



COUNCIL FOR SECURITY COOPERATION IN THE ASIA PACIFIC
2nd Meeting of the CSCAP Study Group on Maritime Security
18-19 February 2014
Centre for Strategic and International Studies, Jakarta, Indonesia

Co-Chair's Report

The second meeting of the CSCAP Study Group on Maritime Security was held on 18-19 February 2014 at the Centre for Strategic and International Studies, Jakarta, Indonesia. Co-chaired by CSCAP Singapore, CSCAP Indonesia and CSCAP New Zealand, the meeting was attended by 25 participants from 14 countries. The findings of this Study Group would supplement the recommendations from the previous Study Group meeting, focusing in particular that, in the absence of trust needed to underpin confidence-building measures in the Asia Pacific region, there is a need for the region to prepare for crisis prevention, mitigation and management. The Study Group aimed to propose specific crisis prevention and management measures that CSCAP could recommend to the Track I level.

Session 1: Report on the Expert Working Group on Safety and Security of Submarine Cables

Centre for International Law, National University of Singapore (CIL NUS) began the session by providing a short review of the CSCAP Experts Group Meeting on Security of Vital Undersea Communications Infrastructure held by CSCAP Singapore the day before. CIL NUS underscored the importance of undersea fibre optic cables as critical infrastructure which carries as much as 95-99% of communications. The stock markets and defence industries of most countries are dependent on the continued operation of submarine cables; if cut off, the economies and defence activities of these countries will grind to a halt.

CIL NUS highlighted several points. First, there was a significant risk of multiple cable breaks. Numerous countries are serviced by multiple cables; should one cable fail others can act as backups. However, such fall backs can be erased if multiple cables are broken as a result of natural hazards like earthquakes or man-made acts such as terrorism. Second, there are no international regimes governing cables except for UNCLOS, and there are no conventions governing terrorist attacks on fibre optic cables. Given the lack of an international legal regime, the way forward should be regional cooperation. Third, there is a need for advance contingency planning for multiple cable breaks. This is especially true for the South China Sea, where no defence ministry in the region has any contingency to deal with terrorists breaking cables in the Sea. Fourth, regional cooperation is not possible unless countries cooperate with telecommunication owners. Fifth, there is the need for the various countries to enact national legislation regarding undersea cables. Many countries currently neither have an agency responsible for the protection of cables nor robust laws to make breaking cables a crime. The country that could be a good example for others to follow is Australia, which sees the resilience of critical infrastructure as vital, and has some the most sophisticated and transparent legislation governing critical infrastructure in the world. Sixth, some countries have only one landing point for submarine cables. If this landing point is disrupted, the country will be cut off from all communications. As such it is important to have more than one entry point at several levels, to consider how to protect landing points from terrorists, and to cooperate with cable owners. Seventh, there are major concerns about the comparatively long repair times in Asia, due to the need to seek the approval and permits from numerous agencies in each country, as well as the slow pace of permit issue. There is a need for countries to cooperate to speed up repair times, for a delayed cable repair in one country would affect communications, including internet, of nearby countries.

Discussion

During the discussion, the focus was on the issue of repairing cables in disputed waters, such as in the South China Sea, and how to ensure the protection and timely repair of cables. In the South China Sea, the issue of clearance for cable repairs should be without prejudice to territorial claims, and would therefore not recognise that one country has a claim while others do not. The discussants agreed that both industry and government must speak to each other and cooperate under private-public partnerships, and this is particularly important in the Asia-Pacific region which faces territorial disputes, natural disasters and piracy which threaten the security of submarine cables. Cooperation would also help alleviate fears that cable repair ships might instead be survey ships sent to conduct surveys of natural resources in waters belonging to another coastal state. Participants also discussed how table top exercises could contribute to the security of submarine cables, in the event of a natural disaster.

Session 2: Overview – The Macro and Micro Views on Regional Maritime Security

CSCAP China reiterated that the East and South China Sea remain the focus of maritime concerns, emphasising that the South China Sea remained relatively stable since last year, with China making joint efforts to address the disputes. China and other countries have formed working groups to study non-traditional security issues in the South China Sea, and China has reached an initial understanding of joint development with other countries. CSCAP China reiterated that nonetheless, accidents do remain possible in the South China Sea, as demonstrated by the near miss between US and Chinese warships during the USS Cowpens incident. The low key response from both sides was noted. CSCAP China affirmed that even though China's foreign policy has been fundamentally altered by the changing security situation, China will continue its commitment to peaceful development and resolution of disputes. Even so, China will continue to strengthen its capabilities and will not give up its rights.

