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BURDEN SHARING IN THE STRAITS Not So Straightforward

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Meeting of User States

ON 15-17 February 2006, the United States held a meeting of countries using the Malacca and Singapore Straits, or the “user States”, in Alameda, California. The purpose was to discuss ways and means of providing assistance to Indonesia, Malaysia and Singapore – the “littoral States” -- to enhance the safety, security and environmental protection of the Straits. This was in accordance with the Jakarta Statement agreed at the meeting convened by the International Maritime Organization (IMO) and the Indonesian Government in the Indonesian capital in September 2005.

The Jakarta meeting aimed to enhance the safety, security and environmental protection in the Straits of Malacca and Singapore. The Jakarta Statement that followed acknowledged the rights and obligations in the 1982 UN Convention on the Law of the Sea (UNCLOS), in particular Article 43 on burden sharing. Article 43 requires user States and littoral States to cooperate in the use and maintenance of the Straits.

The Jakarta Statement invited the IMO to consider -- in consultation with the three littoral States -- convening a series of follow-on meetings for the littoral States to identify and prioritize their needs. It also called on user States to identify possible assistance to respond to those needs.

The purpose of the US-initiated Alameda meeting was to coordinate user State assistance by providing a forum to exchange views on issues of common interest. This would allow the user States to coordinate their positions prior to later meetings with the littoral States, which were not invited to the Alameda meeting.

From the point of view of the user States, the Alameda meeting was an important initiative. However, the littoral States might be justified in regarding it as another attempt to “internationalize” security and safety in the Straits. While the Jakarta Statement had acknowledged the initial task of the littoral States in identifying and prioritizing their needs, the Alameda meeting appeared to pre-empt that first step and allocate a leading role to the user States. Furthermore, the meeting appeared to attach little significance to UNCLOS Article 43 that has been the key focus of the littoral States in the past and the cornerstone of IMO initiatives.

Principle of Burden Sharing

The littoral States have considerable responsibilities to service vessels transiting the Straits -- from provision and maintenance of navigational aids and communications systems to search and rescue (SAR), offshore security services, basic vessel salvage services and marine pollution contingency arrangements. In addition to providing for maritime safety and environmental protection in the straits, the littoral States are now challenged to maintain security in the straits against the threats of piracy and maritime terrorism.

The mechanics of burden sharing are however problematic and warrant further study. A basic problem is that of devising a mechanism for cost-recovery. Should any cost contribution come from the governments of user States, flag States, or more directly from the ship-owners? These issues have been addressed over the years in many international and regional forums, but a satisfactory formula for burden sharing has not been devised.

Differences over Burden Sharing

Issues of burden sharing and cooperation between user and littoral States were the focus of an international conference in Kuala Lumpur in October 2004 hosted by the Maritime Institute of Malaysia (MIMA). In opening the conference, the Deputy Prime Minister of Malaysia, Datuk Seri Najib Razak, stated: "There should be no more free rides for countries using the Straits of Malacca and user nations must contribute towards the safety and security of the sea lane." In addition to Japan, user States in this context include the United States, China, South Korea and Taiwan. China was invited to the Alameda meeting of user States but apparently did not attend. Taiwan was not invited.

The Alameda meeting points to a fundamental difference of view on what is meant by "burden sharing". Over the years, the littoral States have typically seen this as a matter of sharing the financial costs of providing safety and environmental protection. But the recent meeting suggests that the US, and perhaps other user States as well, sees it as a matter of getting more directly involved in security arrangements, particularly to meet perceptions of threats from piracy and terrorism.

Piracy and the threat of maritime terrorism attract most attention from the user States. However, the littoral States are also concerned about other threats, such as arms trafficking at sea, illegal population movement across the Straits, and marine pollution. Anecdotal evidence points to a relatively high level of ship-sourced marine pollution in the Malacca Strait. Without an effective surveillance and monitoring system in place for detecting pollution incidents, passing ships might feel free to discharge oily waste from tank cleaning or other onboard operations. SAR services and an ability to manage cooperatively the consequences of a major disaster in the Straits are other requirements.

Reaching agreement on burden sharing has never been easy. Politics inevitably enter the debate. Japan enjoys a monopoly position as the one user State currently involved in the management of the straits. It has been rather less than enthusiastic in the past with sharing this position with other user States, particularly China. As was demonstrated by their reaction in 2004 to the US' proposal of the Regional Maritime Security Initiative (RMSI), both Malaysia and Indonesia are sensitive to any attempt to "internationalize" management of the Malacca-Singapore Straits that might compromise their sovereignty and sovereign rights in the area. The RMSI was launched by the US in May that year to establish a cooperative

regime for maritime security in the Malacca Straits. At least initially, it was perceived by Malaysia and Indonesia as a heavy-handed and insensitive initiative.

Differences of perception are further accentuated by the fact that the US is not a party to UNCLOS. It might view a cost contribution as an implicit “fee for transit” and thus contrary to the principle of freedom of navigation through an international strait. The US would certainly not see UNCLOS Article 43 as part of customary international law.

Way Ahead

It would seem logical and essential that measures for ensuring safety, security and environmental protection in the Straits should be both comprehensive and integrated. They should cover not just security needs but also the full requirements of safety and environmental protection in the Straits. Unfortunately the user States are only paying lip service to these latter requirements at present.

There is a pressing need for the littoral States to identify and prioritize their needs with regard to providing safety, security and environmental protection in the Straits. Recent press reports suggest that the littoral States will sign a pact in April outlining standard operating procedures for maritime security in the Straits. But this is unlikely to reflect the comprehensive and integrated approach that recognizes all threats and comprehends the interests of all stakeholders. The greater majority of user and littoral States are parties to UNCLOS. Its Article 43 must be the basis of effective cooperation between the littoral and user States rather than the thinly disguised self-interest of user States.

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