

SPECIAL REPORT

September 2013

Maritime Confidence Building Measures in the South China Sea Conference

InterContinental Hotel, Sydney
11–13 August 2013



Foreword

The Australian Strategic Policy Institute, with support from the Australian Department of Foreign Affairs and Trade, hosted a conference on Maritime Confidence Building Measures in the South China Sea.

The conference was held on 11–13 August 2013 in Sydney.

It was attended by delegates from 16 countries and chaired by Mr Peter Jennings, Executive Director of the Australian Strategic Policy Institute.

The conference objective was to develop proposals for prospective maritime confidence building measures (MCBMs) for the South China Sea.

The conference assessed the potential for increased maritime cooperation in the South China Sea in functional areas, such as law enforcement, search and rescue, hydrographic surveying, humanitarian assistance, marine safety, fisheries, marine environmental protection, and marine scientific research.

The conference examined possible procedures for avoiding and managing incidents that might occur at sea between ships and aircraft of different countries.

This *Special Report* opens with the speech presented by Senator Bob Carr, then Australia's Minister for Foreign Affairs.

It includes the keynote address by Professor Dr Hasjim Djalal, Senior Advisor to the Indonesian Minister for Maritime Affairs and Fisheries and Indonesian Naval Chief of Staff.

The report sets out three background papers prepared for the conference by Dr Sam Bateman, Professorial Fellow at the Australian National Centre for Ocean Resources and Security, University of Wollongong, and Captain Justin Jones, RAN, the Director of the Sea Power Centre – Australia.

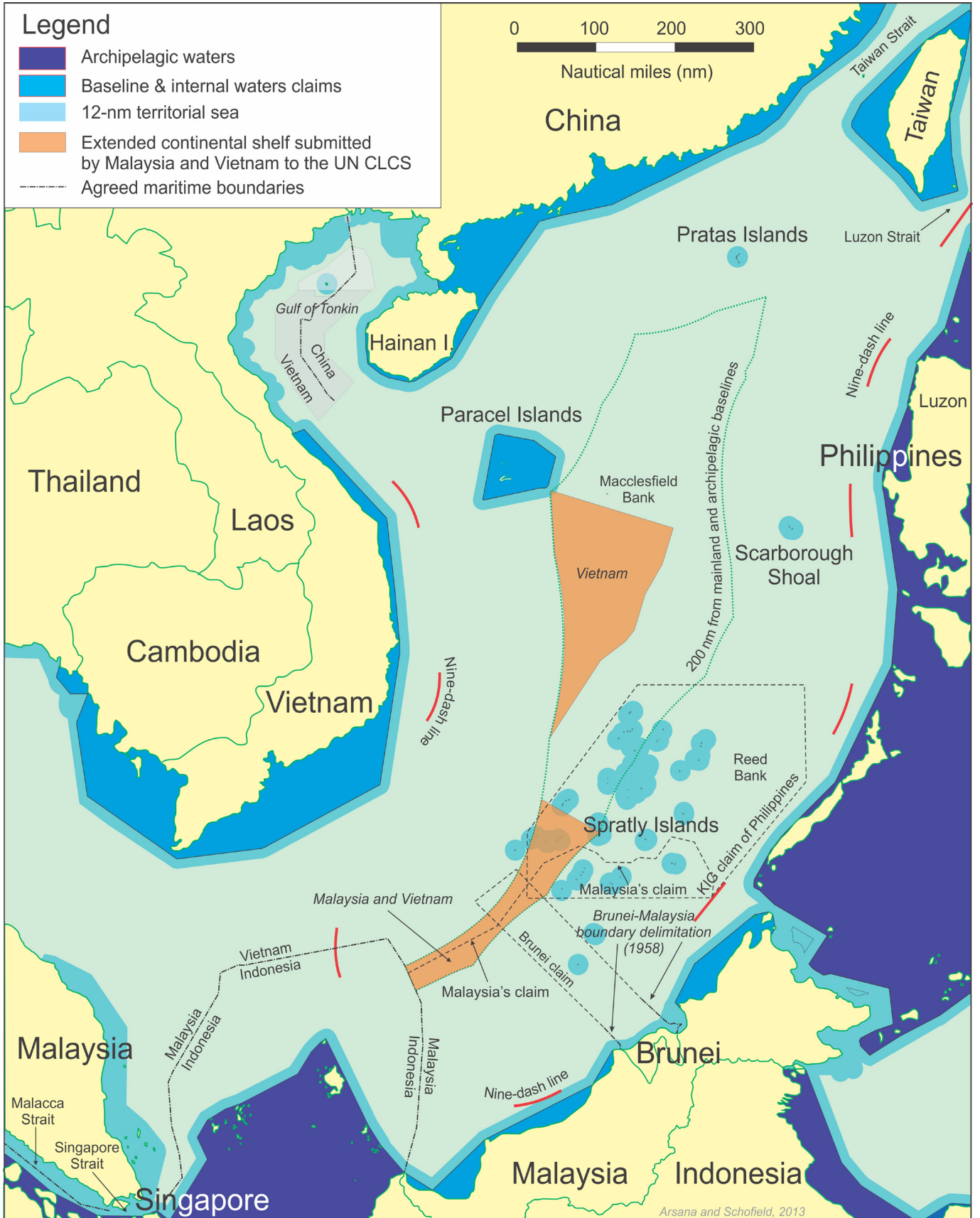
The report includes a paper on trust and MCBMs by Mr Kwa Chong Guan, Senior Fellow, S. Rajaratnam School of International Studies in Singapore, as well as the conference dinner speech on MCBMs in the Indo-Pacific delivered by VADM Ray Griggs, Australia's Chief of Navy.

The report contains a summary record of the conference and concludes with the Chairman's final statement from the conference.

The conference program is provided at the end of this *Special Report*.

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Opening address

Senator the Hon Bob Carr

Introduction

The issues before this conference are important ones for Australia's strategic policy.

Australia has no deeper national interest than helping to ensure that the great success story of our century — the economic transformation of Asia in the Asian Century.

And that means avoiding incidents and increases in tensions that can result in conflict, including in the South China Sea.

For Australia and the region, the stakes couldn't be higher.

I congratulate the Australian Strategic Policy Institute on this initiative.

I welcome all the distinguished speakers and guests.

Together you represent the expertise and, I may say, the best aspirations of the nations of the East Asia Summit.

In the keynote speaker who will follow me, Professor Hasjim Djalal from Indonesia, we have someone whose long-term interest and involvement in these issues is unsurpassed, notably through the Workshop Process on Managing Potential Conflict in the South China Sea, since 1990.

A conference like this has a double importance and purpose.

Significant in itself, it can become part of the process of the avoidance of conflict.

The disputes arising in the South China Sea involve complex questions of history, territory claims, and competition for resources, national measures and international law.

In our approach, the overriding needs are foresight, awareness, knowledge and understanding.

In presenting paths along these lines, this conference can become part of the solution.

I state Australia's position at the outset: We do not take a position on any of the competing claims, but our interest in their peaceful settlement could hardly be more direct.

We are a maritime nation as our very condition of our existence.

More than 90 per cent of our merchandise trade goes and comes by sea.

Two thirds of it moves across the South China and East China seas.

Our continuing objective is to maintain and strengthen the peace and stability of the region based on international law.

The Australian perspective today encompasses the most dynamic region in the world — the vast region of the Pacific and Indian Oceans.

The Indo-Pacific represents the centre of gravity of Australia's economic and strategic interests.

It includes nine of our top trading partners.

By thinking in Indo-Pacific terms, we embrace our largest trading partner, China, our long established partnership with Japan, and our key strategic ally the United States, while reinforcing India's role as a strategic partner for Australia.

It brings in the big growth economies of South Korea and Vietnam, and the trade and diplomatic weight of ASEAN, with Indonesia at the centre.

Thinking in Indo-Pacific terms benefits the world's only nation surrounded by both these great oceans.

Yet it has been a long time coming.

When we remember our preoccupations of barely 40 years ago, the Indo-Pacific concept represents a revolution, and I believe, a liberation in our strategic thinking.

We have come to mature terms with our place in Asia.

So Australia has become familiar with the need for new ways of looking at the region and the world.

Our capacity for new thinking has grown through the work of Australian organisations represented in this room.

As well as this institute, we draw on the Australian National Centre for Ocean Resources and Security at Wollongong University, the Royal Australian Navy's Sea Power Centre and the Australian Hydrographic Service.

So, in matters of maritime governance, we are well equipped for new thinking, fresh approaches, better ways of anticipating and averting conflict.

And for sharing ideas with the region.

But it is for the nations of the region themselves that we can best draw examples and explanations.

The concept of joint development zones for fair and mutual development of resources, where territorial and maritime claims may overlap, flourishes in the region.

The concept is provided in the United Nations Conventions on the law of the sea — ‘the Constitution for the Oceans’, as we see it.

In our region, Malaysia, Thailand and Vietnam have long been participants in joint development zones.

Australia and Timor-Leste are also jointly developing Timor Sea petroleum resources.

They are arrangements that have benefitted the countries involved.

Directly relevant to South China Sea disputes, as Foreign Minister I’ve observed and encouraged the lead taken by ASEAN to develop with China a Code of Conduct for the handling and management of disputes.

There is now an agreement between ASEAN and China to hold formal consultations on a code of conduct.

This is something Australia welcomes.

Consultation in itself can be part of the confidence building process by opening the dialogue and keeping it going.

But we have also encouraged — and will continue to encourage — ASEAN countries and China to begin formal negotiations on a substantive code of conduct.

Apart from the obvious benefits from a code of conduct, discussions on it can help clarify countries’ attitudes to confidence building measures (CBMs).

As Rory Medcalf and Raoul Heinrichs paint in their paper *Crisis and Confidence: Major Powers and Maritime Security in Indo-Pacific Asia* (2011):

‘A major obstacle to progress of effective maritime CBMs is the clash of views about the value and purpose of such instruments, particularly between the dominant strains of policy thinking in Beijing on one side and the United States, its allies and partners on the other.’ (pg4)

Medcalf and Heinrichs note:

‘The prevailing view in Beijing is that strategic “trust” should precede major advances in maritime diplomacy. In Washington and elsewhere the standard view is that CBMs are needed precisely when trust is absent.’

If this correctly states the crux of the problem, it seems to me to open an ample field for the endeavours of Australian and like-minded countries in ASEAN.

For if the argument is to boil down, not so much to trust, but to the order of precedence of trust and compliance, which countries are better placed to help build both trust and confidence, hand in hand, step by step?

Australia in particular, given the depth of our relationship with the United States, China and Japan.

At the highest level of this issue, I believe that we can usefully apply the view I have often stated about the avoidance of conflict over specific, overlapping and competing territorial and maritime claims in the South China Sea and elsewhere:

That to make progress, it can often be better for the parties directly involved to agree to disagree in advance.

That instead of immovable positions on who owns what, rather to focus on how all parties can benefit from cooperative programs, confidence building measures and continuing dialogue.

As I said before, the stakes couldn’t be higher.

It’s true that the great danger is an irreversible crisis sparked by accident or miscalculation.

We would have no excuse for sleep walking our way into unintended conflict.

Let us make sure the story of spectacular growth and transformation of our region is not compromised by any prospect of newspaper headlines reporting conflict in the South China Sea.

This is something that we all need to work at.

We can make a modest contribution to this cause at this conference.

About the speaker

Senator the Hon Bob Carr, Australia’s Minister for Foreign Affairs.

Keynote address

Professor Dr Hasjim Djalal

I would like first of all to express my thanks for being invited to this conference. I think the conference is timely in view of the increasing problems in the South China Sea. I understand that the conference will be discussing functional cooperation related to, among other things, law enforcement activities, search and rescue operations, hydrographic surveys, humanitarian assistance, maritime safety, fisheries management, marine environmental protection, marine scientific research, and other subjects that may be related to these issues. I understand that we hope to be able to discuss possible procedures for avoiding and managing potential incidents that may take place between ships and aircraft of different countries.

Personally, I am very happy to come again to Australia, particularly to Sydney, to discuss issues that many of us have been confronted with in the past 20 or 30 years. I personally would hope that the participants, after being exposed to many ideas that may come up in this conference, will be able to contribute towards the development of peace, stability and cooperation in the South China Sea.

I'm particularly happy and hopeful that the discussion will bring more light to the issues of military intelligence and activities within exclusive economic zones (EEZs), as far as they deal with the South China Sea. In fact, some of us who are participating in the present meeting have been very active and constructive in the past discussing these issues, and have formulated certain basic ideas.

Participants here at this Sydney conference—Sam Bateman, Mark Valencia and Admiral Akimoto—are among those who have previously contributed from time to time to the various meetings of the so-called 'group of 21' in Bali, Shanghai, Honolulu and Tokyo from 2002 to 2005.

We worked under the basic assumption that the South China Sea, or some major portion of it, is under the EEZ regime. I would hope that those colleagues, including some experts from India, Russia and South Korea, will continue to be interested in developing practical ideas that could be further enriched, despite some of the sensitive issues involved.

With regard to other specific topics, such as search and rescue, hydrographic surveys, fisheries, maritime safety, marine environmental protection, marine scientific research, a lot of efforts to promote better understanding and cooperation on these issues have taken place within the series of workshops on managing potential conflicts in the South China Sea that have been organised by Indonesia since the 1990s.

In fact, we started with basic ideas on how to carry out activities that could be supported by the governments and authorities around the South China Sea. To recollect, at the second meeting in Bandung in 1991, we agreed on six basic principles:

1. Without prejudice to territorial and jurisdictional claims, to explore areas of cooperation in the South China Sea.
2. Such areas of cooperation include cooperation to promote the safety of navigation and communications, to coordinate search and rescue, to combat piracy and armed robbery, to promote the rational utilisation of living resources, to protect and preserve the marine environment, to conduct marine scientific research, and to eliminate illicit traffic in drugs in the South China Sea.
3. In areas where conflicting territorial claims exist, the relevant states may consider the possibility of undertaking cooperation for mutual benefit, including exchanges of information and joint developments.
4. Any territorial and jurisdictional dispute in the South China Sea area should be resolved by peaceful means through dialogue and negotiation.
5. Force should not be used to settle territorial and jurisdictional disputes.
6. The parties involved in such disputes are urged to exercise self-restraint in order not to complicate the situation.

In developing the idea, we divided the subject into six topics: political and security issues; territorial and jurisdictional issues; resources development issues; marine environmental protection issues; marine scientific research cooperation; and institutional mechanisms for cooperative efforts.

Generally, we agreed to develop concrete cooperative programs, to encourage dialogue between the parties concerned who are involved in territorial and jurisdictional

issues, and to develop confidence processes and measures so that everyone will feel comfortable with one another.

It took some 11 years for some of these ideas to be adopted in the declaration of conduct between members of ASEAN and China, signed in Phnom Penh in 2002. It took another 10 years for ASEAN to struggle to develop the declaration of conduct to become a more legally binding code of conduct. Now, hopefully, China will be able to respond more positively to the idea, despite the fact that China does not seem to be in a hurry to conclude negotiations on the code of conduct with ASEAN.

Once we have been able to conclude such a code of conduct, I believe many cooperative programs could be developed and implemented in the South China Sea.

Finally, my experience in more than 20 years in managing potential conflicts in the South China Sea together with the ASEAN members, China and Chinese Taipei within the 1.5 track diplomacy indicates that China seems to be positive and willing to cooperate on technical, scientific and environmental issues. But it's less enthusiastic about developing cooperation on resources distribution issues, and least interested in talking about territorial, sovereignty and jurisdictional issues.

At this moment, we're implementing a number of technical and scientific programs, such as biodiversity expeditions in the South China Sea, studies on sea-level rise as a result of climate change, Southeast Asian networking on training and education on maritime issues, and others.

I hope everyone will be supportive of our 1.5 track diplomacy. I hope that this conference will be productive and successful, including in developing some rules of engagement between law enforcement agencies as well as for military activities in the South China Sea area.

About the speaker

Professor Dr Hasjim Djalal, MA is Senior Advisor to the Indonesian Minister for Maritime Affairs and Fisheries and Indonesian Naval Chief of Staff.

Background paper: Maritime confidence building measures—an overview

Dr Sam Bateman

This paper provides an overview of the nature and types of maritime confidence building measures (MCBMs) and notes the importance of effective regimes for managing the maritime domain. It covers maritime and naval cooperation, obligations to cooperate, maritime regime-building, and the law of the sea.

Confidence building measures (CBMs) and preventive diplomacy are widely discussed in security discourse. CBMs can be military measures or broader initiatives encompassing almost anything that builds confidence and promotes dialogue between countries. They include formal and informal measures, whether unilateral, bilateral or multilateral, which contribute to a reduction in misperceptions and uncertainty.

Much discussion of these concepts draws on examples from the maritime domain. For example, many preventive diplomatic measures and CBMs identified in the concept paper tabled at the second meeting of the ASEAN Regional Forum (ARF) in Brunei in August 1995 related to the maritime domain.¹ The measures included zones of cooperation in areas such as the South China Sea, a cooperative regional maritime surveillance and safety regime, and the establishment of a marine information database.

The maritime domain

The maritime domain differs significantly from the terrestrial domain. Differences relate to the interrelationship of uses of the sea and the nature of maritime jurisdiction. Sovereignty at sea is invariably exercised with qualifications, whereas sovereignty on land is absolute. For example, sovereignty over the territorial sea is qualified by the right of innocent passage. In an exclusive economic zone (EEZ), a coastal state only exercises sovereign rights over the living and non-living resources of the zone rather than full sovereignty. Maritime cooperation can be hindered by failure to acknowledge the interconnected nature of uses of the sea² and the qualifications to the exercise of sovereign jurisdiction at sea.

In areas of overlapping jurisdiction, the maritime domain and its resources can't be managed on the basis of

national jurisdiction alone. Cooperation in enclosed and semi-enclosed seas, such as the South China Sea, is an obligation of the littoral countries under Part IX of the 1982 UN Convention on the Law of the Sea (UNCLOS).

Cooperation between neighbouring states is essential for good order at sea and effective maritime management. Nationalistic assertions of sovereignty and self-interest are obstacles to the effective management of the maritime domain.

It's difficult for countries to take a truly independent national view of problems with using the sea. Fences can't be established in the sea in the same way as on land. The sea is a common asset—and potentially a common enemy. It's the fundamental medium of international commerce, but its problems follow no national boundaries. For example, freedom and safety of navigation, the prevention of marine pollution, the conservation of fish stocks, and the mitigation of maritime natural hazards (such as cyclones and tsunamis) are issues of concern to all coastal states. In implementing policies on these issues, countries should take into account the interests and rights of their neighbours, as well as those of other nations that legitimately send their ships into and through waters under some form of national sovereignty.

Maritime regimes

Common and conflicting interests in the maritime domain are addressed through the medium of maritime regimes. Regimes are required where no single decision-making entity holds exclusive power. It's the nature of the maritime domain that the rights and duties of states invariably involve compromises if a 'tragedy of the commons' is to be avoided.

The interconnected nature of the maritime domain and uses of the sea mean that a careful balance is necessary between different uses of the sea, as well as between the interests of different parties. This is true both of the high seas and the roughly one-third of the world's oceans that's now enclosed as EEZs.

The EEZ regime reflects a careful balance between the rights and duties of coastal states and those of user states. Article 56(2) of UNCLOS provides that a coastal state should have 'due regard' to the rights and duties of other states in its EEZ. UNCLOS Article 58(3) requires other states to have 'due regard' to the rights and duties of the coastal state in

exercising their rights and duties in the EEZ. However, no guidance is provided on what constitutes 'due regard'.

