

MALAYSIAN MARITIME ENFORCEMENT AGENCY

by Tim Lynch

A MODERN COAST GUARD MODEL



Admiral Datuk Mohd Amdan bin Kurish

At the January 2012 Royal Australian Navy (RAN) Sea Power Conference in Sydney, **Admiral Maritime Datuk Mohd Amdan bin Kurish**, Director General Malaysian Maritime Enforcement Agency (MMEA), gave a presentation on Maritime Cooperation in the Malacca Strait. Describing the relationship between Malaysia, Singapore and Indonesia, Admiral Kurish stressed the need for trust, information sharing and interoperability, as documented in Memoranda of Understanding (MOUs) among the countries. Intrigued by this presentation, *Frontline Defence* writer **Tim Lynch** then travelled to Putrajaya, Malaysia to interview **Captain Maritime Hj Mamu Bin Said Alee**, Director of Strategic Planning, Maritime Policy & International Relations, at MMEA Head Quarters in February 2012.

Discussing the mission of MMEA, Captain Mamu produced their strategic plan. Translating from the original Malay language, he described the mission of the MMEA as the enforcement of all Malaysian maritime laws and the saving of life at sea.

The *Malaysian Marine Department* is responsible for managing the flow of vessel traffic and safety through the Malacca Strait, the *Royal Malaysian Navy (RMN)* focuses on matters of defence, protecting the country from foreign forces, while the *Malaysian Maritime Enforcement Agency* enforces laws at sea (as the police enforce law on land) and is the lead agency for Maritime Search and Rescue (SAR).

LEGAL STRUCTURE

The Malaysian legal structure has been shaped by three major periods over some 600 years. The first was the founding of the Melaka Sultanate at the beginning of the 15th Century; second was the spread of Islam in the indigenous culture; and finally, and perhaps the most significant in modern Malaysia, was British colonial rule which brought with it constitutional government and the common law system.

Following Independence in 1957, “we adopted many British laws because they fitted our needs,” says Captain Mamu. The MMEA Act 2004 provides the Agency with the authority to enforce all maritime laws in such areas as fishing, customs, piracy, armed robbery at sea, marine pollution, or international merchant ships not abiding by the regulations governing passage through the Strait. “We have the same jurisdictions and powers as the police on the land to apprehend law breakers, collect evidence and prosecute them in the courts.” He believes they are the only Coastguard organization in the world that performs these functions. Others, he says, apprehend the maritime criminals but a related agency will prosecute them in court. “The MMEA arrests and prosecutes all maritime law breakers,” he stresses. Established in 2005, the MMEA was initially under the respon-



< Royal Malaysian Navy exercise on the U.S. Coast Guard Cutter Mellon (WMEC 717) as part of Southeast Asia Cooperation Against Terrorism (SEACAT).

sibility of the Ministry of Transport. It was later transferred to Prime Minister's Department. The current Prime Minister, the most Honourable Dato Seri Najib bin Tun Abdul Razak, was the Minister tasked to initiate the formation of Malaysian Coast Guard.

Before 2005, many agencies (such as the Royal Malaysian Police, Customs, Fisheries) performed maritime law enforcement duties and there was much duplication. Astoundingly, the MMEA successfully adopted strategies to take over all functions related to Maritime Law Enforcement and Search and Rescue within 5 years, finally emerging as the sole agency in 2011.

"It was not an easy task," recalls Captain Mamu. "We had to learn about the procedures and standard operating procedures of each agency. We had to recruit and train more people. We had to get assets operational." Now that the administration is fully in place, MMEA will soon assume the title of Coast Guard – a name commonly recognized throughout the world.

Beyond its enforcement duties, MMEA assistance may be called upon during international conflicts. In such events, MMEA follows the leadership of the Malaysian Armed Forces. "We have developed strong cooperation's with the Malaysian Navy," he tells FrontLine. "We share information, conduct periodic trainings, and coordinate other programmes related to maritime activities." Such collaborations ensure the MMEA is better prepared to render effective assistances to the Malaysian Navy.

FEDERAL AND STATE POLICE

The MMEA interacts with both federal and state-level police forces, depending on the particulars of each incident, and many law enforcement issues fall within the State Police realm. "We have regular meetings with Malaysian Police forces," confirms Capt Mamu. Those collaborations are very positive; the Malaysian Police recently transferred 61 boats and some marine police bases over to the MMEA. Some marine police personnel have also transferred to the new Agency.

Malaysian law requires a police report for court proceedings. But when criminal activities initially committed at sea continue to the land, "we are allowed to do hot pursuit on land until we apprehend them. If we face difficulties, we request the assistance of the police on the land."

