POLICY BRIEF

Stability through practice: Enhancing state capabilities

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The naval balance of power in the maritime Indo-Pacific is shifting. Some states are rapidly expanding and modernising navies and coastguards, and acquiring new capabilities, including anti-ship missiles. The People's Liberation Army Navy (PLAN) is today estimated to comprise 355 ships and will likely grow to a force of 420 by 2025 and 460 in 2030. Many of these ships are new, capable, modern vessels. China already has the world's largest coast guard, numbering about 130 ships, together with 70 or so patrol vessels.

'Grey zone' tactics – those operations that fall below the threshold of conflict – are used by some states to alter the status quo, and there are concerns that principles of freedom of navigation and overflight, including in disputed areas, are threatened. Regional and non-regional states are increasingly engaging in naval exercises and transits to demonstrate their presence and support for principles of freedom of navigation and overflight. In an increasingly crowded and contested region, there are risks inherent in unplanned encounters at sea in a region in which navies, coastguards, merchant shipping, and fishing all operate.

Maritime security trends have reinforced a perception among regional states that capacity building to enhance good order at sea is essential. Yet, how capacity building is presented is essential to how it is perceived and how far it is accepted. Crucially, the tension linking national sovereignty, limited capabilities, and a shifting regional power balance, rewards approaches to capacity building that do not focus primarily on international normative compliance. Rather, capacity building might be best placed to achieve better results if presented as an opportunity to enhance stability through practical cooperation and the promotion of good order at sea through state practice. A practical focus does not preclude conversations about 'maritime governance', but it does not demand regional states to engage in cooperation that might dilute national sovereignty. Indeed, for this reason, this approach can be particularly advantageous to actors from outside the region with interests in the wider maritime order and in ensuring its normative resilience as a primary step towards longer term compliance and stability.

Across the region, material resources and capabilities vary significantly. This is because of two different and interrelated reasons. The first concerns the availability of funds and its impact on domestic organisational arrangements. The increase in national debts as well as public calls for enhanced spending on social security and healthcare as a result of the pandemic have reduced the appetite to invest in naval and coast guard capabilities. For example, in Indonesia, in the aftermath of the loss of a submarine in 2021, and in the Philippines, the armed forces are seeking to advance different procurement programs, but these efforts remain uncertain in the current economic climate.

The second reason pertains to the need to strike a balance between warfighting and security capabilities. As tensions remain high across the South China Sea, and the power differential between the PRC and other regional coastal states widens, states from Vietnam to the Philippines to Indonesia and Singapore have to juggle different priorities. This, in turn, creates organisational quarrels over budget allocations, which affect negatively the overall pursuit and sustainability of capabilities. Needless to say, regional states view external support to offset limitations and constraints as a genuine opportunity.
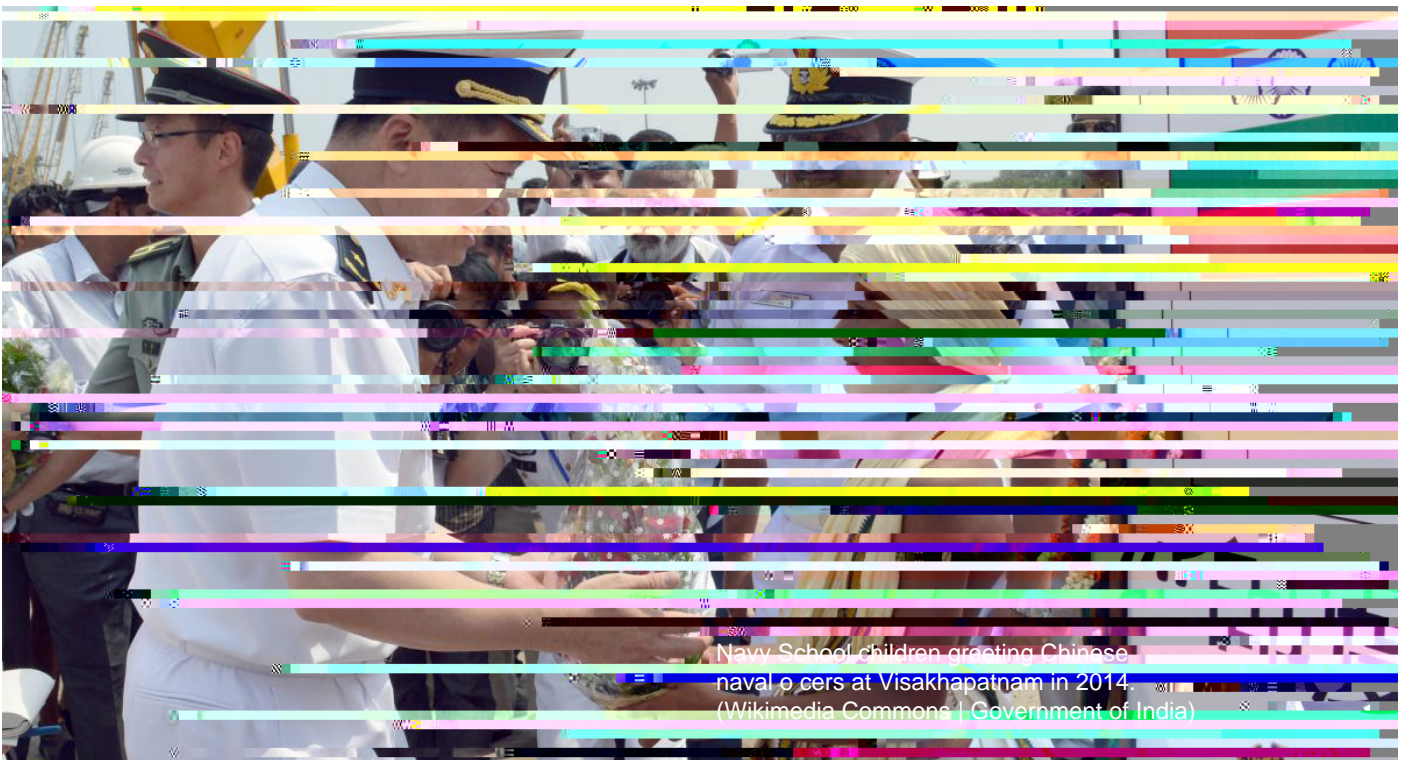
Navy School children greeting Chinese naval officers at Visakhapatnam in 2014.
(Wikimedia Commons | Government of India)

