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Capacity Building for Maritime Security Cooperation: What Are We Talking About?

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Abstract

This paper discusses the notions of "maritime security" and "capacity building" in the context of capacity building for maritime security cooperation in the Asia-Pacific. What constitutes capacity for providing maritime security at the national, sub-regional and regional levels? What capabilities does a country require to ensure its security against maritime threats, including the threat of maritime terrorism and the risk that its maritime transportation system may be used for terrorist purposes? How do all these capabilities fit together to provide security against both conventional and non-conventional threats? Can we put capabilities for conventional (or traditional) security threats into one box and then those for non-conventional (or non-traditional) threats in another? Are we also talking about maritime safety? What is the relationship between the different concepts of maritime security? Conventional and comprehensive? Traditional and non-traditional? National and domestic?

Keywords

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CAPACITY BUILDING FOR MARITIME SECURITY COOPERATION: WHAT ARE WE TALKING ABOUT?

Sam Bateman

Introduction

This paper discusses the notions of “maritime security” and “capacity building” in the context of capacity building for maritime security cooperation in the Asia-Pacific. What constitutes capacity for providing maritime security at the national, sub-regional and regional levels? What capabilities does a country require to ensure its security against maritime threats, including the threat of maritime terrorism and the risk that its maritime transportation system may be used for terrorist purposes? How do all these capabilities fit together to provide security against both conventional and non-conventional threats? Can we put capabilities for conventional (or traditional) security threats into one box and then those for non-conventional (or non-traditional) threats in another? Are we also talking about maritime safety? What is the relationship between the different concepts of maritime security? Conventional and comprehensive? Traditional and non-traditional? National and domestic?

Current Situation

At present the region lacks effective arrangements and the necessary capacity to provide for the safety and security of shipping and seaborne trade and to maintain law and order at sea generally. Current weaknesses include: lack of political and social will; lack of maritime awareness; ineffective arrangements for maritime jurisdiction and enforcement; differing interpretations of the Law of the Sea; weak regional participation in relevant international legal instruments; and lack of capacity to implement appropriate measures to ensure maritime security. These weaknesses occur both at a national level and at a regional level.

At a national level, many countries in the region lack the capacity to provide adequate security in waters under their national jurisdiction and to implement international standards for ship and port security, especially the International Ship and Port Facility Security (ISPS) Code. New international measures for ocean security are generally optimised for developed countries and challenge the capacity of developing countries that may have other priorities of poverty alleviation and development. The latter countries face a particular difficulty with implementing the legal regimes that have been developed at an international level. The old adage of international environmental management: “think globally, act regionally” applies here. This reflects the thought that with maritime security as with many other areas of international regime building, the global thinking has largely been done and the challenge now is to apply these principles at the regional and national levels. It is not hard to come up with good ideas on what needs to be done at a global level but it is much harder making these ideas work at a regional and national level.

At a regional level, the region lacks established procedures and frameworks for information exchange and for operational coordination to provide both maritime security and maritime safety. Bilateral sensitivities continue to inhibit cooperation between the maritime security forces of neighbouring countries and there is a lack of established arrangements for cooperation both between neighbouring countries and between the coastal States and the so-called “user” States whose ships and trade pass through the waters under the jurisdiction of the coastal States. Capacity building at the regional level requires cooperation and coordination, and talk and dialogue between regional countries. Thus capacity-building initiatives might also be seen as maritime confidence and security building measures (MCSBMs).

Regional Developments

The notion of capacity building for maritime security cooperation is not new in the region. The Japan Coast Guard (JCG) has been extremely active in recent years with capacity-building, particularly in Southeast Asia, with maritime training and exercises with regional maritime security forces. The JCG also offers training for foreign personnel at its training

institutions in Japan; is assisting both Malaysia and Indonesia with developing national coast guard forces; and has hosted Port Security Seminars in Southeast Asian countries in order to assist with the implementation of the International Ship and Port Facility Security (ISPS) Code which came into effect on 1 July 2004.

The JCG has taken a leading role with the development of the Asia Maritime Security Initiative 2004 (AMARSECTIVE 2004) agreed at a meeting of the Heads of Asian Coast Guards in Tokyo in June 2004¹ and the more recently agreed Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).² All ASEAN nations, Japan, China, Korea, India, Bangladesh and Sri Lanka are working under ReCAAP to set up an information network and a cooperation regime to prevent piracy and armed robbery against ships in the regional waters. ReCAAP is a very significant achievement for the region that provides the basis for regional cooperation to counter piracy and armed robbery against ships. It includes an authoritative definition of “armed robbery against ships”³ and provides for the establishment of an Information Sharing Centre (ISC) to be located in Singapore.

