CENTRE FOR STRAITS OF MALACCA

In 2013 the Centre for the Straits of Malacca completed seven research projects including those jointly undertaken with the Centre for Ocean Law and Policy. The Centre also successfully organised the 7th MIMA International Conference on the Straits of Malacca as well as other events and provided input papers on issues related to maritime boundary delimitation, deep seabed mining and ocean acidification.

The events organised by CSOM are as follows:

- 7th MIMA Conference on the Straits of Malacca: Keeping the Momentum, Sustaining the Cooperation, Addressing Uncertainties, Kuala Lumpur, 24 – 25 June

- MIMA Talk on "Dangerous Ground, Mischief Reef, Rifleman Bank: Recipe for a Dispute in a Complex Sea Developments Post – 2008", Maritime Institute of Malaysia (MIMA), 28 June

- MIMA Talk on "Current Thoughts on the South China Sea Dispute, Implications for Malaysia", Maritime Institute of Malaysia (MIMA), 8 July

RESEARCH PROJECTS AND SUMMARY OF FINDINGS

Straits of Malacca Outlook Project: Future Perspectives on Safety of Navigation and Cooperation

In 2012, almost 75,500 vessel movements were recorded in the straits, up from 73,538 in 2011 with increases recorded in the number of Very Large Crude Carriers (VLCCs), other tankers and liquefied petroleum gas (LPG) and liquified natural gas (LNG) carriers. The increase in energy carriers reflects the increasing demand for energy from countries such as China and Japan, and in 2011, 15.2 million barrels of oil per day (bbl/d) passed through the Straits of Malacca representing more than 31 percent of world oil movement making it the second most important oil transportation route after the Straits of Hormuz. Notwithstanding its importance, maritime transportation is inherently risky. In 2012, thirty accidents were reported in the Straits of Malacca. While small in comparison to overall traffic movements the number highlights the risk involved in navigating such a busy strait.

Safety of navigation and marine environment protection will remain paramount issues in the Straits of Malacca. As the number of vessels increases so will the risk of incidents in the Straits. Measures put in place such as the Malacca Straits Rules, TSS, STRAITREP and the VTS/VTIS have contributed significantly towards reducing maritime incidents in the Straits. However, risks remain and managing them not only require the introduction, maintenance and replacement of aids to navigation but also exploring new technologies such as e-navigation and applying existing technologies such as the AIS to small vessels that cross the Straits between the three littoral countries.

Four important lessons can be drawn from the Malacca and Singapore Straits: First, a source of funds is needed to sustain the co-operation. Second, the agreement to increase the tempo of co-operation in the Straits came after a protracted period of research and discussion involving many seminars, conferences and meetings. Patience and perseverance are therefore important commodities. Having said this, it is important to note that the lengthy process is important to build confidence and rapport among all parties concerned. Finally, it is important to ensure the sustainability of the co-operation. The littoral states have achieved this within the limited context of the TTEG and the Malacca Straits Revolving Fund and with Japan as the single largest donor.

South China Sea – Policy Options for Malaysia

There is no doubt that Malaysia's current policies in the South China have served its interest. The policies that revolve around five key elements i.e., defence of the Peta Baru 1979, occupation of features to support territorial claims in the Spratlys, extension of continental shelf claims, support for multilateral negotiations based on ASEAN and the DOC as well as bilateral negotiations to address specific issues have protected Malaysia's sovereignty and secured its position in the Spratlys. However, the rapid pace of developments especially in relation to the DOC, the code of conduct and the myriad issues that now needs to be considered require Malaysia to examine it policies vis-à-vis the South China Sea in general and the specific issues which may affect Malaysia's sovereignty in the future.

These issues include maritime security, diplomacy, energy security, environment and resource management, marine scientific research and transportation. These issues in turn can be grouped into four action areas namely legal *effectivite,* diplomacy and functional cooperation. It is recommended that Malaysia strengthens its current policies and adopt new ones to meet the challenges. The policies are developed under the rubric of strengthening Malaysia's claims and positioning her in a leadership role in matters such as confidence building measures, renewable energy development, the preparation of the proposed code of conduct and access to and exchange of information.

Review of National Laws Pertaining to Marine Environment Protection and Resource Management

Environmental laws are created for a number of reasons. They are the need to avoid "the tragedy of the commons" in an open access situation, ensuring that the protection of public goods such as clean air and water is shared within the community, prevention and control of pollution, the growing development of environmental ethics, and the changing requirement of international law. This study examines marine environment law in Malaysia in terms of its development, level of compliance and the issues which affect compliance with these regulations. While the study is focused on marine environment law, the analysis is carried out within the overall context of environmental laws in Malaysia.

It concludes that marine and environmental management laws in Malaysia have developed tremendously since the times of the colonial administration. In some instances, Malaysia is well ahead of the other countries in the region, for example, in the introduction of the EIA regulations. The laws have in general been developed in response to a number of factors:

i. Increasing pressures on the marine environment as a result of human activities

ii. Changing industrial practices, in the case of the rubber an crude palm oil industries
iii. The introduction of new technologies, in the case of trawling, and
iv. Public pressure in the case of the loss of endangered species

However, having national laws, enforcing them and ensuring compliance with them are theoretically interlinked but are in practice disparate matters. Statistics appear to suggest that despite having the laws, compliance among certain industrial and fisheries groups is still lacking. These persistent offenders while small in number present a blight in what could be considered good compliance environment in the country, more so when these violators such as those who contravene the fisheries zonation system, fish bombers and push-netters do so regularly. This clearly presents a case for more targeted enforcement aimed at bringing repeat offenders into compliance.

