

2ND ASEAN REGIONAL FORUM SEMINAR ON UNCLOS

SESSION 2 – NAVAL/LAW ENFORCEMENT PERSPECTIVES

MANILA, 28 MAY 2014

Introduction

- All the seas in the world shall be used peacefully, and any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the UN Charter shall be prohibited

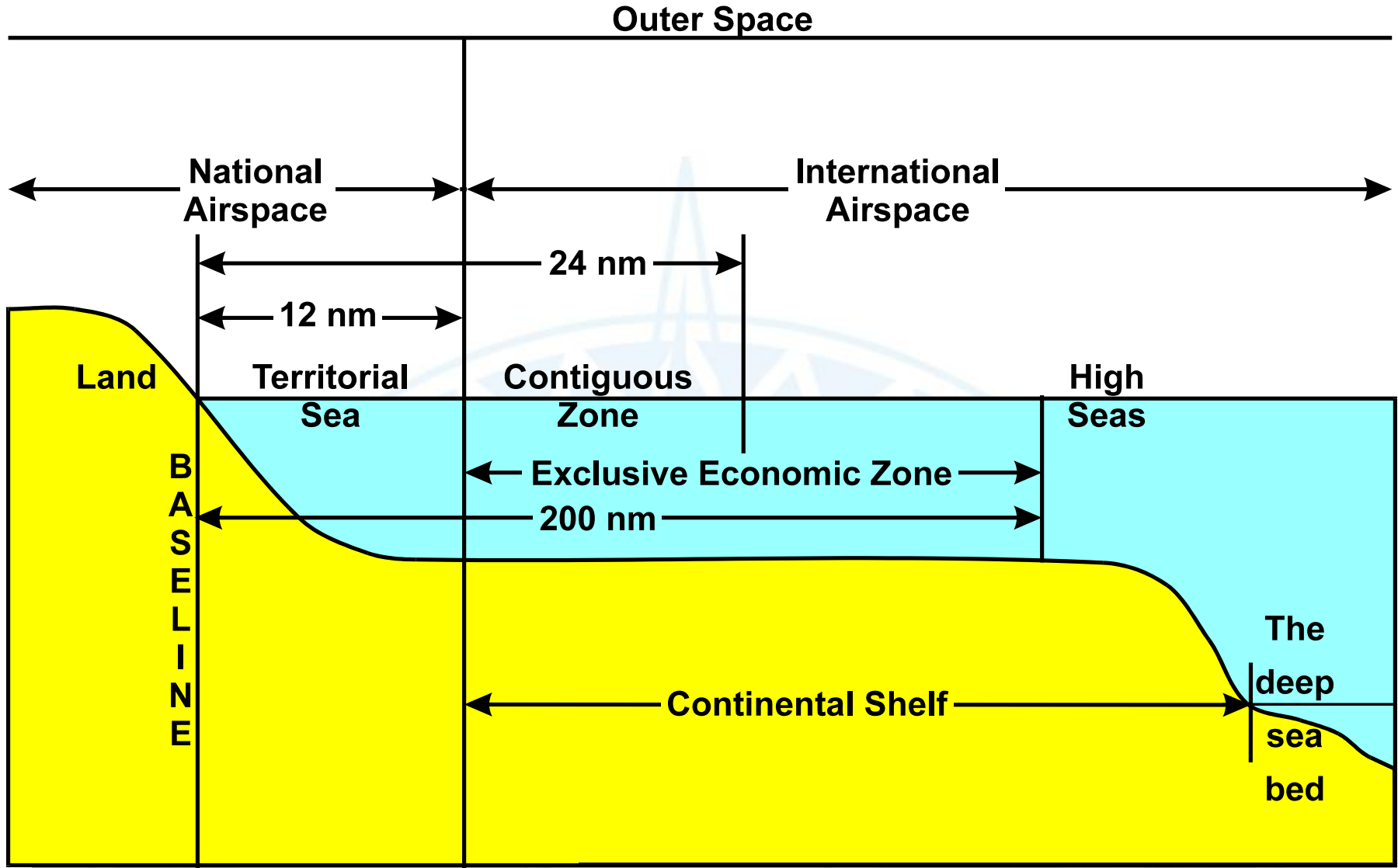
UNCLOS 1982

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- The law of the sea as reflected in UNCLOS was shaped following fifteen sessions of eleven general meetings that spanned a decade and UNCLOS was the result of discussion and compromise among over 150 states.
- Its provisions have been recognised and accepted by an overwhelming majority of the countries across the world and have been taken as the common code of a new maritime order

