

The Establishment of a Cooperative Mechanism for the Straits of Malacca and Singapore under Article 43 of the United Nations Convention on the Law of the Sea

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Introduction

In September 2007, after three years of discussions and negotiations, the three littoral States bordering the Straits of Malacca and Singapore (Indonesia, Malaysia and Singapore) formally launched a cooperative mechanism that is designed to enable user States and other stakeholders to cooperate with the littoral States in enhancing navigational safety and environmental protection in the Straits of Malacca and Singapore. The cooperative mechanism is intended to implement Article 43 of the 1982 United Nations Convention on the Law of the Sea (LOS Convention)¹ which provides that user States and States bordering a strait should by agreement cooperate with respect to navigational safety and environmental protection. This is the first time that Article 43 has been implemented for a strait used for international navigation. This contribution will trace the development of this cooperative mechanism and evaluate its significance.

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¹ *United Nations Convention on the Law of the Sea*, Montego Bay, 10 December 1982, UN/Doc. A/CONF.62/122, 7 October 1982, 21 *I.L.M.* 1261 (1982) [hereinafter LOS Convention].

The Importance of the Straits of Malacca and Singapore

The Malacca Strait is 520 nautical miles in length. Its width varies from 200 nautical miles in the north to 11 nautical miles in the south. The lower half of the Malacca Strait is within the territorial sea (or archipelagic waters) of Indonesia and Malaysia. At its southern end it joins with the Singapore Strait, which is narrower and more difficult to navigate. The Singapore Strait is within the territorial sea (or archipelagic waters) of Singapore and Indonesia.

The littoral States of Indonesia, Malaysia and Singapore agreed in 1971 to adopt a common policy in the two Straits.² As a result, the two straits are treated as one at the International Maritime Organization (IMO) and are commonly referred to together as the Straits of Malacca and Singapore.

The Straits are one of the world's most important shipping lanes. They are the major route used for international navigation between the Indian Ocean and the South China Sea. Ships that pass through the Straits carry an estimated one quarter of the world's trade and one half of the world's oil. Approximately 11 million barrels oil transit the Straits each day, carrying a significant portion of the crude oil supplies of China, the Republic of Korea and Japan.³

Figures on vessel traffic through the Straits vary. According to a study conducted by the Secretariat of the IMO, approximately 60,000 vessels per year transit the Straits.⁴ However, a study by the Ministry of Land, Infrastructure and Transport of Japan in cooperation with the Nippon Foundation found that in 2004 approximately 94,000 vessels of more than 100 gross tonnage passed through the Straits. (The discrepancy in the numbers may be a result of the size of the vessels being monitored, as only vessels of 300 gross tonnage and above are required to participate in the Straits' mandatory ship reporting system.) According to the Japanese study, the number of tankers passing through the Straits in 2004 was

² Joint Statement of the Foreign Ministers of the Republic of Indonesia, Malaysia and the Republic of Singapore, announced simultaneously by the three Governments on 16 November 1971.

³ Profile of the Straits of Malacca and Singapore, Annex, Note by the Secretary-General, Protection of Vital Shipping Lanes, IMO Document C 93/15, 7 October 2004, Annex, p. 3.

⁴ *Ibid.*

almost 23,000, which was 25 per cent of the total number of vessels and 47 per cent of the total tonnage of vessels passing through the Straits. The Japanese study concluded that if the current trend continues, approximately 150,000 vessels will pass through the Straits by 2020 and the share of traffic volume of tankers passing through the Straits in terms of tonnage will increase to 55 per cent.⁵

Past Cooperation Among the Three Littoral States

The three littoral States have been cooperating with regard to the Straits since the early 1970s. Three ministerial meetings of the three littoral States were held before the adoption of the LOS Convention in 1982.

The first ministerial meeting, held in October 1971, resulted in the Joint Statement of 16 November 1971. In the 1971 Joint Statement, the three governments indicated that they were not in agreement on the international legal status of the Straits. They did agree on several matters, including (1) that safety of navigation in the Straits was the responsibility of the three littoral States; (2) that there was a need for tripartite cooperation on the safety of navigation in the Straits; and (3) that a body for cooperation to coordinate efforts on the safety of navigation, comprised only of the three littoral States, should be established.⁶

The second ministerial meeting of the three littoral States took place in Singapore in February 1975. The issue of immediate concern was whether conditions should be placed on the passage through the Straits of very large crude carriers (VLCCs). The Joint Statement of 19 February 1975 included the following points: (1) an expert group should be appointed to study the problem of VLCCs and the possibility of measures to enhance safety of navigation; (2) a traffic separation scheme should be established in the Straits; (3) there should be consultation and cooperation on anti-pollution policy and on compensation for oil pollution damage; (4) a Council of Ministers should be established by the three littoral States on the safety of navigation and marine pollution that should meet annually;

⁵ Y. Okanishi, "Emerging trends in vessel traffic through the Straits," Singapore Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection, 4–6 September 2007, Singapore.

⁶ 1971 Joint Statement, *supra* note 2.

and (5) a Committee consisting of senior officials should be established to assist the Council of Ministers.⁷

The third ministerial meeting of the littoral States was held in February 1977. The ministers reviewed the report of a meeting of senior officials that had been held in Jakarta in December 1976 and adopted the recommendations in the report. The recommendations adopted included (1) vessels transiting the Straits maintain an under-keel-clearance of at least 3.5 meters at all times; (2) deep draught vessels be required to use a deep water route to be designated in part of the Singapore Strait; (3) a traffic separation scheme be established in three areas in the Straits; (4) navigational aids and facilities be improved for the effective implementation of the traffic separation scheme; and (5) a joint policy to deal with marine pollution be formulated.⁸

These adopted recommendations were submitted to the Inter-Governmental Maritime Consultative Organization (IMCO),⁹ and on 14 November 1977 the IMCO Assembly adopted Resolution A.375(X) on Navigation through the Straits of Malacca and Singapore.¹⁰ The resolution mandated a new routing system for the Straits which included traffic separation schemes, deep water routes, and rules relating to under-keel-clearance for deep-draft vessels. It also endorsed the recommendation that all oil tankers navigating through the Straits be adequately covered by relevant insurance and compensation schemes. Annex V of the Resolution contained the "Rules for Vessels Navigating through the Straits of Malacca and Singapore."

