CSCAP MEMORANDUM NO. 25

Maritime CBMs, Trust and Managing Incidents at Sea

A Memorandum from the
Council for Security Cooperation in the Asia Pacific (CSCAP)

June 2014

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1.   Introduction: The Macro and Micro Views of Regional Maritime Security

Tensions have been rising in Asia's maritime regions. While no party wants a conflict to break out, an incident and subsequent miscalculation could well result in unintended escalation. Discussions at the diplomatic level on instituting a series of Confidence Building Measures [CBMs] indicate that progress is being made on maritime safety and security. But incidents and provocations at sea and the air may occur, sometimes spurred by broader tensions at the macro level, and such incidents may spiral out of control creating diplomatic and political crises. There is a need to propose specific crisis prevention and management measures that CSCAP could recommend to the Track I level.

2.   Building Trust and Confidence

The search for CBMs that will reduce the prospect of an incident in the maritime commons escalating to conflict has, and continues to, preoccupy several Track I and Track II forums in the Asia Pacific region. CBMs that have been proposed in these forums include:

2.1.   At the political level
The Asia-Pacific region has, and continues to work on a series of political CBMs. These include: (i) the Treaty of Amity and Cooperation in Southeast Asia which aims to ensure peace, cooperation and solidarity among ASEAN countries; (ii) the Declaration of Conduct of the Parties in the South China Sea which aims to guide behaviour among the South China Sea disputants and work towards an eventual Code of Conduct; (iii) the ASEAN Regional Forum which promote dialogue on political and security matters and enhance confidence-building and preventive diplomacy in the region; (iv) the ASEAN Maritime Forum and Expanded ASEAN Maritime Forum which provides a platform for ASEAN member states and their partners to pursue maritime interests and explore common approaches in ensuring maritime security; (v) the ASEAN Defence Ministers Meeting which engages ASEAN Dialogue Partners in dialogue and cooperation on defence and security matters; as well as defence white papers. It is significant to note that all these political CBMs assume that the parties subscribe to the norms of cooperative security, a central pillar of the regional security architecture, which is underpinned by trust among one another. The dilemma is the extent to which cooperation is possible when there is a trust deficit in the region.

2.2. At the operational level

2.2.1. Functional Cooperation
Functional cooperation for the safety of navigation, search-and-rescue, humanitarian assistance and disaster relief (HADR), coastal zone management and environmental protection would be more easily achievable as CBMs in the absence of trust, when the CBMs are framed within a recognised institution or regime (e.g. UNCLOS, IMO Conventions, etc.). Often on-going CBMs include HADR as well as search and rescue exercises, and these have shown some success over the years. However, efficacy of these functional cooperative efforts as CBMs is hampered by the lack of coordination at the national and regional levels, as well as the wariness of the impact on sovereignty claims that some believe agreement to these CBMs could potentially pose, especially in disputed territories.

2.2.2. Regional incidents-at-sea agreement
Regional incidents-at-sea agreements modelled on the United States-Soviet Union Incidents-At-Sea Agreement (INCSEA) concluded in 1972 have previously been suggested. However, this may be premature at this stage. This navy-to-navy agreement relates to incidents wherever occurring at sea, but it should be noted that such agreements in Asian waters would have to occur in the context of a larger number of, and more complex, jurisdictional/territorial disputes. Negotiations on a regional agreement would also open up differing views about the rights of other states to conduct military activities within an EEZ without permission from or prior notification to the coastal state.

2.2.3. Code for Unplanned Encounters at Sea (CUES)
The Western Pacific Naval Symposium 'Code for Unplanned Encounters at Sea' (CUES) offers safety measures and a means to limit mutual interference, to limit uncertainty, and to facilitate communication when naval ships or naval aircraft encounter each other in an unplanned manner. It is not legally binding; rather it is a coordinated means of communication to maximise safety at sea. It may be adopted on a voluntary and non-binding basis within WPNS and is available for implementation by any navy on the same basis.

