

4-30-2009

Regulation of International Straits

Hasjim Djalal

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>



Part of the [International Law Commons](#)

Recommended Citation

Djalal, Hasjim (2009) "Regulation of International Straits," *Indonesian Journal of International Law*. Vol. 6: No. 3, Article 2.

DOI: 10.17304/ijil.vol6.3.205

Available at: <https://scholarhub.ui.ac.id/ijil/vol6/iss3/2>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

Regulation of International Straits

Prof. Hasjim Djalal¹

Generally this article discusses regulation on international strait which involves the straits of Malacca and Singapore. With regard to the straits used for international navigation, the 1982 UNCLOS prescribes the rights and obligations of the States bordering the straits as well as the users in transit passage. This article describes the problems of the straits of Malacca and Singapore which mainly lay on how to ensure safety and protect environment of the coastal States, Development of Cooperative Mechanism, bilateral cooperation, and new issues. In conclusion, the author share his lesson learned within the last decades on his experiences.

Keywords: International Straits, UNCLOS, International Navigation

I. Introduction

1. "International Straits" are "Straits used for international navigation". This is the terminology used in Part III of the 1982 UNCLOS.
2. With regard to Southeast Asia, generally this topic would involve the straits of Malacca and Singapore, and does not include the various geographical straits in Indonesian archipelago which are governed under separate regime, namely the regimes of archipelagic waters and the archipelagic sealanes as stipulated in Part IV of the 1982 UNCLOS.

¹ Beliau dikenal oleh kalangan luas sebagai Diplomat yang handal dan pakar hukum laut internasional. Pendidikan diplomasi, beliau peroleh dari Akademi Dinas Luar Negeri. Kemudian Beliau memperoleh gelar Master of Arts (MA) di bidang Ilmu Politik Internasional (1959) dan Philosophy Doctor (Ph.D) di bidang Ilmu Hukum Laut Internasional (1961) dan University of Virginia, USA. Beliau pernah menjabat sebagai perwakilan RI di luar negeri termasuk sebagai Duta Besar RI di PBB-New York (1981-1983), Kanada (1983-1985), dan Jerman (1990-1993). Kepiawaian Beliau di bidang hukum laut, dibuktikan dengan dipercayanya beliau menjadi Presiden pertama dari International Seabed Authority (ISA) di Kingston, Jamaica (1995-1996) dan Duta Besar Keliling Indonesia untuk masalah-masalah Hukum Laut dan Kelautan (1994-2000). Beliau juga pernah menjadi anggota Dewan Maritim Indonesia (DMI), penasehat ahli dan Kepala Staf TNI Angkatan Laut RI dan Menteri Kelautan dan Perikanan, serta anggota Komisi Konstitusi MPR RI.

3. With regard to the Straits used for international navigation, the 1982 UNCLOS prescribes, among others, the **rights and obligations of the states bordering the straits as well as the users in “transit passage”**, as follows:
 - a. The transit passage “**shall not in other respects affect the legal status of the waters** forming such straits or the exercise by the states bordering the straits of their sovereignty or jurisdiction over such waters and their airspace, bed, and subsoil” (Article 34 (1)).
 - b. In straits which are used for international navigation, “**all ships and aircraft enjoy the right of transit passage which shall not be impeded..... solely for the purpose of continuous and expeditious transit**” (Article 38).
 - c. Article 39 prescribes, among others, “**that ships and aircraft in transit shall refrain from any threat or use of force against the sovereignty, territorial integrity, or political independence of the states bordering the straits, and shall refrain from any activities other than those incidental to their normal mode of continuous and expeditious transit**”.
 - d. Article 42 (4) prescribes that “**foreign ships exercising the rights of transit passage shall comply with such laws and regulations**” of the states bordering the straits enacted in accordance with UNCLOS.
 - e. Article 43 prescribes that users states and states bordering a strait should by agreement cooperate:
 - i. in the establishment and maintenance in a straits of necessary navigational and safety aid
 - ii. for the prevention, reduction and control of pollution by ships
 - f. Article 44 prescribes that states bordering the straits “**shall not hamper transit passage**” and that “**there shall be no suspension of transit passage**.”

II. The problems of the straits of Malacca and Singapore

1. **The problems of the Straits of Malacca and Singapore** have come into the picture more prominently since the 1960’s, especially since the era of giant oil tankers came into the picture.

