Transit Passage and Users’ Contributions to the Safety of the Straits of Malacca and Singapore

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Abstract

UNCLOS provides that user States and states bordering a strait should by agreement co-operate in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation, and for the prevention, reduction and control of pollution from ships. However, although the agreement to cooperate based on Article 43 has been in effect for 13 years, it has yet to be put into practice.

A historic breakthrough was accomplished when the Cooperative Mechanism proposed by the littoral States, consisting of the Co-operation Forum, the Project Co-ordination Committee, and the Aids to Navigation Fund was agreed to at the ‘Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection’ by the representatives from the littoral States, user States, the shipping industry, and many other stakeholders who participated in this meeting in September 2007.

1Executive Director, Ocean Policy Research Foundation. The author’s PowerPoint presentation can be viewed on the accompanying CD.
This agreement not only realizes the intent of Article 43 for the first time, but surpasses the content of cooperation envisioned at the time UNLCOS was adopted. Most notably, it portends a new kind of cooperation on the part of the direct beneficiaries of straits passage, the shipping industries, who are considering voluntary cooperation as part of their corporate social responsibility (CSR), a 21st century concept.

The author will focus on the new mechanism of cooperation between the stakeholders in the Straits of Malacca and Singapore, including the littoral and user States, the shipping industries and others, and discuss its contents in detail.

1. Article 43 of UNCLOS and Cooperation between Littoral and User States

The breadth of the territorial sea was defined as up to 12 nautical miles by UNCLOS, which entered into force in 1994. Thus, in the center of more than 100 straits, international waters that were once high seas under the traditional three-mile rule were lost. As a result, there was a shift in the legal principle applicable to vessels, from freedom of the high seas to innocent passage of territorial seas, and a new regime of international straits was adopted in UNCLOS to avoid inconvenience from the change as well as to secure freedom of over-flight.

UNCLOS stipulates that all ships and aircraft enjoy the right of transit passage, which shall not impede continuous and expeditious transit and over-flight of the straits used for international navigation between one