

SPECIAL REPORT

December 2014



Strengthening rules-based order in the Asia-Pacific Deepening Japan–Australia cooperation to promote regional order

Foreword

Human societies can enjoy peaceful progress only under the rule of law. The same is true of international society. The rule of law is an essential condition if cooperation and orderly behaviour are to be advanced in the Asia–Pacific. We need norms and rules that guide—and govern—relations among regional states.

The Asian strategic environment is witness to one of the most important power shifts in history. That shift might produce a more cooperative Asia or a more competitive one. The biggest strategic question we face is not simply whether the future for our region will be one of war or peace: it's also about the nature of that peace. Will it be a peace governed by rules and norms or a peace governed by power and coercion?

There's increasing strategic competition in our region, of which assertive behaviour is but one indicator. At the level of grand concepts, China does not openly oppose the rule of law. But it often brushes off calls for rules and norms based upon consensus and expects conformity and respect because of its power and history.

If legal rules and norms are truly to be found for regional problems, all governments will have to conform to certain agreed standards and accept that it's in their national interest to make international law work.

Still, we need a large dose of realism: agreements will only be obeyed because the outcomes are perceived as beneficial to the interests of the government at hand. That should be kept firmly in mind as Australia, Japan and our key ally, the United States, seek to draw China into a lasting and peaceful Asian order.

Earlier this year Japan's Prime Minister Shinzō Abe gave the Keynote Address at the IISS Shangri-La Dialogue in Singapore. He spoke of the fundamental importance of the rules-based order and Japan's desire to play a leading role in bolstering this order. (His full speech is reproduced in this *Special Report*).

Prime Minister Abe took the opportunity to note the potential role that the East Asia Summit (EAS) might play in the region. But for its potential to be realised it's necessary to manage the dynamics of ASEAN 'centrality'—ASEAN convenes both the ASEAN Regional Forum and EAS.

A key challenge for Australia and Japan will be to entice ASEAN down the path of thinking creatively about what centrality means, for ASEAN as much as the broader region. Much of the 'heavy lifting' on that front will have to be done through coordinated bilateral action, rather than within the institutions themselves.

Australia and Japan share an interest in minimising the role that coercion plays in the Asia–Pacific and maximising cooperation across the region. We're both liberal democracies, with a strong bilateral security relationship, an alliance with the United States and a genuine commitment to the rule of law.

ASPI has this year worked on a project to explore the opportunities for both Australia and Japan jointly to promote our shared interest in strengthening the rule of law in the Asia–Pacific. This report sets out the project's key findings.

In June expert meetings were held in Canberra and Tokyo (the latter hosted by the Japan Institute of International Affairs). The Canberra Symposium included regional and

international experts addressing the issue of how to improve the rule of law across the various regional ‘commons’.

ASPI hosted two visiting scholars from Japan to work in Canberra with other experts. Their papers informed the findings of this study and are included in this *Special Report*.

In October ASPI hosted a roundtable in Canberra to further explore policy proposals where both countries might focus their attention and resources to strengthen the rules-based order in the region.

Participants across the series recognised early on that several regional institutions and fora, such as ASEAN and EAS, deal with many of these issues. The aim wasn’t to replicate the policy proposals emerging from those bodies, but rather to suggest potential initiatives where Japan and Australia might successfully promote regional cooperation to deal with a range of economic and security problems through the positive effects of agreed rules and legal norms. The region’s security architecture should be leveraged for the implementation of the policy proposals set out below.

The binding rules of international law are real and relevant: they contribute to regularising the behaviour of governments and contribute to a regional and global order that is more predictable and manageable (see Shirley Scott’s background paper in this *Special Report*).

Rather than trying to develop grand agendas, the study attempted to illuminate areas where both Australia and Japan could improve the efficiency and efficacy of regional rules-based cooperation (see Shiro Armstrong’s background paper in this *Special Report*). In several cases a key finding was that progress required a commitment to capacity-building and information-sharing.

Leadership is critical for the future of a rules-based order in the Asia–Pacific; both Australia and Japan share a responsibility in that regard. Few Asia–Pacific states, we’d submit, measure up as well as Australia and Japan do in abiding by the rule of law and both will continue as major contributors to the rule of international law. And to that end, Australia and Japan should endeavour to provide a model of behaviour for other governments in our region to emulate, small and large powers alike.

ASPI acknowledges the generous support of the Ministry of Foreign Affairs of Japan and the Japanese Embassy in Canberra for this project*.

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* Views and recommendations expressed in this report do not represent the views of the Ministry of Foreign Affairs of Japan or the Japanese Government.

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Policy recommendations to enhance Japan–Australia cooperation and strengthen rules-based order in the Asia–Pacific

Maritime Security

1. Cooperate on maritime capacity building in the Asia–Pacific, including training personnel, assisting with organisational arrangements and strengthening relationships and abilities between relevant maritime agencies.
2. Identify important maritime conventions to provide governments with information on their value to encourage ratification and implementation. This should include assistance to improve administration and enforcement arrangements with regard to maritime conventions, noting that ambit maritime claims don't encourage confidence building.
3. Encourage regional arrangements on combatting illegal, unreported and unregulated fishing, including by strengthening port state control measures, reciprocal boarding agreements and innovative development of the Right to Hot Pursuit.
4. Develop initiatives to bolster regional preparedness for transboundary oil-spill events.
5. Encourage member countries of the Western Pacific Naval Symposium to support the measures outlined in the WPNS publication, *Code for Unalerted Encounters at Sea*, that will reduce the risk of miscommunication between naval and military vessels. This could be a useful accompaniment to later developing a regional Naval Incidents at Sea Agreement.

Rule of Law in Conflict Affected States

1. Collaborate with countries in the Asia–Pacific to develop and deliver UN peacekeeping training programs for military and police personnel and assist potential or emerging peacekeeping contributors to navigate UN force generation, training and pre-deployment processes.
2. Encourage states in the Asia–Pacific to take full steps towards ratification of the Rome Statute of the International Criminal Court.

3. Build awareness of human security issues and state responsibilities for protection of civilians through information exchange and funding for training and scholarships geared towards strengthening state institutions and resilience.
4. Deepen assistance to Asia–Pacific nations in the context of ASEAN's dialogue partnership framework to build capacity in the arenas of rule of law and good governance in order to serve as structural measures to better manage conflicts and work to prevent mass atrocities.
5. Encourage states in the Asia–Pacific to become a party to the United Nations Arms Trade Treaty and assist these states to implement the treaty requirements.

Trade and Economic Cooperation

1. Engage in a consultative regional process through APEC, EAS, TPP, RCEP and G20 to establish an understanding of economic cooperation priorities, reform agendas and regionally beneficial norms and how they might be supported.
2. Develop joint regional goals for Australia and Japanese economic diplomacy, particularly on what the economic architecture should look like and steps to achieve it. In particular, seek to influence the evolution of key regional institutions towards rules-based frameworks by:
 - a. leading on RCEP and promoting TPP to new members in order to minimise conflict between the two economic agreements;
 - b. developing closer technical links with AMRO and understanding of the operation of the Chang Mai Multilateral Initiative.
3. Keep under review the inter-governmental Memorandum of Understanding on the Asian Infrastructure Investment Bank, on condition that it meets international standards of governance and transparency.
4. Work with Japan in APEC and RCEP to support structural reforms in key economies by enhancing transparency and strengthening market-based institutions.
5. Keep the G20 focused on practical measures to address key global economic issues, such as financial crisis management, and on building international relationships by strengthening the link between regional institutions and the G20.

Cyberspace and Internet Governance

1. Encourage a transparent regional dialogue through the ARF on international norms for cyberspace whilst continuing ongoing cyber confidence-building efforts.
2. Strengthen CERT–CERT linkages in the Asia–Pacific through APCERT and PacCERT to bolster technical capabilities in the public and private sectors.
3. Identify opportunities within development assistance programs for ICT infrastructure hardening and ICT network repair post-disaster.
4. Work with the private sector, within both state-driven and non-state-driven international organisations to promote the ideal of an open internet underwritten by ICANN-led multistakeholderism.
5. Utilise terminology and concepts identified in the *Tallinn Manual on the International Law Applicable to Cyber Warfare* and the *Convention on Cybercrime* to help embed the use of agreed terms and definitions related to cyber matters to help ease confusion and build regional trust and confidence.
6. Through APEC’s Telecommunications and Information Working Group develop capacity building and share best practice on the integrity and security of the e-commerce environment.

Airspace and Outer Space

1. Lead the creation of an international code of conduct for outer space activities.
2. Promote a regional understanding of threats to airspace through an annual symposium for decision-makers from government, military and civil service across the region.
3. Prioritise the issue of space debris management through multilateral and regional forums such as the ARF Space Security workshop.
4. Work to develop standards relating to remotely piloted aircraft, including for civil use, considering privacy and safety issues and considering opportunities for how Japan and Australia might achieve appropriate integration of these technologies.

5. Work with regional partners and ICAO to develop an agreed set of rules for establishing and enforcing Air Defence Identification Zones (ADIZ), including crisis communications mechanisms, as an important step in decreasing prospects for tension in the Asia–Pacific air domain.

East Asia Summit

1. Support the creation of a permanent EAS secretariat or committee to build continuity between summits and provide greater EAS focus on strategic, economic and financial issues.
2. Support the EAS to strengthen linkages with the ADMM+, the ARF and the extended ASEAN Maritime Forum.
3. Constitute the EAS as the premier leaders-led forum to engage China as a responsible and constructive player in the Asia–Pacific.
4. Work to support ASEAN’s role in the EAS so that it actively engages with extra-ASEAN powers in a collegiate way, especially in reducing disagreements with China.

Humanitarian Assistance and Disaster Relief

1. Strengthen exchange of information between HADR agencies in Japan and Australia and develop joint training, including with relevant non-government bodies.
2. Increase joint HADR exercises with regional partners with a civil–military coordination focus, and include disaster prevention, as well as early response.
3. Develop urban search and rescue training and mentoring with ASEAN counterparts, in close communication with the ASEAN Committee on Disaster Management and the ASEAN Coordinating Centre for Humanitarian Assistance Centre.
4. Increase exchanges between search and rescue agencies across the region, including developing exercises and coordination between the regional centres of the IMO and ICAO.
5. Establish an accreditation system for foreign medical teams in HADR in the Asia–Pacific.

Japanese Prime Minister's Speech to The Shangri-La Dialogue, Singapore, 30 May 2014

His Excellency Mr Shinzō Abe,
Prime Minister of Japan

Prepared transcript

Your Excellency, Mr Lee Hsien Loong, Director-General Dr John Chipman, ladies and gentlemen, 'Peace and prosperity in Asia, for evermore'.

In order to make that a reality, what should Japan do and how should Japan contribute? That's what I am standing here to speak about. I think all of us in the room here share a common mission. The mission is one of pursuing better living standards and economic prosperity. It's a mission of bringing into full bloom the latent potential of this great growth centre and the people living there, stretching from Asia and the Pacific to the Indian Ocean. We must build and then hand over to the next generation a stage on which each and every individual can prosper still more and certainly benefit from the fruits of growth.

'Asia' is a synonym for 'growth' and another name for 'achievement'. Take TPP. The Trans-Pacific Partnership will surely bring an overwhelming economy of scale to the Asia-Pacific economies. Just as a rocket picks up even greater acceleration in its second and third stages, the RCEP and the FTAAP as it were, the momentum sparked by the TPP will expand our free and creative economic sphere, enabling us to soar even higher. Asia and the Pacific will continue to propel the world economy forward.

And just for Japan to seek a win-win synergy with the Asia-Pacific region, my economic policy is now advancing at full throttle. If you imagine how vast the Pacific and Indian oceans are, our potential is exactly like the oceans, i.e., limitless, isn't it? In order to have the generations of our children and our children's children share in this bounty, it's absolutely imperative that we make peace and stability something absolutely rock solid.

To achieve this, all countries must observe international law. Japan will offer its utmost support for the efforts of the countries of ASEAN as they work to ensure the security of the seas and the skies, and thoroughly maintain freedom of

navigation and freedom of overflight. Japan intends to play an even greater and more proactive role than it has until now in making peace in Asia and the world something more certain. As for Japan's new banner of 'Proactive Contribution to Peace', Japan already enjoys the explicit and enthusiastic support of the leaders of our allies and other friendly nations, including every leader of ASEAN member countries as well as the leaders of the United States, Australia, India, the UK, France and others. Japan for the rule of law. Asia for the rule of law. And the rule of law for all of us. Peace and prosperity in Asia, for evermore. That's what I wish to state to you today.

May I now tell you firstly how I perceive the situation?

This region has achieved tremendous growth in the span of a single generation. However, a large and relatively disproportionate amount of the fruits of that growth is being allocated to military expansion and arms trading. To me, this is extremely regrettable. We also find ourselves facing the threat of weapons of mass destruction and attempts to change the status quo through force or coercion. Clearly there exist elements that spawn instability.

And yet nowhere do we find a need to be pessimistic. That's my approach. Recently, President Barack Obama of the United States and I mutually reaffirmed that the US-Japan alliance is the cornerstone for regional peace and security. President Obama and I also mutually confirmed that the United States and Japan are strengthening trilateral cooperation with like-minded partners to promote peace and economic prosperity in Asia and the Pacific and around the globe. When Australian Prime Minister Tony Abbott visited Japan at the beginning of April, we reaffirmed this exact stance, namely that in security affairs, we will further the trilateral cooperation among Japan, the US, and Australia. We clearly articulated to people both at home and abroad our intention to elevate the strategic partnership between Japan and Australia to a new special relationship. In India, Mr Narendra Modi has become prime minister through another free and fair election. I am absolutely certain that when I welcome Prime Minister Modi to Tokyo, we will successfully confirm that the Japan-India cooperation, as well as trilateral cooperation including our two countries, will make the 'confluence of the two seas' that is the Pacific and Indian oceans, peaceful and more prosperous.

Last year, I visited all ten ASEAN member countries, and my determination grew with each country I visited.

This is because these visits taught me that we share common groundwork regarding our commitment to valuing the rule of law, and that we enjoy a consensus in our respect for freedom of navigation and freedom of overflight. Indeed, in most of the countries of the region, economic growth has steadily brought freedom of thought and religion and checks and balances to the political systems, even though the speed of these changes varies from country to country. The sheer idea of the rule of law, which is one great pillar for human rights, has taken deeper root. Freedom, democracy, and the rule of law, which undergirds these two, form the Asia-Pacific's rich basso continuo that supports the melody played in a bright and cheery key. I find myself newly gripped by that sound day after day.

I have now shared with you how I perceive the circumstances that surround us. Now, my first central point for today is that we must observe international law. International law prescribes the order governing the seas. Its history is long indeed, stretching back to the days of ancient Greece, we are told. By Roman times, the seas were already kept open to all, with personal possession and partitioning of the sea prohibited. Ever since what is known as the Age of Exploration, large numbers of people have come together by crossing the seas, and marine-based commerce has connected the globe. The principle of freedom on the high seas came to be established, and the seas became the foundation for human prosperity.

As history moved on, the wisdom and practical experiences of a great many people involved with the sea, who were at times literally caught up in rough and raging waves, accumulated into common rules. This is what we now know as the international law of the seas. This law was not created by any particular country or countries, nor was it the product of some sort of group. Instead, it is the product of our own wisdom, cultivated over a great many years for the well-being and the prosperity of all humankind.

Today, the benefits for each of us lie in the seas from the Pacific to the Indian oceans being made thoroughly open, as a place of freedom and peace. All of us should find one common benefit in keeping our oceans and skies as global commons, where the rule of law is respected throughout, to the merit of the world and humankind.

Now, when we say 'the rule of law at sea' – what exactly do we mean in concrete terms? If we take the fundamental spirit

that we have infused into international law over the ages and reformulate it into three principles, we find the rule of law at sea is actually a matter of common sense. The first principle is that states shall make their claims based on international law. The second is that states shall not use force or coercion in trying to drive their claims. The third principle is that states shall seek to settle disputes by peaceful means. So to reiterate this, it means making claims that are faithful in light of international law, not resorting to force or coercion, and resolving all disputes through peaceful means.

So that is all about common sense, the foundation of human society. And yet these very natural things must be emphasised. I urge all of us who live in Asia and the Pacific to each individually uphold these three principles exhaustively.

Take a look at Indonesia and the Philippines. They have peacefully reached agreement of late on the delimitation of their overlapping EEZs. I welcome this as an excellent case in point that truly embodies the rule of law. My government strongly supports the efforts by the Philippines calling for a resolution to the dispute in the South China Sea that is truly consistent with these three principles. We likewise support Vietnam in its efforts to resolve issues through dialogue. Movement to consolidate changes to the status quo by aggregating one fait accompli after another can only be strongly condemned as something that contravenes the spirit of these three principles.

Would you not agree that now is the time to make a firm pledge to return to the spirit and the provisions of the 2002 Declaration on the Conduct of Parties in the South China Sea that all concerned countries in the Sea agreed to, and not to undertake unilateral actions associated with a permanent physical change? The time to devote our wisdom to restoring peaceful seas is now.

