

A map of Malaysia and the surrounding region, including the Strait of Malacca, Singapore, and parts of Indonesia. The map is overlaid with a semi-transparent blue box containing the title and author information. The title is in large, bold, yellow capital letters. The author's name and affiliation are in white text. The map shows major cities like Medan, Kuala Lumpur, Singapore, and Johor Baharu, as well as geographical features like the Perak River and the Greater Sunda Islands.

STRAIT OF MALACCA – MARITIME SECURITY CHALLENGES: PERSPECTIVES OF MALAYSIA AS A LITTORAL STATE

By

Nazery Khalid

Fellow, Centre for Economic Studies & Ocean Industries
MARITIME INSTITUTE OF MALAYSIA

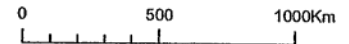
Strategic features

- A vital sea lane of commerce.
- A strategic security choke point.
- Over 63,000 ships passing through in 2003.
- Passed by 70% of tankers plying between Indian Ocean & Pacific Ocean.
- One of world's busiest, most crowded sealanes.
- Major artery linking East and West.
- Provides freedom of navigation & innocent passage, and facilitates free flow of trade.
- Rich in marine ecosystems / resources & archaeological heritage.

Economic importance

- Main passageway of Eastbound oil supply, facilitating the flow of half of world's oil.
- Main sealane for East-West containerized cargo movement, transporting 1/4 of world trade.
- Major ports, cities, industries along its coast.
- Vital source of food for littoral states.
- Marine resources enable tourism.
- Facilitates maritime transportation.
- Provides employment, income, revenue.

