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In order to fulfil its role MiDAS generates dialogue, undertakes research, networking and publication on defence and security related issues with a focus on defence diplomacy, defence policy, comparative technology contemporary security, as well as maritime security. Its publications are a valuable resource for education researchers, planners, policy-makers and practitioners.

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MIDAS-KAS
Conference 2021

ACKNOWLEDGEMENT

This report is based on the MiDAS – KAS Conference 2021 titled Towards A Peaceful Sea Maritime Security Amidst Contemporaneous Challenges that was organized and cosponsored by the Malaysian Institute of Defence and Security (MiDAS), and the Konrad - Adenauer - Stiftung (KAS) Malaysia Office.

The conference was co-chaired by Mr. Noor Hisham Roslee (Acting Chief Executive, MiDAS) and Mrs. Miriam Fischer (Director, KAS Office Malaysia).

Conference planning committee consisted of: Captain Roslee Roslee Mohamad Isa RMN (MiDAS), Cdr Muhammad Ashraf Mahmud RMN (MiDAS), Ms. Nor Aini binti Mohd Nordin (MiDAS), Ms. Ng Chen Chen (KAS) and Ms. Woo Swee Foong (KAS)

Conference technical online support was provided by Virtualive from TIN Tech Group Sdn Bhd. We would like to especially thank all 13 invited speakers and moderator Ms. Nadia Azmi who came on board to contribute to our online conference, as well as the nearly 368 people who participated in the intensive two days of discussions.

This report was prepared by a team consisting of: Mr Gerard George and the conference planning committee.

This conference's videos, may be found on the MiDAS Malaysia Youtube website:
<https://www.youtube.com/channel/UCqGUjbyMZTVYqkD103BBjNA/videos>

Introduction

The MiDAS – KAS Conference 2021 was held virtually in Kuala Lumpur from 2-3 November, 2021 entitled, “Maritime Security Amidst Contemporaneous Challenges towards a Peaceful Sea”. Welcoming remarks by the Director General of MiDAS, Mr Noor Hisham bin Rosle, was followed by a keynote address by the Deputy Minister of Defence YB Dato’ Sri Ikhmal Hisham bin Abdul Aziz. The conference addressed several timely and important topics under broad key themes: Challenges for a Maritime Nation Today; Existing Maritime Laws, Policies and Challenges; and Economic Impact of Maritime Security. About 368 participants worldwide, including thought-leaders and other experts and executive officers representing various government departments, especially from defence, national security, healthcare and related agencies; academia; research and think tank organizations; the diplomatic corps and other international agencies, all from six countries, joined the two-day, hybrid virtual international conference, leveraging on flawless, state-of-the art technology.

In the light of the new Coronavirus variants emerging and taking cognizance of the health and well-being of all participants and the larger populations, the organizers capitalized on this new, hybrid technology and produced, for a second year running, a timely, virtual conference, broadcast live from Kuala Lumpur.

Prior the conference, the modern virtual conference technology enabled potential participants to access the exhibition provided by MiDAS on Malaysia’s Defence White Paper and the “online lounge.”

The South China Sea is fraught with rising maritime and related tensions. This sea and the lands surrounding it is under the radar of not only the littoral states but also of many big powers seeking to both support the region’s development and also to draw benefits from the region: rich natural resources in the sea, including hydrocarbon and minerals, and oil and natural gas. Age-old debates about which country owns which parts of the sea, observing code of conduct at sea, incursions into disputed territories by various countries, emergence of military infrastructures and the rise of other alarming activities at sea, including pollution. All these are increasing tensions in the region and need to be addressed in diplomatic fora with solutions to garner peace and tranquillity for all nations concerned.

The conference organizers pulled together a brilliant line-up of experts involved in the planning and deployment of critical aspects of maritime affairs to discuss the issues confronting the stakeholders of developments in the South China Sea and the Indo- Pacific region. The thrust of the deliberations was how to progress forward in a diplomatic and constructive manner.

The lively interaction with panellists fielding questions from local and international participants after each key session, broadened the discussion on the important topics. Virtual polls on key issues were conducted to ascertain the participants’ response to the key issues raised at the conference. The moderator also invited the participants to engage in raising their concerns to the speakers by using the public chat facility in the virtual conference.

After welcoming remarks and the keynote address, the presentations and deliberations were covered under three key themes over the two-day international virtual conference.

Session one covered the Challenges for a Maritime Nation Today and featured perspectives from First Admiral Fadhil Abdul Rahman, Senior Director, Development Planning of the Royal Malaysian Navy (RMN); Haji Adi Ihram bin Dato Paduka Haji Mahmud, ASEAN Defence Senior Officials’ Meeting (ADSOM-Working Group Leader (Brunei)); and H.E. Michalis Rokas, Ambassador of the European Union to Malaysia. Their varied presentations, painted with a broad brush, depicted the whole range of maritime challenges affecting the Southeast Asian region and how countries as far off as in Europe pay keen attention to issues in the Indo-Pacific.

Session two featured Assoc Prof Dr Salawati Mat Basir, Legal Advisor, National University of

Malaysia (UKM); Dr Arron N. Honniball, Senior Research Fellow, The Max Planck Foundation, and Maria Pia Benosa, National University of Singapore's Centre for International Law. They examined many key aspects pertaining to Existing Maritime Laws, Policies and Challenges. In this segment, participants heard the latest developments in jurisprudence of the seas, what areas need greater attention, and possible solutions to further protect the rights of littoral states, and humanitarian challenges and safety at sea.

Session Three, entitled, Economic Impact of Maritime Security, delved into fisheries with a substantial focus on Illegal, Unreported, and Unregulated Fishing (IUU) within national sea territories and in the high seas. Presenting a wide variety of perspectives on these issues were Haji Mohd Sufian bin Sulaiman, Deputy Director General of the Fisheries Department of Malaysia; Datuk Dr Sibirin Jaafar, Director General of the Malaysian Institute of Maritime Affairs (MIMA); Peter Horn, Project Director of International Fisheries, The Pew Charitable Trusts; and Dr Naporn Popallanachai, Assistant Dean of the Faculty of Law, Thammasat University, Thailand.

Session Four, entitled, Human Security at Sea, reviewed the myriad challenges in maintaining international peace and security in the South China Sea, and to keep it accessible and safe for seafarers, including for shipping and commerce. In this segment, participants heard excellent presentations from Vice Admiral Dato Aris Adi Tan, the National Task Force Commander; Mr. Francois Kernin, Head of the Regional Mixed Movement Unit in the UNHCR's Regional Bureau; and Ms. Jane Chan Git Yin, Senior Fellow, Coordinator of the Maritime Security Programme, Institute of Defence and Strategic Studies, Nanyang Technology University. It was clear that a comprehensive management approach to sea and ocean security was imperative to ensure regional stability, safety health, and prosperity.

Conclusion

In his closing speech, Dato' Sri Muez bin Abdul Aziz, Secretary General of the Ministry of Defence Malaysia, emphasized that dialogues and forums on maritime security are pivotal in sustaining peace and security at sea, and underscored that these initiatives should be a continuous effort. To meet the on-going challenges, countries must collaborate and cooperate, he said. According to him, working together, not in silos, is the key to achieving the desired results of maintaining peace and security at sea and in the region as a whole. Dato' Sri Muez also called on ASEAN member countries to continue engaging with each other and with other multilateral entities to navigate the complex geopolitical landscapes of the region, leveraging on technology and information sharing. He thanked MiDAS and KAS, the conference organizers, for their diligent and efficient work in presenting such an important conference despite the challenges of the on-going health crises, and gave kudos to the participants for their staunch engagement over the two-day virtual conference. Dato' Sri Muez was hopeful that in the future a sequel to this virtual conference could be hosted in Kuala Lumpur so that presenters and participants could meet and engage in person.

Note: To assist readers, bio sketches of the panellists and role players appear at the end of this publication, along with a webliography on the topics covered in this conference, and a list of acronyms used in the presentations.

CONFERENCE ORGANIZERS

Konrad-Adenauer Stiftung (KAS)



Konrad-Adenauer-Stiftung e.V. (KAS) is a German non-profit organisation and think tank with partners and projects in more than 120 countries worldwide. KAS Malaysia facilitates a platform for dialogue among all stakeholders and across various topics, such as good governance, sustainable and economic development and international security dialogue. With its activities and projects KAS provides analyses as well as a forums for exchange, and with that it contributes actively to international cooperation and understanding . KAS Malaysia and MiDAS partnered together in order to conceptualize and facilitate this conference.

MiDAS



The Malaysian Institute of Defence and Security (MiDAS) is a think tank and research organization of the Malaysian Armed Forces under the Ministry of Defence. It spearheads issues on defence and security through research and knowledge sharing. MiDAS has developed strong cooperation with academicians, think tanks and government organizations in Malaysia and internationally.

Further information is available at:
www.midas.mod.gov.my

Conference Moderator
Ms. Nadia Azmi
Newscaster
Sistem Televisyen Malaysia Berhad



After welcoming the conference panellists and participants on behalf of MiDAS and KAS, Ms Nadia Azmi began the session by presenting some key facts: 70 percent of planet earth is made up of the ocean, while 30 percent is land. The sea is very important to humankind, commerce of the sea. 80 percent of global trade is carried by sea, and about 20 to 33 percent passes through the South China Sea. She said that maritime matters involve multiple countries and their varied interests, international laws, disputes and other challenges. Ms Naida added that the conference deliberations on all these issues will serve as a gateway on the challenging “journey” towards a peaceful sea. She then invited and introduced Mr. Noor Hisham bin Rosle the Director General of MiDAS for his welcoming remarks.

WELCOME REMARKS

Mr Noor Hisham bin Rosle **Director General** **MiDAS**

In his welcome address, Mr Noor Hisham bin Rosle emphasized the importance of the timely conference, co-organized with MiDAS' good friend and partner, KAS and was grateful to its . He acknowledged, in advance, the Deputy Minister of Defence who would be delivering the keynote address, and said that it was testimony of the Ministry's unstinting support for the MiDAS-KAS conference. He



was also pleased that experts from Southeast Asia and Europe were recruited as panellists and that hundreds of international participants had registered to attend the virtual conference.

Mr Noor Hisham bin Rosle noted particularly that the conference was designed to address important issues at hand surrounding maritime security and to provide a clearer understanding of its various aspects of maritime security especially during the pandemic crisis, including policies and legal matters. Lawyers and policymakers, he said, would always be consulted for the right course of action when traditional and non-traditional threats impact on the maritime domain. Mr. Noor Hisham then spoke of the importance of economic issues as throughout history the oceans and seas have been linked to economic development of most countries. He was glad that the conference would also address human security at sea which includes social, environmental, political, etc. Mr Noor Hisham foresees we will face challenging times ahead but expressed confidence that such challenges test our skills (to manage crises) and builds resilience.

Moderator Ms Nadia then invited Ms Miriam Fisher, Director KAS Malaysia, for her words of welcome.

Ms Miriam Fisher
Director
KAS Office Malaysia

Ms Miriam Fisher began by welcoming and thanking KAS' partner, MiDAS, the panel of speakers and the audience for their participation, and was impressed with the months of preparation by MiDAS for the virtual conference. She was cognizant of the indispensable role oceans play in almost every aspect of human lives and

said that it was vital to ensure that the maritime domain remains secure for free and legitimate uses. Ms Fisher added that while planning the conference, the organizers wanted the discourse to be focused around the goals of maritime security which included upholding the rules of law, ensuring freedom of navigation and trade, and human security. She was glad they were able to recruit a fantastic panel of speakers from six countries to discuss maritime issues and to share their views and inputs as possible solutions for the existing and emerging multiple challenges at sea. Ms Fisher acknowledged the audience for their presence, and reiterated her appreciation to MiDAS and the moderator. She also affirmed her gratitude to Ms Nor Aini binti Mohd Nordin, Assistant Director for Maritime Security at MiDAS.

Moderator Ms Nadia Azmi then invited the Deputy Minister of Defence Malaysia for his keynote address.



KEYNOTE ADDRESS



YB Dato Sri Ikhmal Hisham Deputy Minister of Defence Ministry of Defence Malaysia

Beginning with his acknowledgement of Mr. Noor Hisham bin Rosle, Director General of MiDAS, and Ms Miriam Fisher, Director of the KAS Office Malaysia, the distinguished panel of speakers and the audience, YB Dato Sri Ikhmal Hisham expressed high regards to the organizers, MiDAS and KAS for organizing the virtual conference despite the current (Covid and its variants) challenges. He said it was an honour and privilege for him to deliver the keynote address.

The Deputy Minister said that the MiDAS-KAS conference has emerged as one of the regional premier conferences where policymakers, researchers, leaders of non-profit organizations and international organizations meet to share and exchange knowledge on defence and security issues. He found that the conference theme was exciting and befitting.

Overview of Challenges for Malaysia



(Photo credits - Reuters: https://www.voanews.com/east-asia-pacific_malaysia-rounds-hundreds-undocumented-migrants-amid-coronavirus-fears/6188630.html [Police officers wearing protective suits pick up an illegal immigrant from an apartment under enhanced lockdown, in Kuala Lumpur, Malaysia, May 1, 2020

YB Dato Sri Ikhmal Hisham noted that, although the country was transitioning from a situation of the pandemic to an endemic, maritime security remained the biggest challenge Malaysia has to tackle as a maritime nation. The Deputy Minister then outlined three challenges affecting Malaysia and the Southeast Asian region:

- (1) Transborder crime,
- (2) Influx of illegal immigrants, and
- (3) Big power rivalry in the South China Sea.

The Deputy Minister said that Malaysia and its neighbours encounter transborder crimes such as trafficking in persons, smuggling of migrants, sea robbery, piracy, kidnapping for ransom, illegal fishing, and sea pollution. The cross-border crime and illegal activities is a challenge for a single country to manage by itself, he said.

Statistical Analyses

(1) YB Dato Sri Ikhmal noted that, based on 2016 statistics, Malaysia lost 6 billion to illegal and unreported and unregulated fishing and this was despite increased enforcement officers and civilians engaged to counter the threat. In 2019, \$4.2 billion losses were reported over several years of illegal fishing and poaching – these untoward activities have led to a serious decline of fish stock in Malaysia.

According to the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, there has been an increase of human trafficking (in Malaysia). 150 cases were recorded in 2020, compared to only 17 cases in 2008. There was a sharp rise in smuggling of migrants to 265 cases in 2020, from only 3 cases in 2010. The Deputy Minister said that transborder crimes impacts economic and social dimensions not only for Malaysia but also for the region.

(2) Illegal immigrants: the influx especially during the pandemic has severely affected the socio-economic fabric. The Deputy Minister pointed out that currently RM1.2 million is spent per day managing illegal immigrants. An added anxiety is the spreading of Covid-19 infections among the detainees. This places a high burden on country's finance and administration, stressed YB Dato Sri Ikhmal.

(3) Big power relations: YB Dato Sri Ikhmal indicated serious concerns about big powers, essentially the U.S. and China shaping the geopolitical and security outlook in the region as both these nations compete in dominating various spheres, including technology, economics, politics, and military.

YB Dato Sri Ikhmal alerted the audience about a grave concern, "a new high" where the U.S., the UK and Australia (AUKUS in short) formed a strategic alliance September 15, 2021. He said this initiative may disrupt peace and stability in the Southeast Asian region.



Photo credits-The Star <https://www.thestar.com.my/news/nation/2021/10/27/pm-expresses-malaysia039s-concern-over-aucus-at-the-east-asia-summit> [PM expresses Malaysia's concern over AUKUS at the East Asia Summit Oct 27]

Deputy Minister YB Dato Sri Ikhmal then proposed three solutions to manage the emerging challenges to peace and stability in the region:

- (1) Increasing inter-regional cooperation,
- (2) Enhancing inter-agency cooperation,
- (3) Continuing to promote multilateralism in managing the South China Sea.

As a solution to overcome transborder crime, the Deputy Minister suggested enhancing existing cooperation, such as the Malacca Straits Patrol and the Trilateral Cooperative Arrangement (i.e., signatories, Malaysia, Indonesia, Philippines) to a whole new level.

With reference to the Annual Report by Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia which showed a decrease in recorded transnational crime in the Sulu Sea in 2020, the Deputy Minister pointed out that there were only 3 incidents in 2020 compared with 8 in 2018. He called on countries to focus efforts to stem the root causes of these transnational challenges. As it is too much a task for one country to manage, he suggested that countries should arrive at a common definition and interpretation of national maritime law.



Photo credits-US Embassy KL <https://www.flickr.com/photos/52445638@N06/49383227748> Southeast Asia Maritime Law Enforcement

To this end policy and lawmakers (from countries in the region) can work collectively to achieve maritime goals, he said. In dealing with illegal immigrants, he stressed on increasing inter-agency enforcement engagement to enhance joint maritime and land border patrol. Furthermore, the Deputy Minister was firm that maritime enforcement capability should be enhanced in order to complement existing defence capabilities. He pointed out the Malaysian Government's establishment of the National Task Force (NTF) to strengthen Malaysia's border control which prevents the intrusion of illegal immigrants, and to curb any further spread of Covid-19.

In addressing challenges posed by porous borders, Deputy Minister YB Dato Sri Ikhmal stated that based on the National Task Force's records, as of 15 August 2021, there were 2,938 illegal immigrants detained within Peninsular Malaysia. He called for invigorated inter-agency cooperation capitalizing on the latest technology. For example, he pointed out that drones could be used to conduct maritime air surveillance and harnessing technology would be an efficient way to increase efficiency of maritime enforcement.

YB Dato Sri Ikhmal then proposed aggressively promoting multilateral cooperation in managing the ever-increasing tensions arising in the South China Sea. He emphasized the need to further advocate the international rules-based order. This would call for nation states to cooperate and use international or regional mechanisms to resolve disputes observing international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).



Photo credits – Creative Commons (CC) by-SA4.0 https://en.wikipedia.org/wiki/Malaysian_Maritime_Enforcement_Agency#/media/File:KM_Tok_Bali_passing_Terengganu_Drawbridge_in_August_2020.jpg [KM Tok Bali passing the Terengganu Drawbridge, 30 August 2020.]

He assured the audience that Malaysia emphasizes that Asian multilateralism is key to managing regional problems. He alluded to the fact that AUKUS should be raised at the upcoming ASEAN Defence Ministers Meeting to determine ASEAN's stand on the matter.



**Zone of Peace, Freedom
and Neutrality**



The Deputy Minister said that ASEAN's ideals of mutual respect, non-interference, and inclusiveness are important pillars for ensuring regional peace and stability, moving forward. He was proud that ASEAN was a successful model in the region, thus far, and was confident it will continue to be the only model suitable for establishing the Zone of Peace, Freedom and Neutrality (or ZOPFAN) and the Southeast Asian Nuclear- Weapon-Free zone (OR SEANWFZ) in this region.

Peace, said the Deputy Minister, is forever a right of all mankind. He urged everyone to must work together to achieve this long and arduous quest in order to provide a better future for the next generation.

In concluding his eloquent remarks, Deputy Minister YB Dato Sri Ikhmal said that he was confident that the MiDAS-KAS Conference 2021 would contribute significantly to the maritime security discourse, and said that he looked forward to hearing the expert panellists and the international participants' thoughts and debates on the matter.

Following the Deputy Minister's keynote address, moderator Ms Nadia alerted the audience about a Question and Answer (Q&A) session to occur at the end of each session and invited them to submit questions through the public chat box. She then introduced the first speaker for Session 1, First Admiral Fadhil bin Abdul Rahman and welcomed him to deliver his presentation.

**First Admiral
Fadhil bin Abdul Rahman
Senior Director, Development
Planning
Royal Malaysian Navy (RMN)**



First Admiral Fadhil appreciated MiDAS and KAS for organizing the timely and important conference. For his presentation, First Admiral Fadhil said that he would be avoiding details but, instead, he would provide an overview of the challenges to a maritime nation, from a practitioner’s perspective. Noting that the sea is vital for survival, his presentation would cover challenges especially for Malaysia within the scope of maritime security in its regional settings and arrangements. He acknowledged the previous decades’ forums and conferences on similar topics and looked to the 2021 MiDAS-KAS conference as a refined version of previous deliberations, distilling them to present current developments. He said that he would conclude with propositions on managing maritime security cooperation for the audience’s consideration.

Contemporary Issues and Challenges

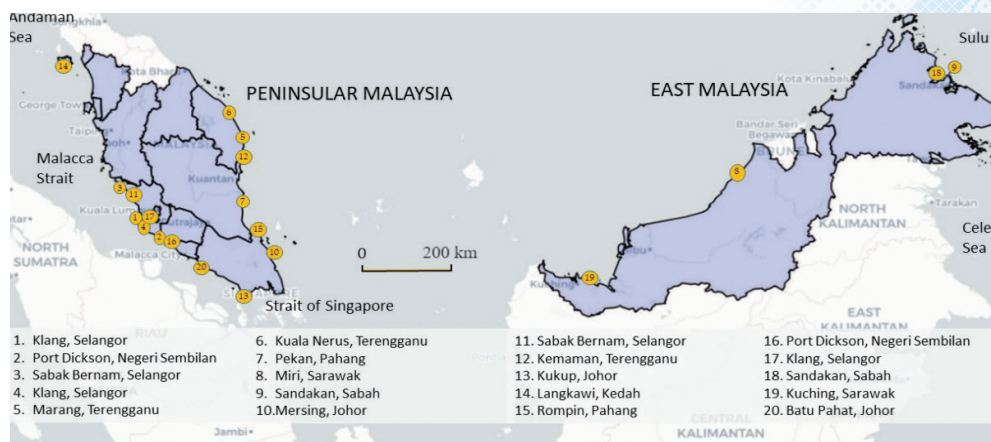


Image Malaysia’s Shoreline; credits/source: <https://www.mdpi.com/2073-4441/13/13/1741> and <https://creativecommons.org/licenses/by/4.0/>

Long Coastline Challenges

First Admiral Fadhil said that Malaysia’s long coastline shows that it has a vast maritime area to cover. Islands in the South China Sea, close to Malaysia’s shores are being used as transit centres for illegal activities. He said there is an urgent need to guard sea and land borders and such efforts would consume a substantial number of assets and capabilities to achieve desired ends.

On the sea front, the First Admiral said that the high density of shipping traffic creates additional challenges in identifying cross border criminal activity. On the one hand, Malaysia, he said, is blessed with two of the world's best lines of communication (referring to the seas adjacent the shores of the Peninsular and Sabah and Sarawak, and the Atlantic and Pacific sides off the shorelines). On the other hand, Malaysia has the colossal responsibility to protect them, added the First Admiral.