What the world eagerly awaits is for our seas and our skies to be places governed by rules, laws, and established dispute-resolution procedures. The least desirable state of affairs is having to fear that coercion and threats will take the place of rules and laws and that unexpected situations will arise at arbitrary times and places. I strongly hope that a truly effective Code of Conduct can be established in the South China Sea between ASEAN and China and that it can be achieved swiftly. Japan and China have an agreement concluded in 2007 between then-premier Wen Jiabao and myself, when I was serving as prime minister. That was a commitment we made to

create a maritime and air communication mechanism in order to prevent unexpected situations between Japan and China. Unfortunately, this has not led to the actual operation of such a mechanism. We do not welcome dangerous encounters by fighter aircraft and vessels at sea. What we must exchange are words. Should we not meet at the table, first exchanging smiles as we sit down to have discussion? It is my firm belief that commencing the operation of this agreement between our two countries will lead to peace and stability of the region as a whole.

Be that as it may, in my view, the time has come to place emphasis on ASEAN. The ARF is a meeting held at the foreign-minister level, while the ADMM-Plus is a meeting at the defence-minister level. There is no stage that outshines the East Asia Summit as a venue for heads of state and government to come together and discuss the order that is desirable. Keeping military expansion in check and making military budgets transparent, as well as enlarging the number of countries that conclude the Arms Trade Treaty and improving mutual understanding between authorities in charge of national defence – there is no lack of issues those of us national leaders ought to take up, applying peer pressure on each other.

I urge the further enhancement of the East Asia Summit, as the premier forum taking up regional politics and security. Next year marks the tenth anniversary of the launch of the EAS. I propose that we first create a permanent committee comprised of permanent representatives to ASEAN from the member countries and then prepare a road map to bring renewed vitality to the Summit itself, while also making the Summit along with the ARF and the ADMM-Plus function in a multilayered fashion. The first thing we should discuss is the principle of disclosure. We have all heard the saying that ‘sunshine is the best disinfectant’. From now, Asia will continue to play the leading role in pulling the prosperity of the world forward. Military expansion is inherently unworthy of such a place as this. The fruits of prosperity should instead be reinvested into even greater prosperity and improving people’s lives. I believe that a framework under which we publicly disclose our military budgets step by step, that enables us to cross-check each other is, a system that we should seek to establish as we extend the scope of the East Asia Summit.

Japan will offer its utmost support for efforts by ASEAN member countries to ensure the security of the seas and skies and rigorously maintain freedom of navigation and overflight. Then what will Japan actually support, and how? That is what I will talk about next. We have decided to provide ten new patrol vessels to the Philippine Coast Guard. We have already provided three brand new patrol vessels to Indonesia through grant-aid cooperation. And we are moving forward with the necessary survey to enable us to provide such vessels to Vietnam as well. And it is true that Japan provides practical support across the board, so when hard assets are sent out from Japan, experts also follow, together with instruction in the relevant technical skills. By doing so, the bonds between the people invariably become stronger. We also convey to the partners our sense of pride in committing ourselves to our duties. By cultivating a high degree of morale and proficiency and sharing our stringent training, buds of lasting friendship emerge.

Even if we look only at the three countries of the Philippines, Indonesia, and Malaysia, the number of people easily surpasses 250 who have learned from Japan about how coast guard operations should be conducted. In 2012, when we invited to Japan higher-ranking officials within the agencies enforcing maritime law in each of the five major ASEAN countries, all throughout the month-long training period, three members of the Japan Coast Guard were assigned to each person receiving training, with all of them living, eating, and sleeping together under the same roof. I understand that one participant from Malaysia said, ‘In Japan, the technical aspects of course, but also the high level of morale of each individual is superb. What I wish to take back home with me is this spirit.’ I feel that this trainee really understood what we were actually trying to convey.

Here in Singapore representatives of member nations of ReCAAP, which was created eight years ago, are on high alert 24 hours a day spotting piracy. Heading the ReCAAP Information Centre at present is a Japanese.

Recently, Japan has formulated new principles governing the cases in which defence equipment can be transferred to other countries. We are now able to send out Japan’s superb defence equipment, such as for rescue, transportation, vigilance, surveillance, and minesweeping, in cases in which appropriate control can be ensured, on the basis of a strict examination. Japan and the recipient country are first to forge a written agreement, and then to move the

whole process forward, bearing in mind that each is strictly examined and aptitude is checked by supervision.

Japan will combine various options within its assistance menu, including ODA, capacity-building by the Self-Defence Forces, and defence-equipment cooperation, to support seamlessly the capacity of ASEAN countries in safeguarding the seas. I have stated all that as a pledge to you.

I will now talk about my final topic for today, and that is about the new banner Japan has chosen to raise. We are in an era in which it is no longer possible for any one nation to secure its own peace only by itself. This is a view shared throughout the world. That is exactly why it is incumbent upon us in Japan to reconstruct the legal basis pertinent to the right of collective self-defence and to international cooperation, including the United Nations peacekeeping operations.

On my watch, discussion is under way in Japan. Japan's Self Defence Forces are at this very moment working hard to foster peace in South Sudan, only recently independent, under the flag of the United Nations mission there. Units from such countries as Cambodia, Mongolia, Bangladesh, India, Nepal, the Republic of Korea, and China are participating in this same mission. There are also a great many civilian UN staffers as well as members of NGOs from various countries. They are all partners with us in the sense that they are all assisting in South Sudan's nation building. Imagine now that civilians or NGO workers there, powerless to defend themselves, came under sudden attack by armed elements. Under the approach that the Japanese government has taken to date, Japan's Self Defence Forces are unable to go rescue these civilians enduring the attack. Is this an appropriate response into the future? My government is thinking hard about it, and a close consultation is under way within the ruling coalition parties. It is precisely because Japan is a country that depends a great deal on the peace and stability of the international community that Japan wishes to work even more proactively for world peace, and wishes to raise the banner of 'Proactive Contributor to Peace'.

Japan has for multiple generations walked a single path, loving freedom and human rights, valuing law and order, abhorring war, and earnestly and determinedly pursuing peace, never wavering in the least. We will continue to walk this same path, unchanged, for generations upon generations to come. I would like all of you gathered here today to understand that point in a way that is absolutely clear. Over what is almost now a

year and a half, I have worked to the very best of my ability to remake the Japanese economy into an economy that once more grows robustly, abundant with innovations. People call this 'Abenomics' and classify it as a type of economic policy. But for me, it is a mission that goes far beyond economic policy. It is nothing less than an undertaking to foster 'new Japanese' who will shoulder the responsibilities of the coming years.

And what are these 'new Japanese' about? They are Japanese who have lost none of the good qualities of the Japanese of days gone by. Japanese who loathe poverty and believe that universal values are found in the joy of hard work have, since the days when Asia was still said to be synonymous with being impoverished, continued to contribute untiringly to the construction of Asia's economies, in the belief that there is no reason why other Asian countries would be unable to accomplish what the Japanese themselves achieved. The 'new Japanese' are not different in the least from their fathers and grandfathers in the sense of rejoicing at each and every one of these selfless and unselfish contributions. If anything has changed, it is that women will be both the target recipients of, and the people responsible for, Japan's support and cooperation with increasing frequency.

Bear in mind that all three of the Japanese who helped create the civil code and the code of civil procedure in Cambodia were young female judges and public prosecutors. It was in August 2011 that President Benigno Aquino III of the Philippines and Chairman Murad Ebrahim of the Moro Islamic Liberation Front held their top-level meeting in Narita, Japan. It was March of this year that a comprehensive peace agreement was finally reached between the two sides. Two years from now, the Bansamoro local government will finally let out its first cry as a newborn. Now, to help support the locals, in what areas is the Japanese assistance team concentrating their investment? One area is having women gain enough ability to make a living. In Mindanao, Japan built a vocational training centre for women. What now echoes through Mindanao, where the sounds of gunshots and angry cries have disappeared, is the light whirl of sewing machines women are operating.

Given the fact that at the end of the day, the growth engine continues to be human beings and are likely to be women placed in an unfair and disadvantaged position, as has been the case until now, the 'new Japanese' are people

who spare no effort to improve the abilities of these people. The ‘new Japanese’ are Japanese who are delighted at the prosperity of Asia and the Pacific as their own personal source of joy and who discover values and a reason for living in making Japan a place of hopes and dreams for aspiring young people in the region. They are Japanese that could go beyond their national borders and have a broad-minded sense of self-identity.

Dozens of high school students come each year to Japan from China. They spread out all over the Japanese archipelago, spanning the nation north to south, and share their daily lives and their studies with Japanese high school students for a full year. Without exception, these young men and women are moved by the friendships they have made with their Japanese schoolmates, and go back to their home country shedding tears at the affection they have received from their host families. They head back calling Japan their second home. I want the ‘new Japanese’ to place even greater importance on that spirit of welcoming non-Japanese with such deep affection.

These ‘new Japanese’ are Japanese who are determined ultimately to take on the peace, order, and stability of this region as their own responsibility. They are people who possess the drive to shoulder the responsibilities of peace and order in the Asia–Pacific region, working together with our regional partners with whom we share the values of human rights and freedom. ‘Proactive Contribution to Peace’ – the new banner for such ‘new Japanese’ – is nothing other than an expression of Japan’s determination to spare no effort or trouble for the sake of the peace, security, and prosperity of Asia and the Pacific, at even greater levels than before, along with our comrades in the region and partners who share our motivation and values. Taking our alliance with the United States as the foundation and respecting our partnership with ASEAN, Japan will spare no effort to make regional stability, peace, and prosperity into something rock solid. In our future, the highway to peace and prosperity rolls out wide before us. Our responsibility to the next generation is to bring this region’s potential for growth into full bloom. Japan for the rule of law. Asia for the rule of law. And the rule of law for all of us. Peace and prosperity in Asia, for evermore. Thank you for your attention. Thank you very much.

Summary of the symposium on strengthening rules-based order in the Asia-Pacific (Canberra, 2 June 2014)

With the support of the Japanese Ministry of Foreign Affairs, the Australian Strategic Policy Institute (ASPI) hosted a symposium on *Strengthening rules-based order in the Asia-Pacific* at the Hyatt, Canberra, on 2 June 2014. The symposium was an invitation-only event, attracting senior figures from academia, government, the military and business. The aim was to investigate the prospects for strengthening order-building in a range of areas, focusing on rules and norms in the Asia-Pacific. Each panel comprised a chairperson to guide discussions and three subject matter experts to proffer opinions on specific aspects of policy issues in question.

Opening session

In his opening remarks, Peter Jennings, Executive Director of ASPI, said that the purpose of the symposium was to enhance Australian and Japanese cooperation in order to strengthen the rule of law in the Asia-Pacific region. Mr Jennings pointed to the two countries' considerable shared economic and financial interests, and stressed the importance of freedom of navigation, not only in the physical realms of sea, land and air, but also in cyberspace. Through enhanced cooperation, it's thought that Australia and Japan could work more efficiently to both prevent and moderate conflict in the Asia-Pacific. He noted that the symposium objective was to create achievable and implementable policy options to improve strategic efficacy in and between Australia and Japan.

Ambassador Yoshitaka Akimoto, Japan's representative to Australia, reiterated that the ultimate focus of the symposium was on strengthening rules-based order in the Asia-Pacific. He noted that the growing economies of China, India and many smaller nations in Southeast Asia would change the landscape of Asia-Pacific relations. Ambassador Akimoto spoke of the security situation in the East China Sea and South China Sea, and commented on the unilateral use of force and coercive tactics to alter the status quo. Shared strategic goals between Australia and Japan were acknowledged, as were intentions to deepen relations with surrounding neighbours who share common values.

Session 1: Shipping, fisheries and the maritime environment

Session 1 examined the nature and types of international legal instruments aimed at establishing rules for managing the oceans and their various uses. This exploration was particularly relevant in the light of a lack of support for and implementation of shipping, fishing and marine environment protection regimes at the national and regional levels. Mr Michael Kinley, then acting Chief Executive Officer of the Australian Maritime Safety Authority, chaired this session. He pointed to the uniqueness of Australian-Japanese relations: because we're both island nations and major trading partners, the partnership has a special sense of shared aims. He believed that the maintenance of current maritime conventions and the implementation of new conventions were the most effective way for Japan and Australia to ensure smooth and transparent maritime operations, both individually and in partnership. Drawing from the success and efficiency of trading operations between partners within the European bloc of the International Maritime Organization, Mr Kinley said that increased efforts in regional maritime cooperation in the Asia-Pacific would enhance trade and security across the region.

Professor Taisaku Ikeshima of the Lauterpacht Centre for International Law at the University of Cambridge and Waseda University explored the maritime legal order and how it could be improved. He noted that, while many domestic political, industrial and cultural elements differ between Japan and Australia, there are still many areas where interests converge to form a basis for leadership on issues of maritime law. It was suggested that Australia and Japan must identify approaches and tools to corral the diverse interpretations and applications across the region. It's essential to focus on the harmonisation of maritime rules and to identify minimum agreed standards to hold regional actors to the scheme. Professor Ikeshima proposed that an implementation action plan be developed and that a panel of experts could be established to monitor the progress of the regional maritime order.

Ms Joanna Mossop of Victoria University of Wellington considered the barriers to the implementation and adoption of international maritime conventions to underwrite a rules-based order. She noted significant cooperation in many areas but that progress in the protection of fisheries and the marine environment is desirable. The patchy

implementation of international agreements is due to three factors. First, divergent priorities across the region mean that states must find mutual interests through continued dialogue on priority issues. Second, subscription to international maritime conventions frequently arouses sensitivities about sovereignty. Third, variances in administrative, financial or technical capacity challenge the implementation of international maritime obligations. Ms Mossop believed sovereignty and marine boundary disputes in the Asia–Pacific to be the single biggest impediment to developing a rules-based order and that initiatives to build confidence, trust and capacity, and adequate dispute resolution mechanisms, will be essential.

Professor Stuart Kaye of the Australian National Centre for Ocean Resources and Security at the University of Wollongong explored the legal instruments available to provide order in the maritime environment, offered some reasons why they have such poor take-up and made suggestions on how to encourage their use. He examined a broad range of baseline environmental conventions and compared the international use of the instruments to that of 10 littoral Asian states, noting a lesser take-up in the region and great variation along the north–south axis. Professor Kaye proposed that a community of maritime experts from across the region be assembled to work collaboratively on maritime challenges. He noted that ambit maritime claims do nothing to engender a spirit of cooperation in the region, and that the separation of intractable territorial claims from the desire to widen marine protection should be a priority to encourage successful cooperation.

The ensuing discussion focused on opportunities for international collaboration. Participants noted that room for dialogue and an appetite for collaboration exist at the working level, but that politics and sovereignty issues keep getting in the way. Some suggested that we build from a strong bilateral basis and expand cooperation from there to embrace more regional actors.

Session 2: Promoting rule of law in conflict-affected states

Session 2 examined opportunities for Japan and Australia to cooperate in the Asia–Pacific region in promoting the responsibility to protect (R2P), conflict prevention and peacekeeping engagement. The panel discussion was opened by Professor Gareth Evans of the Australian

National University. He described the range of prevention activities that aimed to avert the outbreak, continuation and recurrence of conflict. Respect for the rule of law meant the non-arbitrary exercise of state power, ensuring that state institutions are subject to the law, and guaranteeing that the law is applied to all people equally. Professor Evans held that it's important to get law, justice and governance issues right if conflict is to be prevented.

Dr Noel Morada from the Asia-Pacific Centre for the Responsibility to Protect at the University of Queensland described the development of the norm of R2P. Adopted in 2005, R2P identifies the primary responsibility of states to protect their populations against four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing. The first two pillars—which focus on prevention and international assistance for capacity-building, respectively—were much less controversial in the ASEAN context. In Southeast Asia, promoting R2P focuses on the norm as a friend of sovereignty, not an enemy, and one that also enhances the legitimacy of the state. This includes regional capacity efforts within the region—for example, building awareness and constituencies of local champions, developing national architectures to prevent mass atrocities, and convincing governments to conduct training and education for government officials. Dr Morada suggested that Japan and Australia could contribute in building capacity in the region around pillar 2, which includes developing action plans to develop good governance and the rule of law, security sector reform, and creating and enhancing national institutions for the protection of human rights, as well as focusing on human development, conflict prevention, and peace building in conflict areas.

Dr Toshiya Hoshino from Osaka University discussed conflict prevention, with a focus on conflict analysis, the role of the UN Security Council, human elements in international norms and the concept of coexistence. In any effort to prevent conflict, it's important to understand the root causes of the conflict and the context. He suggested that, in contrast to the focus on human rights efforts in the 20th century, the 21st century is about emphasising human elements in international norms (such as R2P). Discussions now focus more directly on the security of the human being. Dr Hoshino suggested that the UN Security Council has an important role to play in creating norms and authorising action. He suggested that Australia and Japan could use their

time as non-permanent members of the Security Council to further develop norms and policies in support of conflict prevention efforts.

Ms Lisa Sharland from ASPI explained developments and trends in UN peacekeeping and the opportunities they present for Japan and Australia to cooperate in the region. Military personnel from both countries are already working alongside one another in the UN mission in South Sudan. Several countries in the Asia-Pacific region have recently signalled their intention to increase their engagement in UN peacekeeping, including Indonesia, China and Vietnam. These developments present several potential areas for Japan and Australia to cooperate in the region, including in supporting regional peacekeeping training efforts (for military and police), assisting countries that are starting to contribute, and deepening political engagement on peacekeeping policy through the UN Security Council and General Assembly.

