

THE 7TH SCIENCE COUNCIL OF ASIA CONFERENCE

WORKSHOP D: SECURITY OF OCEAN IN ASIA

**In Search of a Cooperative Scheme
for Securing the Ocean in Asia**

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1. Major Ocean Changes from the 1990s

The initiatives mankind undertook in the 1990s made that decade a noteworthy one in the quest to better manage the oceans. Here in the early days of the 21st century we continue to be affected by those changes. It is necessary in considering the security of the oceans of East Asia that we begin with this understanding.

(1) End of the Cold War System

The fall of the Berlin Wall in 1989 signified the end of the cold war system, but it was also a huge historical turning point for coastal countries in regard to ocean governance. For decades previous, the world's oceans were zones of competition between the U.S.A. and the USSR, with the security of coastal states being determined by their role in one of the two camps; naturally, under these arrangements, coastal states' autonomy was often severely compromised. Among the changes brought about by the fall of the wall were the dissolution of the USSR and the creation of the Russian Federation. The consequent reduction of military tensions however, also meant a reduction on the oceans of the Russian and U.S. military presence, and a shift to viewing ocean governance as a separate management issue for each coastal state.

The Asian region was one of the regions contested by the two superpowers and so was greatly affected by the end of the cold war. The changes which ensued, combined with the coming into effect of the United Nations Convention on the Law of the Sea (UNCLOS)—a sweeping reform of the legal framework for the oceans—had large effects on the region's management of its ocean security. To be more specific, with the dissolution of the USSR, countries in the East Asian region, including those considered to be a part of the Western bloc, began to more strongly advance independent initiatives, but expanding their jurisdiction often met with

difficulties and often times led to land-based problems being given priority. The result was that coastal states were forced into administering the vast ocean expanses assigned to them by UNCLOS before they could prepare legal enforcement systems to compensate for the departure of the U.S. and USSR's presence. Not surprisingly, the second half of the 1990s saw an escalation in disputes over the possession of islands and their jurisdictional waters as well as a dramatic increase in piracy, smuggling, drug trafficking, and other illegal activities at sea in the Asian oceans, especially in South East Asia. Conditions have not significantly improved in the region, as these are problems not only of individual states' governance over their own ocean areas but also reflect the need for mutual cooperation and coordination between states with adjoining waters. This is especially true in the South China Sea, Malacca Straits, Andaman Sea, and other areas where the borders of territorial seas meet in complicated configurations and where there is heavy ship traffic.

(2) Development in the Asian Region

Up until this time, the countries of East Asia demonstrated a migrating geese pattern of steady and stable economic progress, with Japan in front, to be followed by Singapore, Hong Kong, Taiwan, Korea and other Newly Industrializing Economies (NIES), the ASEAN countries, and, in the nineties with its new market-oriented economic policies, the increasing presence of China.

Also, ASEAN increased its membership to become a cooperative organization comprising the whole South East Asian region and undertook initiatives promoting free trade and security issues, while also establishing the ASEAN Regional Forum in 1994 to discuss political and security issues with non-ASEAN countries.

However, as Thailand moved the baht to a fluctuating rate system in 1997, touching off an Asian financial crisis that then spread to Korea, Indonesia, and other countries in South East Asia, the developing Asian economy was severely affected. Great social shifts also took place in the region as a result of the crisis, such as the fall of Indonesia's Suharto regime. Fortunately, as we moved into the 21st century, each country in the region recovered its momentum towards social stability and economic development, though some more than others. The result has been a deepening in economic integration across the region, making it the world's number one production center.

Unfortunately, these economic activities have also meant the increased pollution of rivers, oceans, and air, and a progressive destruction of the

environment due to a too rapid development of the coastlines; these caused major problems in the marine environment and biological resources of oceans and coastal zones around the region. As is well known, harmony between use and development and protection of the environment was the focus of the 1992 Rio Summit, leading international society to adopt the principle of sustainable development. In Asia, a variety of initiatives leading to the implementation of the sustainable development principle in addressing environmental problems began with activities such as PEMSEA, of which I will speak more later.

Economic development in Asia has also been accompanied by the development of maritime transport centered on the region, making it one of the most heavily trafficked in the world. Meanwhile, super tanker collisions in the Malacca Straits, such as between the Orapin Global and the Evoikos (in 1997, with a spillage of 25,800 tons of C grade heavy crude, and the wreck of the Nadhodka in the Japan Sea (in 1997 with a spillage of 6,240 kilolitres of C grade heavy crude) have caused serious environmental pollution in the surrounding ocean and coastal areas.

