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Erecting Malaysia's maritime fence over the Straits of Malacca and Singapore

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Keywords

singapore, malacca, erecting, malaysia, over, maritime, straits, fence

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ERECTING MALAYSIA'S 'MARITIME FENCE' OVER THE STRAITS OF MALACCA AND SINGAPORE

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MAIZATUN BINTI MUSTAFA
WAN IZATUL ASMA BINTI WAN TALAAT**

Abstract

Malaysia shares the Straits of Malacca and Singapore with Indonesia, Singapore and briefly, with Thailand. Before colonial times, there were no proper maritime boundary delimitation within the Straits of Malacca and Singapore. The Anglo-Dutch Treaty of 1824 has divided the Straits of Malacca and Singapore into two spheres of dominions, which later on became the basis of modern territories of Malaysia, Indonesia and Singapore. Since independence in 1957, Malaysia has been working closely with Thailand, Indonesia and Singapore to properly demarcate maritime boundary lines in the Straits of Malacca and Singapore. Nevertheless, there are still unresolved issues between these littoral States in demarcating their boundaries in these Straits. This may create difficulties particularly when the issues of exerting sovereignty or exercising sovereign rights come into picture. This article concludes that Malaysia should continue to work closely with its immediate neighbour, particularly Singapore and Indonesia in resolving these unsettled maritime boundary issues in the Straits of Malacca and Singapore.

INTRODUCTION

As a country that shares the Strait of Malacca with Indonesia and the Strait of Singapore with Indonesia and Singapore, it is crucial for Malaysia to properly erect maritime 'fence' over its territorial waters of the Straits of Malacca and Singapore.

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.¹ 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.²

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-

¹ Article 3 of the LOSC states 'Every State has the right to establish the breadth of its territorial sea to a limit not exceeding 12 nautical miles, measured from baseline...'.

² Article 56 (1) of the LOSC states 'In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living...'.

nautical miles of continental shelf measured from its baseline.³ 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.

Furthermore, as navigationally busy waterways, it is important for the littoral States of Malaysia, Indonesia and Singapore to finalise the maritime boundary delimitations in the Straits of Malacca and Singapore so to clearly identify the appropriate types of navigational regimes exercisable by vessels navigating the Straits. Nevertheless, as the Straits of Malacca and Singapore are collectively regarded as straits used for international navigation within the ambit of the LOSC, it is not too simplistic to state that the transit passage regime applies to vessels navigating these Straits.⁴

In addition, the littoral States of Malaysia, Indonesia and Singapore could also enhance co-operation in maintaining maritime security should proper demarcation of maritime boundaries are drawn within the waters of the Straits of Malacca and Singapore.

MALAYSIA'S MARITIME CLAIM OVER THE STRAITS OF MALACCA AND SINGAPORE

The history of maritime boundary delimitation in the Straits of Malacca and Singapore goes back to colonial times.⁵ The earliest agreement can be traced to the 1824 Anglo-Dutch Treaty which divided maritime Southeast 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.⁶ 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 were 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, an agreement made without consulting the Malay rulers.⁷ Under this treaty, the Kingdom of Siam relinquished its suzerainty over the

³ Article 76 (1) of the LOSC states 'The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline'.

⁴ Article 37 of the LOSC states that the transit passage regime applies in straits used for international navigation between one part of the high seas or an EEZ and another part of the high seas or an EEZ. Article 38(1) of the LOSC further states that the right of transit passage is a right that cannot be impeded.

⁵ Mary George, 'Incorporation of Environmental Law Principles in the Boundary Treaties of the Straits of Malacca and Singapore' in Frieda Voo (ed), *Legal Regime of the Straits of Malacca and Singapore* (LexisNexis, 2008) vol 4, 585-592.

⁶ The Consolidated Treaty Series, 'Treaty of Commerce and Exchange between Great Britain and the Netherlands, signed at London, 17 March 1824' in Clive Parry (ed), *The Consolidated Treaty Series* (Oceana Publications Inc, 1969) vol 74, 88-108.

