

CO-CHAIRS' SUMMARY REPORT OF THE 2nd ARF WORKSHOP ON ENHANCING REGIONAL MARITIME LAW ENFORCEMENT COOPERATION

Da Nang, Viet Nam, 12-13 March 2019

1. The 2nd ASEAN Regional Forum (ARF) Workshop on Enhancing Regional Maritime Law Enforcement Cooperation, co-chaired by Viet Nam, Australia and the EU, was held in Da Nang, Viet Nam, on 12-13 March 2019. This is the second in a series of ARF events to implement the ARF Ministerial Statement on Enhancing Cooperation among Maritime Law Enforcement Agencies, which was adopted by the ARF Foreign Ministers in August 2016. The list of participants appears as **Annex 1**.

Opening Remarks

2. In his opening remarks, Mr. Duong Tri Hien, Deputy Director-General, ASEAN Department, Ministry of Foreign Affairs of Viet Nam highlighted the growing importance and interest of maritime law enforcement cooperation in our region. A wide range of activities, ranging from information sharing, capacity building to joint/coordinated patrols and exercises have contributed significantly to regional maritime security and safety, as well as confidence building among regional countries. At the same time, maritime challenges remain complicated, even on the increase and incidents continue to occur, unfortunately. In this context, the series of ARF Workshop on Enhancing Cooperation among Maritime Law Enforcement Agencies is organized to discuss and come up with practical initiatives and measures, at the same time build trust and confidence, toward a future where seafarers' and maritime law enforcement vessels can operate at sea in environment of mutual-trust, good order based on international law and common rules and guidelines, and free and safe travels.

3. Ms. Nuala Bethel, Assistant Director, Department of Foreign Affairs and Trade, delivered remarks on behalf of the Australian Co-chair. She stressed that strengthening regional maritime law enforcement is an important issue of first order, especially in the context of growing sophistication and expansion of transnational crimes, and the shared interest of ensuring peace, security, and sustainable development in the region. Specifically, the maritime security challenges in the region include piracy, armed robbery against ships, human right abuses, trafficking, and competing sovereignty claims. These challenges are transnational in nature, and criminals hold no respect for borders. She reiterated Australia's commitment to build a stable maritime regime for good order at sea and recalled the clear directions given by ARF Foreign Ministers in the 2016 Statement on Enhancing Cooperation among Maritime Law Enforcement Agencies. In this context, she recalled the discussions from the first ARF Workshop on Enhancing Regional Maritime Law Enforcement Cooperation have identified key challenges and key areas of opportunity for regional maritime law enforcement cooperation. In this second Workshop, the co-chairs wished to continue the conversation through sharing of best practices and experiences, discussing possible guidelines and codes of conducts, and promoting fishery-sector cooperation among regional maritime law enforcement agencies.

4. In his remarks on behalf of the European Union (EU) Co-chair, Mr. Oren Wolff, Head of Maritime Security Sector, European External Action service, reiterated the EU's political and financial commitments to enhance cooperation with the region in security fields, in which maritime security is one of the four main components. The EU stood

ready to share its extensive experience with ASEAN partners; especially in areas such as piracy, transnational crime, human trafficking, joint military operation such as CSDP Operation Sophia. Reaffirming cooperation as key, he informed the Workshop of the intention to carry on the conversation to enhance regional maritime law enforcement in the future, with the aim to realize this important area of cooperation as a corner stone of ARF maritime security activities.

Session I: Regional Developments and Updates

5. In this Session, the participants were updated with the latest developments related to maritime security in the region since the first Workshop.

6. Police Major Allan Reginald L. Basiya, Chief of Budget and Fiscal section of the Philippine National Police introduced the Philippine Police (PNP) Maritime Police Group's responsibilities such as internal security, law enforcement, search and rescue, and maritime environmental protection. He updated the Workshop on the PNP's latest cooperation efforts in various regional frameworks, including bilateral cooperation with Malaysia, Indonesia and the U.S., trilateral cooperative arrangement in the Sulu Sea, ASEAN Maritime Forum and Expanded ASEAN Maritime Forum, INTERPOL Project MAST. He also stressed the importance enhancing border patrol, capacity building cooperation and networking among regional maritime law enforcement agencies. His presentation appears in **Annex 2a**.

