

WAYS TO EXPAND COOPERATION BETWEEN UKRAINE AND ASEAN UNDER THE CHAIRMANSHIP OF INDONESIA

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Given the geographical remoteness, different regional ecosystems, and, as a result, different challenges and threats, the expansion of cooperation between Ukraine and ASEAN is limited, except for trade, military-technical, cultural and humanitarian cooperation, which is primarily bilateral. One of the most promising options for expanding cooperation with the Association, which would be of interest to all member states and especially to Indonesia, is in the area of maritime security, maritime law and maritime diplomacy, as well as maritime environmental safety.

Maritime security and the fight against piracy

The South China Sea (SCS) is a strategically important water area for ASEAN member states, as the SCS waters wash the shores of almost all the countries of the Association, and for Asian states in general (China, Japan, South Korea, etc.). It is the fourth largest sea in the world after the Philippine, Coral and Arabian Seas.

The SCS plays a key role, firstly, as a source of hydrocarbons on the continental shelf. Oil reserves in this region were found to be approximately 1.2 cubic kilometers (7.7 billion barrels) with an estimated total volume of 4.5 cubic kilometers (28 billion barrels). Gas reserves are estimated at 7,500 cubic kilometers).

Secondly, the SCS is a significant transit route linking East Asia with the oil and gas-rich regions of the Middle East. It is the second busiest sea route in the world, with more than 50% of the total annual trade volume passing through the Straits of Malacca, Sunda and Lombok Straits. More than 1.6 million cubic meters (10 million barrels) of crude oil passes daily through the Strait of Malacca, where piracy is rampant. On average, approximately 80% of imported goods come to East Asia through the South China Sea, accounting for one-third of all world trade. Oil and oil products account for about half of the volume of

maritime transportation.

That said, this region is highly affected by piracy. According to the International Maritime Organization's new annual report¹ on piracy and armed robbery against ships, the total number of reported incidents was 131 between January and December 2022. Of these, 72 incidents were reported in the Straits of Malacca and Singapore Strait, 21 in West Africa, 14 in South America (Pacific), 9 in the Indian Ocean, 6 in South America (Atlantic), 4 in South America (Caribbean), 4 in the South China Sea, and 1 in the Arabian Sea.

58% of all incidents reported in 2022 occurred in Southeast Asian waters, a figure that increased compared to 2021. About 81% of the incidents reported in 2022 targeted ships traveling in the critical Malacca and Singapore Straits. The Strait of Malacca has been of the greatest interest to pirates. Located between the Malay Peninsula and the Indonesian island of Sumatra, it connects the Andaman Sea basins in the Indian Ocean and the South China Sea in the Pacific Ocean. The strait is the shortest maritime route for transporting oil and liquefied natural gas from the Persian Gulf and Horn of Africa to Asian markets. Approximately 20 to 25% of the world's trade, 25% of all oil transported by sea, and about a third of liquefied natural gas passes through it. Due to the high level of supply, the strait is a key transportation artery for Asia. Blocking the strait and cutting off supplies could cause significant economic losses for the regional shipbuilding industry, financial markets, and companies. Acts of piracy and armed robbery have also been reported in the Strait of Malacca, the southern part of the South China Sea, within the Indonesian archipelago, and in some ports and anchorages in Asia. As for incidents on board tankers involving the theft of oil cargo, most of them occurred in the southern part of the South China Sea.

Against this backdrop, and given the need to ensure the stability of regional maritime transport, trade, and energy communications, ASEAN is putting considerable effort into developing maritime security, which is aimed at countering piracy and armed robbery of ships.

Ukraine has experience in fighting piracy as well. Ukrainian sailors have repeatedly been captured by Somali pirates. Back in November 2010, Ukraine joined the European Union's Atalanta anti-piracy operation, which has been running since 2008, and in 2013 it joined NATO's Operation Ocean Shield to combat Somali piracy in the Gulf of Aden and off the Horn of Africa, which began in August 2009. In the spring of 2012, the then Verkhovna Rada Commissioner for Human Rights Nina Karpachova noted that Ukraine was second in the world after the Philippines in terms of the number of pirate attacks on ships carrying its citizens. According to the data announced at the time, in 2008–2011, 42 vessels with 196 Ukrainians on board were attacked by pirates, of which 31 foreign vessels with 155 Ukrainians on board were taken captive.

