

**OCEAN GOVERNANCE, HUMAN RIGHTS &
SUSTAINABLE DEVELOPMENT IN ANTHROPOCENE**

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National University of Singapore

*Panel on Non-traditional Maritime Security Cooperation
in the Post-Pandemic Era*

**MARITIME SECURITY COOPERATION
TO COMBAT SLAVERY AT SEA
ON FISHING VESSELS**

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OUTLINE OF PRESENTATION



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- 2. Gaps in Global Regulation - 8**
- 3. Gaps in Regional Cooperation in Asia - 21**
- 4. Conclusions and Recommendations – 29**

PART ONE

MODERN SLAVERY AT SEA

ON FISHING VESSELS

TRADITIONAL DEFINITIONS OF “SLAVERY” AND “SLAVE TRADE”

1926 Slavery Convention

- “**Slavery**” is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- The “**slave trade**” includes
 - all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery;
 - all acts involved in the acquisition of a slave with a view to selling or exchanging him;
 - all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and,
 - in general, **every act of trade or transport in slaves.**

Kunarac Case, Appeals Chamber, ICTFY



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- “the “traditional concept of slavery” as defined in the 1926 Slavery Convention and often referred to as “chattel slavery” has evolved to encompass various contemporary forms of slavery, which are also based on the exercise of any or all of the powers attaching to the right of ownership

MODERN SLAVERY ON FISHING VESSELS

- Migrant fishers are often recruited by agents who require them to sign contracts which exploit them
- Migrant fishers are then trapped on fishing vessels at sea where it is not possible for them to escape or complain to authorities because such fishing vessels seldom if ever come into port
- While onboard the migrant fishers are often physically abused and controlled by the threat or use of force, threat of other penalties or other forms of coercion
- The result is a **modern form of slavery** because the owners or captains of the fishing vessels are **exercising some the powers attached to right of “ownership”**

LIMITS ON INSPECTIONS BY FLAG STATES AND PORT STATES

- **Flag State inspections** seldom take place because the fishing vessels are flagged in States that do not require regular inspections
- **Flag States** are also not parties to the relevant global instruments of the IMO and ILO, and in any case, these conventions are either not in force or ineffective
- **Port State inspections** on such fishing vessels do not take place because the fishing vessels do not enter ports where they will be inspected for labour conditions on board
 - The fishing vessels are refuelled and supplied at sea by bunker vessels, and they transfer their catch to reefer vessels or larger fishing vessels

PART TWO

GAPS IN

GLOBAL REGULATION

UN SPECIALIZED AGENCIES AND FISHING VESSELS & CREW

- **International Labour Organization (ILO)** focusses on labour conditions, and has adopted a convention on Labour Conditions on fishing vessels
- **International Maritime Organization (IMO)** focusses on safety and pollution from commercial ships, but has attempted to adopt some conventions on the safety of fishing vessels and on the training and certification
- **Food and Agricultural Organization (FAO)** deals with IUU fishing
- **UN Office of Drugs and Crime (UNODC)** deals with transnational organized crime

ILO WORK IN FISHING CONVENTION (No. 188) – LABOUR CONDITIONS

- Entered into force in 2017
- 20 parties, only one State from East & SE Asia - (Thailand)
- Substance:
 - Responsibilities of fishing vessel owners, skippers and fishers
 - Minimum age
 - Recruitment and placement of fishers
 - Fisher’s work agreement
 - Payment of fishers
 - Crew list
 - Repatriation
 - Hours of rest and Manning
 - Medical examination, OSH
 - Medical care
 - Food and potable water
 - Accommodation
 - Protection in the case of work-related sickness, injury or death, social security

FORCED LABOUR ON FISHING VESSELS

- ILO has recognized that forced labour, human trafficking and debt bondage in the fishing industry are transnational organized crimes
- Primary Reasons why it is difficult to regulate:
 1. Isolation of Workplace
 2. Length of time at sea
 3. Transnational operations of fishing industry
 4. Labour supply of migrant workers without identity documents

- 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)
 - Applies to crews of seagoing fishing vessels generally of 24 metres in length and above
 - Consists of 15 Articles plus an annex containing technical regulations.
 - Chapter I contains General Provisions
 - Chapter II deals with Certification of Skippers, Officers, Engineer Officers and Radio Operators.
- EIF 29 Sep 2012, only party in East & SE Asia is Indonesia

IMO: SAFETY OF FISHING VESSELS: 2012 CAPE TOWN AGREEMENT

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1977 Torremolinos
Convention

