

PROPOSED CSCAP STUDY GROUP ON FACILITATING MARITIME COOPERATION

The CSCAP Study Group on Capacity Building for Maritime Security Cooperation at its final meeting in Kuala Lumpur 27-28 May 2006 discussed priority areas for further work on maritime issues by CSCAP. Two priority areas were identified:

- Cooperation between maritime security forces; and
- Maritime cooperation in areas without agreed maritime boundaries.

Cooperation between maritime security forces

The number of “maritime security forces” in the region is multiplying. At a national level, these forces might comprise a navy and separate para-military force, such as marine police or a coast guard,¹ to undertake policing tasks related to law and order at sea, as well as other tasks, such as search and rescue (SAR) and marine environmental protection. Each country will organise its maritime security forces to meet its own constitutional, cultural and political circumstances. Some countries do not have a coast guard and rely entirely on the navy to undertake policing at sea, while others make a clear distinction between the roles and tasks of naval defence and those of civil policing at sea.

A number of trends are apparent with the roles of maritime security forces. First, many regional navies have moved into the high technology era and are more focused on military roles and tasks rather than policing at sea. Secondly, policing at sea is becoming more complex with the development of new security regimes. Thirdly, the levels of illegally activity at sea are increasing. Lastly, some countries are developing their coast guards or establishing such a force where previously they had not had one.

Current Cooperation

Cooperation between regional navies is at present undertaken on an *ad hoc* basis (including by *ad hoc* coalitions); through agreement at a bilateral or multilateral level covered by either by a memorandum of understanding (MOU) or a more formal treaty; or through a formal alliance. At a regional level, navies meet together at the Western Pacific Naval Symposium (WPNS), and in recent years, exercises on some aspects of maritime cooperation (such as mine countermeasures and submarine rescue) have also been undertaken under the auspices of the WPNS.

Cooperation between neighbouring countries to maintain law and order at sea is now more common in the Asia Pacific. This is undertaken both by navies and coast guards. The latter are often assigned a formal role of international cooperation rather than being restricted to home waters. At a regional level, this cooperation is under the oversight of meetings of the Heads of Asian Coast Guard Agencies, which was responsible for the development of the Regional Cooperation Agreement on Combating Armed Robbery against Ships in Asia (ReCAAP).

¹ This proposal uses the term “coast guard” to refer to the para-military forces, although they may have different names in different countries e.g. the Malaysian Maritime Enforcement Agency or the Korean National Maritime Police.

It is important for regional maritime security that dialogue be developed on cooperation to maintain law and order at sea, SAR, navigational safety, and marine environmental protection. Neither the WPNS nor the meetings of the Heads of Asian Coast Guard Agencies can develop the necessary dialogue in isolation. There must be a higher level of dialogue on cooperation between navies and coast guards, and better inter-agency coordination than exists at present both at the national and regional levels. However, problems of regional maritime cooperation might arise where a navy is required to cooperate with a coast guard and vice versa.

The proposed CSCAP work would address the implications of the trends discussed above with the changing roles of maritime security forces, and how greater levels of cooperation might be achieved between these forces. The work might also address:

- the contribution of maritime security forces to disaster relief and humanitarian assistance, following on from the involvement of many regional navies in disaster relief work after the disastrous tsunami in Sumatra in December 2004;
- the contribution of maritime security forces to the security and safety of shipping and seaborne trade (protection of SLOC), particularly in the light of new concepts of maritime security and new threat perceptions following 9/11 (there is a relationship here with the work of the new CSCAP Energy Study Group, and a joint meeting between the two groups might be useful); and
- ways and means of ensuring bilateral/multilateral interfaces and full cooperation between maritime security forces.

Maritime Cooperation in Areas without Agreed Maritime Boundaries

This proposal is based on two key considerations: first, the lack of maritime boundaries in the region, and secondly, the fact that that most of the seas of East Asia may be classified as enclosed or semi-enclosed seas within the definition in Article 122 of the 1982 UN Convention on the Law of the Sea (UNCLOS).