UNCLOS is an international regime, but there are a host of other maritime regimes for shipping, fishing, seabed mining, marine environmental protection, sea dumping, the prevention of ship-sourced pollution, search and rescue, and so on. Contemporary users of the seas face a variety of complex rules, norms, principles and decision-making procedures, which when put together in a particular issue area (such as maritime security, fisheries management or maritime safety) form an international regime.

International regulation of the maritime domain and its uses has increased significantly in recent decades. Many of the new international instruments underpinning the increased regulation of the maritime domain place a premium on cooperation. International maritime-related treaties requiring cooperation include the International Convention on Oil Pollution, Preparedness, Response and Co-operation (1990), the Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995) and the UN Convention against Transnational Organized Crime (2003).

Maritime confidence building

The maritime domain is potentially a rich source of ideas and initiatives for confidence building. Just as security may be defined narrowly in military terms, or more comprehensively to incorporate human, economic, social and environmental security, maritime confidence building may also be defined either:

- broadly to include oceans management regimes and cooperative arrangements for navigation, safety, search and rescue, resources, marine environmental protection and so on, or
- narrowly to mean measures in the defence/military field that reduce the risks of tensions and conflict, and of misunderstanding or miscalculation with military activities at sea.

We can therefore distinguish between military and non-military MCBMs. Those of a non-military nature are mainly about building regimes and cooperation to provide good order at sea.

Military MCBMs

MCBMs related to traditional security can take many forms. They can apply multilaterally or bilaterally and at the global, regional or subregional level. They relate primarily to the activities of military forces and can be relatively simple, such as ship visits and personnel exchanges, or relatively complex, such as regimes for cooperative surveillance or information exchange.

They can have a political focus, such as making the good intentions of a country more apparent ('transparent') and agreeing not to conduct certain types of maritime operation in a particular area or not to acquire certain technologies of maritime warfare. Or they might have an operational focus, such as the exchange of maritime surveillance information, the provision of prior notification of particular naval activities (such as exercises), or agreements to prevent incidents between naval forces (INCSEA agreements).

Naval transparency measures are largely subsumed within the wide variety of military transparency measures. They include invitations to observe naval exercises, military-to-military contacts, doctrine/defence planning seminars, greater openness regarding planning and procurement, and the preparation of defence policy papers ('white papers').

A distinction may be made between *naval cooperation*, which encompasses all military activities associated with the sea (recognising that in some countries maritime aircraft are operated by the air force), and *maritime cooperation*, which is a broader concept in line with the theory of comprehensive security and encompassing the full range of activities and interests in the sea (such as shipping, marine resource management and environmental protection).

Military MCBMs can be divided into three categories:

- *declaratory measures*—statements of intent, including broad commitments such as non-attack or no-first-use agreements
- *transparency measures*—including information, communication, notification and observation/inspection measures
- *constraint measures*—including risk reduction regimes and exclusion/separation zones, as well as more traditional constraints on personnel, equipment and operational activities.

INCSEA agreements

The 1972 agreement between the US and the Soviet Union to prevent incidents on and over the high seas is a key example of a practical MCBM that's stood the test of lengthy and demanding operational experience.³ The agreement laid out a number of measures to prevent naval collisions and to limit provocative manoeuvring and signalling.

Bilateral INCSEA agreements were also negotiated between the Soviet Union and several Western European navies. Russia has also signed INCSEA agreements with Japan and South Korea.

In January 2001, the navies of Indonesia and Malaysia agreed on the MALINDO Prevention of Sea Incident Cooperative Guidelines, which provide standard safety procedures to apply during unscheduled encounters at sea between units of the two navies. The Western Pacific Naval Symposium has also agreed on the Code for Unalerted Encounters between Ships, which has some of the qualities of a non-binding multilateral INCSEA agreement.

The INCSEA agreements between the Soviet Union and Western navies aren't necessarily good models for use elsewhere. First, they relate to the activities of navies that routinely conducted close surveillance of each other's exercises and operations.

Second, the agreements are limited to high seas activities and not to EEZs or territorial seas. Any attempt to develop an agreement to apply in EEZs would open up the controversial question of the nature of the military activities that another state may conduct in the EEZ of a coastal state.

Third, their success can be attributed partly to the fact that they are all bilateral. Not only would the negotiation of multilateral agreements be difficult, but the investigation of particular incidents that possibly contravened an agreement would become more complicated if third parties had to be consulted.

Lastly, submerged submarine operations are excluded from these agreements.

Non-military MCBMs

Non-military MCBMs serve two purposes. First, they provide a direct benefit by helping to build maritime regimes that provide good order at sea and permit effective management

of the maritime domain. Second, they serve as 'building blocks' for habits of cooperation and dialogue that reduce tensions and promote peace and stability.

Good order at sea ensures the safety and security of shipping and permits countries to pursue their maritime interests and develop their marine resources in an ecologically sustainable and peaceful manner in accordance with international law. A lack of good order at sea is evident if there is illegal activity at sea or inadequate arrangements for the safety and security of shipping.

An effective regime for good order at sea involves several elements. First, it means the absence of illegal activity at sea through the suppression of piracy and armed robbery against ships; illegal fishing; illicit trafficking in drugs, arms, people or weapons of mass destruction; and illegal ship-sourced pollution.

The incidence of piracy, particularly the hijacking of ships and their cargoes, as well as other illegal activities at sea, suggests the importance of cooperation to preserve good order at sea. Agreed procedures for cooperative law enforcement between neighbouring countries, the harmonisation of maritime laws and the exchange of information are all possibilities.

Second, it requires arrangements for the safety and security of shipping. Requirements include the availability of effective search and rescue (SAR) services, good hydrographic surveys, reliable meteorological forecasts, and the provision of necessary navigational aids. One requirement for security is a system that provides a response to an emergency on board a ship (such as a pirate or terrorist attack) notified through the ship security alert system introduced with the International Ship and Port Facility Security (ISPS) Code.

Effective environmental and resource management is the third element of good order at sea. Under the provisions of UNCLOS, this is primarily the responsibility of the coastal state in exercising its rights and fulfilling its obligations in its EEZ. However, in areas such as the South China Sea where maritime boundaries haven't been agreed and there are overlapping EEZ claims, management becomes problematic. As has been noted, cooperation is also a specific and joint responsibility of countries adjacent to an enclosed or semi-enclosed sea under the regime in UNCLOS Part IX.

Specific tasks required for marine environmental protection and resource management include monitoring and prevention of ship-sourced marine pollution; mitigation of the effects of major oil spills, or other hazardous or noxious substances; the reversal of the degradation of marine habitats; the control of illegal, unreported or unregulated (IUU) fishing; and the establishment as required of marine protected areas and marine parks.

Finally and most basically, good order at sea means that nations are able to pursue their legitimate maritime interests in accordance with agreed principles of international law. However, this is another problematic area due to certain ambiguities in relevant regimes under the international law of the sea.

Cooperation between neighbouring states to maintain good order at sea is essential even in the absence of agreed maritime boundaries. It might be achieved through memorandums of understanding between the neighbouring states dealing with particular issues.

Problems arise if countries fail to ratify or adequately implement relevant international treaties. While these regimes have been developed at the global level, they depend fundamentally on implementation at the regional and national levels, and it is at those levels that the problems lie.

Law of the sea

UNCLOS is a significant MCBM in its own right. The fact that most East Asian countries, with the exception of Cambodia and North Korea, are parties to the convention gives grounds for confidence that effective management regimes for the enclosed and semi-enclosed seas of East Asia will eventually be achieved. Cooperation between states is a common theme throughout UNCLOS, particularly in Part IX (on enclosed and semi-enclosed seas), Part XII (relating to the preservation and protection of the marine environment), and Part XIII (dealing with marine scientific research).

Many provisions of UNCLOS have confidence building effects. For example, the innocent passage regime in Section 3 of the convention places specific restrictions on warships exercising the right of innocent passage, including a requirement that submarines should transit on the surface. UNCLOS prescribes procedures for the settlement of maritime disputes

by peaceful means, and by clarifying the principles for delimiting maritime boundaries between adjacent states and establishing the EEZ regime it reduces risks of conflict arising from disputes over claims to offshore areas.

Effective maritime regimes require adherence to the legal principles of UNCLOS, as well as to other relevant international maritime treaties. However, there are still many ‘grey areas’ in the Law of the Sea that require negotiation between interested parties. This is particularly so with provisions relating to the EEZ regime.

Some dialogue towards a common regional understanding of aspects of the Law of the Sea where uncertainty exists could be a worthwhile MCBM. The precedent for this activity would be the agreement between the US and the Soviet Union on a common interpretation of the regime of innocent passage.⁴ This provides *inter alia* that neither prior notification nor authorisation is required for the passage of warships, regardless of cargo, armament or means of propulsion.

However, there’s also concern that some MCBMs could constitute a form of ‘creeping’ and ‘thickening’ jurisdiction that would have the overall effect of increasing coastal state control over adjacent waters beyond that allowed under international law and restricting the rights of foreign vessels to operate in those waters.

The dimensions of maritime cooperation

Naval or military cooperation is a subset of maritime cooperation. Maritime cooperation encompasses any cooperative activity associated with an interest in the sea, the protection of the marine environment or a use of the sea or its resources. Table 1 shows the full dimensions of civil maritime cooperation and naval cooperation. It includes, in the middle column, the possible areas of joint activity that involve both military and civil agencies, such as surveillance, marine scientific research, SAR and law enforcement at sea. These may be performed jointly by the navy and civilian agencies, or in some countries may be entirely a naval or civil responsibility.

Law enforcement at sea

Law enforcement at sea can be either a civil or a military responsibility. Some countries have separate paramilitary maritime security forces (coastguards or marine police) for law enforcement at sea, while in other countries maritime law enforcement remains a naval responsibility.

The paramilitary forces undertake policing at sea akin to civil policing onshore. Cooperation between such forces offers benefits not available from naval cooperation. Their vessels are less intimidating and in periods of tension are less provocative. Tensions are evident with regard to the

Table 1: The dimensions of maritime cooperation

Naval/military cooperation	Either or both	Civil maritime cooperation
Ship visits	Counterpiracy	Regional seas programs
Personnel exchanges	Counterterrorism	Resource management (living & non-living)
Navy-to-Navy talks	Law of the Sea	Shipping & ports
Exercises	Marine safety	Port state control
Joint doctrine development	Marine technology development and transfer	Coastal zone management
INCSEA agreements	Marine scientific research	Environment protection
Transparency/prior notification of exercises & operations	Hydrographic surveys	Joint development zones
‘Hotlines’	Search and rescue	Control of ship- and land-sourced pollution
Standing forces	Humanitarian assistance / disaster relief	Ecologically sustainable development
Mine countermeasures	Marine databases	Marine ecosystem management
Peacekeeping operations	Information exchange	Marine tourism
Protection of shipping	Education & training	Marine protected areas
Water space management for submarine operations	Maritime surveillance	
	Law and order	
	Sovereignty/resource protection	

latent, and sometimes not so latent, suspicions held by some countries about the naval capabilities and intentions of their neighbours.

Law enforcement cooperation between paramilitary forces in areas of overlapping or disputed jurisdiction may be more feasible and offer greater benefits for security than cooperation between navies. This cooperation might extend to other requirements, including SAR and the prevention and mitigation of marine pollution.

As a recent paper from the International Institute for Strategic Studies noted:

Any moves towards more collaborative cooperation between assorted national paramilitaries—for example with regard to the protection of the marine environment or on counterpiracy or search and rescue missions—will offer more positive indications regarding prospective stability.⁵

Cooperation and confidence

The importance of cooperation to manage the maritime domain and its resources can't be overstated. This is particularly the case where the EEZ or territorial sea of one country abuts onto those of another. If boundaries can't be agreed, then arrangements for the joint management of common interests are required. Those arrangements would be in accordance with UNCLOS Article 74(3), which provides that, pending agreement on boundaries between adjacent EEZs:

the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement.

Unfortunately, however, a lack of trust may exist between neighbouring countries with unresolved sovereignty disputes. This will prevent cooperation if it's argued that cooperation isn't possible without confidence and trust between the parties to the dispute. It's the contention of this paper that the opposite relationship applies—maritime cooperation is an MCBM that helps build the necessary trust and confidence. Cooperation should proceed even as the disagreements are negotiated at the political level and the sovereignty disputes remain unresolved.

It's easy to identify and talk about MCBMs; it's much harder to translate them into a plan for action. The objective with MCBMs is a security environment in which countries don't feel the need to build up their maritime forces, thereby creating a security dilemma for their neighbours or potential adversaries. Thus, when the navies become involved in the confidence building process, they're effectively 'working themselves out of a job'!

Notes

- 1 The concept paper is available on the ARF website at <http://aseanregionalforum.asean.org/files/library/Terms%20of%20References%20and%20Concept%20Papers/Concept%20Paper%20of%20ARF.pdf>.
- 2 The preamble to the 1982 UN Convention on the Law of the Sea notes that state parties to the convention are 'Conscious that the problems of ocean space are closely inter-related and need to be considered as a whole'.
- 3 Agreement on the Prevention of Incidents On and Over the High Seas, US–USSR, 25 May 1972, 23 UST 1168; Protocol to the Agreement on the Prevention of Incidents On and Over the High Seas, 22 May 1973, 24 UST 1063.
- 4 Uniform Interpretation (by the United States and the Soviet Union) of International Law Governing Innocent Passage, agreement signed 22 September 1989. 28ILM1444.
- 5 Sarah Raine, Christian Le Miere (2013), *Regional disorder: the South China Sea disputes*, Adelphi series, 53:200.

About the author

Dr Sam Bateman is Professorial Fellow at the Australian National Centre for Ocean Resources and Security, University of Wollongong.

Background paper: Existing and previous maritime cooperative arrangements in the South China Sea

Dr Sam Bateman

This paper provides a summary of existing bilateral and multilateral maritime cooperative arrangements in the South China Sea (SCS). These include arrangements for law enforcement, countering piracy, search and rescue (SAR), fisheries management, naval cooperation and marine environmental protection. The paper also refers to some past initiatives that have failed to achieve their intended outcomes.

The principal challenge in the SCS is to build a stable maritime regime that provides for good order at sea, eases tensions and reduces the risk of conflict. The countries around the SCS have a long history of confrontation with relatively few examples of successful cooperation. This is despite the obligation of countries bordering such a body of water to cooperate in accordance with Part IX of the 1982 UN Convention on the Law of the Sea (UNCLOS), to which all the littoral countries are parties.

Obligations to cooperate

The SCS is a 'semi-enclosed sea' covered by Part IX of UNCLOS. The use of the words 'should co-operate' and 'shall endeavour' in Article 123 of UNCLOS places a strong obligation on littoral states to coordinate their activities as defined in the subparagraphs of that article. While resource management, the protection of the marine environment and marine scientific research are mentioned specifically as areas for cooperation, the opening sentence of Article 123 creates a more general obligation to cooperate. That responsibility might be interpreted as including security and safety, including the maintenance of law and order at sea.¹

The non-binding 2002 Declaration on Conduct of Parties in the South China Sea (DOC) agreed between China and ASEAN also invites the littoral countries to cooperate on the following transboundary marine activities pending a comprehensive and durable settlement of the dispute:

- a. marine environmental protection
- b. marine scientific research
- c. safety of navigation and communication at sea
- d. search and rescue operations
- e. combating national crime, including, but not limited to, trafficking in illegal drugs, piracy and armed robbery at sea, and illegal traffic in arms.²

The DOC commits parties to peaceful modes of dispute settlement, the application of international law, the need for building up confidence and trust, and recognition of the freedoms of navigation and overflight in the SCS. While it's been successful in containing disputes and tensions in the SCS until recently, it hasn't contributed to cooperative activities in the way that was hoped, or led to appropriate maritime confidence building measures (MCBMs).

In July 2011, China and ASEAN agreed on guidelines for developing a code of conduct between the claimant countries in the SCS.³ However, the guidelines don't refer specifically to cooperation for management of the sea but rather identify confidence building measures as the initial activities to be undertaken under the DOC.

The focus in the SCS has shifted from cooperation to sovereignty and dispute resolution. Confidence building is now seen as a prerequisite of cooperation, rather than cooperation being viewed as a confidence building measure. The current emphasis is on resolving the sovereignty disputes and establishing a code of conduct rather than on building a cooperative management regime for the sea.

The demands for effective cooperative management regimes in the SCS will become more pressing in the future. Volumes of shipping traffic will continue to increase, bringing greater risks of ship-sourced marine pollution and shipping accidents. There'll be increased pressure on the living and non-living resources of the SCS, as well as growing concern for the protection and preservation of the sea's sensitive ecosystems and marine biodiversity.

Recent developments

The 20th ASEAN Regional Forum (ARF), held in Brunei in July 2013, noted the ASEAN Statement on the Six-Point Principles on the South China Sea as agreed by ASEAN foreign ministers

at their meeting in Cambodia in July 2012.⁴ The principles include the commitment of ASEAN member states to the peaceful settlement of the disputes, full implementation of the DOC and its guidelines, and the early conclusion of a regional code of conduct in the SCS. The foreign ministers also resolved to intensify ASEAN consultations in the advancement of the principles, consistent with the Treaty of Amity and Cooperation in Southeast Asia (1976) and the ASEAN Charter (2008).

The ASEAN–China Joint Working Group to implement the DOC Guidelines will meet next in China in September 2013. China has also proposed an eminent persons group to discuss SCS issues.

Regional maritime security cooperation is under active consideration in three Track 1 forums:

- The ARF Inter-Sessional Meeting on Maritime Security held its most recent meeting in April 2013. The current ARF Work Plan for Maritime Security includes three priority areas: information/intelligence exchange and sharing of best practice; confidence building measures based on international and regional legal arrangements and cooperation; and capacity building for maritime law enforcement.
- The ASEAN Defence Ministers Meeting Plus (ADMM+) Expert Working Group on Maritime Security held its most recent meeting in May 2013. The group conducted the ASEAN Maritime Security Information Sharing Exercise, involving regional navies, and will conduct the Maritime Security Field Training Exercise off Sydney in September 2013.
- The third ASEAN Maritime Forum and the first Expanded ASEAN Maritime Forum were held in Manila in October 2013 on the theme of ‘Strengthening maritime cooperation in the ASEAN region’.

At the Track 2 level, the Council for Security Cooperation in the Asia Pacific’s Study Group on Maritime Security held its first meeting in Singapore in June 2013.

ASEAN–China Maritime Cooperation Fund

At the 14th ASEAN–China Summit in November 2011, China proposed setting up the ASEAN–China Maritime Cooperation Fund of RMB3 billion (about US\$470 million) to implement practical projects under the implementation of the DOC.

This offer was renewed in August 2012 when Chinese Vice Foreign Minister Fu Ying said that China was ready to promote maritime connectivity with ASEAN. China also renewed this offer of funding at the third ASEAN Maritime Forum held in Manila on 4–5 October 2012.

