Maritime transport co-operation in the ASEAN countries: the needs and the problems

H. Prasetyo

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MARITIME TRANSPORT
CO-OPERATION
IN THE ASEAN COUNTRIES
THE NEEDS AND THE PROBLEMS

BY

PRASETYO, Heru
(Republic of Indonesia)

A dissertation submitted to the
World Maritime University in partial fulfilment
of the requirement for the award of the:

Degree of Master of Science
in
GENERAL MARITIME ADMINISTRATION

Year of graduation:
1992
THE WORLD MARITIME UNIVERSITY
MALMO, SWEDEN

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DECLARATION

I certify that all materials in this dissertation which is not my own work has been identified and no material is included for which a degree has been previously conferred upon me.

The contents of this dissertation reflect my personal views and are not necessarily endorsed by the University.

PRASETO, Heru
Malmo, 15 October 1992

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Visiting Professor,
the World Maritime University
This dissertation is dedicated to
my wife Lina, my son Mirza
and my daughters Nana and Lala
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15 October 1992

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<tr>
<td>ADB</td>
<td>Asian Development Bank.</td>
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<tr>
<td>AFTA</td>
<td>ASEAN Free Trade Area.</td>
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<td>ANERA</td>
<td>Asia-North America Eastbound Rate Agreement</td>
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<tr>
<td>ANZESC</td>
<td>Australian/New Zealand Eastern Shipping Conference</td>
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<tr>
<td>APAA</td>
<td>ASEAN Port Authorities Association.</td>
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<td>ASEAN</td>
<td>Association of South-East Asian Nations.</td>
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<tr>
<td>ASCOPE</td>
<td>ASEAN Council on Petroleum.</td>
</tr>
<tr>
<td>COTAC</td>
<td>ASEAN Committee on Transportation and Communications.</td>
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<tr>
<td>EAC</td>
<td>East African Community.</td>
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<tr>
<td>ECDC</td>
<td>Economic Co-operation among Developing Countries.</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Organization of West African States.</td>
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<tr>
<td>EDI</td>
<td>Electronic Data Interchange Systems.</td>
</tr>
<tr>
<td>EEC</td>
<td>European Economic Community.</td>
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<tr>
<td>EEZ</td>
<td>Economic Exclusive Zone.</td>
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<tr>
<td>ESCAP</td>
<td>Economic and Social Commission for Asia and the Pacific.</td>
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<tr>
<td>FASA</td>
<td>Federation of the ASEAN Shipowners' Association.</td>
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<tr>
<td>FASC</td>
<td>Federation of the ASEAN Shippers' Council</td>
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<tr>
<td>FEFC</td>
<td>Far Eastern Freight Conference.</td>
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<tr>
<td>GATT</td>
<td>General Agreement of Trade and Tariffs.</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product.</td>
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<tr>
<td>GNP</td>
<td>Gross National Product.</td>
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<tr>
<td>HICOM</td>
<td>Heavy Industrial Corporation of Malaysia.</td>
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<tr>
<td>IMO</td>
<td>International Maritime Organization.</td>
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<tr>
<td>ILO</td>
<td>International Labor Organization.</td>
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<tr>
<td>JSC</td>
<td>Japan Shippers Council.</td>
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<tr>
<td>LAFTA</td>
<td>Latin American Free Trade Area.</td>
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<tr>
<td>MAS</td>
<td>Malaysian Airlines System.</td>
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<tr>
<td>MFN</td>
<td>Most Favored Nation.</td>
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<tr>
<td>MISC</td>
<td>Malaysian International Shipping Company.</td>
</tr>
<tr>
<td>NIES</td>
<td>Newly Industrialized Economics.</td>
</tr>
<tr>
<td>NOL</td>
<td>Neptune Oriental Liner (Singapore).</td>
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</table>
OECD
Organization Economic Countries for Development.

OILPOL
International Convention for the Prevention of Pollution of the Sea by Oil, 1954

PTA
Preferential Trade Area.

RFC
Revolving Fund Committee.

SCSP
ASEAN Sub-Committee on Shipping and Ports.

SCLT
ASEAN Sub-Committee on Land Transportation.

SCPT
ASEAN Sub-Committee on Post and Telecommunication.

SEATAC
South-East Asian Agency for Transportation and Communications.

TARC
Tiered Area Response Capabilities.

TEU
Twenty-foot Equal Units.

TTEG

UNCTAD
United Nations Conference on Trade and Development.

UNCLOS

UNDP
United Nations Development Program.

US(A)
United States of America.

VLCC
Very Large Crude Carriers
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CHAPTER 1
THE SOUTH EAST ASIAN REGION

1. Introduction

The concept of economic co-operation among developing countries as an explicit policy objective of independent governments can be traced back to the early 1950s, where the major European colonial powers attempted to shape the decolonization process in such a way as to replace their regional colonial administrations by economic co-operation frameworks.

In several cases, the attempts to decolonization included blue prints for political federation, but most of these were broken up soon after independence. However, the economic links left behind by the colonial powers were durable and constituted the starting point for economic co-operation among developing countries in many parts of Africa, the Caribbean and the Asia-Pacific region.¹

Since the 1960s, Indonesia, Malaysia, the Philippines, Singapore and Thailand have formed various pacts among themselves to develop multilateral economic and political ties. In 1967, they made a commitment in Bangkok, Thailand, to the principle of regional co-operation which was then known as the Association of South East Asian Nations (ASEAN).

Starting from that time, there has been a constant challenge to produce substantive results that signify co-operation. Now that the history of the ASEAN covers almost twenty five years and many spheres of activity, it should be possible to analyze, assess and learn from ASEAN's experience.

The purpose of this study is to analyze the needs, the problems and the prospect of maritime transport co-operation as parts of economic co-operation among the ASEAN countries. The approach of the study is explained as follows.

Chapter 1, discusses the general over views of the South East Asian region, the establishment of regional association, the legal status, organization of work and the concept of regionalism as a basis of regional co-operation.

As a group of economically-growing nations which are separated from each other by sea, maritime transport plays an important role in the region. This issue will be presented in Chapter 2 as the needs of maritime transport co-operation, regional co-operation in maritime affairs and co-operation between ASEAN and other countries, regions and international organizations in the field of maritime transport.

The problems concerning maritime issues currently faced by this group of countries, which mainly involve conflict of jurisdiction, marine resources, competition in shipping and problems on safety of ships and protection of marine environment, will be discussed in Chapter 3.

Chapter 4, examines the initiatives in regional maritime transport that can be projected to the prospect of
regional co-operation among member countries, the role of international organizations in the development of maritime sector in the ASEAN countries, and harmonization of the national maritime policy.

Finally, this study develops conclusions and some recommendations to improve the maritime transport and maritime industries in the ASEAN countries.

To explain the paragraphs hereinafter, the analysis will be based on the knowledge gained during study in the World Maritime University and some data collected during on-the-job-training to some places in several countries.

2. Characteristic of the region

South East Asia is quite a new geographical concept, the term itself has been used just for several decades to describe the series of peninsulas and islands laying to the east of India, to the south of China and to the north of Australia.

On the south east coast of the main Asian land mass are the countries which previously were known as Indo-China, bounded on the west by Thailand which shares its border in the southern part with West Malaysia. To the east of this peninsula, there is an archipelago consisting of more than 7,000 islands grouped in chain nearly 1,000 miles long and form the Philippines.

In the south of the Philippines, is a vast group of about 13,000 islands stretching from the west to the
east for over 3,000 miles which form Indonesia containing the world's third largest island called Borneo or, more recently, Kalimantan.

The Borneo island is divided into three parts. The southern part, the biggest part, is belong to the Republic of Indonesia and the north coast of Kalimantan are divided into two countries namely East Malaysia which consist of Sabah and Serawak, and in between of them, is Negara Brunei Darussalam. Almost in the middle of these wide area is the tiny island state of Singapore, lying at the southern tip of the Malay peninsula.

All the South East Asian countries are grouped around the South China Sea, whilst Indonesia is bounded also by the Indian Ocean and the Pacific; and the Philippines, with a coast line twice the length of that of the United States, has the Pacific on their eastern border. In the east of Mindanao Island, is the Mindanao Trench which reaches the greatest known ocean depth of slightly over 11,000 meter.\(^2\)

To imagine these countries as a national region is in some ways as difficult and illogical as to regard as a whole entity the countries which together makeup the continent of Europe. Yet they do have common features and have shared many common experiences whilst their future in large measure depends upon their co-operation as a region.\(^3\)

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\(^3\) Moore, Joana, *South East Asia Today*, Kaye & Ward Ltd., 1974, p. 20
The region is one of immense diversity - in forms of land, races, culture, level of economic development and density of population. Located between the great trade routes which have for centuries linked India and China with the west, it is a region where the modern world and ancient oriental tradition meet. The mixture of people and religious is the living evidence of a long history of invasion and conquest.

It has been some centuries past when traders came from India introducing Hinduism, Buddhism and Sanskrit language, then Arab merchants introducing Islam, and finally from Europe came the Portuguese, the Dutch, the Spanish, the English and the French. With the exception of Thailand, almost every part of South-East Asia suffered of colonialism and only when the colonial ties were finally severed and once the constituent nations attained their freedom and independence, did South-East Asia acquire significance and indeed become a major world region.

3. Legal status and organization of work

At the present day, understanding of multi-country organizations has been a function of what we have seen in the various regional integration movements especially in the post-second World War era. Many nation-states went into joint efforts with other countries, usually geographically related, although not necessarily, and such integration movement is often operationalized by the formation of organization. Some organizations provide the vehicle for action to the benefit of their members.

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4 Ibid., p. 32

5
In the cases of regional multi-country organizations, the field of studies is commonly associated with international relations because the unit of analysis is the country or nation-state and the organization is became a whole new sort of activities. In this context, one must consider that the states, which comprise the organization, become engaged in international activities and subject to international law, diplomacy, security affairs, trade agreements and the like. Ideology also becomes a more important factor than it should be if the unit of analysis is the corporation, the firm or industry. The regional organization also automatically invites the participation of other intellectual disciplines such as political science, economics and sociology.  

As seen from the various inter-organization experiments such as the Organization of American States, the European Common Market, the Latin American Free Trade Association and more others, geography becomes a significant factor for regional integration. Regional organizations are closely related with the common understanding of what a region is. The organization establish because the area is bounded by physical contiguity, or often with some common elements related to language, history, common symbols and tradition.  

In 1966, Malaysia and Indonesia signed an agreement which ended Indonesia's confrontation policy towards Malaysia. So, in 1967, Thailand and Indonesia took initial steps to form a new regional organization that would cover all of the countries of the South-East Asian region includ-

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6 Moore, Joans, *op. cit.*, p. 35
ing Burma, Laos, Cambodia, North and South Vietnam. But the initiative was rebuffed. However, Malaysia, Singapore, and the Philippines found varying reason to join together with Indonesia and Thailand for pursuing the proposed organization and in August 4, 1967, Bangkok played host to the birth of the Association of the South East Asian Nations (ASEAN).  

The ASEAN Declaration (or Bangkok Declaration) is sufficiently simple in language and general in its aims as to allow a variety of interpretations. The Declaration specifies seven aims and purposes, six of which can be determined as developmental in nature and one whose aim is to stress political implications:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;

2. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;

3. To promote South-East Asian studies;

4. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and to explore all avenues for even closer cooperation among themselves;

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5. To promote regional peace and stability through abiding respect for justice and the rule of law in relationship among countries of the region and adherence to the principles of the United Nations Charter.

6. To promote active collaboration and mutual assistance on matters of common interests in the economic, social, cultural, technical, scientific and administrative fields; and,

7. To collaborate more actively for greater utilization of agriculture and industries, the expansion of trade, including the study of the problems of international commodity trade, the improvement of transportation and communications facilities and the raising of the standards of the peoples. 

In accordance with the 1967 Bangkok Declaration, the newly-born organization set up the following administrative machinery to carry out its wishes.

At the beginning, the top decision making body in the Organization responsible for the formulation of policy guide-lines was the Ministers Meeting. This meeting is held in the different ASEAN capitals on a rotation basis according to the alphabetical order. Special meetings may be held sooner than annually according to the demands of the occasion.

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* Mondejar, op.cit. p. 143
Supplemental agreement in 1976 decreed that from then on, the Heads of Government of the member countries would take over the task of providing directions to the Organization, making them the top decision-making body and, since that time, there have been four such Heads of Government meetings – in Indonesia in 1976, in Malaysia in 1977 to mark the tenth anniversary of ASEAN, in the Philippines in 1987 to commemorate the two decades of the Association and again, in Singapore in January 1992.¹⁰

According to the Charter, the annual meeting of the foreign ministers reviews the decisions made by other minister-level meetings and approves the policies which it sends to the various standing committees or other entities charged with implementation of the decisions.

The standing committee under the chairmanship of the foreign minister of the country hosting the ministerial meeting in that particular year has as its members the accredited ambassadors of the other ASEAN countries. This entity continues to serve the operations of the organization in between the foreign ministers' meetings. There are also Ad-hoc committees and permanent committees of specialists and officials on specific subjects.

A national secretariat in each member country has been established to carry out the work of ASEAN and to service the annual special meetings of foreign and other ministers, the standing committees and other special committees. The national secretariat consist of the Senior Officials who meets as a committee and work with low visibility and this committee is known as Senior Official Meetings (SOMs).

The Senior Official Meetings comprises of senior civil servants consisting of political division chiefs or permanent secretaries in each foreign ministry. The SOMs usually meet prior the ministerial meeting and prior to any Ad-hoc meeting of foreign ministers in order to work out a consensus on the matters set for decision.\textsuperscript{11}

Gradually over the years, ASEAN was recognized by the international community as a regional organization significant enough to engage in international affairs with occasional dialogue concerning matters of global concern. As a result of this recognition, several countries became the ASEAN "dialogue partners" or "dialogue countries". These are the United States, Japan, Australia, Canada, New Zealand and all the countries of the European Community as a block.

For dealing with these dialogue partners, as well as with other international organizations, ASEAN has set up committees in the capitals of these dialogue countries. As of 1988, ASEAN committees are found in Bonn, Brussels, Canberra, Geneva, London, Ottawa, Paris, Tokyo, Washington D.C. and Wellington. Also, each ASEAN member country is assigned as a dialogue country to take care of coordinating that partner country's relations with ASEAN as an organization (not bilateral dealings). Malaysia, for example, is responsible for Japan, the Philippines for Australia, Singapore for the United States, Thailand for Canada, Brunei Darussalam for New Zealand and Indonesia for the European Community countries.\textsuperscript{12}

\textsuperscript{11} Schiavone, Op.cit. p. 25

\textsuperscript{12} The responsibility to deal with dialogue partners is revolving among each of ASEAN-member countries.
4. Regional concept

There are many forms in which multi-country organizations have come into being. There are alliance, confederations, and coalitions, as the more common forms. The benefit of pooled resources made possible by common interest, co-operative behavior and co-ordinated strategy is reason enough for nation-states to group together. This is valid for the developed and industrialized countries, but this benefit of organization could be appreciated by developing and still-industrializing countries.¹³

Over the last two decades, ASEAN countries have agreed to create various inter-governmental organization under the assumption that organizational maturity can be achieved through informal but co-ordinated handling of inter-state problems. It cannot be denied that the diverse out-looks and points-of-view of each member country could present themselves as forces of disunity, but the common desire for progress may also serve as a neutralizing element to this threat against unity. As the regional organization grows, it accumulates experience which could manifest itself in various forms and can be explained as follows:

The regional organization can function as a clearing house, so that it becomes an instrument of management wherein member states are able to settle disputes within a framework of internal consultation. In this sense, it can be said that this process of consultation is one way of gathering information resulting in a better-

informed judgement by each member states. This process can be facilitated by the existence of the regional organization.

The fact that there is ASEAN as a regional organization by itself breeds an automatic distinction between member states and non-member states. Such a situation can alter the distribution of power between member states and non-member states since the member states have the advantage of shared knowledge which the organization provides. This is demonstrated for example in such areas as defense and security affairs.

The process of mutual consultation, joint studies and other jointly staged endeavors between the ASEAN members results in getting more familiar with the other member states. With that, they are better able to discover the differences among themselves which could be important in arriving at a consensus decision. Unanimity is at times as unrealistic ideal; often consensus is enough. As this process is repeated, habits of co-operation are cultivated that help build-up a sense of community. This can in turn be beneficial in tempering exaggerated nationalism by the member states, which could come up as an obstacle to a unified solution to certain problems.¹⁴

Regional organizations can also serve as a vehicle for promoting certain norms of behavior. Non-violent approaches, prudence under pressure, and calculated responses to crises, are examples of behavioral norms that can be articulated within the organization. Repeated appeals to such norms could in the long run create an organizational culture at which member states become bound.

¹⁴ Mondejar, op.cit., p. 157

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In this way, these norms can later guide member states in their dealings with one another and also when they deal with non-members, collectively or singly. These norms could also be used as mechanism for mobilizing support in the international arena.

The existence of a regional organization can provide member states the benefit of having an environment that assures them of collective strength. The thought that the member states are surrounded by familiar entities, helps each member state to devote its energies to other equally important endeavors such as the provision of necessary economic preconditions for the member state's domestic social stability.

As the ASEAN is a regional organization, a different entity is born which independent from the identities of the member states. It means that this entity has a power of its own and can move about indicating the own direction to which affairs affecting the region directly or indirectly.\(^{15}\)

The basic principle of regionalism can also be seen in the United Nations Convention on the Law of the Sea (UNCLOS). Article 123 of the Convention provides that states bordering enclosed or semi-enclosed seas should cooperate with each other in the exercise of their rights and duties. To achieve that end, the states shall endeavor directly or through an appropriate regional organization:

1. to co-ordinate the management, conservation, and exploration and exploitation of the living resources of the sea;

\(^{15}\) *Ibid.*
(2) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(3) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area; and

(4) to invite, as appropriate, other interested states or international organizations to co-operate with them in furtherance of this provision.\textsuperscript{16}

Conclusion remarks

As regards to the ASEAN as an organization, there have been some indigenous regional co-operation in maritime matters. There are sub-committees under the committees of the ASEAN Secretariat that involve in maritime importance include fishery, meteorology, science and technology and shipping. There is also an Agreement of the Facilitation of Search for Ships in Distress and Rescue of Survivors of Ship Accidents in which contracting parties undertake to provide assistance to ships in distress in their territories and neighboring seas.

The ASEAN Committee on Food and Agriculture, and Forestry embarked on a whole range of co-operation programmes and projects in the field of agriculture, forestry, livestock, and fisheries, mostly with the dialogue partners, and particularly with Australia, Canada, New Zealand and the United States.


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Through the projects that have been developed by Committee on Science and Technology (COST), scientist from a wide spectrum of disciplines have been brought together to share their knowledge and experiences, and the work at common problems. Sub-Committee on Marine Sciences has discussed the possibility of a co-operative approach to extra regional access for marine scientific research and has approached the European Economic Community and the United States for assistance in funding co-operative maritime scientific research.

