



U.S. RMSI Contravenes UN Convention on the Law of the Sea by Ji Guoxing

On June 23, 2004, military authorities in Indonesia and Malaysia reached agreement on holding joint military exercises in the Strait of Malacca to cope with threats of piracy and terrorism and to ensure that the procedures stipulated by the UN Convention on the Law of the Sea are used for any foreign vessels and fleets passing through the Strait. This is a substantial response to the Regional Maritime Security Initiative (RMSI) that the U.S. is now promoting.

RMSI was formally put forward in March 2004 by Adm. Thomas Fargo, the U.S. Pacific Command commander in the annual U.S. Pacific Command posture statement before the U.S. House of Representatives Armed Services Committee. Fargo said in his testimony, "We are looking at things like high-speed vessels, putting Special Operations Forces on high-speed vessels, putting, potentially, Marines on high-speed vessels so that we can use boats that might be incorporated with these vessels to conduct effective interdiction." The report by the mass media in early April that Fargo planned to deploy marines and special operations forces on high-speed vessels along the Strait of Malacca to flush out terrorists caused an immediate negative reaction in Asia.

RMSI was quickly rejected by the Strait's coastal countries, Malaysia and Indonesia. Malaysian Deputy Prime Minister Najib Tun Razak said on April 6, "control of the Strait is the sovereign prerogative of Malaysia and Indonesia, and U.S. military involvement is not welcome." He said U.S. vessels "can use the waterway for their ships, including warships, but to launch operations they should have the concurrence of Malaysia and Indonesia."

Indonesia's Foreign Ministry spokesman Marty Natalegawa issued a statement on April 12 opposing the U.S. plan. It said the security of the Strait is the responsibility of the Strait's coastal states; the waters of the Strait of Malacca are part of the territorial waters of the coastal states over which they have sovereignty; and "any activities or maneuvers in the Strait by foreign vessels, which are not exercising the right of transit passage – whether they are for civilian or military purposes – are subject to the consent of the respective coastal states." Malaysia and Indonesia have also said that they have the ability to defend the Strait's security, and that if foreign forces are introduced, counter-effects would probably occur, and the Strait might become a major terrorist target.

In the face of strong opposition from Malaysia and Indonesia, Fargo made explanatory remarks on RMSI during the Military Law and Operations Conference in Vancouver May 3, 2004. He says RMSI is still in its infancy, and formal discussions with Asian nations on RMSI will begin by mid-year. "The goal is to share information, provide cueing for

emerging threats, and then to empower each nation to take the action it deems necessary to protect itself in its own waters."

In view of questions about the legality of the Proliferation Security Initiative (PSI), Fargo explained "Activities under RMSI will be undertaken under existing international and domestic law;" and "in the months ahead, we may find related legal areas to explore." However, Fargo clearly said in his explanatory remarks that maritime interdiction capabilities will be required to act against emerging threats and military forces needed, especially on the high seas.

The Strait of Malacca, the main corridor between the Indian Ocean and the South China Sea and the Pacific Ocean, is critical to international shipping. One-third of the world's shipping and half its oil pass through it each year. There are up to 250-270 ship movements in both directions per day, and flows reach 11 million barrels per day. Around 80 percent of U.S. imported strategic materials pass through the Strait. The U.S. lists it as one of the eight world oil transit "chokepoints" and the key choke point in Asia. In my view, the U.S. has long wanted to control the Strait, and antiterrorist operations provide the U.S. with the best pretext and opportunity.

The Strait of Malacca looks like a funnel: it's approximately 800 kilometers long and 35 nautical miles (nm) wide at its southern end and 134.5 nm wide at its northern end. It's about 40 nm wide, and contains many small islands. Apart from territorial waters that extend 12 nm from each coast and the 12 nm of territorial waters that the small islands within the Strait are at least entitled to have, the remaining waters belong to the EEZs (Exclusive Economic Zone); the coastal states of the Strait have sovereignty over the Strait's territorial waters, and have sovereign rights over the EEZs in the Strait.

According to Article 38 of the UN Convention on the Law of the Sea, in straits used for international navigation, "All ships and aircraft enjoy the right of transit passage"; "Transit passage means the exercise in accordance with this part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone." Article 34 stipulates, "The regime of passage through straits used 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." Many, especially in China, are concerned that the RMSI will exceed the right of transit passage, encroach upon the sovereignty and sovereign rights of the coastal states, and evidently contravene the UN Convention on the Law of the Sea.

China's rapid economic development has resulted in drastic increases in its requirements for maritime

transportation and oil imports, and SLOC (sea lines of communication) security relates to the sustainable development of China's economy. China's foreign trade ocean shipping capacity is projected to reach 656 million tons in 2005, compared to 383 million tons in 1998. The number of ships in China and Hong Kong combined would make up the world's third largest shipping fleet. China's domestic oil demand is rising about 4-5 percent annually. At present it produces 160 million tons of crude oil annually. With annual requirements of 220 million tons, it imported more than 90 million tons in 2003. Currently, around 60 percent of China's oil imports are from the Middle East, and the Strait of Malacca has been closely linked with China's economic security and energy security. Thus, China is very much concerned about security in, and who is in control of, the Strait.

It is doubtful whether the RMSI is designed to block China's energy channel and to contain China's economic development. China supports the antiterrorism campaign, supports and is willing to participate in regional cooperation to guarantee SLOC security. China hopes that related countries could establish a terrorism prevention mechanism in the Strait through consultative cooperation with the Strait's coastal states within the framework of the UN Convention on the Law of the Sea to guarantee the Strait's security.

Ji Guoxing is a professor at the School of International and Public affairs, Shanghai Jiao Tong University. He can be reached at gx_ji@hotmail.com. An abridged version of the article in Chinese was published in Jiefang Daily, Shanghai, June 27, 2004.