

SAFEGUARDING THE STRAITS OF MALACCA AGAINST MARITIME CRIME. ISSUES AMONGST STATES ON SECURITY RESPONSIBILITY

Inderjit Singh a/ Tara Singh

Senior Lecturer

Faculty of Strategic & Defence Studies

National Defence University Malaysia

Malaysia

Abstract

The use of the Straits of Malacca generally revolves around three sets of interests: warfare and the projection of military power across the globe, commercial interests and maritime trade, and economic exploitation of the sea. One of the biggest issues in the Straits of Malacca today is the threat to maritime security from piracy and terrorism. According to the United Nations Convention on the Law of the Sea (UNCLOS) the sovereignty over 'territorial seas,' which extend twelve nautical miles off a state's coasts, the Malaccan Strait falls to the littoral states namely Indonesia, Malaysia, and Singapore. But other maritime states such as Japan and China are imposing authority in protecting this strait for economic reasons in shielding their ships against maritime crime. The act of terrorism from various groups and other separatist groups has complicated and brought more challenges to the security of this straits as US is insisting in joining the back wagon in providing naval security in the global war against terrorism. Nevertheless the littoral states are adamant in ensuring their responsibility in providing security with extensive military exercises amongst these states ensuring non interference from other maritime and non state actors. Malaysia and Indonesia feels there is no need for the presence of an extra regional force for the purpose of securing the straits and that such presence will impinge on the sovereignty of the country unlike Singapore who is the most vocal advocate of international cooperation.

INTRODUCTION

Connecting the Pacific and Indian Oceans and situated between the coastlines of Thailand, Malaysia and Singapore on one side and the Indonesian island of Sumatra on the other, the Strait of Malacca is 550 miles long, but only 1.7 miles wide at its narrowest point.¹ Security in the Straits of Malacca is a large and growing concern for the world. Not only does it cause economic havoc in a critical region, but may also have connections to terrorism and has the potential to cause an ecological disaster with many other security threats such as piracy and illegal smuggling. According to Nincic (2002) most of the strategic passageways lie on the world's international trade routes. The Straits of Malacca have been the main connecting link between Europe, the Middle East and South Asia on one side and Southeast and East Asia on the other.

A constant stream of merchandise and trade has flown through the passage from the East to West and West to East. The littoral states of Singapore, Malaysia and Indonesia have refused to surrender their control over this critical region and are working very hard to prevent terrorist attacks and to enhance maritime security in the Straits of Malacca. In 2004 they took a decisive security measures to combat the threat of piracy and armed robbery as well as non-traditional threats to maritime security in the Straits. However, attempts by outside states to establish security regimes have repeatedly run into sovereignty concerns from the coastal states in the region namely Malaysia, Indonesia, Singapore, and Thailand (hereinafter referred to collectively as "littoral states"). The United States, China, and Japan have each taken an interest in ensuring the safe and smooth passage of shipping through the region.



Location of the Straits of Malacca Between Peninsular Malaysia & Sumatera

¹ Bronson Percival, "Indonesia and the United States: Shared Interests in Maritime Security," United States-Indonesia Society, June 2005, 4.

However, despite the intentions of these extra-regional actors, efforts to strengthen maritime security in Southeast Asia have come up against ambivalence or outright rejection. The strait is one of the most important shipping lanes in the world, accounting for a third of the world's trade and half of its oil shipments including 80 percent of the oil and gas imports of Japan, Taiwan, South Korea and China.²

However, foreign pressure regarding a possible terrorism-piracy threat has since forced littoral states to address security concerns. At this juncture many countries that depended on these straits have attempted by forum and close diplomacy to be directly or indirectly involved in safeguarding this lane for their own personal agenda related to economic implications. Nevertheless, in spite of this development, direct foreign leadership particularly from the United States in the Strait has met and will likely continue to meet with fierce resistance. The US presence in the region raises sovereignty concerns, threatens the regional balance of powers, and elicits accusations of gun boat diplomacy and American hegemony. The use of the oceans and straits of the world generally revolve around three sets of interests: warfare and the projection of military power across the globe, commercial interests and maritime trade, and economic exploitation of the sea. Maritime nations, states from outside the Malacca Strait but which are nonetheless interested in the region, are largely concerned with the first two. The other coastal states, which possess the actual territory around the Strait, are for the most part interested in the economic exploitation of ocean resources, and thus in extending and protecting their maritime jurisdiction and sovereignty.

