

**USCSCAP Workshop on
Maritime Security and the Marine Environment
Honolulu, Hawaii – March 30, 2015
Workshop Report**

The US Committee of the Council for Security Cooperation in the Asia Pacific (USCSCAP) sponsored a workshop in Honolulu, Hawaii on March 30, 2015 to examine the relationship between maritime security and the marine environment in the Asia Pacific. It brought together 54 participants from throughout the Asia-Pacific region and beyond, including many who were attending an ASEAN Regional Forum (ARF) Inter-Sessional Meeting on Maritime Security, the following two days at the Asia-Pacific Center for Security Studies in Honolulu. Participants examined the global regimes associated with preservation of the marine environment, regional environmental protection programs and their role in promoting cooperation, the role of maritime disaster response and programs to preserve living resources in building confidence and trust, and the general impact of programs to promote good order at sea on maritime security in the Asia-Pacific region. Throughout the discussion, participants were asked to focus on recommendations for improving functional cooperation as a means for enhancing adherence to the global regimes and implementing them.

Session 1: Global Regimes for the Preservation of Marine Resources

The first session of the workshop focused on the role of global regimes (e.g., UN Convention on the Law of the Sea, UN Conference on the Environment and Development, Convention on Biodiversity, Code of Conduct of Responsible Fisheries) in promoting cooperation in marine environmental protection, the preservation of marine living resources, and the exploitation of other marine resources. In his [presentation](#) Hao Duy Phan (*Centre for International Law, National University of Singapore*) provided an overview of the major legal obligations of states along with potential gaps in the regimes and challenges associated with implementing them. Citing the important roles played by the International Maritime Organization in the development of regimes on limiting pollution, the United Nations Environmental Program and the Fisheries and Aquaculture Organization in the development of environmental preservation regimes, and the far-reaching influence of the UN Convention on the Law of the Sea (UNCLOS), Hao described the steady progress since the 1950s that has led to the current general obligations to prevent pollution and preserve the marine environment. He also highlighted the specific obligations of each state to cause no trans-boundary harm to other states or beyond its own jurisdiction in the exploitation of marine resources, to conduct environmental impact assessments on projects that are likely to affect the marine environment or biological diversity, and to notify other states of impending damage to the marine environment. In fulfilling these obligations, states have the duty to cooperate with neighboring states and to adopt a precautionary approach in their activities in the marine environment.

Despite efforts to preserve the marine environment, serious gaps remain largely due to the lack of national and regional action to prevent pollution and to ensure sustainability of resources and biodiversity beyond national jurisdiction. Phan noted that these gaps are caused by several factors including the reluctance of states to accede to key treaties and conventions, a lack of capacity to implement preservation and sustainability measures, and the lack of coordination and

overlapping responsibilities at both the national and regional level. Overcoming these shortcomings will require better adherence to the global regimes, enhanced coordination at both the national and regional level, and more effective monitoring of compliance with established standards.

Wang Hanling (*Center for Ocean Affairs and the Law of the Sea, Chinese Academy of Social Sciences*) [highlighted](#) the role of UNCLOS in providing the general framework for the principles that guide preservation of the marine environment. However, the lack of specific guidelines and concrete measures to ensure regional cooperation has led to a situation where fragile marine ecosystems have been damaged, many species are endangered, and biodiversity is being threatened. One of the unfortunate and unintended consequences of UNCLOS is that different interpretations of the principles of and requirements in the convention have led to conflicts among member states over maritime delimitations, navigation through straits, and military activity in Exclusive Economic Zones.

Improving the existing regimes would require that all states in the region accede to them; the creation of additional operational guidelines and procedures; strengthening international maritime law enforcement cooperation; increased joint resource development; and eliminating obstacles to international cooperation. To achieve these goals, an ecosystem approach to resource management and environmental preservation is a necessary first step since the key shortcoming centers around the difficulty in managing the ecosystem on the margins of national maritime borders and beyond. Creating and strengthening regional regimes to deal with emerging transnational threats and to promote better cooperation in exploiting resources in the maritime spaces is a fundamental requirement.

