



Council for Security Cooperation in the Asia-Pacific

MEMORANDUM 4

GUIDELINES FOR REGIONAL MARITIME COOPERATION

Introduction

This document puts forward the proposed Guidelines for Regional maritime Cooperation which have been developed by the maritime Cooperation Working Group of the Council for Security Cooperation in the Asia Pacific (CSCAP). The Guidelines are a set of fundamental, non-binding principles to guide regional maritime cooperation and to ensure a common understanding and approach to maritime issues in the region.

These Guidelines were developed on the basis of proposals advanced at several regional forums, at both Track One and Track Two levels, for a Regional Agreement on the Avoidance of Incidents at Sea (INCSEA) agreement. As a consequence of papers delivered and deliberations at the first two CSCAP Maritime Cooperation Working Group meetings, held in Kuala Lumpur in June 1995 and April 1996, the concept evolved through the possibility of a Regional Risk Reduction of Maritime Safety Agreement to the idea of more wide-ranging guidelines covering the full scope of regional maritime cooperation. Subsequently a proposed draft of the Guidelines was considered by an ad hoc meeting of the Working Group, held in Jakarta in December 1996, and accepted for submission to the CSCAP Steering Committee. After subsequent comment by CSCAP members, discussion at the Third Meeting of the Working Group held in Bangkok in May 1997 and a further opportunity for comment by CSCAP members, the Guidelines are now issued for consideration for adoption in the region.

The Guidelines adopt a comprehensive approach to regional security. If adopted by regional countries, they will constitute a major contribution to regional security. They cover the maritime confidence and security building and preventive diplomacy measures identified by the ASEAN Regional Forum (ARF) and reflect the strong support in the region for the 1982 UN Convention of the Law of the Sea (UNCLOS). The Guidelines are consistent with UNCLOS and have been influenced by State practice with regard to developments in oceans management and international law since UNCLOS was opened for signature. They combine this State practice with the obligations pertaining to maritime cooperation laid down in UNCLOS.

Importance of these guidelines

The importance of these Guidelines flows from the nature and complexity of the regional geographical environment, the significance of maritime issues in the region, and the propensity for illegal activities and disputes to occur at sea. Maritime cooperation will contribute to regional stability by easing tensions and reducing the risks of conflict. The Guidelines also reflect the entry into force of the UNCLOS. They demonstrate the strong regional support for UNCLOS which has been ratified by most ARF member states.

Purpose of guidelines

The Guidelines serve several purposes:

- First, they constitute an important regional confidence-building measure, laying down general principles for regional maritime cooperation in line with the ARF's long term objective of becoming a mechanism for conflict resolution. They should serve to dampen down tensions, particularly in areas of enclosed or semi-enclosed sea with disputed or overlapping maritime jurisdiction.
- Secondly, they serve as a step in the process of building an oceans governance regime for the Asia Pacific region based on UNCLOS and the inter-related nature of oceans issues, and devoted to the notion of integrated management of such issues.
- Thirdly, the Guidelines should help promote a stable maritime regime in the region with the free and uninterrupted flow of seaborne trade, and nations able to pursue their maritime interests and manage their marine resources in an ecologically sustainable manner in accordance with agreed principles of international law.
- Fourthly, the Guidelines apply the concept of comprehensive security in the Asia Pacific region. They should provide a link between the various concepts and processes of comprehensive security and the various forums which are concerned with elements of comprehensive security.
- Lastly, the proposed Guidelines encapsulate the progress achieved in the maritime Cooperation Working Group meetings and pave the way for further work within each of the maritime security issue areas covered by the broad principles for cooperation laid down in the Guidelines.

Legal status of the guidelines

The proposed Guidelines are non-binding in nature. They set down broad principles of cooperative behaviour in the maritime sector, and do not create legally binding obligations between states. In keeping with their non-binding but persuasive nature, the guidelines are framed in exhortatory rather than obligatory language.

The Guidelines will be regarded as 'soft' law by international lawyers. Soft law instruments are a relatively recent phenomenon in respect of the growing body of international agreements between states. They are generally regarded as non-binding instruments which do not create legal obligations, but instead reflect agreement between states concerning the need to cooperate in identified issue areas. Some of these instruments have been uniquely successful in articulating basic ground rules for international behaviour. This is especially true in the field of the international environment. For example, the 1972 Stockholm Declaration on the Human Environment is widely accepted as laying down the general principle of a state's responsibility for environmental damage to areas beyond its national jurisdiction. This principle is reflected in many other well-known 'soft law' instruments, such as the 1992 Rio Declaration on Environment and Development, as well as in binding instruments, including UNCLOS itself.

The proposed Guidelines aspire to a similar status in respect of the maritime relations between states in the region. They represent a consensus among these states as to the maritime issues which in their view require cooperation in order to achieve the overall objective of a stable regime for all aspects of maritime activities conducted within the region.