Despite considerable discussion of procedures for implementing the fund and the importance of cooperation, the priority for ASEAN remains an agreed code of conduct. There’s also some reluctance to concede leadership on the process of cooperation to China and a fear that cooperation under the fund may prejudice sovereignty claims. The claimant states have, however, agreed to establish four expert committees on marine scientific research, environmental protection, search and rescue, and transnational crime.⁵

The South China Sea Workshop process

Since 1990, Indonesia has hosted the series of Workshops on Managing Potential Conflicts in the SCS. The main goal of the workshops wasn’t to solve the sovereignty disputes in the SCS but to develop a sense of ‘community’ in the SCS area that reflected the spirit of cooperation in UNCLOS, especially in the EEZ regime (articles 61–67) and the semi-enclosed seas concept in Part IX.⁶

In addition to annual workshops, the process included upwards of 25 technical working groups and groups of experts meetings on marine scientific research; marine environmental protection; safety of navigation, transportation and communication; resource assessment and means of development; and legal matters. The process achieved agreement for cooperative initiatives in a range of areas⁷, but due to lack of funding there’s been little follow-through on these initiatives and the workshop process has slowed down.

Cooperative activities

The principal areas for cooperation are transboundary issues that can’t be managed by one country acting alone. They include, for example, arrangements for the safety and security of growing shipping traffic; fisheries management; piracy and terrorist threats; and environmental threats, including pollution and the destruction of marine habitats.

Resource management

Fisheries

Fisheries management should be a common interest of all SCS littoral countries. The SCS accounts for about one-tenth of the global fish catch. Most fish stocks are either shared stocks, such as scad and mackerel that migrate across the EEZs of more than one coastal state, or highly migratory species, especially tuna, whose migratory patterns sometimes cover a large area of the Pacific Ocean.

Obligations to work together on fisheries management in the SCS are generally not being observed, despite the existence of several regional arrangements theoretically providing for cooperation. As a consequence, fisheries are being exploited in an unsustainable manner and illegal, unreported and unregulated (IUU) fishing is rife. Specific agreements for the SCS on the conservation of fish resources, catch limits and the protection of certain marine species need to be considered.

The geography of the SCS means that there are areas enclosed within the EEZ of one country that were habitually fished by fishers of another, and that some fish stocks exist in the EEZs of two or more littoral countries. UNCLOS Article 62(3) requires in the first instance that a coastal state, in promoting the optimum utilisation of fish stocks in its EEZ, should take into account the interests of another state whose fishers have habitually fished in the EEZ. UNCLOS Article 63(1) requires in the second instance that the states concerned should seek, either directly or through appropriate subregional or regional organisations, to agree upon measures necessary to coordinate and ensure the conservation and development of such stocks.

The 1995 Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks was introduced under UNCLOS at the global level to enhance the cooperative management of fisheries resources that span different areas. However, around the SCS, only Indonesia is a party to this agreement. China and the Philippines have both signed the agreement but not ratified it.

The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which entered into force on 19 June 2004, implements the Fish Stocks Agreement in the Western

and Central Pacific.⁸ China, the Philippines and Vietnam are parties to the convention, while Chinese Taipei is a participating fishing entity. The convention theoretically covers the SCS but it deals only with the conservation and management of highly migratory species that migrate into or out of the region. However, due to difficulties in negotiating the convention, the western boundary of the convention area is undefined, and only China, the Philippines and Vietnam are parties to the convention.

The Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region was agreed between Indonesia, Australia, Brunei Darussalam, Cambodia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor-Leste and Vietnam in 2007. Its objective is to enhance and strengthen the overall level of fisheries management in the region in order to sustain fisheries resources and the marine environment and to optimise the benefit of adopting responsible fishing practices. The actions cover the conservation of fisheries resources and their environment, managing fishing capacity, and combating IUU fishing in the SCS, the Sulu–Sulawesi seas (Celebes Sea) and the Arafura–Timor seas.

The Southeast Asian Fisheries Development Center is another forum concerned with fisheries management in Southeast Asia. Its membership comprises all Southeast Asian countries plus Japan, but not China. The centre's mandate is:

to develop and manage the fisheries potential of the region by rational utilization of the resources for providing food security and safety to the people and alleviating poverty through transfer of new technologies, research and information dissemination activities.

APEC also assumed a role in regional fisheries cooperation with the establishment of its Fisheries Working Group and Marine Resource Conservation Working Group. The two groups merged in 2011 to form the Ocean and Fisheries Working Group. The recent focus of this group has been on IUU fishing and the sustainable development of aquaculture.

Non-living resources and joint development

Southeast Asia, including the SCS, is the most active area in the world for fixed offshore oil and gas platform projects, and floating platforms are also being facilitated by rapid technological developments. The 'oil factor' has also become an important element underpinning sovereignty assertions.

However, perceptions of a rich bonanza of oil and gas reserves in the SCS are probably not justified, particularly so in and around the Spratly Islands.⁹ Furthermore, most oil and gas resources of the SCS are closer to shore in undisputed waters.

The joint development of offshore oil and gas resources is regularly proposed. The main problem invariably lies in determining the actual area for development. Existing joint development agreements include ones between China and Vietnam in the Gulf of Tonkin and a recent agreement between China and Brunei.

Cooperation to ensure the safety and security of offshore oil and gas installations in the SCS is a possibility, but no arrangements are in place yet.¹⁰

Marine environmental protection

The SCS constitutes a large marine ecosystem. In addition to a large percentage of the world's coral reef species and about 12% of the world's mangroves, the SCS has extensive seagrass beds and critical marine habitats for other species.¹¹ Its fisheries have major economic, food security and cultural significance for its coastal communities.

The process of maritime cooperation for the protection of the marine environment of a semi-enclosed sea under UNCLOS Part IX is institutionalised in the UN Environment Programme's Regional Seas Programme. In theory, this program provides a framework for cooperation on marine environmental management, including sustainable resource development, but in practice it's only had marginal success. The full benefits of meaningful cooperation haven't been realised, as they depend heavily on the political commitment of participating countries and the establishment of effective delivery mechanisms to manage action plans. An action plan has been adopted for the waters of Southeast Asia through the Coordinating Body for the Seas of East Asia (COBSEA).

Marine environmental protection cooperation in the SCS is included the UN Development Programme – Global Environment Facility – International Maritime Organization Regional Program on the Prevention and Management of Pollution in East Asian Seas. The goal was to help regional nations to prevent and manage marine pollution through technical assistance and monitoring and regional capacity building and coordination. Following the successful

completion of demonstration projects in China, the Philippines and the Malacca Strait, the project evolved into Partnerships in Environmental Management for the Seas of East Asia (PEMSEA).¹² All countries adjacent to the SCS are participants in PEMSEA. The focus of PEMSEA is to build partnerships within and among regional governments, as well as across public and private sectors.

COBSEA isn't well supported, and PEMSEA has kept clear of projects in disputed areas. Attempts to implement the UNCLOS Part IX obligations haven't achieved the desired outcomes in the Mediterranean and Caribbean seas, and the experience so far with the action plan steered by COBSEA gives few grounds for optimism that successful outcomes will be achieved.¹³ These programs have tended to have a single-sector focus on pollution, whereas a more multisectoral approach to ocean and coastal management is required.

The littoral states have declared numerous marine protected areas around the SCS, but those areas are in undisputed coastal and inshore waters. A marine protected area for a large part of the disputed area in the SCS, involving the SCS claimant states as well as the other states whose vessels exploit the living resources of the sea, might be possible.¹⁴

Marine scientific research

Good knowledge of the marine environment is essential for the effective management of regional seas. It's particularly important in the SCS due to the rich biodiversity of the sea, its complex bottom topography and its rich resources, the exploitation and good management of which require good science.

An example of cooperative marine scientific research was the Current Metering Experiment conducted as part of the ASEAN–Australia Regional Ocean Dynamics Project during the 1990s. This gathered information on the flow of water and transfer of heat between the Pacific and Indian oceans—the key to climate patterns in Southeast Asia and the Western Pacific.

Recent attempts to establish cooperation for marine scientific research in the SCS have come to nothing. The Joint Oceanographic and Marine Scientific Research Expedition in the South China Sea was initiated between the Philippines and Vietnam in 1994 but lapsed in 2007.¹⁵ The bilateral

Agreement for Joint Marine Seismic Undertaking in certain areas in the SCS was signed by the national oil companies of China and the Philippines in 2004 but lapsed after its term of three years. The tripartite Agreement for Joint Marine Scientific Research in Certain Areas of the South China Sea was signed by the national oil companies of China, the Philippines and Vietnam in 2005, also for a term of three years, but failed to realise expectations.

The ARGOS system is a key element of the Global Ocean Observing System, which is the major international oceanographic system for monitoring the world's oceans. ARGOS involves a global array of instruments placed at strategic points about every 300 kilometres to measure temperature, salinity and circulation in the upper 2,000 metres of the sea. However, due to jurisdictional uncertainty, few instruments have been deployed in the SCS.

Shipping

Shipping is a major use of the marine environment but cooperation is required to enhance the commercial efficiency of shipping operations, maintain safety and reduce the impact of these operations on the marine environment. Cooperation is also necessary for the mitigation and prevention of ship-sourced pollution, including arrangements for responding to the major oil spills that may result from maritime accidents and monitoring oil spills in open waters from routine tank cleaning and ballasting operations. Anecdotal information suggests that these activities occur undetected in the SCS due to the lack of an effective coordinated monitoring system.

The Tokyo Memorandum of Understanding on Port State Control provides a regional system of cooperation in inspecting and surveying ships to verify their compliance with international safety standards.¹⁶ The ASEAN Plan of Action in Transportation supports the implementation of the Tokyo MOU with a project on the harmonisation of procedures for port state control, as well as other maritime transport initiatives encouraging ASEAN members to accede to relevant conventions. Other collaborative forums dealing with shipping issues in the region include the Asia–Pacific Heads of Maritime Safety Agencies Forum and the Association of Maritime Education and Training Institutions in Asia Pacific.

Law enforcement

Piracy and armed robbery at sea

Acts of piracy and armed robbery at sea still occur in and around the SCS. While only two attacks were reported in the sea during 2012 (down from 13 in 2011), attacks also occur in littoral ports and anchorages, especially in Vietnam, Borneo and the Philippines.¹⁷

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in the Asia–Pacific (ReCAAP) provides for regional cooperation to counter piracy and armed robbery at sea. It involves all ASEAN nations (except Indonesia and Malaysia) and eight other extraregional countries. It includes an information network and a cooperation regime that includes the SCS. Countries participate in ReCAAP mainly through their coastguards rather than their navies.

The Malacca Strait Patrols (MSP) network has contributed to the reduction of piracy and armed robbery against ships in the Malacca Strait and is a potential model for the SCS. It comprises air surveillance flights under the Eyes in the Sky program and coordinated sea patrols by Indonesia, Malaysia, Thailand and Singapore, as well as an Intelligence Exchange Group, the MSP Information System (MSP-IS) and standing operating procedures, all under the direction of a joint coordinating committee.

Information sharing

The Information Fusion Centre operated by the Singapore Navy provides for regional maritime information-sharing cooperation among regional navies and other agencies. It helps cue participating countries to take actions to respond early to potential threats and developing situations. At the heart of the Information Fusion Centre is the Regional Maritime Information Exchange System (ReMIX), which is an initiative of the Western Pacific Naval Symposium to share maritime security-related information. There will be a reference database of more than 150,000 vessels, designed to flag suspicious vessels that warrant closer surveillance. The MSP-IS is an element of the ReMIX.

The Indonesia–Singapore Coordinated Patrol arrangement coordinates patrols in Singapore Strait. It includes SURPIC, a real-time surveillance picture of the strait.

National maritime information systems are also being established. Indonesia is planning a multiagency National Maritime Information Centre, which will be under the Indonesian Navy. The Philippines' National Coast Watch System is also being developed to provide interagency coordination and maritime security across the Philippines archipelago.

The National Coast Watch System builds on the Coast Watch South System established by the Philippines with the assistance of Australia and the US in the tri-border area in the Sulu and Celebes seas between Indonesia, Malaysia and the Philippines. This had the potential to provide the basis of an integrated system of maritime security in the area involving the three coastal states, but the necessary protocols haven't been agreed.¹⁸

Potential exists for greater coordination and cooperation between these various regional and national maritime information systems. ReCAAP provides this for piracy, but there's a gap for other forms of illegal activity at sea. Any regional system must have a multiagency approach.

The ARF Regional Maritime Information Centre, having been proposed by China, was adopted by the eighth ARF in Hanoi in July 2001. A website was set up and managed by the National Marine Data and Information Service of China. An important aim of the ARF information centre is to share information and intelligence among ARF participants for better cooperation and coordination. The fifth ARF Inter-Sessional Meeting on Maritime Security, held in Seoul in April 2013, suggested that the initiative be revived and further developed.¹⁹

Operational cooperation

Humanitarian assistance and disaster relief

Parts of the SCS region are vulnerable to natural disasters, including earthquakes, storm surges, tsunamis and typhoons. The ASEAN Agreement on Disaster Management and Emergency Response, set up in 2005, promotes regional cooperation and collaboration in reducing disaster losses and intensifying joint emergency responses to disasters in the ASEAN region.

The ARF has established an Inter-Sessional Meeting on Disaster Relief. An ARF disaster relief exercise was held in Thailand in May 2013.

Search and rescue

The 1979 SAR Convention has a relatively low level of acceptance in the region²⁰, possibly because of the costs involved in establishing an SAR infrastructure and a reluctance to allow searching ships or aircraft of another country access to sovereign waters or territory.

Regional search and rescue exercises (Sarex) are conducted under an agreement between ASEAN countries. They have involved most ASEAN countries and have been aimed at ensuring that all regional SAR agencies are able to coordinate assistance during major emergencies. There are also various bilateral Sarex arrangements and exercises between ASEAN countries, such as Sarex Indopura between Singapore and Indonesia and Sarex Malbru between Malaysia and Brunei.

ASEAN and China have also talked about SAR cooperation, but so far this has been limited to 'table top' exercises. A workshop on strengthening ASEAN-China cooperation on SAR in the SCS was held in June 2013.

Singapore has accepted SAR responsibility for a large part of the SCS (Figure 1) and has promulgated the Singapore Plan for SAR Services and Passenger Ships. However, SAR region boundaries don't accord with national maritime boundaries, and this (along with the lack of ratification of the SAR Convention by some littoral countries) suggests that there could still be problems in mounting a large-scale maritime SAR operation in the region, particularly in disputed waters.

Naval cooperation

Exercises

Exercises present several opportunities for confidence building, such as routinely providing prior notice of exercises ('transparency') and exchanging observers at national exercises. Tactical exercises based on exercising war-fighting skills and doctrine at sea may be too sensitive, but SAR, humanitarian assistance or disaster relief exercises involving regional navies should be encouraged.

Annual US-sponsored exercises in Southeast Asia, some of which take place in the SCS, include the Southeast Asian Cooperation and Training (SEACAT) exercise, a major maritime exercise involving most regional countries, and the Cooperation Afloat, Readiness, and Training (CARAT) series of bilateral exercises between the US and most regional

Bilateral cooperation

While successful multilateral cooperation in the SCS has been limited, there are numerous examples of bilateral cooperation in and around the region. During 2010, the Philippines and Vietnam signed memorandums of agreement for maritime cooperation in three areas: fisheries, oil spill preparedness and response, and SAR at sea. The two countries have an agreement between their coastguards on a hotline for information sharing on incidents at sea, marine protection, and the prevention of smuggling, drug trafficking, piracy and illegal immigration in the SCS.

Bilateral arrangements between China and Vietnam include joint development and fisheries management in the Gulf of Tonkin²¹, a hotline to deal with fisheries incidents in the SCS, and two joint patrols per year in the Gulf of Tonkin. The China–Vietnam Fundamental Principles to Settle Maritime Disputes were agreed in October 2011. The principles commit the two countries to friendly consultations in order to properly handle maritime issues and make the SCS a sea of peace, friendship and cooperation.²²

A cooperative management regime?

An effective management regime for the SCS based on national sovereignty, sole ownership of resources and agreed straight-line maritime boundaries between neighbouring countries is proving difficult to achieve. Earlier moves towards a higher level of multilateral cooperation in the SCS appear to have stalled pending agreement on a binding code of conduct, despite the considerable ‘top down’ attention being given to maritime security cooperation in the various forums established under the auspices of ASEAN.

A cooperative management regime requires more active consideration. This might be more of a ‘bottom up’ approach, with a web of provisional arrangements covering cooperation for different functions and perhaps even with different areas for each function. These functions include the development of oil and gas resources, fisheries management, marine safety, marine scientific research, law and order at sea, and the preservation and protection of the marine environment.

Notes

- 1 Council for Security Cooperation in the Asia Pacific (CSCAP) memorandum no. 13, *Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific*, June 2008. The guidelines are a set of fundamental, non-binding principles to guide maritime cooperation in the enclosed and semi-enclosed seas of the region, and to help develop a common understanding and approach to maritime issues in the region. They provide a useful guide to the further development of regional maritime cooperation, and are available at www.cscap.org/index.php?page=cscap-memoranda.
- 2 ASEAN—China Declaration on the Conduct of Parties in the South China Sea (2002), Article 6.
- 3 The guidelines are available at www.asean.org/documents/20185-DOC.pdf
- 4 www.cfr.org/world/aseans-six-point-principles-south-china-sea/p28915
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- 6 Hasjim Djalal, ‘The South China Sea: the long road towards peace and cooperation’, in Sam Bateman, Ralf Emmers (eds), *Security and international politics in the South China Sea: towards a cooperative management regime*, Routledge, Abingdon, 2009.
- 7 Ian Townsend-Gault, ‘The contribution of the South China Sea Workshops: the importance of a functional approach’, in Bateman and Emmers, *Security and international politics in the South China Sea*, p. 196.
- 8 The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, adopted on 5 September 2000 and entered into force on 10 June 2004, ILM 40 (2000) 278.
- 9 Nicholas Owen, Clive Schofield, ‘Disputed South China Sea hydrocarbons in perspective’, *Marine Policy*, 2012, 36(3):809–822.

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- 12 Updated information on PEMSEA is available on the PEMSEA website at www.pemsea.org/newsevents/news.html.
- 13 Alfred Hu Nien-Tsu, 'Semi-enclosed troubled waters: a new thinking on the application of the 1982 UNCLOS Article 123 to the South China Sea', *Ocean Development and International Law*, 2010, 41(3):281–314.
- 14 Robert C Beckman, 'Legal regimes for cooperation in the South China Sea', in Bateman and Emmers, *Security and international politics in the South China Sea*, p. 233.
- 15 Henry S Bensusanto Jr, 'Cooperation in the South China Sea: views on the Philippines–Vietnam cooperation on maritime and ocean concerns', in Tran Truong Thuy (ed.), *The South China Sea: towards a region of peace, security and cooperation*, Diplomatic Academy of Vietnam, Hanoi, 2011, pp. 295–296.
- 16 The Tokyo MOU website is at www.ijnet.or.jp/tokymou/geninfor.htm.
- 17 International Maritime Bureau, 2009, *Piracy and armed robbery against ships: annual report for the period 1 January – 31 December 2012*, January 2013.
- 18 Angel Rabasa, Peter Chalk, *Non-traditional threats and maritime domain awareness in the tri-border area of Southeast Asia: the Coast Watch System of the Philippines*, RAND occasional paper, www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP372.pdf.
- 19 Co-Chairs Summary Report of the Fifth ARF Inter-Sessional Meeting on Maritime Security, Seoul, 18–19 April 2013, <http://aseanregionalforum.asean.org/files/library/ARF%20Chairman's%20Statements%20and%20Reports/The%20Twentieth%20ASEAN%20Regional%20Forum,%202012-2013/09%20-%20Co-Chairs%20Summary%20Report%20-%205th%20ARF%20ISM%20on%20MS,%20Seoul.pdf>.
- 20 Cambodia, Malaysia, the Philippines and Thailand are not currently parties to the convention. Indonesia only became a party in 2013.
- 21 Li Jianwei, Chen Pingping, 'China–Vietnam fishery cooperation in the Gulf of Tonkin revisited', in Tran Truong Thuy (ed.), *The South China Sea: towards a region of peace, security and cooperation*, pp. 303–317.
- 22 'China, Vietnam sign accord on resolving maritime issues', *Xinhua News*, http://news.xinhuanet.com/english2010/china/2011-10/12/c_131185606.htm.