Inter-agency Coordination

The First Admiral said that Malaysia had nineteen different agencies with their own SOPs, priorities and legal jurisdictions, and managing these complex elements is never easy.

Pandemic's Impact

In the First Admiral's opinion, the pandemic exacerbates the challenges of managing both illegal migration and the spread of the dangerous Covid virus (and its mutations) among migrant detainees and beyond, reaching also the local populations. There are increased health risks and the government has to extend further its monitoring and enforcement patrols. The increased frequency of deploying more additional assets and personnel to manage cross-border crime and migrants-induced health risks, impacts further on administrative costs and limited resources. The expensive undertaking includes fast boats, intelligent surveillance and recognition, and related capabilities to combat illegal migration and subversive activities from penetrating Malaysia's borders



Image credits: Creative Commons Attribution-Share Alike 4.0 International license.
Racing Stripe of the Malaysian Maritime Enforcement Agency (Malaysian Coast Guard)

Maritime security, added the First Admiral is not only about the sea but also of security and development ashore. For example, he cited economic instability (ashore) in some nations triggered unlawful sea activities, as was the case in the Gulf of Aden beset with sea piracy and related crimes, disrupting shipping, trade and commerce.



Image credits/source: https://commons.wikimedia.org/wiki/File:Gulf_of_Aden_3_map.png

Successful Approaches

First Admiral Fadhil then showcased two Malaysian models of successful collaborative approaches in managing maritime security. He highlighted the Eastern Sabah Security Command (ESSCOM) established in 2013 and the National Task Force (NTF) formed in 2019. They represent the whole of the government and the whole of society approach as promoted in Malaysia's Defence White Paper.

Innovation and International Cooperation

The First Admiral then said, on a wider scope, the existing regional maritime security arrangements such as the Malacca Straits Patrol, Trilateral Maritime Patrol, and Information Fusion Centre (which continue to be relevant) needs a revisit. The scope of these regional cooperation should address other non-traditional security issues such as illegal cross-border criminal activities. He said, fundamentally, maritime security is transnational and international cooperation is required since the security agenda is beyond individual states. The First Admiral was of the opinion that significant innovation in international cooperation and capacity building is required. It has to progress beyond traditional ways of managing maritime issues in order to achieve the goals of enhancing the effectiveness of the existing maritime security architecture.

Emulate the Malaysian Example

First Admiral Fadhil told the audience that collaboration and integration are key success factors to move forward through the challenging future to overcome global crises such as the Covid-19 pandemic. He suggested that nations could emulate Malaysia's example of working through its National Task Force where cooperation with the myriad enforcement agencies. This model could

be introduced in the existing international arrangements to coordinate security efforts to curb illegal activities.

In this regard, the First Admiral emphasized that although national priorities of each country may differ, there are common grounds for cooperation such as countering drugs and human trafficking, terrorism, and sea robbery.

Among his proposals to manage marine security arrangements, the First Admiral underscored resource optimization through inter-agency cooperation. He suggested that each littoral state could adapt Malaysia's National Task Force model and thereby increase the effectiveness of collective efforts, leveraging on each country's individual success. The process would provide a better understanding of each country's operational capabilities and pave the way for interoperability, improve maritime ISR (Intelligence, Surveillance, and Reconnaissance) and domain awareness, and enhance public trust.

Moving Forward

In concluding his presentation, First Admiral Fadhil emphasized the role of national and international collaboration. He said that well-coordinated efforts involving all relevant government agencies is the way forward to achieving quality collective resilience. As a community, members should work together, share ideas and experiences, and continue to find new and innovative ways to address maritime domain issues.

**Haji Adi Ihram bin Dato Paduka
Haji Mahmud
ASEAN Defence Senior Officials'
Meeting (ADSOM) – Working
Group Leader Brunei**



Hj Adi Ihram thanked the moderator and the organizers for inviting his participation at the timely conference, and pointed out to the audience that he had previously served as the Deputy Permanent Secretary in the Policy and Strategy portfolio in Brunei's Ministry of Defence

Hj Adi Ihram spoke about the interconnectedness of nations today and its complex security environment. In that light, he said he sees ASEAN becoming a more significant regional and international player facing increasingly growing security challenges. There are geopolitical developments, increasing technological advancement and an unceasing commitment to multilateralism.



Photo credits/source: <https://depositphotos.com/stock-photos/asean-flag.html>

Meeting Traditional Security Challenges

The maritime landscape has increasingly complex major power relations at play. The challenge is to turn major power influence to ASEAN's collective benefits but adhering to ASEAN centrality. The correct approach to manage these challenges will also determine ASEAN's relevance and spearhead its own maritime future.

Strategic Waterways

Hj Adi Ithram alerted the audience about the ramifications of power dynamics the Asia-Pacific countries lining the waterways. He said that while the waterways serve as the economic lifelines of the people in the region, maritime flashpoints could arise and they need to be managed tactfully via the rule of law underpinning international order. If major powers are involved to help in the process, it is important that ASEAN centrality is maintained.

ASEAN Achievements in Addressing Maritime Challenges

The ASEAN Community has taken remarkable efforts to manage maritime security, noted Hj Adi Ithram, pointing out its three pillars, namely, the ASEAN Political-Security Community Pillar, the ASEAN Regional Forum Intercessional Meetings on Maritime Security, and the ASEAN Maritime Forum and its Plus. He called for continued momentum of these efforts to develop further trust and confidence among ASEAN nations, their navies, and all relevant maritime agencies.



Photo credits/source: <https://baodanang.vn/english/politics/201912/the-city-hosts-9th-asean-maritime-forum-3266153/>

In addition, ASEAN members share best practices towards a peaceful sea. Hj Adi Ithram spoke also of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP), the Western Pacific Naval Symposium, the Information Fusion Centre in Singapore, and the Combined Task Force 151 (CTF-151) in the Gulf Region of Aden—all geared towards enhancing ASEAN's outlook in maritime security.



Photo credits/source: CTF 151 – <https://combinedmaritimeforces.com/ctf-151-counter-piracy/>
A Royal Marines boarding team from HMS Monmouth take part in a boarding exercise under command of CTF-151.

Hj Adi Ithram added that initiatives such as the Expert Working Group on Maritime Security and the ASEAN naval exercises with China, Russia, and the United States reflect all add towards enhancing ASEAN's strategic outlook in maritime security.

Non-Traditional Security Challenges: Growing Unpredictability

The non-traditional threat has increased wider and deeper in their ranges and complexities over the past decades, according to Hj Adi Ithram. He added that public health and cyber security have become national security concerns.



Photo credits/source: http://www.xinhuanet.com/english/2021-02/11/c_139736764.htm
Chinese Ambassador to Brunei Yu Hong (L) and Haji Erywan, Brunei's Second Minister of Foreign Affairs, at a Chinese vaccine donation ceremony in Bandar Seri Begawan, Brunei, Feb. 9, 2021. (Photo by Jeffrey Wong/Xinhua)

In addition, ASEAN's collective efforts, to manage the Covid-19 pandemic benefited the region greatly from vaccine diplomacy. Member countries helped countries in need even while having to address their own challenges at home.



Photo credits/source: Thailand Department of Fisheries
<https://thaiembdc.org/2019/04/05/thailand-spearheads-in-bid-to-establish-asean-iuu-task-force/>

Illegal Unreported and Unregulated Fishing (IUUF)

Despite the ASEAN Cooperation on Fisheries 2016-2020 IUUF remains one of the greatest transnational and organized threats to both the maritime ecosystems and the region's economies.



Photo credits/source: ASEAN Defence Ministers Meeting 10 Nov 2021 <https://admm.mindef.gov.bn/SitePages/Photos.aspx?RootFolder=%2FADMM%20Photos%2FNOV%202021%2F101121%20ADMM%20Retreat&FolderCTID=0x01200071C7F733659DFD428BC1A262FCCCFFBB&View=%7BD0311E3D%2DB9-27%2D4AFE%2DACAA%2D47D41709B0A4%7D>

Defence and Security: Utilizing Existing Security Architectures and Mechanisms

ADMM and ADMM Plus have to be steadfast in addressing security concerns via the ASEAN Comprehensive Recovery Framework (ARCF) and the ASEAN Shield, according to Hj Adi Ihram. Under the ASEAN Defence Ministers' Meeting, he said, Brunei had introduced the ASEAN Direct Communications Infrastructure in 2014. It features a telephone hotline connecting the ASEAN Defence Ministers with the aim of preventing or diffusing miscommunication, misunderstanding and misinterpretation, and thereby preventing escalation of challenges at sea. As a result of positive developments, this initiative has been extended to the "plus" countries to establish stronger linkages with them to address security challenges in an open, transparent and inclusive manner. It will support the existing ASEAN's "Our Eyes" Initiative and the ASEAN 365 Information Sharing Platform.

ADSOM's Working Group Leader, Hj Adi Ihram, highlighted Brunei's stock-taking exercise (as ASEAN Chair in 2021) on the 15 years of cooperation in ADMM and ADMM-Plus. They are working towards a Strategic Paper on the future of ADMM and Hj Adi Ihram stressed that maritime security should remain a priority in years to come. He was delighted that the 15th ADMM June 2021 adopted 8 new revised and concept papers on ADMM's external engagements. They speak volumes, he said, of ASEAN's commitment to maintaining regional security which includes maritime security. All these initiatives add to ASEAN's efforts to address both traditional and non-traditional security challenges.

The Way Forward: Cooperation and Learning Best Practices

Looking ahead, Hj Adi Ihram underscored the need for greater ASEAN cooperation as major powers continue to be actively engaged in the region. He envisioned more pronounced geopolitical tensions. Hj Adi Ihram underlined the importance of multilateralism. He cited the Covid-19 pandemic which required shared, collective responsibility, transparency, and action from all parties. He emphasized how ASEAN utilizing existing initiatives amidst the Covid-19 pandemic reflected ASEAN's commitment to maintaining regional security and development and its ASEAN centrality. Hj Adi Ihram was of the opinion that in moving forward there needs to be strong determination and commitment to ensure progress and to continue learning best practices to avoid any future miscalculations especially at seas. The sea lanes of communication remain vital to ASEAN.

Concluding his remarks, Hj Adi Ihram said that being speaking at the virtual conference enabled him to observe how the participants carried the importance of the issues forward. He noted the conference had lined up the best experts in the various fields and hoped to see them in person again in the near future.

H.E. Michalis Rokas Ambassador of the European Union to Malaysia

After thanking MiDAS and KAS for organizing the event and inviting him to speak at the timely conference, Ambassador Michalis Rokas acknowledged the many challenges presented by the previous speakers (including the Deputy Minister for Defence) for Malaysia and ASEAN in the maritime domain.



H.E Michalis Rokas, EU Ambassador to Malaysia

EU Engagement in the Indo-Pacific



EU's High Representative/Vice-President of the European Union, Josep Borrell, unveiling the EU's Strategy for Cooperation in the Indo-Pacific in September 2021. Picture: European Union in Australia Facebook.

At the outset, Ambassador Michalis Rokas indicated that a huge amount of EU trade and commerce flows through the Malacca Straits and the South China Sea, and that the EU aims to have an open, strategic partnership that is comprehensive and inclusive.

With Malaysia, he said, the EU looks forward to a partnership agreement soon which should also serve as a springboard to further collaboration in all sectors.

The Ambassador informed the audience that the EU had just launched its strategy in the Indo-Pacific (September 2021) and stated that it was the first time the EU had formulated an overall regional strategy on engaging with a variety of different partners in such a wide economic, geographic and political space as the Indo Pacific. This, he said, reflects the increasing relevance of the Indo-Pacific for the EU which is interested in a rules-based international order as expressed by all the speakers.

Pivoting to the Indo-Pacific: Strategic Importance of the Malacca Straits and the South China Sea

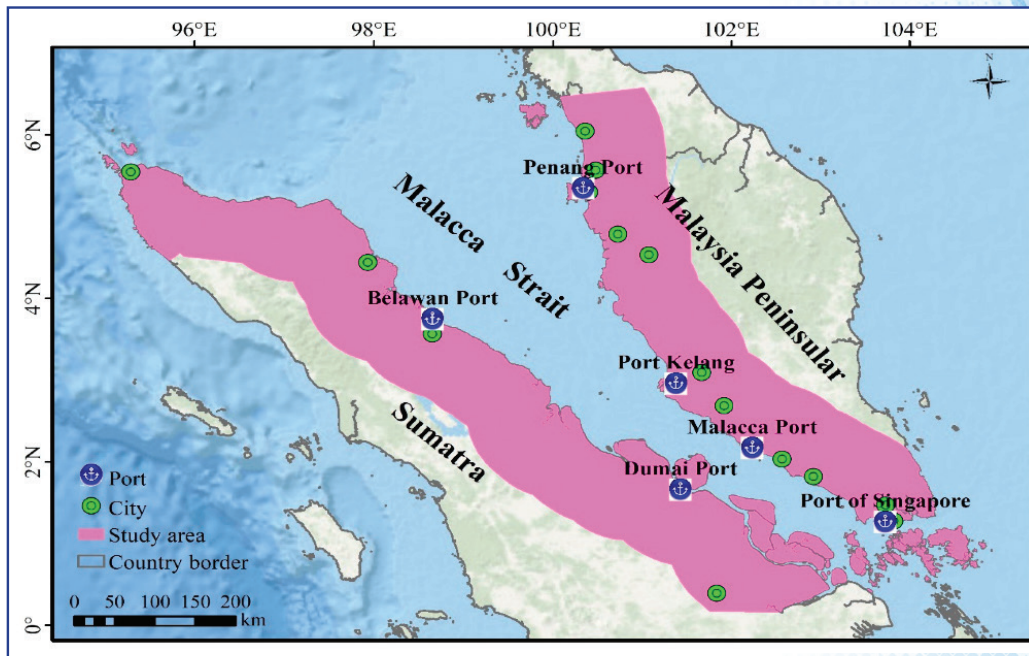


Photo credits/source: Creative Commons <https://www.mdpi.com/2071-1050/12/22/9714>

Ambassador Michalis underscored the EU's intent to step-up engagements, especially in the maritime dimension. He envisioned a crucial cooperation with Malaysia, located in the geographic heart of the Indo-Pacific, especially with regard to the Straits of Malacca.

The Ambassador said that the EU had engaged with the Indo-Pacific for decades and has invested 12 trillion Euros for assistance, more than any other stakeholder in the region. The EU, according to the Ambassador, is the biggest development assistance provider in the region. He cited the EU's strategic partnership with ASEAN, India, China, Japan and the Republic of Korea, highlighting trade between EU and Indo-Pacific as being the highest in the world : 1.5 trillion Euros (2019 figures) and about 40 percent of EU trade flowing through the South China Sea and the Straits of Malacca.

The EU's Strategic Aim

In the EU's Indo-Strategic Strategy launched (in September 2021) their aim, the Ambassador asserted, is to maintain an open and free Indo-Pacific while building a strong and lasting partnership to cooperate on matters from green transition and ASEAN governance, to the digital agenda and security and defence. Motto for the strategy is to cooperate whenever possible to protect the EU's values and interest's every time it is necessary. He underscored that the EU's approach is cooperation, not confrontation. The EU will pursue an inclusive region emphasizing ASEAN centrality as a cornerstone of the EU strategy.

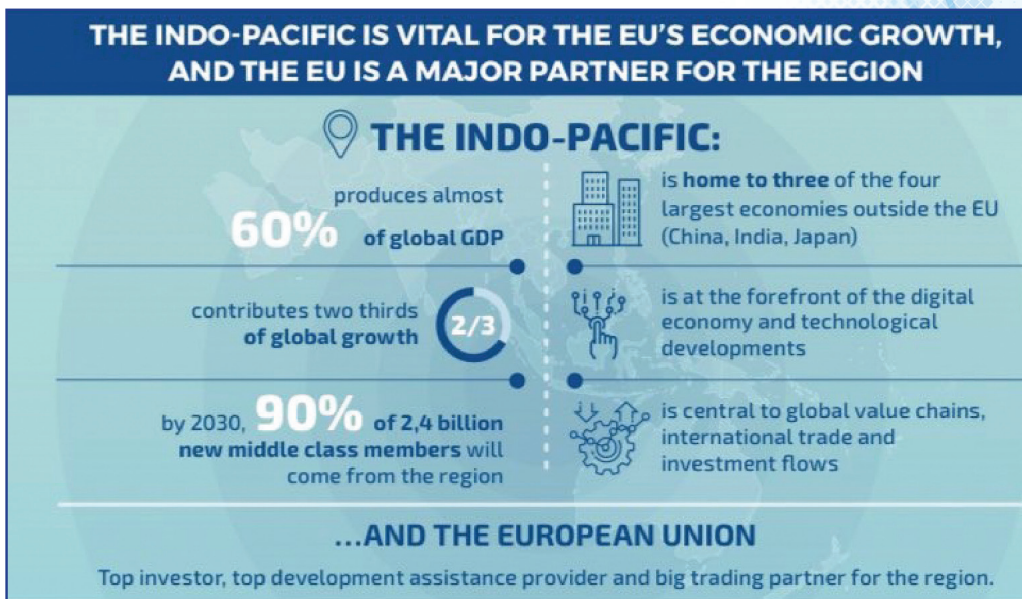


Photo credits/source: <https://twitter.com/EUAmbASEAN/status/1438637437400453123/photo/1>

Upholding Democracy, Rule of Law and Strengthening Cooperation

According to the Ambassador, the EU strategy differs from other regional initiatives such as AUKUS which was announced about the same time as the EU strategy. He reinforced the idea that EU support's the region's security, prosperity and sustainable development while it pays careful attention to the principles of democracy and rule of law. The EU, he said, seeks cooperation also in core global trends such as climate change, the Covid-19 pandemic, and digitalization initiatives. The degree of cooperation may vary, he said, from partner to partner.



Photo credits/source: European Union in Malaysia Facebook; <https://www.facebook.com/EUinMalaysia>

The EU in Malaysia

The EU's strategy of cooperation in the Indo Pacific region will be comprehensive and inclusive, and it seeks to broaden trade negotiations, including with Malaysia. Ambassador Michalis Rokas was optimistic that the EU will conclude a Partnership and Cooperation Agreement with Malaysia that was in the offing. The agreements with the region, he said is a springboard to further enhance cooperation. Potential initiatives include green partnerships, digital connectivity cooperation, and cooperation in research and innovation. These initiatives will be discussed with all the relevant agencies of the Malaysian administration.

Geopolitics, Competition, and Confidence-building

Among multiple and simultaneous challenges in the Indo Pacific, there is the geopolitical competition, on-going military build-up, non-traditional maritime security threats at the forefront: piracy, terrorism, illegal trafficking of weapons, bribery, human trafficking, illegal unreported and unregulated (IUU) fishing, climate change, and illegal immigration. There is a long list of concerns. The EU emphasizes the need for more cooperation and continued efforts to build confidence, resilience and to pursue peaceful resolution of disputes through dialogues and negotiations based on the internationally recognized rules.

The EU, ASEAN, and Maritime Rule of Law

The EU, recognizes the references to universally accepted principals of international law made at the 38th and 39th ASEAN Summits, including the 1982 UNCLOS. The Ambassador said the EU was very encouraged by the progress of in the on-going negotiations of the effective and substantive Code of Conduct (CoC) consistent with the 1982 UNCLOS. The EU would be supportive of the outcomes (of these negotiations) as long as they are not detrimental to third-party interests under international law.



Photo credits/source: Co-chairs' Press Release of the ASEAN-EU Senior Officials' Meeting <https://bit.ly/3Ky7W6s>

Ambassador Michalis Rokas then informed the audience about the EU's dedicated bilateral meetings with ASEAN, for example, the EU-ASEAN Co-chairs' Press Release at the latest Senior Officials Meeting. Therein the EU affirmed the importance of the Code of Conduct and of maintaining and promoting peace, stability, security, safety, and the right of freedom of navigation in and over flight above the South China Sea as well as the peaceful resolution of disputes according to international order and consistent with the 1982 UNCLOS.

Ambassador Rokas said the EU has regularly raised concerns about hybrid activities which are counterproductive to confidence building efforts and about other concerns associated with the South China Sea. He said the EU strategy will continue to explore options to contribute to the protection of sea lines of communication and freedom of navigation in the Indo Pacific while also seeking to support regional partners, including Malaysia in enhancing maritime security.

According to the Ambassador, the EU has increased its investments in the region with assets from in the region with France, the Netherlands, Germany, since 2021. Their activities, Ambassador Rokas said is consistent with international law and demonstrating the EU's commitment to multilateralism and naval diplomacy.

Session 1: Questions and Answers

Questioner Mohd Ashraf Mahmud inquired the position of ASEAN and the UK in the light of the Questioner Mohd Ashraf Mahmud inquired the position of ASEAN and the UK in the light of the AUKUS (Australia, UK, US) security pact which he characterized as dividing rather than uniting countries.

In response, Hj Adi Ithram said he did not think that there was an ASEAN position as such but individual member states have expressed opinions on it. On the positive side, however, Hj Adi Ithram opined that AUKUS was established in a very transparent manner. For example, he cited Australia as having reached out to the Foreign and Defence officials in ASEAN countries to brief them on the intentions and purpose of AUKUS. Hj Adi Ithram said that Brunei too found AUKUS parties being transparent and it reflected their shared commitment towards a stable secure and peaceful region. He added that time will tell whether AUKUS will heighten regional differences. Australia has been alerted, he said, that the ADMM retreat on November 10, would be an opportune time for Australia to address ASEAN member countries' concerns (on AUKUS) when defence ministers would assemble for the informal meeting—a platform for constructive dialogue. Hj Adi Ithram was particular that AUKUS countries should also reach out to other regional players to address its intentions and goals.

From the EU perspective, Ambassador Michelis Rokas responded that the EU strategy is one of cooperation encompassing long standing relations from cultural, political, and economic ties with the region taking cognizance of ASEAN centrality. He emphasized the EU's shared prosperity with the region where about 40 percent of its trade that passes through waters surrounding Malaysia and ASEAN. The EU is a strategic partner of ASEAN, pointed out the Ambassador, and it has many tools to support regional security and prosperity. Related to that, there would be a commemorative summit in 2022 in Brussels to also explain the variety of instruments and to mobilize the financing behind it to achieve a common stability and prosperity. To this end, the Ambassador and the EU's High Representative (Josep Borrell) will be reaching out to their counterparts, including the relevant ministries in Malaysia. He cited his meeting the previous day with the Malaysian Customs official and explained the EU's capabilities and its inclusive strategy based on partnership and cooperation.