Differing state interests initially resulted in uneven threat perceptions of the Strait of Malacca between maritime nations and littoral states. In light of these overarching interests, this paper will look at the security threats of this strait and make an analysis on who should be responsible and why besides the regulating law for protecting this Straits which is beneficial to many maritime states besides the three littoral states namely Malaysia, Singapore and Indonesia.

SECURITY THREATS TO THE STRAITS OF MALACCA

Much of the world's economy depends on the security of shipping that passes through a narrow body of water in Southeast Asia known as the Straits of Malacca. One of the biggest issues in the Straits of Malacca today is the threat to maritime security from piracy and terrorism and the nexus between the two activities. While there is no denying that such threats do exist, questions need to be asked as to the magnitude and scope of these threats and the extent to which these two are linked.

The geographical location of maritime Southeast Asia has led to its archipelagic waterways assuming immense global criticality for piracy and maritime terrorism. The Malacca Straits is one of the world's most vulnerable areas because of their high potential for political conflict and environmental disaster. The effective management of a regional problem for piracy and maritime terrorism in the Southeast Asian region of the Straits of Malacca demands understanding of current political dynamics and security approaches. The strait is one of the most important shipping lanes in the world, accounting for a third of the world's trade and half of its oil shipments including 80 percent of the oil and gas imports of Japan, Taiwan, South Korea and China. The strait is also one of the world's most dangerous maritime "choke points" and a hotspot for transnational crime.³ Incidents of piracy and the threat of terrorism within this critical zone have consequently attracted the attention of maritime nations that use the oceans for power projection and free trade. It is a vital artery linking the region's economy with the rest of the world. This can be seen in the statistics of types of ships using the Straits of Malacca from 1999 to 2010 in **Figure 1**. This clearly shows the increase in ships over the years using this waterway lane especially the tankers and container ships which has an increase trend over the years as seen in **Figure 2**.

² Victor Huang, "Building Maritime Security In Southeast Asia: Outsiders Not Welcome?" Naval War College Review Winter 2008

³ Graham Gerard and Ong-Webb, Piracy, Maritime Terrorism and Securing the Malacca Straits (Singapore: Institute of Southeast Asian Studies, 2006), 137.

Ser	Types of Vessels	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1.	VLCC/DEEP DRAFT CR	3,303	3,301	3,487	3,477	3,788	3,851	3,753	4,040	4,221	4,333
2.	TANKER	14,276	14,591	15,667	16,403	14,759	14,784	14,931	15,894	16,398	16,247
3.	LNG/LPG CARRIER	3,086	3,141	3,277	3,343	3,099	3,297	3,413	3,726	3,330	3,579
4.	GENERAL CARGO	6,476	6,065	6,193	6,624	6,340	6,477	8,467	8,794	8,560	8,445
5.	CONTAINER	20,101	20,091	19,575	20,187	20,818	22,615	23,736	26,359	22,310	24,806
6.	BULK CARRIER	5,370	5,754	6,256	6,531	7,394	8,129	9,684	10,256	11,186	11,642
7.	RORO/CAR CARRIER	1,764	1,980	2,182	2,440	2,515	2,863	3,137	3,455	2,394	2,624
8.	PASSENGER VESSEL	3,151	3,490	3,033	2,838	2,299	2,009	1,870	2,074	1,250	1,071
9.	LIVESTOCK CARRIER	108	108	80	46	45	51	51	48	43	45
10.	TUG/TOW VESSEL	610	422	478	568	420	372	444	566	598	545
11.	GOV/NAVY VESSEL	155	111	120	130	153	81	95	82	67	37
12.	FISHING VESSEL	60	38	35	67	34	39	36	48	61	20
13.	OTHERS	854	942	1,951	982	957	1,081	1,101	1,039	941	739
	Total	59,314	60,034	62,334	63,636	62,621	65,649	70,718	76,381	71,359	74,133

Figure 1: Traffic Analysis on Type of Ships Using The Straits Of Malacca (1999-2010)
Source: Marine Department Peninsular Malaysia (2010)

