

Keeping The Straits of Malacca and Singapore

Safe and Clean: A Triumph For Cooperation

Salutations

Minister Josephine Teo, Mr Andrew Tan, distinguished colleagues from Indonesia and Malaysia, Ladies and Gentlemen.

I would like to begin by thanking the Maritime and Port Authority of Singapore for inviting me to share a few thoughts with you this morning. I was the President of the Third UN Conference on the Law of the Sea, during the final two years, 1981 and 1982. In September 2007, I was invited by IMO and the Government of Singapore to chair a meeting in Singapore which adopted the cooperative mechanism for the Straits of Malacca and Singapore. This occasion therefore brings back many happy memories for me.

My Three Points

I would like to do 3 things this morning. First, I would like to share with you some insights into the negotiating history of Part III of the 1982 UN Convention on the Law of the Sea, on Straits Used for International Navigation. Second, I would like to briefly recapitulate the consultations and negotiations which led to the breakthrough in 2007. Third, I would like to conclude by reviewing the progress which we have achieved in the past eight years and to look to the future.

Straits Used For International Navigation

International law used to recognise 3 miles as the breadth of the Territorial Sea. This consensus began to break down after World War II. At the 3rd UN Conference

on the Law of the Sea, the coastal States demanded that the territorial sea breadth should be expanded from 3 to 12 miles. There are many important straits in the world which serve as vital shipping lanes. 116 of them are narrower than 24 miles in breadth. When the Territorial Sea was 3 miles, there was a high seas corridor in those Straits. Those corridors would disappear if the Territorial Sea were expanded to 12 miles. With the disappearance of the high seas corridor, the regime of passage for ships and aircraft would be reduced to that of innocent passage. The 2 superpowers and other major maritime powers could not accept such an outcome.

To break the impasse, it was agreed that there would be a special regime for ships going through, and aircraft flying over, straits used for international navigation. It was also agreed to call this special regime, Transit Passage.

Transit Passage is neither Innocent Passage nor High Seas Freedom of navigation and overflight. It is a new concept in international law. Transit Passage recognises, on the one hand, the sovereignty and territorial integrity of the coastal States, and, on the other hand, the rights and interests of the international community. A ship or aircraft has to proceed without delay through or over the strait. The coastal State may not impede the passage of the ship or aircraft.

The sovereignty and jurisdiction of the coastal State is exercised subject to Part III of the Convention and other rules of international law. My interpretation of the Convention is that a coastal State may not, for example, impose compulsory pilotage on or demand tolls from, ships in transit passage.

Although many years have passed since the Convention was adopted in 1982, it continues to serve the international community very well. We should therefore be faithful to the letter and spirit of the convention and continue to honour the carefully balanced compromises which were agreed upon and embodied in the convention. I regret to say that, in recent years, some States have acted in ways which are not

consistent with the convention. If disputes arise over the interpretation and application of the convention, which is bound to happen, I hope that State Parties to the Convention will refer such disputes to the International Tribunal For The Law of the Sea, which was established for this purpose, or other fora. Disputes should be resolved peacefully and in accordance with international law, including the UN Convention on the Law of the Sea.

Article 43 of the Convention

During the conference, we realised that we must find a way to encourage user States to assist the straits States in ensuring the safety of navigation and protecting the marine environment in the straits. This is only fair since the user States benefit from the use of the straits. The straits States have to install and maintain aids to navigation, undertake hydrographical surveys and dredging, if necessary, and prepare themselves to prevent and combat pollution from ships.

The text of Article 43 is a compromise text. User States and straits States are exhorted to agree to cooperate. Article 43 can only be implemented if there is an agreement between the straits States and the user States. Agreement to cooperate is consensual and not mandatory.

What would they agree to cooperate on? First, on “the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation”. Second, “for the prevention, reduction and control of pollution from ships”.

The UN Convention on the Law of the Sea came into force in 1994. Two years later, in 1996, as the director of a Singapore think-tank, the Institute of Policy Studies, I co-convoked with the I.M.O., a conference on Navigational Safety and the Control of

Pollution in the Straits of Malacca and Singapore: Modalities of International Cooperation. In 1999, I co-convened another Conference with the IMO, on “Towards Implementation of Article 43 of the Law of the Sea Convention for the Straits of Malacca and Singapore.” The Secretary-General of the IMO, at that time, was William O’Neill. We served as the co-chairmen of the two conferences.

Although a lot of progress was made at the two conferences, the political will on the part of the three straits States, especially one of them, to implement Article 43 was still deficient. During all this time, the only user State which had been helping the straits States was Japan. It had contributed over US\$100 million to this effort. However, by 2004, Japan had indicated that it could no longer bear this burden alone. This point was noted by the straits States.

The next development was an initiative taken by the IMO, in 2004, on the protection of vital shipping lanes. The sixth Secretary-General of the IMO, Admiral EE Mitropoulos, pursued this initiative with great energy and imagination. He chose the Straits of Malacca and Singapore as his No. 1 priority. He managed to persuade Indonesia to host a meeting, in September 2005, involving the straits States, user States and other stakeholders on how to enhance the safety of navigation, environmental protection and overall security of the straits.

In anticipation of the Jakarta meeting, the Foreign Ministers of Indonesia, Malaysia and Singapore held a critical meeting in Batam. The Batam Statement issued by the three Ministers reaffirmed that the straits States have sovereignty and sovereign rights in the Straits and have 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 relevant international organizations 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 UN Convention on the Law of the Sea.

With the Batam Statement as the compass, the Jakarta meeting had a positive outcome. This was followed by another IMO meeting in Kuala Lumpur in September 2006. It was in Kuala Lumpur that the three straits States and the user States agreed to launch a cooperative mechanism. Although the parties had agreed to marry in Kuala Lumpur, the wedding took place a year later, in Singapore, in September 2007. I had the pleasure of officiating at the wedding. I described the nuptial agreement as a historic breakthrough.

To date, the Straits of Malacca and Singapore are the only straits which has implemented Article 43 of the Convention. What lessons can the world learn from us? I suggest the following 5 lessons:

- (i) The 3 straits States have been able to work closely together, since the 1970s, through the Tripartite Technical Experts Group;
- (ii) The 3 straits States are committed to upholding and applying the relevant international law, including the UN Convention on the Law of the Sea;
- (iii) The 3 straits States share a worldview that the cooperative mechanism should be open and inclusive, one which acknowledges the legitimate interests of the user States, while upholding the sovereignty and territorial integrity of the straits States;
- (iv) IMO played an indispensable role as facilitator and convenor; and
- (v) There is a convergence of interests between the straits States and the user States, in enhancing the navigational safety and environmental protection of the straits.

CONCLUSION

Eight years have passed since that historic meeting in 2007. We can look back on the past 8 years with enormous satisfaction. The Cooperation Mechanism has worked well and is a success story. Under it, we have the Cooperation Forum, the Project Coordination Committee and the Aids to Navigation Fund.

The Aids to Navigation Fund has received over US\$20 million in contributions. Five of the ten projects approved by the Project Coordination Committee have been completed. The Cooperation Forum is very well attended by the straits States, user States, the shipping industry, the IMO and other stakeholders. I am gratified that the IMO continues to play a central role in the process.

I continue to hope that other straits will emulate our good example and agree on similar cooperation mechanisms with the user States. Our achievement is a triumph for the international community in implementing the Rule of Law through International Cooperation.

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