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**STRENGTHENING COMPREHENSIVE AND
COOPERATIVE SECURITY IN THE ASIA-PACIFIC**

“Enhancing Maritime Security”

***Enhancing Maritime Security – Law Enforcement
in Malaysia***

by

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ENHANCING MARITIME SECURITY - LAW ENFORCEMENT IN MALAYSIA

BY FIRST ADMIRAL MARITIME ZULKIFILI BIN ABU BAKAR

INTRODUCTION

Whilst it is said that the threat of piracy and sea robbery in the seas of the Asia Pacific has reduced, there are still many challenges that countries in the region face that have compelled them to quantitatively and qualitatively improve their maritime security forces. The aim of this paper is to provide an overview on the on-going efforts to enhance maritime security using Malaysia as an example and how her maritime capabilities can be leveraged in response to security concerns.

This paper will highlight the strategic importance of maintaining maritime safety and security in the Malaysian Maritime Zone (MMZ)¹, including the major Sea Lanes of Communications (SLOCs) in Malaysia, especially the Straits of Malacca. It will also look at the maritime security challenges plaguing the SLOCs and the MMZ. Even though the term maritime security challenges covers traditional security threats as well as non-traditional security threats, this paper will focus on the latter. The paper will discuss the roles played by maritime security forces, in particular the Malaysian Maritime Enforcement Agency (MMEA)² and the need for maintaining a credible security force to ensure that any breach of safety and security is kept to minimum at all times. The paper will conclude by addressing the importance of establishing regional cooperation in the fight against transnational crimes.

THE STRATEGIC IMPORTANCE OF THE MMZ AND SLOCs

¹ This is defined in Section 2 the Malaysian Maritime Enforcement Agency Act 2004 (Act 633) as “the internal waters, territorial sea, continental shelf, exclusive economic zone and the Malaysian fisheries waters and includes the air space over the zone.

² The MMEA, which is the equivalent of a coast guard, was established on 15 Feb 2005 by virtue of the MMEA Act 2004 (Act 633).

The Malaysian Maritime Zone

As a maritime nation, Malaysia's economy is dependent on the rich natural resources, primarily petroleum and gas found in her Continental Shelf³. The State also relies heavily on seaborne trade for the import and export of essential goods, commodities and raw materials. Almost all her commercial major ports such as Penang, Lumut, Klang, West Port, Tanjong Pelepas, Kuantan, Kuching, Miri, Labuan, Kota Kinabalu, Sandakan and Tawau provide impetus for the growth of the adjacent districts and its respective States as a whole. Safe passage and access through the MMZ therefore is the nation's primary concern.

The availability of rich fishing grounds in Malaysia's Exclusive Economic Zone has reduced her dependence on fish imports. Fishing also provides a source of food besides providing a means of income for the more than 1 million fishermen in Malaysia. Some of the most popular marine tourist spots include islands located along the coasts of Malaysia. They are, among others, the islands of Langkawi, Penang, Pangkor, Tioman, Redang, Sipadan and Ligitan. A major oil spill could easily turn into a disaster for the tourism industry. Safeguarding maritime security in the MMZ is therefore vital to Malaysia's national interest.

The Straits of Malacca

The Straits of Malacca, a narrow channel passing between Indonesian Sumatra and the Malay Peninsula has become one of the most important sea routes in the world. The Straits form a strategic waterway by providing the shortest sea route between the Indian Ocean (via the Andaman Sea) and the Pacific Ocean (via the South China Sea).

No less than 70,000 commercial vessels that are carriers of international trade pass through the Straits of Malacca every year⁴. The number continues to

³ Oil money fuels Malaysia's economy by Cecilia Kok, The Star, Saturday, June 20, 2009. See also <http://www.cia.gov/library/publications/the-world-factbook/geos.my.html>

⁴ Ships transiting through the Straits of Malacca have to report to the Vessel Traffic Management Services managed by the Marine Department of Malaysia. The reporting procedure is called Straitrep.

increase each year, more so this year, due to global economic recovery from the recession that began in 2008.

