

## Threats of Piracy in the Straits of Malacca, Sunda, Lombok

The previous chapters centred around maritime hybrid warfare and hybrid conflicts in or near the Strait of Hormuz, the Bab el-Mandeb, the Viro Strait, the Taiwan Strait, and the Kerch Strait. This chapter focuses on the Straits of Malacca and Singapore that together with the Straits of Sunda and Lombok serve as the main gateways to the South China Sea. The Straits of Malacca and Singapore have not been a theatre of hybrid warfare or hybrid conflict, but similarly to the Åland Strait this waterway appears particularly vulnerable to hybrid threats.

### 14.1 Legal and Geopolitical Characteristics

The main passage to the South China Sea traverses the Straits of Malacca and Singapore, which, if combined, are commonly referred to as the most densely navigated straits globally and constituting the second-largest oil chokepoint after the Strait of Hormuz.<sup>1</sup> However, as examined above (Chapter 9 of Part 3), in geographical terms, the Strait of Singapore is not the busiest strait based on the density of ship traffic, albeit it remains by far the busiest strait that is subject to the legal regime of straits under Part III of LOSC.

The Straits of Malacca and Singapore comprises a continuous waterway connecting the Indian Ocean with the South China Sea. Thus, from the perspective of international shipping, the Straits of Malacca and Singapore constitute an integral whole. Geographically, the two straits are different from one another. The narrow and relatively short Strait of Singapore is located rather within the South China Sea, while the Strait of Malacca spans a large maritime area on the western side of the Malay Peninsula.

1 N McCarthy, 'Global Oil Shipments Depend on Major Chokepoints', Statista (25 March 2021).  
L Villar, M Hamilton, 'The Strait of Malacca, a key oil trade chokepoint, links the Indian and Pacific Oceans', US Energy Information Administration (11 August 2017).



MAP 12 The Strait of Malacca

SOURCE: OPENSTREETMAP.ORG, 'STRAIT OF MALACCA', 2021, AVAILABLE WWW.OPENSTREETMAP.ORG; ACCESSED 30 AUGUST 2021. THE MAP IS MODIFIED BY THE AUTHOR SO AS TO DEPICT THE LIMITS OF THE STRAIT OF MALACCA TO THE EXTENT THAT IT IS UP TO 24 NM WIDE.

Geographically, the Strait of Malacca is nearly 1000 km (540 NM) long.<sup>2</sup> Legally speaking, however, the Strait of Malacca is approximately 320 km (173 NM) long, as measured based on its southern limit (Indonesia's Karimunjawa Island) and an imaginary line connecting a coastal point near Malaysia's capital Kuala Lumpur with the Indonesian coast on Sumatra Island (northern limit). In that area, the Strait of Malacca is less than 24 NM wide as measured from the relevant baselines and thus falls under the sovereignty of its coastal States, i.e. Malaysia's territorial sea and Indonesia's archipelagic waters and territorial sea.<sup>3</sup> Consequently, Part III of LOSC is applicable to the Strait of Malacca only in approximately one third of the strait's geographical limits (see Map 12). The

<sup>2</sup> Measurement is based on the geographical points constituting the limits of the Strait of Malacca, as defined in *Limits of Oceans and Seas* (3rd ed., International Hydrographic Organization, Monte Carlo 1953), 23.

<sup>3</sup> See 'Malaysia' and 'Indonesia', MarineRegions.org, available [https://www.marineregions.org/eezdetails.php?mrgid=8483&zone=eez\\_12nm](https://www.marineregions.org/eezdetails.php?mrgid=8483&zone=eez_12nm); accessed 30 August 2021. See also the maps and legislation included in Malaysia, 'Legislation', Division for Ocean Affairs and the Law of the Sea, available <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/MYS.htm>; accessed 30 August 2021. See also Indonesia, *Ibid.*, available <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/IDN.htm>; accessed 30 August 2021.

Strait of Malacca connects the Malaysian and Indonesian EEZs in the west<sup>4</sup> and the EEZs in the South China Sea. Hence, the approx. 320-km-long part of the Strait of Malacca is subject to the right of transit passage (Art 38 of LOSC).

