

Lessons on toll-free shipping from straits of Malacca and Singapore

As Iran talks of levying tolls in the Strait of Hormuz, a model closer home shows how navigation in maritime chokepoints can be managed fairly and openly.

Tara Davenport

One fallout of the Iran war could have serious ramifications for global trade.

In response to attacks by Israel and the United States, Iran announced that it would impose tolls on ships transiting the Strait of Hormuz. Ships reportedly faced charges of up to US\$2 million (S\$2.55 million) per transit, which can be paid in yuan or cryptocurrency. This is purportedly meant to cover the costs of navigational guidance and compensation for war damage.

Iran has recently issued a plan that consolidates its control over the Strait of Hormuz through a variety of measures, including formalising the payment of tolls. But Iran's demand for passage

fees risks setting a problematic precedent.

Tolls or charges for mere passage through territorial seas are prohibited under the 1982 UN Convention on the Law of the Sea (UNCLOS).

Various states and international organisations, including the International Maritime Organization (IMO), have sounded the alarm over this broader risk: that states bordering straits ('strait states') the world over may feel emboldened to impose similar charges for passage through other critical maritime chokepoints.

If this happens, the consequences for global shipping would be severe.

More than 80 per cent of the world's trade travels by sea and disruptions have cascading effects across supply chains, blocking the flow of goods,

driving up prices and hitting ordinary people the hardest. The unfolding global implications over the situation in the Strait of Hormuz has already shown us what this looks like.

Beyond the immediate crisis, the standoff has highlighted the perennial tension that UNCLOS sought to resolve: the balance between strait states' sovereignty and control over critical waterways and navigational rights of all states.

On the one hand, passage through straits is a global public good that benefits all countries. On the other, is it fair that strait states bear the full burden of keeping critical maritime chokepoints open and safe to navigate

Navigational aids such as lighthouses, buoys, radio beacons and electronic systems require consistent upkeep. Clearing wrecks and oil pollution costs money.

If strait states cannot charge for passage, how should these costs be met?

One answer lies closer home – The Co-operative Mechanism on Safety of Navigation and Environmental Protection operating in the straits of Malacca and Singapore, two of the world's most critical chokepoints through which approximately 30 per cent of global trade passes.

Indonesia, Malaysia and Singapore adopted the Co-operative Mechanism in 2007, drawing on Article 43 of UNCLOS which stipulates that strait states and user states should co-operate on navigational aids and pollution prevention.

It offers a model for how strait states and those who use these critical waterways can collaborate to share the burden of managing a strait in a manner consistent with international law.

THE LEGAL FRAMEWORK

UNCLOS provides the legal framework underpinning maritime trade. It recognises that all states have the right to navigate the oceans but imposes limitations on these rights, depending on where the ship is sailing.

In straits used for international navigation located within the 12 nautical-mile territorial sea, foreign ships must be allowed to sail continuously and without interference. This right of transit passage can be regulated only for specified issues such as safety of navigation and to prevent pollution.

Crucially, strait states are barred from charging ships simply for passing through their territorial sea. Otherwise, tolls would give them enormous leverage over international shipping. Moreover, shipowners would avoid routes that charge tolls or pass the costs to consumers, adding considerable costs and delays that would hurt global trade. UNCLOS only permits charges to be levied for specific services rendered to individual ships, without discrimination.

In justifying charges for passage through straits, a misplaced comparison is sometimes made to the Suez and Panama Canals, both of which charge fees to transit. The difference is that both these waterways are man-made and tolls were historically required by Panama and Egypt to recover the enormous costs of construction, ongoing maintenance and in ensuring safe passage through these navigationally hazardous waterways. That justification simply does not arise for naturally-formed straits, which

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User states, maritime industry chipping in

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owe their existence to geography alone.

But in not being able to charge tolls, the strait states are left with a legitimate grievance. They must bear the full cost of maintaining navigational safety and preventing pollution in waters arising from an activity that benefits the world. That's why UNCLOS requires users and strait states to co-operate by agreement on these two issues.

A VIABLE BLUEPRINT

For the straits of Malacca and Singapore, which passes through the waters of Indonesia, Malaysia and Singapore, implementing Article 43 of UNCLOS is critical.

At one time, Japan was the only user state contributing consistently to navigational aids in the straits of Malacca and Singapore. The landscape changed after the 9/11 terrorist attacks in the US heightened anxiety about critical shipping lanes. At the same time, piracy in

the waterways was rising, and Japan signalled it could no longer shoulder the financial burden alone.