About the author

Dr Sam Bateman is Professorial Fellow at the Australian National Centre for Ocean Resources and Security, University of Wollongong.

Background paper: A naval perspective of maritime confidence building measures

Captain Justin Jones

Thus, the Navy has always been an instrument of the policy of States, an important aid to diplomacy in peacetime. —Sergei Gorshkov¹

On 4 March 2006, six boghammers (fast patrol boats) from the Iranian Revolutionary Guard Corps Navy (IRGCN) detached from a sunken crane which lies at the head of the North Arabian Gulf, just inside the Iranian side of the adjoining Iraqi territorial waters. The sunken crane was a well-known observation and staging post for the Iranian Navy and IRGCN, and was under continual surveillance by coalition forces belonging to Task Force 58. The boghammers split into three groups, increased speed to maximum, and executed a coordinated, multi-axis converging manoeuvre towards Iraqi territorial waters and the Kwar Abd Allah Oil Terminal (KAAOT) which is located close to the maritime border. The KAAOT guard ship, HMAS *Parramatta*, responded immediately by increasing speed and conducting a series of sweeps designed to protect the oil terminal. The tense situation was able to be de-escalated.

In an incident two days earlier, an IRGCN boghammer had crossed into Iraqi territorial waters and headed towards KAAOT. HMAS *Parramatta* had blocked the path of the vessel and the two commanding officers had a short conversation in broken English. During the courteous exchange, the Australian captain was able to make clear that his ship was there to guard the exclusion zone surrounding the oil terminal.² The brief interaction ended with the handover of a small gift from the Australian.

Might the earlier, short yet professional exchange have contributed to the de-escalation of the more concerning incident? If so, does the example of interaction between commanding officers constitute a form of confidence building measure (CBM)? This background paper is designed to provoke thought regarding these questions by providing an overview of maritime confidence building measures (MCBMs) and offering a potential framework for their application. In order to lay the groundwork, it's useful to begin with a historical appreciation of the development of the term.

The evolution of confidence building measures

The term 'confidence building measure' is commonly understood to have originated during the Cold War, in the context of arms control. While this is accurate as far as the specific term is concerned, the notion of confidence or trust building between states has a much longer pedigree. The evolution of CBMs can be separated into three phases: pre-Cold War, Cold War and post-Cold War.

The long period from the Middle Ages to the Cold War is rich in measures designed to bring order to anarchy, particularly in the maritime domain. The year 1271 saw the establishment between King Edward I of England and Guy, Count of Flanders, of an agreement 'as to the Behaviour at Sea of English and Flemish Ships'.³ In 1604, Hugo Grotius completed his seminal work, *Mare Liberum*, thus sparking the pursuit of freedom of the seas which endures today. The 1972 International Regulations for Preventing Collisions at Sea, as amended, are founded on mid-19th century collision prevention procedures regulated by Trinity House of Montreal.⁴

The Washington Conference is familiar as a form of naval arms control during the interwar period. US President Harding's invitation to the event is instructive:

It is, however, quite clear that there can be no final assurance of peace of the world in the absence of the desire for peace, and the prospect of reduced armaments is not a hopeful one unless this desire finds expression in *a practical effort to remove the causes of misunderstanding and to seek ground for agreement as to principles and their application.*⁵ (emphasis added)

One manifestation of such a practical effort to remove misunderstanding can be seen in the 1963 establishment of a hotline between the US and the Soviet Union. Still, this predated the term 'confidence building measure', which did not emerge until included in treaties of the early 1970s, linked to nuclear arms control.⁶

Those treaties provided impetus for the UN General Assembly, at its 34th session in 1979, to request of the Secretary-General that a comprehensive study on CBMs be undertaken and reported at the 36th session in 1981.⁷ Although the report was crafted in the context of confidence building designed to facilitate disarmament negotiations,

there are many aspects of its contents which remain relevant today. Close inspection shows a tacit broadening of the concept of CBMs, embodied in the assertion that ‘international confidence cannot be achieved through the building of military confidence alone.’⁸

The demise of the USSR and the end of the Cold War during the 1989–1991 period precipitated what might be seen as the third phase in the evolution of CBMs. This phase involved not only a definitive widening in the scope of CBMs beyond pure arms control, but also a shift in the centre of CBM architecture from Europe and the Atlantic to the Asia–Pacific, and the South China Sea in particular.⁹ With this latter phase of development in mind, it’s appropriate to define what’s meant by the term ‘maritime confidence building measures’.

Maritime confidence building measures defined

One of the challenges with MCBMs is a lack of consensus on what constitutes a CBM and what doesn’t. This challenge is influenced by the very perceptions of mistrust that CBMs seek to ameliorate, which originates from a complex web of historical experiences and geographical, strategic, political, economic, social and other elements.¹⁰ It’s helpful to turn first to the outcomes sought from CBMs.

While a considerable number of by-products, discussed below, will result from the conduct of CBMs, the primary outcomes sought tend to meet the following characteristics:

- the ‘cultivation of commonalities’¹¹
- situation management¹²
- reducing misperception¹³
- mitigating escalation.¹⁴

These characteristics are to an extent embodied in the neat encapsulation of the UN, which identified the goal of CBMs as being to:

contribute to, reduce or, in some instances, even eliminate the causes for mistrust, fear, tensions and hostilities, all of which are significant factors in the continuation of the international arms build-up in various regions and, ultimately, also on a world-wide scale. A second goal is to reinforce confidence where it already exists.¹⁵

Given the outcomes sought, and for the purposes of this paper, CBMs can be defined succinctly using the words of President Harding: practical efforts to remove the causes of misunderstanding. Maritime CBMs, specifically, are those that occur in the maritime environment.¹⁶

A framework for analysis

Having defined the meaning of MCBM in the context of this paper, a framework for their application can be considered. That is, what might realistically be realised from MCBMs?

There’s a natural limit to the extent of MCBMs between non-allied nations, influenced by the aforementioned historical experiences and geographical, strategic, political and other factors. However, coastal states¹⁷ in particular share a key interest—the safety and security of shipping on the global commons. National economies depend heavily on maritime trade. This convergence of national interests provides fertile ground for exploitation. It also means that MCBMs don’t necessarily have to occur between navies and/or militaries alone.

Cooperation should be able to be achieved without trust where national interests converge. This is a typically Western view. Chinese, for example, tend to espouse the development of trust before MCBMs can occur.¹⁸ In the Western ideal, this is a paradox. The purpose of MCBMs, as the name suggests, is to build trust.

A framework for understanding MCBM architecture can be underpinned by institutions, individuals and interdependence. Broadly, this refers to the organisations that are involved, the individuals or delegations that participate and the processes, or measures, adopted.

Institutions

The Indo-Pacific security architecture is a cluttered one. A plethora of regional, supraregional and subregional organisations exists already. Official, or Track 1, bodies within the Indo-Pacific include ASEAN, ASEAN+1, ASEAN+3, the East Asia Summit, the ASEAN Regional Forum (ARF), the ASEAN Defence Ministers Meeting Plus, the Western Pacific Naval Symposium (WPNS), the Indian Ocean Rim Association for Regional Cooperation, and the Indian Ocean Naval Symposium—the latter modelled on the WPNS. There’s no overarching organisation within the wider region, and little appetite to establish one.

Non-governmental, or Track 2, dialogues such as the Council for Security Cooperation in the Asia Pacific (CSCAP) have an important contribution to make towards regional confidence building and enhancing regional security through dialogues, consultation and cooperation. In CSCAP's case, the prime relationship is with the ARF. This affords useful academic input to the many forums which include the ARF as member. Realistically, though, the multitude of platforms in which MCBM development occurs complicates the effectiveness of outcomes. The Indo-Pacific lacks a synergistic approach to security.

An overarching regime that coordinates regional MCBMs is unrealistic due to the nature of the existing organisations. But it's not an impossible notion as long as a convergence of national interests, in this case maritime security, exists. The existing architecture may provide a 'multi track path to an East Asia Community', as has been suggested.¹⁹ Acknowledging a need for regional 'buy-in' is important. The ARF's 27 members include Indian Ocean stakeholders such as India, Pakistan and Sri Lanka. In the fragile region of Northeast Asia, it also draws in North Korea. Whether an informal overarching CBM or MCBM regime evolves over time or a more formal architecture is established remains to be seen. In either case, the community of interested stakeholders is likely to increase.

Individuals

There exists a broad array of interaction throughout the Indo-Pacific. Forums range across governmental, bureaucratic, academic, military and non-governmental forms. Instruments include, *inter alia*, the Proliferation Security Initiative, the Container Security Initiative and the International Shipping and Port Security Code. It would prove difficult to streamline the activities that qualify as MCBM under one umbrella.

A regular structural form for naval and military interaction is as follows:

- Defence Minister meetings (grand strategic). Examples include the ASEAN Defence Ministers Meeting Plus, Five Power Defence Arrangements Ministerial Meetings, Australia–US ministerial talks (AUSMIN), and various 2+2 forums.
- Navy–navy level (military strategic). Normally co-chaired at Rear Admiral/2 Star level. Draws

direction from the outcomes of ministerial level talks. Deals with strategic level issues and delegates operational level matters to an operational working group.

- Operational working group (operational). Normally co-chaired at Captain/Commander level. This forum conducts detailed planning of initiatives agreed at the navy–navy level. The working group builds networks and develops MCBMs.
- Other working groups, such as communications and logistics. The form and extent of subordinate working groups will depend on the nature of the relationship between the two navies or militaries.
- Task groups and individual ships or units (tactical level). Execute the plan.

This basic framework is transferable across governmental and non-governmental agencies, less so with academic forums. When the framework is applied across the breadth of interactive activities occurring between states, the result is a panoply of activities with good intent, which may not be in alignment with each other. Herein lies a fundamental limitation to a whole-of-government approach to MCBMs. The scale of the endeavour invites a potential lack of synergy.

Notwithstanding, it's important for states to ensure that there are a broad array of governmental, non-governmental and academic entities involved in MCBMs. The involvement of bureaucrats and/or politicians in confidence building activities may be constrained by domestic political considerations and diplomatic expectations. Many outcomes are shaped prior to actual meetings and general face-to-face discussion limited to a tight agenda manufactured by advisers. But real decision-making power resides at this level, so once bounds are set and agreed, authority needs to be driven down to practitioners to develop the detail and ensure follow-through.

These practitioners should include a broad range of maritime agencies: coastguards, navies, fisheries enforcement agencies and the shipping industry. The 2010 Senkaku Islands stand-off between China and Japan occurred between the Japan Coast Guard and commercial fishermen. The 2008 USNS *Impeccable* incident occurred between a non-commissioned US naval vessel and Chinese fisheries enforcement agency ships. These examples underscore the necessity to ensure broad maritime agency involvement in MCBM development.

Interdependencies

The definition of MCBM applied in this paper invites broad interpretation. An MCBM can range from a goodwill port visit by a warship to a major multilateral exercise between navies. In the non-military sphere, MCBMs might include coastguards exchanging expertise and experience, or federal police assisting to build capacity in developing countries. Where should states focus in this broad expanse between the innocuous and the aspirational?

A number of MCBMs can be seen as realistic and achievable initiatives. These are based on the premise of being practical efforts to remove the causes of misunderstanding, thereby reducing the risk of miscalculation during maritime encounters and/or incidents between states. Encounters such as the 2010 Senkaku and 2008 USNS *Impeccable* incidents will continue to occur, most particularly in the disputed maritime zones and busy shipping lanes of East Asia and the South China Sea.

If a preconceived set of measures is in place, then the risk of tactical level miscalculation resulting in strategic level misfortune may be reduced. These measures include:

- a new incidents at sea regime (INCSEA)
- a common means of communicating between naval vessels
- formal channels of communications between states ('hotlines')
- coordinated patrols.

INCSEA

The notion of an incidents at sea agreement is founded on the 1972 agreement between the Soviet Union and the US. The agreement was designed to prevent the frequent interactions at sea between military aircraft and naval vessels from becoming serious incidents.²⁰ Importantly, an INCSEA isn't predicated on influencing the size, force structure or weaponry of states party to the agreement. It's a method of risk reduction.

There exists a comprehensive set of regulations pertaining to the conduct of vessels on the high seas and all waters connected therewith. These are known as the International Regulations for Preventing Collisions at Sea 1972 (INTCOLREGS), as amended. An INCSEA shouldn't interfere with these rules in any way. It should be designed as a

complement to the INTCOLREGS with naval and military ships and aircraft in mind. The Soviet–US INCSEA provided for:

- measures to avoid collision
- non-interference in formations of the other party
- avoidance of manoeuvres in areas of heavy shipping
- maintenance of safe distance between vessels
- the use of accepted signals when manoeuvring
- not simulating attacks, launching objects or illuminating the bridges of other party's ships
- requiring aircraft to use caution and prudence when approaching or operating near ships and aircraft of the other party.²¹

The Soviet–US INCSEA also included an article relating to the provision of three to five days warning prior to major naval and military activities on the high seas. This is likely to be a point of potential disagreement between states, although the absence of such a provision shouldn't significantly disrupt the central purpose of the agreement.

The Soviet–US INCSEA isn't the only precedent for such agreements. The UK and Soviet Union signed their own INCSEA in 1986. Germany, Canada, France and Italy signed agreements with the Soviets in 1988 and 1989. Germany and Poland signed a similar arrangement in 1990. The striking of an INCSEA between China and the US, in particular, would make a powerful exemplar for other Indo-Pacific states. This isn't to suggest that a multilateral agreement should be sought. However, building bilateral agreements first may initiate a natural evolution to multitrack processes.

Communications at sea

The international language of the sea is English, and standard protocols for communications between ships at sea already exist. These don't take into account that standards of comprehension vary considerably, as do interpretations of international laws such as INTCOLREGS and the 1982 Law of the Sea Convention. The WPNS developed a publication known as Communications for Unalerted Encounters at Sea (CUES) for use among its members' navies.²² This initiative should be discussed within the expanded Indo-Pacific maritime community. The advantage of a publication such as CUES is that it reduces the risk of miscommunication between naval and military vessels, which may arise as a

result of unequal language proficiency. It makes a useful accompaniment to an INCSEA.

Formal channels of communication between states

In 2010 China and Japan agreed in principle to establish a hotline as a means of direct communication between governments. The initiative was never followed through.²³ The US and China had previously established a similar hotline.²⁴ In each case, the purpose of the communications channel was perceived differently. China has viewed the hotline as a method of providing forewarning of naval and military activities. Japan and the US perceive the hotline as a means of resolving concerns. The benefit of a hotline is direct communications between states, in order that the risk of misunderstanding concerning naval and military activities is reduced. There's potentially significant value in the presence of direct lines of communication between governments. There are also risks. The purpose/s and limitations of the channel must be agreed and understood. Moreover, the identification of the end users—the government departments and individuals concerned—is fundamental.

Coordinated patrols

The conduct of coordinated patrols in areas of sensitivity is a useful means of building confidence, albeit a potentially controversial one. Again, precedents exist for such an initiative. One example is the coordinated patrols conducted by India and Thailand²⁵ and India and Indonesia along the maritime boundaries of the Andaman and Nicobar islands.²⁶ The areas in which these patrols are performed straddle the important sea lanes of the Malacca Strait. This adds a degree of authenticity to what might otherwise be viewed as solely an MCBM.

The model is transferable to maritime boundaries in East Asia and the South China Sea. In particular, consensus on coordinated patrols might be achieved where the safety and security of joint offshore exploration assets is concerned. The contentious nature of this proposition should be recognised, but there's potential for a confidence building benefit should states pursue the notion.

Types of MCBMs and their by-products

Writing in 2011, Medcalf, Heinrichs and Jones separated MCBMs into direct and non-direct measures. Direct MCBMs

were considered as those 'more immediately related to contested zones, contentious issues and threatening capabilities', whereas indirect MCBMs were considered to be 'forms of engagement and cooperation that are geographically remote from or in other ways only indirectly related to the main issues, zones or capabilities of contention and concern.'²⁷ Their menu of MCBMs therefore took the following form:

- Direct CBMs
 - channels of communication (hotlines)
 - standards for communication at sea (CUES)
 - declarations, non-binding codes
 - formal agreements (INCSEA)
 - operational-level dialogue
- Indirect CBMs
 - goodwill visits
 - bilateral dialogues / navy-to-navy talks / naval staff talks
 - combined exercises
 - operational cooperation
 - agreements (e.g. submarine search and rescue)
 - educational exchanges
 - Track 1.5 and Track 2 dialogues.²⁸

From the range of potential MCBMs outlined in this paper, a number of by-products can be inferred: interoperability between navies and/or maritime agencies; regional capacity building; improved integration; continued engagement among regional navies; goodwill; technology transfer; continued dialogue; and access to the region. These all contribute, many in intangible ways, to reducing the potential for misunderstanding, improving relations and enhancing good order at sea.

Conclusion

Confidence building has a long history in international relations, predating Westphalian conceptions of the sovereign state. In the modern and post-modern eras, the notion of MCBMs has undergone an evolutionary process

which has been underpinned by two main developments. These are the gradual expansion of the concept from pure arms control measures to broader, whole-of-government approaches to trust building, coupled with a geographical shift in their main centre of use from Europe to Asia. At a minimalist level, MCBMs seek to cultivate commonalities, manage situations, reduce misperception, and mitigate escalation. Thus, MCBMs are considered as practical efforts to remove the causes of misunderstanding in the maritime domain. As a by-product, there's a potential to realise improved relations and increase good order at sea.

This paper has proposed a framework for the understanding of MCBMs within the Indo-Pacific, namely institutions, individuals and interdependence. None of the measures outlined is expected to circumvent or replace the extant range of MCBMs already occurring throughout the region. Moreover, the concept of MCBMs shouldn't be viewed as a panacea for the issues and challenges of intraregional relations, nor the ultimate solution to disputes, maritime or otherwise. The MCBMs expounded in this paper are simply an assessment of realistic and achievable measures that could be established between regional states, in this case using navies and maritime agencies as the appropriate tools of statecraft. In this respect, as Gorshkov suggested, navies and maritime agencies will continue to be important aids to diplomacy in peacetime.

