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**Maritime Security in Southeast Asia:
Maritime Safety and the Marine Environment**

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**Session 1. Legal Regimes and
Marine Environmental Protection and Safety**

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Outline of Presentation

1. Global Regimes Governing Safety, Security & Marine Environment
2. Regional Regimes Governing Safety, Security & Marine Environment
3. Possible Areas for Cooperation?

Part 1

Global Regimes Governing Safety, Security & Marine Environment

Global Regimes on Safety & Security

- 1982 UNCLOS - the legal framework setting out rights and obligation of flag States, coastal States and Port States
- IMO Conventions on Safety of Navigation – SOLAS, COLREGs, STCW, Load Lines, etc
- IMO Convention on Search & Rescue – SAR
- IMO Conventions on maritime terrorism – 1988 SUA & Platforms Protocol, 2005 SUA and Platforms Protocol
- 2002 Amendments on SOLAS on Maritime Security

Other global arrangements

- Other global arrangements to deal with the increased threat of maritime terrorism after 2001 include US-led initiatives
 1. Container Security Initiative (CSI)
 2. Proliferation Security Initiative (PSI)
- CSI and PSI are voluntary cooperative arrangements among like-minded States

Global Regimes on Marine Environment

- 1982 UNCLOS - Part XII. Protection and Preservation of the Marine Environment
- IMO conventions on prevention of ship-source pollution – MARPOL 73/78 and its annexes, ballast water, anti-fouling, etc
- IMO conventions on contingency planning - OPRC 1990 and OPRC HNS
- IMO conventions on liability and compensation - Civil Liability (CLC), Fund, Bunkers, HNS
- IMO conventions on ocean dumping – London 1972 & 1996 Protocol

Special Tools to protect marine environment from ship-source pollution

- “Protected Areas” under MARPOL 73/78 imposing special rules on discharge of oil from the operation of ships
- PSSAs – Particularly Sensitive Sea Areas – procedure whereby coastal States can seek approval of the IMO for special measures to minimize the risk of ship-source pollution in particularly sensitive areas in their territorial sea or EEZ

Related Global Regimes relevant to Marine Environment

- 1992 Biodiversity Convention & Jakarta Mandate
- 1995 Fish Stocks Agreement
- FAO Code of Conduct of Responsible Fisheries
- FAO International Plan of Action to Prevent, Deter & Eliminate IUU Fishing
- FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2009

Part 2

Regional Regimes Governing Safety, Security & Marine Environment

Tokyo MOU on Port State Control

- Tokyo MOU is an inter-governmental co-operative organization on port State control (PSC) in the Asia-Pacific region
- Concluded in December 1993 and came into operation in April 1994.
- It aims to eliminate sub-standard shipping in the region by promoting effective and uniform implementation of the major IMO and ILO Conventions
- 18 member Authorities: 6 ASEAN (Indonesia, Malaysia, the Philippines, Singapore, Thailand, Viet Nam), plus China, Hong Kong (China), Japan, Korea, Russia, Australia, New Zealand, Papua New Guinea, Fiji, Vanuatu, Canada and Chile

ReCAAP

- Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, signed 2004, EIF 4 September 2006
- The ReCAAP **Information Sharing Centre** (ReCAAP ISC) was established under the Agreement, and was officially launched in Singapore on 29 November 2006.
- 17 Contracting Parties are: 8 ASEAN countries (Brunei, Cambodia, Laos, Myanmar, Philippines, Singapore, Thailand, Viet Nam), China, Japan, Korea, India, Bangladesh, Sri Lanka, Denmark, Netherlands and Norway

Article 123 of UNCLOS relating to Semi-Enclosed Seas

- 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;
 - (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.

Cooperation Mechanism for Straits of Malacca and Singapore

- Consistent with Article 43 of UNCLOS, which calls upon user States and littoral States to cooperate to enhance safety and environmental protection in Straits used for International Navigation
- Cooperation Mechanism consists of (1) Fund to enhance safety; Cooperation Forum; and (3) Specific Projects to enhance safety and prevent pollution in the Straits
- Is directed and controlled by Littoral States
- Cooperation of Users in purely voluntary

UNEP Regional Seas

- The UNEP Regional Seas Programme was launched in 1974 in the wake of the 1972 UN Conference on the Human Environment in Stockholm
- 13 Regional Seas programmes have been established under the auspices of UNEP, including the EAST ASIAN SEAS
- EAS Action Plan is steered by the Coordinating Body for the Seas of East Asia
- East Asia Seas members are Australia, Cambodia, China, Indonesia, Malaysia, Philippines, Republic of Korea, Singapore, Thailand and Vietnam