Questioner Nor Aini asked if ADMM had any plans to work with other multilateral organizations (eg. the EU) on best practices in the maritime domain.

In his reply, Hj Adi Ithram confirmed that ADMM receives interests from EU countries and EU multilateral organizations to work with ADMM Plus. He reported that in 2021 the ADMM ministers adopted a concept paper on its external engagements with partners, including the EU. The EU has expressed its interest to engage with ADMM Plus activities, he added. ADMM Plus has several expert working groups, he mentioned, including: peacekeeping, HADR, cybersecurity, and maritime.

A questioner from the Royal Malaysian Navy asked if the EU has any assistance or grants to support countries in the South China Sea to improve the capability of their aging assets.

Ambassador Michelis Rokas confirmed they (the EU) do and they are existing projects which the EU uses for its own maritime security around the Mediterranean or the Gulf, against piracy, surveillance, including its enhanced satellite systems, ie, Copernicus Sentinel-6, capable of tracing the slightest moves and (the EU) can share data with partners.



Illustration of the Sentinel-6 (Michael Freilich) spacecraft in orbit above Earth; Photo/image source/credits:
[https://commons.wikimedia.org/wiki/File:Sentinel-6_Michael_Freilich_\(2\).jpg](https://commons.wikimedia.org/wiki/File:Sentinel-6_Michael_Freilich_(2).jpg)

Ambassador Michelis Rokas said that the EU's wide "tool-box" of instruments and tailor-made projects financed by the EU. He and the High Representative will be speaking to the various countries' government agencies about this and prepare for 2023 summit. The Ambassador underscored that the EU plans to partake as observer in ADMM's meetings as all (participating countries) are facing common challenges—affecting Europe too, despite the distance from the South China Sea region. Hybrid threats, he said, have no frontiers.

A final question was directed to Hj Adi Ihram on ASEAN frameworks and action plans to manage the rising geo-political contest in the South China Sea.

Hj Adi Ihram said that despite critiques, he believed that ASEAN had played a key role and has persisted in its efforts towards achieving peaceful settlements of territorial and jurisdictional disputes. ASEAN, he emphasized, was the fulcrum in the region to resolve disputes in a constructive manner. Hj Adi Ihram said they (ADMM and its "Plus" platform) work with the Ministries of Foreign Affairs and ASEAN's Defence sectors. They aim to increase mutual trust and confidence to enable dialogue and engagement among countries. He stressed that self-restraint and shared values of peace and stability in the region are core values and aims of the initiatives of the defence ministers of ADMM and counterparts of ADMM-Plus. This also involves the defence ministers/officials of the United States, China, and Australia, according to Hj Adi Ihram. He said that policymakers (including him) should have the habit of cooperation and avoid the use of force.

Associate Prof Dr Salawati Mat Basir
Legal Advisor, Universiti
Kebangsaan Malaysia,
Lecturer, Armed Forces Defence
College, Malaysia



MARITIME SECURITY: MEASURING CHALLENGES AND PROGRESS

Associate Prof Dr Salawati Mat Basir began her presentation acknowledging that the maritime space is governed by a variety of international treaties and agreements, from boundaries to fishing regulations. She said regional organizations such as BIMSTEC, and ASEAN were increasingly involved in maritime issues while the TCA (Trilateral Cooperative Agreement) are emerging on an ad hoc basis to counter maritime security threats in the Sulu-Celebes seas.



Malaysia, Indonesia and Philippines Defence Ministers, parties of the Trilateral Cooperative Arrangement (TCA), aim to boost security in the Sulu Sea, Sulawesi and Sabah's east coast. Photo credits: Bernama/The Star, <https://www.thestar.com.my/aseanplus/aseanplus-news/2022/01/16/trilateral-cooperative-arrangement-defence-ministers-of-malaysia-indonesia-and-philippines-on-jan-27>

Emerging Hotspot of Piracy, Armed Robbery, and Kidnap for Ransom

Assoc Prof Dr Salawati alerted the audience about the rise of piracy off Somalia and in the Gulf of Guinea, the criminal gangs who rob and kidnap fishermen at sea in the Bay of Bengal, and similar piracy in the Straits of Malacca and Sulu Sea for ransom. She said the regional authorities have been quick to respond to these crimes using coordinated patrols, increased information sharing via ReCAAP and the International Fusion Centers in Singapore and New Delhi. These incidents are on the increase, according to Dr Salawati, after the pandemic and the economic slowdown.

Black markets in wildlife trafficking, drugs and contraband products, are on the rise but more prominently in the Southeast Asian region, reports Dr Salawati. The Asia Pacific region (Malaysia, Thailand, Vietnam, etc.) provides a market for synthetic drugs and wildlife products. She said this region is the fulcrum of such illicit international trade between Africa (the primary source for such products) and East Asia (the primary market). Dr Salawati stressed that port screening measures and the role of Maritime Domain Awareness (MDA) can help thwart these illicit crimes.

Maritime Enforcement Capacity

Dr Salawati said that collective maritime security is necessary in order to help all countries (including especially those with greater financial challenges) address disaster relief, search and rescue, maritime mixed migration and IUU fishing. States, she said, should share the burden and their navies and maritime law enforcement agencies should work in tandem to leverage on increased MDA initiatives to address these rising maritime challenges.

Dr Arron N. Honniball
Senior Fellow
Max Planck Foundation
For International Peace and
Rule of Law, Germany



THE LAW OF THE SEA AND MARITIME SECURITY

Law of the Sea overlapping claims

Why provisional or Permanent resolution to maritime security

When the resolutions towards UNCLOS apply

How successful agreements can be promoted



Overlapping claims in the South China Sea; Image source: UNCLOS and CIA

Dr Honniball explained that three variations of overlapping claims may negatively impact ocean governance, including security:

Popular Variant

1. Continental insular territory resulting in competing claims to be a personal state and thus any maritime zones established thereof.

UNCLOS (article 298) When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 [compulsory dispute settlement]

Dr Honniball, argued that Article 298 of UNCLOS confirm that disputes centered on territorial sovereignty fall outside the Law of the Sea framework and must be settled through negotiation or other peaceful means, that is, including third party dispute settlement by mutual consent, evident in two successful cases between Malaysian and neighboring states concerning disputes of islands, in early 2000. He elaborated the two caveats in this exclusion: (i) both in the South China Sea arbitration. First, low-tide elevations cannot be subject to appropriation and cannot be transformed into a high-tide feature. Sovereignty of a low-tide elevation rests with the coastal state whose territorial sea or continental shelf is found; (ii) the illegal status and zone entitlements of maritime features are defined by the Law of the Sea. So maritime breach can be a low-tide elevation which generates no maritime claims, a rock which generates territorial sea or a fully entitled island which can generate full zone entitlement.

Dr Honniball further explained that these caveats help determine if overlapping claims really exist and reduce the nationale for either party to undertake activities on disputed features which could worsen the dispute and undermine security.

2. Classical Variant

This is where states establish their own maritime zones in a manner consistent with UNCLOS but due to the geographical and political make- up of the region result in overlapping claims with adjacent or opposite states. This affects the maritime zones in practice.

3. Coastal states' Variant

In this case, the coastal state's excessive claims overlap with the rights and interests of the international community, appropriating resources and rights from the global commons and places them under that state's control; e.g. the outer limit of most maritime zones is established from base lines. So, if a state uses questionable base lines to push its outer limits seawards, then an overlapping claim with the high seas or the area occurs.

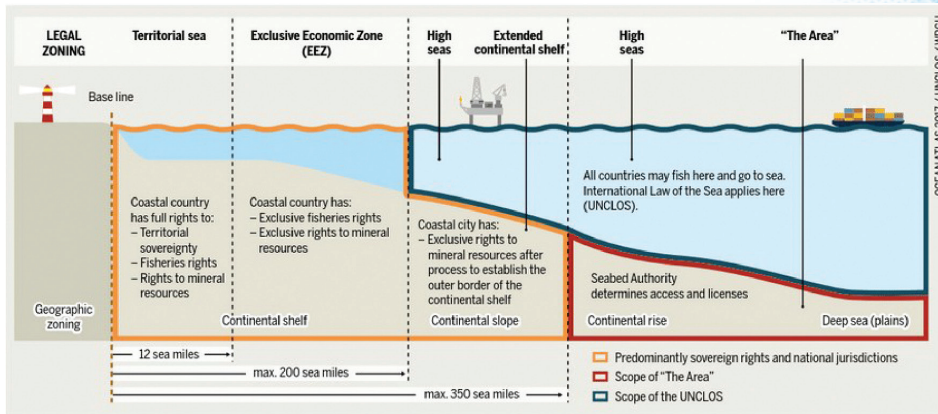


Image source: Maritime zones according to UNCLOS (Bahr, 2017)

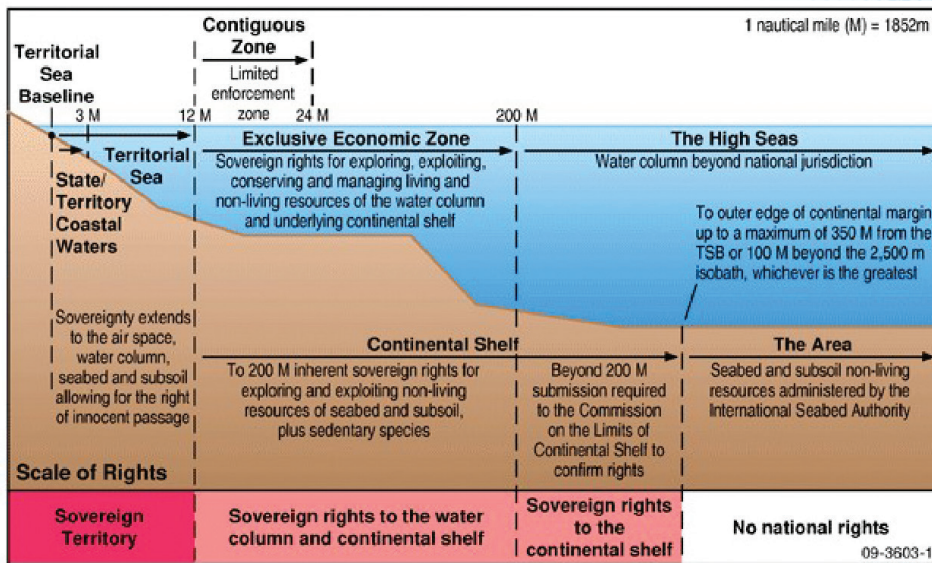


Image source: Maritime Zones Under UNCLOS (Geoscience, Australia)

Dr Honniball further stated that the same occurs if a state claims a novel maritime zone if it is inconsistent with the limits of UNCLOS.

Resolutions Matter for Maritime Security

According to Dr Honniball, the international law framework of jurisdictional rights and responsibilities are predicated on rights and obligations, and finding a clear state with sovereignty or sovereign rights to the area in question. Certain rights and obligations do apply in overlapping areas but these focus on provisional cooperation and not hampering the reaching of a final agreement (see UNCLOS articles 15, 74 and 83 for examples of this matter). Self-restraint obligations apply to states but not non-state actors who may then utilize grey areas and the self-restraint of maritime enforcement operations to conduct unlawful activities. Overlapping claims clearly frustrate clarity on which state will have enforcement jurisdiction. However, it also affects prescriptive jurisdictions and whether an offence has occurred.

Dr Honniball informed the audience that all states are responsible to address illegal fishing in overlapping areas. In the South China Sea it is more complex and claimant states will differ whether this is illegal or unregulated fishing.

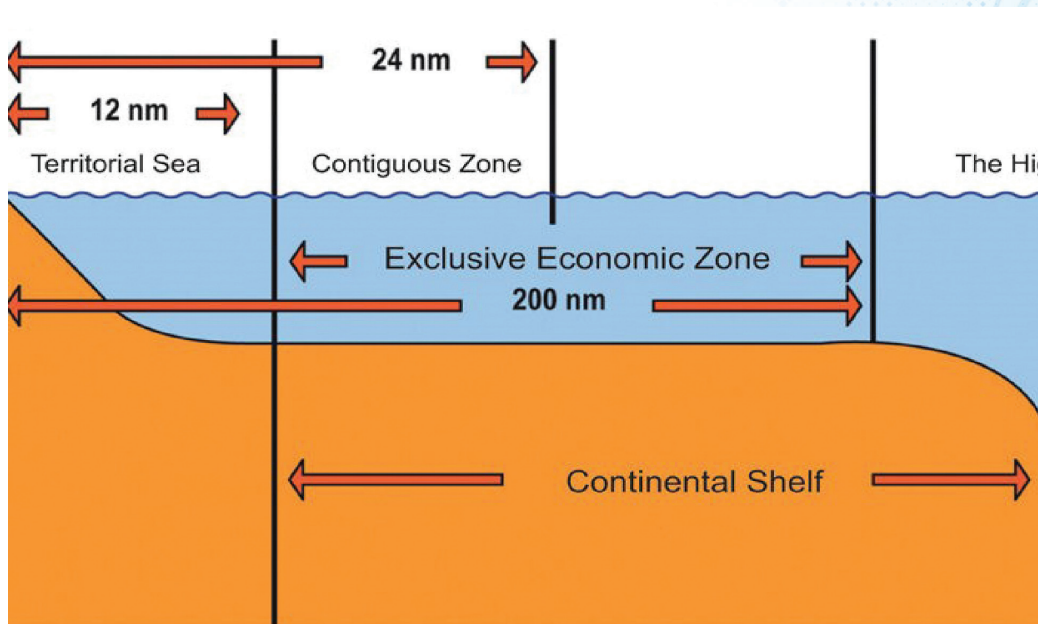
Addressing Disputes

Domestic and multilateral measures apply well, said Dr Honniball, so long as they do not hamper the reaching of a final agreement.

At the domestic level states are limited in a certain jurisdiction on the basis of the disputed territorial sovereignty but other jurisdictional basis still apply. In disputed waters, states can continue to regulate vessels from that state, the conduct of nationals from that state, and finally the entry of foreign flag vessels into domestic ports.

At the multilateral level, according to Dr Honniball, regional frameworks can address shared maritime security concerns, notwithstanding the existence of overlapping claims. For example, in Asia, there is the Regional Agreement to Combat Piracy and Armed Robbery against ships in the region. If an attack occurs in an overlapping EEZ, states can still utilize the cooperative framework with its universal application of piracy, etc., applies in all high seas and all EEZ areas. In this example, Indonesia and Malaysia are not contracting parties to ReCAPP but they cooperate with ReCAPP at the operational level.

Delimitation Process



Maritime Delimitation according to Law of the Sea; Image source/credits: International Institute for Law of the Sea Studies

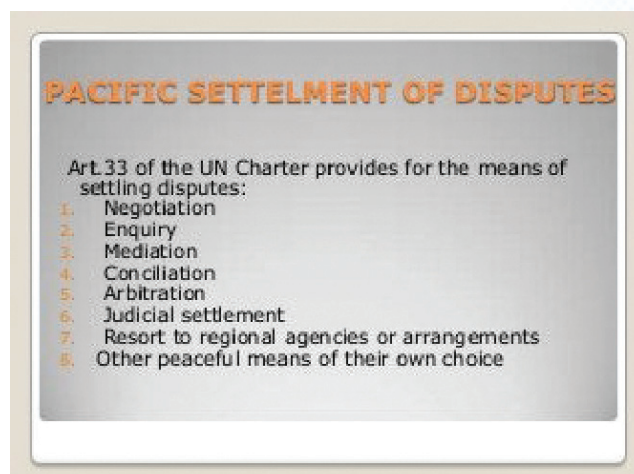
As regards delimitation process to resolve disputes of overlapping areas, Dr Honniball explained that UNCLOS provides claimant states to enter into provisional arrangements. If these address resource access or transitional ocean governance of the overlapping area, this can reduce maritime security concerns. UNCLOS allows parties concerned may enter into their own terms so long as it does not prejudice third party rights. For overlapping continental shelf or EEZs UNCLOS does not provide any preference beyond mutual agreements but does provide if no agreement is reached within a reasonable period of time, the states concerned can resort to the UNCLOS dispute settlement procedure. This does not apply to overlapping claims in Southeast Asia involving a claimant state that is not party to UNCLOS. For others, depending on the states' choice of procedure, Dr Honniball said that Article 287 and Article 298 of UNCLOS will direct the dispute to one of the compulsory dispute tribunals or conciliation commissions.

Dr Honniball disclosed that since the Black Sea judgement, international courts and tribunals have been consistent in the application of the three stage methodology to deal with delimitation. This is challenging because it is difficult to be exact and each case has its own novelty.

Boundary and Maritime Security Issues

According to Dr Honniball, while courts and tribunals can often settle shared boundary, for bilateral agreements, states have complete discretion over whether to settle on a single or separate EEZ or continental shelf boundary. While maritime security such as IUU fishing is to be considered during the process and shared boundary, great cooperation is required in monitoring and control. When delimitation is settled by compulsory dispute settlement, the ICJ (in the Indian Ocean judgement in 2021) confirmed that security interests are unlikely to qualify as a relevant circumstance in the second stage of the delimitation process, when considering the adjustment of the equidistant line. While the boundary line will be final and binding, the security factors will change over time and remain uncertain as they are not a permanent circumstance.

Successful Resolutions of Overlapping Claims



In this regard, Dr Honniball stressed that international relations play a crucial part. He referred the audience to Part XI of UNCLOS (whose preamble) promotes dialogue and trust building, and obliges states to exchange views and to enter into dispute settlement in good faith, and to try and reach an agreement on overlapping claims within a reasonable period.

Take Aways of Practice

Breaking down a dispute to manageable components is consistent with UNCLOS, said Dr Honniball, citing the Strait of Malacca and Singapore as examples. Breaking down by maritime zone (Malacca Strait) or breaking it down geographically are proper. In the latter (Singapore Strait) case three agreements have progressively extended the territorial sea delimitation line between Singapore and Indonesia. The remaining sections and tri-party points between Malaysia, Singapore and Indonesia are the most complex to address, sighed Dr Honniball.



Often forgotten, he said, is to provide due publicity and to deposit a copy of the agreement with the UN Secretary General as enunciated in UNCLOS Articles 16, 75 and 84. He added that a successful agreement is one that is consistent with international law and fully implements the obligations of states both substantive and procedural – this is easy to fulfill, he argued, and is of equal benefit to states in question as parties cannot say they were unaware of the exact location of the agreed upon boundary.

Ms Pia Benosa
Research Associate
Ocean, Law & Policy
Centre for International Law (CIL)
National University of Singapore



Challenges to the Post-Arbitration Legal Order in the South China Sea

Ms Pia Benosa began her presentation by sharing key findings in the South China Sea arbitration between the Philippines and China which she said provides significant guidance for how disputing parties in the region should conduct themselves.

According to Ms Benosa, the status and implementation of the award (more than 5 years old) and its contribution to the law of the sea remains a key topic in public discussions although there are doubts whether the state should have undertaken the arbitration. She noted that while the award addressed numerous aspects of the law of the sea but yet, UNCLOS, a framework convention from the 1980s, did not provide categorical answers.

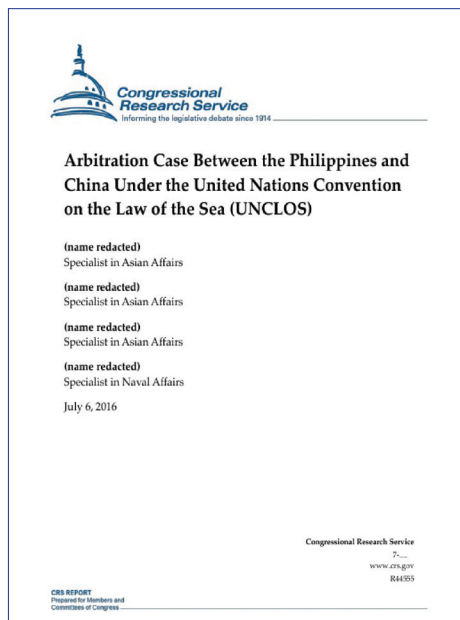


Image credits/source and access to the above report: <https://crsreports.congress.gov/product/pdf/R/R44555/4>

Key Findings in the South China Sea Arbitration (Philippines and China)

1. Claims to the Nine-Dash Line is a “constellation of historic rights short of title” and not a claim of historic title to the South China Sea waters. This is inconsistent with UNCLOS. The only basis of maritime rights is those provided in UNCLOS. Unfortunately, China lost out by not participating in the proceedings. The tribunal stated claims for a “bundle of rights” is inconsistent with UNCLOS because exclusive or exclusionary cannot be permitted to co-exist with sovereign rights in the oceans. The tribunal emphasized the fundamental rulings of UNCLOS as criteria to form the basis of entitlements to maritime spaces.
2. Ms Benosa further reported that sovereignty disputes among claimants continue to persist and case by case examinations of characteristics of disputed features (not covered in the Award) are necessary to determine status and entitlements.
3. The tribunal also found that several of China’s actions were not consistent with the peaceful purposes of UNCLOS, including the protection of the environment. Some outstanding issues such as the legal issues about the construction of artificial islands continue to be of concern.

Ms Pia Benosa then turned towards some disquieting trends in the region.

Disquieting Trends since the South China Sea Arbitration

1. Ms Benosa highlighted the continuous incursions in maritime areas of other claimant states which exacerbate the denial of access to, and exercise of, sovereign rights in the EEZ and interference with law enforcement with those rights – often with the use of militia forces and intimidation. Many states have experienced these unlawful incursions and Ms Benosa cited the Philippines, Malaysia and Indonesia in particular.
2. Continuing damage to the marine environment was yet another concern, emphasized Ms Benosa, by construction of artificial islands or other illegal maritime activity in environmentally sensitive areas.
3. Slow progress in negotiations for a Code of Conduct in the South China Sea has cast doubt on the centrality of ASEAN, according to Ms Benosa. With ASEAN chairmanship passed on to Cambodia, the country which levelled a dissenting voice in 2016 on whether ASEAN should release a statement in support of South China Sea arbitration.
4. Engagement of “law fare” to deter unwanted conduct, the weaponization of the law as tools used in bolstering territorial claims in the South China Sea.
5. Ms Benosa then underscored the recalibration of relationships and strategies vis-à-vis non-claimant regional stakeholders and she referred to AUKUS being an issue in this regard.

Flashpoints, Shared Dilemmas and Interests

The dynamics in the South China Sea region is changing and Ms Benosa alluded to big the entry of big powers’ (AUKUS) as cited above. She informed the audience about China’s use of its law fare, creeping jurisdiction, and the use of force. China’s enactment of its Coast Guard Law and its revised Maritime Traffic Safety Law are inconsistent with UNCLOS and critiqued by international



stakeholders. China could use force to manage foreign vessels entering China-claimed (though disputed) waters. China's internal laws, said Benosa, cannot be used to justify unlawful acts and they contravene UNCLOS.

