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THE STRAITS OF MALACCA AND SINGAPORE: THE RULE OF LAW AND GLOBAL COOPERATION



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Editor's Note: Professor Tommy Koh is Ambassador-At-Large at the Ministry of Foreign Affairs; Special Adviser of the Institute of Policy Studies, and Chairman of the Governing Board of the Centre for International Law, National University of Singapore. He was the President of the Third United Nations Conference on the Law of the Sea, 1980-82, as well as the Chairman of the Main Committee of the UN Conference on Environment and Development. Dr. Koh was formerly the Singaporean ambassador to the United States and the United Nations.

It is a given that trade benefits all countries and peoples; as such, international trade is a vital locomotive of the world economy. Over 90 percent of the international trade in goods is carried by ships. The shipping industry is therefore a strategic asset for the world. The shipping industry

as well as the navies of the world need clear and universally accepted rules on the regimes for the passage of ships and aircraft in ocean space.

From ancient times to the end of the Second World War, international law specified that the breadth of the Territorial Sea is three nautical miles. However, in the 1950s and 1960s, more and more coastal states claimed 12 miles as the breadth of their Territorial Seas. This was one of the difficult issues which the UN Conference on the Law of the Seas had to grapple with. The problem is that there are 116 straits used for international navigation which are narrower than 24 miles in breadth. The High Seas corridors in those straits would disappear if coastal states were allowed to extend their Territorial Seas to 12 miles. The regime of passage for ships and aircraft traversing those straits would be reduced to Innocent Passage. The great powers could not accept such an outcome.

The trade-off negotiated at the conference was that the Territorial Sea would be extended to 12 miles. In return, there would be a special regime of passage for ships and aircraft in Straits Used For International Navigation, such as the Straits of Malacca and Singapore—the special regime would be called Transit Passage. A coastal state cannot stop a ship or aircraft in transit passage. At the same time, the ship or aircraft must move expeditiously through the strait.

The Convention forbids a coastal state from imposing compulsory pilotage on ships or collecting tolls from such ships. A coastal state has to maintain, at its own expense, navigational or safety aids, and it may have to dredge the strait. It will also have to maintain equipment and trained personnel to stand ready to combat pollution from ships in the strait.

Shouldn't the user states assist the coastal states in keeping the straits safe for navigation? Shouldn't the user states cooperate with the coastal states in keeping the marine environment in the straits clean and healthy? Article 43 of the Convention exhorts the coastal states and the user states to cooperate in order to keep the straits safe and clean. Article 43 is however not self-implementing. It can only come to life if there is an agreement by the coastal states and the user states to cooperate.

I have spent many years of my life trying to get an agreement between Indonesia, Malaysia, and Singapore, on the one hand and the user states, on the other hand to implement Article 43. Together with the International Maritime Organization, I convened two Conferences in 1996 and 1999 in Singapore. Although the conferences were well attended and helped to clarify the issues, Indonesia was not ready to implement Article 43. The breakthrough came in 2007 at an IMO Conference in Singapore. I was given the privilege of chairing that Conference which adopted,

by consensus, a Cooperation Mechanism for the Straits of Malacca and Singapore. Under it, we have a Cooperation Forum, a Project Coordination Committee and the Aids to Navigation Fund.

Eight years have passed since that historic meeting in 2007. We can look back on the past 8 years with great satisfaction; the Cooperation Mechanism has worked well and is a success story. The Straits of Malacca and Singapore are the only straits used for international navigation which have successfully implemented Article 43 of the Convention. The time has surely come for other coastal states and user states to emulate our good example. What we have achieved is a victory for the International Rule of Law and for Global Cooperation.