2. **At the same time, the traffic and the significance of the Straits to international trading community were also increasing.**
3. **The problem was and still is how to ensure the safe passage of those vessels navigating the long, and in some part shallow, narrow, and crowded Straits and how to protect the environment of the coastal states**
4. **In view of this, the three coastal countries had been attempting to coordinate their policies since the 1960's. After several years of consultation, they reached for the first time an understanding on the Straits of Malacca and Singapore in the **Joint Statement on November 16th, 1971**, stating among others **the need for tripartite cooperation on the safety of navigation** in the two straits and that **a body for cooperation to coordinate efforts for the safety of navigation in the Straits of Malacca and Singapore be established.****
5. **From this early beginning, Japan, through Malacca Straits Council (MSC) and Nippon Foundation have been very active in supporting the promotion of safety of navigation and environmental protection in the straits.**
6. **The position of the coastal states was reconfirmed in the **Joint Statement** of the three coastal countries on **19th February 1975** (which was prompted by the accident of the **Showa Maru** giant tanker in Singapore Straits on January 6, 1975), and by **Joint Statement** of the three coastal countries on promoting safety of navigation in the Straits of Malacca and Singapore on **24 February 1977.****
7. **Since 1977 the efforts to promote safety of navigation and environmental protection in the Straits have been largely concentrated in the **TTEG (Tripartite Technical Experts Group)**, while negotiation on the **legal status** of the Straits were going on in the **3rd UN Law of the Sea Conference**. The discussions during the Conference centered around the **status of the straits, the navigation regime** to be applied for foreign vassels and aircraft (freedom of navigation or innocent passage), the **safety of navigation, and the environmental concerns** as well as the **security and the integrity of the states bordering the straits.****

8. A number of progress had been achieved in the cooperation between the three coastal countries and Japan through the TTEG, endorsed by IMO, such as:
 - a. **More and more detailed hydrographic surveys** have been made in the two straits and **better and more accurate charts** are being produced regarding more places in the straits.
 - b. Together with the production of chart, **better information and knowledge** have also been gained on marine environment specific to the straits, such as the tidal and current information
 - c. Consequently, **more and more necessary navigational aids** have also been established or modernized to meet the increasing need of traffic.
 - d. In order to promote safety of navigation, **traffic separation schemes (TSS)** have also been established in certain parts of the strait in cooperation with IMO in London.
 - e. Also, in order to promote safety of navigation, particularly due to the shallowness of the waterways in some parts, an **Under Keel Clearance (UKC) of 3,5 metres** has also been established in cooperation with IMO and it has now been in operation for many years
 - f. In order to ensure an immediate cleaning up operation as a result of oil pollution that may occur in the straits, a **Revolving Fund** has also been established since the last several years. The Fund was established by contribution from the Japanese side but administered in cooperation with the three coastal countries.
 - g. A system of **voluntary reporting** has also been organized and a **pilotage** system in some areas has also been practiced. The two systems had had difficulties in implementation, primarily because some user states considered them as not in conformity with the principles of freedom of navigation and transit
 - h. At the same time, the three coastal countries have also developed a number of useful cooperation with regard to **contingency plans against marine pollution, search and rescue operation**, as well as cooperation against **illegal activities at sea**, including cooperation against **armed robbery, smuggling**, and so on.

9. The 3rd UN Law of the Sea Conference finally adopted the UNCLOS 1982. **Article 43** of the Convention, as stated earlier, stipulated the **need for cooperation between the coastal countries and the users**. For more than 20 years since the adoption of UNCLOS in 1982, not much implementation took place on Article 43.
10. After several years later, the **Batam Ministerial Meeting** of the Littoral States of the Straits of Malacca and Singapore on **1-2 August 2005** emphasized that the **cooperation between the coastal states and the users should be done in accordance with international law, particularly Article 43 of UNCLOS 1982**.
11. During the **Jakarta Meeting** organized by IMO and the three coastal countries on **7-8 September 2005**, it was agreed that **Article 43 should be used as a basis for mechanism to cooperate between the coastal states and the users of the straits, either states or other stakeholders**.