Governance through practice: Supporting an inclusive understanding of rule of law
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The Indo-Pacic faces challenges in the implementation and practice of the norms and principles enshrined in the United Nations Convention on the Law of the Sea (UNCLOS). The existence of overlapping maritime claims and jurisdictional gaps coupled with the absence of direct international enforcement measures, including in dealing with the use of ags of convenience to disguise or avoid criminal activity on the high seas, all present challenges to a law-based maritime order. Compounding this is the use of 'lawfare' by some states, including the use of quasi-legal narratives that partially draw on UNCLOS while ignoring other parts in order to justify excessive maritime claims.

There are positive examples in the Indo-Pacic of dispute resolution mechanisms under UNCLOS being employed by smaller states against bigger states in maritime disputes. In 2014, for example, India and Bangladesh settled on a maritime boundary in the Bay of Bengal with the assistance of an international arbitral tribunal. In 2018, Australia and Timor-Leste signed a maritime boundary treaty in the Timor Sea a er Dili initiated the world's rst (and to date only) Compulsory Conciliation process under UNCLOS.

However, international dispute resolution processes have had less impact in the region's more complex and contested maritime geographies. One of the most notable examples concerns the Philippines-China South China Sea case initiated by the Philippines in 2013. In this case, the PRC rejected the arbitral tribunal's jurisdiction and refused to acknowledge or respect the 2016 award. The award in the South China Sea arbitration had the potential to change international legal dynamics of regional maritime disputes.

In particular, it o ered important materials to investigate in greater depth the regime of islands as articulated in article 121 of the convention, and to expose inconsistent uses of coast guard, law-enforcement, and militia organisations in the pursuit of legal claims. In practice, however, it has changed little on the ground in terms of reigning in excessive maritime claims and the 'grey zone' tactics that the PRC especially has employed to assert them.

If implemented, the arbitral tribunal ruling would result in a dramatic spatial reduction in maritime claims in the South China Sea. But the ruling has not been capitalised on, or e ectively advocated by, either the South East Asian claimants or the international community more broadly. According to Asia Maritime Transparency Initiative's arbitration tracker , only 8 governments have publicly supported the ruling, 35 acknowledged it, and 8 opposed.