During the discussion that followed, several participants noted opportunities for Australia and Japan to assist countries in the region (specifically, Burma, Fiji and Indonesia) with their peacekeeping engagement efforts.

Session 3: Sustaining rules-based order in international trade and economic cooperation

Session 3 explored international trade and economic cooperation as the basis of significant opportunities for continued growth across the Asia-Pacific. The session was chaired by Professor Peter Drysdale AM of the Crawford School of Public Policy at the Australian National University. He first noted that, while economic rules are central to relations between states in the Asia-Pacific, those relations are dominated entirely by the global rules-based order that governs the trade and economic system. The system under which international trade arrangements have been built has underwritten post-war growth, prosperity and participation in the Asia-Pacific. Professor Drysdale noted that the international trading system has both economic and political aspects. While there are concerns that the World Trade Organization (WTO) hasn't moved forward on new issues or responded well to the emergence of new powers, it has provided powerful protection against both economic and political forces that might have encouraged deep protectionism through the global financial crisis. A plethora of bilateral trading agreements diverge from the core

principles of the global regime in their preferentialism, but they have little impact on the system because they have so far been limited. The tasks now are to determine where the global trading system is headed in the light of mega-regional agreements such as the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP) and to understand how the global and regional systems will work together.

Dr Joshua Meltzer of The Brookings Institution explored how regional economic and trade policies could be harmonised to support international economic cooperation. He recognised that peaceful development in the region will hinge on positive US-China bilateral relations and that the two countries' economic relationship will contribute importantly to the development of regional norms. While this relationship is recognised as a source of stability, it's also a noted point of political tension and irritation, and there's a narrative in Washington that China no longer plays fair in the international trading system. Despite challenges, opportunities to develop foundational norms in the region remain. China's new program of significant domestic reform can be used to open the way for international cooperation. Trade agreements are a paradigmatic example of rule of law at the international level, so the TPP and RCEP are both opportunities to get trade and investment rules right. Dr Meltzer noted that the WTO dispute settlement mechanism has been a huge success with buy-in across the regional community.

Professor Takashi Terada of Doshisha University examined how the rules-based order could support free trade and explored opportunities for liberalising regulatory frameworks. He provided a strong overview of Japan's historical prosecution of bilateral free trade agreements, of which it has concluded 12 over 15 years, demonstrating the agreements' consistency with the TPP's rule-making coverage. The recently concluded bilateral trading agreement between Japan and Australia was the most recent new tool for developing positive regional norms. Professor Terada maintained that Australia and Japan should jointly urge more RCEP members to join the TPP, so that the TPP can overcome its weakness of small economic scale.

Mr Richard Andrews of the G20 Taskforce in the Department of the Prime Minister and Cabinet explored the G20 as a contributor to rules-based order in the Asia-Pacific. He recognised the unique position Australia maintained

by hosting the G20 in November 2014 immediately after the APEC Summit and the East Asia Summit, where collaboration on economic issues was also on the agenda. He noted that, unlike the G8, the G20 has a large representation in the region and that the challenge lies in developing a regional voice that reflects its weight in global affairs. The contributions of the G20 as a global forum will be contextually related to the international environment in which regional cooperation takes place. Mr Andrews noted that the G20 is essentially an economic forum but that it has the potential to produce beneficial spillovers into other areas, such as conversations to support stability in the Asia–Pacific. It has sought to improve global economic resilience, help countries to find shared solutions to shared problems, build trust through decision-making processes and interact positively with other regional institutions.

Discussion of Japan’s and Australia’s promotion of norms in the RCEP and TPP followed. Participants pointed out that a number of countries in the region are attempting domestic reforms that will ultimately support global agreements on trade, and that will have to be complemented by international efforts.

Session 4: Cyberspace and internet governance

Session 4 explored opportunities for Japan–Australia cooperation in the cyber commons. The panel discussion was moderated by Dr Tobias Feakin, Director of the International Cyber Policy Centre at ASPI. Dr Feakin recognised cybersecurity as part of the ‘core business’ in traditional security, in contrast to the view that it’s part of non-traditional security. Referring to ongoing discussions in the international community about how much the internet should be controlled by states or through multi-stakeholder processes, he spoke of a need to avoid the ‘Balkanisation’ of the internet. The Asia–Pacific is a particularly interesting arena for cyber competition, and one in which there’s much potential for Japan and Australia to cooperate to strengthen cyber norms and practices.

Dr Hitoshi Nasu of the College of Law at the Australian National University considered how the geopolitical context affects the development of a regional legal framework for cybersecurity and how cyber capabilities will challenge existing international law. Cyberspace is a new domain for

militaries, and many are still reconciling the technologies with their traditional structures. On cyber capabilities and preparedness in the Asia–Pacific, Dr Nasu saw marked variation across the region. While states are reluctant to commit to rules, there’s a need to develop a capacity through international law so that cybersecurity problems, particularly those posed by non-state actors, can be managed effectively. He spoke of a need for militaries and states to engage in meaningful dialogue on cyber capabilities, particularly defensive capabilities, and recommended the UN Group of Government Experts’ decision as a guide for a priorities list.

Ms Maeve Dion of the Department of Law at Stockholm University considered cyber norms. What do they look like? How can or should states shape them? What kinds of regulation or intervention are needed to moderate norms and practices in the cyber realm? She recommended that the discussion on cyber issues be deepened to reflect the variety of meanings that different cyber actors give to similar terms currently in the cyber lexicon; different meanings can result in different thresholds for action in areas of justice, foreign affairs, defence, corporate cybersecurity, and so on. Ms Dion believed that members of the international community need to identify their own cyber issues of concern much more clearly before common interests can be identified and managed efficiently on a bilateral or multilateral basis. She proposed that appropriate models for tackling cyber issues can be found in existing public international law and cooperative international efforts in security and disaster response (beyond traditional defence concepts).

In the discussion that followed, participants noted that the cyber domain is a new area of operations for most governments and militaries, leading to difficulties in knowing where cyber matters fit in the legal perspective. The Asia–Pacific has some unique cyber challenges and conflicting views in almost every area of cybersecurity. On a positive note, working-level dialogues across Asia have mostly been kept open despite political tumult. There was broad consensus that cooperation could be enhanced by capitalising on existing national cyber strengths. Japan and Australia are seen to be strong supporters of the multi-stakeholder model of internet governance, and that common interest is proposed as a foundation on which to strengthen the rules- and norms-based cyber order.

Session 5: Emerging challenges in airspace and outer space

Session 5 explored issues related to airspace and outer space. The session was chaired by Air Marshal John Harvey AM (ret'd), who began by noting how both domains are critically important for economic and human wellbeing, and that processes in these commons can be easily disrupted. The most significant and imminent problems involve tensions associated with overlapping air defence identification zones in the region, the build-up of space debris and, seemingly, a new 'space race' between China and the US. He mentioned the rise of unmanned aerial vehicles ('drones'), and noted that their proliferation raises questions about whether current laws covering their use—at domestic and international levels—are adequate for the protection of national security.

Group Captain Dr Ian Henderson AM of the Military Law Centre and Asia Pacific Centre for Military Law spoke on the contested regional airspace commons, and offered suggestions for protecting the openness and stability of the commons and for international agreements needed to strengthen its governance. He argued that many issues and conflicts between states over airspace and outer space stem from the lack of universally accepted definitions of some aspects of those commons. In the first instance, definitions are needed for the limits of airspace and outer space and for air defence identification zones (not all states define which activities can occur in various classes of airspace). Much of the legal framework for airspace has its roots in the laws of the sea; however, confusion has arisen about aspects of

contiguous and exclusive economic zones that apply to the sea but have very limited application to the airspace above it.

The discussion that followed explored cooperation in the outer space domain between Japan and Australia. Japan leads the Asia-Pacific Regional Space Agency Forum, and Australia contributes significantly. Participants suggested that the Australia-Japan relationship could be extended to cooperation on satellite technology. They recognised unmanned aerial vehicles as one of the more pressing issues in the aviation space today because drones pose a challenge to civilian privacy as well as to military and state processes.

Background paper

A rules-based order for the Asia-Pacific: identifying opportunities for Australia–Japan cooperation

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Australia and Japan have much in common. Situated on similar meridians of longitude, both are island nations that consequently share a strong interest in maritime affairs. The two countries are major trading partners. Both are responding to the changing power dynamics in the Asia–Pacific region, particularly the rise of China, from the perspective of being close allies of the US, although Japan is geographically much closer to China than is Australia. Both are democracies strongly committed to the rule of law domestically and to a rules-based order internationally. The common prioritisation of the international rule of law is more than an abstract ideal; it follows from a belief that the rule of law is an important prerequisite for sustainable prosperity and security.

Why are rules needed?

A rules-based international order provides a standard against which one's own behaviour and that of other states can be measured. This creates shared expectations about how other states are likely to conduct their affairs. The benchmarking of acceptable and non-acceptable ways of conducting security, political and economic affairs gives states a basis on which to anticipate and interpret the actions of others. International law thus provides 'rules of the game' by which bilateral, regional and global relations can be conducted and by which to mitigate the effects of the differences that inevitably arise during the course of any relationship.

International institutions are underpinned by international law insofar as international organisations are established by treaty. Such treaties contain substantive law but also specify mechanisms by which to enhance their effectiveness and resolve disputes through peaceful means. Since the creation of the United Nations in 1945, the global rules-based order has prohibited the use of military force to pursue national agendas and obliges states to resolve their disputes through peaceful means.

It offers a catalogue of ways for doing so, from bilateral negotiations (the least formal) through to conciliation, arbitration, mediation and judicial settlement. The selection of a dispute resolution mechanism is an art as much as a science, insofar as there's no one method that's appropriate for every dispute and welcomed by every player. This helps explain why the International Court of Justice has jurisdiction to hear only cases to which states have consented. The WTO is unusual in having a compulsory system of dispute resolution.

A core principal of the rule of law is that all are equal before the law. A rules-based international order therefore tends to be more stable than a political order based on naked power.

Although a rules-based international order is important, it has some limitations. First, as in any system of law, its subject matter and even the content of its rules may to some extent reflect the norms and preferences of those most influential in its creation. This is significant insofar as states that didn't contribute to the shaping of specific legal regimes may regard those regimes as less legitimate for that very reason. It's difficult to achieve compliance with international law through military force, although military force may sometimes play an enforcement role. Legitimacy is therefore an intrinsic characteristic of a genuine rules-based international order.

Second, the issues being addressed by policymakers inevitably change over time, which means that the law must necessarily adapt, grow and expand if it's to remain relevant to changing circumstances; international law can be regarded not only as an entity but as a process. A true rules-based international order must therefore contain an optimal balance between change and stasis: too much change to the rules, and the order can no longer be said to be based on those rules; too little change relative to the context in which it functions, and the order will become brittle and susceptible to fracture. Managing that balance requires careful judgement by those assuming leadership roles in the order.

Third, because the international political system is 'anarchic' (that is, without a supranational authority) at both the regional and global levels, there are systemic constraints on a rules-based order. Most fundamentally, it's more difficult to enforce laws against the most powerful within the regional or global system than it is for the most powerful to enforce law, or to ensure that law is enforced, against others. This is to a certain extent inevitable, but if law becomes no more

than a synonym for power, the basis of the international order is no longer law, but power. Given the integral nature of international law and contemporary world politics, such an outcome would be likely to detract from the legitimacy not so much of the legal system itself, but of the regional or global power that refused to subject its policies and actions to the system of law.

Why do countries participate in a rules-based order?

States sign up to a rules-based order because they perceive it as in their interests to do so. This is most fundamentally a practical question: international law is integral to international interaction of every type, so it's simply not viable for a state wishing to benefit from trade and transboundary exchanges to remain outside the system. Many transnational issues can't be resolved unilaterally, so states need to coordinate their own policy preferences with those of others and with those over whom they exercise jurisdiction in order to address the issues as effectively as possible.

States also sign up to a rules-based order because it provides remedies and mechanisms through which to obtain remedies in the event that another state or international actor breaches the rules to which it has agreed. Business may be attracted to a country in which foreign direct investment is buffered from potential risks by law; in the same way, regional trade and investment will be more likely to grow in an environment in which the 'rules of the game' are established, what are perceived to be the reasonable rights and obligations of each party are balanced, one's commercial and financial interests are protected, and the rules are enforceable.

States abide by rules because they perceive it as in their interests to do so. This may sometimes be because they feel an obligation to comply with the rules even though the outcome would otherwise not be in their immediate interest. Policymakers may wish to avoid sanctions for noncompliance, or they may have already aligned their practice with the law so that the question of whether or not to comply does not arise in practice.

However, a rules-based international order is more likely to last over the long term if states are complying not only out of a sense of obligation but because they believe that this will produce an outcome in line with their interests as they see

them. In theory, this will always be the case because states become bound by specific rules by consent. In practice, the correlation might not be as direct as the theory suggests. For example, the rules may pre-date the sovereign existence of the state or may be combined as packages of norms and rules of which a country must accept all or none.

How can compliance with existing rules be strengthened?

Below the highest political questions, such as those about the use of force, a potentially more fruitful question to ask is 'Why do states sometimes fail to comply with international law?' In most cases, the reason isn't wilful disobedience but a lack of capability, clarity or priority.¹ Rates of compliance may be increased by enhancing transparency in the regime for measuring the parties' performance. Self-reporting is common in international legal regimes, although it imposes a burden on parties. Improved compliance with reporting regimes, as well as compliance with substantive provisions, may be achieved through clarifying and simplifying the requirements and through providing technical and financial assistance, training and institutional support to build capacity where needed.²

The effect of such measures is to tighten the congruence between legal orders at the global, regional, national and subnational levels. Public international law is primarily a state-based system of law in which national governments both create the law and assume responsibility for implementing it. However, most states adopt a 'dualist' approach to the domestic implications of international law, meaning that the creation of new international law doesn't automatically alter the municipal, or domestic, legal system. There may be institutional impediments or delays in implementing international law commitments at the domestic level that might or might not stem from a lack of political will at the national level.

Dispute resolution can also increase compliance. One of the most significant developments in the international legal order in the late 20th and early 21st centuries was the growing number of international courts and tribunals. As a region, Asia has been known for its reticence to use formal dispute resolution processes; its leaders generally prefer to address issues through diplomacy rather than in the courtroom.

However, there's been a shift in recent years. The International Court of Justice has heard cases between Singapore and Malaysia³ and between Australia and Japan.⁴ Both China and Japan currently have judges on the bench. China has been active in WTO dispute settlement cases over the past decade. The Philippines has initiated arbitration under the auspices of the International Tribunal for the Law of the Sea.

For those states operating within a rule-of-law framework, initiating litigation isn't necessarily assumed to be an unfriendly act. Most international litigation takes place among states that are working closely together for the simple reason that issues are more likely to arise where relationships are intense. Formal methods of dispute resolution, such as by the International Court of Justice, nevertheless tend to work best where all parties to the dispute are willing to submit their differences to the jurisdiction of the court and accept whatever outcome is delivered through that process.

This option might not be politically viable if the domestic price of a loss is too high for a government to take such a risk. Governments have been found to submit territorial disputes to judicial dispute resolution mainly when they're willing to compromise but public opinion prevents them doing so and an external ruling provides political 'cover' for what would otherwise be a controversial settlement.⁵

Arbitration and conciliation are forms of third-party dispute resolution that are less threatening to national sovereignty than judicial settlement. Compulsory conciliation resulting in a nonbinding recommendation may suggest paths forward while protecting the sovereignty of the players and may be particularly useful where there's ambiguity about a point of law.⁶

However, it's worth bearing in mind that international law doesn't require a state to resolve a dispute. In instances in which no party to a dispute could conceive of compromise and so no mutually acceptable resolution is possible, the most viable option is sometimes to find mechanisms by which to manage or to set aside the dispute without resolution in order to focus on cooperation elsewhere.

Promoting a rules-based regional order

Speaking at the 2014 Shangri-La Dialogue, Japanese Prime Minister Shinzō Abe emphasised the importance of the rule of law and its connection to security and prosperity: 'Peace and prosperity in Asia, forevermore. Japan for the rule of law. Asia for the rule of law. And the rule of law for all of us.'⁷

Abe's speech made little mention of China, but his message was received by the Chinese Government as provocative and aggressive, 'portraying China as an imaginary enemy to the peace of the whole region'.⁸ The speeches of Abe and US Defense Secretary Chuck Hagel and the reaction of China have prompted considerable discussion.