III. Development of cooperative mechanism

1. The **Kuala Lumpur Meeting** on the Straits of Malacca and Singapore on **18th-20th September 2006** agreed to form a **“Cooperative Mechanism”** between the littoral and the user states on safety of navigation and environmental protection in the straits, **including for burden sharing purposes**. The KL meeting also agreed to implement **six projects** to promote safety of navigation and protection of the marine environment.
2. As a follow up to those three meetings (**Batam, Jakarta, Kuala Lumpur**), the meeting in **Singapore** on **4-6 September 2007** **reconfirmed the establishment of the Cooperative Mechanism** among the littoral states and the users. The establishment of Cooperative Mechanism provides opportunities and forum for **all the users of the straits**, including states, shipping industries, and other stakeholders, to participate and share their **“Corporate Social Responsibilities (CSR)”** in protecting the environment and in promoting safety of navigation in the very strategic straits.

3. The **Cooperative Mechanism** recognizes the following principles:
 - a. Recognizing territorial sovereignty, sovereign rights, as well as jurisdiction of the coastal countries.
 - b. It should be **in conformity with Article 43 of UNCLOS**.
 - c. **The TTEG (Tripartite Technical Experts Group) of the three coastal/littoral countries will be the focal point** for the activities to promote safety of navigation and marine environmental protection in the straits.
 - d. **The recognition of the interest of the users and other stakeholders in those straits as well as their roles and contributions to the promotion of cooperation in the straits.**
4. The **Cooperative Mechanism (CM)** shall have:
 - a. **Cooperation Forum (CF)** for dialogue and open discussion among the coastal states and the users.
 - b. **Project Coordination Committee (PCC)** for the implementation of the cooperative programs in cooperation with the sponsors of the project.
 - c. **Aids to Navigation Fund (ANF)**.
5. The implementation, the structure, and the process within the **Cooperative Mechanism (CM)** should be **simple and flexible** in order to accommodate possible development.
6. The implementation of Cooperative Mechanism shall **not prevent implementation of bilateral cooperation** of specific project or projects.
7. **Cooperation Forum (CF)**
 - a. **Cooperation Forum (CF)** is a mechanism for coastal states and the users to carry out dialogue, information exchange and burden sharing on specific issues for common benefit and possible cooperation.
 - b. The **first Cooperation Forum** under the Cooperative Mechanism was held in **Kuala Lumpur on 27-28 May 2008**. The Forum:
 - i. Agreed on its rules of procedures.
 - ii. Discussed the report of the first meeting of ANF in **Penang on 16-17 April 2008** and other activities of the **Project Coordination Committee (PCC)**.

- iii. Discussed various issues relating to the Straits of Malacca and Singapore:
 - 1). Status of the aids to navigation.
 - 2). Situation on the safety of navigation.
 - 3). Development of various efforts to protect marine environment, particularly oil spill response.
 - c. Development of Marine Electronic Highway (MEH) demonstration project
 - d. The development of the 6 projects agreed upon in Kuala Lumpur in 2006.
 - e. Presentation by Malaysian Institute of Marine Affairs (MIMA) on the relations between shipping and the protection of environment
8. Project Coordination Committee (PCC)
- a. The Project Coordination Committee (PCC) was formed to implement the projects agreed upon in Kuala Lumpur meeting in 2006. The first meeting of the PCC was held in Kuala Lumpur on 29 May 2008. The meeting discussed the implementation of the six agreed projects.
 - b. It appears that no one has expressed interest in sponsoring Project no. 1, namely on Removal of the Identified Wrecks in the TSS in the Straits, with estimated costs of about USD \$ 19 million in 5 years.
 - c. Australia, China, and USA reaffirmed their commitment to support implementation of Project no. 2, namely on the capacity building on HNS (Hazardous and Noxious Substances) preparedness and response, in 6 proposed locations, all of them in Malaysia and Singapore, with estimated costs of about US \$ 3.5 million in 2 years.
 - d. On Project no. 3 (Demonstration Project of class B Automatic Identification System (AIS) on small ships), costing about USD \$ 400,000 for about 6 months, and Project no 4 (Setting up Tide, Current, and Wind Measurement System) in 12 locations, with estimated costs of about USD \$ 774,400 for 4 years, plus other operational costs, all amounting to about USD \$ 1,401,400 in 4 years, it was emphasized that there was need for data collection by the 3 coastal states..

