

# Enhancing maritime security in the Indo-Pacific

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**POLICY BRIEF**

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*Cover image: The crew of Tongan Guardian-class Patrol Boat, Ngahau Siliva, prepare to march onboard after the ship was officially handed over to from Australia to Tonga on 30 October 2020 | Royal Australian Navy | LSIS Richard Cordell*

## Executive summary

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- The Indo-Pacific faces multiple security challenges, ranging from the risk of major war arising from territorial and maritime disputes to significant human and environmental threats to ecosystems.
- Differences in hard power capabilities and law enforcement capacities and divergent perspectives on maritime order and basic norms threaten both stability and governance, or 'good order at sea'.
- Regional states and states with significant stakes in Indo-Pacific security and prosperity should tailor their action on the basis of a clear understanding of the different order of priorities across regional states.
- To maximise the effect of their contributions, regional states and states with significant stakes in Indo-Pacific security and prosperity should seek to deconflict their actions and favour cooperative and integrated strategies where possible.
- Given the diverse nature of maritime security challenges, states should seek to promote an inclusive, cooperative and integrated approach to their actions, combining diplomatic, economic, and military instruments to meet these challenges.
- Regional cooperation should prioritise actions and activities aimed at supporting, strengthening, and amplifying the capacity and capabilities of small and medium regional coastal states to uphold and if necessary, successfully defend their maritime interests.





## Introduction: The paradox of maritime governance in the Indo-Pacific

This report draws upon the findings from a series of four online workshops that La Trobe Asia, together with Kings College London and Griffith Asia Institute convened from 18 January 2022 to 08 February 2022. The sessions lasted for 90 minutes and were aimed at convening a network of experts from across the region to explore issues of conflict disputes and management, international law, maritime security cooperation, and capacity building as ways to strengthen the regional maritime order.

The report engages with the question of maritime security through the framework of 'good order at sea'. Such an approach, originally developed by Geoffrey Till, focuses on the functional understanding of ocean governance as a matter of wider regional stability, including both material issues of hard power and normative issues of behaviour. In this respect, the pursuit of good order at sea in the Indo-Pacific rests upon a fundamental paradox. On the one hand, there is considerable agreement over the importance of stability at sea, especially in a context in which the ocean represents a primary connecting fabric within and among states. On the other, there is a measure of disagreement over how such an objective should be pursued, given the significant differences in capabilities, capacity, and priorities.

Looming upon such disagreements is the understanding that challenges to good order at sea in the Indo-Pacific reflect broader trends. Crucially, governance cannot be fully disentangled from a question of maritime order that unfolds from a balance in regional military

and paramilitary power. Shared perceptions about the shifting maritime power balance informs how regional actors perceive stability as a matter of regional governance. Yet, regional maritime security is affected by a vast range of issues beyond traditional great power politics, including sustainability (such as over-fishing and undersea mining), natural disasters and human rights at sea. Regional states are increasingly required to manage and prosecute 'blue crimes' in their maritime jurisdictions, such as Illegal, Unreported and Unregulated (IUU) fishing, piracy and illegal arms-, people- and drug- trafficking. The work of investigative journalists like Ian Urbina and international organisations such as UNESCO have in fact brought to light the continuous damage to marine ecosystems the world over.

The COVID-19 pandemic has exacerbated a variety of transnational crimes, most notably smuggling – from pandemic-related medical items to food – as well as drugs and human trafficking. In 2021, Singapore recorded an uptick in piracy and robbery incidents, whilst in the aftermath of the winding down of operations in Afghanistan, South East Asian states have been paying increased attention to the potential resurgence of transnational terrorism. Whilst there is agreement in multilateral forums for concerted action, the recent pandemic has highlighted the risks of indecisiveness unfolding from international crises, which pitch national interests against international responsibilities.

