



Multilateralism in the Straits of Malacca and Singapore



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ABSTRACT

This paper analyzes International Maritime Organization (IMO) involvement in maritime cooperation regime in the Straits of Malacca and Singapore through multilateralism. It begins by introducing the maritime cooperation regime prior to 2001, which was mainly trilateral in nature through Tripartite Technical Expert Group on the Safety of Navigation (TTEG). Although TTEG managed to increase the level of safety of navigation in the Straits of Malacca and Singapore through the implementation of the Traffic Separation Scheme (TSS) in 1981 and Mandatory Ship Reporting System (STRAITREP) in 1998, such cooperation was beset by financial strain and conflict of interests. Subsequently, there was a change in the cooperation regime after 9/11 incident. This paper identifies that the change was contributed by the IMO through a methodology called multilateralism. Three important principles were adopted by IMO in implementing multilateralism in the Straits of Malacca and Singapore, namely generalized principles of conduct (respect for sovereignty and compliance with burden sharing principle under Article 43 of UNCLOS 1982), diffuse reciprocity, and indivisibility. This paper concludes that multilateralism by IMO has transformed trilateral cooperation into multilateral cooperation in the Straits of Malacca, combining state actors (littoral states and user states) and non-state actors (non-governmental organizations and international shipping industries).

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1. Introduction

During the period of 1971–2001, maritime cooperation regime in the Straits of Malacca and Singapore was implemented. In this connection, the three littoral states successfully established the Tripartite Technical Expert Group on the Safety of Navigation (TTEG) in 1975, through which two main achievements were made, namely the implementation of Traffic Separation Scheme (TSS) and Mandatory Ship Reporting System (STRAITREP) in 1981 and 1998 respectively.¹ However, such cooperation was limited to the three littoral states. There was no involvement of state actors or non-state actors in the management of the Straits of Malacca except Japan through the Malacca Strait Council (MSC). Since the setup of MSC in 1968, Japan has made every effort to ensure safe navigation in the Straits of Malacca and Singapore. On the other hand, IMO's involvement was just for approval for TSS and STRAITREP implementation. Overall, the passage of the Straits

of Malacca is properly regulated, but sovereignty is strictly guarded by the littoral states.

However, the 9/11 incident changed the world's security and also had a big impact on security level in the Straits of Malacca and Singapore. In this connection, the Straits of Malacca was regarded as 'the second front of global terrorism'.² Concerns triggered by the international community, particularly the US, regarding the risk of terrorist attacks in the Malacca Strait has seen attempted intervention and involvement of various parties to ensure safe and secure the Malacca Strait for international trade and shipping activities. Even though it was regarded as a myth, diplomatic efforts to control this busy and strategic passage between the Indian Ocean and the Pacific and the threat of piracy were intensified [1]. The littoral states, especially Malaysia and Indonesia, repeated their long-standing position that the Straits of Malacca and Singapore were not an international waterway, although they fully recognized their use for international shipping [2]. In the meantime, Japan led a multilateral initiative to combat piracy and armed robbery under Regional Cooperation Agreement on Combating Piracy and armed Robbery Against Ships in Asia

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¹ TSS is an IMO-approved routing system. It was implemented in the Straits of Malacca and Singapore on 14th November 1977 by virtue of IMO Assembly Resolution A.375(X). Further, on 19th May 1998, the IMO adopted Resolution MSC 73 (69) making a ship reporting system mandatory for ships of certain categories when passing through the nine designated sectors along the Straits of Malacca and Singapore (from Pulau Angsa to Horsburg Lighthouse). STRAITREP came into force on 1 December 1998.

² Several countries in the region such as Malaysia, Thailand, Indonesia, and the Philippines were featured in al Qaeda's most ambitious plans, including its attack on the USS Cole in October 2000 and the September 11 attacks [The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States, 2004, <http://www.gpoaccess.gov/911/pdf/fullreport.pdf>. – accessed 19 June 2013].

(ReCAAP) but received no participation from Malaysia and Indonesia.³ In addition, attempts by the United States to assert military control over the Straits under Regional Maritime Security Initiative (RMSI) were met by stiff resistance from Indonesia and Malaysia [3].⁴ Amazingly, IMO-led multilateral cooperation was accepted despite their resistance to other parties' similar efforts.

The question arises as to what kind of methodology or approach was adopted by the IMO in balancing the different interests of the parties involved in cooperation regime in the Strait of Malacca? This methodology or approach needs to be scrutinized and clearly understood because the answers about the ability of IMO to change the maritime cooperation regime in the Straits of Malacca will be obtained. Indeed, different priorities, perceptions and interests in the Straits of Malacca which has lasted since the 1970s are very difficult to resolve without compromise.

Therefore, this paper argues that the success of multilateralism in the Straits of Malacca after 2001 was partly due to IMO's role in facilitating the entire process by adopting three principles, namely generalized principles of conduct, indivisibility, and diffuse reciprocity. Despite taking so long, the multilateralism approach facilitated by IMO is a win-win approach that promises everyone will benefit equally.