There are also crucial areas now relevant to oceans governance that were not known or well understood when UNCLOS was dra ed in 1982. One area is climate change. Global sea-level rise will a ect maritime baselines, zoning limits and boundaries of coastal states, particularly low-lying islands. Baselines are viewed by some states (such as Australia and the UK) as 'ambulatory' which means they move with territorial changes caused by erosion, accretion, and sea level rise. However, for low-lying states, their normal baselines are vulnerable to inundation which will impact their maritime limits and entitlements.

Most of the region's small and medium states rely upon the legitimacy of an UNCLOS-led maritime order that supports cooperation, deters the use of armed force to manage disputes, and maximises opportunities for timely and equitable resolution. The broader issue is how the region can defend an international legal maritime order in which larger states are restricted from unilaterally imposing their will on smaller states.

While many states advocate the importance of a 'rules-based order', there remains disagreement about how to interpret the 'rules', which rules should be prioritised, and the kinds of activities that should/should not be permitted (e.g. posturing at sea). There is also disagreement about the extent to which a body of law should be prioritised ahead of rules, which is vaguer term that incorporates informal or so law, or indeed 'practices' around the

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Building a sustainable security order through practical cooperation
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The security architecture of the Indo-Paci c is changing. At the structural level, PRC's Belt and Road Initiative, or BRI, is providing new avenues for regional states to pursue infrastructure funding and development. However, it has been criticised for low quality projects and for having a strategic agenda—including in maritime security—that has privileged the promotion of Chinese in uence over a core commitment to regional economic development. The extent to which the BRI is changing the security architecture remains unclear, but it is a regular point of consideration for most experts from within the region.

Beyond the BRI, the consolidation of speci c regional forums has replaced the proliferation of mechanisms that distinguished the 1990s and early 2000s. In South Asia and along the littorals to the east and west, the Indian Ocean Regional Organisation has been reinvigorated. In North, Central, and South Asia, the Shanghai Cooperation Organisation has expanded to include India and Pakistan. In East Asia, institutions and mechanisms have been built around the Association of South East Asian Nations (ASEAN), including the ASEAN Defence Ministers Meeting (ADMM+), ASEAN

Regional Forum (ARF), and East Asia Summit. To some extent, there is an element of strategic crowding in the region, and it is important to understand the strengths and roles of particular multilateral frameworks and arrangements.

Within this context, the role of ASEAN remains central to maritime security for regional syten-USav 0(y f)31
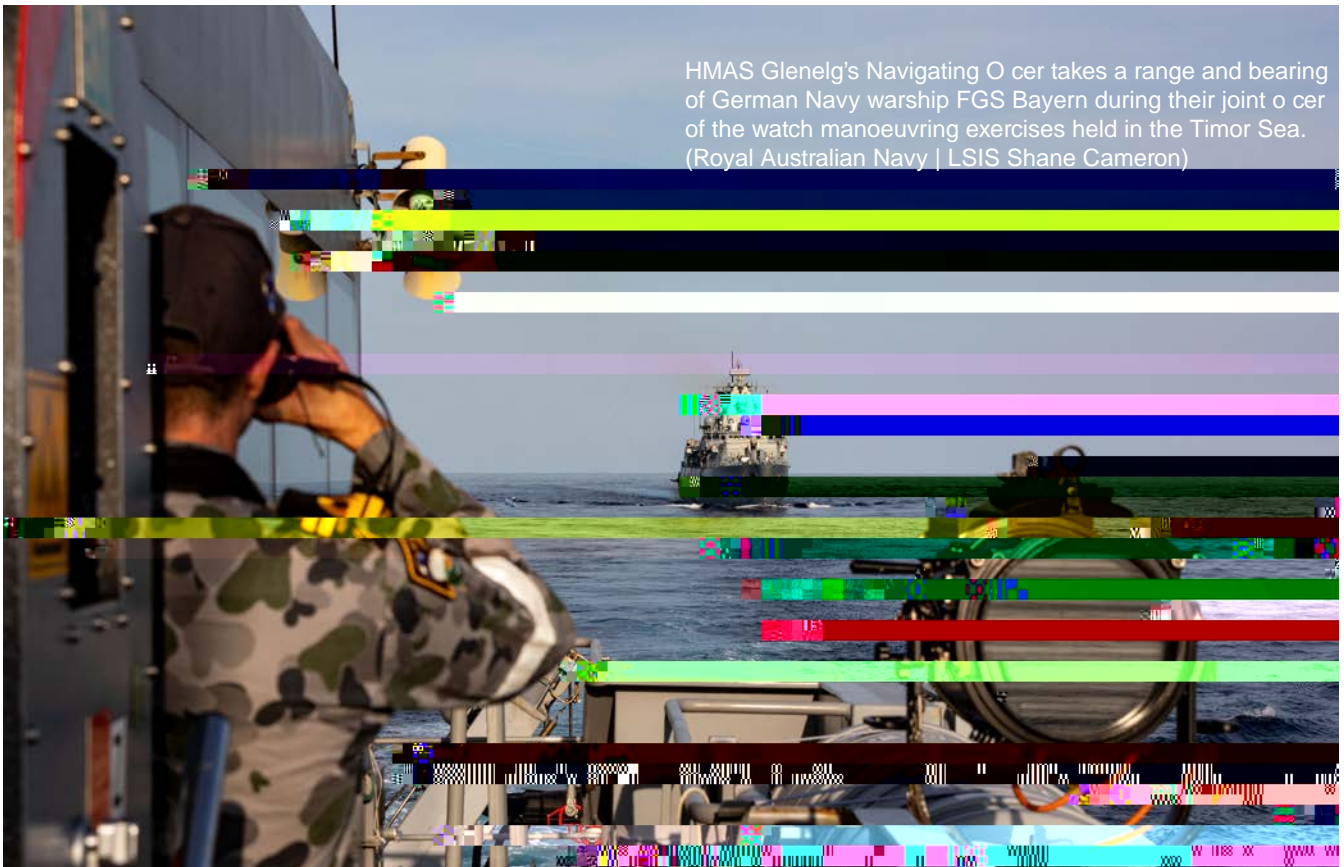
HMAS Glenelg's Navigating Officer takes a range and bearing of German Navy warship FGS Bayern during their joint officer of the watch manoeuvring exercises held in the Timor Sea. (Royal Australian Navy | LSIS Shane Cameron)