The right of transit passage also applies in the Strait of Singapore that joins the Strait of Malacca near Indonesia's Karimunjaya Island. Unlike the Strait of Malacca, the geographical and legal limits of the Strait of Singapore are identical as the entire Strait of Singapore falls under the sovereignty of its coastal States. It is located between, on the one hand, Singapore and Malaysia and, on the other hand, Indonesia. It is approximately 100-km-long and very narrow strait as its width mostly stays around 10 NM, while at its narrowest point between St John Island (Singapore) and Pulau Senang (Indonesia) the strait is only 2 NM wide.<sup>5</sup> The Johor Strait separates Singapore Island from mainland Malaysia. It is even narrower than the Strait of Singapore and not used for international navigation. Since 1924, the Johor Strait is closed for ship crossings between the Strait of Malacca and South China Sea due to the construction of the 1-km-long Johor-Singapore Causeway.<sup>6</sup>

The Straits of Malacca and Singapore are subject to a complex set of navigational safety measures, including a TSS,<sup>7</sup> mandatory ship reporting system 'STRAITREP',<sup>8</sup> Vessel Traffic and Information System,<sup>9</sup> and an under keel clearance<sup>10</sup> (of at least 3.5 metres). These measures reduce the threat of shipping accidents in the long and narrow sea route. Yet the accident risk in the Strait of Singapore is still significant as its narrowest point is only approximately 2

4 These EEZs are located, *inter alia*, in the area that is commonly identified by geographers as the Strait of Malacca, but where navigation and overflight does not need to be safeguarded under Part III of the LOSC as the high seas freedoms are guaranteed in the relevant EEZs.

5 Navionics ChartViewer, *op. cit.*, the Strait of Singapore.

6 'Singapore-Johor Causeway Opens, 28th Jun 1924', *HistorySG* (Government of Singapore 2021), available <https://eresources.nlb.gov.sg/history/events/4ae3cb2-e472-4fa6-987a-2aeedf0d101f> (accessed 17 August 2021).

7 Inter-Governmental Maritime Consultative Organization, Resolution A.375(x) 'Navigation through the Straits of Malacca and Singapore', adopted on 14 November 1977, available [https://www.wcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.375\(10\).pdf](https://www.wcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.375(10).pdf) (accessed 30 August 2021).

8 See Maritime and Port Authority Singapore, 'Vessel Traffic Information System', available <https://www.mpa.gov.sg/web/portal/home/port-of-singapore/operations/vessel-traffic-information-system-vtis> (accessed 30 August 2021). The International Register of Shipping, 'IMO Navigation Rules at Straits of Malacca and Singapore', 7 December 2019, available <https://intlreg.org/2019/12/07/imo-navigation-rules-at-straits-of-malacca-and-singapore/> (accessed 30 August 2021).

9 Caminos, Cogliati-Bantz, *op. cit.*, 393.

10 Molenaar 1998, *op. cit.*, 316–318.

NM wide.<sup>11</sup> This implies that it is in principle possible that a major accident causes the blockage of international navigation through the Straits of Malacca and Singapore. Such incident may be accidental or deliberately caused, e.g., by launching a cyber-attack, by an entity that considers that the disruption of commerce in one of the main arteries of global commerce would serve its interests.

Such blockage would have a significant impact on the world economy, as illustrated by the above-discussed six-days-long blockage of the Suez Canal in March 2021.<sup>12</sup> However, these risks are to some extent mitigated by the fact that ship traffic between the Indian Ocean and the South China Sea could be redirected from the Straits of Malacca and Singapore into the Indonesian straits of Sunda or Lombok.

Sunda and Lombok straits connect the Indian Ocean with the Java Sea that is located between some of the world's largest islands: Sumatra, Java, and Borneo. The small Sangian Island separates the Sunda Strait, located between the Indonesian islands Sumatra and Java, into two short channels. The eastern channel is slightly wider (5.5 NM) than the western channel (4 NM).<sup>13</sup> The Lombok Strait is situated between Bali Island and Lombok Island approximately 1000 km east of the Sunda Strait. It is approximately 11.5 NM wide and 30 NM long.<sup>14</sup> Distinct from the Sunda Strait that includes numerous islets and shoals in its northern end in the Java Sea, the Lombok Strait does not present significant navigational hazards and due to its great depth (mostly 400–1200 metres) is suitable for submerged transit.<sup>15</sup>

Both the Sunda Strait and the Lombok Strait are located in the Indonesian archipelagic waters,<sup>16</sup> rendering the right of archipelagic sea lanes passage applicable to ships and aircraft crossing the straits (Art 53 of LOSC). Prior to the entry into force of the LOSC, Indonesia temporarily closed the Sunda and Lombok Straits for international traffic in the course of its 1988 naval exercises.<sup>17</sup>

11 Navionics ChartViewer, *op. cit.*, the Singapore Strait. Notably, according to other accounts, the narrowest breadth of the Singapore Strait is 3.2 NM. See Ashley Roach and Smith 2012, *op. cit.*, 305.

12 See *supra* Chapter 6.2 of Part 2.

13 Navionics ChartViewer, *op. cit.*, the Sunda Strait. Notably, according to other accounts, the two channels of the Sunda Strait are at their narrowest respectively 3.7 NM and 2.4 NM wide. See Ashley Roach and Smith 2012, *op. cit.*, 332.