PEMSEA

- **The Partnerships in the Environmental Management for the Seas of East Asia (PEMSEA)** is an international organization involving various stakeholders of the Seas of East Asia
- Partner countries include China, Japan, ROK, DPRK, Timor Leste and all ASEAN States except Malaysia and Myanmar
- PEMSEA is also the regional coordinating mechanism for the implementation of the 2009 Sustainable Development Strategy for the Seas of East Asia (SDS-SEA)
- PEMSEA's core operating activities consist of assisting countries on national policy reforms concerning integrated and ecosystem-based management of watersheds, estuaries and adjacent coastal seas

Coral Triangle Initiative

- **Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI-CFF)** established in 2009 at the World Oceans Conference in Manado, Indonesia
- Established to address the urgent threats facing the coastal and marine resources of one of the most biologically diverse and ecologically rich regions on earth.
- CTI-CFF is managed through a Secretariat based in Jakarta, Indonesia.
- Members include Indonesia, Malaysia, the Philippines, Timor Leste, Papua New Guinea and the Solomon Islands

2009 Blueprint on the ASEAN Political-Security Community

Call to promote ASEAN maritime Cooperation by:

- i. Establishing the ASEAN Maritime Forum;
- ii. Applying a comprehensive approach that focuses on safety of navigation and security concerns in the region that are of common concern to the ASEAN Community;
- iii. Stock-taking maritime issues and identifying maritime cooperation among ASEAN member countries; and
- iv. Promoting cooperation in maritime safety and search and rescue (SAR) through activities such as information sharing, technological cooperation and exchange of visits of authorities concerned.

2009 Blueprint on the ASEAN Political-Security Community

Measures to Strengthen ASEAN Cooperation on Disaster Management and Emergency Response include

1. Work towards effective interface on disaster management between ASEAN and other ASEAN-related bodies such as ARF, ASEAN Plus Three and East Asia Summit (EAS) in a manner that will enhance ASEAN's disaster management capacities
2. Develop ARF strategic guidelines for humanitarian assistance and disaster relief cooperation

2010 ASEAN Declaration on Cooperation in Search and Rescue

2010 ASEAN Declaration on Cooperation in Search and Rescue of Persons and Vessels in Distress at Sea

- 6. Promote cooperation and information sharing between ASEAN and Dialogue Partners and relevant maritime international organisations in order to strengthen ASEAN's capabilities to assist persons and vessels in distress at sea;
- 7. Strengthen and where necessary develop coordinated regional approaches, and create or upgrade regional policies, operational mechanisms, plans and communication systems to prepare for and ensure rapid and effective response to distress situations; and

2009 Blueprint & South China Sea

- i. Continue ASEAN's current practice of close consultation among Member States to achieve full implementation of the DOC;
- ii. Explore and undertake cooperative activities identified in the DOC and eventually explore other co-operative measures on the basis of close consultation among the member countries, while respecting sovereignty and integrity of each other;
- iii. Carry out on a regular basis the overview of the process of implementation of the DOC, thus ensuring timely and proper conducts of the Parties in the South China Sea in accordance with the DOC; and
- iv. Work towards the adoption of a regional Code of Conduct in the South China Sea (COC).

ASEAN Regional Forum

- 27 Members including 10 ASEAN members, the 10 ASEAN dialogue partners (Australia, Canada, China, the EU, India, Japan, New Zealand, ROK, Russia and USA), one ASEAN observer (PNG) as well as the DPRK, Mongolia, Pakistan, East Timor, Bangladesh and Sri Lanka.
- At the 17th ARF in HaNoi in July 2010, the Ministers are expected to adopt the Ha Noi Plan of Action to Implement the ARF Vision Statement.
- The Plan of Action (PoA) will drive the ARF's deliberation and course of actions in the next ten years.
- Six areas of cooperation are identified in the PoA as the basis for ARF future work, namely: **disaster relief**, counterterrorism-transnational crime, **maritime security**, non-proliferation and disarmament, peacekeeping operations, and defense dialogue.