In the ASEAN Sub-Regional Environment Programme, as part of the COST, member nations have discussed a co-ordinated approach to marine environmental protection in Regional Seas Programme with its goal to upgrade awareness and capabilities for ASEAN member countries for the implementation such programme. The ASEAN Committee on Petroleum (ASCOPE) also has within its term of reference the development of sub-regional contingency plans for oil spill. ASCOPE has been discussing standardization of environmental and safety regulations concerning offshore oil exploration.

As a group of nations which each individual has its own sovereignty, there are national jurisdiction that superimposed on transnational resources and activities, it is an evidence for the need to increase bilateral and multilateral consultation as well as co-ordination in policy regarding national marine interests; there is also the need to share an understanding by policy makers on trans-national marine environment and resource interdependencies; and the need of co-operation on marine policies.

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regarding resource exploitation and environmental management.

The development of each nation in the South East Asian region is depend on the sea and its resources for many generations. It is evidence that the high rate economic growth in the ASEAN countries are coming from their exploitation of living and non-living marine resources. For further management of marine resources, a carefully constructed web of regional agreement may form multilateral negotiation and adjustment toward common policies and it seems that necessity will be mother of co-operation.

The two decades of the ASEAN's existence have shown that despite the fact that member states comprise a diverse group of political entities, they nevertheless have a common regional predicament and a common attitude to a regional political order.
CHAPTER 2

THE NEEDS OF MARITIME TRANSPORT CO-OPERATION

Introduction

The single most influencing factor on demand for maritime transport is the growth of the world economy. There is not a simple or direct relationship between them, but we can distinguish three different aspects of the world economy that may bring about change in the demand for maritime transport. The first is the occurrence of business cycles. As the world economy goes through cycles of four or five years' duration during which there are alternate increases or reductions in the rate of economic growth, these fluctuations cause the demand for maritime transport also to fluctuate through a sequences of high and low growth.

The second is the long-term trend relationship between the growth of seaborne trade and growth of the world economy as the side effect of the business cycle. To explain this phenomena, if the industrial output increases for some period, the world economy will also increase at the same period and it means that seaborne trade will increase. The consequence is that demand on maritime transport will also increase or decrease.

The third factor to be recognized in assessing the impact of the world economy on seaborne trade is the occurrence of "economic shock" which often is precipitate by certain particular events. An example are two occurrences happened during the 1970s. The first occurrence happened in 1975 and the second in 1980/82. Both were
brought on by a sudden and massive increase in oil prices. On these occasions, industrial output and seaborne trade suddenly declined, in each case setting off a protracted depression in the shipping market.¹

2.1. Economics of the ASEAN countries

The Association of South East Asian Nations (ASEAN) is currently known as a potential region with regard to trade, investment and transport which has been undergoing major internal changes that have important implications for the future.²

Although they occupy the same geographical area, the ASEAN countries are extremely diverse in terms of economic structure and development, political orientation, culture, history and religion. The ASEAN economic co-operation has been occurred because of the changes in international economic environment, including contradiction stemming from increased globalization and interdependence on the one hand and the current trend toward bilateralism and protectionism on the other.³ In this sense, the ASEAN countries should embrace their unilateral liberalization and advocate multilateral co-operation through greater regional economic integration and working more closely together as a "bargaining block" in international negotia-

¹ Stopford, Martin, Maritime Transport Economics, Unwin Hyman, Boston, 1988, pp. 60-61


tions, such as at GATT and other international forum.  

Compared with many of the industrialized nations, the economic growth in this region is particularly healthy. During the period of 1981 to 1989, where most of the countries in the world were in recession, output growth in developing ASEAN economies averaged 7 percent per annum as compared with the global growth rate of only 2.9 percent and an average growth rate for all developing countries of 3.2 percent per annum.  

Among the developing Asian economies, the ASEAN are expected to continue to exhibit the strongest economic growth. The Asian Development Bank (ADB) forecasted that the growth rates of the South-East Asian economies (excluding Singapore) at 7.2 percent in 1990 and 7.3 percent in 1991, representing only a modest reduction of the 7.8 percent growth rate that had been achieved in 1989. This growth may only be achievable if the capacity of the fastest growing exporting countries, such as Thailand, Malaysia and Indonesia, broaden their industrial base and remove the bottle necks posed by their infrastructure.  

Progress toward intra-ASEAN economic co-operation since the ASEAN Concord was signed in Bali, Indonesia in 1976 has been increasing significantly. The first step towards intra regional trade co-operation came at the Second Summit in Kuala Lumpur, Malaysia in 1977, when the Preferential Trading Area (PTA) programme was instituted.  

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4 Ibid.  
The Third ASEAN Summit in Manila, Philippines in December 1987, demonstrated a desire on the part of all member nations to promote trade and investment links, focusing on economic liberalization and private sector participation. As a result, according to the Economic & Social Commission for Asia and the Pacific (ESCAP), trade growth in South East Asia during 1989 held up very well.\(^7\) Table 1 features annual economic growth rates of the ASEAN countries compared to the ASEAN and OECD countries during period 1986-1991 and the forecast for 1992:\(^8\)

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<tr>
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<td>2.0</td>
<td>2.2</td>
<td>3.5</td>
<td>3.0</td>
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<tr>
<td>Indonesia</td>
<td>3.2</td>
<td>3.3</td>
<td>5.8</td>
<td>7.4</td>
<td>7.0</td>
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<tr>
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<td>4.7</td>
<td>8.1</td>
<td>8.5</td>
<td>9.3</td>
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<td>6.8</td>
<td>5.7</td>
<td>2.5</td>
<td>2.1</td>
<td>4.1</td>
</tr>
<tr>
<td>Singapore</td>
<td>1.8</td>
<td>8.8</td>
<td>11.0</td>
<td>9.2</td>
<td>8.3</td>
<td>5.9</td>
<td>6.5</td>
</tr>
<tr>
<td>Thailand</td>
<td>4.7</td>
<td>7.1</td>
<td>11.0</td>
<td>12.2</td>
<td>10.0</td>
<td>7.4</td>
<td>8.0</td>
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<tr>
<td>ASEAN total</td>
<td>2.9</td>
<td>5.0</td>
<td>7.6</td>
<td>8.3</td>
<td>7.4</td>
<td>6.5</td>
<td>6.9</td>
</tr>
<tr>
<td>OECD total</td>
<td>2.7</td>
<td>3.1</td>
<td>4.4</td>
<td>3.1</td>
<td>2.8</td>
<td>2.0</td>
<td>2.5</td>
</tr>
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\(^8\) Port and Transport Consulting (PTC) Bremen GmbH., Analysis of the Liner Cargo Shipping Sector of the ASEAN Countries. Executive Summary (Unpublished), Brussels, December 1992, p. 8
Indonesia

As shown in the Table 1, Indonesia's trade from 1986 was increasing because it benefited from the rise in oil prices brought about by the Gulf crisis.9 In line with average ASEAN economic development, the Indonesian economy has shown high growth rates since 1988. According to Port and Transport Consulting Bremen GmbH, for 1991/1992 continued growth is forecast at yearly rates of 6.6 percent. These rates are considerably above the average of OECD countries.

The windfall of oil and gas revenue has helped to further generate Indonesia's trade which had fallen by about a quarter during the first half of 1990 to US$ 2 billion. However, the higher oil price has been diminishing the demand for export of Indonesia's oil due to the Gulf crisis resulting in slower economic growth in the major Far East economies that rely on oil imports. Then the situation have affected the Indonesian economy resulting in an economic growth at a level lower than 7 per cent in 1991.

Despite the slow of economic growth, since 1982 the Indonesian government has been introducing a counter-purchase policy in an attempt to generate non-oil primary exports,10 and in 1988 promotion effective macro-economic policies (e.g. currency devaluation) and micro-economic policies (e.g. exporter duty compensation, reform of the customs service, simplified system of licensing and deregulation) have been stimulating the growth of manufacturing

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10 Marjorie, op.cit, p. 25
production. These steps were followed by privatization and deregulation which has comprised:

- the transfer of ownership from the public to the private sector;
- the transfer of production previously produced by the public sector to the private sector;
- the financial privatization where the government give broader opportunity to the private financial institutions to participate in national development;
- deregulation of the economy, i.e. relaxation or removal of government regulation that interferes with market forces.\(^{11}\)

Today, it is likely that any deregulation and privatization steps have been focused primarily upon relaxation of regulations pertaining to foreign trade as counter measures to the fall of petroleum prices. Thus, it is hoped that the Indonesia's non-oil exports can be expanded and its dependency upon traditional exports be reduced.\(^{12}\) The steps to deregulate and to privatize Indonesian economy have also had significant potential benefit for ASEAN economic co-operation as the sheer size, and economic and diplomatic power of Indonesia make this country a dominant player in regional and international trade.\(^{13}\)

\(^{11}\) Ng Chee Yuen and Norbert Wagner, "Privatization and Deregulation in ASEAN; An Overview", ASERAN Economic Bulletin, March 1989

\(^{12}\) Ibid.

\(^{13}\) Seiji Naya and Michael G. Palmer, op.cit, p. 266
Malaysia

After recession in mid of the eighties, the Malaysian economy developed very well, achieving from 1988 to 1990 very high growth rates of between 8.1 and 9.0 per cent. This development has been followed by a windfall from oil revenue. Throughout 1990, Malaysia earned about M$ 10.8 billion, up 47 per cent on 1989, or about 25 per cent of the total foreign trade.14

With a Malaysian population of 17 million, Gross Development Product (GDP) per capita is considerably high in the ASEAN countries. This high economic development performance is forecasted to continue. Table 1, shows the real economic growth rate of Malaysia compared to ASEAN and OECD countries in 1986 - 1992.

The unstable oil price during the second half of the 1980s, has been the main reason for Malaysia to decide not to rely on petroleum as the main export commodity. As is the case in Indonesia, similar steps have also been taken by the government of Malaysia to generate non-oil export commodity. The Heavy Industrial Corporation of Malaysia (HICOM) was established in 1983 to coordinate and support this programme.15

Privatization in Malaysia was officially begun in 1985 when the Guidelines of Privatization were announced. The objective of privatization in Malaysia as stated in the Plan were to relieve the financial and administrative burden of the government, to promote competition among

14 Lloyd's ASEAN Shipping Directory, op.cit., p. 16
15 Marjorie, op.cit., p. 67
private sectors, to improve efficiency and increase the productivity of services and to accelerate the economic growth by stimulating private entrepreneurship.\textsuperscript{16}

Although Malaysia’s privatization record is rather limited, where the government is still the major share holder of the respective companies and consequently continues to exert control over them, the development of GDP remains high compared with other ASEAN member countries. This is because of the predominant method of privatization in which there has been partial divestment of equity of government-owned enterprises to institutions and individuals.\textsuperscript{17} The privatization of Malaysian Airline System (MAS), Malaysian International Shipping Company (MISC) and cargo handling at Port Klang are the most important examples.

Malaysia is attempting to maintain a predominantly free-enterprise and trade oriented economy which relies on the external and private sectors, and emphasizes greater productivity, entrepreneurship, innovation, deregulation and privatization.

The Philippines

From the economic point of view, the Philippines has certain similarities with some of the newly industrialized countries of the Far East such as Republic of Korea,

\textsuperscript{16} Ng Chee Yuen and Robert Wagner, loc.cit.

\textsuperscript{17} Ibid.
Hong Kong and Taiwan which can also be called "tiger" economies.\textsuperscript{18} It recorded the rapid economic expansion and developed very well from 1987 to 1989 but slightly below the average of the total ASEAN countries.

The Philippines has the added advantage of a plentiful natural resource base and a potentially enormous domestic market considering the population of 60.7 million (as recorded in the 1990 census) and the real economic growth rate of the Philippines compared to the ASEAN and OECD countries can be seen according to Table 1.

Since the early 1970s, the Philippines has been putting a great deal of effort into expanding non-traditional exports. Sales of electronics, bananas, clothing and handicrafts have been increased substantially.\textsuperscript{19} Recently, market shares among second-rank trade partners are changing because some countries such as those in Eastern Europe and the People Republic of China have liberalized their economies. Furthermore, the international trade of the ASEAN countries has grown as the consequence of privatization and deregulation, and the Philippines import share has risen from only 2 per cent in 1973 to 9 per cent in 1989 and export from 2 per cent to 7 per cent.\textsuperscript{20}

The privatization programme of the Philippines is seemingly the most systematic and ambitious in the ASEAN countries. As the United States has naval bases in the Philippines territory since the Second World War, its


\textsuperscript{19} Ibid.

\textsuperscript{20} Ibid. p 878
economy more or less is influenced by the US economic-style and the professed philosophy of the free enterprise system has always been the publicly stated policy of the political leaders in the Philippines. The state economic role had been small compared to other ASEAN countries. The primary aims of this privatization effort are to reduce the budgetary burden of public enterprises on the government and to generate as much capital as possible through the sale of their assets.21

With some exceptions, according to the constitution of the Philippines, foreign investors are allowed to participate in the development of national economy.22 In 1990 Singapore's Neptune Orient Lines (NOL) took advantage of this opportunity with the acquisition of a 40 per cent shareholding in the leading Filipino coastal operators, Lorenzo Shipping Corporation. As a result of the agreement Lorenzo deployed two 400 TEU container ships in its local operations between Manila, Davao, Dadiangas and Zamboanga.23

The result of privatization and deregulation in the Philippines have been the involvement of foreign investor in the national development and inflows from services and unrequitited transfers have developed considerably. Furthermore, despite the recession in the Middle East from the mid-1980s, which reduced the number of Filipinos working there, overall numbers of overseas workers continued to rise, as did the total sums remitted.

21 Ng Chee Yuen and Robert Wagner, loc.cit

22 Ibid., p. 217

23 Mary R. Brooks, Fleet Development and the Control of Shipping in South East Asia, ISEAS (Occasional Paper No. 77), 1985, pp. 17-21
Thailand

Although never formally a colony, Thailand was incorporated into the world economy from the middle of the 19th century onwards, under Western domination. In 1896 an Anglo-French treaty reserved the Kingdom as a field for British trade investment. British advisers began to exert an influence over the finance and external affairs. After the Second World War, the British position eroded and the country's raw materials and markets became an object of rivalry between Japan and the USA.\(^2^4\)

Recently, Thailand's economic growth was the highest within the booming ASEAN countries. Even in the recession era in the mid-eighties, Thailand experienced a growth of some 5 per cent per year which was considerably better than those of many ASEAN countries. During 1986, the Thai economy underwent an improvement with the balance of payments moving into a surplus on the current account, accelerating in the growth of GDP. From 1988 to 1990 even double-digit growth figures were achieved and an economic growth above the ASEAN average is still forecast. The figure of real economic growth rate of Thailand compared to ASEAN and OECD countries shown in Table 1 (Page 20).

Under the sixth National Economic and Social Development Plan (1987-1991), the Thai government aimed to reduce its role as the 'principal economic stimulator' by limiting public expenditure and by encouraging private investment. A wide-ranging privatization programme was announced. Among 67 state enterprises, gradually, they were privatized in 1991. This included industries such as the Paper Mill Organization, the Alum Organization and the

\(^2^4\) Regional Survey of the World, op.cit., p. 971

27
Preserved Food Organization. In 1987, the Eastern Seaboard Development Committee confirmed its intention to allow the private sector to run the new port facility at Laem Chabang.25

To pace the economic growth, significant deregulation of the economy took place. Some state enterprises have been divested as the effort to privatization. Apart from this steps, the government of Thailand has also allowing private companies to provide service otherwise offered by state enterprises.

In addition, the government reduced the tariff barriers and launched policy towards total freedom of capital movements, a wide range of measures was implemented. Following the coup d'etat in February 1991, oil prices were deregulated, price controls were removed from many goods, import restrictions were lifted, export inspections were halted, licensing requirements for numerous industries were lifted and limits on the expansion of such industries as textiles and sugar-refining were ended.26

Within the South East Asian region, Thailand has taken a lead investigating the possibilities for trade and investment in Laos and Vietnam. It is considered that these countries could provide Thailand with much needed raw materials and a market for manufactured goods. In addition, some Japanese, Hong Kong and Taiwanese investors were using Thailand as a base for operations in the former Indo-China states i.e. Vietnam, Laos and Cambodia.

25 Ng Chee Yuen, op.cit., pp. 216-217

26 Regional Survey of the World, loc.cit
The Seventh Development Plan of Thailand (1992-1996) envisaged an average annual growth of GDP of 8.2 per cent over the plan period, compared with an actual growth rate of 10.5 per cent over the Sixth Plan. The Plan emphasized the role of the private sectors in development and envisaged further financial deregulation. Other components of the Plan included land reform, decentralization of administration and budget, and improvement in education.\textsuperscript{27}

Singapore

Singapore achieved high rates of economic growth during 1980s except for two years in 1985 and 1986. After a slump in 1986 the economy of Singapore developed very well with real economic growth rates even above the already high average of ASEAN countries and considerably above the average of OECD countries. The real economic growth rate of Singapore from 1986 to 1992 is shown in the Table 1 (Page 20).

Singapore derived its initial economic success as an entrepôt mainly, as a result of a strategic geographical position and an excellent natural harbor.\textsuperscript{28} Another major factor in past growth had been the effective implementation of soundly-conceived government policies that took Singapore's weaknesses and strengths fully into account. The competitiveness of Singapore's exports on world markets, the ability to attract overseas investment, the allocation of resources to investment and the development

\textsuperscript{27} Ibid., pp. 979-983

\textsuperscript{28} Ibid., p. 908
of an international financial sector are other major factors.

Singapore's 1990 GNP per capita of US$ 11,300 was approximately equal to that of countries such as Hong Kong, Spain and Ireland; and it was for this reason that the World Bank and other UN agencies placed Singapore in the "High Income Economies" category.\(^\text{29}\) As much as it is allowed, Singapore's growth strategy aims to complement and supplement the developmental needs of the neighboring countries because of its comparative advantage in infrastructure and services. In this regard, it has maintained a high interest and level participation in the ASEAN group.\(^\text{30}\)

Among the ASEAN countries, Singapore seems to be the most systematic in its effort to privatize. Starting from 1986, some government-linked companies were privatized, and within this group, first priority was given to companies which are earmarked for listing in the stock market, and in line with the privatization policy, Port of Singapore Authority has taken steps to privatize some of its services which include leasing two berths to the private sector, contracting out mobile cranes, fumigation and some bunkering operations to the private sectors.

Brunei Darussalam

The Sultanate of Brunei or Negara Brunei Darussalam acceded to full independence in January 1984. The

\(^{29}\) Ibid.

\(^{30}\) Seiji Naya, op.cit., p. 339
country's inhabitants, totaling 260,000 in 1992, enjoy one of the world's highest levels of national income. According to statistics, in 1992 Brunei's gross national product is equivalent to almost US$17,000 per head.\(^ {31} \) The economy is based largely on wealth from national gas and petroleum which accounted for more than 90 per cent of exports, and from the investment of surplus foreign exchange reserves in long-term securities.

