resource development activities in the East China Sea. To date, it has built 16 offshore structures near the geographic equidistance line between Japan and China, on the Chinese side of the line.¹ The government of Japan has expressed regret over China’s unilateral pursuit of development and has requested China to cease all unilateral development activities, as the exclusive economic zone (EEZ) and the continental shelf is yet to be delimited between the two States.² As this situation illustrates, unilateral activities have frequently given rise to tension, in maritime areas subject to overlapping claims to EEZs and continental shelves by more than two parties and where the maritime boundary is yet to be agreed (hereinafter referred to as “undelimited maritime areas”).

The United Nations Convention on the Law of the Sea (UNCLOS) provides that, pending agreement on the delimitation of the EEZ and continental shelf, “the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during the transitional period, not to jeopardize or hamper the reaching

* This essay was originally published on *Kokusai Mondai* [International Affairs], No. 674, Sep. 2018.

** Kentaro Nishimoto is a professor in the School of Law at Tohoku University.

¹ Ministry of Foreign Affairs of Japan, *Diplomatic Bluebook 2018* (Ministry of Foreign Affairs, 2018), p. 58.

² Ministry of Foreign Affairs of Japan, *The Current Status of China’s Unilateral Development of Natural Resources in the East China Sea* (https://www.mofa.go.jp/a_o/c_m1/page3e_000356.html).

of the final agreement” (Articles 74(3) and 83(3)). In other words, with respect to undelimited maritime areas, the States concerned have an obligation to: 1) make efforts to enter into provisional arrangements; and 2) not to jeopardize or hamper the reaching of a final agreement. The second obligation is often referred to as the “obligation of self-restraint,” as it requires the States concerned to practice a certain degree of self-restraint in their behavior.³ Unilateral activities in undelimited maritime areas raise the question of whether they are in breach of the obligation of self-restraint.

It is not a simple matter to determine what kinds of activities constitute a violation of the obligation of self-restraint. For some time, the only precedent in which an international court or tribunal directly addressed the obligation of self-restraint was the award rendered in 2007 by the Arbitral Tribunal constituted under Annex VII of UNCLOS, in the maritime delimitation dispute between Guyana and Suriname. The subsequent discussion concerning the obligation of self-restraint has revolved around the criteria given in the arbitral award. More recently, the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) addressed the obligation of self-restraint in the case concerning the delimitation of the maritime boundary between Ghana and Côte d’Ivoire (Provisional Measures Order of 25 April 2015 and Judgment of 23 September 2017). Focusing mainly on the two cases, this article will examine the issues regarding the obligation of self-restraint and the measures that could be taken against a breach of the obligation. Because the two cases concerned the development of oil resources, which is also at issue between Japan and China, this article will focus primarily on the obligation of self-restraint as it relates to the development of oil and mineral resources.

1. The Obligation of Self-Restraint in International Case Law

There is general consensus that the intent of the obligation of self-restraint in undelimited maritime areas is not to prohibit all unilateral activities pending delimitation.⁴ In the first place, the text of Articles 74(3) and 83(3) of UNCLOS envisages certain activities taking place. During the drafting of the Convention, some States proposed that a moratorium be placed on resource exploration and development in undelimited maritime areas. However, this proposal was not accepted, and the present text was eventually adopted.⁵ The question, therefore, is as follows: of the unilateral activities not based on provisional arrangements that are undertaken in undelimited maritime areas, how do we distinguish activities that constitute a violation of the obligation to exercise self-restraint from those that do not?

³ It should be noted that the obligation as provided under the Convention is an obligation for States concerned to “make every effort not to jeopardize or hamper the reaching of the final agreement.” Caution is required not to draw any inferences from the term “obligation of self-restraint” itself, which is used in this article as a shorthand and is not a term actually used in the Convention.

⁴ Satya N. Nandan and Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (Martinus Nijhoff, 2002), Vol. II, p. 984; Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart/Nomos, 2017), pp. 578–579, 663; Yumi Nishimura, “Nicchū tairikudana no kyōkai kakutei mondai to sono shori hōsaku” [The issue of delimitation of the continental shelf between Japan and China and the ways for its resolution], *Jurist*, No. 1321 (2006), p. 55.

⁵ Youri van Logchem, “The Scope for Unilateralism in Disputed Maritime Areas,” in Clive H. Schofield et al. (eds.), *The Limits of Maritime Jurisdiction* (Martinus Nijhoff, 2013), pp. 179–181; Akio Morita, “Keisō kaiiki ni okeru katsudō no kokusai hōjō no hyōka—nicchū nikkan kan no shomondai wo tegakari toshite” [Assessing activities in disputed maritime areas under international law: various issues between Japan and China, and Japan and South Korea], in Sōji Yamamoto et al. (eds.), *Kaijō hoan hōsei—kaiyōhō to kokunaihō no kōsaku* [The Law and Institutions of Maritime Security: the interaction between the law of the sea and domestic law] (Sanseidō, 2009), p. 392.

(1) Guyana/Suriname Case

The dispute between Guyana and Suriname concerned the delimitation of their territorial seas, EEZs and continental shelves, as well as the development of petroleum resources pending delimitation. The dispute was referred to an Arbitral Tribunal constituted under Annex VII of UNCLOS. In the maritime area disputed by the two States, Guyana had granted several private companies permission to engage in oil exploration. One of the companies was CGX Resources Inc. of Canada, whose oil rig encountered an incident in which it was ordered by the Suriname's navy to leave the area (the "CGX Incident"). Suriname claimed that Guyana had violated the obligation of self-restraint by authorizing exploratory drilling to be undertaken in the disputed area; Guyana claimed that the conduct of the Surinamese navy was in violation of the same obligation, and also constituted a threat of force in breach of the Charter of the United Nations.

As a general matter, the Arbitral Tribunal stated that unilateral activities can be undertaken in disputed maritime areas without provisional arrangements, so long as the activities in question do not have the effect of jeopardizing or hampering the reaching of a final agreement.⁶ Further, the Tribunal adopted the view that activities that cause physical change to the marine environment are not permitted unless undertaken pursuant to a provisional arrangement, because they would cause permanent change and ultimately jeopardize or hamper the reaching of a final agreement. Activities that did not result in physical change, on the other hand, were to be generally regarded permissible.⁷ Based on this standard, the Arbitral Tribunal decided that Guyana's granting of exploratory drilling was a violation of the obligation of self-restraint. At the same time, it concluded that allowing seismic testing did not constitute such a violation in the circumstances at hand.⁸

The Arbitral Tribunal stated that the distinction based on physical change to the marine environment is consistent with the jurisprudence of international courts and tribunals on interim measures.⁹ In particular, the Arbitral Tribunal cited the decision of the International Court of Justice (ICJ) in the Aegean Sea Continental Shelf case. In that case, Greece requested interim measures ordering Turkey to refrain from exploration activities in the disputed maritime area.¹⁰ The ICJ ultimately declined to indicate interim measures, pointing out that Turkey's actions did not create a risk of irreparable prejudice to the rights claimed by Greece's for the following three reasons: 1) the seismic exploration did not involve any risk of physical damage to the seabed; 2) the activity in question was of a transitory character and did not involve the establishment of installations; and 3) no suggestion had been made that Turkey has engaged in operations involving actual appropriation or other use of the natural resources in question.¹¹ The Arbitral Tribunal in the Guyana/Suriname case considered that the standard for issuing interim measures, which is whether a given activity causes irreparable prejudice to the rights of a party, is more rigorous than the standard for the obligation of self-restraint, which concerns whether a certain activity jeopardizes or hampers the reaching of a final agreement. Therefore, the Tribunal considered that the decision of the ICJ based on the test of physical damage is relevant in its

⁶ Arbitral Award Constituted Pursuant to Article 287, and in Accordance with Annex VII, of the United Nations Convention on the Law of the Sea in the Matter of an Arbitration Between Guyana and Suriname, Award of the Arbitral Tribunal (17 September 2007), *Reports of International Arbitral Awards*, Vol. XXX, pp. 131–132 (paras. 465–466).

⁷ *Ibid.*, p. 132 (para. 467).

⁸ *Ibid.*, p. 137 (paras. 480–481).

⁹ *Ibid.*, pp. 132–133 (paras. 468–469).

¹⁰ *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, Order of 11 September 1976, *ICJ Reports 1976*, pp. 5–6 (para. 2).

¹¹ *Ibid.*, p. 11 (para. 30); *Guyana/Suriname Award*, *supra* note 6, p. 132 (para. 468).

determination of what kinds of activities constitute a violation of the obligation of self-restraint.¹²

The arbitral award in the Guyana/Suriname case is generally understood to have indicated a certain standard, namely, (permanent) physical change to the marine environment, as permissible limits for unilateral activities in undelimited maritime areas.¹³ However, some authors have cautioned against overgeneralization of this standard.¹⁴ In particular, it has been pointed out that even in the context of seismic exploration, the knowledge obtained through exploration could jeopardize or hamper the reaching of a final agreement or cause irreparable harm to the sovereign rights of another party.¹⁵ Moreover, the arbitral award itself was not entirely clear about the scope of unilateral activities that do not violate the obligation of self-restraint. The award stated that, as a general rule, unilateral activities that do not cause physical change to the marine environment “generally” would not violate the obligation of self-restraint.¹⁶ However, in its more detailed findings in relation to the facts of case, the Arbitral Tribunal referred to the fact that both countries had given permission for seismic exploration to be undertaken, and that no objections were raised from the other side. It was on this basis that the award reached its conclusion that, “in the circumstances at hand,” unilateral seismic testing did not violate the obligation of self-restraint.¹⁷ It can be observed that the Arbitral Tribunal did not only take into account the nature of the activity, but also the context of the dispute in the undelimited maritime area, including the attitudes of the States concerned. This may be regarded as only natural, as the obligation of self-restraint is concerned with the reaching of a final agreement. However, in contrast to the fact that the award included some general standards concerning the obligation of self-restraint focused on the nature of the activity, it did not articulate a general framework that reflects all the considerations that were taken into account.

(2) Ghana/Côte d’Ivoire Case

The Ghana/Côte d’Ivoire case involved a dispute regarding the delimitation of their territorial seas, EEZs and continental shelves, and unilateral activities undertaken by Ghana in the disputed maritime area pending delimitation. The dispute was referred to the Special Chamber of ITLOS. Ghana had been conducting oil exploration and exploitation activities on the Ghanaian side of the equidistance line in the dispute maritime area. In regard to Ghana’s activities, Côte d’Ivoire requested the Special Chamber to “to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area constitute a violation of the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3,

¹² Ibid., p. 133 (para. 469)

¹³ Yasuhiko Kagami, “Keisō kaiiki de no katsudō—gaiana tai surinamu kaiyō kyōkai kakutei jiken” [Activities in disputed maritime areas: case concerning the maritime boundary between Guyana and Suriname], in Akira Kotera et al. (eds.), *Kokusaihō hanrei hyakusen* [One Hundred Selected International Law Cases] (2nd edition) (Yūhikaku, 2011), p. 77.