East Asia Summit

- 18 Member countries are the ten ASEAN countries plus China, Japan, Korea, India, Australia, New Zealand, USA and Russia.
- The Sixth East Asia Summit (EAS) was held on 19 Nov 2011 in Bali
- Reaffirmed determination to continue working together in disaster management, particularly with a view to enhance regional rapid response capabilities and humanitarian assistance.
- Recognized the importance of promoting maritime cooperation, including sea piracy, search and rescue at sea, marine environment, maritime security, maritime connectivity, freedom of navigation, fisheries and other areas of cooperation.
- Chairs of Summit encouraged dialogue involving EAS participating countries to utilize opportunities and address common challenges on maritime issues building upon the existing of ASEAN Maritime Forum (AMF).

ASEAN Maritime Forum

Chair's Statement 19th ASEAN Summit, Bali, 17 November 2011

- We reaffirm our commitment to work together in addressing maritime issues comprehensively within the framework of the ASEAN Maritime Forum (AMF) and other existing ASEAN mechanisms for the benefit of our ASEAN region.
- We note with interest the proposal of convening an expanded AMF, back-to-back with future meetings of the AMF, to include countries in the wider East Asia region.
- We further task the AMF to start developing approaches and cooperative measures on maritime cooperation.

Part 3

Possible Areas for Cooperation

1. Marine Environment – Regulation of Ocean Dumping ?

- Global rules & standards are set out in 1972 London and 1996 Protocol
- No ASEAN countries are parties to 1996 Protocol and only Philippines is party to 1972 London
- UNCLOS provides that States Parties must have laws on dumping “at least as effective” as the global rules and standards
- **Is it in the common interest of States in the region to become parties to the 1996 Protocol ?**

2. Marine Environment – Pollution from Offshore Platforms ?

- Pollution from offshore installations and platforms under national jurisdiction has become a matter of concern after Deep Water Horizon incident in the Gulf of Mexico in 2010 and the Montara incident in the Timor Sea in 2011
- Article 208 provides that States shall establish “global and regional rules, standards and recommended practice and procedures to prevent, reduce and control pollution of the marine environment from seabed activities under national jurisdiction
- **Is it in the common interest of States in the region to develop rules or standards on pollution from off-shore platforms?**

3. Marine Environment – Regional Rules or Guidelines on Decommissioning of Offshore Platforms ?

- Hundreds of oil platforms in Southeast Asia will reach the end of their useful life in the next few years
- These platforms pose a threat to navigational safety and to the marine environment
- There are international guidelines on the decommissioning of offshore platforms as well as on “rigs to reefs”
- **Is it in the common interest of States in the region to establish regional rules or guidelines on the decommissioning of installations and platforms ?**

4. Maritime Security - Conventions on international Maritime Crimes?

- Is it in the common interest of States in the region to create a cooperative framework to protect international shipping by ratifying and effectively implementing the following conventions?
 1. 1982 UNCLOS – provisions on piracy
 2. 1988 SUA Convention and Platforms Protocol
 3. 1979 Hostages Convention
 4. 1999 Terrorism Financing Convention
 5. 2005 SUA Convention and its Platforms Protocol

5. Maritime Security – Cooperation to Protect Submarine Cables ?

- The international communications of every State rely on fibre optic submarine cables beneath the oceans
- Submarine cables are threatened by shipping and fishing activities as well as by natural disasters
- A terrorist attack on submarine cables could slow or cut off broadband communications in several countries and may not be a crime under the laws of any State
- **Is it in the common interest of States in the region to cooperate to protect submarine cables ?**

6. Maritime Security - Cooperation in “Disputed Maritime Areas” ?

- There are many “disputed maritime areas” in the region because of sovereignty disputes over offshore islands as well as overlapping maritime boundary claims
- It is extremely dangerous when States attempt to enforce their national laws (e.g. **fishing laws**) in a disputed area against vessels from a State which also claims rights and jurisdiction in the disputed area
- International law imposes limits on the unilateral actions that can be taken in areas disputed maritime areas (e.g., no exploration involving drilling)
- **Is it in the common interest of States in the region to develop guidelines to prevent incidents in “disputed maritime areas” which could endanger peace & security ?**

Common Issue for Cooperation

- There are many issues or areas where it is arguably in the common interest of States in the region to cooperate
- However, it is often difficult to agree on the appropriate forum for considering such cooperation
- Which issues should first be considered at the Track 2 level, and if so, which organization would be most appropriate?
- At the Track 1 level, which issues should first be considered within ASEAN, before they are considered by the ARF or the Asian Summit?

Thanks for your Attention !

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