- Though there are countries that has not acceded to UNCLOS, they have the responsibility and obligation to observe all of its provisions.
- International law of the sea requires the development of practices by all states that will help enrich and improve the law itself, and the law requires further development as well, but no practices are lawful if they go against or even conflict with the fundamental rules of UNCLOS

Enforcement Zones



Security Incidents



Sometimes... **** happens



North Korean spy ship sunk by Japanese coast guard



EP-3 Aries II on Hainan island



USS Pueblo



Maritime Security and ARF Pillars

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- Confidence Building. Building confidence when trust is absent. Enhancing cooperation through functional cooperation
- Preventive Diplomacy. Addressing common threats
- Conflict Resolution. Combination of CBM and PD to resolve conflicts

GOVERNMENT VESSELS

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NAVY

LAW ENFORCEMENT

INSTRUMENT OF FOREIGN POLICY

INSTRUMENT OF DOMESTIC POLICY

COMMON DOCTRINES

NATIONAL CULTURE

A FORCE. THREATENING PRESENCE

AN AGENCY. PRESENCE TO ENFORCE LAW

MAN MACHINE INTERFACE

BEAT ON BOAT

STAND OFF WEAPON SYSTEM.
DISTANCE OPERATION

CLOSE QUARTERS ORDNANCE.

RULES OF ENGAGEMENT BASED ON
PROPORTIONALITY

RULES OF FORCE TO FACE THE LAW

TRUST BUILDING - MILITARY

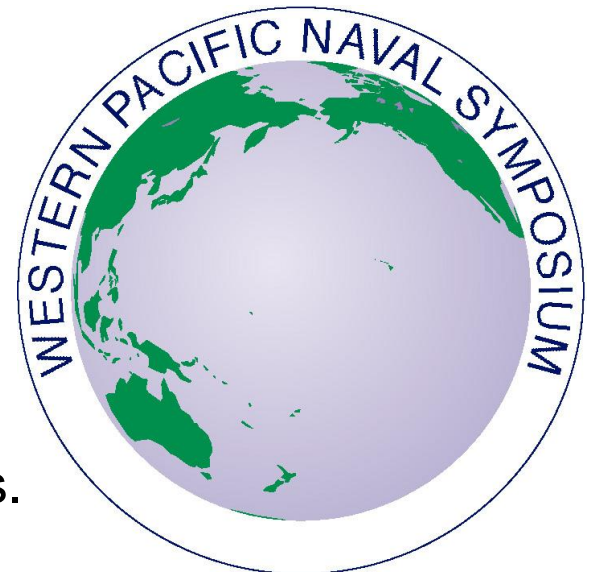
Western Pacific Naval Symposium

■ WPNS

- First meeting held in 1988, original 13 members nations has now grown to 21 members and 4 observer nations.
- Nations represented by Chiefs of Navy at biennial symposiums.
- Precursor symposium agenda workshops held at middle manager level (Captain rank).

WPNS Objectives

- Increase naval cooperation, by providing a forum to discuss maritime issues, leading to common understanding and possibly agreements.

