

The Straits of Malacca and Singapore

14th Cooperative Forum

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Singapore

Keynote Address by Tommy Koh, President,

3rd UN Conference on the Law of the Sea

Salutations

Mr Chee Hong Tat, the Acting Minister for Transport, Singapore

Mr Teo Eng Dih, the Chief Executive of the Maritime and Port Authority of Singapore

Pak Dr Hartanto, Director of Marine Safety and Seafarers, Directorate General of Sea Transport, Indonesia

Captain Mohamed Halim Bin Ahmed, the Director-General, Marine Department, Malaysia

Friends from the user states, Excellencies, ladies and gentlemen.

Thank MPA

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 would also like to extend a very warm welcome to our colleagues from Indonesia and Malaysia. The excellent manner in which Indonesia, Malaysia and Singapore cooperate among

themselves and between them and the International Maritime Organization (IMO), in ensuring the safety of navigation through the busiest straits in the world, is praiseworthy. Please join me in giving the delegates of the three countries a well-deserved round of applause.

What I would like to do this morning is to tell you three stories.

First Story

My first story is about the struggle to end an era of legal chaos and conflict at sea. The old law of the sea had existed for centuries. The old legal order became untenable after the Second World War. For example, the newly independent countries, led by the Latin-American coastal states, challenged the 3-mile limit for the Territorial Sea. They unilaterally extended their Territorial seas to 6, 12, 50 and even 200 miles. There were also many disputes between states about fisheries. There was no agreement on the claims of coastal states, to a zone beyond their Territorial Sea, in which they have the exclusive right to fish. Things were so bad that two European countries, Iceland and the United Kingdom, actually went to war over fishing rights.

Order was restored in 1982, when the Third UN Conference on the Law of the Sea, adopted the UN Convention on the Law of the Sea, or UNCLOS, in short. I have described UNCLOS as the constitution for the world's oceans. My first message is that UNCLOS is a precious achievement and we should protect it from any attempt to undermine it. My second message is that although UNCLOS is 41 years old it is still fit for purpose. It is able to accommodate new developments, such as, the recently concluded agreement on biodiversity beyond the limits of national jurisdiction, the BBNJ treaty, in short.

Second Story

My second story is about how we came to adopt the provisions of UNCLOS on Straits Used for International Navigation. At the UN Conference, there was an emerging consensus to expand the maximum width of the Territorial Sea, from 3 miles to 12 miles. The trouble was that there were 116 straits used for international navigation that were narrower than 24 miles. This meant that when the Territorial Sea is expanded to 12 miles, the High Seas corridors in those straits would disappear.

The then superpowers, the US and USSR, told us that they could not accept replacing high seas passage with innocent passage

in those straits. They demanded a special regime of passage for their ships, aircraft and submarines, going through, over or under those straits. Their demand was based upon the fact that the straits were choke points in their strategic sealanes. It was also important for their submarines to be able to pass through the straits in their submerged mode because they did not want their adversary to know where they were. If we refused to accommodate their demand, there would be no convention. This formed the background to the special regime of passage, called transit passage, for ships, aircraft and submarine. However, the rights and interests of the Straits states, especially in respect of the marine environment, have also been accommodated. The virtue of the convention is that it has succeeded in addressing and reconciling the competing interests of states. Transit passage is a new concept in international law.

Third Story

My third story is about how we have succeeded in implementing Article 43 of UNCLOS. This article urges the straits states and user states to cooperate. They should cooperate to do two things. First, to maintain navigational aids and make other improvements to the safety of international navigation. Second, to prevent, reduce and control pollution from ships.

I support the idea that the user states should cooperate with the straits states because they benefit from using the straits. I was not happy with the fact that only one user state, Japan, was cooperating with the straits states. The other user states should share Japan's burden.

In cooperation with the IMO, I tried to establish the cooperative mechanism in 1996 and in 1999 but had failed both times because Indonesia was not ready. In 2004, the Foreign Ministers of Indonesia, Malaysia and Singapore held a very important meeting in Batam, Indonesia, to discuss the issue. This meeting paved the way for a breakthrough three years later.

Following their meeting, they issued the Batam Statement. The statement contains three elements. First, it 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. Second, it acknowledged the interests of the user states and relevant international organisations and the roles that they could play in respect of the straits. Third, any cooperative measures taken in the straits must be in conformity with international law, including UNCLOS.

I must also give credit to the former Secretary-General of IMO, Admiral E.E. Mitropoulos who was a skilful diplomat. He convened a workshop in Indonesia, in 2005, followed by a second workshop in Malaysia, in 2006. In 2007, I was given the privilege of chairing the third meeting, in Singapore, which adopted the cooperative mechanism under Article 43 of UNCLOS.

Conclusion

Given this background, you can understand how happy I am to be with you, at the 14th Session of the Cooperative Forum.

The success of the Cooperative Mechanism, during the past 16 years, is due in part, to 4 founding principles. They are:

- (i) Indonesia, Malaysia and Singapore will abide by international law, including UNCLOS;
- (ii) Indonesia, Malaysia and Singapore will work together and arrive at a consensus on the effective management of the straits;

- (iii) The cooperative mechanism will be open and inclusive; and
- (iv) There is a shared interest between the straits states and the user states in enhancing the navigational safety and environmental protection of the straits.

I will conclude by mentioning that this is the only cooperative mechanism, which has been established under Article 43 of UNCLOS. It has worked well. I hope it will inspire other straits states and user states to emulate our example.

Thank you.

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