Abe's rule-of-law initiative can't be dissociated from either the territorial disputes in the East and South China seas or from the US–Japan strategic alliance. Contributing to the maintenance of a rules-based order aligns the initiative with the US's determination to ensure 'that the Asia–Pacific remains an open, inclusive, and prosperous region guided by widely accepted rules and standards and a respect for international law'.⁹ In the words of Steve Chabot, chairman of the US Committee on Foreign Affairs' subcommittee on Asia and the Pacific:

The United States presence in the Asia–Pacific is built on promoting regional stability, fostering respect for international law, advancing respect for human rights, and maintaining freedom of navigation and unhindered lawful commerce in the maritime regions. These objectives are fundamentally hinged on the United States' alliances with Japan, South Korea, Australia, Thailand and the Philippines; our resilient relationships with Taiwan and Singapore; and our evolving relationships with Vietnam and Indonesia.¹⁰

Whereas the US used to take no position on any of the sovereignty claims or territorial disputes in Asia, the Obama administration has moved to more directly challenge the basis of China's claim to nearly the entire South China Sea via its 'Nine-Dash Line'. US Assistant Secretary of State for East Asian and Pacific Affairs, Danny Russel, noted in congressional testimony earlier this year that any Chinese claim not based on claimed land features 'would be inconsistent with international law'.¹¹

Australian Foreign Minister Julie Bishop stated in June 2014 that Australia 'will persist with calls for tensions [in the South and East China seas] to be resolved in accordance with international law and without the use of coercion or force to alter the status quo', but that Australia 'isn't taking a view on the disputes themselves'.¹²

Maritime disputes in the region have a long reach, affecting regional issues that aren't immediately related to the disputes (consider search and rescue, for example). In selecting specific issues on which Australia and Japan could cooperate in

promoting a regional rules-based order in the Asia-Pacific, it would be well to bear in mind that the closer the specific issue comes to having direct implications for the territorial disputes, the more complex and delicate it will be to pursue, the more it's likely to prompt a reaction from China, and the more the US and Australia can be expected to tread with extreme caution.

On the US policy approach to the Senkaku/Diaoyu crisis from September 2012 to April 2013:

US policy-makers were aware that they faced a delicate balancing act: they would have to communicate sufficient resolve so as to discourage Chinese aggression against Japan, but also had to avoid signaling unconditional support to Tokyo, lest that be interpreted by Japan as a green light to take potentially provocative or reckless actions that would increase tensions and possibly pull the United States into a conflict.¹³

Australia, like the US, has an important relationship with China, and Australian officials will be likely to be aware of the potential to be manoeuvred to the advantage of another player or for Australia to be subject to attempts at wedge politics.¹⁴

Abe's agenda for promoting a rules-based regional order was far broader than the rule of law at sea. However, it's certain that any cooperation between Japan and Australia to promote that order will be viewed by the Chinese Government and by observers of the region in a geopolitical context, of which the recent elevation of Australia-Japan security cooperation is one component. It's certainly the case that any possible implications of those initiatives for territorial disputes or for major issues in US-China relations (such as cybersecurity) won't go unnoticed.

How should Japan and Australia select areas for cooperating to promote a rules-based regional order?

Identifying and seizing potential opportunities for Australia-Japan bilateral cooperation to promote the rule of law in the region aligns with the recognised strengths of middle-power diplomacy. A valuable diplomatic contribution of middle powers is often that of offering intellectual and political energy. This can take the form of planning, convening and hosting meetings, setting agendas and priorities, finding practical solutions to specific problems in existing regimes or those under negotiation, or any combination of those activities.¹⁵

The essence of middle-power diplomacy is thus often the exchange and nurturing of ideas and their gradual refinement through studies and multi-track diplomacy.

Middle-power leadership is often most effective when it takes the form of 'niche diplomacy'. That is, the middle power doesn't try to emulate the breadth of focus of a great power but concentrates its energies where those efforts can be expected to yield the most valuable return. This raises a question about the basis on which to make the necessary selection of issue areas. Here are some suggested, overlapping, areas:

- **Those that will advance broad objectives, interests, values and norms common to both Japan and Australia.** Prime Minister Abe set out a list of issues in his Shangri-La speech (see Appendix A on page 20), but that list is presumably not exclusive and not all the ideas on it would necessarily be deemed appropriate by Australia. What lies at the intersection of our respective priorities?
- **Those that are compatible with, or more proactively contribute to achieving, the objectives of the US, as a senior ally of both Japan and Australia, in the region.**
- **Those of direct relevance to the region, other than large geopolitical questions.** What are key needs of the region as a whole, as well as of specific countries in the region?
- **Those that are forward-looking, whether in relation to the human or the natural world.** What's our region going to look like 5, 10, 20 or 50 years from now? What will best place the people of the region to prosper in that world?
- **Those for which both countries have the necessary and complementary expertise.** Are we the best positioned and equipped to be taking this issue forward?
- **Those for which the outcomes of cooperation are likely to be greater than the sum of the individual contributions.** Could the initiative be achieved readily without bilateral cooperation or pursued more effectively by either state taking the matter forward with a different partner?
- **Those that have reasonable prospects of success.** There may be many initiatives whose successful achievement both sides would welcome. Incremental, realistic steps are those most likely to yield a positive outcome.

- **Those likely to yield a public diplomacy dividend for Japan and Australia.** Public diplomacy is diplomacy by a government directed at the public of another country. It's a concept closely related to that of 'soft power', insofar as it captures the extent to which the public holds favourable views of another country. Japan might not always have reaped the degree of soft-power benefit warranted by its regional aid efforts, which have been considerable and have benefited recipients.¹⁶

This suggests that Japan may do well to use not only the ideological ideal of the rule of law but specific rule-of-law initiatives to counter Chinese rhetoric emphasising Japan's militaristic past. China appears to have enhanced the public diplomacy effect of its aid efforts by giving other regional recipients what they perceived they needed.¹⁷ This suggests the value of engaging other regional players in the early stages of any bilateral rule-of-law initiative and of listening closely to their priorities, rather than determining the needs of others in the region in a paternalistic manner.

Conclusion

Australia and Japan are well placed to cooperate in promoting a rules-based order in the region at a time of renewal in the bilateral relationship. Both are fully committed to the rule of law at both the domestic and international levels and both have deep reservoirs of legal and other relevant expertise. Japan's considerable history of engagement with international law is worth a special mention: the Japanese Society of International Law was established in 1897, nine years ahead of the American Society of International Law.

Prime Minister Abe's rule-of-law initiative aligns closely with US and Australian priorities in the region. The rule of law can be used to reconcile or contain points of difference between players. To be effective in enhancing prospects for peace and prosperity, it is vital that specific initiatives chosen for bilateral cooperation be conceived of, and executed, in such a way that the two countries are able to use their considerable diplomatic and legal capacity to work alongside other actors in the region, as appropriate, for the benefit of the region as a whole.

Appendix A: Priorities identified by Prime Minister Abe in his Shangri-La speech

- Trans-Pacific Partnership (TPP)
- Oceans and skies as global commons
- Freedom of navigation
- Freedom of overflight
- Code of Conduct in the South China Sea between ASEAN and China
- A maritime and air communication mechanism between Japan and China to prevent unexpected situations (there was agreement in 2007 to create one¹⁸ but this hasn't led to the operation of such a mechanism)
- Human rights—freedom of thought and religion and checks and balances to political systems
- Increasing the number of parties to the Arms Trade Treaty
- Reconstructing the legal basis pertinent to the right of collective self-defence and to international cooperation, including UN peacekeeping operations. If civilians or NGO workers come under sudden attack by armed elements, should Japan's Self-Defence Forces be able to go to rescue them?
- Women will be the target recipients of, and the people responsible for, Japan's support and cooperation

Forums and mechanisms

East Asia Summit

Prime Minister Abe urged the further enhancement of the EAS as the premier forum taking up regional political and security issues. Specific actions by which to extend the scope of the EAS might include:

- Developing a framework within which to make military budgets transparent and keeping military expansion in check
- Creating a permanent committee of permanent representatives to ASEAN and preparing a roadmap to bring renewed vitality to the EAS
- Making the EAS, the ARF (meeting at foreign minister level) and the ADMM+ (defence minister level) function in a multilayered fashion.

ASEAN

Japan will support ASEAN members to ensure the security of the seas and skies, freedom of navigation and overflight. Specifically Japan will:

- Build on existing initiatives, including Japanese support and training for those enforcing maritime law through coastguard operations and the ReCAAP information centre, and from now on, where appropriate controls can be ensured, to export Japanese defence equipment for such purposes as rescue and minesweeping.
- Support official development assistance, capacity building by the Self-Defense Forces, and technology cooperation.

Notes

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Background paper

Economic cooperation in the Asia–Pacific and sustaining the rules-based order in international trade

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Introduction

The rules-based global trading system has underpinned huge growth in trade and the integration of economies that have signed on to it, whether they are political allies or not—and nowhere more than in the Asia–Pacific region. The postwar economic architecture has produced much closer interactions across borders and, arguably, a period of relative peace and prosperity the like of which hasn't been seen before. Yet the global trading system faces challenges that not only have the potential to undermine economic cooperation between countries, but may also have implications for geopolitical relations.

The General Agreement on Tariffs and Trade (GATT), which later became the WTO, is the most important element of the global rules-based order governing economic exchange. It was created in the aftermath of World War II along with the other Bretton Woods institutions, such as the International Monetary Fund and the World Bank.

The GATT and WTO made possible the rapid development of many countries, which were able to transform their economies through trade growth. Global trade has grown at twice the rate of output since the 1950s. Faster trade growth was especially the case in East Asia, where a commitment to open policies and integration into the global market was critical in lifting hundreds of millions out of poverty and making East Asia the world's most dynamic economic region. From 1980 to 2012, the economy of East Asia grew at an average rate of 7.2% a year.¹

The multilateral trading system operates under a set of rules and principles that are respected by those that are signed up to the system. The rules provide confidence that countries will not pursue short-term self-interest at the expense of others. Without those rules, which underpin and enforce cooperative behaviour, countries choose policies that are suboptimal for them and their trading partners. International trade is

characterised by the prisoner's dilemma, which delivers lower payoffs for each country in the absence of cooperation. An extreme example is the Smoot–Hawley Tariff Act of 1930, which raised US tariffs in response to the Great Depression and halved US trade, further prolonging and deepening the depression.² The collapse of the League of Nations coincided with retaliation against US protectionism, and there were significant geopolitical consequences. The collapse of global trade meant that imperial conquest rather than trade was seen as the preferred method to secure access to raw materials by Japan and the other 'dissatisfied powers'.³

The experience of the interwar period, including the collapse of global trade, led to the establishment of one of the most successful and important international institutions, which has underpinned the liberal international order with rules and principles, and the multilateral trading system. Regional and international trade could not and did not develop and flourish without that robust framework of commitments to cooperative policy behaviour.⁴

It's that system that has allowed economic interdependence to grow between countries committed to it, and economic interdependence has helped constrain conflictual political relations. Further rule- and order-building beyond trade—in investment and non-economic arenas—would be less likely to succeed without the underpinning of a robust and liberal international trading system.

This paper outlines the importance of a rules-based global trading and economic system for global economic prosperity and political stability. It examines the strengths and weaknesses of the system, as well as the major risks it faces today, and how the system affects geopolitical interactions.⁵

The primacy of economics in East Asia

The creation of the rules-based trading order allowed disputes and disagreements among trading partners to be resolved within the agreed rules and system without spilling over into foreign or security policy.⁶

The system meant that countries could open up their economies with confidence that they would be far less open to economic damage by protectionism or discriminatory exclusion from access to international markets. It has also meant that developing countries have an avenue for development based on trade and some ability to shape the rules and outcomes in

the global system. In committing to the rules and principles of the global trading system, governments accepted significant constraints on using trade policies for strategic economic or non-economic gain, thus creating a vastly more positive nexus between trade and economic policies and political security policies than there was before World War II.

Peace and stability are not automatically secured by increased interdependence, but deep commercial ties between countries give many (not least those with direct commercial interests at stake) a great stake in peace and stability.⁷ Those countries that have signed up and committed to the liberal international order have managed to have economic forces largely determine the scale and structure of trade and, to an extent, bypass issues of geopolitics.

Diversity in the Asia-Pacific region (which includes economies at different stages of development, with different economic and political systems, and varying degrees of political amity and enmity between them) has led to a particular character of regional economic cooperation and integration.⁸ Within the Asia-Pacific, East Asian economic integration is on par with that of Europe, where economic integration has been institution-led.⁹ East Asian economic integration has been market-led, and the major liberalisation efforts in the region have been unilateral and non-discriminatory, not preferential and discriminatory.

The proliferation of preferential free trade agreements (FTAs) that started a decade ago in East Asia hasn't significantly diverted trade or investment away from non-members, mostly because trade barriers are already low except in a few sensitive sectors (mostly agricultural) that FTAs have failed to liberalise to any significant degree. Non-discriminatory trade policies (as well as preferential trade, which hasn't delivered significant discriminatory outcomes thus far) are the reason why economic relationships have developed despite political differences. What underpinned the unilateral and non-discriminatory opening up of markets in East Asia was confidence in the global trading system and the need for development.

Hot economics, cold politics

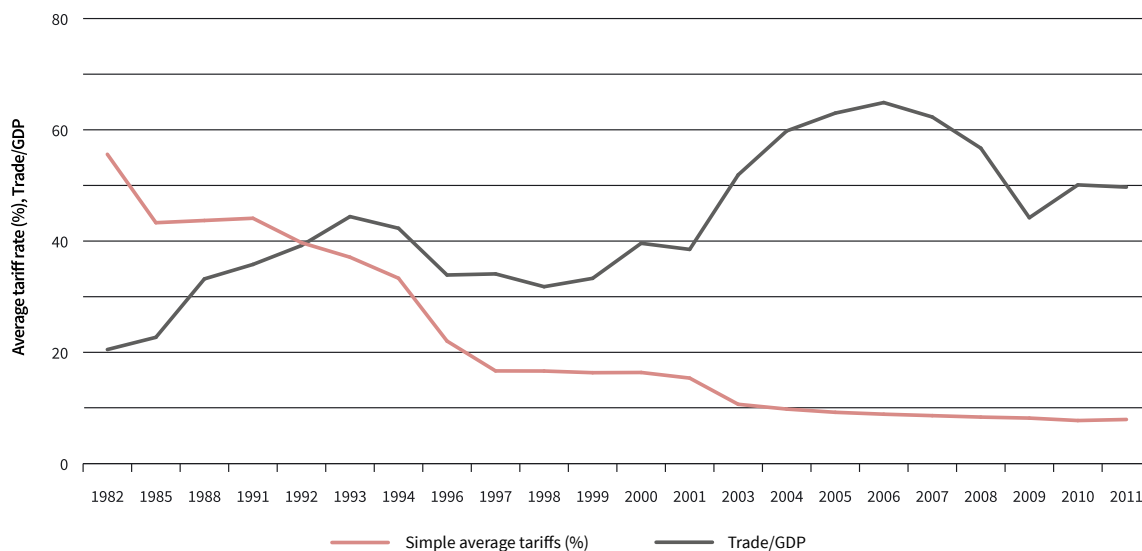
Two of the largest three global trading relationships are those between China and the US and between Japan and China. The third, the US-Canada relationship, is nested in a strong regional agreement, the North American Free Trade Agreement.

China's deep economic interdependence with Japan and the US isn't the result of bilateral or regional agreements but of the unilateral opening of the Chinese economy to the global economy under the multilateral system.¹⁰ The result is bilateral relationships that have been economically led instead of led by bilateral economic institutional or political arrangements.

China's accession to the WTO in 2001, and its 15-year unilateral liberalisation in the lead-up to that, had a profound effect on global trade, China's economic and political interaction with other countries and the shape of the global economy.¹¹ Prices in China and the rest of the world had already converged (a key measure of integration into the world economy) by the eve of China's WTO accession thanks to its earlier tariff and other liberalisations, but the 'confidence' effect of joining the WTO saw its trade and investment shares increase rapidly after its accession (Figure 1).

The confidence effect and China's commitment to the same global rules and principles that bound other countries were the reasons why trade between Japan and China, as well as Japanese investment into China, grew at a record pace throughout the 2000s, even while political relations waxed and waned over that period, sometimes deteriorating seriously.¹²

For example, from 2001 to 2006, political relations deteriorated and bilateral state visits between Japan and China were suspended. There were large-scale protests in China against Japan in 2005, including an attempted public boycott of Japanese goods. Yet trade between the two countries and investment from Japan into China grew at record pace. The growth in interdependence, and the constraints it put on politics, were never more evident than in 2006 when Prime Minister Abe—long known as hawkish towards China—made China his first state visit to 'break the ice' in bilateral relations. It also resulted in the six subsequent Japanese prime ministers avoiding visits to the Yasukuni Shrine, the main factor in the poor relations during the prime ministership of Koizumi from 2001 to 2006. The visit by Abe to Yasukuni in 2013 in his second time as prime minister, and when he appeared to have much more political capital, has reversed that course politically, but the China-Japan economic relationship hasn't been derailed.

Figure 1: Chinese average tariff rate and trade to GDP ratio, selected years

Sources: Author's calculations based on WTO statistics database (<http://stat.wto.org/>); UNCTADSTAT database (<http://unctadstat.unctad.org/>); World Bank, *China engaged: integration with the global economy*, Washington DC, 1997; NR Lardy, *Integrating China into the global economy*, The Brookings Institution, Washington DC, 2002; T Rumbaugh, N Blancher, *China: international trade and WTO accession*, IMF working paper WP/04/36, International Monetary Fund, 2004.