Notes

- 1 Sergei Gorshkov, *The sea power of the state*, Pergamon, London, 1979, p. 248.
- 2 Brendan Nicholson, 'Frigate in standoff with Iran gunboats', *The Age*, 13 March 2006.
- 3 David Griffiths, *US–China maritime confidence building: paradigms, precedents and prospects*, China Maritime Studies Institute, no. 6, US Naval War College Press, 2010, p. 10
- 4 Griffiths, *US–China maritime confidence building*.
- 5 *Conference on the Limitation of Armament, Washington, November 12, 1921 to February 6, 1922, report of the Canadian delegate*, King's Printer, Ottawa, 1922.
- 6 United Nations, *Comprehensive study on confidence building measures*, report of the Secretary-General, UN Centre for Disarmament, New York, 1982, p. 14.
- 7 United Nations, *Comprehensive study on confidence building measures*, p. 1.
- 8 United Nations, *Comprehensive study on confidence building measures*, p. 4.
- 9 See, for example, Desmond Ball and Amitav Acharya (eds), *The next stage: preventive diplomacy and security cooperation in the Asia Pacific region*, Canberra Papers on Strategy and Defence, no. 131, Strategic and Defence Studies Centre, Australian National University, 1999; Desmond Ball and Sam Bateman, *An Australian perspective on MSCBMs in the Asia Pacific region*, working paper no. 234, Strategic and Defence Studies Centre, Australian National University, 1991; Sam Bateman, 'Asia–Pacific maritime confidence building', in Jill Junnola (ed.), *Maritime confidence building in regions of tension*, report no. 21, The Henry L Stimson Centre, 1996.
- 10 United Nations, *Comprehensive study on confidence building measures*, p. 4.
- 11 Samuel Huntington, in his major post-Cold War work, *The clash of civilizations and the remaking of world order* (1996, repr. Simon & Schuster, New York, 2003, p. 13), wrote of the need to cultivate commonalities.
- 12 In the context of risk, either avoiding it or managing it safely, including unintended consequences. Griffiths, *US–China maritime confidence building*, p. 2.
- 13 A core function of state-to-state confidence building. Griffiths, *US–China maritime confidence building*, p. 19.
- 14 Rory Medcalf, Raoul Heinrichs, with Justin Jones, *Crisis and confidence: major powers and maritime security in Indo-Pacific Asia*, Lowy Institute, MacArthur Foundation, 2011, pp. 6–12, 27; Griffiths, *US–China maritime confidence building*, p. 1 in terms of 'unwanted escalation'.
- 15 United Nations, *Comprehensive study on confidence building measures*, p. 6.
- 16 'Maritime' does not refer solely to the sea; nor does it apply only to navies. MCBMs might encompass the land–sea interface (the 'littoral') and will pertain to all vessels, and organisations and agencies associated therewith.

- 17 A coastal state is a state that borders the sea.
- 18 The notion of *guanxi* (personal networks of influence) is significant within Chinese society. See also Tai Ming Cheung, 'Emerging Chinese perspectives on naval arms control and confidence and security building measures,' unpublished paper presented at Workshop on Naval Confidence Building Regimes for the Asia Pacific Region, Kuala Lumpur, 8–10 July 1991, pp. 2–4.
- 19 H.E. Dr Marty Natalegawa, opening keynote speech to the 7th General Conference, Council for Security Cooperation in the Asia Pacific, 16–18 November 2009, Jakarta, www.cscap.org/uploads/docs/General%20Conf%20Reports/CSCAP%202009-Summary%20Report-Public.pdf.
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- 21 Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the prevention of incidents on and over the high seas.
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- 27 Medcalf et al., *Crisis and confidence*, pp. 27–29.
- 28 Medcalf et al., *Crisis and confidence*.

About the author

Captain Justin Jones, RAN, is the Director of the Sea Power Centre—Australia.

This paper represents the author's own views, not official policy or the position of the Australian Government, Department of Defence, Australian Defence Force or Royal Australian Navy.

Conference paper: Trust and maritime confidence building measures

Mr Kwa Chong Guan

We have for the past two decades been preoccupied with confidence building measures (CBMs) as building blocks for peace and security in the Asia–Pacific. We adopted this strategy of CBMs as the underpinning of cooperative security in the Asia–Pacific from the Organization for Security and Co-operation in Europe, which had inherited from its predecessor, the Conference on Security and Co-operation in Europe, a legacy of CBMs from the 1975 Helsinki Final Act regime to the Vienna Document regime since 1990. In Track 1 and various Track 2 networks for the past two decades, we've proposed for the Asia–Pacific a large number of CBMs and confidence and security building measures (CSBMs) and continue to do so.

Proposing a variety of CBMs/CSBMs on the assumption that they have worked in transforming European security in the post-Cold War world is the easy part of the exercise. The ASEAN Regional Forum at its inception adopted a three-phase development plan that starts with the adoption and practice of CBMs, which leads to preventive diplomacy and then moves to conflict management and resolution. But, two decades on, the ASEAN Regional Forum is still preoccupied with CBMs, and appears not yet ready to move into preventive diplomacy. This suggests that, while it's easy to propose CBMs to build cooperative security, it's more difficult to decide when CBMs are likely to succeed and which will be stillborn.

I argue that trust decides whether CBMs will be adopted and practised. This raises the issue of whether CBMs precede and build trust, as many assume, or whether trust is a prerequisite for CBMs to succeed.

Trust is not an end state or product of CBMs, or a necessary beginning for CBMs, but an interactive process of building confidence, which is underpinned by trust. CBMs assume that, for example, I am prepared to put my future wellbeing into your hands when I trust your declaration not to be the first to use force in any disagreement I may have with you in future. Or that I trust that the numbers given in your Defence White Paper on your naval modernisation are true and reliable, and you're not out to deceive me so that I'm surprised by the number and size of your frigates in a

display of force to intimidate or deter me in a naval stand-off with you.

There are two dimensions to trusting your declaration not to use force in any disagreement with me, or the reliability of the numbers in your Defence White Paper.

It means that I am prepared to take the risk of believing your declaration or readiness to comply with CBMs we agree upon, and that in the event of your not complying with your declaration or with the CBM, I've calculated that I have the capacity or resilience to absorb the consequences to my security and wellbeing of your breaking your declaration not to be the first to use force in a disagreement. Likewise, you will have to assess the risk to you of my not complying with the CBMs we agree to. What reasons or justifications do I have to trust you, and vice versa, especially when I'm not prepared to surrender my future wellbeing to the trustworthiness of your declaration? This is the quantitative and predictive dimension of trusting you to comply with CBMs we agree to. In the rational actor and realist world we live in, distrust becomes the default response to proposals for CBMs.

However, if we are not to live in a perpetual and totally Hobbesian world of anarchy, then at some point in time and space I have to suspend my risk assessments of not trusting you and make a qualitative leap of faith to believe that both you and me have a normative and moral interest in not being the first to use force in any disagreement, and that mediation within some kind of institution or CBM should be the preferred option for the management, if not resolution, of our disagreement. The challenge for us is to cooperate and build confidence without trust.

On this assumption of trust as the key to which CBMs are likely to take off and should be argued for, and which are likely to be stillborn, I suggest the following three-category classification of CBMs.

The first category of CBMs is those that depend upon a rational actor quantification of risk in accepting and complying with the CBM. This category of CBMs would principally include declarations and non-binding codes of refraining from the use of force in a dispute and transparency about naval modernisation and build-ups in defence papers. The underlying issue with this category of CBMs is assurance of compliance with non-binding declarations or procedures for verification and monitoring of declarations of naval

build-ups and deployments. What's the risk to my security of believing in your declaration of no first use of force in any dispute with me? Further, what assurance do I have of your compliance with CBMs on an incident at sea (INCSEA) or rules of engagement agreement, or the regulation of your fishermen not to fish in waters I claim?

What is my self-interest in being truthful and transparent in providing comprehensive and reliable data on my naval build-up in my Defence White Paper, when I have no assurance that you will reciprocate? Is it more in my self-interest to be opaque, perhaps not necessarily to deceive you, but more to keep you in a state of uncertainty about my plans for how I would react to you in a disagreement? Framed within the logic of this classical Prisoner's Dilemma game, CBMs that require me to take the risk of surrendering my future wellbeing and security to you without any assurance or guarantees of your reciprocating my trust are therefore a non-starter.

The second category of CBMs is those that are based on a normative framework, regime or institution we can agree to. Functional cooperation for the safety of navigation, search and rescue, disaster relief and humanitarian assistance, or coastal zone management and environmental protection would be CBMs we can more easily accede to because they're framed within some kind of institution or regime we can agree to. Moreover, functional cooperative CBMs are a low risk to my security and wellbeing if neither of us complies with them.

The issue with this category of CBMs is their institutions and regimes that are expected to build confidence and trust, but our risk assessments of our interests inform us that they may threaten our interests. The UN Convention on the Law of the Sea (UNCLOS) is the key CBM we're all committed to. It is the regime on which we have all based our claims and counterclaims as to what we are entitled to do or assert a right to as 'my territory' in the South China Sea (and East China Sea). We have staked too much on UNCLOS to repudiate it. It's held up as the regime for the management, if not resolution, of our disputes in the South China Sea.

But as a conflict management, and especially resolution, mechanism it could threaten our interests in the South China Sea if we submit our disputes with others to adjudication under UNCLOS. The code of conduct that ASEAN's attempting to negotiate with China is probably another CBM on which we

are divided by very different risk assessments of the potential losses and gains to us.

What, then, are the institutions (other than the UN and its Security Council) upon which we can build some form of cooperation without trust? If we look back to the European experience, the Conference on Security and Co-operation in Europe operated in an environment where trust was in deficit and in the 1975 Helsinki regime managed to agree only to voluntary prior notification of major military manoeuvres (21 days for 25,000 troops) and voluntary exchanges of observers (with no assurance of reciprocity) and visits of military delegations.

In 1986 at Stockholm, annual calendars of planned notifiable activities and onsite verification in cases of doubts about compliance in reporting troop movements were adopted as new CBMs. After that, other CBMs (such as annual information on planned deployments, budgets and strengths of land and air forces) were added in a series of four agreements concluded in Vienna between 1990 and 1999.

Transposing this European experience to the South China Sea, where there's a similar deficit of trust among the interested parties, leads to the conclusion of the primacy of CBMs for prior notification of movements of naval forces and naval exercises and operations and some kind of ship visits and port calls.

But what is the South China Sea and wider Pacific Ocean equivalent of the Conference on Security and Co-operation in Europe and its successor, to frame these CBMs to promote information exchange and maritime domain awareness? Earlier in the Cold War, the Soviet and US navies were sufficiently professional to be able to negotiate a series of procedures to avoid incidents at sea, despite their strategic differences and rivalry. Can we today promote similar navy-to-navy dialogues and exchanges to cooperate without trust? Would the Western Pacific Naval Symposium be a suitable regime to build navy-to-navy dialogues and exchanges?

In the South China and East China seas today, the issue is not only a navy-to-navy standoff that needs to be prevented, but also stand-offs between a plethora of other law enforcement agencies protecting fishermen and other marine resources. There's a growing need to provide for some form of confidence building and cooperation between the coastguards many littoral states have established. We

may need to consider the need for an institution to network not only the coastguards, but the other law enforcement agencies operating in the South China Sea.

If prior notification of naval forces movements, manoeuvres and operations is a key prerequisite for building confidence and the beginning of trust, then regimes and institutions that enable the collection, collation and dissemination of this category of information would be a third category of CBMs we should work on to build trust.

In this digital age, the issue is not a lack of information but an overload of information that has to be processed into reliable knowledge that we can trust and act upon. ReCAAP and the Information Fusion Centre provided by the Singapore Navy could be models for institutions in which all interested parties in the South China Sea participate to process all-source information into knowledge we can trust and act upon.

In conclusion, we need to ask the worst case scenario question of what happens when the CBMs we plan for to build peace and security break down in an incident at sea? How do we prevent disputes and conflicts arising from, for example, a fishing trawler being fired upon by a coastguard vessel claiming the trawler is in waters protected by that vessel? Crisis management measures may well be the final category of CBMs we need to put in place to prevent the violent encounter between the fishing trawler and the coastguard vessel from escalating into a major stand-off between the law enforcement agencies and naval vessels despatched to protect the fishing trawler, which has been fired upon by the rival coastguard.

Do we have 'hotline' communication channels in place and, more importantly, do we trust the conversations over that hotline to de-escalate the stand-off? Failing that, do we have on stand-by, in the ASEAN way, fact-finding missions and eminent persons groups to form goodwill missions to mediate in the crisis? We can only hope that what has become known as the ASEAN way of goodwill, patience and tolerance will prevail in a crisis over the next incident at sea in the South China Sea, despite an underlying distrust of the other.

About the author

Mr Kwa Chong Guan, Senior Fellow, S. Rajaratnam School of International Studies (RSIS), Singapore.

Dinner address by Vice Admiral Ray Griggs AO, CSC, RAN

Maritime Confidence Building Measures in the Indo-Pacific

Good evening ladies and gentlemen, thank you Peter for the opportunity to talk to you tonight. It's always a little awkward to come into a conference dinner cold and talk about a subject that you have been listening to people talk about all day and here you are trying to relax a little. I hope that I will not cover too much of the same ground that you have traversed so far—if I do think of it as reinforcement!

Firstly, I am not going to solely focus on the South China Sea. As important as it is, I think that if we do not take an Indo-Pacific 'system wide' view of the issue of maritime confidence building we run the risk looking at snapshots and micro-regions, no matter how important they are, in what is an intertwined and deeply interconnected system.

I will obviously tonight look at this issue principally through the naval lens; there are plenty of others here that will have already looked more broadly. I could do that but I think my value add is to give you a naval view which is but a slice of the bigger picture.

What is the end state that we seek at sea? Ultimately in my view it is to have good order at sea, something that is equally important for Australia, our allies, friends, partners and even our economic competitors.

Of course, good order at sea enables trade. For Australia, nine out of our top ten trading partners are in the Indo-Pacific—only the UK is outside this area—and eight of the nine lie along the massive economic trading artery that runs from the Middle East, across the Indian Ocean, through the Strait of Malacca, into the South China Sea, past Japan, China and Korea and on North America.

Maritime trade—courtesy of bulk and containerised trades—has a pervasive influence and we are all dependent on it for our ongoing prosperity.

- 98% of Australian trade by volume moves by sea; and
- 70% of the output of our key bulk commodities are exported,

all of that by sea.

But, we must remember that there are fundamental vulnerabilities that our geo-strategic situation which exposes us to in such a highly interconnected and just in time economic system.

- 40% of our two-way trade goes between just three countries (China, Japan and South Korea) and most of it travels through waterways where maritime boundaries are not yet settled.
- Our strategic vulnerability to fuel supplies as highlighted by a recent NRMA study which reinforced the impact of any disruption to our maritime trading system.

The maritime environment is growing in importance in its own right, not just simply as a pathway for trade. The value we derive from the maritime environment is only likely to grow, be it offshore oil and gas installations, alternative energy generation or the value of maritime biodiversity reflected in both tourism and food security, particularly the value of farmed and wild fish stocks.

The maritime trading system is not owned by anyone but most benefit from it. It is a system that can only work effectively if there is a strong collaborative effort to keep it functioning. In my view, this drives us to cooperation.

The obvious conclusion for me at least is that all trading nations have a real interest in good order at sea and therefore a stable global maritime trading regime.

So what are the challenges across the Indo-Pacific? First, and foremost, is protecting our collective ability to trade. While I know this might be self-evident, particularly to an audience like this, I just don't think we can emphasise it enough.

Containerised maritime trade has fundamentally changed the way economies work—we don't have stockpiles of components anymore because the delivery is so predictable and so reliable; we don't worry about where anything is made, because the cost of transporting it from almost anywhere to almost anywhere else is almost negligible. The cost of transporting a single shirt from Asia to Europe by sea is now one cent!

I think piracy in particular and maritime security more generally are issues which remain of concern—precisely because it has an impact on that trade and prosperity piece I have already mentioned.

Climate change is a broad topic and one which cannot be ignored. As you unpack the implications for the maritime environment and the Indo-Pacific region in particular, there are a number of issues which are of concern and will need management—humanitarian assistance and disaster relief, changes to the distribution of marine resources and potential forced migration being amongst the most obvious.

I think the uneven implementation of maritime security architectures across the Indo-Pacific is something else to take note of and focus our thoughts on.

However, it is the lack of a shared understanding of navigation rights and the tolerance for various forms of activities in offshore zones that is the key issue and the ongoing source of tension in a number of parts of the Indo-Pacific. Much of this stems from differing views on the relative weight of domestic versus international law in particular maritime zones. This is a significant issue for us to grapple with. It is a difficult issue to bring to the surface and problematic for officials in particular to discuss in these types of fora.

UNCLOS and all its associated mechanisms lie at the heart of this issue. I think UNCLOS does provide the basis for the answers just as it did as Australia, Indonesia and the US worked through the partial designation of the three Indonesian north-south archipelagic sea lanes in 1997.

Given these range of issues, building confidence among those key players involved in the cooperative and collaborative effort to keep the maritime trading system effective is critically important. As I said earlier I will focus on the naval dimension tonight even though it is a subset of the broader MCBM issue.

Confidence building measures in the maritime domain are not new of course. In fact the use of the term is something that takes us back in time to the Cold War, this is really where the genesis of the term comes from.

Much of the traditional thinking about confidence building measures was focused on nuclear weapons and disarmament. They were set against a bi-polar strategic system of two near peer powers and with a similar power gradient between them.

The landscape in the Indo-Pacific today is of course very different, it is not dominated by a bi-polar power structure,

quite the opposite. It is a diverse region with more marked power gradients and relationships. This makes the development of confidence building measures not only more important but more challenging. A relatively simple bilateral measure such as the 1972 INCSEA agreement no longer works in this environment. The answer is inherently more complex.

This year's Australian Defence White Paper uses a term which has been around for a few years. The White Paper talks of regional security architectures and the 'habits of cooperation' they foster.¹

I think many would accept that habits of cooperation are in some ways the desired output of maritime confidence building measures. But I would suggest at one level at least, they can form the inputs that lead to the development of these measures themselves.

When talking about habits of cooperation, it is critical to focus on those elements that make the most difference to us, those things that make the biggest strategic impact. When you list these elements they sound deceptively simple and not that profound.

Notwithstanding this, it is still very important to re-state the fundamentals so that they become accepted and eventually acted on. The key elements in my view are:

- Transparency,
- A disposition to share,
- A mechanism to share and, not least,
- A willingness to act together.

Transparency underpins any strategic cooperation regarding shared objectives and cuts to the very heart of confidence building. Of course there are a diverse range of cultural perspectives on transparency including fundamentally whether it is seen as a weakness or a strength, this, in itself sets up significant challenges at the outset.

I deliberately differentiate between transparency and the disposition to share. Transparency in this sense is more about clarity around strategic intent than exchanging information. If there is a clear view of the strategic intent which is matched by actual behaviours, confidence and eventually trust can be built.

Being transparent is one thing but it must also be accompanied by a disposition to share if any meaningful

cooperation is to be viable. Much of this is again cultural; we are all shaped by our basic societal outlook and rightly by the experiences we have all had in our respective national security domains.

The need to know principle remains dominant, deeply rooted and relevant. The need to share is evolving but deep down, is not as well established. The two are often viewed as being mutually exclusive but I believe they can and should operate in harmony.

Technology is of course setting the pace here and in some cases dragging us into what is for some, uncomfortable territory. The important thing is that we are honest with ourselves about what our own disposition to share is—what is critically important to protect and what is critically important to share—but equally that we understand each other's natural disposition. To do that we need to continue to build relationships because, without that understanding, we cannot move forward.

The next logical step once there is a disposition to share is to have a mechanism to share; again technology lies at the heart of this issue. We have certainly come a long way with a range of commercial systems that allow us to exchange data and information. In the purely military information domain, a domain that is shrinking in relation to the broader maritime security information domain, we still suffer from what I would call the 'eyes only' syndrome.