¹⁴ British Institute of International Comparative Law (BIICL), Report on the Obligation of States under Articles 74 (3) and 83 (3) of UNCLOS in Respect of Undelimited Maritime Areas (BIICL, 2016), pp. 25–26; David Anderson and Youri van Logchem, “Rights and Obligations in Areas of Overlapping Maritime Claims,” in S. Jayakumar et al. (eds.), *The South China Sea Disputes and Law of the Sea*, (Elgar, 2014), p. 220.

¹⁵ Kagami, *supra* note 13, p. 77; Naoya Okuwaki, “Kyōkai mikakutei kaiiki no kankatsuken” [Jurisdiction in undelimited maritime areas], in Shinya Murase and Jun’ichi Etō (eds.), *Kaiyō kyōkai kakutei no kokusaihō* [International Law of Maritime Boundary Delimitation] (Tōshindō, 2008), p. 173; BIICL, *supra* note 14, pp. 25–26; Stephen Fietta, “Guyana/Suriname,” *American Journal of International Law*, Vol. 102, No. 1 (2008), pp. 127–128.

¹⁶ *Guyana/Suriname Award*, *supra* note 6, p. 132 (para. 467).

¹⁷ Ibid., p. 137 (para. 481).

of UNCLOS.”¹⁸ In addition, Côte d’Ivoire sought provisional measures that would require Ghana, *inter alia*, to suspend all existing oil exploration and exploitation activities and to refrain from granting new permits.¹⁹

In response to Côte d’Ivoire’s request for provisional measures, the Special Chamber declined to order the suspension of ongoing exploration and exploitation activities, and prescribed an order principally requiring Ghana to ensure that no new drilling takes place.²⁰ The Special Chamber did accept that Côte d’Ivoire’s rights to explore and exploit resources were at least plausible, that Ghana’s ongoing exploration and exploitation activities would result in a modification of the physical characteristic of the disputed area, and that acquisition and use of information about the resources of the disputed area would create a risk of irreversible prejudice to the rights claimed by Côte d’Ivoire.²¹ However, the Special Chamber considered that an order suspending ongoing activities would entail the risk of considerable financial loss and could cause harm to the marine environment. It was therefore considered not appropriate to order the suspension of all exploration and exploitation activities.²²

In its judgment on the merits, the Special Chamber found that Ghana’s unilateral exploitation activities were not in violation of the obligation of self-restraint. Firstly, the judgment noted that Ghana ultimately complied with the provisional measures order and suspended its activities in the disputed maritime area.²³ It added, however, that it would have been preferable if Ghana had responded to Côte d’Ivoire’s request at an earlier stage. Secondly, the judgment pointed out that Ghana had undertaken activities only in the maritime area that was ultimately attributed to it, and that Côte d’Ivoire had claimed a violation of Article 83(3) of UNCLOS in the “Ivorian maritime area.”²⁴ In other words, the judgment attached importance to the fact that Côte d’Ivoire had claimed a violation of the obligation in the Ivorian maritime area, rather than in the disputed maritime area. As a result of the maritime delimitation effected by the judgment, it was ultimately found that Ghana had not carried out activities in Côte d’Ivoire’s waters, and thus there was no violation of the obligation of self-restraint within the scope of the submission by Côte d’Ivoire. It seems that this second point was decisive for the judgment in reaching its conclusion. In effect, the Special Chamber refrained from making substantive decisions concerning the obligation to exercise self-restraint in the entire disputed maritime area.²⁵

¹⁸ *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment of 23 September 2017, para. 63.

¹⁹ *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Provisional Measures, Order of 25 April 2015, *ITLOS Reports 2015*, pp. 152–153 (para. 25) (<https://www.itlos.org/en/cases/list-of-cases/case-no-23/case-no-23-provisional-measures/>).

²⁰ *Ibid.*, p. 166 (para. 108). The Special Chamber indicated provisional measures to the effect that: a) Ghana shall ensure that no new drilling takes place in the disputed area; b) Ghana shall take all necessary steps to prevent information resulting from its exploration activities in the disputed area from being used to the detriment of Côte d’Ivoire; c) Ghana shall monitor all activities conducted by itself or with its authorization to ensure the prevention of serious harm to the maritime environment; d) both parties shall cooperate in taking all necessary measures to prevent serious harm to the marine environment in the disputed area; and e) both countries shall refrain from any unilateral action that might aggravate the dispute.

²¹ *Ibid.*, pp. 163–164 (paras. 88–96).

²² *Ibid.*, pp. 164–165 (paras. 99–102).

²³ *Ghana/Côte d’Ivoire*, Judgment of 23 September 2017, para. 632.

²⁴ *Ibid.*, para. 633.

²⁵ Nuwan Peiris, “Ghana v. Ivory Coast,” *American Journal of International Law*, Vol. 112, No. 1 (2018), p. 92.

Nevertheless, the reference to Ghana's suspension of activities in the judgment deserves attention. It is not entirely clear in what sense this fact was given as a reason for the finding that there was no violation of Article 83(3).²⁶ In any event, however, if the Special Chamber had followed the standard adopted in the Guyana/Suriname case, the fact that Ghana later suspended drilling activities that would cause physical change to the marine environment could not have constituted a reason supporting its conclusion. To that extent, the judgment in the Ghana/Côte d'Ivoire can be regarded as having adopted a different approach from the one in Guyana/Suriname. A circumstance particular to the case was the fact that there was a certain accumulation of practice using the equidistance line as the boundary for exploration and exploitation of oil resources, and that a dispute concerning activities in the Ghanaian side of the equidistance line had surfaced relatively recently. (However, the argument of Ghana that mutual practice reflected a tacit agreement between the parties on the maritime boundary was not accepted by the Special Chamber.)²⁷ The focus on the "suspension" of the activities carried out in the disputed maritime area and not on factors such as the nature of the activities that were carried out, could be because consideration was given to the particular context of the dispute between the parties.

Judge Paik appended a separate opinion to the judgment. Judge Paik, while stating that the formulation of the submission of Côte d'Ivoire compelled him to support the judgment, considered the arguments on the obligation of self-restraint in detail.²⁸ According to Judge Paik, the obligation of self-restraint is a "result-oriented notion," and the key is whether the action in question would have the effect of endangering or impeding the reaching of a final agreement.²⁹ He maintains that, contrary to the approach adopted by the Guyana/Suriname award, what is permissible under Article 83(1) and what is not cannot be identified in general and in the abstract. Rather, Judge Paik considers it is necessary to take into account such factors as the type, nature, location, and the time of acts, as well as the manner in which they are carried out, and to decide in the framework of relations between the State concerned.³⁰ With regard to the case at hand, he concluded that there was a violation of the obligation of self-restraint by Ghana, as Ghana had continued to carry out highly invasive activities in the vicinity of the equidistance line, despite repeated protests by Côte d'Ivoire.³¹

(3) Assessment of the International Case Law

The two cases so far decided by international courts and tribunals, relating to the obligation of self-restraint, do not necessarily provide clear standards concerning the scope of the obligation. The Guyana/Suriname case indicated a test of physical change to the marine environment, and its decision that exploratory drilling and exploitation are not to be permitted is considered as

²⁶ For a view that the reasoning is unconvincing, see Nigel Bankes, "ITLOS Judgment in the Maritime Boundary Dispute between Ghana and Côte d'Ivoire" (http://site.uit.no/jclos/files/2017/10/JCLOS-Blog_271017_ITLOS-Judgment-in-the-Maritime-Boundary-Dispute.pdf). Bankes points out that the obligation of self-restraint existed before and independently of the provisional measures order, and even if Ghana could put an end to its continued violation of the obligation of self-restraint by complying with the order, this does not mean that there was no proven breach before that time.

²⁷ It is also noteworthy that the judgment referred to the issue as whether there was a breach of the obligation of self-restraint "after realizing that that area was also claimed by Côte d'Ivoire." *Ghana/Côte d'Ivoire*, Judgment of 23 September 2017, para. 631.

²⁸ *Ghana/Côte d'Ivoire*, Judgment of 23 September 2017, Separate Opinion of Judge Paik, para. 1.

²⁹ *Ibid.*, para. 6.

³⁰ *Ibid.*, para. 10.

³¹ *Ibid.*, para. 16.

providing important guidance on the matter.³² However, the view that activities that do not cause physical change are generally permissible has not received support in subsequent discussions on this issue. It has been suggested in academic literature that a flexible approach taking into account the context of the relations between the States concerned may be necessary, and that it may be difficult to establish an absolute standard based on the nature of the activity in question.³³ As noted above, the reference to the suspension of existing exploitation activities in the judgment in the *Ghana/Côte d'Ivoire* case may be regarded as consistent with this kind of approach. That judgment also emphasized that the obligation of self-restraint is an obligation to make every effort not to jeopardize or hamper the reaching of a final agreement, “in a spirit of understanding and cooperation.”³⁴ It could be argued that such an understanding of the obligation of self-restraint also implies that there are certain limits to categorical standards based on the nature of the activity in question.

The provisional measures order in the *Ghana/Côte d'Ivoire* case is also indicative of the limits of the approach, such as in the *Guyana/Suriname* award, that attempts to identify the scope of the obligation of self-restraint through an analogy with the jurisprudence on provisional measures. Since unilateral exploitation activities by Ghana resulted in permanent physical change to the seabed, this would be considered a violation of the obligation of self-restraint, if the standard in *Guyana/Suriname* was adopted. In light of this, concerns have been raised about the fact that the Special Chamber in the *Ghana/Côte d'Ivoire* case did not prescribe orders for existing exploratory drilling and resource exploitations, pointing out that there is a risk of *a fait accompli* being accomplished.³⁵ However, it could also be argued that the decision concerning provisional measures in the *Ghana/Côte d'Ivoire* case has simply demonstrated that decisions on provisional measures are made under different circumstances from those on the obligation of self-restraint in undelimited maritime areas. While no fundamental resolution of the situation is anticipated in the near future with respect to the obligation of self-restraint, provisional measures are prescribed only taking into account the need to preserve rights and prevent the exacerbation of the dispute until the judgment on the merits is rendered.³⁶ Thus, it may be time for a reassessment of the standard adopted in *Guyana/Suriname*, also from the viewpoint of the reasoning from which it was deduced.