Often, national security and national interests are prioritized over international law or working together with other states. The Peoples Republic of China (PRC), for example, rejected the 2016 Arbitral Tribunal ruling in the Philippines-China South China Sea case that its historic rights claim within the nine-dash line is legally invalid. At the same time, by refusing to ratify UNCLOS, the US remains open to accusations of hypocrisy by the PRC about its support for the maritime 'rules-based order.'



*HMAS Canberra sails in formation with (l-r) USS Abraham Lincoln, JS Izumo (obscured), USS Mobile Bay, HMAS Warramunga, HMAS Supply, USS Spruance, USS Gridley, JS Takanami and USS Sampson as part of a group sail RIMPAC 2022. (Royal Australian Navy | POIS Christopher Szumlanski)*

## Stability through practice: Enhancing state capabilities

The naval balance of power in the maritime Indo-Pacific is shifting. Some states are rapidly expanding and modernising navies and coastguards, and acquiring new capabilities, including anti-ship missiles. The People's Liberation Army Navy (PLAN) is today estimated to comprise 355 ships and will likely grow to a force of 420 by 2025 and 460 in 2030. Many of these ships are new, capable, modern vessels. China already has the world's largest coast guard, numbering about 130 ships, together with 70 or so patrol vessels.<sup>1</sup>

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

Maritime security trends have reinforced a perception among regional states that capacity building to enhance good order at sea is essential. Yet, how capacity building is presented is essential to how it is perceived and how far it is accepted. Crucially, the tension linking national sovereignty, limited capabilities, and a shifting regional power balance, rewards approaches to capacity building that do not focus primarily on international normative compliance. Rather, capacity building might be best placed to achieve better results if presented as an opportunity

to enhance stability through practical cooperation and the promotion of good order at sea through state practice. A practical focus does not preclude conversations about 'maritime governance', but it does not demand regional states to engage in cooperation that might dilute national sovereignty. Indeed, for this reason, this approach can be particularly advantageous to actors from outside the region with interests in the wider maritime order and in ensuring its normative resilience as a primary step towards longer term compliance and stability.

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

The second reason pertains to the need to strike a balance between war fighting and security capabilities. As tensions remain high across the South China Sea, and the power differential between the PRC and other regional coastal states widens, states from Vietnam to the Philippines to Indonesia and Singapore have to juggle different priorities. This, in turn, creates organisational quarrels over budget allocations, which affect negatively the overall pursuit and sustainability of capabilities. Needless to say, regional states view external support to offset limitations and constraints as a genuine opportunity.



*Navy School children greeting Chinese naval officers at Visakhapatnam in 2014. (Wikimedia Commons | Government of India)*





The Australian Defence Force worked with the Pacific nations of Palau and Micronesia by helping to conduct maritime surveillance to help detect and deter illegal fishing activity in the Pacific in March 2022 as part of Operation Solania. (Royal Australian Navy)

In recent years, efforts to improve maritime domain awareness and information sharing represent a prime example of the regional recognition of the importance of developing adequate tools to maintain stability. Regional states have been working individually through domestic law and law enforcement to ensure their sovereign rights in the maritime domain and prosecute blue crimes. While maritime domain awareness and information sharing across large parts of the Indo-Pacific has improved markedly in recent years, with the establishment of ‘fusion centres’ for information sharing in the Port Vila, Vanuatu, in Singapore, and in Gurugram, just outside the Indian capital New Delhi,<sup>2</sup> this remains crucial for providing states with the data they need to secure their waters through domestic prosecutions and avoid misunderstanding. This is particularly important for small island states that have significant EEZs compared with their territory, such as the microstate Kiribati which has an EEZ of over 3.5 million km<sup>2</sup>, one of the world’s largest. Such vast maritime areas are difficult for states to effectively police and patrol. Assistance does not need to come just in the form of naval or coastguard assets. Maritime domain awareness items such as satellites for vessel monitoring systems and AIS tracking access are of great value for enhancing good order at sea.

