

PROMOTING REGIONAL MARITIME COOPERATION WITHOUT STRATEGIC TRUST

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BASIC QUESTION

How to implement maritime cooperation in East Asian seas for important activities, such as search and rescue, marine environment protection, maritime safety and fisheries management, despite the maritime conflicts and strategic distrust that prevents such cooperation?

OUTLINE

- Need for maritime cooperation
- Legal Status of Regional Seas
- Dimensions of Maritime Cooperation
- Current naval cooperation
- Current civil maritime cooperation
- Obstacles to Effective Cooperation
- Possible Way Ahead/Overcoming Distrust
- Conclusions

Need for Effective Cooperation

- Cooperation is both an obligation and a necessity
- Large Exclusive Economic Zones (EEZs)
- Obligation to cooperate in UNCLOS Part IX
- Shipping Traffic increasing
- Resources pressures (living and non-living)
 - ‘fish rich’ area
 - Offshore oil and gas
- Environmental degradation
- Avoiding a “tragedy of the commons” (a ‘lose-lose’ outcome)
- Good order at sea

Table 1 - Maritime Zones of East Asia

Country	Land Area	Maritime Zones	Maritime/Land
	(sq km)	(sq km)	Area Ratio
Japan	370,370	3,861,000	10.4
North Korea	121,730	129,650	1.1
South Korea	98,400	348,478	3.5
China	9,600,000	1,355,800	0.1
Taiwan	32,360	392,381	12.1
Philippines	300,000	1,891,247	6.3
Vietnam	332,556	722,337	2.2
Thailand	414,001	324,812	0.6
Malaysia	332,649	475,727	1.4
Singapore	588	343	0.6
Indonesia	1,904,342	5,409,981	2.8
Brunei	5,765	24,352	4.2
Cambodia	181,041	55,564	0.3

UNCLOS Article 122 - Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

UNCLOS Article 123 – Cooperation between bordering states

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

(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;

UNCLOS Article 123 (cont.)

(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

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

2002 Declaration on Conduct of Parties in the South China Sea (DOC) Cooperative Activities

- marine environmental protection;
- marine scientific research;
- safety of navigation and communication at sea;
- search and rescue operations; and
- combating national crime, including, but not limited to, trafficking in illegal drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The Dimensions of Maritime Cooperation

- naval cooperation - mainly for traditional maritime security
- civil maritime cooperation to manage regional seas and activities within them – including non-traditional security concerns
- Also joint activities (civil, military or both)

The Dimensions of Maritime Cooperation

Naval Cooperation	Either or Both	Civil Maritime Cooperation
<ul style="list-style-type: none"> • Ship Visits • Personnel Exchanges • Navy to Navy talks • Exercises • Joint doctrine • INCSEA Agreements • Transparency • “Hot Lines” • Standing Forces • Mine counter-measures • Peacekeeping • SLOC Protection • Submarine Safety 	<ul style="list-style-type: none"> • Marine safety • Marine scientific research • Search and rescue • Humanitarian assistance and disaster relief (HADR) • Data bases • Information exchange • Education & training • Maritime Surveillance • Law and order/piracy • Terrorism • Sovereignty/resources protection 	<ul style="list-style-type: none"> • Regional seas programs • Resource management (living & non-living) • Shipping & ports • Port state control • Environment protection • Joint development zones • Control of ship and land-sourced pollution • Ecologically sustainable development • Marine tourism • Public-private partnerships

Current Naval Cooperation

- Western Pacific Naval Symposium (WPNS)
 - exercises, including submarine safety
- Malacca Straits Patrols
- Singapore Information Fusion Centre (IFC)
 - Foreign liaison officers
- US sponsored naval exercises (e.g. SEACAT)
- US-Japan-India naval exercises
- Five Power Defence Arrangement (FPDA) maritime exercises
- Humanitarian Assistance and Disaster Relief operations and exercises

Current Civil Maritime Cooperation (1)