The international community such as the Joint War Committee (*JWC*) representing the London marine insurance and Ageis Defense Services has declared in Its risk assessment that a maritime terrorist and piracy attack in the Straits of Malacca is a potential threat. Intelligence and information gathered from Piracy, Jemaah Islamiyah operating in Southeast Asia and the threats from the Free-Aceh Movement (*G.A.M*)⁴ on hijacking vessels, clearly indicates the level of penetration of terrorist organization infiltrating piracy operations in the Straits of Malacca.⁵

Although the littoral states and to some extend the ship owners association has regretted over the decision of the *JWC*, it is without a doubt that they must be prepared for a maritime attack. A warranted lack of evidence pointing to an immediate threat from maritime terrorism and to completely rule out the possibility of an attack in the Straits would be an incorrect assessment. The increasing number of violent and well-coordinated attacks on transiting ships in the straits is a serious problem and has suggested that the attacks might be dry runs for a more serious terror attack on shipping. Conversely, some terrorism experts have expressed the view that there is no link between these attacks and terrorist elements, and that there is no evidence that the attackers and terrorists are working together in the straits to launch a terror attack against shipping. Nevertheless, the straits are vulnerable to such acts. Other threats to shipping in the straits include sea piracy in international waters; armed robbery against ships in national and international waters; smuggling of drugs, migrants, arms and commercial goods; transportation of weapons of mass destruction (*WMD*)⁶ and related materials by sea; and environmental pollution.

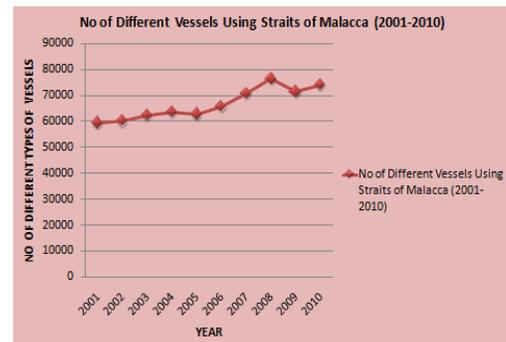


Figure 2: Trend of Total Vessels Using The Straits Of Malacca (1999-2010)
Source: Marine Department Peninsular Malaysia (2010)

⁴ The Free Aceh Movement (Indonesian: *Gerakan Aceh Merdeka* or simply *GAM*), also known as the Aceh Sumatra National Liberation Front (ASNLF), was a separatist group seeking independence for the Aceh region of Sumatra from Indonesia.

⁵ Maritime Terrorism and Piracy in the Straits of Malacca: A Potential Risk That Needs To be Taken Seriously; Turkish Weekly Journal; Andrin Raj, Visiting Research Fellow, Japan Institute for International Affairs and Security & Terrorism Analyst, Stratad Asia Pacific Strategic Centre

⁶ A weapon of mass destruction (*WMD*) is a weapon that can kill large numbers of humans and/or cause great damage to man-made structures (e.g. buildings), natural structures (e.g. mountains), or the biosphere in general.

Ships and their crews transiting the Straits of Malacca and Singapore face the constant threat of unauthorized boarding; theft of personal property, cargo and the ships themselves; and violence against and kidnapping or murder of seafarers. **Figure 3** shows the statistics of maritime crime ie sea robbery/piracy in the Straits of Malacca with the highest number of 75 in 2000 but generally the situation is under control with minimal crimes from 2005 onwards and the trend is decreasing over the years.

Carrying a third of world trade and half of its oil supplies, security in the Straits is a concern of everyone with a stake in the waterway. Located in one of the world’s most vibrant economic growth areas, the Straits is a pivotal link in international trade and transportation. It is therefore not surprising that security in the Straits is a matter of

grave concern among the littoral states and internationally. Each year, according to Lloyd’s of London, some 70,000 merchant vessels carrying a fifth of all seaborne trade and a third of the world’s crude oil shipments transit this critical choke point in the global economy. The strait’s geography makes it nearly unsecurable. According to Jean-Paul Rodrigue (2004)⁷ to ensure a constant and interrupted oil supply, the strategies of industrialized nations have been articulated by the use of military force primarily by the United States, economic incentives and uneasy alliances with oil producers. The two major security threats namely traditional and non-traditional threats has been further enhanced with the issue of petroleum been a commodity of strategic importance since the last century which led to geopolitical conflicts for access, control and ease of strategic passageways.