Despite such enforcement responsibilities, the MMEA is proud of its cooperation with similar agencies of neighbouring countries, "especially our neighbouring partners in the fight against crime at sea: Malaysia, Singapore, Thailand, Indonesia and Philippines. We have developed very close maritime and land border cooperation. We have a good working relationship with our neighbours, we do yearly meetings and we all work in support of law enforcement and Search and Rescue at sea."

MMEA officials share information on suspect vessels or individuals among mem-

bers of this network. For instance, "if we know some vessel or individual criminals are going to another port but we cannot apprehend, we will call our colleagues in the port of destination and inform them and they will act accordingly."

How much of a threat is there from terrorism in the region and how is MMEA handling such threats? "So far we haven't seen any signs of Maritime terrorism but we take every precaution," notes Capt Mamu with care. "We don't want anything to happen. MMEA conduct activities and training on counter terrorism. Malaysia believes that terrorism and transnational organized crime are serious global concerns that have the potential to endanger the stability and security of nations as well as threaten international peace."

According to the Malaysian government, battling such threats must be done comprehensively. The Ministry of Foreign Affairs has established the Southeast Asia Regional Centre for Counter-Terrorism (SEARCCT), which serves as a regional counter-terrorism centre focusing primarily on training, capacity-building, research and public awareness programmes. "In collaboration with other Governments and international organizations, the Centre also promotes Malaysia's perspective on the most effective means of countering the threat posed by terrorism."

> Royal Malaysian Navy multi-role support ships manœuvre during an at-sea exercise for Cooperation Afloat Readiness and Training (CARAT).



> Fixed Wing SAR M71-01 aircraft.





< Crewmembers of Coast Guard cutter Boutwell work together with members of the MMEA to understand each others' law enforcement tactics.

How do the regional countries regard the waterways of the Malacca, Singapore Straits, are there any sovereignty issues around the use of the waterways? "As littoral states, we cannot stop ships transiting," notes Capt Mamu. "We consider the right of transit passage under UNCLOS through the Straits of Malacca is clear in its preservation of a balance between the usage of territorial waters of a country by foreign vessels, with the sovereign right of the coastal states to manage the affairs of security and safety in their waters. Ships in transit are not allowed to stop or do anything other than transit through the straits."

The annual Heads of Asian Coast Guard Meeting provides an opportunity to discuss and share Maritime Law Enforcement concerns and Search and Rescue

issues. Other helpful international, bilateral and multilateral cooperation include:

- The establishment of cooperative mechanisms provide opportunities and a forum for all stakeholders of the straits, including states, shipping industries, and other users, to participate and share their "Corporate Social Responsibilities" in protecting the environment and in promoting safety of navigation in the very strategic straits. These recognize territorial sovereignty, sovereign rights, as well as jurisdiction of the coastal countries and in conformity with UNCLOS Article 43.
- A Tripartite Technical Experts Group (TTEG) of the three coastal/littoral countries is the focal point for activities to promote safety of navigation and marine environmental protection in the straits.

- Cooperation with Australian Border Protection Command.
- Combined Operations Planning Committee, and close cooperation with Bakarkamla Indonesia.
- Combined Naval Working Group and Cooperation with the Royal Thailand Marine Police;
- Border Patrol Coordinating Group and Cooperation with the Philippines Coastguard;
- Cooperation with Singapore Police Coastguard and Maritime Security Task Force (Republic of Singapore Navy);
- Malacca Straits Law Enforcement Cooperation (Littoral States);
- Sulu Sulawesi Law Enforcement Cooperation (Littoral States);
- Bilateral Training and Consultative Group with United States Coastguard;
- Japanese Coastguard and Japan's International Cooperation Agency.

Canada has a similar situation arising with respect to the passage of shipping along the North West Passage as a conse-

A number of Coast Guard agencies operate primarily or partially as law enforcement agencies with similar authority to police forces. While not every Coast Guard agency has a law enforcement role or takes the same approach to marine law enforcement, the following is a quick overview of a few of these agencies.

The Malaysian Maritime Enforcement Agency

The MMEA was established after a study conducted by the Government of Malaysia in April 1999 showed that maritime related enforcement was inefficient due to the involvement of multiple agencies. The MMEA includes officers and staff who are involved with legal affairs and prosecution. The Agency is responsible for 11 key functions: to enforce law and order under any federal law in the Malaysian Maritime Zone; to perform maritime search and rescue duties in the Malaysian Maritime Zone and on the high seas; to prevent and suppress the commission of the Malaysian Maritime Zone; to provide assistance in any criminal matter at the request of a foreign State; to carry out air and coastal surveillance; to provide a platform and support services to any relevant agency; to establish and manage maritime institutions for training officers of the Agency; to perform any obligation to ensure maritime safety and security or do all things incidental thereto; to control and prevention of maritime pollution in the seas; to prevent and suppress piracy and illicit traffic in narcotic drugs on the high seas; and to assist the Malaysian Armed Forces during the period of emergency special crisis or war.