We are still locked in, to a certain extent, to rigidly defined security classification structures, which drive the architecture of our information exchange systems. Whether it is a 5, 27 or 74 eyes community, it is an inherently limiting construct in an era where we need to form sometimes fleeting coalitions and groupings to deal with particular situations. Without a highly adaptable mechanism to share we are constraining ourselves. I am not saying we should not protect our vital information, now more than ever we need to do that, but I would venture to say that we still all tend to put far too much into the 'eyes only' category. This doesn't help the development of confidence building measures.

That said we should not ignore the non-technical mechanisms that support our ability to share; these are as important and in many ways more so than the technical solutions. Relationships, as I have mentioned is one; the need for collaboratively developed doctrinal approaches,

mechanisms to avoid confusion and misinterpretation are others, if we really want strong cooperation.

But ultimately we need a collective willingness to act, borne out of a shared understanding of the common challenges that we face. We of course see many such examples of that willingness to act off the Horn of Africa, in the Combined Maritime Force, in NATO, the EU, in ReCAAP—to which Australia is just finalising its accession—in the Malacca Straits Patrols and of course in Singapore with the Information Fusion Centre (IFC).

That collective willingness to act is often enabled by established security architectures. The Indo-Pacific is fundamentally different to the Atlantic in relation to the number of strategic political and economic groupings with well-established security architectures. Notwithstanding, there are a number of relevant regional examples of strategic cooperation, such as the Expert Working Groups that have grown out of the ASEAN Defence Ministers Meetings Plus structure.

The Maritime Security EWG is highly relevant and is currently co-chaired by ourselves and Malaysia. It was established in April 2011 and what appeals to me is not only the expert discussions, but how these have rapidly progressed to a table top exercise hosted by Malaysia in 2012 and soon a field training exercise to take place off the NSW coast later next month. This combination of activities is ideally suited to genuine learning and cooperation.

A mature mechanism in the Pacific context is the Western Pacific Naval Symposium (WPNS) which itself emerged from the germ of an idea at the International Seapower Symposium at Rhode Island. The cooperation in WPNS is excellent, be it in HADR or MCM, but of course it is still not without challenges.

WPNS is of course a confidence measure in and of itself; anything that helps to build relationships and manage interactions between navies is a good thing.

The Indian Ocean though is a different story; a critical waterway for all of us but one without a solid maritime security architecture. The Indian Ocean Naval Symposium (IONS) remains a nascent construct when compared with WPNS but one which offers good prospects. IONS is a quite different grouping to WPNS, with a much larger percentage of para-military or civil coastguard type 'navies' among its members. This does change the dynamic but brings a

new and broader maritime security dimension directly into IONS considerations.

I take over Chairmanship of IONS in March of next year which coincides with our national chairmanship of the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC). IOR-ARC has existed for many years but its security focus is relatively new and in the first instance is focused on maritime security. It will be crucial that IONS and IOR-ARC, although operating at different levels, act in a complementary way—embedding this is a significant opportunity for Australia over the next 12–18 months. It is an important time in the Indian Ocean region as maritime security issues now have some prominence and traction. Our goal will be to build on the work of previous IONS chairs to cement IONS as part of the evolving maritime security architecture.

Regular exercises, be they HADR, SAR or fully fledged warfighting training activities, allow us to develop levels of interoperability and build trust, transparency and understanding that would otherwise not be possible. You only have to look at the evolution of the types of activities that we have undertaken with the PLA-N in recent years to make that point.

The confidence gained from these activities can, and does, directly translate into real world action that helps preserve both good order at sea and our ability to trade.

Coordinated patrols, separate from exercises, also offer some prospect of significantly building confidence. The reality is getting to the point where a coordinated patrol is agreed between nations is as important as the patrol itself. In our own case we have coordinated patrols with the Indonesian Navy each year in waters to our north. This has proved a very useful mechanism for both navies and has been an important part of a deepening and maturing of our bilateral naval relationship.

One area that we have seen a distinct willingness to act on in our region is the development of shared maritime domain awareness. The importance of what has been achieved here should not be taken lightly. Institutions such as the Singapore IFC are stand out examples.

I think more work on interactions at sea is essential. It should not be confined simply to the South China Sea because we are dealing with a system and the growth in international trade demands that we must be able to cooperate for good order at sea across the system, not just in one location.

The work being done in WPNS on unalerted encounters at sea is a good example. Although resolution of this has languished for some time, hopes are high that CUES (The Code for Unexpected Encounters at Sea) will finally be signed at the next major WPNS meeting in China next April. Its evolution has been difficult and in many ways mirrors the difficulties moving to an agreed code of conduct for the South China Sea between ASEAN and China.

But, it remains a cornerstone piece of work that will enable a much clearer understanding of what to expect in encounters at sea in the Western Pacific more generally. There is a very strong commitment amongst WPNS members to see this through to a conclusion.

As the number of submarines increases across the region we need to work on strengthening the existing submarine water space management arrangements that are in place particularly where new submarine actors are involved. Building some confidence in this area would be useful but will of course take time given the additional sensitivities that national ownership of submarines bring.

We must however be careful not to seek a silver bullet solution to the maritime security challenges that we face. There is, in a global system, no single solution, but there are number of good models to draw on, expand and develop. We must also not get obsessed with measures as outcomes, our various cultural approaches again place different weight on the outcome as a Key Performance Indicator, the process of building the relationship is in many cases as important as where we are trying to get to.

In the end, I think efforts to establish and entrench the habits of cooperation, whether you view them as inputs or outputs, are critically important. And I think a focus on naval forces provides a high payoff for the effort given the role they play in the maritime environment. I am the last person to think this is easy but it is vitally important if we are to foster cooperation, build confidence and continue to enjoy the prosperity that flows from our global maritime trading system.

Note

1 2013 Defence White Paper, p. 8, para 2.7.

About the speaker

VADM Ray Griggs AO, CSC, RAN, Chief of Navy.

Conference summary

With the support of the Australian Department of Foreign Affairs and Trade, ASPI hosted the Maritime Confidence Building Measures in the South China Sea Conference in Sydney on 11–13 August 2013. The conference was attended by participants from 16 different member countries of the East Asia Summit. It was chaired by Mr Peter Jennings, Executive Director of ASPI. The objective of the conference was to develop proposals for prospective maritime confidence building measures (MCBMs) for the South China Sea (SCS).

Opening session

In his opening address (included in this report), the Australian Minister for Foreign Affairs, Senator the Hon Bob Carr, observed that the issues before the conference are important ones for Australia's strategic policy. He noted that while Australia doesn't take a position on any of the competing claims in the SCS, it has direct interests in their peaceful settlement. Nearly two-thirds of Australia's overseas trade moves across the South China and East China seas. Any conflict or serious miscalculations in managing the situation in the SCS would threaten the economic growth and stability of the entire Indo-Pacific region.

The keynote address for the conference (included in this report) was provided by Professor Dr Hasjim Djalal from Indonesia. He hoped that many ideas that would contribute to the development of peace, stability and cooperation in the SCS would come up during the conference. Those ideas could include procedures for avoiding and managing potential incidents that may take place between ships and aircraft of different countries.

Professor Djalal spoke of the contributions made by the workshops on managing potential conflict in the South China Sea that he has coordinated over the past 20 years. He observed that it had taken 11 years of discussion in the workshops and elsewhere to develop the 2002 ASEAN–China Declaration on Conduct of Parties in the South China Sea (DOC), and then a further 10 years before the guidelines on implementing the DOC were agreed. He thought that China seems positive and willing to cooperate on technical, scientific and environmental issues, less enthusiastic about developing cooperation on resources distribution issues, and

least interested in talking about territorial, sovereignty and jurisdictional issues.

Session 1: Concepts of MCBMs

Session 1 provided an overview of the nature and types of MCBMs and maritime regimes and a summary of existing regional MCBMs. Dr Sam Bateman from the Australian National Centre for Ocean Resources and Security reviewed the concept of MCBMs, distinguishing between military MCBMs related to the activities of military forces and non-military MCBMs primarily related to cooperative management of the maritime domain. The latter measures provide a direct benefit by helping to build maritime regimes that provide good order at sea and permit effective management of the maritime domain while also serving as ‘building blocks’ for habits of cooperation and dialogue that reduce tensions and promote peace and stability.

Dr Mark Valencia, a private maritime consultant from the US with a long involvement in SCS issues, discussed multilateral maritime regimes in the SCS. He described the SCS as a ‘regime desert’ with few effective maritime regimes. Whereas in the past he had hoped that regimes in non-traditional security areas could lead to positive outcomes related to more traditional security, he’s now less confident—bilateral arrangements in non-traditional areas may be all that’s possible. He believed it would be more efficient now to focus directly on traditional security measures in a broad strategic sense—not necessarily military. These might be based on major instruments such as the UN Charter, the 1982 UN Convention on the Law of the Sea (UNCLOS), the Treaty of Amity and Cooperation in Southeast Asia, the Declaration on a[n ASEAN] Zone of Peace, Freedom and Neutrality, the Bangkok Southeast Asia Nuclear-Weapons-Free Zone Treaty, and the DOC. Dr Valencia noted the slow progress towards a code of conduct, believing that confidence among and between nations in the region is waning. Fundamental principles, such as no threat or use of force, haven’t taken root in the SCS.

The following panellists discussed various existing MCBMs relevant to the SCS. Captain Justin Jones RAN from the Sea Power Centre—Australia briefed the conference on the Western Pacific Naval Symposium and its Code for Unalerted Encounters between Ships (CUES). He noted the fundamental importance of ships and aircraft being able to

talk to each other, observing that while English is supposedly the international language of the sea, many seafarers and fishermen in charge of vessels at sea cannot speak English. While the adoption of CUES is voluntary, it potentially provides a simple code for communications between units of different countries. It’s important that CUES finds its way on to the bridges of both naval and civil law enforcement vessels operating in and around the SCS.

Mr Zhao Qinghai from the China Institute of International Studies discussed issues related to the US–China Military Maritime Consultative Agreement. Mr Zhao thought that the agreement provides a framework for dialogue, but is generally ineffective and should be amended. Both parties see value as well as limitations in the process. They’re suspicious of each other’s strategic intentions and there are three main obstacles to military exchanges: US ships and aircraft conducting close-in reconnaissance in China’s exclusive economic zone (EEZ); US arms sales to Taiwan; and US limitations on military-to-military exchanges and contacts with the People’s Liberation Army. The parties have different views about what’s required. China wants to shift attention away from operational safety to planning for naval exercises and other navy-to-navy contacts, while the US wants a ‘hotline’ arrangement with clear lines of communication between responsible operational commanders at all levels. Increased navy-to-navy practical engagement is an important way of taking the relationship forward in a constructive manner.

Captain Dr Sukjoon Yoon ROK-N (Rtd) addressed MCBMs in Northeast Asia. He described the several conceptual MCBMs in the region but noted that none has been supported by a mandatory operational framework. Due to intractable problems of interpretation, including nationalistic sensitivities, regional rivalry and a historical legacy of distrust, it’s proved impossible to achieve operational MCBMs. He identified several issues. First, political will is a vital prerequisite for functional MCBMs. Second, the continuing militarisation of the disputed islands and areas is not helpful, and this is exacerbated by the three-dimensional complexity of their boundaries (air, surface and subsurface). Third, command and control systems are opaque and confused, typically blurring operational command and control chains between navies and coastguards. Fourth, the lack of operational manuals and rules of engagement

procedures for the on-scene commanders in the disputed seas is another issue likely to cause miscalculations.

Captain Martin Sebastian from the Maritime Institute of Malaysia discussed existing MCBMs in Southeast Asia. He prefaced his comments by observing that the resources of the SCS are critically important to Malaysia, and that strategically the sea binds East and West Malaysia together. He went on to describe current cooperative arrangements in the Malacca Strait and the bilateral agreements between Indonesia and Malaysia. Captain Sebastian speculated on the need to recognise the economic importance of the SCS and whether we were talking about confidence- or security-building measures. He saw opportunities to enhance resource security through cooperative research and law enforcement and identified a role for resources industries (oil and gas and fisheries) in advancing security.

In the subsequent discussion period, several participants focused on the relationship between confidence and trust, observing that a trust deficit currently exists. Prospects for a regional incidents at sea agreement (INCSEA) were also mentioned, with the comments that any such arrangement couldn't just be navy-to-navy, and that in any case law enforcement isn't a core business of navies.

Session 2: Functional cooperation

Two lead speakers opened up Session 2, addressing issues associated with functional cooperation, including previous cooperative efforts, the current state of maritime cooperation and prospective areas for cooperation. Professor Wu Shicun from the National Institute for South China Sea Studies discussed ASEAN–China cooperation in the SCS. He referred to Part IX of UNCLOS and the 2002 DOC as the two bases for cooperation. The sovereignty disputes and overlapping maritime claims are fundamental obstacles to cooperation, but China is committed to promoting cooperation. Possible areas for cooperation include oil spill prevention, a truly coordinated approach to search and rescue, marine scientific research and ecological protection.

The other lead speaker, Mr Carl Baker from the Pacific Forum CSIS, addressed functional maritime cooperation in the SCS. He identified the range of regional and global mechanisms and institutions that in theory at least provide a basis for cooperation. He reminded the conference that effective civil cooperation is both a national and a regional

challenge. However, military and safety issues now dominate the maritime security agenda and environmental and resource management issues have been politicised. A focus on sovereignty and territorial disputes discourages full civil maritime cooperation.

Mr Baker provided useful feedback on the four maritime security workshops conducted by the Pacific Forum CSIS during 2012. The workshops were on maritime domain awareness, maritime environment and safety, maritime governance and law enforcement, and maritime defence, each reflecting US interests in maritime issues. The workshops found low confidence in dispute resolution mechanisms, coupled with some concern that ASEAN's principles, particularly consensus decision-making, complicated dispute resolution. However, they noted opportunities for civil maritime cooperation, including the establishment of a regional civilian-based disaster response capability, joint hydrocarbon exploration projects, and expanded regional fisheries management. In conclusion, Mr Baker observed that civil maritime cooperation is different from military confidence-building.

Panellists then addressed particular areas where functional cooperation might be established or further developed.

Dr Nguyen Lan Anh from the Diplomatic Academy of Vietnam discussed fisheries cooperation in the SCS. She identified a strong rationale for CBMs in fisheries, including the economic benefits and the potential for win–win solutions. Several forums exist to facilitate the necessary cooperation, but they have limitations due to the limited participation of China and the lack of political will, capacity and good scientific data on which to base management plans. According to Dr Nguyen, fisheries have become politicised and are being used as tools to strengthen maritime claims. Nevertheless, there are good opportunities for MCBMs, including seafarer training and capacity building, a code of conduct for the fair treatment of fishermen, 'hotlines', and search and rescue for missing fishing vessels, as well as scope for experience sharing and technical assistance from countries such as Australia, New Zealand, Japan, South Korea and India.

Dr Lowell Bautista from the Australian National Centre for Ocean Resources and Security at the University of Wollongong addressed the scope for cooperation in marine scientific research. Significant difficulties are the lack of definition of what constitutes marine scientific research

and differences in interpretation of what's involved.

Dr Bautista described past cooperative programs: the Joint Oceanographic Marine Scientific Research Expedition in the South China Sea and the Joint Marine Seismic Undertaking. While those programs haven't been entirely successful, there's still potential for 'without prejudice' cooperation in marine scientific research, an expanded research agenda, and mechanisms for database and information exchange, but strong and sustained littoral state support and state or international organisational leadership is required.

Commodore Brett Brace RAN from the Australian Hydrographic Service made the initial point that *hydrography* is broader than *hydrographic surveying*. Hydrography is 'the branch of applied sciences which deals with the measurement and description of the physical features of oceans, seas, coastal areas, lakes and rivers, as well as with the prediction of their change over time, for the primary purpose of safety of navigation and in support of all other marine activities, including economic development, security and defence, scientific research, and environmental protection'¹, whereas hydrographic surveying is the actual collection of hydrographic data.

Cooperation is essential to hydrography, and the International Hydrographic Organization has encouraged the establishment of regional hydrographic commissions to coordinate hydrographic activity and cooperation at the regional level. The East Asia Hydrographic Commission is the regional body that covers the SCS. Its main achievements include the publication of the SCS Electronic Navigational Charts in 2005 and the establishment of a task group in 2006 to work on the charts' consistency and coverage of the region. Commodore Brace noted in conclusion that hydrography provides an existing framework for international and regional cooperation upon which to undertake MCBMs, specifically for marine environmental protection, marine scientific research and the safety of navigation and communication at sea.

Dr Jay Batongbacal from the University of the Philippines discussed cooperation for protecting the marine environment. He noted that while there are good reasons to cooperate with marine environmental protection, there are also grounds for competition, including cultural differences, national self-interest, and little belief in the validity of 'non-prejudicial' clauses. Multiple modalities for cooperation

exist, but there are major gaps in the level of ratification of relevant international instruments by SCS littoral countries. Dr Batongbacal noted increased levels of suspicion and distrust between the littoral states and low expectations for MCBMs at this stage. Certain measures, such as the joint designation of specific areas for protection, are unlikely to build confidence at this point. Other measures might be more feasible, such as exchanges of information and personnel and the involvement of the private sector (such as the petroleum industry).

The last panellist in Session 2, Mr Leo Bernard from the Centre for International Law, National University of Singapore, discussed the prospects for joint development of the oil and gas resources of the SCS. He noted that joint development is a long-term commitment that's difficult to negotiate. There are prerequisites, including political will, an acceptance that joint development is not giving up sovereignty, and agreement on the area for development. The more claimants there are to a particular area, the greater the difficulty in agreeing on arrangements. Hence, there's greater potential for joint development in areas where there are only two claimants, such as around Scarborough Shoal and the Paracels.

In opening up the discussion period, the Conference Chair mentioned that he was starting to see some success stories about functional cooperation, particularly at the bilateral level. Several themes emerged in discussion. First, the possibility of non-spatial joint development was raised, including joint research, fisheries management that's not confined to narrowly defined areas, and marine data systems, such as a geographic information system (GIS). Second, it was noted that there's no current mechanism in which functional cooperation might be negotiated. Third, the need for some dialogue with industry was suggested.

Session 3: Operational and legal considerations

Dr Tran Truong Thuy from the Diplomatic Academy of Vietnam opened up Session 3 with a presentation on cooperation for good order at sea, specifically addressing ideas and suggestions for avoiding and managing incidents at sea in the SCS. He identified military, law enforcement, research and civilian agencies as the main players in

incidents at sea and then described some of the incidents that have occurred in recent years.