The Asia-Pacific Economic Cooperation (APEC) forum has taken a number of capacity building initiatives for maritime security. In February 2003, APEC Senior Officials endorsed a Counter Terrorism Action Plan (CTAP). This lists specific objectives and expected outputs by APEC economies to secure cargoes, to protect people in transit, to secure ships engaged in international voyages, to ensure the security of international aviation, to halt the financing of terrorism, to enhance cyber security, to

1 ‘Coastguards Adopt Amarsective 2004’, *The Star* online, 28 June 2004.

2 ‘Asian Nations Band to Fight Piracy’, *The Straits Times (Singapore)* online, 13 November 2004.

3 ReCAAP Article 1(2) states that “For the purposes of this Agreement, “armed robbery against ships” means any of the following acts:

(a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party’s jurisdiction over such offences;

(b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”⁵

secure energy supplies and to protect the health of APEC communities.⁴ The CTAP recognises that capacity building and the assessment of needs are essential to its successful implementation. It encourages all APEC members to both identify their capacity building needs and outline what expertise they can offer other APEC members in the area of capacity building.

The Secure Trade in the Asia-Pacific Region (STAR) initiative developed by APEC provides for the protection of ships and cargoes; promotes the introduction of ship and port security plans; provides for the accreditation of seafarer manning agencies in the region; promotes cooperation on fighting piracy; sets standards for ship borne detection equipment and technology; and pays particular attention to energy security including the security of sea lines of communication (SLOCs). The first STAR conference held in Bangkok in February 2003 cited the need to strengthen the institutional capacity of governments as essential to the success of the program.

Maritime security is mainly handled in APEC through the Transportation Working Group (TPTWG) and the Maritime Security Experts Group. The latter group's discussion at the 24th TPTWG held in Bangkok, 16-20 August 2004, included discussion of the training under the ISPS Code and the capacity building needs of APEC economies in the maritime security arena. Earlier, the APEC High Level Meeting in Maritime Security Cooperation held in Manila, 8-9 September 2003, had drawn up an indicative list of capacity-building needs of APEC economies related to the implementation of maritime security measures and agreed to present this to international financial institutions. At the recent APEC Summit held in Santiago, Chile, President Bush and six other leaders launched the ISPS Code Implementation Assistance Program to assist fellow APEC members in complying with the ISPS Code through technical assistance and grants, which will be provided beginning in 2005.⁵

4 Asia-Pacific Economic Cooperation (APEC), Submission to United Nations Counter Terrorism Committee Meeting, Washington, 7 October 2003 (dated 18/09/2003). Available at <www.apec.org>

5 'Fact Sheet: U.S. Actions on the APEC Leaders' Meeting: Ensuring Security, Promoting Prosperity', *Washington File*, Office of the Press Secretary, The White House, 21 November 2004.

The Regional Maritime Security Initiative (RMSI) launched by the United States of America earlier this year is another regional development that has significant capacity building implications. It arose from a U.S. concern that the littoral states adjacent to the Malacca and Singapore Straits lacked the capacity to provide sufficient security for the shipping and seaborne trade passing through those straits. It postulated some involvement of the U.S. in providing that security but mainly due to sensitivities of sovereignty on the part of Malaysia and Indonesia in particular, it was not well received in the region at least initially. Major elements of the RMSI include increased situational awareness, information sharing, a decision-making architecture and interagency cooperation.⁶ These are fundamental elements of the regional capacity to provide for the security of shipping passing through the Malacca Strait.

Maritime Security

Events of 9/11 and subsequent perceptions of a terrorist threat to shipping and seaborne trade have forced a reappraisal of what we mean by “maritime security”. It has a traditional meaning for navies and defence forces which have the role of protecting the nation and its national maritime interests⁷ against traditional threats. These threats are usually of a military nature and formulated on the basis of strategic assessments and appreciations of the regional security environment. They recognise a government’s first responsibility to provide for the security and well being of its citizens, including the protection of national sovereignty, both territory and people.

As well as direct national maritime security interests such as protection of sovereignty, offshore resources and shipping, a country has shared interests with its neighbours. These include maintenance of a stable maritime environment that will prevent threats arising and prevent the proliferation of weapons of mass destruction (WMD).

