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Special Areas and PSSAs in the Straits of Malacca and Singapore: Legal & Practical Issues

Robert Beckman

Director, Centre for International Law (CIL)

National University of Singapore



UNCLOS Part III. Straits Used for International Navigation

- All ships enjoy the right of transit passage, which shall not be impeded
- Ships in transit passage must comply with **generally accepted regulations, procedures and practices** for safety at sea and prevention of pollution from ships
- Rights of Littoral States to regulate ships exercising transit passage is very restricted
- Littoral States may designate sea lanes and traffic separation schemes if referred to and adopted by the IMO

“Special Areas” under MARPOL Convention 73/78

- MARPOL defines certain sea areas as "special areas" in which, for technical reasons relating to their oceanographical and ecological condition and to their sea traffic, the adoption of special mandatory methods for the prevention of sea pollution is required
- Under the Convention, these special areas are provided with a higher level of protection than other areas of the sea
- 2013 GUIDELINES FOR THE DESIGNATION OF SPECIAL AREAS UNDER MARPOL, resolution A.1087(28) of 21 February 2014

Special Areas - Requirements

- The criteria which must be satisfied for an area to be given Special Area status are grouped into the following categories:
 - - oceanographic conditions;
 - - ecological conditions; and
 - - vessel traffic characteristics

Ecological Conditions

Conditions indicating that protection of the area from harmful substances is needed to preserve:

1. depleted, threatened or endangered marine species;
2. areas of high natural productivity (such as fronts, upwelling areas, gyres);
3. spawning, breeding and nursery areas for important marine species and areas representing migratory routes for sea-birds and marine mammals;
4. rare or fragile ecosystems such as coral reefs, mangroves, seagrass beds and wetlands; and
5. critical habitats for marine resources including fish stocks and/or areas of critical importance for the support of large marine ecosystems

IMO Guidelines for designation of Special Areas

1. The normal provisions in MARPOL must not be sufficient in the light of the existing oceanographic and ecological conditions in the area
2. The requirements of a Special Area designation can only become effective when adequate reception facilities are provided for ships in accordance with the provisions of MARPOL 73/78
3. Proposals for a Special Area are strengthened if measures are being, or will be, taken to prevent, reduce and control pollution of the marine environment from other sources of pollution
4. Proposals for designation of a Special Area would be strengthened if measures are being taken to manage the area's resources

Special Areas in MARPOL Annexes

- **Annex I.** **Oil and Oily Water**
- **Annex II.** **Noxious Liquid Substances in Bulk**
- **Annex V.** **Garbage**
- **Annex VI.** **Air Pollution (SO_x Emission Control Area)**

Procedures for Designation of MARPOL Special Areas

- A proposal to designate a given sea area as a Special Area should be submitted to the MEPC in accordance with the rules adopted by the IMO for submission of papers
- A proposal to designate a sea area as a Special Area should contain:
 - a draft amendment to the appropriate annex of MARPOL 73/78 as the formal basis for the designation; and
 - a background document setting forth all the relevant information to explain the need for the designation

Information Required in Background Document

1. A definition of the area proposed for designation, including its precise geographical co-ordinates
2. The type of Special Area proposed
3. A general description of the area, including information regarding: oceanography, ecological characteristics, social and economic value, scientific and cultural significance, environmental pressures from ship-generated pollution, other environmental pressures and measures already taken to protect the area
4. An analysis of how the sea area in question fulfils the criteria for the designation of Special Areas
5. Information on the availability of adequate reception facilities in the proposed Special Area

PSSAs

- A PSSA is an area that needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities
- **REVISED GUIDELINES FOR THE IDENTIFICATION AND DESIGNATION OF PARTICULARLY SENSITIVE SEA AREAS**
Resolution A.982(24) adopted on 1 December 2005, as amended by resolution MEPC.267(68) adopted on 15 May 2015

Associated Protective Measures

- At the time of designation of a PSSA, an associated protective measure, which meets the requirements of the appropriate legal instrument establishing such measure, must have been approved or adopted by IMO to prevent, reduce, or eliminate the threat or identified vulnerability

Associated Protective Measures – Available Options

1. Designation of an area as a Special Area under MARPOL Annexes I, II or V, or a SOx Emission Control Area under MARPOL Annex VI, or application of special discharge restrictions to vessels operating in a PSSA
2. Adoption of ships' routing and reporting systems near or in the area, under the SOLAS Convention and in accordance with the General Provisions on Ships' Routing and the Guidelines and Criteria for Ship Reporting Systems
3. Development and adoption of other measures aimed at protecting specific sea areas against environmental damage from ships, provided that they have an identified legal basis

Applications for PSSAs

- Each application for a PSSA should then consist of two parts:
 - Part I – Description, significance of the area and vulnerability
 - Part II – Appropriate associated protective measures and IMO's competence to approve or adopt such measures
- The MEPC bears primary responsibility within IMO for considering PSSA applications and all applications should first be submitted to the MEPC

Review & Evaluation by IMO

- IMO should provide a forum for the review and re-evaluation of any associated protective measure proposed, as necessary, taking into account pertinent comments, reports, and observations of the associated protective measures
- Member Governments which have ships operating in the area of the designated PSSA are encouraged to bring any concerns with the associated protective measures to IMO so that any necessary adjustments may be made

APMs and Procedure for PSSA Proposals

- The MEPC should not designate a PSSA until after the associated protective measures are considered and approved by the pertinent Sub-Committee, Committee, or Assembly
- If the associated protective measures are not approved by the pertinent IMO body, then the MEPC may reject the PSSA application entirely or request that the proposing Member Government submit new proposals for associated protective measures

Examples of Routing Measures

1. Traffic Separation Scheme
2. Recommended Route
3. Deep Water Route
4. Area to be Avoided
5. Precautionary Area
6. No anchorage area

Conclusions & Recommendations

1. The requirements for the designation of PSSAs seem to be more stringent than those for the designation of MARPOL Special Areas, especially under the 2005/2015 Guidelines
2. If Special Areas or PSSAs are proposed in areas within the Straits of Malacca and Singapore, the littoral States should consider them in the TTEG and then make a joint submission to the MEPC
3. Before submitting a proposal to the MEPC, the littoral States should obtain feedback and information from user States and the shipping community through the Cooperation Forum

Thanks for your Attention

Robert Beckman

Director, Centre for International Law

Email: cildir@nus.edu.sg