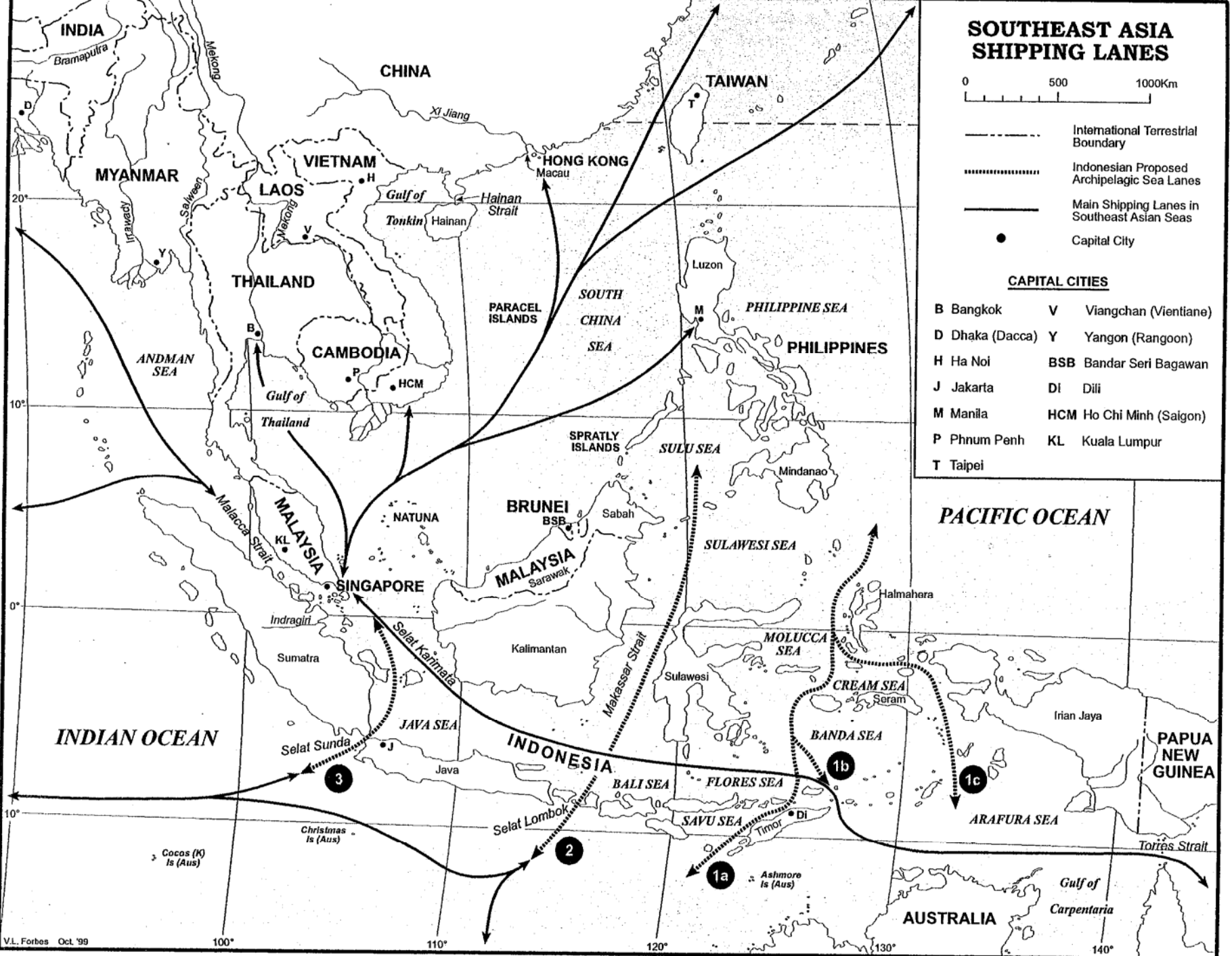
SOUTHEAST ASIA SHIPPING LANES



- International Terrestrial Boundary
- Indonesian Proposed Archipelagic Sea Lanes
- Main Shipping Lanes in Southeast Asian Seas
- Capital City

CAPITAL CITIES

- | | |
|-----------------|--------------------------|
| B Bangkok | V Viangchan (Vientiane) |
| D Dhaka (Dacca) | Y Yangon (Rangoon) |
| H Ha Noi | BSB Bandar Seri Bagawan |
| J Jakarta | DI Dili |
| M Manila | HCM Ho Chi Minh (Saigon) |
| P Phnum Penh | KL Kuala Lumpur |
| T Taipei | |



Implications of disruption

May not totally paralyze navigation as there are other alternative routes, but may bring catastrophic impacts :

- Disrupt oil flow from West to East.
- Raise freight rates worldwide.
- Hit hard on bulk shipment.
- Affect regional and global trade and economies.
- Alter strategic landscape of region and invite intervention of outside powers.

Perspectives of littoral states

- Sovereignty is sacrosanct!
- SOM for most part is within territorial waters of littoral states.
- With exception of freedom navigation accorded by UNCLOS Article 38, the national regimes apply in these parts.
- Domestic and international pressures in exerting rights to the SOM.

1971 Joint Statement by Littoral States

Malaysia, Indonesia and Singapore agreed that :

The responsibility for SOM safety of navigation is theirs

- There was a need for tripartite cooperation in the safety of navigation in SOM.
- There was a need for a cooperative body to coordinate efforts for SOM' safety of navigation.
- SOM's safety of navigation and the internalization of the straits are separate issues.
- The Malaysian and Indonesian governments agreed that SOM and Singapore Straits are not international straits but recognize their use for int'l shipping.

UNCLOS 1982 – Article 34(1)

“The regime of passage through straits for international navigation established in this Part 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 air space, bed and subsoil”

This law confirms the position of littoral states in their 1971 Joint Statement laying down the principles of managing SOM and its institutional framework.

Issues in SOM management (I)

- Security and management of SOM is a complex matter.
- Such complexity requires holistic outlook, comprehensive responses and unbridled resolve.
- Security of SOM is multi-dimensional, encompassing environmental and socio-economic issues & involves uncertainties.
- SOM is under stress from human activities.

Issues in SOM management (II)

- Balancing the needs of littoral states & international community.
- Traditional security threats – pirates, sea robbers, maritime terrorism.
- Non-conventional threats – trans-boundary crimes, smuggling of illicit goods and illegal immigrants.
- Safeguarding environmental integrity.
- Ensuring navigational safety.

Malaysia's stand (I)

- Sovereign rights and jurisdiction are central to Malaysia's SOM interests.
- Values its sovereignty but welcomes input / help from others to protect & manage SOM.
- Ever ready to engage neighbors in talks & joint actions in enhancing SOM security.
- Actively involved in multilateral initiatives such as ASEAN Regional Forum, TTEG, MASLINDO.

Malaysia's stand (II)

- Supports multinational integrated approach in managing SOM.
- Encourages burden-sharing of responsibilities without compromising on sovereignty.
- Resolute in its belief that ultimate responsibility of protecting security & managing SOM is with littoral states but burden must be shared by user states and other stakeholders.

SOM – Whose security?

- Many security threats, different perceptions, varying responses.
- Vital that all the elements are mutually understood to ensure implementation of effective & acceptable approaches.
- Choosing the right formula – security initiatives should be in line with existing mechanisms and international laws.
- Piracy is not terrorism! Important to distinguish maritime crimes to address them accordingly.
- Prevention is just as crucial as cure.