One issue not addressed in either of these cases is the question of the geographical scope of the obligation of self-restraint. In both cases, the States concerned had clear claims regarding their maritime zones. However, in areas such as the East China Sea, where such clear-cut claims to maritime areas have not been made, the identification of a disputed area is in itself a difficult issue. If the obligation of self-restraint is considered applicable to the entire area of overlapping maritime entitlements, coastal States that make excessive maritime claims may be placed at an advantage. It has therefore been suggested that defining the geographical scope of the obligation of self-restraint may not be necessary, and that considerations should instead focus on the extent

³² Kazuhiro Nakatani, “Kyōkai mikakutei kaiiki ni okeru IPPŌTEKI shigen kaihatsu to buryoku ni yoru ikaku—gāiana-surinamu chūsai hanketsu wo sankō toshite” [Unilateral resource development and the threat of force in undelimited maritime areas: A case study of the *Guyana/Suriname* arbitral award], in Shunji Yanai and Shinya Murase (eds.), *Kokusaihō no jissen—komatsu ichirō taishi tsuitou* [The Practice of International Law: in memory of Ambassador Ichirō Komatsu] (Shinzansha, 2015), p. 534.

³³ Anderson and Logchem, *supra* note 14, pp. 206–207; BIICL, *supra* note 14, pp. 24–25.

³⁴ *Ghana/Côte d'Ivoire*, Judgment of 23 September 2017, paras. 629–630.

³⁵ Yoshifumi Tanaka, “Unilateral Exploration and Exploitation of Natural Resources in Disputed Areas: A Note on the *Ghana/Côte d'Ivoire* Order of 25 April 2015 before the Special Chamber of ITLOS,” *Ocean Development and International Law*, Vol. 46 (2015), pp.326–327.

³⁶ The separate opinion of Judge Paik in the *Ghana/Côte d'Ivoire* case also makes this point. *Ghana/Côte d'Ivoire*, Judgment of 23 September 2017, Separate Opinion of Judge Paik, paras. 8–9.

to which a unilateral activity jeopardizes or hampers the reaching of a final agreement.³⁷ However, this issue has not received adequate discussion in academic literature, making it difficult to consider the application of the obligation of self-restraint in the East China Sea.

2. Responses to Violations of the Obligation of Self-Restraint

In addition to the question of the kinds of unilateral activities that would constitute a violation of this obligation, another important question is the scope of permissible responses by a coastal State against a violation of the obligation of self-restraint by another State. Coastal States are at a risk of being placed at a disadvantage in the ultimate maritime boundary delimitation if they fail to respond to unilateral activities undertaken by another State, as this may be deemed tacit acceptance of the maritime claim of the latter. On the other hand, coastal States must ensure that their own responses do not violate the obligation of self-restraint, if they choose to take certain measures in response to a violation.

(1) Law Enforcement against Violations of the Obligation of Self-Restraint

In the Guyana/Suriname case, one of the main issues concerned the CGX Incident, in which a drilling rig operating under permission from Guyana was ordered to leave the area by the Surinamese navy. The Arbitral Tribunal, in addition to finding that Guyana's grant of permission for exploratory drilling constituted a violation of the obligation of self-restraint, decided that the order to leave issued by the Surinamese navy constituted a threat of force prohibited under Article 2(4) of the UN Charter, and also violated the obligation of self-restraint under UNCLOS.³⁸ In finding that Suriname had violated the obligation of self-restraint, the arbitral award specifically noted that Suriname had other peaceful options to address the issue, including negotiations and the use of the compulsory dispute settlement mechanism.³⁹ The finding by the Arbitral Tribunal in this case that the order to leave by the Surinamese navy constituted a threat of force in violation of Article 2(4) of the UN Charter has drawn some criticisms, sparking a debate concerning the conceptual distinction between the use of force in maritime law enforcement and under the UN Charter.⁴⁰ In relation to the obligation of self-restraint, it is not clear from the arbitral award itself whether law enforcement measures that do not constitute the threat or use of force would be found to constitute a breach, as the finding that Suriname had violated the obligation of self-restraint in this case was made in connection with the finding on the threat of force.

However, considering that law enforcement activities in undelimited maritime areas can raise tensions between the States concerned, the statement by the arbitral award in the Guyana/Suriname case that States should resort to peaceful means of dispute settlement should equally apply to law enforcement activities in general. On the other hand, some adopt the view that the obligation of self-restraint should not necessarily prohibit all law enforcement measures, for the reason that it is doubtful whether negotiations and dispute settlement procedures are sufficient measures to protect the interests of the coastal State after another States actually starts

³⁷ BIICL, *supra* note 14, pp. 29–31.

³⁸ *Guyana/Suriname Award*, *supra* note 6, pp. 126, 138 (paras. 445, 483–484).

³⁹ *Ibid.*, p. 138 (para. 484).

⁴⁰ Patricia Jimenez Kwast, "Maritime Law Enforcement and the Use of Force: Reflections on the Categorization of Forcible Action at Sea in the Light of the *Guyana/Suriname Award*," *Journal of Conflict and Security Law*, Vol. 13, No. 1 (2008), pp. 49–91; Tom Ruys, "The Meaning of 'Force' and the Boundaries of the *Jus ad Bellum*: Are 'Minimal' Uses of Force Excluded from UN Charter Article 2 (4)," *American Journal of International Law*, Vol. 108, No. 2 (2014), pp. 159–210.

conducting unilateral activities.⁴¹ This question is linked to the issue of whether it is possible to utilize the compulsory dispute settlement procedure of UNCLOS for a violation of the obligation of self-restraint, which is discussed below. It has also been suggested that even if law enforcement activities in undelimited maritime areas would in general violate the obligation of self-restraint, they may be justified as countermeasures against the prior violation of the obligation by another State.⁴² It would seem unequitable for a State to be placed at a disadvantageous position due to the mutual obligation of self-restraint, while another State engages in unilateral resource development. Thus, there might be room to consider that, under exceptional circumstances such as in case of urgency or where there is no other way to preserve its rights, States could respond by certain law enforcement measures without violating the obligation of self-restraint.

(2) The Possible Use of the Compulsory Dispute Settlement Mechanism

As discussed above, the arbitral award in the Guyana/Suriname case is of the view that an option for States is to resort to the dispute settlement mechanism under UNCLOS when disputes arise in undelimited maritime areas. However, Article 298(1)(a) of the Convention allows States to declare that they do not accept procedures with respect to “disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations,” and therefore to remove themselves from the scope of the compulsory dispute settlement procedure for these kind of disputes. Of Japan’s neighbors, Russia, the Republic of Korea and China have issued such declarations with respect to all categories of disputes provided under Article 298(1).⁴³ If disputes concerning the obligation of self-restraint, which is provided in Article 74(3) and 83(3), are considered to fall within the exception under Article 298(1)(a), disputes with these States concerning a violation of the obligation of self-restraint cannot be brought to the compulsory dispute settlement procedure under UNCLOS.

One view on this issue is that disputes concerning the obligation of self-restraint do not fall within the exception on disputes “relating to sea boundary delimitations,” since the exception should not be interpreted in an unduly broad manner, considering that the general rule of UNCLOS is to subject disputes concerning its interpretation and application to the compulsory dispute settlement procedure.⁴⁴ However, the fact that Article 298(1)(a) provides an exception should not necessarily warrant a narrow reading. A better approach is to consider the intended scope of the exception on the basis of the treaty provision itself.

That being said, the text of Article 298(1)(a), which should provide the starting point for this discussion, is ambiguous as to its purpose. It is unclear whether the intent was simply to allow exclusion of “disputes concerning the interpretation or application of articles 15, 74 and 83,” with the phrase “relating to sea boundary delimitations” merely explaining the content of the referenced articles, or rather, to specifically limit the exclusion to disputes “relating

⁴¹ Irini Papanicolopulu, “Enforcement Action in Contested Waters: The Legal Regime,” 6th IHO-IAG ABLOS Conference, *Contentious Issues in UNCLOS—Surely Not?*, Monaco, 25–27 October, 2010, p. 4 (https://www.iho.int/mtg_docs/com_wg/ABLOS/ABLOS_Conf6/S7P2-P.pdf)

⁴² BIICL, *supra* note 14, p. 116, 172; Sōji Yamamoto, “Kyōkai mikakutei kaiiki ni okeru hōshikkō sōchi no haikai to genkai” [The Context and Limits to Law Enforcement Measures in Undelimited Maritime Areas], *Kaiyōhō no shikkō to tekiyō wo meguru kokusai funsō jirei kenkyū* [Case Studies of International Disputes Concerning the Enforcement and Application of the Law of the Sea] (Kaizyō hoantaisei tyōsa kenkyū iinkai hōkokusyo [Report of the Research Committee on the Regime of Maritime Security]) (Japan Coast Guard Foundation, 2008), p. 113.

⁴³ Russian Federation: Declaration made upon ratification, *Law of the Sea Bulletin*, No. 34 (1997), p. 9; Republic of Korea: Declaration pursuant to Article 298, 18 April 2006, *Ibid.*, No. 61 (2006), p. 14; China: Declaration under Article 298, 25 August 2006, *Ibid.*, No. 62 (2006), p. 14.

⁴⁴ Nakatani, *supra* note 32, p. 534.

to sea boundary delimitations” within the broader category of “disputes concerning the interpretation or application of articles 15, 74 and 83.”⁴⁵ As a matter of textual interpretation, the former interpretation seems more straightforward. This was the interpretation adopted in the decision on competence in the compulsory conciliation proceedings between Timor-Leste and Australia concerning the Timor Sea in 2016.⁴⁶ According to this position, disputes concerning the obligation of self-restraint are not subject to compulsory dispute settlement procedures, because disputes concerning paragraph 3 of Articles 74 and 83 which provide the obligation of self-restraint would clearly fall within “disputes concerning ... articles 15, 74 and 83,” which are excluded by Article 298(1) (a).

However, the decision by the conciliation commission was not supported by detailed reasoning, and the matter may still be considered open for further discussion. It is understood that the reason for having a system of optional exceptions in the first place is that some disputes were considered politically sensitive to be entrusted to the compulsory dispute settlement procedure.⁴⁷ Article 298(1) (a), in particular, reflects the political and economic importance of maritime boundary delimitation, as a process for determining the scope of the power of coastal States.⁴⁸ It is possible to argue that this rationale for allowing optional exceptions does not apply with respect to disputes concerning the obligation of self-restraint, as the dispute would have no bearing on the standards or methods for boundary delimitation itself.⁴⁹ However, it could alternatively be argued that disputes concerning the obligation of self-restraint cannot always be considered in complete isolation from the standards and methods for the final maritime delimitation, as the plausibility of the rights may have to be taken into account in finding a violation of the obligation of self-restraint.