The group of experts established in 1975 has come to be known as the Trilateral Technical Experts Group (TTEG). The TTEG meets regularly to coordinate policies relating to safety of navigation and environmental protection in the Straits. The Council of Ministers, however, was never established, and following 1976 no ministerial level meetings specifically dealing with cooperation in the Straits were held until August 2005.

⁷ Joint Statement of the Foreign Ministers of the Republic of Indonesia, Malaysia and the Republic of Singapore, 19 February 1975, Singapore.

⁸ Joint Statement of the Foreign Ministers of the Republic of Indonesia, Malaysia and the Republic of Singapore, 24 February 1977, Manila.

⁹ IMCO is now known as the International Maritime Organization (IMO).

¹⁰ IMO Assembly Resolution A.375(X), Navigation through the Straits of Malacca and Singapore, adopted on 14 November 1977.

As a result of close cooperation through the TTEG, the littoral States have recommended to the IMO the adoption of other measures designed to enhance the safety of navigation in the Straits. For example, in 1998 the three littoral States proposed to the IMO that a mandatory ship reporting system be adopted in the Straits. The Maritime Safety Committee (MSC) of the IMO, acting in accordance with Regulation V/8-1(h) of the International Convention for the Safety of Life at Sea (SOLAS),¹¹ adopted resolution MSC.73(69) on 19 May 1998, establishing the mandatory ship reporting system known as “STRAITREP” for the Straits.¹²

In 1998, the three littoral States also proposed to the MSC¹³ that the traffic separation scheme for the Straits be amended to facilitate the safe and efficient flow of traffic through the Straits. The MSC approved the amendment of the traffic separation scheme so that it extended for more than 260 nautical miles, from One Fathom Bank, off Port Klang, the main port for Kuala Lumpur, through the southern half of the Malacca Strait and the entire Singapore Strait, to the Horsburgh lighthouse area in the South China Sea. The Horsburgh lighthouse is 40 nautical miles from Singapore, at the eastern approach to the Singapore Strait. The measures also amended the traffic separation scheme in the Singapore Strait by creating three precautionary areas.¹⁴

¹¹ Adopted on 1 November 1974, entered into force on 25 May 1980. The text with amendments of Chapter V of SOLAS is available online at U.S. Coast Guard Navigation Center, <www.navcen.uscg.gov/marcomms/imo/SOLAS_V.pdf>, 28 September 2007.

¹² IMO Resolution MSC.73(69), Mandatory Ship Reporting Systems, adopted on 19 May 1998, Annex I, Description of the Mandatory Ship Reporting System in the Straits of Malacca and Singapore.

¹³ IMO Assembly Resolution A.858(20) of 27 November 1997 sets out the procedures for the adoption and amendment of traffic separation schemes and other routing measures, and authorizes the MSC to act on behalf of the IMO in approving such measures.

¹⁴ COLREG.2/Circ. 44, dated 26 May 1998; see also R. C. Beckman, “Enhancing the Safety of Navigation,” *Port of Singapore Magazine* Issue 1 (1999): pp. 26–29.

The LOS Convention Regime on Straits used for International Navigation

The Straits are governed by Part III of the LOS Convention¹⁵ on straits used for international navigation. Pursuant to Part III of the LOS Convention, commercial and military vessels of all States have the right of transit passage through the Straits and such right cannot be impeded or suspended.¹⁶ Ships exercising transit passage through the Straits are bound under the LOS Convention to comply with generally accepted international regulations, procedures and practices governing safety at sea and pollution from vessels.¹⁷ The rights of the littoral States to regulate ships exercising transit passage respecting safety and ship-source pollution are severely restricted. Littoral States may only establish sea lanes and traffic separation schemes and “give effect to” applicable international regulations regarding the discharge of oil, oily wastes, and other noxious substances.¹⁸ In effect, this means that the power to adopt laws and regulations governing vessels exercising the right of transit passage through the Straits rests with the IMO rather than with the littoral States.

Background on Article 43 of the LOS Convention

The regime governing straits used for international navigation in the LOS Convention contains one provision that was intended to ensure that, while user States were able to enjoy the benefits of transit passage, they were also expected to share some of the burdens to ensure safety of and to control pollution in such straits. That provision is Article 43, which places an obligation on user States to cooperate with States bordering straits used for international navigation with regard to navigational safety and vessel-source pollution. Article 43 reads as follows:

- User States and States bordering a strait should by agreement cooperate:
- (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.

¹⁵ LOS Convention, *supra* note 1.

¹⁶ *Ibid.*, Arts. 38, 44.

¹⁷ *Ibid.*, Art. 39.

¹⁸ *Ibid.*, Art. 42.

Unfortunately, with the exception of Japan, user States did not show any interest in cooperative arrangements under Article 43 for the Straits of Malacca and Singapore. User States willingly accepted the benefits of the straits used for international navigation regime, but they were not willing to share the burdens. Consequently, Indonesia, Malaysia and Singapore have had to bear the financial burden, with assistance from Japan, of ensuring navigational safety in the Straits. They have also had to bear the burden of dealing with oil pollution incidents and coping with illegal discharges of oil and oily wastes in the Straits.

Article 43 was a compromise provision which, as already noted, sought to balance the interests of the littoral States and user States with regard to the safety of navigation and environmental protection.¹⁹ The use of the word “should” in the chapeau of Article 43 indicates that the provision was intended to encourage cooperation between user States and States bordering the strait for the specific purposes set out in paragraphs (a) and (b) of the article. The cooperation is to be by “agreement,” but the word agreement is sufficiently vague to include either formal written agreements or less formal arrangements. The provision does not define “user States” but common sense dictates that user States would include States whose vessels use such straits and States who otherwise benefit from the passage of vessels through such straits. Article 43 does not mention the IMO, but this omission would not foreclose a role for the IMO in the process leading to cooperative arrangements.

Commentators have suggested that Article 43 was an attempt to meet the concerns of States bordering straits of having to bear the burden of establishing and maintaining aids to navigation and the risk of pollution of their marine and coastal environment from ships transiting straits, while receiving little benefit since most of the vessels transiting the straits used for international navigation would not stop in the State bordering the strait.²⁰ According to leading commentators, Article 43 was drafted with

¹⁹ On the legislative history of Part III, see *Straits Used for International Navigation, Legislative History of Part III of the United Nations Convention on the Law of the Sea*, Volume II (New York: U.N. Division of Ocean Affairs and the Law of the Sea, 1992); S. N. Nandan and D. H. Anderson, “Straits Used for International Navigation: A Commentary on Part III of the United Nations Convention on the Law of the Sea 1982,” *British Yearbook of International Law* 60 (1989): 159–204; and S. N. Nandan and S. Rosenne, eds, *United Nations Convention on the Law of the Sea 1982: A Commentary*, Volume II (Dordrecht: Martinus Nijhoff Publishers, 1993).