Defining piracy

- Article 101 of UNCLOS 1982 : *"... illegal acts of violence or detention against a ship (or aircraft) on the high seas or in other areas beyond the jurisdiction of any state"*.
- IMB's 1992 Special Report : *"... the act of boarding any vessel with the intent to commit theft or other crime and with the capability to use force in furtherance of the act"*.
- *"Criminal acts against any vessel underway, in port or at anchor anywhere - not just on the high seas"* (Dr Vivian Forbes, Curtin University)

Questions on piracy

- Who are these pirates or armed robbers?
- What are their nationalities?
- Are they organized syndicates or funded?
- What actions should be taken?
- What are the range of punishments?
- What are the national, regional or international concerns?
- What should be the compensation to victims?

Aspects of piracy

- Piracy on the high seas
- Armed robbery in a marine setting
- Maritime crime & hijacking of ship
- Short, medium or long-term seizure of the ship, its personnel and its cargo
- Corporate fraud
- Phantom ship
- State-authorized crime
- Maritime terrorism

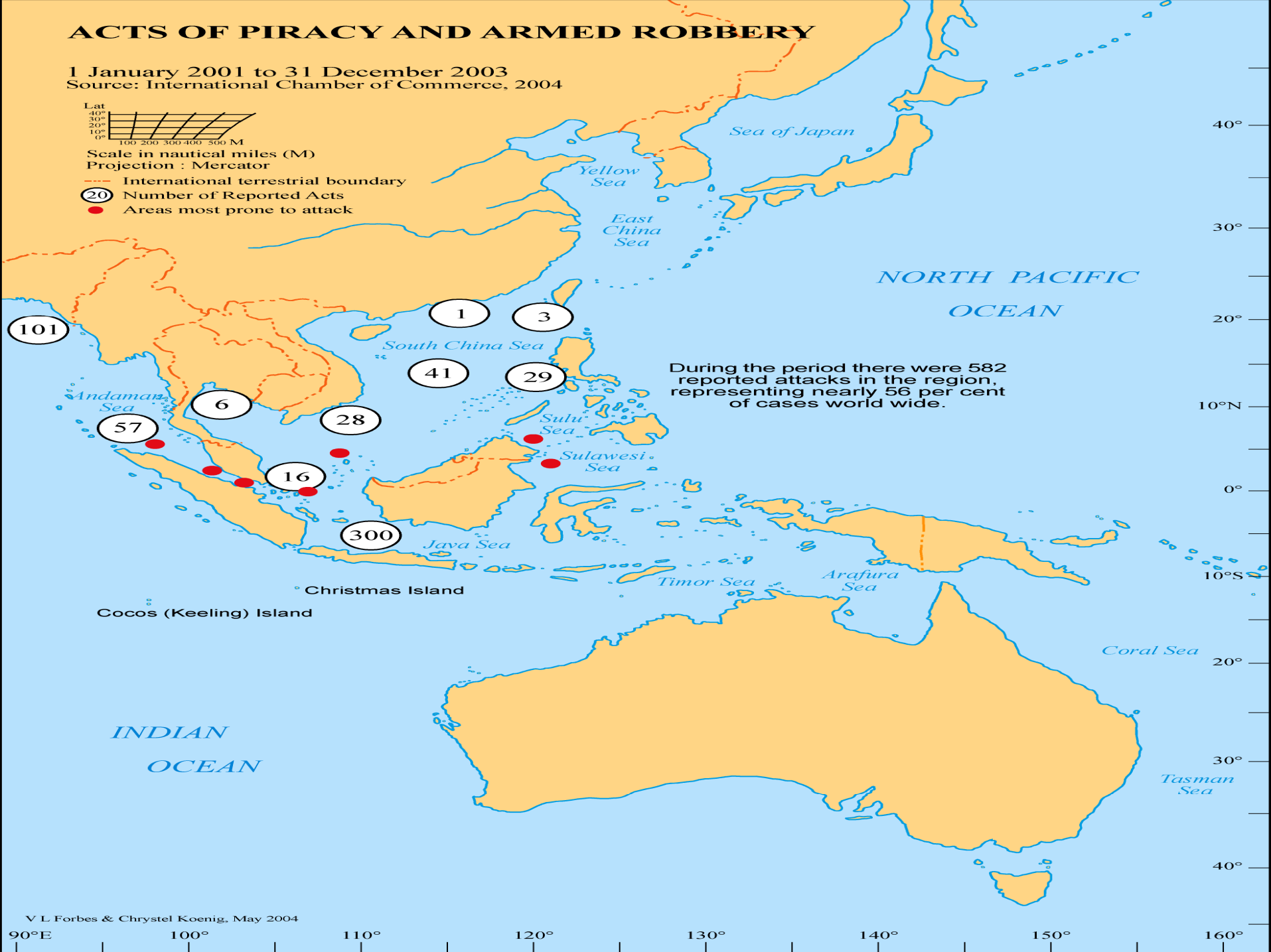
ACTS OF PIRACY AND ARMED ROBBERY

1 January 2001 to 31 December 2003
Source: International Chamber of Commerce, 2004



Scale in nautical miles (M)
Projection : Mercator

- International terrestrial boundary
- ⊙ Number of Reported Acts
- Areas most prone to attack



During the period there were 582 reported attacks in the region, representing nearly 56 per cent of cases world wide.