A good number of these vessels are merchant ships and oil tankers and it is reported that annually, half of the global energy shipments⁵ and RM3.8 billion worth of goods and services⁶ world's oil and one third of global trade passes through the Straits of Malacca. The maintenance of security in the Straits of Malacca as a SLOC therefore cannot be taken for granted or under-emphasized. Any disruption of the free flow of trade and navigation in the Straits would adversely affect the economy of all the trading nations which depend largely on seaborne trade especially the littoral States of Indonesia, Singapore and Malaysia.

Security in the Straits of Malacca is also important to Malaysia for the following reasons:

Firstly, there is the international perception that the security of the Straits of Malacca is the responsibility of the littoral states. Perhaps the pressure was more on Malaysia because the name Malacca, which is one of the 13 states in the country, is synonymous to Malaysia.

Secondly, lack of enforcement portrays lack of display of authority and eventually, sovereignty. As some may recall, due to the rising number of piracy cases, the Straits of Malacca was once listed as a war risk zone⁷ by the insurance companies for a brief period in 2006. In fact, the absence of an effective law enforcement mechanism invites intervention by the security forces from other States. This was clearly reflected in a number of United Nation's Security Council Resolutions (UNSCR) which called for assistance from other

⁵ Webpage Centre for the Straits of Malacca, Maritime Institute of Malaysia. <http://www.mima.gov.my>.

⁶ Malacca Straits Research and Development Centre, Universiti Putra Malaysia.
<http://www.fsas.upm.edu.my/~masdec/web/straits.html>.

⁷ Lloyds Market Association.

States to address the piracy situation, specifically in Somalia. The presence of qualifying statements such as “...this resolution shall not be considered as establishing customary international law....” will not, however, stop the UNSCR from becoming customary international law because UNSCR in itself is customary rules of international law.⁸

The maintenance of maritime security for the other areas in the MMZ is also of primary concern to Malaysia. The South China Sea is strategically located, being in the hub of maritime activities and economic development of ASEAN states. The increase in volume of international trade that results from these activities mean that more goods will be transported by sea, thus there will be more ships plying the old trade routes in the region. This increase in maritime traffic leads to a corresponding increase in non-military threats, also commonly known as non-traditional threats, to maritime security.

MARITIME SECURITY CHALLENGES

Security Threats

Recognizing the needs of the international community and the littoral states to secure the safe passage of vessels in the Straits of Malacca, which is also in the MMZ, there is a continuous need to address the non-traditional security threats. These threats include terrorism, piracy, sea robbery, smuggling, human and narcotics trafficking.

These threats may also be classified into the following categories:

- A. Transnational crimes;
- B. Illegal seaborne migration; and
- C. Environmental and economic issues.

⁸ International Legal Framework (UNCLOS, SUA & UN Resolutions): How Are They in Tackling Piracy by Samuel Pyeatt Menefee at p. 3.

Transnational crimes refers to activities carried out firstly by, criminals, who smuggle drugs, weapons and even people across the porous maritime borders within the region. The latest development in trans-boundary cases for this region would be the increase in smuggling of food commodities. As rice is the staple food for most ASEAN countries, the shortage of such commodity would force people to smuggle the item out of necessity or for a quick gain.

Secondly, pirates and sea robbers prey on vessels that ply the trade routes, particularly the waters of the Straits of Malacca. The number of reported attacks, however, has been drastically reduced due to coordinated efforts undertaken by the littoral states of Malaysia, Singapore and Indonesia and the active preventive measures adopted by the onboard ship's crew.

Cases of suspected human trafficking that have been increasingly intercepted of late⁹ are now becoming a major concern. While the figures are still relatively low, it is undeniable that such cases do exist and efforts are ongoing to ensure that the problem is nipped in the bud. There are also cases of smuggling of people, purportedly organized by crime syndicates, who succeed because there are, gaps and seams in the laws of the affected countries.

As regards illegal seaborne migration, the unfortunate disparity in economic prosperity between one country and another attracts movement of illegal immigrants between the two. Some seek better sources of income while others seek a better future in the countries of their choice. These have sometimes caused strained relationships between the States affected together with possibly enhanced social and health related problems.

One must also be mindful of the fact that the migration of individuals may not be limited to those venturing for a better life but may also include the movement of

⁹ It has become a standard procedure for MMEA that whenever there is an arrest involving foreigner or individuals believed to be a minor, investigation procedures on suspicion of human trafficking shall be carried out first.

criminals or even terrorists who come seeking a safe haven under the pretext of migration, while waiting for the right time to launch their next strike.