⁷ American Society of International Law, 'Treaty Between Great Britain and Siam 1909' in *The American Journal of International Law, Supplement: Official Document* (American Society of International Law, Oct., 1909) vol 3, 297-304.

northern Malay States of Kedah, Perlis, Kelantan and Terengganu to the British.⁸ This treaty, which is still adhered to today, exemplifies the present Malaysia-Thailand boundary. The boundary extends for 314 miles from the Strait of Malacca across the Peninsula to the Gulf of Siam on the east. On maritime boundaries of the two areas, the 1909 Treaty stated:

The island known as Pulo Langkawi, together with all the islets south of the midchannel between Terutau and Langkawi, and all the islands south of Langkawi shall become British. Terutau and the islets to the north of mid-channel shall remain to Siam.

With regard to the islands close to the west coast, those lying to the north of the parallel of latitude where the most seaward point of the north bank of the estuary of the Perlis River touches the sea shall remain to Siam, and those lying to the south of the parallel shall become British.⁹

Upon independence, Malaysia signed a treaty to delimit its northern territorial boundaries in the Strait of Malacca with Thailand in 1979.¹⁰ This treaty reiterated the colonial treaty concluded in 1909 where straight lines were drawn from the point situated in mid-channel between Ko Tarutao, an island of the 'Butang Group' and Pulau Langkawi, separating the territorial seas of the two States.¹¹

Thailand and Indonesia entered an agreement to delimit their continental shelf boundary on 17 December 1971 in the northern part of the Strait of Malacca.¹² This agreement came into force on 16 July 1973.¹³ Both Indonesia and Thailand applied the equidistance method in drawing the line to delimit their continental shelf boundary in the Strait of Malacca towards

⁸ Article 1 of the the Anglo-Siamese Treaty 1909 confirmed that the Siamese Government transfers to the British all rights of suzerainty, protection, administration and control over the States of Kelantan, Terengganu, Perlis and Kedah. See American Society of International Law, 'Treaty Between Great Britain and Siam 1909' in *The American Journal of International Law, Supplement: Official Document* (American Society of International Law, Oct., 1909) vol 3, 297-304.

⁹ Boundary Protocol Annexed to the Treaty dated March 10, 1909, in American Society of International Law, 'Treaty Between Great Britain and Siam 1909' in *The American Journal of International Law, Supplement: Official Document* (American Society of International Law, Oct., 1909) vol 3, 297-301; United States of America Department of State, 'International Boundary Study: Malaysia-Thailand Boundary' (No. 57 – November 15, 1965, The Geographer, Office of the Geographer, Bureau of Intelligence and Research, United States of America, 1965), 1-8.

¹⁰ Choon-Ho Park, 'Treaty Between the Kingdom of Thailand and Malaysia Relating to the Delimitation of the Territorial Sea of the Two Countries' in Jonathan I. Charney and Lewis M. Alexander (eds), *Malaysia-Thailand (Territorial Sea)* (Martinus Nijhoff, 1993) vol 1, 1096-1098.

¹¹ Choon-Ho Park, 'Malaysia-Thailand (Territorial Sea)' in Jonathan I. Charney and Lewis M Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol I, 1091-1098.

¹² J. R. Victor Prescott, 'Indonesia-Thailand (Malacca Strait and Andaman Sea)' in Jonathan I Charney and Lewis M. Alexander (eds), *International Maritime Boundary: The American Society of International Law* (Martinus Nijhoff, 1993) vol II, 1455-1463.