The China–Japan relationship is the most striking example of economics dominating politics because of the scale and depth of economic relations and the unresolved history and political mistrust between the two countries. And, importantly, it explains why the territorial dispute over the Senkaku/Diaoyu Islands has so far not seriously damaged the economic relationship.

History is littered with examples of how bad politics can dominate economic relations. A contemporary example is the India–Pakistan relationship. Despite the two countries having had a single market (with the free flow of goods, capital and people) and many similar institutions before partition, the political divide between the two since has meant that Pakistan accounts for less than 1% of India's trade and India accounts for less than 5% of Pakistan's. Without the politics, estimates suggest that India–Pakistan trade could be as much as 10 times greater.¹³

Unlike Japan and China, India and Pakistan do not have normalised economic relations. Pakistan hasn't granted India most favoured nation status, despite both being members of the WTO. The primacy of politics between two of South Asia's largest economies has prevented Pakistan recognising India as equal to other trading partners. And neither India nor Pakistan has committed to openness to the global economy to the extent that their East Asian neighbours have.

Strengths of the global trading system

Many countries, such as Russia recently, remain keen to join the WTO. This is despite some literature that suggests that WTO membership is largely insignificant because members don't trade more or have more liberal trade policies than non-members.¹⁴ That literature misses the fact that there's a difference between old members, especially the original signatories of the GATT, and members that joined the GATT after the conclusion of the Uruguay round. The gains from joining the GATT/WTO largely depend on what liberalisation a country agrees to undertake during the process of its accession to the organisation.¹⁵

The strict accession requirements that the US and the EU imposed on China in the bilateral negotiations leading up to entry in 2001 were unprecedented. They were imposed largely because of the impact that China was already having, and was predicted to have, on the international trading system. China's rapid rise and the adjustments that had to be made were causing friction and stresses for China, its trading partners and the international economic community. More stringent rules had to be put in place for other WTO members to be confident that China's accession wouldn't adversely disturb the system.¹⁶ It's precisely because of such unprecedented concessions that the signalling effect of membership to investors and trading partners was so strong.

The accession commitments were a blueprint for China's institutional change and reforms for at least a decade from 2001.¹⁷ Japanese investors and traders, for example, could be confident that China would be constrained from retreating from the global market.

Dispute settlement

A major role of the GATT/WTO is in dispute resolution and in giving members, including developing countries, confidence that they'll receive fair and equal treatment. That trade disputes can be settled in a legal setting accepted by all members means that retaliation and escalation do not occur outside of the WTO rules. Nor do trade disputes spill over into sensitive political problems.

The WTO's dispute settlement function is active and robust. While the number of WTO panels established to resolve disputes seems to have decreased in the wake of the global financial crisis, it has rebounded strongly since 2010 (Figure 2). The number of disputes brought against trading partners by developing countries has grown (Figure 3), and the number of disputes that have been resolved or upheld demonstrates the system's relevance and importance. The establishment of the Advisory Centre on WTO Law in 2001 demonstrates the ability of the WTO to adapt in order to remain relevant to developing countries.

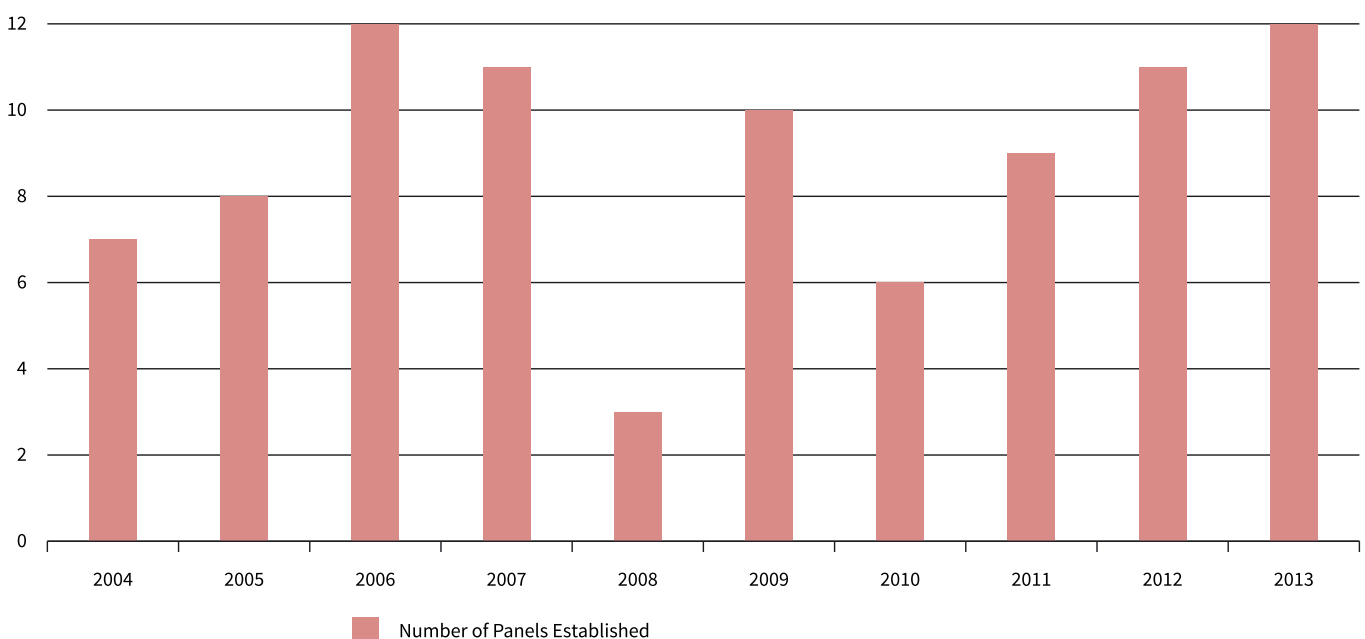
The WTO's legitimacy depends on its relevance to developing as well as developed country members.

The recent ruling against China on its restrictions on rare earth metals exports¹⁸, and China's acceptance of that ruling¹⁹, provide considerable confidence in the disputes settlement process under the WTO. Whether China's purpose in restraining exports was to consolidate its domestic industry or for environmental reasons, the way the policy was executed and the anxiety it caused the international community (especially in Japan, which relied heavily on Chinese rare earth supplies) meant that the way the ruling was handled is an important sign of faith in the WTO. The US, Japan, the EU and China resolved the dispute peacefully in the appropriate forum without resorting to embargoes, a trade war or any form of conflict. This was just one example in which, without confidence in the WTO and its dispute settlement mechanism, the outcome from a trade dispute could have escalated into more serious conflict.

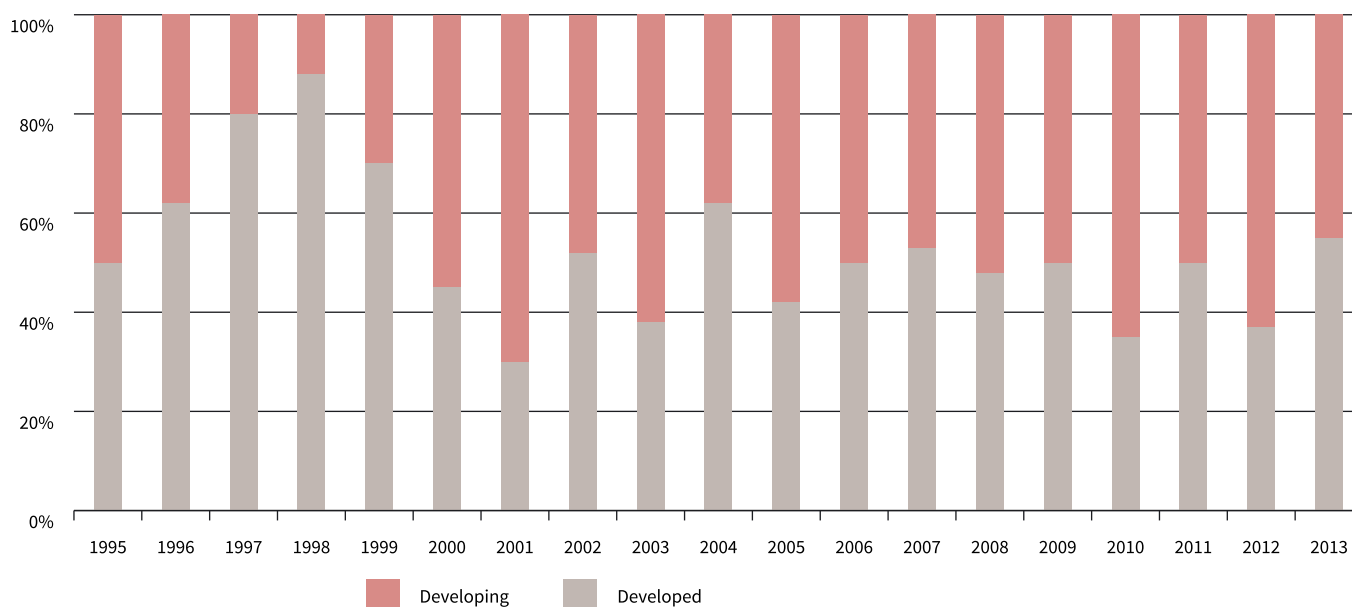
Backstopping protectionism

The WTO and the global trading system faced a major test during the global financial crisis. Although the advanced economies went into recession on a scale that matched the Great Depression in output and financial losses, and global trade flows collapsed (by 12% in 2009), there was no significant rise in tariffs and other trade barriers.²⁰

Figure 2: WTO panels established, 2004 to 2013



Source: www.wto.org/english/tratop_e/dispu_e/jfried_13_e.htm.

Figure 3: Disputes brought forward by developed and developing countries, 1995 to 2013

Source: www.wto.org/english/tratop_e/dispu_e/jfried_13_e.htm.

In the wake of the crisis, ‘murky’, non-tariff-based protectionist measures were introduced by some governments; some estimates suggest that they accounted for more than half of all protectionist measures in the post-crisis period.²¹ Policies such as local content provisions and industrial policies that restricted global trade were introduced. However, after the crisis most countries continued to liberalise tariffs, and changes in trade policy (through raising tariffs or taking anti-dumping action) contributed only about 2% of the observed drop in world trade in 2008–09.²² That was in clear contrast to the effects of the Smoot–Hawley tariff wars during the Great Depression.

Of the 4,144 trade measures recorded by Global Trade Alert from the start of the crisis to early 2014, 22.2% have been coded ‘green’ (that is, they represent, in the opinion of GTA, liberalising policy), while 57.4% have been coded ‘red’ (policy considered protectionist).²³ One reason some developing countries dropped tariffs and other trade barriers in the aftermath of the crisis may be the rise in global supply chain trade: when it’s necessary to import in order to export, the risks of retaliation are larger and there are domestic producers that demand low import barriers.²⁴ But the role of the WTO shouldn’t be understated. Indeed, the rise of global supply chains is a *consequence* of the rules-based trading system that the GATT/WTO system underwrites.

This was a significant achievement, given the acute protectionist pressures at the time. Leadership at the G20 had much to do with the ‘standstill’ on protection, but the shock of the global financial crisis didn’t weaken the WTO or undermine the confidence that countries had in it. The slow recovery of the advanced economies meant that protectionist forces put significant pressure on governments to close markets, but the global trading system proved robust to those pressures.

The robustness of the global trading system throughout the crisis and its aftermath has meant that recession and collapsed trade in some countries hasn’t generated conflict between nations.

Risks to the global rules-based trading system

The WTO is nonetheless confronted by a number of risks and, despite its dispute resolution function, its appeal to new members and its role as a backstop against protectionism, its future is often viewed as uncertain. The system has always faced risks and challenges to some degree and has evolved to stay relevant and maintain legitimacy since its creation, including through its transformation from the GATT to the WTO. But the challenges it faces now are significant, and multilateral trade governance appears to be drifting.

Outdated rules, agenda and mode

The WTO has been weakened by its inability to complete the Doha round of negotiations that began in 2001.

The rules it enforces and the principles it underpins don't comprehend aspects of the huge growth of trade in parts and components and cross-border specialisation in tasks. The WTO has made little progress on services trade liberalisation (despite a promising plurilateral agreement currently under negotiation) and is absent in liberalising or governing investment in any way—two important dimensions of economic exchange in the 21st century.

The proliferation of supply chains has meant that investment, trade in goods and trade in services are all more closely linked than in the past, even at the launch of the Doha round in 2001. And the Doha round remains a work in progress, stuck on traditional market access issues and therefore unable to reinvent its own agenda. The large WTO membership of 159 is a strength, but the 'single-undertaking' nature of negotiations means that 'virtually every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately'²⁵ and that all members have to agree, making consensus very difficult and a weakness of the WTO.

Inability to prosecute liberalisation multilaterally and the difficulty of dealing with 'new' issues in that frame has led to the proliferation of, or at the least provided an excuse for pursuing, preferential trade agreements, or free trade agreements (FTAs), which undermine the core most-favoured nation principle of non-discrimination in the WTO multilateral trade system. FTAs multiplied from the early 2000s but have run up against the same issues of sensitive sectors (for example, agriculture) that have stalled multilateral negotiations. FTAs have neither been comprehensive enough to affect trade or investment outcomes significantly nor gone much beyond WTO rules.²⁶

Preferentialism and rule-setting among the few

The Asia–Pacific has contributed to strengthening the global trading system by pursuing economic integration regionally in a way that's consistent with furthering global trade. Other regions, most notably North America and Europe, pursued regionalism in a more inward-looking way that reduced trade barriers to members at the expense of non-members. In the Asia–Pacific, and particularly in East

Asia, opening up economies was done unilaterally, which meant opening up regionally and globally, consistent with the principle of open regionalism.²⁷

Yet the new mega-regional economic agreements are attempting to make significant changes to domestic settings, beyond the goods trade. Given their design, this could significantly affect economic exchanges between members at the expense of non-members. That would be a departure from open regionalism and introduce preferentialism and discrimination that actually bites into economic relationships in East Asia, with potentially significant political implications.

The new mega-regional agreements of the Trans-Pacific Partnership (TPP) in the Asia–Pacific and the Transatlantic Trade and Investment Partnership between the US and Europe could significantly affect trade and investment in a way that would be quite unlike the effects of bilateral FTAs. The trade, investment and other rules governing international commerce could be written by a smaller club of powerful countries and become fragmented. The risk is that those rules will be written in favour of advanced economies at the expense of the world at large, particularly developing and emerging economies. There's also a question about how these deals might undermine the WTO itself.

The new rules under these agreements, which discriminate significantly against those outside them, and the size of their memberships pose a threat to trade and investment flows globally and could undermine the most-favoured nation principle. And the potential fragmentation in the rules, in areas like dispute settlement, could also undermine confidence in the global system.

The 'WTO-plus' aspects of FTAs and mega-regionals damage the idea of the WTO rule of law by prescribing country-specific rules. If rules are negotiated in this manner, the large established powers will end up setting them, reducing the confidence and stake that developing countries have in the multilateral trading system. It also poses challenges for the dispute settlement mechanisms in the WTO, as the WTO-plus provisions reach into areas not covered in WTO agreements and the dispute settlement procedure will have to 'fill in the gaps' to determine how those provisions fit in with existing WTO rules. This will end up creating new trade laws—which the dispute settlement procedure is explicitly designed *not* to do.²⁸

Asymmetry in rules

Another major risk to the global trading system is the asymmetry in rules: newer members are typically required to commit much more than founding members of the GATT.²⁹ The different accession protocols based on the date of joining the GATT or WTO mean that China is subject to much more discipline than India, for example, and the US isn't bound by symmetry in its export and import rules in the same way.

An acute example of this can be seen in the recent WTO ruling against China on the imposition of export controls on rare earth metals³⁰ while the US isn't prohibited from 'utilising a similarly onerous licensing structure that, in practice, restricts US energy exports' of liquefied natural gas and crude oil.³¹ The US is under no obligation regarding export duties, taxes or other restrictions consistent with GATT Article XI and prohibits almost all exports of crude oil.³²

While the WTO has largely expunged the negative interaction of geopolitical security issues with trade, the intersection with international investment still poses a risk. Without a global rules-based system for investment, there's spillover from the geostrategic or geopolitical to the economic issues. The refusal of American and Australian law makers to allow Huawei to invest in the National Broadband Network in Australia and expand operations in the US because of cybersecurity concerns, and Chinese regulators' imposition of strict conditions on US multinationals operating in China, show that the line between protectionism and security issues is blurred.³³ There's as yet no global framework that provides confidence to investment host and source countries in the way that the WTO provides confidence in matters of trade.

Australia–Japan cooperation

Australia and Japan have played an important role in the stability and development of the Asia–Pacific region.³⁴

In the postwar period, Japan has been active in creating and providing regional public goods, providing development assistance, and keeping markets open and robust. Japan effectively led the establishment of the Asian Development Bank in 1966. It was also instrumental, alongside Australia, in the creation of APEC in 1989. On the political–security front, Australia and Japan have contributed to the peace and stability of the region through the US alliance framework, and in Japan's case its exclusively defence-oriented security policy underpinned by the Article 9 peace clause of the Japanese Constitution.