Besides this, there are environmental and economic issues that result from the increase in traffic density of ships and other related maritime activities. The seas are vulnerable to threats of maritime pollution due to accidental spills, illegal dumping of waste, overfishing as well as illegal fishing. In recent years, cases of oil pollution from accidental spills and dumping activities have resulted in the degradation of the marine environment, thus contributing to scarcity of rich fishing grounds. Such cases have also threatened the tourism industry which largely depends on the unspoilt nature and beauty of the environment.

Since the causes of these problems originate from vessels of different States, managing law enforcement issues without the guidance of an existing cooperative mechanism becomes increasingly difficult for any one State.

The threats to security mentioned above are by no means exhaustive in nature. Indeed there are many others but it is sufficient to say that the damage caused by the illegal activities that have been mentioned can be very costly to the economy of a State, notwithstanding the costs of managing the problems. There is therefore, a need to have an effective law enforcement organization to tackle the maritime threats and challenges.

Safety of Navigation

In some cases, breach of safety practices may result in security problems. Efforts are being done to ensure safe navigation in the Straits of Malacca. Under the auspices of the International Maritime Organization and in accordance with Article 43 of the Law of the Sea Convention (LOSC), the littoral states have formed a Maritime Cooperative Mechanism¹⁰ which provides a framework of

¹⁰ The Cooperative Mechanism comprised 3 components, i.e. Cooperation Forum, Project Coordination Committee and Aids to Navigation Fund. It was first introduced in September 2006 at the Kuala Lumpur Meeting and was endorsed and agreed upon by the 3 littoral states of Indonesia, Singapore and Malaysia at the Singapore Meeting in September 2007.

cooperation and burden sharing between the littoral states and users of the Straits of Malacca and Singapore. For example, in order to further enhance the safety of navigation in the Straits, ships transiting through the Straits have to report to the Vessel Traffic Management Services, based in Port Klang, Malaysia¹¹. This is to facilitate identification and communication between ships and shore-based activities for the passing of relevant safety information.

Significant Threats

Among the maritime security threats mentioned above, the one that attracts international interest including from the global media would be threats posed by pirates or sea robbers. This is particularly significant in light of the present piracy cases off the coast of Somalia. In the case of South East Asia, the areas in the MMZ where most incidents of piracy or sea robbery have been recorded are in the Straits of Malacca and the South China Sea.

Sometimes the word piracy and sea robbery is used interchangeably. This occasionally happens when the focus of the subject matter is to reflect the gravity of the actual crime. There are differences between them but the most pronounced difference between piracy and sea robbery is the location where the offence is committed. If the offence happens on the high seas (EEZ for that matter by virtue of article 58 (2) of the LOSC) it will be termed as piracy¹². If it happens in the territorial seas and internal waters, then the offence is sea robbery where the coastal state would have jurisdiction.

The number of piracy and sea robbery cases in the Straits of Malacca since the year 2000 to this date has reduced drastically from 40 in 2000 to 1 case in 2009. For this present year of 2010, only one case has been reported so far. It involved a fishing vessel reportedly attempting to board a Very Large Crude Carrier. This incident, however, has not been confirmed. Incidences of piracy or sea robbery

¹¹ Ibid 2.

¹² Article 105 LOSC invites universal jurisdiction.

reports come from the International Maritime Bureau Piracy Reporting Centre, Maritime Port Authority of Singapore, Information Sharing Centre for ReCAAP¹³ and local enforcement authorities including the MMEA.

The reduction in the number of piracy cases is due to effective security mechanisms that were put in place at the height of piracy incidents in the Straits in 2006. In fact, in March 2009, the European Commission held an international workshop¹⁴ that discussed and commended the success of the three littoral states in implementing cooperative security measures to combat piracy. Among the mechanisms that drew praise were the Eyes in the Sky, the Malacca Straits Surface Patrol (MSSP) and the Maritime Cooperative Mechanism which were jointly implemented by the three states, the establishment of the Information Sharing Centre, ReCAAP based in Singapore and the formation of the MMEA.

