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Drawing Malaysia's line over the straits

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Drawing Malaysia's line over the straits

Abstract

The South China Sea has been an area of focus, particularly in the issues of conflicting maritime claims among countries in the region. Less focus, however, is given to the conflicting maritime claims that are still ongoing between Malaysia and its neighbours in the Straits of Malacca and Singapore.

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DRAWING MALAYSIA'S LINE OVER THE STRAITS

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Lowell B. Bautista

Introduction

The South China Sea has been an area of focus particularly in the issues of conflicting maritime claims among its claimant-states. Less focus, nevertheless, is given to the conflicting maritime claims that are still ongoing between Malaysia and its neighbours in the Straits of Malacca and Singapore. As the Straits of Malacca and Singapore are crucial to Malaysia's economic interests, it is crucial for Malaysia to properly 'draw its line' over these Straits.

Maritime Claims

Article 3 of the United Nations Convention on the Law of the Sea 1982 (LOSC) clearly states that a coastal state may claim up to 12-nautical miles (approximately 22 kilometers) of territorial sea from the baseline of the coastal state. The coastal state has absolute sovereignty over its territorial sea area which consists of both the seabed and the marine waters within that specified zone. Beyond this 12-nautical miles limit, a coastal state could no longer exert sovereignty but it could however, exercise sovereign rights up to 200-nautical miles (approximately 370 kilometers) of 'exclusive economic zone' (EEZ), otherwise known as the fishing zone.

However, the EEZ boundary involves only the marine waters in that zone without including the seabed area. The seabed area is described as the 'continental shelf', usually rich in minerals and petroleum deposits, where the LOSC allows a coastal State to claim up to 200-nautical miles of continental shelf measured from its baseline. In certain circumstances, the boundary line demarcating the EEZ and continental shelf could be different between two neighbouring coastal States. Hence, a coastal state may possess sovereign rights to extract minerals from the seabed but could not exercise its rights to exploit fisheries resources in the body of marine waters over the seabed of the same area, as the sovereign rights to fish in these marine waters may belong to a different state.

Maritime Delimitation of the Straits of Malacca and Singapore

The history of maritime boundary delimitation in the Straits of Malacca and Singapore goes back to colonial times. The earliest agreement can be traced to an Anglo-Dutch treaty in 1824 entered into in London, that divided maritime South East Asia into two parts; Singapore and the Malay Peninsula were placed under British dominion while the areas of the Malay Archipelago south of the Strait of Singapore were placed under Dutch control. However, there was no precise boundary delimitation that divided the Strait of Malacca into the British and the Dutch dominions. The treaty merely explained the spheres of influence of the Dutch and the British in the Malay World.

As far as Malaysia's northern land and maritime frontiers are concerned, the boundary delimitation was based on the agreement made between the Kingdom of Siam and the British Government in the Anglo-Siamese Treaty of 1909 without consulting the rulers of the Malay states at that time. Under this treaty, the Kingdom of Siam relinquished its suzerainty over the northern Malay States of Kedah, Perlis, Kelantan and Terengganu to the British. This treaty, which is still adhered to today, exemplifies the present Malaysia-Thailand boundary. The boundary that has alienated more than a million Thai Malay-Muslims from their fellow Kelantanese counterparts, extends for about 505 kilometers from the Strait of Malacca across the Peninsula to the Gulf of Siam on the east.

Historically, the Malay Peninsula and the island of Sumatra used to be part of a same political entity. For example, the Malacca and Johor-Riau sultanates used to have territories that extended beyond the Malay Peninsula over to Sumatra. However, the Anglo-Dutch Treaty has since 1824, politically separated the Malay Peninsula and Sumatra.

The length of the Strait of Malacca runs mostly between the Malaysian and Indonesian territorial waters. Considering this, Malaysia and Indonesia concluded an agreement on 17 March 1970, dividing the territorial seas of both countries in the Strait of Malacca. An agreement was signed between both nations to delineate continental shelf boundaries in the Strait of Malacca a year earlier in 1969. The seabed boundary line between the two nations coincides with the territorial sea boundary line in most sections of the waterway.

To the south, the territorial sea boundary line slightly deviates from the seabed boundary limits in favour of Malaysia. Despite having agreed territorial sea and seabed boundaries, there is yet to be an agreement between Indonesia and Malaysia on the delimitation of their exclusive economic zone (EEZ) boundary in the Strait of Malacca. Negotiation on the maritime delimitation of their EEZ in the strait is ongoing. The absence of a precise EEZ boundary delimitation in the northern part of the Strait of Malacca has generated difficulties for Malaysian and Indonesian fishermen in determining which maritime areas of the Strait are permissible for fishing, creating a zone called the 'grey area'.

