

ANNEX

Statement relating to article 233 of the draft convention on the law of the sea in its application to the Straits of Malacca and Singapore

Following consultations held among the delegations of States concerned, a common understanding regarding the purpose and meaning of article 233 of the draft convention on the law of the sea in its application to the Straits of Malacca and Singapore has been confirmed. This understanding, which takes cognizance of the peculiar geographic and traffic conditions in the Straits, and which recognizes the need to promote safety of navigation and to protect and preserve the marine environment in the Straits, is as follows:

1. Laws and regulations enacted by States bordering the Straits under article 42, paragraph 1 (a) of the convention, refer to laws and regulations relating to traffic separation schemes, including the determination of under keel clearance for the Straits provided in article 41.

2. Accordingly, a violation of the provision of resolution A.375(X),^a by the Inter-Governmental Maritime Consultative Organization adopted on 14 November 1977, whereby the vessels referred to therein shall allow for an under keel clearance of at least 3.5 metres during passage through the Straits of Malacca and Singapore, shall be deemed, in view of the peculiar geographic and traffic conditions of the Straits, to be a violation within the meaning of article 233. The

^aSee Inter-Governmental Maritime Consultative Organization, Assembly, Tenth Session, Resolutions and Other Decisions, London, 1978.

States bordering the Straits may take appropriate enforcement measures, as provided for in article 233. Such measures may include preventing a vessel violating the required under keel clearance from proceeding. Such action shall not constitute denying, hampering, impairing or suspending the right of transit passage in breach of articles 42, paragraph 2 or 44 of the draft convention.

3. States bordering the Straits may take appropriate enforcement measures in accordance with article 233, against vessels violating the laws and regulations referred to in article 42, paragraph 1 (a) and (b) causing or threatening major damage to the marine environment of the Straits.

4. States bordering the Straits shall, in taking the enforcement measures, observe the provisions on safeguards in Section 7, Part XIII of the draft convention.

5. Articles 42 and 233 do not affect the rights and obligations of States bordering the Straits regarding appropriate enforcement measures with respect to vessels in the Straits not in transit passage.

6. Nothing in the above understanding is intended to impair:

(a) the sovereign immunity of ships and the provisions of article 236 as well as the international responsibility of the flag State in accordance with paragraph 5 of article 42;

(b) the duty of the flag State to take appropriate measures to ensure that its ships comply with article 39, without prejudice to the rights of States bordering the Straits under Parts III and XII of the draft convention and the provisions of paragraphs 1, 2, 3 and 4 of this statement.

DOCUMENT A/CONF.62/L.145/ADD.1

Letter dated 29 April 1982 from the representative of Indonesia to the President of the Conference

*[Original: English]
[29 April 1982]*

As Chairman of the delegation of Indonesia to the eleventh session of the Third United Nations Conference on the Law of the Sea, I have the honour to refer to the letter dated 28 April 1982 from the Chairman of the delegation of Malaysia to the eleventh session of the Third United Nations Conference on the Law of the Sea on behalf of the delegations of Indonesia, Malaysia and Singapore, regarding the statement concerning the purpose and meaning of article 233 of the draft convention on the law of the sea in its application to the Straits of Malacca and Singapore.

I am pleased to inform you that my delegation confirms the contents of the letter and the said statement.

*(Signed) M. KUSUMAATMADJA
Representative of Indonesia
to the Third United Nations Conference
on the Law of the Sea*

DOCUMENT A/CONF.62/L.145/ADD.2

Letter dated 29 April 1982 from the representative of Singapore to the President of the Conference

*[Original: English]
[29 April 1982]*

As Chairman of the delegation of Singapore to the eleventh session of the Third United Nations Conference on the Law of the Sea, I have the honour to refer to the letter dated 28 April 1982 from the Chairman of the Delegation of Malaysia to the eleventh session of the Third United Nations Conference on the Law of the Sea on behalf of the delegations of Indonesia, Malaysia and Singapore, regarding the statement concerning the purpose and meaning of article 233 of the draft convention on the law of the sea in its application to the Straits of Malacca and Singapore.

I am pleased to inform you that my delegation confirms the contents of the letter and the said statement.

*(Signed) T. T. B. KOH
Representative of Singapore
to the Third United Nations Conference
on the Law of the Sea*