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for the Protection of the Marine Environment*

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**CIL**

CENTRE FOR INTERNATIONAL LAW  
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**Panel 5. Session 1**  
**Ship-Source Pollution:**  
**Current State of Play in Southeast Asia**

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# Outline of Presentation

- 1. International Conventions**
- 2. Status of Conventions – Seas of Southeast Asia**
- 3. Regional and Sub-Regional Cooperation on Ship-Source Pollution in Southeast Asia**

# **Part 1**

# **International Conventions**

# UNCLOS & IMO Conventions

- UNCLOS was negotiated from 1973 to 1982
- Negotiations followed 1972 Stockholm Conference on the Human Environment
- Negotiations had to take account of existing IMO Conventions:
  - 1972 London Convention on Dumping of Wastes at Sea
  - 1973 International Convention on the Prevention of Pollution from Ships (MARPOL 73/78)
  - 1974 Convention on Safety of Life at Sea (SOLAS)
- Solution was to have provisions in UNCLOS which “incorporate by reference” the latest version of the IMO conventions and regulations

## UNCLOS Provisions incorporating IMO Conventions by Reference

- **Article 211(2)**. Flag States must adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag that . . . shall at least have the same effect as that of **generally accepted international rules and standards established through the competent international organization**
  - This provision requires that the laws of the flag State must be at least as effective as MARPOL 73/78 in preventing pollution from ships
  - Also incorporates amendments to MARPOL annexes once they are “generally accepted”

# Annexes to MARPOL 73/78 & Number of States Parties

- Annex I Oil
  - Annex II Noxious Liquid Substances
  - Annex III Harmful substances in Packaged Form
  - Annex IV Sewage
  - Annex V Garbage
  - Annex VI Air Pollution
- 
- MARPOL annexes are amended on updated on regular basis
  - Amendments to annexes are automatically binding on parties to MARPOL 73/78 through “tacit acceptance procedure”

## Number of Parties to MARPOL Annexes and % of World's Tonnage of Shipping

- Annex I Oil 157 - 99.15%
- Annex II Noxious Liquid Substances 157 - 99.15%
- Annex III Substances in Packaged Form 148 - 98.57%
- Annex IV Sewage 142 - 96.31%
- Annex V Garbage 153 - 98.73%

# 1972 LONDON & 1996 PROTOCOL

- “Dumping” in UNCLOS and 1972 London is the intentional disposal of waste at sea
- States Parties to UNCLOS have obligation to adopt laws and regulations on dumping that are “no less effective than the global rules and standards”
- States Parties to UNCLOS have an obligation to prohibit dumping in their waters and dumping by ships flying their flag
- 1996 Protocol updates 1972 London in light of developments in international environmental law after 1992



# Other IMO Conventions on Prevention, Reduction and Control of Pollution from Ships

London Convention 1972 on Dumping	87 Parties (59.37%)
London Protocol 1996	51 Parties (40.18 %)
Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC)	112 Parties (76.44%)
Ballast Water Management 2004 -	79 Parties (80.94 %)
Anti-Fouling Convention (AFS) 2001 –	82 Parties (94.76%)

## **Part 2**

# **Status of Conventions – Seas of Southeast Asia**

# Status of Key Conventions in Seas of SE Asia

- **Seas of SE Asia: South China Sea & Gulf of Thailand**
  - Brunei, Cambodia, China, Indonesia, Malaysia, Philippines, Singapore, Thailand & Vietnam
- **1982 UNCLOS**
  - All parties except Cambodia
- **Prevention of Pollution from Ships (MARPOL 73/78)**
  - **MARPOL Annexes I & II** - All parties
  - **MARPOL Annexes III to V** – All Parties except Brunei & Thailand
- **Dumping at Sea (1972 London 1972 & 1996 Protocol)**
  - Only China, Philippines and Thailand

# Implementation & Enforcement of UNCLOS & MARPOL on Ship-Source Pollution

## **Flag States have Primary Obligation :**

- Must adopt laws & regulations at least as effective as MARPOL 73/78
- Must effectively exercise jurisdiction and control of over ships flying its flag
- Must require ships to carry Certificates that inspected and comply with MARPOL and other IMO Conventions
- Must investigate complaints that not exercising effective jurisdiction & control

## **Port States have Secondary Obligation:**

- May require Certificates of compliance with MARPOL and other IMO conventions as condition of entry into Port
- May conduct undertake investigation and institute proceedings in respect of illegal discharges in violation of MARPOL

**Coastal States** have very limited powers to investigate illegal discharges by foreign ships in their waters

# Problems of Implementation & Enforcement

- MARPOL and other IMO Conventions are very technical and complex and they are continually being amended and updated
- Many developing countries lack the financial resources and technical expertise required to develop a maritime administration capable of effectively implementing their obligations as flag States & port States
- Many States engage the services of professional “Classification Societies” to undertake the inspections and certifications required by many IMO conventions
- Shipowners on the lower end of industry often register their ships in “open registry” states and engage classification societies with a questionable reputation

