

2019 ASEAN DEFENCE MINISTERS' MEETING GUIDELINES FOR MARITIME INTERACTION

Adopted in Bangkok, Thailand on 11 July 2019

BACKGROUND

1. Through a Joint Declaration, the ASEAN Defence Ministers agreed to “undertake practical measures such as protocols of interaction and direct communication channels to reduce vulnerability to miscalculations and to avoid misunderstanding and undesirable incidents at sea” during the 9th ASEAN Defence Ministers’ Meeting (ADMM) in 2015.
2. The Ministers further agreed to “practice and observe international protocols such as Code for Unplanned Encounters at Sea (CUES) and commence work on crafting protocols of interaction to maintain open communications to avoid misunderstanding and prevent undesirable incidents” as reflected in the 2016 ADMM Joint Declaration.
3. The ADMM then adopted the Concept Paper on Guidelines for Maritime Interaction on 23 October 2017 in Clark, Pampanga to reduce vulnerability to miscalculations and avoid misunderstanding and undesirable incidents at sea.

OBJECTIVES

4. In line with the Concept Paper on Guidelines for Maritime Interaction, the objectives of the Guidelines include the following:
 - 4.1 To advance ASEAN’s maritime security efforts with the end view of realizing the goals of ASEAN Defence Ministers.
 - 4.2 To establish comprehensive and feasible maritime conflict management measures on the basis of confidence-building, preventive diplomacy, and peaceful management of tensions that could arise at sea.
 - 4.3 To contribute in addressing common maritime security challenges faced by ASEAN Member States.
 - 4.4 To contribute to the implementation of international law and regional conventions including, among others, the United Nations Convention on the Law of the Sea (UNCLOS), International Regulations for Preventing Collisions at Sea (COLREG), and CUES.
 - 4.5 To serve as a set of guidelines for the ASEAN defence sectoral body in engaging other relevant ASEAN sectoral bodies involved in maritime security.

SCOPE AND APPLICATION

5. The end users of the Guidelines will primarily be ASEAN defence establishments, particularly naval ships and naval aircraft.
6. The Guidelines shall only apply when the subject naval ships or naval aircraft are from ASEAN Member States.
7. The Guidelines shall be applicable when the subject naval vessels are in the high seas.
8. The implementation of the Guidelines shall be voluntary and non-legally binding. It also does not create any international obligation or commitment under international law.
9. The possibility of extending guidelines with the Plus Countries shall only be explored and decided by the ADMM.
10. In the event that there is a decision to extend the Guidelines with Plus countries, this shall be based on consensus of the ADMM upon the endorsement of the ASEAN Defence Senior Officials' Meeting (ADSOM) through the ADSOM Working Group (WG).

GENERAL PRINCIPLES

11. The Guidelines shall be based on ASEAN's fundamental principles as set out in Article 2 of the ASEAN Charter.
12. The Guidelines shall uphold all existing maritime arrangements ASEAN Member States. It shall not supersede any international agreement or treaty.
13. The Guidelines shall reaffirm the ASEAN Member States' commitment to resolve disputes through peaceful means without resorting to the threat or use of force in accordance with universally recognised principles of international law, including UNCLOS.
14. The Guidelines are without prejudice to: (i) existing rights and obligations of both user and coastal states under international law, including UNCLOS; (ii) existing rights and obligations under bilateral and multilateral arrangements between states, as well as between states and organisations; and (iii) ASEAN Member States' positions vis-à-vis existing maritime and airspace disputes.

DEFINITION OF TERMS

15. A naval vessel refers to warships as defined by UNCLOS, naval auxiliaries as defined by CUES, and submarines.
16. A naval aircraft refers to fixed-wing and rotary-wing aircraft, and unmanned aerial systems or vehicles that are used by the armed forces of a state in maritime operations.
17. The definitions provided by UNCLOS on different maritime zones, including internal waters, archipelagic waters, exclusive economic zone, continental shelf, and high seas, shall be followed in this Guidelines.

