

New milestone in better straits cooperation Article 43 of UNCLOS helps keep Malacca, Singapore straits safe, secure and clean

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THE straits of Malacca and Singapore are among the world's most important sea lanes. Half of the world's trade and a third of its oil exports pass through these two straits.

Countries in Asia, as well as those further afield, in Europe and the Middle East, benefit from using the straits, as do the shipping industry and other stakeholders. Ensuring open, safe and secure navigation and the cleanliness of the marine environment is a shared responsibility of the three littoral states of Indonesia, Malaysia and Singapore, the user states, the shipping industry, and other stakeholders.

However, negotiating an agreed framework for the littoral states and the user states and other stakeholders to cooperate remained elusive for many years.

A historic breakthrough was recently achieved. The littoral states, user states, and other stakeholders met under the auspices of the International Maritime Organisation (IMO) in Singapore, from Sept 4 to 6 this year. The meeting adopted an agreement to establish a cooperative mechanism. The Singapore meeting was part of the visionary initiative of IMO secretary-general Efthimios Mitropoulos called 'Protection of Vital Shipping Lanes'. The Singapore meeting was preceded by successful meetings in Jakarta in 2005 and Kuala Lumpur in 2006.

The launch of the cooperative mechanism was a very happy occasion for the veterans of the Third United Nations Conference on the Law of the Sea. We had spent over a decade negotiating and crafting the 1982 UN Convention on the Law of the Sea (UNCLOS). One of the difficult issues we had to resolve was the demand by coastal states to extend the breadth of the territorial sea to 12 nautical miles and the effect this would have on the straits used for international navigation.

Part III of the convention, on Straits Used for International Navigation, was a delicate compromise, balancing the rights of the littoral states with the rights of the international community. The compromise was to

accept an extension of the breadth of the territorial sea to 12 nautical miles and to create a new regime of passage for ships and aircraft passing through and over straits used for international navigation.

The new regime is called 'transit passage' and is a stronger regime than the regime of 'innocent passage'. The straits of Malacca and Singapore are two examples of such straits.

Article 43 of Unclos, which is incorporated under Part III of the convention, states: 'States bordering a strait and user states should by agreement cooperate in the establishment and maintenance of navigational safety or other improvements in aid of international navigation, and also for the prevention, reduction and control of pollution from ships.'

Unclos came into force in 1994. Two years later, I had a discussion with the then secretary-general of the IMO, William O'Neil, who encouraged me to convene an international conference to see if we could implement Article 43 in respect of the straits of Malacca and Singapore.

The Institute of Policy Studies in Singapore and the IMO co-convened an international conference on the straits for this very purpose. The conference, held in 1996, brought together the littoral states, user states and other stakeholders for the first time.

Participants of the 1996 conference had a full and frank discussion on how we could work together, in line with Article 43, to ensure the safety of navigation and the control of pollution in the straits. They were, however, not ready to implement the provision.

A follow-up conference was held in 1999. Unfortunately, we were still ahead of our time, and neither the littoral states nor the user states were ready for the cooperation envisaged by Article 43.

I was therefore very happy when the current secretary-general of IMO, Mr Mitropoulos, launched the 'Protection of Vital Shipping Lanes' initiative in 2004, which aimed to promote a comprehensive approach to addressing the safety, security and pollution control in critical shipping lanes around the world. The IMO decided to begin its initiative with the straits of Malacca and Singapore.

At the first meeting held in Jakarta, in 2005, it was agreed that a cooperative mechanism be established for the three littoral states to

meet on a regular basis with user states, the shipping industry and other stakeholders to enhance safe and sustainable navigation through the straits.

The conceptual framework of the mechanism was subsequently presented at the Kuala Lumpur meeting in 2006. The mechanism consists of three components:

(i) the Cooperation Forum for open dialogue and discussion, (ii) the Project Coordination Committee to oversee projects that addressed the immediate needs of the Straits, and (iii) the Aids to Navigation Fund to receive direct financial contributions for the renewal and maintenance of critical aids to navigation.

Owing to the initiative of the IMO, the cooperative attitudes of the three littoral states, the user states, and the shipping industry, we have finally been able to, for the first time, implement Article 43 of Unclos.

This is very welcome news for the world.

I would like to share the five lessons that I have learnt from this fruitful process.

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

Lesson 2: The three littoral states are committed to upholding and applying the relevant international law in the straits of Malacca and Singapore.

Lesson 3: The three littoral states share a mindset which can be best described as open and inclusive. We assert our sovereignty over our territorial seas in the straits of Malacca and Singapore. At the same time, we acknowledge the rights and interests of the user states, shipping industry and other stakeholders.

Lesson 4: The IMO has played a vital role in the process. Without the positive, helpful and pro-active role of the IMO, we would not be celebrating this successful outcome.

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

For a long time, Japan was the only user state which was willing to help the littoral states. More recently, other user states, such as China, South Korea, the US and others, have emulated Japan's example. I would like to thank the user states and the shipping industry for their positive attitude and their willingness to cooperate with the littoral states.

It is my hope that Article 43 can be successfully implemented in other straits used for international navigation. I know that this is no easy task. Indeed, it has taken more than a decade for conditions to ripen in respect of the straits of Malacca and Singapore.

As we celebrate, we must be soberly aware that this is but the first step in a long voyage towards effective cooperation between the littoral states, the user states, and other stakeholders to keep the straits safe, secure and clean.

The writer is Singapore's Ambassador-at-Large. He was president of the Third UN Conference on the Law of the Sea (1981 to 1982).