CSCAP China provided several recommendations. First, territorial disputes should be addressed through diplomatic and peaceful means, including friendly negotiations on the basis of respect for historical facts and international law. Second, a new system of interstate relations should be cultivated, based on the principles of non-confrontation, mutual respect and win-win cooperation, with medium and small countries also playing a key role. At the same time, the focus should be on CBMs, trust building and crisis mechanisms. Third, the Cold War mentality should be abandoned, and bilateral alliances need to adapt to the current situation and contribute to regional peace and development. In this regard, the focus should be on non-traditional security issues rather than traditional ones. Fourth, communication and dialogue should be encouraged at all levels, including at operational and working levels, and between the new Chinese Coast Guard and the US Coast Guard.

CSCAP US acknowledged that macro and micro level tensions are increasingly feeding each other at the diplomatic level, resulting in an increased threat to vital regional maritime security and freedom of the seas as well as a real danger of military conflict arising from incidents. There is a pressing need for near term measures to reduce tensions and prevent or manage incidents. CSCAP US reminded the meeting that the US "rebalance" is overstated, and is a comprehensive policy, not primarily military but also involving trade, economics, cultural exchange, and so on. The US has a national interest in the freedom of navigation and overflight, particularly in the South and East China Seas.

The main concern of the US is the number, frequency and assertiveness of some countries, as well as the unilateral imposition of regulations in the region. CSCAP US noted that the US has been consistent in its support for a Code of Conduct, and advocated for the acceleration of the process to provide a

framework to regulate behaviour in the South China Sea. The US has called for the usage of hotlines and emergency procedures to manage an incident, which should be multilateral and include non-military law enforcement agencies. In the East China Sea, the US is highly concerned about worsening Sino-Japanese relations, and emphasised the need for crisis prevention procedures and the toning down of rhetoric. While the US takes no position on the disputes, it nonetheless takes a strong position on behaviour, opposing coercion and the use of force, and supporting the rule of law to manage and resolve disputes. CSCAP US recommended that near term measures are needed to avoid further escalation. Claimants should agree not to use unilateral attempts to change the status quo as per the Declaration of Conduct, and all claimants should clarify their claims based on maritime law and UNCLOS. Further cooperation is needed, including between Coast Guards. At the same time, the bilateral US-China relationship should be strong and cooperative, and the US should persuade other countries to also pursue such relations with China through organs like the ADMM, EAMF, and so on. Ultimately, what is paramount is for all sides in territorial disputes to back off, exercise restraint and implement near to medium term measures to manage crises.

Discussion

The discussion focused on a range of issues. The first was the need to devise cooperative programmes on scientific and environmental issues. Second, there is a need to seek areas for cooperation rather than confrontation. Third, ASEAN and China should steadily advance the COC process, with ASEAN member states also settling their own bilateral disputes and clarifying their claims. Fourth, a claim was made that, if countries could agree to settle their disputes with a third party mechanism like the International Court of Justice, there would be progress towards dispute resolution. Fifth, it is also important to not only promote peace and stability in the South China Sea, but also to set rules of engagement between disputing parties. Sixth, external parties like the US, Australia, Japan and India should exercise caution in the South China Sea despite their interests, so that they would not be regarded as confusing or complicating matters in the Sea. Finally, if an INCSEA agreement can be reached, there should be greater understanding on the non-interference of the naval exercises of another country.

Session 3: Building Trust and Confidence

CSCAP Australia underscored the need to have sufficient political will to collaborate, together with a shared understanding of the issues and a shared sense of purpose among governments to encourage collaboration. There is also a need to mobilise the appropriate agencies with the relevant competencies and assets towards collaboration, as well as the need to close the gaps between different agencies of different states, potentially by capacity building funded through redirected foreign and military aid. At the institutional level, the main tasks are to assign agency-specific responsibilities, with a clear delineation between agencies to ensure there is no duplication and the responsibilities supported by legislation. Necessary resources also should be provided to these agencies to help them manage responsibilities.

At the national level, the key task is to bring the different agencies together nationally. However, a major challenge is that not all maritime issues can be grouped, managed or enforced in such a way, and there should therefore be a national approach to maritime issues that involves all relevant agencies and stakeholders. For inter-agency cooperation, each agency should be encouraged to work with others. Protocols need to be developed and agreements on what information can be exchanged, how it can be used and how agencies might work together need to be reached. At the regional level, governments should ratify relevant international treaties and incorporate them into national legislation before cooperation with other states. There should also be a focus on enhancing bilateral and trilateral relations

where interests and capabilities are more likely to converge. Moreover, there should be a harmonisation rather than standardisation at the operational level. These are necessary as each state has different national arrangements and agencies and a basic level of reconciliation is required. Finally, there is a need to consider how to transition these efforts towards multilateral implementation once fully functional, and how these efforts may be funded.