INTERACTION WITH NAVAL SHIPS AND AIRCRAFT

18. Foreign naval ships enjoy certain immunities in accordance with international law.
19. Preservation of life and property should be of utmost consideration.
20. Naval ships and naval aircraft presenting a challenge should be warned and given the opportunity to withdraw or otherwise cease its actions.
21. Upon issuance of a query or warning from a naval ship or naval aircraft of another ASEAN Member State, the naval ship or naval aircraft in question should identify itself.
22. When calls are initiated, naval ships and naval aircraft are encouraged to promptly respond to avoid miscalculations or misunderstanding.
23. When such miscalculations or misunderstanding occur, naval ships and naval aircraft should increase efforts to communicate.
24. ASEAN Member States should follow communication procedures anchored on CUES.
25. In the absence of a perceived insecurity, naval ships of ASEAN Member States within each other's line of sight are encouraged to exchange information through the Automatic Identification System (AIS).
26. During unplanned encounters at sea, naval ships are encouraged to conduct passing exercises and communications exercises.
27. Naval ships and naval aircraft may refer to relevant provisions in CUES and COLREG to avoid untoward incidents, particularly on safe speed, safe distance, assurance measures, and signals.
28. In the event of an untoward incident, subject naval ships should refrain from taking any action that will further escalate the situation. Efforts should focus on rescue of personnel as required by international law and in line with the capacity of the naval ship or naval aircraft. One ship or aircraft may not, however, board or salvage the ship or aircraft of the other side without prior explicit consent.
29. During peacetime, naval ships are encouraged to turn-on the AIS in high-traffic areas to avoid untoward incidents.

RENDERING ASSISTANCE

30. Should an extreme emergency arise that indicate the need for assistance to preserve a life, nearby naval ships and naval aircraft should endeavour to extend assistance upon the request of the distressed naval ship.
31. When requesting assistance, the distressed naval ship should provide all necessary information, including the patient's condition, weather condition, as well as the ship's accurate position, time, speed, and course. In case of an aircraft transfer from a naval ship, the aircraft should be informed of the hoist location.

INTERACTION WITH CIVILIAN MARITIME AGENCIES

32. The ASEAN defence sectoral body is encouraged to engage other relevant ASEAN sectoral bodies involved in maritime security to enhance interoperability and promote cross-pillar cooperation.

33. The convening of an expanded ad hoc working group composed of policy and technical officials from ASEAN Member States' defence establishments and other maritime security agencies may be initiated by the defence establishment of any ASEAN Member State on a voluntary basis for the purposes of sharing knowledge, experiences, and best practices, and exploring opportunities for cooperation to avoid untoward incidents at sea, including the possible expansion of the Guidelines to relevant civilian agencies.

34. Extending the Guidelines to other ASEAN sectoral bodies shall only be considered once the Guidelines for Maritime Interaction has been finalized and tested within the ASEAN defence sector.

SYNERGY WITH OTHER RELATED EFFORTS

35. During maritime-related emergencies that require timely communication and decision-making between ASEAN Defence Ministers, the ASEAN Direct Communications Infrastructure (ADI) should remain as the primary mechanism for "providing a permanent, rapid, reliable, and confidential means by which any two ASEAN Defence Ministers may communicate with each other to arrive at mutual decisions in handling crisis or emergency situations, in particular related to maritime security" as reflected in the Concept Paper Establishing a Direct Communications Link in the ADMM Process.

36. The Guidelines should be a complementary initiative for naval ships and aircraft alongside the Guidelines for Air Military Encounters (GAME).

37. Relevant outcomes of related meetings, namely workshops, seminars, exercises, and other activities under the ADMM-Plus Experts' Working Group (EWG) on Maritime Security as well as those from the ASEAN Regional Forum (ARF), East Asia Summit (EAS), ASEAN Maritime Forum (AMF), and Expanded ASEAN Maritime Forum (EAMF), among others, may be taken into consideration to provide inputs for the development and implementation of the Guidelines.

38. Other initiatives that should also be considered are those by the Western Pacific Naval Symposium (WPNS).

IMPLEMENTATION AND AMENDMENTS

39. An ad hoc working group composed of policy and technical officials from the defence establishments of ASEAN Member States should be established to monitor the development and implementation of the Guidelines, as well as developments in other related initiatives. Relatedly, any ASEAN Member State that hosted a similar initiative should bring such initiatives to the attention of the ad hoc working group.

40. The ASEAN Navy Chiefs' Meeting (ANCM) shall be the lead body for formulating and developing the operational and technical parameters of the Guidelines. Feedback and status of the implementation of the Guidelines shall be reported by the ANCM to the ad hoc working group for onward submission to the ADSOM through the ADSOM WG.

41. The outcome of the meetings and workshops as well as the status of the development and implementation of the Guidelines shall be duly reported to and assessed by the ADMM through the ADSOM and ADSOM WG.

42. The Guidelines shall be considered as a living document that can be amended based on the consensus of the ADMM through the ADSOM and ADSOM WG.

43. Proposed amendments shall be presented by the ad hoc working group to the ADSOM WG for discussion and deliberation. Once a consensus is reached, the amended Guidelines shall be submitted to the ADSOM for endorsement to the ADMM for adoption.