1993 Torremolinos
Protocol

2012 Cape Town
Agreement

2019 Torremolinos
Declaration

MARITIME SECURITY COOPERATION TO COMBAT SLAVE-LIKE CONDITIONS ON FISHING VESSELS

IMO – SAFETY OF FISHING VESSELS

- Most IMO Conventions do not apply to small fishing vessels
- 1977 Convention included safety requirements for the construction and equipment of new, decked, seagoing fishing vessels of 24 metres in length and over
- 1993 Torremolinos Protocol amended provisions in response to lack of ratifications of 1977 Convention
- 2012 Cape Town agreement made further amendments so that States could progressively implement certain provisions and exempt certain vessels
- 2019 Torremolinos Protocol made further amendments
- Status: Not in force, no ratifications from East or SE Asia

IMO AND AUTOMATIC IDENTIFICATION SYSTEMS (AIS)

- IMO requires AIS use by all vessels over 500 GT and for all vessels over 300 GT on an international voyage
- Many countries and regional fishing management organizations are creating AIS requirements for fishing vessels
- EU requires all fishing vessels over 15 metres in length to be equipped with AIS

1. UNODC focusses on combatting transnational organized crime at sea
2. UNODC reports the criminals engaged in fisheries crimes may be involved in a range of illegal activities including IUU fishing, transshipment of marine resources, corruption, money-laundering, etc
3. UNODC has also stated that trafficking in persons in the fishing industry for the purpose of forced labour is a serious problem

PROBLEMS IDENTIFIED BY UNODC IN THE FISHING INDUSTRY



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1. Lack of at-sea surveillance of vessel movements and transshipments
2. Lack of transparency of the identity of the beneficial ownership of fishing vessels and a lack of international records of fishing vessels' identity and history.
3. Lack of ability or willingness of some flag States to enforce their criminal law jurisdiction

1982 UNCLOS AND MODERN SLAVERY ON FISHING VESSELS

- General principle governing jurisdiction over ships is that they are subject to the **exclusive jurisdiction of the flag State**
- States have duty to effectively exercise jurisdiction and control in administrative, technical and social matters over ships flying its flag
- Flag States are required to conform to “generally accepted international regulations, procedures and practices”
- Problem is that there are no “generally accepted international regulations, procedures and practices” because only 20 States have ratified the ILO Work in Fishing Convention and few States have ratified the IMO STWC-F Convention

Article 99. Prohibition on the Transport of Slaves

- Every State shall take effective measures to prevent and punish the **transport of slaves** in ships authorized to fly its flag and to prevent the unlawful use of its flag for the purpose.
- Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

1982 UNCLOS AND SLAVERY ABOARD FISHING VESSELS

- Article 99 prohibits the **transport of slaves** in ships authorized to fly its flag
- Article 99 provides that any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free
- Article 110 provides that a warship has a **right of visit** on a foreign ship if there is reasonable ground for suspecting that the ship is “engaged in the slave trade”
- Issue is whether States are willing to give liberal interpretation of transport of slaves to include modern slavery at sea on fishing vessels