6 ADM Tom Fargo USN, Commander, US Pacific Command, Address to MLOPS Conference in Victoria, British Columbia, 3 May 2004, 3-5. Available at <<http://www.pacom.mil/speeches/sst2004/040503milops.shtml>>

7 The national maritime interests of a country include shipping and seaborne trade, marine resources, protection of sovereignty (including sovereignty over offshore territory), law and order at sea and protection and preservation of the marine environment.

Nations have to talk about and agree on issues such as the principles of the law of the sea, the prevention of marine pollution, the conservation of fish stocks, the safety and security of shipping, and the delimitation of maritime boundaries. In implementing policies on these issues, nations have to take into account the interests and rights of their neighbours, as well as those of other countries, who legitimately send ships into and through their waters. Failure to address these issues on a cooperative basis fundamentally inhibits the development of a stable maritime security environment in the region.

The concept of maritime security has expanded following 9/11. It is still about protecting the security and well being of its citizens but instead of overt threats from military forces, the threats of concern are veiled and perhaps even “unthinkable”. This new focus for maritime security is apparent in the work of the International Maritime Organization (IMO) and other international organizations concerned with making international shipping and seaborne trade more secure against the threat of maritime terrorism. This is not what naval officers and militaries think about when they talk of “maritime security”. This is not *their* business. Conferences and meetings are held these days on “maritime security” and there is hardly a naval officer in sight.⁸ Navies see their business as protecting the nation beyond its shores and are not necessarily involved with the security of port facilities or ships in port. These activities are regarded as civil policing responsibilities and the task of marine police or the coast guard.

Concepts of Maritime Security

What is the interface (if any) between the traditional concept of maritime security and the new concept evident in with the ISPS Code and the focus on securing shipping and seaborne trade from the threat of terrorism? Navies have always been involved with the protection of shipping and clearly would provide the top end of the response capability in the event of an actual terrorist threat or the threat of such an attack. The Baltic and International Maritime Council (BIMCO) uses the term “maritime security” to cover the risks associated with drug smuggling, piracy, and

⁸ Such as the APEC High Level Meeting in Maritime Security Cooperation held in Manila, 8-9 September 2003.

armed robbery against ships, stowaways, migrant smuggling and the threat of terrorism.⁹ These are all activities that involve the criminal abuse of the maritime transportation system and might involve delays and disruption to the movements of commercial shipping. They relate to the meaning of “security” in commercial law that has to do with instruments that affect the performance of a contract.

In criticising the U.S. Government’s management of Homeland Security, Stephen Flynn, a former U.S. Coast Guard officer and Homeland Security activist, has argued that “[p]art of the problem is that Washington continues to treat domestic and national security as distinguishable from one another”.¹⁰ Similarly, he noted that “[i]n the case of the U.S. Navy, until recently, this desire to stay out of the homeland defense business even applied to safeguarding its own fleet within U.S. ports”.¹¹ Thus Flynn claims that the Pentagon has distinguished between “homeland defense” and “homeland security” and has assigned itself the role of dealing with threats that emanate only from outside the U.S.¹² This distinction between domestic security (homeland security) and national security (or homeland defense) is instructive in helping us to understand the concept of maritime security that we might adopt in the Study Group.

National security is equated with protecting the nation beyond its shores – or what might be seen normally as national defence – while domestic security refers to what takes place on land – the hardening of critical infrastructure, personnel identity documentation for people working on ships and in ports, and arrangements for port security both on the land side (perimeter fencing, access controls, etc) and on the waterside with channel security and waterborne security patrols of the port area. Domestic security is not a concern of our CSCAP Study Group

9 Ove Tvedt, ‘Drug Trafficking, Refugees, and Illegal Immigrants’ in Proshanto K. Mukherjee, Maximo Q. Mejia Jr., and Gotthard M. Gauci (eds.), *Maritime Violence and other Security Issues at Sea*, Proceedings of the Symposium on Maritime Violence and other Security Issues at Sea (Malmo, Sweden, World Maritime University, 2002), 167.

10 Stephen Flynn, *America the Vulnerable- How our Government is Failing to Protect Us from Terrorism*, (New York, Harper Collins Publishers in cooperation with the Council on Foreign Relations, 2004), 50.

11 Ibid. 39.

12 Ibid. 214.

except for the technical cooperation that might be involved in assisting some countries to build their capacity to provide domestic security.