14 *Ibid.*, the Lombok Strait.

15 *Ibid.*, the Sunda Strait, the Lombok Strait.

16 M.Z.N.67.2009.LOS (Maritime Zone Notification), Deposit by the Republic of Indonesia of a list of geographical coordinates of points, pursuant to article 47, paragraph 9, of the Convention, 25 March 2009.

17 Ashley Roach and Smith 2012, *op. cit.*, 332–333.

The archipelagic sea lanes passage, as guaranteed under the Convention, now prevents the closure of the straits. The archipelagic sea lanes passage is functionally equivalent to the right of transit passage as they are both based on the freedoms of navigation and overflight. The two legal regimes safeguard expeditious, unobstructed, and non-suspendable transit between two parts of the high seas/EEZ, while allowing aircraft and ships to navigate in their normal mode (incl., e.g., submerged). The main distinction between the rights of transit and archipelagic sea lanes passage is that while the former applies to all foreign ships and aircraft in a strait from coast to coast, the latter applies only in the designated sea lanes and air routes or in normal routes used for navigation if archipelagic sea lanes are not designated (see Arts 38 and 53 of LOSC). In 2002, Indonesia designated archipelagic sea lanes in the Sunda Strait and the Lombok Strait.<sup>18</sup>

Notably, the risk of occurrence of a complete blockage in the Strait of Singapore similar to that of the Suez Canal in 2021 is reduced by geographical factors. The minimal width of the Suez Canal is about 200 metres, while the narrowest (2 NM) part of the sea route in the Strait of Singapore is approximately 20 times wider. On the other hand, the density of ship traffic in the Strait of Singapore is also significantly greater. While on average, nearly 50 vessels sail through the Suez Canal daily,<sup>19</sup> the daily ship crossings of the Strait of Singapore (ships over 300 GT) amount on average to slightly over 230.<sup>20</sup> Furthermore, in contrast to the Suez Canal, the Strait of Singapore has been for centuries, and still is, a global hotspot for piracy and armed robbery.

## 14.2 Threats of Piracy in Indonesia and the Straits of Malacca and Singapore

Article 101(1) of LOSC defines piracy as any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft, or against a ship, aircraft, persons or property in a place outside

18 Article 11(1)-(3) of the Indonesian Government Regulation No. 37 on the Rights and Obligations of Foreign Ships and Aircraft Exercising the Right of Archipelagic Sea Lane Passage through Designated Archipelagic Sea Lanes, adopted 28 June 2002, entered into force 28 June 2002.

19 BBC News 24 March 2021, *op. cit.*

20 Hand, *op. cit.*

the jurisdiction of any State. Thus, it sets a spatial criterion according to which for an armed robbery to be categorized as piracy it needs to occur outside the jurisdiction of any State. In this legal framework, piracy may occur on the high seas as well as in the EEZ,<sup>21</sup> but outside its scope fall in any case attacks against ships in waters that fall under the sovereignty of the relevant coastal State. The distinction between piracy and armed robbery<sup>22</sup> is particularly relevant in the case of Indonesian archipelagic waters and territorial sea, and the Straits of Malacca and Singapore that fall under the sovereignty of Indonesia, Malaysia, and Singapore.

Reportedly, at least since 1990s, Southeast Asia has been the most affected region globally from piracy and armed robbery that has brought about also the highest number of fatalities among the crews of targeted ships (see also Figure 5).<sup>23</sup> In 2020, the incidents of piracy and armed robbery almost doubled in Asia, particularly in the Straits of Malacca and Singapore, and the South China Sea.<sup>24</sup> However, these absolute numbers should be interpreted in the light of the fact that the sea routes in and around the Straits of Malacca and Singapore are the busiest globally. Thus, from an individual seafarer's perspective, the likelihood of falling the victim of a pirate attack or armed robbery is not greater than in, e.g., West Africa or West Indian Ocean.<sup>25</sup>

The number of attacks against ships navigating in the Strait of Singapore has increased from 3 in 2018 to 23 in 2020.<sup>26</sup> At the same time, the recent successful counter-piracy operations in the Strait of Malacca and around the Horn of Africa demonstrate that it is possible to suppress newly emerged waves of attacks against ships relatively quickly. In 1998, the IMO characterised piracy and armed robbery in the Strait of Malacca as having an endemic character<sup>27</sup> and, in 2000, the Strait of Malacca reported over 70 incidents of piracy or armed robbery that was overshadowed only by the number of attacks in

21 D Guilfoyle, 'The Legal Challenges in Fighting Piracy' in B van Ginkel, FP van der Putten (eds), *The International Response to Somali Piracy: Challenges and Opportunities* (Brill, Leiden/Boston, 2010), 128.