²⁰ Nandan and Rosenne, *ibid.*, p. 383.

straits such as the Straits of Malacca and Singapore in mind,²¹ and one of the purposes of the provision was to ensure that States bordering such straits do not unilaterally impose charges on passing vessels.²²

Commentators have also pointed out that States bordering straits used for international navigation are under no express duty under the LOS Convention to establish a system of navigational and safety aids in straits.²³ The only duty on States bordering such straits is to give appropriate publicity to any danger to navigation within the strait of which they have knowledge.²⁴ However, SOLAS, Chapter V, Regulation 13, provides that each Contracting Government

undertakes to provide, as it deems practical and necessary either individually or in cooperation with other Contracting Governments, such aids to navigation as the volume of traffic justifies and the degree of risk requires.²⁵

Furthermore, Regulation 13 provides that when establishing such aids to navigation, Contracting Governments undertake to take into account international recommendations and guidelines.

It can be concluded that Article 43 is intended to promote and foster cooperation between States bordering straits and user States to enhance navigational safety and environmental protection in straits used for international navigation. This is especially true in straits where user States are the major beneficiaries of safe passage through the straits, and the burdens and risks borne by the States bordering the straits far exceed the benefits they derive from passage of ships through the straits.

Efforts to Implement Article 43 in the Straits

In July 1994, agreement was reached at the United Nations on the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994 Imple-

²¹ Nandan and Anderson, *supra* note 19, at p. 193.

²² S. N. Nandan, "The Provisions on Straits Used for International Navigation in the 1982 United Nations Convention on the Law of the Sea," *Singapore Journal of International & Comparative Law* 2 (1998): 393–399 at 397.

²³ Nandan and Rosenne, *supra* note 19, at p. 383.

²⁴ LOS Convention, *supra* note 1, at Art. 44.

²⁵ SOLAS, *supra* note 11.

mentation Agreement).²⁶ The 1994 Implementation Agreement addressed the concerns of the industrialized countries about the provisions in Part XI of the LOS Convention on deep sea mining in areas beyond the limits of national jurisdiction. The 1994 Implementation Agreement ensured that the LOS Convention would become universally accepted and that its provisions, including Part III on straits used for international navigation, would be accepted by all States as legally binding.²⁷

Indonesia, Malaysia and Singapore realized that this development presented them with an opportunity to attempt to implement Article 43 in the Straits of Malacca and Singapore. This resulted in discussions and papers at international conferences and workshops on cooperative arrangements to improve navigational safety and prevent pollution in the Straits, including the following:

- 1994 Kuala Lumpur Workshop on the Strait of Malacca / 1995 Malaysian Institute of Maritime Affairs International Conference on the Strait of Malacca: Meeting the Challenges of the 21st Century²⁸
- 1996 International Maritime Organization / Institute of Policy Studies Conference in Singapore: Navigational Safety and the Control of Pollution in the Straits of Malacca and Singapore – Modalities of International Cooperation²⁹
- 1996 Regional Conference on Sustainable Financing Mechanisms for the Prevention of Marine Pollution: Public Sector-Private Sector Partnerships³⁰

²⁶ *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982*, New York, 28 July 1994, U.N. General Assembly A/RES/48/263, 33 I.L.M. 1309.

²⁷ In July 1994, the 63 States who were parties to the LOS Convention did not include any of the major industrialized countries. As of 31 May 2007, 155 States are parties to the LOS Convention, including most of the industrialized countries.

²⁸ Selected papers from these workshops were published in H. Ahmad, ed., *The Straits of Malacca: International Co-operation in Trade, Funding and Navigational Safety* (Kuala Lumpur: Maritime Institute of Malaysia, 1997).

²⁹ The papers presented at the conference and the rapporteur's reports summarizing the points made in the papers and the discussions are published in the *Singapore Journal of International & Comparative Law* (1998), No. 2.

³⁰ The regional conference was organized by the GEF/UNDP/IMO Programme for the Prevention and Management of Marine Pollution in the East Asian Seas. It is noteworthy because one of the papers was co-authored by B. A. Hamzah and M. Nizam Basiron

- 1999 International Maritime Organization/Institute of Policy Studies Conference in Singapore: Towards Implementation of Article 43 of the LOS Convention for the Straits of Malacca and Singapore³¹
- 1999 International Conference on the Straits of Malacca: Towards Sustainable Development of the Straits of Malacca (Malacca, Malaysia)³²

The International Maritime Organization (IMO) co-organized conferences in Singapore in 1996 and 1999 with the Institute of Policy Studies (IPS). IPS was headed by Ambassador-at-Large Professor Tommy Koh, who had served as President of the Third United Nations Conference on the Law of the Sea (UNCLOS III), which negotiated the LOS Convention. The 1999 IMO/IPS Conference made significant progress toward reaching a consensus on how to implement Article 43. In summarizing the discussions of the 1999 Conference, the Chair, Professor Tommy Koh, listed 12 points of convergence, including the following:

6. The initiative for implementing Article 43 should be taken by the three littoral States, but that in doing so, the three littoral States should cooperate with the International Maritime Organization.
9. With respect to the implementation of Article 43, ‘user States’ should cooperate with the littoral States to do what the 1982 Convention enjoins them to do and what equity compels them to do.
11. In implementing Article 43, we must take into account the equities on both sides, including the fact that most of the Straits of Malacca and Singapore are within the territorial sovereignty of the coastal States, and the fact that user States have legitimate rights and interests in the Straits.³³

of the Maritime Institute of Malaysia, and was entitled “The Straits of Malacca: Some Funding Proposals.” This paper was also published separately as a MIMA paper.

³¹ The papers presented at the conference and the rapporteur’s reports summarizing the points made in the papers and the discussions are published in a Special Feature volume of the *Singapore Journal of International & Comparative Law* (1999), No. 3, on Implementing Article 43 of the LOS Convention in the Straits of Malacca and Singapore.

³² M. Shariff, F. M. Yusoff, N. Gopinath, H. M. Ibrahim and R. A. Nik Mustapha, eds, *Towards Sustainable Management of the Straits of Malacca: Proceedings of the International Conference on the Straits of Malacca, 19–22 April, 1999, Malacca, Malaysia* (Selangor: Malacca Straits Research and Development Centre (MASDEC), 2000).