For capacity-building efforts to be most effective they have to be bespoke. They need to be adapted to the particular domestic arrangements, capacity, and capabilities of the intended recipient. Efforts in capacity building need also to be persistent in nature to allow for effects to be lasting and fully processed by the regional organisations. In this respect, it must be pointed out that

South East Asia remains a very large area and capabilities will always be limited compared to the needs. As such, lasting efforts are more likely to elicit results, as the example of the Australian-sponsored regional patrol boat program in the South Pacific would suggest.

### Recommendations:

The report finds the following recommendations as relevant to advance capacity building:

- To work cooperatively to build the capacity of regional states to monitor, police, and defend their territorial waters and EEZs, and assist in the event of humanitarian emergencies through maritime domain awareness, information and sharing and surveillance capacities;
- To engage in more joint maritime training exercises with navies and coastguards;
- To ensure that the specific needs of individual states are addressed through bespoke capacity-building and training agendas;
- To ensure greater coordination in training and resourcing can enhance their abilities to act professionally and effectively when problems arise and uphold their maritime rights through domestic enforcement;
- To favour legal capacity building and training for maritime officers and workers about law of the sea and maritime order, and civil society organisations working across the spectrum of maritime security issues.

## Governance through practice: Supporting an inclusive understanding of rule of law

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

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

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

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

If implemented, the arbitral tribunal ruling would result in a dramatic spatial reduction in maritime claims in the South China Sea. But the ruling has not been capitalised on, or effectively advocated by, either the South East Asian claimants or the international community more broadly. According to Asia Maritime Transparency Initiative's arbitration tracker<sup>3</sup>, only 8 governments have publicly supported the ruling, 35 acknowledged it, and 8 opposed. Such global ambivalence makes it difficult for international maritime dispute resolution mechanisms to support good order at sea as a means to more resilient maritime governance.

Over the past three years, however, the decline in regional stability has driven some states to reinforce the arbitral tribunal ruling and clarify their own legal positions on the award. The swathe of note verbales to the UN that followed Malaysia's submission to the Commission on the Limits of the Continental Shelf in 2019 is a good example, as states engaged in legal and public diplomacy to clarify their views on the ruling and the responsibilities of states to respect international law. The Arbitration Award has served a purpose in unifying the majority of South China Sea littoral States—Philippines, Malaysia, Indonesia and Vietnam—around the notion that the award represents an authoritative interpretation of international law that has shaped their maritime claim-making.

*Australian Foreign Minister Julie Bishop and East Timor Deputy Minister of the Prime Minister Agio Pereira sign a document related to a treaty that resolves a long-standing maritime border dispute between the two countries in March 2018 following reconciliation proceedings (Photo: Maritime Boundary Office)*







*The Australian Government delivered the Guardian-class patrol boat FSS Tosiwo Nakayama to the Federated States of Micronesia on Friday, 11 March 2022. (Royal Australian Navy | LSIS Ernesto Sanchez)*

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

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

While many states advocate the importance of a ‘rules-based order’, there remains disagreement about how to interpret the ‘rules’, which rules should be prioritised, and the kinds of activities that should/should not be permitted (e.g. posturing at sea). There is also disagreement about the extent to which a body of law should be prioritised ahead of rules, which is vaguer term that incorporates informal or soft law, or indeed ‘practices’ around the maintenance of ‘good order’. Legal ‘grey areas’ in UNCLOS have also exacerbated different views among states about key provisions, including whether or not warships have rights to innocent passage. There is also disagreement about whether the rules-based order should focus more on the ‘order’ aspect, meaning states should be coming together to create a safe and secure region (cooperatively, rather than competitively).