Border protection is a major dimension of national security. This involves both protecting against the maritime transportation system being used to import terrorist materials, including possible WMD, or other illicit materials, such as drug, arms and even human beings, as well as surveillance, patrols and response at sea to protect sovereignty, to prevent illegal entry of people or goods and to enforce national laws against crimes at sea.

A distinction might be made between “surveillance”, “patrol” and “response”. Surveillance is most effectively undertaken by aircraft but satellites and land-based radars systems might also be used, such as the Marine Electronic Highway (MEH) in the Malacca Strait. Consideration also has to be given to surveillance and identification systems for developing maritime situational awareness and for long range identification and tracking (LRIT) of vessels, including the use of automatic identification systems (AIS). Patrols might be conducted by both ship and aircraft and are mainly for deterrence purposes by demonstrating a physical presence in an area of interest although they also ensure that the means are available in the area to identify a suspicious target that has been detected by other means. Response invariably requires a surface ship to board and if necessary detain a suspicious vessel.

The enforcement of national laws at sea is conducted within the framework of domestic law and international law obligations. These are often referred to as “constabulary operations” and may be conducted by a coast guard, as well as by conventional naval forces. Crimes at sea might be defined as “a criminal offence connected to the sea or to ships”.¹³ They are frequently transnational in nature with more than one national jurisdiction involved. There are many offences that might fall within this definition and constitute a breakdown in law and order at sea. Relevant offences might comprise piracy, maritime terrorism, drug trafficking, human smuggling, illegal fishing, and offences against the marine environment (e.g. ship-sourced marine pollution). “Maritime violence” is another term used in the current international environment

13 CSCAP Memorandum No.5 – Cooperation for Law and Order at Sea.

where it is often difficult to make precise distinctions between different types of crimes at sea (particularly piracy and maritime terrorism). Thus the Model National Law on Acts of Piracy or Maritime Violence developed in the IMO includes a very comprehensive definition of what constitutes “maritime violence”.¹⁴

Considerations of national and domestic security also invite consideration of supply chain security. The container transport chain is a massively complex system with numerous players including the shipper, transport operators, specialized terminals and handling facilities, and freight integrators. Terrorists targeting the container transport chain might use one of two approaches: they might intercept a legitimate consignment and tamper with it (the “hijack” scenario) or develop a legitimate trading identity to ship an illegitimate and dangerous consignment (the “Trojan horse” scenario).

Most of the attention with ensuring the security of the supply chain has so far focused on the intermediate stages in the chain, the port terminals and the ships. Concern is now shifting to the inland carriers and freight integrators operating in the first few and last few links of the chain. These represent more of a security risk than their larger counterparts further down the chain (i.e. the terminal operators and shipping managers). These are issues which are being addressed by APEC and other regional forums. The CSCAP Study Group has a potential contribution to make to supply chain security through its regional dimensions and the possibility of helping to promote supply chain security at the regional level through cooperation and dialogue.

Safety and Security

There is a close relationship between maritime safety and maritime security. While a distinction between the two meanings is apparent in English, in some languages they may almost be synonymous.¹⁵ In the past it was normal in the shipping sector to make a distinction between safety and security. The 1974 International Convention for the Safety of

14 Maximo Quibranza Mejia Jr, ‘Defining Maritime Violence and Maritime Security’, in Mukherjee et al., *Maritime Violence and other Security Issues at Sea*, 36

15 Ibid. p.28.

Life at Sea (SOLAS Convention), for example, related to safety at sea¹⁶ while the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), and its Protocol related to offshore installations, were concerned with security at sea. However, this has all changed following 9/11 and safety and security have now become “inextricably linked”.¹⁷ Chapter XI of the SOLAS Convention has been retitled “Special measures to enhance maritime safety and security” and Part II of this chapter is entitled “Special measures to enhance maritime security”.

Maritime security in this context has been defined as “those measures employed by owners, operators and administrators of vessels, port facilities, offshore installations, and other marine organizations or establishments to protect against seizure, sabotage, piracy, pilferage, annoyance or surprise”.¹⁸ On the other hand, a definition of maritime safety might be “those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations, and other marine organizations or establishments to prevent or minimize the occurrence of mishaps or incidents at sea that may be caused by substandard ships, unqualified crew, or operator error”.¹⁹

Safety and security are not mutually exclusive. Maritime safety is part of comprehensive security and includes: maritime safety services (including search and rescue, rescue coordination centres and maritime safety communications); marine environmental protection (especially the prevention of and response to ship-sourced marine pollution); marine navigational aids and services; ship and personnel safety services (e.g., marine surveys, Port State Control, marine accident investigations, marine qualifications and identity documentation); and hydrographic surveying.

