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Maritime Security Governance: Indonesia, Malaysia, and Singapore's Approach Towards the Proliferation Security Initiative

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I. INTRODUCTION

A key facet in responding to security conditions in the post-Cold War environment is through counter-proliferation initiatives. Generally, proliferation responses target nuclear, chemical, and biological weapons of mass destruction (WMD). The prevention of the proliferation of WMD has been associated with American national strategy since the 1990s. The Proliferation Security Initiative (PSI) is a counter-proliferation initiative established by the United States. It aims at stopping the trafficking of WMD, their delivery systems, and related materials to and from States and non-State actors of proliferation concern. Being a maritime superpower, the United States has an abiding interest in ensuring that strategic waterways such as the Straits of Malacca (SOM) are not used for transporting such weapons.

This article examines the different responses to the PSI by the three littoral States of the SOM. It proceeds in three sections. First, it outlines the PSI and its key characteristics, including (a) the U.S.-led security dynamics; (b) the global scope of the PSI beyond littoral States' security priorities, and (c) its complex initiatives covering multiple actors across multi-domain security. Second, the article uncovers the receptibility of the PSI in the Southeast Asian region and the variety of responses by Indonesia, Malaysia, and Singapore. Drawing on the different approaches by these three littoral States, the third section explains the factors determining their responses to PSI as a maritime security governance initiative in the SOM.

II. THE STRAITS OF MALACCA: A STRATEGIC SEA LANE OF COMMUNICATION

The SOM's littoral States of Indonesia, Malaysia, and Singapore bear the responsibility for providing adequate security measures for international shipping in the straits and securing the straits from illegal activities. However, they have limited capacity in terms of assets for enforcement. This limitation is exacerbated by the absence of a clear governance framework for managing the multifaceted, multi-layered involvement of multiple actors in the SOM. Hence, they are fairly receptive to cooperation with user States and other non-State entities, subject to certain caveats, the foremost being that the external proponents do not impose their political will and interests on the regional States. This reservation is clearly in effect in regard to maritime security initiatives, in particular the PSI.

The relationship between the PSI and maritime security governance in the SOM has been controversial and raises several key questions. First, why don't all three littoral States subscribe to the U.S.-led PSI? Second, excepting Singapore, why do the littoral States not share the U.S. view that the PSI will keep the straits free and safe from the movement of WMD? Third, is the PSI consistent with international law, in particular the 1982 UN Convention on the Law of the Sea (UNCLOS)? These questions present a complex security governance scenario for the littoral States of the SOM.

Indonesia, Malaysia, and Singapore have long-standing relationships with the United States and share common interests across a broad range of issues, including maritime security. Relationships among Indonesia, Malaysia, and Singapore are diverse and include military, economic, and security aspects specifically related to counter-terrorism measures, maritime domain awareness cooperation, intelligence cooperation, and cooperation in deterring transnational crimes in strategic waterways.¹ Despite the strong relationship as strategic partners, not all littoral States have responded in like fashion towards the PSI. Singapore has been proactive on all three security mechanisms, holding that the straits should remain unrestricted to the international community. As such, it has supported and adopted the PSI as a security mechanism in the SOM since 2003. Indonesia has a more cautious approach in rejecting the PSI, a stance it maintains to date. Unlike Singapore and Indonesia's polar-opposite positions, Malaysia has taken a moderate and adaptive approach, being a participant State in the PSI since 2005.

The maritime security governance approach of each of the three nations toward the PSI is based on considerations of sovereignty, economics, and legal factors in viewing the PSI as a security initiative. Adoption or rejection of the PSI and its governing mechanisms in the SOM depends on the three variables; however, these States are also influenced by the ordering of institutional factors of relevance to the PSI.

III. THE PROLIFERATION SECURITY INITIATIVE

The PSI is a maritime security approach bearing a great power footprint, which in turn has generated distinct approaches to it by all three littoral

1. Thomas F. Daughton, *The Straits of Malacca and Challenges Ahead: The U.S. Perspective*, in *BUILDING A COMPREHENSIVE SECURITY ENVIRONMENT IN THE STRAITS OF MALACCA* 40 (Mohd Nizam Basiron & Amir Dastan eds., 2006).

States. The reasons for the different approaches are grounded on issues of national sensitivity. Although the PSI has received global support because of the shared desire to deter the proliferation of WMD, its opponents view it as eroding navigational freedom and somewhat dampening seaborne commerce.² In this regard, the PSI lacks political support from some littoral States, imposes jurisdictional challenges, and lacks regional institutional recognition.

