THE SEARCH FOR MARITIME SECURITY IN THE ASIA PACIFIC: SOME IMPORTANT QUESTIONS

INTRODUCTION

Tensions have risen in recent months in both the South China Sea and the East Sea. The search for confidence building measures that will reduce the prospect of an incident in the maritime commons escalating to conflict is engaging several track one and track two forums in the Asia Pacific region. New Zealand is an active member of five of these forums: the ASEAN Regional Forum Inter-Sessional Meeting (ARF ISM) on Maritime Security; The ASEAN Defence Ministers Plus (ADMM+) Expert Working Group on Maritime Security, which New Zealand will co-chair with Brunei from 2014; the CSCAP Study Group on Maritime Security, which New Zealand currently co-chairs with Singapore and Indonesia; the Expanded ASEAN Maritime Forum (EAMF); and the Western Pacific Naval Symposium (WPNS).

As a maritime nation reliant on the uninterrupted flow of traffic in the maritime commons for its continued prosperity, New Zealand has a strong interest in achieving outcomes from these forums that promote good order at sea. The aim of this paper is to consider some salient questions that will promote regional confidence in the maritime domain.

IS THIS THE TIME TO SEEK A REGIONAL INCIDENTS-AT-SEA AGREEMENT?

The short answer is no or at least not yet. The idea of a regional incidents-at-sea agreement modelled on various bilateral agreements between some members of the Asia Pacific community, has been mooted in some of the recent literature on maritime security issues in the region. The United States-Soviet Union Incidents-At-Sea Agreement concluded in 1972 to reduce the risk of conflict at sea between their navies (since replaced by an equivalent United States-Russia Agreement), has been cited as a precedent that could be adopted regionally. Russia has also concluded agreements

with Japan and with the Republic of Korea. Malaysia and Indonesia have concluded an agreement known as MALINDO that, while not an incidents-at-sea agreement, comprises a set of guidelines for safety procedures in the event of unplanned naval encounters.

As Sam Bateman explains in a February 2013 blog, entitled *Managing Incidents at Sea*, featured in *The Strategist*, negotiations on a regional agreement 'would open up different views about the rights of other states to conduct military activities in an EEZ without permission of the coastal state. The US regards these rights as part of customary freedoms of navigation and over-flight while China adopts the opposing view, along with Malaysia and Thailand'. (Indonesia could also be added to that list.) Bateman notes that all three countries have regulations restricting the right of other countries to conduct military activities in their EEZ.

A regional agreement can only succeed if it is embraced by all the major maritime nations in the Asia Pacific. China is yet to conclude any bilateral incidents-at-sea agreements. There is a Military Maritime Consultative Agreement between China and the United States, but this falls well short of an incidents-at-sea agreement, which to date neither China nor the United States appears to favour. It is difficult to envisage China embracing the idea of a regional agreement until it is willing to enter into, and has gained experience in implementing, bilateral arrangements.

ARE THERE OTHER CONFIDENCE BUILDING MEASURES?

There are alternative means of building confidence. Work being done by the Western Pacific Naval Symposium (WPNS) offers a way forward. The WPNS brings together Navy Chiefs from the region, including the US, China, Japan, the ROK, India, Australia, New Zealand and all of the ASEAN's except for Myanmar and landlocked Laos, to discuss maritime security issues, and engage in practical cooperation. In 1999, the WPNS promulgated a Code for Unalerted Encounters at Sea known as CUES. The aim of this Code is to "offer safety measures and a means to limit mutual interference and uncertainty and facilitate communication when naval and public ships, submarines or aircraft make contact".

The emphasis in CUES on communication is particularly important as standards of English comprehension in the region still vary considerably. (As in the air, English is the international language of the sea.) The Code includes provisions for "good seamanship", such as procedures to avoid

collisions and actions that could be misconstrued. It is not an international agreement or treaty and is not therefore binding under international law. As the WPNS is yet formally to endorse CUES, observance of its procedures is voluntary. The WPNS decided in 2012 to work towards the formal adoption of a revised Code at the WPNS meeting, which China will chair, to be held in Beijing in 2014.

At the November 2012 meeting of the ASEAN Defence Ministers Plus Expert Working Group (EWG) on maritime security, Australia proposed that some technical aspects of CUES and other codes of conduct could be used by the EWG for the purpose of developing basic Terms of Reference for the EWG's Fleet Training Exercise hosted by Australia in September 2013. The RNZN took part in this exercise. The EWG also agreed that some technical aspects of CUES relating to communications and interactions at sea to keep operations safe could be adopted in the development of an operational Terms of Reference.

The further development of CUES as a regional instrument that could be formally adopted to codify safety measures at sea would be a significant and timely step forward. Attention could then turn to developing standardized procedures that could be exercised bilaterally and multilaterally.

