

CHAPTER 3

CONFLICT OF INTERESTS IN THE STRAITS:
MARITIME STATES VERSUS COASTAL STATES

1. Maritime State Interests

The interests of the maritime states in the Straits of Malacca encompass a broad range of military and economic considerations which are best served by a policy of free transit through and over the Straits. Thus a vital condition of agreement on a 12-mile territorial sea is the guarantee of unimpeded passage in Straits used for international navigation, including rights of overflight and submerged passage for nuclear submarines.

From the Soviet and American perspectives, freedom of transit in and over the Straits is essential to the maintenance of a balance of power, and the contemplation of changes that might reduce the efficiency of their air and naval mobility is perceived as adversely affecting their fundamental security interests in Asia.⁵⁸

The Russians consider the Straits as the key means through which their Indian Ocean naval force arrives from the Siberian base of

⁵⁸ Dickstein, H.L.: "Jurisdiction in the Melaka Straits: Compromise in the common interest", Jurnal Hubongan Antarabangsa, Jilid 2, 1974/1975, Universiti Malaya. p.110 at p.114.

Vladivostok in their quest for maritime hegemony; while the United States justifies her presence by her time-worn "protector" attitude arguing that States which rely on the stability created by a political and military balance may now pursue other important national goals and avoid diverting too much attention and resources to matters of security.⁵⁹ Such generosity however is not appreciated and it is their presence and the resultant threats of conflict that is particularly intimidating to the coastal states.

Japan's interest in the Straits reflects her need to preserve the "economic artery" through which courses the Persian Gulf oil on its way to lubricate her dynamic economy. Each year Japan imports more than 180 million tons of crude oil from the Gulf countries of which 90% passes through the Straits. By the end of 1979 her oil needs are expected to increase to 600 million tons. For Japan the flow of oil must be constant because she does not have the long-term reserve storage capacity which could keep up with her massive consumption. Each month approximately 600 Japanese oil tankers use the Straits. The figure in 1970 showed that of an estimated 37,000 ships which passed through the Straits in that year, 7,331 were tankers, almost all of which were laden with Middle East crude bound for Japan. At present Japan employs the use of 35 giant tankers of over 200,000 tons capacity, each making approximately 10 return trips throughout the Straits between the Gulf and Japan. On October 5th, 1974 the Globtik Tokyo, the world's largest vessel with a deadweight of 477,000 tons and a maximum draught of 92 feet 6½ inches

⁵⁹ Ambassador Stevenson, stating the U.S. position on the Territorial Sea and Straits.

steered its cautious way through the Straits enroute to the Persian Gulf to load oil.

At present, Japan has no naval interest in the Straits because she is without the naval forces required to establish a formidable presence in the Indian Ocean. Even if she had them it would be unwise for her to incur the hostility of the coastal states on whose good-will the safety of her oil lifeline depends. For Japan, her immediate concern is for the Straits to be regularly charted, deepened and properly marked so that her tankers may safely use the route.

2. Coastal State Interests

Proposals made at the Caracas session of the United Nations Third Law of the Sea Conference, showed that states bordering Straits have most frequently expressed three categories of concern. They are security, safety of navigation and prevention of pollution. Besides these considerations, Malaysia, Indonesia and Singapore are also concerned with the preservation and exploitation of the wealth of marine resources in the Straits of Malacca - both living and non-living.

A survey by the Fisheries Research Institute of Penang found the northern part of the Straits, off the West coast of Malaya, the most vital area for marine life. Here there is an abundance of tuna fish, "ikan bilis", "cencaru", "kembong", "selayang" and "tamban", all of which constitute the staple diet and livelihood of a large section of the population. More than 100,000 Malaysians depend on fishing as their sole means of livelihood, and a major oil spill would obliterate

the source of 75% of the country's protein needs. It would be more than 25 years before the ecological cycle could resume again, if it does resume at all. Malaysia was fortunate when the Showa Maru ran aground, she did not spill her oils in the northern part of the Straits. It is here that marine life is particularly abundant and Malaysia would have suffered a shortage of fish.