As such, non-regional states should remain focused on assistance with day-to-day issues, rather than significant geopolitical concerns in their multilateral and minilateral engagements as a way to minimise such fears.

Indeed, such an approach may prove to be particularly effective for two other reasons. First, as previously mentioned, domestic politics and national interests, priorities and capabilities can affect the willingness of states to work together in the pursuit of good order at sea. Functional aspects of cooperation require more consideration and funding to understand the degree of cooperation required, to what ends, and what costs states are willing to bear. Second, in South East Asia, states have often preferred to opt for more targeted mini-lateral groupings on issues of maritime security, such as coordinated patrols in the Malacca Strait and Mekong river.

Many states remain at odds over governance issues such as how to confront the pressing challenges of IUU fishing and over-fishing, particularly since these issues have sovereignty implications within states' EEZs. In East Asia, the ten ASEAN member states and China are negotiating a Code of Conduct (COC) in the South China Sea. South East Asian claimants view the COC as a potential constraint on the use of force in maritime and territorial disputes, but negotiations have been delayed due to the COVID-19 pandemic. ASEAN states and China agree on many aspects in the draft text. However, there remain a number of uncertainties, such as the geographical scope and the binding nature. A COC that circumvents or ignores UNCLOS and undermines the 2016 arbitral tribunal would be of concern to states with significant stakes in Indo-Pacific maritime security and maintaining open sea lanes of communication across all maritime domains.

If adequately implemented, efforts to build capacity to support good order at sea may be a practical and effective way for extra regional powers to coordinate and have an enduring and sustainable impact on regional security. As the number of external powers engaging in capacity building assistance programs widens, coordination to increase de-confliction might be a good way to maximise collective efforts. In particular, countries like Japan and the United States have already acquired some substantive experience in capacity building assistance – especially through the lease of capabilities. The territorial contestation in the South China Sea is a strategic issue that many Indian ocean countries do not want to become involved in; they would prefer to focus on the range of non-traditional security issues in their neighbourhood, including armed robbery, terrorism, and climate change.