- UNEP Regional Seas Programs (COBSEA, NOWPAP and SPREP)
- Projects for Environmental Management of the Seas of East Asia (PEMSEA)
- Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) (focal points mainly civil)
- Heads of Asian Coast Guard Agencies (HACGA) meetings
 - Cooperation between regional coast guards
- APEC working groups
 - Xiamen Declaration on Oceans Cooperation

COBSEA



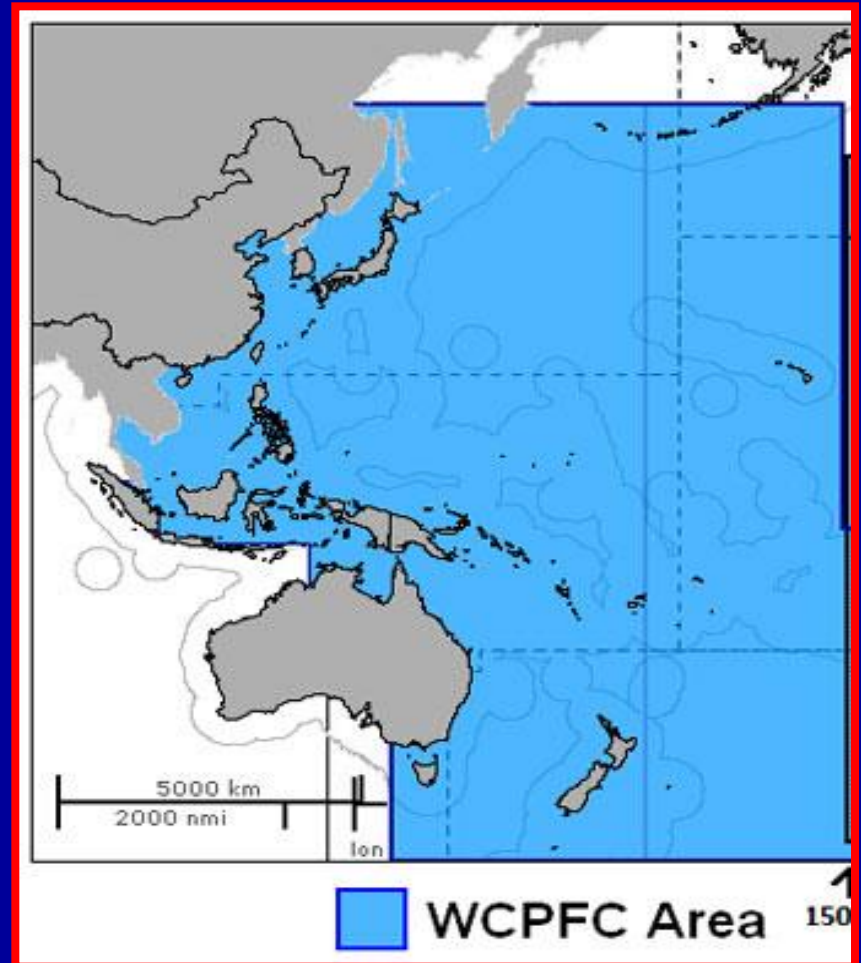
- Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the East Asian Seas Region (the East Asian Seas Action Plan) approved in 1981 - concerns for the effects and sources of marine pollution.
- 9 Participating countries – Cambodia, China, Indonesia, Malaysia, Philippines, ROK, Singapore, Thailand and Vietnam.

ReCAAP

- a governmental organisation (IMB PRC is private sector)
- 20 contracting parties with focal points mainly coast guard or civil maritime administrations
- collects data on piracy and sea robbery incidents in East and South Asia
- 4 categories of incidents (including petty theft)
- capacity building activities both regionally and elsewhere

Current Civil Maritime Cooperation (2)

- Fisheries – regional plan of action
- Western and Central Pacific Fisheries Commission
- Tokyo MOU on Port State Control
- ASEAN-China Maritime Cooperation Fund
- SAR exercises



Effective Cooperation lacking due to:

- Lack of trust between major powers and neighbours with sovereignty disputes ('lawfare')
 - 'securitising' civil maritime cooperation
- Lack of agreed maritime boundaries
 - no "fences in the sea"/straight-line boundaries
- Commitment to independence and sovereignty
- Lack of support for relevant international regimes (e.g. SAR , SUA, Fish Stocks)
- Lack of capacity, coordination and common interests
- Lack of strong political framework (ARF? EAS?)