2.2.4. Pan-regional coast guard forum
Coast Guards and other law enforcement agencies, as they improve their capabilities and assume greater responsibilities for maritime security, need regional forums (like the Navy) to interact with, and better understand other Coast Guards they encounter at sea.   An example of such a forum would be the North Pacific Coast Guard Forum established in 2000 which includes Canada, China, Japan, the Republic of Korea, Russia and the United States. The Forum has had some success in documenting best practices among Coast Guards and has a web-based information exchange system, while bilateral and multilateral operations and exercises have been conducted under its auspices. South East Asia does not have an equivalent forum and existing

regional information sharing centres do not have a mandate to provide a platform to improve awareness and communication across the full spectrum of activities encompassed by the North Pacific Forum, although the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which has its Information Sharing Centre (ISC) located in Singapore, has provided a platform for regional coast guards to cooperate on counter-piracy.

At the pan-regional level, there is also the Heads of Asian Coast Guard Agencies Meeting (HACGAM). This initiative was started in 2004 to discuss cooperation among the member organizations to combat piracy in the region. However, the scope of discussions has since expanded to include law enforcement, maritime security, disaster prevention and relief and capacity building. Presently, 17 countries take part in the initiative. Such forums play an important role in building confidence through professional-level interaction and regular dialogue between regional maritime law enforcement agencies. This is of increasing importance given the role that Coast Guards and other paramilitary ships are playing in asserting sovereignty and sovereign rights within contested waters.

2.3. At the technical level

2.3.1. Enhancing maritime situational awareness [MSA]

In order to maintain good order at sea and counter transnational threats in regional waters, countries must first be aware of what is occurring in their maritime environment and have in place a responsive enforcement capacity. An inclusive and cooperative MSA arrangement should also be able to alert participating countries to possible incidents before it happens or soon thereafter.

The ReCAAP ISC promotes information sharing and capacity building arrangements to enhance regional cooperation to combat maritime piracy and armed robbery. The establishment of the Information Fusion Centre at the C2 Centre in Singapore's Changi Naval Base in April 2009 serves as a regional maritime information hub to enhance maritime situational awareness, and to act as an early warning system. The challenge now is to further broaden and institutionalise such mechanisms for increased maritime domain awareness leading to security cooperation.

2.3.2. Direct communication links & hotlines

Establishing direct communication links, including 'hotlines', between the defence ministries, navies and paramilitary maritime organisations of regional countries can provide vital channels for communication, especially where relations are complicated by maritime disputes. During periods of tension, such channels can play a useful function in preventing inadvertent escalation. In normal times, the hotline can also play a helpful confidence building role, while not replacing some countries' preferences for informal or inter-personal

connections. An initiative is currently under way through the ADMM on hotlines that could in due course be expanded.

Given widespread differences in capacities, existing practices and political expectations among regional states, care will be needed to ensure that common communication protocols are agreed and understood. While countries' willingness to set up 'hotlines' may be a good indicator of their willingness to engage in crisis management, the ultimate value of such links will depend on the good intentions of the parties concerned, with no guarantee that they may be utilised or even maintained in a crisis.

3.   CBMs and Trust: Cooperating without Trust

An underlying assumption of cooperative security in the Asia Pacific is that CBMs are trust-building measures. The vision was that starting with functional cooperation in SAR, HADR or marine scientific research, the region could build the trust to move to other operational and political CBMs for cooperative security. Cooperation is perceived to be both an obligation and a necessity, and that trust will follow cooperation. Hopefully, CBMs could lead to both trust and confidence, reducing the chances of an incident at sea escalating into a political crisis. But where CBMs do not lead to cooperation and trust, crisis management will then be critical to prevent an inadvertent escalation to military conflict.

3.1.   Risk management and crisis mitigation
An Incident-at-Sea may escalate into a political crisis as a result of the inadequacy of CBMs. Current information technology would further accelerate the pace of crises. The worst case scenario question of what happens when the CBMs break down in an Incident at Sea needs to be considered. What measures can be utilised to prevent disputes and conflicts arising from, for example, a fishing trawler being fired upon by a coast guard vessel claiming the trawler is in waters protected by that coast guard vessel? Crisis management measures will need to be put in place to prevent a violent encounter between the fishing trawler and the coast guard vessel from escalating into a major standoff and between the law enforcement agencies and even naval vessels despatched to protect its fishing trawler which has been fired upon by the rival Coast Guard.