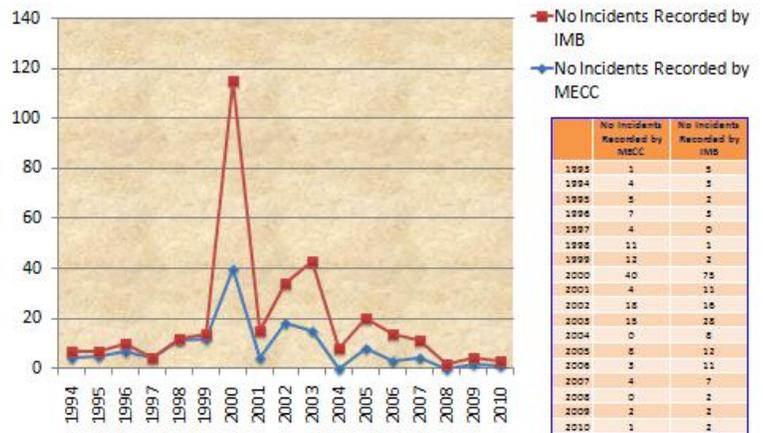


Figure 3: Statistics of Marine Crime (Piracy & Sea Robbery) in the Straits of Malacca (1994-2010)
 (Source: International Maritime Bureau IMB & Malaysian Enforcement Coordinating Centre MECC (2010))

Each year, according to Lloyd’s of London, some 70,000 merchant vessels carrying a fifth of all seaborne trade and a third of the world’s crude oil shipments transit this critical choke point in the global economy. The strait’s geography makes it nearly unsecurable. According to Jean-Paul Rodrigue (2004)⁷ to ensure a constant and interrupted oil supply, the strategies of industrialized nations have been articulated by the use of military force primarily by the United States, economic incentives and uneasy alliances with oil producers. The two major security threats namely traditional and non-traditional threats has been further enhanced with the issue of petroleum been a commodity of strategic importance since the last century which led to geopolitical conflicts for access, control and ease of strategic passageways.

THE SOVEREIGNTY OF THE LITTORAL STATES

Piracy and sea robbery have existed for centuries in the Strait of Malacca, where complicated geography and highly trafficked routes create opportunities for lucrative attacks.⁸ Legally speaking, most of the attacks that occur within the Strait do not qualify as ‘piracy’ under international law. According to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), piracy consists of any illegal acts of violence or detention committed against a ship or aircraft “on the high seas or in any other place outside the jurisdiction of any state.”⁹ Since piracy has universal jurisdiction according to international law, any state can prosecute any person who fits this definition according to its own anti-piracy laws.¹⁰ However, since article 3 of UNCLOS awards states sovereignty over ‘territorial seas,’ which extend twelve nautical miles off a state’s coasts, the Malaccan Strait falls within the jurisdiction of the coastal states of Indonesia, Malaysia, and Singapore.¹¹ According to UNCLOS, piratical attacks within these waters constitute armed robbery, and thus it remains the responsibility of littoral states to police the area.¹² Apparently, this legal regime is not fully understood by many international communities and shipping industries. Even some scholars, either intentionally or unintentionally, have mistaken to interpret high seas regime applicable in the Straits. This inaccuracy raised difficulties when implementing specific issues that have been laid down by international law, particularly the 1982 UNCLOS.

⁷ Jean-Paul Rodrigue received a Ph.D. in Transport Geography from the Université de Montréal (1994) and has been at the Department of Economics & Geography at Hofstra University since 1999. Dr. Rodrigue, as project director, contributed to the development of a web site about transport geography and was chair of the Transport Geography Specialty Group of the American Association of Geographers (2004-2006).

⁸ Zubir Karim, “The Strategic Significance of the Straits of Malacca,” Australian Defense Force Journal, 172:2007, 33.

⁹ United Nations Convention on the Law of the Sea art. 100, 10 Dec 1982, 1833 U.N.T.S. 397 [hereafter UNCLOS].

¹⁰ Michael Bahar, Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory of Naval Anti-Piracy Operations, 11.

¹¹ UNCLOS, art. 3

¹² For the purposes of this paper, however, the terms ‘piracy’ and ‘armed robbery’ will be used interchangeably to refer to acts committed either within territorial waters or on the high seas, unless otherwise specified.