³³ R. C. Beckman, “Towards Implementation of UNCLOS Article 43 for the Straits of Malacca and Singapore – Rapporteur’s Report on the 1999 IPS/IMO Conference on

The Rapporteur-General for the 1999 Conference, Robert Beckman, stated in his summary that among the matters on which there is now a better understanding are the following:

6. The three straits States concerned must decide amongst themselves on the nature and extent of assistance they seek and the modalities they wish to establish for such cooperation, and that the initiative for such cooperation must come from the straits States.
7. That a consensus is emerging on certain principles that should govern any funding mechanism under Article 43, and that some form of funding mechanism to implement Article 43 with respect to the Straits of Malacca and Singapore is inevitable.³⁴

It was agreed at the 1999 Conference that the littoral States had to decide amongst themselves on the nature and extent of assistance they should seek and the modalities they wish to establish for cooperation. The only suggestion on how to proceed was made by Ambassador Hasjim Djalal of Indonesia:

In conclusion, I would suggest that the Tripartite Committee of Senior Officials of the Straits of Malacca and Singapore be convened immediately to revive the discussion on the implementation of Article 43, either through informal voluntary cooperation with the users of the straits or through a much more formal mechanism through the IMO or through other conferences.³⁵

The three littoral States did not take up Ambassador Djalal's suggestion. From 1999 to 2005 there was little action or progress relating to burden-sharing arrangements and the implementation of Article 43. No meeting of senior officials was held; no follow-up conference was held; and no discussions among the littoral States took place. The issue of Article 43 was put on the back-burner as a result of the turbulence facing the region arising from the Asian financial crisis from 1997 to 2002, the political upheavals in Indonesia after the fall of President Suharto in 1998, and the 2003 Asian severe acute respiratory syndrome (SARS) crisis. During this

the Straits of Malacca and Singapore," *Singapore Journal of International & Comparative Law* 3 (1999): 253–292, at 285–286.

³⁴ *Ibid.*, pp. 290–291.

³⁵ H. Djalal, "Funding and Managing International Partnership for the Malacca and Singapore Straits Consonant with Article 43 of UNCLOS, 1982," *Singapore Journal of International & Comparative Law* 3 (1999): 457–469, at 469.

period, Japan continued to be only user State that willingly accepted the burdens as well as the benefits of the regime of transit passage through the Straits.

Events Leading to a New Spirit of Cooperation in 2005

After the 11 September 2001 incident in the United States there was increased concern in the international shipping community about maritime terrorism. Maritime security became a high priority at the IMO, and IMO adopted measures to enhance the security of ships and ports.³⁶

As security in ports was enhanced, concern increased about the vulnerability to terrorist attacks of vital sea lanes such as the Straits of Malacca and Singapore. The Indian Navy reportedly escorted vulnerable vessels through the Straits at the request of the United States.³⁷ The United States took various initiatives with coalitions of willing partners, including the Container Security Initiative (CSI)³⁸ and the Proliferation Security Initiative (PSI),³⁹ the latter of which raised some concerns in Asia about whether the LOS Convention provisions on sovereignty and jurisdiction would be respected. A remark by a U.S. Admiral about the establishment

³⁶ A new comprehensive security regime for international shipping was adopted by the IMO in December 2002 and entered into force on 1 July 2004. The mandatory security measures include a number of amendments to SOLAS 1974. They include the new International Ship and Port Facility Security Code (ISPS Code), which contains detailed security-related requirements for governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B).

³⁷ V. Sakhuja, "Challenging Pirates in Malacca Straits," Society for the Study of Peace and Conflict, Opinion/ Analysis, Article No. 6, September 20, 2004, <www.sspconline.org>, 13 September 2007.

³⁸ The Container Security Initiative (CSI) was launched in 2002 by the U.S. Bureau of Customs and Border Protection (CBP), an agency of the Department of Homeland Security. Its purpose was to increase security for container cargo shipped to the United States. See <www.cbp.gov/xp/cgov/border_security/international_activities/>, 13 September 2007.

³⁹ The Proliferation Security Initiative (PSI) was launched by U.S. President George W. Bush in May 2003. It is aimed at stopping shipments of weapons of mass destruction (WMD), their delivery systems, and related materials. See <usinfo.state.gov/products/pubs/proliferation/>, 13 September 2007.

of a Regional Maritime Security Initiative (RMSI) in Southeast Asia was met with suspicion and hostility in Indonesia and Malaysia.⁴⁰ At the same time, the number of incidents of piracy and armed robbery against ships in the Straits of Malacca increased.⁴¹ This resulted in the Malacca Strait being declared a war-risk zone for the purposes of marine insurance by Lloyd's.⁴² Other developments which did not go unnoticed in the Southeast Asia were the steps taken by China to develop a blue-water navy,⁴³ the announcement by India that its maritime security interests extend to the South China Sea,⁴⁴ and proposals in Japan for its Coast Guard to undertake patrols to safeguard sea lanes vital to its maritime interests.⁴⁵

In addition, Japan indicated in 2004 through informal channels that it would no longer be able to bear all of the costs of maintaining and replacing aids to navigation in the Straits and that assistance from other user States would be necessary. As already noted, for many years Japan had been the only user State to contribute to navigational safety and environmental protection in the Straits. Through the Malacca Straits Council of Japan, it had contributed 13.2 billion yen (US\$113 million)

⁴⁰ C. S. Kuppuswamy, "Straits of Malacca: Security Implications," South Asia Analysis Group, Paper No. 1033, 18 June 2004. See <www.saag.org/papers11/paper1033.html>, 13 September 2007.

⁴¹ Of the total number of incidents of piracy and armed robbery against ships reported to the ICC International Maritime Bureau (IMB) Piracy Reporting Centre in Malaysia in calendar year 2004, eight were in the Singapore Straits, 37 were in the Malacca Straits, and 93 were in Indonesia. The IMB reported that the number of attacks in the Malacca Straits was the second highest since the IMB began compiling statistics in 1991, and that many of the attacks in the Malacca Straits were serious and involved vessels being fired upon and crew kidnapped for ransom. ICC International Maritime Bureau, "Piracy and Armed Robbery against Ships, Annual Report, 1 January–31 December 2004" (Kuala Lumpur: ICC International Maritime Bureau, 2004).