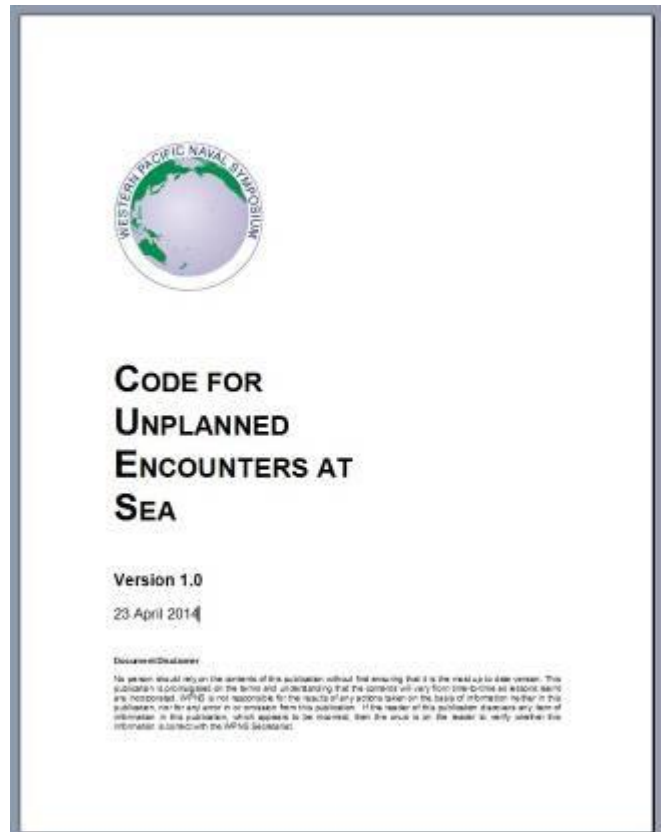


CUES

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■ Code for Unplanned Encounters at Sea

- Publication of the Western Pacific Naval Symposium (WPNS)
- Recently endorsed by the Symposium in Qindgao, China on 23 April 2014
- Commonly referred to as 'CUES'



PURPOSE

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

Legal Considerations

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

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TRUST BUILDING - LAW ENFORCEMENT



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MEMORANDUM 4

GUIDELINES FOR REGIONAL MARITIME COOPERATION

Introduction

This document puts forward the proposed Guidelines for Regional maritime Cooperation which have been developed by the maritime Cooperation Working Group of the Council for Security Cooperation in the Asia Pacific (CSCAP). The Guidelines are a set of fundamental, non-binding principles to guide regional maritime cooperation and to ensure a common understanding and approach to maritime issues in the region.

These Guidelines were developed on the basis of proposals advanced at several regional forums, at both Track One and Track Two levels, for a Regional Agreement on the Avoidance of Incidents at Sea (INCSEA) agreement. As a consequence of papers delivered and deliberations at the first two CSCAP Maritime Cooperation Working Group meetings, held in Kuala Lumpur in June 1995 and April 1996, the concept evolved through the possibility of a Regional Risk Reduction of Maritime Safety Agreement to the idea of more wide-ranging guidelines covering the full scope of regional maritime cooperation. Subsequently a proposed draft of the Guidelines was considered by an ad hoc meeting of the Working Group, held in Jakarta in December 1996, and accepted for submission to the CSCAP Steering Committee. After subsequent comment by CSCAP members, discussion at the Third Meeting of the



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MEMORANDUM 5

COOPERATION FOR LAW AND ORDER AT SEA

Executive summary

This memorandum discusses agreed best practices and the scope for cooperation to maintain law and order at sea in the Asia Pacific. It proposes measures that would promote law and order at sea and reduce the incidence of maritime crime. It is concerned with facilitating enforcement of domestic laws at sea and with developing cooperation to enforce domestic laws beyond national jurisdiction in specific cases allowed by international law.

Maritime crime might be defined as a criminal offence connected to the sea or to ships. Many activities fall within this definition and constitute a breakdown in law and order at sea. For the purpose of this memorandum, these include piracy; maritime terrorism; drug trafficking; human smuggling; maritime theft and fraud; illegal fishing and offences against the marine environment.