A. U.S.-Led Security Dynamics

The PSI seeks to address the risks arising from global trafficking of WMD, including in the SOM. The United States has remained its main proponent through the Bush, Obama, Trump, and Biden administrations. U.S. participation in the initiative is overseen by the Department of State and guided by the 2002 National Strategy to Combat Weapons of Mass Destruction.³ The PSI has been a key feature in U.S. counterproliferation efforts and has received support from U.S. allies.

Almost all the literature available on the PSI emphasizes its origins. The PSI was launched by President Bush in 2003 at the G-8 global summit in Krakow, Poland.⁴ It aims to prevent the proliferation of WMD, including biological, chemical, and nuclear weapons, across the world. The initiative is significant because its objectives include WMD delivery systems and transit through strategic sea lanes such as the SOM. The initiative provides for interdiction and seizure by all PSI participants of vessels suspected of transporting WMD at sea. The participating States work closely to “facilitate intelligence sharing and law enforcement activities to monitor, identify, and intercept suspected vessels carrying WMD in national and international waters.”⁵

2. See generally Timothy Perry, *The PSI as a Shared Good: How the Proliferation Security Initiative Both Challenges and Reinforces a Prevaling Mare Liberum Regime*, 49 OCEAN DEVELOPMENT AND INTERNATIONAL LAW 335 (2008).

3. Additional information from the U.S. State Department about the PSI is available at: <https://www.state.gov/proliferation-security-initiative/> (last visited June 15, 2023).

4. See Perry, *supra* note 2.

5. Mark J. Valencia, *The Proliferation Security Initiative: Should Malaysia Join?*, MARITIME STUDIES, May–June 2005, at 14.

The PSI has Washington's enduring stamp as its initiator. The United States initially enlisted eleven supporting governments with strong counter-proliferation records to become its core participants.⁶

Although the PSI is U.S.-led, many countries share its common threat perceptions, making it a highly globalized effort. The original participant States include the United States, Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom. It has evolved into a global partnership endorsed by 107 countries.⁷ Undeniably, the United States is the driving force behind the PSI. According to some, the PSI is a defining story of U.S. foreign policy success, and Washington has been proud of its potential as a winning effort.⁸

The PSI has a strategic element that is not covered in much of the literature. That is the geostrategic interests of the littoral powers of the SOM and how those interests affect the littoral States' responses to security initiative mechanisms. One scholar who has covered this element is Mark Valencia, who made interesting observations as to how the PSI has a strategic dimension and how great powers assert an interest in strategic sea lanes.⁹ In his assessment, Valencia notes that the primary motive for the creation of the PSI was the interdiction of ships moving WMD and related materials from or to targeted countries such as North Korea, Libya, Iran, Sudan, and Cuba. Further, he alluded to the core countries that officially supported the PSI, such as Australia, Singapore, Japan, South Korea, and several landlocked countries in Central Asia. Nations such as Japan and South Korea purportedly support the PSI because of North Korea's involvement in the movement of WMD. Additionally, he argues that the "Straits States" and maritime powers have different perspectives and priorities. The United States and Japan focus on threats relating to maritime terrorism and the shipment of WMD. Similarly, one of the littoral States of SOM, Singapore, also supports the PSI, believing that it is necessary to collaborate with external powers to protect its small maritime space. Singapore shares the threat perception on the nexus of maritime terrorism and WMD and seeks to guarantee open and unimpeded commercial shipping through the straits. However, Indonesia

6. See David Cooper, *Challenging Contemporary Notions of Middle Power Influence: Implications of the Proliferation Security Initiative for "Middle Power Theory,"* 7 FOREIGN POLICY ANALYSIS 317 (2011).

7. See U.S. State Department, *PSI Interdiction Principles*, <https://www.state.gov/psi-interdiction-principles/> (last visited June 15, 2023).

8. See Cooper, *supra* note 6.

9. See Valencia, *supra* note 5.

and Malaysia place greater emphasis on sovereignty over the SOM and, hence, do not subscribe to external security involvement in it.

B. Global Scope of the PSI

The inception of the PSI was an international response to address concerns about the rapid proliferation of WMD among State and non-State actors. Although the principal aim deals with interdiction, it is pertinent to note that it covers a wide range of political and economic responses in addition to the boarding of suspect vessels. Its application is also global in scope, involving security and the legal and diplomatic processes and procedures of participating States.

The initiative also relates to international efforts in dealing with the challenges to global peace arising from the proliferation of nuclear, chemical, and biological WMD. The PSI is a component of counterproliferation that essentially deals with operational measures to interdict the transfer of WMD in which participating States agree to a set of “interdiction principles.”