Both Australia and Japan now find themselves in a region with vastly different circumstances and are grappling for a broader framework within which to manage their relationships in Asia. This is especially so for how they relate to China, which is the most important economic partner for both of them. Some see a thickening of security ties across the US–Japan and US–Australia relationships as naturally extending into a formal trilateral alliance. But that has considerable risks, and the region needs a broader framework in which to engage China and other players. China's the largest economic partner for almost every country in the region.

China is embedded in the global trading system and has shown that it's keen to play a positive role in broader regional economic cooperation. There's also growing concern within China about its tensions with neighbours. It seems that order building that includes China and its growing economic and political interests is preferred to a hedging strategy that isolates it politically or economically.

Australia and Japan are key players in shaping a new Asia–Pacific. Both are now part of the TPP and the Regional Comprehensive Economic Partnership (RCEP), the two mega-regional economic agreements under negotiation in Asia and the Asia–Pacific. The TPP doesn't include China and the RCEP doesn't include the US, so Australia and Japan have a critical role to play in ensuring that the two agreements don't divide the region but are instead complementary and bring China and the US into a closer and more comprehensive trans-regional arrangement in the longer term. The deepening of regional economic interdependence will help countries manage their other differences. A set of arrangements that complement and strengthen each other and the global system is needed—not a set of arrangements that are competing and exclusive. This is the constructive diplomacy on which the Australia–Japan partnership now needs to be brought to bear. It would involve a more strategic partnership that promotes deeper regional cooperation, similar to when Japan and Australia led the creation of APEC.

Conclusion

The global trading system has underpinned the development of economic integration globally. Its success is most evident in the Asia–Pacific region and especially East Asia, which is one of the world's most economically integrated regions. And the open regionalism of Asia and the Pacific has continued to buttress that global system. East Asian

economic integration has occurred despite significant political differences between countries and in a region without a regional institution with supranational authority.

That multilateral trading system is under threat. Weaknesses in the WTO from the inability to conclude the Doha round or to introduce rules relevant to cross-border business in the 21st century carry real risks. One consequence is that rule-making increasingly threatens to occur outside of the multilateral framework in mega-regional agreements. That means that developing countries will have less, if any, input into the rules that govern trade, and that dispute settlement (a strength of the current system) for WTO-plus areas beyond trade, and perhaps even for traditional areas of trade, will occur outside of a multilateral framework that's accepted by all and provides a strong measure of economic as well as political assurance.

The erosion of the rules-based global trading system could lead to a collapse of confidence in the system and have significant implications for economic and political relations between countries. It would also undermine the liberal international order. A robust and fair global trading system with legitimacy is a necessary condition for furthering rule-making and confidence-building in other areas of the international order.

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Background paper

Japan–Australia cooperation in humanitarian assistance and disaster relief

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It's often said that the 21st century is Asia's century: we've seen the rapid growth of the new emerging economies, such as China and India, and it's expected that Southeast Asian countries will achieve similar economic development in the coming decades.

The huge population of 4 billion in Asia has underpinned remarkable economic growth, which has brought rapid urbanisation in the region.

But Asia is the area that's most affected by natural disasters. With its high population and recent economic growth, Asia suffers almost half of the world's total damage from such disasters, amounting to \$1,116 billion in 1983–2012. Rapid urbanisation and tardy development of infrastructure have made Asian countries vulnerable to the human, social and economic damage inflicted by disasters.

As trading nations, Japan and Australia have benefited from Asia's economic rise. Both countries have interests in ensuring that regional economic growth won't be seriously disrupted by severe natural disasters.

As advanced countries, we have a moral obligation to be active in giving humanitarian assistance in the event of natural calamities. It's therefore worth developing constructive collaboration between us in order to strengthen humanitarian assistance and disaster relief (HADR) capabilities, not only our own, but also those of other states in the broader Indo-Pacific region.

Twelve measures to improve cooperation

This section outlines some measures to improve Australia–Japan HADR cooperation.

First, we should work together to enhance our HADR capabilities by strengthening information exchanges and joint training opportunities. In doing so, both governments should try to engage other countries in the Indo-Pacific region to promote HADR cooperation.

Japan and Australia share good records of HADR cooperation during the Boxing Day tsunami in 2004, the Great Eastern Japan Earthquake in 2011 and Typhoon Haiyan in the Philippines in 2013. In those cases, Japan's Self-Defense Forces and the Australian Defence Force played important roles as early responders. Now the Japan–Australia Acquisition and Cross-Servicing Agreement has become effective, the two countries should strengthen the interoperability of our HADR capabilities by increasing the numbers of joint exercises, with the intention of a collaborative response when a big disaster hits the region in the future.

Second, it's important that the first responders of both nations share joint training with the other members of the Indo-Pacific region. RIMPAC 2014 joint HADR exercises proved to be a good forum for multilateral cooperation, including with civilian players.

Japan should participate in the next Exercise Talisman Saber, which developed effective civil–military coordination in 2013. As regular participants in the Pacific Partnership, both countries should also help the US to roll out this cooperation to other Indo-Pacific partners.

Third, Japan and Australia should increase opportunities for HADR joint exercises. It's desirable that other countries in the region be engaged in such exercises, and civil–military coordination should be a focus.

Fourth, Japan and Australia should work together to refine the existing urban search and rescue (USAR) accreditation system under the International Search and Rescue Advisory Group (INSARAG) and develop mutual mentoring in close consultation with ASEAN counterparts.

USAR is a field in which the Japan International Cooperation Agency (JICA) and the Australian Department of Foreign Affairs and Trade have undertaken exchanges of information and joint training.

We should cooperate to enhance our capabilities with each other, especially to upgrade our USAR skills to a level higher than that required in the accreditation system under INSARAG. This has already begun—Queensland Fire and Emergency Services has mentored the Japan Disaster Relief Team at JICA's request.

Our governments should also involve other regional countries in joint training and mentoring activities, with the aim of developing their capacity to INSARAG-accredited level or higher. This would be in close communication with counterparts such as the ASEAN Committee on Disaster Management and the ASEAN Humanitarian Assistance Center. JICA would be an ideal host for such joint training, as it can fully utilise its own training facilities.

Fifth, the international collaboration seen in the search for the missing MH370 airliner showed the possibilities for regional cooperation in maritime and air searches. The search demonstrated goodwill and a cooperative spirit among regional players such as Japan and China, even when they were politically at odds.

It's desirable to increase the opportunities for exchanges among the search and rescue agencies of the region. As search and rescue is conducted from both sea and air, Japan and Australia should pursue better coordination between the Asia-Pacific regional centres of the International Maritime Organization and the International Civil Aviation Organization.

Because joint training in maritime and air search and rescue can be costly, especially for the smaller developing countries in the Indo-Pacific region, we should cooperate in the development of desktop exercise methods in this field.

Sixth, despite our great capabilities and resources, Japan and Australia haven't developed notable HADR cooperation in fields other than USAR. The Emergency Management Australia (EMA) is working closely with the East Asia Summit (EAS) to establish an accreditation system for foreign medical teams (FMTs) in HADR to clarify the level of assistance that a particular FMT can offer. Such a system will help countries hit by disasters to determine which FMTs to allocate to which areas. Sometimes affected countries are flooded with too many FMTs, some of which don't have appropriate capabilities. This can result in additional burdens for local governments and communities that have to concentrate on helping themselves.

This FMT process has regional approval: EMA has respected ASEAN centrality and ASEAN members' capabilities. Such a careful, steady attempt to extend HADR cooperation into the wider region would be highly desirable.

JICA should strongly support such a move by EMA. The prime ministers of Japan and Australia should offer strong support for establishing the medical accreditation system within the EAS.

Seventh, discussion on HADR cooperation in the region often focuses on early response, such as the dispatch of USAR teams and FMTs. This is understandable, as a speedy rescue effort, especially in the first 72 hours, matters if lives are to be saved. Because not many countries have early response capabilities adequate enough to deploy overseas, these questions tend to be seen as matters for those agencies that do.

However, discussions about HADR should also cover a wider range of issues, including disaster prevention and enhancing public awareness for preparedness. These are matters of concern for small island states that lack relief capabilities and as a result suffer significantly in times of disaster. Even modest preventive measures are far more effective in saving lives and minimising damage, and far less costly, than highly refined disaster relief operations.

Furthermore, it has been members of affected local communities, not foreign USAR teams, that have saved the most lives immediately after earthquakes. And widespread local knowledge about tsunamis can save many lives when people simply evacuate quickly to higher land.

Strengthening public awareness really counts in HADR for every government and local community. So, in developing cooperation on HADR, the Japanese and Australian Governments should consider measures to enhance public awareness, not only among their own citizens, but also among the people in the region as a whole. Both governments should increase their official development assistance for the purposes of disaster prevention.

In short, we should extend the range of HADR cooperation to include disaster prevention and public awareness, as well as early response.

Eighth, as Japan and Australia are disaster-prone countries, both have accumulated significant experience in disaster response, recovery and mitigation. Our experience should be shared in the region.

EMA is drafting the Rapid Disaster Response Toolkit for the EAS as a guide to what kinds of assistance are

needed in particular areas. This could be a good guide for regional governments that want to improve not only their preparedness but also their relief capabilities.

Japan can help to enrich the content of the toolkit by making full use of its abundant knowledge of earthquakes and tsunamis. Australia knows all about firefighting. Other countries in the region can participate in updating the content from their own experiences and lessons learned. Modest as they may be, these activities will make a huge contribution to community resilience and mutual confidence by promoting a common language about HADR. Based on that, we can expect spillover towards region-wide collaboration.

Japan should strongly push the publication of the toolkit, and both countries should move to endorse this activity as an official EAS achievement in forthcoming summit meetings.

Ninth, to improve public awareness about HADR in the region, it will be useful if regional countries can have easy access to knowledge and the lessons that have been learned.

Japan's Cabinet Office has developed its website on disaster prevention. It now includes an English version of Japan's disaster management policy and educational materials for mitigating damage from tsunamis. The Australian Emergency Management Institute has developed 'Knowledge Hub', a public educational website on disaster prevention.

While these websites focus mainly on domestic audiences, they also provide international visitors with useful information on disaster preparedness. Our two nations should work together to develop the content of our websites to help regional nations build up their knowledge about disaster prevention.

Australia's website for disaster resilience education can be a model for educational materials for schools across the Indo-Pacific. Japan can contribute to public education for disaster prevention in the region by introducing its abundant examples for grassroots training in schools, offices and local communities. We should exchange information on our disaster prevention educational materials.

Tenth, while EMA has developed solid links with the EAS in sharing knowledge about HADR, the other Australian agencies seem to focus mainly on developing collaboration with regional partners, including Japan, in the deployment of rapid response teams.

In order to contribute to a rules-based regional order, it will be equally important for Japan and Australia not only to enhance our own HADR capabilities through bilateral, minilateral or multilateral joint training, but also to work together to create opportunities to improve the region's preparedness for natural disasters.

But the HADR capabilities, experience and resources of regional countries vary widely. It may still take time to implement region-wide multilateral civil-military HADR joint training programs. Nonetheless, it may be worth starting regional HADR cooperation by learning from our own or other nations' experiences and sharing a common HADR lexicon.

The Australian Government should upgrade information exchanges and coordination between EMA and the other agencies on HADR collaboration with regional partners, including Japan.

The Japanese Government should strengthen its interagency coordination, centred on JICA, with the specific aim of collaborating with Australia on HADR, from early response to resilience, prevention and public awareness.

Eleventh, effective HADR activities require working with non-government bodies, such as businesses and non-government organisations (NGOs).

In the age of corporate social responsibility, business has not only the capabilities to supply a huge range of relief, but also a strong interest in minimising disruptions to supply chains. Knowledge about minimising business risks can be applied to disaster prevention.

With their knowledge and links with local communities, NGOs provide vital information to other responders, including militaries, on which areas need which kind of assistance.

Japan demonstrated a model for government-business-NGO cooperation and coordination on HADR during the Great Eastern Japan Earthquake. The Japan Business Federation (*Keidanren*), Japan's main business organisation, served as a contact point between business and relief bodies for information on material needs in disaster-affected areas and which corporations could supply them. Japan Platform, Japan's international cooperation NGO, played coordinating roles with government bodies, businesses, other Japanese NGOs and individual volunteer workers. The information that NGOs brought from their local human networks proved

valuable for other relief agencies when the agencies had to judge which resources were to be allocated.

Moreover, businesses and NGOs can respond quickly to disasters because their decision-making processes are far less complicated than those of government bodies. To achieve more effective HADR operations, they should be engaged as active players.

Such an inclusive whole-of-society approach in HADR is desirable because it can fill a niche that the bureaucratic approach of government agencies sometimes misses, and helps to smooth the shift from early response to recovery.

For the whole-of-society approach to function, better communication and coordination among players are vital. Since this model is quite new, Japan and Australia should try to learn from past examples, such as the 2011 earthquake and tsunami.

We should exchange information on promoting the participation of businesses and NGOs in HADR operations, and especially on learning from examples in the Great Eastern Japan Earthquake.

Twelfth, Japan has learned many lessons from its own natural disasters, especially the 1995 Great Hanshin Awaji Earthquake and 2011 Great Eastern Japan Earthquake. The Japanese Government has been active in sharing such lessons, as shown in the hosting of the 2nd United Nations World Conference on Disaster Reduction in Kobe in 2005, which carried the Hyogo Framework of Action.

But Australian HADR agencies haven't necessarily been well informed about these activities, let alone Japan's international promotion activities. To overcome this information gap, careful coordination is needed among HADR agencies of each country—for example, between JICA, Japan's leading first responder and the Cabinet Office responsible for disaster reduction and promotion activities, and the Department of Foreign Affairs and Trade, Australia's rapid response coordinator, and EMA, which is mainly responsible for domestic coordination.

On the Japanese side, JICA can be a main contact point for the Australian side.

The Australian Government may have to apply more diplomatic resources to support EMA's initiatives within the EAS. Once good coordination is established, Japan

and Australia could cooperate more effectively towards HADR capacity-building in the EAS, as illustrated by the Japan–Australia partnership that established the foundation for APEC.

A good starting point will be the 3rd United Nations World Conference on Disaster Reduction, which will be held in Sendai in March 2015. Japan and Australia should try to send 'Team Japan' and 'Team Australia', including representatives of the emergency services, businesses and NGOs. The event could be used as a springboard towards bilateral coordination for the whole-of-the-society approach in HADR.

Background paper

The East Asia Summit: strengthening a rules-based regional order in the Asia-Pacific

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Introduction

On 9 July 2014, Japanese Prime Minister Shinzō Abe and Australian Prime Minister Tony Abbott issued a ‘Special Strategic Partnership for the 21st Century’ joint statement at the time of Abe’s first visit to Australia. The two leaders underscored ‘the importance of the East Asia Summit as the premier forum for addressing the strategic, political and economic challenges facing the region and undertook to work together on strengthening its role’.

On 11 June 2014, before the bilateral summit, the fifth Japan–Australia ‘2+2’ Ministerial Meeting pledged the two countries’ commitment to ‘cooperating in strengthening the strategic, political and economic roles of the East Asia Summit (EAS), and to working together in the ASEAN Regional Forum, the ASEAN Defence Ministers Meeting Plus and the ASEAN Expanded Maritime Forum’.

Japan and Australia are natural strategic partners, as their recent official statements confirmed. On 14 September 2012, the 4th Australia–Japan Foreign and Defence Ministerial Consultations issued a joint statement titled ‘Common Vision and Objectives’. The ministers declared that:

Australia and Japan are natural strategic partners sharing common values and interests, including a commitment to democracy, the rule of law, protection of human rights and open markets. Australia and Japan share a common strategic objective of ensuring long-term peace, stability and prosperity in the changing strategic and security environment in the Asia-Pacific region and beyond.

Above all, Tokyo and Canberra committed to working ever more closely to ensure ‘mutual support for our respective alliances with the United States, which continue to help underwrite peace, stability and prosperity in the Asia-Pacific,

and working together as active partners to maintain and strengthen comprehensive US engagement in the region’. The two nations committed to strengthen ‘regional architecture, particularly the East Asia Summit, to promote cooperation on political, security, economic and other challenges facing the region’.

This paper explores practical policy implications to strengthen the EAS so that it may contribute to strengthening the rules-based order in the Asia-Pacific. It argues that Japan and Australia share historical experiences, common values and interests in multilateral cooperation in the region. Tokyo and Canberra can and should cooperate to work on strengthening the security architecture in East Asia and the Asia-Pacific through a leaders-led premier forum of the EAS together with most of the important nations in the region.

The paper starts with the background of Japan–Australia cooperation in regional multilateralism in the Asia-Pacific and East Asia. Then it goes on to analyse security trends, challenges and regional institutions in East Asia. It examines the significance and weakness of the EAS as a promising premier forum. The paper suggests practical ways to improve the EAS to strengthen the rules-based order in the Asia-Pacific, and explores the policy implications.

Japan, Australia and multilateralism in the Asia-Pacific and East Asia

Japan and Australia have long cooperated in multilateral forums in the Asia-Pacific and sought cooperation through the Pacific Economic Cooperation Council and the Asia-Pacific Economic Cooperation (APEC) forum. On the one hand, Japan looks to the values and common interests shared by the region’s two US allies of significance. Australia’s participation in the multilateral institutions of the Asia-Pacific is important for Japan.