Cocos (Keeling) Island

Christmas Island

Factors contributing to piracy

- SOM heavy traffic makes fertile hunting ground.
- Freedom of the sea / innocent passage.
- Potential involvement of authorities.
- Insider information.
- Knowledge of cargo's content, value, route.
- Poor seamanship amongst crew.
- Vulnerability of ships especially tankers.
- Non-ratification of Rome conventions.
- Socio-economic root causes.

Initiatives to combat piracy

- Tracking device on board of ships.
- Trip wire around ships.
- Alert crew.
- Placement of armed guards on board.
- Check crew lists and ships for stowaways.
- Address socio-economic causes of piracy.

Maritime jurisdiction

Coastal and island states may claim jurisdiction to:

- Inland waters (landward of baseline).
- Archipelagic waters (encompassed by straight baseline system).
- Territorial sea (12-nautical mile zone).
- Contiguous Zone (not exceed 24 n.m. from baseline).
- Exclusive Economic Zone (200-n.m. zone)
- Continental shelf (legal limit must be defined)
- High seas (beyond national jurisdiction - yes or no? Article 58).

A comprehensive approach towards SOM management

Responses should be structured around existing institutional framework comprising of the following :

- Tripartite Ministerial Meeting on SOM and its subsidiary body, TTEG.
- 1971 Joint Statement on SOM by littoral states.
- Article 43 of UNCLOS.

7Cs Tenets of successful SOM management

- Commitment
- Cooperation
- Consistency
- Capacity
- Compromise
- Causality - observance of cause-effect conditions
- Complexity - Appreciation of the intricacies of the issues involved

National level efforts

- Enforcement agencies / safety systems.
- Legal framework – Continental Shelf Act, EEZ Act, Fisheries Act, Environmental Quality Act, Merchant Shipping Orders, Maritime Zone Enforcement Act.
- Ratification of international conventions – UNCLOS, SOLAS, COLREG, MARPOL, ISPS.
- Harmonizing domestic with int'l laws.
- Acceding to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

International level efforts

- Party to 1971 Joint Statement by littoral states.
- Establishment of SOM management fund.
- Creation of SOM management regime.
- Establishment of Malacca Strait Council.
- Support towards IMB's Piracy Reporting Center.
- Involvement in ASEAN Regional Forum & Tripartite Technical Experts Group (TTEG).
- Resources sharing.
- Regional maritime security initiatives – MASLINDO, MALINDO CORPAT, joint patrols.

International laws

- 1958 GENEVA CONVENTION - Article 15.
- 1970 HAGUE CONVENTION (Suppression of Unlawful Seizure of Aircraft).
- 1971 MONTREAL CONVENTION (Suppression of Unlawful Acts Against the Safety of Civil Aviation).
- 1982 LAW OF THE SEA CONVENTION - Articles 101 to 111. (Art. 101 = Art. 15 of 1958 Con.) - entered into force 16 November 1994.
- ROME CONVENTION OF 1988 (entered into force 1 March 1992) [Convention-suppression of Unlawful Acts Against the Safety of Maritime Navigation - SUA]
- International Ship and Port Security Code (ISPS) – in force 1 July 2004.

Future challenges

- Traffic forecast at 71,000 ships in 2005.
- Bridging differing perspectives & streamlining varying responses towards SOM management.
- Proposal to build Kra Canal.
- Proposal to build Russian oil pipeline.
- Threats of pollution from hazardous cargo.
- Threats of pirates and maritime terrorism.
- Compliance with security measures i.e ISPS, CSI
- Astronomical cost of managing SOM.
- Unilateral acts i.e. Proliferation Security Initiative

Conclusions

- The importance of SOM is pervasive.
- Any obstacle to freedom of navigation and safe passage will bring catastrophic consequences.
- Sovereignty and jurisdiction of littoral states are paramount and non-bargainable.
- Users must cooperate and share burden of securing and managing SOM.
- User states must help littoral states in capacity building.
- Respect, understanding and cooperation are vital in ensuring interests of all parties are met.