Brunei is the third largest petroleum producer in South-East Asia after Indonesia and Malaysia. In 1989, the country's reserves of petroleum were estimated to be sufficient to maintain production at current level for above 25 years and Brunei has had a healthy balance of trade since 1972, owing to the rising value of the country's exports for petroleum and natural gas. The real economic growth rate of Brunei Darussalam from 1986 to 1991 can be shown in the Table 1 (Page 20)

In 1985, the Government of Brunei proposed a "Master Plan" to broaden the economy. Its main aims are to reduce reliance on income from petroleum and natural gas to achieve self-sufficiency in food production and to boost import substitution, as well as increasing private sectors participation in the economy. A professional evaluation of several projects concluded that the agricultural activities with the greatest potential were rubber production, cattle-fattening and cultivation of spices and fruits, however, prospects for export were not promising.

Japan is continues to be Brunei's major trading partner accounting for 66.9 per cent of total exports while other major trading partners are Thailand, South Korea,

\(^ {31} \) Regional Survey of the World, op.cit., p. 155-156

31
Singapore and the USA. Although in 1988 the USA removed Brunei from its general system of preferences, mainly because of Brunei's high average annual income, it seems that export were unlikely to be adversely affected, as Brunei had never taken full advantage of the trade privileges offered under the system.\textsuperscript{32}

Brunei joined ASEAN on the attainment of independence in 1984. Singapore had become Brunei's major source of skilled labor and advice as well as a major importer. Favorable economic relations were maintained during the late 1980s enabling Brunei to diversify its economy further. Participation in ASEAN projects also gave Brunei an interest in the economic development of the region.

Brunei has established particularly cordial relations with the Philippines and in 1989, Brunei agreed to an advance loan on concessionaire terms to promote economic development in the Philippines. In 1987 the Sultan granted a large interest-free loan to Indonesia for industrial and transport development projects.

Being a small state which is rich in oil and natural gas, Brunei was particularly concerned by the Iraqi annexation of Kuwait in August 1990 and as a potentially vulnerable state, Brunei's priorities remain to diversify its economy and to foster good relations with its ASEAN neighbors.

\textsuperscript{32} Ibid.
Regional issues

As the geographical situation demands, shipping has been an important tool of regional and international relations in the ASEAN countries. Shipping seems to be involved in the entire foreign relations process, policy formulations as well as executions because all of the ASEAN countries can be categorized as traditional maritime nations. It is no doubt that shipping and maritime sectors are considered vital to form an economic, political and social integration of the nations in South-East Asia.

In general, it appears that the economic boom in the ASEAN countries needs the development of their maritime industries to strengthen ties among themselves and through co-operative efforts in the various fields of shipping, ports, multimodal transport and protection of marine environment, and also to increase their participation in the world maritime industry.

Although all of the ASEAN countries have undertaken sizeable investments in their transport sectors, particularly over the last two decades, and even though they have made important progress in the provision of transport services and infrastructure, the challenges facing the ASEAN shipping and maritime sectors over the next decade relate more to improving the performance of existing infrastructure, promoting intermodal integration and harnessing information technology rather than continued expansion of physical facilities.

It was generally stated by the United Nations Conference on Trade and Development (UNCTAD) that co-operation among developing countries in the field of shipping or other maritime sectors may achieved the following predomi-
nant objectives:

a. to contribute to the economic integration in the sub-region;
b. to encourage political integration;
c. to decrease dependence on foreign maritime interests;
d. to decrease the foreign currency outflow and, to the extent possible, increase foreign currency earnings;
e. to create employment opportunities;
f. to develop human resources;
g. to stimulate intra-regional and inter-regional trade.\(^3^3\)

Again, as stated in the Singapore Declaration of 1992, the Heads of State and Government of the ASEAN countries, convinced that ASEAN co-operation remains vital to the well-being of the people of the South-East Asia, and therefore declared that:

- ASEAN shall move towards a higher plane of political and economic co-operation to secure regional peace and prosperity.
- ASEAN shall constantly seek to safeguard its collective interests in response to the formation of large and powerful economic groupings among developed countries, through the promotion of an open international economic regime and stimulating economic co-operation in the region;
- ASEAN shall adopt appropriate new economic measures directed towards sustaining ASEAN economic growth and development which are essential to the stability and

\(^3^3\) United Nations Conference on Trade And Development, Committee on Shipping, "Programme of Action for Co-operation Among Developing Countries, Draft Programme of Action for Co-operation Among Developing Countries in the Area of Shipping, Ports and Multimodal Transport" (Conference resolution 144(XII)). TD/B/C.4/273, 26 September 1984

34
prosperity of the region;
- ASEAN shall further enhance regional co-operation to provide safe, efficient, and innovative transportation and communication infrastructure network.  

2.2 Regional co-operation in the maritime sectors

The extra-territoriality of shipping makes it suitable as a vital tool of foreign, as well as domestic policy. Co-operation in the area of maritime sectors particularly in shipping seems to be the aspiration of developing countries for more equitable participation in the world maritime industry as well as to promote their foreign trade.

Co-operation among developing countries in the field of shipping and other maritime sectors is also a means to overcome the imbalance of power in shipping, restrictive practices in the shipping market, adaptation of new maritime technology and to solve problems in ship financing.

According to United Nations Conference on Trade and Development (UNCTAD), developing countries have been making major efforts to develop their maritime industry in exercising their capacity to strengthen ties among themselves and through economic co-operation and related co-operation efforts in the various fields of shipping and maritime sectors, the developing countries can increase their participation in world maritime industry.  

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35 Ibid.
The development of shipping and maritime sectors are dependent in the growth and development on economic and technical co-operation and integration. What is true for fleet development, for example, is also true for the many other sectors of the maritime industry where subregional, regional and inter-regional co-operation is required. The effort of co-operation of all units in the maritime sectors are aimed at expanding trade, promoting the orderly development of maritime industry and increasing income of each country.

The ASEAN countries recognize that national and regional action is required to overcome the problems in shipping and maritime affairs. This idea created the establishment of the ASEAN Committee on Transportation and Communications (COTAC) in 1967 of which the objective are:

1. To promote close co-operation, establish joint programmes and develop technical projects in the field of communications and transportation, including marine transportation and inland waterways;

2. To review, reconcile and collate projects under consideration by ASEAN dealing with all modes of transportation and communications and identify possible areas for international financial and technical co-operation.

3. To co-ordinate plans and activities pertaining to communications and transportation among the ASEAN countries and to maintain close co-ordination with other sub-regional, regional and international organizations for transportation and communications where ASEAN countries are members thereof.

4. To recommend measures for ASEAN co-operation in land, air and maritime transportation in the field of navigation, safety and pollution protection.
5. To recommend measures for standardization and development of training and facilitate the exchange of experts.\textsuperscript{36}

COTAC as an inter-governmental organization under the ASEAN is assisted by a number of sub-committees which consider different types of transport and communications. There are the:

1. Sub-Committee on Shipping and Ports (SCSP);
2. Sub-Committee on Land Transportation (SCLT)
3. Sub-Committee on Post and Telecommunication (SCPT)
4. Sub-Committee on Civil Aviation and Related Services

In the maritime field, the Sub-Committee on Shipping and Ports has the duties mainly to improve the activity of the fleet of ASEAN member countries, and for this purpose the Sub-Committee is coordinating three specific intra-ASEAN non-governmental associations and federations relating to the maritime sectors, there are the:

a. ASEAN Port Authority Association (APAA)
b. Federation of ASEAN Shipowners Association (FASA)
c. Federation of ASEAN Shipper Council (FASC)

To have a closer co-ordination and co-operation, each association or federation meets annually prior the Sub-Committee meeting to discuss the progress and impediments of activities that have taken place. In this forum also, members of each organization may propose and discuss the new initiatives in shipping and other issues relating to maritime transport.

a. ASEAN Port Authority Association (APAA)

One essential thing in the chain of maritime transport is the existence of the port. It is essentially the point where goods are transferred from one mode of transport to another. On the seaward side, the port is concerned with ships that brings in cargoes for discharge and/or load and then depart. On the landward side, cargo is brought by road, rail or other modes of transport to the port and sheltered or storaged and then transferred into ships or is taken from ships for distribution in the hinterland.

Ports also can be treated as operational units which consist of many parts such as pilotage, towage, signaling, sheds, handling equipment, customs and so on. These parts all interact and the effects of the operations of one has repercussions upon the efficiency of the others. A port may by viewed as a system made up of a number of subsystems.

As an operational unit, ownership of the port can be distinguished into two extreme positions:

1. An entirely private port where all services and facilities are provided by one or several privately owned companies;
2. A public port where all services and facilities are performed by one or more public agencies without any participation of the private companies.\(^\text{37}\)

As matter of fact, that to built a new port in the ASEAN countries still requires capital support from the

\(^{37}\) UNCTAD Committee on Shipping, Conference Resolution 144(VI), p. 8
government. However, for operational purpose, to reduce bureaucracy and inflexibility due to the lack of the spirit of competition, the government gradually releases these function to the private sectors and appoints a port authority in certain ports.

To build and develop a port is a challenge for the ASEAN countries. As the trade in the region is increasing significantly, the demand for development to a modern port is also increasing. However, the lack of capital and the status of the most ports in the region recently are for feeder services rather than sea port, the development of ports cannot stands alone and therefore needs both regional and national co-operation among the ports.

For the above circumstances, in 1975 the ASEAN Port Authority Association (APAA) was established with the aims to provide the ASEAN port authorities and harbor organizations a vehicle for regional co-operation in port development, operations and managements; promote and protect members' interests. 3a

After almost twenty years of co-operation, many efforts have been carried on and some intra-ASEAN projects to improve port services have been implemented. The various APAA projects going on which stressed on the improvement the necessary port infrastructure, to accommodate and facilitate the increased international and regional movement of cargo are:

1. Implementation of APAA FAL Forms which provide standardization and simplification on several documents procedures in ports.

3a Ibid., p. 603

3. To submit various project proposals on training for port managers to EEC for funding.\(^39\)

b. Federation of ASEAN Shipowner Association (FASA)

Another essential point in the chain of maritime transport is the shipowner or person whose employ the ship operates in the maritime business. To defend their interests, ship-owners are organized mainly in the following ways:

(a) In a shipping conference, rate agreement or similar co-operation arrangement;
(b) In national shippers' associations;
(c) In regional shipowner' associations to defend their interests as shipowners in a particular part of the world;
(d) In global or quasi-global organizations such as the International Chamber of Shipping, the Baltic International Maritime Conference, the International Chamber of Commerce, the International Shippers' Association.\(^40\)

\(^{39}\) Report by the APAA in the Thirteenth Meeting of the ASEAN Sub-Committee on Shipping and Ports, 6-9 August 1990, (Unpublished Document).

\(^{40}\) UN Conference on Trade and Development, Protection of Shipper Interests: Guidelines for Developing Countries - Report by the UNCTAD Secretariat, U.N., New York, 1978, p. 15
To defend their interests against maritime workers' union, shipowners are also organized as employers' associations, and to insure particular interest on a mutual basis, they are organized in protection and indemnity associations.

Shipping is a vital means of transportation in the ASEAN countries because it carry trade between member countries, to promote international trade, contribute employment, and encouraging ancillary industries and to support other industries. As the economic growth in the region indicates a healthy conditions to establish greater scope for genuine co-operation on commercial projects at bilateral or multilateral levels, shipowner in the region established the Federation of ASEAN Shipowner' Association in November 1977 with the aims to promote, develop and support the common interests of members; foster, develop and maintain close co-operation; extend assistance to any member; improve the shipping services; represent the members in their collective dealing. 41

The ASEAN governments have agreed to the principles of free competition and trade and their reliance on the private sectors to maintain the economic development. 42 Within the context of the sea transport sector, this has translated into a gradual dismantling of previous protectionist machinery and withdrawal of state support. Each ASEAN country now practices a free shipping and trade policy with minimal restrictions on the activities of

41 Union International Associations, p. 768

42 In the Framework Agreement on Enhancing ASEAN Economic Co-operation, all ASEAN-member States agreed to establish and participate in the ASEAN Free Trade Area with reduction or elimination of non-tariff barriers and provide new flexibility for new forms of industrial co-operation (Singapore Declaration of 1992).
foreign companies or ships."³

Given this realistic and a strong indication that agreement on the ASEAN Free Trade Area (AFTA) will be reached, and that it will be the main vehicle to strengthen intra-ASEAN economic co-operation, FASA now plays catalytic role and serves as the conduit for dealing with the public sector, other regional and international organization such as the ASEAN Secretariat, COTAC, ESCAP and the IMO."⁴

Over the years, FASA threw up many projects of a regional nature covering areas of Intra ASEAN Liner Services, ASEAN Ship Design, Joint Bulk Shipping and Bulk Cargo Pooling. FASA is also considering the feasibility of COTAC proposal to establish joint-ventures to develop intra ASEAN shipping services between specific trade sectors which have been identified as Singapore-Johore-Riau, Sabah-Bitung-Davao, South Thailand-Malaysia-Singapore-North Sumatra."⁵

An ASEAN fleet replacement programme is a priority with the assistance of COTAC as the representative of ASEAN governments to arrange the donor support and in securing the assistance of UN-ESCAP Transport and Communication Division in the development and implementation of the programme."⁶

Another progress achieved by FASA as a regional organization was establishment of permanent ties with the Australian Shipping Community in 1987 and the Hong Kong

³ Mary R. Brooks, loc.cit.
⁴ 13th Meeting of the ASEAN Sub-Committee on Shipping and Ports, Singapore.
⁵ Ibid.
⁶ Ibid.

42
Shipowner' Association that sent an observer to FASA meeting. Having established its credentials, the Federation is consulted regularly by both the private and public sectors on regional maritime matters.47

c. Federation of ASEAN Shippers' Council (FASC)

Besides the shipowner and port authority, there are other important points in the chain of maritime transportation such as shippers. They are a key player in the economic development of a country. They connect two of these major inputs, trading and transport. Correlation between these inputs and their impact on economic development are demonstrated at national, regional and international levels.

Actually, "shipper" is the trader which, in the context of export and import, responsible and control maritime transport because they generates the basic demand for sea transport. However, the volume of cargo from each shipper usually makes up a small part of the total cargo which should be loaded by a ship. This will influence the negotiation position between the shipper and shipowner. A single shipper is not able to make demands with regard to the services offered by the shipping companies. In such a situation, the shipper have to accept the freight rate as a cost of service offered by the shipowner.

To negotiate and bargain with the shipowner or ship operators on freight rate, shippers have a strong arguments and appropriate data collection, analysis and forecasting. Moreover, the effectiveness of an argument

47 Ibid.

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put forward by shippers in negotiation will be much stronger if they are based on a broad and good knowledge on the industry's organization, structure of shipping cost and mechanism of the market. In this regard, joint action with other shippers has the advantages of combined negotiating strength and maximized his negotiation capability. This can be achieved by establishment of effective shippers' council. 48

The setting up of a shippers council, also provides shipowners, government agencies and port authorities with a means of communication and consultation with the shippers, and in turn permits them to deal with national policies, regulations, industrial relations and other non-commercial matters which would otherwise be beyond the capacity of the individual shipper.

In today's situation, there is a need for a high degree of co-ordination between all parties involved in maritime transport in order to adapt traditional shipping procedures and practices to modern-day conditions. The world system of shipping business is changing, the conventional ships are displaced by modern container ships which the size are also increasing; the emergence of round-the-world services followed by the new concept of multimodal transport involving integrated chains of sea, land and even air transport, are becoming increasingly popular; the old shipping system is being replaced by consortia of shipping lines who use pool system of vessels and cross-exchange slot charter. 49 All these structural changes have an impact on the position on the shipper in the maritime

48 Protection of Shippers Interests, p. 6

transport industry.

To overcome the changes in the maritime transport industry and to adapt to the new shipping conditions, in 1975, the Federation of ASEAN Shippers' Council (FASC) was founded. Although the shippers associations in the region has been established, it is difficult to specify the real aims of the Association because of the unequal trade regulations between each ASEAN member countries. Furthermore, when reference is made to set up a shippers' council, it implies that shipments of cargo are made by a large number of shippers mostly from the private sector. However, since privatization among most of the ASEAN members is in progress and the governments are controlling export through marketing boards which are official or semi-official agencies, it is difficult to set up a national shippers council representing all the national shippers of the private sector.

It seems that the reason for establishment of the FASC was because of direct pressure from the international market which is much more stronger while the internal market is characterized with rigid competitiveness and commercial secrecy.58 Given these weaknesses, the markets are divided into several individual market which are subject to constant changes and differentiate between one and another. This situation brings into an offensive increasing and changing freight rates structure. That has created confusion and increased shipping costs for shippers in the region.

The modes and technology of international transportation are undergoing innovations and development but,

58 Mary R Brooks, loc.cit

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whatever the changes in structural form within the ASEAN countries, there will be a need for consultations involving shippers, shipowners or ship operators, ports authorities and governments. Only with good co-operation, co-ordination and goodwill between national, regional and an international shippers' council, can their roles and function be expanded and strengthened to tackle common issues.

During the seventeen years since its establishment, FASC has participated in many regional activities in maritime transport and co-operates with other similar organizations at the international level, such as the Asia-North America Eastbound Rate Agreement (ANERA), the Australian/New Zealand Eastern Shipping Conference (ANZESC), the Japan Shippers Council (JSC) and the Far Eastern Freight Conference (FEFC). In co-operation with FASA, FASC has implemented some inter-governmental projects initiated by ASEAN-COTAC which is called the "COTAC Initiatives" and includes Broker Telegraph System (BTS), Point-to-point Shipping Services, Freight Booking and Cargo Consolidation Centres, and Inter-ASEAN Bulk Pool Systems.51

Co-operation among ASEAN countries in the field of maritime transport is taking place to improve the service in that sector by higher frequency and lower cost. For these reasons, the fleet of the ASEAN countries grew within the last five years by a considerable 28%. This is in contrast to the world wide development where the fleet grew by some 5% only. As can be seen from Table 2, the merchant fleet of the leading Asian countries shrunk within the same period an average by 11%.52

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52 UN-ESCAP, Doc. ST/ESCAP/940.
The maritime trade of the ASEAN countries must be also regarded within the overall Asiatic context due to the booming development of trade in this region. Availability of natural resources and lower labor costs in the ASEAN countries has accelerated immigration of manufacturers and high investment from Japan and the Newly Industrialized Economics (NIEs) to this region. Not only the intra-ASEAN trade but the whole intra-Asiatic trade has been stimulated. The container movements within the Far East are estimated to reach 3m TEU in the year of 1994 with a current growth of 15% per annum.\(^{53}\) If the intra-Asian trade keeps up this rate, it will overtake the Far East-Europe trade within five years, to stand second only to the Trans-pacific trade in the world rankings.\(^{54}\)

Maritime transport is essential to any open economy; the degree of the reliance upon it depends on the structure of international trade and on the extent to which other transport modes can serve that trade. The effectiveness and the efficiency of the maritime transport will depend largely on the goodwill and dedication to international co-operation which covers co-operative arrangements among national lines as well as among shippers' organizations and should also involve governments.

2.3 Co-operation with other countries, regional and international organizations.

Maritime transport is considered a vital prerequisite for economic and political integration of the ASEAN

\(^{53}\) Lloyd's Maritime Asia, July 1990. ?