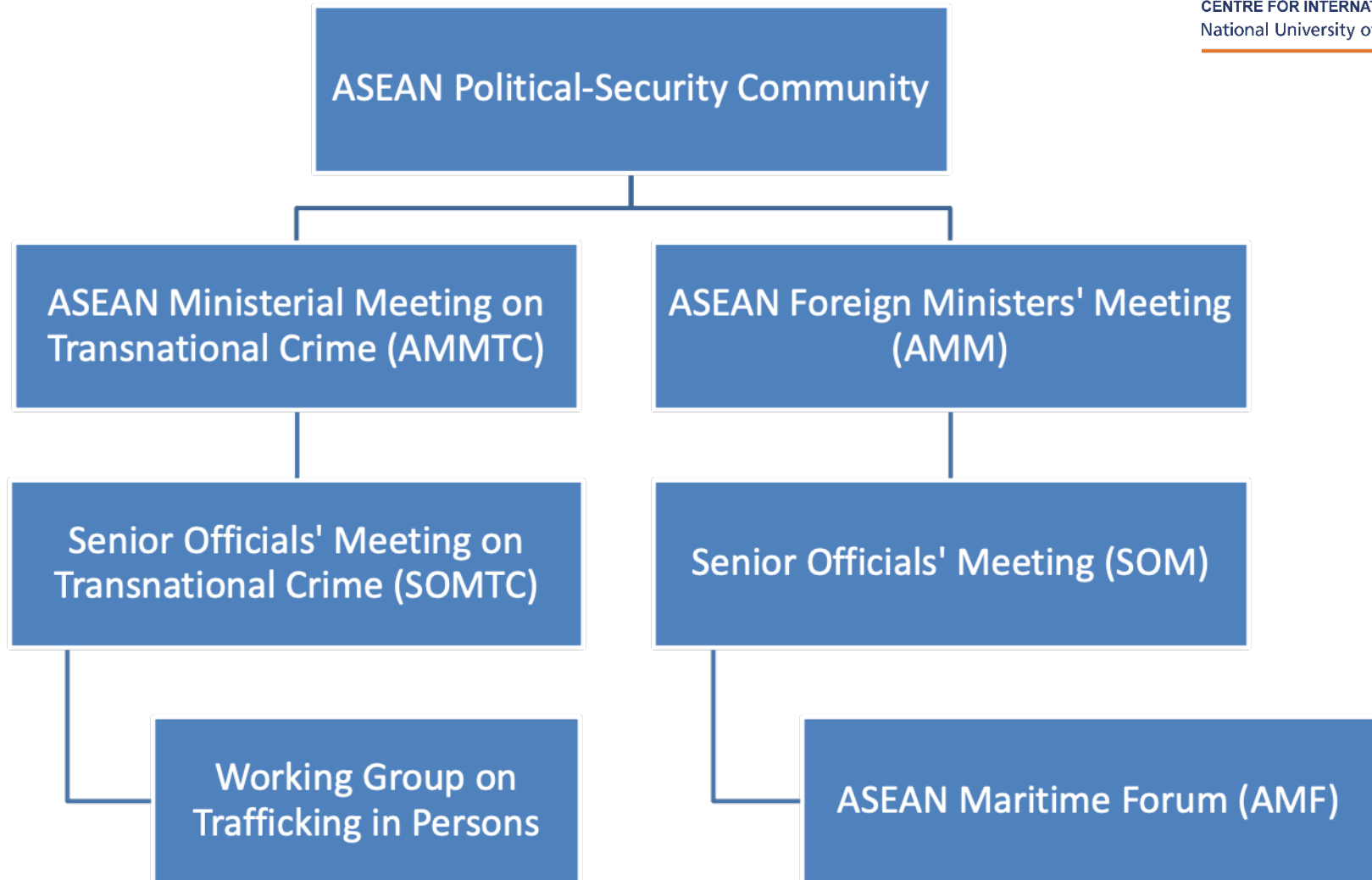
PART THREE

GAPS IN

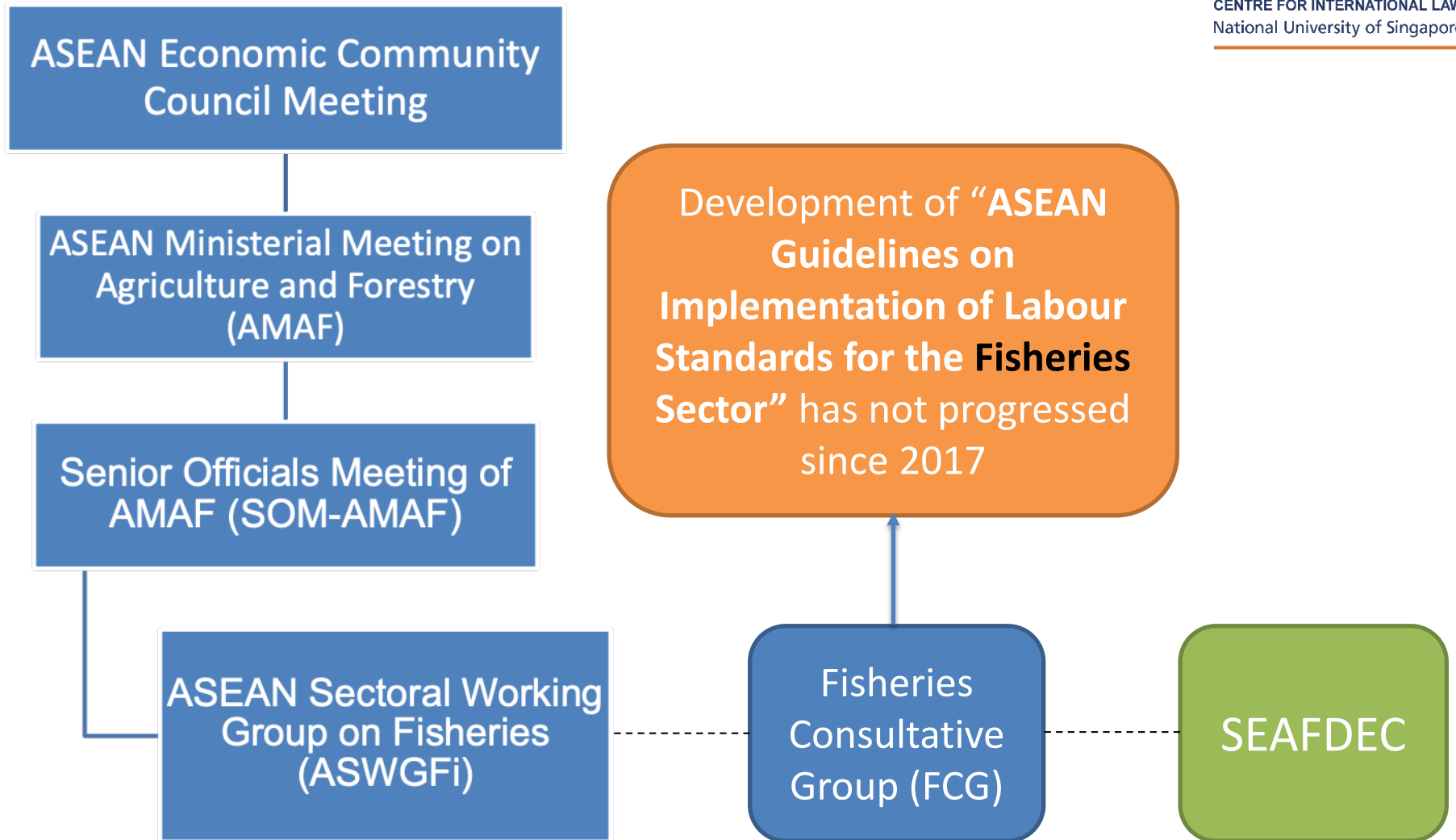
REGIONAL COOPERATION

IN EAST AND SOUTHEAST ASIA

POLITICAL-SECURITY PILLAR



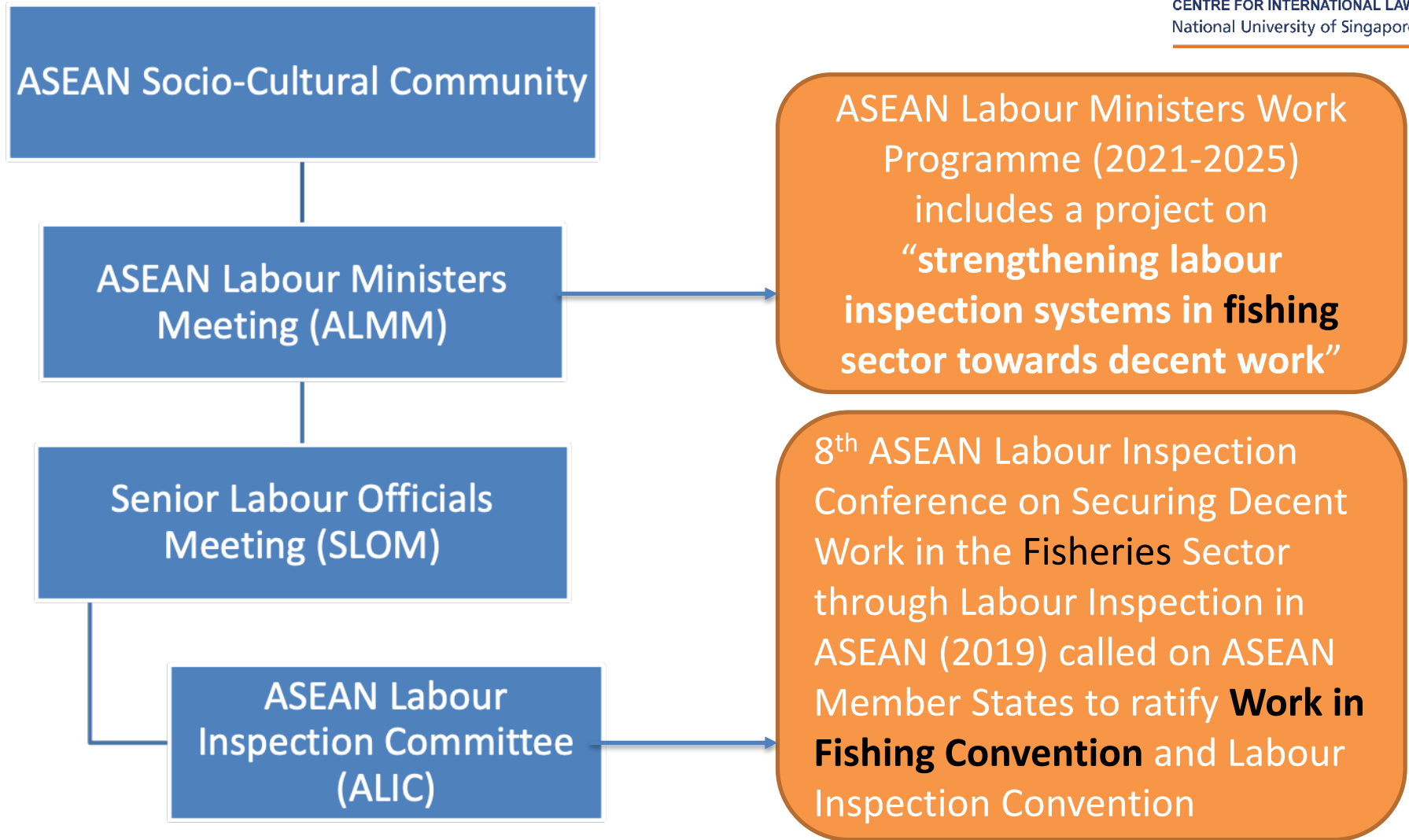
ECONOMIC PILLAR



SOCIO-CULTURAL PILLAR

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SEA FISHERIES PROJECT

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SEA Fisheries Project (Strengthened Coordination to Combat Trafficking in Fisheries in Southeast Asia), established in 2017, aims to reduce trafficking and labour exploitation in the fisheries sector

SEA FISHERIES PROJECT

SEA FORUM FOR FISHERS



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- **Southeast Asian Forum to End Trafficking in Persons and Forced Labour of Fishers (SEA Forum for Fishers)** to be established under the SEA Fisheries Project as a non-binding voluntary multi-stakeholder *Regional Coordination Body in Southeast Asia* to improve coordination among the Members in combatting trafficking in persons, forced labour, and modern slavery at sea
- Members include:
 - National government authorities;
 - Representatives of workers in and from Southeast Asia;