According to Brad Williams and Andrew Newman, the PSI approach by the United States, as expounded in its National Security Strategy, was developed with assessment since the 1990s on security threats by “rogue States” determined to build WMD for offensive use, and that these States could “sponsor terrorism around the globe.”¹⁰ The United States continued an aggressive counterproliferation strategy outlined since then, including in the National Security Strategy 2002. This has been embraced by the United States’ strong allies in the Asia Pacific, such as Australia and Japan.

The target routes of interdiction in the Asia Pacific environment incorporate sea, land, and air routes in close proximity to high-risk countries such as China, North Korea, Iran, and Pakistan, none of whom participate in the PSI.¹¹ This seems to suggest that the PSI may be sending a powerful political message to these States.

Indonesia, Malaysia, and Singapore’s responses toward the PSI have partially been influenced by the global scope of the initiative and concerns about the geostrategic interests of the great powers. Indonesia, Malaysia, and Singapore have different strategic priorities than the great powers, and they understand the careful consideration needed vis-a-vis their attempt to secure the SOM. The littoral States’ response is based on two considerations. First,

10. Andrew Newman & Brad Williams, *The Proliferation Security Initiative: The Asia-Pacific Context*, 12 NONPROLIFERATION REVIEW 303 (2005).

11. *Id.* at 304.

the underlying interest of the United States and support from its allies, such as Japan, Australia, and South Korea on the PSI. Second, the indirect opposition to the PSI by countries such as China and North Korea. The opposing views compel the littoral States to regard the PSI in terms of their geostrategic approaches rather than external countries' interests in global security. This approach by the littoral States is mainly to avoid taking sides.

C. *Multiple Actors Across Multi-Domain Security*

A key in determining a littoral State's response to the PSI is the nature of the security challenges that the State faces. The PSI addresses security issues that are far more sensitive than other security threats because they relate to the delivery of WMD and their use by terrorists or other extremist groups, posing security threats to global shipping.

Security issues associated with WMD have been integral threat elements in U.S. national strategy. With the end of the Cold War, security against WMD has featured highly in American security discourse between 2002–2004. It has also featured in United Nations Security Council and General Assembly deliberations since 1946. In fact, in 1992, the United Nations Security Council noted that “the proliferation of all weapons of mass destruction constitutes threats to international peace and security.”¹² Apart from the United States, other countries that formulated security strategies on WMD included the Soviet Union, France, and Germany (through their respective white papers in 1994), the UK, Italy, and the Netherlands. Additionally, the western-based North Atlantic Treaty Organization (NATO) appreciates the existence of a threat with nuclear, biological, and chemical weapons proliferation and also the increased capability of missiles as a means of delivery.¹³

The Global War on Terror and the importance of maritime security came to prominence in the early 2000s as a response to security threats to the western world. Southeast Asia is known as the American “second front” in the war on terror, where several States, such as the Philippines, Malaysia, and

12. W. Seth Carus, *Defining “Weapons of Mass Destruction”* 5–9 (rev. & updated 2012), https://ndupress.ndu.edu/Portals/68/Documents/occasional/cswmd/CSWMD_OccasionalPaper-8.pdf.

13. See Joseph Pilat, *Dealing with Proliferation and Terrorism Involving WMD*, in *COMBATING WEAPONS OF MASS DESTRUCTION* 9 (Nathan E. Busch & Daniel Joyner eds., 2009).

Singapore, were alleged to be home to al Qaeda operatives.¹⁴ Consequently, the environment in Southeast Asia has moved beyond the common concerns of maritime piracy and armed robbery to include the threat of maritime terrorism and other transnational issues, such as the protection of the marine environment and the use of the maritime domain for smuggling activities. The Straits of Malacca and Singapore received extensive international attention due to many instances of piracy in 2004–2006 as well as the potential threat of terrorism.