## Recommendations:

In light of the above, the report finds the following recommendations relevant to promote normative behaviours through the promotion of good order at sea:

- To recognise the different perspectives and agency of states in South East Asia, Indian Ocean Region and the Pacific who at the forefront of contemporary challenges to UNCLOS;
- To promote, based upon the above recognition, greater regional consensus on legal ambiguities to narrow the gaps in legal approaches by encouraging all states to be clear about their maritime claims and the basis upon which they are made;
- To encourage and support the research and development of evidence-based policy reports, events and publications by experts designed to articulate national claims;
- To address lawfare narratives through coordinated legal and public diplomacy aimed at explaining the importance of international law of the sea to the public, and expand public and policy understanding of maritime security issues;
- To engage in collective, regional forms of normative and operational sea power, including joint activities with regional partners on areas of international law of the sea, such as principles of freedom of navigation and overflight;
- To build upon existing ‘rules of the road’ to minimise risks associated with increasingly crowded maritime domains and unplanned encounters at sea;
- To work in cooperation with regional states to build norms and practices in areas that UNCLOS did not anticipate, such as climate change and the affects of rising sea levels on baselines.

## Building a sustainable security order through practical cooperation

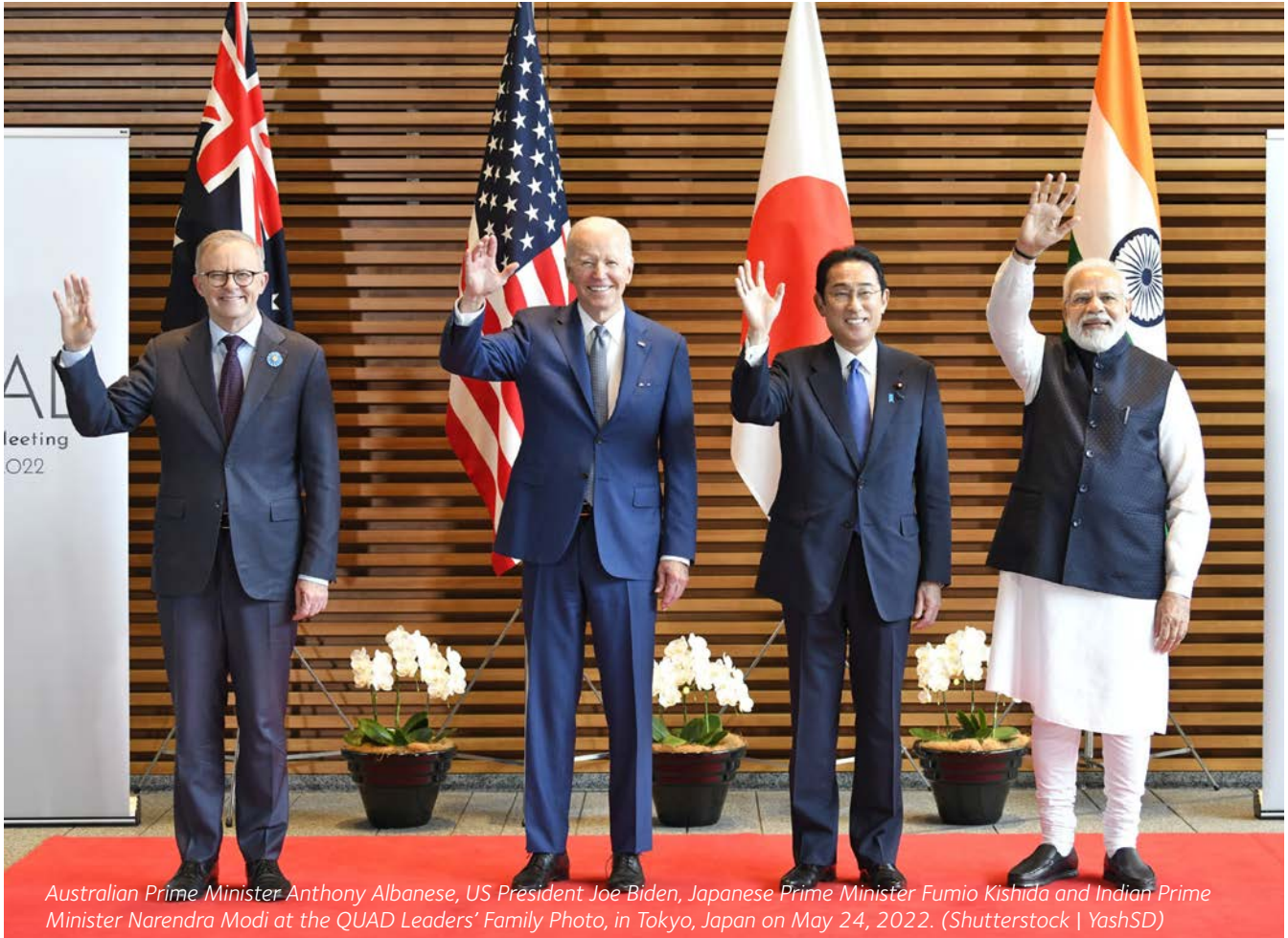
The security architecture of the Indo-Pacific is changing. At the structural level, PRC's Belt and Road Initiative, or BRI, is providing new avenues for regional states to pursue infrastructure funding and development. However, it has been criticised for low quality projects and for having a strategic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

