

**Bilateral USCSCAP and CSCAP Philippines Workshop on
Maritime Security in East Asia
May 27, 2014, Manila Hotel, Manila, Philippines
Key Findings and Recommendations**

The US and Philippine Committees of the Council for Security Cooperation in the Asia Pacific (CSCAP) met at the Manila Hotel in Manila, Philippines on May 27, 2014 to discuss the UN Convention on the Law of the Seas (UNCLOS) and Maritime Security in East Asia. It brought together 41 participants from throughout the Asia-Pacific region and beyond, including many ASEAN Regional Forum (ARF) Workshop participants, all attending in their private capacity. The off-the-record discussions focused on the role of UNCLOS in facilitating dispute settlement and promoting cooperation through regional organizations. Participants focused on dispute settlement mechanisms, principles related to freedom of navigation and rights and responsibilities of states, environmental preservation, and the management of living maritime resources. Throughout the discussion, participants were asked to focus on the role regional organizations like the ARF and CSCAP should play in promoting the principles outlined in UNLCOS and what could be done at the regional and state level to facilitate implementation of those principles.

In the interest of providing ideas for action within the ARF, the following key findings are focused on recommendations for action by the ARF, other regional organizations, or for member states within the ARF. This is not a consensus document but merely a listing of ideas presented during the course of discussions that could stimulate thinking in subsequent dialogues on UNCLOS.

In the area of **dispute settlement**, the ARF and other regional organizations could reduce tensions by acting as a bridging element between disputants. There were a range of views on how this could be achieved. One view offered was that specific actions could include:

- Advocating a specific dispute settlement procedure based on an independent assessment of the situation that would be mutually satisfactory to parties involved.
- Helping to moderate extreme behavior by disputants by sharing information to help neutralize and shape public perceptions on both sides of the dispute.
- Providing support to both parties in the dispute settlement process upon request.

Alternatively, the ARF could serve as a dialogue mechanism to promote better cooperation in the area of confidence building in nontraditional security issues. While all agreed that direct negotiation between involved parties is the preferred dispute settlement mechanism, there are tools available to the ARF (including fact-finding and “good offices” missions) that could contribute to dispute resolution, assuming parties involved are open to third party assistance. For example, the ARF could also set up a sub-working group, comprised primarily of South China Sea claimants, to specifically address overlapping claims and concerns using its good offices.

Appeal to a third party appears necessary in the event of a stalemate and/or when bilateral approaches are no longer practical. The goal of the ARF in such cases would be to find common ground among disputants. One approach would be to examine outcomes from International Court of Justice and International Tribunal on Law of the Sea findings to determine how rules have been applied in order to evaluate current disputes in that light.

In addition, ARF member states could take the following steps to promote dispute settlement:

- Bring respective territorial claims into conformity with UNCLOS.
- Evaluate how ICJ and ITLOS have ruled on similar cases.
- Acknowledge a dispute exists before proceeding with joint development proposals.

As regards **freedom of navigation** and activity in the various UNCLOS zones, the ARF should:

- Acknowledge the primary role of the UNCLOS in ordering rule of law at sea.
- Encourage strict adherence to rule of law including the terms of the UNCLOS.
- Emphasize the need for harmonization of national legislation with UNCLOS.
- Consider the adoption of principles for building confidence and establishing norms of behavior in EEZs that are consistent with principles of UNCLOS.

In addition, ARF member states should take the following actions to bring laws in compliance with UNCLOS:

- Eliminate excessive coastal maritime claims.
- Adjust requirements for navigation in territorial seas and EEZs.
- Build capacity to enhance law enforcement capabilities in conjunction with neighboring countries to reduce exploitation in border areas of EEZs.