The German Federal Coast Guard:

Police officers serving with the Küstenwache retain their usual police powers, though adjusted to fit with the maritime nature of their job.

The Haitian Coast Guard

is considered a police unit and combines water policing with Coast Guard duties. Their core mission is to secure the maritime area through active surveillance; ensure compliance with laws and regulations regarding fishing and navigation; and work against all forms of crime, particularly drug trafficking.

quence of the Arctic ice melting. The Malaysians recommend their model be considered as having some application for international ship movement across the Arctic. "I think it is an excellent model you can use," agrees Capt Mamu. "The details of our arrangements are on the Internet, including the Cooperative Mechanism involving outside organizations and countries who contribute to the funding and provide corporate oversight. The TTEG group meets first to identify the technical needs around vessel movement along the Straits. It introduces the issues to the Cooperative Mechanism members. We currently have seven projects, in terms of capacity building, money, technical expertise, that are funded by countries independent of the tripartite countries." With very high traffic flow (90,000 ships per year), and considering the narrowness of some sections of the Straits, an accident could have significant repercussions in the flow of global maritime traffic. "Accidents are prevented by controlling the flow of ships through the Straits and recognizing that we have to accomplish this as efficiently as possible. Ships approaching the Straits have to report to respective littoral countries they are approaching when entering this region."

Captain Mamu explains that MMEA has been involved in recent discussions with Canadian counter parts on human trafficking. "We are establishing a liaison with the embassy of Canada here on this matter.

There are many similarities between Malaysian and Canadian Institution as a consequence of their British Empire affiliations.

Canada officials had indicated their willingness in capacity building for MMEA. MMEA in turn had submitted MMEA needs on capacity building through Canadian Embassy. The Canadian government will initiate G to G talks on this matter."

The MMEA is somewhat unique, and perhaps most modern, in the area of coastal water policing; the Director of Strategic Planning was asked to consider the Canadian model. "I was informed the Canadian Coast Guards don't carry guns, how do you stop and arrest if you don't carry guns? The bad boys won't stop if you don't have a gun. How can you arrest them?"

Captain Mamu would like Canadians to "visit Malaysia and learn about our past, here the people are very friendly and there are many places to visit."

DISCUSSION

Malaysia is a maritime nation based on the rule of law. The 14th Century Harbour Master at the Port of Melaka oversaw the entry, docking and departure of all vessels using the port from all parts of Asia with

some in transit for Europe. Melaka became a global port in the 14th Century because it offered protection from monsoons, which were the source of energy for sail but also a menacing threat if there was no safe harbour between journeys. In 1511 the Portuguese, applying their brand of religious fanaticism, captured Melaka. Seeing it as their stranglehold on supply ships going to Venice, the Portuguese did not anticipating the backlash from Muslim traders refusing to trade at Melaka because of what they had done to Muslims in Asia and the Indian sub-continent. Melaka never regained its global port status. The Dutch removed the Portuguese in 1641 and used the location to enforce their monopolistic practices for trading spices at inflated prices to Europeans who used them for masking body odour, aphrodisiac promises and culinary delights. The British removed the Dutch from Melaka in 1824 and Malaysia became part of the British Empire. Malaysia gained its independence from Britain in 1957, and today comprises a federation of 13 States and 3 federal territories.

Canada does not have the same kind of maritime history, nor the geopolitical location that influences Malaysia's role in our globally connected world, although this could change with the melting of Arctic sea ice along its northern shoreline.

Government decision making in Canada tends to be more decentralized than in Malaysia. Canada's Pacific, Atlantic,

The Icelandic Coast Guard

is primarily a law enforcement agency, though they also perform Coast Guard duties such as search and rescue. Crews exercise police authority when they execute, or assist with, law enforcement.

The Indian Coast Guard

employs law officers who prosecute and defend cases filed by or against the Indian Coast Guard. Tasked with protecting India's maritime interests and resources, it is responsible for maritime law enforcement over both territorial and international waters; search and rescue; protection of marine ecology and environment; scientific data collection and support; and maritime defence support.