\(^{54}\) UN-ESCAP, Doc. ST/ESCAP/ORD, p. 42
countries into the world economy and contribute decisively to this.\textsuperscript{55} As has happened for most developing countries, maritime transport development is a matter of finance and manpower which are not equally distributed. While some countries have a large pool of trained labor but lack of finance, such as the Philippines, others, which lack necessary labor of sufficient quality and quantity, have an abundance of finance, such as Japan and European countries.\textsuperscript{56}

In the recent years, many countries embarking on schemes of regional economic integration have similar feelings that maritime transport and freight rates within the region are important aspect of the international integration process and should be under regional control. Integration relates to the domestic as well as foreign trade, just as maritime transport, contributes to both regional and international development and trade. There are some example for the regional economic integration such as the LAFTA (Latin American Free Trade Area), the EAC (East African Community), the EEC (European Economic Community), the ECOWAS (Economic Organization of West African States) and now with the ASEAN (Association of South-East Asian Nations).

Recently, the ASEAN member countries face a number of important decisions concerning policy on maritime transport. Some of these have been brought about by expanded jurisdiction over the sea, as legitimized by the United Nations Convention on the Law of the Sea (UNCLOS). Designation of archipelagic sea-lanes, control of marine

\textsuperscript{55} Ademuni-Odeke, \textit{Shipping in International Trade Relations}, Avebury, 1988, p. 25

\textsuperscript{56} Ibid.
pollution from ships in territorial waters and protection of the marine environment within the economic exclusive zone (EEZ) are among issues on which policy decisions must be made.\(^5\) Other problems are development of ASEAN fleet which includes the implementation of international conventions on commercial use of maritime transport such as Code of Conduct, Multimodal Transport, Registration of Ships; and IMO conventions regarding safety of ships and prevention of pollution generated from ships.

Chapter 1 already explained that ASEAN as an organization, has been recognized by the international community and set up several countries to be "dialogue partners" or "dialogue countries". The "dialogue" approach has been arranged to simplify the relationship between the ASEAN member countries and those of the "partners" to solve the common international issues as well as transferring new technology from developed to developing countries.

The United States has become the "dialogue partner" and become important to the ASEAN because it is the largest market for manufactured exports which is the key to the outward-looking industrialization strategies of the ASEAN countries and is destination of 25 to 40 per cent of the ASEAN member state manufactured export instead of Japan (8 to 11 per cent) and the European Communities (13 to 21 per cent).

Maritime transport acts as the main catalyst for the trade between ASEAN and the US. Under the ASEAN-US Dialogue, several projects have been implemented to improve maritime industry in the region including a "Seminar on Improvement of Planning, Management and Operations of

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\(^5\) Ibid., p. 89
Breakbulk and Drybulk Handling Terminals" which have been held in Kuala Lumpur, Jakarta and Bangkok in February 1989, a "Training Programme for Combatting Oil Pollution" which saw implemented under the scholarship programme at the Asian Institute of Technology in Bangkok from 14 May - 8 June 1990.58

The co-operation agreement between the 12 nations of the European Community and the ASEAN concluded in 1980 was the first ever concluded by the ASEAN with "dialogue partner". This agreement covered not only trade but also economic co-operation, including investment promotion, industrial co-operation and training; co-operation in science and technology; energy and rural development and transportation.

European countries have had a long historical relationship with the ASEAN member countries and were economically dominant in this part of the world in the pre-world war years. The relationship between the European Community and the ASEAN was initiated in 1972 when the ASEAN was still in its formative years.59 ASEAN recognized that the European Community is a prospective market for its products and a potential source of investment for industrialization. Similarly, the European Community also stated its willingness to foster regional co-operation with other parts of the world and to assist ASEAN regional development programmes which would help to strengthen and foster intra-ASEAN co-operation.60

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58 Report of the 13th Meeting of the ASEAN-SCSP (Unpublished)
59 Wannamethee, Phan, "The Important of the EC for South East Asia; the ASEAN Perspective", Schiavone, Giuseppe (ed.), Western Europe and South East Asia: Co-operation or Competition? The Macmillan Press Ltd., London, 1989, p. 20
60 Ibid.
The European Community is also an important market for the ASEAN, after Japan and the US, contributing the development of the ASEAN economies. Based on the Co-operation Agreement of 1980, it provides the ASEAN countries Most Favored Nation (MFN) treatment under the General Agreement of Trade and Tariffs (GATT) to promote the development and diversification of reciprocal exchanges at the highest possible level, and to study ways and means to overcome trade barriers.\(^6\)

In the ASEAN-EEC co-operation on maritime transport has also been conducted with the European Community's assistance to improve port management in the ASEAN countries through an integrated training programme of the ASEAN Port Authority Association (APAA). The programme intended to increase the efficiency of port operations in the ASEAN countries. The programme, financed by the European Community, included:

(a) Container Terminal Operation and Maintenance Training Programme and Seminar for Trainers and Personnel Managers;
(b) Training for Line Managers in Container Operations and Maintenance;
(c) Training in Application of Information Technology;
(d) Seminar for Development in Container Shipping and Intermodalism;
(e) Port Marketing Training;
(f) General Management Training for Senior Managers;
(g) Training in Planning Management and Operation of Drybulk Terminal; and

\(^6\) Seiji Naya, loc.cit.
(h) Seminar on Simulation and Communication from Ship to Shore.\textsuperscript{62}

Although it has kept a low profile, Canada has become the ASEAN's latest dialogue partner in 1983. Trade between these two countries cannot be compared with other dialogue partners because Canada has established a duty-free trading pact with United States. In addition, many of the products are not competitive with ASEAN raw material exports.\textsuperscript{63}

However as "dialogue partner", the co-operation between Canada and the ASEAN is emphasized in regional development programme. In this context Canada approved assistance to ASEAN countries with an "ASEAN Transportation Study". This study is aimed at assisting ASEAN countries with the improvement of multimodal transport and application of computers to regional trade procedures. The study is directed at developing and formulating plans for legislation and regulations, transport documentation, infrastructure and tariffs regarding multimodal transport operations.\textsuperscript{64}

All of the discussion would not be complete without including Japan. In terms of investment, Japan is the ASEAN's largest investor and the largest source of official development assistance. From the economic perspective, Japan is the most important economic partner. However, as ASEAN has embraced a more outward-looking

\textsuperscript{62} Europe Information, "The European Community's Relations with ASEAN", \textit{External Relations}, April 1991, p. 11; and Report of the 13th Meeting of the ASEAN-SCSF (Unpublished)

\textsuperscript{63} Seiji Naya, \textit{op.cit.}, p. 268

\textsuperscript{64} Report on the 13th Meeting of the ASEAN-SCSF, Singapore (Unpublished)
development strategy focusing on manufactured export, it has not looked to Japan as a booming market for its trade of exported goods. The "structural impediments" such as formal tariff and non tariff barriers has closed the Japanese market to the import of manufactured goods and serves to limit the ASEAN products exported to Japan.65

Considering the above circumstances, maritime transport co-operation between the ASEAN and Japan is not as close as co-operation with other countries. With their vested interests in the waterway, the Japanese shipowners formed the Malacca Straits Council in 1968 which was composed of such powerful bodies as the Petroleum Association of Japan, the Japan Shipbuilders Association, Shipowners Association, Japanese Maritime Foundation and Japanese Hull Insurers' Union.66

The Council was established because of the growing size of Japanese tanker vessels which sail through the Malacca and Singapore Straits. The first indication of the potential for catastrophe was when the 150,000 DWT "Tokyo Maru" scrapped her bottom on granite floor of the Malacca Straits, in 1967. Experience from that accident cause the Council to proposed that some sort of traffic separation scheme should be adopted in the Straits.

In 1969, a preliminary hydrographic survey carried out jointly by Japan, Malaysia, Singapore and Indonesia in the Tripartite Technical Expert Group on Safety of Navigation in the Straits of Malacca and Singapore (TTEG) revealed that several areas of the straits had less than 25

65 Seiji Naya, op.cit., p. 266

66 Kent, George, op.cit., p. 224
meters of depth where fully loaded VLCCs could not transit safely. The survey result had not been achieved when the 240,000 DWT "Showa Maru" went aground carrying 224,000 tons of crude oil from the Persian Gulf for delivery to Japan in 1975 spilling thousands of tons of oil into the Straits and causing to an important fishing area and environmental damage.  

By February 1977, the survey was over and result have been achieved. A compromise underkeel clearance of 3.5 meters during transit was the agreed upon figure and on 1 May 1981, based on the IMO Resolution No. A.375(X), the traffic separation schemes went into effect. In 1983, the Council gave financial support to prevent and combat oil pollution generated from ships passing the Straits. The finance was deposited to and managed by the Revolving Fund Committee (RFC) which is composed of the representatives of littoral states, Singapore, Malaysia and Indonesia.

For at least two centuries the seaborne trade of the countries of South-East Asia and Australia has been dominated by vessels owned and operated by the traditional maritime countries of Western Europe. They dominate the power of region's shipping and because of the comparative advantage enjoyed by the developed maritime countries such as relatively plentiful capital, advanced technology and shipping expertise developed over a long period, this

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68 Revolving Fund Committee meets annually to review the oil spill casualty in the Straits. The chairman of the Committee is elected in five-year terms and revolved between the member states in alphabetical order. (MOU of the Revolving Fund Committee - Unpublished).
domination was maintained until the 1970s. Indeed some would argue that the dominance remains even today.69

The economies of the ASEAN countries and Australia alike depend on seaborne trade. Maritime transport provides this region access to the markets of Europe, North America and Japan for the primary and semi-produced goods; and, vessels return with the manufactured goods for import that are essential for economic development. However, the more political, rather than economic, attitude that the cargo generator (government) is entitled to transport its own cargo, regardless of its ability to compete commercially, has given rise in many parts of the world to the concept of bilateral cargo sharing and discrimination against foreign flag shipping. This situation describes the maritime transport relation between Australia and ASEAN countries.70

Realizing that ASEAN and Australia have similar problems in maritime issues, in 1990 Singapore proposed an annual cooperation project on "Staff Attachment to Australia for Training in Implementation of IMO and ILO Conventions" with the objectives:

(a) To promote maritime safety, prevention of pollution from ships and welfare of seafarers in the region;
(b) To enhance the capabilities of ASEAN countries in implementing IMO and ILO Conventions;

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70 Ibid., p.
(c) to promote mutual understanding between ASEAN and Australia in the implementation of IMO and ILO Conventions.\textsuperscript{71}

To complement and enhance the development of the maritime sector in ASEAN member states, and to respond rapidly changes of external conditions and trends in both technology and maritime industry, ASEAN has established cooperation with other regional and international organizations.

The Economic and Social Commission of Asia and the Pacific (ESCAP), a regional organization established under the United Nations, has been assisting the ASEAN countries to develop their maritime sector. Together with South-East Asian Agency for Transportation and Communications (SEATAC), ESCAP has supported the introduction of multimodal transport and information technology to the transport sector in ASEAN countries.

Many projects on maritime sector development had been undertaken and these projects are in progress in a number of areas. In 1989, ESCAP organized and delivered the "ESCAP/UNCTAD Workshop on Multimodal Transport" jointly with UNCTAD, and in co-operation with UNDP. ESCAP also delivered the "ESCAP/UNDP Report on Electronic Data Interchange Systems for Transport Related and Trade Facilitation Activities" to promote the use of EDI Systems in order to maintain a competitive market position of the region relative to their more technologically advanced neighboring regions and international trading partners.\textsuperscript{72}

\textsuperscript{71} Report of the 13th Meeting of the ASEAN-SCSF

There is co-operation between ESCAP, UNCTAD, ILO and IMO in the project on publishing guidelines for maritime legislation. The aims of this project is to reformulate and/or update national maritime legislation in the region as it has been found that the maritime legislation of several developing countries in the ESCAP region is generally outmoded and inadequate to meet needs arising from new international maritime conventions, advanced shipping technologies and a shift in national and global trade. It is emphasized that these guidelines should assist member countries in the region in achieving a unified and uniform maritime law, thus, further contributing to the development of the maritime industry and seaborne trade of the region.\(^3\)

For technical assistance, United Nations Development Programme (UNDP) has been approached for aid in setting up necessary projects for development of maritime sector in the ASEAN region.\(^4\) Through the UNDP Technical Co-operation Programme, there are several projects in the field of shipping and ports, and under the UNDP Inter-Country Programme, two projects have been completed in May 1989, namely RAS/81/055 - Support to Maritime Sector in ASEAN, and RAS/81/108 - Development of Maritime Transport Resources and Sub-regional Co-operation in the ASEAN countries.\(^5\)

With regard to the implementation of the UNDP Fifth Cycle Inter-Country Programme (1992-1996), the ASEAN Secretariat has submitted various COTAC project proposals


\(^4\) UNDP, Compendium UNDP Projects as per March 1988.

\(^5\) Ibid.
to be included in the Programme for funding. It seems that as a developing region, ASEAN still needs financial and technical assistance from the UNDP with implementation of various projects in maritime transport. The immediate impact of these projects was to provide the ASEAN countries with technical information on the development of technologies in shipping which could be used as a basis for the development of fleet-related shipping policies and for training personnel.76

Conclusion remarks

As a conclusion of this part, it seems that maritime transport is still and will remain an important feature of life for the ASEAN member countries. The economic situation in each of the ASEAN member countries, with growth rates several percentage point above the average for countries of the Organization for Economic Co-operation and Development (OECD) is a significant factor in the demand for maritime transportation in the region.

The ASEAN governments' policy to liberalize their economy with privatization and deregulation has attracted foreign investors to participate in the development of this region. Some "dialogue partners" have been established and economic relations between the ASEAN and its partners are continuing. This relations has been involving the regional maritime industry into the international maritime trade environment with its problems and opportunities.

The Association of South East Asian Nations (ASEAN) as a group of developing countries represents a

76 Report of the 13th Meeting of the ASEAN-SCSP.
middle-income, new market economy and a western oriented group within developing countries. Hence, it is desirable that there should be close co-operation, consultation, collaboration and, if possible, concentrated action between developing countries or other regions.

A regional approach is currently on-going involving the ASEAN governments and the private institutions' to participate in regional co-operation in maritime transport. The establishment of the Committee on Transportation and Communications (COTAC) and Sub-Committee on Shipping and Ports (SCSP) as organizer of the private institutions' regional co-operation in maritime sectors namely, ASEAN Port Authority Association (APAA), Federation of ASEAN Shipowners Association (FASA) and Federation of ASEAN Shipper Councils (FASC), is the evidence of this regional co-operation.
CHAPTER 3

PROBLEMS IN MARITIME ISSUES
IN THE ASEAN COUNTRIES

3.1. Conflict of jurisdiction

The United Nations Convention on the Law of the Sea was adopted by the Third United Nations Conference on the Law of the Sea at Montego Bay, Jamaica on 10 December 1982 with the participation of more than 150 countries and organizations. There were 130 votes for and only 4 against (including the USA) and 17 abstentions. The Convention consist of 17 parts with 320 articles and 9 annexes. Two of them are very important for the future regime of the sea.

Although the UNCLOS has not come into force, it seems that most of countries have already reserved the right to claim the maritime areas designated in the articles of this Convention. Many countries that sufficiently remote from overseas claim five maritime zones as regulated in the articles as follows:

1. Article 3 and 4 indicate that every state has the right to establish the breadth of its territorial sea up to the limit of 12 nautical miles which can be measured by straight line outer limit of every point of the base line equal to the breadth of the territorial sea.

2. Article 8 indicate that waters on the land ward side of the baseline of the territorial sea is regarded as internal waters of the State.
3. Article 33 indicate that contiguous zone of 24 nautical miles measured from the baseline where the state has the right to exercise the control necessary to prevent infringement of customs, fiscal, immigration or sanitary laws and regulations and punish the offender who commits infringement of the above laws and regulations within the territory or territorial sea.

4. Article 55 indicate the exclusive economic zone within 200 nautical miles from the baseline which gives the sovereign rights to the coastal state to explore and exploit, conserve and manage the natural resources with regard to the economic activities in the zone.

5. Article 76 indicate the continental shelf of a coastal state that "comprise the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout natural prolongation of its land to the outer edge of the continental margin, or to a distance of 200 nautical miles ...".¹

One of the most important issues that can be derived from the adoption of the UNCLOS is prolongation of national jurisdiction in which, according to the doctrine of international public law, denotes the power of a state to enforce the national rules and regulations in its territory. This includes the power of the state for physical interference and competence of court to prosecute the violations.

Within the issues to implement national jurisdiction under the UNCLOS, the seas within the South East

Asia region have plenty of potential for conflicts which can be derived from the fact that the sea plays a certain role in the ideological, political, economical, and strategic equations for the ASEAN member countries.²

There are some areas within the ASEAN region where boundaries still need to be settled which can be explained as follows:

1. An area in the south-western Gulf of Thailand resulting from disagreement over the measurement of the equidistance line between Thailand and Malaysia as the effect of the claim of Thailand over some islands.

2. Claim of the Malaysian government over an area of continental shelf off north-east Sabah in the Celebes Sea which extends beyond lines of an equidistance in its border with the Philippines.

3. Two small islands are disputed by Indonesia and Malaysia in the Celebes Sea where Malaysia unilaterally claims control over the small islands between the Indonesian islands of Batuan Unarang and Pulau Maratua.

4. The dispute between Indonesia and the Philippines over an area south of Mindanao where the Philippines claims that its territory extends beyond the equidistance line with Indonesia.

5. The dispute between Indonesia and Malaysia over an area extending north-east from Serawak (Kalimantan/

² Kent, George & Mark J. Valencia, Marine Policy in South East Asia, University of California Press Ltd., 1986, pp. 76-81
Borneo) land boundary where the continental shelf boundary is not in line with the equidistance line.

6. A small disputed area in the Straits of Malacca and Singapore which has been claimed by Singapore and could affect its boundary with Malaysia and Indonesia.³

Although there are some conflicts that the ASEAN members have not solved, in fact these conflicts have been buried under the rug in the name of ASEAN spirit and solidarity.

As a matter of fact, that most of the maritime jurisdiction conflicts and claims are also conducted in the northern part of the ASEAN area that is in the area of the South China Sea which the conflicts and claims have happened between members and non-members of the ASEAN.