16 The SOLAS Convention is generally regarded as the most important of all international treaties dealing with the safety of merchant ships. The main objective of the Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety.

17 William O'Neill, 'Safety and Security Now Inextricably Linked', *IMO News*, 4 (2001), 4.

18 Mejia, 'Defining Maritime Violence and Maritime Security', 28.

19 *Ibid.*

Summary

The dimensions of comprehensive (i.e. both traditional and non-traditional) maritime security where the CSCAP Study Group might be able to contribute comprise the following activities:

- the maintenance of law and order at sea in the region, including the suppression and prevention of piracy, maritime terrorism, drug trafficking, human smuggling and ship-sourced marine pollution;
- the security and safety of international shipping and seaborne trade passing through the region;
- the provision of maritime safety services, including search and rescue operations, mitigation of natural hazards, disaster relief, rescue coordination centres, weather reporting, marine navigational aids and services and maritime safety communications;
- marine environmental protection, particularly the prevention of and response to ship-sourced marine pollution;
- maritime surveillance and information sharing, including the development of regional situational awareness; and
- regional cooperation, particularly through training and education programs and the promotion of maritime awareness, to promote supply chain security and assist countries with their domestic security arrangements.

Capacity Building

Capacity at a national level includes the ability to provide adequate protection for maritime infrastructure (ports and port facilities), security in waters under national jurisdiction and border protection, as well as the ability to implement new international standards in ship security, cargo and port security, and seafarers' documentation and to discharge the country's responsibilities as a flag State.²⁰ Capacity at the sub-regional and regional levels will include arrangements for cooperation

²⁰ Much of the breakdown in law and order at sea can be traced to the fact that some flag States are not discharging their responsibility in accordance with Article 94 of UNCLOS for vessels flying their flags when they commit offences at sea. This is the case for virtually all categories of maritime crime, but particularly illegal fishing, drug and arms trafficking, offences against the environment and human smuggling.

and coordination of maritime security arrangements, information exchange, and cooperative training and education, as well as the development of protocols and systems to facilitate such arrangements.

Developing countries in particular face considerable difficulties in developing their capacity to provide maritime security. A formal description of the process of capacity building may be found in Chapter 37 of Agenda 21.²¹ Although this description relates to capacity for managing and protecting the marine environment and its resources, it might also be usefully extended to capacity building for maritime security:

Specifically, capacity-building encompasses the country's human, scientific, technological, organisational, institutional and resource capabilities. A fundamental goal of capacity-building is to enhance the ability to evaluate and address the crucial questions related to policy choices and modes of implementation among development options, based on an understanding of environmental potentials and limits and of needs as perceived by the people of the country concerned.²²

Capacity-building in developing countries requires cooperation between these countries and relevant international organisations, regional associations and with developed countries, as well as among the developing countries themselves. The aim of this process is to enhance the capacities of developing countries in the areas of data and information, scientific and technological means and human resource development. Capacity is usually regarded as including at least three elements: human resources, institutions and enabling environment. It is much more than simply training. Chapter 37 of Agenda 21 goes on to note that:

Technical cooperation, including that related to technology transfer and know-how, encompasses the whole range of

21 UN Conference on Environment and Development (UNCED), Agenda 21 (Rio de Janeiro, 3-14 June 1992), Chapter 17: Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources.

22 *Ibid.*, paragraph 37.1.

activities to develop or strengthen individual and group capacities and capabilities.

The remainder of this section provides an overview of the capacity required for maritime security at both a national and regional levels, along with considerations in determining how the particular capacity should be developed.

Capacity Required at a National Level

Institutional Arrangements

- Public sector departments and agencies responsible for developing and implementing policy for all dimensions of maritime security and maritime safety with the avoidance of duplication and clear specification of responsibilities.
- Maritime security forces and law enforcement agencies (possibly also with capabilities for marine search and rescue). Again this is an area where duplication should be avoided. It makes no sense to have ships and aircraft of different agencies patrolling in the one area but for different purposes. Maritime security forces should have a cross-sectoral role.
- Arrangements for the collection, analysis and dissemination of intelligence and for the determination of risk assessments related to maritime security threats.
- National (and State or Provincial) Maritime Security Committee or Maritime Security Task Force that brings together policy and operational agencies and intelligence services;
 - might also be required at a State or Provincial level;
 - might also have Intelligence and Technology sub-committees.
- Information centres (e.g. national focal points, regional coordinating centres, maritime rescue coordination centres, information sharing centre).
- Arrangements for cooperation between the public and private sectors related to maritime safety and security.