# IMO Measures to Enhance Implementation and Enforcement

- **Integrated Technical Cooperation Programme (ITCP)**
  - designed to assist Governments which lack the technical knowledge and resources that are needed to operate a shipping industry safely and efficiently
- **Sub-Committee on Implementation of IMO Instruments (III)**
  - Functions are to assess, monitor and review the current level of implementation of IMO Instruments with a view to identifying and addressing areas where members may have difficulties in fully implementing their obligations
- **IMO Mandatory Audit Scheme**
  - provides Member States with a comprehensive and objective assessment of how effectively it administers and implements 9 mandatory IMO instruments

# Port Reception Facilities

- The Annexes to MARPOL 73/78 provide that port States **shall ensure the provision** of facilities at their ports and terminals for the reception of oily waste, garbage and sewage, without causing delay to ships, adequate to meet the needs of the ships using them
- The Marine Environment Protection Committee (MEPC) of the IMO has strongly encouraged member States to fulfill their obligation to ensure the provision of reception facilities
- In 2006, an Action Plan to tackle the alleged inadequacy of port reception facilities was developed by the Sub-Committee on Flag State Implementation (FSI) and approved by the MEPC

# Port Reception Facilities

- In 2006 MEPC also developed a port reception facility database (PRFD) as a module of the IMO Global Integrated Shipping Information System (GISIS)
- The FSI has also developed a Guide to Good Practice on port reception facility providers and users, and in March 2018, MEPC adopted a **Revised Consolidated Guidance for Port Reception Facility Providers and Users**
- Despite these efforts by the IMO, the adequacy of port reception facilities for oily waste, garbage and sewage is a serious problem in Southeast Asia



# Regional Cooperation on Provision of Reception Facilities

- **Guidelines for Ensuring the Adequacy of Port Waste Reception Facilities** [Resolution MEPC.83 (44) of 13 March 2000]
- IMO Guidelines state that given the transboundary nature of marine pollution, the requirement for State to ensure the provision of adequate reception facilities may be further improved by **regional agreements**
- Examples of regional agreements cited in the Guidelines:
  1. Baltic Sea States
  2. Australia and New Zealand
  3. Regional Organisation for the Protection of the Marine Environment (ROPME)
  4. Member States of the European Union.