KEY INTERNATIONAL CONVENTIONS FOR GOOD ORDER AT SEA (1)

- **UNCLOS** - provides the broad principles for oceans governance and the framework for other international regimes and treaties.
- **SOLAS** - the 1974 Safety of Life at Sea (SOLAS) Convention – deals with the safety and security of merchant ships, and includes the International Ship and Port Facility Security (ISPS) Code.
- **MARPOL** – the International Convention for the Prevention of Pollution from Ship prevents pollution of the marine environment by ships.
- **SAR** - the 1979 Convention on Maritime Search and Rescue (SAR Convention) encourages cooperation with regard to search and rescue operations at sea.

KEY INTERNATIONAL CONVENTIONS FOR GOOD ORDER AT SEA (2)

- **SUA** – 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), and Protocol covering offshore facilities, extends enforcement jurisdiction against acts of violence at sea beyond territorial limits.
- **SUA 2005** - the SUA 2005 Convention creates new measures related to maritime terrorism and shipment of WMD.
- **OPRC Convention 1990** – the OPRC Convention 1990 establishes measures for dealing with oil pollution incidents either nationally or in cooperation with other countries.
- **Fish Stocks Agreement 1995** - Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Status of Conventions and Agreements								
	UNCLOS	SOLAS	MARPOL	SAR	SUA 1988	SUA 2005	OPRC 1990	Fish Stocks
Brunei	X	X	X(a)		X			
Cambodia		X	X(a)					
China	X	X	X	X	X		X	
Indonesia	X	X	X(a)	X				X
Japan	X	X	X	X	X			X
Laos	X							
Malaysia	X	X(a)	X(a)				X	
Myanmar	X							
North Korea		X	X(a)					
Philippines	X	X(a)	X		X			
Russian Federation	X	X	X	X	X		X	X
Singapore	X	X	X	X	X		X	
South Korea	X	X	X	X	X		X	X
Thailand	X	X(a)	X(a)				X	
Vietnam	X	X	X(a)	X	X			

KEY QUESTIONS

- Have the “means” (i.e. boundary agreements and dispute resolution) become more important than the “ends” (i.e. effective management of regional seas)?
- Does effective maritime cooperation, including for ‘softer’ issues depend on trust or does cooperation help build trust (the ‘chicken and egg’ dilemma)?
- How do we build greater trust?

Action for dealing with regional maritime conflicts required at 2 levels:

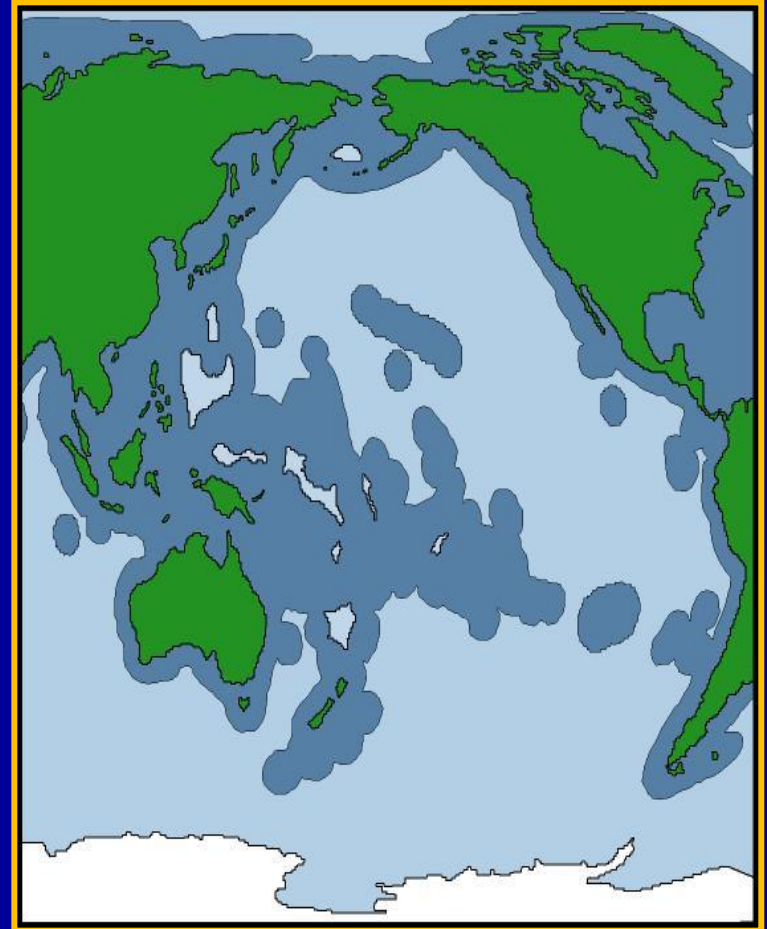
- Development of operational maritime confidence and security building measures (MCSBMs)
- Moves towards a more cooperative approach to managing the sea and its resources – how to promote cooperation without strategic trust?