As international law stipulates, because the Strait of Malacca falls within the territorial boundaries of the regional coastal states, the task of guarding and policing the Strait belongs to Singapore, Malaysia, and Indonesia. Foreign nations enjoy the privilege of ‘transit passage’ through the Strait, but they must refrain from any threat or use of force against the sovereignty of the coastal states or the integrity of their territory.¹³ In other words, without the express permission of the coastal states, foreign powers cannot use their own forces to combat the maritime threats within the region.

COASTAL STATES AND MARITIME NATIONS: CLASH OF INTERESTS

The use of the oceans and straits of the world generally revolve around three sets of interests: warfare and the projection of military power across the globe, commercial interests and maritime trade, and economic exploitation of the sea.¹⁴ Maritime nations, states from outside the Malacca Strait but which are nonetheless interested in the region, are largely concerned with the first two, while coastal states, which possess the actual territory around the Strait, are for the most part interested in the economic exploitation of ocean resources, and thus in extending and protecting their maritime jurisdiction and sovereignty. In light of these overarching interests, this paper will now discuss the exact leadership motivations of the three littoral states and the dominant maritime players in the Malacca Strait region.

Singapore is heavily dependent on trade to fuel its export-driven economy. As a hub for transshipment trade and oil refining, Singapore would be most severely affected by a disruption in the free flow of shipping. Further, Singapore’s city centre, port, and critical industries, which are located on its southern coast, are likely targets for a possible maritime attack. Given its economic position and vulnerability, it is unsurprising that Singapore is eager to enhance international and interagency cooperation to defend against maritime terrorism. Singapore has a modern and capable navy and police coast guard, and monitors the vessels that pass through the Singapore Strait via a vessel traffic information system. Of the three littoral states, Singapore is the most vocal advocate of international cooperation.¹⁵ Malaysia is similarly dependent on maritime trade, as 80 percent of its trade passes through the Strait and major Malaysian ports are located on the Strait itself. However, Malaysia is also concerned with protecting its resource-rich Exclusive Economic Zones (EEZ),¹⁶ which contributes to the fishing industry. While collisions, groundings, or oil spills that could result from piratical attacks are a concern, its sovereign control over the Strait and its resources are similarly important. Thus, while Malaysia contends that littoral states have the capacity to safeguard the Strait, it admits that a degree of “burden sharing” with extra-regional states is possible.¹⁷

Indonesia is the largest archipelagic country in the world with over 50,000 miles of coastline spread over 17 million square miles. Unlike its regional neighbours, Indonesia is not as dependent on trade and thus does not share their concerns regarding maritime security. Rather, the state remains focused on domestic issues: economic development, political reform, territorial integrity and militant Islam. A relatively poor nation, it is only now strengthening its democracy as it recovers from both the financial crisis of 1998 and the devastating effects of the 2004 tsunami.¹⁸ Furthermore, for the Indonesian Navy, preventing piracy is less important than patrolling its extensive maritime borders and dealing with smuggling and illegal fishing, and environmental degradation. They also feel that the presence of foreign forces would be a humiliation to Indonesian sovereignty and tantamount to foreign intervention. Aside from these three littoral states, Southeast Asia is also a region of overlapping spheres of influence between rival extra-regional powers. China’s rapid economic development has resulted in drastic increases in its seaborne commerce and oil imports. As 80 percent of its energy imports pass through the Strait, the Strait’s security is pivotal to the sustained development of China’s economy.¹⁹

¹³ UNCLOS, arts. 38, 39, 40.

¹⁴ Graham Gerard and Ong-Webb, *Piracy, Maritime Terrorism and Securing the Malacca Straits* (Singapore: Institute of Southeast Asian Studies, 2006), 137.

¹⁵ Victor Huang, “Building maritime security in Southeast Asia: outsiders not welcome?” *Naval War College Review* Winter 2008

¹⁶ Under the law of the sea, an Exclusive Economic Zone (EEZ) is a seazone over which a state has special rights over the exploration and use of marine resources. It stretches from the seaward edge of the state’s territorial sea out to 200 nautical miles from its coast. In casual use, the term may include the territorial sea and even the continental shelf beyond the 200 mile limit.

¹⁷ Abd. Rahim Hussin, “The Management of Straits of Malacca: Burden Sharing as the Basis for Cooperation” *LIMA International Maritime Conference 2005*, Awana Porto Malai, Langkawi, Malaysia, 4 December 2005.