⁴² In June 2005 the Joint War Committee (JWC) section of Lloyd's Market Association in London declared the Malacca Strait a war-risk zone. The decision to add the Straits of Malacca to JWC's list was taken following recommendations by a private defence consultant, Aegis Defence Services, which carried out risk assessments on the area and suggested that it was a potential site for a terrorist attack.

⁴³ "Blue-Water Ambitions," *Asiaweek* 26(11) 24 March 2000, <www.asiaweek.com/asiaweek/magazine/2000/0324/nat.2china.navy.html>, 13 September 2007.

⁴⁴ "India Challenges China in the South China Sea," *Asia Times Online*, 27 April 2000, <www.atimes.com/ind-pak/BD27Df01.html>, 13 September 2007.

⁴⁵ "Japan to begin Asian piracy patrols," CNN.com, 6 June 2001, <archives.cnn.com/2001/WORLD/asiapcf/east/06/06/japan.sea.piracy/index.html>, 28 September 2007.

from 1968 to 2005. Japan's indication that it would no longer be able to bear this cost alone created pressure to establish a framework for cooperation under Article 43.

The final impetus for action came from leadership of the Secretary-General of the IMO, Mr. Efthimios E. Mitropolous, with the support of the IMO Council. At its 92nd session in June 2004, the IMO Council addressed concerns about the security of vital shipping lanes and requested the Secretary-General to work on the issue in collaboration with the parties concerned.⁴⁶ The IMO Secretariat undertook a study of vital shipping lanes and gave special consideration to the Straits of Malacca and Singapore. At the IMO Council's 93rd session in October 2004, the Secretary-General submitted a document that analyzed the key issues involved in protecting vital shipping lanes against terrorist attacks.⁴⁷ The document included a profile of the Straits of Malacca and Singapore. The IMO Council agreed that the organization had and could play a role in the protection of shipping lanes of strategic importance and significance.

In March 2005, the IMO Secretary-General delivered the keynote address at the ASEAN Regional Forum on Confidence Building Measures in Singapore. The Secretary-General stated that, as part of his efforts to push forward collaboration on maritime security in the region, he had initiated a round of consultations with the three littoral States and selected user States. He referred to the planned IMO-sponsored meeting to be hosted by Indonesia in September 2005 and stated that this gathering would provide a unique opportunity for the littoral States, user States, and other stakeholders to work to enhance the safety of navigation, environmental protection and overall security in the Straits.⁴⁸

⁴⁶ IMO, "Council – 92nd session: 21–25 June 2004," <www.imo.org/Safety/mainframe.asp?topic_id=114&doc_id=3580>, 28 September 2007.

⁴⁷ Note by the Secretary General, Protection of Vital Shipping Lanes, IMO Doc. C93/15, 7 October 2004. Document includes Annex, "Profile of the Straits of Malacca and Singapore."

⁴⁸ E. E. Mitropolous, "Regional Co-operation in Maritime Security," ASEAN Regional Forum Conference, 2 March 2005, at IMO, Newsroom, Speeches of the Secretary-General, <www.imo.org>, 13 September 2007.

The Batam Joint Ministerial Statement, August 2005

In August 2005, one month before the IMO-sponsored meeting in Jakarta, the foreign ministers of the three littoral States met in Batam, Indonesia, to discuss matters pertaining to the safety of navigation, environmental protection and maritime security in the Straits. This was the 4th trilateral ministerial meeting of the three littoral States on matters relating to the Straits of Malacca and Singapore and the first since 1977.

The Batam Joint Statement⁴⁹ sets out the views of Indonesia, Malaysia and Singapore on the respective roles of the littoral States, user States, and international agencies such as the IMO in enhancing safety, security, and environmental protection in the Straits. The Joint Statement reaffirms that the three littoral States have sovereignty and sovereign rights in the Straits and the primary responsibility for the safety of navigation, environmental protection and maritime security in the Straits. At the same time, the Statement acknowledges the interests of user States and the relevant international agencies (e.g., the IMO), and the role they could play in respect of the Straits. It also states that any cooperative measures taken in the Straits must be in conformity with international law, including the LOS Convention.

With respect to the possible roles of user States and others in cooperative arrangements, the Joint Statement provides that, bearing in mind the responsibility and burden of littoral States and the interests of user States, the ministers welcome the assistance of the user States, relevant international agencies, and the shipping community in the areas of capacity building, training and technology transfer, and other forms of assistance in accordance with the LOS Convention.

The Batam Joint Statement recognizes the importance of the tripartite ministerial meeting in providing the overall framework for cooperation. The ministers agreed that the ministers and the senior officials should meet on a more regular basis to address relevant issues in a timely manner. Such meetings may include, if necessary, representatives of other relevant agencies of the respective littoral States. This wording is important since it acknowledges that some types of cooperation are beyond the

⁴⁹ *The Batam Statement of the 4th Tripartite Ministerial Meeting on the Straits of Malacca and Singapore*, Batam, Indonesia, 1–2 August 2005, IMO Doc. IMO/SGP 1/INF.3, Annex 3.

competence of any one ministry and require coordination between government agencies.

In the Batam Statement, the three littoral States agreed amongst themselves on principles for cooperation in advance of the discussions that were to take place at the IMO-sponsored meeting in Jakarta with the IMO, user States and the international shipping community. The agreed principles for cooperation included (1) that the littoral States have sovereignty and sovereign rights in the Straits; (2) that the littoral States have primary responsibility over the safety, environmental protection and security of the Straits; and (3) that any measures adopted or taken on these matters must be in accordance with international law, including the LOS Convention.

2005 IMO Meeting and the Jakarta Statement, September 2005

The IMO-sponsored meeting in Jakarta was held on 7 and 8 September 2005 and was attended by over 30 States, as well as international organizations and international non-government organizations. The statement from the meeting, known as the Jakarta Statement,⁵⁰ identified several points of agreement relating to safety and environmental protection in the Straits. First, the Statement indicated that it was agreed that the work of the Tripartite Technical Experts Group (TTEG) on safety of navigation should continue and be supported and encouraged. Second, it was agreed that the three littoral States should establish a mechanism for meetings on a regular basis with user States, the shipping industry and other stakeholders, to discuss the issues of safety, security and environmental protection in the Straits and to facilitate cooperation, including exploring the possible options for burden-sharing. Third, it was agreed that the three littoral States should establish and enhance mechanisms for information exchange within and between States so as to enhance maritime domain awareness and to contribute to the enhancement of cooperative measures. It was agreed that where possible, these mechanisms should build on existing arrangements such as the TTEG mechanism.