Conclusions

In academic circles, discussions are still ongoing about the scope of unilateral activities that can be carried out by coastal States without violating the obligation of self-restraint in undelimited maritime areas, and the measures that can be taken by coastal States against unilateral activities that violate the obligation of self-restraint. A consistent standard has not yet been developed in the jurisprudence of international courts and tribunals. The arbitral award in the Guyana/Suriname case did establish a seemingly clear-cut standard concerning the limits of unilateral activities. However, the limits to making categorical determinations based on the nature of the activity have come to be recognized as a result of the subsequent academic debates and the judgment in the

⁴⁵ Van Logchem, *supra* note 5, p. 195.

⁴⁶ In the Matter of a Conciliation before a Conciliation Commission Constituted under Annex V to the United Nations Convention on the Law of the Sea between the Democratic Republic of Timor-Leste and the Commonwealth of Australia, Decision on Australia's Objections to Competence (19 September 2016), paras. 93–97. This case was a compulsory conciliation case under UNCLOS Annex V, which can be initiated at the request of a party, when a dispute that fall under the optional exception in Article 298(1) (a) “arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties.” On the decision of the conciliation commission on its competence, see Dai Tamada, “Kokuren kaiyōhō jōyaku fuzokusho V chōtei jiken (higashi chimōru/ōsutoraria) kengen kōben ni kansuru kettei (2016 nen 9 gatsu 19 nichi)” [UNCLOS Annex V conciliation case (Timor-Leste/Australia), Decision on Objections to Competence (19 September 2016)], *Kobe hōgaku zasshi* [Kobe Law Journal], Vol. 66, No. 3–4 (2017), pp. 119–134.

⁴⁷ Proelss, *supra* note 4, p. 1921.

⁴⁸ Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (Cambridge University Press, 2005), p. 257.

⁴⁹ Yumi Nishimura, “Kaiyō funsō no kaiketsu tetsuzuki to hō no shihai” [Dispute settlement procedures concerning maritime disputes and the rule of law], *Kokusai Mondai* [International Affairs], No. 666 (2017), p. 42.

more recent Ghana/Côte d'Ivoire case.

In the developments after the Guyana/Suriname case, the obligation of self-restraint is increasingly viewed as an obligation not limited to refraining from certain specific types of activities that could be identified in general and in the abstract. This is a useful point of reference in examining the current situation in the East China Sea. For example, by restricting its resource development in the East China Sea to the Chinese side of the equidistance line, China may be acting in the belief that it is in compliance with the obligation of self-restraint by simply doing so. However, notwithstanding the possible differences of interpretation concerning the geographical scope of the obligation of self-restraint, the fact that China has continued to pursue unilateral development, despite the understanding on joint development that was reached in June 2008, takes on added significance in the context of Japan-China relations in the East China Sea.⁵⁰ On the other hand, it is also important for Japan to reassess whether activities conducted on the Japanese side of the equidistance line would not have the effect of jeopardizing or hampering the reaching of a final agreement based on “the spirit of understanding and cooperation.”

It is difficult to provide any concrete conclusions on the prospect of Japan initiating proceedings against China using the dispute settlement mechanism under UNCLOS, with the claim that the unilateral resource development activities by China violate the obligation of self-restraint. As discussed above, precedents and academic discussions on this point are limited, making it difficult to draw any concrete conclusions. However, it would seem that a plausible case could be made in favor of the interpretation that Article 298(1)(a) does not exclude disputes concerning a violation of the obligation of self-restraint from the compulsory dispute settlement procedure. As such, this option should not necessarily be ruled out. On the other hand, the question of whether invoking the dispute settlement mechanism could contribute to the resolution of the dispute in reality is an issue that must be seriously considered on its own merits.⁵¹

⁵⁰ Ministry of Foreign Affairs of Japan, “Japan-China Joint Press Statement Cooperation between Japan and China in the East China Sea” (<https://www.mofa.go.jp/files/000091726.pdf>).

⁵¹ On this point, see Nishimura, *supra* note 49, pp. 41–45.

The Present and Future of Multilateralism and Expectations for Japan*

Izumi Nakamitsu**

Abstract

The international community faces a mounting crisis in multilateralism. The shift by certain major States in pursuing a “my country first” posture, trending towards nationalism, and inward-looking foreign policies is not a cause, but a symptom, of the challenges that multilateralism is confronting. The basis upon which multilateralism is declining seems rooted in the loss of hope by citizens who feel their expectations for the post–Cold War period have been betrayed, and who believe that they have been left behind by the policies and effects of globalization. To address this difficult issue, it is first necessary to rightfully acknowledge the outcomes achieved through multilateralism and the rationale of therefore maintaining the rules-based international order. Secondly, to restore people’s trust, it is urgent and essential that reforms be made to ensure that multilateral institutions are capable of effectively addressing and resolving issues that are becoming manifest in the 21st century. And thirdly, it will be vitally important to anticipate trends in major global reforms and explore more creative ways to engage in multilateral diplomacy. Japan should be a leader, advocating for the importance of multilateralism at this crucial juncture. To that end, Japan would be well-advised to extend its powers of assistance and backing to the discussions now underway on reforms to the United Nations and other multilateral institutions.

Introduction

Since the end of World War II, the international order has been maintained and preserved by multiple foundations, including, inter alia, the United Nations (UN) system and the Bretton Woods institutions; various regional organizations and multilateral alliances; multilateral treaties and arrangements addressing specific issues, including the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Convention Relating to the Status of Refugees, and the UN Convention on the Law of the Sea, and the regimes and institutions that sustain them. The principles of “great power unanimity” of the five permanent members of the UN Security Council, sovereign equality of the UN Member States, non-intervention in internal affairs, and territorial integrity were all key factors in the multilateral system, which contributed to maintaining the balance of power and stability between East and West during the Cold War.

With accelerating globalization, the international community in the post–Cold War period has come to place heightened importance on multilateral frameworks in order to address an array of global-scale challenges concerning, among others, peace and security, free trade systems, human rights, public health, humanitarian assistance, climate change, and sustainable development.

* This essay was originally published on *Kokusai Mondai* [International Affairs], No.678, Jan.-Feb. 2019.

** Izumi Nakamitsu is United Nations Under-Secretary-General and High Representative for Disarmament Affairs.

Despite unilateral actions, such as the United States (US) invasion of Iraq in 2003 and the Russian invasion of Crimea in 2014, the adoption of the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change in 2015 seemed to underscore the effectiveness of multilateralism in addressing global issues through multilateral negotiations and coordination.

However, in 2018—three years after these major multilateral achievements—the international community was facing a mounting crisis in multilateralism following both the United Kingdom’s decision to withdraw from the European Union as well as the US withdrawals from the Paris Agreement, the Trans-Pacific Partnership (TPP), the Iran nuclear deal, and the UN Human Rights Council.

It was multilateralism that was the most crucial issue at the high-level meeting of the UN General Assembly in 2018, which was attended by the heads of state and prime ministers of 126 countries. In stark contrast to US President Donald Trump’s rejection of the “ideology of globalism” and emphasis on the “doctrine of patriotism,” a number of world leaders expressed their commitment to UN-centered multilateralism and the rules-based international order, arguably demonstrating a sense of crisis. However, in the view of the author, the shift by major Member States to a “my country first” posture and inward-looking foreign policies is not a cause, but a symptom, of the challenges which multilateralism is confronting.

What are the root causes of these challenges to multilateralism? What is needed for its revitalization? What form should multilateralism take in the 21st century? And what role is Japan expected to play? This article will address these questions from the perspective of the UN.

1. Root Causes of the Decline of Multilateralism

To maximally achieve their foreign policy objectives, all sovereign states choose the most appropriate option from unilateralism, bilateralism, or multilateralism. Generally, a superpower is likely to pursue its national interests through unilateralism or bilateral diplomacy since these enable it to overwhelm its counterparts. Moreover, medium and small powers tend to seek opportunities to exercise its diplomatic powers in a multilateral framework to achieve its foreign policy goals.

When discussing multilateralism, it is imperative to bear in mind that the term itself has a largely normative dimension. John Ruggie, who served under former UN Secretary-General Kofi Annan as Assistant Secretary-General for Strategic Planning, defined multilateralism as an institutional model for the coordination of relations among three or more nation-states based on generalized principles of conduct.¹ In the context of the post-Cold War international community, this “normative” dimension was also manifest as an order based on liberal norms promoted by the US-led Western countries. The creation of the post of UN High Commissioner for Human Rights in 1994, the adoption of the concept of “Responsibility to Protect” in 2005, and the establishment of the UN Human Rights Council in 2006 all illustrate normative rules of behaviour in the post-Cold War era.

However, in 2012, the situation in Syria exposed the dysfunction of the Security Council—the core of the UN’s multilateral system—which gave the impression that cracks had begun to appear in the foundations of multilateralism in the post-Cold War era. Russian diplomats frequently argued that Russia would never allow regime change in Syria as the Western countries had done in Iraq or Libya. As is widely known, the US and Russia are still in sharp conflict on Syrian issues, such as regarding the use of chemical weapons. The US-Russian strategic rivalry has become reminiscent of the Cold War-era relationship. It has had an impact on issues pertaining to the situation in Ukraine, reduction and control of nuclear arsenals and other strategic weaponry,

¹ Ruggie, John G. “Multilateralism: The Anatomy of an Institution,” *International Organization*, Vol. 46, No. 3 (Summer 1992), pp. 561–598.

and cyber security. This has led to the dysfunction of the UN Security Council contravening the “principle of great power unanimity,” which in turn is a primary cause behind the crisis in multilateralism. Furthermore, if the US and China fall into the “Thucydides Trap,” the impact, not only on multilateralism, but on global stability, will be tremendous.²

At the same time, the current decision-making mechanisms of multilateral diplomacy are no longer as simple as they were during the Cold War era of bipolar confrontation between East and West. The world is shifting towards a multipolar system and several regional major powers—no longer emerging powers—have acquired formidable influence and assertiveness. As a consequence, it has become increasingly difficult to reach an agreement not only within the UN Security Council but particularly within multilateral fora where decisions are made in consensus. For instance, the Conference on Disarmament has been deadlocked for over 20 years, and the 2005 and 2015 review conferences of the NPT—one of the pillars of the international security system—failed to adopt a consensus final document on substantive issues.

However, the root cause behind the decline of multilateralism appears to be the loss of hope by a number of people who feel their expectations for the post-Cold War period have been betrayed and that they have been left out of the benefits of globalization. In his statement at the General Assembly in 2018, UN Secretary-General Antonio Guterres described this sense of hopelessness as a case of “trust deficit disorder.”³ Due in part to the ineffectiveness of the Security Council, the Syrian civil war has become a protracted conflict, spurring a massive outflow of refugees. Additionally, migrant flows from, among others, Africa’s Sahel region and Libya have triggered a social and political crisis in Europe. While contributing to economic growth worldwide and reducing the level of extreme poverty by half, the effects of economic globalization have made a growing number of people feel that conditions of economic disparity and inequality have actually worsened. A look across the advanced industrial world reveals an intensifying sense of antipathy towards efforts at international cooperation as well as the open societies and institutions cultivated by the international community under the banner of multilateralism. This sense of hopelessness and loss of trust have begun feeding a vicious cycle further eroding multilateralism, spurring political trends towards populism and exclusionism at the domestic level and giving expression to inward-looking unilateralist foreign policies at the international level.

