



Burden Sharing in the Straits of Malacca: Proposed Funding Mechanism Based on Practices in other Straits used for International Navigation

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Presentation Outline

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- Issues of Burden Sharing
- Legal Issues for Straits used for International Navigation
- Practices in other Straits and Canals used for International Navigation
- Framework for Establishment for Straits of Malacca Authority
- Conclusion

Introduction

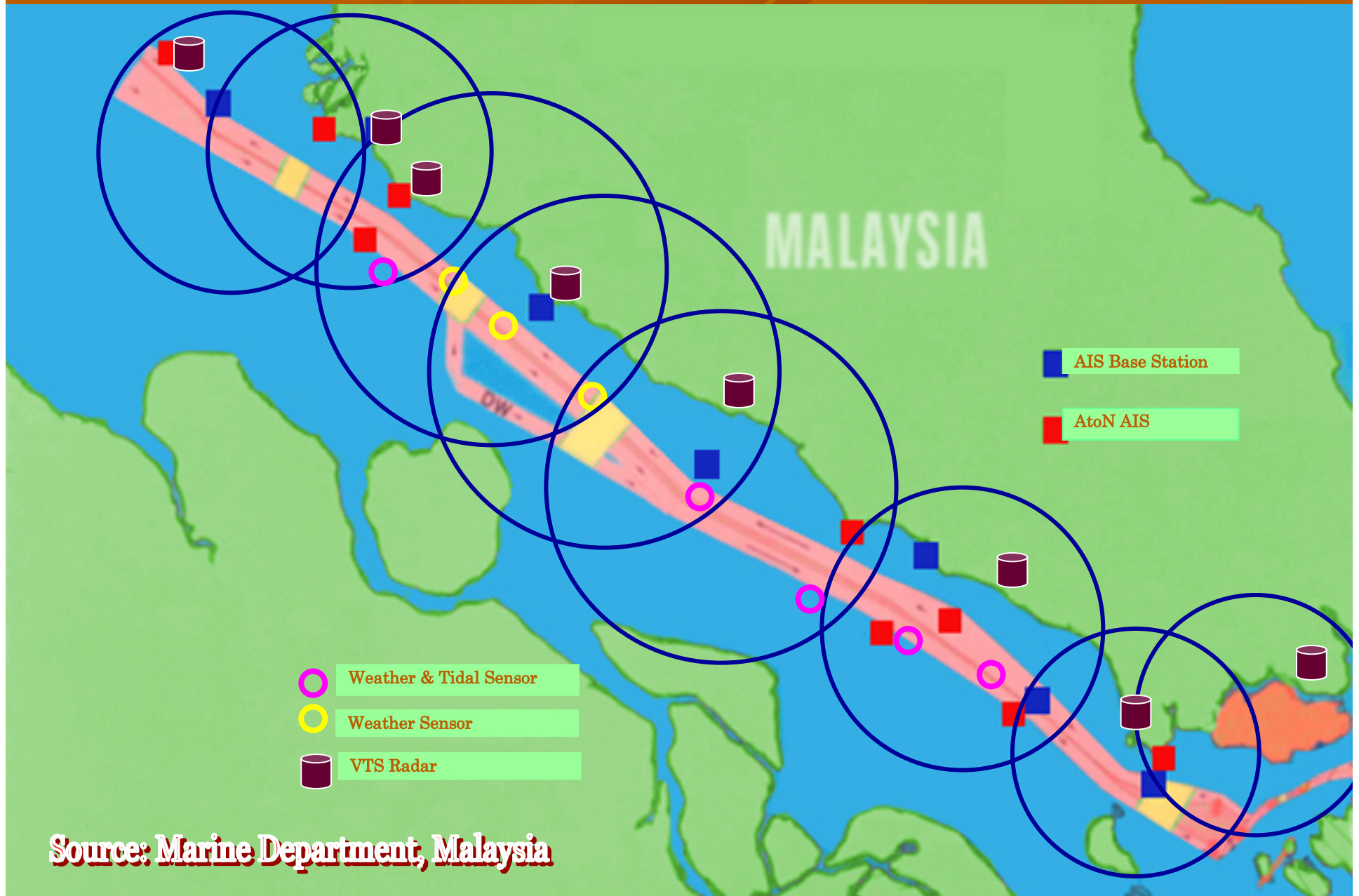
- Issues of burden sharing and cooperation between users and the littoral states in the SOM has been discussed in many forums.
- However, reaching agreement on burden sharing has never been easy.
- Differences among littoral and users on Who, What and How to Pay has been debated over the years
- The mechanics of burden sharing are equally problematic and warrants further study

- Malaysia has been one of the biggest investors in terms of safety and security of navigation in SOM

- This involves :-

- ❖ Infrastructure development,
- ❖ Maintenance of navigational aids,
- ❖ Assistance to vessels in distress
- ❖ Securing the straits from criminal activity
- ❖ Facilities included:- SSS, VTS, ECDIS, AIS
- ❖ Enforcement :- MASLINDO, Joint Coordinated Patrol, Eye in the Sky, MMEA

MALAYSIAN VTS RADAR COVERAGE



Source: Marine Department, Malaysia



Legal issues of Burden Sharing

The legal mechanism for burden sharing the cost of keeping straits used for international navigation safe and secure is already present in the form of Article 43;

- Article 43 of the UNCLOS encourages cooperation between the user states and the coastal states to maintain straits used for international navigation.

