

PIRACY AND MARITIME THREAT IN THE STRAITS OF MALACCA: SAFEGUARDING PULAU PISANG LIGHTHOUSE

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ABSTRACT

Malaysia's sovereignty over Pulau Pisang has never been in dispute. However, the right to operate a lighthouse on a plot of land on the island as well as the road leading to it which had been granted in perpetuity to the Singapore Port and Maritime Authority so long as Singapore operates that lighthouse, is contentious in nature. There have been suggestions that bilateral talks held to enable Malaysia to take over management of the lighthouse development and management activities be established so as to mark Malaysian authority over the island. These ideas indirectly solve many problems not only in terms of the safety of border areas but also security problems in the Straits of Malacca. Therefore, this article examines the issue of Pulau Pisang as a major focus involving issues shared by Malaysia and its neighboring country, namely Singapore, including maritime border factors in the Malacca Straits as well as the implications for putting the Pulau Pisang Lighthouse under Malaysian administration.

Keywords: *Maritime, Sovereignty, Border, Terrorist, International law, Malaysia.*

1. INTRODUCTION

The 21st century is seeing more countries paying serious attention to asymmetrical threats as a new dimension in strategic defence. Traditional security issues will continue into the new century but threats such as terrorism and transboundary crime such as piracy have also attracted attention and is given focus as parts of the national strategic perspective. As such, Malaysia's and the region's security environment is shaped and determined by traditional and non-traditional security interests. Current trends in maritime security favour an enhanced multilateral approach or involvement of various countries in addressing maritime security risks.

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The Straits of Malacca is a major maritime lane that allows trade conducted among the countries in this region and provides natural resources, road transport as well as work and recreation that are invaluable to people. However, it also brings many challenges and conflicts among bordering countries such as Malaysia, Singapore and Indonesia like the seizure of territory, cross border crime, smuggling, piracy and environmental pollution. In recent years, the issue of maritime security increasingly beckons the attention of policy-makers and analysts in the region. Matrix safety post-September 11 increasingly demands international attention to the depth and stages at which various safety threats may occur.

The world's perception of increased maritime safety risk as a fallout from that incident has increased public attention on preserving regional maritime security. The question of whether the littoral states are working together to maintain security in the waters of this region are hotly debated in various forums and international meetings, especially of late with the increasing focus of the international community towards regional maritime safety. Particular attention is being given to important maritime lanes such as the Malacca Straits which is among the busiest and most strategic waters in the world.

2. FRAMEWORK OF THIS ARTICLE

The framework of this article is a qualitative legal analysis of the international issues involved in the Straits of Malacca, adopting a socio-legal approach to the study. Yaqin (2007) stated for socio-legal research, data collection relies on primary and secondary data. The authors used the methods and techniques of designing, collecting and analyzing data related to existing laws in Malaysia, and international border disputes in order to produce evidence that could substantiate the statement. Primary data refers to legislation, parliamentary records and related court cases in Malaysia. Secondary sources are based on publications such as articles, journals, books, student theses, and official documents. In addition, observations of the issues on the ground related to UNCLOS are also included in the analysis.

The methodology used was the analysis of secondary sources, including open publications, print and electronic media. The study design used in the study of history also records and documents past events systematically to collect, evaluate, verify and synthesize facts in order to understand the link with present or future activity. To achieve the socio-legal research objectives, a number of approaches were used as research tools, such as historical (Mahmud, 2009;

Postan, 1972; Lange, 2013), philosophy and jurisprudence method (Yaqin, 2007), comparative method, and analytical and critical method (Chatterjee, 2000). Some other methods were also used by the researchers such as descriptive method, exploratory method (Gutteridge, 1946) and rationalization method.

3. PIRACY AND MARITIME CRIME

Although piracy and maritime crime in the Malacca Straits have significantly declined after 2005, there has been an uptick in two areas since 2008, attributed in part to problematic maritime enforcement due to disputed maritime boundaries. One area is the Riau Archipelago south of Singapore along the eastbound lane of the traffic separation scheme. The other is in the northern Malacca Straits between Sumatra and the west coast of Malaysia, where there is no agreement on the Exclusive Economic Zone (EEZ) boundary between Indonesia and Malaysia. Most maritime crime involves small-scale robbery, targeting ships at anchor and entering or leaving a harbor, which could be countered by more effective policing by port authorities.