¹⁸ Bronson Percival, “Indonesia and the United States: Shared Interests in Maritime Security,” *United States-Indonesia Society*, June 2005, 4.

¹⁹ Ji Guoxing, “US RMSI Contravenes UN Convention on the Law of the Sea.” *Pacific Forum CSIS*, Honolulu, Hawaii, 8 July 2004.

For China the bulk of the Middle Eastern oil to China passes through the Straits of Malacca, Lombok and Sunda. However, the Straits of Malacca is the preferred route for many as it offers the shortest distance and the most secure route replete with navigational aids. This makes the Straits of Malacca an important shipping route for China and the other Northeast Asian economies such as Japan, Taiwan and South Korea. Given its importance to China's economic survival it comes as no surprise when Beijing indicated that it is prepared to protect the shipping routes which are important to China's economy.

This is bolstered by China's statement that China has strategic interest in these important sea routes and would use its naval might to ensure that these sea lanes remain open. Zhao Yuncheng, an expert from China's Institute of Contemporary International Relations went even further and suggested that whoever controls the Straits of Malacca and the Indian Ocean could threaten China's oil supply route. His conclusions were echoed by President Hu Jintao²⁰ who said that the "Malacca-dilemma" is the key to China's energy security. Hu hinted that several powers (the US included) have tried to enlarge their scope of influence in the Straits of Malacca by controlling or attempting to control navigation in the Straits of Malacca. Japan's interest in Southeast Asia is similarly economic, as it is dependent on imported energy supplies and raw materials. China's fast-paced economic growth and the strengthening of its defensive capabilities placed in a position to challenge the US's global leadership in the future, the only country with the capability to do so after the demise of the Soviet Union. The latent competition for global leadership would likely see the US adopting strategies to curtail China's challenge in the East Asian region. This would include controlling vital sea-lines of communication (SLOC)²¹ and strategic maritime chokepoints such as the Straits of Malacca thus indirectly controlling the movement of raw materials and goods to China.

In contrast to the Japanese and Chinese focus on commerce, the US maritime security initiatives in the Malacca Straits have attempted to forge a regime that addresses the threats of terrorism and arms proliferation. In the wake of the September 11 al Qaeda attacks, terrorism has taken centre stage in American foreign policy. The presence of al Qaeda allies in Southeast Asia, when coupled with the use of maritime terrorism elsewhere and the vulnerability of the Malacca Strait as a global economy "chokepoint," demands considerable US attention. Indeed, the former Bush administration and American media labelled the region as the "second front" in the "Global War on Terrorism."²² The Regional Maritime Security Initiative (RMSI)²³ was a conceptual framework proposed by Admiral Thomas Fargo of the US Pacific Command (USPACOM)²⁴ in 2004 for neutral, multilateral security cooperation.

The United States intended for RMSI to be a voluntary partnership of regional states that shared information and provided early warning to counter transnational threats, though, ideally, the United States would take a leadership role in concept development and implementation.²⁵ RMSI never moved beyond proposal stages, as the media incorrectly reported that Fargo had testified to Congress that American Special Forces and Marines would patrol the Malacca Strait in high-speed vessels an error that persists even in academic papers. The resulting media frenzy and the forceful condemnation of the proposal by Malaysia and Indonesia permanently tainted RMSI. In response to the perceived US plan, Malaysian Prime Minister Najib Tun Razak adamantly stated, "Control of involvement is not welcome."²⁶ Perhaps, herein lay the real reason why the US wants to bolster its presence in the Straits of Malacca.

²⁰ Hu Jintao was elected president of the People's Republic of China on March 15, 2003. He is now general secretary of the CPC Central Committee, president of the People's Republic of China, chairman of the Central Military Commission

²¹ Sea lines of communication (abbreviated as SLOC) is a term describing the primary maritime routes between ports, used for trade, logistics and naval forces

²² Bronson Percival, "Indonesia and the United States: Shared Interests in Maritime Security," United States-Indonesia Society, June 2005, 4.

²³ A Regional Maritime Security Initiative, or "RMSI", as it is abbreviated, would provide a plan of action to address unsecured or ungoverned seas which are potential havens for criminal or terrorist activity, providing relatively cheap and inconspicuous movement.

²⁴ The United States Pacific Command (USPACOM) is a Unified Combatant Command of the armed forces of the United States, led by the Commander, Pacific Command (CDRUSPACOM), is the supreme military authority for the various branches of the Armed Forces of the United States serving within its area of responsibility (AOR).