2. The concept of multilateralism

Multilateralism is comprised of three main principles; namely generalized principles of conduct, indivisibility, and diffuse reciprocity. As explained by Caporaso, "The institution of multilateralism is distinguished from other forms by three properties: indivisibility, generalized principles of conduct and diffuse reciprocity" [4]. These three principles differentiate multilateralism from unilateralism or bilateralism. Multilateralism has been widely implemented in the 20th and 21st century due to global interdependence. According to Ikenberry, "as global interdependence grows, so does the need for multilateral coordination of policies comes as close as any to unchallenged veracity" [5]. Besides interdependence, transboundary issues such as international terrorism, human trafficking, smuggling, piracy and armed robbery against ships have raised demand for multilateral solutions to these problems.

In terms of definition, multilateralism was defined as 'the practice of co-ordinating national policies in groups of three or more states, through ad hoc arrangements or by means of institutions' [6]. However, this definition is limited to multilateralism by state actors, which focus on the institution as 'inherited patterns of rules and relationships that can affect beliefs and expectations, and as potential tools for the pursuit of their own objectives' [7]. In other words, multilateralism forms an institution when there is a set of the rules governing the conduct of the parties involved through multilateral agreements based on specific regulations [8]. In this context, multilateralism exists in the form

of international regime or international organization. Multilateralism has also been defined as 'persistent sets of rules, formal and informal, that affect the behavior of actors that define and stabilize property rights of states, manage coordination problems and resolve collaboration problems' [9]. These definitions provide us with the understanding that multilateralism and the establishment of international institutions are interrelated, because the establishment of an international institution itself is the result of the process of multilateralism. In the context of the Straits of Malacca, multilateralism facilitated by IMO has sought to resolve conflict and complicated transboundary issues which ineffectively addressed through bilateral or trilateral mechanism.

3. Multilateralism by IMO in the Straits of Malacca and Singapore

This section will analyze how IMO facilitated multilateral maritime cooperation in the Straits of Malacca and Singapore after 2001. It has been argued that IMO successfully facilitated maritime cooperation between state actors and non-state actors based on three main principles, namely generalized principles of conduct, indivisibility, and diffuse reciprocity. These three principles were applied to three important aspects, namely maritime security, maritime safety, and marine environmental protection.

As a matter of fact, the establishment of the UN is the symbol of multilateralism. Thus, IMO, as a specialized agency of the UN, also adopted this method for every action. Multilateralism has been implemented by various multilateral institutions and in various forms of cooperation, be that political, economic, industrial or legal cooperation. It grew rapidly after the end of Cold War. In addition, multilateralism has been associated with the weapon of the weak because only small countries often choose to participate in multilateralism to achieve their interests [10].

However, the study also found that the perception that multilateralism is used as a weapon by small countries is not entirely accurate. In this connection, big countries, particularly the U.S, Japan and China, have used multilateralism as a weapon and means to get involved in the management of the Straits of Malacca and Singapore. In contrast, small countries, especially Malaysia and Indonesia, refused to accept multilateralism by IMO in the Strait at first. However, external pressure by superpowers, the spread of transnational maritime crime, duty to cooperate under Article 43 of UNCLOS 1982, and finally the fully mandated involvement of IMO has made them agree to cooperate.⁵ This development is consistent with the Acharya's view that "multilateralism and multilateral institutions may not be the quickest, most efficient or decisive producers of normative change, but they make fundamental transformations legitimate and peaceful" [11].

It is clear that multilateralism in the context of the Straits of Malacca is not the weapon of weak states but rather a weapon of powerful states to urge the IMO to be a 'middleman' for urging the littoral states to accept international cooperation in the management of the Straits of Malacca.

3.1. Generalized principles of conduct

In facilitating a new maritime cooperation regime in the Straits of Malacca after 2001, the IMO outlined two general principles of conduct, namely the principle of sovereignty and territorial

³ ReCAAP is the first regional government-to-government agreement to promote and enhance cooperation against piracy and armed robbery in Asia. It was finalized on 11 November 2004 and entered into force on 4 September 2006. To date, 18 States have become contracting parties to ReCAAP namely all ASEAN nations (except Indonesia and Malaysia), Japan, China, Korea, India, Bangladesh, Sri Lanka, Netherlands, Norway, UK and Denmark. [<http://www.recaap.org/AboutReCAAPISC.aspx> -accessed 20 June 2013].

⁴ The Regional Maritime Security Initiative (RMSI), proposed in 2004 by Admiral Thomas B. Fargo, former commander of the US Pacific Command, is one of the American maritime security programs and initiatives designed to promote regional cooperation and improve maritime security in the East Asia and Pacific region, especially in the Straits of Malacca and Singapore. The main goal of RMSI is to develop a partnership of willing nations to work together under international and domestic law, to identify, monitor and intercept transnational maritime threats, in particular piracy, armed robbery and maritime terrorism.

⁵ Researcher's interview with Muhammad Razif Ahmad, Managing Director of Port of Tanjung Pelepas (formerly a director of Mariners Affairs Division, Marine Department of Malaysia), 5 April 2012, Port Klang and Abdullah Yusuff Basiron, Undersecretary of Maritime Division, Ministry of Transportation Malaysia, 4 April 2012, Putrajaya.

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