⁵⁰ *Jakarta Statement on Enhancement of Safety, Security and Environmental Protection in the Straits of Malacca and Singapore*, Jakarta, 8 September 2005, IMO Doc. IMO/JKT 1/2.

2006 IMO Meeting and the Kuala Lumpur Statement, September 2006

A follow-up meeting was held from 18 to 20 September 2006 in Kuala Lumpur, Malaysia. At the Kuala Lumpur meeting representatives from the three littoral States presented papers and made presentations outlining the cooperative mechanism. The proposed cooperative mechanism consists of three elements: specific projects, a cooperation forum, and a fund.

First, the three littoral States proposed six specific projects to enhance safety and environmental protection and requested user States to cooperate directly in these projects. Under the coordination of the littoral States' TTEG, the following six projects were agreed upon: (1) the removal of wrecks in the traffic separation scheme (TSS); (2) cooperation and capacity-building in relation to the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol);⁵¹ (3) a demonstration project of class B automatic identification systems (AIS) transponder on small ships; (4) setting up tide, current and wind measurement systems; (5) replacement and maintenance of aids to navigation; and (6) replacement of aids to navigation damaged in the 2004 tsunami. One of the most important developments at the Kuala Lumpur meeting was that two major user States, China and the United States, expressed interest in participating in three of the proposed projects.

Second, the three littoral States proposed the establishment of a Cooperation Forum to promote open dialogue and discussions between the littoral States, user States and other interested parties. The Cooperation Forum is to be the main avenue for user States and other interested parties to meet and cooperate with the littoral States on improving safety and environmental protection in the Straits. Third, the three littoral States agreed to establish an Aids to Navigation Fund that would enable user States and other stakeholders to make voluntary contributions to enhance navigational safety and environmental protection. Although the Cooperation Forum and the Aids to Navigation Fund were outlined as integral parts of the cooperative mechanism, few details were provided on how they would be established and how they would operate.

⁵¹ *Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000*, 15 March 2000, Australian Treaties Library, [2003] ATNIF 9 [hereinafter (OPRC-HNS Protocol)].

The formal document which emerged from the meeting was the Kuala Lumpur Statement.⁵² The Statement sets out several points of agreement with respect to the cooperative mechanism, including the following points. First, it was agreed that the cooperative mechanism is intended to promote dialogue and facilitate close cooperation between the littoral States, user States, the shipping industry, and other stakeholders. Second, it was agreed that the six projects presented by the three littoral States for enhancing safety of environmental protection should be supported. Third, it was agreed that the littoral States, user States, the shipping industry, and other stakeholders should cooperate towards the establishment of a mechanism for voluntary funding of the proposed projects and for the maintenance and renewal of the aids to navigation in the Straits. It was also agreed that the IMO should act to facilitate a follow-up meeting and to attract sponsors for the proposed projects and contributors for fund.

2007 IMO Meeting and the Singapore Statement, September 2007

A third and final meeting on Enhancement of Safety, Security and Environmental Protection in the Straits of Malacca was convened by the IMO and the Government of Singapore from 4–6 September 2007. The purpose of the meeting was to provide a follow-up forum to build upon the outcomes of the Jakarta and Kuala Lumpur meetings. Indonesia, Malaysia and Singapore formally launched the cooperative mechanism announced at the Kuala Lumpur meeting and provided more details on the three components. They also briefed participants on the progress made to secure sponsors for the six proposed projects. Participants were also updated on the measures being taken by the defence forces of the three littoral States to enhance security in the Straits. The Singapore meeting was attended by representatives from 50 States and 17 maritime-related organizations.

The product of the meeting was the Singapore Statement,⁵³ which affirmed that the littoral States have sovereignty, jurisdiction and territorial integrity over the Straits and primary responsibility for safety, security and

⁵² *Kuala Lumpur Statement on Enhancement of Safety, Security and Environmental Protection in the Straits of Malacca and Singapore*, Kuala Lumpur, 20 September 2006, IMO Doc. IMO/KUL 1/4.

⁵³ *Singapore Statement on Enhancement of Safety, Security and Environmental Protection in the Straits of Malacca and Singapore*, Singapore, 6 September 2007, IMO Doc.

environmental protection in the Straits. At the same time, the Statement acknowledges the role of the IMO, user States, shipping industry, and other stakeholders in cooperating with the littoral States in promoting and enhancing safety of navigation and environmental protection, and in ensuring the uninterrupted flow of traffic in the Straits. The Statement invites the IMO to participate in the cooperative mechanism, to continue to cooperate with the littoral States, and to provide assistance in attracting sponsors for the projects and contributors to the Aids to Navigation Fund. The Statement makes it clear, however, that the cooperative mechanism initiative is being led by the littoral States and that the IMO's role is secondary.

The Singapore Statement also makes it clear that the cooperative mechanism builds upon and enhances existing cooperative arrangements. This is important in the regional context, since Indonesia usually favours building upon existing cooperative mechanisms rather than developing new mechanisms. Therefore, because the TTEG on the Safety of Navigation had worked successfully for years, the littoral States decided to build upon it and enhance its functions.

The Singapore meeting did not establish anything new. Rather, it clarified and solidified what had been agreed to in the previous meetings and formally launched the cooperative mechanism. In particular, the littoral States provided more detail on the cooperative mechanism and publicly announced that user States had come forward to support five of the six projects and the Aids to Navigation Fund. Support for one or more of the projects came from China, Japan, Korea and the United States. In addition, Korea and the United Arab Emirates announced that they would contribute to the Aids to Navigation Fund. Several other States, including Germany, announced that they would try to find ways to participate in the projects.

The lack of support from private industry and other stakeholders for the Aids to Navigation Fund was a disappointment. The IMO Secretary-General stated that the main challenge in this regard is how to sensitize the interested parties.⁵⁴ However, the one exception, as expected, was

IMO/SGP 1/WP.1, <www.mpa.gov.sg/infocentre/newsreleases/2007/nr070906.htm>, 25 November 2007.

⁵⁴ Opening Address by Mr. E. E. Mitropoulos, Secretary-General, International Maritime Organization, Singapore Meeting on the Straits of Malacca and Singapore: Enhancing

the Nippon Foundation of Japan. Consistent with its past generosity, it announced that it would be prepared to contribute to the Aids to Navigation Fund by providing up to a third of the costs of maintaining and repairing the aids to navigation during the first five-year period.