After a series of meetings convened by the IMO, the Co-operative Mechanism was formally launched in 2007.

Every year, it brings together representatives from user states, the shipping industry and other stakeholders to exchange views with the three countries and identify priority projects.

User states and the industry contribute financially and through technical assistance to specific projects promoting navigational safety and marine environmental protection. Fifteen projects have been undertaken to date, including wreck removal and the replacement of navigational aids. The benefits are tangible. The wreck removal project, for instance, has resulted in safer navigation through the straits, fewer collisions and reduced oil spills. India contributed to capacity building while Germany developed a wreck monitoring tool.

Under this framework, the Aids to Navigation Fund (ANF) was established to receive voluntary financial contributions from user states, industry, and other stakeholders of which funds are used to facilitate navigation.

The Co-operative Mechanism is the only fully operational implementation of Article 43 in the 30 years since UNCLOS came into force. It may not be easy to replicate this mechanism elsewhere, given the different geopolitical realities that characterise other straits. But there are lessons that can be drawn.

First, co-operation and coordination among strait states must come first. Indonesia, Malaysia and Singapore adopted a common policy on the straits as early as 1971. A tripartite technical experts group was established in 1975 comprising representatives from each of these three states, which submits joint proposals to the IMO on navigational and environmental matters. This group coordinates work done under the Co-operative Mechanism, reflecting the principle that primary responsibility for the straits lies with them.

It is also clear that inclusivity matters and the Co-operative Mechanism engages not just user states but also shipping companies and industry

associations to keep navigation safe. There is a clear institutional architecture that entrenches this engagement in a structured way. The IMO also remains deeply involved.

Flexibility in co-operative arrangements has helped. Contributions to the ANF, for example, can be financial or in-kind, one-off or continuing, bilateral or multilateral.

Last but not least, consistency with UNCLOS is key. Contributions to the ANF are voluntary, not compulsory or unilaterally imposed tolls for mere passage. Clear financial governance rules ensure transparency and accountability, giving user states and industry the confidence to contribute.

THE DANGER OF UNILATERAL ACTION

None of this has been easy. The Co-operative Mechanism took a decade of discussions. Managing a shared resource among three strait states, multiple user states, and a global shipping industry requires constant mediation to find common ground. But its central achievement is clear: it provides a framework where the burden of maintaining shipping in the straits of Malacca and Singapore can be discussed and distributed equitably, instead of being imposed unilaterally by the

strait states.

In the wake of Iran's action on tolls in the Strait of Hormuz, government officials from Indonesia, Malaysia and Singapore have affirmed their commitment to keeping the straits of Malacca and Singapore open and safe in accordance with international law.

At a symposium in Jakarta on April 22, Indonesian Finance Minister Purbaya Yudhi Sadewa floated the possibility of levying charges in the straits but later stressed that Indonesia would not seek to monetise international shipping routes and emphasised the importance of involving Malaysia and Singapore in any such decision. Indonesian Foreign Minister Sugiono on April 23 then made clear his country's position: Indonesia will not impose tariffs on ships through the straits, as such a policy would be inconsistent with UNCLOS.

Separately, Singapore's Foreign Minister Vivian Balakrishnan said that Singapore, Malaysia and Indonesia shared a strategic interest in keeping the straits of Malacca and Singapore open at a CNBC event in Singapore on April 22, reiterating that the right of transit passage is guaranteed for everyone and cannot be negotiated. Malaysia's Foreign Minister Mohamad Hasan said that any decision on the straits cannot be made unilaterally

while speaking at a forum on the same day. Their positions resonate with Article 43, which calls on strait states and user states to co-operate but leaves considerable flexibility to determine the form of cooperation that they want to engage in. It also speaks to something fundamental about the governance of global commons like the oceans: the seas that connect us cannot be managed by any single state acting alone.

International law tends to make headlines only when it is broken. Its quieter work – providing the architecture for cooperation between states – rarely attracts attention, yet it is this invisible scaffolding that keeps the world functioning. At a time when unilateral action increasingly defines international relations, the Co-operative Mechanism in the straits of Malacca and Singapore stands as an important reminder that states can look beyond their immediate national interests and cooperate for the collective good.

• Dr Tara Davenport is Co-Head of the Oceans Law and Policy Team at the Centre for International Law, Deputy Director of the Asia-Pacific Centre for Environmental Law, and an Assistant Professor at the Faculty of Law, National University of Singapore.