



Council for Security Cooperation in the Asia-Pacific

MEMORANDUM 12

MARITIME KNOWLEDGE AND AWARENESS: BASIC FOUNDATIONS OF MARITIME SECURITY

EXECUTIVE SUMMARY

Maritime knowledge and awareness are basic foundations of maritime security in the Asia-Pacific. These attributes involve understanding that problems at sea are invariably inter-related; of how international maritime industry functions; of the roles of maritime security forces; of the relevant international legal frameworks, particularly those relating to jurisdiction at sea; and of the importance of participation in key international maritime regimes.

The maritime domain is covered by numerous international regimes all of which are heavily dependent upon cooperation for their successful implementation. There are regimes for shipping, security, fishing, seabed mining, marine environmental protection, search and rescue, and so on, all within the framework provided by the 1982 UN Convention on the Law of the Sea (UNCLOS). There are major gaps in the level of participation in these regimes in the region and to some extent this is due to a lack of awareness of the benefits of participation.

This memorandum makes a number of recommendations to enhance maritime knowledge and awareness in the region. These relate to institutional arrangements; improved understanding of the benefits of regime participation; coordination between maritime security forces; public-private sector linkages; and achieving a common understanding of key concepts.

Introduction

This memorandum addresses the need for maritime knowledge and awareness in the Asia-Pacific. It identifies why these attributes are important for maritime security, and makes recommendations regarding how the current situation might be improved.

Maritime awareness, as discussed in this memorandum, is not to be confused with maritime domain awareness or situational awareness. These are operational concepts involving the collection of information on a maritime area to provide a basis for threat assessments. Maritime awareness in this memorandum is a broader concept involving knowledge of the maritime domain, its uses, its intrinsic characteristics, its problems and the relevant legal frameworks that cover maritime activity.

Managing maritime security threats

There are numerous threats in the oceans and seas of the world. These include threats to national unity and integration; piracy and armed robbery against ships; maritime terrorism; illicit trafficking in drugs, arms and people; all kinds of smuggling; pollution; illegal fishing; illegal mining at sea; and marine natural hazards, such as tsunamis and cyclones. Managing these threats requires cooperation at the regional level, as well as cooperation between agencies at a national level. However, cooperation is often inhibited by: a perception that cooperation may involve some loss of sovereignty; a lack of appreciation that problems may exist; insufficient priority to addressing problems; and some reluctance to ratify and implement relevant international conventions.

Importance of maritime awareness

Maritime awareness includes understanding that problems at sea are invariably inter-related; of how international maritime industry functions; of the roles of maritime security forces; of the relevant international legal frameworks, particularly those relating to jurisdiction at sea; and of the benefits to be gained by participation in important international maritime regimes. To some extent, low levels of cooperation and coordination are a manifestation of a lack of maritime awareness. This deficiency might also lead to some lack of trust both between agencies and countries.

The maritime domain is fundamentally different to the terrestrial one. Differences relate to the interrelationship of activities at sea, and to the nature of the jurisdiction exercised by a country over maritime areas. On land, the sovereignty of a State is absolute, but at sea, it is qualified by the obligation to grant other States certain rights and freedoms of navigation and overflight in some maritime areas under national sovereignty; and by the fact that a coastal State only exercises limited sovereign rights in its exclusive economic zone (EEZ) and continental shelf, and not sovereignty.

In the Asia-Pacific, the situation is further complicated by the strategic geography of the region with its numerous islands and archipelagos, confined shipping channels, sensitive marine habitats, and numerous areas where maritime boundaries have not been agreed, or where there are conflicting claims to sovereignty over offshore islands and reefs.

Interdependence of maritime activities

The preamble to the 1982 UN Convention on the Law of the Sea (UNCLOS) states that “the problems of ocean space are closely interrelated and need to be considered as a whole”. This consideration applies to maritime security and law enforcement as much as it does to other activities at sea. Yet in many countries, operational and administrative responsibility for maritime security might be divided between different agencies. This is not necessarily a bad thing provided appropriate institutional arrangements are in place to provide coordination between agencies. If agencies do not coordinate effectively at a national level, then regional cooperation is more difficult.

Cooperation between maritime security forces

The maritime security forces of a country may comprise a navy, and a separate marine police or coast guard to undertake policing tasks at sea. This memorandum uses the term “coast guard” to refer to the latter forces although they may have different names in some countries e.g. the Malaysian Maritime Enforcement Agency.