¹³ J. R. Victor Prescott, 'Agreement Between the Government of the Republic of Indonesia and the Government of the Kingdom of Thailand Relating to the Delimitation of a Continental Shelf Boundary Between the Two Countries in the Northern Part of the Strait of Malacca and in the Andaman Sea.' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol 1, 1462-1463.

the opening to the Andaman Sea.¹⁴ Four days later, an agreement between Malaysia, Indonesia and Thailand was concluded to establish a common point, where their tri-junction claims would meet.¹⁵ The common point was agreed as being in a maritime area nearest to Indonesia, thus securing its full entitlement over the North Sumatra Basin which is said to be rich in oil reserves, and furthest from Thailand.¹⁶ With this common point established, the shares of Malaysia, Indonesia and Thailand over the seabed boundary in the northern region of the Strait of Malacca were settled. This trilateral agreement came into force on 16 July 1973.¹⁷

The length of the Strait of Malacca runs mostly between the Malaysian and Indonesian territorial waters. In consideration of this, Malaysia and Indonesia concluded an agreement on 17 March 1970, drawing a boundary between the territorial seas of both countries in the Strait of Malacca.¹⁸ Prior to this, an agreement was signed between both nations which delineated the continental shelf boundaries in the Strait of Malacca in 1969.¹⁹ The seabed boundary line between the two nations coincides with the territorial sea boundary line in most sections of the waterway.²⁰ It continues in a northerly direction to converge with the common point between Indonesia, Malaysia and Thailand.²¹ To the south, the territorial sea boundary line slightly deviates from the seabed boundary limits in favour of Malaysia.²² The existing agreements only delimit the continental shelf and the territorial sea boundaries between the two States covering the southern end of the Strait of Malacca.²³

¹⁴ Ibid.

¹⁵ J. R. Victor Prescott, 'Indonesia-Malaysia-Thailand' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol II, 1443-1454.

¹⁶ Ibid.

¹⁷ J. R. Victor Prescott, 'Agreement Between the Governments of the Republic of Indonesia, the Government of Malaysia and the Government of the Kingdom of Thailand Relating to the Delimitation of the Continental Shelf Boundaries in the Northern Part of the Strait of Malacca.' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol I, 1452-1454.

¹⁸ Choon-Ho Park, 'Indonesia-Malaysia (Territorial Sea)' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol I, 1029-1038.

¹⁹ Choon-Ho Park, 'Indonesia-Malaysia (Continental Shelf)' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol I, 1019-1028.

²⁰ Choon-Ho Park, 'Agreement Between the Government of Malaysia and the Government of Indonesia on the Delimitation of the Continental Shelves Between the Two Countries.' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol I, 1025-1027.

²¹ Ibid.

²² Choon-Ho Park, 'Treaty Between the Republic of Indonesia and Malaysia Relating to the Delimitation of the Territorial Sea of the Two Countries in the Strait of Malacca' in Jonathan I. Charney and Lewis M. Alexander (eds), *Indonesia-Malaysia (Territorial Sea)* (Martinus Nijhoff, 1993) vol I, 1029-1034.

²³ Mak Joon Num, 'Pirates, Barter Traders, and Fishers: Whose Rights, Whose Security? User Conflicts and Maritime Nontraditional Security in Malaysian Waters' (2009) *The Indian Ocean: Resource and Governance Challenges* <[http://www.stimson.org/rv/pdf/Indian_Ocean\(PDF\)/Indian_Ocean-Chapter_2_Mak.pdf](http://www.stimson.org/rv/pdf/Indian_Ocean(PDF)/Indian_Ocean-Chapter_2_Mak.pdf)>, 21.

There is yet to be an agreement between Indonesia and Malaysia on the delimitation of their exclusive economic zone (EEZ) boundary in the northern part of the Strait of Malacca.²⁴ Negotiations on the maritime delimitation of their EEZ in the Strait is still ongoing.²⁵ Map 1 illustrates the unresolved EEZ boundary delimitation between Malaysia and Indonesia in the Strait of Malacca.