In his February 2013 blog, Sam Bateman also notes that a study group set up several years ago by the Japan Ocean Policy Research Foundation developed draft guidelines in the form of broad principles, for navigation and over-flight in Exclusive Economic Zones to lessen the risk of incidents in these Zones. It was hoped that this work could serve as a valuable confidence-building measure, but the guidelines are yet to be endorsed by any regional organisation, possibly because of references to military and intelligence gathering activities. Further work is now underway to revise the draft guidelines with the aim of gaining support in one or more of the region's various maritime security forums.

WHAT ABOUT HOTLINES?

Taking this idea a step further, perhaps a subset of the Western Pacific Naval Symposium could convene to focus on incident prevention and incident mitigation in the South China Sea. One very useful outcome, which such a group might promote, could be the development of bilateral hotlines, including at the operational level between Navies and Coast Guards, with the

aim of preventing a minor incident escalating to something more serious. That could in due course lead to the evolution of multilateral hotlines.

There has been some welcome progress in 2013 in the development of bilateral hotlines. China and Viet Nam have agreed to set up a hotline to resolve fishing incidents in disputed South China Sea waters, and Viet Nam and the Philippines have established a hotline between their respective Coast Guard Headquarters to share information on incidents at sea and on a range of trans-national crimes.

China and the United States established a hotline several years earlier, but the principal lesson to be learned from that experience is that hotlines will have little utility unless both parties have a clear understanding as to their purpose and their limitations. In a presentation to the Australia-hosted August 2013 *Conference on Maritime Confidence Building Measures in the South China Sea*, Captain Justin Jones RAN noted that "China has viewed the hotline as a method of providing forewarning of naval and military activities. The United States perceives the hotline as a means of resolving concerns."

IS THERE A ROLE FOR A PAN-REGIONAL COAST GUARD FORUM?

Definitely. The formal adoption of CUES by the WPNS, while very welcome, would not address incidents involving Coast Guard vessels. The North Pacific Coast Guard Forum established in 2000 has a membership that includes Canada, China, Japan, Korea, Russia and the United States. The Forum has had some success in documenting best practices among Coast Guards in areas of maritime security, fisheries enforcement, illegal migration and drug trafficking. It has a web-based information exchange system, and has published a manual for combined operations. A number of bilateral and multilateral operations and exercises have been conducted under the auspices of this Forum focussing on key issues related to maritime security including marine safety, environmental protection, drug interdiction, migrant interdiction and piracy.

South East Asia does not have an equivalent forum and existing regional information sharing centres do not have a mandate to provide a platform to improve awareness and communication across the full spectrum of activities encompassed by the North Pacific Forum. Yet many of this region's Coast Guards have maritime security roles including in the contested waters of the South China Sea.

One solution would be to expand the North Pacific Forum to include the South-east Asian region. This could provide a region-wide framework with the aim of building confidence through professional-level interaction and regular dialogue between those operating paramilitary ships. An expanded forum could consider the application of elements of CUES to Coast Guard operations in the South China Sea. A second option would be to widen the membership of the annual meeting of the Heads of Asian Coast Guard Agencies and to encourage a more proactive agenda that includes the range of cooperative activities being undertaken by the North Pacific Forum along with the adoption of CUES.

HOW CAN REGIONAL MARITIME DOMAIN AWARENESS BE IMPROVED?

Progress has been made in recent years in developing maritime information management arrangements at both national and regional levels, but cooperation between national and regional centres needs work. The establishment of the International Fusion Centre (IFC) at Changi, Singapore in April 2009 was an important step forward in promoting collective awareness of trans-boundary maritime security threats. Its centre-piece is the Regional Maritime Information Exchange System known as ReMIX. This system is a Western Pacific Naval Symposium initiative to share security-related information. The Centre was established to serve as a regional maritime information hub, to enhance maritime situational awareness, and to act as an early warning system.

Sixteen countries now contribute Liaison Officers to the Centre. Participation includes all of the ASEAN nations (except for Myanmar, which is now considering membership, and land-locked Laos), Australia, New Zealand, the United States, India, Canada, the United Kingdom, France, Chile and Peru. China also intends to deploy a Liaison Officer. The Centre has established operational linkages with 62 agencies in 32 countries.

The Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia, (ReCAAP) also has an Information Sharing Centre. It was formally recognised as an international organisation in 2007. Like the IFC it, too, is headquartered in Singapore, ReCAAP promotes information sharing, and capacity building arrangements to enhance regional cooperation to combat maritime piracy and armed robbery. Information sharing takes place through a secure web-based Information Network System. ReCAAP is now working closely with the Changi Centre on piracy-related information and capacity-building efforts and is engaging with the local shipping industry. A

Standard Operating Procedure was recently signed between the two Centres on joint cooperation.