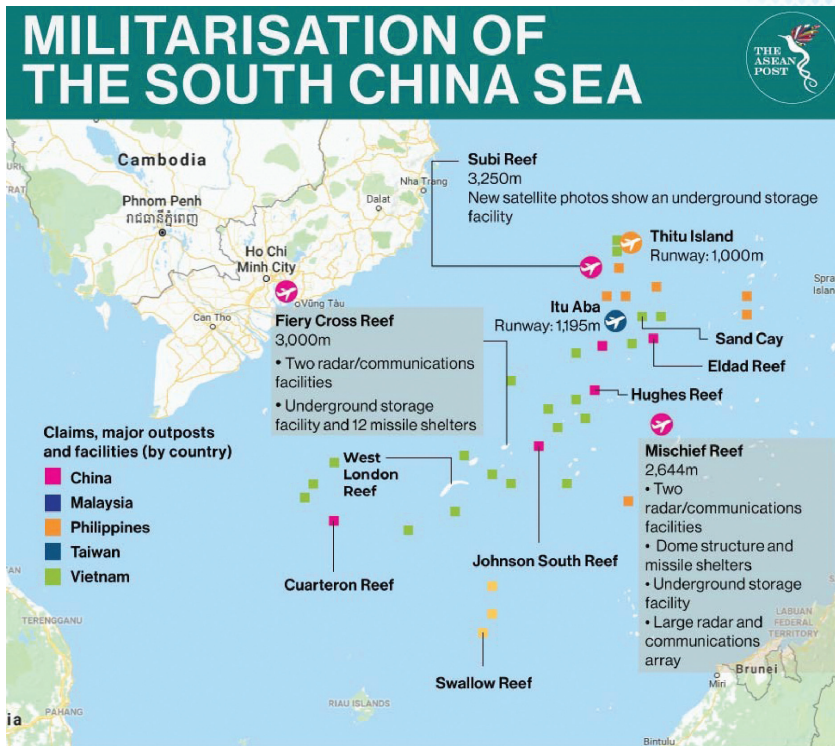


Image source: The ASEAN Post and various sources.

Ms Pia Benosa then continued to explain the dangers of exponential militarization and the potential for flashpoints in grey zone warfare. These grey zones have become default for players in the South China Sea, she argued.

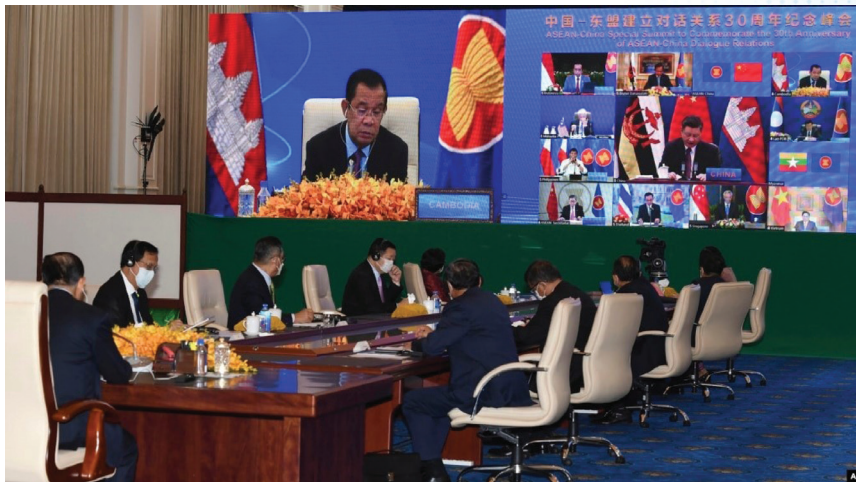
Ms Benosa further stated that this is further magnified by the continued deployment of maritime militia, survey ships, the recent recovery of underwater objects liable to be used against UNCLOS approved innocent passage. She added that regional alliances resulting in maritime exercises

among friendly nations, including military drills, the USS freedom of navigation operations, all contribute to the dynamics of the South China Sea region.

The UN CLCS (scientific body recommending the limit of the outer continental shelf of states. She noted that since December 2019 in dispute settlements, about 30 communications have been made to the UN Secretary General in relation to Malaysia's partial submission of its continental shelf claim. It shows certain affirmations of pronouncements made in the Award including bunking the possibility that baselines can be drawn by continental states offshore of the Galapagos.

Ms Benosa then informed the audience that there has been some proposals in the U.S. Senate (connected with its competition with China) including the U.S. (non-claimant state) proposed South China Sea and East China Sea Sanctions Act which seeks to impose restrictions on persons associated with China's acts. She posited the question if this is what claimant states expect from its non-claimant partner countries, and if that would exacerbate instability in the region.

Challenges to UNCLOS, argued Ms Benosa, included the relationship between international law and municipal law, shared interests of claimant states and the international community. She underscored that states have to deal with non-compliance by regional powers to UNCLOS and its arbitral Award/s, and with the complexities of sovereign rights and jurisdiction (of states) to explore and harvest natural resources in the EEZ in the continental shelf.



ASEAN-China special summit at Peace Palace in Phnom Penh, Cambodia, Nov. 22, 2021. Photo credits: VOA and An Khoun Sam Aun/National Television of Cambodia

Conclusion

Ms Benosa emphasized that ASEAN should maintain ASEAN centrality while seeking support from superpowers for national and regional development. She concluded on a happy note that although ASEAN states themselves have disputes on claims in the South China Sea, they have exercised restraints and avoided conflicts and closed her presentation arguing for safeguarding of rights in the South China Sea.

Session 2: Questions and Answers

Moderator Ms Nadia asked the panel what challenges were there in making the Code of Conduct (a mere declaration) more binding.

Ms Pia Benosa said the main challenge was agreeing to language that would have binding obligations for states to follow. She noted that at this time only the preamble (not the rest of the document) has been reached and that it is difficult to attain consensus in the multi-party setting. She underscored the challenge of tying ASEAN centrality to the present situation.

To another question on how to move forward in light of non-compliance to UNCLOS in order to, Dr Arron N Honniball said that typical of legal frameworks, non-compliance will continue to exist. The challenge, he said, is to reduce the level and to make it non-sustainable. If parties agree, Dr Honniball said, that UNCLOS will be the basis on which overlapping claims will be addressed, then it's easier to move forward to resolve the dispute. So in East Asia if one party is using base lines not covered by the treaty which another state does not recognize, or is claiming maritime zones not in the treaty, then, according to Dr Honniball, the (dispute) progress is slow.

Next, a questioner inquired to what extent UNCLOS can prevent conflicts in the South China Sea. Dr Honniball responded by saying actors move across boundaries as do the various maritime claims, so if there is an agreed upon framework or agreement, the dispute can be reduced to avoid possibility of conflict. He cited the fisheries agreement in the Arctic Ocean is in place, so if an industrial fishing dispute arises, it is used under UNCLOS to prevent a conflict from arising. He lamented that a binding framework is lacking in the South China Sea, so conflicts could arise.

Another question arose whether there were any gaps to be filled in the existing to maritime law that could avert conflict in the future. In response, Associate Professor Dr Salawati Mat Basir said that ASEAN members have adequate laws but world politics must be considered. In this regard, she said that superpower's alter ego to conquer areas. She alerted the audience about the case of Philippines and China where the former, in good faith, presented their case very well and consistent with UNCLOS and international law but she decried China's response. Laws are adequate, she said, and then alluded to the intimidating attitude and treatment from the superpower to attain what it wants in the disputed area. Dr Salawati then mentioned how Malaysia's commercial vessel (in October 2021) was harassed daily within Malaysia's own maritime zone. She said the concern is about the attitude of the superpower over middle and small power.

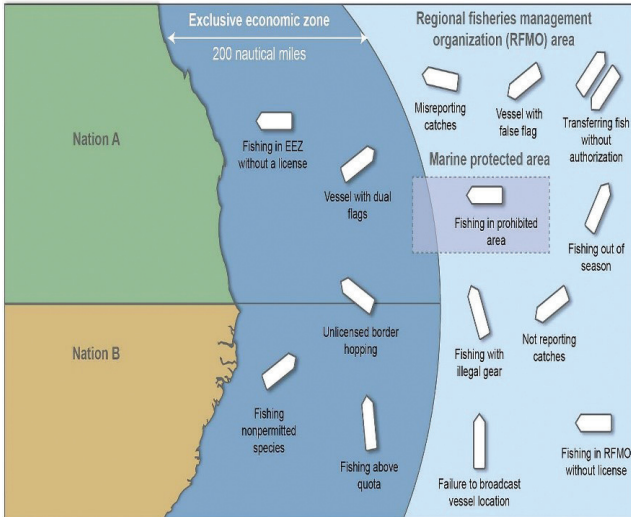
A questioner said UN agencies have been ineffective in enforcing laws of the sea on superpower states and asked if instead the focus should be on having strong regional institutions like strengthening ASEAN. Dr Salawati said that ASEAN's hands are tied by the superpower, so it is imperative that ASEAN political leaders consider and deal with this issue.

Questions were then raised on maritime terrorism and IUU.

Ms Pia Benosa shared that law enforcement relating to maritime terrorism can be addressed by states' domestic criminal laws while implementation would vary from state to state. ASEAN members have experience, she informed, in dealing with non-traditional security threats (including Illegal, unreported and unregulated fishing) and dialogue on this is going on and must continue, to reduce the possibility of miscalculations at sea.

Dr Arron N. Honniball responded saying that the United Nations is still debating the definitions of maritime terrorism and now the focus is on trying to define particular acts at sea which would be shared among states to suppress. There would be global frameworks and instruments. He said that

at the regional level there would be ASEAN Counterterrorism Convention which would take about fifteen of these instruments and try to adopt them among the parties concerned. Implementation would be a challenge because domestic laws for this is not yet in place and there are inconsistencies among practice across the treaty framework. For example, he said that Malaysia has obligation to punish those funding offences but not actually conducting the offence.



Source: GAO analysis of agency information. | GAO-22-10424

“What is the way forward for the United States in the South China Sea?” inquired another questioner. Dr Arron N Honniball said it is a political decision for the U.S. which and that the U.S. will pursue reinforcing the arbitral Award and continuing the freedom of navigation program. He said his personal opinion is that the U.S. should continue to cooperate with regional allies.

Conference Moderator
Ms Nadia Azmi
Newscaster
Sistem Televisyen Malaysia
Berhad



Moderator Ms Nadia Azmi began the second day of conference with a recap of the previous day's conference deliberations. She reiterated the three predominant challenges to achieving maritime laws and policies, essentially:

(1) littoral countries are at risk because criminal activities conducted at seas cross borders and trespass coastlines; (2) coordination between states and agencies is crucial. Notwithstanding each with their own laws, SOPs and legal jurisdictions, it is important to find common ground; (3) just as the Covid-19 pandemic affected countries and human lives, the maritime domain also has to deal with the consequences of the health crises. Illegal immigration and cross border activities have exacerbated the spread of the Covid-19 virus.

Ms Nadia said the previous day's deliberations also covered the role of critical organizations like ASEAN and the EU in maritime security, emphasizing that no state can stand on its own but it is the interdependence of states that enable each other economically and socially. Participants also heard from the panelists that integration and collaboration are imperative in achieving peace. The EU has vital interests in the region with about 40 percent of its trade passing through the Straits of Malacca and the South China Sea. The laws are adequate but require cooperation and compliance from all states for effective implementation.

Ms Nadia reminded the audience about participating in the Questions and Answers session that followed each key session, by using the public chat box online.

From an economic perspective, Ms Nadia said that the Straits of Malacca is one of the world's most important waterways and that countries seek to use the waterways and harness the rich resources under the South China Sea for their economic development and prosperity. She then introduced the sessions and the respective panel experts. Subsequently, Ms Nadia invited them to present their perspectives on the economic impact of maritime security.

SESSION 3: ECONOMIC IMPACT OF MARITIME SECURITY

Hj Mohd Sufian bin Sulaiman
Deputy Director-General
(Management)
Department of Fisheries,
Malaysia

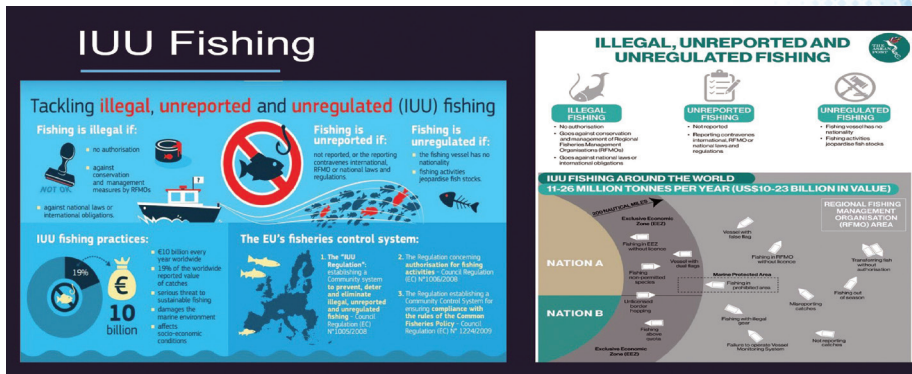


Economic Impact of IUU Fishing



A Vietnamese vessel apprehended by Malaysian authorities for fishing illegally in Johor waters. Malaysia loses RM6 billion in revenue annually due to illegal fishing (Fisheries Department). Photo credits: NST

After thanking the organizers, MiDAS and KAS, Hj Mohd Sufian described to the participants IUU fishing as fishing activities conducted in contravention of national, regional and international applicable laws and regulations. Unreported fishing, he said, refers to fishing activities that are not reported or misreported to relevant authorities contravening the said laws (above) or reporting procedures of regional fisheries management organizations. Unregulated fishing, on the other hand, occurs in fish stock areas lacking conservation or management measures stipulated in international law.



Slide credits: Hj Mohd Sufian bin Sulaiman

Facts About IUU Fishing

Hj Mohd Sufian informed the audience that IUU fishing is a threat to marine ecosystems and undermines national and regional efforts to conserve and manage fish stock in a manner that leads to long term sustainability and responsibility. IUU fishing also threatens the livelihoods of fishermen and other stakeholders and exacerbates poverty and food insecurity to communities who rely on fish resources. He said IUU fishing is associated with organized criminal activities and occurs on fishing vessels and sometimes using fishing activities as a cover for other illegal activities. These include trafficking in drugs, humans, arms, piracy, etc.

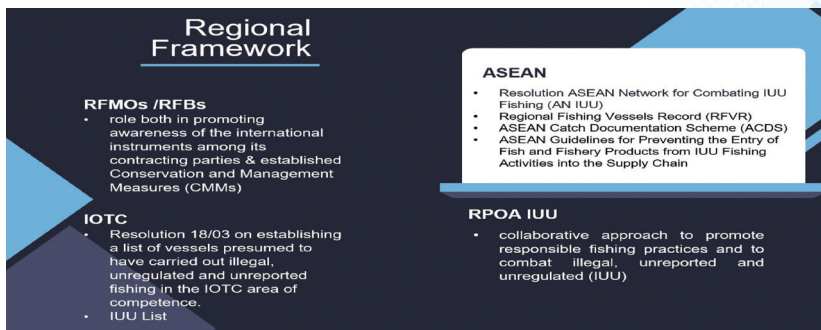
United Nations Addresses IUU Fishing

A holistic approach is necessary to combat IUU fishing, argued Hj Mohd Sufian. He added that the UN General Assembly highlighted IUU fishing as a key threat to the management and sustainability of fisheries in national waters and the high seas. The UN General Assembly has dedicated June 5 as the International Combat Against IUU day. Hj Mohd Sufian added that there are several other channels to address initiatives to combat IUU, including via bilateral and multilateral instruments.

According to Hj Mohd Sufian, since 1982, under the auspices of UNCLOS, the FAO under the UN, has taken initiatives to combat IUU fishing and developed compliance agreements, including the UN Fish Stock Agreement, Code of Conduct for Responsible Fisheries (CCRF), and International Plan of Action for IUU Fishing (IPOA-IUU).

Regional Frameworks to Combat IUU

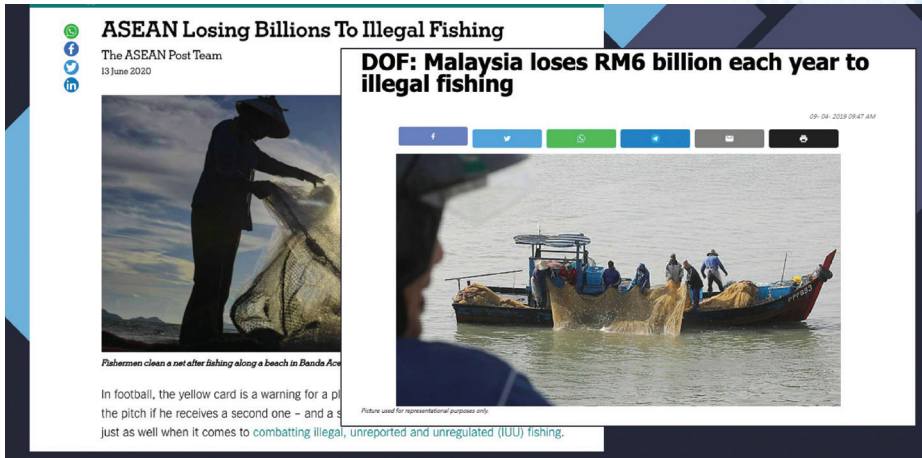
In addition, to the above, Hj Mohd Sufian shared other regional frameworks that combat IUU.



Slide credits: Hj Mohd Sufian bin Sulaiman

IUU's Impact on the Marine Environment and Malaysia's Economic Losses

Hj Mohd Sufian argued that IUU fishing can hamper regional countries' efforts to manage fisheries sustainably and conserve marine biodiversity. The inherent nature of IUU does not allow quantifying the full, global economic impact resulting from these illegal activities. Nonetheless, the Department of Fisheries has carried out studies in 2016 and 2019 which showed that Malaysia lost up to RM6 billion to illegal fishing annually.



Slide credits: Hj Mohd Sufian bin Sulaiman

Additional Efforts by Malaysia to Combat IUU

Commitment & Effort in Combating IUU

<p>FISHERIES ACT 1985</p> <ul style="list-style-type: none"> - Strengthen fisheries governance in Malaysian waters. - streamline and update measures and laws in combating IUU fishing 	<p>NPOA IUU</p> <p>formulate pertinent and achievable, additional measures in addressing IUU fishing</p>	<p>REGIONAL & BILATERAL ARRANGEMENTS</p> <ul style="list-style-type: none"> • IOTC • RPOA IUU • ASEAN • MY-AUSTRALIA • MY-EU
<p>INTER AGENCY COOPERATION</p> <ul style="list-style-type: none"> - IUU Committee - National Plan Control & Inspection (NPCI) - Joint MCS programs 	<p>PSM</p> <ul style="list-style-type: none"> • Control foreign fishing vessel • Port Inspectors 	

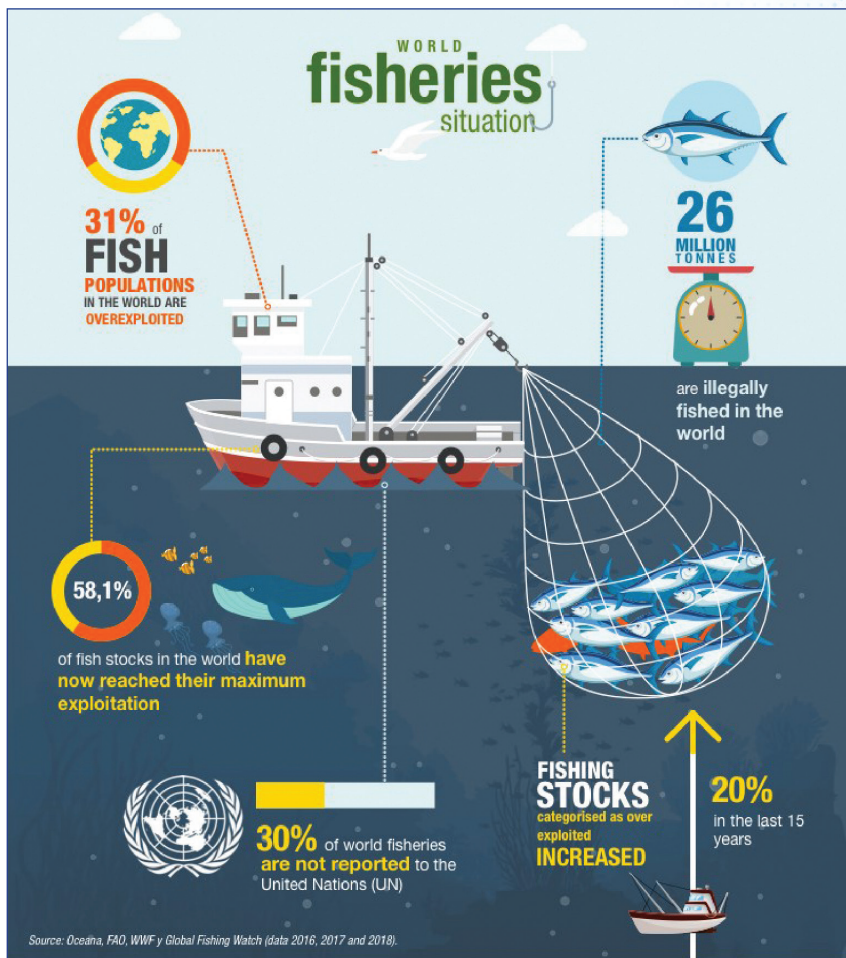
Slide credits: Hj Mohd Sufian bin Sulaiman

Next, Hj Mohd Sufian laid out a summary of Malaysia's fisheries strategic plan and the Plan of Action to Deter and Eliminate IUU fishing. These initiatives, he explained further, included the Fisheries Act (1985) which was amended in 2019, and included higher penalties, about six times more than the former provisions of the law. They aimed to strengthen fisheries governance within Malaysian waters, and to streamline and update pertinent measures and laws. He made the case for Malaysia in support of global quest to ensure sustainable fishing on the high seas, in which penalties were imposed up to RM4 million for any unlicensed local fishing vessel in operation or in violation of license conditions on the high seas.

