



Policy Forum 06-103: Co-operation in the Malacca and Singapore Straits: A Glass Half-Full



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Recommended Citation

"Policy Forum 06-103: Co-operation in the Malacca and Singapore Straits: A Glass Half-Full", NAPSNet Policy Forum, December 12, 2006, <https://nautilus.org/napsnet/napsnet-policy-forum/-o-operation-in-the-malacca-and-singapore-straits-a-glass-half-full/>

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Policy Forum Online 06-103A: December 12th, 2006

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Article by Mark J. Valencia

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I. Introduction

Mark J. Valencia, a maritime policy analyst based in Hawaii and the author of "The Proliferation Security Initiative: Making Waves in Asia", writes, "Thus for both Straits states and user states the agreement is much ado about little. The only incremental change is the establishment of a forum in

which user states can use to pressure the Straits states regarding their security concerns. User state assistance in improving safety and security in the Straits remains elusive. And the interests of the Straits states and the user states are likely to continue to clash."

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II. Article by Mark J. Valencia

- Co-operation in the Malacca and Singapore Straits: A Glass Half-Full
by Mark J. Valencia

The states bordering the Straits of Malacca and Singapore (the Straits states - Indonesia, Malaysia and Singapore) and the extraregional maritime powers that depend heavily on the Straits for transit of commercial and naval vessels have divergent interests. More than 70 percent of vessels using the Straits do not call at any Straits state port. Yet the Straits states have been bearing the brunt of the burden of maintaining the safety and security of navigation and the environment there. Consequently, the Straits states have been trying to forge an agreement with the user states to assure that they contribute to Straits safety and security. A ministerial meeting of the Straits states in August 2005 and International Maritime Organization-sponsored meetings in Jakarta in September 2005 and in Kuala Lumpur in September 2006 between the Straits states and the user states produced an agreement of sorts. But many issues remain unresolved and some states remain dissatisfied. Indeed the glass remains half-full.

Malaysia and Indonesia are primarily concerned with both their conceptual and practical sovereignty in the Malacca Strait, i.e., control, and keeping the Strait free from pollution, as well as preventing piracy, smuggling, and illegal fishing. Singapore and the user states are much more concerned with the safety and security of navigation. The United States in particular is interested in preventing possible terrorist attacks on its vessels and in interdiction of vessels carrying weapons of mass destruction.

The meetings were an attempt to implement Article 43 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which all involved have ratified - except for the United States. The Article provides that in such Straits used for international navigation user states and littoral states should co-operate in the establishment and maintenance of necessary navigational and safety aids and in the prevention, reduction and control of pollution from ships.

The meetings produced a proposal by the Straits states to establish a mechanism to meet on a regular basis with user states and the shipping industry. This mechanism would be used to discuss safety, security and environmental protection of the Straits and to facilitate co-operation in keeping the Straits safe and open to navigation, and sharing of the cost of doing so.

The principles governing the functioning of the mechanism will include

- littoral state sovereignty and sovereign rights in the Straits;
- littoral state primary responsibility for the safety of navigation, environmental protection and maritime security in the Straits; and
- compliance with international law, i.e., any measure taken in the Straits should be in accordance with international law including the 1982 UNCLOS, while at the same time acknowledging the interests of user states and states bordering the searoutes leading to the Straits.

The mechanism has been praised for avoiding sensitive issues like creating a system for charging users for the services provided by the Straits states, defining user states, allocating jurisdiction and rights and responsibilities in the Straits, and creating a Straits management scheme. But that is exactly where it falls short of what is needed. Indeed, no matter how well it is dressed and differences papered over, this arrangement is a lowest common denominator compromise that fully satisfies no one.

The Straits states' long-standing hope that the user states would finally begin to significantly share the burden remains largely unfulfilled. Such assistance could take the form of contributions to projects identified and agreed with the littoral states either in the form of direct financial contributions or in-kind technical assistance or equipment. However, such contributions remain voluntary and other than long-term contributor Japan, the only other user state offering such assistance is China. Moreover the agreement does not define user states or the direct and indirect beneficiaries of Straits use such as shippers, shipping companies and consumers of oil and goods that transit the Straits. This means that the net cast to solicit contributions remains narrow and porous. Although good intentions have been expressed by some users, the proof will be in the giving. Until then, most users will remain free-riders, benefiting from the efforts of the littoral states and the two contributors while contributing nothing themselves.

The agreement also avoids the critical issues of sovereignty and jurisdiction--- and thus rights and responsibilities in the Straits - a contentious issue between Indonesia and Malaysia on the one hand and Singapore on the other. Further there is not even a differentiation between the Malacca Strait which is bordered solely by Indonesia and Malaysia, and the Malacca and Singapore Straits which of course includes Singapore as a littoral state. Boundaries remain uncertain and issues of jurisdictional rights and responsibilities will not be resolved until they are agreed.

The agreement also avoids any formal arrangement among the littoral states for cost-effective and efficient management of the Straits. Indeed, the ad hoc nature of current Straits management is reinforced in that assistance can be bilateral, which is preferred by Indonesia. Although the Tripartite Technical Expert Group on Safety of Navigation will oversee developments, needed urgently is a coordinating committee to solicit and select appropriate projects including training and capacity building, collect funds, enhance efficiency, eliminate redundancy, monitor and report on project implementation, collect and disseminate information, and share intelligence. Thus the agreement is hardly an example of robust co-operation between the littoral states---as one entity--and the user states.

Further, the issue of security in the Straits is not addressed. While security can be discussed in the forum to be set up under the mechanism, the focus of discussions will be on safety and environmental protection. Moreover, direct user state assistance in enhancing security in the Straits continues to be unwelcome by the Straits states. This will disappoint India, Japan and the United States which have repeatedly offered such assistance.

Thus for both Straits states and user states the agreement is much ado about little. The only incremental change is the establishment of a forum in which user states can use to pressure the Straits states regarding their security concerns. User state assistance in improving safety and security in the Straits remains elusive. And the interests of the Straits states and the user states are likely to continue to clash.

III. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send

responses to: napsnet-reply@nautilus.org . Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

Produced by The Nautilus Institute for Security and Sustainable Development
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