

CENTRE FOR STRAITS OF MALACCA

The Management of Straits Used for International Navigation: A Comparative Study of the Straits of Malacca and Other Straits

The Straits of Malacca and Singapore compares relatively well in terms of safety of navigation and cooperation with the other straits used for international navigation (SUFIN) examined in this study namely the Turkish Straits, the Strait of Hormuz, the Strait of Gibraltar and the Dover Strait. The Straits of Malacca by and large has put in place the necessary tools and aids to navigation similar to other SUFIN such as traffic separation scheme, automatic identification system, specialised routing, traffic rules and mandatory ship reporting and complied with the requirements of the various international conventions. In addition Malaysia has unilaterally put in place instruments such as the vessel traffic management system (VTMS) and cooperatively imposed conditions such as the under-keel clearance (UKC). However, questions remain as to the sustainability of the present cooperative mechanism and marine environment protection in general. There is as such many potential study areas for consideration such as:

- Harmonisation of legal regime for pollution control and environmental protection in the Straits of Malacca and Singapore
- Marine spatial planning and coastal zone management
- Institutional structure for managing safety of navigation, environmental protection cooperation in the Straits of Malacca and Singapore
- Sustainable financing mechanism for safety of navigation, environmental protection cooperation in the Straits of Malacca and Singapore

Review of Legal Arrangements for Marine Environment Protection in the South China Sea

While the global and international conventions to which the countries of the South China Sea are parties convey obligations on the states to co-operate regionally, this obligation has generally not been met. In addition, there is no single legally binding regional intergovernmental agreement on marine environmental protection that involves all the countries bordering the South China Sea. This review indicates that, while all countries have a suite of legal instruments designed to protect the environment and conserve natural resources, these are often not harmonised and integrated with national policies. Countries continue to be without an integrated coastal/marine management policy that sets clear priorities, principles and guidelines that can steer policy conflicts towards resolution and encourage government agencies and offices to see themselves as part of a larger effort towards proper management of coastal and marine habitats. Unlike most other regions, it has never adopted a legally binding instrument and, consequently, it is free of precedent and other legal baggage. Regional co-operation is gaining momentum and South China Sea states are indicating a greater concern for environmental sustainability. There is also a growing recognition that the inefficient use of resources will only worsen without horizontal and vertical co-ordination and regional co-operation. It seems an appropriate time to consider an effective and region-appropriate course for long-term sustainability of the South China Sea and its resources, including consideration of a regional framework for co-operation, co-ordination and communication.

Archiving Malaysia's Maritime Heritage: a Policy and Feasibility Study

Malaysia's maritime heritage comprises not only historical and cultural artefacts but also key documents that record the nature of the seas around us such as navigational charts and architectural drawings of important aids to navigation. The study found that there is a paucity of record in the country for both. In the case of the latter while some copies of charts dating back to the 1860s are kept at the National Hydrographic Centre, there are no records of the work undertaken. Neither are the records or charts kept at the National Archives. Archival research at the UK Hydro unearthed some of the records they are by no means complete. The loss of such records could be detrimental to Malaysia's interests in future disputes. Similarly no original designs of lighthouses exist except for recent renditions done by local architects. The National Archives only has records and correspondences regarding the employment of lighthouse keepers. Only the original design of the One Fathom Bank Lighthouse was available at the Kew National Archives in the UK. The study suggests that steps be taken to fully archive the materials at the UK Hydro before they are transferred to the Kew Archives and that the materials concerned be digitised for future purposes.

The Significance of Aids to Navigation and Navigational Issues as Factors of Special or Relevant Circumstances in Maritime Boundary Delimitation

Aids to navigation are important markers for seagoing vessels and have also been instrumental as basepoints in determining delimitation lines. At the same time navigational issues play a contributory role as special or relevant factors in maritime boundary delimitation matters. The importance of aids to navigation and navigation as factors in adjusting the delimitation line was highlighted in the International Court of Justice (ICJ) case of *Qatar and Bahrain* (Judgment, I.C.J. Reports 2001). The construction of navigational aids can be legally relevant in the case of very small islands. The case also mentioned navigational interests as important elements in justifying the median line in relation to maritime delimitation.

The Court in the Gulf of Maine case decided that electronic and other aids to navigation for navigational assistance cannot be taken into account as a relevant circumstance or, if the term is preferred, as an equitable criterion to be applied in determining the delimitation line. The Court's view in respect of activities concerning navigation cannot be taken into account as a relevant circumstance in determining the delimitation line or, if the term is preferred, as an equitable criterion to be applied in determining the delimitation line. The Chamber refused to consider those factors as relevant, except in the case entail 'catastrophic repercussions' and "cannot be regarded as by the Court as exercising a decisive influence on the delimitation of the boundary. They may support and strengthen, but they cannot negative, any conclusions that are already indicated by the geographical, political and legal circumstances of the region...".

Navigational interests have been found to constitute such special circumstances, Article 15 allows the Tribunal to consider historic title and special circumstances as reasons for varying the median line in constructing a delimitation of the territorial sea and factors such as "convenience, navigability, and the desirability of enabling each Party so far as possible to navigate in its own waters, can be taken into account as factors of special circumstances in maritime boundary delimitation. However, the Court did not allude to the navigational interests as factors of relevant circumstances for the continental shelf delimitation.