The Singapore Police Coast Guard

is the Marine Police division of the Singapore Police Force. Though they are primarily a police force, with all the enforcement powers that implies, they do take on the roles of the Coast Guard that would typically be handled by other organizations, such as the handling of distress calls.

A Sri Lankan Coast Guard

force was established in March 2010 to curb human smuggling and drug peddling activities. The *Coast Guard Act*, passed in 2009, empowers Coast Guard officers to arrest people and impound vessels that engage in illegal activities.

Swedish Coast Guard

has had enforcement powers since 1982.



< Members of the MMEA board a vessel of interest to enforce laws of the sea.

Arctic and landlocked provinces tend not to see themselves as being part of a maritime nation – such preoccupations are considered to be federal government concerns. Given this cultural legacy, is Canada a maritime nation that can compete in today's globalized economy?

There are many similarities between Malaysian and Canadian institutions as a consequence of their British Empire affiliations. Being granted Dominion status within the Empire, Canada's adoption of British laws and traditions has been different from Malaysia following its negotiated independence from the British Crown. For example, the Canadian Coast Guard (CCG) service has evolved into an internationally respected Search and Rescue (SAR) service in collaboration with the Canadian military. It also provides navigational support around Canadian shores, including inland waterways. However, with respect to providing any "guarding" function of the coastline, the Service has retained the British Yeoman tradition of signalling, tactical communications and Petty Officer administrative duties.

Canada's RCMP retained a monopoly in law enforcement at the federal level, especially with respect to the right to bear arms. Consequently, Canada's national police force is the primary source of maritime law enforcement around Canada's coastline. While some detachments are equipped with vessels suitable for engaging in maritime police activities, often the RCMP must acquire a vessel to enforce Canadian maritime law. Rather than following up on leads, such enforcement

duties tend to arise as a request by some department of government, like Transport Canada, sensing the need to have a law enforcement presence when visiting a "vessel of interest." CCG vessels are used for transporting RCMP officers on such occasions but under strict conditions since CCG personnel are not trained in law enforcement and are forbidden to place themselves in harm's way by their union.

The Government of Canada prides itself in being able to achieve consensus among all of its departments. This is achieved through the formation of integrated joint task force operations such as: the Interdepartmental Marine Security Working Group (IMSWG), Marine Security Operation Centres (MSOCs), Marine Security Enforcement Teams (MSETs), and the National Port Enforcement Teams (NPETs). NPETs are examples of federal, provincial and municipal police collaboration in protecting communities from organized crime at Canada's seaports.

Given changes in the kinds of threats Canada is experiencing from transnational criminal organizations, the RCMP collaborates with the Royal Canadian Navy (RCN) on such criminal investigations. Even though National Defence media reports on such assignments stress the camaraderie that evolves when RCMP officers board naval vessels, there is no denying both cultures are different; making the chain no stronger than the weakest link. These fault lines in the Canadian maritime security system were recently documented in paper by Vice-Admiral (retired) J.Y. Forcier, entitled "The Canadian Navy and the Canadian Coast

Guard: Cooperating Sea Services or Co-existing Federal Fleets," June 2011.

In a paper entitled *Regional Navies and Coast Guards: Striking a Balance between "Lawships" and Warships*, Dr Sam Bateman, an internationally recognized authority in maritime security, explains that coast guard units are more suitable than warships for employment in sensitive areas. He points out that the arrest of a foreign vessel by a warship may provoke tension, whereas an arrest by a coast guard vessel may be accepted as legitimate law enforcement, signalling that the arresting party views the incident as non-political. Bateman concludes that a basic clash exists between the military ethos of applying maximum force and that of civil law enforcement, which is more circumspect and usually involves minimum force.

In Canada, Senatorial Committees, the Auditor General, and independent analyses, such as that by Forcier, have recommended change in the way Canada's coastline is guarded. None of these recommendations seem to impact the *status quo*. Substantial change in the structure of Canadian security will likely only happen when Canada directly experiences an incident such as: Bologna, 1980; Air India Bombing, 1985; Oklahoma City 1995; New York 9/11, 2001; Bali bombings, 2002; Madrid, 2004; London 7/7, 2005; aborted Toronto 18, 2006; Glasgow, 2007 or Oslo 22/7, 2011.

As Captain Mamu stressed, the merging of government departments takes a while to sort out in establishing a unified maritime security law enforcement agency. Even with a more centralized system of government and the backing of the Prime Minister, Malaysia took seven years to merge its maritime laws under one agency. Land based police forces are only now turning over their vessels and marine bases to the MMEA. The Malaysian experience took seven years – how soon could other governments achieve similar organizational change? **S**

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