<u>**Regional Workshop**</u>

<u>**PSSAs In Southeast Asia: Trends and Prospects**</u>

<u>**Opening Remarks by CIL Chairman, Prof Tommy Koh**</u>

I thank Professor Beckman for inviting me to join you this morning. My first duty is to bid all of you, especially our foreign friends, a warm welcome. I want to extend a special welcome to our keynote speaker, Pak Havas. My second duty is to share a few thoughts with you. I will make 3 points. <u>First</u>, I will highlight some important provisions of the UN Convention on the Law of the Sea. I will also review the 1991 IMO Guidelines on PSSAs. <u>Second</u>, I will briefly discuss the importance of shipping and international trade to countries in East and Southeast Asia and the equal importance of the oceans and the marine environment. I will then conclude my remarks.

<u>**Part I (A)**</u>

<u>**Preamble of the UN Convention on the Law of the Sea.**</u>

Para 4 states:

"Recognising the desirability of establishing through this Convention, with due regards for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the

conservation of their living resources, <u>and the study, protection and preservation of the marine environment</u>."

Commentary

The conference succeeded in achieving consensus on the need to take a comprehensive approach, based on the concept of the integrity of global ecological systems and of the global navigation system. This comprehensive approach entails the dominance of international rules and standards over national laws and regulations.

Part XII: Protection and Preservation of the Marine Environments

Part XII of the Convention refers to "competent international organization". The competent international organization is the International Maritime Organization (IMO).

Article 192 states: "States have the obligation to protect and preserve the marine environment."

Commentary

This general obligation under Article 192 and the more specific obligation under Article 194 were referred to by the South China Sea Arbitral Tribunal in its ruling that China had violated its obligations.

Article 211(6)(a): "Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and <u>coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilisation or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through the competent international organization with any other States concerned, may, for that area, direct a communication to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving such a communication, the organization shall determine whether the conditions for that area correspond to the requirements set out above</u>. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization".

Commentary

My interpretation of this long paragraph is that it enables coastal states, with the prior approval of IMO, to create "marine protected areas".

Article 237:

1. The provisions of this Part are without prejudice to the specific obligations by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.

2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of this Convention."

Commentary

Article 237 deals with the relationship between the obligations of Part XII and specific obligations assumed by States under existing or future treaties or agreements dealing with the same topic. The article states that the provisions of Part XII shall be without prejudice to such specific commitments, and that those specific commitments should be applied consistently with the general principles and objectives of the convention.

Part I (B)

IMO PSSA Guidelines

PSSAs are defined as:

"Areas that need special protection through action by IMO because of its <u>significance for recognised ecological, socio-economic, or scientific attributes</u> where such attributable may be vulnerable to damage by international shipping activities."

Commentary

The PSSA Guidelines were adopted by IMO in 1991 after many years of deliberation. PSSA is not mentioned in the Convention. However, it is not inconsistent with the Convention. PSSAs can probably be justified as a variant of the marine protected area under Article 211 (6)(a). There are now a total of 17 PSSAs in the world. In July this year, the IMO approved the first PSSA in Southeast Asia, the Tubbataha Reefs National Park PSSA in the Philippines. In addition to the Philippines, Indonesia, Malaysia and Vietnam are also considering designating PSSAs. This workshop is therefore very timely.

Part II (A)

The Marine Environment and Biodiversity in S.E. Asia.

The seas of Southeast Asia are rich in biodiversity. Indeed, WWF has estimated that 75% of the world's hard coral species can be found in the waters of Indonesia, Malaysia, Papua New Guinea, the Philippines, Solomon Islands and Timor-Leste. WWF has called this area as the "Coral Triangle". In 2009, the leaders of the 6 countries met in Manado, Indonesia and adopted an action plan to protect and conserve the coral reefs.

Why should we care about the coral reefs of the world? We should do so because they host about 25 percent of all marine species, including fish. The variety of life supported by coral reefs rival that of tropical rainforests.   For this reason, coral reefs are sometimes called the "rainforests of the sea" or the "Amazon of the Sea." Coral reefs provide us with food, are important to our tourist industry and protect us from storms, including tsunamis.

Individually and collectively, we wish to do what we can to protect our marine environment and to utilise our marine resources in a sustainable manner.

Part II (B)

International Shipping and International Trade

At the same time, we must acknowledge the importance of shipping and international trade to all of us. The countries of East and Southeast Asia are trading nations. For Singapore, trade is our life blood. Most trade is maritime trade. The Straits of Malacca and Singapore is the busiest sea lane in the world. The Lombok Strait offers ships an alternative to the Straits of Malacca and Singapore.   It is in our collective interests to support the freedom of navigation and overflight for ships and aircraft.

<u>Part III</u>

<u>Conclusion</u>

Our objective is to find a proper balance between our interest in protecting the marine environment, on the one hand, and our interest in supporting and facilitating international shipping and international trade, on the other. We also wish to uphold international law, including the UN Convention on the Law of the Sea. It is in this spirit that we embark upon our discussion of the concept of Particularly Sensitive Sea Areas and its application in our region.

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