<p>"the continuous requirement for the measurement of fishing effort characteristics and resource yields through observations, data collection, measurement and analysis of data and fisheries activity information"</p> <ol style="list-style-type: none"> 1. Monitor fish landing; 2. Vessel Monitoring System; 3. Catch and operations reports; 4. Inspection of fishing vessels; 5. Inspection of fishing gears; 6. Reporting for storage purposes ; 7. Analysis on catch and fishing effort & report comparison with VMS, verification on the accuracy of the landing report; 8. Control on landing ports/sites (landing is only permitted at designated sites); 9. Collection, measurement & analysis of fishing activities but not limited to species composition, fishing effort, by catch & discharge & area of operation . 	<p style="text-align: center;">CONTROL</p> <p>"The regulatory conditions under which the exploitation of the resource may be conducted."</p> <ol style="list-style-type: none"> 1. Control fo fishing effort through licensing; 2. Registration of fishing vessels; 3. Requirement to have permanent markings on fishing vessels; 4. Control and prohibition on fishing gears and methods of fishing; 5. Control on transhipment; 6. Fishermen Registration Programme and Issuance of Fishermen Card; 7. Establishment of fishing zones and marine protected areas (MPAs). 	<p style="text-align: center;">SURVEILLANCE</p> <p>"the degree and types of observations required to maintain compliance with the regulatory controls imposed on fishing activities"</p> <ol style="list-style-type: none"> 1. Inspection by Fisheries Officer/ Authorised Officer and other enforcement authorities at sea; 2. Air, sea and land surveillance; 3. Law Enforcement.
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Slide credits: Hj Mohd Sufian bin Sulaiman

International cooperation for monitoring and surveillance are vital to confront challenges of IUU fishing. To this end, Hj Mohd Sufian described how Malaysia joined the Monitoring, Control and Surveillance programs via bilateral and regional agencies arrangements. These efforts, he assured the audience, will help trace fish and fisheries product source.



Conclusion

According to Hj Mohd Sufian, IUU fishing is harmful to marine life and fish stock. It also undermines the effectiveness of national and international efforts to safeguard fish stock sustainability, and it enables other related crimes. He said that there are a range of measures that can be undertaken to combat IUU fishing, and these include legal, institutional, economic and social dimensions. These initiatives, stressed Hj Mohd Sufian, involves multiple players from national, regional and international sectors. He highlighted recent trade-related policy measures which were included in the market-access agreements. The way forward, argued Hj Mohd Sufian, is to intensify cooperation and commitment on IUU fishing in various national and international fora.

**Datuk Dr. Sabirin bin Ja'afar,
Director General
Maritime Institute of Malaysia
(MIMA)**



Datuk Dr Sabirin began his presentation by providing a short introduction of the economic impact of maritime security to Malaysia as 40% of the nation GDP is from its maritime industry with 1.455 million m.t of fish was produced in 2019.

In addition, Malaysia as a maritime nation is located in the middle of Sea Lanes of Communication (SLOCs), such as the Strait of Malacca, South China Sea and Sulu-Celebes Sea.

Maritime Security Issues in Malaysia and Worldwide

Datuk Dr Sabirin elaborated on the common maritime security issues faced by Malaysia and the rest of the world:

1. **Illegal, Unreported and Unregulated Fishing (IUUF)**
 - a. Malaysia data has shown encroachment mostly involved Vietnamese and Thai fishing vessels off the east coast of Peninsular Malaysia;
 - b. Lack of agreed maritime boundaries in the South China Sea deteriorate the issue following Malaysia New Map 1979;
 - c. Malaysia has taken a number of action in order to manage IUUF such as publishing the National Plan of Action to Prevent, Deter and Eliminate IUUF in 2013,
 - d. Enforcement activity under Op Naga from April 2019 to 17 August 2021 had successfully carried out 22,384 inspection involving 416 arrests; and
 - e. He added that the Malaysia-Vietnam Memorandum of Understanding (MoU) made a good breakthrough in addressing the matter of IUUF by the Vietnamese fisherman in Malaysia EEZ.
 - f. In term of economic impact of IUUF he highlighted that Malaysia losses up to RM 6 billion every year due to IUUF which is equivalent to approximately 980 tonnes of the country's sea based produce.
 - g. IUUF is a major threat to food security in Southeast Asia with one third of the regional fish stock decreasing over the last 30 years and should current practice persist an additional 59% is expected to decrease by 2045.

2. Piracy and Armed Robbery

- a. According to ReCAAP only 2 incident was reported in Malaysian waters during Jan-Sept 2021 one in Sandakan and one in the Strait of Malacca;
- b. There were 4 incident in 2020, 11 incident in 2019 and 2018 respectively and 7 incident in 2017 and 2016 respectively.
- c. There is a decline in the trend due to multilateral cooperation in information sharing and enforcement activity such as the Malacca Strait Patrol (MSP), ReCAAP ISP and ICC-IMB.

3. Maritime Terrorism

- a. Kidnapping for ransom, armed robbery, piracy, arm smuggling, narcotic trade and ship hijacking was a big issue in the Sulu-Sulawesi Sea as it is used as a source of income for the armed separatist in the Southern Philippines.
- b. The reason behind the conflict in Southern Philippine can be seen through history. Prior to Sabah joining Malaysia and before the formation of Philippines, the islands in Southern Philippine and Sabah was under the Sulu Sultanate. Hence the people in the areas have been able to move freely with families on both sides and continuing their traditional activities.

However the economic impact of piracy, armed robbery and maritime terrorism are real. Hence it is important that we have a proper security in place to address these issues. He added that by preventing the incidents from happening it will minimizes tax loss. Furthermore, with our ports and sea lanes safe from malicious attacks it will also influences and increases investors' confidence to invest in Malaysia financial market.

Dr Sabirin in his way forward segment highlighted five elements that need to be done. First is the importance of protecting and educating vessels crew members so that they have a higher chance in avoiding security threats. Second, the maritime industry and the general public should be informed of the violence and cruelty of pirate and maritime terrorist attacks, the dangers crew may face, and substantial losses in term of human life and property. Third, as indicated in Malaysia Defence White Paper, the community plays a vital role in aiding Malaysia's maritime security capacity and awareness development. Forth, encouraging Malaysian public especially woman to join and contribute to maritime sector. Fifth, the maritime security and enforcement are crucial in avoiding our resources being robbed by terrorist.

**Mr Peter Horn,
Project Director on International
Fisheries
The Pew Charitable Trusts**

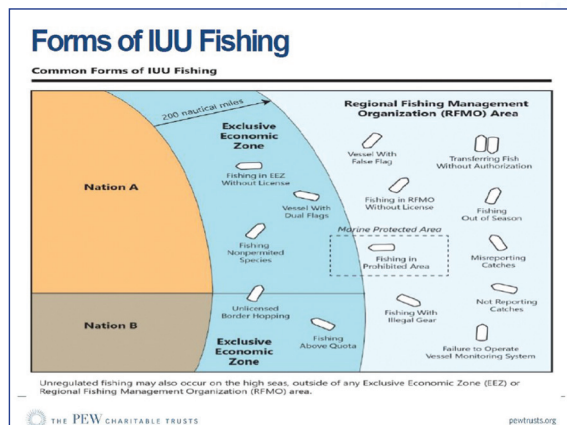


Understanding The Link Between Maritime Security And Illegal, Unreported And Unregulated (Iuu) Fishing

Mr Horn started by thanking the moderator for introducing him and hoped that discussion can be built from the discussion made by other speakers before him. He mentioned that as a former navy officer while serving in Hong Kong he had the pleasure of joining in four exercises with the Malaysian navy. After leaving the Navy he is currently with Pew in the International Fisheries team. The team looks at oversight and management of fisheries and he focusses in ending illegal fishing. He focuses on three strand:

1. Implement and improve policy;
2. Maritime security issues specifically to understand the link between maritime security convergence crime and IUU fishing;
3. Build up towards regional cooperation.

After a brief introduction about himself and what his organization does Mr Horn started his presentation by introducing the various forms of IUU fishing as illustrated in the diagram below. He highlighted that the main perpetrators of IUU fishing do so in a systematic and organized way by exploiting gaps, boundaries, and borders. He admits that it is complicated as there are many things which falls under the arc of IUU fishing. However it is the unreported element that is the big one because it reflect poor fisheries management, lack of good stock assessment and inability to manage sustainably.



He emphasized that IUU is more than just about fish and its tentacles goes deep and exploiting the vulnerable be it species, people or countries. According to him some countries particularly those in West Africa have over 4% of their Gross Domestic Product (GDP) is directly related to fishing. Based on Pew research finding, IUU fishing penalizes compliant actors it actually undermined fisherman who are trying to fish legally. It undermines supply chains because in Europe and America people are increasingly concerned about the provenance of their food such as was it caught correctly, has it been involved in slavery human trafficking and the origin of the fish hence it deceives consumers. IUU fishing is also associated with fraud, piracy, arms and drug smuggling, and human rights abuse.

The Link between IUU and Maritime Security

Mr Horn than talked about the link between IUU and maritime security. First he stressed the importance of understanding the meaning of security. Security is about stability, hence security and the economy are inextricably linked. According to him the understanding of what security is has changed over the year and in a book titled *Securing the State* written by Sir David Oman a senior officer in the United Kingdom Intelligence Services he wrote

“Security today is based on trust on the part of the citizen that the risks of everyday life whether from man made threats or impersonal hazards, are being adequately managed to the extent that there is confidence that normal life can continue”

He again highlighted that perpetrators of IUU fishing exploits gaps in governance and oversight and rarely only steal fish hence this is the link between IUU fishing and maritime security. Furthermore he explained as had been pointed out by previous speakers IUU fishing impacts environmental security since there is no data on how many fish has been extracted from the sea. This will than impact food security particularly those who lives on the coastlines whose livelihoods and income depend on food. He stressed that economic security element is absolutely clear and the final impact which is frequently discussed by navies around the world is the maritime security element. When one do not know what is happening in the water anything could be happening there it could only be about stealing fish but if its armed smuggling or piracy or transferal of terrorists than more need to be known about it.

Regional Cooperation

He then talked about initiatives taken by the European Union in tackling the issue of IUU fishing through the common fisheries policy and associated with it is the IUU regulation. It is about sharing common resource and managing it effectively as well as controlling fleets and fish. He informed that Pew is a member of a coalition of NGOs in the Europe which is looking to promote better governance and improve the fisheries transparency and EU leadership in this area. The EU IUU regulation is well known and most associate it with the carding process that the EU would call dialogues. EU uses its power as a market state to enter dialogues with countries and either issue them with a yellow warning saying that if governance doesn't improve sanctions will occur or red cards saying you need to improve your fisheries governance. There are two other elements of EU IUU regulation which are equally important, one is on the fact that EU nationals should not profit from IUU fishing wherever that takes place in the world. The other element is that there should be good catch documentation schemes which are aimed at stopping IUU caught fish entering the market.

He then shared another form of regional cooperation named FISH-i that occurs just at the other side of the Indian Ocean involving eight (8) West African states that got together to try and improve the governance of their waters. According to him, their ocean have a wealth of fish but were being plundered with systematic IUU fishing hence the eight countries decided to take a stand against it and started sharing information. One of the key element of their information sharing observed

was that this countries were happy for others to take success. He shared an incidents involving a vessel fishing off the coast of Somalia. The case started with the EU forces that has established maritime domain in the area patrolling in the Indian Ocean, had compiled evidences regarding the vessel, the information was then transmitted to the EU headquarter. The EU headquarter passed the information back with the Indian Ocean Tuna Commission which is the regional fisheries management organization in the area who then shared the information with all the FISH-i member states. Based on the information the member countries found that some fishing vessel were fishing illegally. The Somalia arrested vessel and took them to the Mogadishu Harbour but they sailed away at night down to Kenya. However, Kenya authority arrested them and took them back to Somalia for them to be prosecuted there. This incident is a great example of cooperative action, information sharing and had real effect on the water.

Conclusion

Mr Horn concluded his session by talking about maritime security opportunities. His thought is that maritime security has a real leadership role, as navies are used to working together, they believe in freedom of navigation and trade governance of waters. According to him, to start off all navies need to understand what's happening on the waters, they have a fairly sophisticated mechanism for information sharing that can easily build pictures, and they also understood that one asset alone cannot control an area of sea. This is why maritime security is relevant in the fight against IUU fishing.

Militaries tend to have good leadership, positive, engaging, deliver effect and leadership here is in being prepared to share information, to work together, to let other people to take a little bit of credit for some of the work that you've contributed. As a ship captain, they are only as good as their weakest link on board the ship and everybody needed to work together so that effect can be delivered. This perspective is something that maritime security forces tends to bring up at any debate.

Another opportunity is capacity development is something that navies regularly do through numerous exercises with various nation, by working together it improves their knowledge and knowledge of others. The navies through these exercises, practiced passing information on IUU fishing operations with each other, organizing interception and boarding and subsequent arrest of vessels. These type of integrated operations is what maritime security is all about, hence that is why IUU fishing with all its different crimes that is associated with it is such a threat to maritime security. It is also reason why PEW firmly advocate maritime security forces to take the threat of IUU fishing seriously.

Assistant Professor Dr. Naporn Popattanachai
Centre for Natural Resources and Environmental Law
Faculty of Law, Thammasat University, Thailand.



FROM YELLOW TO GREEN LIGHT: THAILAND AND ITS ACTIONS IN COMBATING IUU FISHING

Asst. Prof. Dr Popattanachai started by thanking the moderator for her introduction. He informed that for the past five to six Thailand faced a huge problem related to IUU fishing. Looking at the history of Thailand fishing law it has been a mess for the past four to five decades. However, with the push from the EU, Thailand managed to improve its existing law and regulatory. He then highlighted the four main subtopics that he will talk about in his session mainly introduction, weaknesses identified as increasing risks associated with IUU fishing, action taken by Thai government in combating IUU fishing and conclusion.

Introduction

He shared a general overview of Thailand fishing industry as provided by the Fishery and Agriculture Organisation 2020 yearbook as in Table below, Thailand is in the top 15 of the countries that produce lots of marine catch. There are about 200,000 tons increase from 2017 to 2018. The overall statistics showed an increase hence it reflected how crucial the fishing industry is in Thailand and through the global fishery markets. According to Thailand Department of Fisheries as of 30th June 2021, Thailand has a total of 61,832 vessels in its fishing fleet with 82.26% being subsistent and small scale fishing vessels, 17.14% commercial fishing vessels, and 0.6% are distant fishing vessels with license to fish outside the Thai waters.

Country or area Pays ou zone País o área	2009 t	2010 t	2011 t	2012 t	2013 t	2014 t	2015 t	2016 t	2017 t	2018 t
China	14 786 810 F	14 807 437 F	14 989 554 F	15 188 657	15 350 545	16 117 803	16 386 164	15 787 554	15 373 194	14 647 819
Indonesia	5 111 388	5 386 309	5 753 051	5 856 860	6 125 187	6 458 735	6 689 688	6 542 228	6 736 358	7 215 215
Peru	6 927 778	4 301 607	8 249 157	4 849 211	5 854 347	3 573 371	4 824 050	3 796 978	4 157 414	7 169 805
India	4 066 756	4 689 316	4 311 132	4 871 641	4 643 440	4 980 603	4 843 388	5 176 369	5 531 313	5 320 253
Russian Fed	3 826 129	4 069 879	4 254 877	4 331 398	4 360 694	4 259 055	4 457 138	4 759 332	4 864 460	5 108 854
USA	4 228 200	4 312 039	5 173 688	5 004 365	5 096 169	4 984 590	5 040 268	4 903 574	5 033 950	4 744 418
Viet Nam	2 178 400	2 249 711	2 399 528	2 623 673	2 623 588	2 743 462	2 860 638	3 077 841	3 315 207	3 347 039
Japan	4 126 593	4 081 140	3 791 262	3 664 175	3 651 152	3 639 022	3 404 050	3 200 089	3 205 749	3 130 925
Norway	2 532 463	2 679 918	2 282 302	2 150 297	2 079 338	2 301 697	2 293 870	2 033 818	2 378 511	2 488 979
Chile	3 453 786	2 679 736	3 063 463	2 572 880	1 770 956	2 175 459	1 786 249	1 497 230	1 918 958	2 122 431
Philippines	2 512 059	2 500 190	2 218 153	2 203 737	2 199 259	2 246 299	2 151 467	2 024 828	1 887 058	2 049 572
Myanmar	1 892 600 F	1 961 150 F	1 975 920 F	1 962 231 F	1 919 001 F	1 970 550 F	1 970 470 F	2 072 390 F	2 155 440 F	2 033 110 F
Bangladesh	1 821 579	1 726 586	1 600 918	1 535 715	1 550 446	1 591 190	1 623 837	1 674 770	1 801 084	1 871 225
Thailand	1 870 702	1 810 620	1 835 126	1 719 628	1 824 829	1 670 035	1 501 370	1 530 544	1 500 447	1 707 136
Mexico	1 613 812	1 526 506	1 566 066	1 575 030	1 615 936	1 519 857	1 467 267	1 510 754	1 628 669	1 692 045

Weaknesses Identified As Increasing Risks Associated With IUU Fishing

He then shared that European Union Commission on 21st April 2015 issued a notification on notifying a third country in this case Thailand of the possibility of being identified as a non-cooperating third country in fighting IUU fishing. There were quite a few issues surrounding this notification and Thai has been identified as a problem in the fishing industry starting with the sizeable amount of incidents from 2010 to 2016. There were quite a few numbers of Thai fishing vessels that operated without license or permit and operating in the maritime zone of other countries. According to him their encroachment was due to the significant declines of the fishing population within the Thai waters. In 2007 it was reported that Thai fishing vessels will go everywhere from Indonesia, Cambodia, Malaysia and also Madagascar.

Second problem identified was that Thai fishing vessels were fishing without Vessel Monitoring System (VMS) equipment on-board in the high seas and in coastal States where VMS is a requirement for all foreign flagged vessels. In October 2014, 5 Thai vessels were arrested for fishing illegally in Papua New Guinea' (PNG) Exclusive Economic Zone (EEZ). The absence of VMS on-board most Thai vessels combined with weak collaboration with neighbouring states suggests that the risk of IUU activity occurring in the Thai fleet is high. This is supported by the extensive distribution of Thai vessels involved in IUU activities in the Indian and Western Pacific oceans in 2011 to 2014. The lack of VMS as a tool to monitor fishing activity location undermines the validation process of Thai catch certificates as the authorities cannot systematically and independently verify and cross check area of capture with those declared by operators.

Third weakness identified is in term of presenting erroneous information regarding fishing areas to obtain validation of catch certificates from the Thai authorities and importation of the products into the EU. The EU officers 2012 and 2014 visits revealed that catch certificates often arrive weeks or even months after import into Thailand. The linkage between import permit and catch certificate number is very difficult if not impossible to establish, rendering traceability even more difficult. This means Thai traceability systems was not incorporated into the accounting systems of companies resulting in exhaustive and unreliable data.

Fourth is a problem is related to fishing vessels in which vessels were caught falsifying or concealing their markings, identity or registration. Some of the vessels caught had incorrect IMO numbers, some vessels were not listed in the RFMO approved register and some carrier vessels was not on the list of RFMO established carrier vessels.

Lastly, it's the institutional arrangement within the Thai government itself. There were problem with corporations and communication between the EU and coastal states government. There were no clear timeframe was given in term of revising and improving fishing regulatory system. There was no clear plan for introducing VMS system as compulsory and there was ineffective verification and responses to other States. All of it resulted in obstructing the work of coastal State officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures. All of these weakness resulted with Thai being brandished by the EU with a yellow card.

Action Taken By Thai Government In Combating IUU Fishing

In response to the yellow card, Thailand has arguably performed 360° actions to overhaul fisheries regulatory system in fighting with IUU fishing. This can be seen from the six following aspects:

- i. Legal works;
- ii. Management of fishery resources and Thai fishing fleets;
- iii. Monitoring, control and surveillance of fishing activities;

- iv. An establishment of traceability system;
- v. Enforcement and implementation of fisheries laws; and
- vi. International and regional cooperation

In the aspect of legal work Thai adopted the 2015 Emergency Act on Fisheries resulting in an overhaul of the fishing regulatory system. Thai also adopted several statutory instruments and subsidiary legislations for the regulation of fishing activities such as statutory instruments on fishing vessel registration, on an application for a fishing license within and outside Thai waters, statutory instrument on a requirement of an installation of a on-board VMS system both on fishing and associated vessels as well as statutory instruments on Port-in and Port-out notification.

Regarding the management of fishery resources and Thai fishing fleets, Thai adopted a Marine Fisheries Management Plan 2015, prepared census on fishing vessels and determination of maximum sustainable yield (MSY). In addition, under monitoring, control and surveillance of fishing activities, the Thai government Adopted 2015 – 2019 National Plan of Action on IUU Fishing (NPOA-IUU) and in the process of preparation the next phase of NPOA-IUU. Thai also established Fisheries Monitoring Centre (FMC), Port In – Port out Centre (PIPO), port inspection and verification, on-board inspection

Compulsory installation of Electronic Reporting System/ Electronic Monitoring System (ERS/EM) for distant fishing vessels and an independent observer on board fishing vessels.

Thai also establishment of traceability system it is achieved through the Thai Flagged Catch Certification for Fish caught by Thai fishing vessels, PSM linked and Processing Statement and System (PPS) for imported fish from a third country and by employing the use of logbook – landing declaration – catch certificate. In term of enforcement and implementation of fisheries laws more than 4000 cases concerning IUU fishing has been prosecuted since the yellow card notification. Stronger sanction with economic punitive damage was also imposed on the perpetrator that accumulated to over 500,000 million Thai Baht in value.

Thailand also increased their cooperation with other international and regional arrangement. Thai has also become a Party to FAO Agreement on Port State Measures in May 2016, to the UN Fish Stock Agreement since April 2017 and to South Indian Ocean Fisheries Agreement (SIOFA) since 2017. Thailand is currently in the process of becoming a Party to FAO Compliance Agreement. Other cooperation with RFMOs includes IOTC, ASEAN, SEAFDEC and SIOFA in term of capacity-building and annual conferences.

Conclusion

In conclusion there has been several positive developments in Thai's fishing regulatory system resulting in the revocation of yellow cards. However, he admitted that there are a lot of challenges going on in term of complying with international obligations and ensuring correct information reported through the fisheries information system. The changes has obviously placed Thailand in a better position compare to before but there are more work still to be done.

Session 3: Questions and Answers

Questioner Jacqueline, she asked how effectively has Malaysia and Vietnam implemented VMS in combating IUU fishing? How open would they be to making collected VMS data more transparent in order to facilitate regional cooperation in term of enforcement?

