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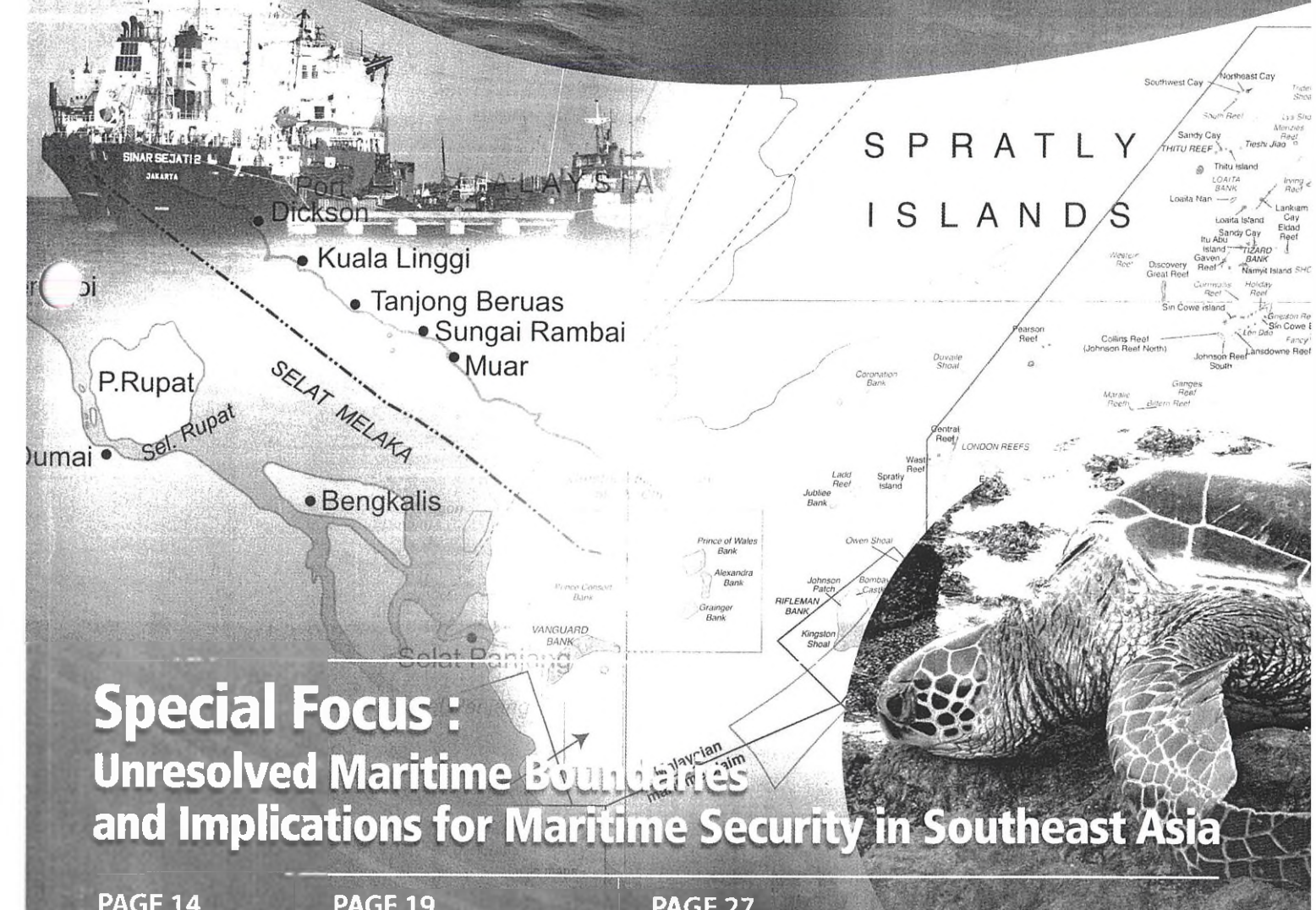

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Unresolved Maritime Boundaries and Implications for Maritime Security in Southeast Asia

Vivian L Forbes and Mohd Nizam Basiron

How ridiculous are the boundaries set by mortals
- Lucius Seneca (54 BC-39 AD), Roman historian -

Abstract

In its non-traditional form, maritime security is concerned with the prevention of intentional damage through sabotage, subversion, or terrorism. A maritime security regime is designed to help safeguard a nation's maritime transport system and offshore facilities from terrorism and unlawful interference. Under this regime, all security-regulated ports, port facilities, offshore facilities, port and offshore service providers and ships undertake security risk assessments and implement security plans to address identified risks. Following the incidents in the United States of America on 11 September, 2001, the international community resolved to implement a system to secure the maritime transport sector against the threat of terrorism. The International Ship and Port Facility Security (ISPS) Code, developed by the International Maritime Organization (IMO) in December 2002, was the result. Subsequent events in Bali, London, Madrid and Mumbai, to name a few, bring to the fore the collective international concerns about safety and security at sea, at land/sea interface as well as the hinterland of coastal and island states. Maritime and terrestrial trans-boundary security must be established and enforced. Where international boundaries have been delimited, there is a lesser likelihood of acts of transgression. In the 'grey' legal areas, there exist potential problems.