MCSBM's

- Resolving different views of rights and duties in an EEZ
 - Principles for Building Confidence and Security in the Exclusive Economic Zones of the ASIA-PACIFIC
- Lower levels of naval cooperation (port visits, personnel exchanges, etc)
- Incident at Sea Agreements
 - Code for Unplanned Encounters between Ships (CUES)
 - US- China agreements on prior notice of major military activities and safety of air and maritime encounters
- Submarine proliferation – reduce risks of submarine incidents and enhance safety
- Demilitarising regional seas – using coast guards?

Rights and duties of States in an EEZ

- In exercising their rights and performing their duties in the EEZ, other States shall have due regard to the rights and duties of the coastal State
- Similarly in exercising its rights and duties, a coastal State shall have due regard to the rights and duties of other States
- But what is not having “due regard” – would regional guidelines be useful?



Principles for Building Confidence and Security in the Exclusive Economic Zones of the ASIA-PACIFIC

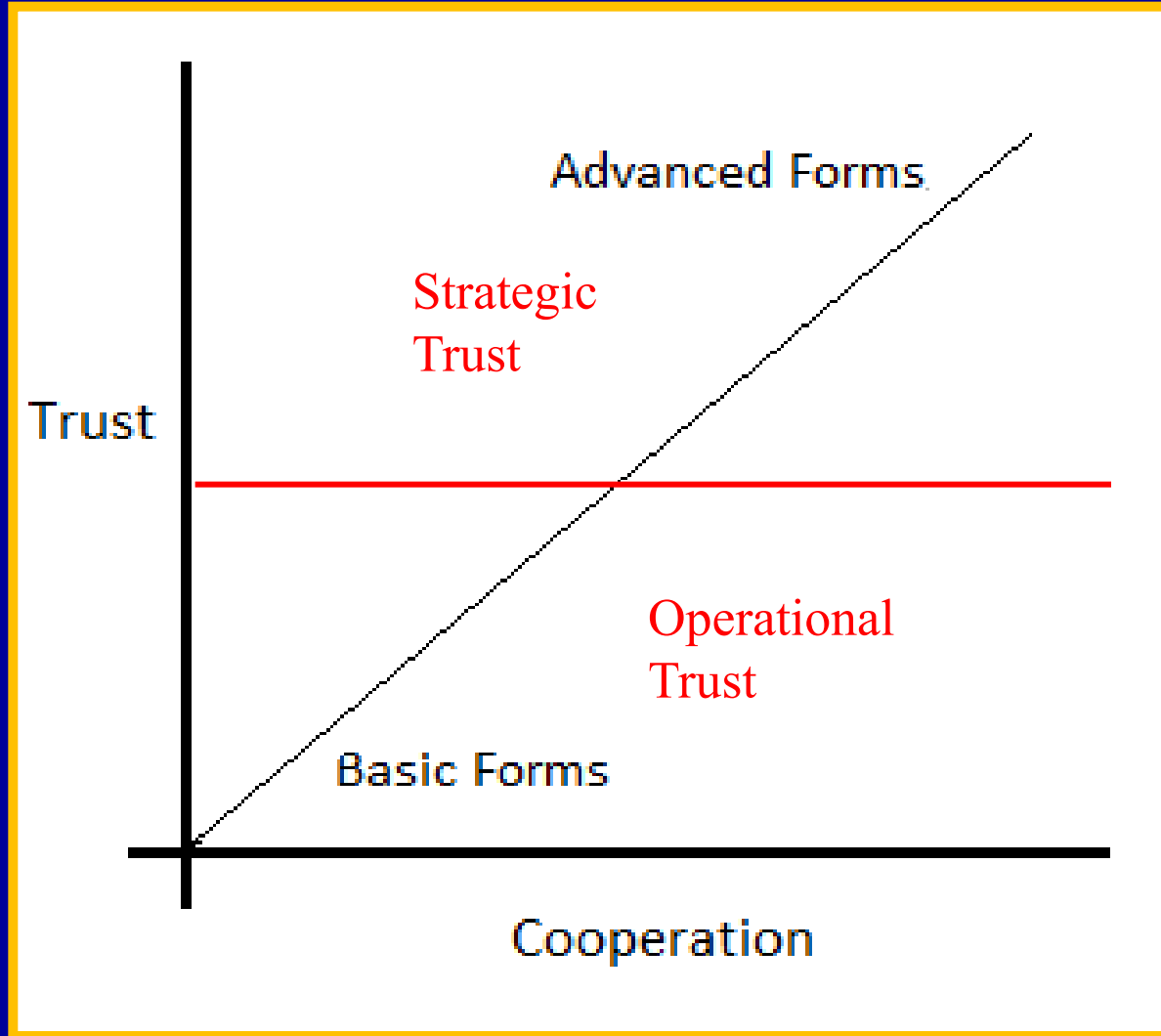
- Developed by Ocean Policy Research Foundation of Japan (available at: http://www.sof.or.jp/jp/report/pdf/2014_03_02.pdf)
- A non-binding confidence-building measure
- focus on issues of misunderstanding and ambiguity with regard to rights and duties in the EEZ: the interpretation of 'due regard', the lack of a universal definition of 'marine scientific research' and the scope of activities in the EEZ contrary to the norm that the EEZ should be reserved for peaceful purposes.

A 'Dual Track' Approach to Trust?

(Trust = trusting the other party to do what is right)