The literature on maritime security suggests that maritime terrorism is not clearly defined in any international legal instrument, though some studies provide an acceptable explanation. Among them is one by Catherine Raymond who states that maritime terrorism is “a new phenomenon compared to other violent activities which take place in the marine environment. Where it has occurred, it has largely been in the context of civil war or wars of succession and has as a consequence remained the business of the affected state.”¹⁵ While there is no internationally agreed definition, scholars agree that maritime terrorism covers a wide range of actions, including the hijacking of vessels, use of weapons against other ships or port facilities, terrorists posing as seafarers to enter another country, and transfer of weapons of mass destruction via merchant ships to terrorist organizations.¹⁶

Furthermore, maritime terrorism poses significant challenges to legal regimes governing State jurisdictions under customary international law and UNCLOS. Additionally, it adds to operational issues for law enforcement as far as State jurisdiction is concerned. According to Robert Beckman, PSI interdiction principles provide that participating States should act regarding vessels in their ports and internal waters and are consistent with principles of international law; however, there is no such provision in UNCLOS.¹⁷ The

14. See John Gershman, *Is Southeast Asia the Second Front?*, 81 FOREIGN AFFAIRS 60 (2002).

15. Catherine Zara Raymond, *Maritime Terrorism in Southeast Asia: A Risk Assessment*, 18 TERRORISM AND POLITICAL VIOLENCE 239, 240 (2006).

16. Robert Beckman & Tara Davenport, *Maritime Terrorism and the Law of the Sea: Basic Principles and New Challenges* (unpublished paper presented at Globalization and the Law of the Sea Dec. 1–3, 2010, in Washington D.C.), <https://cil.nus.edu.sg/wp-content/uploads/2010/08/Beckman-Combating-Maritime-Terrorism-19-Nov-final.pdf>.

17. Robert Beckman, *Transit Passage Regime in the Straits of Malacca: Issues for Consideration*, in BUILDING A COMPREHENSIVE SECURITY ENVIRONMENT IN THE STRAITS OF MALACCA 244 (Mohd Nizam Basiron & Amir Dastan eds., 2006).

challenge is more pronounced in regard to how the PSI would apply to vessels exercising the right of transit passage through the Straits of Malacca and Singapore.

The contradiction in international norms relates not only to its legal basis but also to the different understandings of its international norms. There is another perspective that states that the PSI does not create any international norms, but only refers to implementation measures within existing international laws. Although it is aimed at strengthening international norms, studies suggest that the PSI lacks fundamental international principles, particularly legal ones. For ASEAN, international principles are of foremost priority, especially in dealing with maritime matters. As such, where the PSI contradicts UNCLOS, it does not conform with internationally agreed principles, although experts do acknowledge that the legal basis under international law is narrow.¹⁸

The PSI exists as an activity and is not an organization under any established institutions. Participating States identify gaps in existing diplomatic, political, legal, military, and economic tools and identify practical measures to close the gaps. As such, it is not a legally binding treaty. It does not own an international secretariat, permanent staff, or office. It has no authority or compliance control mechanism and does not bind any legal actions. States have the freedom to decide on participation on a case-to-case basis. As such, the PSI is a loose consortium or informal grouping of willing States.¹⁹

IV. RECEIPTIBILITY AND LITTORAL STATES' RESPONSES TO THE PSI

The littoral States of Indonesia, Malaysia, and Singapore tend to take divergent approaches to the PSI security mechanism despite the common risks they face in the SOM. Maritime terrorism is considered one of the security risks that could threaten this strategic waterway. The issue of maritime terrorism is based on the premise that it will interrupt the maritime supply chain among major seaborne trading nations. The fear is that terrorists will use the maritime system to transport their WMD in shipping containers.²⁰ Maritime

18. See, e.g., Adrian Choong, *The Proliferation Security Initiative: Can It Deliver?*, 38 *POINTERS: JOURNAL OF THE SINGAPORE ARMED FORCES*, No. 1, 2012, at 1.

19. Jacek Durkalec, *The Proliferation Security Initiative: Evolution and Future Prospects* (EU Non-Proliferation Consortium, Non-Proliferation Papers No. 16, 2012), https://www.sipri.org/sites/default/files/EUNPC_no-16.pdf.

20. Sam Bateman, *Regime Building in the Malacca and Singapore Straits: Two Steps Forward and One Step Back*, 4 *ECONOMIC PEACE AND SECURITY JOURNAL* 45 (2009).

terrorism is a concern, and all three littoral States agree on the need to counter it. Despite this fear, not all the littoral States support the PSI as a governing security mechanism in the SOM and not all are participants. As shown in Table 1, the three States have different levels of status vis-a-vis the PSI. Singapore is a core participant, Malaysia is an ordinary participant, and Indonesia is a non-participant.