In order to reduce these risks, initiatives to secure maritime safety have been undertaken by the IMO and others, including the improvement of traffic separation schemes (TSS) in the Malacca Straits, adoption of the mandatory vessel reporting system (VTS), and the strengthening of ship construction using the double hull design.¹ The Marine Electronic Highway (MEH), which began a demonstration project in one section of the Malacca Straits from 2007, was also conceived in this period.

Also, while UNCLOS creates a regime for regulating international straits, in which it recognizes “the requirement of continuous and expeditious transit”, it also states that “User States and States bordering a strait should by agreement co-operate: (a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation...”² Recognizing its responsibility as a User State, Japan has since the 1960s cooperated in the provision of funds and technologies to Coastal States in their construction and operation of navigational aids and other safety measures. I believe this is an example of the kind of cooperation envisioned by UNCLOS and is highly appreciated by the Coastal countries. However, though it has now been more than ten years since UNCLOS came into effect, it is not apparent that any other User States have undertaken this kind of cooperation. In view of this, the Nippon Foundation, which has made great contributions for navigation safety measures in the Malacca Straits for more than 30 years, is proposing the

establishment of an international framework in which Users voluntarily make financial contributions for safety measures in the Straits as part of their Corporate Social Responsibility.

2. Establishing legal and policy frameworks for ocean governance

(1) United Nations Convention on the Law of the Sea

Until recently, the oceans had long been used and exploited based on the “freedom of the high seas” concept, that whatever lay outside of national sovereignty boundaries was not subject to regulation. However, upon entering the last half of the 20th century, with increasing marine pollution, resource depletion, and a rapid and unplanned development of coastal areas, international society was forced to undergo a paradigm shift that resulted in the adoption of UNCLOS and Agenda 21. Along with the principles of comprehensive management and sustainable development, this promoted the international sharing of a common legal and policy framework under which coastal states would have sovereign rights over vast areas of ocean up to 200nm from shore, the environment of which they would be responsible for maintaining and managing.

UNCLOS came into effect in 1994, twelve years after its adoption by the Third United Nations Conference on the Law of the Sea. In response to the demands of Coastal States for expansion of ocean areas under their sovereign rights, the Convention that came into effect adopted the twelve mile territorial waters regime, the archipelagic regime, the two hundred mile Exclusive Economic Zone regime, and reformed the continental shelf system. In order to discourage further claims, it established the “common heritage of mankind” system regarding the deep sea bed and the mineral resources therein. We should also note that, in recognition of the need to consider ocean problems as a whole, the Convention emphasized marine environmental protection and conservation and sought to strengthen international initiatives for prevention of marine pollution, promoted scientific ocean research for peaceful purposes, and urged cooperation in the transfer of ocean-related knowledge and technology to developing countries. Moreover, it paid particular attention to the peaceful settlement of disputes, established the International Tribunal for the Law of the Sea in Hamburg, Germany, and fixed provisions for the settlement of disputes in considerably more detail than in previous conventions.

(2) Agenda 21 and WSSD

(Agenda 21, Chapter 17)

The second half of the twentieth century saw a dramatic rise in the world's population, accompanied by rapid increases in production and consumption. One result is that conservation of the global environment has been taken up as a major issue in response to the many problems that have arisen. For example, the purifying capacity of the oceans that we once thought were unlimited have been plainly shown not to be so by the increase in land-based pollution. Also, we now see clearly that the unregulated development of coastal areas is having a serious impact on the eco-systems of the coastal zones. Furthermore, the living resources of the oceans that we thought were inexhaustible have declined due to degradation of the environment and over-fishing, to the extent that in some cases extinction of species has become a worry, making the protection, conservation, and appropriate management of resources one of the major issues of our times.

It was the United Nations Conference on Environment and Development of 1992, the Rio Summit, which gave direction to mankind's demand that these pressing environmental and development problems be addressed. The Earth Summit addressed the oftentimes antagonistic relation between the concepts of "environment" and "development" by advocating the principle of "sustainable development" in which "to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."

The Rio Declaration on Environment and Development, which set out this principle, as well as the Programme of Action for Sustainable Development: Agenda 21, which was adopted for its implementation, became a policy framework within which individual countries could cooperate and coordinate their efforts in addressing environmental problems.