²⁵ "Regional Maritime Security Initiative" available at www.globalsecurity.org/military/ops/rmsi.htm

²⁶ Mark Baker, "Malaysia rebuffs US sea force plan," *The Age*, 6 April 2004, available at <http://www.theage.com.au/articles/2004/04/05/1081017102019.html?from=storyrhs>

If this is the situation, then it is not impossible to envisage a future “worst-case-scenario” where the US would use the threat of terrorism and piracy or both to instigate an inspection regime that would also have the effect of limiting China’s access to oil, other raw materials, technology and industrial equipment. And it would not be difficult also to foresee China’s response to such a situation by exerting its rights to secure uninterrupted passage of goods and service to and from China. A shooting war between China and the US in the Straits of Malacca may seem far-fetched but there would no doubt be tension between the two powers if China perceives that there are attempts to limit its growth potential by limiting its access to vital chokepoints such as the Straits of Malacca. It is therefore in Malaysia’s and the other littoral States’ best interest to ensure that the Straits of Malacca remains open to international navigation in line with the principles of transit passage embodied in the United Nations Convention on the Law of the Sea.²⁷

DIPLOMACY : A WAY FORWARD

Thus far, the United State’s interest in the Malaccan Strait has compelled littoral states to take some steps to address the vulnerability of the region. There is already non-coalition operational cooperation among littoral states to safeguard the security of the Strait of Malacca: the Malacca Straits Patrols initiated coordinated sea patrols between Indonesia, Malaysia and Singapore; Project Supric allows information sharing between Singapore and Indonesian command and control centres; the “Eyes in the Sky” initiative enhances surveillance by combined maritime air patrols by all littoral states including Thailand; and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia promotes and enhances cooperation, mainly by establishing an information sharing centre in Singapore and Malaysia.²⁸ The current Five Power Defence Arrangement (FPDA) by 5 states namely Malaysia, Singapore, United Kingdom, Australia and New Zealand further enhance the security of this Straits with annual multilateral exercises in protecting this sea way.

Future American attempts at cooperation initiatives must be neutral, limited and tailored to accommodate regional sensitivities. The United States cannot erect its own maritime security regime within the Malacca Strait, but it can take steps to strengthen security in the region. Littoral states appreciate the assistance of outside states so long as such assistance is neutral, limited, and non-military. Thus, the United States can share and build understanding through multilateral forums, improve the capacity building of the coastal countries through burden sharing, support intraregional initiatives, and promote and increase interoperability through exercises. Bilateral and multilateral exercises such as anti-mine, anti-piracy and anti-hijacking exercises build the operational expertise of local navies, improving their ability to secure the Strait. The annual Cooperation Afloat Readiness and Training (CARAT)²⁹ exercises and the Southeast Asian Cooperation against terrorism exercises between the United States and the navies of the littoral states are particularly helpful.³⁰ The US can also offer technical assistance to build capacity, particularly in Indonesia.

In addition, the United States can focus on promoting mutual understanding and goodwill within Southeast Asia. The reception of neutral and multilateral proposals like the RMSI the extent to which policies of pre-emptive self-defense and a disregard for national sovereignty have tarnished America’s reputation abroad, thereby impeding its diplomatic efforts. Given this, the US must step softly, and its diplomacy should centre on forging understanding and goodwill. Humanitarian civic assistance particularly the tsunami humanitarian relief mission should continue. While humanitarian aid does not directly strengthen regional maritime security, it goes further towards addressing the root causes of piracy and terrorism, namely the poverty that initially forces fishermen to abandon their trade and assume illegal activities like piracy. The United States must abandon a framework of aggressive, pre-emptive self-regional maritime security regime within the Strait of Malacca and the US must restrain the use of its power so as not to encroach on the issues of sovereignty related to direct intervention. Even regime-building attempts by extra-regional Asian actors have met with resistance. In 1999, Japan proposed the formation of a regional coast guard as part of its effort to increase regional cooperation and enhance security in Southeast Asia.

²⁷ The United Nations Convention on the Law of the Sea (UNCLOS), also called the Law of the Sea Convention or the Law of the Sea treaty, is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place from 1973 through 1982.