2. Multilateral Diplomacy and Multilateralism in the 21st Century

Secretary-General Guterres has sounded a warning that tensions reminiscent of the Cold War have returned in the increasingly complex environment spurred by the shift towards a multipolar world. He has emphasized the need to revitalize and strengthen the multilateral system for achieving and maintaining world peace and security. Cataclysmic changes caused by climate change, large-scale refugee and migrant flows, and the “fourth industrial revolution” marked by artificial intelligence (AI) and cyber technologies, which will impact trends affecting not only the security dimension but practically all areas of society, are global-scale challenges that cannot be addressed through unilateral or bilateral diplomacy. The following three points are proposed to overcome the current decline of multilateralism and to revitalize and reinforce it.

The first is to rightfully acknowledge the outcomes achieved through multilateralism and to accordingly maintain the rules-based international order. Although not explicitly covered by provisions of the UN Charter, peacekeeping operations (PKO) devised by members of the

² Allison, Graham, Professor, Harvard University. *Destined for War: Can America and China Escape Thucydides’s Trap?* Houghton Mifflin Harcourt, 2017. (“*Beichu senso zenya—shinkyu taikoku o shototsu saseru rekishi no hosoku to kaihi no shinario*”) (Japanese translation by Asako Fujiwara, Diamond Inc., 2017). When a rising power challenges a ruling one, the resulting tension carries a strong risk of war. Allison describes this as an example of Thucydides’s trap, named after the ancient Greek historian.

³ <https://www.un.org/sg/en/content/sg/speeches/2018-09-25/address-73rd-general-assembly>

international community to deal with challenges to peace have prevented conflicts from escalating and contributed to their resolution. Also, achievements in fields such as public health and education would not have been possible without multilateral cooperation. It is essential to reaffirm that the UN Charter and the various UN institutions, which possess unparalleled legitimacy attributable to their universality, are actually at the core of these norms and institutions. The norms of the 21st century should be more than purely elements of an order governing behaviour between sovereign states; rather, they should be human-centric in their nature and capable of recovering the trust of those who feel excluded or left behind. We must send a clear message explaining why multilateral cooperation is needed now more than ever.

Secondly, to restore people's trust, it is urgent that reforms be made to ensure that multilateral institutions are capable of effectively addressing and resolving those issues that are becoming manifest in the 21st century. It is regrettable that, in the post-Cold War period, the Member States could not make serious efforts to implement reforms in several areas, such as reforms to the Security Council. Efforts at UN reform led by Secretary-General Guterres, including to the Secretariat and UN system, should be understood within this broader context. UN institutions should be capable of preventing and resolving conflicts whenever possible, and they must be able to effectively contribute to refugee relief and the mitigation of economic disparities. To these ends, UN institutions must not be simply bureaucratic entities, but should possess the intellectual capacity to formulate and present visionary solutions to these difficult tasks. Virtually all of the issues that the international community now faces are fraught with difficulty and cannot be addressed or solved by a single organization. The UN has already amassed experience in cooperating with the African Union (AU) and other regional organizations in peacekeeping operations and the mediation of peace accords.⁴ Still, there needs to be a framework that will enable multilateral institutions to function even more effectively while coordinating and forming cooperative partnerships among multilateral organizations. This may be referred to as a form of networked multilateralism.⁵

And thirdly, it will be vitally important to anticipate trends in major global reforms and explore more creative ways to engage in multilateral diplomacy. Dealing with the new challenges, including the weaponization of AI, will require the construction of new norms through multilateral diplomacy. It is likely that the formation of norms in the 21st century will require not only the more traditional international legal instruments such as treaties but also soft norms such as political declarations and commitments—which are not legally binding but are monitored—voluntary codes of conduct of private companies and scientists, and industrial standards. That being the case, new creative multilateral diplomacy should be pursued based on the contributions of more inclusive, “multi-stakeholder” processes as well as traditional multilateral government negotiations. With this approach, the “convening power” that the UN wields as a forum for dialogue and negotiation will presumably increase in importance.

3. The Role Expected of Japan

Since joining the United Nations in 1956, Japan has been committed to a pacifist diplomacy shaped by moderation and has continued to be a respected member of the international community.

⁴ For example, the International Security Assistance Force (ISAF), a security mission in Afghanistan led by the North Atlantic Treaty Organization (NATO), formed a cooperative alliance with the United Nations Assistance Mission in Afghanistan (UNAMA). Currently the African Union Mission in Somalia (AMISOM) is actively engaged in Somalia in cooperation with the United Nations Assistance Mission in Somalia (UNSOM), while the Intergovernmental Authority on Development (IGAD) is working in South Sudan with the United Nations Mission in South Sudan (UNMISS).

⁵ <https://www.un.org/sg/en/content/sg/speeches/2018-11-09/strengthening-multilateralism-and-role-un-remarks-security-council>

The soft power it has amassed over this long period and the trust it has earned from the international community should not be underestimated. As a country which has led initiatives in multilateral cooperation in fields ranging from humanitarian and development assistance to peace-building and public health, I hope that Japan will be a leader which advocates the importance of multilateralism at this crucial juncture. To that end, Japan is expected to extend its powers of assistance and backing to the discussions now underway on reforms to the UN and other multilateral institutions. It would also arguably be worthwhile for Japan to utilize, in full, the trust it has earned within the international community and play more proactive roles in coordination and mediation in the interests of other countries. Moreover, I hope that Japan will act as a country capable of conveying wisdom and vision for the 21st century, connecting civil society, sovereign states and global society as it did in the past through the promotion of human security and other important policy concepts at the international level. Finally, it should also be noted that in order to realize this in today's world, which is globalizing and flattening at ever accelerating speeds, Japan itself urgently needs to tackle the tasks of dismantling its seniority system, ensuring diversity, and evolving into a society that enables all citizens to be active participants regardless of age or gender.

The Role for Middle Powers in the Free and Open Indo-Pacific: Looking at Opportunities for Canada and Australia*

Jonathan Berkshire Miller and Thomas Wilkins**

Abstract

The governments of Japan and the United States have firmly adopted the notion of a “Free and Open Indo-Pacific” (FOIP) at the heart of their regional foreign policies. The FOIP initiative has now energized other regional allies and partners of these two leading states as they search for ways to respond to and contribute to the FOIP. As self-styled “middle powers,” Canada and Australia have been no exception. This article explores the potential roles to be played by Ottawa and Canberra, both individually, and in tandem, with regards to matters such as respect for national sovereignty, peaceful conflict resolution, free and open trading practices, and the maintenance of international laws and norms. The article reveals that while both Canada and Australia both effectively support the FOIP, Canberra has been more proactive in turning its rhetoric into actions by means of a dedicated “Step Up” policy in the crucial South Pacific sub-region, as well as noteworthy efforts to enhance its own capabilities in line with American alliance expectations. It concludes that Washington’s need for capable and willing allies will grow further, and that both countries are well-positioned to contribute further to the FOIP in multifarious ways, both as allies, and potentially as in a bilateral capacity, should the opportunity arise.

The Indo-Pacific, as a geographic concept that connects the vast oceans of the Pacific and the Indian along with the states in between, is not a new idea. Indeed, the idea of a broader geographic region—rather than more traditional subsets such as East Asia, South Asia, or the more expansive Asia-Pacific—has been used for more than a decade by scholars and practitioners in the region. An Indian naval captain began using the concept in geopolitical terms more than a decade ago, but the terminology has not been limited to scholars in Delhi. Japan’s Prime Minister Shinzo Abe, back during his first stint as Prime Minister in 2007, spoke to India’s parliament about his country’s vision for the Indo-Pacific noting a “confluence of the two seas”¹ and pressed for a need to transcend beyond traditional frameworks that often separated or minimized the geopolitical connections between South Asian and the Indian Ocean

* This policy brief is based off a range of discussions, meetings and presentations that the authors had during an academic outreach trip to California in May 2019. The authors engaged with a number of scholars, officials and policy makers on the Indo-Pacific and the role of middle powers, such as Canada and Australia. Some of these stakeholders included: the RAND Corporation, the Milken Institute, the Korean Consulate in Los Angeles, the Japanese Consulate in Los Angeles, the Middlebury Institute of International Studies at Monterey, the Japan Society of Northern California and Stanford University.

** Jonathan Berkshire Miller is a Tokyo-based Senior Fellow at the Japan Institute of International Affairs and a Distinguished Fellow with the Asia-Pacific Foundation of Canada. Thomas S. Wilkins is a Senior Fellow at the Japan at the Japan Institute of International Affairs and a Senior Lecturer in International Security at the University of Sydney, Australia.

¹ Ministry of Foreign Affairs of Japan, “Confluence of the Two Seas: Speech by H.E.Mr. Shinzo Abe, Prime Minister of Japan at the Parliament of the Republic of India,” August 2007. <https://www.mofa.go.jp/region/asia-paci/pm0708/speech-2.html>

region with that of East Asia and the Pacific.

But, while not new, the Indo-Pacific framing has been quickly gaining currency by actors in the region, with Japan and the United States declaring Free and Open Indo-Pacific (FOIP) strategies or visions, in addition to other regional approaches by India, Australia and Indonesia. According to Washington, in a recent Report released by the Department of Defense (DOD), the FOIP is based upon the principles of (i) respect for sovereign independence, (ii) peaceful resolution of disputes, (iii) free, fair and reciprocal trade based on open investment, transparent agreements, and connectivity, and (iv) adherence to international rules and norms, (including those of freedom of navigation and overflight).²

The United States emphasized the importance of this change by renaming its former US Pacific Command—military headquarters for the region based in Hawaii—to the US Indo-Pacific Command last year.³ The concept has also sparked interest of like-minded states in Europe—both France and the United Kingdom demonstrating a keen interest in promoting their own engagement in the Indo-Pacific. Earlier this year, the French aircraft carrier—the Charles de Gaulle—set course for its journey from the Mediterranean Sea to Singapore, traversing through the Indian Ocean region and working with regional partners on its way. The British have also made similar deployments in recent years. Last year, the Royal Navy dispatched three ships that traversed the South China Sea alongside a contingent from France’s navy. During the trip, the UK vessels conducted a freedom of navigation patrol in the waters near the Paracel Islands in the disputed South China Sea.⁴

To be sure, the Indo-Pacific is facing a host of shared security challenges, from maritime piracy and crime, to heated territorial disputes and a pressing need to enhance regional capacity and readiness for humanitarian assistance and disaster relief to mitigate the impact of natural disasters. In the vast maritime space of the region—stretching from East Africa to the Pacific island chains—the foundations of regional commerce and security are secured through the freedom of navigation and secure Sea Lines of Communication (SLOCs). These areas are crucial for all states in the region—including middle powers such as Canada and Australia—as they are both deeply invested in secure supply chains through its economic integration with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

There is great economic opportunity in the region for both Canada and Australia with large economies and diverse fast-paced growth in many middle-size economies. That said, alongside this economic growth is a large demand for infrastructure development in the region—with the Asian Development Bank (ADB) estimating that there is a need for more than \$25 trillion in infrastructure by 2030.⁵ To fill this void, several regional powers have the ability to work with states in the region for a sustainable way forward based on fair-lending, transparent institutions and long-term growth. This is an area that middle powers, such as Canada and Australia, can join other states—such as the US, Japan, and states from Europe—to push forward on and make unique contributions.

