



Council for Security Cooperation in the Asia-Pacific

MEMORANDUM 13

GUIDELINES FOR MARITIME COOPERATION IN ENCLOSED AND SEMI-ENCLOSED SEAS AND SIMILAR SEA AREAS OF THE ASIA PACIFIC

Introduction

This document puts forward the proposed Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific, which have been developed by the Study Group on Facilitating Maritime Cooperation in the Asia Pacific established by the Council for Security Cooperation in Asia Pacific (CSCAP). 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.

Background

Many of the seas in the Asia Pacific region are enclosed or semi-enclosed seas within the definition in Article 122 of the 1982 UN Convention on the Law of the Sea (UNCLOS).¹ UNCLOS Article 123 states that:

States bordering an enclosed or semi-enclosed sea **should** cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they **shall** endeavour, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

¹ The regional seas which fall within this definition include: Sea of Japan, Yellow Sea, East China Sea, Gulf of Tonkin, South China Sea, Celebes Sea, Sulu Sea, Gulf of Thailand, Andaman Sea, Timor Sea, Arafura Sea.

- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in the furtherance of the provisions of this article.

This is a strong obligation, but cooperation in the management of regional enclosed and semi-enclosed seas falls short at present of what is desirable. This is due largely to the existence of sovereignty disputes and overlapping boundary claims that inhibit the process of cooperation and a perception that cooperation involves some giving up of sovereignty.

While resource management, the protection of the marine environment and marine scientific research are mentioned specifically as areas for cooperation, the opening sentence of UNCLOS Article 123 sets 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.

Less than half the maritime boundaries required in the seas of Southeast and Northeast Asia have been agreed. In many cases, sovereignty disputes over offshore islands and other features inhibit further progress with maritime boundary delimitation. These disputes are unlikely to be resolved in the short-term, and in the meantime, important areas of cooperation are not being addressed, including cooperation for maintaining law and order at sea (including against piracy, maritime terrorism, proliferation of weapons of mass destruction (WMD), and illegal trafficking in arms, drugs, protected resources or people), search and rescue, navigational safety, and marine environmental protection.

Importance of these guidelines

The importance of these Guidelines flows from the nature and complexity of the regional geographical environment, the significance of maritime issues in the region, and the propensity for illegal activities and disputes to occur at sea. Maritime cooperation in the enclosed and semi-enclosed seas will contribute to regional stability by easing tensions and reducing the risks of conflict.

In putting forward these Guidelines, the Study Group acknowledges that several important management regimes, including conflict avoidance mechanisms, are already in place for the enclosed and semi-enclosed seas of the Asia-Pacific. These include:

- The ASEAN-China Declaration on the Conduct of Littoral states in the South China Sea 2002.
- The Japan-China Mutual Prior Notification Regime for Scientific Research in Waters of Interest to each other.
- Various bilateral Fisheries Cooperative Agreements and Joint Development Zones.

The Guidelines seek to build on these existing mechanisms and extend the valuable lessons that have already been learned through the development of these mechanisms.

Purpose of Guidelines

The Guidelines serve several purposes:

- First, they should serve as a basis for preventive diplomacy, constituting an important regional confidence-building measure that lays down general principles for regional maritime cooperation in line with the ASEAN Regional Forum's (ARF's) long term objective of becoming a mechanism for conflict prevention. They should serve to encourage cooperation, particularly in enclosed or semi-enclosed seas with overlapping claims to maritime jurisdiction.
- Secondly, they serve as a step in the process of enhancing oceans governance in the Asia Pacific region based on UNCLOS and the notion of integrated management of oceans issues.

- Thirdly, the Guidelines should help promote a *stable maritime regime* in the region with the free and uninterrupted flow of seaborne trade, and nations able to pursue their maritime interests and manage their marine resources in an ecologically sustainable manner in accordance with agreed principles of international law.