Agenda 21 emphasized the importance of the oceans, and adopted Chapter 17, "Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of Their Living Resources." This was to serve as a policy framework for individual states to cooperate with each other and coordinate their efforts in addressing the problems of sustainable development in the ocean. Chapter 17 says specifically, in its opening, that "This requires new approaches to marine and coastal area management and development...that are integrated in content and are precautionary and anticipatory in ambit." It then sets out detailed action plans for seven programme areas that would comprise a common global policy framework, for example, "Integrated management and sustainable development of coastal

areas, including exclusive economic zones,” and “marine environmental protection.”

(WSSD)

Another response to emerging problems was the World Summit on Sustainable Development in 2002, ten years after Rio, in Johannesburg, South Africa. In regard to oceans, WSSD reaffirmed the importance of implementing UNCLOS and Agenda 21 and included in its Plan of Implementation practical measures concerning cross-sectoral aspects such as promotion of integrated coastal and ocean management, fisheries, biodiversity and ecosystem functions, marine pollution (especially land-based pollution), maritime safety and protection of the marine environment, the marine environment and science, and the sustainable development of small island developing states.

(PEMSEA)

Another initiative in response to worsening environmental conditions is PEMSEA, the Partnership on Environment Management for the Seas of East Asia, begun in 1994. The PEMSEA project was funded by the Global Environment Facility (GEF), and implemented and executed by the UNDP and IMO respectively, which promoted participation by countries across the East Asian region. Its early activities focused on addressing environmental hotspots, especially semi-enclosed seas such as the Malacca Straits, the Bay of Thailand, and the Bohai Sea, and initiating Integrated Coastal Management projects in Xiamen, China and Batangas, Philippines. After successfully implementing the ICM project in Xiamen, PEMSEA received support from participating States as well as GEF/UNDP/IMO, allowing it to begin its second term in 2000.

A major accomplishment of PEMSEA’s second term was its Sustainable Development Strategy for the Seas of East Asia. It was adopted at the twelve country Ministerial Level Forum of the East Asian Seas Congress hosted by PEMSEA in December of 2003 in order to facilitate the WSSD Plan of Implementation in the East Asian region. SDS-SEA has great significance not only in promoting implementation of sustainable development of the oceans by the countries of East Asia, but as a policy framework within which the region as a whole can undertake these initiatives.

In addition, although PEMSEA began as a project to assist developing countries, the Haikou Partnership Agreement on the Implementation of Sustainable Development Strategy for the Seas of East Asia, concluded last December at the East Asian Seas Congress 2006 held in Hainan, China, laid out the activities for its third term beginning in 2007, including the establishment, with the cooperation of the East Asian states, of a regional working office, and plans for how best to raise its mission to that of a regional cooperative organization for implementation of sustainable development.

The PEMSEA model for cooperation, in contrast to a Western model predicated on conclusion of a regional convention, is one of a “defacto partnership,” in which each state cooperates according to its needs, interests, and priorities. International cooperation among states based on such a non-binding mechanism might well be termed an Asian Model, but to make such cooperation a success regarding policy issues and the problems facing the East Asian oceans, shared perspectives between states and the building of political will are essential. The initiatives to emerge out of this mode of cooperation deserve the closest attention in the future.

3. Difficulties in Implementing the UNCLOS/Agenda 21 Framework

The UNCLOS regime parceled up vast and originally integrated ocean spaces of up to 200nm from shorelines and entrusted the management of these spaces to individual coastal states. While the preamble to UNCLOS states that “...the problems of ocean space are closely interrelated and need to be considered as a whole,” it does not necessarily provide a concrete framework for how states are to coordinate and cooperate in securing a legal order on the oceans, for promoting peaceful use, conserving natural resources, and protecting the environment. Too often this has resulted in inconsistencies between the comprehensive governance aims of the UNCLOS and Agenda 21 regime and the exercise of sovereignty by coastal states.

(Disputes over border delimitations)

For example, there is the problem of border delimitations. Due to UNCLOS, areas of sovereign rights, including territorial waters, the EEZ, and the continental shelf, saw a large expansion outwards from shore. As a result, there were cases in which the ocean areas of adjoining or opposing countries overlapped, raising the

issue of new border delimitations. Also, as recognition of a 200nm EEZ and continental shelf around islands increased their importance strategically, disputes have begun to arise concerning their territorial status. It is ironic that a Convention established for the comprehensive management of ocean space has instead prompted more disputes between states, but shows the need for mankind to again combine its knowledge and wisdom to overcome these difficulties.