Recommendations:

The report finds the following recommendations as relevant to promote sustainable regional stability through an inclusive and open architecture:
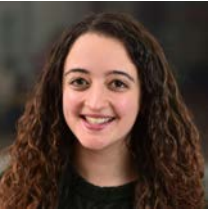
- To improve regional architecture by not 'reinventing the wheel' but rather providing capacity to regional states. An official road map of multilateral relations could be proposed, with agreed key pillars of cooperation on health, trade and investment, defence and security, and climate change.
- To advance the capacities of minilaterals such as the Quad and AUKUS to provide more inclusive and beneficial channels for regional cooperation on a range of 'non-traditional' maritime security challenges, ensuring that diplomacy and wider regional cooperation is central to their approaches and that their commitment to the region sufficiently resourced and operationalised.
- To develop comprehensive and integrated strategies—combining diplomatic, economic, and military instruments –to meet contemporary maritime security challenges, strategies should be coordinated to the extent that is possible to avoid overlaps and reduced effectiveness.
- To ensure that non-traditional security issues—such as cooperation in piracy in the high seas, human rights at sea, bolstering economic capability and governance in the 'blue economy', distributing technology, and enhancing trust and transparency, for example—re integral to more coordinated approaches among regional and extra-regional states.
- To ensure that all states promote and coordinate their positions on key maritime disputes and present a united front in the negotiations. States not party to the negotiations should encourage those that are to develop a 'high quality' COC that commits al states to abiding by UNCLOS.

Notes

1. Congressional Research Service, China Naval Modernization: Implications for US Navy Capabilities—Background and Issues for Congress, updated 20 January 2022, https://sgp.fas.org/crs/row/RL33153.pdf, p. 2, 5.
2. The Pacific Fusion Centre was set up by the Pacific Islands Forum in 2021.
3. Asia Maritime Transparency Initiative, Arbitration support tracker, published August 2021, https://amti.csis.org/arbitration-support-tracker/
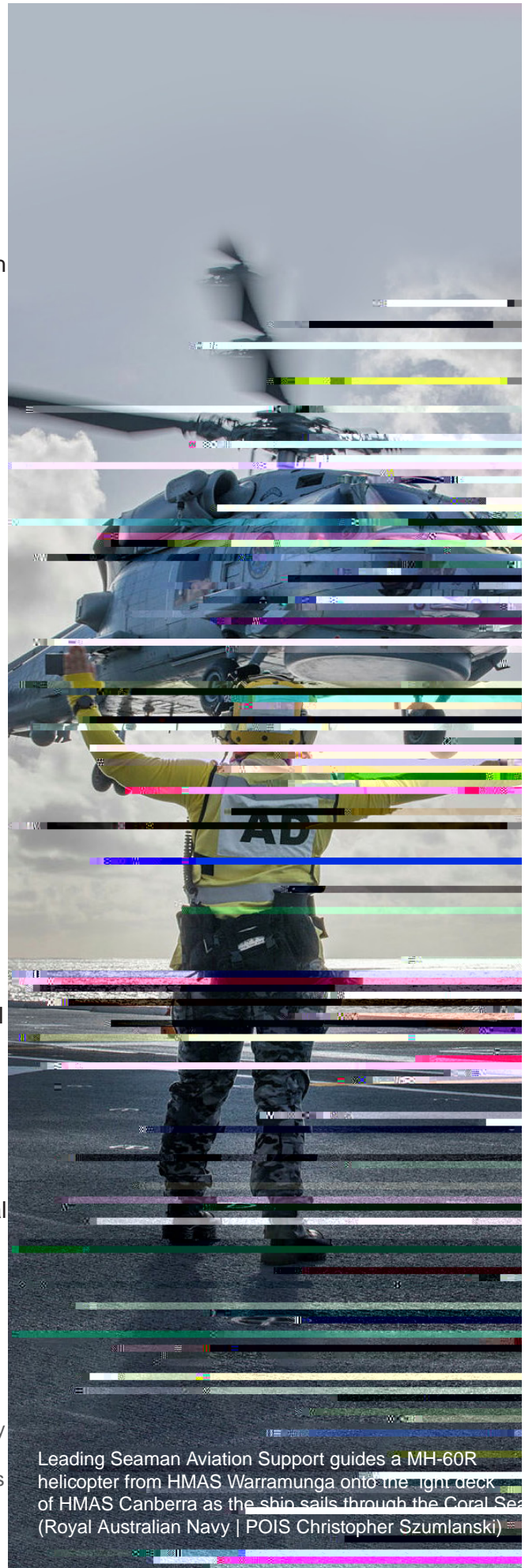
Leading Seaman Aviation Support guides a MH-60R helicopter from HMAS Warramunga onto the flght deck of HMAS Canberra as the ship sails through the Coral Sea (Royal Australian Navy | POIS Christopher Szumlanski)

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