Cooperation to provide maritime security is becoming more common in the Asia Pacific. It may be on an *ad hoc* basis; or through agreement at a bilateral or multilateral level as covered by a memorandum of understanding (MOU) or a more formal treaty. At a regional level, navies meet together at the Western Pacific Naval Symposium (WPNS), and in recent years, some operational exercises have been undertaken through the WPNS. Coast guard

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).

Language

Good communications are essential for both awareness and cooperation but these are often hampered by problems of language, translation and interpretation.¹ These problems are significant in the legal context and may partly explain why some important conventions are not well supported in the region. They arise for example, from the difficulties experienced in providing a clear explanation of a carefully worded and complex international treaty in a particular language. Furthermore, common law phrases are often encountered in international conventions that are difficult to apply in civil law.

International conventions

The maritime domain is covered by numerous international regimes. The number of instruments associated with these regimes is increasing, but the purpose, benefits and obligations of these may not always be appreciated.

In addition to UNCLOS, there are regimes for shipping, security, fishing, seabed mining, marine environmental protection, search and rescue, and so on. The main maritime security regimes are those provided by the International Maritime Organization (IMO), particularly the International Ship and Port Facility Security (ISPS) Code, other amendments to the 1974 Safety of Life at Sea (SOLAS) Convention, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and its Protocols; and for maritime safety through both SOLAS and the 1979 Convention on Maritime Search and Rescue (SAR Convention). The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) is the main international instrument for preventing ship-sourced marine pollution. All these Conventions require cooperation for their successful implementation.

Annex A shows the status among CSCAP member countries of these conventions. There are still major gaps in the level of ratification. Cambodia, the DPRK, Thailand and the United States are not parties to UNCLOS and eight member countries are not parties to the SAR Convention. The SUA Convention has not been ratified by all CSCAP member countries and no member country has yet ratified the convention's 2005 Protocol. Only the SOLAS and MARPOL Conventions have been ratified by all CSCAP member countries although some of their protocols have not been.

Recommendations

Institutional arrangements

- Clear arrangements should be implemented at the national level for inter-agency coordination on maritime security, including clearly specified responsibilities for agencies and procedures for cooperation.
- These arrangements might include a national Maritime Security Committee to provide inter-agency coordination and expertise.

Coordination between maritime security forces

- A process should be established for dialogue and cooperation between navies and coast guards. This might include coast guard representation at the WPNS and naval representation at the Heads of Asian Coast Guard Agency meetings.

¹ For example, subtle distinctions exist in different languages between concepts such as: *defence* and *security*; *security* and *safety*; a *freedom of navigation* and a *right of navigation*; and *intelligence sharing*, *information sharing* or *to provide information*.

Private sector linkages

- Public and private sector partnerships on maritime security should be encouraged both at the national and regional levels.

Legal workshops

- Legal workshops involving public sector legal practitioners and academic lawyers would assist in promoting broader regional adherence to relevant regimes.

Promoting maritime awareness

- Maritime awareness might be enhanced through multi-agency training and educational workshops at both the national and regional levels.
- Regional maritime awareness would also benefit from some transparency with the development and promulgation of national maritime policies.

Language

- CSCAP could develop a lexicon of agreed maritime security expressions that would help in overcoming difficulties with language and interpretation.

Conclusion

Maritime knowledge and awareness are basic foundations of maritime security in the Asia-Pacific. Capacity for maritime security comprises institutional arrangements, legal frameworks and resources. While some progress is being made with capacity building in these areas, the process is hampered by a lack of maritime knowledge and awareness that may prevent appropriate institutional arrangements, operational procedures and legal frameworks being put in place.

28th CSCAP Steering Committee Meeting

Jakarta, Indonesia

6 December 2007

Annex A

**Status of Conventions – CSCAP Member Countries
(as at 30 Nov 2007)**

	UNCLOS	MARPOL 73/78	SOLAS 74	SAR 79	SUA 88	SUA 2005 Protocol
Australia	X	X	X	X	X	
Brunei	X	X	X		X	
Cambodia		X	X			
Canada	X	X	X	X	X	
China	X	X	X	X	X	
DPRK		X	X			
India	X	X	X	X	X	
Indonesia	X	X	X			
Japan	X	X	X	X	X	
Malaysia	X	X	X		X	
Mongolia	X	X	X		X	
New Zealand	X	X	X	X	X	
PNG	X	X	X	X		
Philippines	X	X	X		X	
ROK	X	X	X	X	X	
Russian Fed.	X	X	X	X	X	
Singapore	X	X	X	X	X	
Thailand		X	X			
United States		X	X	X	X	
Vietnam	X	X	X	X	X	

Sources: IMO and UN Division for Ocean Affairs and the Law of the Sea

Note: X denotes that the country has ratified or acceded to the Convention.