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

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

Within this context, the role of ASEAN remains central to maritime security for regional security and prosperity, though it has proved to have significant limits in promoting stronger and resilient forms of cooperation. In particular, the ARF has been increasingly marginalised as a result of great power competition. To date, the ASEAN Defence Ministers Meeting (ADMM-Plus) has been able to move the discourse further than the ASEAN Regional Forum. The East Asian Summit, meanwhile, is not necessarily the most appropriate channel for the debates over sensitive topics such as the South China Sea disputes because of its regional limitations.

On the other hand, new minilateral forums, including the Quad and AUKUS, have come to supplement the larger forums as avenues to address specific security concerns, especially in relation to the changing shifts in power balance. Both formats could be potentially controversial as they may be viewed by some South East Asian states as primarily anti-Chinese (risking aggravating China) and undermining ASEAN centrality.



Australian Prime Minister Anthony Albanese, US President Joe Biden, Japanese Prime Minister Fumio Kishida and Indian Prime Minister Narendra Modi at the QUAD Leaders' Family Photo, in Tokyo, Japan on May 24, 2022. (Shutterstock | YashSD)





*HMAS Glenelg's Navigating Officer takes a range and bearing of German Navy warship FGS Bayern during their joint officer of the watch manoeuvring exercises held in the Timor Sea. (Royal Australian Navy | LSIS Shane Cameron)*

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

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

Many states remain at odds over governance issues such as how to confront the pressing challenges of IUU fishing and over-fishing, particularly since these issues have sovereignty implications within states' EEZs. In East Asia, the ten ASEAN member states and China are negotiating a Code of Conduct (COC) in the South China Sea. South East Asian claimants view the COC as a potential constraint on the use of force in

maritime and territorial disputes, but negotiations have been delayed due to the COVID-19 pandemic. ASEAN states and China agree on many aspects in the draft text. However, there remain a number of uncertainties, such as the geographical scope and the binding nature. A COC that circumvents or ignores UNCLOS and undermines the 2016 arbitral tribunal would be of concern to states with significant stakes in Indo-Pacific maritime security and maintaining open sea lanes of communication across all maritime domains.

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

## Recommendations:

The report finds the following recommendations as relevant to promote sustainable regional stability through an inclusive and open architecture:

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

## Notes

1. Congressional Research Service, *China Naval Modernization: Implications for US Navy Capabilities—Background and Issues for Congress*, updated 20 January 2022, <https://sgp.fas.org/crs/row/RL33153.pdf>, p. 2, 5.
2. The Pacific Fusion Centre was set up by the Pacific Islands Forum in 2021.
3. Asia Maritime Transparency Initiative, *Arbitration support tracker*, published August 2021, <https://amti.csis.org/arbitration-support-tracker/>



*Leading Seaman Aviation Support guides a MH-60R helicopter from HMAS Warramunga onto the flight deck of HMAS Canberra as the ship sails through the Coral Sea. (Royal Australian Navy | POIS Christopher Szumlanski)*



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