Maritime jurisdiction and enforcement are extremely complex, particularly in enclosed and semi-enclosed seas where maritime boundaries are not agreed. The exercise of State jurisdiction is governed by important factors such as the location of the offence, the nationality of the vessel(s) involved, the nationality of the victim(s), the nature of the offence and the nationality of the offender. A State's criminal jurisdiction also varies depending on the type of jurisdiction. This might be as a flag State over vessels flying its flag; as a coastal State over waters under national jurisdiction; as a port State exercising jurisdiction over vessels entering its internal waters; as an archipelagic or straits State; as a State of nationality of natural or legal persons engaged in illegal activities; or through the exercise of universal jurisdiction on the high seas as permitted by international law. States have exclusive competence relative to matters within their jurisdiction and their jurisdictional competence varies in different maritime zones.

Much of the breakdown in law and order at sea can be traced to the fact that some flag States are not discharging their responsibility for vessels flying their flags when they commit offences at sea. Difficulties also arise from uncertainties in particular legal regimes, including piracy. These difficulties can only be resolved through some form of agreement between States. This might be through either a multilateral treaty or a bilateral arrangement between neighbouring States.

The memorandum sets out a hierarchy of measures for maritime enforcement cooperation



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MEMORANDUM 6

THE PRACTICE OF THE LAW OF THE SEA IN THE ASIA PACIFIC

The practice of the Law of the Sea has significant security implications in the Asia Pacific, particularly in the Western Pacific and East Asia where there are numerous straits used for international navigation, several major archipelagic States and large areas of ocean and sea claimed as exclusive economic zone (EEZ). Some regional States have made declarations and statements on signing, ratifying or acceding to the 1982 UN Convention on the Law of the Sea (UNCLOS) or have introduced subsequent domestic legislation that suggest different positions on particular Law of the Sea issues.¹ Greater clarity and understanding of the Law of the Sea, particularly navigational regimes and the rights and obligations of coastal States in offshore zones, offer potential for maritime confidence and security building measures (MCSBMs).

Many provisions of UNCLOS have confidence-building effects. UNCLOS prescribes procedures for the settlement of maritime disputes by peaceful means. UNCLOS also clarifies the principles for delimiting maritime boundaries between adjacent and opposite States and for establishing the EEZ regime. It reduces the risk of conflict arising from disputes over claims to offshore areas. General acceptance of the navigational regimes in UNCLOS should mean that there is less risk of misunderstanding when warships of one State transit the



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MEMORANDUM 12

MARITIME KNOWLEDGE AND AWARENESS: BASIC FOUNDATIONS OF MARITIME SECURITY

EXECUTIVE SUMMARY

Maritime knowledge and awareness are basic foundations of maritime security in the Asia-Pacific. These attributes involve understanding that problems at sea are invariably inter-related; of how international maritime industry functions; of the roles of maritime security forces; of the relevant international legal frameworks, particularly those relating to jurisdiction at sea; and of the importance of participation in key international maritime regimes.



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MEMORANDUM 13

GUIDELINES FOR MARITIME COOPERATION IN ENCLOSED AND SEMI-ENCLOSED SEAS AND SIMILAR SEA AREAS OF THE ASIA PACIFIC

Introduction

This document puts forward the proposed Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific, which have been developed by the Study Group on Facilitating Maritime Cooperation in the Asia Pacific established by the Council for Security Cooperation in Asia Pacific (CSCAP). The Guidelines are a set of fundamental, non-binding principles to guide maritime cooperation in the enclosed and semi-enclosed seas of the region, and to help develop a common understanding and approach to maritime issues in the region.

ARF ISM – Maritime Security

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- The 5th ARF ISM MS was held from 18 to 19 April 2013 in Seoul, Republic of Korea
- Priority Area 2 - Co – lead countries, Malaysia and Japan on CBM
- Priority Area 3 - Co – lead countries, Malaysia and China on Maritime Law Enforcement Capacity Building
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6th ARF ISM MS, Bali 26 May 2014

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6TH ARF ISM MS

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- ARF Maritime Security Work Plan
 - Priority Area 3 - Capacity Building of Maritime Law Enforcement Agencies
 - Co-Chairs Malaysia and China
 - 2014-2016
 - Concept tabled during 6th ARF ISM MS in Bali

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THANK YOU

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