This paper highlights the un-delimited boundaries in the regional context, addresses the vex question of national maritime claims, briefly examines the issues behind the problems and offers an analysis of the concerns and issues. It stops short of making suggestions for the alignment of future boundaries. However, it argues that cooperative ventures may be an avenue for resolving disputes provided the political will exists.

Introduction

Engagement and inter-operability are critical to maritime security and successful humanitarian assistance as well as disaster relief missions rendered worldwide. Linking regional stability to the ideals of cooperation and partnership is possible. Partnerships can shape the maritime domain, relieve the suffering of others and ensure the international community is prepared for any uncertainty in the future. A political will at local, national and regional levels must exist. Working together as partners will ensure enhanced security in the maritime domain and rapid response to the regional crises. Seaborne threats such as armed robbery, piracy, drug smuggling, human trafficking, oil bunkering and terrorism are real. Many of these threats cross international borders, requiring like-minded maritime and terrestrial forces to cooperate and share real-time information to keep the region and the world safe.

Traditionally, maritime security is viewed as the need to secure a nation's maritime realm through diplomatic and military means. Relation between nations has been adversely affected by unresolved maritime boundary disputes as seen recently in the South China Sea and the Sulawesi Sea. Unresolved maritime boundaries deny nations access to the disputed areas, depriving them the benefits of the marine resources in the areas as well as creating tension between them.

Effective and secure borders (frontiers) on land can generally be maintained. In the marine setting, however, such is not always the case. Maritime boundaries need to be delimited and also their alignments delineated, where practicable, on charts and maps. These graphics should be made available to all who request them. Failure to possess settled boundaries has the potential to create untold legal, logistical and political problems and impose a financial burden on the State(s) in the region. In maritime Southeast Asia, there are at least 19 sets of maritime boundaries that require finalisation. In general, the States in the region are to be congratulated for delimiting many boundaries since 1969.

The structure of this paper comprised a brief description of maritime security, an illustration of specific act of terrorism which resulted in numerous deaths and international scorn, an analysis of the maritime security in the Southeast Asian region, discussion on unresolved maritime boundaries and the effects in the political, social and spatial context.

Maritime Security

Maritime Security is concerned with the prevention of intentional damage due to sabotage, subversion, or terrorism. There are three main maritime security activities conducted by law enforcement agencies of a coastal and island State. They are port security, vessel security, and facility security.

Port security regulations require measures at ports to reduce the risks and mitigating the effects of an act that threatens the security of personnel, facilities, vessels, and the public. Such regulations pool assets within the port boundaries to provide a framework to communicate, identify risks, and coordinate resources to mitigate threats and consequences. They must ensure that the total port security posture is accurately assessed and that, security resources are appropriate for these programmes. They must identify critical assets within a port, develop a prioritised list of those most susceptible to acts of sabotage, and plan for adequate security measures to meet specific needs.

The *International Ship and Port Facility Security (ISPS) Code, 2002* was adopted by the International Maritime Organization as new provisions to the *International Convention for SOLAS* to enhance maritime security. National legislation and the ISPS Code regulate vessel security. The regulations within these two documents require the owners or operators of vessels to designate security officers on vessels, develop security plans based on security assessments, implement security measures specific to the vessel's operation, and comply with current Marine Security levels.

A facility is defined as structure or infrastructure of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation. Some examples of facilities are barge fleet facilities, cargo container terminals, oil storage facilities, and passenger vessel terminals.

National legislation and the ISPS Code regulate facility security. The regulations in these two documents require the owners or operators of facilities to designate security officers on the facilities, develop security plans based on security assessments, implement security measures specific to the facility's operation, and comply with the current Marine Security levels. Those facilities designated as Outer Continental Shelf (OCS) facilities must meet the same security requirements as those of waterfront facilities.

Although the regional focus of this paper is on Southeast Asia, it will benefit the reader if we allude to a specific case of terrorism in South Asian seas that was given world-wide coverage in late-November 2008 that demonstrates trans-boundary crime across un-delimited boundary.

Specific Case of Maritime Terrorism

In the 2008 Mumbai (Bombay) attacks, there were more than 10 coordinated shooting and bombing attacks across the financial capital and also the largest city in India. The attacks from 26 to 29 November had at least 173 people killed and 308 wounded, drew condemnation across the world. This tragic event was conceived in another sovereign state, crossed perceived international maritime jurisdictional zones and created havoc on the citizens and infrastructure of a neighbour. Maritime security was breached by a brazen attack during the early hours of the evening.

Eight of the attacks occurred in South Mumbai at Chhatrapati Shivaji Terminus, the Oberoi Trident, the Taj Hotel & Tower, Leopold Cafe, Cama Hospital, the Orthodox Jewish-owned Nariman House, the Metro Cinema, and a lane behind the *Times of India* building and St Xavier's College. There was also an explosion at Mazgaon, in Mumbai's port area, and in a taxi at Vile Parle. By the early morning of 28 November, all sites except for the Taj Hotel had been secured by Mumbai Police and other security forces. An action by India's National Security Guards (NSG) on 29 November, resulted in the death of the last remaining attackers at the Taj Hotel, ending the attack.