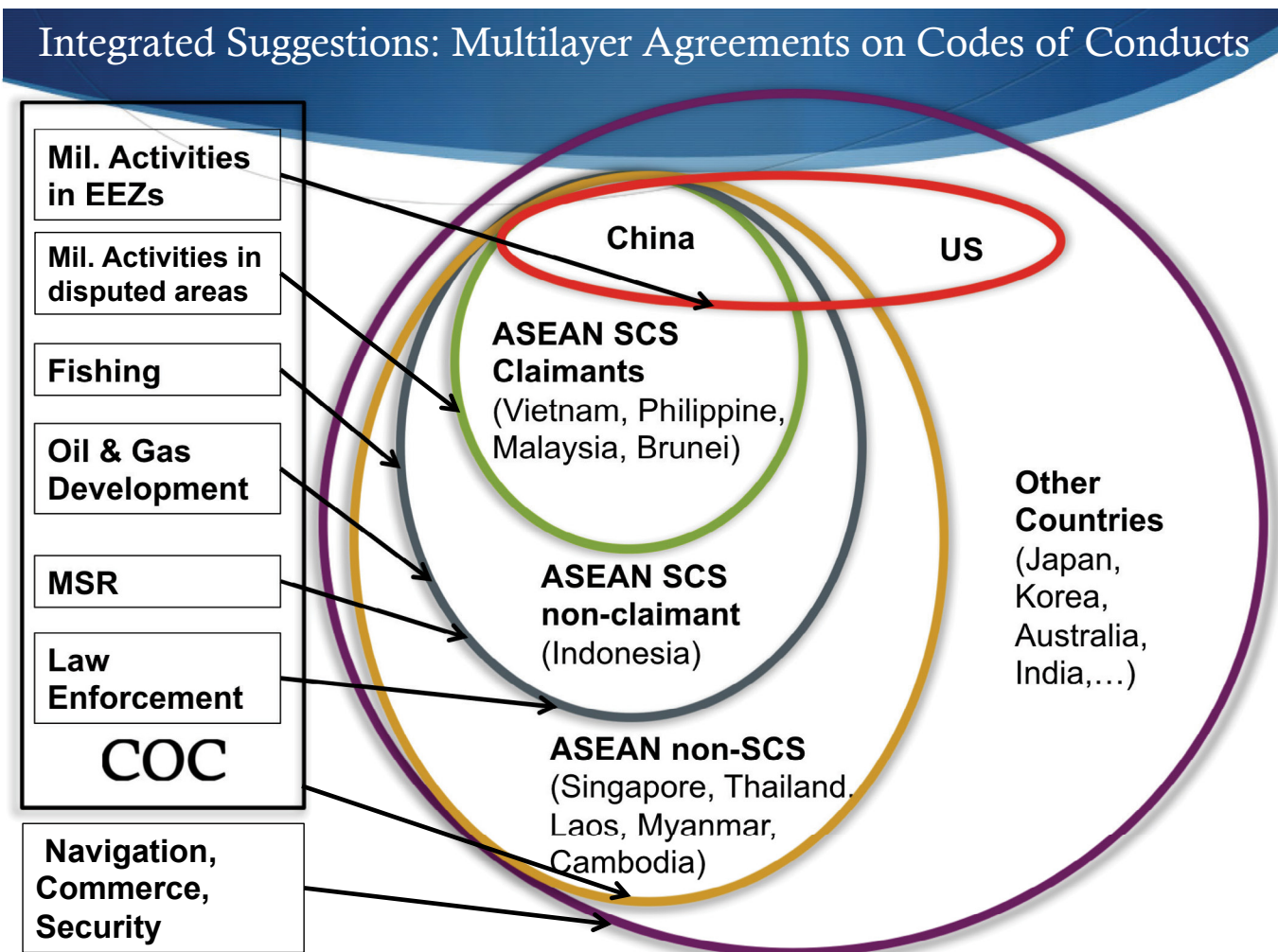
For each category of incident (military activities; fishing in disputed areas; seismic survey, oil and gas exploration and exploitation; and marine scientific research), Dr Tran identified optimistic and feasible options for managing incidents at sea between the units of the different categories of players. For military activities, the optimistic options include INCSEA agreements and a common interpretation of UNCLOS, while the feasible options include prior notification of exercises and surveys in foreign EEZs; establishing hotlines of communication; dialogue and discussion immediately after an incident occurs; and establishing a South China Sea Navy Forum. For the other categories of incident, optimistic options include boundary delimitations and joint development agreements, while the more feasible options

include fair treatment of fishermen, refraining from the threat or use of force, hotlines, non-use of military vessels, and a coastguard forum for the SCS.

Dr Tran noted that accidents at sea can be avoided by existing regulations, but preventing and managing intentional incidents requires the negotiation of new agreements (both bilateral and multilateral), including either just the littoral SCS countries or, where appropriate, the non-regional stakeholders as well. He presented the layers of potential agreements diagrammatically, as shown in Figure 1.

Ms Jane Chan from the Maritime Security Programme at the S Rajaratnam School of International Studies (RSIS), Singapore, discussed maritime information sharing in the SCS. She characterised current responses as either 'top down' through the ASEAN Maritime Forum, the Expanded ASEAN Maritime Forum, the ASEAN Regional Forum

Figure 1: Multilayer agreements on codes of conduct



Inter-Sessional Meeting on Maritime Security and the ADMM Plus Expert Working Group on Maritime Security, or 'bottom up' bilateral and multilateral efforts, such as under the Malacca Strait Patrols arrangements, the ReCAAP Information Sharing Centre, and the Singapore Navy's Information Fusion Centre. The Information Fusion Centre now has 54 international liaison officers from 16 countries, and China, Myanmar and South Korea are soon to send their own. It's also established arrangements for engagement with the shipping industry. The centre's area of interest extends from Sri Lanka in the west to Papua in the east and from the Timor Sea north to Taiwan. The ASEAN Information-sharing Portal is a unique platform for regional commanders of ASEAN navies to chat and share information through the use of a smartphone application.

Lieutenant Colonel Arief Meidyanto from Badan Koordinasi Keamanan Laut (Bakorkamla), Indonesia, addressed experiences in interagency coordination (both national and regional). Indonesia faces a huge problem with maritime law enforcement and, with some 12 agencies involved, there's a need for increased agency coordination with perhaps a single maritime security and safety agency (Bakamla). Illegal fishing is a major problem for Indonesia, and as an example of the problems that can arise Colonel Meidyanto discussed a case that occurred during the interception on 26 March 2013 of a Chinese fishing vessel by the Indonesian patrol vessel Hiu Macan 001 patrolling the Indonesian EEZ in the Natuna Sea, and the subsequent interception by two Chinese patrol vessels that required the release of the Chinese fishing vessel by using the threat of force. In conclusion, Colonel Meidyanto also encouraged the ASEAN Maritime Forum to focus on coordinating regional arrangements for law enforcement, search and rescue, hydrographic surveying, humanitarian assistance, marine safety, fisheries, marine environmental protection, and marine scientific research.

Rear Admiral Kazumine Akimoto JMSDF (Rtd) from the Ocean Policy Research Foundation of Japan spoke of the problems with incidents occurring in regional EEZs and a consequent need for guidelines related to navigation and overflight in EEZs. The greater part of the East Asian seas is claimed by regional states as their EEZs, and disputes exist over the interpretation and application of relevant articles in UNCLOS. Admiral Akimoto described the Guidelines for Navigation and Overflight in the EEZ that were developed by the EEZ Group 21 over several meetings between 2002

and 2005 under the sponsorship of the Ocean Policy Research Foundation. Considering that seven years have elapsed since the guidelines were published and that the security environment in the seas in East Asia has changed significantly, the foundation has decided to undertake a two-year project to review the guidelines. Draft 'Principles for Building Confidence and Security in the Exclusive Economic Zones of States in the Asia-Pacific' are to be considered at a meeting in late October 2013 in Tokyo.

Dr Li Mingjiang from RSIS, Singapore, began his comments by saying that cooperation for maritime security and avoiding and managing incidents at sea depends on political will and political solutions. He noted that there are different layers of incidents related to, first, sovereignty issues that are best left to the claimant parties; security management, which is primarily an issue between ASEAN and China with extraregional countries only having marginal roles; and non-traditional security issues that involve all littoral countries plus the extraregional stakeholders. He noted the difficulties in building confidence and trust in any part of the SCS and saw any progress that has been made, including between China and Vietnam, as largely symbolic. There's potential, however, for linking CBMs with commercial and economic developments, including joint ventures in fisheries and aquaculture. Dr Li also mentioned the possibility of cooperation for environmental protection and managing the effects of climate change (especially sea-level rise).

Captain Ronnie Gavan from the Philippine Coast Guard had been asked to speak in this session on the concepts of Coast Watch South in the tri-border area between Malaysia, the Philippines and Indonesia and the National Coast Watch System and their possible value as models for the SCS. He was unable to attend, but provided some useful talking points. He noted the problem faced by the Philippines, where multiple agencies have mandates for maritime security governance, and that the National Coast Watch System is intended to get around this problem with a whole-of-government approach to maritime domain awareness and ensure a coordinated approach to the multiple threats in the maritime domain. The National Coast Watch System built on experience with Coast Watch South, which harmonises naval and civil maritime command and control systems in the southern Philippines through a central coordinating centre in Zamboanga City.

The Coast Watch South and National Coast Watch System concepts have highlighted some important lessons that are relevant to the SCS, including the importance of interpersonal relationships and the conduct of cross-border operations without an agreed boundary delimitation. The Philippines now has bilateral arrangements with Vietnam, China, Malaysia and Indonesia that provide for cooperation on a range of cross-border activities, as well as a multilateral agreement with Brunei, Indonesia, Malaysia, Singapore and Thailand on an oil spill response plan. These are facilitated by what Captain Gavan referred to as ‘white ships diplomacy’, which he saw as having particular utility for CBMs in the SCS.

The discussion period included references to the implications of new technologies, including the use of unmanned vehicles, such as drones, for surveillance purposes, and the importance of naval and coastguard units having clear rules of engagement.

Dinner address

The dinner address at the conference (included in this report) was provided by Vice Admiral Ray Griggs AO, CSC, RAN, Chief of Navy, Australia. Rather than just focusing on the SCS, he took a broader Indo-Pacific ‘system-wide’ view of maritime confidence building. He highlighted the importance of seaborne trade to Australia—maritime trade has a pervasive influence and all regional countries are dependent on it for their ongoing prosperity. He went on to refer to the many challenges to good order at sea in the Indo-Pacific region, including the lack of a shared understanding of navigation rights and the tolerance for various forms of activities in offshore zones. Given this range of issues, building confidence among key players involved in cooperative and collaborative efforts to keep the maritime trading system effective is critically important.

Admiral Griggs observed that a relatively simple bilateral measure such as the 1972 INCSEA agreement won’t work in the current environment and that the answer’s inherently more complex. The key elements in his view are transparency, a disposition to share, a mechanism to share and, not least, a willingness to act together. Transparency underpins any strategic cooperation towards shared objectives and cuts to the very heart of confidence building. However, there’s a diverse range of cultural perspectives on transparency, including fundamentally whether it’s seen

as a weakness or a strength, and this sets up significant challenges at the outset. Much of the disposition to share is again cultural. Technology’s a key issue underpinning a mechanism to share. The development of CBMs is hindered by rigidly defined security classification structures, which drive the architecture of information exchange systems. Admiral Griggs observed that non-technical mechanisms, such as interpersonal relations, support our ability to share—in many ways more than do the technical solutions.

Lastly, Admiral Griggs discussed the various forums involved in CBMs, including the expert working groups established by the ASEAN Defence Ministers Meetings Plus, the Western Pacific Naval Symposium, the Indian Ocean Naval Symposium and Singapore’s Information Fusion Centre. He noted that as the number of submarines increases across the region work is required on strengthening existing submarine water space management arrangements, particularly by involving new submarine actors. His final caution was that we must not get obsessed with measures as outcomes. Our various cultural approaches again place different weights on the outcomes as key performance indicators, and the process of building the relationship is in many cases as important as where we’re trying to get to.

Session 4: Prospective MCBMs

The last session comprised a lead speaker and panellists from countries represented at the conference, followed by a general discussion. The session was designed to develop ideas for MCBMs based on previous proposals and positions of key protagonists and to re-emphasise the importance of MCBMs and maritime cooperation as a building block for more effective management of the SCS and its resources.

The lead speaker, Mr Kwa Chong Guan from RSIS, Singapore, provided an overview of the need for confidence building in the SCS (his comments are included elsewhere in this report). His main theme was the difficulty of deciding which CBMs are likely to succeed and which aren’t. He pointed out that CBMs are underpinned by trust, arguing that trust is the key element involving a rational calculation of risk and whether or not the parties involved could trust each other to conform to a CBM. He saw trust not as an end state or product of CBMs, or a necessary beginning for CBMs, but as an interactive process of trust and building confidence, which is underpinned by trust. The challenge is how to cooperate

and build confidence without trust. This suggests a need to start with low-risk CBMs, including some form of confidence building and cooperation between the coastguards many littoral states have established. In the final analysis, we can only hope that what's become known as the ASEAN way of goodwill, patience and tolerance will prevail in a crisis in the SCS despite an underlying distrust of the other.

In the discussion session that followed Mr Kwa's talk, a growing distinction was noted between trust building measures and CBMs. Trust has more of a political dimension with domestic political implications. Reference was made to the high levels of distrust currently apparent in the region.

Dr Wu Shicun had three main concerns in his comments: China is an equal partner in the SCS; external powers should not be involved; and the code of conduct should be seen as a crisis management tool rather than as a means of dispute resolution. On joint development, he thought that there are no potential areas where this might be possible.

Captain Martin Sebastian distinguished between CBMs, which might include law enforcement activities, and security building measures reflecting both traditional and non-traditional security issues. He pointed out that law enforcement isn't the core business of navies and that law enforcement, along with search and rescue and marine environmental protection, involves key interests that require attention regardless of any distrust apparent in the security environment.

Dr Jay Batongbacal from the Philippines saw a role for the International Maritime Organization along the lines of the activity it had sponsored leading to the Cooperative Mechanism for Safety and Marine Environmental Protection in the Malacca and Singapore Straits. He also mentioned climate change and coastal zone management (both particular concerns of the Philippines), law enforcement and interagency coordination and cooperation, and exchanges with industry.

Dr Tran Truong Thuy from Vietnam referred again to the high levels of distrust that existed in the region at present—between Vietnam and China, between the US and China and even within ASEAN. He also mentioned law of the sea issues and the CBMs required for the different maritime zones.

Professor Hasjim Djalal from Indonesia had nine suggestions:

- Fisheries management is a potential CBM, noting the bilateral arrangements already agreed between Indonesia and Malaysia and Malaysia and China.
- Maritime boundary agreements should be actively pursued—'good fences make good neighbours'.
- Claims should be resolved before legislation is put in place—domestic legislation becomes an obstacle to progress.
- Stirring up public opinion should be avoided.
- The implications of new technologies (such as drones) and operational procedures should be reviewed.
- Guidelines covering rights and duties in the EEZ are needed.
- There's a need to keep talking about joint development.
- Military activities in the SCS should not be extended.
- There's a need to identify and agree on projects for cooperation (such as hydrographic surveying and fisheries stock assessments).

Captain Justin Jones RAN speculated about whether the 'big picture' has been lost, including the potential impact of crises on regional and national prosperity and the basic importance of common interests, notably seaborne trade. There's a need to recognise what INCSEA agreements are and what they aren't. Captain Jones thought that corporate memory is lacking and that there may be a case for permanent envoys to promote MCBMs.

Mr Carl Baker speculated on the need for an appropriate forum to take MCBMs forward, particularly through functional cooperation. He noted the importance of functional cooperation to build trust, suggesting that there's potential for it and mentioning disaster relief, oil spill management and fisheries management as particular issues. He also noted the need to talk about rights and duties in the EEZ.

Closing remarks

In his closing remarks, the Conference Chair noted that the conference and the 25 speakers had been on a remarkable journey over the meeting's one and a half days, and that many different insights and useful ideas had emerged.

The conference had been fortunate in having among its participants several people who have been working on this complex array of issues for 20 years or more. Mr Jennings went on to say that while most of the ideas about MCBMs had been around for many years, strategic circumstances had changed, making the need for progress in military and civilian maritime CBMs more urgent than ever.

A key issue is the economic importance of the seaborne trade through the East Asian seas and the implications for the Indo-Pacific region as a whole should that trade be disrupted in any way. The SCS is a focusing lens for this strategic system, and MCBMs, both military and civilian, have a critical role to play.

Much discussion during the conference had returned to the ‘chicken and egg’ dilemma of which came first between trust, on the one hand, and confidence in a regime on the other. One school of thought is that arrangements for functional cooperation on issues such as resources management, marine scientific research and marine environmental protection are MCBMs or trust-building measures. The other school of thought is that this functional cooperation can’t proceed without strategic trust. Finding a solution to this dilemma is extremely difficult. Several participants had referred to the higher levels of distrust in the region. This makes negotiating functional cooperation extremely difficult, although some forms of bilateral cooperation appear to be having success.

Several participants had pointed out that cooperation is not just something that’s nice to have—it’s both an obligation and a necessity. Without cooperation, fisheries are being overfished, marine habitats are being destroyed, large areas of the SCS remain unsurveyed, and littoral countries lack the scientific knowledge required for the effective exercise of their sovereign rights in adjacent waters. A possible way out of the basic dilemma is to try to disconnect essential civil maritime cooperation from the military and sovereignty issues, which are the root causes of distrust. A forum bringing together the agencies of littoral countries that deal with law enforcement, search and rescue, and marine environmental protection might help in this regard, as well as the active pursuit of cooperative programs to address clear common interests, such as fish stock assessments and hydrographic surveying.

Economic interests, including industry, also have a role to play. The Chair noted that it was remarkable how economists and strategists thought about the issues differently. The rational economic actor would of course argue strongly for the continuation of peace and stability. Mr Jennings asked whether there are prospects of bringing together major private sector interests—the raw material producers, port owners, shipping firms, logistic chain managers and fisheries organisations—into a discussion with governments on their security needs.

The Chair thought that there’s also a useful role for auditing and consolidating the huge volume of useful practical cooperation that’s taking place in the SCS—from managing fish stocks to hydrographic cooperation. This might take the form of a handbook providing a reference guide for regional maritime engagement best practice. In all of these areas, though, there’s a need to progress from dialogue to actionable outcomes.

Mr Jennings observed that the value of the work that’s been done over many years shouldn’t be lost. Professor Djalal had reminded the conference that it took 11 years from 1991 for an informal code to be accepted into the ASEAN Declaration of Conduct in 2002. That means hard work is needed to retain the gains that have been made.

The published proceedings of the conference will be taken forward into appropriate regional gatherings, possibly the Expanded ASEAN Maritime Forum. Appropriate ASEAN processes and Australian processes will be considered. The overall objective will be to develop actionable proposals for prospective MCBMs in the region.

Note

- 1 International Hydrographic Organization, *Definition of hydrography*, www.iho.int/srv1/index.php?option=com_content&view=article&id=299&Itemid=289.

Chairman's final statement

The Sydney Conference on Maritime Confidence Building Measures (MCBMs) in the South China Sea was attended by 62 participants from 16 different member countries of the East Asia Summit. It was hosted by the Australian Strategic Policy Institute (ASPI).

The objective of the conference was to develop actionable proposals for prospective MCBMs for the South China Sea (SCS). The conference assessed:

- The potential for increased maritime cooperation in the SCS in functional areas, such as law enforcement, search and rescue (SAR), hydrographic surveying, humanitarian assistance, marine safety, fisheries, marine environmental protection, and marine scientific research; and
- Possible procedures for avoiding and managing incidents that might occur at seas between ships and aircraft of different countries.

The major challenge with the SCS is to build a stable maritime regime that provides for good order at sea, eases tensions and reduces the risk of conflict. To assist in meeting this challenge, the conference developed a set of recommended measures that may contribute to regional policy making through an appropriate regional forum, possibly the Expanded ASEAN Maritime Forum (EAMF).

Strategic Considerations

Both Senator Bob Carr, Australian Minister for Foreign Affairs, in his opening address, and Vice Admiral Ray Griggs, the Chief of the Australian Navy, in his dinner speech highlighted the importance of seaborne trade through the SCS. This was a common interest of all regional countries, as well as of countries outside of Southeast Asia, including Australia, which have vital trade routes passing through or near the SCS. Any disruption of shipping traffic as a result of conflict or serious miscalculations between the littoral countries would compromise the economic growth and prosperity of the entire region.