Application of Article 121: The Evolution of Travaux Preparatoires to Jurisprudence Development

The application of Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 has been the subject of debate between States way before the Article 121 being drafted. The issues of Article 121 related to the interpretation of “Islands” and “Rocks” disputes raised as a result of the interpretation of islands and rocks are actuated by questions regarding their legal effect on zones of national maritime jurisdiction and the delimitation of international maritime boundaries as well as legal issues due to sovereignty.

The evolution of interpretation of “Islands” and “Rocks” of travaux preparatoires stated the debatable discussions in drafting the component of the provisions in order to derive to Article 121 provisions ultimately. Even that does not provide a conclusive answer as States interpret “Islands” and “Rocks” differently. Prescott and Schofield opined that “ultimately it is the state that owns the rock which will make decision on whether the tests are passed or failed. At the same time, it is open to other States to challenge any decision that the rock allows extended maritime claims”.

Based on the analysis of the International Court of Justice (ICJ), Permanent Court of Arbitration (PCA) cases, International Tribunal for the Law of the Sea (ITLOS) the Court does provides the jurisprudence pertaining to low-tide elevations in the case of *Qatar v. Bahrain* case (2001). Nonetheless, in cases relating to the interpretation of islands and rocks based on Article 121, international courts and tribunals in their judgements till today have not provided definitive answer of the interpretation.

Malaysia’s Maritime Limits – Part One (Straits of Malacca and Straits of Singapore)

The main objective of this project is to publish a book titled Malaysia’s Maritime Limits in relation to Malaysia’s maritime boundaries issues. This project is initiated as there has been a lot of issues and recent developments on maritime boundaries in the region which would have implications to Malaysia. These include the International Court of Justice (ICJ) cases of Batu Puteh, Middle Rocks and South Ledge case as well as Pulau Ligitan and Pulau Sipadan case where Malaysia’s were involved. Therefore, project is to review, analyse and provide latest information on issues relating to Malaysia’s maritime boundaries.

The first part of the project covers the issues concerning Malaysia’s maritime boundaries in the Straits of Malacca, looking at the current issues between Malaysia and Indonesia. The study output amongst others mentioned the seabed boundary and the territorial sea boundary in the Malacca Strait was the result of the Continental Shelf Agreement between Malaysia and Indonesia negotiated in good faith. The boundary agreement also agreed that Pulau Perak and Pulau Jarak were appropriate straight baselines and agreed to Malaysia’s use of the two islands as base points. These boundary agreements must not be re-negotiated or readjusted, as a single maritime boundary in the narrow Strait of Malacca would best serve the interest of the two countries.

Part one of the project also covers Malaysia’s maritime boundaries in the Straits of Singapore and its approaches. The study look at the maritime boundaries issues relating to the three littoral States Indonesia, Malaysia and Singapore. The study look at the maritime boundaries issues in the eastern and western approaches as well as the delimitation issues in Batu Puteh,

Middle Rocks and South Ledge area. Incorporating the latest, although the territorial sea boundary between Indonesia and Singapore in the eastern and western part of the Straits of Singapore have been agreed, eventually to complete (closing the gap) the maritime boundary delimitation line, Indonesia and Singapore need to negotiate with Malaysia in the western and eastern part of the Straits of Singapore. In this regard, two tri-junction points will eventually be established on both sides of the Straits of Singapore.

A Socio-economic Evaluation of the Maritime Sector of the Straits of Malacca

The Strait of Malacca is a vital element of the littoral states for its rich ecosystem, abundant non-living sources and as a busy waterway. International and regional shipping give a vital role to the Strait of Malacca which is made more prominent with the various ports along it. Shipping and port activities are key income sources of the Strait and could contribute more towards the nation's GDP with proper management and policy applications. One of the key sectors is the fisheries sector. In 2009 landings from the west coast of Peninsular Malaysia which borders SOM amounted to 729,558 metric tonnes (tonnes) compared to the national total of 1,393,226 tonnes. This is an increase of almost 36,000 tonnes from 2008. The increase in fisheries landings however belie what has been described by environmentalists as a crisis in fisheries resource management which has manifested itself in the many symptoms of overfishing such as decrease in catch-per-unit-effort, reduced fish biomass and increase in landings of trash fish within the demersal fisheries subsector in SOMS. Because of the significance of SOMS to Malaysia's fisheries sector any dramatic decline in the resource could affect the industry as a whole and the supply of protein to Malaysians whose per capita consumption of fish in 2004 was 45.4 kilogrammes (kg)⁶ and was expected to increase to 56 kg in 2010. Overfishing is not the only threat to the fishing industry. Over the years SOM has seen steady decline in the ecosystems which support the burgeoning fisheries, namely mangroves. From 1973 to 2005 states bordering SOM have lost between 20 to 90 percent of their mangrove coverage. On the other hand a research cruise conducted by the University of Malaya to the islands of Perak and Jarak in the Straits in 2010 discovered hitherto unknown and biologically diverse terrestrial and marine ecosystems including corals and seaweed habitats.