Hj Mohd Sufian answered that Malaysia Department of Fisheries has already imposed mandatory requirement for commercial vessel to install vessel monitoring system (VMS) as part of their monitoring control surveillance measure. Failure to make sure that the VMS operated as required can lead to suspension or cancelation of fishing license. As a member of ASEAN and RPOE IUU, Malaysia has various platform to share relevant information with our neighbouring countries. Up to date, Malaysia always facilitated request from other countries authorities who require information from our VMS for trade measure and enforcement purposes. Malaysia is currently upgrading its system to ensure all the mandatory requirement by international organization are met.

SESSION 4: HUMAN SECURITY AT SEA

Vice Admiral Dato' Aris Adi Tan bin Abdullah
Commander
National Task Force (NTF)

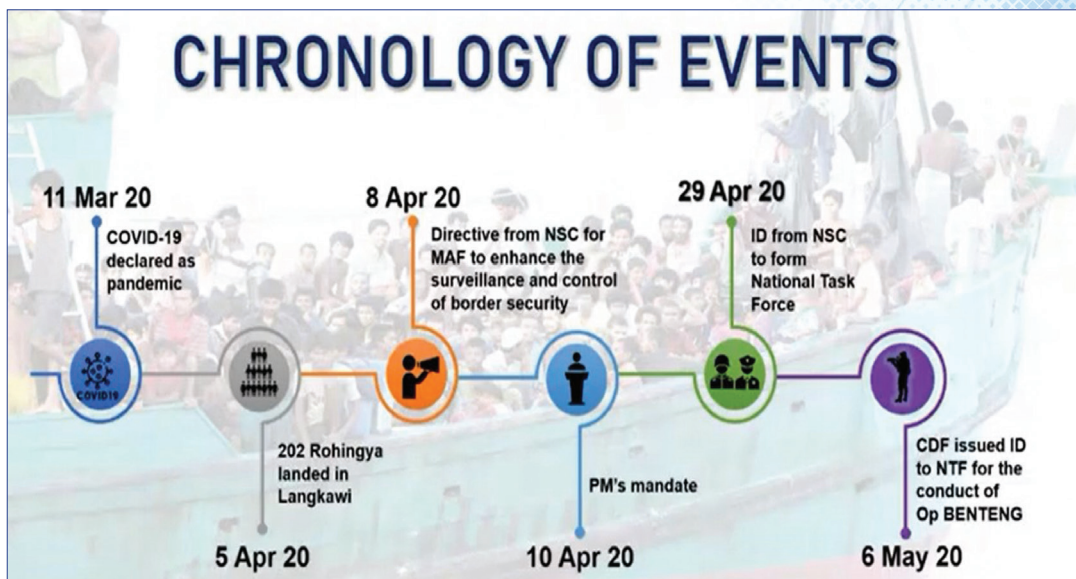


HUMAN SECURITY AT SEA – NTF PERSPECTIVE

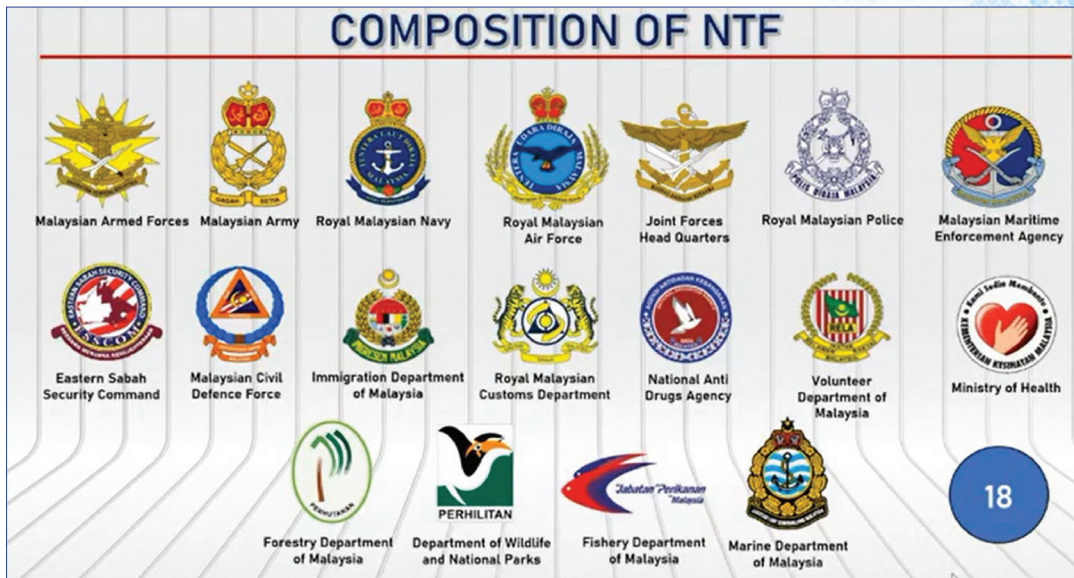
Vice Admiral Dato' Aris thanked the moderator for her introduction. He then proceeded by sharing the scope of his presentation that covers background, strategic update and challenges.

Background

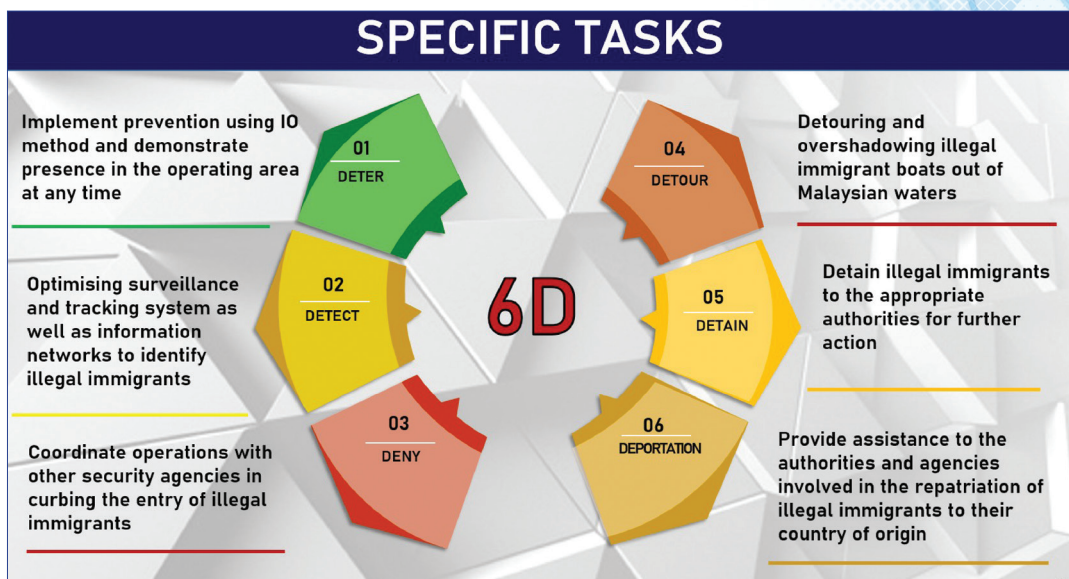
V. Adm. Dato' Aris provided a chronology of events that lead to the formation of the Malaysia National Task Force from the time Covid-19 pandemic was declared by the World Health Organisation till NTF received directive to conduct Operation Benteng or Ops Benteng. The chronology is illustrated in the diagram below:



He also shared that the mission of NTF is to strengthen the Malaysia's border control from the intrusion of illegal immigrants in order to curb the spreading of COVID-19. He also shared the composition of NTF comprising of 18 government agencies. He recalled that previous speakers spoke about collaboration as well as integration and he assured that NTF is doing exactly the same thing. He informed that the three leading agencies are the Malaysian Armed Forces (MAF), the Royal Malaysian Police (RMP) and the Malaysian Maritime Enforcement Agency (MMEA). The composition is as illustrated in figure below.



The roles of NTF are to provide the concept for Joint Op and command & control for the operation, to provide and scrutinize the requirement for additional assets for all the agency before tabling it to the Ministry of Finance (MOF), to coordinate and monitor the conduct of the operation in dealing with encroachment of illegal immigrants through land, sea and air to include the utilization of assets from MAF, RMP and MMEA and lastly to coordinate intelligence sharing among relevant agencies. Next he explained the NTF concept of operations CONOPS. Since the formation of NTF border control operations are executed by mobilizing an integrated forces at the core, extended and forward areas. The missions are carried out through specific tasking called 6D that are deter, detection, deny, detour, detain and deport. In addition border security are carried out via cooperation with neighbouring countries, hence as mentioned by the Deputy Minister in his keynote address multilateral cooperation is definitely a part of NTF responsibility to ensure things are running properly. NTF also coordinate national assets and logistical needs as well as appropriate legal provisions. He also highlighted that the National Security Council is to be provided with information as well as pointer for them to issue strategic guidance and coordinating requirements between ministries. The specific tasking called 6D is illustrated in the following figure.



Strategic Update

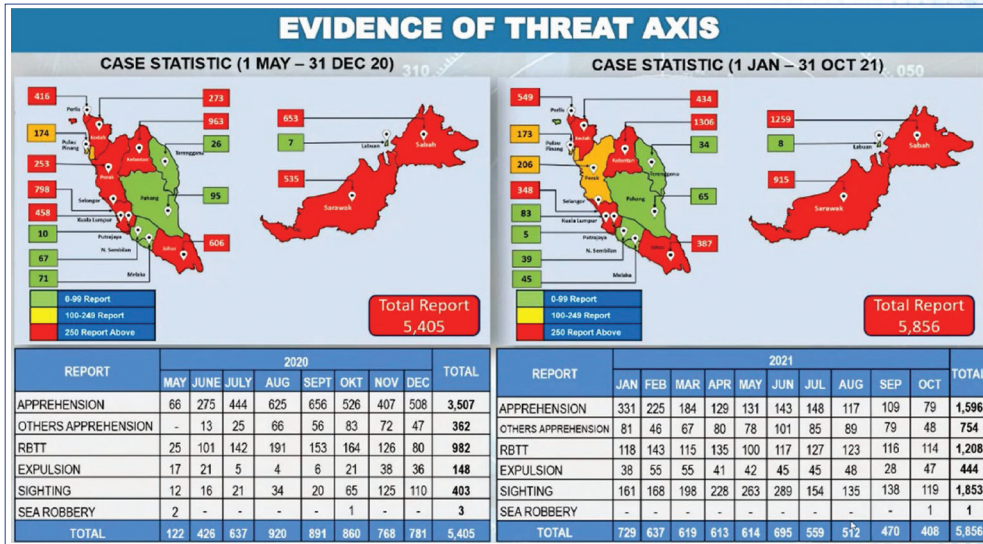
V.Adm. Dato' Aris inform that due to the current pandemic, NTF priority is not to detain but rather to deter and detour. It is mainly due to the current regional vaccination percentage. Based on the report produced by oneworldindata.org website on Covid vaccination status as of 1 November 2021 it showed that only Singapore, Cambodia and Malaysia vaccination percentage is 75% and above. The rest of the ASEAN member states are at 58% and below. He stressed that earlier Malaysia was talking of herd immunity with 80% vaccinated but now to change to endemic we need 90% of our population vaccinated. However, currently most of the illegal immigrants are entering from Myanmar with only 10% of its population vaccinated, Philippine at 19% vaccinated, Indonesia at 27% vaccinated and Thailand at 44% vaccinated. The percentage is way below the desired requirement hence NTF is tasked to ensure no illegal immigrant enters our border.

Next he shared the threat analysis made by NTF based on strategic intelligence obtain around the region. Currently NTF has determined the push factor that pushing people to leave their current country and heading towards Malaysia. In the case of Bangladesh, they currently hosting around 1.3 million of refugees in Cox Bazaar and Bhasan Char Island, while in Myanmar there are still an ongoing civil war, in Cambodia and Vietnam variant delta is creating a lot of domestic problem there. There is also a rise of Covid cases in Thailand, Indonesia and the Philippines.

He also shared that from the very first day NTF was formed, data was collected based on the seven criteria stipulated such as illegal immigrants, contrabands/drugs, smuggling, illegal fishing, ketum, cigarette and animal. He stressed that there is a saying that if one cannot manage the data, they will not be able to resolve any resolution. So by collecting all the data NTF were able to identify six threat axis namely the northern part of Malacca Straits, western peninsular coast, State of Johor coastal areas, northern land border of the peninsular, land border between Sarawak and Kalimantan and eastern Sabah coastal areas.

V.Adm. Dato' Aris shared based on case statistic from January 2021 till 31 October 2021 a total of 5,856 cases has been reported. Furthermore he also provided a statistic to compare cases from May till December 2020 with that of 2021. In term of apprehension the figure has gone down while

sighting efficiency has increased from as reflected in the figure shown in the following table. The figures shows the effectiveness of Ops Benteng in securing Malaysia border.



Next he stressed on the statistics of illegal immigrants apprehension all across Malaysia. According to the statistics there is always a positive cases in every apprehension and 60% of the Rohingya smuggled into Malaysia is now entering through the State of Kelantan. The table below shows the figure of illegal immigrant arrested during Ops Benteng.

ARREST OF PATI MOVEMENT IN / OUT									
CITIZEN	KEDAH	PERLIS	P. PINANG	SELANGOR	JOHOR	KELANTAN	SARAWAK	SABAH	TOTAL
INDONESIA	3	6	19	871	1,261	-	360	165	2,685
MYANMAR	159	5	-	25	1	66	-	-	256
LAOS	-	-	-	-	-	1	-	-	1
VIETNAM	-	-	-	-	60	-	-	-	60
CAMBODIA	-	-	-	-	-	1	-	-	1
FILIPINA	-	-	-	-	-	-	-	93	93
THAILAND	25	15	-	-	-	163	-	-	203
BANGLADESH	1	-	-	-	3	3	-	-	7
ROHINGNYA	-	-	-	45	-	19	-	-	64
PAKISTAN	-	-	-	2	-	-	-	-	2
CHINA	-	-	-	-	5	-	-	-	5
TOTAL	188	26	19	943	1,330	253	360	258	3,377

Challenges

According to V.Adm Dato' Aris there are a total of eight challenges that Malaysia faces. First is the human security versus the national security, whereby all of the officers in the enforcement agencies are consistently placed in a paradox of choosing between human security and national security. This

is one challenge that the government really need to address. Second is conflict in the neighbouring countries such as the situation in Myanmar, Thailand. Third is the unpleasant condition in refugee camps are contributing to the movement of illegal immigrants. The movement has caused the detention camps in Malaysia to be overcrowded and the current pandemic is making it worst. Fourth is the close proximity between land masses such as peninsular Malaysia with Sumatera, Indonesia. The distance is as short as just 35 nautical miles and if a boat moves at 35 knots it will take it less than an hour to crawl across and the reaction time for enforcement agency can be as short as 20 minutes.

The fifth challenge is economic disparity between citizens and immigrants coming over from Indonesia, Philippines and others is another push factor for them to come across to Malaysia. The sixth challenge is a pull factor which is family relationship between those living in Malaysia and those who are coming. The seventh is the syndicate or otherwise also known as tekong that facilitates the movement of illegal immigrants. He believes in order to overcome the issue of syndicates the involvement of maritime agencies and ministries is very pertinent and Malaysia is currently working very hard on it. The eight challenge is the barter trade. This aspect really needed to be reevaluate, he believes that it does not benefit Malaysia too much but rather it is benefitting the surrounding countries.

The ninth challenge is the busy shipping route is causing heavy traffics that results in the tenth challenge which is shifting of modus operandi. Both makes it difficult for enforcement agencies to operate at sea it is a continuous challenge just as one find a way to handle them they always shift to other approach. They usually use the environment or the situation to their advantage. To date NTF has been able to identify 136 different modus operandi carried out by the syndicates. The eleventh challenge relates to workforce in agricultural sector as the minister announced Malaysia is working on developing the best approach to bring in 32,000 foreign worker to assist in agricultural sector.

The twelfth challenge involve the non-government organization (NGO) versus enforcement agencies. According to him for as long as the NGOs such as UNHCR and enforcement agencies cannot reach an understanding the National Security Council (NSC) 23 Order will remain an issue. He believes that we have to change our habit and attitude in this particular aspect. Both side should work as a team rather than as an opposing entity. Thirteenth and fourteenth challenges which are the logistic support and assets as well as personnel is never enough. Enforcements agencies currently have to make do with what they are given. Hence that is why one of the main responsibility of the NTF is to coordinate and try to maximize existing capability as well as future procurement.

Challenge number fifth teen is influence ops and this is basically something to attack the mind and psyche of target group to make the country sovereignty, safety and security as the first priority or cardinals before other missions or objectives that some other agency might have. The last challenge is the choke points, NTF has a lot of choke points in running its operations. The most obvious are the limited existing detention center, the prosecution of court cases and NSC 23.

These are constrains that are currently being faced by Malaysia maritime agencies that need to be resolved in order to do better. He concluded that the COVID-19 situation has given rise to more awareness of illegal immigrants as well as illegal issues in the maritime arena. He shared that NTF is created not to only safeguard the border but to provide space and time for the government agencies to recalibrate as well as reset its internal situations. Although there is more to be done but the government needed to start somewhere and he believes that the NTF and the rest of the enforcement agencies will continue to integrate and calibrate among it selves in order to secure Malaysia environment.

Mr. François Kernin
Head of the Regional Mixed
Movement Unit
UNHCR Regional Bureau for Asia
and the Pacific



Mr Kernin thanked the moderator for the introduction and he expressed his gratitude for being invited to be part of the conference and panel looking at the concept of human security in the context of refugee movement is something that is very pertinent. He stated that looking at countries of departure, applying or realizing the concept of human security could contribute to solve refugee crisis in ensuring that people don't have to leave their countries and can enjoy their right to the fullest where they live. The concept is also relevant in countries of asylum where realizing human security can ensure dignity in exile as well as enabling refugees to contribute to the maximum of their capacity to the host community and in some contexts it can also pave the way towards durable solutions for them. He then explained that his presentation will be touching upon three different topics. First is a brief overview of recent refugee maritime movements in Southeast Asia, second is how to balance national interest and legal obligations and third is good practices to protect refugees at sea.

Recent Refugee Maritime Movements in Southeast Asia

He shared that for many years, the Rohingya have been fleeing persecution in Myanmar and have crossed the sea in search of safety. Some had left directly from the Rakhine State in Myanmar travelling towards Malaysia or neighbouring countries. Others have first sought refuge in Bangladesh and in the refugee camps there where to date almost one million are still living. Many of those Rohingya have taken the sea, crossing the Bay of Bengal and the Andaman Sea often with the intention to reach Malaysia. In order to describe the scale of those movements since January 2020 last year to date UNHCR have recorded approximately 2,800 attempted sea journey and during the same period 245 have died or gone missing at sea. Almost one person out of ten who had attempted that journey did not survived.

There are a number of reason for which refugees may have died at sea. First is abuses by smuggler and traffickers who are usually in full control of the boat and they usually used violence to maintain order on the boat. The UNHCR have heard from refugees a number of reports of physical and sexual abuses as well as killings. In addition, in order to maximize profits the smugglers often kept limited supplies on board of those vessels. Hence, many of the refugees also died of starvation or thirst after spending extended period of time at sea. In addition, many of the vessels attempting the journey are not seaworthy and they also faced difficult sea condition especially during rainy season. He admitted that the data that the UNHCR has is probably only the tip of the iceberg many deaths are never reported and many bodies are never found. He highlighted that among the survivors 66% of them were women and children. There is a shift in recent years, with an increase in the number of women and children who took the desperate measure of taking boats in search of safety in another country.



Balance National Interest and Legal Obligations

Next, he touched on the difficult balance that countries should try to achieve. It is clear that the refugees need to be better protected at sea and the high number of deaths occurring in recent years is not acceptable. In order to be realistically objective it is important to consider the perspective of states where often the intended destination of those refugees. States that have interest in controlling their borders they do not like to face what sometimes they perceive as an excessive burden compare to other neighbouring states who may not share responsibilities.

He believed that the discussion held in the session is relevant as those two objectives are not mutually exclusive. Human security as it is formulated for the panel can be realized while also ensuring that the state's legitimate sovereign and security interest are met. In addition states also have obligations to combat smuggling and trafficking of a person including at sea.

He shared that the first key challenge that states faces and this has been mentioned in the previous presentation is the irregular movement of refugees and maybe also other groups of people. Irregular movements are of concern for different reasons. First people moving irregularly may enter states without approval of the authorities, sometimes without the knowledge of those authorities and they do not go through necessary public health measures which are particularly relevant during the current COVID-19 pandemic. Lastly the movement have been supporting and maintaining the business of smugglers.

He also shared good practices that has been carried out in order to limit the irregular movement of refugees. The first avenue is by reducing the need for dangerous irregular journeys, which starts by protecting refugees in countries of departure. If the rights of refugees are respected, if they are provided opportunities in term of education and livelihood. They are far less likely to attempt dangerous boat journey across the sea. In Bangladesh some of the key reasons, refugees are highlighting in their discussion with UNHCR are on accessing education and livelihood opportunities. The second aspect is giving alternatives to refugees, instead of working with smugglers to cross borders and the sea, providing legal pathways that states can manage closely, ensure oversight by

the border authorities but allowing access to education, livelihood and reunifying families will lessen refugees need for the alternatives.

The second challenge he highlighted was protecting life on the high sea. The high sea is the body of water that's outside of state's territorial water and of course that's an area where often there is no clear responsibility who is supposed to rescue those that may be in distress there. Protecting life at sea is even more challenging because smugglers by nature are keeping their journey clandestine, they will never issue distress call if this means that they will be at risk of being arrested by the authorities of the country.

On this challenge he suggested to avenue to be explored, one is in all circumstances life should be saved without discrimination irrespective of the legal status of the nationality of the people who are in distress at sea. It is also a direct translation of countries obligation under UNCLOS, which reflect long standing maritime tradition. There are two concrete action that can be taken first is strengthen arrangement for communication and coordination for the rescue of persons in distress at sea. This is not limited to internal interagency coordination but also with neighbouring states. Second is adopting a humanitarian and precautionary approach to identifying and responding to potential distress situations.

Intervening under high sea is challenging for any states that's why in the second avenue regional approach is needed. There has been numerous commitment in the past for instance engaging through the Bali Process Task Force on Planning and Preparedness to better respond to maritime movement. It was established to support states in implementing better planning for maritime movements of refugees and migrants. There's a number of training and other policies that are developed in the context of this mechanism. The second action that can be taken is by reactivating the ASEAN Trust Fund to support countries of disembarkation to implement humanitarian activities, capacity building or others.