Are there in place hotlines or communication channels, and more importantly, the trust in the conversations over those hotlines to de-escalate the stand-off? That failing, can fact-finding missions and Eminent Persons Group forming goodwill missions mediate in the crisis? It can only be hoped that common interest in avoiding injury to personnel, ship and aircraft as well as some goodwill, patience and tolerance in spite of underlying distrust will prevail in a crisis over the next Incident at Sea.

4. Recommendations

4.1. At the political level

ASEAN and its dialogue partners should continue to work on moving the region, as well as North and South Asia, from CBMs to preventive diplomacy. ASEAN states and China should steadily advance consultation on a COC in the South China Sea within the framework of a complete and effective implementation of the Declaration of the Conduct of Parties issued in 2002, in particular the building of trust and confidence by holding defence and military dialogues; voluntary exchange of relevant information and notification of impending joint military exercise, ensuring just and humane treatment of all persons in danger or distress, and the undertaking of cooperative activities on, inter alia, marine environmental protection, scientific research, safety of navigation and communication at sea, search and rescue operations, and countering transnational crime. In addition, the parties involved should also adhere to the 2011 Guidelines for the Implementation of the DOC. At the same time, the greater region may need to look more at operational or technical level CBMs. Success of political and strategic CBMs would depend on a commitment to resolving disputes peacefully and abiding by international law.

4.2. Maritime situational awareness

There is a need for a voluntary initiative to coordinate and promote maritime situational awareness for search-and-rescue and disaster relief throughout the region, similar to the ReCAAP ISC and the Information Fusion Centre. It is worth noting that Singapore has recently offered to host a regional coordination centre for HADR at the Changi Command and Control Centre.

4.3. Hotlines

In the context of the Asia-Pacific, hotlines and other lower-level direct communication measures should have the highest priority as a CBM in crisis management. One useful outcome which a group like WPNS might promote could be the development of bilateral hotlines, including at the operational level between Air Forces, Navies and Coast Guards, to prevent the escalation of an incident. While the immediate need for hotlines is nearly always bilateral, that could in due course lead to the evolution of multilateral hotlines for broader consultation and confidence building. However, it is important to note that hotlines will have little utility in times of tension unless both parties have a clear understanding as to their purpose, what they are able to achieve and what their limitations are, as well as the capacity and willingness to use them effectively and not cancel them when most needed during a crisis. Moreover, the hotlines should be used with the knowledge of the appropriate personnel to call, especially the level or rank of seniority of the personnel manning the hotlines, 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.

ABOUT CSCAP

CSCAP is a non-governmental (second track) process for dialogue on security issues in the Asia Pacific. Membership in CSCAP is on an institutional basis and consists of Member Committees. Current membership comprises Australia, Brunei Darussalam, Cambodia, Canada, China, the EU, India, Indonesia, Japan, the Democratic People's Republic of Korea, the Republic of Korea, Malaysia, Mongolia, New Zealand, the Philippines, Russia, Singapore, Thailand, Vietnam and the USA.

The functions of CSCAP are as follows:

a. to provide an informal mechanism by which political and security issues can be discussed by scholars, officials, and others in their private capacities;
b. to encourage the participants of such individuals from countries and territories in the Asia Pacific on the basis of the principle of inclusiveness;
c. to organise various working groups to address security issues and challenges facing the region;
d. to provide policy recommendations to various intergovernmental bodies on political-security issues;
e. to convene regional and international meetings and other cooperative activities for the purpose of discussing political-security issues;
f. to establish linkages with institutions and organisations in other parts of the world to exchange information, insights and experiences in the area of regional political-security cooperation; and
g. to produce and disseminate publications relevant to the other purposes of the organisation.

Study Groups are the primary mechanism for CSCAP activity. As of June 2014, there were three CSCAP Study Groups. These are concerned with: (i) Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific. (ii) Principles for Good Order at Sea; and (iii) Regional Security Architecture.

This memorandum was produced by the CSCAP Study Group on Principles for Good Order at Sea and was approved by the 41st CSCAP Steering Committee Meeting in Kuala Lumpur, Malaysia, on 5 June 2014.