Beginning 2008 up to 2012, the Malaysian and Indonesian authorities have been apprehending hundreds of fishermen of either countries in the 'grey area' for allegedly committing illegal fishing, an offence under the law of both nations. As the discussion on EEZ demarcation is still ongoing, the Malaysian and the Indonesian authorities have agreed in February 2012 to no longer arrest fishermen of either countries in the 'grey area' but instead would only instruct them to leave the area.

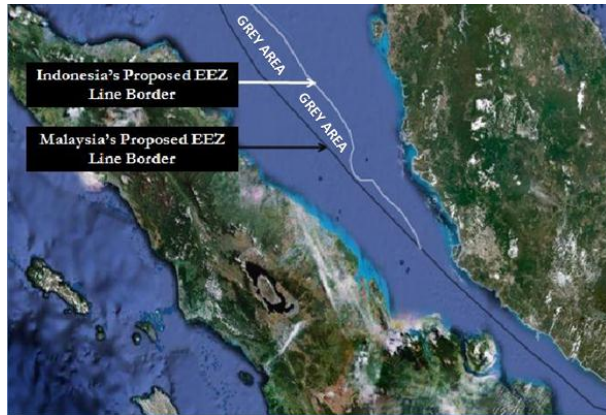


Figure 1: EEZ 'Grey Area' in the Strait of Malacca
(Modified from Google Maps)

At the southern sector of the Strait of Malacca, the earliest maritime boundary delimitation agreement related to the division of the Johor Strait, concluded between the British Government and the Sultan of Johore in the Straits Settlements and Johore Territorial Waters Agreement of 1927. The present maritime boundary between Malaysia and Singapore in the Johore Strait is based on this 1927 Agreement, under which all the islets within the Johor Strait belonged to Singapore. With the consolidation of Johor into Malaysia upon independence in 1957 and with the separation of Singapore in 1965, both sovereign governments entered another agreement relating to the territorial sea limits in the Strait of Johore in 1995.

The purpose of the 1995 Agreement is to delimit precisely the territorial waters boundary between the two States made previously in the 1927 Treaty. Further south, the maritime boundary delimitation between Indonesia and Singapore has also been defined in the Strait of Singapore through the 'Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Strait of Singapore', which was signed in 1973 and entered into force in 1974. These agreements together delimit the maritime boundary between Singapore and Malaysia in the Johor Strait and Indonesia and Singapore in the Strait of Singapore.

Unsettled Matters

Notwithstanding the agreements already described, there are many unsettled matters relating to boundary delimitation in the Strait of Malacca. Besides the unresolved EEZ boundary delimitation in the Strait between Malaysia and Indonesia, Malaysia has also yet to finalise and submit a map specifying its straight baselines defining its internal waters and territorial sea on its side of the Strait of Malacca to the United Nations. In the two maps officially released in 1979 by Malaysia's Directorate of National Mapping, entitled Territorial Waters and Continental Shelf Boundaries, Malaysia did not make a formal declaration or publicly identify the exact coordinates of its straight baselines from which these claims are measured, as required by Article 4(6) of the 1958 Geneva

Convention on the Territorial Sea and the Contiguous Zone. In addition, Malaysia and Indonesia have yet to delimit their territorial seas in the waters of the Strait of Singapore.

The Malaysia-Singapore dispute on sovereignty over Pedra Branca and the small rock islets of *Batuan Tengah* (Middle Rocks) and South Ledge was decided by the International Court of Justice (ICJ) in 2008. The court awarded the sovereignty of Pedra Branca to Singapore while *Batuan Tengah* was awarded to Malaysia. As for South Ledge, the court was reluctant to decide anything and left this question to both countries to be settled amicably by them. Negotiations between Malaysia and Singapore on this issue are still ongoing. Once they are completed, there will be changes in the maritime boundary delimitation between Malaysia, Singapore, and Indonesia on the eastern end of the waters of the Strait of Singapore towards the opening to the South China Sea.

Way Forward

The issues described above show that the problems of maritime boundary delimitation have not been entirely settled between Malaysia, Indonesia and Singapore as far as the Straits of Malacca and Singapore are concerned. For important waterways like the Straits of Malacca and Singapore, issues like maritime boundary delimitation are critical to ongoing cooperation between the littoral States. Hence, Malaysia should work together with its closest neighbours, Indonesia and Singapore to deal with this unfinished business amicably under the spirit of good-neighbourliness. It is true what most people say, ‘good fences make good neighbours’.

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