² US Department of Defense, “Indo-Pacific Strategy Report: Preparedness, Partnerships, and Promoting a Networked Region,” June 1, 2019, p. 4. https://media.defense.gov/2019/May/31/2002139210/-1/-1/1/DOD_INDO_PACIFIC_STRATEGY_REPORT_JUNE_2019.PDF

³ US Indo-Pacific Command, “U.S. Indo-Pacific Command Holds Change of Command Ceremony,” May 2018. <https://www.pacom.mil/Media/News/News-Article-View/Article/1535776/us-indo-pacific-command-holds-change-of-command-ceremony/>

⁴ Tim Kelly, “British Navy warship sails near South China Sea islands, angering Beijing,” Reuters, September 6, 2018. <https://www.reuters.com/article/us-britain-china-southchinasea-exclusive/exclusive-british-navy-warship-sails-near-south-china-sea-islands-angering-beijing-idUSKCN1LM017>

⁵ Asian Development Bank, “Meeting Asia’s Infrastructure Needs,” February 2017. <https://www.adb.org/publications/asia-infrastructure-needs>

Yet, alongside these economic opportunities are a number of key challenges to the rules and order in the region that have underpinned security and prosperity for the littoral states. China continues to favour coercive actions rather than adherence to international law with regard to its salami-slicing tactics in the South China and East China Seas.⁶ These concerns in the maritime realm are not limited to the East and South China Seas. In the Indian Ocean region, there has been a build-up of Chinese infrastructure development in critical areas such as deep ports in Sri Lanka and Pakistan. These moves continue to draw anxiety from states in the region, who are wary of China's long-term geopolitical motivations through its signature Belt and Road Initiative (BRI).

Canada's Approach to the Free and Open Indo-Pacific

Canada has shown an interest in being more engaged in the Indo-Pacific region. During the visit of Japan's Prime Minister Shinzo Abe to Ottawa in late April, Canadian Prime Minister Justin Trudeau noted a "shared vision for maintaining a free and open Indo-Pacific region based on the rule of law."⁷ The statement was Canada's first high-level endorsement of the importance of Indo-Pacific strategies, of which many key regional players like the US, Japan, Australia, India and Indonesia have already adopted. But, while the visit with Japan was the first upfront embrace of the Indo-Pacific concept, Ottawa has in fact already outlined its shared views on the region through its joint statement with India last year—where the two sides agreed to "reaffirm the importance of lawful commerce and the freedom of navigation and over-flight throughout the Indo-Pacific region, in accordance with international law."⁸

Despite this, however, Canada has been hesitant to embrace the FOIP concept. The traditional lens for Ottawa to look at engagement has been through the Asia-Pacific framing—defining the region largely through our experience in the multilateral architecture such as the Asia Pacific Economic Cooperation (APEC) on the trade side, and the Association of Southeast Asian Nations (ASEAN) Regional Forum on the political-security side. Canada was a founding member of APEC in 1990 and has been a dialogue partner in the ASEAN Regional Forum (ARF) since its formation in 1994. Aside from these two main vehicles, Canada has been active in the international development space over the years through and is a member of the Asian Development Bank, and more recently joined—while not before considerable internal debate—the Chinese-led Asian Infrastructure Investment Bank (AIIB) in 2017.⁹

This multilateral underpinning is of course complemented by a range of diverse bilateral relations in the region, with different opportunities and challenges. China and Japan—the second and third largest economies—are the two most critical relationships in terms of trade value, but there are growing relationships with a host of other partners in the region too—including South Korea (with which Canada inked a Free Trade Agreement in 2014), Taiwan,

⁶ Ministry of Foreign Affairs of Japan, "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Response - Records of Intrusions of Chinese Government and Other Vessels into Japan's Territorial Sea," June 2019. https://www.mofa.go.jp/region/page23e_000021.html

⁷ Prime Minister of Canada, "Prime Minister of Canada Announces Closer Cooperation with Japan," April 2019. <https://pm.gc.ca/eng/news/2019/04/28/prime-minister-canada-announces-closer-collaboration-japan>

⁸ Prime Minister of Canada, "India-Canada Joint Statement: Partnership for Security and Growth," February 2018. <https://pm.gc.ca/eng/news/2018/02/23/india-canada-joint-statement-partnership-security-and-growth>

⁹ Philip Calvert, "Canada's Move to Join the AIIB is Smart Politics and Economics," *Nikkei Asian Review*, September to 2016. <https://asia.nikkei.com/Economy/Philip-Calvert-Canada-s-move-to-join-the-AIIB-is-smart-politics-and-economics>

India and the individual member states of ASEAN. Underscoring these growing relationships—at least in economic terms—is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, a mega-regional free trade pact that Canada ratified, along with 10 other states in the region, last year.¹⁰

But yet, despite a long history of engagement, the consistency of Canada's role often appears unmoored and not fully aligned with our interests and stakes in the significant geopolitical shifts taking place in the region. A frequent critique from stakeholders and officials in the region is that Canada must make a more consistent and comprehensive approach that demonstrates an investment of time and capital that goes beyond merely trade and investment. Specifically, there is a need and desire—at least from most states—for a strong Canadian voice on political-security developments in the region, be it on maritime security, nuclear non-proliferation or humanitarian assistance and disaster relief (HADR). This is where the tenets, rules and values that form the basis of the emerging growth of Indo-Pacific frameworks will help Canada better serve its interests and promote its role.

The role for Canada in the Indo-Pacific

In June 2019, Canada's Defense Minister Harjit Sajjan visited the Shangri-La Dialogue in Singapore for the fourth consecutive year. The Dialogue, hosted under the stewardship of the International Institute of Strategic Studies in the UK, is the premier security and defense summit in Asia and has become a “must-attend” event for officials, policy makers and scholars focused on the region's wide range of emerging security issues—of which strategic competition between the United States and China is top of mind in recent years. Immediately following the Shangri-La Dialogue, Sajjan visited Japan for an important bilateral visit which was hosted by Japan's Defense Minister Takeshi Iwaya. During Sajjan's visit, Canada and Japan agreed to work cooperatively to advance a “free and open Indo-Pacific.”¹¹ Indeed, when thinking about Canada's engagement in the region, our relations with Japan must be first of mind.

As Canada's looks to reorient its defense posture to be more active in the Indo-Pacific, Japan should be the logical cornerstone of such efforts. During the visit of Sajjan to Tokyo in June, Canada and Japan underscored the importance of the Acquisition and Cross-Servicing Agreement (ACSA) signed last year. This agreement will strengthen cooperation between the Canadian Armed Forces (CAF) and the Japanese Self-Defense Forces and will allow both countries to make efficient use of each other's military equipment during operations and exercises in Canada, Japan and other locations. The agreement will also advance cooperation between the two countries in response to humanitarian and disaster crises, peacekeeping initiatives, and allow greater collaboration with third-partners, including the US.¹²

In addition to the ACSA agreement, both sides are moving towards greater interoperability between their militaries with a growth in joint exercises and high-level exchanges. In 2017, the two sides commenced bilateral naval drills dubbed “Kaedex” (“kaede” meaning maple leaf in Japanese) and the Canadian navy also participated as a trilateral participant last year in the US-

¹⁰ Global Affairs Canada, “CPTPP Explainer,” June 2019. <https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/index.aspx?lang=eng>

¹¹ Department of National Defence of Canada, “Joint Statement of the Ministry of Defense of Japan and the Department of National Defence of Canada on Defense Cooperation,” June 2019. <https://www.canada.ca/en/department-national-defence/news/2019/06/joint-statement-of-the-ministry-of-defense-of-japan-and-the-department-of-national-defence-of-canada-on-defense-cooperation.html>

¹² Global Affairs Canada, “Canada and Japan sign Acquisition and Cross-Servicing Agreement to strengthen military cooperation,” April 2018. <https://www.canada.ca/en/global-affairs/news/2018/04/canada-and-japan-sign-acquisition-and-cross-servicing-agreement-to-strengthen-military-cooperation.html>

Japan “Keen Sword” naval exercises. Canada has also been working with Japan, and other allies in the Five Eyes intelligence network, to help monitor and disrupt attempts by North Korea to evade sanctions over its nuclear and missiles programs—through surveillance of ship-to-ship transfers in the East China Sea.¹³ Moreover, in 2018 Canadian General Wayne Eyre was appointed as Deputy Commander of the UN Command on the Korean Peninsula—marking the first time a non-US general assumed the role.

But there are more steps to go in this nascent security relationship. This past April, during the visit of Japan’s Prime Minister Shinzo Abe to Ottawa, Prime Minister Justin Trudeau made the first high-level Canadian endorsement of a “free and open Indo-Pacific”—a vision that is shared by other like-minded states, such as the US, Australia and Japan. This vision fundamentally rests on the maintenance of a rules-based international order premised on common norms, laws and practices, with an aim at reducing the potential for conflict and promoting sustainable development. This of course draws a stark contrast to China’s increasingly hostile posture in the region, marked by its militarization of man-made islands in the South China Sea and its unfair and non-transparent lending practices through its Belt and Road Initiative. Not to mention its coercive attempts—through the arbitrary detention of two of our citizens and sealing off much of the market for our exporters of canola and soybeans—to force Canada to relent on the sensitive extradition case of Huawei chief financial officer Meng Wanzhou. Going forward Canada should continue to enhance our ties with Japan—a natural partner in the region—and other key middle powers such as Australia, states in ASEAN and South Korea, to work closely and pursue our interests in the Indo-Pacific.