The South China Sea consists of about four million square kilometers and is characterized by rich in natural resources. There are about 200 islands which most of them are not suitable for human inhabitants, but they are important for strategic, economic, political and legal reasons.⁴

Currently, the South China Sea is known as one of the most strategic waterways in the world. It was formerly the place where two great powers met. It is generally known that the United States, on occasion, sent warships to or through South China Sea and equally, the former USSR has

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³ Joseph R. Morgan, loc.cit

also been known to send its fleets in or through these waterways. The approaches to these waterways through the Malacca, Singapore, Sunda, Bangka, Karimata, Gaspar, Balabac, Mindoro, Bashi, and Taiwan Straits are controlled by non-communist countries.⁵

For Japan, the South China Sea is extremely important for strategic and economic purposes because almost all of Japanese oil imports are transported through these waterways. At the same time it is also extremely vital for shipping Japanese products to South East Asia, South Asia, Africa, the Middle East and Europe.⁶

Economically, the enormous potentials either in minerals and fisheries resources of the South China Sea brings this area into the disputing area. The bordering states of the South China Sea have already discovered or are discovering enormous potentials for oil and gas resources. For example, this is the case of Malaysia, the Philippines, Indonesia and Brunei Darussalam. Recently, the potential in other minerals such as manganese rich nodules are under researched by surrounding countries like the People Republic of China and Japan.⁷

For the land-locked or geographically disadvantage states such as Singapore and Brunei, the South China Sea is very important because, according to the Articles 69 and 70 of the UNCLOS, they have the right to participate, ⁵ Report of the "Workshop on the Managing Potential Conflict in the South China Sea", Bali, 22-24 January 1990.
⁶ Hasjim Djalal, loc.cit.
on an equitable basis, in the exploitation of living resources in the economic exclusive zone of other states. It means that the exploitation is conducted beyond its own jurisdiction.

There are a lot of bilateral territorial disputes in the South China Sea, either over ownership of various islands, (especially Paracels, Spratly, and Phu Quoc Islands) or over boundary delimitations. There are also a lot of problems regarding delimitation of territorial waters, contiguous zone, economic exclusive zone and continental shelves. These jurisdictional problems needs to be solved in a peaceful ways for the future mutually beneficial use of the South China Sea.

The problems of maritime jurisdiction are not just affecting the strategical, political and economical situations of the area but then also affects the safety of navigation, shipping, protection of marine environment and communications because the regime of navigation, in some extent, depends on the legal status of the waterways.

In the South China Sea, apparently, thypoon is a major hazard to the safety of navigation in stead of human error, substandard ships, war, and piracy, in some cases. Since there are a lot of disputes over the maritime jurisdictions in the South China Sea, once a vessel is in trouble, rescue is difficult because, normally, with the extension of various national jurisdictions, the responsibility for search and rescue falls on the littoral states, but it appears that no countries bordering the South China Sea are at present willing or able to do any major rescue operation.\(^a\)

\(^{a}\) George Kent, op.cit., p. 317
Another major difficulty following the problems of maritime jurisdiction in the South China Sea relates to the political circumstances and economic differences among the bordering countries. Under these circumstances, it seems that claims by China, Taiwan, Malaysia, the Philippines, and Vietnam over the Sparty Islands makes it unlikely that maritime boundaries problems will soon be settled.

The problem can be more complicated if one of the states in this area sets their claim based on historical views, which are limiting in their scope for compromise. For example, both China and Vietnam have insisted that all the Sparty Islands and associated submerged banks have belonged to each exclusively from time immemorial. The Philippines countered with setting its claim based on the historical virtue of the treaty limits set down by American and Spain for peace agreement on 1898, and the same circumstances could create difficulties in negotiations with any states which may claim some of the Sparty Islands. 9

As an important international corridor between the Pacific and Indian Oceans, the interests of the other users would be affected if the freedom of passage is hampered because of the flare-ups in the South China Sea. Political instability in the region, such as Cambodia, Vietnam and Hong Kong issues, present other major difficulties in the boundary negotiations.

The presence of islands, from a geographically point of view, is also a common difficulty in negotiating maritime boundaries. Although most islands and islets in the South China Sea cannot support human inhabitation

9 Report of the Workshop on Managing Potential Conflict ...
because this are only rock, however, resources buried under
the sea make them reason enough to spark the dispute among
states adjacent to this area. Article 121 of the UNCLOS
stipulates that an island is a naturally formed area of
land surrounded by water and is above water at high tide,
which features may be used to claim all maritime zones. On
the other hand, this regime cannot be applied for rocks
because the last part of Article 121 provides that rocks
that cannot sustain human inhabitation or economic life of
their own shall have no EEZ or continental shelf. There is
no provision enabling rocks to be distinguished with confi-
dence from islands.

In the South China Sea there are many reefs
surmounted only by rocks. However, in February 1992, China
by-passed a law laying claim to a region of rock and the
Paracel Islands further north, and reserving the right to
use force to defend them. Vietnam, despite having lost
at least two ships in a 1988 naval battle with China in the
Spartlays, warned that it is prepared to defend its terri-
tory. It seems that instead of a treasure of oil, gas or
other minerals, the chief reasons for the boundary dispute
were poor relations and ideological ownership of islands.

The complexity of the conflicts and rivalries of
the disputants, the larger and deeper political division in
states surrounding the South China Sea, makes the settle-
ment of the issues will take time to evolve.

The complicated relationship between regional
States with extra-regional actors whether directly involve
or not, leaves the South China Sea region vulnerable to any
military actions. Moreover, now that the troops of the

10 "Deals: Mixing Oil and Water", Asia Week, July 17, 1992

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disputant are more or less in place, it seems that any move to tip the delicate balance in the Sporlays will greatly increase the chance of another military confrontation.\textsuperscript{11}

3.2. Conflict on marine resources

Conflicts on the use of ocean is relate to the conflicts of maritime jurisdiction. A nation's involvement in marine resource can be examined by considering its geographic features, its resources and resource use patterns, its dependence, its development thrusts, and its ability to enforce its marine interests.

In the South East Asia, at least five million people are directly dependent on the use of marine resources. At least twenty-five million people are affected by decisions regarding the marine resources industry in the region. However, few countries in South East Asia have established firm and clear policies with regard to their marine interests within their maritime jurisdictions.\textsuperscript{12}

The capability of South East Asian nations to deter illegal persons who enter into their claimed marine areas or to patrol them is generally inadequate. Singapore and Brunei, with their extremely small marine area is an exception, while the remaining states have thousands of square kilometers of ocean area or hundreds of kilometers of marine perimeter to cover per patrol vessel or aircraft. Although a vessel or an aircraft can be equipped with radar and would be able to patrol a considerable expanse, but

\textsuperscript{11} Ibid.

\textsuperscript{12} George Kent, loc.cit.
only a portion of a total marine fleet or aircraft fleet could be suitable or expandable for marine surveillance because it is too expensive.

The national marine interest is depend on the accessibility of such nation to the sea and its resources, and it can be considered from both technology-capital and legal-political perspective. As most of political entities of the ASEAN countries are developing countries with high population growth rates, the interest - in term of capital and policy - to the maritime sector is vary from country to country.\textsuperscript{13} The greater population such as Indonesia has the more interests and resources available that could be allocated to marine activities, while Brunei and Singapore apparently have fewest resources available for marine investment.

Some nations are dependent on the sea for their national unity, communications between water-separated areas, as a buffer zone between unfriendly neighbors, maintain cultural traditions, resources for the rural development, for coastal recreation and tourism, and waste disposal.\textsuperscript{14} These are often significant factors in national marine interests.

To maintain the national marine interests, management of marine resources by coastal states is needed to control over living resources in its adjacent waters. The 200 nautical miles of the exclusive economic zones (EEZs) regime is an important area to manage conflict arising from the competition of exploitation of marine resources.

\textsuperscript{13} Report of the Workshop on Managing Potential Conflict in the South China Sea (Unpublished).

\textsuperscript{14} Elizabeth D. Samson, "Fisheries", Marine Policy in the South East Asia, p. 101
The existence of the EEZ, however, in some situations has created new conflicts of interests. First, states have not always agree on the nature and extent of the obligations on controlling living resources entitled in the EEZ regime. The argument refers to the UNCLOS regarding the "equitable" rights of land locked states, such as Laos, and geographically disadvantaged states (Brunei, Singapore, Malaysia and Singapore) to participate in the exploitation of the living resources in the EEZ of coastal states. In particular, it is frequently difficult to strike the balance of right between coastal state control over their living resources and the right of non-coastal states in the EEZ.

Second, as living resources are become an industry of growing economic value in the world market, some states have found themselves with capacity to harvest living resources far greater than what can be harvested in their own waters. The need for this excess capacity to provide an economic return has frequently led to the situation where vessels are alleged to fish without permission in the waters of other countries. This situation can be more complicated if there is the perception that non-harvested resources exist in the other state's waters.

Third, the EEZ can create a conflict respecting living resources because it may overlap with another country's EEZ, and in the real situation it is difficult to delimit coastal areas with a 200 nautical miles limitation. For this reason there is an unresolved EEZ boundary between Malaysia and Indonesia on the west side of Borneo, north of Tandjong Datu. This portion of the Sunda Shelf is an off-shore fishing ground for both countries where the pelagic fish are believed to be under-exploited.
Fourth, for highly migratory species like tuna, which also have a high economic value in the international market, it is difficult to manage one's EEZ because it will affect the potential of another country's EEZ. The depletion of coastal living resources and decreasing productivity in centers of fishing populations, and the over-fished status of the demersal species within respective national jurisdiction will affect fishing stock other countries. It is in the interests of all countries in the region to have an accurate assessment of the stocks and to employ resource management measures, particularly for demersal, inshore and coastal fisheries, and to explore non-traditional fishing grounds, both for large or small scale operations.¹⁵

Management of marine living resource stocks requires an understanding of the biological and economic forces bearing on the resource. Biological over-fishing occurs when the maximum sustainable yield (MSY) has reached the point where additional fishing efforts bring proportionately less catch. Economic over-fishing occurs when additional investment in the industry result in proportionally lower incremental returns.

The increasing proportion of trash fish caught by trawlers in shallow waters, the high percentage of juveniles in net hauls, and the leveling off of outright decline of catch volumes of some countries are clear signs of biological over-fishing. Decreasing of total landings in Malaysia, Indonesia and the Filipinos is evidence of an overexploited fishery.

Biology and economy of fishing activities are closely interlocked. Biologically sound practices may be

economically deficient, but the reverse may also be true. Thus, purse seines are economically efficient but tend to catch juveniles because they use small-mesh nets. More selective gears do not abuse the resource but are costly to operate. Government intervention is needed to promote certain fishing activities to the extent that it takes into consideration social, cultural, political and other factors.¹⁶

Intensive utilization of ASEAN resources to fill pressing and immediate needs of the countries for food, employment and foreign exchange could harm future fishing stocks. As a matter of fact, the available information cannot supply answers with reasonable certainty, to what extent the filling of the needs should or could be differed or tempered by management restraints in favor of maintaining the continuing productivity of the resource for future generation.

The impact of over exploitation of living resources in the ASEAN countries is destruction of marine environment. Socio-economic priorities and political expediencies still overpower ecological considerations. Thus, pressures remain strong for the conversion of mangrove swamps to fish ponds, such as in the northern coast of Java Island, and for the exploitation of coral reefs for export. These destructive practices as well as sedimentation of estuaries, pollution of coastal areas, dynamiting, and other forms of illegal fishing, all affect fish stock adversely. The major impediments to the successful implementation of ecologically sustainable development programs for living marine resources in the ASEAN countries are their inability to communicate effectively their rationale.

¹⁶ Mark J. Valencia, op. cit., p. 56
to fishermen and other resource users.

There are many major concerns related to marine living resources in the region that can be handled with multilateral or regional co-operation confined to technology exchange. There are many small-scale fisheries and aquaculture which can be directed by the government to the extent of regional co-operation, however, the sovereignty factor governs most of the ASEAN countries attitude toward their zones. Hence, the management aspects of a broader programme covering coastal zone management issues having regional implications are ignored because the individual countries feel no sense of urgency.

The problems with marine living resources policy development becomes more difficult to solve because of the existence of non-living resource exploration and exploitation. There are two different interests which must be dealt with by the political institutions in the ASEAN region; a judgment between "fish versus oil" must be made.

In the second-quarter of 1982, drilling activities in the ASEAN area an "hit all-time high". There continues to be a wide variety of potential discoveries of every size in many geologic settings providing incentives for both large and small drilling companies. In the ASEAN seas, the success ratio of drilling was 50% in 1982. Exploration costs, while increasing, have not risen as high as in other areas of the world, and the entry expenditures such as bonuses and work obligations are modest relative to the typically large concession areas.

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17 Ibid.

18 Workshop on the Managing Potential Conflict in the South China Sea
Since offshore oil industry was introduced in the end of 19th century, there has been a wide array of offshore drilling equipment. The capabilities of these units have expanded in respect to the water depth that they can handle. The technological advances have also dramatically increased the distance at which offshore units can operate from shore. The extreme dependence of many nations on international supplies of oil have been increasing the value of this new non-living resource product.\footnote{Mark J. Valencia, loc.cit.}

With the extension of jurisdiction over resources and economic activities to the EEZ regime, the very shape of nations has changed dramatically. Nations in South East Asia find themselves with new, sometimes unfriendly, neighbors on their maritime boundaries. In many places, basins bearing oil and gas extend into areas of overlapping claims where, eventually, exploration and drilling will reach as trends continue for further offshore and deeper water exploration.\footnote{loc.cit.}

In fact, all countries in the South East Asian region have formally and multilaterally claimed EEZs extending up to 200 nautical miles from national baselines in which nations might claim sovereign rights for purpose of exploring, exploiting, conserving, and managing living and non-living resources; claim over the seabed and subsoil and the superjacent waters; and claim over jurisdiction to conduct marine scientific research and preservation of marine environment.

The archipelagic claim of Indonesia and the
Philippines, a multiple claims to particular oceanic Islands and bases for extended jurisdictional claims, and possible historical claims to much of the South China Sea, all raise additional questions regarding the conflict of marine resources both living and non-living.

3.3 Competition in shipping

Shipping is an important feature of life in the ASEAN countries because it is fundamental to the development of the region. Governments of the ASEAN countries face a number of important decisions concerning shipping policy, some of which are brought about by booming economies in this region, rapid development in style of shipping and international trade, and the enormous transformation of shipping technology.

There were hundreds of tankers from Arabian Gulf crossing the Strait of Malacca destined for a newly industrial Japan. It was obvious even to the fishermen in the "kampung" (village) along the strait that with each passing years the tankers were getting bigger and bigger. It was a technological explosion, and countries bordering the through-routes in the region, particularly Malaysia, Singapore and Indonesia, were part of it, willingly or not. The increasing number of tankers transiting the strait was accompanied by booming of oil production in Malaysia and Indonesia, placing the political institutions in the ASEAN countries in the midst of a shipping boom over which they had little control.21

As already explained in the previous paragraphs,

21 Ibid., p. 218
due to the strong feeling of national sovereignty over its jurisdiction, even after the founding of ASEAN and the resulting increased regionalism, all of the member states had different maritime priorities. The lack of uniformity in ASEAN's approach to maritime questions was due largely to the varied geographical, historical, and economical nature of the individual states.\footnote{22}

In terms of economics, it is a growing commitment of ASEAN governments to the principles of free competition and trade, and their increasing reliance on the private sector that maintains the thrust of regional development. Within the context of the sea transport sector, this has translated to the gradual dismantling of previous protectionist machinery and withdrawal of state support. Each of the ASEAN countries now practices a free shipping and trade policy for foreign companies or ships of foreign nationalities.

\textbf{Singapore}

Singapore's shipping policy in general reflects the country's overall economic policy which is to promote free enterprise with minimal interference from government. This has been geared to a definite set of objectives to the maritime sector relying principle on a fiscal policy as a means to confer larger tax advantages on the shipping community in order to foster the requisite conditions for investment and growth.\footnote{23} In keeping with this philosophy, Singapore has chosen a mechanism for fleet development unique among ASEAN nations, that of establishing a "flag of

\footnote{22} PTC Bremen/Bremenhaven

\footnote{23} Harry R. Brooks, \textit{loc.cit.}
convenience".

The Singapore's mechanism to support fleet development which the aim to expanding its role as a maritime center serving the needs of the international shipping community, is deliberately liberal. This policy has attracted foreign participation in vessel ownership and its ancillary industries or setting up of its subsidiaries. Three objectives of fleet development in Singapore have been identified:

a. creating additional tax incentives which are designed to actively encourage major shipowners to relocate to the island;

b. greater utilization of existing support infrastructure which can increase Singaporean participation in the provision of international shipping services; and

c. expansion of other ancillary maritime services such as shipbrokers, charterers, surveyors, classification societies, P & I clubs and specialists in maritime law, finance, and insurance.  

Consistent with Singapore's "free market" philosophy is its aversion to cargo allocation. Singapore has not signed the UNCTAD Liner Code and is not likely to do so. Although cargo allocation practices are feature of Indonesia-Singapore trade, it is more because of Indonesia's preference for it.  

Singapore supports the "freedom of seas" principle and, given the size of the republic

24 Ibid.

25 Mark J. Valencia, op.cit., 193

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and the current trading patterns, the introduction of a cabotage policy would make little sense.

Thailand

Thailand provides a direct contrast to Singapore in its philosophy and approach to shipping policy. Although Thailand has also released a privatization policy, it has depended very heavily on foreign shipping lines to handle its seaborne exports and imports. Some support has been provided through government equity participation, among other things, the creation of the Merchant Marine Promotion Commission (MMPC) and the implementation of Merchant Marine Promotion Act in 1978.\textsuperscript{26} The extent of support for fleet promotion, however, has been limited by largely economic considerations. Fleet promotion mechanisms are still evaluated for their costs and benefits,\textsuperscript{27} and must be shown to be fiscally advantageous.

The promotion of Thai national fleet development through various tax reliefs, investment privileges and cargo reservation schemes has been rather limited in its total effect, largely due to the restricted capabilities of Thai fleet, the country's own under-developed ports and transport infrastructure, and the lack of sufficient capital to buy ships.

Nevertheless, the seventh National Economic and Social Development Plan (1992-1996), lays down new directives for the maritime sector which importantly include the

\textsuperscript{26} Mary R. Brooks, \textit{op.cit.}, p. 35

\textsuperscript{27} Ibid.
dual objectives of increasing participation by the private sector in the maritime industry and the promotion of joint ventures with foreign lines to increase the service capabilities of national shipping companies.\textsuperscript{28}

By international standards, the Thai liner fleet is very small. In the trade with Europe, only two Thai-owned semi-container vessels are deployed. That means only 2 percent of total ASEAN-Europe cargo.\textsuperscript{29} Thai liner shipping is concentrating on the route between Bangkok to Japan and on feeder shipping to and from Singapore and Hong Kong. Although the country is in the midst of a boom in its international trade, the Thai shipping industry finds itself in a situation where its share of foreign seaborne trade is declining.

The Philippines

The Philippines is an archipelagic state for which shipping is an economic necessity. It is dependent on both domestic and international shipping. The trading pattern of the Philippines is different from that of its ASEAN neighbors in that a majority of its international trade is with the USA rather than Europe.\textsuperscript{30} The maritime industry Authority (MARINA) was established in 1974 to carry out state policy to increase the profile of Philippine carriers in foreign trade while ensuring that domestic inter-island shipping is kept strictly national rather than international.

\textsuperscript{28} PTC Bremen/Bremenhave (Unpublished)

\textsuperscript{29} Ibid.