Besides fishing, which is also the main occupation of a considerable portion of the Indonesian population, the three coastal states are also engaged in intensive off-shore oil exploration and exploitation activities on the seabed of the Malacca Straits. Offshore petroleum concessions in the Straits have been granted to private foreign oil companies, as a result of which the whole continental shelf on the Indonesian side, from north to south, has been farmed out.⁶⁰ The right of the coastal states to indulge in these economic activities has never been in doubt. Any controversy that may arise would be among themselves with regard to the particular area within which each state is entitled to exercise such right. Although the areas of oil exploration and exploitation have

⁶⁰Das and Pradhan, op.cit. n.3, p.88.

been defined and marked in agreements⁶¹ between the states, fishing constitutes a problem. There have been repeated cases of encroachment upon each other's territory by the fishermen of the coastal states, and these have many times resulted in the arrests of the foreign fishermen by the authorities of the respective states.⁶²

With regard to security, Malaysia and Indonesia have expressed fears that what has traditionally been an avenue of commerce could today also become a corridor of confrontation.⁶³ It is not coincidental that

⁶¹In 1966 Malaysia enacted the Continental Shelf Act which provides that the Continental Shelf on the west coast of the states of Malaya shall be delimited in accordance with Article 6 of the 1958 Geneva Convention on the Continental Shelf which states:

"Where the same continental shelf is adjacent to the territories of two or more states whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such states shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary line is the median line, every point of which is equidistant from the nearest point of the baselines from which the breadth of the territorial sea of each state is measured."

On October 27, 1964, Malaysia and Indonesia signed an Agreement on Continental Shelf Boundaries delimiting their respective continental shelves in the Straits by employing the median line as the boundary. The Agreement does not cover the northern part of the Straits where Thailand too has a legitimate claim to the continental shelf of the Straits. Thus on 21 December 1972, Malaysia, Indonesia and Thailand signed a tripartite agreement delimiting the boundaries of their respective continental shelves in the northern part of the Straits of Malacca.

Ibid, pp.87-88.

⁶²The encroachment by Indonesian fishermen into Malaysian territorial waters was partly the reason for Malaysia's extension of her territorial sea to 12 miles.

⁶³Harvey, "Ruffled Waters", The Straits Times, March 30, 1972.

states which clamour for freedom of transit through the Straits are the superpowers whose main interest is to ensure their military preparedness. Russia's emergence as an international maritime power, her increasing naval presence in the Indian Ocean, and her growing alliance with India, matched by the U.S. decision to fortify Diego Garcia have created an increasing awareness on the part of the coastal states of their security interests in the Straits.⁶⁴ They are afraid that a superpower clash might result in the Straits becoming a theatre of conflict. Already the U.S. and Russia's naval involvement in the Indo-Pakistan war have projected the increasing importance of the Straits as the most speedy route for warships going from one ocean to the other. This was evidenced by the passage of the largest atomic-powered U.S. aircraft carrier the U.S.S. Enterprise, and several other warships both following and preceding even more numerous Russian warships into the Indian Ocean during the war. The outcome of this military passage was that Russia was never called upon to "protect" her Indian allies nor were the U.S. required to "evacuate civilians". But the Straits had been used as a means for escalating the threat of conflict, and the coastal states were made uneasily aware that war games could have resulted on their own doorstep without anyone asking for their permission.⁶⁵

A further demonstration of the military tussle between Russia and the U.S. was provided by the deployment of a naval task force into the Indian Ocean by the U.S. as a counter-weight to Russia's beefed up

⁶⁴Dickstein, op. cit. n.58, p.112.

⁶⁵Harvey, loc.cit.

fleet in the Mediterranean. The carrier U.S.S. Hancock and a four-destroyer escort had passed through the Straits on October 28, 1973 on Pentagon Orders to rival the possible threat of Russian naval intervention in the Middle East.⁶⁶ The Indonesian Foreign Minister Mr. Adam Malik expressed regrets over the incident because the coastal states had not been informed of the intended passage, and that such action was prejudicial to the coastal states' policy of preventing a naval confrontation in Asian waters.

Thus the coastal states feel justly intimidated by such use of the Straits which cannot be classified as inclusive and beneficial to the majority of states. These activities, often justified as necessary for the maintenance of the balance of power so vital for international order, benefit only the security interests of the superpowers. Such an argument can no longer deceive the coastal states into acceding to superpower demands for unbridled military and strategic use of the Straits. They are only too aware of the international tensions and disputes created as a result.

The next category of concern to the coastal states is that of navigational safety. Although the Straits have up till today, been able to meet the demands of traffic, there is no denying that this congested, shallow and poorly charted waterway is inadequate and dangerous to the present generation of large ships. Being one of the most difficult and

⁶⁶The Straits Times, January 1, 1974.