The Roles Played by the Navy, Coast Guard and the Marine Police Force

The maritime security forces of a country may comprise a navy, a coast guard or a marine police. A navy has a military or war-fighting role as its primary role and law enforcement as its secondary or peace time role. A coast guard usually performs a law enforcement or constabulary role in peace time and augments the navy during war or a state of emergency. A marine police force normally exists in countries where there are no coast guards. The advantage of having a coast guard in comparison to a marine police is that since the former is paramilitary in nature, it reduces a country's defense expenditure as it can perform a dual role. The coast guard crew must however, be capable of swift adaptation from constabulary to traditional naval roles when required. A State therefore does not need to maintain a big navy nor does it need to maintain a large marine police force to carry out law enforcement role since the navy and coast guard

¹³ The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia is the first government-to-government agreement to enhance the security of regional waters.

¹⁴ Validation Workshop on Critical Maritime Routes from the Straits of Malacca to the Horn of Africa and the Gulf of Aden, Brussels 9-10 March 2009 organized by the European Commission.

complement each other. With the increasing complexity of maritime security over the past few years and the high operating costs of maintaining too many law enforcement agencies at sea, States are moving towards creating a coast guard or changing the roles of the marine police to becoming a coast guard.

Some States even have other agencies such as customs, environment, fisheries, health and immigration departments to augment the law enforcement roles carried out by the navy, coast guard or the marine police force. These agencies have a variety of vessels at their disposal. The roles of these agencies in law enforcement however, may be limited since they have their own primary functions such as anti smuggling for customs, breach of environmental provisions for the department of environment, combating illegal, unreported and unregulated fishing for the fisheries department, and so on, thus there cannot be a specific focus on maritime security as a whole. It is therefore advantageous to have a single agency with autonomous powers to carry out law enforcement.

The Law Enforcement Role

In the exercise of duties to ensure maritime security, especially when it comes to addressing traditional security threats, the biggest challenge in combating these threats is usually related to the issue of target identification. There is therefore, a need for the maritime security forces especially those involved in law enforcement duties to harness its surveillance capabilities in order to search, detect, classify and identify targets.

In this respect, while it is true to say those warships, in particular larger vessels which are configured for combat roles are better equipped with advanced surveillance gadgets to detect contacts; the problem of target identification would still prevail as some targets get cluttered among the many fishing vessels found in certain areas. Target identification becomes more challenging during harsh weather conditions and during night operations.

Navies, however, can still be of assistance in providing picture compilation for the purpose of law enforcement. If they cannot dedicate their time to law

enforcement duties, the information gathered can still be passed on to the relevant law enforcement agencies for further action. The next issue then would be inter-operability among the agencies to work together. In this aspect, as the navy and the coast guard has inter-changeable role; inter-operability therefore can best be achieved between the navy and the coast guard. While the challenges faced by security agencies may be complex, the job would still have to be managed.

There are views that the military, in particular, navies, due to the size of its assets may want to focus on the war fighting role¹⁵. Engaging in law enforcement duties, inevitably, requires a substantial commitment of time and effort in terms of training, execution, and court duties. Ultimately, it is for the stakeholder to decide on the eventual role.

The Changing Nature of the Law Enforcement Role in Malaysia

One of the biggest challenges faced by the Malaysian Government is maritime law enforcement. With a vast maritime area of interest versus a limited number of resources, there is a need to be focused on the type of enforcement operations to be done. Prior to the formation of the MMEA, there were 8 agencies responsible for enforcing more than 40 relevant statutes. They are:

- Department of Immigration;
- Department of Fisheries;
- Department of Environment (DOE);
- Marine Department;
- Royal Malaysian Air Force;

¹⁵ This is particularly true for the Royal Malaysian Navy (RMN) as it was strong proponent for the setting up of the Malaysian Maritime Enforcement Agency. The RMN continues to be support the MMEA in terms of assets, personnel and training. Almost 85% of the personnel in the MMEA comprise of retired or ex-naval personnel. The recruits for MMEA are still being trained at the RMN Recruit Training Centre in Johore.

- Royal Malaysian Navy;
- Royal Malaysians Customs;
- Royal Malaysian Police (Marine and Air Wing)

In the past, some of the agencies worked in isolation in meeting the requirements of the Acts governing them. For example, the Fisheries Act, the Environmental Quality Act (EQA), the Customs Act, and the Immigration Act stipulate the management of enforcement activities by the Fisheries Department, the DOE, the Customs Department and the Immigration Department respectively. The Fisheries Act however, authorizes the RMN, Marine Police, Marine Department and Customs officers to carry out its enforcement. A similar provision is found in the EQA authorizing officers from the various agencies to enforce cases of oil pollution. As a result of some uncertainties and overlapping jurisdiction in combating the maritime threats, the National Maritime Enforcement and Coordination Centre (NMECC) was formed in 1985 in order to coordinate the enforcement activities. This was to avoid confusion and delineation of specific duties by the various agencies.