\textsuperscript{30} Mary R. Brooks, \textit{op.cit.}, p. 35
The government of the Philippines has tried through legislation to secure a greater cargo share for the Philippines flag vessels. The policy emphasizes protectionist shipping practices more so than any of its ASEAN neighbors. It maintains rules on government cargoes, allowing exporters to deduct from their taxable income the amount of overseas freight expenses and charges in the Philippines ports provided that the shipments are made on the Philippines vessels. It supports bilateral shipping agreements and strictly holds that trade should be shared according to UNCTAD Liner Code criteria.\textsuperscript{31}

Despite these efforts, the port situation is not supported. The acquisition of more port facilities is blocked by lack of funds, and any major increase in the size of ports would mean moving thousands of squatters who live around the port area.\textsuperscript{32} The access facilities to the port and their infrastructure need to be upgraded to perform the effective function to serve the port users.

**Malaysia**

Malaysia traditionally has been faced with a problem of shipping its agricultural products to predominantly European markets. Due to the geographical situation, most of Malaysia's ports were built on shallow waters that were not deep enough to accommodate ocean-class trading vessels, and the access to the ports, such as road and railway networks, need to be planned and upgraded. For these reasons, for years Malaysia's shipping industry was

\textsuperscript{31} George Lauriat, 'Shipping', Marine Policy in the South East Asia, p. 200-202

\textsuperscript{32} Ibid.
railway networks, need to be planned and upgraded. For these reasons, for years Malaysia's shipping industry was dominated by its southern neighbor, Singapore. With the split between Malaysia and Singapore in 1965, however, Malaysia has been forced to develop its own shipping industry.³³

In 1968, Malaysian International Shipping Company (MISC) was founded with 51 percent of its capital government owned and the rest held by government agencies and private sectors. The principal aim of the company was to provide enough tonnage to enable the country to reduce the loss of foreign exchange through freight and insurance payments for shipping services. It had the related target of expanding the national fleet and the share of Malaysian flag vessels in international trade.³⁴

The two main trusts of government assistance were introduced in the 1980s with the imposition of a strict cabotage policy followed by the introduction of various tax reliefs, principally incorporating the abolition of corporate tax on earnings from shipping and seafarers' wages. The effect of these incentives, however, has been disappointing because the national fleet profile is ageing and inadequate quantities of cargo to be shipped; the net outlay on freight and insurance has continued to increase annually; and, foreign shipping still dominates the country's total seaborne trade.

While there are no rules making it difficult for foreign companies to participate in the shipping industry,

³³ Mary R. Brooks, loc.cit
³⁴ Ibid.

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there is little evidence of their involvement in shipping infrastructure on services, partly due to the proximity of Singapore as the hub port for Malaysian trade. Nevertheless, the government is on the way to privatization of its shipping lines (MISC), national port (Port Kelang), and shipyard which may encourage more direct involvement by foreign investors to participate in the maritime business in Malaysia.

Indonesia

Indonesian maritime development has been heavily influenced by the country's unusual geographic situation. The main problems in the Indonesian maritime industry is that the ports, and the ships sailing the inter-island trade, are inadequate; and, the main international ports - Tanjung Priok in Jakarta and Tanjung Perak in Surabaya - are far off the principal international trading routes. With more than 300 ports spreaded in more than 900 occupied islands, control over national seaborne trade is difficult.\footnote{George Lauriat, loc.cit}

Due to difficulties in controlling trade, Indonesian shipping laws are amongst the most discriminatory in all Asia. Foreign shipping lines operating in Indonesia, according to the Presidential Decree No. 9 Year 1969, must appoint a local shipping company as their agent for proposed vessel services. Inter-island trade has been controlled by a strict cabotage policy which absolutely prohibits the use of foreign vessels for domestic cargoes. The country has a number of cargo reservation schemes namely with Singapore, Japan and Europe.
Although these controls were still in place at the beginning of the 1980s, the government had nevertheless begun to re-evaluate its policy on shipping, driven by the need to increase the competitiveness of Indonesian exports and dismantle the barriers to trade. The first reform was implementation of Presidential Instruction No. 4/1985 (INPRES 4/1985) which aimed at liberalization of deep sea shipping by abolishing the agency appointment system and opening more ports to international trade. Another reform was extending the deregulation process to the domestic shipping sector by implementation of the November Package of Regulations of 1988 (PAKNOV 24) which intended to create a free-market for the Indonesian operators, including the effective opening of the market to foreign owned tonnage under only nominal Indonesian control. The Package also provided for the foreign investor to cooperate with national shipping companies in the formation of joint venture, and in principle, foreign participation in all aspects of shipping business is therefore permissible.

Brunei Darussalam

The small state Brunei Darussalam has a merchant fleet of just 9 units, 7 of which are liquified gas tankers for exporting part of the gas production of the country. The fleet of general cargo carriers are made up of two very small units totaling 1,400 dwt. Both units are deployed in the Brunei-Singapore-Malaysia route. Brunei's economy is essentially served by ships of neighboring Malaysia and Singapore while its own vessels play an insignificant role.

36 PTC Bremen/Bremerhaven
The ASEAN member countries have been active in the shipping industry since the establishment of the organization itself with variety reasons of involvement, the strongest of which is economic control. Singapore wishes to counter the strength of Far East Freight Conference (FEFC)\(^{37}\) and to generate employment for its nationals, as well as increasing the participation of national industries in the maritime sector of the region. Malaysia aims to earn foreign exchange to counter its losses through freight and insurance payments, and to carry a greater share over its national cargoes.

The Philippines, Thailand and Indonesia also seek a share of the world trade as a means of redistributing world wealth. In spite of a similar colonial heritage for five of these ASEAN countries, divergent philosophical approaches to fleet development and shipping policy already are evident.

Maritime industry, particularly shipping and port operation, is an activities that needs a big investment. Since there is no substantial operating subsidies are granted to the development of this sector, it is significantly hard for the national maritime industry to involve in international competition.

For many countries, cabotage and cargo reservation rules are the commonest mechanism to generate the demand for national flag ships and protect the national interests from the loss in international competition. As this rule illustrate, Indonesia, Malaysia, the Philippines and Thailand are not interested in being dominated by Singaporean shipping services, although most of the ASEAN

\(^{37}\) Mary R. Brooks, loc.cit.

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countries are net importers of Singaporean shipping which most of the cargoes are transhipped through the Singapore's port and using its shipyard.\textsuperscript{38}

Indonesia is strengthening its fleet for inter-island trade and strictly implement its cabotage law. Malaysia is rebuilding its east-to-west coastal trading between Malaysia. Thailand is trying to build a basic international fleet. Singapore shipowners in the intra-ASEAN service have yet to replace their vessels. It is likely that the critical over-ordering of vessels will result if the individual ASEAN countries pursue an uncoordinated policy on the fleet expansion.

No ASEAN carriers receive any special privileges in terms of port fees, berthing priorities or bunker concessions and in this sense also compete on an equal basis with non-ASEAN operators. Consider that at the level of the relative cost operation, ASEAN and non-ASEAN operators are coming to compete on a more equal footing. As the ASEAN operators receive no privileges to reduce their capital or voyage costs in relation to their non-ASEAN competitors, and the daily operation costs of the ASEAN vessels' converge, the competition will become more and more tight.

\textsuperscript{38} UN/ESCAP, Intra ASEAN Shipping Study
3.4. Problems in safety of ships and marine environment

Safety of ships

The main problem in safety of ships in the ASEAN countries is seaworthiness of the ship. It is unreal without considering the underlying of the causes to the management of ship and the maritime administrations in the region. To keep the ships seaworthy require co-operation and co-ordination between port states who constitute the right to control safety of the ship according to the national and international regulations; and flag states who can control the owners and the managers.

National government has the power and responsibility to prevent many shipping disasters and to ensure that vessels trading within their waters are safe. Most of vessels employed in intra-ASEAN route, particularly inter-island, are under 500 GRT which the average age, as can be shown in Table 2, are eighteen years in the Philippines and more than twenty years in Indonesia. As ships are so important to connect the nation, it is sometimes difficult to maintain standard of building and crewing. In addition, such as in Indonesia, most of the ships are also traditionally built which known as "perahu layar motor" or motorized wooden vessel.

The nations of the South East Asian region have a worse casualty rate than published. The government attitude tend to have a vested interests in not making things look bad internationally, and unless a vessel actually does sink and unless that vessel has a heavy loss of life or causes a massive pollution problem, it is generally forgotten.
The maritime administration in the ASEAN countries are still need to be improved. Shipping practice and shipping technology has grown more and more sophisticated in the past decade and maritime claims and marine casualties seems have also increasingly complex. With the extended jurisdiction implied by the UNCLOS, the question of who will look after the safety of the ships becomes more important, and ships that are involved in the maritime casualty are more likely to have been less seaworthy rather than the failure of the survivors.

Although all of the ASEAN countries have ratified International Convention on Safety of Life at Sea, 1974, it is difficult to maintain safety of an overaging ships. On the other hand, the maritime administration of the ASEAN countries have to follow the development high technology accident lies in the impact of vessel designs, which the first trial has been introduced through grounding of the VLCC "Showa Maru" in 1968 resulting pollution in the Straits of Malacca and Singapore. As ship design always a compromise between cost, technological consideration, the job to be done, and physical environment, again it is dilemma between economic, politic, and maritime safety.

Seaworthiness of a ship is determined by a system of annual surveys in accordance with the requirements of insurance, international laws, its flag, and harbor regulations. The maritime administration as one who responsible for maritime safety, may delegate its statutory services to classification society. There are several classification societies recognized in ASEAN, among other things, Lloyd's Register (United Kingdom), Det norske Veritas (Norway), Nippon Kaiji Kyokai (Japan), American Bureau of

39 Field Trip Study, Det Norske Veritas, Norway.
Shipping (USA), Germanische Lloyd (Germany), and Bureau Veritas (France).

As a private institutions, they are competing each other to give classifications services to their clients. Of course the actual classification societies, as a commercial entities, may have their own aberration as well. This competition among classification societies, whether or not, need more attention from the maritime administration to be more careful in the judgement of maritime safety.

Crews

Another aspect of the high technology marine casualty is helplessness of the crew once things begin to go wrong. In the high technology shipping, the pressure places on crews is often vastly different than that experienced in normal shipping. In this regard, training is an important and urgent to improve the ability of seafarers to overcome an advanced and new shipping technology. There is still some problems regarding maritime training in the ASEAN countries. Approach to the administration of seafarers among ASEAN countries have been divergent.

National policy objective and strategies concerning seafarer in each countries have been linked to the development of merchant shipping in the region. The significant differences in national philosophy existing within ASEAN and the role of government in supporting the growth of national-flag shipping in ASEAN need to be addressed. Mary R. Brooks, summarized the problems in ASEAN seafarers which influence to the employment prospect, as:

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(a) Technological change in shipping enabling the progressive automation of vessels which resulting in the encouragement of general purpose crews. This means fewer employment opportunities for seafarers, highlighting the need for reviewing training standards and training facilities in order to provide necessary new skills;
(b) Current shipping recession which have an impact to the reduction of world seaborne trade. It produce a very considerable over capacity in ships and low freight rates in all shipping sectors. This in turn has had a depressing effect on the employment of seafarers and competition in producing of low-waged seafarers.⁴⁰

Marine environment

According to the UNCLOS, pollution of the marine environment means "the introduction by man, directly or indirectly, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazard to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities".

The convention also says, in article 194, that "States shall take, individually or jointly as appropriate, all measures consisting with the Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavor to harmo-

nize their policies in this connection". Also, "States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incident of activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention".  

Pollutants do not recognize the new jurisdictional boundaries. The protection of marine environment is important for supporting primary uses of the ocean such as fishing, but also be seen as being great value in itself for the future generation. Major pollutants in the ASEAN waters are oil discharged and spilled from the ships and offshore platforms, and silt or human wastes discharged from land. Although national regulation generally are technically sound, their implementation has been disappointing.  

Although the countries share their concern about the threat of marine pollution, specially oil pollution from vessels and offshore drilling installations, but the diversity of the region limits the feasibility and desirability of bringing the national responses into accord. The level of concern and the capacity to respond to marine pollution vary widely from country to country.

Among the ASEAN countries, the Philippines was the first to introduce major pollution control legislation by ratifying International Convention for the Prévention of

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41 Mark J. Valencia, loc.cit
42 Ibid.
Pollution of the Sea by Oil, 1954 (OILPOL) and followed by Indonesia and Brunei ratifying MARPOL 73/78, while Malaysia, Singapore and Thailand, have their national regulations on pollution in their respective countries.

Tankers are the major ocean-borne source of oil in the marine environment of ASEAN countries. The bulk of oil carried transits the region from the Middle East to Japan in vessels from outside the region. There should be a harmonized policy regarding protection of the marine environment.

Although all of ASEAN countries are members of International Maritime Organization (IMO), yet all of them sign, ratify, accede the international conventions relating to the prevention and control of marine pollution from ships or offshore drilling platforms. The Philippines signed four convention as the same amount as Indonesia, and Brunei ratify two conventions. Thailand and Malaysia have signed none while Singapore only ratify COLREG 1960.43

Perhaps this situation is worrying because, as already explained in the previous paragraphs, there are more ageing fleet, not just in ASEAN waters but, in the world. According statistic issued by Lloyd's Register of Shipping, during 1980s, the percentage of ships under ten years old fell from 62 per cent to only 36 per cent in 1989. This trend has a number of implications. One is that the number of accident resulting from breakdown and similar events could increase, for there is no doubt that older ships are more vulnerable than newer ones. There should be a uniform standard adopted to control marine pollution which could be applied not just for local pollut-

43 See, List of IMO Conventions, Appendix J.
ers but also for extra-regional polluters.

Another problems which need to be taken into consideration for regional co-operation is the development of hazardous cargoes such as liquefied natural gas (LNG), nuclear spent fuel, toxic chemicals which are transported through or within the region. This substances need specific knowledge of pollutant types, sources, distribution, loading or discharging, and their effect to the marine environment. There remains a need for more baseline studies on the components, and physical processes that distribute pollutants in coastal waters. There is also an urgent need to standardize the analytical method used within the region in monitoring marine pollution.

Conclusion remarks

In conclusion of this Chapter, it can be summarized that extension of national jurisdiction in the South East Asian region creates many boundary problems which have yet to be agreed. The difficulties in resolving these boundary problems varies with political, geographic and economical circumstances. Based on UN Convention on the Law of the Sea, though this convention has yet come into force, other factors of difficulties are including domestic problems, questionable lines, historical claims, desire to continue previous boundaries, geographical disadvantages, the nature of seabed, disparity in wealth, and high or unknown economic potential.

Most of the disputed areas are exist in the South China Sea which claim have been made by ASEAN and non-ASEAN members. Some maritime areas which have been claimed by more than one country is suspected have oil and gas re-
serves. There are number of claimants with different characteristic of the basic relations such as ideology and political system, pre-occupation, military capability and inclination, the need for non-living marine resources from the area to develop national economy on the faster way, and the degree of knowledge of the deposits in the area. The more these factors reinforce each other negatively, the greater likelihood of unilateral action.

The extension of national jurisdiction with an archipelagic waters and EEZs also creates transnational fisheries issues. With these enlargement, national responsibilities for management of fishery resources have also increase. Nations will have to protect their traditional fishermen and work out access rights for more modern fishing vessels which usually stronger and have more modern fishing gear than the traditional one. Areas important for fisheries development need to be protected from pollution. Management of shared and migratory stocks requires transnational co-operation.

The exploitation of non-living resources is activity underway in the South East Asian seas. There are a lot of drilling platforms spreaded in this region. Since the UNCLOS states in Article 60 that the coastal state has the right to establish safety zones up to 500 meters in radius round any installations, which are usually a difficult area to in force regulations, surveillance is needed to detect illegal acts such as intrudance of fishermen or unwilling attendance, and unsafe industrial practices. This matters are only a small part of problems on management of marine resources that should be reviewed by the maritime administration in the ASEAN countries.

"Workshop on the Managing Potential Conflict in the South China Sea"
CHAPTER 4

INITIATIVES IN MARITIME TRANSPORT
IN THE ASEAN COUNTRIES

4.1 Prospect in maritime transport co-operation

Maritime transport for the ASEAN countries is, in
general, of paramount importance which is still largely
dependent on what is still recognizable as a colonial or
semi-colonial pattern of trade. As relatively new
independent nations, the ASEAN member countries are on the
way to develop their maritime sectors. It has been pointed
out that because they lack of necessary skilled manpower,
capital, technical know-how, established ports and the
prerequisite infrastructure, they have restored to
protectionism as a method for establishing or developing
their own national fleet.¹ These restrictive method led
to legal as well as economic problems, because establishing
or developing national fleet is limited by international
trade, economics, politics, and so on; shipping is part of
and influenced by trends in the international system, and
should always be considered within this context.²

The most natural purpose of a national fleet is
to carry international trade, but a fleet also contributes
to a nation's economy by contributing to employment, en-
couraging ancillary industries and, in times of war, it can
serve to keep the lifelines open.³ There is a conflict

¹ Ademusi-Odeke, Protectionism and the Future of the International Shipping, Martinus Nijh-
off Publisher, Dordrecht, Boston/Lancaster, 1984, p. 23

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³ Odeke, op.cit., p. 16

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between developed and developing countries in approach to shipping in the world.

In international maritime transport, there is a distinction between traditional maritime nations which represented developed countries which already have an established shipping systems and controlling the world maritime transport with their large fleet and most of the ships are belongs to the private company or a free enterprise on the one hand, and developing maritime nations which has found favor in many developing countries with the establishment of the state-controlled national flag carriers, either throughout outright ownership or controlled indirectly through government organizations. The question is now, which one is good for development of the ASEAN fleet?

Despite the fact that member of ASEAN are developing countries that can be categorized as relatively new independent nations, marine transport was one of the real difficulties that had to be faced right from the beginning of independence. Maritime transport was in fact the key to economic survival for most of these nations. However, it had been developed, as for many centuries, into a system in which only a small and select group of richer and stronger nations who can participated.

For almost four centuries when the colonial powers from the western countries occupied the South east Asian region and change the maritime tradition of the

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4 Adewumi-Odeke, op. cit., pp. 25
nations. On the very ancient mariners of this region had passed their trade down through ages to their descendants and later on, they had been forced to continue their primitive seaborne trade without any modernization or incentive, on they had become the labor in the fleets of the colonial masters. The masters had kept the shipping business very much to themselves, sending their own people of their empires to run western-style shipping business strictly controlled by board of directors in the Europe. The indigenous had no chance to develop their own maritime tradition and maritime industry.  

After independent, the new nations had to survive and deal with international community that they never had any experience to dealt with before. They had some raw materials, which mostly similar, to be exported on which the whole economy depends. The exports which consist mainly primary commodities or semi-manufactured products that per-unit value is generally low. To export their products to the world markets required shipping, which already been controlled by well-established conferences and other cartels.

Since there were many pressing priorities and immediate problems that had to be resolved, shipping and its internationalism did not fit well with surging, emotional nationalism and sovereignty. More over, the leaders of developing countries has lack of understanding in marine policy and has little interests in technicalities of international maritime transport.

