

CSCAP Study Group on Facilitating Maritime Cooperation in the Asia-Pacific – Final Study Group Report and Report of Meeting on Maritime Cooperation in Enclosed and Semi-Enclosed Seas

FINAL STUDY GROUP REPORT

The Study Group on Facilitating Maritime Cooperation in the Asia Pacific was established at the CSCAP Steering Committee meeting in June 2006 with a charter to hold two meetings. The first meeting was held in Wellington, New Zealand 15 -16 Dec 2006 hosted by CSCAP New Zealand on the main topic of the Roles of Maritime Security Forces (a report on this meeting was tabled at the last Steering Committee meeting). The second meeting was not held until April 2008 and is reported below. Although there was no meeting of this particular Study Group for nearly eighteen months, CSCAP momentum on regional maritime security was maintained by a special Study Group on Safety and Security in the Malacca and Singapore Straits that held its meeting in Jakarta in September 2007.

The Output of the Study Group on Facilitating Maritime Cooperation in the Asia Pacific so far comprises:

- CSCAP Memorandum No. 12 - Maritime Knowledge and Awareness: Basic Foundations of Maritime Security (copies supplied to member CSCAPs)
- Draft CSCAP Memorandum – Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific (copy distributed with meeting papers).

It is still hoped to produce a book of edited papers from the Wellington meeting of the Study Group.

SECOND MEETING

The second Meeting of the CSCAP Study Group on Facilitating Maritime Cooperation in the Asia-Pacific was held in Seoul, ROK Wednesday 2 and Thursday 3 April 2008 hosted by CSCAP Korea. The meeting was well attended with 28 participants from 13 member CSCAPs and two keynote speakers/resource persons. The meeting was co-chaired by Probal Ghosh (CSCAP India), Sam Bateman (CSCAP Australia) and Hasjim Djalal (CSCAP Indonesia). The Study Group was most grateful to CSCAP Korea for the warm hospitality and efficient arrangements made for this meeting.

The objective of the Seoul meeting was to develop principles or guidelines for maritime cooperation in enclosed and semi-enclosed seas. This would include issues of functional cooperation, including joint management arrangements for particular functions. 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.

After welcoming statements by CSCAP Korea and the Co-chairs, the meeting opened with a keynote address by one of the resource persons, Dr Mark Valencia on “A Maritime Security Regime for Northeast Asia”. Dr Valencia identified reasons why a “Peace Regime”, as agreed at the February 2007 Six-Party talks should give consideration to the maritime domain, largely because of the many overlapping claims to maritime jurisdiction in the region. He identified numerous worrying maritime incidents that have occurred in recent years. On the positive side, he identified developments, including several INCSEA agreements and joint arrangements that provided a foundation on which to build. The second party of his paper discussed a prospective “code of conduct” for Northeast Asian seas. Dr Valencia concluded that, if such a code was in place, we could think about a “Northeast Asia Ocean Peacekeeping Force” to ensure safety and security of navigation, undertake sea rescue, protect fisheries and protect the environment against potential polluters.

Session 1

The first working session of the meeting discussed prospective functional areas of cooperation:

- **Resources Assessment and Management.** Professor Ian Townsend-Gault from CSCAP Canada addressed joint development as a resource management tool where boundaries cannot be agreed. This approach was well supported in terms of basic international legal principles of peaceful settlement, good faith, and equity. There were now several examples of effective working arrangements around the world where resources were being exploited without prejudice to long-term boundary agreements.
- **Fisheries.** Dr Wang Kuan-hsiung from Chinese Taipei pointed out that fisheries are no longer just a national issue, as well as identifying a global problem of excess fishing capacity. The enclosed and semi-enclosed seas of East Asia are now over-fished and the management of fisheries in these seas must be approached on a cooperative basis.
- **Marine Environmental Protection.** Professor Robert Beckman from CSCAP Singapore provided a very critical overview of progress with cooperation to enhance marine environmental protection in regional seas. In his view, key international treaties were not taken seriously with low levels of ratification and poor implementation even when such treaties were ratified. A major effort was required in the region to redress this situation. It was also much easier to cooperate if a common legal framework was available.
- **Marine Safety and Search and Rescue.** Co-chair Sam Bateman used a fictitious incident involving a missing LPG tanker in the South China Sea to demonstrate the lack of agreed contingency arrangements in the region for dealing with such a situation. The likely ineffectiveness of the SOLAS Ship Security Alert System was a particular problem.
- **Security and Law and Order at Sea.** Co-chair Probal Ghosh briefed the meeting on recent initiatives by India to promote cooperation, including the Indian Ocean

Naval Symposium (IONS) and the associated Track Two seminar. On a broader note, he noted ongoing problems with the Proliferation Security Initiatives (PSI) and the difficulties of some countries with implementing the International Ship and Port Facility Security (ISPS) Code.

- Security of Offshore Oil and Gas Installations. Resource Person Lee Corder described the current situation with offshore oil and gas exploration and exploitation in the region. Many new wells and platforms were scheduled to come into production. He discussed the safety and security risks of these installations based on accidents and incidents that had occurred elsewhere in the world, before identifying the current legal regime, for ensuring safety and security. There was a strong mutual interest in the security and safety of offshore oil and gas installations (fixed and floating), but there were still uncertainties about jurisdiction, security responsibilities and cooperative contingency response arrangements.

The discussion session at the end of Session 1 covered a range of issues. Questions were raised about whether cooperation in enclosed and semi-enclosed seas extended to security as security was a national responsibility but much depended upon what is meant by “security”. The disposal of offshore installations was identified as another issue for the region. The distinction in the legal regimes for ensuring the safety and security of fixed installations (responsibility with the coastal State) and of floating platforms (flag State responsibility) was noted.