Country	Status	Variation/Characterization
Singapore	Core Participant	<i>Proactive</i> (1) Unimpeded Passage for Trade and Commerce (2) Possible Terrorist Acts Against Maritime Targets (3) U.S.-Singapore Strategic Framework Agreement for a Closer Cooperation Partnership in Defense and Security
Malaysia	Participant	<i>Firm but Adaptive</i> (1) War on Terror is a priority (2) Strong Military-to-Military Cooperation (3) U.S.-Malaysia Maritime Cooperation, Including Counter-Terror & Non-Proliferation
Indonesia	Non-Participant	<i>Cautious</i> (1) Sovereignty & Sovereign Rights (2) Independent Foreign Policy (3) International Law & UNCLOS

Table 1: Variation in Policy Choices on PSI by Singapore, Malaysia, and Indonesia

Singapore proactively responded to the PSI and has been a core participant since the security initiative was proposed in 2003. Malaysia was unsure of its approach towards the PSI in the first two years but decided to lean towards adaptive measures and became a participant in 2005. Despite appearing as a key nation in the global effort to tackle the movement of WMD to terrorist-related networks, Indonesia rejected the PSI. To date, it is cautious in dealing with foreign powers-led security initiatives and has not participated in the PSI. Indonesia's priorities differ from those of Malaysia and Singapore. This has prevented the PSI from garnering regional support.²¹

Singapore views possible acts of terror against maritime targets as real and shares a similar threat perception with the United States. Being the

21. See Aaron Dunne, *The Proliferation Security Initiative: Legal Considerations and Operational Realities* (SIPRI Policy Paper No. 36, 2013), <https://www.sipri.org/sites/default/files/files/PP/SIPRI36.pdf>.

world's foremost maritime transshipment hub and situated strategically in the center of Southeast Asia shipping, Singapore believes it could be a prime target for terrorism-linked activities, including WMD. Hence, Singapore is among the fifteen core participants of the initiative. As provided by Sam Bateman, Catherine Raymond, and Joshua Ho, the maritime transportation industry has been affected by threats of terrorism and needs a better regulatory environment than the one that existed before 9/11.²² In this aspect, Singapore's choice to be proactive in all maritime security initiatives in dealing with such threats is justified.

Post-9/11, Malaysia is also considered an important partner in the War on Terror because of its strategic location along the Straits of Malacca. With the War on Terror, security issues have become a top priority in Malaysia-U.S. maritime cooperation.²³ With 9/11, the United States was concerned that terrorists seeking to disrupt global trade might attack shipping in the straits and began to view Malaysia in a new light. Malaysia has become an important partner in fighting terrorism for several reasons, one being that the "US now viewed Malaysia as a success story in Southeast Asia—multi-racial, vibrant, and progressive—at a time when the region was considered the 'second front' in the war on terrorism due to the links between its militant groups and the Al-Qaeda network of Osama bin Laden."²⁴

For Malaysia, maritime security is a priority area. As a coastal State bordering the SOM, the direct geographical proximity warrants a comprehensive approach to security that is not limited to matters of sovereignty and sovereign rights. The impact of unsecured passage could have devastating consequences for the economic development of the ports, commercial cities, and densely populated areas along the SOM. As such, sovereignty and sovereign rights and jurisdiction should not hamper cooperation initiatives.²⁵

22. Sam Bateman et al., *Safety And Security in the Malacca and Singapore Straits: An Agenda for Action* 15 (Institute of Defence and Strategic Studies Policy Paper 2006), https://www.rsis.edu.sg/wp-content/uploads/2014/07/PR060501_Safety_and_Security_in_Malacca_Singapore.pdf.

23. Alexander Sullivan, *Advancing U.S.-Malaysia Security Cooperation in a Changing Environment*, CENTER FOR NEW AMERICAN SECURITY (2012), https://www.files.ethz.ch/isn/184428/CNAS_MalaysiaCountry_Sullivan.pdf.

24. PAMELA SODHY, MALAYSIA-US RELATIONS 2000–2011, at 11 (2012), https://isis.org.my/wp-content/uploads/2009/06/attachments_e-books_Pamela_Sodhy_Malaysia-US_Relations_Oct2012.pdf (footnote omitted).

25. W. N. Salleh, *A Malaysian Perspective*, in BUILDING A COMPREHENSIVE SECURITY ENVIRONMENT IN THE STRAITS OF MALACCA 20 (Mohd Nizam Basiron & Amir Dastan eds., 2006).

Thus, despite having sovereignty concerns initially, Malaysia adapted to the global security benefits of the PSI and became a participating country.