One of the reasons for border problems becoming issues of contention between affected states is that UNCLOS does not clearly lay out a standard for delimiting EEZs and the continental shelf. Should the principle of a median line equidistant between the coasts of two states be used, as with the delimitation of territorial waters, or the equity principle? If the latter, there is the problem of a lack of a clear standard for deciding what is equitable. Also, regarding the continental shelf, though UNCLOS states it will not necessarily give first importance in its definition to topographical concept until 200nm, as the 1958 Convention did, some countries still call for such adherence.

Discussions over territories and boundaries between principals in a dispute can easily become confused. In clarifying delimitation standards and settling any subsequent disputes there is thus a need for procedures whereby the opinions of a disinterested and objective third party can be given effect. Increasingly, there are calls by international society for such procedures in the belief that they facilitate a smoother agreement process between principals in a dispute.

(Increase in transnational crimes at sea)

With the coming into effect of UNCLOS, much of what was formerly the high seas has now come under the jurisdiction of coastal states. For this reason, illegal activities such as piracy in high sea areas close to coastal zones, that would have formerly been regulated by authorities from any state, are now the responsibility of authorities from the single state that has been given sovereign rights over that area due to the expansion of jurisdictional waters. This state of affairs, combined with the fact that some states remain weak in their regulatory powers against crime at sea, has led to an increase in criminal activities, beginning with piracy, but also smuggling, illegal immigration, drug trafficking, and terrorism at sea. Making the situation worse, criminals' escape has been made easier as authorities are interrupted in hot pursuit by territorial water and other boundaries between adjacent states, newly created by the increase in ocean area over which coastal states have been given jurisdiction.

Meanwhile, some progress is being made in the region regarding the piracy problem. For example, East Asian countries participating in the Regional Conference on Combating Piracy and Armed Robbery Against Ships in 2000 in Tokyo adopted the Asian Anti-Piracy Challenge 2000, and in November 2004 the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia was also adopted, coming into effect in September of 2006. In spite of this progress, however, it is estimated that 86.5% of piracy incidents occur within the territorial waters of individual states. In light of this, a firm response by individual countries is being called for, but unfortunately many countries still do not have adequate policing capabilities for their areas of jurisdiction. Unfortunately, incidents increase as political instability undermines law enforcement capabilities. In order for each country to deploy the patrol boats, aircraft, and trained personnel necessary to regulate the ocean areas under its jurisdiction, international cooperation in technical and financial assistance, as called for by UNCLOS, is indispensable, the implementation of which is a matter of some urgency.

(Marine pollution over increasingly wide areas)

Marine pollution is also a complicated problem. Oil spills due to tanker accidents, harmful algae blooms due to red tides, land-based pollution, and other forms of pollution of the marine environment spread freely across ocean areas, in complete disregard of national borders, sovereignty, and jurisdictional rights. There has also been an increase in environmental damage due to economic activities such as shipping, as ballast water is released into different ecosystems. These kinds of problems cannot be addressed as long as states put undue emphasis on their sovereignty. What is required are coordination and cooperation between the affected states, as called for by UNCLOS.

(Management of marine biological resources and IUU fishing)

Management of marine biological resources is another area in which an international perspective on the exercise of sovereign rights by coastal states is necessary. Everyone agrees that the development of human society has depended on marine biological resources and that there is a need to effectively manage these resources when overfishing has left them severely depleted. Management and regulation of the fishing industry centers on the FAO, which has undertaken forward looking initiatives and promoted many regional fishing agreements.

However, as all states do not actively participate in fisheries management, illegal, unreported, and unregulated fishing is still rampant. The management of marine biological resources is an area in which understanding is required by all sovereign states, as is their cooperation and coordination in the international frameworks that facilitate that management.

(Harmonization between the UNCLOS/Agenda 21 regime and the exercise of sovereign rights by individual states)

It is entirely natural that most sovereign states give the highest priority to governing their own affairs. However, when looking at the implementation of UNCLOS by individual states, the tendency among states has been to choose a national over an international approach, especially as regards land areas, and, unfortunately, to give only a low priority to the management of the expanded ocean areas over which they have jurisdiction, a situation that indicates less than sufficient consideration for the meaning of ocean governance and coastal state obligations.

However, it should not be forgotten that the ocean, being twice the size of the inhabitable land area, is by nature of an international character. It was in recognition of this fact that the UNCLOS and Agenda 21 regime was internationally agreed upon, in pursuit of sustainable development of the oceans, for the survival and prosperity of mankind. Ocean Governance does not imply placing unfair restrictions on national sovereignty or compromising the interests of individual states. Rather, it is a process by which each state contributes actively to the governance of the ocean in order to strengthen the foundations on which its own security rests. It is necessary therefore that each state have a thorough understanding of this and increases its efforts in managing ocean areas.