- e. **On Project No. 5 regarding Replacement of Aids to Navigation**, assessment survey will be conducted on **51 aids to navigation by Indonesia** in Indonesian water, and **Malaysia** will conduct similar activities in its waters in June and July 2008. Singapore will assess aids to navigation in its waters later. **Japan and South Korea** reconfirmed their commitments to support the project. The three littoral countries also agreed that the interim report on the Assessment Survey will be submitted to the **second meeting of the ANF Committee in October 2008**. The final report is expected to be submitted by December 2008 to Indonesia as the coordinator of the Project No.5. The whole project may take up to 10 years and the cost of replacement is estimated to be about USD \$ 18, 225,000.
 - f. With regard to the **Project No. 6 on Replacement of 7 aids to navigation damaged by tsunami in 2004**, **China** reconfirmed its commitment to implement the project step by step within 47 months, and asked Indonesia to determine the position of the 7 aids to navigation. China also asked Indonesia to carry out “foundation survey” and prepare the preliminary design for the 7 aids to navigation locations. Indonesia suggested that the Project No. 6 could be finished within 36 months. The original estimated cost of the project was USD \$ 276,000, and after some investigation, it may cost higher.
9. **Aids to Navigation Fund (ANF)**
- a. With regard to the **ANF (Aids to Navigation Fund)**, which is a very important element to promote safety of navigation through burden sharing arrangement, so far the contribution to the Fund has been **voluntary**. It is expected that the contribution could and would come from states, shipping industries, oil industries, international organizations, or any non-governmental organizations that care for the safety of navigation and environmental protection in the straits. It should be noted that in this context **Japan** has been one of those who has supported the program and the efforts from the very beginning within at least the last 30 years. **The ANF will be administered by the three coastal countries** by rotation and

will not establish a separate permanent Secretariat for that purpose. **The ANF Committee**, consisting of representatives from littoral states as well as contributors will be formed to ensure transparency and accountability on the use of the Fund.

- b. **The Aid to Navigation Fund (ANF)** is flexible and is open to any form of cooperation. Financial contribution from the users or any other institution can be made in accordance with the rules of Cooperative Mechanism.
- c. **The First Meeting of the ANF Fund took place in Penang, Malaysia, on 16-17 April 2008**, attended by representatives of the three coastal countries, plus the Republic of Korea, United Arab Emirates, Nippon Foundation, and the Middle East Navigational Aids Services (MENAS). The observers from China, Greece, Japan, and IMO also attended.

The First ANF Meeting agreed, among others, on the following:

- i. The decisions on terms of reference (TOR), rules of procedures (ROP), and other arrangements.
- ii. The ANF was **established in Malaysia** on the basis of Malaysian Financial Procedure ACT 1957.
- iii. **Malaysia** was chosen as the **Chairman of the ANF Committee** for the next three years, namely until 31st December 2010, and thereafter shall be held by rotation among the three coastal countries. **Singapore** will assume chairmanship in January 2011. This mechanism follows the practice of managing the **Revolving Fund** which was established in 1982.
- iv. ANF will implement **Project No. 5** on replacement and maintenance of 51 aids to navigation in the Straits as agreed in the Kuala Lumpur meeting (2006) and Singapore meeting (2007).
- v. The ANF Meeting acknowledged the indicated contribution in 2008 from **Nippon Foundation (USD 1.351.000)**, **MENAS (USD 1.000.000)**, **United Arab Emirates (USD 100.000)**, **Republic of Korea (USD 100.000)**, additional contribution from **China, and Greece** to the amount of **USD 1.000.000** through the IMO Trust Fund. These all come to the amount of

- USD 3. 551.000. In addition, **Japan** also contributed USD 200.000 and committed to contribute additional fund at the Fund Committee meeting in October 2008. **It should be noted that the estimated costs of the 6 projects was USD \$ 42,802,400 in 10 years, while the Aids to Navigation Project (no. 5) alone would cost about USD \$ 18,225,000.**
- vi. The support of the **IMO Trust Fund** to Cooperative Mechanism, including to ANF, will be formalized in a document that would be worked out between the IMO and the three Littoral States.
 - vii. Based on the experiences of **Malacca Straits Council** in handling and maintaining Aids to Navigation in the Straits of Malacca and Singapore, the meeting also asked Malacca Straits Council in Japan to assist the ANF Committee in implementing its tasks.
 - viii. The three littoral states shall discuss the proposal of the Republic **Korea** regarding the participation and contribution from the user states to the ANF.
 - ix. The Second ANF Meeting will be held in Kuching, Sarawak, in October 2008 at about the same time with the 33rd meeting of the TTEG.
10. It is generally felt that the contribution of **Nippon Foundation** and **MENAS** has been instrumental in encouraging other supports to the ANF, including from the **Republic of Korea, UAE, Greece, Japan, and others.**
11. The 2nd ANF Committee under the Cooperation Mechanism was held in Kuching, Malaysia, on October 30 – 31, 2008, attended by the littoral states, plus **UAE, Republic of Korea, Nippon Foundation, MENAS** as well as by observers from **China, Greece, Japan, and IMO.**
- a. In this meeting, the Republic of Korea expressed readiness to contribute in USD an equivalent to 100 million Korean Won (approximately USD 100,000), subject to the signing of an MoU (which is now being drafted).
 - b. The ANF Committee acknowledged receipt of USD 1,351,000

and USD 100,000 from **Nippon Foundation** and **UAE** respectively.