A. Sovereign Interests

Sovereign interests, including sovereign rights and duties of the littoral States, are one of the variables determining the responses of littoral States on security initiatives, whether on land or the maritime and air domains. Sovereign interests are prevalent as they represent the national and political realities of nations. Despite this and the numerous efforts urging Indonesia to join the PSI, it consistently remains a non-participant. Why is this a strong position? One answer lies in Indonesia's sovereign interests itself. Indonesia's Foreign Minister stated in 2006 that joining the PSI could threaten Indonesia's sovereignty because it was a U.S.-dominated initiative.²⁶ Of the three littorals, Indonesia is the most sensitive towards sovereignty issues, and the nuclear interdiction principles have been a challenge to Indonesia.

Indonesia's position on the SOM is clear. According to Indonesia's diplomats, sovereignty and sovereign rights issues in the straits are matters agreed upon by coastal States and have a strong footing in international law.²⁷ Their sovereignty and sovereign rights prevail over international patrols. Interdictions in areas such as the SOM are inconsistent with those rights and Indonesia will not associate with them. This statement is a straightforward response to the PSI security mechanism that would implicate the littoral States' management in the SOM. Thus, Indonesia does not want to be associated with it. Indonesia recognizes that maritime terrorism and the proliferation of WMD are threats, and the risks associated with them are shared by Malaysia and Singapore. At the same time, Indonesia's leaders and diplomats are of the view that the PSI is a unilateral regime that is outside international norms.

26. Muhamad Jaki Nurhasya, *Proliferation Security Initiative (PSI): Revisiting the Indonesian Perspective*, 2 AEGIS JOURNAL OF INTERNATIONAL RELATIONS 59, 63 (2017).

27. Presentation Slideshow, Arif Havas Oegroseno, Director for Political, Security and Territorial Treaties, Dep't of Foreign Affairs, Republic of Indonesia, *Threats to Maritime Security and Responses Thereto: A Focus on Armed Robbery against Ships at Sea in the Straits of Malacca and Singapore: The Indonesian Experience*, https://www.un.org/depts/los/consultative_process/documents/9_oegroseno_presentation.pdf (last visited June 15, 2023).

B. *Economic Interests*

The PSI's focus is on operations related to WMD and delivery systems, especially on cargo that could potentially carry such dangerous materials. The transport sector across Southeast Asia is a key catalyst for economic development and features prominently in ASEAN economic integration. Many Southeast Asian countries are maritime economies and shipping is a primary form of transportation and essential for communication between the region and the world.

In this regard, all the SOM littoral States have invested heavily in developing the maritime economy through port developments as well as ensuring the safety and security of the shipping sector. Ports are different in their geography, topography, surroundings, and the communities that are dependent on port business. However, there is a consensus that ports are vulnerable because of their easy access by land and sea. Singapore recognizes this vulnerability and has introduced several security measures, but there is no clear consensus among littoral States or users of the straits on security approaches. This is despite the risks posed to ships plying the straits and ships at anchorage along it.

The approaches by Singapore and Malaysia towards the PSI are primarily influenced by economic interests to ensure that they are pitching into a neoliberal stance in regard to maritime governance in the SOM. This stance assumes that such governance relies on an increase in competition and the introduction of markets in all social realms and to support international institutions' agendas for safety and security in the SOM. Underlying the shortcoming that neorealism neglects the economy, Malaysia and Singapore sought to maximize cooperation for economic survivability. Singapore is proactive while Malaysia is adaptive in its governance response to the PSI.

C. *Legal Interpretations*

Scholars have slightly different understandings of the PSI, especially its international legal standing. Stuart Kaye argues that it draws legal support from its member States largely because it is consistent with international law.²⁸ Following 9/11, the PSI received global attention and advanced as a critical agenda for the international community. It was deliberated by the United

28. Stuart Kaye, *The Proliferation Security Initiative in the Maritime Domain*, 81 INTERNATIONAL LAW STUDIES 141 (2006).

Nations Security Council in 2004, which unanimously adopted Resolution 1540 on the prevention of the proliferation of WMD. The resolution provided that States could take measures to prevent the proliferation of WMD and associated materials and ensure that they do not fall into the power of non-State actors. Despite the urgent attention on the security threat, the resolution's shortcoming lies in not referring to the interdiction of vessels, a matter that was then left to be contemplated within the PSI.²⁹

UNCLOS is a treaty that defines the rights and duties of States in the ocean and is regarded as the foremost instrument on maritime jurisdiction, including those on the PSI. In this respect, Indonesia's non-participation in the PSI has legal considerations. Indonesia has raised doubts over the PSI and is uncertain if it adheres to international law, including UNCLOS. The work of Timothy Perry perhaps explains Indonesia's concern. Perry explains the paradox of the PSI in relation to the concept of Hugo Grotius's *Mare Liberum* (understood as a general statement on the rights of freedom of trade and navigation). Perry states that, unlike a treaty, the PSI does not develop a legal regime for its participating States. States can at any time decide if they want to participate in any of the interdiction principles or, in the extreme case, exit from the PSI.³⁰ Citing the works of Aaron Dunne and Mark Shulman, Perry suggests that the PSI established a new model for multilateral cooperation while avoiding inconvenient treaty instruments.