²⁸ Huang 4

²⁹ CARAT is a series of bilateral exercises designed to increase U.S. Sailors' understanding of Southeast Asian cultures in the event the navies are called upon to work together in real-world operations.

³⁰ qtd in Huang 4

Though the patrols would comprised of forces from Japan, South Korea, China, Malaysia, Indonesia and Singapore, China immediately opposed the creation of such an organization, viewing it as a move by Japan to extend its security role in East Asia and to contain Chinese maritime interests. The failure of these attempts at regime building to address the extra-regional states' security concerns illustrates the limits of maritime nations' involvement in the territorial waters of the Strait of Malacca. Ambitious endeavours like the Japanese effort to create a unified fleet are unlikely to succeed because of the largest obstacle to maritime state involvement; however, is the reluctance of littoral states to surrender any control over their territory. The poor reception of the RMSI in Southeast Asia highlights the sovereignty concerns of coastal states and their connection to anti-American sentiment from aggressive US policy elsewhere. Littoral states vehemently reject the notion of other states patrolling their territorial waters. Enduring postcolonial nationalism, a desire to protect their economic control of the region, and resentment towards the United States contribute to this reluctance.

In the case of the Malacca Strait, Indonesia and Malaysia fear that the threat of maritime terrorism may prove a sufficient impetus for foreign intervention, and regard US leadership in the area as an effort to prepare for such a contingency. Furthermore, there is the fear that a strong US presence may only bolster the ideological appeal of 'extremist elements' and encourage terrorist attacks.³¹ In the early phases of the newly independent littoral states, cross-Straits connections declined but started to develop more forcefully with economic growth and development in the 1980s. At the same time the Straits of Malacca maintained and increased its position as the world's most important shipping lane, more so than the Panama Canal or the Straits of Gibraltar. However the United States has been politically using preemptive diplomacy towards the littoral states to internationalize the Straits. The threat of piracy and maritime terrorism has been a critical factor in addressing the Straits of Malacca as well as the political dynamics and security approaches that are increasingly of vital importance to the littoral states as pressure from the international community brings forth a new era of security and political concerns. The Straits is now considered an even more strategic location for acts of piracy and maritime terrorism to flourish and to hinder the economies of the world. Piracy endangers the lives and welfare of citizens of a variety of flag states, and has a direct economic impact on the global economy in the form of fraud, stolen cargoes, delayed trips, and increased insurance premiums.

CONCLUSION

Indonesia, along with Malaysia and Singapore, therefore maintains that since the sovereignty and sovereign rights of the littoral States prevail over the Straits, the responsibility to maintain security and ensure safety of navigation is also within the authority of the littoral States. According to the Article 3 of 1982 United Nations Convention on the Law of the Sea (UNCLOS) awards states sovereignty over 'territorial seas,' which extend twelve nautical miles off a state's coasts, the Malaccan Strait falls within the jurisdiction of the coastal states of Indonesia, Malaysia, and Singapore. Piratical attacks within these waters constitute armed robbery, and thus it remains the responsibility of littoral states to police the area. Apparently, this legal regime is not fully understood by many international communities and shipping industries. In this context, any interference from any non-littoral states in the Straits, are inherently inconsistent with the prevailing rules of international law, and must be challenged.

Even regime-building attempts by extra-regional Asian actors including maritime states such as Japan and China have met with resistance. The act of terrorism from various groups and separatist groups has complicated and brought more challenges to the safety of this super water highway. So far the littoral States have managed to curtail the enthusiasm of the US to contribute "actively" to ensuring maritime security in the Straits of Malacca. This does not come cheap though, and the price is more presence of the maritime forces of the littoral States in the area. Already joint patrols have been inaugurated and executed. The big question is whether these patrols could be sustained. The failure to do so would again bring about the pressure from the US and its allies to demand that they also be given the right to patrol the Straits of Malacca. Much therefore depends on the wisdom of Malaysia and the other littoral States in balancing the interest of the world's only superpower and a powerful neighbour. Nevertheless the littoral states are adamant in ensuring their responsibility in providing security with extensive military exercises amongst these states ensuring non interference from other maritime and non state actors. Malaysia and Indonesia feels there is no need for the presence of an extra regional force for the purpose of securing the straits and that such presence will impinge on the sovereignty of the country unlike Singapore who is the most vocal advocate of international cooperation.

³¹ Valencia, 12

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