Map 1. The Potential EEZ Boundary Line in the Strait of Malacca
(Modified from Google Maps)

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.²⁶ 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.²⁷

At the southern sector of the Strait of Malacca, the earliest maritime boundary delimitation agreement related to the division of the Johor Strait was concluded between the British Government and the Sultan of Johor in the Straits Settlements and Johor Territorial Waters Agreement of 1927.²⁸

²⁴ M. J. Valencia, 'Validity of Malaysia's Baselines and Territorial Sea Claim in the Northern Malacca Strait' (2003) 27 *Marine Policy*, 367-373; Badan Koordinasi Survei dan Pemetaan Nasional (BAKOSURTANAL), 'Peta Negara Kesatuan Republik Indonesia' (BAKOSURTANAL, 2009); Max Herriman and Raja Petra Mohamed, 'A Malacca Strait Boundary: Factors for Consideration' in M. Shariff et al (eds), *Towards Sustainable Management of the Straits of Malacca* (Malacca Straits Research and Development Centre, 2000), 755-764.

²⁵ The Star, 'Shock Over Jail Sentence: Malaysia Protests Against Indonesian Court's Decision on Fishermen', *The Star* (Kuala Lumpur), 2011.

²⁶ Tempo, 'Hubungan Indonesia-Malaysia' *Tempo* (Jakarta, 2010)

²⁷ Utusan Malaysia, 'Nelayan tak lagi ditangkap di kawasan pertikaian' *Utusan Malaysia* (Kuala Lumpur, 2012)

²⁸ Article I of the 1927 Treaty states that there '...shall be an imaginary line following the centre of the deep-water channel in Johor Strait, between the mainland of the State and Territory of Johor on the one side, and the Northern shores of the islands of Singapore, Pulau Ubin, Pulau Tekong Kechil and Pulau Tekong Besar on the

The present maritime boundary between Malaysia and Singapore in the Johor Strait is based on this 1927 Agreement, under which all the islets within the Johor Strait belong to Singapore. With the consolidation of Johor into Malaysia upon independence in 1957 and the separation of Singapore in 1965, both governments entered into another agreement relating to the territorial sea limits in the Strait of Johor in 1995. The purpose of the 1995 Agreement is to delimit precisely the territorial sea boundary between the two States made previously in the 1927 Treaty.

The maritime boundary delimitation in the Strait of Singapore between Indonesia and Singapore has been defined in the ‘Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Strait of Singapore’,²⁹ which was signed in 1973 and entered into force in 1974.³⁰ The following Table 1 summarises the maritime boundary agreements among the littoral States of the Straits of Malacca and Singapore:

Parties	Type of Boundary	Date Signed	Entry into force	Regional Sea
Indonesia-Malaysia	Continental Shelf	27 October 1969	7 November 1969	Strait of Malacca and South China Sea
Indonesia-Malaysia	Territorial Sea	17 March 1970	8 October 1971	Strait of Malacca
Indonesia-Singapore	Territorial Sea	25 May 1973	29 August 1974	Strait of Singapore
Indonesia-Malaysia-Thailand	Continental Shelf	21 December 1971	16 July 1973	Strait of Malacca
Indonesia-Thailand	Continental Shelf	17 December 1971	16 July 1973	Strait of Malacca
Malaysia-Singapore	Territorial Sea	7 August 1995	7 August 1995	Strait of Johor
Indonesia-Singapore	Territorial Sea	20 May 2009	NIL	Western approaches to the Strait of Singapore

Table 1. Summary of Maritime Boundary Agreements on the Straits of Malacca and Singapore up to 2013 (Source: MIMA)³¹

other side’. See Maritime Institute of Malaysia, ‘Agreement Between the Government of Malaysia and the Government of the Republic of Singapore Delimit Precisely the Territorial Waters Boundary in Accordance with the Straits Settlements and Johore Territorial Waters Agreement 1927’ in Vivian Louis Forbes and Mohd Nizam Basiron (eds), *Malaysia’s Maritime Space: An Analytical Atlas of the Environments and Resources* (Maritime Institute of Malaysia, 1998); Mary George, *Legal Regime of the Straits of Malacca and Singapore* (LexisNexis Malaysia Sdn Bhd, 2008), 590-592.