¹ https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/MSC.4-Circ.267_Annual%20report_2022.pdf

Therefore, it is reasonable to consider the possibility of cooperation with ASEAN countries, both multilaterally and bilaterally, to build confidence and develop a common approach to combating piracy and armed robbery through conferences, seminars, forums, and advisory support with national maritime agencies of ASEAN countries. In addition, there is a high potential for Ukraine's involvement in the ASEAN Maritime Forum, which is viewed as a dialogue platform rather than a full-fledged multilateral mechanism for coordinating maritime security cooperation. This limits an effective and timely response to emerging problems, but will boost Ukraine's diplomatic engagement in the regional agenda, which views piracy as a security and economic threat. In the future, the dialogic format of cooperation can be reformatted into naval cooperation to combat piracy and cross-border crime and develop military-technical cooperation with the countries of the Southeast at the bilateral level. This is particularly relevant today, when Russia is becoming an increasingly "toxic" country, and is losing capacity and resources as a key supplier of arms to regional states, which could make Ukraine an alternative.

The Law of the Sea and the problem of maritime conduct

The SCS and the archipelagos located within its waters are also a zone of clash of interests between regional powers and the object of territorial disputes. China claims 80% of the SCS water area—the so-called nine-dash line zone, also called the "cow's tongue line" because its contours resemble the shape. At the same time, Beijing justifies its claims with "historical rights." In fact, the SCS is the most important sea route for China to deliver its goods by sea to Europe, Africa and the Middle East. China receives oil, liquefied natural gas and other resources from the Middle East and Africa. If this route is blocked, it threatens to collapse the Chinese economy, which is deprived of access to energy resources. Hence, the SCS is a matter of China's national security.

Beijing's control over the South China Sea will mean further expansion of its political and economic leverage, as well as strengthening its energy independence. This will further expand China's influence on neighboring countries and, accordingly, weaken the influence of the United States and its allies, which are completely dependent on hydrocarbon supplies that pass through here. The Strait of Malacca is vital to China. Approximately 60% of China's trade and 80% of its oil imports pass through it. Consequently, all of China's foreign trade, economic development, and energy security depend on the safety of navigation in the Strait of Malacca directly, as well as in the SCS as a whole. This situation was called the "Malacca dilemma" by the then Chinese President Hu Jintao back in 2003. Since then, the Chinese authorities have been looking for a way to offset this vulnerability.

China, using its power and authority in geostrategic terms, pursues a realistic policy and refuses to work out a compromise solution that would suit other countries in the region that have valid claims against Beijing.

In its strategy on the SCS, Beijing relies on the policy of *fait accompli*, which implies creating a situation in which China's sovereignty over the SCS, at least within the nine-dash line, will be perceived by the international community as a settled fact after a certain period of time without the possibility of returning to the original status quo.

Most of China's actions fit well into this policy: the creation of artificial islands and the expansion of existing islands and reefs, the launch of tourist cruises to the disputed islands in 2016, active exploration activities by the China National Petroleum Corporation and the Chinese oil company Offshore Oil Engineering, and the PLA's authority to authorize Chinese Navy patrol vessels to stop, detain and search foreign vessels if they enter disputed waters without the permission of the Chinese authorities.

But this does not limit Beijing's active involvement in the region. The Chinese authorities have installed and are actively operating drilling rigs, research vessels and patrol boats, and hundreds of fishing boats are plowing the waters.

China's persistent and aggressive policy in the SCS is causing dissatisfaction among ASEAN member states; the Philippines, Vietnam, Brunei, and Malaysia. There are four groups of islands in the SCS: the Pratas Islands, Paracel Islands, Spratly Islands and the Zhongsha Islands (also known as Macclesfield Bank). The names in Chinese are Dongsha (東沙), Xisha (西沙), Nansha (南沙), and Zhongsha (中沙), collectively referred to as the "Four-Sha." The Spratly Islands are disputed by Vietnam, China, Taiwan, Malaysia, Brunei, and the Philippines. All stakeholders, except Brunei, have small military contingents on the archipelago. The Paracel Islands are the subject of a dispute between Vietnam, China, and Taiwan. The Paracel and Spratly archipelagos are increasingly important because they lie on the routes connecting the Pacific and Indian Oceans; they are a critical eastern flank for the rest of Asia, for Europe and Africa. Controlling these archipelagos means controlling the sea and air routes of the South China Sea.