China, Korea, Japan and India are all members of ReCAAP as are eight of the ten ASEAN's – Malaysia and Indonesia being the notable exceptions. Australia acceded to the ReCAAP Agreement in August 2013 and the United States has announced its intention to do so. Several European countries also participate as do Sri Lanka and Bangladesh. ReCAAP is viewed by the International Maritime Organisation as a model of inter-governmental cooperation to counter piracy that other regions could very usefully emulate. It is already reaching out to organisations in other regions to provide support and advice on combating piracy.

The challenge now is to further institutionalise mechanisms for maritime security cooperation. Collin Koh, an associate research fellow at the S. Rajaratnam School of International Studies, in a paper published on 17 May 2013, entitled *"Pan-ASEAN Maritime Security Cooperation: Prospects for Pooling Resources"*, suggests that ASEAN could look to arrangements in the Baltic Sea as an example of an incremental approach towards the goal of institutionalisation. He is referring to the multilateral Sea Surveillance Cooperation Baltic Sea (SUCBAS) agreement. This agreement "comprises graduated levels of information sharing amongst national authorities – both military and civilian". Importantly given strong sensitivities over sovereignty issues in the Asia Pacific region, the agreement does not prejudice member states national sovereignty over data considered to be sensitive for sharing".

Koh also cites the example of FRONTEX, which conducts regular joint maritime border control and surveillance operations in European, Atlantic and Mediterranean waters, as another model that ASEAN could consider. SUCBAS and FRONTEX, he suggests, demonstrate how pragmatic multilateral arrangements can be used "effectively to tackle trans-boundary challenges on the one hand while preserving national sovereignty on the other". The Asia Pacific region needs to strengthen and grow existing initiatives like the Changi Fusion Centre and ReCAAP, by drawing on working examples of cooperation in other regions such as SUCBAS and FRONTEX.
There is another effective regional counter-piracy coordinating arrangement that could also serve as a very useful model for growing RECAAP. In 2008, several countries taking part in counter-piracy operations in the Indian Ocean formed a voluntary mechanism called Shared Awareness and De-confliction (SHADE). Its utility lies in coordinating and de-conflicting counter-piracy activities in order to maximise the benefits from this successful

counter-piracy mission, but without sacrificing national identity. Both China and the United States participate in SHADE as do several other Asia Pacific states. A recent United States Naval War College study notes that "willingness on the part of independent navies, China's in particular, to synchronise their anti-piracy operations with Western forces within the SHADE mechanism is an historic achievement for twenty-first century maritime commons governance".

Consideration might be given to a counterpart mechanism for the maritime region covered by RECAAP. Ideally, it should not be limited to counter-piracy operations important as they are. RECAAP does not cover other forms of illegal activity at sea. A wider mandate to include all trans-national maritime crimes and establish mechanisms for the security of the numerous offshore oil and gas facilities would fill this significant void.

There are useful, practical examples of coordinated patrolling already taking place in South-east Asian waters. India and Thailand conduct coordinated border patrols, as do India and Indonesia, which coordinate patrols along the maritime boundaries of the Andaman and Nicobar islands, while Malaysia, Singapore, Thailand and Indonesia conduct coordinated sea and air patrols of the key Malacca Strait waterway.

There would also be merit in following up the suggestion put forward during the ARF's Inter-sessional meeting on maritime security held in Seoul in April 2013, to further develop a Chinese proposal (adopted by the ARF in 2001) to establish an ARF Regional Maritime Information Centre. China has established a web-site which is managed by its National Marine Data and information Service. The aim is to share information and intelligence among ARF participants, but it has yet to realise its full potential.

An inclusive, cooperative, regional maritime domain awareness arrangement should be able to alert contributing countries to possible trouble before it happens or at the very least as soon as it has happened. As Geoffrey Till, Visiting Professor, at the S.Rajaratnam School of International Studies' Maritime Security Programme, points out in the School's May-June edition of *Broader Horizons*, the invasion of Sabah in March 2013 by a large group of Philippines political activists might not have caught the Malaysian and the Philippines governments by surprise were such an arrangement in place.

CAN SEARCH AND RESCUE (SAR) COOPERATION BE IMPROVED?

The 1979 International Convention on Maritime Search and Rescue entered into force in 1985, establishing an international system for SAR operations. The Convention emphasised cooperation between neighbouring SAR organisations. Search and rescue regions were subsequently established including in South-east Asia. A subsequent revision to the Convention gave greater emphasis to a regional approach to search and rescue operations.

There have been discussions between ASEAN and China about SAR cooperation, some limited table-top exercises, and a workshop was held in June 2013 on strengthening SAR cooperation in the South China Sea. But the region is far from achieving a harmonised approach to SAR capability.