How can Canada become more involved in the emerging Indo-Pacific framework? First, Canada must assertively and unapologetically promote its interests and values in the region—most of which align closely to its key partners there such as the US, Japan, Australia, and member states in ASEAN. For example, if one closely inspects the FOIP policies by Washington and Tokyo, they will find more convergence than divergence with regard to Canadian interests. The US strategy stresses the need to “promote transparency, openness, rule of law, and the protection of human rights and fundamental freedom.”¹⁴ Tokyo meanwhile stresses the importance of peace and stability in the region through common rules, open investment and the provision of international public goods. Most would agree these are rules and norms the Canada also subscribes too. A corollary to this is that greater engagement with the Indo-Pacific would help us further national areas of excellence desperately need in the region’s approach to preventive diplomacy, such as women, peace and security.

Second, Canada can manage both an effective and pragmatic relationship with China, and simultaneously enhance its engagement with the Indo-Pacific region. Beijing may be wary of the framing of Indo-Pacific, because of its tense relations with Washington under the Trump administration, but it would be incorrect to label the different national approaches as a containment strategy aimed at China. Rather than alliance-politics, this is a loose grouping of like-minded and progressive states that are standing up for a prosperous and stable region that follows rules and maintains a sustainable trajectory—not to benefit one, but for the region as a whole. This is something Canada should stand up for, and it should not let its recent bilateral difficulties with Beijing distract it from the larger strategic dynamics playing out in the region.

Finally, just as engaging China and the Indo-Pacific framework are not mutually exclusive, so are the fundamentals of our existing engagements in the region. Ottawa will continue to be a key

¹³ Department of National Defence, “Operation NEON,” June 2019. <https://www.canada.ca/en/department-national-defence/services/operations/military-operations/current-operations/operation-neon.html>

¹⁴ US Department of State, “Advancing a Free and Open Indo-Pacific Region,” November 2018. <https://www.state.gov/advancing-a-free-and-open-indo-pacific-region/>

part of APEC, the ARF, ADB and other multilateral fora—with ASEAN at the core—but it need not pursue this road in isolation from cooperation that makes sense with regional partners and allies.

Australia's Indo-Pacific Vision

The first thing to note with regard to Australia's approach to the FOIP is the nomenclature employed. Canberra has not officially adopted the moniker "Free and Open Indo-Pacific" like its American and Japanese partners to badge its regional strategy, with the cognate term "open, inclusive and prosperous Indo-Pacific" featuring instead in the 2017 Foreign Policy White Paper.¹⁵ Some variations on the term naturally appear in surrounding discourses—"a free, open, inclusive and prosperous Indo-Pacific" has been used in joint statements with the US and Japan—but this slight distinction does not amount to any tangible difference from the core precepts of the FOIP (described in the introduction).

So, what form does Canberra's participation in the FOIP take, in the context of a broader Australian Indo-Pacific strategy (IPs)? There is no one specific policy document or declaration that embodies Australia's IPs, but rather it represents a compound of individual and joint policies and initiatives which sync with the FOIP concept. In this short briefing it is useful to unpack its ideological, security and economic dimensions, all of which are intertwined.

Behind the Australian "vision" of an "Indo-Pacific Century," destined to bring regional and national prosperity, there are three premises.¹⁶ First among these is the "relocation" of Australia's strategic frame of reference to the newly identified "Indo-Pacific" region itself. The recent Defence and Foreign Policy White papers codified a shift in the locus and scope of regional interaction to the "Indo-Pacific" as geopolitical construct. Influential Australian figures had long advocated for a refocusing on the Indo-Pacific, aside from the extant "Asia Pacific," as recognition not only of India's rise to economic and strategic prominence, but as a better reflection of the actual region Australia itself inhabits at the intersection of these two great Oceans.¹⁷

Second is the oft-repeated government commitment to a "Rules-based International Order" (RBO) which the FOIP strongly advocates. This has long been an identifiable theme for a "middle power" country like Australia, which, based solely upon its own national capabilities, cannot afford to engage in a no-holds barred struggle of power politics, but rather seeks a "liberal internationalist" posture which emphasizes international norms and institutions, sovereignty, rule-of-law, non-coercion and all-round "good international citizenship."¹⁸ The RBO concept has become an increasingly prolific mantra in Canberra's policy declarations as the best method to achieve regional stability and prosperity. Not so implicit in the RBO concept is a resistance to Chinese revisionist attempts to expand its strategic space and influence across the region in ways viewed as detrimental to the existing order, as evidenced through the BRI, Shanghai Cooperation organisation, and AIIB, for example. Instead, Australia alongside its close US and Japanese partners seeks to provide an alternative to a future regional order dominated by China in contradiction with these liberal internationalist principles.

Third, participation in FOIP-related activities is grounded in Australia's deep attachment to

¹⁵ Australian Government, "Overview," in *2017 Foreign Policy White Paper* (Barton ACT: Department of Foreign Affairs and Trade, 2017), pp. 1–10.

¹⁶ Cameron Hill, "Australia in the 'Indo-Pacific' Century: Rewards, Risks, Relationships," in *Parliamentary Library Briefing Book* (Canberra ACT: Parliamentary Library, 2013), pp. 144–145.

¹⁷ Rory Medcalf, "In Defence of the Indo-Pacific: Australia's New Strategic Map," *Australian Journal of International Affairs*, 68:4 (2014), pp. 470–483.

¹⁸ Allan Gyngell, *Fear of Abandonment : Australia in the World since 1942* (Carlton, Vic.: La Trobe University Press, 2017).

American regional primacy. Australia—like Japan and many others—sees its bilateral security alliance with the US anchored in the broader “hub-and-spokes” network, and its close Special Strategic Partnership with Japan, as the best way to uphold or enforce the RBO and secure the Indo-Pacific in accord with its national interests. In correspondence with the recently released American Indo-Pacific Strategy Report, which outlines replacement US grand strategy for the Pivot, Canberra is seeking deeper partnerships with Japan, India, and key SEA states in a bid to uphold the RBO semi-independently and collectively, alongside the central role expected of the US.¹⁹

Security Considerations for Australia

The primary drivers behind Australia’s interest in the FOIP are security concerns. While broader “Non-Traditional Security” (NTS) issues remain prominent in Australian thinking, for example: terrorism, irregular populations movements, climate change, or financial or humanitarian crises, it is the newly arrived era of great power competition that most vexes strategic planners in Canberra. Based upon its growing economic and strategic weight in the region, China has moved from “biding its time and hiding its capabilities” to a newfound policy of “assertiveness” pushing out its strategic space and regional influence by a variety of means that have set alarm bells ringing in Canberra as portents of a “new Cold War.”

Chinese militarisation of the contested South China Sea (in violation of international law and prior agreements with the US), the use of economic coercion against Canada, Japan and South Korea, among others, and its attempts to establish a regional foothold in Australia’s “patch” of the South Pacific have shifted perceptions in Canberra. But in addition to these demonstrations of Chinese “sharp power,” nothing so upset the political equilibrium in Canberra as much as the recent revelation of the extent of Chinese espionage and “influence operations” discovered inside Australia itself.²⁰ On this basis, Australia has tightened its security measures and readily complied with US wishes to ban the Chinese state-owned telecom giant Huawei from providing its 5G network, drawing economic retaliation—an interruption in coal imports—from Beijing.

Indeed, the Chinese challenge is seen across the Indo-Pacific region, and which the FOIP concept seeks to address. It includes the use of economic statecraft to achieve strategic gains as well as “hybrid” techniques to challenge the strategic situation on the ground—or more appositely—on the sea. By seeking to exploit “gray zone areas” in the maritime space, for example the use of fishing fleets and maritime militias to harass competitor states in disputed territories in the South China and East China Seas, Beijing is seeking to break out of the confines of its so-called series of “island chains” and ultimately extend a degree of control over key maritime trade arteries. The security of these SLOCs, and the rights of free navigation and overflight in international waters are increasingly challenged by naval and air intrusions, and patrols attempting to assert Chinese sovereignty. The controversial Freedom of Navigation Operations (FONOPS) conducted by the US Navy consistently meet harassment from Chinese forces. This strikes at the heart of the FOIP and RBO concepts that Australia seeks to defend and exemplify Chinese attempts to revise the regional order to its preference. Australia has sought to augment its regional naval presence through Indo-Pacific Endeavour—a task force engaging in a series of engagement activities and military training exercises during port visits—in addition to low profile maritime patrol and surveillance activities Indian Ocean, Strait of Malacca and South China Sea under Operation Gateway.

¹⁹ US Department of Defense, “Indo-Pacific Strategy Report: Preparedness, Partnerships, and Promoting a Networked Region,” June 1, 2019, p. 4. https://media.defense.gov/2019/May/31/2002139210/-1/-1/1/DOD_INDO_PACIFIC_STRATEGY_REPORT_JUNE_2019.PDF

²⁰ John Garnaut, “Australia’s China Reset,” *The Monthly*, August 2018.

Australia is also backing the FOIP with hard power through a sustained program to improve its defence capabilities with a projected defence budget increase of 2% of GDP, (currently AUD \$36.4bill. for 2018).²¹ It is seeking to augment existing capabilities, which are being ever-more attuned to combined operations with the US (and potentially Japan) and acquiring new ones. Chief among these is the future submarine project which will double the its flotilla by 2030, giving it some of the most potent undersea naval capabilities. In addition, it seeks to increase its reconnaissance capabilities to enforce Maritime Domain Awareness (MDA) in the vast Oceanic spaces to the north of the Australian continent through acquisition of US hardware such as the 8A Poseidon maritime surveillance/response aircraft and MQ-4C Triton UAV.

Australia is also upgrading its 70-year-old defence alliance with the US.²² Under the US Force Posture Initiatives in Northern Australia, agreement has been made as early as 2016 to station a US Marine Task Force in Darwin, while defence, intelligence and military ties have all been strengthened. The 2018 Australia-United States Ministerial Consultations (AUSMIN) consultations listed a prolific range of areas for cooperation including upholding the rules-based international order (through the FOIP), coordination against foreign domestic interference, regional maritime capacity-building, economic and infrastructure support, space, cyber and energy security issues, missile defence, counter terrorism, and a stronger role for the Trilateral Strategic Dialogue (TSD) with Japan.²³

Plans have also been unveiled to establish a joint naval base with the US at Lombrum on Manus Island in Papua New Guinea (PNG).²⁴ As the 2017 Foreign Policy White Paper affirms—“Our alliance with the United States is central to Australia’s approach to the Indo-Pacific.”²⁵ And additionally, Australia has sought to keep advancing its security relations with Japan through its decade-old Strategic Partnership with Tokyo, another advocate of FOIP and the RBO.²⁶ This process is unified with the US through means of the reinvigorated Trilateral Strategic Dialogue process just mentioned.