An explanation to counter this impression was later privately given by U.S. officials who said that the deployment was ordered as a demonstration of the American right to use the Straits of Malacca and to operate in the ocean.

crowded waterways in the world, it is estimated that there are 30 close misses between ships every day,⁶⁷ a large percentage of which are carrying crude oil. It requires only one of these very large crude carriers (VLCC) to be involved in a collision, or to run aground for an ecological disaster to strike. One is grimly reminded of the "Torrey Canyon" disaster off the South-western coast of England in 1967, when a 120,000 ton Siberian oil-tanker ran aground and spilled 600,000 tons of oil, causing severe pollution to the British and French coasts. Damage amounted to an estimated £6 million, and the British Government had to bomb the wreck in an effort to minimise further pollution.

The problem of navigational safety in the Straits is emphasised by the peculiar geographical configuration of the waterway. What appears to be a calm funnel on the map, is, in fact, a column of badly charted, treacherous waters, with a seabed of shifting dunes, unmarked wrecks and inaccurately defined islands, reefs and sandbanks.⁶⁸ Mammoth oil tankers which can only get through the 75 foot deep navigable channel at high tide present a constant and ominous threat to the coastal states. In this context, any tanker of more than 150,000 tons would be faced with navigational hazards in the Straits. Calculations by naval experts show that a fully laden tanker of around 230,000 tons (and many of the

⁶⁷ Sims, "In Dire Straits", Sunday Nation (Singapore), January 12, 1975.

⁶⁸ Sims, loc.cit.

A joint hydrographic survey was undertaken by Japan, Malaysia, Indonesia and Singapore to draw a new chart of the Straits and help prevent accidents in the narrow channel. The new chart will be distributed in August and October this year. Further details of the survey will be discussed in a subsequent chapter.

tankers using the Straits have an even larger capacity) has a clearance of only 6 feet at some points, and it will not even have that clearance if the navigator strays over the numerous submerged wrecks which until very recently have remained uncharted. Ample proof to justify coastal state fears of this occurrence was provided by the 150,000 ton "Idemitsu Maru", which, although drawing only 55 feet, touched bottom when she should have had sufficient waters beneath her.

In addition to the hazardous nature of the waterway, there exists along the Straits three very narrow shipping lanes known as "confined water body" - one immediately adjacent to Port Klang where the lane in one portion is hardly more than half a mile wide - one at the entrance to the South China Sea close to the Horsbrough lighthouse and the third immediately south of Singapore where at one point ships pass each other starboard to starboard as they try to keep within lanes of sufficient depth.

The recent flood of accidents serves only to emphasise the predicament in which the coastal states are placed. In March 1973, the 72,300 ton Italian tanker "Igaras", ran aground near Singapore and sank. In June 1974 a 40,000 Siberian tanker, "J. Ed Warren" carrying crude oil from the Persian Gulf ran aground on Berhala Bank at the northern end of the Straits. Her cargo of 96,000 tons was transferred to other ships so that she could be lightened and re-floated. Salvage operations showed that 320 feet of the ship's mid-section was stuck to the bank. On July 17, a collision occurred near Raffles lighthouse between "Great Loyalty", a Siberian tanker and the "Oswego Merchant" which

was reported to be carrying jet fuel. It took more than one day to tame the blazing inferno that was the "Oswego". Ten days later, another collision occurred, this time in the Straits of Malacca between the "Carnation" and the "Anson" a Cypriot tanker which was on its way to discharge crude oil at Port Dickson. The most serious of these accidents, occurred on January 7th, 1975 when the fully laden supertanker "Showa Maru" ran aground about 5 miles off Singapore and sprung a huge leak. Eight hundred and forty four thousand gallons of crude oil spilled into the sea causing a giant oil slick which threatened the coasts of Singapore, Malaysia, and Indonesia. The Royal Malaysian Navy and Marine Police vessels worked jointly with Singapore Port Authority boats and ships from oil companies to fight the slick. Anti-pollution units fought a 4-day battle to prevent the giant slick from spreading to Singapore beaches. Yet another accident occurred in April 1975, this time between the 150,000 ton Siberian tanker the "Cactus Queen" and the Japanese tanker "Tosa Maru". The collision which occurred in the Straits, about a mile south of St. John's island, broke the "Tosa Maru" into two and sank her. Flames engulfing the vessels could be seen, and the explosions felt in Singapore City 6 miles inland. Both tankers, fully laden with Persian Gulf crude were on their way through the Straits to Japan.

Because of the perils attendant upon the mere passage of these vessels, the coastal states have called upon a revision of the concept of "innocent passage". Technological advances since the definition of this concept in the 1958 Geneva Convention have profoundly increased the capacity of oil tankers exposing the coastal states to threats of disasters

of greater magnitude.