- c. **The Japanese industries**, under the principles of CSR, made commitment to contribute USD 500,000 through the **Malacca Strait Council**. In addition, **Japan** had secured a sum of USD 1 million for the implementation of **Project No. 5**.
- d. **The IMO** informed the meeting that **Greece** had contributed USD 1 million to the **ANF** through the **IMO Trust Fund**. **IMO** and littoral states are drafting an agreement on how to use the **Greece** contribution.
- e. **Nippon Foundation** reaffirmed its commitment to contribute an amount of **1/3 of the estimated costs of maintenance and replacement of navigation aids required by the Fund for the first five years**.

12. TTEG

During the 33rd TTEG meeting in Kuching, 28-29 October 2008:

- a. **Malaysia** reported that there was still no sponsor for **Project No. 1 (Removal of the Identified Wrecks)**, though the **US** indicated interest earlier. A prioritized list of the wrecks had been forwarded to the **US** for consideration but no response had as yet been received from the **US**.
- b. With regard to the **Project No. 2 (Cooperation and Capacity Building on hazardous and noxious substance (HNS))** preparedness and response in the straits, **Malaysia** gave the update on a course organized by the **US Coast Guard** for the littoral states from 20-25 October 2008 in **California and Detroit**. It was also mentioned that the **US** was considering to assist in the development of a **HNS Contingency Plan** for the littoral states which would be discussed at the **Project Coordination Committee (PCC)** meeting 2009. In addition **China** had also indicated that it could provide training sometimes in 2009 on the subject that would complement the **US** training program. In addition **Malaysia** also referred to its discussions with **Australia** on **Pilot Project for Developing the HNS database** that would include three critical locations, namely **Penang, Port Klang, and Tanjung Pelepas**.
- c. **On Project no. 3 (Demonstration Project on Class B Automatic**

Identification System (AIS)) transponder on small ships, Singapore reported that **phase 1** on the development of the project had been completed and that the project is currently entering the **second phase**, namely the installation of back-end equipment and transponders. In addition, **Japan** and the **Republic of Korea** had agreed to lease **10 and 30 transponders respectively**. The project is still on track to be completed by the end of 2009. The littoral states would bear the installation cost first and recover the cost from the IMO Trust Fund subsequently. **Indonesia** and **Singapore** could proceed with the trial as schedule in early 2009, while **Malaysia** could conduct their trial when they were ready.

- d. On **Project no. 4 (Setting up Tide, Current, and Wind Measurement System)**, Singapore reported that good progress had been made and thank **China** for their efforts in this direction. **China** proposed that 6 stations be set up close to high risk areas, namely at **One Fathom Bank, Tanjung Medang, Pulau Undan, Pulau Hiu Kecil, Raffles and Horsburgh**.
 - e. With regard to **Project No 5 (Replacement and Maintenance of Aids to Navigation)**, **Indonesia** reported that the **first phase** of the assessment survey of 51 aids to navigation which was to identify the requirements and prepare the work program had been completed at the cost of USD 222,153.30. The **second phase** would focus on establishing the detail scope of work and more precise cost estimation for implementation which was estimated to commence in early 2009.
 - f. On **Project no. 6 (Replacement of Aids to Navigation damaged by the Tsunami Incidence)**, **Indonesia** reported that no significant progress had been made.
13. During the meeting, **Singapore** proposed a new project on **“Emergency Towing Vessels (ETV) service”** in the straits under the Project Coordination Committee. It was agreed that Singapore would elaborate on this project at the next TTEG which could be held back to back with the second Cooperation Forum in Singapore in October 2009.
 14. During the **33rd TTEG meeting in Kuching**, attended by observer from **China, Japan, Malacca Strait Council, Nippon Maritime**

Center, and the **IMO**, the **Cooperative Mechanism** was also discussed. The **TTEG** was committed to ensure the success of the **Cooperative Mechanism**.