The most controversial principle of the PSI is interdiction of vessels entering, leaving, and transiting territorial seas and contiguous zones. UNCLOS provides that vessels of all States have the right of innocent passage through the territorial sea of all States.³¹ Passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State. Scholars have established that it is difficult to prove that the passage of a vessel—even one carrying nuclear materials—will pose such a danger unless authorities can prove that the vessel is not innocent and intends to bring the WMD into the territory of a coastal State in violation of that State's laws and regulations. Furthermore, in a strait used for international navigation like the Straits of Malacca, the right of "transit passage" applies to all vessels. They cannot be impeded by the coastal States. It is for this reason that some coastal States are reluctant to join security frameworks like the PSI that interfere with the rights of transit passage.

29. *Id.*

30. See Perry, *supra* note 2.

31. Beckman & Davenport, *supra* note 16.

Scholars such as Yann-Huei Song note that the relationship between the PSI and UNCLOS has been controversial.³² Song notes that the United States is a core member of the PSI but is not a party to UNCLOS. UNCLOS is viewed as a “Constitution of the Ocean” and stands as the most comprehensive legislative and political work under the United Nations, and there have been arguments that the U.S.-led PSI may be inconsistent with UNCLOS.³³

Others refer to the PSI as a coalition of willing partners in response to the growing proliferation of WMD and an attempt by the United States to create a framework for international cooperation. Since its inception, PSI developments have not consisted of international treaties but of cooperative arrangements among participating States for the interdiction of ships that could be carrying WMD. While Robert Beckman and Tara Davenport suggest that the PSI is a mere coalition of the willing, a detailed assessment suggests a strong legal background to the PSI, especially on the consistency of the interdiction principles with UNCLOS and international law. A principal question discussed by Beckman and Davenport in *Maritime Terrorism and the Law of the Sea: Basic Principles and Challenges* relates to the jurisdiction and legality of the PSI within UNCLOS and existing rules of international law.³⁴

While agreeing that the interdiction principles are among the contentious issues, they seem to acknowledge that some specific actions set out in the principles are generally consistent with UNCLOS and international law. The main ones concerning vessels flying the flag of participating States are consistent with the provisions set out in UNCLOS and conform to principles governing the law of the sea. They provide that:

States have a right to board and search vessels in their internal waters and territorial sea which are flying their flag because the sovereignty of a state extends to its internal waters and to its territorial sea and a state’s laws apply on ships flying their flag. In addition, a flag state has exclusive jurisdiction over acts aboard ships in areas beyond the territorial seas of any state.³⁵

32. Yann-Huei Song, *The U.S.-Led Proliferation Security Initiative and UNCLOS: Legality, Implementation, and an Assessment*, 38 OCEAN DEVELOPMENT & INTERNATIONAL LAW 101 (2017).

33. *Id.*

34. Beckman & Davenport, *supra* note 16.

35. *Id.* at 17.

This is an important principle because it suggests that participating States must consider flag States' approval to board and search vessels flying their flag under certain circumstances. This principle—setting out actions for interdiction, boarding, and searching authority for participating flag States—is not acceptable to Indonesia. Article 43 of UNCLOS requires user States and States bordering straits to cooperate in the establishment and maintenance of navigational and safety aids in the strait. However, there is no such provision for security cooperation. In this respect, such cooperation among littoral States and users of the straits are by individual State's choice. Indonesia has consistently upheld that as a sovereign State, it can establish its own policy preferences in this respect.

In the legal context, a far-reaching limitation of the PSI is that it does not create a legal obligation for littoral States. At the same time, participation is not restricted to States that have endorsed the PSI principles.³⁶ Non-PSI nations such as Indonesia can participate and act independently or work with PSI participants to intercept suspected consignments outside the PSI framework, which is consistent with existing international and internal laws. Besides, customary international law already allows for the high-seas interdiction of suspected WMD-laden vessels flagged by nonconsenting States. As such, there is no real pressure on littoral States to participate in the PSI because the legal framework for dealing with interdiction of WMD is already in existence.