Several discussants agreed with both presenters that there is a failure to fully implement existing regime and that more action is needed at the regional level. It was suggested that the ARF should encourage all member states to accede to the regimes and that a study should be undertaken to assess the risks and vulnerabilities associated with the lack of full implementation in the region. This study could determine why states are not implementing or ratifying the regimes, assess how other regions of the world are addressing the UNCLOS requirements to promote regional cooperation in preserving the marine environment, examine the potential for overlap among regional guidance contained in global regimes, and determine where capacity is needed to address shortfalls. Using a risk-based approach using marine ecosystems as the unit of measure would help focus on common risks and shared vulnerabilities, creating a basis for developing mutually beneficial solutions. The key challenges facing states in the region are not the gaps in the regimes, but the lack of political will to cooperating to better manage maritime spaces.

Session 2: Regional Marine Environmental Protection Programs

In session two, attention shifted to two regional environmental protection programs in the Asia-Pacific – the Partnerships in the Environmental Management for the Seas of East Asia (PEMSEA) and the Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI-CFF) – and their role in promoting cooperation to protect environmental resources. Both of these programs are successfully implementing integrated coastal management programs in East Asia, Southeast Asia, and parts of Melanesia despite the lack of a broader legal framework governing

the activity. By taking a practical approach and focusing on functional cooperation at the local level, these programs have been able to integrate the requirements of the global marine preservation and biodiversity regimes and foster regional cooperation based on criteria established by technical working groups rather than by mandates established by a multilateral organization. It can be argued that these programs have succeeded despite the lack of a formal regional cooperation mechanism by focusing on developing sustainable resource systems based on integrated coastal management systems, working through a network of local communities and leveraging expertise provided by non-governmental partners.

In his [presentation](#), Adrian Ross (*PEMSEA*) explained that PEMSEA was established in 1993 to focus on marine pollution prevention and management and expanded in 2003 when 14 countries agreed to a broader focus on establishing a sustainable development strategy for the seas of East Asia (SDS-SEA). Since then PEMSEA has become a recognized international organization focused on coastal and ocean governance in East Asia. The SDS-SEA is a collaborative platform for implementing commitments contained in the legal regimes to protect, sustain, and develop the marine environment. By framing coastal management challenges and opportunities through a sustainable development prism and expanding the scope of its projects, PEMSEA has been able to expand the amount of coastline under active management to 12 percent by the end of 2013 with a target of 20 percent by the end of 2015. Functionally, the scaling up of the integrated coastal management (ICM) program has resulted in enhanced disaster risk reduction and management; increased biodiversity and fisheries protection; and improved water supply, pollution reduction, and waste management in priority watershed areas. The ICM approach has proven to be an effective contributor at the local, national, and regional level to both marine environmental preservation and the development of the blue economy in East Asia.

Alan White (*The Nature Conservancy*) [provided](#) an overview of the CTI-CFF. Launched in 2009, the program was established in response to the threats of marine environmental degradation and resource depletion in the area that includes the 5.7 million square kilometers of ocean extending from the maritime boundaries of the Philippines in the north, to the Solomon Islands in the east, to Indonesia in the south, to Malaysia in the west. The broad goal of the program is to apply an ecosystem approach to managing priority seascapes in the region by establishing and managing designated marine protected areas (MPAs). A key to success is a robust planning process among the six member states that promotes effective regional collaboration and a measurement system to evaluate progress on the environmental preservation and biodiversity objectives. By establishing incentives and tailoring solutions to local community needs, the program has been able to share expertise among participant countries and establish a shared information management system that systematically tracks progress in local initiatives.

The discussion highlighted the fact that both programs are heavily focused on practical approaches to marine environmental preservation and biodiversity. While governance issues are important, by focusing on functional issues the programs have generated cooperation on the specific requirements, relying on non-governmental agencies to provide technical support to ensure effective implementation. By using technical working groups to establish criteria for standards and compliance, both programs have avoided the problems associated with reaching agreement within a particular regional organization before proceeding with local initiatives. This model has reduced tension while promoting a sense of “win-win” among participant countries

while promoting regional cooperation. In this context, it was also noted that PEMSEA has emerged as the recognized coordinator for several regional programs including its cooperation with the UN Development Program, World Bank, and other regional preservation and biodiversity programs.