Legal Frameworks

- Legislation and regulations for maritime security that should:
 - identify entities with the legal authority to carry out investigations, arrests, and similar enforcement activities;
 - establish jurisdiction over offences to address penalties establishing procedures for national and multilateral cooperation;
 - strengthen criminal proceedings and extradition proceedings; and strengthen prosecution procedures.
- Memorandums of understanding (MOUs) or other agreements for mutual support and cooperation among maritime safety and security agencies.

Resources

- National capabilities (ships, aircraft and systems, perhaps including land-based radars, AIS interrogation systems and surveillance satellites) for maritime surveillance, patrol and response in waters under national jurisdiction, as well as in the approaches to those waters.
- Personnel with the appropriate education and training.
- New technologies to provide situational awareness in adjacent maritime areas and to improve security in ports.
- Financial resources, including where appropriate, assistance from international financial institutions.

Capacity Required at a Regional Level

Institutional Arrangements

- Identify, strengthen and enhance existing cooperation among national focal points of contact.
- Arrangements at a regional and/or sub-regional level for information collection and exchange.
- Border control arrangements between neighbouring countries covering common measures with respect to certain activities that

might occur at sea within the vicinity of their maritime boundaries and cross those boundaries.

- Heads of Asian Coast Guard Agencies Meetings that build cooperative relations among agencies and share information on maritime security in the Asian region. The “Heads of “Coast Guard Agencies” means “heads or acting-heads” of “authorities responsible for conducting law enforcement activities of anti-piracy and armed robbery against ships and other unlawful acts at sea, including maritime terrorism, when within their charter and/or providing assistance to persons and/or ships in distress at sea as a result of such attacks”.²³
- Western Pacific Naval Symposium (WPNS) that brings together the navies of the Western Pacific. The last WPNS was held in Singapore in November 2004 and considered the possibility of regional security exercises.
- The ReCAAP ICS in Singapore will be an important facility for the collection and analysis of data on piracy and armed robbery against ships.
- A monitoring and surveillance regime for building up a regional picture of the incidence of operational ship pollution, as well as the processing of evidence to obtain a successful prosecution.

Legal Frameworks

- Multilateral or bilateral legal arrangements that facilitate apprehension, investigation, hot pursuit, prosecution and extradition, exchange of witnesses, sharing of evidence, inquiry, seizure and forfeiture of the proceeds of maritime crime.
- Maritime boundary agreements - regional States should move expeditiously to resolve existing boundary disputes to ensure that maritime jurisdiction might properly be exercised in the applicable zones. If boundaries cannot be resolved, countries should be prepared to enter into some form of provisional arrangements for maritime

²³ AMARSECTIVE 2004 adopted at the Heads of Asian Coast Guard Agencies’ Meeting on 18 June 2004 in Tokyo. Heads of Agencies attended from Bangladesh, Brunei, Cambodia, China, Hong Kong China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, Philippines, Republic of Korea, Singapore, Sri Lanka, Thailand, and Vietnam.

security in the disputed area without prejudice to their positions in the boundary negotiations.

- Memorandums of Understanding (MOUs) or other agreements between neighbouring countries covering border controls and coordinated sea patrols. As a further development, neighbouring countries might agree to enforcement of each other's laws, rules and regulations in each other's jurisdiction. The Treaty of Niue, for example, provides a reciprocal enforcement regime for Pacific island countries.
- Border control arrangements between neighbouring countries might include the countries agreeing to common measures with respect to certain activities that might occur at sea within the vicinity of their maritime boundaries and cross those boundaries.
- Harmonization as far as possible of national maritime laws and regulations.
- Technical cooperation to promote understanding and compliance with international obligations.
- Consideration might be given to the conclusion of bilateral protocols between neighbouring countries that are parties to the Convention relating to Intervention on the High Seas in Cases of Oil Pollution Damage to extend the Convention to their exclusive economic zones (EEZs). This would facilitate mitigation of the effects of ship-sourced marine pollution.
- Regional protocols on flag State responsibilities might be possible, as well as efforts to encourage regional States to ratify the UN Convention on Conditions for Registration of Ships. Reciprocal ship boarding aspects might be covered by a series of bilateral treaties or a multilateral treaty under the auspices of the major convention granting States reciprocal rights of investigation automatically without the need to seek permission from the flag State.
- Common agreement on the application of high seas enforcement principles in the EEZ in respect of offences other than those related to resources and the environment.