- Strategic Trust - between major powers and neighbours with sovereignty disputes – all about traditional security, sovereignty, conflict prevention, dispute resolution, etc
- Operational Trust – to allow essential and obligatory civil maritime cooperation to proceed (without prejudice to sovereignty claims)

The Trust Continuum



Current Forums

- WPNS, APEC, HACGA, etc
- ARF Inter-Sessional Meeting (ISM) on Maritime Security - broader maritime strategic issues, including the promotion of strategic trust
- Maritime Security Expert Working Group (MSEWG) established by the ADMM Plus - military cooperation and confidence-building;
- Expanded ASEAN Maritime Forum (EAMF) - civil maritime cooperation, including building operational trust

Possible Way Ahead

- Distinguish between strategic trust and operational trust
- Avoid 'militarizing' civil maritime cooperation - prefer coast guards over navies for civil maritime cooperation
- A more robust regional organization for civil maritime cooperation (HACGA/EAMF/EAS)
- Ratification of International Conventions
- A Common Understanding of key principles of the Law of the Sea
- Pursue joint development/management of resources, including non-spatial joint activities (e.g. exploration)
- Involve private sector more (shipping, fishing, oil & gas)
- US to become a party to UNCLOS

Conclusions

- Need for Changed Mindsets - common interests rather than self-interest
- Close association should be recognised between maritime cooperation and economic development (The Blue Economy)
- International attention on Ocean issues (e.g. the UNSG's Ocean Compact, World Ocean Forum)
- Forum required for Coast guard agencies covering civil maritime cooperation for law enforcement, SAR and pollution prevention & mitigation (EAMF and HACGA?)