Recommendation

It is recommended that these Guidelines be put forward as a CSCAP initiative for consideration by the ARF.

The publication of this Memorandum should not be seen as endorsement of the Guidelines by all members of CSCAP. Some CSCAP members have reservations about several of the Guidelines especially:

- 18-19 Naval Cooperation
- 20 Maritime Surveillance
- 30 Non-Prejudicial

GUIDELINES FOR REGIONAL MARITIME COOPERATION

The participating states of the ASEAN Regional Forum;

Conscious that the issues of oceans management are closely interrelated and need to be considered as a whole;

Affirming the duty among all States to utilise the oceans for peaceful purposes;

Acknowledging the importance of resolving sovereignty and jurisdictional disputes peacefully and without resort to force;

Supporting the intention of the ASEAN Regional Forum (ARF) to foster a regional environment conducive to maintaining the peace and prosperity of the Asia Pacific region;

Taking into account the entry into force of the 1982 United Nations Convention of the Law of the Sea (UNCLOS);

Acknowledging the guiding principles for the Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources set out in Chapter 17 of Agenda 21, agreed at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992;

Taking into account emerging practice with regard to maritime cooperation in all parts of the world;

Acknowledging the importance of seaborne trade in the Asia Pacific region;

Mindful of the interests which countries share in the marine environment, and in a spirit of cooperation, friendship and goodwill; and

Convinced that these guidelines will promote regional maritime cooperation and contribute to the peace, good order and continuing prosperity of the Asia Pacific region;

Hereby adopt the following non-binding Guidelines for Regional Maritime Cooperation:

Definitions

1. For the purpose of these Guidelines:

“archipelagic waters” means those waters enclosed by the archipelagic baselines of an archipelagic State drawn in accordance with Article 47 of the UNCLOS.

“continental shelf” means the submarine area of seabed and subsoil as defined by part VI of the UNCLOS;

“enclosed or semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting

entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States, as defined by Part IX of the UNCLOS;
“exclusive economic zone” means an area superjacent to the sea-bed, the sea-bed and subsoil, as defined by Part V of the UNCLOS;

“high seas” means those waters to which the provisions of Part VII of the UNCLOS applies;

“marine environment” includes the oceans and all seas and adjacent coastal areas;

“pollution of the marine environment” means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities, as defined by part I of the UNCLOS;

“sea lines of communication” is the term used to describe shipping routes used for seaborne trade;

“surveillance” means the observation of aerospace, surface and sub-surface areas, places, persons or objects by visual, aural, electronic, and photographic means; and

“territorial sea” means the belt of sea which is claimed by the coastal State as territorial sea in accordance with Section 2, Part II of the UNCLOS.

Rights and duties

2. Parties recognise:
 - the sovereignty and responsibilities of other Parties in respect of their internal waters, territorial seas, and archipelagic waters;
 - the sovereign rights and duties of other Parties with regard to exclusive economic zones and continental shelves; and
 - the rights and responsibilities of other States as provided by the UNCLOS, other conventions, treaty obligations and general international law.

Maritime cooperation

3. States are encouraged to become parties to the UNCLOS and other relevant instruments, noting that this will contribute to the strengthening of peace, security, cooperation, sustainable development and friendly relations.
4. Parties accept that a comprehensive concept of regional maritime security requires a multidisciplinary approach, necessitating cooperation and coordination among all interested bodies and activities.
5. Parties recognise the importance of cooperation for the management of the marine environment, particularly for enclosed and semi-enclosed seas.
6. Parties acknowledge and appreciate the progress being made with activities to prevent conflict and promote cooperation in the South Pacific and the South China Sea. These experiences provide valuable lessons in practical maritime cooperation.

Sea Lines of Communication

7. Parties recognise the importance of freedom of navigation, in accordance with the provisions of UNCLOS, to the maintenance of seaborne trade in the Asia Pacific region.

8. Taking into account the promotion of the safety of navigation and the protection of the marine environment, parties are encouraged to develop cooperative approaches to the maintenance and protection of sea lines of communication. Such cooperative approaches might begin with exchanges of information and training in such areas as humanitarian assistance, search and rescue, marine safety, and law and order at sea. The exchange of information should include information on likely threats to, or security incidents relating to, sea lines of communication.
9. Further implementation of this cooperative approach could include naval cooperation and the sharing of information resulting from maritime surveillance.

Humanitarian assistance

10. Parties recognise the benefits of working together on the prevention, mitigation and management of maritime natural disasters, including preparedness and early warning systems, the exchange of information, compilation of data bases, planning, disaster reduction and relief activities, as well as training and education programmes.

Search and rescue

11. Parties are encouraged to promote greater sharing of maritime Search and Rescue (SAR) experience and expertise, as well as facilitate coordination and cooperation in SAR training and procedures.
12. Parties are encouraged to consult with regard to the ratification, implementation and participation in relevant conventions and instruments concerning maritime SAR.