Resources

- Training Programs - enhanced cooperation and coordination in law enforcement and intelligence sharing with piracy and armed robbery at sea activities and other transnational crimes.
- Potential cooperative activities with combating marine pollution include the development of common operating and reporting procedures, training for enforcement professionals, increasing awareness of legal process and obligations, development of enforcement guidelines and collaborative research to identify *high risk* areas.
- Procedures for information sharing and dissemination to provide maritime situational awareness at the regional level. Specific areas of cooperation might include:
 - an internet-accessible regional data-base of national legislation dealing with maritime security;
 - an regional register of vessels that spans national and international laws;
 - a web page of information and data related to law and order at sea in the region. This might include, for example, details of cooperative arrangements, status of relevant conventions and similar instruments.
- Procedures for coordinated response at the tactical and operational levels.
- Financial resources obtained by loans from international financial institutions and contributions from contracting Governments. The principle of “burden sharing” should be adopted between user States and coastal States adjacent to areas of high shipping density where maritime security threats are deemed to be higher.

Navies versus Coast Guards

In establishing capacity at a national level, consideration needs to be given to the relative roles of navies and coast guards. The core role of a navy is to conduct military operations at sea in defence of national security. This war fighting role and the capabilities it requires fundamentally underpin the ability of a navy to conduct constabulary

operations or other activities at sea in accordance with foreign and domestic policy.²⁴ Nonetheless, many of the world's navies "are not blue-water, power-projection, sea-control navies – rather regional navies that also enforce laws, protect resources, conduct search and rescue, prevent environmental damage, and maintain aids to navigation".²⁵ But on the other hand, major navies might be reluctant to become involved in policing against non-traditional security threats. As Flynn has described it, "the reality is that our old national security dogs are having a difficult time learning new tricks" and "senior officers reflexively protest that they are warriors, not cops, and have steadfastly resisted anything that looks like domestic law enforcement".²⁶

Some countries might now prefer to use their coast guards in implementing maritime security regimes. Coast guard vessels may be more suitable than warships for employment in sensitive areas where there are conflicting claims to maritime jurisdiction and/or political tensions between parties. Regional coast guards are expanding rapidly.²⁷ Bangladesh, the Philippines and Vietnam have all established coast guards and China, Malaysia and Indonesia are following suit. The anti-piracy operations by the JCG in Southeast Asian waters demonstrate the use of coast guards as instruments of foreign policy. Similarly, the JCG has been handling the operational side of Japan's involvement in the Proliferation Security Initiative (PSI) rather than the Japanese Maritime Self-Defense Force (JMSDF).

There are a number of reasons for establishing a separate coast guard. Legal considerations are major ones. A coast guard should be a para-military organisation. Its officers must have the ability to enforce national maritime laws with wide powers of arrest over both foreigners and national citizens but in many countries, there are constitutional and

24 According to the eminent British strategic thinker, Ken Booth, modern navies have three functions: diplomatic, constabulary and military. Ken Booth, *Navies and Foreign Policy* (London, Croom Helm, 1977), 15-16.

25 Vice Admiral James Loy USCG and Captain Bruce Stubbs USCG, 'Exporting Coast Guard Expertise', *USN Institute Proceedings*, May 1997, 56.

26 Flynn, *America the Vulnerable*, 39

27 For a discussion of the development and expansion of coast guards in the region see Sam Bateman, 'Coast Guards: New Forces for Regional Order and Security', *Asia Pacific Issues: Analysis from the East-West Center No.65* (Honolulu, East-West Center, January 2003).

political reasons why military forces should not be involved in policing duties against national citizens.²⁸ In the U.S. for example, the military is constrained by the principle of *posse comitatus*.²⁹

Coast guard units are also more suitable than warships for employment in sensitive areas where there are conflicting claims to maritime jurisdiction and/or political tensions between parties. In such situations, the arrest of a foreign vessel by a warship may be regarded as highly provocative whereas arrest by a coast guard vessel may be accepted as a legitimate law enforcement measure. It signals that the arresting party views the incident as relatively minor. A basic clash also exists between the military ethos of applying maximum available force to resolve a situation and that of law enforcement, which is more circumspect and usually involves minimum force. Lastly, there is the issue of costs with coast guard vessels and aircraft generally being less expensive than naval units. Furthermore, in developing countries the civil nature of the coast guard's role may support access to funding from international aid agencies to acquire new vessels.³⁰

Legal Frameworks

Developing countries face particular problems with determining whether to ratify particular conventions. In the field of maritime security and safety, the articulation and enactment of sound and effective legislation is extremely important. There are numerous areas of deficiency with regard to the state of ratification of conventions dealing with the marine environment, maritime safety and pollution from ships. These conventions are not considered to be self-executing.