7. Dr. Nguyen Hung Son, Acting Director-General of the Institute of East Sea Studies, Diplomatic Academy of Viet Nam, updated the Workshop of the developments of the various Indo-Pacific concepts, events in the South China Sea, and Viet Nam's latest efforts related to the maritime domain. After extensive analysis of the Indo-Pacific concepts, their evolutions, he concluded that these concepts centre around the maritime domain and their eventual implementation shall directly affect the maritime domain of the region. On the South China Sea, notable developments include continuing militarization of maritime features, increasing frequency of freedom of navigation operations (FONOP), increasing use of unmanned vehicles, increased risks to safety of navigation, and various marine environmental issues. He also pointed to Viet Nam's latest efforts in ensuring maritime security, including the coming into effect of the new Fishery Law, new Coast Guard law, and new Sustainable Marine Economic Development Strategy. His presentation appears in **Annex 2b**.

8. Captain Sebastian A. Martin, Head of the Centre for Maritime Security and Diplomacy, Maritime Institute of Malaysia, updated the Workshop on the latest ARF efforts on establishing Single Maritime Point of Contact (SMPOC). Noting that many regional countries have already established national SMPOC, they also differ vastly in functions and powers invested in them, as they are tailored to meet each country's specific requirements and interest. There are simple SMPOC which serve as a "post-box" to more complex ones which serve as coordinating agency, to full-fledged SMPOC with its own human resources, finance, and assets to take action on the ground. His presentation appears in **Annex 2c**.

9. Mr. Bruno Hellendorf of Egmont Royal Institute, offered an EU's perspective on the contemporary maritime security environment. He noted that there are many influential factors which may hinder maritime cooperation, including politic of exclusive national sovereignty, conflicting maritime interests, military arm race, and different prioritization of threats; nevertheless, he also shared the view that comprehensive counter to modern maritime security can only be done with a cooperative, rules-based

approach and coordination at national, regional, and global level. Taking in account of constantly evolving nature of maritime security threats, he stressed EU's learned lesson on the importance of capacity building, utilization of enabling technologies, joint exercises/observations, avoidance of duplication, multilateral approach... In this regard, he shared the view that the EU has clear maritime interest in this region, and possesses a lot to offer in cooperation, especially in term of capacity-building and technology in maritime domain awareness. His presentation appears in **Annex 2d**.

Session II: Best practice in bilateral and multilateral maritime law enforcement cooperation arrangements

10. In this Session, the participants examined MLEAs cooperation in the region, including both bilateral and multilateral arrangements, shared experiences and best practices.

11. Ms Kaitlin Meredith of the Global Maritime Crime Programme (GMCP) from the UNODC gave a brief introduction on the ongoing programme and shared information on good practices in regional and international cooperation in the area. The GMCP started in combatting piracy and expanded to also cover MLEA capacity building to ensure effective interdiction and prosecutions of maritime crime, including in drug and arms trafficking, TiP and SoM, environmental crime, piracy and nuclear and radioactive materials as well as other new and emerging threats. The GMCP provides various types of support to develop national capacity as well as national, regional and cross regional cooperation, including on-water operations and normative efforts, ranging from effective legal finishes, model documents, practical guide, compendium to treaties and experts databases. In Southeast Asia, the GMCP focuses on cross-regional prosecutors' network, combatting piracy and drug trafficking. Her presentation appears in **Annex 3a**.

12. Mr Li Chunlin from the China's Coast Guard focused his presentation on the Philippines-China coastguard cooperation. A joint coastguard committee between China and the Philippines was established after the signing of the two Presidents to provide institutional framework and foundation for cooperation between related agencies of the two countries. Following this, several related activities were agreed on, including hosting of the meeting on annual basis, exchanging of senior officers, hotline mechanism, port visit, combined exercises and junior officer training course in MLEA. He also shared a successful case of cooperation involving the rescue of two Philippine fishermen by Chinese coastguard during the 2015 Typhoon. The 2nd joint coastguard meeting was hosted in China in 2018.