The creation of NMECC however, did not solve the problem of enforcement as each agency was still engulfed with its own priorities and interests particularly in managing its assets and human resources. Besides this, NMECC also lacked command and control functions over the agencies while the assets assigned to her were meant to meet specific duties only. There were still other challenges that were not addressed including inter-agency cooperation as well as interoperability among maritime agencies. The approach taken by each maritime agency in combating threats to maritime security was more sectoral in nature and the disparity in the capability of assets and resources between one agency and another required further resolution.

In 1999, the government directed a feasibility study to be carried out on the formation of a coast guard. As a result of the study, a decision was made to establish a coast guard by amalgamating all the various assets and human

resources dealing with maritime law enforcement. Subsequently, the MMEA was born.

MMEA

Under the MMEA Act, MMEA has been tasked to perform enforcement functions under all federal laws for ensuring the safety and security of the MMZ and is the primary agency responsible for search and rescue at sea. To ensure that MMEA is able to perform its functions, MMEA has been given assets that include surface vessels¹⁶, rotary and fixed wing aircraft and radar sea surveillance systems. While the air assets, surveillance radars and boats are new, some of the ships however, are almost 50 years old¹⁷ and need to be replaced. To date, MMEA has in its inventory the following assets:

Types	Numbers
Ships (>20m in length)	50
Boats (<20m in length)	25
RHIBs	52
Total	127

Figure 1 - Surface Vessels

Types	Numbers
Helicopter	3 (Dauphine)

¹⁶ Out of 50 ships and 21 boats, 1 ship was given by the Nippon Foundation, 2 new boats by TM while the rest of the ships and boats were used ships given by the following agencies: RMN (17), Marine Police(15), Customs(5), Fisheries(12) and Marine Department(21)

¹⁷ The 15 Patrol Craft class of ships given by the RMN.

Fixed Wing	2 (CL 415)
Total	5

Figure 2 - Air Assets

Radar Sea Surveillance Systems

Upon its formation, MMEA inherited the existing Radar Sea Surveillance Systems (RSSS) situated along the coast facing the Straits of Malacca. These radars were previously operated by the NMECC¹⁸ based in Lumut. The RSSS serve a dual function, firstly to provide radar picture for the safety of navigation under the Vessel Traffic Services (VTS) operated by the Marine Department and secondly for surveillance and security purposes of the MMEA. They are operated by independent VTS and MMEA radar operators. The RSSS has proven to be a useful tool for MMEA with a significant number of successful interdictions due to their effective use¹⁹. A similar type of surveillance radars are currently in the process of being installed from Sandakan in the east coast to the western coast of Sabah on the island of Borneo.

Today, MMEA is in its fifth year of operation. Some wonder whether MMEA has evolved to be the sole maritime enforcement agency as it was intended to be in Malaysia or whether MMEA is the ninth agency. This is because over the years even after MMEA's formation, the other law enforcement agencies such as the Marine Police Force, The Fisheries Department and the Customs Department (Marine section) are still operating at sea. As it is, MMEA has already embarked on a strategic plan that will eventually make it the sole maritime enforcement agency in Malaysia by August 2011. During this time MMEA has had the opportunity to equip her personnel and assets to be ready to meet the dateline. The statistical data provided speak for themselves.

¹⁸ NMECC has been absorbed as part of MMEA with effect from 1st June 2009.

¹⁹ The successful interdiction of a vessel carrying 240 kg of cannabis on 24th May 2010 was a result of continuous surveillance by the RSSS stationed in Langkawi.