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6 Ibid.
7 Ibid., p. 46

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By this time the divergence between the public aspect of maritime law and policy on the one hand, and private or commercial side of shipping law and policy on the other which already well defined in the developed countries for decades, also created additional problems for the developing maritime nations. As one can find that most of developing countries do not have proper maritime administration because they assume that public maritime law and policy was a matter for foreign affairs, while the private or commercial aspect divided into several sub-groups in ministries and government departments dealing with commerce, trade, transport, or communications and ranked much lower in the national priorities. This divergence is harmful and costly to the nation it self due to the lack of efficiency and lack of co-ordination and co-operation among institutions.\(^a\)

As the development of maritime transport, in fact, has been dominated by traditional maritime nations, and inadequate maritime legislation in developing maritime nations, developing countries are thus caught in a difficult bind from which they have neither the means nor the ways to extricate themselves.

The divergence of the maritime laws in the developing countries is the heart of the difficulties. If there is a maritime code available in developing country, it might be an inheritance from its pre-independence which is inadequate to the new developments and practices in maritime transport activities. The approach of developing countries to the question of shipping has been raised in a report prepared by the Economist Intelligence Unit (IEU) of UNCTAD, at the request of the Secretary General, in connex-

\(^a\) Odeke, op.cit., p. 47
ion with the sub-item on "Measures for improving the invisible trade of developing countries through increasing receipts for services such as tourism and reducing payments of transportation, insurance and similar charges". The report suggested that recommendation should be made which could emphasize, inter alia,

The need for establishment of a consultation/negotiation machinery between liner conferences and national or regional shippers councils;

The desirability of development of the merchant marines of developing countries;

The examination of possible regulatory measures concerning liner conferences; and

The need to give priority to port development.\(^9\)

More pressure from developing countries on the maritime issues have forced UNCTAD to formulate the term of reference of a body dealing with shipping matters. Consequently, when the Trade and Development Board met at its first session in April 1965, by resolution 11(I) of 29 April 1965, decided to establish Committee on Shipping. The Committee held its first regular session in Geneva in November 1965 and its first special session in July 1966.

The term of reference of the Committee on Shipping stipulated in the need:

To promote understanding and co-operation in the field of shipping and to be available for harmonization of shipping policies of governments and regional economic groupings with fall within the competence of the Trade and Development Board;

To study and make recommendations on the ways in which and conditions under which international shipping can most efficiently contribute the expansion of the world trade, in particular of the trade of developing countries. Particular attention should be paid to economic aspect of shipping, to those shipping matters which affect the trade and balance of payments of developing countries, and to related shipping policies and legislation of governments on matters which fall within the competence of the Trade and Development Board;

To make recommendations designed to secure, where appropriate, the participation of shipping lines of developing countries in shipping conferences on equitable terms;

To promote co-operation between shippers and conferences, a well-organized consultation machinery could be established with adequate procedures for hearing and remedying complaints by formation of shippers' councils or other suitable bodies on a national and regional basis;

To study and make recommendations with a view to promoting the development of merchant marines, in particular of developing countries.\(^\text{10}\)

The establishment of Committee on Shipping of UNCTAD in April 1965 brought under examination of the international shipping industry with the participation of all countries member of United Nations. Consequently, a forum was created where all parties involved in maritime transport, among other things, government, shipowners, shippers and port authorities, could meet to discuss and elaborate international measures to meet the concerns of the developing and developed countries.

Instead of maritime law that constitutes specialized branch of the law which govern maritime transport and sea-borne international trade, there is the law of the sea

\(^{10}\) Ibid., p. 108
which encompasses all aspect of the uses and utilization of resources of the ocean. The maritime law and the law of the sea overlap to the extent that both relate to shipping activities on the seas. In this common area, the law of the sea often enunciates principles and lays down rules while more specific and technical rules, such as relation among governments, shipowners and shippers, and rules on safety of ships and on control of pollution from ships, are embodied in maritime law.

The law of the sea is based on the United Nations Convention on the Law of the Sea. Of the region of the UN Economic and Social Commission for Asia and the Pacific (UN-ESCAP) membership, 33 of the 36 members have signed the Convention and two of the five associate members that are entitled to sign have done so. Ten members have already ratified the Convention which is two member of ASEAN countries. States that have expressed thereby an international commitment not to defeat its objectives and purposes.

The Convention establishes a comprehensive framework for the regulation of all ocean space. Its provisions stipulate, among other things, the limits and regimes of national sovereignty or jurisdiction over zones of ocean space adjacent to the coasts, access to the seas, navigation, protection and preservation of marine environment from pollution, exploitation of living resources, marine scientific research, mining of the sea-bed and the settlement of dispute.

The Convention also provides, particularly, establishment of territorial sea up to 12 nautical miles and EEZ of up to 200 nautical miles over which coastal state enjoys sovereign rights to the resources. It also
establishes the freedom of navigation within the high seas and the EEZs, and other internationally lawful uses of the seas related to the freedom of navigation such as those associated with operation of ships. It sets out the special regimes that applied to navigation through straits and archipelagic waters.

The Law of the Sea Convention sets out different legal regimes for the freedom of navigation on the high seas and for passage in the territorial sea, through international straits and in archipelagic waters. In this context, it covers, among others, the right of coastal states to establish legislation concerning passage in the territorial sea for safety of navigation and to regulate maritime traffic, to protect navigational aids and facilities, to preserve the environment and control of pollution.

The Convention contains a provision on the registration of vessels and, rights and duties for flag states. It sets out rules for inspection and boarding of vessels and their detention for violation coastal state's laws including pollution. Coastal states may also establish sea lanes and traffic separation schemes in the territorial sea. Furthermore, the Convention sets out the rights of archipelagic states to regulate navigation through archipelagic waters, the rights of states bordering straits, to regulate transit passage through those straits, and the rights of coastal states to regulate passage to their EEZs in so far as safety zones around artificial islands, installations and structures.

Another important things that stipulated under the Convention are the rights of states to control, prevent or reduce pollution from ships, to prevent illicit drug
traffic and to assure safety of maritime traffic in their areas.

The development and management of marine resources are a great challenge for developing countries such as ASEAN because many resources are transnational in distribution, the ocean transit environmental pollutants and its impacts, and many maritime activities transcend the new jurisdictional marine boundaries. Of the available means to meet this challenge, economic and technical co-operation among developing countries, through self-reliant South-South co-operation in a regional framework, through new form of scientific industrial co-operation between North and South, and through co-operation with strengthened and, where necessary, restructured international organization, is one of the routes that can be taken to overcome the major obstacles faced in developing and utilizing the increased resources brought under prolongation of national jurisdiction.¹¹

The success of regional co-operation depends on the involved countries with firm and positive political commitment to undertake the co-operation.¹² In addition, whenever participating countries posses a certain degree of competence in the region and resources are available within the countries, the chances for a co-operation programme to be implemented and to bring the desired benefits to cooperating countries are greater.

¹¹ Elizabeth M. Borgese, Seminar on the Marine Affairs I, the World Maritime University, July 29 - August 2, 1991

Several different approaches to regional co-operation can be distinguished: joint activities, regional organizations, treaty arrangements, harmonization of laws and policies, and informal contacts. In ASEAN, the most demanding of this approach is joint activities involving sustained close interaction in a specific enterprises or projects. For example, Australia and Indonesia are currently engaged in establishing a zone of co-operation for the purpose of exploiting petroleum resources in the Timor Sea.

This negotiations are consequent of the parties' failure to find a mutually acceptable boundary-line because Australia based its claim on the national prolongation principles, or geomorphology, whereas Indonesia's claim rested on the equidistance criterion. The zone will be divided into three areas. The joint development regime will be apply only to area A where joint control will be exercised through a joint authority. Negotiations are continuing on issues such as administrative arrangements, the mining regime, the applicable law, including matters relating criminal law, employment law, taxation and so on.\(^3\)

Regional co-operation as the most frequent approach to the protection of marine environment in fact has been attributed to the eminent danger of serious pollution in enclosed and semi-enclosed seas. The most promising regional pollution control activities now underway in South East Asian region are those taking place within ASEAN network. There are two regional organizations which their

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\(^3\) Atmadja, Mochtar Kusuma, 'Sovereign Rights Over Indonesia Natural Resources; An Archipelagic Concept of Rational and Sustainable Resources Management', *Marine Policy*, November 1991

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prime focuses to develop and to protect marine environment and coastal areas by effective control of oil pollution in the ASEAN region.

The Action Plan for the Protection and Development of the Marine Coastal Areas of the East Asian Seas Region adopted by ASEAN member countries in 1981, with its main objectives is development and protection of marine environment and coastal areas for the promotion of the health and well-being for the present and future generations. The contribution of the participating countries to this Plan through the commitment of personnel to implement various activities have been focused on the extensive training programmes which have created a large pool of environment management experts who co-operate on an inter-regional basis to respond the environmental problems.14

Another bodies that has been established by the ASEAN to deal with oil pollution is the ASEAN Council on Petroleum (ASCOPE), which mainly concerns with environmental effects of the exploration for petroleum and natural gas. They have been discussing standardization of environmental and safety regulations for off-shore drilling and local complexities of combating trans-national oil spills.15

For a specific area such as Strait of Malacca and Singapore, the Tiered Area Response Capabilities (TARC) has been established in 1985 to supplement local industry in Singapore, Malaysia and Indonesia and government capabilities to respond to any possible accident in the vicinity


15 Mark J. Valencia, loc.cit.
area of the Strait which are perceived to be areas of high risk. TARC provide some oil pollution response equipment which can be mobilized beyond primary area provided it is available and should be returned to the Singapore bases within certain specific time limits.

With several organizations established in the region, it means that ASEAN countries have been aware to the impact of marine pollution within the regional waters. The remain needs for the future regional co-operation are to upgrade awareness and skills of the personnel to control marine pollution. Formidable policy obstacle must be overcome to move toward a truly regional co-operative approach to marine environmental protection in South East Asian region.

A number of issues arise in countries wish to address full protection on marine environment, they should first extend their environmental concern and control to their EEZs, including areas claimed by more than one country. Second, they should recognize and respond to the transnational nature of some pollutants and their impacts, particularly oil from all resources. Third, to expand their scope of co-operation including trans-national oceanographic features and ecosystem. Fourth, the scope of action plan should be extended including environmental impact assessment and management of pollutants from seabed exploration and exploitation. Fifth, all countries should be consider standardizing their approach to the management of marine pollution. ¹⁶

¹⁶ Report of the Workshop on Managing Potential Conflict in the South China Sea. (Unpublished)
4.2 The role of international organizations

One of the primary objectives of the establishment of Association of South East Asian Nations (ASEAN) more than two decades ago by five original founder nations namely Indonesia, Malaysia, the Philippines, Singapore and Thailand, is maintaining close and beneficial co-operation with existing international and regional organizations, and explore all avenues for even closer co-operation among themselves. In the maritime transport, reaffirmation of co-operation have been performed by establishment of regional organizations of the maritime transport actors such as port authorities, shipowners, shippers and so on.

The new legal regime of the oceans needs an intensifying co-operative arrangements among countries in all aspect of maritime affairs which emphasize take place in the development of marine sciences, protection of marine environment, development of ocean resources and the uses of ocean space. Attention should be addressed to the creation of more efficient communication mechanism and channel among countries in order to achieve maximum uses of the ocean for their national development with minimum damage to the marine environment.

The co-operation in maritime affairs is also fundamental for developing countries to have more equitable share in benefit derived from maritime industry. However, it was stated elsewhere that developing world is characterized by diversity in development experience. Attempts to strengthen co-operation in maritime transport are being undertaken through the establishment of regional organizations and joint venture with participation of international organizations, as well as developed countries.
As there are many international organizations and institutions concerned directly or indirectly with the ocean, this part will only illustrate the role of international organizations and institutions responsible for the maritime affairs to the development of regional co-operation in ASEAN region.

United Nations Development Programme (UNDP)

The United Nations Development Programme (UNDP) has been plays a catalytic role by assisting to mobilize the necessary capital investment, as it is financed by voluntary contributions from governments member States of the United Nations and its related agencies, for development of more than 150 developing countries and territories. With its five-year country and inter-country programme, UNDP co-ordinate development activities in every economic and social sectors, including agriculture, aquaculture, forestry, manufacturing, transportation, housing and building, environmental protection programme, education and training, economic planning, and development of public administration.

UNDP has became dialogue partner for the ASEAN who provide financial and technical assistance to make better use of their human and natural resources, improve living standards, expand productivity, and contribute to a sustainable expansion of the regional's economy. This UN institution has helped the ASEAN, whether in regional basis or to each individual country, with its projects on maritime sector to improve port development, operation and management, to upgrade personnel skills of maritime administration by providing financial support for work-
oriented literacy training or fellowship for specialized studies abroad.\textsuperscript{17}

In all areas, UNDP works to broaden economic and technical co-operation among developing countries them self and its assistance is given in response to the priority needs and integrated into overall national and regional plans.

United Nations Conference on Trade and Development

The United Nations Conference on Trade and Development (UNCTAD) was set up by General Assembly of the United Nations in 1964 with the basic philosophy objective as to compromise and co-operate in promoting economic development and trade through international co-operation within the universal United Nations network. As an inter-governmental forum, its mandate and is to strengthen international system, structures and arrangements in issues relating to trade and finance, particularly that of developing countries, and to encourage positive interaction between national policies, international accepted rules and disciplines, and the operation of world markets.

As per 1990, UNCTAD has 168 member states which is divided into several groups, among other things, Group 77 consist of developing countries, Group B made up of industrialized countries, particularly Western countries, and Group D comprises of socialist countries of Eastern Europe, though at present their economic system are becoming more liberal.\textsuperscript{18}

\textsuperscript{17} United Nations, \textit{Basic Fact About UN}, UN Publications, p. 23

\textsuperscript{18} Ibid.
As an inter-governmental forum, thus, UNCTAD attempt to bridge the gaps between the groups, notably through the dialogue by member States during the conference, where all members share a responsibility to promote accelerated and sustainable development according to their economic weights and capacities.

The UNCTAD Conference is held every four years at ministerial level to establish policy guidelines. Between sessions work is carried out by the executive body of UNCTAD, the Trade and Development Board which meets annually and reports to the UN General Assembly through the Economic and Social Council.

Under the UNCTAD auspices have resulted a number of international commodity agreement; reformulation and adoption of the principles and rules of the international trading and industrialization system; the adequate transfer of resources on satisfactory terms and conditions, and reform of the international monetary systems; reserve transfer of technology in the Economic Co-operation among Developing Countries (ECDC) programme; and pioneering and path-breaking initiative in the area of maritime transport by launching a system which emphasize, inter alia, a consultation/negotiation machinery between parties involved in it.\textsuperscript{19}

The achievement on the UNCTAD in the field of maritime transport is the entry into force of the UN Convention on a Code of Conduct for Liner Conferences, the adoption of the UN Convention on International Multimodal Transport of Goods, the adoption of the UN Convention on

the Carriage of Goods by Sea (the "Hamburg Rules"), the adoption of the UN Convention on conditions for Registration of Ships, and setting up a Joint Inter-governmental Group of Expert between UNCTAD and the IMO to prepare a draft Convention on Maritime Liens and Mortgages.

UNCTAD has played a leading role in promoting shipping as an industry, particularly in developing countries, and encouraging economic co-operation among States to that end. As the objective of UNCTAD is, inter alia, to formulate policies, principles and legal rules on international trade and development, shipping has been kept under intensive spotlight and a process towards "internationalization" of this industry has begun by placing it under commonly agreed principles of international private and public law.  

UNCTAD has been provide an assistance which laid the basis for economic integration among the five countries member of ASEAN. For this purpose, technical assistance projects financed by UNDP were implemented which include the analysis of trade liberalization schemes, studies on common external tariffs, reform of customs practices, fiscal harmonization, financial and monetary co-operation, industrial co-operation, feasibility studies on regional importation schemes as well as institutional support in the establishment and setting up of work programmes of some of organizations or secretariat concerned.

It is difficult to assess the achievement of

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21 Basic fact about UN, p. 7

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UNCTAD's work in the field of shipping because instability, restrictive practices, over-tonaging in the shipping industry, and the barriers to developing countries' participation are still the most immediate problems in the current decade. Although several conventions, decisions and recommendations addressed to remedying a wide range of problems have been adopted unanonymously by consensus or after wide agreement, but at the same time it has been noted that uncertainties of the world trade raised the delayed implementation of many of these measures.

The most extreme example is the implementation of the UN Code of Conduct which the impetus came from developing countries. Although Indonesia, Malaysia and the Philippines have ratified this Convention earlier before it came into force, and UNCTAD in co-operation with UNDP has organized some national or regional seminars and workshops to give guidelines for its implementation, it is extremely difficult to assess the result as their lack of experience in the liner business, inadequate infrastructure and resistance by the established conferences. Furthermore, closer regional co-operation in shipping and maritime business is needed as this problems cannot be solved by individual countries.

International Maritime Organization (IMO)

The convention establishing the International Maritime Organization, which formerly called Inter-governmental Maritime Consultative Organization (IMCO), was adopted in a UN maritime conference held in Geneva on 6 March 1948. The Convention came into force on 17 March 1958, when it was ratified by twenty-one States, including seven with at least one million gross tons of shipping
each. IMO is the twelfth specialized agency of the United Nations that provide machinery for co-operation and the exchange of information among Governments on technical matters affecting shipping engaged in international trade.

IMO provides a forum for member Governments and interested organization to discuss and exchange information, and endeavor to solve problems connected with technical, legal and other questions concerning the safety of ships and the prevention of marine pollution by ships. It encourages the adoption of the higher practicable standards in matters concerning maritime safety, navigational efficiency and the prevention and control of marine pollution from ships.²²

The result of the discussions, IMO has adopted a number of conventions and recommendations which have adopted by Government and have entered into force. Among them, the most important are convention regarding safety of life at sea, prevention of marine pollution from ships, and training and certification of seafarers as main instruments while under each would came secondary conventions.²³

To overcome the problems on the safety of ships and protection of marine environment, IMO has set up a strategy which consist of the following components:

1. To provide and effective machinery for technical, legal and scientific co-operation among Governments in the field of the safety of ships and protection of the marine environment from pollution from ships and related activities;


²³ Shamir Mankabady, loc.cit.
2. To adopt the highest practicable standards in matters concerning maritime safety and the protection and the control of marine pollution from ships and related activities;

3. To encourage the widest possible acceptance and effective implementation of these standards at the global level;

4. To strengthen the capacity for national and regional action to prevent, control, combat and mitigate marine pollution and to promote technical co-operation to this end;

5. To co-operate fully with other organizations within the United Nations family and relevant international, regional and non-governmental groups to ensure a co-ordinated approach to the problems and avoid wasteful duplication of efforts;

6. To help IMO members States - and especially the developing countries - to implement this Strategy.24

IMO has now developed a global programme to help developing countries member of the organization in the field of technical assistance in various forms, vary in size and duration. The assistance activities to be provided through special division/committee in the form of the provision of experts and consultants who may be assigned individually or as a team; training which may be provided through fellowship to nationals of developing countries, seminars or special courses; or the supply of equipment necessary for the projects, such as the supply of radar or simulator.

In fact, funds for financing of the IMO technical assistance projects could be obtained from UNDP, UNEP, developing countries and industrialist countries. As can be shown in the Annex ..., IMO has been acting as executing agency for UNDP to provide assistance to the ASEAN coun-

24 Ibid., pp. 5-7
tries in their effort to establish new maritime facilities in conformity with future global standards. The assistance could be grouped under three headings namely shipping, ports and harbors, and marine pollution.