The third challenge, states are facing is that once boats have been disembarked on the territory, there's a number of issues that will be faced. First among the people on the boat there will be people with different needs, different profile and rights. Some refugees on board may be victims of trafficking, victims of gender based violence on board and these victims needed to be identified quickly to ensure specialized services are provided in time. Two good practices in this circumstances, the first is ensuring comprehensive screening and referrals. Second is coordination with humanitarian actors for assistance and specialized protection such as UNHCR Office in Malaysia. Another issue to be faced on treatment of persons rescued at sea, in the current pandemic situation there are practices across the region in the context of disembarkation where quarantine measures in respect of public health policies are taken. This is important in order to contain the spread of COVID-19 virus. Another good action that can be taken is alternatives to detention, it has been seen that this approach has prevented a number of mental health issues among survivors and have in general contributed to their well-being and also reduced the number of financial burden for the state of disembarkation. Those good practices can be replicated in different context.

He concluded that refugee maritime movements are complex and present challenges for all involved. He informed that UNHCR are ready to work with the government of Malaysia and others to overcome those challenges together.

Ms. Jane Chan
Senior Fellow and Coordinator of
the Maritime Security Programme
S. Rajaratnam School of
International Studies (RSIS)
Nanyang Technological
University (NTU)



Ms Chan started her session by thanking the moderator, greeting participants and thanking both organisers MiDAS and KAS for the invitation to join the event. She recapped that the panels have contemplated and discussed important issues of maritime security environment of today. She was glad that as the conference proceeding has come to the end it has a dedicated panel to think about the human security aspect. She recapped what was highlighted by both V.Adm and Mr Kern that the competing interest between national securities to that of human security. She admitted that as an analyst very often when she thought of maritime security the starting point is also top down, she would start with doing a current assessment of the strategic environment consider what are the specific threats and challenges, what might the international convention laws and rules say. She may also think about the role of international regional institution and others. According to her it is common for example issues related to seafarers to be mentioned last or not featured at all in the broad conversation about maritime security. So, with the limited time she has, she informed that she will simply raise three issues related to the broad theme. She emphasized that this it will be very broad and not nuanced and it is within the three areas in her mind the human security discussion should be more prominent.

First on climate change and the correlating issue of sea level rise and correlating human security issue, second on safety at sea focusing more on the predicament of seafarers and third to touch briefly on crimes at sea. Regarding the first area she consider it timely since the UN Climate Change Conference COP26 is currently ongoing and already there are news that leaders of island states made impassioned appeals, arguing not only that the rest of the world should act in its own self-interest but it has an obligation specific to those of the island states. She informed that although she the topic of the panel is at sea and she included the island issue the world will eventually be confronted with it being at sea in the not so distant future. The risk and cause of climate change has long been known then the UN inter-government panel on climate change IPCC in its most recent report in August 2021 concluded that climate change is widespread rapid and intensifying with some impacts such as sea level rise now irreversible.

She highlighted that one of the angle that maritime security analyst like herself is looking at and that is the legal implication on the law of the sea especially on provisions with reference to sovereignty and sovereign rights of states entitlement of these island states and the correlating enforcement issues at sea. Policy makers and academics alike are looking into how states would defend their existing territories and maritime resources in accordance with international law when dealing with rising sea and land laws. There many who are thinking of the existential question for these countries and their people as whether statehood could continue if a nation would become uninhabitable and

the legal rights and implication for citizen mobility. If people are to be relocated no doubt some of the impact won't be felt immediately but nonetheless needed to be discussed. Issue of migration legal or otherwise will become real even before the islands and ethos become underwater features. It will be even more difficult to ignore the more immediate problem for example changes in fishing resources, food security problem with shift in species distribution or some facing total wipe-out which has challenged international and national ocean and fisheries governance.

On safety at sea mainly the challenges the seafarers face at sea during this pandemic though she wanted to mention that she had no intention to make light the condition at sea pre—COVID as it is also often a neglected issue. In the last couple of years the safety of naval operation and commercial shipping drew very serious reflection in the region and beyond. She informed that she will mainly focus on the commercial side of things. The COVID-19 pandemic has brought about disruption that many did not foresee and it has led to significant impact on the shipping industry. It created significant hurdles to crew changes and repatriation of seafarers which raise serious concern for the safety and wellbeing of seafarers and the longer term development of the shipping industry.

The International Maritime Organization (IMO) has classified this phenomena as a humanitarian crisis. In addition, vessel that are operated by overworked and mentally exhausted seafarers will increase the risk of accidents at sea. So, IMO and many port states and the shipping industry worked very hard together to manage this crisis. She implored that this issue is not forgotten because it is not just about seafarers out at sea or one that be kept out. The ability to ensure that our sea line of communication (SLOC) remains open and secure, it's premised upon the fact that ships are still playing these waters with seafarers a board. So, it is therefore critical for continued prosperity and security and for many it is also about survival on land to get essential supplies to get to where they are urgently needed.

She then highlighted the number of maritime incidences in Southeast Asia that has long been neglected even before the pandemic. The incidences are vessels capsized, grounding, fires, medevac, collision and ect. The Information Fusion Centre in Singapore reported during the quarterly shared awareness meeting held in mid-October 2021 that from January to August 2021 on average regional countries conducted more than 40 search and rescue operation per month and that is just within 2021. More than 2,500 people were rescued from the sea but there were a total of 701 reported death or missing at sea and this includes seafarers, fishermen and other sea users.

She informed that on to her final point which is about crimes at sea. Maritime Southeast Asia remains heavily exposed to the various non-traditional security threats and both the V.Adm and Mr Kernin had talked about it. The safety and security of seafarers at sea pre-COVID do received some attention. In fact, it is the single element for consideration which all stakeholders, shippers and enforcement agencies alike can all agree on. She informed that she learned it first hand back in 2016 when RSIS worked on a regional guide to counter piracy and armed robbery against ship in Asia led by ReCAAP together with the Information Fusion Centre and various international shipping organization for example ICS or INTERTANKO and BIMCO. She updated that an updated version of the guideline is currently being worked on and she assured that securing and ensuring safety of the seafarers is the primary objective of such a guide.

It is a real concern that the current economic situation perpetrated by the pandemic may push more into illegal activities and could threaten the safety and security of regional waters. In Southeast Asia while most of the attacks at sea were petty thefts by an armed perpetrator if left unchecked, piracy and robbery will fester and put seafarers and other user of the sea at risk. She recalled the kidnap for ransom cases in the Sulu-Celebes Sea although the last actual incident were more than a year ago. However, between 2016 and 2020 more than 80 hostages were kidnapped at sea

with 11 killed and the last four hostages that were held in captivity were rescued by Philippines authorities of Tawitawi only in March this year. She recalled that IUU fishing has been mentioned by many speakers yesterday and today but apart from looking at it from sustainable angle as an environmental concern and food security issues there is also a very real and serious concern about the sometimes appalling condition on these fishing vessel. The fishermen some of them are subject to other criminal operation such as human trafficking.

She concluded that there's no doubt that the topic of human security within the international security studies literature is a standalone subject matter. She hoped that she had managed to highlight that in the study of maritime security the damaging effect of the various maritime security threats such as piracy, armed robbery, IUU fishing, human trafficking, smuggling, environmental concern and so forth do have a human security dimension that ought to be considered. So these threat to maritime security are well known and the frequently raised question and recommendation on what we needed to be done is all well known. She joined other speakers of the conference by reiterating the importance of a whole government approach, the utility of a cooperative and multilateral approach and the importance of public-private partnership.

Session 4: Questions and Answers

Questioner Dato' Pahlawan Mat Amin Muslan asked, combatting illegal immigrants especially in Malaysia has become a chronic problem what are the key changes and success factors that the NTF have brought, in order to make it a success.

V.Adm. Dato' Aris answered that we often heard that intelligent drives operation. The creation of NTF you'll actually be able to have a community called the combine intelligent working group (CIWG) comprises of all the enforcement agencies. Intelligent community are very protective and very secure very secretive about their intel. They won't share, there is a great break through but for instance as he had mentioned about illegal entry point the route and all that. Now by having this CIWG we are actually able to accumulate 606 illegal entry point and it can be classified as active, not so active, and not active. Knowing that NTF can actually preeminently put their enforcement agency in place. He shared that to date the NTF has captured about 26,000 illegal immigrant. The ROI as far as statistic is concern. NTF to date has accumulated about RM670 million. NTF were able to apprehend or capture about 550 ships and boats and more importantly the government is now giving weather warning to citizen worrying about flood. But for the NTF they are worrying about flooding of illegal entries as when high tide occurs the sea level may rise as high as 5 meter and the boat can actually go until your door steps. He informed that this is the warning that NTF provide to all enforcement agencies at all the entry points. He also stressed that 25,000 enforcement agencies officers are currently on the ground doing this and they are aligned and they are coordinated.



Dato' Sri Muez bin Abd Aziz
Secretary General
Ministry of Defence Malaysia

The Secretary General, Dato' Sri Muez delivered his closing remarks by first thanking and congratulating Ms Nadia for successfully moderating the conference for the past two days. He also thanked the Malaysian Institute of Defence and Security (MiDAS) for their enthusiastic and dedicated work to make the event happen. He then continued by thanking Mrs Fischer for KAS Malaysia continuous cooperation and support with MiDAS in making event such as MiDAS-KAS Conference a reality. He also thanked the speaker for their contributions and sharing of experiences. He expressed that he was pleased that the MiDAS-KAS conference this year was well attended by various stakeholders ranging from government officials and policy makers to industry practitioners and experts.

He then gave a recap on what was discussed for the past two days and highlighted points that he found extremely important within maritime security moving forward. The points that he had highlighted are as listed below:

1. The need to define maritime terrorism so that it is commonly understood and subsequently for national laws to reflect international law and vice versa.
2. The need for practitioner to be well verse in the use of technology and to have capabilities that can manage the contemporaneous maritime security challenges
3. Illegal, Unregulated and Unreported fishing and the idea of having enforcement officer on board of a navy ship is certainly something worth considering.

4. The issue of human security at sea and the need for collective by the signatory's countries to assist countries like Malaysia

He also highlighted the need to work together instead of in silo or against each other. The importance for ASEAN to be more proactive in engaging with each other and other multilateral entities for this region to navigate the ever growing and complex geopolitical landscapes. In addition he also mentioned the need for more engagement and familiarization of technology in maritime security among countries so that information sharing can be disseminated faster.

He recalled there is certainly plenty that needs to be done to ensure better future for our next generation as stated by the Honourable Deputy Minister of Defence in his opening remark the day before. Dato' Seri Muez closed his speech by thanking all of the participants for joining the conference and hoped that the next conference can be held physically.

SPEAKERS BIOGRAPHY

Session 1



First Admiral Fadhil joined the Royal Malaysian Navy in 1988 and commissioned into the Executive Branch. He is currently the Senior Director of Plan Development Division at the Navy Headquarters. He has completed extensive sea service on board a number of ships including Executive Officer of KD KELANTAN (Patrol Craft) and KD LEKIU (Frigate). First Admiral Fadhil has performed a wide range of staff functions at Navy and Joint Force settings including; Staff Officer Strategy at Navy Headquarters, Chief Staff Officer (Operations) at Fleet Command Headquarters, Staff Officer Maritime Operations (J5) at Joint Force Headquarters, and Director of Human Resource Development at the Navy Headquarters. He holds a Master's Degree in Defence Studies from the National University of Malaysia and a Master's Degree in Management from UNITAR. He is an alumnus of Advance Command and Staff Course United Kingdom, and later the Malaysian Armed Forces

Defence College.



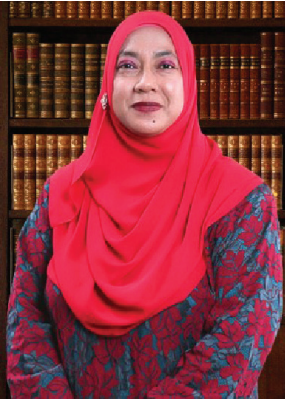
Haji Adi Ihram bin Dato Paduka Haji Mahmud is appointed as Deputy Permanent Secretary, Ministry of Defence on 19 December 2020. Prior to his appointment as Deputy Permanent Secretary, he was Director for the Directorate of Defence Policy from 9 November 2017 and was the Head of Legal Affairs Unit at the Permanent Secretary's Office, Ministry of Defence from 2003 to 2011 where he played the role as the legal advisor for the Ministry of Defence before he assumed the position of Acting Director of Defence Policy. As the Director of Defence Policy, he has been actively involved in enhancing defence diplomacy at both bilateral and multilateral level including through various initiatives in the ASEAN Defence Ministers' Meeting (ADMM) and ASEAN Defence Ministers' Plus Meeting (ADMM-Plus) and was the ASEAN Defence Senior Officials Meeting Working Group (ADSOM WG) Leader for Brunei Darussalam. He was a legal graduate from the London School of

Economics and Political Science, University of London (1996) and was awarded his professional certificate of legal practice from the Legal Profession Qualifying Board, Malaysia in 2006.



H.E. Michalis Rokas is the Ambassador and Head of the EU Delegation to Malaysia. He has twenty-six years' experience in the field of foreign affairs having joined the European Commission External Relations Directorate General in 1994. His prior postings include Chargé d'Affaires a.i. and Head of EU Delegation to New Zealand, First secretary of the European Commission's Office in Hong Kong and Macau, Head of the Support to Delegations Division at the European External Action Service (EEAS) and Deputy and Head of the China, Hong Kong, Macao, Taiwan and Mongolia Division at the EEAS. Ambassador Rokas holds a bachelor degree in Economics and a postgraduate degree in European Economics.

Session 2



Assoc Prof Dr Salawati Mat Basir is the Legal Advisor at the National University of Malaysia (UKM). Prior to joining UKM, Dr Salawati held several professional positions including practising Advocate & Solicitor, legal officer at a multinational company and post conflict officer with United Nations Conference on Trade & Development (UNCTAD). Dr Salawati held LLB, LLM and PhD from the National University of Malaysia (UKM). Dr Salawati's interests include Public International Law, International Development Law, and Migration and Refugee Law. Her research focuses on globalisation and international development law in Malaysia and the Third World, and the right to development in ASEAN Economic Community (AEC) and human rights especially for immigrants and marginalise groups. In particular, she writes on international development and human rights, refugee and migration issues in Asia Pacific, financing for development, SDGs and sustainable development.



Dr Arron N. Honniball is a Senior Research Fellow at The Max Planck Foundation for International Peace and the Rule of Law (Germany), working within the Foundation's ASEAN and Indian Ocean projects. Prior to joining MPFPR, Arron was a Research Fellow (2019-2021) in the Ocean Law and Policy Team at the Centre for International Law, National University of Singapore (Singapore) and PhD Candidate (2014-2018) at the Netherlands Institute for the Law of the Sea, Utrecht University (The Netherlands). He defended his PhD at Utrecht University (2019), entitled 'Extraterritorial Port State Measures: The basis and limits of unilateral port state jurisdiction to combat illegal, unreported and unregulated fishing' and has published on numerous oceans law topics. Research interests principally concern the law of the sea and state jurisdiction in international law.



Maria Pia V. Benosa is a Research Associate at the Centre for International Law of the National University of Singapore. Prior to this she was a Law Reform Specialist for the University of the Philippines Law Center's Institute for Maritime Affairs and Law of the Sea, and has acted as legal adviser to key Philippine government offices on maritime security and the protection of marine biodiversity beyond national jurisdiction. She obtained her LL.M. in National Security Law, and a Certificate in International Arbitration and Dispute Resolution from Georgetown University Law Centre in 2018 under a Fulbright Foreign Student Program grant. In 2017, she held the Hamilton Shirley Amerasinghe Fellowship at the UN Division for Ocean Affairs and the Law of the Sea. Ms. Benosa also taught Public International Law and Local Government courses at the UP College of Law.

Session 3



Mr. Mohd Sufian bin Sulaiman has been appointed as the Deputy Director General of Fisheries Malaysia (Operation) on April 12, 2021. He graduated with a Bachelor of Fisheries Science from Universiti Pertanian Malaysia (UPM) and began his career in the Department of Fisheries Malaysia on 15 December 1986. During his 35 years of service in the Department of Fisheries Malaysia, he is known as one of the Senior Officer with extensive experience in the fields of enforcement, resource management, fisheries extension and training. Prior to holding his current position, he was appointed as the Senior Director of Marine Parks and Resource Management Division, Director in the Fisheries Offices of several states, namely Melaka, Negeri Sembilan and Selangor. In addition, he also once headed one of the Division in the Ministry of Agriculture and Food Industry as the Director of the Agricultural Training Division.



Datuk Dr Sabirin Ja'afar is an experienced legal advisor, scholar, and community leader. He worked his way up from Magistrate (Malaysian Judicial and Legal Service) to Sessions Court Judge in Kuala Lumpur. Following this, he held numerous responsibilities – as the Special Officer to YAA Tun Mohamed Dzaidin Haji Abdullah, Chief Justice of Malaysia, as Deputy Public Prosecutor for Kuala Lumpur, Senior Federal Counsel (International and Advisory Division), Legal Advisor for the Ministry of Defence and Director of Legal and Investigations of the Malaysian Maritime Enforcement Agency (MMEA). Later, he was seconded to the Malaysia-Thailand Joint Authority (MTJA) as its Legal and Administration Manager before opting for early retirement in 2011. After his early retirement, Dr Sabirin took the time to join the academia as a Professor of Business Law and Ethics at the International Business School (IBS), Universiti Teknologi Malaysia (UTM). Most recently, he was appointed as Pro-Chancellor of Universiti Teknologi Malaysia Melaka (UTeM) in 2019 for three years. He also actively champions maritime and environmental rights. He also held many leadership positions, as Chairman of the Terrorism Prevention Board, Ministry of Home Affairs (POTA), as a Member of the Board of Directors of Perbadanan Usahawan Nasional Berhad (PUNB), and as a Member of Board of Directors of Perbadanan Kemajuan Negeri Melaka (PKNM). Since 2020, he has been the Director-General of the Maritime Institute of Malaysia (MIMA). Today, Dr Sabirin is often sought for advice concerning maritime and is actively involved in the London-based Seafarers' Rights International (SRI) Association.



Peter Horn directs Pew's work on ending illegal fishing, bringing together policy, technology, and enforcement initiatives to legislate against this practice and prevent or stop it at sea. Horn joined Pew in 2015 after serving for more than 30 years in the British Royal Navy, where he reached the rank of commander. He served in the Fishery Protection Squadron as well as strategic planning and intelligence. Horn commanded HMS Middleton and led deployments throughout the Atlantic, Middle East, and parts of Asia. He was invested as a Member of the Most Excellent Order of the British Empire in 1998. Horn holds a master's degree in intelligence and security studies from the University of Salford in the United Kingdom.



Dr. Naporn Popattanachai is currently an assistant dean and a former director of Centre for Natural Resources and Environmental Law, Faculty of Law, Thammasat University, Thailand. His research interests and expertise lie in the fields of Public International Law, International Environmental Law, International Law of the Sea, and Trade-related Environment matters. He completed his LL.M. in European Legal Studies at the University of Bristol, the UK in 2011, and LL.M. in Environmental Law and Policy at University College London in 2012. He received his PhD with a particular focus on Protection of the Marine Environment from Pollution from Land-based Activities from Nottingham Law School, Nottingham Trent University, UK. He was an ITLOS/Nippon Fellowship at the International Tribunal for the Law of the Sea, Hamburg, Germany. Recently his research article titled 'Marine plastics: Fragmentation, effectiveness and legitimacy in international lawmaking' (2018) co-authored with Professor Elizabeth Kirk in *Review of European, Comparative, and International Environmental Law* received an accolade for top-cited paper of 2018-2019.

Session 4



Vice Admiral Dato' Aris Adi Tan bin Abdullah was commissioned as a Second Lieutenant on 22 May 82 in the Executive branch and later specialised as a Navigating Officer, graduating from HMS MERCURY, United Kingdom. With his vast operational experiences, Vice Admiral Dato' Aris Adi Tan was appointed Commander of National Task Force (NTF) on 6 May 20 by the National Security Council (NSC) a multi-agency organisation. His staff appointments include Commanding Officer of KD SULTAN IDRIS I, KD PELANDOK, Commandant of Malaysia Armed Forces Defence College, Assistant Chief of Staff Defence Communication and Electronic Division, Malaysian Armed Forces HQ, Commander of Naval Education and Training and Commander Western Fleet (CWF). He holds a Master of Science in National Resource Strategy from Naval Defence University, USA and a Master of Defence Studies in Social Science from University Kebangsaan Malaysia (UKM). He is also certified as a Training Developer responsible for formulating the System Approach to Training in improving and enhancing the training system in the RMN. Additionally, he is also a certified Quality Manager from the American Society of Quality and an ISO Quality Auditor. He was the patron of the Navy Basketball Association and Chef de Mission in Regattas the Region.



Mr. François Kernin is the Head of the Regional Mixed Movement Unit in UNHCR Regional Bureau for Asia and the Pacific. In this capacity, he works on issues related to asylum and migration, smuggling and trafficking, and protection at sea. Before his current assignment, François was Regional Durable Solutions Officer with UNHCR Regional Office in Amman, Jordan, focusing on the Syrian Crisis, where he supported regional coordination efforts and provided legal and operational advice on issues related to access to asylum and voluntary repatriation. Previously, he worked with OCHA in the Philippines, and with UNHCR in Tunisia, Côte d'Ivoire, Lebanon and Jordan. During these experiences, he led and coordinated activities aimed at addressing the needs of refugees, internally displaced persons and stateless persons in contexts of natural disasters and armed conflicts. François Kernin graduated with BA in Political Science and MA in International Relations from Sciences Po Grenoble. In addition, he has a Master's in International Human Rights Law from the University of Oxford.



Ms. Jane Chan is a Senior Fellow and Coordinator of the Maritime Security Programme at the S. Rajaratnam School of International Studies (RSIS) in Nanyang Technological University (NTU), Singapore. Her main research interests include maritime security issues in Southeast Asia, law and order at sea, regional maritime cooperation and confidence-building measures, and regional boundary delimitation and territorial disputes. She is an affiliated faculty at the Singapore Arm Forces (SAF)-NTU Academy (SNA). Her recent publication includes Christian Bueger and Jane Chan (eds.), *Paving the Way for Regional Maritime Domain Awareness: Information Fusion Centre*, Nanyang Technological University, 2019, Sam Bateman, Rajni Gamage and Jane Chan (eds.), *ASEAN and the Indian Ocean: The Key Maritime Links*, RSIS Monograph, 2017, Vijay Sakhuja and Jane Chan (eds.), *China's Maritime Silk Road and Asia*, (VIJ Books India Pvt Ltd, 2016), Geoffrey Till and Jane Chan (eds.), *Naval Development in Southeast Asia* (Routledge, 2014).