15. The representative of **IMO** informed the meeting on the receipt of contribution of **USD 1 Million** from **Greece** which would be kept at **IMO Trust Fund** and that a mechanism would be worked out on how the **IMO Trust Fund** would cooperate with the **ANF** in utilizing the fund in order to promote the safety of navigation in the Straits.
16. Singapore announced that the **second Cooperation Forum** and the **Project Coordination Committee** would be held in Singapore in **October 2009**.

IV. Bilateral cooperation

1. In **bilateral level** between **Indonesia** and other users, particularly with regard to the promotion of security in the Straits, it should also be mentioned that **Japan** and the **US** have also played constructive roles. In **December 2007** **Japan** gave three patrol boats to the **Indonesian Marine Police** to help patrol the **Straits of Malacca**, thus helping **Indonesia** to deal with piracy, armed robberies, weapons smuggling, and possible maritime terrorism in the Straits.
2. **The US** also contributed 15 patrol boats to **Indonesian Police**, 4 of them would be placed in **Batam** to help secure the **Straits of Malacca** and **Singapore**.
3. As a result of these bilateral cooperations, and the more active cooperation among the three littoral states, **the security situation in the Straits is now much more conducive**. Piracy incident have decreased in the straits in 2007 and 2008.
4. It should also be noted that **Japan** on 7 November 2008 has donated **Rp. 177,6 billion** or about **USD 15 Million** to **Indonesia** to increase its ability to promote safety of navigation in the straits of **Malacca** and **Singapore** by establishing **Vessel Traffic System (VTS)** in **Batu Ampar** and a number of sensor stations to collect information on the traffic.

V. **New issues**

1. The problems of **pilotage system** in the Straits of Malacca and Singapore; whether it would be compulsory or voluntary, whether they would be employed in the TSS, or whether they would be limited to port entry only, etc, need to be discussed. This issue was discussed during the 33rd TTEG meeting in **Kuching**, and would be further discussed at the next TTEG meeting.
2. The issue of **limiting traffic** in the strait. According to press report, the Deputy Prime Minister of Malaysia has asked the Malaysian Maritime Institute to study the need for limiting vessel traffic in the Straits of Malacca so that they will not threaten safety of navigation. The press report indicated that in **1999** there were **43.965** ships using the straits, by **2007** has increased to **70.718** ships and by **2015** it is estimated that the number of traffic would go up to **120.000** ships. According to Pak Najib, due to increasing growth in international economy, the traffic of commercial vessels in the strait has increased every year and if they are not limited, they could threaten safety of navigation.
3. **Global financial crisis** has affected both governmental and corporate financial situation. Some hints have been made that they may cause problems in getting financing for the promotion of navigational aids and other environmental measures in the straits. Some modalities would have to be worked out to overcome this problem.
4. **Problems of small vessels:** There are a lot of small vessels navigating through or crossing the straits of Malacca and Singapore. In some cases they may not be technologically fully equipped for the promotion of safety and environmental protection. Along this line there was similar issue that was raised by **Singapore**, namely on **signals to be displayed by vessels crossing the traffic separation scheme** in the Strait of Singapore.
5. The Straits of Malacca and Singapore are also criss-crossed by **underwater cables and in some cases by underwater pipelines**. Some accident have caused damages to these underwater cables and some fear has emerged of similar situation with regard to underwater pipelines. Some mechanism would have to be worked-out to protect

these installations.

6. The issue of **financing capacity building** to protect aids to navigation, whether it could be drawn from the Aid to Navigation Fund, also needs to be solved.
7. Some contribution to the promotion of safety of navigation, such as contributed by Greece, was channeled through the IMO Trust Fund, not directly to the ANF. Therefore, a *modus operandi* between the ANF and the IMO TRUST Fund would have to be worked out as soon as possible.