²⁹ Choon-Ho Park, ‘Agreement Stipulating the Territorial Sea Boundary Lines Between Indonesia and the Republic of Singapore in the Strait of Singapore’ in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993), 1049-1054.

³⁰ Choon-Ho Park, ‘Indonesia-Singapore’ in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol 1, 1049-1056.

³¹ Vivian L Forbes and Mohd Nizam Basiron, ‘Unresolved Maritime Boundaries and Implications for Maritime Security in Southeast Asia’ (2010) 17(1) *MIMA Bulletin*, 9.

UNRESOLVED ISSUES

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 (UN).³² 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 (TSC)³³ and Article 16 (2) of the 1982 United Nations Convention on the Law of the Sea (LOSC). Article 16 (2) of LOSC reads:

The coastal State shall give due publicity to such charts or lists of geographical coordinates (on the drawings of baselines) and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

In addition, Malaysia and Indonesia have yet to delimit their territorial seas in the waters of the Strait of Singapore.³⁴

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 sovereignty over Pedra Branca to Singapore while *Batuan Tengah* was awarded to Malaysia. The ICJ left the question of South Ledge to be settled amicably by the two countries.³⁵ Consequently, the three littoral States now have their respective maritime areas in the eastern opening of the Strait of Singapore towards the South China Sea.³⁶ Negotiations between Malaysia and Singapore on this issue are still ongoing. Once sovereignty over the islands/rocks is established, maritime delimitation can proceed among Malaysia, Indonesia and Singapore.³⁷

³² M. J. Valencia, 'Validity of Malaysia's Baselines and Territorial Sea Claim in the Northern Malacca Strait' (2003) 27 *Marine Policy*, 367-373.

³³ Ibid.

³⁴ Choon-Ho Park, 'Indonesia-Singapore' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff, 1993) vol 1, 1049-1056.

³⁵ International Court of Justice (ICJ), 'Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)' (ICJ, 2008) <<http://www.icj-cij.org/docket/files/130/14492.pdf?PHPSESSID=e5dc0baf91086da004883db261c90796>>, 93-94.

³⁶ I Made Andi Arsana, *Good Fences Make Good Neighbours* (2010) The Malaysian Insider <<http://www.themalaysianinsider.com/breakingviews/article/good-fences-make-good-neighbors-i-made-andi-arsana/>>; Robert Beckman and Clive Schofield, 'Moving Beyond Disputes Over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait' (2009) 40(1) *Ocean Development and International Law*, 1-35.

³⁷ Robert Beckman and Clive Schofield, 'Moving Beyond Disputes Over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait' (2009) 40(1) *Ocean Development and International Law*, 1-35.

CONCLUSION

The problems of maritime boundary delimitation, as the discussions above clearly show, have not been entirely settled among Malaysia, Indonesia and Singapore as far as the Straits of Malacca and Singapore are concerned. This issue is critical for important maritime chokepoints such as the Straits of Malacca and Singapore, especially with respect to ongoing cooperative activities between the littoral States.

The absence of territorial sea delimitations in the Strait of Singapore between Malaysia, Indonesia and Singapore and the unresolved EEZ boundary between Malaysia and Indonesia in the Strait of Malacca would make it complicated, jurisdictional-wise, for these littoral States to exercise their sovereignty and/or sovereign rights over the disputed or overlapping maritime areas.

It is also expected that legal difficulties may also arise in determining the appropriate types of navigational rights i.e. the rights of innocent passage, transit passage or non-suspendable innocent passage, applicable to vessels navigating through the different areas of the Strait of Malacca. The issue of overlapping maritime claims in the Straits of Malacca and Singapore could only be resolved with the eventual conclusion of maritime boundary delimitation agreements negotiated amicably among the three littoral States. Hence, Malaysia should work together with its closest neighbours, Indonesia and Singapore to deal with this unresolved issues amicably under the spirit of good-neighbourliness. It is true what most people say, 'good fences make good neighbours'.

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