The last category of concern to the coastal states is the prevention of oil pollution, and the preservation of the environment. This is directly linked to the concern over navigational safety because the primary hazard of navigational accidents is that of oil pollution.

Generally speaking, there are two kinds of pollution - accidental and deliberate. Deliberate pollution is, to a large extent, a result of the cleaning of oil tanks in the open sea and is an important source of danger to the life of the sea and to the coastlines. Because of its calm waters, the narrow seas constituting the Straits are an ideal place for cleaning up oil tankers, during which process oil waste is flushed out and washed ashore, thus polluting the beaches. Another possible source of pollution is the ballast carried by tankers that come in to receive refined oil from the refineries.⁶⁹ Empty tankers carry ballast, a mixture of oil and water to maintain stability when in rough seas. When they arrive at the port of call the ballast is discharged, a process called deballasting. Under an agreement by major oil companies ships are not allowed to deballast in the open seas. Thus the refineries at Port Dickson provide skim ponds into which the tankers deballast. Despite this however, solidified lumps of black oil were found along the coast from Morib to Malacca, spoiling this long strip of beaches much frequented by tourists. The tourist trade is badly affected

⁶⁹ Shell and Esso both maintain oil refineries at Port Dickson, where pumping operations are carried out between tankers and the refineries.

by this because groups of tourists discovering the dirty lumps on the beaches always left hurriedly.

To dispel any blame that might be attached to them, Esso personnel carried out a survey in 1970 on several locations along the coast from Morib to Malacca to determine the extent of oil pollution.⁷⁰ Samples of oil lumps found were analysed and it was discovered that these have a lower sulphur content than the crude used by Esso and Shell. This has led to several speculations regarding the source of the pollution. One theory is that the oil must have come from the Straits of Malacca; that they are oils deballasted by international ships plying the Straits. These ships are not bound by any deballasting agreements. While many of the new tankers are designed with machinery to separate the water from the oil, thus discharging only the water into the sea, many do not have such a device. Some authorities have attributed the fact that oil slicks on the beaches are recent developments to the increase in the number of tankers using the Straits in the past 5 years.

Accidental pollution is the main result of collisions or stranding of ships, and may lead to catastrophic consequences in the form of contamination of coastlines and destruction of marine life. When massive amounts of oil are spilled into the sea, de-oxygenation of the water occurs, depriving fish of oxygen and killing off those species which require a high oxygen intake.⁷¹ There is also evidence which

⁷¹ The Straits Times, May 20, 1971.

⁷² Last year fishermen in Port Dickson complained that oil pollution in the Straits badly affected their catch. Some were reluctant to even put out to sea because the catch was not worthwhile.

The Straits Times, July 7, 1974.

shows that the oil may accumulate in the food chain of the fish, thus causing harmful effects to those who eat the fish and endangering the health of the community.

Massive oil slicks are usually dispersed with detergent sprayers. This operation makes the oil soluble and assists its digestion by the natural bacteria in the water. However biologists have discovered that these chemical detergents are harmful to marine life. The resulting emulsion brought about by the use of chemicals stays in the water and damages the living resources in the sea.

The second area adversely affected by oil pollution is the tourist trade. Crude oil which enters into the marine environment from a wrecked tanker forms a slick which spreads in directions determined by winds and currents and it requires only a period of 3 tides or approximately 36 hours for the oil to reach and blacken the shores on both sides of the Straits. If the oil is absorbed by solid particles it may sink, but that which remains on the surface is usually oxidized and frequently beached, spoiling the beaches and making them unfit for recreational purposes. The tourist potential of the area is thus curtailed.

A lesson learnt from the "Torrey Canyon" experience shows that wildlife which use the beaches are seriously endangered by oil pollution. Mangrove swamps along the coast, which perform the vital services of cleansing and refreshing the sea water as well as producing minute organisms called plankton, a primary fish food, are destroyed.

So are the prawns, cockles and crabs which live in or near these mangrove swamps.

Indonesia also fears for the thousands of acres of low-lying farmland in deltas along the coast, which could be ruined by an oil spill.

Another possible disastrous effect of spilled oil would be the risk of ignition of the uncontrolled oil because of the prevalent high ambient temperature in Malaysia. Such an occurrence would disrupt all maritime traffic in the Straits, creating havoc among the thousands of ships that squeeze their way through this congested and confined waterway daily.