As long as we lack this kind of international coordination and cooperation that operates across the sovereign rights borders of each country's ocean areas, integrated ocean management will be difficult to achieve. We should also keep in mind that UNCLOS explicitly advocates the development and transfer of scientific ocean research and technology. For the sake of ocean governance and sustainable development, it is vital that we create harmonious and coordinated relations between the UNCLOS/Agenda 21 regime and the exercise of each country's sovereign rights.

4. The Tokyo Declaration on "Securing the Oceans"

The Ocean Policy Research Foundation (formerly the Ship & Ocean Foundation) hosted an international oceans security conference in December of 2004 on a new security concept for the oceans, the International Conference on Geo-Agenda for the Future: Securing the Oceans. At this conference, the third since 2002, presentations were given and discussions held on a new security concept, more comprehensive and human centered than traditional ones centered on war and conflict, one that seeks to secure conditions in which people are freed from poverty and degraded environments. Debate focused not only on the need for such an oceans security concept but practical measures for its implementation.

The pollution of the marine environment that spreads regardless of national boundaries and management of the freely roaming living resources of the ocean are issues that cannot be effectively addressed by individual countries operating solely from a national sovereignty perspective. Conversely, those involved in smuggling, drug trafficking, piracy, and terror at sea seek to take advantage of the fact that sovereign borders often interrupt policing efforts by national authorities. In order to implement the UNCLOS/Agenda 21 framework, it is therefore indispensable that individual states strengthen their coordination and cooperation at the international level in the pursuit of integrated management.

It was with this aim in mind that OPRF advocated the new “Securing the Oceans” concept at the Third International Conference “Geo-Agenda for the Future: Securing the Oceans,” held in December 2004, at which we adopted ten concrete measures for building political will and implementing the concept. These measures were the result of three years discussion by eminent experts on the Law of the Sea and ocean policy.

The concept of Securing the Oceans regards the implementation of ocean governance as an integral part of comprehensive security. It requires that all aspects of ocean management, including military activities, the peaceful use of the oceans, resource extraction, environmental management, and scientific research should be addressed in an integrated manner. The concept of Securing the Oceans provides a comprehensive and integrated approach to ocean problems as a whole. It promises a significant improvement on the pattern of sectoral specific initiatives.

The Tokyo Declaration proposes to states, as well as to the United Nations and other international organizations, to join in initiatives to promote and implement this new security concept, Securing the Oceans. Furthermore, it urges the creation of an international think tank, establishment of outreach programs, the establishment of a coordinating mechanism and cross-sectoral body for ocean

affairs, and the holding of Securing the Oceans international conferences on a regular basis.

Towards implementation of this new security concept, the Tokyo Declaration proposes the establishment of conflict prevention and environment protection systems, creation of surveillance, monitoring, and enforcement systems, more information sharing, burden sharing, and international cooperation for capacity building.

For example, in regard to the need for appropriate burden sharing by User States, Proposal 2-4 of the Tokyo Declaration states that “In recognition of coastal states’ burdens in discharging their ocean governance responsibilities, user states should provide to coastal states appropriate financial and technical assistance. States and organizations should work to create systems to facilitate such cooperation.” This is intended to be a concrete proposal towards realization of Article 43 of UNCLOS, for the strengthening of safety measures in the Malacca Straits, an area that has lately drawn much international attention. While we should follow the recent positive efforts to address this problem by the IMO and User States, there is also a need to deepen the debate on the interpretation and application of the relevant articles in UNCLOS.

The Securing the Oceans concept received considerable attention at the East Asian Seas Congress 2006 held in Hainan, China, where it served as the unifying concept for one of the seven main themes of the congress. Within this session OPRF hosted a workshop on the Tokyo Ocean Declaration.

As we in the East Asian region have together from ancient times benefited from the ocean’s bounty in developing our societies, it is my sincere hope that as a model to the world we can now implement this new concept of “Securing the Oceans.” With that wish, I conclude my remarks. Thank you for your attention.

¹ In December of 1998 it was decided that TSS should be expanded for the distance of 487km from One Fathom Bank to the Horsburgh Lighthouse at the east end of the Singapore Strait. Also, the Mandatory Ship Reporting System in the Straits of Malacca and Singapore (STRAITREP) was introduced.

² UNCLOS Art. 38, Art.43