28 Hugh Smith, 'The Use of Armed Forces in Law Enforcement', in Doug MacKinnon and Dick Sherwood (eds.), *Policing Australia's Offshore Zones – Problems and Prospects*, (Wollongong Papers on Maritime Policy No.9, Centre for Maritime Policy, University of Wollongong, 1997), 74-97.

29 The Posse Comitatus Act in the United States embodies the traditional American principle of separating civilian and military authority and prohibits the use of the military in civilian law enforcement.

30 An example of this process is the acquisition by the Philippines Coast Guard of two large (56m length overall) "search and rescue vessels" that are clearly patrol vessels in every respect other than name. Bill Beecham, 'San Juan' and 'Don Emilio', *Asia Pacific Shipping*, 1:4 (January 2001), 18.

States face a significant task in reviewing their position with regard to the various IMO conventions to determine whether it is in their interest to become parties to them. Furthermore, a number of countries which, although having ratified these conventions, have not given domestic effect to them. There appears to be a need for greater attention to these conventions, enhanced legal education and better domestic legislation. The intellectual capacity to redress these problems has not necessarily been established yet in many developing countries and there is scope for cooperation to assist in building the required skills and expertise.

A particular legal framework issue arises from the fact that that the ISPS Code applies only to so-called "SOLAS ships" i.e. commercial ships over 500 gross tonnage that are employed on international voyages. Unless extended by national legislation³¹, it does not apply to fishing vessels, ships under 500 gross tonnage, or to merchant ships employed only in domestic trade. The number of vessels to which the ISPS code does not apply is particularly large in East Asia where there are large fishing fleets, many smaller trading vessels, and big domestic commercial fleets, particularly in China, Japan, Indonesia and the Philippines. Countries need to consider the feasibility of extending the ISPS code to "non-SOLAS" ships.

Conclusions

The paper has explored the relationship in general terms between these different concepts of maritime security and the implications for navies, coast guards, national maritime administrations and so on. Generally it would seem that the new security challenges require greater flexibility and pose some challenges for established divisions of responsibility. These might lead to counter-productive battles between agencies on issues of "turf".

What does this all mean for our CSCAP Study Group? Where can CSCAP value add to the activities that are already happening in the region? In the past the CSCAP Maritime Cooperation Working Group has taken a comprehensive view of maritime security but we should now

31 The Maritime Transport Security Act (Commonwealth) 2003 in Australia, for example, extends ISPS provisions to all ships employed on interstate but not to ones employed on intrastate voyages.

refine that view somewhat. We should embrace both comprehensive and non-traditional security. Our concept of maritime security should cover the threats of piracy, terrorism, trafficking in drugs, arms or humans and some types of environmental threat, particularly ship-sourced marine pollution. It should include cooperative aspects of maritime safety and of national security (such as joint and coordinated patrols and cooperative approaches to surveillance and situational awareness), as well as cooperative measures to prevent the maritime transportation system being used for illegal purposes.

Capacity-building should occur at all levels (national, sub regional, regional, and international). It should cover the development of organizational, operational, legal, and human resources capabilities. There is a fundamental need for technical cooperation on maritime security. Developed countries need to assist less developed ones with building their capacity to deal with maritime security threats. This is not at the "sharp end" with the better equipped countries sending their own forces to patrol in high threat areas but rather through assistance with training and resources to build up local infrastructure, establish systems and procedures, and train personnel.

The countries in need of assistance must feel that they are still retaining control over waters under their sovereignty and that they have some influence over the process of maritime regime building through their collective bargaining weight. Perhaps an *ad hoc* workshop of like-minded countries might be useful with identifying issues of common concern and a possible way ahead. Indonesia with its expertise in law of the sea and its experience with coordinating the South China Sea Workshops may be well placed to take a leading role. Multidisciplinary and multinational education and training in maritime affairs conducted at a regional level would make an important contribution to building regional maritime awareness and an appreciation of the benefits of a collective regime. Maritime awareness is generally lacking in the region at present but is fundamental to the implementation of an effective maritime security regime.