Session 3: Marine Environmental Protection, Disaster Response, and Confidence Building

One of the fundamental principles of the ARF has been the need to build confidence among member states through cooperation on common security concerns such as disaster response and preservation of living resources. In session three, the group examined the practical application of this principle by examining the extent to which states in the region have been able to develop cooperative approaches to maritime disaster response and to the preservation of living resources.

Lee Cordner (*Indo-Pacific Governance Research Centre, School of History and Politics, University of Adelaide*) began with a [presentation](#) on regional mechanisms for disaster response in the Asia-Pacific, noting that many countries had yet to sign several legal instruments covering search and rescue, maritime pollution, oil spills, and dumping. Offering a brief review of the major disaster response operations that have been undertaken in a region that is very prone to natural disasters, Cordner noted that past responses have demonstrated a noticeable lack of regional coordination, although there has been some improvement in recent years following the completion of the 2005 ASEAN Agreement on Disaster Management and Emergency Response, the establishment of the ASEAN Humanitarian Assistance Center, and the development of regional disaster response plans and procedures. He attributed the slow progress in improving regional cooperation to a general lack of trust among states in the region as well a lack of capacity to both respond and to absorb outside assistance in many Southeast Asian countries. However, with the increased activity in the maritime spaces, there is an urgent requirement to improve response capabilities in the region.

Nguyen Thi Lan Anh (*Diplomatic Academy of Vietnam*) followed with her [observations](#) on opportunities for regional cooperation to conserve living maritime resources in the Asia Pacific. Noting that exploitation of marine resources has been politicized, Nguyen highlighted two initiatives that have sought to promote cooperation. The ASEAN Fisheries Consultative Forum was established to promote and improve the sustainable utilization of the living aquatic resources through the proper management and development of the fisheries and fishing operations undertaking several projects to harmonize national and regional standards, promote private-public partnerships, and prevent and control illegal, unreported and unregulated (IUU) fishing. The APEC Ocean and Fisheries Working Group was formed in 2011, following a decision to merge the former Marine Resource Conservation and Fisheries Working Groups. The group has focused on developing a common regional approach to resource conservation, information sharing, capacity building, sustainable fishing practices, and prevention of IUU fishing.

While these programs have raised awareness, developed regional standards, built capacity to improve management of living resources, and harmonized policy approaches, it is likely that there are several areas that can be improved. Nguyen argued that at this stage of development it would be beneficial is to study the achievements of the cooperative arrangements that have been undertaken and to conduct a joint survey to ensure all parties are talking about the same issues.

She also argued that it would be beneficial to promote cooperation at the operational level by establishing procedural rules and contingency planning to articulate behavior standards for fishing associations and fisheries monitoring forces, and to establish mechanisms for sharing information among fishermen and fisheries monitoring forces. The fundamental principle is that there is a need for a common regional approach to ensure effective monitoring and enforcement.

Following the presentations, the discussion highlighted the fact that despite the cooperation exhibited in the area of humanitarian assistance and disaster relief, there remains a serious trust deficit in the region. The proliferation of coordination centers and the lack of common definitions and operating procedures have led to confusion about responsibilities and uncertainty about the capacity to deal with maritime disasters in the region. More generally, it was acknowledged by several discussants that the key to moving forward in both maritime disaster management and in managing the region's fisheries is functional cooperation that is governed by commonly agreed upon standards and operating procedures. The expressed hope is that that type of cooperation will eventually lead to the development of trust among states with a stake in ensuring a peaceful and stable security environment.