VI. Lessons learned

1. Within the last 3 decades, experiences have taught us that: **the problems of the straits of Malacca and Singapore could be solved through practical/ technical mechanism and cooperation.** For this purpose, the political will of the users to cooperate and to help coastal countries is essential.
2. **Cost and burden sharing** in promoting safety and security of navigation, as well as environmental protection in the straits, are not only possible, as indicated by the cooperation with Japan, but are **also increasingly necessary and essential.** Cost sharing should also include other users of the straits, either states or shipping companies or other entities.
3. Certain coastal countries have indicated that the **problems** posed to their marine environment as the result of pollution from ships, either accidentally or willfully, **have become graver.** These countries would need cooperation from IMO and the international community, particularly the users and user states, to share the costs of dealing with these matters. If the users or user states, however defined, except Japan, do not show inclination or willingness to cooperate, then the coastal states would be tempted to take unilateral measures.
4. **Users or user states are therefore urged to voluntarily cooperate,** like Japan, with the coastal countries to promote safety of navigation and to protect marine environment in the straits. The model of cooperation shown by Japan, including by establishing **Revolving Fund** through the contribution of the Japanese Straits of Malacca

Council could be emulated. In fact, it is also suggested that the voluntary contribution to the coastal countries, especially Indonesia, to strengthen its capacity to fight against piracy and armed robbery in the straits could also be undertaken through voluntary contribution to the existing Revolving Fund and by extending the use of the Fund to also help fight piracy and armed robbery.

VII. Conclusions

1. **The long efforts to achieve and promote safety of navigation and environmental protection in the Straits of Malacca and Singapore has borne some fruits, particularly in the agreement to assure the availability of the necessary aids to navigation as well as the beginning of the contributions to the ANF, within the context of Cooperative Mechanism. I would hope that more contribution to the Fund would come from other stakeholders, such as from the shipping industries and oil companies, within the context of their Corporate Social Responsibility, as well as from other Governments, Governmental groups, environmental groups and international or regional organizations.**
2. **Originally, it was expected that the Sasakawa suggestion last year to collect contribution of USD 1 cent for each ton of oil and gas transiting the Straits would be positively and favorably considered by shipping and oil companies, within the context of their CSR, and other stakeholders. Unfortunately this hope was not to be the case.**
3. **It is also expected that the Meeting of the 22nd US PACOM MILOPS will further contribute toward a more effective implementation of the Cooperative Mechanism within the context of promoting regulations of the Straits of Malacca and Singapore, thus contribute positively to the regulation of straits used for international navigation.**
4. **It should be noted that the safety and security situation in the Straits of Malacca and Singapore has generally improved since the establishment of the various activities of Cooperative Mechanism, the**

cooperative relations between the three coastal countries, and certain bilateral cooperation to promote the safety, security, and the environment of the straits. While piracy has increased dramatically in East Africa, particularly in Somalian waters, they have substantially decreased in the Straits of Malacca and Singapore. IMB (International Maritime Bureau) in Kuala Lumpur noted that the safety of navigation in the straits of Malacca is now **much better**. There was **no report of piracy within the last few months**. Yet the problems of pollution in the straits and the maritime security in Indonesian waters have not been eliminated, particularly with regard to increasing **illegal fishing, illegal mining, smuggling, and other illegal acts at sea**.

5. Finally, while cooperation and assistance from the users of the Straits are needed and required under Article 43 of UNCLOS 1982, there are certain situation in which Indonesia would not be comfortable with, such as: (1) The idea of certain countries to station their Navies or Marines in the Straits to patrols and maintain security. Indonesia would consider this effort as an affront to its sovereignty and therefore would not welcome it; (2) The idea of hiring Navies, particularly foreign navies, and other foreign "security companies" to escort commercial vessels in transit. Indonesia would not welcome this idea, not only because it would be an affront to its sovereignty, but could also cause incident or confrontation with Indonesian law enforcement agencies including Indonesian Navy. (3) The idea of arming commercial vessels with "offensive weapons" or fire arms could also create confrontation with the coastal States law enforcement agencies; (4) Indonesia would not welcome joint patrols of foreign navies in the Straits, except in joint exercises and coordinated patrols among the littoral States

References :

1. The United Nations on the Law of the Sea of 1982
2. Documents resulted in :
 - a. the Joint Statement of the three coastal countries on 19th February 1975
 - b. the Batam Ministerial Meeting of the Littoral States of the Straits of Malacca and Singapore on 1-2 August 2005

- c. the Jakarta Meeting organized by IMO and the three coastal countries on 7-8 September 2005
- d. The Kuala Lumpur Meeting on the Straits of Malacca and Singapore on 18th-20th September 2006 agreed to form a “Cooperative Mechanism
- e. First Meeting of the ANF Fund in Penang, Malaysia, on 16-17 April 2008
- f. the 33rd Tripartite Technical Experts Group (TTEG) meeting in Kuching, 28-29 October 2008.