13. Mr Chris Waters from the Ministry of Home Affairs of Australia discussed Joint IUU Patrols in his presentation with focus on the comprehensive strategic partnership between Australia and Indonesia. He gave a brief introduction on the Maritime Border Command (MBC) of Australia, which was established to undertake civil maritime security operations to detect, deter, respond to and prevent illegal activities in the Australian Maritime Domain. The works of MBC involve in providing study tours, maritime security exercises, coordinated patrols and information campaigns within the country. Mr Waters also shared information on the coordinated patrol conducted with Indonesia on IUU Fishing. The air-rider and ship-rider agreements have played a major role in helping both partners to understand each other's positions and cooperate more efficient. The patrol has helped to reduce IUUF cases substantively. His presentation appears as **Annex 3b**.

14. Captain Jean-Rene Degans, French Joint Staff Liaison Officer at the Information Fusion Centre (IFC) Singapore focused his topic on recent developments in international and regional cooperation and shared lessons learned as well as challenges ahead from the works of the IFC Singapore since its establishment in 2009. The IFC has extensive global linkages with 40 countries to share information on incidents. It also conducts extensive engagement efforts with shipping community, including outreach programs, voluntary community reporting and collaborative initiatives in order to access shipping knowledge and information and form closer relationship and shape industry practices. The Captain also shared the limitation of the IFC, ranging from lack of trust among officers to lack of understanding between IFC and Interpol or UNODC, etc. He concluded the presentation by listing several challenges ahead, notably, the development of maritime surveillance and response capabilities at sea. His presentation appears as **Annex 3c**.

15. In his presentation on “EU’s agenda in wider Indian Ocean, Mr Oren Wolff of the European External Action Service from the EU focused on the EU’s actions, especially in Western Indian Ocean with a view to extending some lessons, practices and services to ARF’s area of interest. He emphasised the importance of the 2016 EU Global Strategy and the 2014 EU Maritime Security Strategy, especially mentioned the ASEAN Centrality aspects within, which has focus on helping ASEAN develop its capacity to maintain peace and stability in the region. The strategy has 4 pillars, namely multilateralism, civi-military cooperation, functional integrity and rule of law, especially UNCLOS. The EU finds it important to promote compliance to regional agreements and supports closer cooperation on land-sea nexus, including security audit of ports. Mr Wolff concluded his presentation by reiterating that the EU is not a power but a partner to Asia and reaffirming EU’s commitment in providing its expertise in this regard.

Session III: Guidelines and codes of conduct

16. In this Session, the participants discussed the various proposed and existing guidelines and codes of conducts for actors at sea in the region.

17. Ms. Amanda Hsiao of Centre for Humanitarian Dialogue (HD) updated the Workshop on the works of HD on the South China Sea for the 3 and ½ years in developing common operating principles for maritime law enforcement agencies. Over the years, HD had played as a facilitator for informal, track-2 dialogues between various South China Sea claimants, and there seemed to be an emerging consensus on the principles of transparency and communication, do-no-harm, and due regard for good order at sea. Her presentation appears in **Annex 4a**.

18. Dr. Collin Koh of the Institute of Defence and Strategic Studies, Rajaratnam School of International Studies of Singapore presented on lessons for maritime law enforcement guidelines from the Code of Unplanned Encounter at Sea (CUES). He came to a conclusion that in reality, maritime law enforcement and naval forces have different focus and operate differently. He shared the view that there needs to be a new and different guideline specifically for maritime law enforcement incident prevention; which could contain characteristics such as non-binding, voluntary, emphasizing on compliance with COLREGS 1972, aiming to apply to as many maritime law enforcement agencies as possible, can contain safety and communication procedures as seen in CUES, emphasizing on the necessity and proportionality of taking certain actions including the use of force, and should cover aviation assets as well as maritime assets. His presentation appears in **Annex 4b**.