The conference acknowledged the good work done in the past, and was continuing to be done, by the Workshops on Managing Potential Conflict in the SCS coordinated

by Indonesia. However, strategic circumstances have deteriorated in recent years due to increased tensions between the countries with conflicting claims to features within the SCS, as well as between the major regional powers. The active pursuit of cooperative programmes and MCBMs will help ease regional tensions and overcome the current trust deficit.

Concepts of MCBMs

The conference reviewed the nature and types of maritime confidence building measures (MCBMs) and maritime regimes with a summary of existing regional MCBMs, such as the Code for Unaltered Encounters between Ships (CUES) developed by the Western Naval Symposium (WPNS), the agreements to prevent incidents between naval forces (INCSEA Agreements) between Russia and South Korea and Russia and Japan), MALINDO (the INCSEA Agreement between Malaysia and Indonesia), and the Military Maritime Consultative Arrangements (MMCA) (between China and the US).

Several participants emphasised the importance of communications. The ability of law enforcement and naval units of different countries to talk to each other was a very basic tool to prevent and manage incidents at sea. The simple communications code that was part of CUES provided this facility. It could be more widely used.

CBMs may be loosely defined as practical efforts to remove the causes of misunderstanding, while MCBMs specifically are those that apply in the maritime environment. In this context *maritime* does not refer solely to the sea, nor does it apply only to navies. MCBMs also encompass the land-sea interface (the 'littoral') and pertain to all vessels, aircraft, and organisations and agencies associated therewith.

A distinction can be made between MCBMs of a military nature and those of a non-military nature. Military MCBMs can have a political focus, such as with making the good intentions of a country more apparent ('transparent') and with agreements not to conduct certain types of maritime operation in a particular area or not to acquire certain technologies of maritime warfare. Or they might have an operational focus, as for example with the exchange of maritime surveillance information, the provision of prior notification of particular naval activities (e.g. exercises), or INCSEA Agreements.

Non-military MCBMs are mainly about building regimes and cooperation to provide good order at sea. They serve two purposes. Firstly, they provide a direct benefit by helping to build maritime regimes that provide good order at sea and permit effective management of the maritime domain. Secondly, they serve as ‘building blocks’ for habits of cooperation and dialogue that reduce tensions and promote peace and stability.

Maritime Cooperation in the SCS

The conference addressed issues associated with functional maritime cooperation, including previous cooperative efforts, the current state of maritime cooperation and prospective areas for cooperation. It noted the obligations to cooperate in Part IX of the 1982 UN Convention on the Law of the Sea (UNCLOS), and the 2002 ASEAN-China Declaration on Conduct of Parties in the SCS.

The importance of cooperation to manage the maritime domain and its resources cannot be overstated. Cooperation is essential for good order at sea and effective maritime management. However, a lack of trust exists between neighbouring countries with unresolved sovereignty disputes, and this inhibits successful cooperation.

Similarly, exclusive forms of cooperation between a select group of countries can lead to a breakdown in trust when other countries are excluded from the arrangement. While bilateral cooperation between neighbouring countries should be encouraged, multilateral cooperation in the SCS should as far as possible be inclusive of all littoral countries.

A ‘chicken and egg’ situation has emerged in the SCS. What comes first – cooperation as a confidence-building measure (CBM), or strategic trust? Some believe that arrangements for functional cooperation on issues such as resources management, marine scientific research and marine environmental protection are CBMs or trust-building measures. Others claim that this functional cooperation cannot proceed without strategic trust.

The demands for effective cooperative management regimes in the SCS will become more pressing in the future. Volumes of shipping traffic will continue to increase with greater risks of ship-sourced marine pollution and shipping accidents. There will be increased pressure on the resources of the

SCS, living and non-living, as well as growing concern for the protection and preservation of the sea’s sensitive ecosystems and marine biodiversity.

Conference speakers provided useful suggestions regarding how functional cooperation might be improved. These suggestions included:

- Cooperative arrangements to ensure the safety and security of offshore oil and gas installations in the SCS.
- Coordinated marine scientific research programs in the SCS, noting that marine scientific research (including seismic surveys) is essential for effective management of the SCS and its resources.
- Cooperative arrangements to protect the marine environment.
- The establishment of marine protected areas (MPAs) in the SCS.
- The establishment of a SCS forum bringing together the coast guards and other para-military maritime law enforcement forces of littoral and adjacent countries.
- A coordinated approach to marine oil spills in the SCS.
- The establishment of an SCS fisheries management and conservation forum.
- Agreed rules and standards for regional fish stocks and protocols for managing fishermen.
- Agreement on a plan for conducting hydrographic surveys in certain uncharted areas of the SCS.
- Coordinated arrangements for humanitarian assistance and disaster relief in the SCS.
- The establishment of a marine information data base for the SCS.
- Protocols for submarine rescue and escape.

The conference welcomed China’s proposed ASEAN-China Maritime Cooperation Fund. It noted the agreement to establish four expert committees on marine scientific research, environmental protection, search and rescue and transnational crime prevention.

Operational and Legal Considerations

The conference addressed operational and legal considerations with the provision of maritime security in the SCS, including naval and coast guard activities, information-sharing, cooperative law enforcement, operational and legal issues and rules of engagement (ROE). Speakers made useful suggestions regarding potential measures for avoiding and managing incidents that might occur at sea between ships and aircraft of different countries.

While the conference acknowledged that naval exercises and coordinated or joint patrols can be a useful MCBM, it was also conscious that these activities have the potential to send destabilising messages if conducted in disputed areas. Also, inclusive exercises, if only by the inclusion of observers, are to be preferred over those involving a limited group of participants.

Effective maritime regimes require adherence to the legal principles of UNCLOS, as well as to other relevant international maritime treaties. However, there are still many 'grey areas' with the law of the sea. This is particularly so with provisions relating to the exclusive economic zone (EEZ) regime.

Some dialogue towards common understandings of aspects of the law of the sea where uncertainty exists could be a worthwhile MCBM. The agreement between the United States and the Soviet Union on a common interpretation of the regime of innocent passage is one precedent for this activity.

In this regard the conference noted the intention of the ARF to hold the Second ARF Seminar on UNCLOS as proposed by the Philippines and Australia.

Prospective MCBMs

This conference considered ideas for MCBMs based on previous proposals and the positions of key protagonists. It re-emphasised the importance of MCBMs and maritime cooperation as a 'building block' for more effective management of the SCS and its resources.

It is easy to identify and talk about MCBMs; it is much harder to translate them into a plan for action. The national perspectives of the countries littoral to the SCS and other stakeholder countries vary considerably. Central to the way

ahead is the need to identify common interests that might provide the basis of successful MCBMs.

Preventing and Managing Incidents in the SCS

Potentially a key common interest is the need to have in place arrangements that might assist in preventing misunderstandings between vessels and aircraft of different countries and managing incidents that might occur. The conference noted in this regard that a tactical level document, such as the existing bilateral INCSEA agreements in the region, was unlikely to be achieved and in any case, the CUES document was already in place. An alternative might be broader guidelines at the strategic and operational level.

However, any document should be non-binding so as to ensure its wide acceptance. Also, it should not be called a 'code of conduct' to avoid any conflict with the political Code of Conduct now being negotiated between China and the ASEAN countries.

A possible title is 'Guidelines for Preventing and Managing Incidents at Sea in the South China Sea'. In drafting the guidelines, the relevance of existing documents, such as MALINDO and CUES should be examined. The latter document is very relevant as all countries bordering the SCS are members of the WPNS.

Any such guidelines might address issues such as:

- Non-naval vessels and non-military aircraft to be preferred for sovereignty protection and law enforcement tasks.
- Prior notification should be provided of major maritime operations to be conducted in the SCS.
- Hot lines should be established between the relevant naval and coast guard headquarters.
- Maritime security units operating in the SCS should recognise and be prepared to apply CUES.
- The International Convention for Preventing Collisions at Sea (COLREGS) should always apply between ships operating in the SCS.
- Live fire endangering human life should not be used.
- Arrangements for the fair treatment of fishermen.
- Law enforcement operations in the SCS should be conducted in accordance with UNCLOS and other relevant international conventions

- Countries should provide information and contact details for agencies conducting law enforcement operations in the SCS.
- Regular exchanges of visits between the headquarters' staffs of regional maritime law enforcement agencies, including reciprocal ship-rider programmes.
- The guidelines are without prejudice to the sovereignty claims.

Civil Maritime Security Forces

The conference noted that most law enforcement now in the SCS is carried out by civil maritime security forces, such as coast guards ('white hulls'). Law enforcement is not the 'core business' of regional navies.

The conference saw merit when developing MCBMs to think separately about ones applicable to civil law enforcement forces and the military MCBMs for naval forces. Military activities usually involve a higher level of risk whereas the activities of civil forces are more routine in nature, including a need for everyday exchanges between countries with adjacent or over-lapping jurisdictions. These activities are potentially less sensitive than naval activities.

Consideration might be given to establishing a forum where the civil maritime security forces of littoral countries meet together to discuss issues of common interest, including the prevention of transnational maritime crime, search and rescue, and the prevention and mitigation of ship-sourced marine pollution. These activities relate to the obligations of littoral countries under Part IX of UNCLOS and should proceed regardless of whether or not there is a binding Code of Conduct or any resolution of the sovereignty disputes. It was also important that clear divisions of responsibility should exist between the various agencies with maritime interests.

Private Sector Involvement

The conference noted that at this stage, private sector interests such as the oil and gas, shipping and fishing industries had little or no direct involvement in government-government discussions about the SCS. These industries are all important components of the development programs of countries littoral to the SCS. Some dialogue between economists and strategists might reinforce the common

interest of regional countries in the SCS, its resources and trade routes, and their importance to regional economies.

The conference saw merit in establishing an Advisory Group of industry representatives, including representatives of regional industry associations where such associations exist, to provide input to regional discussions on SCS issues. This Group might be established under the umbrella of ASEAN-China Senior Officials' Meeting on the SCS.

Joint Development

Many speakers at the conference referred to the potential for the joint development of the resources of the SCS and the need to keep talking about it. Reference was made to the potential for pursuing further joint development in areas where there were only two claimants, as well as to the possibility of non-spatial joint development, such as scientific research to assess the resource potential of different areas.

Fisheries

Fisheries are an important economic interest of SCS littoral countries but they have become politicised. They are primarily managed on a national basis whereas cooperative management is essential to their sustainability. Agreed rules and standards for regional fish stocks are lacking, and there is no effective Regional Fisheries Management Organisation (RFMO) for the SCS. Some participants saw merit in extending current successful bilateral agreements to multilateral arrangements.

Assistance from non-littoral countries to help build the capacity of littoral countries for fisheries management was another possibility.

An Activity Audit?

There is much talk in the region at present at both the bilateral and multilateral levels about the situation in the SCS, as well as some successful examples of bilateral cooperation in particular. A reference handbook detailing just what is going on in the region at present to resolve the disputes in the SCS and to put in place cooperative arrangements would enhance both dialogue and awareness among stakeholders. It might be a useful guide to best practice in maritime cooperation, while also promoting synergy between, and leading to some rationalising, of current efforts.

Closing Comment

The conference provided a valuable opportunity for the exchange of views and interaction between participants representing a range of different view-points on the situation in the SCS. It was encouraging to hear the positive views of speakers with success stories about countries working together on common interests to resolve the problems of the SCS.

The conference included subject matter experts who were able to bring their expertise to bear in developing a potentially fruitful list of prospective MCBMs for the SCS. The active engagement of all participants contributed to the success of the conference.

Peter Jennings

Executive Director

Australian Strategic Policy Institute

Acronyms and abbreviations

APEC	Asia–Pacific Economic Cooperation
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
CBM	confidence building measure
COBSEA	Coordinating Body for the Seas of East Asia
CSBM	confidence and security building measure
CSCAP	Council for Security Cooperation in the Asia Pacific
CUES	Communications for Unalerted Encounters at Sea
DOC	Declaration on Conduct of Parties in the South China Sea
EEZ	exclusive economic zone
IRGCN	Iranian Revolutionary Guard Corps Navy
IUU	illegal, unreported or unregulated fishing fishing
KAAOT	Kwar Abd Allah Oil Terminal
MCBM	maritime confidence building measure
MSP	Malacca Strait Patrols
PEMSEA	Partnerships in Environmental Management for the Sea of East Asia
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in the Asia–Pacific
RSIS	S Rajaratnam School of International Studies, Singapore
SAR	search and rescue
SCS	South China Sea
UN	United Nations
UNCLOS	UN Convention on the Law of the Sea
WPNS	Western Pacific Naval Symposium

MARITIME CONFIDENCE BUILDING MEASURES IN THE SOUTH CHINA SEA PROGRAM



**InterContinental Hotel, Sydney
11–13 August 2013**

- The objective of the meeting is to develop proposals for prospective MCBMs for the South China Sea (SCS)
- The measures may be taken forward through an appropriate regional forum, possibly the ASEAN Maritime Forum (AMF) Plus
- The meeting will assess:
 - The potential for increased maritime cooperation in the SCS in functional areas, such as law enforcement, search and rescue (SAR), hydrographic surveying, humanitarian assistance, marine safety, fisheries, marine environmental protection, marine scientific research, joint development etc, and
 - Possible procedures for avoiding and managing incidents that might occur at sea between ships and aircraft of different countries.

Sunday 11 August 2013

18:00 – 20:00	Welcome Cocktail Reception and Event Registration	Harbour Room, Level 31, InterContinental Hotel, Sydney
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Monday 12 August 2013

Fort Macquarie Room, Level 2, InterContinental Hotel, Sydney		
09:00 – 10:00	Introduction	Peter Jennings, Executive Director ASPI; Conference Chair
		Opening: Senator the Hon Bob Carr, Minister for Foreign Affairs
		Keynote Address: Prof. Hasjim DJALAL, Indonesia
10:00 – 10:30	Break	
10:30 – 12:30	<u>Session One</u> Setting the Scene – Concepts of MCBMs	<p><i>This session will provide an overview of the nature and types of maritime confidence building measures (MCBMs) and maritime regimes with a summary of existing regional MCBMs, the Code for Unalerted Encounters between Ships (CUES) developed by the Western Naval Symposium (WPNS), MALINDO (the INCSEA between Malaysia and Indonesia), the Military Maritime Consultative Arrangements (MMCA) (between China and US), INCSEAs between Russia and South Korea and Russia and Japan) etc.</i></p> <p><u>Lead Speakers</u></p> <p>Nature and types of MCBMs Dr Sam BATEMAN, University of Wollongong</p> <p>Maritime Regime Building for the SCS Dr Mark VALENCIA, private maritime consultant, United States</p>

		<p><u>Panellists</u></p> <p>WPNS and CUES Captain Justin JONES, Seapower Centre, Australia</p> <p>US-China Military Maritime Consultations (MMCA) Mr ZHAO Qinghai, China Institute of International Studies</p> <p>MCBMs in NE Asia Dr Sukjoon YOON, Korea Institute for Maritime Strategy</p> <p>MCBMs in Southeast Asia Captain Martin SEBASTIAN, Maritime Institute of Malaysia (MIMA)</p> <p>Discussion</p>
12:30 – 13:30	Lunch	
13:30 – 15:30	<p><u>Session Two</u></p> <p>Maritime cooperation in the SCS (bilateral and multilateral)</p>	<p><i>This session will address issues associated with functional cooperation, including previous cooperative efforts, current state of maritime cooperation and prospective areas for cooperation -- with a focus on the obligations to cooperate in UNCLOS Part IX, and those identified in the 2002 ASEAN-China Declaration on Conduct of Parties in the SCS. Speakers and panellists are asked to make suggestions regarding how functional cooperation might be improved.</i></p> <p><u>Lead speakers</u></p> <p>ASEAN-China Maritime Cooperation Dr WU Shicun, National Institute for South China Sea Studies, PRC</p> <p>Civil Maritime Cooperation in the SCS Mr Carl BAKER, Pacific Forum CSIS</p> <p><u>Panellists</u></p> <p>Fisheries Dr NGUYEN Lan Anh, Diplomatic Academy of Vietnam</p> <p>Marine scientific research Dr Lowell BAUTISTA, Australian National Centre for Ocean Resources and Security, University of Wollongong</p> <p>Hydrographic surveying CDRE Brett BRACE RAN, Australian Hydrographic Service</p> <p>Marine environmental protection Professor Jay BATONGBACAL, University of the Philippines</p> <p>Joint Development of Oil and Gas Resources Mr Leo BERNARD, Centre for International Law, National University of Singapore</p> <p>Discussion</p>
15:30 – 15:45	Break	

15:45 – 17:30	<p><u>Session Three</u></p> <p>Operational and Legal Considerations</p>	<p><i>This session will focus on maritime security in the South China Sea, including naval and coast guard activities, information-sharing, cooperative law enforcement, operational and legal issues and rules of engagement (ROE). Speakers and panellists are asked in particular to address ideas and suggestions regarding potential measures for avoiding and managing incidents that might occur at sea between ships and aircraft of different countries.</i></p> <p><u>Lead speaker</u></p> <p>Cooperation for good order at sea Dr TRAN TRUONG Thuy, Diplomatic Academy of Vietnam</p> <p><u>Panellists</u></p> <p>Maritime Information Sharing Jane CHAN, Maritime Security Programme, RSIS, Singapore</p> <p>Inter-agency coordination (both national and regional) Lieutenant Colonel Arief MEIDYANTO, Bakorkamla, Indonesia</p> <p>Ocean Policy Research Foundation EEZ Guidelines RADM (Rtd) AKIMOTO Kazumine, Ocean Policy Research Foundation, Japan</p> <p>Cooperation for maritime security and avoiding and managing incidents at sea Dr LI Mingjiang, RSIS, Singapore</p> <p>Discussion</p>
19:00 – 22:30	Conference Dinner	<p>Utzon Room, Sydney Opera House</p> <p>Dinner Speaker: Vice Admiral Ray Griggs AO CSC RAN, Chief of Navy, Australia</p>

Tuesday 13 August 2013

Fort Macquarie Room, Level 2, InterContinental Hotel, Sydney		
09:00 – 12:00	<p><u>Session Four</u></p> <p>Prospective MCBMs</p>	<p><i>This session will develop ideas for MCBMs based on previous proposals and positions of key protagonists. It will re-emphasise the importance of MCBMs and maritime cooperation as a 'building block' for more effective management of the SCS and its resources. The lead speakers are asked to set the scene for a general discussion of key issues, while the panellists should provide a brief response from their national perspective.</i></p> <p><u>Lead speaker</u></p> <p>Overview of the need for confidence-building in the South China Sea Mr KWA Chong Guan, RSIS, Singapore</p>

		<u>Panellists</u> China Dr WU Shicun Malaysia Captain Martin A. SEBASTIAN Philippines Dr Jay BATONGBACAL Vietnam Dr TRAN TRUONG Thuy Indonesia Prof Hasjim DJALAL Australia Captain Justin JONES, RAN US Mr Carl BAKER Discussion
12:00 – 12:30	Chairman’s Summation	
12:30 – 13:30	Lunch	
	Meeting Close	

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ASPI

Tel +61 2 6270 5100

Fax + 61 2 6273 9566

Email enquiries@aspi.org.au

Web www.aspi.org.au

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