Cooperation in the Straits of Malacca & Singapore

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Outline

- History of Passage through Straits
- Overview of Straits of Malacca and Singapore
- Cooperative Mechanism
- Challenges
History of Passage through Straits

- Emmerich de Vattel – 1758
- ICJ - *Corfu Channel Case* 1949
- Article 16(4) Territorial Sea Convention 1958
- Articles 37 – 44 UNCLOS 1982
Emmerich de Vattel

“...straits...when they serve for a communication between two seas, the navigation of which is common to all or several nations, the nation which possesses the strait cannot refuse the others a passage through it.”

*The Law of Nations or the Principles of Natural Law - 1758*
As a matter of customary law, warships had a right of innocent passage through international straits which could not be suspended by the coastal State.
There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.
Art 38(2) UNCLOS - 1982

“Transit passage means...the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an EEZ and another part of the high seas or an EEZ.”
Straits of Malacca and Singapore

- Geographical Overview
- Importance
- Maritime boundaries
Geographical Overview

- Connecting the Indian Ocean with the South China Sea
- Shortest routes between the Middle East and Far East Asian countries
- Approximately 520 nm → the longest strait used for international navigation
- The narrowest part of the Strait of Malacca is 8.4 nm wide; for Singapore Strait is just 3.2 nm.
Importance of the Straits

- >50% of world’s oil supply carried by sea
- 80% of crude-oil supplies for Japan and Korea
- 60,000 vessels / year
- 10.3 million barrels of oil per day in 2002
- Rich in fishing grounds, mangroves, coral reefs and marine biological diversity
- Oil flows through the Strait are 3x greater than those through the Suez Canal, and 15x greater than those through the Panama Canal
Maritime Boundaries

- Maritime boundary agreements for most but not all of the Straits.
- Malaysia and Indonesia agreed on a continental shelf boundary in 1969 (North Malacca Strait > 24 nm).
- Malaysia and Indonesia territorial sea boundary agreement 1990 (Southeast Malacca Strait < 24 nm).
- Territorial sea boundary between Indonesia and Singapore 1973 and most recently in 2009.
Cooperative Mechanism

- Cooperation between Indonesia, Malaysia and Singapore prior to UNCLOS
- Article 43 UNCLOS
- Current Cooperative Mechanism
Cooperation of Littoral States

- The littoral States have been cooperating since the early 1970s through Tripartite Technical Experts Group (TTEG).
- Revolving Fund scheme established in 1981.
- Measures to enhance safety of navigation are submitted by the 3 States to the IMO:
  - Traffic Separation Scheme
  - Under keel clearance requirement
  - Mandatory ship reporting scheme
One Fathom bank

Horsburgh
Article 43 UNCLOS

User States and States bordering a strait should by agreement co-operate:

a. In the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and

b. For the prevention, reduction and control of pollution from ships.
Negotiation of Article 43 UNCLOS

- Littoral States are concerned with preserving their sovereignty and territorial integrity, but lack capability to protect the Straits.
- Malaysia’s concerns of the financial burden it would have to bear in ensuring the safety of the navigation and protection of the marine environment in the Malacca Strait.
- However, international practice does not allow the imposition of charges on ships by coastal States by reason only of their transit passage.
The Sound Dues
Purpose of Article 43 UNCLOS

- To encourage cooperation between user States and States bordering straits to ensure the interests of user States are taken into account.
- Basis for international cooperation to defray the cost of aids to navigation or other measures relating to navigational safety or marine pollution.
2007 Cooperative Mechanism

- In 2004 IMO Secretary-General led an initiative to enhance safety, security and environmental protection in Straits of Malacca and Singapore
- Adopted in 2007 after 3 years of negotiations but limited to safety and environmental protection – not security
- Cooperative Mechanism is the first scheme to implement Article 43 of UNCLOS
2007 Cooperative Mechanism

1. Cooperation Forum – platform for dialogue
2. Project Coordination Committee – 6 projects with contributions from Australia, China, EC, Germany, India, Japan, Korea and USA
3. Aids to Navigation Fund – US$ 15.3 million China, India, Japan, Korea, Saudi Arabia, UAE, Malacca Straits Council, Nippon Foundation, IMO & IFAN
Project Coordination Committee

1. Removal of wrecks in the TSS (India & Germany)
2. Capability development to deal with spills (Australia, China, EC & USA)
3. Development of automatic identification systems & prevention of collisions (Korea, Japan, & Australia)
4. Tide, current & wind measurement system (China & India)
5. Replacement and maintenance of existing Aids to Navigation in the TSS (Japan & Korea)
6. Replacement of Aids to Navigation destroyed by the 2004 tsunami (China)
Current & Future Projects

- The **Marine Electronic Highway Project** for the Straits is now under the cognizance of the Tripartite Technical Expert Group.
- **Emergency Towing Vessel service.**
- Development of an under keel clearance management system.
Other Funds

- **Revolving Fund** - 450 million yen:
  - October 1992 – The Nagasaki Spirit incident in the north Malacca Strait (Indonesia & Malaysia)
  - October 2000 – The Natuna Sea incident near Tanjung Pinang (Indonesia)
  - May 2010 – The MT Bunga Kelana 3 and the MV Waily collision

- **IMO Malacca & Singapore Straits Trust Fund** – US$1.86 million - China, Greece, Germany, Norway and EC
Challenges

- Enforcement lies with flag State
- Lack of clear maritime boundaries
- SOP for Joint Oil Spill Combat
- Private sector participation
- Cross-strait traffic
- Transparency → to stimulate interest and support; to educate the public.
Thank You for Your Attention

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