The islands can be used as observation points for submarine operations, for the construction of bases to protect sea communications, and as launching points for amphibious assaults and ground attacks. If war breaks out on the Asian continent, a military presence on the Spratly Islands could be effectively used to stop all sea passages in the South China Sea.

The position of ASEAN states is that it is imperative to comply with the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Another equally important document that determines the state of play in the region is the Declaration on the Conduct of Parties in the South China Sea, signed by China and the

ASEAN member states. The Declaration was the first step toward signing a Code of Conduct for the Parties in the South China Sea and was initiated in the 1990s by the Philippines, Vietnam, and Malaysia. The dispute settlement could have reached its logical conclusion (the signing of the Code), but the lack of unified positions of the ASEAN countries led to the “freezing” of this process, although the discussion continues today.

During the ASEAN summits, the member states of the organization have repeatedly expressed their desire to reach agreement on the Code. This crucial document will become the basis for resolving territorial disputes and conflicts, ensuring stable economic development of the region and development of energy resources. The Code will eliminate the possibility of resolving current conflicts by military means.

The decision of the Arbitration Chamber of the Hague Court of Arbitration on the Philippines’ lawsuit against China, filed in 2016, had a significant impact on the current state of affairs. The court recognized China’s “historical claims” as illegal. The tribunal concluded that their illegitimacy is not due to the fact that such claims contradict the rules and provisions of the 1982 UN Convention on the Law of the Sea, but rather to the fact that the status of “historic” waters is applicable mainly to bays and other marine areas adjacent to the coast.

Currently, there are two main approaches to resolving the conflict in the SCS: negotiations only between the parties to the conflict (the Chinese option) or internationalization of the problem and ensuring its international legal solution, primarily on the basis of the UN Convention on the Law of the Sea (the Philippine option).

Meanwhile, it seems that the creation of a regional maritime organization could be a potentially promising solution, which would avoid further internationalization of the conflict, but at the same time create an international platform for discussion and search for ways out of the current situation exclusively by the parties concerned.

It should be noted that Indonesia, which currently holds the ASEAN chairmanship, has consistently maintained a neutral position and is positioned as a supervisor who advocates exclusively for the peaceful settlement of disputes and compliance with international law. Jakarta refuses to go into direct confrontation with China, although the parties had a conflict in 2015 over the Natuna archipelago.

Conflict between the PRC and the Republic of Indonesia over the Natuna Archipelago

In 1982, Indonesia became one of the 117 states that signed the UN Convention on the Law of the Sea, and ratified it in 1985. For states whose territory is formed by numerous islands,

such as the Philippines, Indonesia, Maldives and Seychelles, the Convention provides for a special status—“archipelagic State.” The introduction of this status necessitated the definition and delimitation of borders with neighboring states. A clear definition of stable and legally fixed land and maritime borders has become one of the main directions of the foreign policy of independent Indonesia. However, the delineation of Indonesia’s maritime borders has been very difficult and has led to a number of disagreements and conflicts with neighboring countries.

By mid-2012, Indonesia managed to define maritime borders with seven neighboring countries—India, Thailand, Malaysia, Singapore, Vietnam, Papua New Guinea, and Australia. Yet not all issues with these countries have been resolved. Maritime borders with the Philippines, Timor-Leste, and the Pacific nation of Palau remain uncertain. Disputes with China over the maritime space northeast of the Natuna Islands remain ongoing.

The incident in the Natuna region in 2015 could have severely shaken Indonesia’s neutral position and drawn Jakarta into an open clash with China.

The Natuna archipelago is located between the island of Kalimantan and the Malacca Peninsula and is known for the region’s largest gas field. In November 2015, Chinese Foreign Ministry spokesperson Hong Lei said that China has no claim to the archipelago and emphasized that just as Indonesia has no claims to the SCS, China has no claims to the Natuna Islands. The archipelago itself can be called an outpost that allows it to influence the course of events in the SCS. Jakarta has consistently continued to increase its presence in the waters at the expense of the archipelago. In particular, the Chief of Staff of the Indonesian Air Force, Air Chief Marshal Agus Supriatna, noted that Indonesia intends to build air force bases in Natuna to make the archipelago an Indonesian Pearl Harbor.