In the early 1990s, some Asia-centric groupings were proposed that did not include the US, Australia and New Zealand. When former Malaysian Prime Minister Mahathir bin Mohamad proposed the East Asia Economic Group in 1990 and when the Asia–Europe Meeting was established in 1995, it is reported that Japan sought Australian participation in

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those multilateral forums. In the early 2000s, Japan sought Australia's participation in the EAS. As early as 2002, when Japanese Prime Minister Junichiro Koizumi spoke on an East Asian Community in Singapore, Japan insisted that Australia participate and proposed membership. Finally, the EAS was established with 16 countries, including ASEAN 10+3 (Japan, China and South Korea) +3 (Australia, New Zealand and India).

More recently, on 30 May 2014, Japanese Prime Minister Abe delivered a speech to the 13th Shangri-La Dialogue in which he emphasised the importance of the rule of law in the region. Abe proposed that the role of the EAS be bolstered. His address was well supported by many countries in the region (see box).

Japanese PM Shinzō Abe's proposal on the EAS at the 13th Shangri-La Dialogue on 30 May 2014

I urge the further enhancement of the East Asia Summit, as the premier forum taking up regional politics and security. Next year marks the tenth anniversary of the launch of the EAS. I propose that we first create a permanent committee comprised of permanent representatives to ASEAN from the member countries and then prepare a road map to bring renewed vitality to the Summit itself, while also making the Summit along with the [ASEAN Regional Forum] and the ADMM-Plus function in a multilayered fashion. The first thing we should discuss is the principle of disclosure. We have all heard the saying that 'sunshine is the best disinfectant'. From now, Asia will continue to play the leading role in pulling the prosperity of the world forward. Military expansion is inherently unworthy of such a place as this. The fruits of prosperity should instead be reinvested into even greater prosperity and improving people's lives. I believe that a framework under which we publicly disclose our military budgets step by step, that enables us to cross-check each other, is a system that we should seek to establish as we extend the scope of the East Asia Summit.

On the other hand, Australia has pursued active middle-power diplomacy to strengthen the security architecture in the Asia-Pacific. With the region facing significant changes, including the rise of China and China-Taiwan issues, Australia regards its role as that of an honest broker to maintain international order in East Asia and the Asia-Pacific. Australia's main concerns are to use multilateral regional frameworks to secure US commitment to Asia and to maintain stable US-Japan-China relations. While the economies of East Asia have grown to be the engine of the global economy, Australia's interests and stakes in East Asia have also increased.

On 4 June 2008, at the Asia Society AustralAsia Centre, Australian Prime Minister Kevin Rudd proposed his vision of an Asia-Pacific Community. Rudd declared the 'Asia-Pacific century' and noted the need for strong and effective regional institutions to 'underpin an open, peaceful, stable, prosperous, and sustainable region' and to address the 'collective challenges that no one country can address alone'. Prime Minister Rudd's Asia-Pacific Community proposal sought equivalence with the EAS.

In July 2012, Foreign Affairs Minister Bob Carr published an article titled 'The East Asia Summit: building our regional architecture for the 21st century'. It emphasised that 'The task ahead of us ... is to strengthen and entrench the EAS leaders' level dialogue and advance practical proposals for cooperation on the broad range of economic, political and security challenges confronting our region.'

It should be noted that Tokyo and Canberra share common interests in the creation and strengthening of regional institutions in the Asia-Pacific and East Asia. First, they share an interest in ensuring an enduring and significant US commitment to the Asia-Pacific region through the EAS. Second, Japan and Australia share common interests in engaging China as a constructive and responsible player in the Asia-Pacific in the light of its continued ascension and assertive and provocative behaviour directed at its neighbours in the region. Third, Tokyo and Canberra share common interests in the management of great-power relations between China and the US. Fourth, both Japan and Australia share values and interests, including democracy,

human rights, the rule of law, open markets and free trade, existing international norms and regional order.

Above all, the two nations share vital common interests in securing the global commons in the region, including freedom of navigation and overflight, outer space and cyberspace. Japan and Australia can and should cooperate to strengthen regional institutions for the reasons listed above.

East Asian security and regional institutions

Security trends in East Asia and the Asia-Pacific

Today, East Asia is undergoing dramatic changes, and regional security trends are both complex and challenging. On the one hand, the shifting power balance is remarkable—emerging powers such as China and India are rising, while US hegemonic power declines. In the long term, there are three courses of power transition: competitive, cooperative and a hybrid of the two. Political tensions and the risk of grey-zone situations in the South China Sea and East China Sea are notable. China's sustained rise and assertive and intensified activities in various areas provoke serious concerns in the region and across the world. North Korea's continued belligerence and military build-up, including moves towards nuclear weapons and ballistic missiles, remain on the minds of many in the region.

On the other hand, East Asia is becoming a region of economic development and interdependence, political democratisation, cooperation and integration. Economic interdependence and regionalism make military conflicts more costly, though not unlikely. Regional institutions in the Asia-Pacific and East Asia enhance international cooperation in a range of areas and at various levels. Compared to the poor record of multilateralism during the Cold War, we have witnessed the emergence and evolution of various ASEAN-centred regional mechanisms, such as APEC, the ASEAN Regional Forum (ARF), the ASEAN Defence Ministers Meeting Plus (ADMM+), ASEAN+3 dialogue and the EAS.

Conditions of peace and stability and regional institutions in East Asia and the Asia-Pacific

A rules-based regional order is important for stability, peace and prosperity for all parties, and to insulate against political change or instability caused by naked force or coercion.

The foundational principle of a rules-based order is that all parties are equal in the eyes of the law. Compliance depends on the legitimacy, obligations and interests of the parties. Disobedience is caused by a lack of capability, clarity or priority of the rules-based order. The support of all the major players in the region is necessary for the maintenance of regional order.

Broadly speaking, any sustainable international order needs a proper balance of three international systems: a realist 'balance of power', a liberal 'concert of powers' or 'cooperative security', and an idealist international community. In a realist view of the power shift in East Asia, relations between the US and China are most important to the success, stability and direction of the regional order. With China's rapid rise and increasing assertiveness, the US commitment to Asia and the US network of hub-and-spokes partners and allies contribute to the maintenance of a stable international order in East Asia. In a liberal perspective on cooperative security, the architecture of various regional institutions contributes to the preservation of peace and stability in East Asia and the wider Asia-Pacific region. In an idealist view, although an 'East Asian community' or an 'Asia-Pacific community' remains only a long-term goal, economic interdependence and regional integration are ongoing across the region.

Scholars debate the roles and functions of regional institutions in East Asia and the Asia-Pacific. On the one hand, realists assume that international institutions are mere instruments of great-power influence, and so can't play any significant role in rules-based order in the region. From this viewpoint, regional institutions reflect a power struggle among great powers. On the other hand, constructivists maintain that international institutions can enhance cooperative relations by moulding member states' national interests and identities through norms and rules. In reality, it's more pragmatic to consider both aspects of realist materials/powers and constructivist ideas/norms.

Regional institutions contribute to the maintenance of the current regional order in at least six ways:

- They underwrite the US's engagement with the region. APEC and the ARF contribute to the US commitment in both East Asia and the Asia-Pacific, as expected by many regional powers.

- Regional institutions give member states opportunities to participate in the norms/rules-making processes of the region. While ASEAN sits in the driver's seat of regional cooperation, Japan and Australia also play important roles in these processes.
- They contribute to China's peaceful rise by providing opportunities to learn the norms of cooperative security through multilateral dialogues. China was reluctant to join the ARF and other regional mechanisms, but understands the importance of regional cooperation in the processes. For example, China's assertive stance or actions face criticisms by other countries in the ARF or the EAS.
- They enhance the management of major-power relations by providing opportunities for high-level dialogue. The US and China set up bilateral dialogues to deal with serious incidents by using opportunities available in APEC or the ARF. Despite the current difficulties between Japan and China, the two nations can seek opportunities for bilateral talks on the sidelines of APEC summits. These regional institutions enhance mutual understanding among members and functional cooperation in various areas.
- Regional institutions such as the Regional Comprehensive Economic Partnership and the Trans-Pacific Partnership enhance economic cooperation and integration which can benefit for peace and economic prosperity of the region.
- In the longer term, borrowing from European experiences, regional institutions have the capacity to create and maintain a regional international society through norm-building, rule-building, institution-building and community-building in East Asia and the Asia-Pacific.

The East Asia Summit

Origin

The concept of the EAS evolved and developed in the process of ASEAN+3 in the beginning of the 21st century. Concerning debates on creating an East Asian Community in the future, the East Asia Vision Group submitted a report to the ASEAN+3 summit in 2001 on a measure to expand the summit to an EAS. The East Asia Study Group also submitted a report to the ASEAN+3 summit in 2002 that mentioned the mid- to

long-term goal of holding an EAS meeting. In November 2004, the ASEAN+3 summit decided to hold the first EAS in Kuala Lumpur, Malaysia, the following year.

Significance and strengths

A premier forum

The EAS is a leaders-led forum for 'strategic dialogue and cooperation on political, security and economic issues of common regional concern with the aim to promote peace, stability and economic prosperity in East Asia'. The EAS holds an annual leaders summit, usually back-to-back with the annual ASEAN leaders meetings and in addition to meetings of ministers and senior officials during the year. Even though APEC also holds an annual summit, it focuses mainly on economic and trade issues with a number of memberships in the wide church of the Asia-Pacific. The EAS is a premier forum for dealing with the most important agendas among all the important players in East Asia.

Membership

The EAS membership includes all the major countries in East Asia and the Asia-Pacific. At the 6th EAS in Bali, 18 member countries met and the US and Russia attended for the first time. Memberships include ASEAN 10+3 (Japan, China and South Korea) +3 (Australia, New Zealand and India) +2 (the US and Russia). The 18 EAS member countries together represent almost 55% of the world's population and account for around 56% of global gross domestic product. The EAS has an appropriate and desirable membership for decision-making on East Asian affairs. The consensus of all the key players of East Asia helps to strengthen the rules-based regional order in East Asia and the Asia-Pacific.

Agendas, including political and security issues

The EAS deals with a range of important agenda items, including those related to regional security. In 2013, for example, EAS leaders discussed nuclear nonproliferation, the Korean Peninsula, developments in Syria and Iran, maritime security and the management of disputes in the South China Sea. The leaders also reviewed progress in priority areas of functional cooperation, including regional economic and financial integration, education, regional disaster response, energy, the environment, health and connectivity. The EAS sets up working groups in non-traditional security, such as

humanitarian assistance and disaster response, regional connectivity and maritime security. It can also enhance economic cooperation and integration, including through the Regional Comprehensive Economic Partnership and the Trans-Pacific Partnership. It works to confirm common principles and fundamental rules in the region by enhancing political and security initiatives. In addition, it promotes practical cooperation, connecting summit outcomes to tangible cooperation. Most importantly, the EAS should focus on the most important issues, avoiding wasting time and energy in discussing secondary issues.

Management of major-power relations

In the context of China's rapid rise and the power shift in East Asia and the Asia-Pacific region, the management of US-China relations and US-Japan-China relations is fundamental to the peace, stability and prosperity of East Asia. Regional powers such as ASEAN and Australia expect the EAS and regional institutions to manage major-power relations and to avoid major-power conflicts. The EAS also provides valuable opportunities for bilateral talks in times of relational turmoil. It contributes to mutual understanding and functional cooperation among major powers.

Norms/rules-building, institution building, and community building

The EAS contributes to norm/rule-building and reconfirms basic sharing principles of regional cooperation: peaceful conflict resolution; open, inclusive and evolutionary processes to create habits and norms of cooperation; and respect for the ASEAN Treaty of Amity and Cooperation, the UN Charter, and international law. Despite the slow process of the so-called 'ASEAN way', the EAS aims to play its role in the evolving regional architecture in the East Asian region and to work towards building the East Asian Community as a long-term goal to underwrite the maintenance of peace, security, prosperity and progress in the region and beyond.

Weaknesses and deficiencies

Despite its strength and potential, the EAS has its weakness and deficiencies. First, it doesn't have any follow-up mechanisms or permanent secretariat to ensure that decisions taken by the leaders are enacted. The EAS is held on one day per year, and is often too short, too formal and too rigid to allow free and flexible discussions. The EAS lacks

the capacity to implement the agreed norms or cooperative measures because ASEAN-centred forums are based on the principle of being 'non-binding'.

Second, the ASEAN-centred process of the EAS is too slow. The 'ASEAN way' requires the consensus of all parties. The chairing of the EAS is dominated by ASEAN, which also decides topics and agendas. ASEAN has concerns that great powers will take initiatives and dominate the topics and agendas of the EAS. Most ASEAN countries also expect to be in a neutral position and not to be forced to choose between great powers. ASEAN plays a key role as the convener of organisations such as the ARF and EAS, but with centrality comes a responsibility to lead—and ASEAN is yet to really lead, particularly in its interactions with the wider membership of the EAS and the ADMM+. ASEAN is becoming increasingly concerned about its centrality, but this concern is leading to more defensive behaviour, not a willingness to get out in front.

Third, China tries to avoid dealing with sensitive issues such as Taiwan, maritime security, the South China Sea, mechanisms for making military build-ups transparent, preventive diplomacy, collective security, and so on. Beijing prefers to use bilateral talks or regional forums profitable for China, such as the ASEAN+1/+3 and the Shanghai Cooperation Organisation, rather than the EAS.

Finally, the American leadership tends to be impatient with the slow and time-consuming progress of the ASEAN-led meetings. Not a few Asian countries are concerned that the US rebalance may be undermined due to Washington spending time, energy and resources in dealing with domestic issues and other pressing affairs, such as Ukraine and Russia, ISIS and the Middle East more generally.

Recommendations

Japan and Australia should patiently continue to support ASEAN's unity and cohesion as well as ASEAN's centrality in the EAS. Any assertive actions by Japan or Australia would face opposition or negative reactions from China and ASEAN. The ASEAN way may be time- and energy-consuming, but any feasible reform of the EAS would require the understanding and support of ASEAN countries. Japan and Australia can help to strengthen ASEAN and reinforce its centrality through targeted capacity-building.

ASEAN needs to lead from the front and engage with extra-ASEAN powers in a new and more collegial way. Tokyo and Canberra could encourage ASEAN to work on how to achieve this broad shift in ASEAN's thinking.

East Asian regional cooperation needs to respect and reconfirm basic sharing principles of regional cooperation: peaceful conflict resolution; open, inclusive and evolutionary processes to create habits and norms of cooperation; and respect for the ASEAN Treaty of Amity and Cooperation, the UN Charter and international law.

The EAS should focus on worthwhile macro agenda items, including security and strategic issues and economic and financial issues. Above all, maritime security is the most complicated but urgent concern in East Asia. It needs adjustment of existing procedures for agenda-setting to deal with the pressing challenges and risks in the region as a whole. Japan and Australia ask that ASEAN may consider joint chairmanship of the EAS with non-ASEAN member countries so that the Summit meeting can talk about common concerns among member states in the region.

Currently, the formality of the EAS setting poses a challenge to free and frank discussions between states. Ample time should be allocated to build a collegial atmosphere that will encourage intensive and open dialogue.

The EAS should take initiatives to create a workable crisis management mechanism to support maritime security in the South and East China seas as well as on the Korean Peninsula. It should set up multi-/mini-lateral working groups among concerned countries to enhance functional cooperation on pragmatic issues and areas.

Japanese Prime Minister Abe's proposal on the EAS deserves serious attention. The EAS should work to establish a clear vision—a road map for the EAS as the premier forum linked to the ARF (meeting at foreign minister level) and the ADMM+ (defence minister level) in a multilayered function. It should strengthen institutional linkages with other political–security forums, including the ADMM+, the ARF and the Extended ASEAN Maritime Forum. At first, the EAS can ask the ADMM+ to report its activities to the EAS, from where the EAS can give the ADMM+ directions and tasking.

The EAS should create a permanent committee or secretariat within or alongside the ASEAN secretariat in order to build continuity between summits, so that the EAS can be responsible for implementing decisions and accountability can be assigned to EAS leaders.

The rise of China is the most pressing challenge to the future of East Asia. The EAS should be a premier leaders-led forum to engage and encourage China as a responsible and constructive player in East Asia and the Asia–Pacific.

There are significant opportunities for Japan and Australia to support the EAS. The two nations can and should cooperate with the US, India, ASEAN and other like-minded partners on the EAS in order to strengthen the rules-based regional order for peace, prosperity and progress in the Asia–Pacific.

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Dinner address

Mr Roger Wilkins AO

Secretary, Attorney-General's Department, 2 June 2014

Prepared transcript

Introduction

Like Japan, Australia is a trading nation. Our economic prosperity and security depends on the free flow of goods and services in the global market, open access to ocean trade routes and international communications and appropriate regulation of emerging technologies.

International law plays a key role in setting rules for these diverse issues. Adherence to a predictable, global rules-based system underpins our economic growth and is essential if States are to resolve their differences peacefully.