Session 4: Promoting Good Order at Sea

The final session expanded on the theme of the perceived trust deficit in the region and examined the role of promoting good order at sea in building confidence among states in the Asia-Pacific region. Jim Boutilier (*Maritime Forces Pacific, Royal Canadian Navy*) began the session by [offering](#) the perspective that good order at sea underpins the modern economic system which is based on massive maritime trade flows between Asia and the rest of the world. However, the security order in the Asia Pacific is challenged by both transnational crimes such as piracy and sea robbery as well as territorial disputes, which have strained relations among countries with competing claims. This is partly attributable to the lack of coherent security architecture in the region, which was fragmented, and as noted in the previous session, marked by a number of overlapping organizations and initiatives. There has been some degree of cooperation in response to the increase in sea piracy with the establishment of joint maritime patrols, multinational military exercises, and improved situational awareness. Efforts to mitigate the territorial disputes through cooperative arrangements have been less successful. In this context, the East China Sea Peace Initiative was seen as a modest attempt that has been largely ignored by both China and Japan, and the Declaration on the Conduct of Parties in the South China Sea was characterized as a failure given the broad disregard during the past decade as states have not adhered to the principle of not changing the status quo in regard to existing land features.

Martin Sebastian (*Maritime Institute of Malaysia*) [argued](#) that an ecosystem strategy was needed to create the conditions needed to ensure good order at sea. In other words, good order at sea is contingent on good governance on land and requires a whole-of-nation approach to ensure the state's authority to deter and suppress illicit activity extends from land to the sea. This holistic approach provides for shared information and ensures that the principle of good order extends from the land to maritime boundaries; regional cooperation is required to extend good order beyond territorial waters.

At the regional level, cooperation occurs between military forces through transparency and trust building initiatives such as the Western Pacific Naval Symposium and the recently established Code for Unplanned Encounters at Sea (CUES). Other good order at sea initiatives such as the provisions for the safety of shipping and cooperating in response to illegal activity or search and rescue are also important for building trust among civilian and military forces operating in regional waters.

In the discussion, several commentators noted positive developments in promoting good order at sea through regional cooperation. First, it was noted that although CUES is voluntary and clearly a first step in reducing the likelihood of miscommunication among military vessels. Hopefully, it will serve as impetus to build more such mechanisms that will eventually include civilian law enforcement vessels since much of the risk of confrontation is among these types of vessels. Second, the importance of multilateral mechanisms such as the North Pacific Coast Guard Forum was highlighted. The basis for much of the forum's success has been the ability of member countries to identify specific arrangements among agencies that are focused on capabilities and capacities of all members and by taking advantage of other's capabilities to build a stronger framework for cooperative action. Another commentator argued that even though the aspirations contained in the DOC regarding regional cooperation had not been realized, several important provisions continued to serve as the basis for increased trust among littoral states.

Others, however, felt that these positive developments were outweighed by more negative trends, with some arguing that the failure of the DOC needed to be openly acknowledged. More specifically, there has been a failure among claimants "to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner." Accordingly, it was argued that claimants should be challenged to return to the *status quo ante* (i.e., pre-2002 conditions) to demonstrate their commitment to the DOC. Some assessed that the lack of common understanding of rules and standards led to the disorder while other suggested that the problem was a lack of effective enforcement mechanisms like a binding code of conduct to prevent violations of existing legal requirements.

In concluding remarks, it was noted that a common theme of the workshop was the lack of trust among states in the Asia Pacific region. Without increased trust, it will be very difficult for states to find ways to sustain cooperation. Instead, much of the success discussed during the workshop centered on functional cooperation among local communities where the commitment to collective action to sustain commercial interests and preserve ecosystems seemed to work best. While this makes for a rather dismal outlook for success by regional organizations, it does suggest that there is political will at the local level to move forward using an ecosystem approach.

Key findings from this meeting are as follows:

- Based on the existing global regimes governing maritime spaces, all states have a general obligation to prevent pollution and preserve the marine environment. In meeting these obligations they are required to avoid causing trans-boundary harm, to conduct environmental

impact assessments, and notify other states in the event of damage in the process of exploiting marine resources. States also have a general obligation to cooperate with neighboring states and adopt a precautionary approach to exploiting marine resources.

- Gaps in the global regimes occur largely through the lack of implementation guidance associated with principles contained in the global regimes. The key challenge is not in the gaps themselves but in the lack of national and regional implementation mechanisms.