4. International Labor Organization

The International Labor Organization (ILO) was established under the Treaty of Versailles in 1919 with the main objective is to promote social justice for working people everywhere. Its main activities, among other things, are:

to formulate international policies and programmes to help improve working and living conditions;

to create international labor standards serving as guide lines for national authorities in putting these policies into action;

to carry out a programme of international cooperation to assist government in making these policies effective in practice; and

to provide assistance in training to help advance the efforts.\(^{25}\)

With the agreement between the ILO and the UN approved on 14 December 1946, the organization became the first specialized agency associated with the UN, and the original membership of 42 nations had grown to 152 by the end of December 1990.\(^{26}\)


\(^{26}\) Ibid.
The oldest and most important function of the ILO is the adoption by the tripartite International Labor Conference in which workers' and employers' representatives have an equal voice with those governments in formulating its policies. Through this tripartite conference, conventions and recommendations provide guidance on policy, legislation and practice.

Through the programme of technical cooperation, the ILO has developed its cooperation activities of specific concern to seafarers. Particular attention has been devoted to assist developing countries in the practical application of international maritime labor standards with special reference to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) for development of national shipping industry.

The ILO had already assisted the Government of Thailand to make a feasibility study during early of 1970s for the establishment of a national institute for the training and ratings for its merchant fleets and during 1980s this was followed up by further assistance to prepare a pre-design master plan for the proposed training center.²⁷

An inter-regional seminar focused on stimulating the recognition and promotion of workers' education for maritime workers with the aim to strengthen the educational capabilities of maritime trade union, had been held in Geneva in 1977 followed by an Asian Regional seminar on the same subject had been organized in cooperation with the Government of Singapore. In 1985, a regional evaluation

²⁷ Report of the Director General on the 74th International Labor Conference (Maritime), Session 1987, pp. 71-75
seminar attended by participants from India, Indonesia, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka and Thailand, observed that the programme have had a positive impact and in particular that several unions had started to develop educational programmes of their own.

The ILO had also organized a more specialized regional seminar with the subject of social security for seafarers in Asia. This seminar had been held in Manila in 1980 with the financial assistant of the Government of Norway. To maintain close cooperation in regional or sub-regional basis, in 1983, the ILO participated in an ad hoc inter-governmental meeting organized by ESCAP to survey existing legislation in certain countries within ESCAP region and contributed a section on terms and conditions relating the employment of seafarers. training and ratings for its merchant fleets and during 1980s this was followed up by further assistance to prepare a pre-design master plan for the proposed training center.  

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4.3 Harmonization of national policies in maritime transport

It is already noted in the previous Chapters that although ASEAN countries occupies the same geographical area, they are extremely diverse in many aspects, particularly in economic development. On the other hand, they have similar commodities to be exported which mainly raw materials and semi-manufactured products. For these reasons, unilateral action is remain dominant in national policy for development. Within ASEAN organization, there is competition in cooperation and the reverse can also be true. However, the pressure and influence from outside the region has put regional cooperation remains the most possible policy chosen by the political institutions in this region responding any international problems.

Considering the differences among the ASEAN countries, harmonization of their enforcement policy in

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29 Ibid., pp.16

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maritime affairs might be made towards effective management of resources for benefit of all states in the region. Harmonization may be defined as the deliberate alignment of the laws and policies of different nations for the purpose of fulfilling their national interests. Certain legal and judicial standards should be agreed, including levels of punishment in the event of convictions. In maritime affairs and most of other sectors, there are likely to be modest adjustment in national laws and policies that would yield significant benefit to all concerned.

The way that lead to the regional maritime affairs cooperation is widely open. The need is apparent for increased bilateral and multilateral consultations as well as for a new degree of cooperation to meet the challenge in maritime transport cooperation and management of marine use pattern and concept.

Indeed, maritime transport and trade continue to be significant in and through this region due to its geographical location. Thus, technical vulnerability to the safety of ships and protection of marine environment is remain high. There are many issues of action that need to be addressed and harmonized which include standardization of regulations, sea-lane siting, the possible violation by foreign ships, dual standards due to the extension of national maritime jurisdiction, improvement of safety standards, crew training and rescue response in light of high-technology accidents. A regional approach and regional convention on the maritime issues could unify policies and procedures.

Certain standards on safety of ships in the ASEAN region have been achieved since all the member countries had ratified one of the main IMO instrument i.e. Interna-
tional Convention on Safety of Life at Sea, (SOLAS) 1974. The main objective of this Convention is to specify minimum standards for construction, equipment and operation of ships. It deals with stability requirements, watertight compartments, maintenance of machinery and electrical installations under various emergency conditions, fire protection and extinction, life-safing appliances, radio equipment, and so on.\(^{30}\)

However, the SOLAS Convention is not cover for all ships. Vessels under 500 GRT and do not engage in international voyages, pleasure craft and wooden ships of primitive build are not subject to this Convention, whereas there are a lot of "Perahu Layar Motor" or "motorized sailing vessels" which traditionally build and linking one island to another in the ASEAN region. Since these "perahu" plays an important role in intra-ASEAN trade as well, nevertheless, their safety must be of concern to all and their should be a standard legislation that drawn up the guide-lines for design, construction and equipment.

Limitation on the draught to which a ship may load can make a significant contribution to its safety. The limit is given in the form of freeboard. For the regional standardization of freeboard, the ASEAN member countries, except Thailand, have ratified International Convention on Load Lines, 1966, which entered into force in 1968.

The main objective of the Convention is to set up "uniform principles and rules, with respect to the limits

\(^{30}\) The IMO, The Safety of Life at Sea, The Bath Press, Sales No. 110.86.02.E.,1986
to which ships on international voyages may be loaded", and to ensure structural strength and stability of ships by establishing minimum freeboard. The Convention applied "to all ships engaged on international voyages", with the exception to war ships, ships less than 150 GRT, less than 24 meters in length, pleasure yacht not engaged in trade, fishing vessels, and ships solely navigating in the specific areas.

As the safety of ships of "non-Convention", it is important that load lines and freeboard should be determined, and statutory provisions should be made for the issue of "local" load lines certificates too, which should be taken into consideration and should be stipulated by the relevant maritime administration in the region.

Another important aspect of the safety of the ships is the loading, handling, and packaging of the cargo. SOLAS, in its Annex, contains a number of important provision in this issue. Among them, in relation of the carriage dangerous goods, Chapter VII of the Annex to SOLAS contain some general obligations for States parties. Based on this Chapter, States are required to issue detailed instructions on safe packing and stowage of dangerous goods, and to aid the implementation of this Chapter, IMO has up dated the International Maritime Dangerous Goods Code (IMDG-Code). With the IMO Assembly resolutions A.81 (VI), Governments are recommended to adopt and use IMDG-Code as the basis of national regulations in order to provide harmonization between countries engaged in the carriage of dangerous goods by sea.\footnote{Shamir Mankabady, \textit{loc.cit.}}

The most crucial element in so far as safety of

\footnote{Shamir Mankabady, \textit{loc.cit.}}
ships and protection of marine pollution from ships are concerned is the human element. With continuing technological developments in shipping, the human factors have became of great importance. No matter how sophisticated the equipment on a modern ship might become, the safety of ships will ultimately depend upon their crews and their professional ability and dedication seafaring to day is, therefore, a highly skilled profession, and training of maritime personnel must be given high priority.

Recognizing this problems and due to the increasing demand of qualified seafarer in the world shipping industry, Brunei, Indonesia and the Philippines have ratified International Convention on Standard of Training, Certification and Watchkeeping for Seafarers, 1978. The Convention lays down minimum standards requirements for training qualifications and seagoing service for masters, deck officers, engineer officers, radio officers and certain categories of ratings which must be met before Government may issue certificates of competency under the Convention.* It establish for the first time basic minimum regulations which can be accepted by all maritime countries.

Furthermore, effort to harmonize the regional curriculum on maritime education had received a positive support from FASA. A project on the "ASEAN Maritime Manpower Programme" had been proposed by the FASA to upgrade skill capabilities of the ASEAN maritime manpower to make them more competitive in the world market and to establish certification system for sea-based personnel among the ASEAN member countries.

Indeed, with the continued recovery of the global and shipping, the demand for seafarer has also increasing. This give rise to an opportunity to the ASEAN seafarers to
be employed overseas, but there are certain problems that has to be considered. Although there are still qualified and competent crews that can be employed in foreign vessels, however, the traditional sources of seafarers are now drying up. Serious problem are being felt by some manning agencies and foreign shipping principals on the shortage of qualified licensed officers and senior ratings, especially officers and crews of specified vessels such as gas and chemical tankers.\textsuperscript{32} Another factor that has to be considered is the entry and heightened participation in the international maritime labor market of other developing maritime nations, notably Sri Lanka, Pakistan, and Bangladesh.\textsuperscript{33} In this regard, the serious co-operation among the ASEAN member countries should be developed to be able to participate completely in the upturn of the world maritime industry.

In the prevention of marine pollution from shipping activities, the co-operation to preserve specific areas such as Straits of Malacca and Singapore have been arranged, but there are remain constrain on regional standards and national response vary widely in scope and purpose. The ASEAN countries share genuine concern about the threat of oil pollution in the region, especially the threat of oil pollution by vessels and offshore drilling installations, however this concern is not matched by appropriate preventive and remedial legislation enforcement. Interest is apparent in various modes of regional co-operation for marine pollution prevention and control, but the diversity of the region limits the feasibility and desirability of bringing the national responses into ac-

\textsuperscript{32} Field Trip Study, V-Ship Norway, Oslo, 16 September 1992

\textsuperscript{33} Ibid.
The ASEAN countries must aware that the size of oil carriers passing through this area, the carriage of noxious materials by sea, and the potentially harmful effects of severe pollution to the marine environment are need a comprehensive multilateral action and agreement. This agreement should regulate all aspects of pollution from ships. In addition, the ASEAN member countries should jointly develop and promote contingency plans for responding to pollution incidents. Examples of such co-operation are to be found in the Gulf Area, Mediterranean, Baltic and the North Sea.35

The UNCLOS provides that States should endeavor to harmonize their policies regarding protection of the marine environment. It also provides a general legal framework addressing operational pollution, but leave the specific to a "general accepted international rules and standards for prevention, reduction and control of pollution from vessels".36 This refers specifically to the standard of discharge and requirement for construction and equipment stipulated in the International Convention for the Prevention of Pollution from Ships, 1973 and its Protocol of 1978 (MARPOL 73/78).

The MARPOL contains 20 articles and has two protocols which respectively deal with reports on incidents involving harmful substances and arbitration. In addition,

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34 Mark J. Valencia, op. cit., p. 125-132


there are five annexes regarding the prevention of:

(a) Pollution by oil (Annex I);
(b) Pollution by noxious liquid substances carried in bulk (Annex II);
(c) Pollution by harmful substances carried by packages, portable tanks, freight containers, or road or rail tank wagons etc. (Annex III);
(d) Pollution by sewage from ships (Annex IV); and
(e) Pollution by garbage from ships (Annex V).

The Convention provides a complete package of regulations on prevention of marine pollution from ships, in the sense that it apply to any ships of any types and fixed or floating platforms. However, warships, naval auxiliaries or other ships owned or operated by a state and exclusively used for non-commercial service, are excluded. But such ships must act in a manner consistent with the Convention.37

Each annexes to the Convention required the parties to provide and maintain adequate reception facilities in ports for discharging oil residues, noxious chemical substances, sewage and garbage from ships. Certain additional obligations apply to every parties to the Convention with regard to the special areas that designated in the Convention.

Conclusion remarks

This Chapter has illustrated the prospects of maritime transport co-operation in the ASEAN countries

37 Shamir Mankabady, op.cit., pp. 340-348
which is paramount important to the development of this region. However, due to the lack of necessary skilled manpower, capital, technical know-how and so on to manage both maritime transport structure and infrastructure, these inadequacy led to loose in regional maritime transport cooperation.

The new initiative to strengthen regional cooperation in this sector is needed and the role of international organizations or institutions are demanded, in the sense that more assistant is needed in kind of expertise through transferring maritime knowhow and technology in regional seminars or workshops.

In reverse, the ASEAN countries should take the international organizations' decisions into their consideration. It can be achieved through ratification and implementation of international convention relating to the maritime transport or other maritime issues with some adjustment for its specific cases.

As Mark J. Valencia criticized, that "the countries of South East Asia are generally skeptical of international conventions... Apparently they feel that costs imposed by implementation and enforcement of the international regulations outweigh the benefits to be derived." With the increasing economic development, however, it may now be asked: is it time for individual or collective re-examination of the benefit and costs of each of the existing conventions?

38 Mark J. Valencia, op.cit., pp. 254

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Considering the above challenge, the ASEAN countries should harmonize their maritime policies to a certain degree of standard that could be agreed by all ASEAN member countries. Of course, these standard could not be set for national or regional benefit only, but it should be accepted by international community who want to make relationship with the ASEAN region as well.

In line with harmonization of maritime policies, there is a "Guidelines for Maritime Legislation" developed by UN-ESCAP that can be followed as a guide lines to set such standard. The "Guidelines" has the principal objectives to provide a readily-available and common source of reference and assistance to developing countries in their effort towards preparation of an orderly and up-to-date maritime law. This "Guidelines" was drafted by a group of experts appointed by ESCAP in co-operation with ILO, IMO, UNCTAD and United Nations Conference on the Law of the Sea.

It is urgent for the ASEAN countries to re-arrange their maritime transport regulations as their existing regulations are inadequate with the rapid development in maritime technology, maritime law and maritime industry. The safety of ships and prevention of marine pollution from ships are the only one part of maritime transport components that should be re-arranged and harmonized. On the other side, the commercial aspect of maritime industry are also need to be harmonized for the benefit of all ASEAN member countries.
GENERAL CONCLUSION

So far, this paper has concentrated on the needs and the problems of maritime transport in the ASEAN countries. However, there are lessons that should be learned from the development of international maritime transport which will have an impact to the sustainability of regional co-operation in maritime transport the ASEAN region. This chapter intends to look at these developments, pointing to possible future directions to be considered by the ASEAN countries to develop or sustain their participation in maritime transport industry.

Shipping

Currently, many traditional maritime nations are facing difficult times. The over-supply of shipping service world-wide due to the change in international trade patterns, and consequently fall in freight rates, have the main reason for serious declined in the traditional maritime nations' merchant fleet. Furthermore, unstable economic situation in the developed countries due to the global recession, have change relationship between the level of economic activity.

Newer production areas become important because manufacturing and processing facilities are now established in the newly-industrialized countries, particularly of south and east Asia. These development have an evitable impact on the demand for shipping services generated by the traditional maritime nations.

Some of the traditional maritime nations in Europe such as the United Kingdom and Germany, have all experienced decline in their merchant fleet and it mean
that their share in the world fleet have also declined. A loss of share when accompanied by today's stagnating market means a loss of employment opportunities for nationals.

It seems that the decline of the traditional maritime nations' fleet cannot be recovered in the near future because of many reasons - from the investment to the operation of the ships. The financial crisis in the biggest and oldest shipping insurance such as the Lloyd's of London or the crisis in dockyard such as Kockum AB in Sweden, are an evidence that many traditional maritime nations will no longer hold their superiority in maritime industry. On the other hand, there are some developing maritime nations such as South Korea, Taiwan, China, or Singapore have beat the record of international maritime industry.

The Commission of the European Community in its views in the international merchant shipping has suggested to take the developing countries into the considerations for consultation and co-operation while at the same time firmly defending the Community's commercial and shipping interests.¹ The Commission wished that the European Community should consider it useful to intensify its co-operation in shipping matters with the ANDEAN² and the ASEAN countries.

Furthermore, the Commission also welcomed the establishment of Joint ventures between commercial undertakings of the Community and developing countries and

¹ Commission of the European Communities, A Future for the Community Shipping Industry: Measures to Improve the Operating Condition of the Community Shipping. Com. (89) 266 Final, Brussels, 3 August 1989, pp. 16-17
² Consist of Bolivia, Columbia, Ecuador, Peru, and Venezuela.

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support the willingness of the international business community to co-operate with developing countries in the establishment of viable shipping enterprise on commercial basis.

The willingness and the initiatives from developed countries to co-operate with the developing countries create a new challenges and opportunities for national and regional development. It is the time for the developing countries to take this opportunity by developing and improving their shipping industry on the basis, for example, joint venture or joint operation between developed and developing countries, or among the countries in the region.

Safety of ships

The safety of ships is largely dependent upon the adequacy of its construction, equipment and maintenance thereof. Since shipping has grown enormously sophisticated in the past decade, it seems that marine casualties likewise have grown increasingly complex.

To prevent shipping disaster and to ensure that vessels sailing through the ASEAN region are save, to be required a standard that should be agreed by all of the government in the region. International standards adopted by the international institutions should be ratified and implemented because these standards "reflects the highest practicable standard".

It is obvious that the development in maritime transport have been characterized by increasing need for differentiation method of transport by sea such as LNG carrier, oil tanker, container ship and so on, and the introduction of new technology. Regulations, control and
supervision have to be addressed to absorb this development.

In spite of the fact that the great majority of injuries and marine casualties are due to too human error, the standard regulations that should be applied must award the same degree of attention between technical and operative standard such as operation management system, training, qualification requirement, and so on.³

Protection of marine environment

Since environmental problems transcend national boundaries, regional co-operation is necessary to protect the marine environment from vessel source pollution. As already mentioned in the previous Chapters, several generalizations can be made about pollution in the South East Asia region. First, the ASEAN countries share genuine concern about vessel source pollution. Second, the concerns about pollution is not followed by appropriate legislation and enforcement. Third, although there are various modes of regional cooperation for marine pollution prevention, but diversity of the interests limits the actual action to response against marine pollution from shipping activities.

It should be realized that the need for development and the need for environmental protection not necessarily contradict among ASEAN member countries. There should be a regional standard of regional action to protect regional marine environment.

Programs are needed to upgrade awareness and skills of personnel in the region and to train people to

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³ Mark J. Valencia, Marine Policy in the South East Asia, p. 265
conduct research, monitoring, and policy formulation to control marine pollution. It would be useful to coordinate regional data exchange on marine pollution and to increase the number of co-operative research, training and response programs within the ASEAN network.

Regionally, there are numbers of international organizations assisting the ASEAN regional development. Their contributions could be regarded as a means for better regional co-operation in maritime transport and other maritime issues. The international institution such as the World Maritime University of the IMO should be used as best to exchange maritime knowledge and sciences for better future of regional co-operation. With the ratio of minimum ten students of the ASEAN region graduated from this institution annually and most of them are coming from the maritime administrations, it is hoped that they can understand the needs and the problems of regional co-operation on maritime transport and related issues in the ASEAN region.
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Source: UNDP Compendium of Approved Projects as of 30 September 1987
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B=Brunei, I=Indonesia, M=Malaysia, P=Philippines, S=Singapore, T=Thailand
Source: 58th MSC Meeting, September 1990