The Natuna incident began on March 19, 2015, when Indonesian authorities spotted the Chinese vessel Kway Fey 10078 within the Indonesian Exclusive Economic Zone in the SCS. A patrol vessel of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia detained the Chinese vessel along with eight crew members, accusing them of illegal fishing with trawls, and escorted the ship to Natuna waters for further investigation. The commander of the Ranai Naval Base, Natuna, Colonel Arif Badrudin, claimed that the Chinese fishing vessel was conducting its illegal activities within the 83.5 square kilometer area of the South China Sea (4.34 kilometers from Natuna), which is at the intersection of Indonesia’s exclusive economic zone, the Indonesian continental shelf border, and the Chinese nine-dash line. He added that many Chinese vessels are engaged in illegal fishing in the area, accompanied by Chinese coast guard ships.

Despite the looming risk of an escalation of the conflict with China, Indonesia showed restraint and did not take any drastic steps that could worsen relations between the two countries, including the threat of Minister of Maritime Affairs and Fisheries Susi Pudjiastuti

to bring the case to the International Tribunal for the Law of the Sea. The Ministry of Foreign Affairs of China, in turn, stated that the trawler was carrying out “normal activities” in “traditional Chinese fishing grounds.” Director of the East Asia and Pacific Department of the Indonesian Foreign Ministry Eddy Yusuf assumed that the Chinese statement about “traditional Chinese fishing grounds” hides the familiar term “nine-dash line” that China does not use in its dialogue with Indonesia, since such rhetoric would lead to conflict. Although the issue was resolved after several meetings between the two countries, the conflict in the Natuna region showed the need to remain vigilant with China. Therefore, the law of the sea and the behavior of states at sea are of particular interest to Indonesia and can be a tool for expanding cooperation both bilaterally and with ASEAN as a whole.

The issue of the law of the sea is crucially important for Ukraine, given the existential threat posed by the Russian Federation, which is more aggressive than China in the Black and Azov Seas. The annexation of the Crimean Peninsula led to the de facto occupation by Russia of 3/4 of Ukraine’s maritime space, which includes the territorial sea and the exclusive Ukrainian maritime economic zone, while the maritime border between Ukraine and the Russian Federation has not yet been established in accordance with international maritime law, which resulted in an interstate incident in 2003 over Tuzla Island in the Kerch Strait. In addition, during military exercises, the Russian Federation blocked the Azov Sea and part of the Black Sea, thus preventing Ukrainian vessels from leaving the ports of Berdiansk and Mariupol for the Black Sea. Accordingly, the search for and joint development of legal mechanisms to curb expansion in violation of international maritime law by a potential or actual aggressor may be of common interest to Ukraine and ASEAN countries, either bilaterally or in the Ukraine-ASEAN multilateral format, as well as on global platforms such as the UN.

Foreign policy strategy of President Joko Widodo: “Indonesia is the World’s Maritime Axis”

The law of the sea is a subject of interest to Indonesia, as a country that claims to be a regional and, in the future, a global leader, a powerful maritime nation. In 2014, Indonesian President Joko Widodo promulgated the doctrine “Indonesia is the World’s Maritime Axis,” which identified five main pillars on which the doctrine is based.

1. Revival of the historical maritime culture of the Indonesian people.
2. Conservation of marine resources and regulation of marine fisheries, focusing on the establishment of Indonesian sovereignty over marine products.
3. Giving priority to the development of comprehensive and modern maritime infrastructure and communications, the construction of strategic sea lanes and

modern deepwater ports, while improving the shipbuilding industry, logistics and maritime tourism.

4. Strengthening of maritime diplomacy, elimination of sources of conflicts at sea, such as illegal fishing, violation of sovereign borders, territorial disputes, piracy and marine pollution, while establishing cooperation in all areas of activity in the maritime space.
5. Being located at the junction of two oceans, the Indian and Pacific, Indonesia must build up its maritime defense capabilities to ensure maritime security.

For Indonesia, the doctrine defines two main tasks—geostrategic and geo-economic. The geostrategic orientation involves a significant expansion of Indonesia’s foreign policy interests and a shift from Southeast Asia to the Indo-Pacific macro-region. The Widodo Doctrine expands Indonesia’s sphere of interests from Australia to the entire Indian Ocean basin, including the coastal states of Africa. The main goal is to raise Indonesia’s status to the level of an influential global (maritime) power.

The geo-economic aspect involves turning Indonesia into a strategic transport, logistics and trade hub of global importance. In 1953, Indonesia’s first president, Sukarno, called for the country to become a maritime nation, the ruler of the seas. Reviving the ideas of the fathers of Indonesian statehood, Joko Widodo proclaimed the slogan “In the ocean we triumph.”