Historic Breakthrough of Great Significance?

In his opening address at the Singapore meeting, the IMO Secretary-General stated that he viewed the mechanism as “an historic breakthrough of great significance” and that the cooperative mechanism constituted “the first attempt to put in place a formal framework to promote implementation of the both the spirit and intent of Article 43 of the United Nations Law of the Sea Convention.”⁵⁵

The cooperative mechanism devised by the littoral States in consultation with the IMO and user States is indeed an historic breakthrough. It addresses (or side-steps) all of the concerns raised in the conferences and workshops held from 1994 to 1999 on the implementation of Article 43 in the Straits. The cooperative mechanism is open to user States without attempting to define the meaning of user States. The cooperative mechanism goes beyond Article 43 in two ways. First, it clarifies that the IMO has a role in the mechanism. Second, it calls for participation by private entities, including the shipping industry and other stakeholders.

User States and other stakeholders are likely to participate in the Cooperation Forum since it will enable them to exchange ideas with the littoral States on how to enhance safety, security and environmental protection in the Straits. The International Association of Independent Tanker Owners (INTERTANKO) was the first to recognize the potential of the Cooperation Forum. At the 2007 Singapore meeting, it stated that it considers its involvement in the Cooperation Forum as a key opportunity and that it is eager to contribute its time and resources to the Cooperation Forum and its future work by acting as a link between the littoral States, user States and the tanker industry.⁵⁶ The Cooperation Forum will also enable user States and other stakeholders to work together with the littoral States

Safety, Security and Environmental Protection, Singapore, 4 September 2007, p. 5, IMO Doc. IMO/SGP 1/INF.7.

⁵⁵ *Ibid.*, p. 4.

⁵⁶ Presentation by Mr. T. Wilkins, Regional Manager Asia-Pacific, International Association of Independent Tanker Owners (INTERTANKO), Singapore Meeting on the Straits

to identify new projects and new cooperative measures to enhance safety, security and environmental protection in the Straits.

User States and other stakeholders who contribute to the Aids to Navigation Fund will also have a voice in the management and operation of the Fund. A committee comprising the littoral States, contributing user States and other contributors will be established to manage and operate the Fund. User States who contribute to specific projects are to sit as members of the Project Coordination Committee. These mechanisms will ensure that user States and other stakeholders who cooperate with the littoral States will be given a voice in both the projects and the Fund as well as in the Cooperation Forum.

The cooperative mechanism is likely to work and be successful for three reasons. First, the mechanism is initiated and driven by the littoral States, recognizes the sovereignty and jurisdiction of the littoral States in the Straits, and is consistent with international law, including the LOS Convention. Second, it recognizes that the IMO, user States and other stakeholders have a role in cooperating with the littoral States and gives to those who are cooperating a voice in the management and operation of the mechanisms. Third, because it is inclusive, open and flexible, it will be possible to adapt the cooperative mechanism to meet changing circumstances.

What Next?

Indonesia, Malaysia and Singapore will be taking steps in the next several months to bring the three components of the cooperative mechanism into effect. The inaugural meetings of the three components of the cooperative mechanism—the Cooperation Forum, the Project Coordination Committee and Aids to Navigation Fund—will be organized in 2008.

Once the cooperative mechanism is established, it is expected that the littoral States, in consultation with user States and other stakeholders, will identify additional projects to enhance safety and environmental protection in the Straits. Five of the six projects that have been approved relate to the safety of navigation. Additional projects that might be considered to enhancement environmental protection in the Straits include:

of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection, 4–6 September 2007, Singapore, Session 6, 5 September 2007.

1. Assistance to littoral States in ratifying and effectively implementing all of the annexes to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78),⁵⁷ including the provision of adequate reception facilities in major ports in the littoral States;
2. Cooperative measures to combat intentional illegal discharges of oil or other hazardous and noxious substances in the Straits;
3. Cooperative measures to develop contingency plans to deal with a major transboundary oil pollution incident, including whether it is desirable to have all three littoral States become parties to the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990),⁵⁸ the 2000 OPRC-HNS Protocol,⁵⁹ and the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund 1992);⁶⁰ and
4. Cooperative measures to ratify and effectively implement other IMO conventions on ship-source pollution, including the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention)⁶¹ and the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (Ballast Water Convention).⁶²

⁵⁷ *International Convention for the Prevention of Pollution from Ships*, London, 2 November 1973, 1340 U.N.T.S. 184, as amended by *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships of 1973*, 17 February 1978, 1340 U.N.T.S. 61.

⁵⁸ *International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990*, Australian Treaties Library, [1995] ATS 12.

⁵⁹ OPRC-HNS Protocol, *supra* note 51.

⁶⁰ *Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*, Australian Treaties Library, [1996] ATS 3.

⁶¹ *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*, London, 23 March 2001, Australian Treaties Library, [2002] ATNIA 25.

⁶² *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004*, London, 13 February 2004, Australian Treaties Library, [2005] ATNIF 18.

How was the Historic Breakthrough Achieved?

Ambassador Tommy Koh, the former President of the UNCLOS III and Chair of the 1996 and 1999 IMO/IPS Conferences on the Straits, chaired the closing session of the 2007 Singapore Conference. His comments included the following statements:

I was... very happy when [IMO] Secretary-General Mitropoulos launched the “Protection of Vital Shipping Lanes” initiative, the first of which concentrated on the Straits of Malacca and Singapore. Today, owing to the commitment of the IMO, the tireless efforts of the three littoral States over the past three years and the willingness of the user States and shipping industry to contribute to ensure the safety, security and cleanliness of the Straits, we have finally been able to implement Article 43 of the LOS Convention. This is indeed a historical breakthrough.

On this momentous occasion, allow me to share with you 5 lessons that I have learnt from this process.

Lesson 1: The three littoral States have been able to work together. Indeed, we have been cooperating on improving navigational safety and environmental protection in the Straits since the 1970s, through the Tripartite Technical Experts Group (TTEG).

Lesson 2: The three littoral States were committed to upholding and applying applicable international law in the Straits of Malacca and Singapore.

Lesson 3: The three littoral States share a mindset that the Cooperative Mechanism should be open and inclusive, one that acknowledges the legitimacy and rights of user States while still upholding the sovereignty and territorial integrity of the littoral States.