Lack of Maritime Boundaries

Less than half the maritime boundaries required in the seas of Southeast and Northeast Asia have been agreed. Sovereignty disputes over offshore islands and other features inhibit further progress with maritime boundary delimitation. These disputes are unlikely to be resolved in the short-term, and in the meantime, there is effectively a “grey hole” of jurisdiction that means important areas of cooperation are not being addressed, including cooperation for maintaining law and order at sea (including against piracy, maritime terrorism, proliferation of WMD, and illegal trafficking in arms, drugs, or people), search and rescue, navigational safety, and marine environmental protection).

In this context CSCAP has previously stated that:

If boundaries cannot be resolved, economies should be prepared to enter into some form of provisional arrangements for the maintenance of law and order in

the disputed area without prejudice to their positions in the boundary negotiations.²

Enclosed or Semi-enclosed Seas

The *regime* of enclosed or semi-enclosed seas, established by UNCLOS Part IX, is particularly important in East Asia where there are many such seas. In the context of the Study Group's activities, UNCLOS Article 123, dealing with cooperation of states bordering enclosed and semi-enclosed seas, is especially significant:

States bordering an enclosed or semi-enclosed sea **should** cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they **shall** endeavour, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in the furtherance of the provisions of this article (emphasis added).

This is a very strong obligation, but cooperation in the management of regional enclosed and semi-enclosed seas in the region is falling short of what is necessary. Again, this is due to the existence of sovereignty disputes. What is less clear, however, is what is actually meant by the term "cooperation", and how this is to be achieved.

While resource management, the protection of the marine environment and marine scientific research are mentioned specifically as areas for cooperation, the opening sentence of UNCLOS Article 123 sets a more general obligation to cooperate. That responsibility might now be interpreted as including security and safety, including the maintenance of law and order at sea.

Objective

The objective of this work would be to develop principles or guidelines for maritime security cooperation in the areas of maritime space where maritime boundaries have not been agreed. This would include issues of functional cooperation, including joint management arrangements for particular functions.

² *The Weakest Link? Seaborne Trade and the Maritime Regime in the Asia Pacific*, CSCAP Memorandum No.8, p.5. The word "economies" is used here because CSCAP Memorandum No.8 was produced with the involvement of participants from the Pacific Economic Cooperation Council (PECC) that uses "economies" to describe its members rather than "countries".

Without this cooperation, it is impossible to arrive at an effective management regime, or to reduce the risks of conflict or confrontation over disputed areas. It is an extremely important requirement that is not being addressed at present at a Track One level, but could constitute a significant measure of preventive diplomacy, as well as contributing operationally to safety and security.

The work would be “geographically neutral” in that reference would not be made to particular areas of disputed jurisdiction and the merits or demerits of different claims. However, reference may be made to successful forms of cooperation, or joint management, which might already be taking place in some areas. It might also include an analysis of lessons learnt.

Way Ahead

The preferred approach of the Study Group would be to address both the above proposals by a single Study Group, possibly with the title of CSCAP Study Group on Facilitating Maritime Cooperation. The alternative approach would be to establish separate Study Groups to deal with each of the above issues but this is not preferred as it might lose the benefits of the current interface that exists in the present Study Group between more conventional maritime security people, and those coming more from a law and oceans management policy background.

Recommendation

It is recommended that the CSCAP Co-Chairs and Steering Committee approve the establishment of the CSCAP Study Group on Facilitating Maritime Cooperation to have two meetings – one focused on each of the above topics.

The first of these meetings will be focused on “Cooperation between maritime security forces” and will be held in Wellington, New Zealand, immediately prior to the CSCAP Steering Committee in December 2006.

The second meeting will be focused on “Maritime Cooperation in Areas without Agreed Maritime Boundaries” and will be held in mid-2007, possibly somewhere in Southeast Asia

The results of the first meeting will be presented at the CSCAP Steering Committee in mid-2007, and of the second meeting at the Steering Committee meeting in December 2007.

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