CSCAP Malaysia gave an overview of maritime security architectures, evolving maritime security issues and opportunities for CBMs. Outlining the Asia-Pacific regional architecture, CSCAP Malaysia mentioned that priority areas include information exchange and sharing of best practices. Detailing the progress of the ASEAN Maritime Forum, Expanded ASEAN Maritime Forum, the ASEAN Defence Ministers Meeting, and the Maritime Law Enforcement Training Workshop in developing and promoting CBMs, CSCAP Malaysia asserted that maritime security issues are constantly evolving and are being discussed in a variety of forums, such as the WPNS, IONS, and ANCM. Moreover, bilateral and multilateral exercises are being carried out. CSCAP Malaysia also highlighted constabulary issues in the region that many agencies are now addressing, such as illegal cross border movements, narcotics and people smuggling, exploitation of marine life, attacks on maritime communities, piracy, marine pollution, bunkering fraud, illegal sand mining and illegal broadcasting.

CSCAP Malaysia also reiterated the role of industry, citing initiatives including the usage of armed guards, the International Ship and Port Facility Security Code and the Container Security Initiative. CSCAP Malaysia reemphasised that functional cooperation works best as a CBM, especially with regards to maritime law enforcement. The land-sea nexus must be addressed, since good order at sea is contingent upon good order on land. Moreover, functional cooperation should be a whole of nation rather than a whole of government approach, since all sectors need to work together. To break the logistic chains of criminal organisations, a regional response is required. Best practices are also needed, such as community policing to reduce the trust gap between the electorate and government; the usage of technology; cooperation with non-government organisations, and anti-corruption measures.

CSCAP Japan assessed that CBMs and trust building does not work in the region, given the lack of trust in the region. CBMs are procedures or rules to avoid conflict escalation resulting from misunderstanding, and trust is essential for conflict prevention and resolution. As such, CSCAP Japan proceeded to explain why CBMs would not work in the region. First, some countries believe that trust needs to come first before confidence building, and the way to build trust is to first make compromises. Given the hardening positions of various countries, CBMs would not be effective. Second, some countries use CBMs as political tools, with some using CBMs to track the movements of foreign militaries, for example, or use it to stop arms sales to neighbouring countries. Third, some countries put more emphasis on sea denial rather than conflict prevention and resolution.

CSCAP Japan emphasised that tension became high in the East China Sea in 2008, but since then the situation is now better than it appears to be. The Japan Coast Guard reportedly said that the Chinese Coast Guard have seem to changed their attitude and are less aggressive. As such, there appear to be no high chance of a collision. Nonetheless, CSCAP Japan reminded the meeting that a surprise incident could still happen, especially in the sky, with CSCAP Japan concluding with an emphasis on the importance of freedom of overflight.

Discussion

The discussion centred on the limitations and advantages of CBMs. There was less likely to be points of contention regarding functional cooperation, although events are becoming increasingly complex

and moving much faster than before. The ADMM is considered to be a significant development and an important addition to regional architecture. Moreover, the ARF-RMIC initiative proposed by China and noted by the 2001 ARF meeting is something worth looking into, as well as a pan-regional coast guard forum that would give an opportunity for coast guards to play a bigger role. Shared awareness, de-confliction mechanisms for piracy, coordinated patrolling, and non-binding arrangements for the South China Sea were also discussed. In particular, CUES was also highlighted, given the need to factor unalerted or unplanned encounters between vessels from different countries. CUES would likely be discussed in the upcoming WPNS meeting in Beijing, but it was noted that it has not been discussed in IONS.

With regards to rules of engagement, what is most important during unplanned encounters is information exchange towards de-escalation, and the application of rules of engagement only when weapons are ready to be fired. The importance of including encounters in airspace over waters was also raised, due to the compressed reaction times in the air compared to on sea. It was also emphasised that all sides should be willing to build trust with others, and multilateral arrangements are important especially with deteriorating bilateral relations. It was concluded in the discussion that it would be a long time before agreement on political CBMs can be reached, so there is a need to move forward with operational and technical CBMs. Moreover, ship-to-ship communication can and should be improved. In the recent USS Cowpens incident in the South China Sea, a full encounter was avoided because the officers in both ships had at least some language proficiency to communicate.

Session 4: Risk mitigation and Crisis Management

CSCAP Korea highlighted that the East China Sea territorial disputes remain unresolved, but the US would play a key role in the event of military conflict between both countries. Japan and China, both traditional rivals, are engaged in a naval arms race due to mutual threat perceptions, and there is a need for both countries to undertake special efforts to prevent conflict and implement institutional measures to prevent misperceptions. CSCAP Korea highlighted the Republic of Korea's own challenges in building confidence and trust when improving relations with the Democratic People's Republic of Korea (DPRK), with the relationship experiencing sharp ups and downs. CSCAP Korea emphasised that building confidence should be based on the premise of mutual benefit, and if one country pushes its national interests too far, then it would not work. Additionally, politicians should not use maritime issues for domestic political purposes, and multilateral or international pressure is needed on some countries which break confidence building measures.