The Widodo Doctrine was the first to put forward the *concept of maritime diplomacy*. First and foremost, maritime diplomacy should be aimed at eliminating sources of conflict at sea, such as illegal fishing, violations of sovereignty, territorial disputes, as well as piracy and maritime pollution. This concept emphasizes the desire to resolve problems peacefully through diplomatic negotiations without the use of any form of violence.

Inextricably linked to this concept is the second foreign policy objective, which is to strengthen Indonesia’s sovereignty and jurisdiction over its maritime waters, clarify borders, and resolve border territorial disputes with neighboring countries.

Indonesia also applies the concept of maritime diplomacy to the conflict in the SCS. Indonesia, as a mediator, welcomes the commitments made by the parties to implement the Declaration on Conduct in the SCS and supports the finalization of the Code of Conduct in the SCS.

Indonesia considers the settlement of territorial disputes to be a critical step in ensuring security in the region and around the world. To this end, the Ministry of Foreign Affairs aims to increase Indonesia’s activity and contribution to accelerating the settlement of territorial conflicts in the region through the ASEAN mechanism.

Maritime environmental security

Southeast Asia is one of the fastest growing regions in the world. As a result of industrialization in the countries of the region, the marine environment is deteriorating sharply. In addition, as the region's seas are crossed by the world's largest transportation routes, ship traffic is accompanied by increased pressure on the marine environment. Given that the region is a global center of marine biodiversity, the consequences of marine pollution are both regional and global. Recognizing the danger of marine environmental degradation, Southeast Asian states consider the issue of marine environmental safety as an integral part of their environmental security policy.

ASEAN pays considerable attention to the issue of marine environmental security, as reflected in the Hanoi Plan of Action (1999–2004), which calls on the Member States to strengthen regional cooperation on integrated coastal zone protection and management; develop a regional action plan to protect the marine environment from land-based and marine sources of pollution; and strengthen regional cooperation to protect marine heritage parks and reserves. In addition, the countries of the region were encouraged to pursue interagency and intersectoral coordination at the national, regional and universal levels for the sustainable development of the ASEAN coastal and marine environment. According to this document, ASEAN member states should enhance regional cooperation on oil spill response.

Regional coordination of marine environmental protection is carried out by the Marine and Coastal Protection Working Group. The Working Group is composed of national facilitators responsible for coordinating national efforts in seven areas: protection of coral reefs, seaweeds and mangroves; tanker discharges and ballast water; solid, liquid and hazardous waste; clean mining; coastal erosion; ecotourism; and protection of coastal wetlands and protected areas. The working group implements a number of criteria adopted by ASEAN ministers on marine water quality, national marine areas and marine heritage areas. The ASEAN Marine Water Quality Criteria will consist of 17 parameters for protecting the aquatic environment and human health.

Maritime environmental safety is essential for Ukraine. Even before Russia's full-scale invasion of Ukraine, environmentalists noted the unsatisfactory state of the Black Sea waters. The most critical indicators of the state of the marine environment and hazardous factors of negative impact were eutrophication and its consequences: heavy pollution of marine ecosystems with toxic and carcinogenic substances, microbiological pollution, reduction of biodiversity, reduction of marine living resources, including fish stocks, reduction of quality and availability of recreational resources, and threats to public health. A full-scale war significantly worsens the situation: The Russian Armed Forces are launching

missiles from submarines in the Black Sea, dumping spent fuel into the water, and destroying biological treatment facilities in the occupied territories. Moreover, after the Russian invasion, massive deaths of dolphins due to infections, intoxication, and exposure to radio frequencies have been recorded. The disaster at the Kakhovka hydroelectric power plant aggravates the situation dramatically. The water from the Kakhovka HPP contains a large amount of pollutants that will enter the Black Sea, including toxic metals and oil hydrocarbons, which can have consequences for the marine ecosystem. Moreover, the abundance of fresh water amid rising temperatures and the usual water blooms that traditionally occur in the Black Sea will be longer due to additional desalination.

In summary, the issue of ensuring marine environmental safety is a subject for further cooperation between Ukraine and ASEAN countries, particularly in terms of developing legal mechanisms to hold accountable countries that deliberately commit actions that are hazardous to the environment.

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