V. INSTITUTIONS AND THE PSI

Institutions have a role in any global effort. Institutional arrangements are examined from two perspectives: power-based and norms-based. Traditionally, institutional cooperation is only feasible when priorities match each other, often reflected through self-interests. Institutions provide mutually benefiting cooperation on issues ranging from security, trade, economy, and non-traditional affairs such as environmental and ocean governance. The role of institutions has been more visible in Southeast Asia since the formation of ASEAN in 1967.

In some governance approaches, littoral States adopt norms of subsidiarity—that is, creating local rules to preserve their autonomy—to avoid the dominance of larger powers and to limit intervention in regional affairs. As phrased by Terence Lee and Kevin McGahan, the littoral States engage in

36. Perry, *supra* note 2.

norms of subsidiarity, whereby weaker States band together to develop their own rules in response to powerful actors marginalizing or excluding them in global governance.³⁷ The Malacca Straits Patrol exemplifies such an approach.

The littoral States engage in norm subsidiarity through cooperative arrangements for handling maritime security such as piracy and armed robbery. The weaker States engage in that because international institutions are dominated by great powers who are often seen as violating global norms. In this instance, international institutions are unwilling or fail to prevent abuse by the great powers. The PSI is the most difficult security initiative dividing the littoral States from pursuing a united response towards great power pressure in regional security. The PSI could be one of the triggers making the littoral States engage in processes such as norms subsidiarity.

Opposite to norms-based institutions are power-based institutions that have proven to be problematic in the regional context. This is because powerful States create powerful institutions to distribute power and maintain or increase their share of world power.³⁸ The PSI—an enterprise created by the United States as a global power—is heavily grounded on the former. The support for these security initiatives derives mainly from the United States' traditional allies, such as Australia, Japan, and South Korea. The targets of PSI are proliferators, seen to be the most dangerous people in the view of the United States.

The analysis also reveals that norms-based security initiatives are seen as more feasible compared to power-based ones. The chances of acceptance are higher by omitting hard security issues. Non-traditional security issues, which are less sensitive to the State's sovereign rights and only involve non-military forces, are more easily accepted through consultation and joint efforts as the outcomes are shared security interests. We see this play out, for example, in international institutions such as the Indian Ocean Rim Association, Cooperative Forum in the Straits of Malacca, and the ASEAN Regional Forum Intersessional Meeting on Maritime Security, because they have no difficulty discussing issues of common interest, such as fisheries management, sustainable oceans, and navigational safety.

37. Terence Lee & Kevin McGahan, *Norm Subsidiarity and Institutional Cooperation: Explaining the Straits of Malacca Anti-Piracy Regime*, 28 *PACIFIC REVIEW* 529 (2015).

38. See John Mearsheimer, *The False Promise of International Institutions*, *INTERNATIONAL SECURITY*, Winter, 1994–95, at 5.

VI. CONCLUSION: THE DIVERGENT APPROACHES TO THE PSI AND THE IMPACT ON SECURITY GOVERNANCE IN THE SOM

The divergence in security governance among the littoral States on the PSI was explained in this article by analyzing the three independent variables. They are sovereign interests, economic interests, and legal obligations. Singapore was proactive and joined the initiative as soon as it was introduced. Similarly, Malaysia approached the PSI with reasonable consideration. Although Malaysia was not receptive in the initial stage, several considerations came into play, such as the country's long-standing security partnership with the United States, the shared non-traditional threat perceptions among PSI participating nations, and the threats of terror-related activities on shipping along the SOM. This resulted in Malaysia participating in the PSI.

Oppositely, sensitivity to the PSI is obvious from Indonesia's arguments that what constitutes "security" to the United States does not necessarily translate into the question of security to Indonesia. The country's dilemma is that the PSI could adversely affect its security by entering into a too-close relationship with a great power. Indonesia's rejection of the PSI is said to avoid an "excuse" by external powers for "redress" using piracy or maritime terrorism to internationalize the straits.

The PSI is a case in point where the littoral States adopt distinctive approaches. This is due to national sensitivities surrounding the PSI. The PSI has evolved into a strong security effort to address the movement of WMD and it has received global support because of the shared good. It deters the proliferation of such weapons, related unlawful materials, and their delivery systems to States and non-State actors of proliferation concern. However, the opposing views are that the PSI erodes navigational freedom and somewhat dampens ocean commerce. The PSI is seen as an exclusive endeavor by a foreign power and does not take an inclusive perspective of the sovereignty concerns of coastal States. Consequently, any security arrangement without the strong support of the three littoral States will be deemed less effective as it lacks the political support of all the littoral States, creates jurisdictional challenges, and does not have regional institutional recognition.