CSCAP Korea suggested several practical measures. First, various contact channels should be set up and contact frequency increased to reduce mutual distrust. Hotlines are particularly useful between militaries, although CSCAP Korea acknowledged that it can be difficult to maintain these hotlines, given that the DPRK sometimes does not respond to hotline calls from the ROK side. CSCAP Korea underscored the importance of maintaining the hotlines no matter what happens politically. Second, when attempting to reduce mistrust, all parties should start with non-sensitive issues and then progress to tougher ones. Third, all countries must reject the tendency to use military force. The governments should have tight control of the military, and law enforcement agencies should have priority in maintaining maritime security. Fourth, there should be a crisis management manual used by all sides so as to make behaviour predictable and reduce misunderstanding.

CSCAP India's presentation focused on trust, explaining that trust is an episodic phenomenon, and there is no permanent trust in international relations. As such, there is a need for institutions that are able to build a basic level of trust. One of the main ways to enhance trust is to be more transparent, but

the dilemma is that with transparency, there would be a loss of deterrent value that less disclosure can bring. Moreover, different countries have different concepts of what UNCLOS means, which translate to a lack of trust in others to respect or uphold any agreement based on UNCLOS.

With regards to hotlines, CSCAP India maintained that hotlines are of little use if one side is not willing to speak or respond to the calls of the other. CSCAP India also highlighted the fact that most disputes in South Asia are territorial in nature, and there has been a feeling that CBMs would compromise the claims and rights in disputed areas by claimant states. But there are truly no alternatives to CBMs when it comes to building trust. Some CBMs that CSCAP India highlighted include preventive diplomacy and ship-to-ship communication at all levels so as to prevent an incident from occurring or escalating.

CSCAP Singapore spoke at greater lengths on hotlines. Hotlines can be a channel for clarifying intentions and de-escalating incidents, and can be applied to incidents at sea or in the airspace over water. Nonetheless, there is no one-size-fits-all template for applying hotlines to different countries. As such, hotlines are no panacea, but merely a tool for crisis management. The main value of hotlines is political, but it can also serve other purposes, like improving coordination and communication between different states during natural disasters or incidents of terrorism. While most hotlines are bilateral, third party triangulation may be possible with existing links, with the possibility of multilateralising them if possible. At the multilateral level, there is already a mesh to start from, in the form of both ReCAAP and the Information Fusion Centre. The main principle guiding modes of communication are that they should be permanent, real-time, reliable and confidential.

Some of the issues with hotlines involve the appropriate level of formality – especially in Southeast Asia where informality and backchannels are preferred and hotlines may be seen as escalatory by raising issues from the background to the formal level – and what level or rank is appropriate for hotlines. Hotlines between paramilitary law enforcement are also needed, but this may require a separate channel as civilian command arrangements may not be in tandem with military ranks. It is noteworthy that some countries prefer to refer to hotlines as direct communication links, to avoid giving the impression of problems in the bilateral relationship. A further issue is the real time nature of crises, which puts pressure on officers in charge of the hotlines. CSCAP Singapore concluded that there should be a patchwork set of arrangements, pointing to the ADMM+ as an example even if it is at an early stage at present.

Discussion

During the discussion that followed, it was noted that crisis manuals are fairly standard in crisis management even at the corporate level. Another point made was that South Korea was able to work out contingencies with North Korea due to common culture and language between the two Koreas, which enhanced understanding between the two sides. Building on this point, it was mentioned that the missing link between trust and confidence is empathy between the two sides, although distrust sometimes arises from both sides knowing each other too well. Nonetheless, it was noted that North Korea has used hotlines as a political tool, cutting off the link during crises, so the challenge is how to keep hotlines open. The point that there are two major differences between the South and East China Seas was also made – with ASEAN involved in the South China Sea, it is easier to control the situation as compared to the East China Sea, and there are also no Track 1.5 diplomatic workshops dealing with the East China Sea disputes.

Another participant gave a rejoinder that a country has proposed a Maritime Cooperation Fund with a view to help bolster existing cooperative efforts in the region. The main task at hand is to implement to

Declaration of Conduct while negotiations on the COC proceed. It was concluded that crisis management would lead to bilateral rather than multilateral information sharing, as two parties do not want a third party to be privy to sensitive issues like territorial disputes. However, less sensitive transnational issues could be multilateralised. Arrangements are already in place, such as the Singapore Information Fusion Centre with naval liaisons having direct communications back to their country headquarters. Moreover, hotlines would only be effective if those using them know the appropriate personnel to call, and there must be a way for the hotlines to reach key decision-makers such as chiefs-of-staff at any time during a crisis.

Prepared by:

Henrick Tsjeng Zhizhao

Associate Research Fellow

S. Rajaratnam School of International Studies

For CSCAP Singapore