Further information on CSCAP can be obtained from the CSCAP website at www.cscap.org or by contacting the CSCAP Secretariat:

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CSCAP Memoranda

CSCAP Memoranda are the outcome of the work of Study Groups approved by the Steering Committee and submitted for consideration by the ASEAN Regional Forum and other bodies.

- Memorandum No.24 – Safety and Security of Vital Undersea Communications Infrastructure
  Author: Experts Group on Vital Undersea Communications Infrastructure
  Date published: May 2014

- Memorandum No.23 – Enhancing Water Security in the Asia Pacific
  Author: Study Group on Water Resources Security
  Date published: January 2014

- Memorandum No.22 – Non-Proliferation of Weapons of Mass Destruction
  Author: Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific
  Date published: September 2012

- Memorandum No.21 – Implications of Naval Enhancement in the Asia Pacific
  Author: Study Group on Naval Enhancement in the Asia Pacific
  Date published: August 2012

- Memorandum No.20 – Ensuring A Safer Cyber Security Environment
  Author: Study Group on Cyber Security
  Date published: May 2012

- Memorandum No.19 – Reduction and Elimination of Nuclear Weapons
  Author: Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific
  Date published: February 2012

- Memorandum No.18 – Implementing the Responsibility to Protect (RtoP)
  Author: Study Group on the Responsibility to Protect (RtoP)
  Date published: September 2011

- Memorandum No.17 – Promoting the Peaceful Use of Nuclear Energy
  Author: Study Group on Countering the Proliferation of Weapons of Mass Destruction in the Asia Pacific
  Date published: June 2011

- Memorandum No.16 – Safety and Security of Offshore Oil and Gas Installations
  Author: Study Group on Safety and Security of Offshore Oil and Gas Installations
  Date published: January 2011

- Memorandum No.15 – The Security Implications of Climate Change
  Author: Study Group on the Security Implications of Climate Change
  Date published: July 2010

- Memorandum No.14 – Guidelines for Managing Trade of Strategic Goods
  Author: Export Controls Experts Group (XCXG)
  Date published: March 2009

- Memorandum No.13 – Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific
  Author: Study Group on Facilitating Maritime Security Cooperation in the Asia Pacific
  Date published: June 2008

- Memorandum No.12 – Maritime Knowledge and Awareness: Basic Foundations of Maritime Security
  Author: Study Group on Facilitating Maritime Security Cooperation in the Asia Pacific
  Date published: December 2007

- Memorandum No.11 – Human Trafficking
  Author: Study Group on Human Trafficking
  Date published: June 2007

- Memorandum No.10 – Enhancing Efforts to Address Factors Driving International Terrorism
  Author: Study Group on Enhancing the Effectiveness of the Campaign Against International Terrorism with Specific Reference to the Asia Pacific Region
  Date published: December 2005

- Memorandum No.9 – Trafficking of Firearms in the Asia Pacific Region
  Author: Working Group on Transnational Crime
  Date published: May 2004

- Memorandum No.8 – The Weakest Link? Seaborne Trade and the Maritime Regime in the Asia Pacific
  Author: Working Group on Maritime Cooperation
  Date published: April 2004

- Memorandum No.7 – The Relationship Between Terrorism and Transnational Crime
  Author: Working Group on Transnational Crime
  Date published: July 2003

- Memorandum No.6 – The Practice of the Law of the Sea in the Asia Pacific
  Author: Working Group on Maritime Cooperation
  Date published: December 2002

- Memorandum No.5 – Cooperation for Law and Order at Sea
  Author: Working Group on Maritime Cooperation
  Date published: February 2001

- Memorandum No.4 – Guidelines for Regional Maritime Cooperation
  Author: Working Group on Maritime Cooperation
  Date published: December 1997

- Memorandum No.3 – The Concepts of Comprehensive Security and Cooperative Security
  Author: Working Group on Comprehensive and Cooperative Security
  Date published: December 1995

- Memorandum No.2 – Asia Pacific Confidence and Security Building Measures
  Author: Working Group on Confidence and Security Building Measures
  Date published: June 1995

- Memorandum No.1 – The Security of the Asia Pacific Region
  Author: CSCAP
  Date published: April 1994