Lesson 4: The IMO has played a vital role in the process. Without the commitment of the IMO, we would not be here today celebrating this successful outcome.

Lesson 5: There is a convergence of interest between littoral States and user States in enhancing the navigational safety and environmental protection of the Straits.

I agree with Ambassador Koh’s points. The convergence of events in 2004 and 2005 and the IMO Protection of Vital Shipping Lanes initiative pressured the littoral States to work together. The tripartite ministerial meeting in Batam in August 2005 was critical. Once the three littoral States agreed amongst themselves on the principles that would form the basis for discussions with the IMO, user States and other stakeholders, a framework for negotiations was in place. It was then simply a matter of

hard work by the officials of the three littoral States. Numerous meetings were held between the officials of the littoral States between the annual IMO meetings to work out the details of the cooperative mechanism. The key fact is that although the process was initiated by the IMO, it was taken over and driven by the three littoral States, with the IMO playing only an advisory role. As the littoral States reached agreement among themselves on the details of the cooperative mechanism, they consulted informally with the IMO and with key user States. This enabled the making of minor adjustments to the mechanism in order to ensure support from key user States.

If there was a weakness in this process, it was that the process was primarily State-driven, making it difficult for the littoral States to consult with non-State stakeholders such as shipping companies and shipping organizations. Because of its past record of generous support and ongoing activities to maintain and replace aids to navigation in the Straits, the Nippon Foundation was likely kept apprised of developments. However, because other stakeholders were not brought into the discussions, they are not likely to feel a sense of ownership in it. It was, therefore, not surprising that at the Singapore meeting the only non-government stakeholder to come forward and pledge funding for the Aids to Navigation Fund was the Nippon Foundation.

One of the major tasks that now faces the littoral States and the IMO is to convince private shipping companies and other stakeholders that it is in their interests to take an active part in the cooperative mechanism and make voluntary contributions to the Aids to Navigation Fund. Some companies may be willing to do so if important persons in the international maritime community, such as the IMO Secretary-General, appeal to their sense of corporate social responsibility. Another factor which should encourage more private companies to make voluntary contributions is that they will be able to participate in the Cooperation Forum. If shipping companies and representatives of the shipping industry are invited to engage in a dialogue with the littoral States in the Cooperation Forum on how to enhance safety, security and environmental protection in the Straits, and their views are taken into account by the littoral States, they should be more willing to make voluntary contributions to the Aids to Navigation Fund.

A major difficulty in getting private industry to make voluntary contributions is that they fear that their participation will establish a precedent

that will be followed in other straits used for international navigation. The Straits of Malacca and Singapore was selected by the IMO as the “first” of several vital shipping lanes that are in need of protection and cooperative measures. However, private industry should be somewhat assured by the fact that it took more than ten years and a convergence of events to attain the historic breakthrough in the Straits of Malacca and Singapore. If it proves as difficult to implement Article 43 in other straits used for international navigation, the shipping companies should have little fear that the cooperative mechanism for the Straits of Malacca and Singapore will open the flood gates. Also, since the cooperative mechanism is voluntary, it will not work as a precedent for other straits used for international navigation unless major user States and shipping companies are willing to voluntarily cooperate with the States bordering the strait.

Whither Cooperation to Enhance Maritime Security?

It should be noted that the cooperative mechanism that has been established for the Straits is limited to measures to enhance safety and environmental protection and does not include measures to enhance maritime security in the Straits. This is consistent with the wording of Article 43 of the LOS Convention as there is no mention of security in the article.

However, the IMO commenced the Protection of Vital Shipping Lanes initiative because of the concern for security of the shipping lanes. Also, the major reason that the littoral States took steps to enhance their cooperation on Straits issues in 2005 was because of concerns with maritime security after the September 11 incident and because of the risk to international shipping from piracy and armed robbery against ships.

The 2005 Batam Statement contains several paragraphs which suggest that the process was intended by the ministers to be used as a framework for cooperation to enhance security in the Straits, as well as safety and environmental protection. The 2005 Batam Statement provides that the ministers agreed to establish a TTEG on maritime security. However, in the following discussions the littoral States seemed to have second thoughts about including security in the cooperative mechanism. The TTEG on maritime security was mentioned in the 2006 Kuala Lumpur Statement, but there is no mention of it in the 2007 Singapore Statement. It appears that the littoral States decided against establishing a TTEG on maritime

security. Instead, they have left cooperative measures to enhance maritime security to the defence forces of the littoral States. The 2007 Singapore Statement commends

the joint efforts of the armed forces of the three littoral States in contributing to the security of the Straits, through the Malacca Straits Sea Patrols and the “Eyes in the Sky” maritime air patrols, as formalized in the signing of the Malacca Straits Patrols Standard Operating Procedures on 21 April 2006

Thus, the new cooperative mechanism for the Straits appears to be limited, as least for the time being, to the enhancement of safety and environmental protection in the Straits. Cooperation to enhance maritime security will also continue to be enhanced, but by the defence forces at the operational level and by the foreign affairs and defence ministries in other forums.

Conclusion

The cooperative mechanism established by Indonesia, Malaysia and Singapore in the Straits of Malacca and Singapore is the first attempt by the international community to implement Article 43 of the LOS Convention. The cooperative mechanism as set out in the 2007 Singapore Statement is consistent with the letter and spirit of Article 43 and with Part III on straits used for international navigation. The cooperative mechanism is likely to succeed because it recognizes the sovereignty and territorial integrity of the littoral States, while at the same time acknowledging the interests of user States, the IMO and the international community. It is also likely to succeed because it establishes a voluntary scheme that gives a voice to the stakeholders and avoids the controversial issue of tolls or charges.

If it is successful, the cooperative mechanism will enhance cooperation between the littoral States and the IMO, user States and other stakeholders in order to benefit the marine environment and international shipping, without threatening or undermining the sovereignty and territorial integrity of the littoral States. The same principles and scheme can be used to develop cooperative mechanisms to enhance maritime security in the Straits.

The most important result of the establishment of the cooperative mechanism for the Straits of Malacca and Singapore is that it is likely to enhance cooperation and build trust among the three littoral States themselves. The important lesson that Indonesia, Malaysia and Singapore

should have learned over the past years is that, when they identify their common interests and work together to accomplish them, they can achieve far more than when they act unilaterally. It is hoped that the three littoral States will use this experience as a model for further cooperative efforts to protect and preserve the marine and coastal environment in Southeast Asia.