Furthermore, Australia is seeking to extend this into a Quadrilateral process—the “Quad”—with New Delhi in order to gain India’s adherence to the overall FOIP vision as part of its Indo-centric strategy. However, much confusion reigns as to the exact relationship between the Quad and the FOIP that has hindered the understanding of both (as I have illustrated elsewhere), but in particular it seems that Quad members are divided over their interpretation of how “inclusive” the latter is to be presented.²⁷ Whilst, all parties have stressed that FOIP is open to all that abide by its principles, in reality it is a values-loaded concept—perhaps with the intent of “socialising” China (in echoes of the earlier “responsible stakeholder” notion). Indeed, since the Quad partners are all democratic states, and the FOIP itself inherently represents an *alternative* to the

²¹ Australian Government, Department of Defence, “A Safer Australia - Budget 2018–19 Defence Overview,” May 8, 2018. <https://www.minister.defence.gov.au> [Accessed March 3, 2019]

²² Thomas Wilkins, “Re-assessing Australia’s Intra-Alliance Bargaining Power in the Age of Trump,” *Security Challenges* [Forthcoming].

²³ Australian Government, Department of Foreign Affairs and Trade, “2018 Australia-U.S. Ministerial Consultations (AUSMIN),” July 24, 2018. <https://dfat.gov.au/news/news/Pages/2018-ausmin.aspx> [Accessed March 1, 2019]

²⁴ Joanne Wallis, “Australia Steps Up Its Pacific Pivot,” East Asia Forum, October 20, 2018. <http://www.eastasiaforum.org/2018/10/20/australia-steps-up-its-pacific-pivot>

²⁵ Australian Government, “Overview,” in *2017 Foreign Policy White Paper* (Barton ACT: Department of Foreign Affairs and Trade, 2017), 4.

²⁶ Thomas Wilkins, “Australia and Japan Facing ‘Disruptive’ Challenges to the Rules Based Order in the Indo-Pacific,” *Policy Brief*, September 26, 2018.

²⁷ Thomas Wilkins, “Australia and the ‘Indo Pacific’ Concept—Disambiguating the ‘Idea’ and the ‘Region’ from Quadrilateral ‘Strategy,’” *Policy Brief*, July 19, 2018.

Chinese-led regional order, there is a large contradiction in this proposition.

Lastly, Australia has been keen to attract additional adherents to the broad FOIP vision, both through other enhanced security partnerships, such as with Singapore, but also through the “Quad-plus” process that brings extra-regional powers such as France and the UK into the FOIP enterprise (noted in the introduction). The final layer of this cooperation is the desire to maintain a place for ASEAN in the FOIP vision—Canberra has been quick to reassure members that “ASEAN centrality” will not be undermined, but polls among South East Asia experts indicate a great degree of scepticism over the FOIP.²⁸ Indonesia, Australia’s emerging neighbour to the north has made attempts to frame its own IPs (the “global maritime fulcrum”), but appears tepid towards the FOIP itself.

Yet there limits to Canberra’s willingness to support and enforce the FOIP and US primacy in defiance of Beijing, especially if it emerges as a “hard-balancing” or “containment” mechanism. It is well known that not only is the PRC by far Australia’s biggest trading partner, upon whom continued prosperity is assumed to depend, but the possibility that the US may gradually withdraw from the region and leave China as regional hegemon also raise the “shadow of the future” in Australian calculations.²⁹ Indeed, the current US Administration has sent mixed signals as to its engagement with the region. On the one hand Trump’s disparagement of allies, trade disruptions, withdrawal from TPP, and disregard for the liberal international order have seriously undercut Australia’s position. Yet, more recent championship of the FOIP combined with determined efforts to push back against Chinese challenges are more positive signals, welcomed in Canberra. Nevertheless, Medcalf argues “Australia’s preference is for a U.S. response to China that competes rather than confronts, that deters rather than provokes.”³⁰

Economic Drivers

To be effective and appealing to regional interlocutor states across the Indo-pacific, and to compete with the economic challenges raised by China, Australia’s de facto participation in the FOIP also has a strong economic component. Given the maritime/security emphasis that the FOIP has acquired, it is important to note the economic aspects in which Australia is a participant, seeking to tap into emerging markets and benefit from the “blue water economy” concept.³¹ Integral to the FOIP vision is the desire to promote increased regional connectivity through free-market, transparent and high-quality programs that will meet the region’s growing infrastructure needs. In this respect it again runs counter to Chinese methods that have been criticized for being opaque, corrupt, bringing few local employment benefits, and entrapping aid beneficiaries with unsustainable debt for projects of questionable viability (“debt-trap diplomacy”). The antithesis of the FOIP.

Australia’s economic centre of gravity has shifted over the past two decades towards its Western Indian-Ocean-facing and Northern coasts as result of its massive minerals exports trade Australia itself is a major trading partner with South East Asia, the Pacific Island Countries (PICS),

²⁸ Tang Siew Mun (et al.), *The State of Southeast Asia: 2019 Survey Report* (Singapore: ISEAS-Yusof Ishak Institute, 2019).

²⁹ Hugh White, *Without America: Australia in the New Asia* (Carlton: Black Inc., 2017).

³⁰ Rory Medcalf, “Toward a Shared Alliance Strategy in a Contested Indo-Pacific: A View from Australia,” The National Bureau of Asian Research, May 21, 2019. <https://www.nbr.org/publication/toward-a-shared-alliance-strategy-in-a-contested-indo-pacific-a-view-from-australia>

³¹ The World Bank, “What is the Blue Economy?” June 6, 2017. <http://www.worldbank.org/en/news/infographic/2017/06/06/blue-economy>

and seeks to expand its opportunities with India (as detailed in the recent Varghese report).³² Ideally, the FOIP would have also included the economic showpiece of the TPP, but since the US withdrawal this has left a gaping hole in US geo-economic influence that has yet to be convincingly filled. That Australia along with Japan has championed the CPTTP in the absence of Washington's leadership testifies to the importance these secondary powers ascribe to the economic dimension of regional order. On a smaller scale, Australia has joined its TSD partners in a Trilateral Investment Fund (\$133mill.) designed to offer economic assistance with pressing regional infrastructure development in the Indo-Pacific.

In terms of development, Australia is taking a prominent role, with high levels of Official Development Assistance (ODA) targeted towards South East Asia (especially Indonesia) and the PICS. Though Australia provides some assistance to Africa and other Indian Ocean Rim countries the locus is clearly in these two former regions of key strategic importance to Canberra. Indeed, the Pacific Islands may be the best example of the FOIP in action for Australia as part of its contiguous Pacific "Step-up."³³ A new Office of the Pacific has been established in Department of Foreign Affairs and Trade (DFAT), to coordinate the promotion of good governance, development, and maritime capacity-building (such as the provision of patrol boats), with a \$2bill. AUD now allocated to an infrastructure financing facility.³⁴ To this purpose, Australia has also partnered with the US and others to build an electrical grid for PNG.³⁵ The Step-Up policy is strategic as much as economic, as it seeks to counterbalance the massive increase of Chinese economic influence in the region which threatens to render such states as vulnerable to untoward political influence. Australian strategists are concerned that if China provides critical infrastructure to these countries, they will be vulnerable to subversion or subjection by Beijing (with the bugging of the Organisation of African Unity by China being a case in point). Australia is worried that if economically and financially unviable commitments are entered into with China, Canberra will be left to deal with the socio-economic and security fall-out of these fragile states on its doorstep.

Time for Middle Powers in the Indo-Pacific

In sum, it is clear that there is ample space and demand for complementary middle powers, such as Canada and Australia, to assist—and in some cases provide like-minded alternatives—to US influence and assistance in the Indo-Pacific. Throughout our discussions with US stakeholders, it was also made clear that the US not only welcomes this engagement but also expects it. Indeed, the Indo-Pacific Strategy Report highlights how allies such as Canada and Australia can "play a critical role in maintaining a free and open Indo-Pacific."³⁶ In light of growing US uncertainty and credibility in the region, and rising Chinese assertiveness—the role of Canada and Australia can help underscore the rules-based order and bolster the need for sustainable investment and open

³² Peter N Varghese AO, *A Report to the Australian Government: An India Economic Strategy to 2035—Navigating from Potential to Delivery* (Barton ACT: Department of Foreign Affairs and Trade, 2018). <https://dfat.gov.au/geo/india/ies/index.html>

³³ Department of Foreign Affairs and Trade, "Stepping Up Australia's Pacific Engagement." <https://dfat.gov.au/geo/pacific/engagement> [Accessed March 10, 2019]

³⁴ James Batley, "Australia's New Pacific Czar," *The Interpreter*, Lowy Institute, January 30, 2019. <https://www.lowyinstitute.org/the-interpreter/australia-new-pacific-czar> [Accessed March 1, 2019]

³⁵ Stephen Dziedzic, "Australia Joins Multinational Bid to Improve Papua New Guinea's Energy Infrastructure," November 18, 2018. <https://www.abc.net.au/news/2018-11-18/australia-joints-multinational-effort-to-improve-png-energy/10508614>

³⁶ US Department of Defense, "Indo-Pacific Strategy Report: Preparedness, Partnerships, and Promoting a Networked Region," June 1, 2019, p. 42. https://media.defense.gov/2019/May/31/2002139210/-1/-1/1/DOD_INDO_PACIFIC_STRATEGY_REPORT_JUNE_2019.PDF

trade. This discussion of the ways in which Australia and Canada have sought to respond to the FOIP vision, as championed by Japan and the US, is indicative of the actual and potential role such that self-styled middle powers can play in upholding the regional international order against revisionist challenges, by doing their part.

Yet, as middle powers with relatively limited capabilities compared with leading FOIP states such as the US and Japan, it may be worth Ottawa and Canberra engaging in renewed bilateral cooperation to explore how they can jointly coordinate their approach to the FOIP and perhaps pool their capabilities more effectively as they have done so successfully in the past, in initiatives such as the International Security Assistance Force (ISAF) in Afghanistan, and through other areas including disrupting people smuggling and organized crime in SEA. Potentially fruitful avenues of joint cooperation to explore could include HADR, joint naval exercises, MDA and ODA/capacity-building, among others. In conclusion, this is a prime opportunity for solidarity between these two middle powers to leverage their joint reputation for multilateralism, norm entrepreneurship and all-round reputation for “good international citizenship” to play a larger role in the Indo-Pacific affairs.

Upcoming Issue of the

JAPAN REVIEW

Volume 3, Number 2 (Fall 2019)

**Territory and Maritime Issues
in East Asia and their Origins**

Published by the Japan Institute of International Affairs

3rd Floor Toranomon Mitsui Building, 3-8-1 Kasumigaseki Chiyoda-ku,
Tokyo Japan 100-0013

Tel: +81-3-3503-7261 (International)

Fax: +81-3-3503-7292 (International)

More information about the Institute's activities and publications available at: <http://www2.jiia.or.jp/en/>

THE JAPAN
INSTITUTE OF
INTERNATIONAL
AFFAIRS

