



# Norms of Navigation 8th ARF ISM on Maritime Security

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# Scope of Presentation

- **Maritime Security and The International System**
- **Norms of navigation**
  - Innocent passage
  - CUES



# Maritime Security Underpins Prosperity

## Energy Security

- More 90% of trade and half of the oil used in the Asia-Pacific moves by sea

## Sea Ports

- 15 of 20 busiest
- 6 in China

## Strait of Malacca

- 1/3 of world trade
- 1/2 of oil shipping
- 70,000 ships/year

100

Journeys / Year

5000

# The Concept of Maritime Security

## Our concept of maritime security is informed...

- n By our common history
- n By its connection to prosperity
- n By its implications for the international system

## While our nations' policies may not always align...

- n We must find a way to work together on maritime security
- n The international system of norms, standards, rules, and laws should represent those areas where our nations' policies do align
- n Building capability, capacity, and trust is fundamental to increasing security

## Areas for cooperation in maritime security



# Areas for Cooperation in Maritime Security

- **UNCLOS**
- **International Organization Development**
- **Piracy**
- **Illegal, Unreported, and Unregulated Fishing**
- **Refugees and Migrants**
- **Maritime Domain Awareness**
- **The Role of Coast Guards**



# The International System

*Prosperity*

*Security*

*Norms*

*Standards*

*Rules*

*Laws*

*Capability*

*Capacity*

*Trust*



# The Building Blocks of the International System

## Norms

*Commonly accepted and expected*

## Standards

*Practices defined by a measure of excellence or promoting interoperability*

## Rules

*Practices codified by agreement between government agencies*

## Laws

*Binding international conventions*

## **Change Mechanisms**

*Evolution of culture*

*Evolution of needs*

*Negotiation*

*Parliamentary, legislative, formal consensus; great rigor*

*Less Formal & Binding*

*More Formal & Binding*

# The Building Blocks of the International System

## Norms



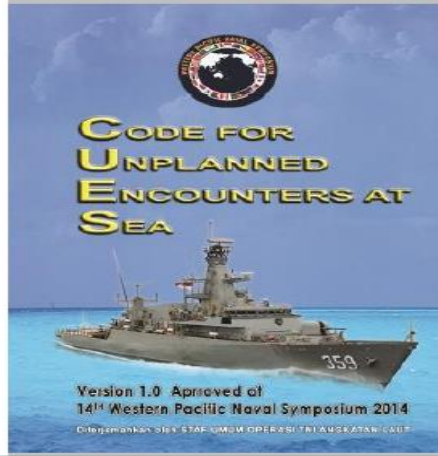
## Standards



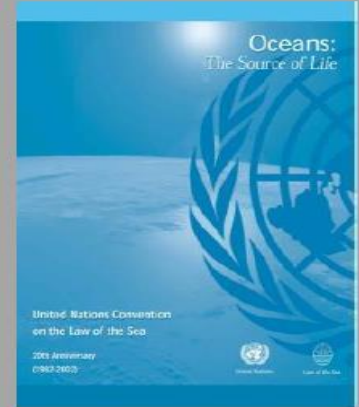
**VHF 16:  
Mayday,  
Mayday**



## Rules



## Laws



*Less Formal & Binding*

*More Formal & Binding*



# Norms of Navigation

- **Freedom of navigation**
  - Innocent passage
- **Code for Unplanned Encounters at Sea (CUES)**



# Freedom of Navigation

- n All ships have a freedom of navigation of the high seas under Article 87(1)(a) of the Law of the Sea Convention
- n This guarantee is also applied to the exclusive economic zone of a state by Article 58
- n Only the waters of the territorial sea and internal waters of a coastal state have restrictions of freedom of navigation
- n Special navigational regimes guarantee rights of access to the territorial sea



# Innocent Passage

- Available in the territorial sea
- Must be continuous and expeditious (18)
- Stopping or anchoring are possible where:
  - – incidental to ordinary navigation
  - – rendered necessary by *force majeure* or distress
  - – rendering assistance to persons, ships or aircraft in danger or distress
- Can be temporarily suspended for essential security purposes, but not discriminate, and be published in advance (25(3))



# CODE FOR UNPLANNED ENCOUNTERS AT SEA

- **Commonly referred to as CUES**
- **Publication of the Western Pacific Naval Symposium**
- **Endorsed by the Chiefs' Symposium in Qingdao, China on 23 April 2014**



# Development of CUES

- On behalf of WPNS, the Australian Chief of Navy promulgated a draft of CUES in 1999
- There have been various revisions since then
- A major review in 2013, conducted by a team of four nations and coordinated by Australia
  - Renamed the document
  - Simplified the legal sections
  - Clarified its application to 'naval ships and aircraft'
  - Updated the annex (tactical component)
  - Reformatted the document with a modernised 'new look'





# PURPOSE OF CUES

- **CUES provides navies with safety procedures, a basic communications plan and basic manoeuvring instructions for naval ships and naval aircraft during unplanned encounters at sea**



# Legal Considerations

- **CUES is not legally binding – nations will use it voluntarily**
- **Naval ships and aircraft enjoy sovereign immunity**
- **CUES does not supersede international civil aviation rules or rules applicable under international agreements or treaties or international law**



# Safety Procedures

- **Actions to avoid collisions at sea**
- **Formations and convoys**
- **Safe speeds and distances**
- **Radio communication procedures**



# Challenges Ahead

- **Training**
- **Implementation**
- **Exercises and real life experiences**
- **Document review**



# Recent Developments

- **Endorsed by IONS Conclave of Chiefs in Dhaka, Bangladesh on 13 January 2016**
- **France is proposing a WPNS CUES Working Group – to be considered at WPNS 2016 in Padang, Indonesia on 13 April 2016**
- **Singapore is proposing the development of an underwater CUES, to be discussed at the 2<sup>nd</sup> Submarine Operational safety Conference, in Busan, Republic of Korea on 30 May 2016**
- **The US Coast Guard adopted CUES in late 2015 and are encouraging other coastguards to follow suit**





[www.navy.gov.au](http://www.navy.gov.au)