A SELECT WEBLIOGRAPHY

The digital version will provide immediate access to all items listed.



Political Map of the South China Sea

Map Credits: Nations Online Project (rights free for non-commercial Use)

PURSuing PEACE AT SEA

Promoting Peace and Stability in the South China Sea Through Maritime Cooperation by Ding Duo, China Daily.Com.CN, June 21, 2021.

The author, deputy director of the National Institute for SCS studies in Hainan, China, and Research Fellow of Institute for China-American Studies in Washington, DC, presents perspectives on the complex and fragile situation in the South China Sea and the lack of mutual political trust by countries in the region. He is confident that if coastal states work to promote maritime cooperation and try to eliminate external interferences, long-term stability can be secured.

War or Peace in the South China Sea? Edited by Timo Kivimaki. Nordic Institute of Asian Studies, 2002.

This study advocates the creation of a strategic understanding to aid diplomatic efforts for peace in the South China Sea region. It covers the genesis of the disputes and its various dimensions: environmental aspects – the question of the protection of biodiversity, the prevention of water pollution, protection of the reefs and prevention of the overexploitation of the fisheries economic aspects of natural resources and trade routes natural resources and sea lanes. Security questions are covered and finally the potential for conflict and its management to transform the trend towards peace.

Partnerships for Peace in the Southchina Sea by Gilang Kembara. Center for Strategic and International Studies (Jakarta) Working Paper Series (WPSINT) 02/2018.

The territorial claims by South China Sea coastal states is a hotbed for tensions in the region. A peaceful resolution to disputes and overall stability of the South China Sea is of utmost importance for regional prosperity. The author discusses these issues and the challenges confronting governments in the region. He opines that differences between claimant states can be resolved via partnerships and then presents the following policy recommendations: (1) legal principles to promote cooperation and minimise tensions in the South China Sea, (2) confidence building measures, (3) preventive diplomacy, and (4) crisis management.



US Navy's aircraft carrier USS Ronald Reagan in the South China Sea.
Photo Credits: U.S. Pacific Fleet

A Force For Peace and Tranquility by Capt. John Gay, Indo-Pacific Defense Forum, Vol. 46, Issue 3, 2021, pp 60-63.

Capt. John Gay, Public Affairs Officer for the Pacific Fleet, emphasizes that the U.S. Navy seeks to preserve peace and stability throughout the Indo-Pacific region, uphold freedom of navigation, in

a manner consistent with international law, maintain unimpeded flow of trade and commerce and works with partners to ensure prosperity of all nations. The U.S. Navy is also renowned for its rapid deployment of humanitarian and disaster relief throughout the world. Recently, U.S. representatives from the Department of Defense, the Joint Chief of Staffs, and related agencies, met virtually with members of the PRC's Central Military Commission's Office for International Military Cooperation and members from related agencies. The goal was to build mutual understanding to prevent potential crisis.

How a Vietnam-Malaysia Fishing MOU Could Ease the Wider South China Sea Dispute by Ralph Jennings, VOA, April 16, 2021.

Malaysia and Vietnam intend to sign a memorandum of understanding that experts say could eventually help ease a decades-old, six-party dispute over sovereignty in the resource-rich South China Sea. Malaysia is confident the deal, now in its final stages, will solve the issue of Vietnamese fishing boats that enter Malaysian-claimed waters. If the memo helps both sides, their cooperation could eventually go deeper and enable them to resist the sea's militarily strongest claimant, China or work alongside it, opine some analysts.

Maritime Challenges in the South China Sea Region



Disquieting Trends

China Island Tracker. CSIS-AMTI. (Undated).

According to the Center for Strategic and International Studies-Asia Maritime Transparency Initiative

(CSIS-AMTI), China has 20 outposts in the Paracel Islands and 7 in the Spratlys. It also controls Scarborough Shoal. Since 2013, China has engaged in dredging and artificial island-building in the Spratlys, creating 3,200 acres of new land, along with a substantial expansion of its presence in the Paracels. This website provides aerial and satellite images and provides short analysis of the outposts from the Cuarteron and Mischief Reefs in the Spratlys to the Scarborough Shoal, with dates of acquisition, type of structures built, and type of Chinese controls on and around them.

Blunting China's South China Sea's 'New Normal' Quest Starts with the Southeast Asian Claimants by Prashanth Parameswaran, *The Diplomat*, June 15, 2020.

The author sees that China is creating a new normal to enable its ability to enforce what it sees as legitimate claims. He does not see a blunting of this trend unless interested parties who also believe that they have legitimate claims push a collective response to reverse the trend.

Sansha City in China's South China Sea Strategy: Building a System of Administrative Control by Zachary Haver. CMSI China Maritime Reports. 12, 2021

China's Sansha City established in 2012 in Woody Island administers the bulk of its territorial and maritime claims in the South China Sea. Its jurisdiction includes the Paracel Islands, Zhongsha Islands, and Spratly Islands and most of the waters within China's "nine-dash line." Sansha exercises administrative control, implementing military-civil fusion, and carries out work of defense, stability maintenance, environmental protection, and resource development. This system allows China to govern contested areas of the South China Sea as if they were Chinese territory.

Forbidden Catch: Illegal, Unreported, and Unregulated Fishing Threatens Maritime Security by Cmdr Ben Crowell and Wade Turvol *Indo-Pacific Defense Forum*, Vol. 46, Issue 3, 2021, pp 48-51.

The authors define Illegal, Unreported and Unregulated (IUU) fishing according to the United Nations, describes the state of world fisheries, discusses the perils of piracy and other criminal activities occur in the high seas, and suggests solutions to address the threat of IUU. They say IUU is much more than an environmental crime. It is a global, strategic challenge that must be met with a collaborative, international, strategic response

"Concerns Over the South China Sea (SCS) Situation" in Issues of Concern to ASEAN (in The State of Southeast Asia 2021 Survey Report) by the ASEAN Studies Centre, ISEAS-Yusof Ishak Institute, 10 February 2021, pp. 13-19.

This report captures the perspectives of opinion-makers, policy-makers, and thought-leaders in the region and covers regional affairs and geo-political developments. Section 3, dedicated to "Issues of Concern to ASEAN" points out that, 62.4% of respondents are concerned about China's militarisation and assertive actions, followed by Chinese encroachments in the exclusive economic zones and continental shelves (59.1%); (45.2%) envisages a US-China military confrontation that may lead to a political crisis. A large majority (84.6%) want ASEAN to adopt a principled stand on the SCS that upholds international law, and 80.8% agree that a code of conduct in the SCS must be aligned with international law.

U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress, Congressional Research Service, October 6 2021.

Prepared for members of the U.S. Congress, this report provides background for lawmakers to consider whether the U.S. Administration's strategy for competing strategically with China in the

SCS and ECS is appropriate and correctly resourced, and whether Congress should approve, reject, or modify the strategy, the level of resources for implementing it, or both. Decisions that Congress makes on these issues could substantially affect U.S. strategic, political, and economic interests in the Indo-Pacific region and elsewhere.

What's Behind the Rising US-Southeast Asia Coast Guard Cooperation? By Prashanth Parameswaran, The Diplomat, August 27, 2019.

The author zooms-in at a general rising trend of U.S. and Southeast Asian coast guard collaboration. He opines that this could factor into broader implications for the United States and specific Southeast Asian countries, but also for regional security.

AUKUS



A U.S. Navy nuclear-powered submarine. Photo credits: US Navy

The AUKUS Dominoes are Just Starting to Fall by Stephen M Walt Foreign Policy, September 18, 2021.

Harvard University professor of international relations, Stephen M Walt, analyses AUKUS, the world's newest security pact. He sees it as a joint effort to equip Australia with a fleet of advanced nuclear-powered submarines, vis-a-vis a China threat, and to engage Australia with the Quad's efforts in the region. The move, while it thwarts, in the long run, China's efforts towards regional hegemony, it has also upset France as Australia backed off from a prior commitment to purchase French submarines. This leaves Asian countries bewildered in discerning to what degree the U.S. and Chia are disrupting the region's peace.

Anxiety, Unpreparedness and Distrust: Indonesia's Careful Response to AUKUS by Muhammad Waffaa Kharisma. University of Melbourne's Blog, Indonesia at Melbourne, October

13, 2021.

The author, a researcher at Jakarta's CSIS (Centre for Strategic and International Studies), is concerned that the AUKUS (Australia-UK-United States) trilateral defence pact will be a destabilising force for Indonesia and Southeast Asia as it will not only enhance Australia's access to nuclear-powered assets, defying efforts by countries in the region to promote non-proliferation but will, instead, provoke the continuation of an arms race and military projection in the Southeast Asian Region.

AUKUS Is Deeper Than Just Submarines by Arzan Tarapore. Stanford University Freeman Spogli Institute for International Affairs, September 29, 2021.

While the Australia-UK-US (AUKUS) security pact shows a seriousness about naval power, the biggest story is the radical integration of leading-edge defense technology and a new approach to alliances, argues the author. The pact seeks to win the technology competition with China by pooling resources and integrating supply chains for defense-related science. It is a decades-long transnational project to seize advantages in artificial intelligence, quantum computing and cyber technology.

Integrating AUKUS into the Indo-Pacific by Ramesh Thakur, The Strategist, 28 September 2021. Emeritus professor at the Australian National University, Ramesh Thakur, says that AUKUS joins the plethora of groupings jostling to manage regional affairs. Setting his discussion within the emerging geopolitics in the region, Ramesh Thakur traces the positions of the Quad (U.S., Australia, Japan, India) and Britain and France, in the Indo-Pacific balance of power and influence. He writes that AUKUS will also play into ASEAN's fears about Southeast Asia becoming a battleground for Sino-U.S. rivalry.

PIRACY

Piracy Under International Law by the UN Oceans and Law of the Sea. 24 May 2012.

Acts of piracy threaten maritime security by endangering, in particular, the welfare of seafarers and the security of navigation and commerce. These criminal acts may result in the loss of life, physical harm or hostage-taking of seafarers, significant disruptions to commerce and navigation, financial losses to shipowners, increased insurance premiums and security costs, increased costs to consumers and producers, and damage to the marine environment. Piracy can also prevent humanitarian assistance and increase costs of shipments to the affected areas.

PIRACY AND ARMED ROBBERY AGAINST SHIPS
ICC INTERNATIONAL MARITIME BUREAU

97 INCIDENTS
WERE REPORTED TO THE IMB PIRACY REPORTING CENTRE
JANUARY - SEPTEMBER 2021

ICC INTERNATIONAL CHAMBER OF COMMERCE
ICC International Maritime Bureau
#IMBpiracy @IMB_Piracy

Piracy and Armed Robbery Incidents at Lowest Level in Decades, but IMB Cautions Against Complacency. International Chamber of Commerce's (ICC), 14 October 2021.

The International Chamber of Commerce's International Maritime Bureau (IMB) reported the lowest number of reported piracy and armed robbery incidents for the first nine months of any year since 1994. However, IMB warns that seafarers must remain vigilant as violence against crew remains high in many seas around the world. This site provides details, including statistics and infographics of various aspects of piracy and armed robbery globally: number of incidents, types of attacks, types of vessels, total attacks per region, etc. IMB also issued **piracy warning for the South China Sea**.

Uncertain Prospects: South China Sea Code of Conduct Negotiations by Felix K Chang, Foreign Policy Research Institute, October 6, 2020.

Senior Fellow at FPRI's Asia Program, Felix K Chang, laments that for about two decades the goals of the Code of Conduct (CoC) has not yet reaped success in reducing tensions in the South China Sea. He analyses the conundrum and also opines that the Covid pandemic has slowed down the process of talks and negotiations towards CoC. Both ASEAN and China still hope to agree to finalise the CoC in 2021 but the year is now almost ending and Chang is not confident it will occur.

Existing Maritime Laws, Policies, Challenges

Maritime Security: Belgium's Interests and Options Report. Egmont Institute-GRIP, 2017.

According to this Report, maritime security connects economic actors to political decision makers, administrative staff, institutional frameworks, military forces and security agents in new and complex ways. With the support of the Foreign Affairs of the Kingdom of Belgium and the Egmont Royal Institute for International Relations and the Group for Research and Information (GRIP), this Report while not representing official positions of any institutions, introduces maritime security vis-a-vis South China Sea disputes and good legal order at sea, based on Belgian stakes and perspectives in a debate on maritime security at the European and global levels. It also presents Belgium's role and place in Asia.

Is Malaysia Really a Maritime Nation? by Adam Leong Kok Wei, The Diplomat, May 25, 2021.

Associate Professor in strategic studies, and Deputy Director (Research) in the Centre for Defence and International Security Studies (CDISS) at the National Defence University of Malaysia, provides a brief analysis of Malaysia's strategy in the South China Sea and contends that the country thinks and acts like a continental nation and is unlikely to become a true maritime nation soon. Among his recommendations is that the Government should also inculcate interest in future careers within the maritime ecosystem, such as ship-building, maritime engineering, navigation, port and harbor management, and maritime insurance.

Conceptualization of Malaysia's Maritime Security by Tharishini Krishnan, AMTI-CSIS (Washington, DC), November 22, 2021.

Although there is no single document consolidating the country's maritime policy, to understand Malaysia's maritime ,one should peruse the National Security Policy (Dasar Keselamatan Negara), Malaysia's Defense White Paper 2020 and several other documents the author lists. They include the Malaysian Maritime Enforcement Agency Act, a working draft bill from 2011 which seeks to promulgate and codify all issues pertaining to maritime security in Malaysia. The author provides

an insight into Malaysia's evolving maritime policy responding to sea dynamics and challenges.

Brunei Darussalam's Conceptualizations of Maritime Security by Asyura Salleh, AMTI-CSIS (Washington, DC), November 22, 2021.

Brunei has demonstrated a focus on ensuring the safety of passage for all users at sea and protecting its national security interests. The author presents how Brunei defines its approach to maritime security and the various government agencies and stakeholders involved in the process. Cognizant of militarization and arms race in the region, the author envisages a firmer and carefully crafted Brunei posture towards the South China Sea's continuing disputes while also relying on regional coordinating mechanisms and multilateral naval exercises to defend its territorial claims.

China's Maritime Law in the South China Sea by VCI Legal. Lexicology, October 28, 2021.

Recent change in the Chinese Maritime Traffic Safety Law (MTSL) tightens China's control over vessels that pass through the Chinese territorial sea. And due to China's current claims over the Parcel and Spratly Islands, the free passage of vessels in international waters in the region is also affected. This article sets the discussion vis-a-vis UNCLOS and cites examples of how China's new law affects other countries' right of free passage in the South China Sea.

The Philippines Conceptualization of Maritime Law by Jay Batongbakal. AMTI-CSIS (Washington, DC), November 4, 2021.

The author points out that the Philippines maritime security is based on two principal documents: the National Security Policy and the National Security Strategy. These documents recognize the Philippines' maritime interests as an archipelagic state and intend to enhance cooperative maritime security and defense arrangements with other countries in order to safeguard the territorial integrity and sovereignty of the country. They further endorse the state or condition wherein the nation's sovereignty and territorial integrity, the people's well-being, core values and way of life, and the state and its institutions are protected and enhanced.

Germany Takes a More Outspoken and Active Position on the South China Sea Disputes by Stefan Telmo, German Practice in International Law, 30 March, 2021,

The author, professor of public law, and Director of the Institute of Public International Law, University of Bonn (Germany) says that Germany took a more firm position from 2019 in underscoring Freedom of Navigation and Overflight Operations (FONOPs) in the South China Sea, emphasised the importance of UNCLOS and a rules- based international order, and encouraged countries to take a peaceful manner to settle disputes.

Economics, Climate Change and Environment

Geo-Economic Impact of COVID-19 on the Maritime Sector in Malaysia by Sumathy Permal and Norsyihan Jamal. Sea Views, No. 1, 8 April 2020.

The authors discuss the impact of Covid-19 on geo-economics and the maritime sector of Malaysia. They observed from a study by the Malaysian Institute of Economic Research (MIER) that Malaysia's real GDP would shrink about 6.9 % relative to the 2020 baseline and translate to negative (-2.9%) real GDP growth for 2020, relative to 2019. Consumer spending will decline sharply by 11%. They further argue that the menacing virus has slowed production and shipping traffic in China, Malaysia's largest trading partner, disrupting supply chains. In addition, maritime-related sectors such as tourism, and commodities such as palm oil and oil and gas industries, and

sea transport affected by the vagaries of geo-economics of the region, are all impacting Malaysia's economic growth.

GDP Impacts of South China Sea Disputes by Nikit Kwatra, Mint, 25 November 2021.

The South China Sea's increasing tensions between China and the U.S., and the overlapping territorial disputes by many countries in the region is disrupting international trade and economic growth. Kwatra reports on a new study by the U.S. National Bureau of Economic Research (NBER) which demonstrates that major Asia-Pacific economies could lose up to 12 percent of their GDP if the geopolitical tensions were to force closure of key trade routes in the region. The NBER study by Kerem Cosar and Benjamin D Thomas of the Department of Economics, University of Virginia, entitled, **The Geopolitics of International Trade in Southeast Asia** concludes that the SCS disputes, partially motivated by search for offshore hydrocarbon energy deposits, could set in motion rapid arms race in the region.

China Committed to Maritime Cooperation, Tackling Climate Change in South China Sea Amid US Coercion of ASEAN by Zhang Hui, Global Times, November 9, 2021.

China made it clear at the Nov 10 Symposium on Global Maritime Cooperation and Ocean Governance 2021 that it is committed to working with countries in the South China Sea region to expand maritime cooperation, protect global maritime supply chains and tackle climate change to build the South China Sea into a sea of peace, friendship and cooperation. Chinese State Councilor and Foreign Minister Wang Yi said that countries should uphold multilateralism to jointly safeguard maritime order. He added that countries should work together to address global challenges such as global warming and rising sea-levels. According to the author, ASEAN will not fall trapped into U.S. coercion to contain China.

In Deep Water: Current Threats to the Marine Ecology of the South China Sea by Pratinashree Basu and Aadya Chaturvedi, Observer Research Foundation Issue Brief No. 449, March 8, 2021.

Environmental impacts of China's activities in the South China Sea will be long lasting, according to the authors. China's island construction, drilling activities, hydrofracking, and overfishing have pushed the marine ecosystem of the region to the brink of collapse, and the destruction of coral reefs, and the marine life they support is threatening the food and energy security of the littoral states. They provide details of how the unlawful marine practices in the South China Sea will impact sustainability of the region's ocean. Dr. Rashid Sumaila, Professor at the Institute for the Oceans and Fisheries and the School of Public Policy and Global Affairs at UBC.

Overfishing in the South China Sea Could Cost 10 Billion a Year in Lost Revenues by Earth. Org, November 3, 2021.

Overfishing in the East and South China Sea and worsening impacts of climate change are driving fisheries to the brink of collapse in the coming decades, according to new research released by the University of British Columbia fisheries scientists and ADM Capital Foundation. Dr Rashid Sumaila, Professor, Institute for the Oceans and Fisheries at the University of British Columbia says that with a strong commitment to regional fisheries management and climate change mitigation, the oceans can continue to support Asia's human, social, and economic well-being.

Germany's Indo-Pacific Vision: Building a Multilateral World Order with ASEAN by Jan Kliem, Think China Newsletter, 15 February, 2021.

Senior (German) Research Fellow, German-Southeast Asian Center of Excellence for Public Policy

and Good Governance, Thammasat University opines that the Indo-Pacific that Germany envisions a region led by multilateralism, the key principle throughout its policies, from climate cooperation to security. Germany and the EU supports ASEAN's multilateral security architecture and that is good news for the region.

Covid-19: In Search Search of Solution for Maritime Supply Chains

By Chin Yim Leng, MIMA Online Commentary on Maritime Issues, No. 4/2020, 16 June 2020.

The outbreak of the Covid-19 pandemic has had a remarkable impact on maritime supply chains. Since its first case in China's Hubei province, Wuhan, Chinese seaborne trading activities were greatly affected: weakening manufacturing confidence, decreasing demand for non-essential goods worldwide. Lockdowns and movement restrictions in pandemic-affected countries have led to rapid contractions in maritime supply chains. Governments and private agencies should take initiatives to stem the tide of disrupted marine supply chains: digitalization and blockchains, says the author, are easy to access and control in optimising the efficiency of maritime supply chains.

How a Vietnam-Malaysia Fishing MOU Could Ease the Wider South China Sea Dispute, VOA (East Asia), April 16 2021.

Agreements around the South China Sea are few today but have a record of building trust by solving local problems even as the wider sovereignty issue lingers. Analysts believe the Vietnam-Malaysia memorandum envisioned would start by easing tension between the two countries. Vietnamese fishing boats end up in Malaysian waters because the waters are close, not always clearly marked on maps and offer more fish than the seas nearer Vietnam.

Security Challenges of Climate Change by Murray Hiebert and Danielle Fallin, Center for Strategic and International Studies (CSIS) Commentary, October 5, 2020.

With post-pandemic economic recovery as top priority for Southeast Asian countries, the United States can deepen its relations, increase economic cooperation, and support green initiatives simultaneously. The United States should help the region limit the most damaging impact from climate change, in order to reap soft-power benefits arising from high levels of trade and investment.

Oceans of Opportunity: Southeast Asia's Shared Maritime Challenges by Danielle Faillin et al. Center for Strategic and International Studies (CSIS), September 2021.

This report, based on a CSIS June 2021 conference with political, economic and scientific experts, emphasises that countries in maritime Southeast Asia whose populations rely on the marine ecosystem for food security, economic growth, and national security, should place greater focus on prudent management of mounting environmental and security challenges.

Spike in Incursions Highlights Joint Australian and Indonesian Interests in Combating Illegal Fishing by Hillary Mansour, The Strategist, 29 November 2021

The author highlights environmental damage and economic losses because of illegal fishing. She argues that the rate of illegal fishing activity by Indonesians in Australian waters has soared and Indonesian fishermen have been punished consistent with their bilateral agreements. Solutions to the problem include an overall strategy incorporating government partnerships and multilateral forums, notably the Australia-Indonesia initiated regional plan of action to promote responsible fishing and combat illegal fishing in Southeast Asia. The top-down approach had the issue included in the agenda in a recent meeting between Australian Prime Minister Scott Morrison and Indonesian President Joko Widodo.