 - Representatives of employers in and from Southeast Asia, and businesses that source from the fishing and seafood industry on SE Asia

ROLE OF NGOS

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- NGOs have been studying the issue and have been tracking ships that stay at sea for long periods without coming into any port
- NGOs are using satellite data and machine learning to identify the fishing vessels that are likely to be engaged in forced labour or modern slavery at sea

PART FOUR

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

1. Serious issues of fragmentation of governance at the international, regional and national levels
2. Problem is transnational and cannot be effectively addressed at national level alone
3. Given the fragmentation issue, the problem is not likely to be addressed at the Global Level in the foreseeable future
4. Best option is to address the issues at the regional level in East and Southeast Asia through an ASEAN Plus Three mechanism
5. As major fishing nations, the cooperation of China, Japan and Korea with ASEAN is essential

RECOMMENDATIONS

1. States in Southeast Asia that are the target of labour on board foreign-flagged fishing vessels should more strictly regulate the labour recruitment companies in their territory
2. States in East and Southeast Asia should require fishing vessels flying their flag, owned by their nationals or operating in their EEZ to utilize AIS and to enter ports for inspections on labour conditions
3. States should require bunker vessels flying their flag to keep detailed records of the time and location of the sale of bunkers to fishing vessels
4. States should cooperate with NGOs to identify the fishing vessels that are likely to be engaged in modern slavery at sea

CONCLUSIONS & RECOMMENDATIONS



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5. ASEAN Plus Three Cooperation should follow the SEA Forum for Fishers model, but also include NGOs
6. Coast Guard vessels of cooperating States should be authorized to board fishing vessels in the EEZ or on the high seas when there is evidence that they are engaged in modern slavery at sea
7. If clear evidence of modern slavery is found, the Coast Guard vessel should free the slaves by bringing them aboard their vessel
8. Fish consuming nations should be encouraged to support these measures by banning fish from vessels found to be engaged in modern slavery at sea

Thanks for your attention!

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