Year	Inspections	Arrests
2006	360	173
2007	4497	691
2008	7396	679
2009	13598	1037
2010-20 May	4657	572

Figure 3 – MMEA Statistics

ACT	2006	2007	2008	2009	2010- 20 May
FISHERIES	132	527	515	700	283
IMMIGRATION	11	49	39	95	85
CUSTOMS	17	27	26	39	25
FORESTRY		2	5	1	-
ENVIRONMENT			5	3	4
MERCHANT SHIPPING	7	54	39	132	114
SUPPLY CONTROL	2	25	41	27	45
RICE PADDIES REGULATIONS		2			1
NATIONAL LAND CODE	1	4	7	23	5
DANGEROUS DRUGS		1	1	3	1
FIRE ARMS			1	1	
WILDLIFE PROTECTION				3	

LAND AND MINERAL				1	
CORRUPTION				4	
SALES OF DRUG				2	
NATIONAL REGISTRATION				2	2
ANIMAL 1953				1	1
HUMAN TRAFFICKING					6
POISONS					1
TOTAL	170	691	679	1037	573

Figure 4 – Arrest Statistics According To Statutes

THE IMPORTANCE OF REGIONAL COOPERATION

As had been said before, the events in Somalia has attracted overwhelming international attention to the success stories of the littoral states in curbing piracy in the Straits of Malacca. It has brought about opportunities for the littoral states to look back and improve on previous weaknesses. It has also strengthened regional cooperation among the littoral states as generally people realize that no one state will be able to tackle transnational crimes alone.

The fact remains that managing law enforcement operations across different national frontiers requires regional and even international cooperation. Logic dictates that even countries that are capable of increased maritime domain awareness may not be able to achieve effective enforcement, particularly for criminal activities that transcend different maritime borders. There is a need to develop information sharing mechanisms among related agencies as well as between countries within the region. For this reason, the establishment of a focal

point network will facilitate such information sharing and consequently expedite the use of existing arrangements on mutual assistance in criminal matters.

As a follow up to the above, States should also develop standard operating procedures that will enable swift decision-making processes and pre-planned responses for any eventualities.

One of the most important elements in law enforcement is the speed by which maritime interdiction can be successfully achieved. By participating in joint or combined exercises, States will be able to increase their proficiency in law enforcement, while at the same time validating the standard operating procedures that have been developed together.

It is also essential that States in the region cooperate, identify and resolve weaknesses in their enforcement mechanisms, including all elements of ambiguities, and lacunae of existing international and domestic laws. By doing so, they will ensure that no criminals are able to escape the hands of the law, and this will in turn pose a sufficient deterrence to would-be offenders. After all, prevention is still the best form of effective law enforcement.

Since its formation, MMEA has taken steps to establish bi-lateral as well as multi-lateral relationships with several countries in the Asia Pacific region. MMEA has a close working relationship with the following organizations:

- a. ISC ReCAAP in Singapore;
- b. Singapore Police Coastguard;
- c. Maritime Port Authority of Singapore;
- d. Japan Coastguard; and
- e. United States Coastguard.

THE WAY AHEAD

Through the working mechanisms of the Head of Asian Coast Guards and the ASEAN Senior Official Meetings on Transnational Crimes (SOM TC), MMEA is also seeking to establish a multilateral cooperation with the coast guard agencies of several countries to facilitate information sharing in the fight against transnational crimes. Furthermore, under SOM TC, Malaysia has become the lead nation for the fight against piracy.

For now, the law enforcement arrangements in the fight against piracy in the Straits of Malacca are generally undertaken by cooperation between the Armed Forces of the littoral states. Once MMEA is able to establish relationship with its direct partners, especially the coast guards of Indonesia and Singapore, it is anticipated that the general law enforcement activities may eventually be undertaken by the coast guards of the littoral States. This also applies to the situation in the Sulu Sulawesi areas.

CONCLUSION

Based on the foregoing arguments although the threats of piracy and sea robbery have tremendously reduced in the Straits of Malacca, there are still other non-traditional security concerns that are equally if not more, threatening. There is therefore a need for Malaysia to maintain a credible security force to ensure that any breach of safety and security is kept to minimum at all times. The Malaysian Government's move to establish MMEA as the sole maritime law enforcement agency shows that the nation has taken a focused approach to tackle law enforcement. The formation of MMEA to take over the maritime law enforcement roles from the other 8 agencies should also be viewed as a consolidation effort which can be leveraged in response to the prevailing maritime security environment. With good regional cooperation, Malaysia's commitment to provide maritime safety and security for the passage of vessels through the MMZ and the Straits of Malacca can be assured.