Recent developments in the South Pacific provide a useful pointer to achieving a regional approach. At a June 2013 maritime SAR workshop, Pacific Island delegates committed to accelerate acceptance of a non-binding arrangement to promote cooperation in SAR matters among 24 Pacific Island countries and territories. The Secretariat of the Pacific Community is coordinating the development of the arrangement in collaboration with SAR authorities in Australia, New Zealand, the United States and France.

A non-binding regional arrangement that facilitated preparations for a response to a major SAR emergency in the South China Sea would be a significant and very practical confidence-building measure. Regional exercises simulating a major emergency and involving all parties with interests in the South China Sea would be a further means of developing the habit of maritime cooperation.

Unfortunately, four ASEAN countries are yet to ratify the 1979 SAR Convention. Their reluctance possibly reflects the considerable infrastructure demands the Convention places on those who ratify, but more likely the awkward fact that SAR region boundaries do not align with national maritime boundaries. And there remains the problem of disputed waters. Nevertheless, the willingness of ASEAN and China to discuss how cooperation might be achieved is a welcome development.

WHY IS THE SECURITY OF SUBMARINE CABLES AN ISSUE?

Submarine cables are the backbone of the international telecommunications network. They are essential to the world's banking and financial systems, email systems, and defence communications. Yet little attention has been paid by the international community to ensuring their security. The

possibility of deliberate disruption is real. Since 2007, there have been three separate incidents in South-east Asian waters involving attacks on or interference with submarine cables. Robert Beckman of Singapore's Centre for International Law noted recently that when it comes to security, submarine cables are "international orphans". Submarine cable security is not addressed in the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation known as the SUA Convention. No UN body or specialised agency has primary responsibility for the regulation of submarine cables and they are not registered in any State.

While the United Nations Convention on the Law of the Sea provides that State Parties shall adopt laws and regulations to make damaging a cable either wilfully or through culpable negligence, a criminal offence, that provision is inadequate. Only a few States have enacted legislation to implement this provision and their legislation does not deal with acts by foreign terrorists outside the territorial sea. Beckman has proposed that all States designate a security agency to receive communications from the cable industry on cable breaks that may pose a security threat. He points out that in the Asia Pacific region only Australia and Singapore have done so.

International conventions make the intentional destruction of air and ship navigation facilities an international crime among contracting parties. Submarine cables should be considered to be just as important to the international community as civil aviation and maritime navigation. There is an urgent need as Beckman proposes for a similar convention to protect cables, and for States to amend their criminal laws to make it a crime intentionally to break a cable where that cable lands in their territory irrespective of where the actual criminal act takes place. It would also make good sense for Governments to share information about suspicious cable breaks.

CONCLUSION: WHAT ROLE CAN NEW ZEALAND PLAY?

Rising tensions in the South China Sea and the East Sea have highlighted the growing danger of incidents at sea arising from miscalculation with potentially serious complications for regional security. As noted earlier in this paper, several forums are now addressing maritime security issues including the ADMM Plus Maritime Security EWG; the ARF Maritime Security ISM; the re-invigorated CSCAP study group on maritime security; the symposiums involving practitioners such as WPNS and the Indian Ocean Naval Symposium; the Expanded ASEAN Maritime Forum; and the Network

of ASEAN Defence and Security Institutions known as NADI. It is thus a very crowded seascape, yet little progress has been made in tackling the key issues at a time when tensions have increased and regional countries are in the midst of a rapid expansion of naval capabilities.

The challenge now is to find the best way to proceed to build mutual confidence and cooperative behaviour, and to strengthen crisis management capabilities. There is also a need to make adequate legal provisions to tackle the largely ignored issue of intentional damage to submarine cables, which are now an integral part of critical infrastructure.

Given its co-chairmanship of the CSCAP maritime security study group, active participation in the ARF ISM on Maritime Security, longstanding participation in the WPNS and the imminent co-chairmanship of the ADMM Plus EWG on Maritime Security, New Zealand is well-placed to take a prominent role in promoting confidence building measures and the cooperation necessary to achieve good order at sea, and so lessen the risk of incidents in the maritime domain escalating to a conflict situation. New Zealand is also well-placed to build support for regional cooperation on measures to protect submarine cables, although as a matter of priority there is the important matter of enacting appropriate national legislation, and to follow Australia's and Singapore's footsteps by designating a national security agency to handle issues relating to submarine cable security.

New Zealand might also reconsider its position on accession to ReCAAP. It decided not to accede in 2011. This decision sits oddly given New Zealand's strong interest in maritime security and good order at sea, and its anti-piracy efforts in the Indian Ocean in recent years including several bilateral contributions with Singapore.

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