The instinct of the lawyer can be to insist every new challenge is best met with greater regulation. But it is testament to the durability of the international law system that many of the fundamental principles to address trade, environmental protection and emerging technologies are already in place. There is no need to unnecessarily reinvent the regulatory wheel. Appropriate regulation of these challenges may require only smaller or nuanced changes based on the fundamental rules already in place - to address gaps and ensure greater coordination between complex international rules. In many cases, political will to implement existing rules is what is actually needed.

Rule of law

As we all know, the transformation and growth of the Asian region is gathering pace.

With this change our region will be the world's largest producer of goods and services and the largest consumer of them. This will also bring greater political and strategic weight to the region.

In a diverse region such as Asia, a fair, rules-based order is conducive to political stability, and open and reliable trading environment, and confidence in investment.

Strengthened law and justice frameworks increase our ability to combat serious organised and transnational crime. This in turn promotes a safer regional environment for the trade in goods and services.

The Attorney-General's portfolio plays an important role in supporting the rule of law and effective governance in Asia, including through promoting work to combat people smuggling, terrorism, money laundering and corruption.

In fact, as part of Australia's G20 Presidency this year, my Department is co-chairing the Anti-Corruption Working Group.

Access to trade

As early as 1608, Grotius (the 'Father of International Law') opined, "every nation is free to travel to every other nation and to trade with it". Trade fuels economic growth, supports jobs, raises living standards and provides affordable goods and services.

Australia is committed to the wide-ranging benefits of liberalising trade. We have prioritised bilateral, regional and global trade agreements that open up markets for Australian exporters and sustain a strong, rules-based architecture for global trade.

- In addition to the six free trade agreements Australia currently has with its Asia Pacific trading partners, Australia recently announced the conclusion of negotiations on historic trade agreements with Korea and Japan.

Trade Agreements cannot be meaningful without the ability to freely move goods around the world. As island nations, shipping plays a critical role in facilitating Australia and Japan's trade networks.

- 98 per cent of Australia's trade by volume is exported by sea.

Since 1945, the Asia-Pacific region has become the fastest growing and most dynamic region of the global economy, with increasing intra and interregional seaborne trade.

All trading nations have a common interest in ensuring the maintenance of maritime security, unimpeded trade and freedom of navigation through the shipping routes in the region.

The trade route through the South China Sea is a case in point. Up to 57 per cent of Australia's merchandise exports and 48 per cent of the world's merchandise trade pass through the South China Sea.

Australia does not take a position on competing claims in the East China Sea and South China Sea. We recognise that resolution of disputes is an issue for the countries involved.

However, we have a legitimate interest in the maintenance of peace and stability, respect for international law, maritime security and unimpeded trade and freedom of navigation and overflight in the Asia-Pacific region.

Having parties to the dispute agree to the rules of the game would greatly assist in promote peace and stability in the region.

The UN Charter encourages states to seek regional solutions to regional disputes.

In this respect, Australia continues to encourage China and ASEAN countries to negotiate a binding Code of Conduct for the South China Sea.

International developments in Law of the Sea

Whilst freedom of sea navigation is critical, Australia recognises the importance of conserving and managing the oceans resources and the environment that sustains them.

- This includes in areas beyond national jurisdiction - on the high seas and deep seabed. These areas contain ecosystems with unique features worthy of conservation and offer prospects for scientific advancement and commercial development.

Internationally, concern has grown about the impact of new human activity on the marine environment. There is also poor coordination between existing oceans institutions and sectors (in fisheries, mining and shipping) and gaps in regulatory frameworks.

- For example, there is currently no global framework for marine protected areas on the high seas or for the conduct of environmental impact assessments. Whilst the UN Convention on the Law of the Sea (UNCLOS) regulates deep-sea mining, there is no global framework to regulate marine genetic resources taken from the seabed and commercially developed.

Australia (and Japan) are actively participating in United Nations discussions on a potential new treaty under UNCLOS on the conservation and sustainable use of biodiversity beyond national jurisdiction. It is early days and the scope of any new treaty is yet to be determined. If discussions moved

forward, the treaty would likely cover access and benefit sharing of marine genetic resources and marine protected areas and environmental impact assessments on the high seas.

Some States (like Japan) are concerned that a new treaty could encroach upon or diminish regional fisheries arrangements or duplicate the work of existing international institutions.

However, Australia thinks such concerns can be overcome. We support shaping a new treaty which is consistent with UNCLOS and its implementing agreements and which recognises the mandates of existing international institutions and regional arrangements. Coordination between the different sectors and institutions that cover these oceans areas will be key.

Japan and Australia may not agree on every issue at every regional or international meeting. But what we share is a belief in cooperation and that being 'at the table' is important.

Both States participate actively in fora such as the International Maritime Organisation (IMO) to regulate and reduce the pollution from ships and in regional fisheries management organisations to ensure sustainable fisheries.

The patchwork of international and regional oceans-related law highlights the complexity of international regulation States have to deal with in one area alone.

Whilst multilateral treaties are a traditional source of international law, they can be notoriously difficult and time consuming to negotiate. Perhaps because of this, States are finding complementary and creative ways to develop international law and strategic legal policy in regional organisations or in coalitions of like-minded states. Australia's participation in the East Asia Summit is a particularly valuable example.

The political appetite for binding international law will vary according to the issue. However, soft law developed in this way can also have a normative effect over time.

Protecting cyber networks

Apart from access to global trade, Australia's prosperity heavily depends on safe and secure access to international communications. This is a critical capacity that includes a vast array of infrastructure – submarine cables, banking and telecommunication networks.

A free and open internet is essential to regional prosperity.

Cyberspace enables and contributes to economic growth, generates innovation, improves productivity and opens up new markets.

Australia believes that an open and dynamic cyberspace is the best way to foster this prosperity and encourage citizens to interact with their government.

We are committed to promoting the underlying principles of the Internet – as an open, decentralised and accessible space that supports technical innovation and freedom of expression and association online. This is the best way to drive international trade and economic prosperity.

But these unique characteristics of cyberspace also provide opportunities for malicious cyber activity. The internet transcends national borders. It is anonymous. This makes cyberspace vulnerable to cyber exploitation and attacks. Harmful acts are extremely difficult to attribute to a State or individual. Responding to these different acts is challenging.

The Edward Snowden allegations have complicated this environment and the context in which the norms debate takes place.

Concerns about privacy and mass surveillance have unhelpfully become conflated with international debates around the governance and management of the internet.

Suspicion and distrust are feeding the desire from some countries for increased State regulation of the Internet through the United Nations.

When it comes to governance, Australia believes that everyone should be involved. Internet governance is not just for governments. While some government involvement in internet governance is necessary, for example Australia and Japan have both ratified the Council of Europe Convention on Cybercrime -we like the fact that no one single organisation or government owns or controls the Internet. Accordingly, we support a multi-stakeholder model for internet governance - where private sector, governments and users contribute to shaping the evolution and use of the Internet. This is this highly participatory model that has driven the openness and innovative characteristics of the internet that we see today.

There is ongoing international dialogue on the issue of State behaviour in cyberspace. As in the offline world, a common understanding of norms of behaviour promotes predictability in relations between States in cyberspace.

Australia's view is that existing international law, including human rights law, is applicable in cyberspace.

Indeed, an Australian (Ms Deborah Stokes) chaired the most recent UN Group of Governmental Experts on Cyber, which delivered a landmark report supporting this view.

However, much work remains to be done to reach consensus on *how* such bodies of law apply to cyberspace. A new UN Group of Government Experts has been created to continue this discussion.

Australia believes that developing confidence building measures between States as this work progresses, are an immediate and practical means of ensuring common understanding and promoting predictability within our region.

Work being undertaken through the ASEAN Regional Forum, including the recent workshop we hosted with Malaysia on confidence building measures, is essential to achieving these objectives.

We thank Japan for its significant contribution to this work.

Regulation of Unmanned Aerial Vehicles

Public commentary on UAVs or drones has centred on their controversial use in counter-terrorism operations and military theatre.

In this regard, they have sustained a bad reputation – associated with civilian casualties and possible 'remote-control' warfare.

I don't intend to debate the validity of these claims, only to say that in terms of accountability, where UAVs are used to carry weapons they are subject to the same international law requirements on the use of force and the conduct of hostilities as other weapons.

Clearly UAVs offer the potential for positive opportunities beyond the military to a range of security, law enforcement and commercial application. But they have also raised questions concerning privacy, trespass and boundaries for surveillance.

There are diverse UAV models in use today each with different characteristics, capabilities and possible uses. For government there is clear application for border protection, law enforcement, emergency response, search and rescue, and surveillance. The Australian

Federal Police uses UAVs to support operations and crime scene management and is trailing one to support public safety operations including in search and rescue, and tactical operations.

UAV technology is also becoming more affordable and accessible, including by private individuals. They are increasingly being used by non-government entities and private citizens for surveying, photography, filming public events, wildlife and marine protection, and recreation.

UAVs do not necessarily pose different legal or policy challenges to manned aircraft or other devices used to perform the same functions. However, the smaller sizes, greater flexibility of use means there is potential for their use in a range of new contexts.

Relevant laws are generally technology neutral and apply to the use of UAVs in the same way they would apply to other means of undertaking the same activities. The exception is civil aviation laws, which specifically regulate the use of UAVs in an air safety context. The Civil Aviation Safety Authority is developing safety standards for UAVs in order to integrate them in all classes of airspace.

My Department has not yet identified any significant deficiencies in the coverage of our existing policy and regulatory frameworks. It is possible that future growth in the number of UAVs and their new uses may challenge the effectiveness of those frameworks. Accordingly, the Department will continue to monitor developments in this area.

Appendix 1: Programme for the symposium



Strengthening rules-based order in the Asia-Pacific

Developing an Australia-Japan agenda for strengthening agreed rules and norms in the Asia-Pacific

Symposium on Enhancing Australia-Japan Cooperation
Hyatt Hotel, Canberra
2 June 2014

0830 - 0900	Registration and coffee
0900 - 0910	<p>Welcome and Introductory Remarks</p> <p>Mr Peter Jennings PSM, Executive Director, Australian Strategic Policy Institute, Australia</p> <p>His Excellency Mr Yoshitaka Akimoto, Ambassador Extraordinary and Plenipotentiary, Embassy of Japan, Canberra</p>
0910 - 1025	<p>Session 1 - Shipping, Fisheries and the Maritime Environment</p> <p>Chairperson: Mr Michael Kinley, Australian Maritime Safety Authority</p> <p>Subject matter experts:</p> <ul style="list-style-type: none"> • Prof Taisaku Ikeshima, Waseda University • Ms Joanna Mossop, Victoria University of Wellington • Prof Stuart Kaye, Australian National Centre for Ocean Resources and Security, University of Wollongong <p>The last few decades have seen a proliferation of international instruments establishing rules for managing the oceans and its various uses. Under the principle of ‘think globally, act regionally and nationally’, implementation is necessary at the regional and national levels. However, many instruments, including ones about shipping and protecting the marine environment and fishing, are not well supported in the region. Why is this so? How can we get better rules for shipping, fisheries and the maritime environment and how do we enforce these rules eg. role of coastguards, regional organisations?</p>
1025 - 1045	Coffee

1045 - 1200	<p>Session 2 - Promoting Rule of Law in Conflict Affected States</p> <p>Chairperson: Professor the Hon Gareth Evans AC, QC, FASSA, Australian National University</p> <p>Subject matter experts:</p> <ul style="list-style-type: none"> • Dr Noel M. Morada, Asia–Pacific Centre for the Responsibility to Protect, University of Queensland • Dr Toshiya Hoshino, Osaka School of International Public Policy, Osaka University • Ms Lisa Sharland, Australian Strategic Policy Institute <p>Ensuring respect for the rule of law lays at the heart of building durable peace, protecting human rights, and encouraging sustained economic and social development in post-conflict states. How has the Responsibility to Protect (R2P) doctrine developed and where should regional actors focus efforts to strengthen R2P principles? What are the shared lessons to be learned from peacekeeping and other operational activities led and supported by regional players? How should regional actors contribute to conflict prevention activities to manage conflicts and ensure peaceful and successful transitions? How does trauma affect post-conflict communities and how does it challenge the building of rule of law?</p>
1200 - 1300	<p>Lunch</p>
1300 - 1415	<p>Session 3 - Sustaining Rules-based Order in International Trade and Economic Cooperation</p> <p>Chairperson: Professor Peter Drysdale AM, Crawford School of Public Policy, Australian National University</p> <p>Subject matter experts:</p> <ul style="list-style-type: none"> • Dr Joshua Meltzer, The Brookings Institution • Prof Takashi Terada, Doshisha University • Mr Richard Andrews, G20 Policy Division, Department of Prime Minister and Cabinet <p>There exist significant opportunities for economies across the Asia–Pacific continue to grow and strengthen on the basis of a sound regional rules-based economic order. How does the G20 contribute to the rules-based order in the Asia–Pacific? How can the rules-based order support free trade? What opportunities are available for regulatory frameworks to be liberalised? Is reform needed in policies related to foreign ownership? How can economic and trade policies across the region be harmonised to support international economic cooperation?</p>
1415 - 1435	<p>Coffee</p>
1435 - 1550	<p>Session 4 - Cyberspace and Internet Governance</p> <p>Chairperson: Dr Tobias Feakin, International Cyber Policy Centre, Australian Strategic Policy Institute</p> <p>Subject matter experts:</p> <ul style="list-style-type: none"> • Dr Hitoshi Nasu, College of Law, Australian National University • Ms Maeve Dion, Faculty of Law, Stockholm University <p>Cyber space has continued to grow as an important arena in which governments and citizens can act. How does the existing geopolitical context affect the development of a regional legal framework for cyber security? What challenges does the development of cyber capabilities pose to the existing rules of international law? Cyber maturity across the region is variable, with some states possessing highly developed capabilities while other states are in the early stages of this work.</p>

	<p>Regardless of the degree to which a state is active in cyberspace, it is key that actors in the region contribute to the establishment of clear and identifiable behavioural norms. What do these norms currently look like? How should state actors shape these norms? What regulation is needed in this space? Are international organisations needed to moderate norms and practices in the cyber realm? In a decisive year for the future of the Internet, this exercise is also important with regard to answering questions of Internet governance. How does a free and open Internet contribute to the prosperity of our region? What are the dangers in moving to state-based Internet control? How can Australia and Japan proliferate the ideal of an open Internet across the region?</p>
1550 - 1605	Coffee
1605 - 1720	<p>Session 5 - Emerging Challenges in Airspace and Outer space</p> <p>Chairperson: AIRMSHL John Harvey AM (Ret'd)</p> <ul style="list-style-type: none"> • Mr Terry Farquharson, Civil Aviation Safety Authority • Group Captain Ian Henderson AM, Military Law Centre and Asia-Pacific Centre for Military Law <p>Significant technological advancement will continue to push states into new areas of operation. As unmanned aerial vehicles (UAVs or drones) have proliferated throughout militaries and the commercial sector, serious legal questions for governments and regional organisations are being raised. These are related to concerns about individual privacy, as well as the use of drones by militaries for surveillance and targeted strike beyond national borders. Are existing international legal frameworks adequate to deal with the emerging military use of drones? Has the US set a precedent for the use of drones by other states over the past decade? How will commercial uses of drones impact domestic laws regarding the airspace?</p> <p>The governance and defence of the air commons is a significant issue for states in the Asia-Pacific with the proliferation of symmetric and asymmetric capabilities allowing both state and non-state actors to challenge order in airspace. How is the air commons contested in the region? How can the openness and stability of the air commons be protected? What international agreements are needed to strengthen governance of the air commons?</p> <p>The space commons facilitates the sound functioning of global political and economic systems. While the international community wishes to ensure the continued openness of space, its inherent fragility is threatened by a lack of policy for its protection and management. What are the main threats and challenges facing the space common? What frameworks and agreements should be developed for the structured management of space? How can regional actors be encouraged to contribute positively to the space commons?</p>
From 1900	<p>Symposium Dinner</p> <p>Dinner speech by Mr Roger Wilkins AO, Secretary, Attorney General's Department</p> <p><i>'The role of a rules-based order in promoting prosperity in the Asia-Pacific'</i></p>

Acronyms and abbreviations

ADMM+	ASEAN Defence Ministers Meeting Plus
AMRO	ASEAN+3 Macroeconomic Research Office
APEC	Asia-Pacific Economic Cooperation
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
CERT	computer emergency response team
EAS	East Asia Summit
EMA	Emergency Management Australia
EU	European Union
FMT	foreign medical team
FTA	free trade agreement
G20	Group of Twenty
GATT	General Agreement on Tariffs and Trade
HADR	humanitarian assistance and disaster relief
ICANN	Internet Corporation for Assigned Names and Numbers
ICAO	International Civil Aviation Organization
ICT	information and communications technology
IMO	International Maritime Organization
INSARAG	International Search and Rescue Advisory Group
JICA	Japan International Cooperation Agency
NGO	non-government organisation
R2P	responsibility to protect
RCEP	Regional Comprehensive Economic Partnership
TPP	Trans-Pacific Partnership
UK	United Kingdom
UN	United Nations
USAR	urban search and rescue
WTO	World Trade Organization

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