

Securing the Integrated Management and Sustainable Development in
Asian Seas

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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 matter for each country.

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 great effects on the region's 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 land based problems were given priority. The result was that coastal states were forced into administering the vast ocean expanses assigned to them by UNCLOS before they could put in place legal enforcement systems equal to the now departed U.S. and USSR presence. Not surprisingly, the second half of the 1990s saw an escalation in disputes over islands' possession and its 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. It has now been ten years since this surge in illegal activities began, and the insufficient responses to these problems means that we remain in conditions in which safety at sea is not secured. 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

Until this time, the countries of East Asia demonstrated the 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 the 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 Maersk Navigator and the Sanko Honor (in 1993 with an oil spillage of 27,000 kilolitres), and 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 is to have a demonstration project in one section of the Malacca Straits from this year, 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 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, is proposing the establishment of an international framework tentatively named the Organization for Cooperation in the Safety of the Malacca Straits, in which Users and/or User States make financial contributions for safety measures in the Straits in proportion to the degree they benefit from such measures.

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. The reason for such a long delay was the claim by developed nations, centering on the U.S., that regulations concerning the deep sea bed favored developing countries. In any case, it can't be denied that the long delay resulted in a diminishing of momentum that had been building within states for the creation of a new order on the oceans.

In this passage of more than ten years, there naturally occurred many new

postings and even retirements among those who had participated in the deliberations of the Third U.N. Conference. Thus, the push to implement the Convention required the rebuilding of cadres and expertise at both the national and international levels. This is one reason why so many countries were not able to respond effectively and promptly in the effort to implement the Convention earlier.

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. It also gave considerable weight to the protection and preservation of the marine environment, establishing a section for the prevention of marine pollution. 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 overfishing, 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 arising environmental and development problems be addressed. The Earth Summit took up the oftentimes antagonistic relation between the concepts of "environment" and "development" and integrated them under 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."³

The Rio Declaration on Environment and Development, which set out this conception, 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." It 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.

I would especially like to point out that the Plan of Implementation

requires of individual states the formulation and implementation of national strategies for sustainable development by 2005.⁴ As there is a tendency for states to make issues of land areas the focus of their sustainable development initiatives, action needs to be taken to ensure that ocean issues are included in the national strategies to be drawn up by individual 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. Although PEMSEA began as a project to assist developing countries, with the adoption of SDS-SEA the East Asian countries are now discussing ways in how best to raise its mission, as it enters its third term in 2007, to that of a regional cooperation organization for implementation of sustainable development.

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 and 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 to geographical features, 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 the settlement of disputes there is thus a need for procedures whereby the opinions of a disinterested and objective third party can be given effect. Efforts such as international symposiums for clarifying delimitation standards should also be made to promote agreement between principals in a dispute.

The academic community should also do more than wait for the

accumulation of opinions by the International Court of Justice on disputes of this type; instead, they should work actively to deepen debate on the issue and clarify standards. As tensions in international relations can easily escalate with emotional responses to delimitation issues from a narrow nationalism, an objective and constructive debate at the academic level is now more necessary than ever.

(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 areas close to coastal zones that would formerly be 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. 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 has been 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 last November the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia was also adopted. In spite of this progress, in 2004 half the world's incidents of piracy took place in East Asia, with incidents rising in the Malacca Straits while total world numbers decreased. 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 called for, but unfortunately many countries still do not have adequate policing capabilities for their areas of jurisdiction. 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 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.

(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)

One factor that has hampered the development of such a framework is that for a large number of countries, establishing effective sovereignty over their own affairs has been given the highest priority. When problems arise and are judged to affect their national sovereignty, the tendency among these countries has been to choose a national approach over international

coordination, with unfortunately less than sufficient consideration to 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. What is necessary now is for us to actively promote such understanding among all states. As long as we lack international coordination and cooperation that operates across the sovereign rights borders of each country's ocean areas, integrated management will be difficult to achieve. 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 ocean, 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 on a national sovereignty perspective. Conversely, those involved in smuggling, drug trafficking, piracy, and terror at sea seek to take advantage of the fact 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 we advocated the new “Securing the Oceans” concept at the Third International Conference “Geo-Agenda for the Future: Securing the Oceans” held last December, at which we adopted ten concrete measures for building political will and implementing the concept.

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 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 which has lately drawn much international attention. Along with attention towards positive efforts to address this problem by the IMO and User States, there is a need to deepen the debate on the interpretation and application of the relevant articles in UNCLOS.

Although time does not allow me to give a detailed explanation of the Tokyo Declaration on Securing the Oceans, I hope that if you agree with its principles upon reading it, you might work with us to implement the ten concrete measures it proposes

As we in the East Asian region have together from ancient times benefitted from the ocean's bounty in developing our societies, it is my sincere hope that as a model to the world we could now implement this new conception of "Securing the Oceans." With that wish, and a hope for your understanding and cooperation, 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

³ Principle 4 of Rio Declaration on Environment and Development 1992

⁴ WSSD Plan of Implementation 11 H. 162 (b)