## Part 3

# Regional and Sub-Regional Cooperation on Ship-Source Pollution in Southeast Asia

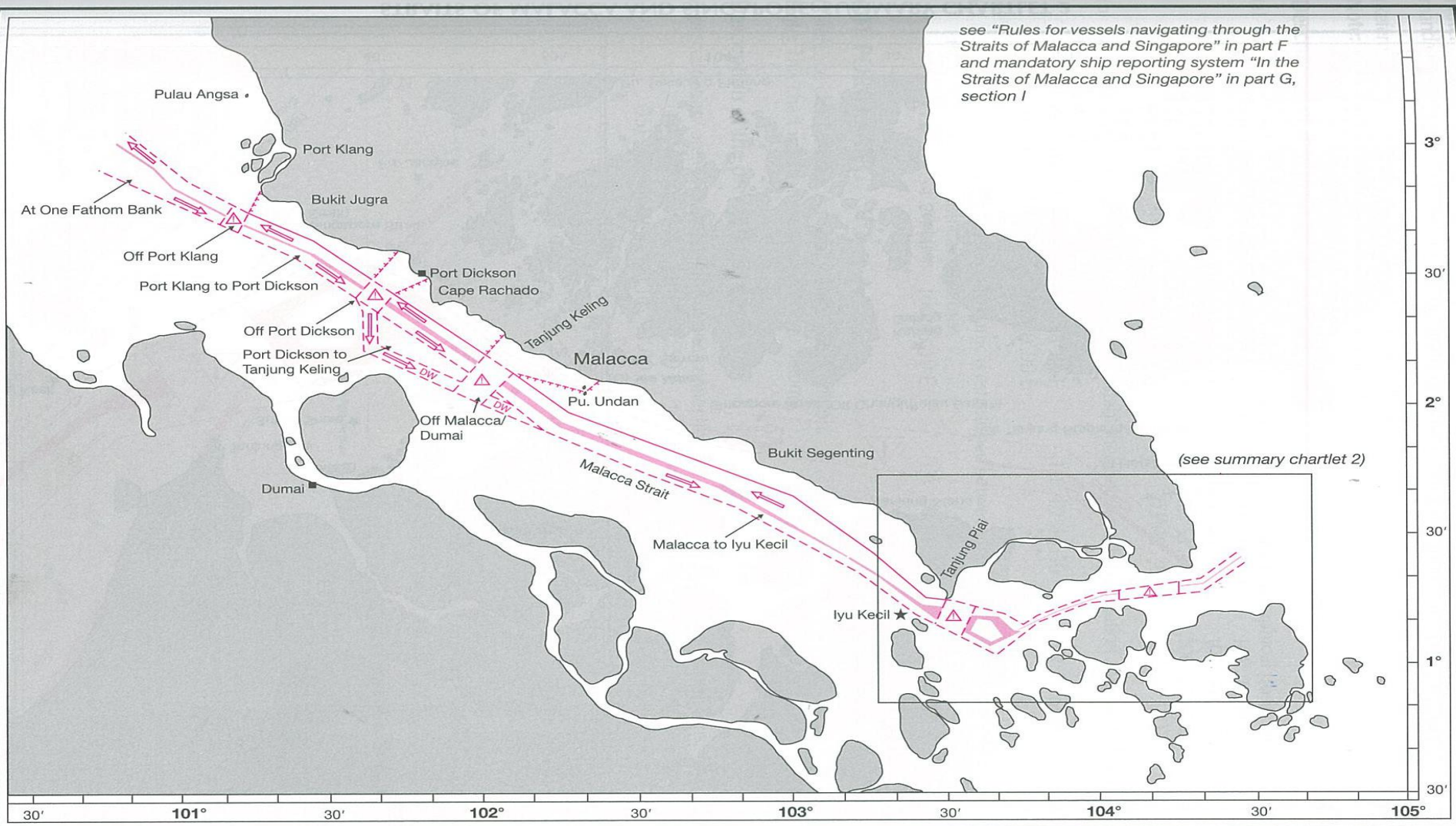
# Tokyo MOU on Port State Control

- 1993 Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MOU)
- Secretariat in Tokyo
- Parties to Memorandum are maritime authorities responsible for Port State Control
- Mission is to promote the effective implementation, and the universal and uniform application of relevant IMO/ILO instruments on ships operating in the region
- Has improved port State control in the region

# ASEAN Regional Cooperation

- 1994 Project on Oil Spill Preparedness and Response in the ASEAN Seas Area (ASEAN OSPAR Project)
- 1994 ASEAN Oil Spill Response Action Plan (OSRAP)
- 2014 MOU on ASEAN Cooperation Mechanism for Joint Oil Spill Preparedness and Response (OSRAP MOU)

# Straits of Malacca and Singapore



STRAITS OF MALACCA AND SINGAPORE: SUMMARY CHARTLET 1

# Cooperation Mechanism for Straits of Malacca and Singapore

- Indonesia, Malaysia and Singapore have been cooperating with each other and with the IMO since the 1970s to enhance the safety of navigation and combat ship-source pollution in the Straits of Malacca and Singapore (SOMS)
- The three littoral States have made several proposals to the IMO for the adoption of routing measures in the SOMS, including:
  - Traffic Separation Scheme
  - Mandatory Ship Reporting
  - Vessel Traffic System

# Cooperation on Oil Spills in Straits of Malacca and Singapore

- Cooperation between Littoral States of Indonesia, Malaysia and Singapore
  1. Straits of Malacca and Singapore Revolving Fund (1981)
  2. Standard Operating Procedure for Joint Spill Combat in the Straits of Malacca and Singapore (1982)
  3. Cooperation Mechanism for the Enhancement of Safety, Security and Environmental Protection in the Straits of Malacca & Singapore (2007)

# Cooperative Mechanism for Straits of Malacca and Singapore

- A Cooperative Mechanism for SOMS was established in 2007 following discussions between the three littoral States, user States and the IMO
- The Cooperative Mechanism provides a framework for cooperation between the three littoral States and users of the strait to enhance the safety of navigation and preserve and protect the marine environment
- It consists of three components:
  - **Cooperation Forum**, where user States and other stakeholders meet with the littoral States
  - **Project Coordination Committee**, where projects to enhance safety and protect the environment are identified and carried out by user States and littoral State
  - **Aids to Navigation Fund**, where user States and other stakeholders contribute to a fund to maintain aids to navigation in the SOMS



# Projects under SOMS Project Coordination Committee

1. Cooperation and Capacity Building on Hazardous and Noxious Substances (HNS) Preparedness and Response (2007-2015)
2. Development of Guidelines on Places of Refuge for Ships in Need of Assistance in SOMS, 2015-
3. Marine Oil Spill Monitoring System in the SOMS, 2015-

# Gulf of Thailand

- Cooperation of Cambodia, Thailand and Vietnam on Oil Spill Preparedness and Response



# Cooperation on Oil Spills in the Gulf of Thailand

- Cooperation between Cambodia, Thailand and Vietnam
- 2006 Joint Statement on Partnership in Oil Spill Preparedness and Response in the Gulf of Thailand
- 2006 Framework Programme for Joint Oil Spill Preparedness and Response in the Gulf of Thailand
- Strategic Action Plan for Oil Spill Preparedness and Response in Gulf of Thailand, 2017-2021
- Developed under PEMSEA – Partnerships in Environmental Management for the Seas of East Asia

**Thanks for your attention!**

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