Session 2

The second session reviewed current cooperative arrangements in some of the semi-enclosed seas in the region identifying where possible, successful areas of cooperation and where difficulties were being experienced.

- Sea of Japan. The CSCAP Japan representative provided a positive view of current cooperation, mentioning particularly SAR and Coast Guard cooperation. While mainly it was civilian cooperation, defense “hot lines” were in place. A CSCAP Korea representative described moves towards effective maritime cooperation in the East Sea/Sea of Japan. He identified the scope for practical approaches, including fisheries management, “provisional arrangements” under UNCLOS Article 83(3), and joint development. He saw a strong obligation on the coastal States, as “co-guardians” of the sea to cooperate for the purpose of community interests. In the subsequent discussion session, it was pointed out that the DPRK and Russia are also bordering states to this sea.
- East China Sea. In Talking about cooperative arrangements, a CSCAP China representative noted that maritime security cooperation was not well developed and there were no “hot lines”.
- South China Sea. A CSCAP China representative provided a comprehensive overview of current cooperative arrangements in the South China Sea in which China was participating. These included much activity between China and Vietnam, the China-ASEAN Joint Working Group in the implementation of the

Declaration on Conduct of Parties in the South China Sea (DOC), arrangements between China and the Philippines, and the Tripartite Agreement for Joint Marine Seismic Undertaking between China, the Philippines and Vietnam. Still there was a long way to go with substantial cooperation.

- Sulu and Sulawesi Seas. The CSCAP Malaysia identified the importance of these seas both to the bordering states and the world. Some cooperative arrangements were in place, including BIMP-EAGA, but there were still numerous threats in the area.
- Gulf of Thailand. The CSCAP Malaysia representative spoke of the types of cooperative arrangements that applied to the Gulf of Thailand. There were four bordering States and all had extensive interests in the Gulf. However, cooperative sustainable development initiatives seemed to have slowed down in recent years.
- Andaman Sea. Co-Chair Probal Ghosh spoke of India's experiences in the Andaman Sea which were very different to those on India's western seaboard. The Nicobar and Andaman islands were of great significance to India.
- Timor and Arafura Seas. Co-chair Sam Bateman addressed maritime boundary arrangements in the Timor and Arafura Seas, including the Joint Development Agreement between Australia and East Timor. Cooperation between Australia and Indonesia was relatively well developed on a range of issues (e.g. fisheries, illegal people movement, SAR) but was rather less so with the two other countries – East Timor and PNG except in the Torres Strait where there was a high level of cooperation. Co-Chair Hasjim Djalal reminded the meeting that the 1997 Boundary Agreement between Australia and Indonesia had not yet been ratified by either country. He also mentioned that in his view, continental shelf and EEZ boundaries do not have to coincide and that there were no maritime boundaries between Indonesia and East Timor. He identified the Coral Reef Initiative, involving six archipelagic countries between the Philippines and the Solomon Islands as an important new development.

Session 3

This session discussed the draft of the proposed Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas of the Asia Pacific that had earlier been distributed to participants. Much of the discussion revolved around definitions, including of “marine scientific research”, “overlapping claims” and “surveillance”. Particular guidelines that attracted discussion included those related to maritime cooperation, use of force, maritime surveillance, military exercises and marine resources. The discussion was productive and after the closure of the meeting, a small group was able to produce a revised draft of the Guidelines which was then distributed to participants by email.

Session 4

The last session of the meeting discussed prospective further work by CSCAP on maritime security and the specific proposals for new study groups that might be put before the next CSCAP Steering Committee. Discussion ranged over the following issues:

- Maritime treaties as previously undertaken by the CSCAP Sub-Group on Maritime Legal Matters. While this topic had some support, its specialist nature and the likelihood of development in other forums meant that it was not given priority for further work in CSCAP.
- Cooperation for the safety and security of offshore oil and gas installations. This was thought to be a useful topic that could involve some links between CSCAP and the private sector.
- Promotion of a cooperative (“seamless”) approach to the security of sea lines of communication (SLOCs), especially Middle East – Indian Ocean – East Asia). There was some support in the group for work on SLOCs, particularly in view of the relationship with energy security.
- Port security, including offshore security of ports and capacity-building.
- The implications of increased regional naval arms spending, including consideration of the possibility of a naval arms race and confidence-building issues. There was a consensus in favour of this topic provided the focus was on “naval modernization” and the study group addressed both the benefits and costs of naval modernization.
- Maritime Domain Awareness (MDA) (information-sharing) for regional SLOC security.
- The depletion of regional fish stocks, including illegal, unreported and unregulated (IUU) fishing, and the implications for regional security, including the possibility of “fish wars”. This topic had some support in the group but was seen as possibly of a lower priority than some other issues.

Proposals for CSCAP Study Groups on Naval Modernization and the Security and Safety of Offshore Installations have been prepared and circulated to the Steering Committee.

Conclusion

Over its two meetings, the Study Group has usefully continued CSCAP consideration of issues related to regional maritime security. The first meeting highlighted the importance of effective institutional arrangements for maritime security, including the importance of clear dividing lines of responsibility between agencies. The second meeting showed that cooperation in the many seas of the Asia-Pacific is still far below that which is desirable. This is largely due to the existence of sovereignty disputes and the lack of agreed maritime boundaries that tend to inhibit the process of cooperation.

Maritime security continues to loom large on the Track One agenda. The second meeting of the Study Group highlighted good reasons why that is so. Despite the pressing need for cooperation in several functional areas, maritime security cooperation still falls short of that which is necessary. It is understood that the ARF is about to commence a more detailed study of maritime security and this provides opportunities for CSCAP.