In the area of **environmental preservation**, ARF and other regional organizations should:

- Encourage and assist member states in becoming a party to the various International Maritime Organization's Conventions to protect the marine environment.
- Educate member states on the benefits associated with becoming a party to IMO conventions on liability and compensation for environmental damage.
- Undertake studies to determine the value in creating Particularly Sensitive Sea Areas for the purpose of preserving these areas from environmental damage.
- Develop a real-time communication network for maritime law enforcement agencies (ASEAN could lead the way in this regard by establishing an intra-ASEAN network upon which the ARF could build).
- Encourage member states to consent to being bound by the new Port State Measures Agreement.
- Develop plans and engage in exercises to improve regional responses to Hazardous and Noxious Substance incidents

In addition, ARF member states should:

- Fully implement their obligations under UNLCOS to preserve the environment.
- Implement IMO conventions into domestic law.
- Establish Special Areas or Particularly Sensitive Sea Areas

As regards **managing maritime living resources**, the ARF should:

- Develop of clearinghouse for good practices in fisheries management.
- Serve as a forum for confidence building.
 - o Encourage member states to interpret and comply with UNCLOS provisions.
 - o Define the limits of contested waters.

- Engage in preventive diplomacy to reduce potential conflicts between agencies involved in managing access to living resources.
- Undertake a study to better understand traditional fishing rights.
- Build capacity for combating illegal, unreported, and unregulated fishing.
- Develop common practices and rules on living resources management in contested waters.
- Promote cooperation on search and rescue of fishermen in distress.

In addition, ARF member states should:

- Engage in bilateral fisheries management agreements with neighboring states.
- Build capacity to monitor and reduce IUU fishing.
- Improve cooperation between neighboring states to coordinate penalties for IUU.

Participants fully understood the sensitivities and difficulties associated with dealing in areas of overlapping or conflicting territorial claims. But these should not be used as an excuse for not complying with UNCLOS procedures or to not developing common approaches to managing the sea and its resources.

While this CSCAP dialogue was designed to be generic and to discuss UNCLOS in general, the overwhelming majority of discussion and examples of current challenges focused on the South China Sea (SCS). Cooperation in this area seems particularly urgent, given the upswing in confrontational behavior. While claimants argue over sovereignty, fish stocks are dwindling, marine habitats are being destroyed, and good order at sea remains severely lacking..

ASEAN SCS claimants could set the example by addressing their own conflicting claims and by using available dispute settlement mechanism, such as the never-employed ASEAN Treaty of Amity and Cooperation (TAC) High Council.

ARF participants should also be aware of the *Principles for Building Confidence and Security in the Exclusive Economic Zones of the Asia-Pacific* produced in 2013 by the Ocean Policy Research Foundation. CSCAP may conduct a careful examination of the principles and guidelines contained in this document to further assess its relevancy to the ARF and Asia-Pacific maritime community, as part of its continuing effort to promote regional maritime security cooperation. A listing of past CSCAP Memoranda pertaining to maritime cooperation is attached.

The views expressed in these Key Findings represent the view of the seminar chairman and do not necessarily reflect the views of all seminar participants. They are offered as food for thought and further examination and reflection. A more comprehensive summary of this CSCAP UNCLOS Workshop will be made available shortly from USCSCAP and can be obtained by contacting PacificForum@pacforum.org or the primary authors, Ralph Cossa (Ralph@pacforum.org) and/or Carl Baker (Carl@pacforum.org).

CSCAP Memoranda dealing with Maritime Security issues:

- No. 4: Guidelines for Regional Maritime Cooperation (Dec 1997)
- No. 5: Cooperation for Law and Order at Sea (Feb 2001)
- No. 6: The Practice of the Law of the Sea in the Asia Pacific (Dec 2002)
- No. 8: The Weakest Link? Seaborne Trade and the Maritime Regime in the Asia Pacific (Apr 2004)
- No. 12: Maritime Knowledge and Awareness: Basic Foundations of Maritime Security (Dec 2007)
- No. 13: Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific (July 2008)
- No. 16: Safety and Security of Offshore Oil and Gas Installations (Jan 2011)
- Forthcoming: Maritime CBMs, Trust & Managing Incidents at Sea\
- Forthcoming: Safety and Security of Vital Undersea Communications Infrastructure