Article 43 stipulates:

User States and States bordering a strait should by agreement co-operate:

(a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and

(b) for the prevention, reduction and control of pollution from ships.

Differences of Perception

- ❖ Littoral States

Maintain that user States has an obligation to share the burden (cost) to maintain navigational safety and security

- ❖ User States

Seem to see burden sharing as a matter of getting more directly involved in security arrangements in the Malacca Straits

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- With such differences, it is vital that any proposal for the management of the Straits should take into account its legal regime and balancing the concerns of the littoral States and the users states and other stakeholders
- More important that any funding assistance should not infringe on the sovereignty of Littoral States

CURRENT SITUATION IN THE SOM

- The maintenance of navigational safety and security in SOM currently shouldered by littorals.
- Vessels passing through waterways like the St Lawrence River pay for the cost of navigational safety through port dues charged when they call at one of the inland ports.
- On the other hand, more than 70% of the vessels transiting through Straits of Malacca do not call at any of the littoral states ports. Hence no port dues can be collected.

- contribution from beneficiaries who have direct and indirect interest

Or those who benefit from safe and secure straits; except from Japan

- Offers of burden sharing mostly come in the form of security aids and not financial assistance
- Straits of Malacca is owned by three different countries.
- Any regime for the straits must be acceptable by all the three littoral states.

Some Theories of Burden Sharing

- 3 Essential elements for the design of practical burden sharing rule:-
 1. Overall Objective
 2. Decide on burden sharing rule
 3. Define the baseline or target

- 3 Basic notions of burden sharing
 1. Equity
 2. Effectiveness
 3. Efficiency

Studies of Practices in other Waterways Used for International Navigation

- **The Turkish Straits**
- **The Straits of Hormuz**
- **The of Straits Gibraltar**
- **The Dover Straits**
- **The Panama Canal**
- **The Rhine River**
- **Straits of Malacca**

Framework for Burden Sharing

Establish a Funding mechanism

- Funding mechanism may be based on the various models of international practices
- However, each strait or waterway differs from SOM in term of physical, legal and the managment structure
- Not feasible to adopt any of the waterways wholly as a model for SOM
- But some of the principles that govern these waterways can be studied and certain features can be used as foundation to the establishment of a framework for SOM

Some Practices Applicable to SOM

Turkish Straits

- The Montreux Convention has given Turkey rights beyond boundaries of innocent passage to collect taxes from ships in transit
- Turkish Straits Authority is collecting taxes; toll for services provided for the navigational safety at the straits.

Panama Canal

- Security threat from non state actors in the waterways has been well acknowledged, such as the case of Panama canal
- Some of the fees collected by the Panama Canal Authority (ACP) are meant to enhance security measures in the canal.
- ACP has strengthened coordination with international security agencies, as well as Panama's security forces, to ensure the safety of ships transiting the canal

Proposal for Straits of Malacca Authority (SMA)

- Propose the formation of Malacca Straits Authority (SMA), an international commission to look into the maintenance of the navigational safety, security and environmental protection in SOM
- SMA should serve as a platform to coordinate the Management Plan for the funding framework.
- Commission comprises officers from Malaysia, Indonesia, Singapore and other users states, on membership basis.

- Amongst the role of SMA:-
 - a) Draw fees structure payable by the beneficiaries of the SOM
 - b) Fees according to types of vessels, tonnage.
 - c) Fees to be calculated based on international standard for tonnage measurement established by the International Convention on Tonnage Measurement of Ships, 1969.
 - d) Deploy experts on legal matters in the SOM, focusing into the legal implications that are to be addressed in order to comply with generally accepted principles in international law. Experts to focus on UNCLOS's legal regime on "Straits used for international navigation".
 - e) Set up Desk for Safety of the Environment that looks into issues relating to pollution caused by oil, accidents and other environmental disasters.
 - f) Set up unit for Security measures consisting of officers from all three littoral states.

- g) Drawing up an evaluation of the costs of navigational safety measures in practice in the Malacca Straits including :-
- Sea Surveillance Systems (SSS);
 - Vessels Traffic Monitoring Systems (VTS);
 - Electronic Chart Display (ECDIS);
 - Automatic Identification Systems (AIS)
- h) Consulting with, and making recommendations to the Member States (beneficiary of the Straits) in respect of the execution of the above mentioned works, with due consideration to the technical and economic interests, plans and possibilities of the respective States.
- i) Establishing a uniform system of traffic regulations on the whole navigable portion of the Straits.
- Proposed Method of Collection-Arrangements for the payment of tolls may be made with the collection bank designated by the “Malacca Straits Authority”

Conclusion

- Establishing a funding mechanism for SOM need serious consideration
- Further study needed to identify the actual cost of navigational safety in the Malacca Straits.
- The costing should be done by the Littoral States through the Tripartite Technical Expert Group (TTEG)
- With a detailed study, a case for the proposal can be taken up through the IMO. It is important that such a proposal go through the IMO and in accordance with international law.

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