Legal Status of the Guidelines

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

Previous CSCAP Memorandums

The previous CSCAP Memorandums are relevant to these Guidelines:

- CSCAP Memorandum No. 4 – Guidelines for Regional Maritime Cooperation (December 1997)
- CSCAP Memorandum No.5 – Cooperation for Law and Order at Sea (February 2001)
- CSCAP Memorandum No. 6 – The Practice of the Law of the Sea in the Asia Pacific (December 2002)

Recommendation

It is recommended that these Guidelines be endorsed by the ARF.

*29th CSCAP Steering Committee Meeting
Kuala Lumpur, Malaysia
2 June 2008.*

GUIDELINES FOR MARITIME COOPERATION IN THE ENCLOSED AND SEMI-ENCLOSED SEAS OF THE ASIA PACIFIC

The participating states of the ASEAN Regional Forum:

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

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

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

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

Taking into account the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), particularly those in Part IX;

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

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

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

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

Hereby adopt the following non-binding Guidelines for Maritime Cooperation in the Enclosed and Semi-enclosed Seas of the Asia-Pacific:

Definitions

1. For the purposes of these Guidelines:

"archipelagic waters" means those waters enclosed by the archipelagic baselines of an archipelagic State drawn in accordance with Article 47 of the UNCLOS;

"continental shelf" means the submarine area of seabed and subsoil as defined by Part VI of the UNCLOS;

"enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States, as defined by Part IX of the UNCLOS;

"exclusive economic zone" means an area superjacent to the sea-bed, the sea-bed and subsoil, as defined by Part V of the UNCLOS;

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

"littoral states" means states in the Asia-Pacific region bordering on an enclosed or semi-enclosed sea;

"marine environment" includes the oceans and all seas and adjacent coastal areas, as well as the seabed and ocean floor and subsoil thereof;

"marine scientific research" means ship or air-based activities undertaken in the marine environment for peaceful purposes and for the benefit of humanity as a whole to enhance scientific knowledge regarding the nature and natural processes of the seas and oceans, the seabed and subsoil;

"overlapping claims" refers to marine areas over which two or more states claim sovereignty or sovereign rights;

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

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

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

Non-prejudicial

2. Nothing contained in these Guidelines should be interpreted as prejudicing the position of any littoral state in its claims to territorial sovereignty, sovereign rights over resources, or jurisdiction over territory or maritime zones.

Rights and duties

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

Maritime cooperation

4. Littoral states recognise the importance of cooperation for the management of the marine environment, particularly for enclosed and semi-enclosed seas.
5. Littoral states acknowledge and appreciate the progress already being made with activities to prevent conflict and promote cooperation in the enclosed and semi-enclosed seas of the Asia-Pacific. These experiences provide valuable lessons in practical maritime cooperation.
6. Littoral states accept the importance of an inclusive approach to maritime cooperation, noting the interests of relevant stakeholders.

Use of force

7. Littoral states agree to use the sea for peaceful purposes only and without resorting to the threat or use of force except as provided for in the Charter of the United Nations.

Sea lanes of communication

8. Littoral states recognise the importance of the freedoms and rights of navigation, in accordance with the provisions of UNCLOS, to the maintenance of seaborne trade in the Asia Pacific region.

Humanitarian assistance

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

Search and rescue

10. Littoral states are encouraged to promote greater sharing of maritime Search and Rescue (SAR) experience and expertise, as well as facilitate coordination and cooperation in SAR training and procedures.
11. Littoral states are encouraged to consult with regard to the ratification, implementation and participation in relevant conventions and instruments concerning maritime SAR.
12. Littoral states are encouraged to develop cooperative arrangements on SAR operations with other states surrounding enclosed and semi-enclosed seas.

Navigational safety

13. Littoral states are encouraged to promote navigational safety by measures such as adequate charting, notices to mariners, navigational aids, and notification of recommended shipping routes, as appropriate.
14. Littoral states are encouraged to consult with regard to the ratification, implementation and participation in relevant conventions and instruments concerning maritime safety.
15. Littoral states are encouraged to cooperate to promote navigational safety including in areas of overlapping maritime claims within enclosed and semi-enclosed seas.