19. Professor Sam Bateman of the Australian National Centre for Ocean Resources and Security, University of Wollongong, presented the findings of the ARF EEP Working group on lessons learnt and best practice regarding prevention and management of incidents at sea. The Working group comprehensively reviewed the current and applicable prevention and management of incident arrangements in the region, and came up with a list of lessons learnt and best practice as well as concrete recommendations. The Working group also came up with concept paper on Guidelines for Preventing and Managing Incidents between Maritime Law Enforcement Agencies. His presentation appears in **Annex 4c** and the concept paper appears in **Annex 4d**.

Session IV: Promoting maritime law enforcement cooperation in the fisheries sector

20. In this Session, participants had in-depth discussions on the current challenges in the fisheries sector found in the region, including working-condition, human right abuses, and conservation of fishery resources.

21. Dr. Yunus Husein, Special Advisor of Presidential Task Force to Combat Illegal Fishing of Indonesia, offered the Indonesian perspective on fishery crimes, which identified 14 types of fishery crime, and 8 other closely related crimes; all of which are transnational in nature. In response, Indonesia chose a whole-of-government approach, with strong international cooperation with regional countries and international organization; this approach proved effective through many successful prosecution of criminal activities, including many cases related human trafficking, forced labour, and modern slavery. His presentation appears in **Annex 5a**.

22. Ms. Mi Zhou, Project Manager at the South East Asia Fishery Project, International Labour Organization, presented on the works and progress of the South East Asia Forum for Fishers. The SEA Forum for Fishers takes a voluntary, flexible, multi-stakeholder, human-rights based approach, seeking to enhance coordination and amplify effectiveness of existing regional efforts in the promoting of decent work and prevention of abuses in the fishery sector. The SEA Forum offers many opportunities for maritime law enforcement cooperation in the region, especially on human trafficking, labour condition and standard, fair recruitment of fishermen. Her presentation appears in **Annex 5b**.

23. Ms. Amanda Hsiao of HD also presented her personal perspective on the opportunity for possible provisional fisheries enforcement mechanism in the South China Sea. In her study, she explored this possibility drawing from existing agreements related to fishery around the region, and initiated a discussion on whether similar arrangements could be made in the South China Sea. Her presentation appears in **Annex 5c**.

Key take-aways:

24. Throughout the Workshop, the participants had vibrant discussions on the topics presented by the speakers. In general, the following points were highlighted:

- (i) The maritime domain is a common and centre interest of the ARF region, where the South China Sea lies at the heart of it. There is a convergence of interest to maintain a safe, stable maritime domain that is open, inclusive and interconnected.

- (ii) There exists various challenges in the maritime domain, that threaten life and safety of seafarers, detrimental to human rights, hinder sustainable development, and impend maritime peace, security and stability in the region. Thus, enhancing cooperation to addressing these maritime challenge is a priority of first order, including enhancing maritime law enforcement cooperation.
- (iii) There are many excellent maritime law enforcement cooperation underway in the region. And we draw many important lessons from them, including the importance of a holistic approach, cooperative activities to trust and confidence building, people-to-people linkage, inter-agency cooperation especially land-sea nexus, information sharing at the regional level through fusion centres, maritime domain awareness, the effects of technology evolution, and the need for institutionalization as basis for advanced cooperation.

Next steps:

25. Based on the discussions during the two-day Workshop, the Co-chairs proposed the following next steps:

- (i) Organize the third ARF workshop on Enhancing Regional Maritime Law Enforcement Cooperation in the 2019-2020 inter-sessional year to continue the conversation in this area.
- (ii) Building upon the results of the EEP Working group on lessons learnt and best practice regarding prevention and management of incidents at sea, propose and seek endorsement from to establish an online working group to develop an ARF Guidelines for Preventing and Managing Incidents between Maritime Law Enforcement units, with the aim to complete this document in 2020.
- (iii) Drawing on the discussions thus far, strive to build a road-map for continuing enhancing regional maritime law enforcement within the ARF beyond 2020.

26. The participants agreed to submit the above Menu of Potential Recommended Actions to the ARF-ISM-MS, ARF-SOM and ARF Foreign Ministers for consideration.

Closing Remarks:

27. In their closing remarks, the Co-chairs expressed thanks and appreciation to the participants for their active engagement and contribution to the success of the Workshop and looked forward to working with all ARF members to move forward this important initiatives.