PANEL 4: STRAITS GOVERNANCE

CONTEMPORARY ISSUES ON PASSAGE THROUGH ARCHIPELAGIC STRAITS AND SEA LANES

42ND ANNUAL CONFERENCE OF THE CENTER FOR OCEANS LAW AND POLICY: COOPERATION AND ENGAGEMENT IN THE ASIA-PACIFIC REGION

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OVERVIEW

• Introduction
• Implementation
• Current Issues and Concerns
• Future Issues and Concerns
• Prospects for the Future
INTRODUCTION

• UNCLOS Part IV: Archipelagic States – result of negotiations led by “Archipelago Group of States” (Indonesia, Philippines, Fiji, Bahamas, Papua New Guinea)

• Primary Concerns of the AGS (UN Doc A/AC 138/SC II/L.15):
  • Recognition of sovereignty over archipelagic (inter-island) waters
  • Restriction of international vessel passage to innocent passage only in designated sea lanes thru archipelago

• UNCLOS Outcomes
  • Sovereignty over archipelagic waters recognized, but
  • 2 passage regimes applicable:
    • Innocent passage
    • Archipelagic Sea Lanes Passage
INTRODUCTION

• Philippines: Statement upon Ratification, 08 May 1984
  • “6. The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic State over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence and security.
  • “7. The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation.

• Philippines’ restrictive view not expressly shared by other States in AGS; in practice, however, there appears to be a trend toward this restrictive view
IMPLEMENTATION: ARCHIPELAGIC SEALANES PASSAGE


• Indonesian partial designation: Government Regulation No. 37 (2002) – 3 north-south ASLs, no east-west ASLs

• Philippines aborted unilateral designation: between 2013-2015, there were attempts by government to unilaterally legislate 3 ASLs (1 north-south, 2 east-west) through the Philippine archipelago contrary to IMO GPASL and UNCLOS Part IV consultation requirements
  • Current bills no longer designate specific ASLs
CURRENT ISSUES AND CONCERNS

- Restrictive interpretation
  - Indonesia & Philippines both envision limitation of foreign vessel passage to only designated ASLs, as well as right to regulate vessel passage within ASLs
    - Indonesian Gov’t Regulation No. 37 (2002), Art. 3
    - Philippine HB 3285, filed 13 Jan 2017, Explanatory Note
  - Concept of “Partial Designation” introduced in the GPASL
    - “…does not meet the requirement to include all normal passage routes and navigational channels as required by UNCLOS.”
CURRENT ISSUES AND CONCERNS

- In reality: different routes for different ships with different frequencies and at different times
  - Sea lane usage as a function of technology and trade patterns
CURRENT ISSUES AND CONCERNS

• Increasing environmental impact of shipping
• Risks of shipping-related accidents expected to increase
• Noticeable higher incidence in recent years of ship groundings
CURRENT ISSUES AND CONCERNS

• Increasing environmental impact of shipping
• Collision risks increase as shipping volume increases
CURRENT ISSUES AND CONCERNS

• Increasing environmental impact of shipping
  • Marine debris, particularly garbage and plastics, on the rise along major shipping routes
  • Tubbataha Reef Natural Park (in the middle of the Sulu Sea) clean-up statistics:

<table>
<thead>
<tr>
<th>Year</th>
<th>Kg. of Collected</th>
</tr>
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<tbody>
<tr>
<td>2010</td>
<td>198</td>
</tr>
<tr>
<td>2011</td>
<td>627</td>
</tr>
<tr>
<td>2012</td>
<td>635</td>
</tr>
<tr>
<td>2013</td>
<td>1,460</td>
</tr>
</tbody>
</table>
CURRENT ISSUES AND CONCERNS

• Maritime crime along routes used for international navigation
• Drop-off deliveries at sea used by smugglers in cooperation with local cohorts
CURRENT ISSUES AND CONCERNS

• Resurgence of maritime crime along routes used for international navigation
  • Piracy and robbery at sea in maritime border areas (Sulu-Celebes Sea) per ReCAAP:
    • 3 abductions, 4 attempted abductions in 2017
    • As of Dec 2017:
      • 59 abducted
      • 43 released/rescued
      • 7 killed
      • 9 in captivity
FUTURE ISSUES AND CONCERNS

• Coordination of designated ASLs
• Other potential environmental issues
  • Air pollution in/around routes
  • Noise pollution due to increased maritime activity; important for sensitive areas
  • Marine biodiversity conservation commitments (esp. MPA targets) v. shipping needs
• Claims to traditional fishing rights
  • Neither Philippines nor Indonesia recognize traditional fishing rights within archipelagic waters; both regard foreign fishing in archipelagic waters as illegal
  • View that foreign fishing activities are connected with transnational maritime crime (e.g., drug trade, illegal wildlife trade)
FUTURE ISSUES AND CONCERNS

- Drone technology impacts on management of archipelagic waters
- Autonomous Underwater Vehicle operations directed by AI; long-range, undetectable
- Discards/lost “not-so-smart” drones; carried into archipelagic waters by ocean currents
- “Normal mode” military activities during ASL passage (e.g., launch/recovery of aircraft)
- Airspace management over ASL

US ‘marine drone’ found off Zambales

MASHINAG, Zambales: Three fishermen from this town last Friday found another US “marine drone” off the South China Sea (West Philippine Sea) near the disputed Pagging Shoal.

It was the second drone recovered off the coast of Zambales this year.

Galier Gudermas, 50, Reynaldo Mendayta, 20, and Juangtuneñas, all residents of Sitio Takas in barangay Loboc, the town, and they found the yellow-colored oceanographic instrument, also called Glider Digger, while fishing in the West Philippine Sea, dragged it home and later turned it over to the municipal police station.

Another U.S. drone found off Zambales – report

The yellow drone contains labels from the National Oceanic and Atmospheric Administration.

Yesterday, Friday, November 13, 2015

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SanL (Philippines) – A sea drone from the United States of America is shown. The drone was discovered on November 13, 2015.

FIGURE 2. Tracks and locations of observational platforms during the Origins of the Kuroshio and Mindanao Current (OKMC) and Observations of Kuroshio Transport and Variability (OKTV) programs. The underwater gliders Spray (orange) and Saaglinder (yellow) were deployed to observe the NEC, the MC, and the Kuroshio. The profiling floats SOLO-II (white) and EM-APEX (red) were widely deployed throughout the region. Subsurface moorings, pressure inverted echo sounders (PIES), and ship stations (symbols) provided higher density observations at key locations.
INITIAL RESPONSES

- Designation of PSSA in high-risk, environmentally sensitive areas
  - Philippines’ Tubbataha Reef Natural Park PSSA designated in 2017, effective 01 Jan 2018
  - Indonesia’s Lombok Strait designation, presently ongoing before IMO
INITIAL RESPONSES

- Trilateral Cooperative Arrangement
  - Designation of transit corridors
  - Joint patrol arrangements
  - Hotlines and info-sharing
- AIS monitoring
PROSPECTS FOR THE FUTURE

- Use of IMO regulatory framework to address marine environmental concerns
  - More PSSA designations possible
  - Resort to other IMO convention mechanisms possible (e.g., MARPOL Special Areas)
- Governments view sea lane designation as instruments of greater control
  - Future actions may not be completely consistent with UNCLOS ASL rules
  - Increasing domestic pressure for regulation of foreign vessel passage in response to maritime criminal activity
- Liability and compensation regimes will be of increasing interest to archipelagic States
- Continuing “negotiation” of passage regimes as incidents arise; archipelagic States will continue to push the envelop toward greater regulation
END OF PRESENTATION

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