Third Party Intervention in Relation to Maritime Boundaries Disputes: An Analysis

Third party intervention issues have often been raised in relation to maritime boundary disputes between states. The state seeking to intervene has to show the precise way in which its rights or interests may be affected by the decision of the case. A situation of this kind arises for instance, when the legal claims of the third state are also affected as a result of the disputes raised by the parties to the legal proceedings.

Generally there is no right of intervention by third party in judicial settlement or arbitration. However, under judicial settlement, in resolving the disputes by peaceful means, recourse for a third party intervention has been made available through Article 62 of the ICJ Statute and this is complemented by Article 81 of the Rules of the Court 1978.

In arbitration, on the other hand, there is no room for third party intervention. Nevertheless, "there are both multilateral and bilateral treaties which positively exclude the jurisdiction of an arbitral tribunal where the dispute in some way affects the interest of a third party. Such a clause acts as a negative protective device to avoid prejudice to third party interests, and to prevent the tribunal from entering into a consideration of matters that cannot be confined within a bilateral framework. The purpose of such a clause is to protect a third party against having arbitration take place, and to ensure that multipartite disputes are not forced into a bilateral framework". This is as stipulated under the Vienna Convention on the Law of Treaties 1969. As such, other possible ways for intervention can be done via:

(i) Article 36 of the Vienna Convention on the Law of Treaties 1969
(ii) Notification via Note Verbale to the Secretary-General of the United Nations, and
(iii) Note Verbale to the State's Concern

In relation to maritime boundary disputes, the essential ingredient of intervention is that a state must demonstrate convincingly that the cases brought by the parties to the proceedings will affect the third state's interest and rights as a result of the decision of the Court. Examples of cases based on International Court of Justice (ICJ) and Permanent Court of Arbitration (PCA) on the applications to intervene are the Philippines in Pulau Ligitan and Sipadan, East Timor in relation to Portugal and Australia, and Nicaragua intervention in the El Salvador/ Honduras.

Maritime Delimitation: Unity in Boundary Lines

Malaysia has one tripartite and three bilateral agreements pertaining to maritime boundary delimitation in the Straits of Malacca. In the northern part of the straits, the maritime boundary between Malaysia and Thailand was delimited based on the Continental Shelf Agreement between Malaysia, Thailand, and Indonesia 1971, Boundary Protocol annexed to the Anglo–Siamese Treaty of 1909 and the Territorial Sea Treaty between Malaysia and Thailand 1979.

In relation to Malaysia – Indonesia, the maritime boundary in the northern part of the Straits of Malacca was delimited based on the 1969 Agreement on the Delimitation of the Continental Shelves, while in the southeastern sector, Malaysia – Indonesia signed the Territorial Sea 1970 delimiting the territorial sea boundary in this area. It is understood that Indonesia is proposing a dual boundary system in the northern part of the Strait of Malacca despite the boundary delimitation agreement of 1969. Therefore, the implications of such an arrangement need to be thoroughly assessed before Malaysia decides on the issue.

The boundary between the southern part of Malaysia and the northern part of Singapore is stated in the Agreement of 7 August 1995 between the Government of Malaysia and the Government of the Republic of Singapore to "Delimit Precisely the Territorial Water Boundary in Accordance with the Straits of Settlement and Johore Territorial Waters Agreement 1927."

In the western approaches to the Straits of Singapore (the area off Tanjung Piai), there exists a 'grey area' or a no man's land, in which boundaries have yet to be delimited. As such, it is important for Malaysia, Singapore and Indonesia to discuss and delimit the boundaries in these areas. In the meantime, illegal dumping and illegal tanker cleaning are being carried out in this area. At the same time, the lack of definite and unstable maritime boundary delimitation within these areas have led to incidents of Malaysian as well as other nations' fishermen being arrested. Hence, there is a need for discussions to delimit these areas; in the meantime, Malaysia's options in trying to mitigate the situation in this area need to be identified.

The question of maritime boundary issues in the Straits of Malacca requires a two-pronged approach by Malaysia. In the case of Indonesia's proposal for a dual maritime boundary system in the Straits of Malacca, Malaysia should maintain the 1969 Agreement as she has adopted a single maritime boundary line encompassing of a single continental shelf / EEZ boundary line as depicted in the Peta Baru 1979. Most importantly, the 1969 Agreement is a bilateral agreement and binding between both countries. As such, both countries should honour the Agreement.

Malaysia should maintain the single maritime boundary line in delimiting the seabed and subsoil and water column as the approach is more practical and effective in relation to enforcement of regulations. In addition, implementation and regulation of regulations can be done without any hindrance. A clear and manageable maritime zone is also said to be conflict prevention.

It would also be feasible to have the official EEZ coordinates inserted in the Baselines of Maritime Zones Act 2006 as Malaysia already has its EEZ Act 1984. At the same time, Malaysia should also declare the single maritime boundary line in the Baselines of Maritime Zones Act 2006.

To resolve the issues In relation to the grey area off Tanjung Piai, Malaysia, Indonesia and Singapore need to discuss matters pertaining to the territorial sea boundaries between them

within this area. In the meantime, until agreement is reached, there may be questions as to which state has territorial jurisdiction over the issues of illegal dumping and tanker cleaning and of fishermen being arrested. In the interim, a Technical Committee to look at the grey areas between the three countries should be set up whilst resolving the issues of maritime boundaries delimitation. The committee could inter alia address issues relating to humanitarian assistance to distressed vessels in line with the objective of ensuring safety and security in and around the waters of the straits.