Maritime safety

13. Parties are encouraged to promote navigational safety by measures such as adequate charting, notices to mariners, navigational aids, and notification of recommended shipping routes, as appropriate.
14. Parties express support for regional and international efforts to deal with the problem of sub-standard ships, including the establishments of regional systems of port state control.
15. Parties are encouraged to consult with regard to the ratification, implementation and participation in relevant conventions and instruments concerning maritime safety.

Law and order at sea

16. Parties recognise the importance of cooperation in the maintenance and enforcement of law and order at sea, including the prevention of piracy, drug smuggling, and other crimes at sea, acknowledging the rights of states to enforce their domestic laws at sea to the extent permitted by international law.
17. Parties are encouraged to institute regular meetings to enhance cooperation and coordination in their maritime enforcement activities.

Naval cooperation

18. Parties acknowledge the confidence building benefits of naval cooperation, including increased personnel contacts and voluntary measures to promote naval transparency.
19. Parties may wish to consider a framework of bilateral or multilateral instruments on the avoidance of naval incidents that would be open to interested navies.

Maritime surveillance

20. Parties recognise that maritime surveillance may be conducted for peaceful purposes as part of the exercise of freedom of navigation and overflight in areas claimed as exclusive economic zone or continental shelf, and on the high seas. This should be conducted without prejudice to the jurisdictional rights and responsibilities of the coastal state within its exclusive economic zone or over its continental shelf, as provided for under UNCLOS.*
21. Parties are encouraged to work towards arrangements for the sharing of surveillance information with other Parties to these Guidelines.

Protection and preservation of the marine environment

22. Parties recognise their individual and collective obligation to protect and preserve the marine environment.
23. Parties are encouraged to consult with regard to:
 - cooperation on a bilateral, sub-regional and regional basis in taking all measures necessary to prevent, reduce, monitor and control pollution of the marine environment from all sources.
 - the ratification, implementation and participation in relevant conventions and instruments concerning protection, preservation and monitoring of the marine environment.
 - the implementation of Chapter 17 of Agenda 21, adopted at the 1992 United Nations Conference on Environment and Development (UNCED), particularly those programme areas concerning integrated management and sustainable development, marine environmental protection and the strengthening of international, including regional cooperation and coordination; and
 - the development and implementation of national, sub-regional and regional monitoring programmes and contingency plans in response to pollution incidents in the marine environment.

Marine resources

24. Parties are encouraged to consult at the bilateral, sub-regional and regional levels in the formulation and harmonisation of policies for the conservation, management and sustainable utilisation of marine living resources that straddle maritime zones, or which are highly migratory, or occur in the high seas.
25. Parties are encouraged to consult at the bilateral, sub-regional and regional levels in the formulation and harmonisation of policies for the exploration and exploitation of marine non-living resources which occur across two or more zones of national jurisdiction, especially in cases where a shared resource can be exploited, wholly or in part, from one or more of the zones of national jurisdiction.

Marine scientific research

26. Parties are encouraged to cooperate, directly or through competent international, regional or sub-regional organisations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about the marine environment, particularly about pollution of the marine environment and changing sea levels.

27. Parties are encouraged to consult on efforts to harmonise their respective procedures, in accordance with Part XIII of UNCLOS, for granting consent to proposed marine scientific research projects in their exclusive economic zones and on their continental shelves.

Technical cooperation and capacity building

28. Parties recognise the benefits of technical cooperation and capacity building, and are encouraged to implement relevant programmes in the maritime sector designed to build infrastructures, institutions and capabilities for policy formulation and implementation. This includes information sharing and development of databases.

Training and education

29. Parties will cooperate on the development and promotion of training and educational programmes for the management of the marine environment, particularly for the maintenance of safety and law and order at sea, the preservation and protection of the marine environment, and the prevention, reduction and control of marine pollution. Such cooperation might include:
- the offer of places on national training courses to other parties, subject to payment of relevant costs;
 - sharing curriculum and course information;
 - the exchange of naval and law enforcement personnel, scientists and other experts;
 - the exchange of views on maritime issues;
 - holding conferences, seminars, workshops and symposiums on maritime subjects of common interest; and
 - fostering cooperation among maritime training institutions and research centres.

Non-prejudicial

30. Nothing contained in these Guidelines, or activities taking place thereabove, should be interpreted as prejudicing the position of any Party in its claims to territorial sovereignty, sovereign rights or jurisdiction over territory or maritime zones.

*CSCAP Malaysia is not able to agree with this formulation of Paragraph 20 and proposes that it should read:

“Parties recognise that maritime surveillance may be conducted for peaceful purposes as part of the exercise of freedom of navigation and overflight in areas claimed as exclusive economic zone or continental shelf, and on the high seas. This should be conducted with agreement, and without prejudice to the sovereign rights, of the coastal state within its exclusive economic zone or continental shelf”.