Contingency planning

16. Littoral states should ratify and take all necessary measures to implement the International Maritime Organization (IMO) Conventions on preparedness, response and cooperation to deal with spills of oil or noxious and hazardous substances.
17. Littoral states are encouraged to cooperate with each other and with the private sector in the development of regional and sub-regional contingency plans to mitigate the effects of marine natural hazards and to manage the consequences of a major maritime disaster, including a serious environmental threat, such as an oil spill, or an accident on an offshore oil or gas installation.

Law and order at sea

18. Littoral states recognise the importance of cooperation in the maintenance and enforcement of law and order at sea, including the prevention of piracy and armed robbery against ships, poaching of marine resources, the illicit transport of people, drugs, arms and weapons of mass destruction, and other illegal activities.
19. Littoral states are encouraged to institute regular meetings to enhance cooperation and coordination in their maritime enforcement activities.

Information sharing

20. Littoral states recognize the importance of information for the exercise of their rights and the fulfillment of their obligations in enclosed or semi-enclosed seas, and are encouraged to work towards arrangements for the sharing of information with other littoral states.
21. Littoral states are encouraged to discuss and form mechanisms with other littoral states for future information exchange with other littoral states on military exercises, especially in areas where there are overlapping claims.

Protection and preservation of the marine environment

22. Littoral states recognise their individual and collective obligation to protect and preserve the marine environment.
23. Littoral states should consult with regard to:
 - cooperation in taking all measures necessary to prevent, reduce, monitor and control pollution of the marine environment from all sources;
 - the ratification, implementation and participation in relevant conventions and instruments concerning all aspects of protection, preservation and monitoring of the marine environment;
 - measures to implement the relevant IMO Conventions that establish liability to ensure that funds for compensation and clean-up are available; and
 - the development and implementation of contingency plans to respond to pollution incidents in the marine environment.

Marine resources

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

Provisional arrangements

26. Littoral states are encouraged to consider entering into provisional arrangements of a practical nature in areas of overlapping claims in accordance with UNCLOS Articles 74 and 83; and should seek to reach agreement on the sharing of resources in areas of overlapping claims or the resources accruing therefrom in an equitable manner, bearing in mind relevant state practice in the Asia Pacific.

27. Littoral states which cooperate in areas of overlapping claims have the right to declare that their cooperation shall not prejudice or diminish in any manner whatsoever their position with respect to existing sovereignty and maritime boundary claims.
28. Littoral states are free to declare that their cooperation with other states in an area of overlapping claims does not constitute any form of recognition of the legitimacy of the sovereignty claims or maritime boundary claims of other states in the overlapping area.

Marine scientific research

29. Littoral states are encouraged to cooperate, directly or through competent international, regional or sub-regional organisations, for the purpose of promoting studies, undertaking programs of scientific research and encouraging the exchange of information and data acquired about the marine environment, particularly about pollution of the marine environment and changing sea levels.
30. Littoral states should promote the establishment of regional marine scientific and technological research centres in accordance with UNCLOS Article 276.
31. Littoral states are encouraged to consult on efforts to harmonise their respective procedures, in accordance with Part XIII of UNCLOS, for granting consent to proposed marine scientific research projects in their exclusive economic zones and on their continental shelves.

Capacity building

32. Littoral states recognise the benefits of technical cooperation and capacity-building, and are encouraged to implement relevant programs in the maritime sector designed to build infrastructures, institutions and capabilities for policy formulation and implementation. This includes information sharing and development of databases.
33. Littoral states are encouraged to cooperate on capacity building, including the development and promotion of training and educational programs for the management of the marine environment, particularly for the maintenance of safety and law and order at sea, the preservation and protection of the marine environment, and the prevention, reduction and control of marine pollution. Such cooperation might include:
 - the offer of places on national training courses to other parties;
 - sharing curriculum and course information;
 - the exchange of naval and law enforcement personnel, scientists and other experts;
 - the exchange of views on maritime issues;
 - holding conferences, seminars, workshops and symposiums on maritime subjects of common interest;
 - fostering cooperation among maritime training institutions and research centres; and
 - cooperation in the collection and analysis of biological and ecological data.
34. Littoral states are encouraged to seek assistance in capacity building from international aid agencies and developed countries.