- Most of the global regimes associated with preservation of the marine environment have been in place for decades, yet many states have not acceded to or ratified several key regimes. The ARF should encourage all member states to implement the regimes and a study should be undertaken to assess the risks and vulnerabilities associated with the lack of implementation. A study could determine why states are not implementing/ratifying the regimes, assess how other regions are addressing the requirements to promote regional cooperation in preserving the marine environment, examine the potential for overlap among regional organizations implement guidance contained in global regimes, and determine where capacity is needed to address shortfalls.

- The Partnerships in Environmental Management of Seas in East Asia (PEMSEA) and the Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI-CFF) are both successfully implementing integrated coastal management programs in East Asia, Southeast Asia, and parts of Melanesia despite the lack of a broader legal framework. By taking a practical approach and focusing on functional cooperation at the local level, these programs have been able to integrate the requirements of the global marine preservation and biodiversity regimes into their programs and foster regional cooperation based on criteria established by technical working groups.

- The Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI-CFF) has facilitated the development of a regional marine protected area system framework and action plan which has involved extensive regional cooperation among the six CT countries. Enabling factors in this process have been a regional information sharing program to track progress (www.ctatlas.reefbase.org) and strategic technical assistance provided through CT partner organizations. It provides a model for future cooperative regimes.

- The increased number of disasters in East Asia has led to some improvement in regional cooperation in responding to maritime disasters, but there remains a general lack of trust among states in the region, preventing fully effective regional marine disaster response capabilities.

- Several states in East Asia have not acceded to or ratified key maritime disaster response regimes. As a result, there is a general lack of coherence and standardization in disaster response efforts to maritime incidents in East Asia. A key to improving this situation is for all responders to have common definitions and operating procedures.

- The proliferation of humanitarian assistance and disaster response centers in East Asia, while positive on the surface, has created uncertainty regarding the responsibilities of each and the relationships among the various centers.

- Initiatives undertaken by the ASEAN Fisheries Consultative Forum and the APEC Ocean and Fisheries Working Group have led to better cooperation among regional states in improving sustainable utilization of living aquatic resources despite the lack of a regional mandate. Given these successes, a stocktaking of their achievements is necessary and specific action should be taken to promote regional cooperation at the operational level.
- A common theme throughout the discussion was the lack of trust among states in East Asia. While the causes for this lack of trust are difficult to assess, it is a key impediment to developing effective cooperative mechanisms in all areas of cooperation.
- Some participants viewed the recent activity in the South China Sea as evidence that the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) had failed to achieve its stated goal to “enhance favorable conditions for a peaceful and durable solution of differences and disputes among countries concerned.”
- More specifically, there has been a failure among claimants “to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.” Claimants should be challenged to return to the *status quo ante* (i.e., pre-2002 conditions) to demonstrate their commitment to the DOC.
- The increased tension created by maritime territorial disputes has created new tensions and has led to a general sense that good order at sea among military and civilian maritime forces has suffered as a result and made mechanisms like the Code for Unplanned Encounters at Sea (CUES) more important. While CUES provides useful guidelines, it is still voluntary, applies primarily to navies and not coast guards, and does not deal with air activities. More work needs to be done to operationalize and expand CUES.
- An ecosystem approach to good order at sea is needed, recognizing that good order at sea is directly related to good governance on land. This approach requires a whole of nation approach to ensure that government, private enterprise, and nongovernmental organizations work together to address maritime security threats.
- Various CSCAP maritime cooperation working groups have developed and forwarded to CSCAP and ARF co-chairs numerous memoranda with concrete proposals for promoting good order at sea and related maritime issues. These are summarized on the attachment that follows. A more detailed summary of the challenges and recommendations from the USCSCAP meeting is also provided as food for thought; it is not a consensus statement or series of official CSCAP recommendations but is offered to stimulate conversation.

For more information, please contact the authors Ralph Cossa [RACPacForum@cs.com] or Carl Baker [carl@pacforum.org]. These findings reflect the view of the authors; this is not a consensus document. A full summary of the workshop proceedings will be available upon request shortly.