22 See further on the distinction between the two legal concepts, in RC Beckmann, 'Combating Piracy and Armed Robbery Against Ships in Southeast Asia: The Way Forward' (2002) 33(3-4) *Ocean Development & International Law*, 319-320.

23 A McCauley, 'The Most Dangerous Waters in the World', *Time* (22 September 2014).

24 Viotti, *op. cit.*

25 D Rosenberg, C Chung, 'Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities' (2008) 39(1) *Ocean Development & International Law*, 60.

26 See *supra* Figure 5.

27 IMO, 'Report of the Maritime Safety Committee on its Sixty-Ninth Session', MSC 69/22, 1998, 62.

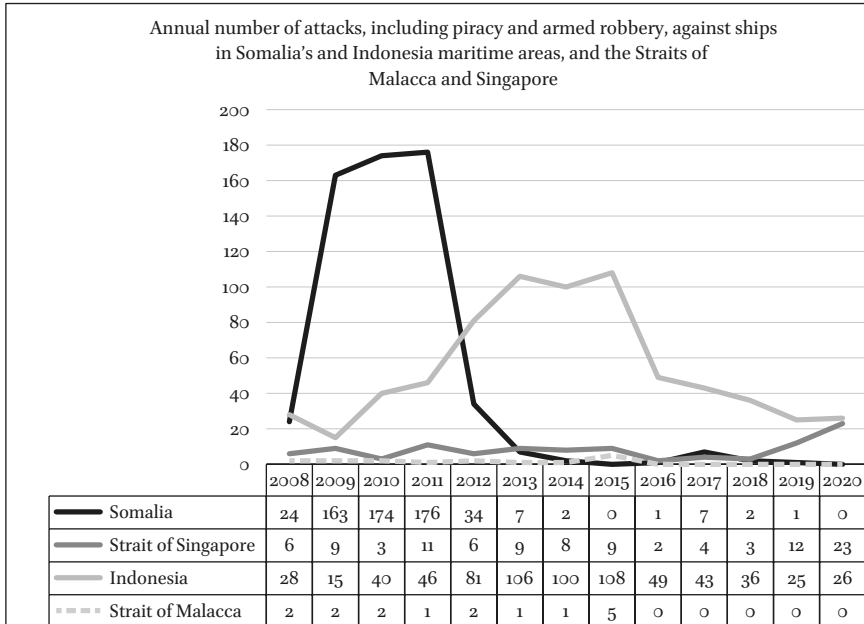


FIGURE 5 Piracy and armed robbery in Somalia, Indonesia, and the Straits of Malacca and Singapore

Note: Figure is based on data collected from EU Naval Force – Somalia, *op. cit.* ICC-IMB Piracy and Armed Robbery Against Ships: Report for the Period 1 January – 31 March 2021 (ICC International Maritime Bureau, London, 2021), 18. ICC-IMB Piracy and Armed Robbery Against Ships: Report for the Period 1 January – 31 December 2020 (ICC International Maritime Bureau, London, 2021), 6, 21. ICC-IMB Piracy and Armed Robbery Against Ships: Report for the Period 1 January – 31 December 2015 (ICC International Maritime Bureau, London, 2016), 5. ICC-IMB Piracy and Armed Robbery Against Ships: Report for the Period 1 January – 31 December 2011 (ICC International Maritime Bureau, London, 2012), 5.

Indonesia.<sup>28</sup> After Indonesia and Malaysia decided in 2005 to increase their efforts in patrolling their long coasts and adjacent waters in the Strait of Malacca,<sup>29</sup> the incidents of piracy and armed robbery were reduced to only a couple per year.<sup>30</sup>

28 Beckmann, *op. cit.*, 324.

29 ICC-IMB 2020 Report, *op. cit.*, 21. On the regulatory framework stipulated in bilateral treaties concluded between Indonesia and Malaysia and applicable to the patrols in the Strait of Malacca, see Beckmann, *op. cit.*, 330–331. See also Caminos, Cogliati-Bantz, *op. cit.*, 401.

30 See *supra* Figure 5.

Since 2016, attacks on ships have not been reported in the Strait of Malacca.<sup>31</sup> Similarly, the surge of pirate attacks in Somalia's maritime area around the Horn of Africa in 2009–2011 was effectively suppressed by the intervention of international coalition forces, the NATO, and the EU.<sup>32</sup> This intervention followed the aim of Article 100 of LOSC that stipulates the obligation of all States to cooperate fully in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State. Due to reasons discussed above, such international intervention absent of the prior permission of the relevant coastal State(s) is not possible in the Strait of Singapore or in the up to 24-NM-wide part of the Strait of Malacca as well as in straits situated in the archipelagic waters of Indonesia, e.g., the straits of Sunda and Lombok.

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid. See *supra* Chapter 6.3 of Part 2.