Southeast Asia has since the late 1980s, become one of the global 'hot spots' for pirate attacks on commercial vessels and fishing boats. Modern day pirates are increasingly prepared to use violence to further their aims thus with the number of pirates armed with automatic weapons on the rise causing injuries to the crew as well as assaults and killings occurring regularly in pirate attacks in the region. A further worry is the latest increase in hostage taking of crew members and vessels for ransom (ICC International Maritime Bureau, 2017).

It is also important to note the distinction between piracy and sea robbery. The latter occurs in national waters and is a domestic issue; the former takes place in international waters and requires international cooperation to address it. Where sea robbery within national waters tends to be petty theft at ports and anchorages, piracy tends to be carried out by organised groups who are well-equipped with weapons and fast craft. Pirates may take bulk cargo to sell on the black market and kidnap crew members for ransom. In rare cases, ships may be hijacked. Critical reviews (Beckman, 2002; Teo, 2007; Hong and Ng, 2010) of existing mechanisms for maritime security revealed several factors that affect the ability of states to address threats to maritime security: sovereignty, legislation, compliance and information sharing, but also the existence of effective early warning systems and response capabilities (Beckman, 2002).

Since 1990, the security concept has widened beyond the narrow focus of regulatory, political or military factors to include economic, societal and environmental dimensions and deepened from state centered (national/international security) (Buzan, Waever & De Wilde, 1998) to people centered (human and gender security) concepts (Brauch, Oswald-Spring, Mesjasz, Grin, Dunay, Behera, Chourou, Kameri-Mbote & Liotta, 2008). As such, the security problems in the Straits of Malacca and Singapore require continuous negotiation processes involving all stakeholders to prevent conflicts and tensions.

While the vast majority of pirate attacks in Southeast Asia today are simple 'hit and run robberies', committed by what can best be described as 'common sea-robbers', some attacks are conducted by organised pirate gangs – or syndicates – who predominantly attack medium-sized vessels, including cargo ships, bulk carriers and tankers. In these cases a vessel and its crew is held hostage for a limited time, or the entire vessel is hijacked by pirates and is then turned into a 'phantom ship' (International Maritime Bureau, 1997).

The terrorist group by the name of Jemaah Islamiah (JI) network is still active in Southeast Asia especially in Indonesia with networks in the Philippines, Malaysia, Singapore and Thailand. Malaysia has successfully conducted operations to curb JI activities with a series of arrests including the apprehension of Mas Selamat Kastari and his two accomplices in Johor on 1 April 2009. Similar efforts by Indonesia and Singapore to curb terrorism through the arrests or deaths of principal terrorist planners are regarded as part of the ongoing efforts which clearly require cooperation at the regional level. JI's role in promoting terrorism still requires continuous and special monitoring despite the deaths of several senior JI leaders, its splinters continue to recruit and conduct its activities which needs to be completely eliminated (Ministry of Defence of Malaysia, 2010).

Terrorism has emerged as a long term threat to regional and international security after the terrorist attacks of 11 September 2001 on the United States of America. Currently the two active and organised militant and terrorist groups are the Abu Sayyaf Group (ASG) and JI. ASG carries out kidnapping-for-ransom to fund its activities in the Southern Philippines. ASG's activities have security implications to Malaysia especially in Sabah. Authorities are also concerned over possible collaboration and cooperation network between JI and ASG in the Southern Philippines. Traditional security issues remain the principal threats to Malaysia's sovereignty. However, non-military or asymmetric threats have become major concerns and have the ability to challenge government authority and the potential to undermine regional security and stability.

4. THE IMPORTANCE OF SAFEGUARDING THE STRAITS OF MALACCA AND MANAGING PULAU PISANG

Ibrahim and Nazery (2007) stated that the Straits of Malacca is one of the main international maritime routes and services for almost the entire East-West maritime transportation via the sea. It also hosts Malaysia's major ports and business centers and is the transportation route for eighty percent of Malaysia's exports and imports. Malaysia explicitly regards any encroachment into the Straits of Malacca as a threat to its national interests, defence and sovereignty. Moreover the control of the Straits of Malacca by an external power would adversely affect the economic prosperity of most countries including major powers. The strait has the potential to become a source of dispute for external powers resulting in it becoming a conflict "hotspot" which could negatively impact Malaysia's security and defence. Malaysia's standpoint is that the Straits of Malacca should be free from external power involvement and that it is the responsibility of the littoral States to defend the sovereignty of the Straits of Malacca.

At 520 nautical miles long and extremely narrow at numerous places, the Straits of Malacca and Singapore constitute one of the world's busiest waterways, linking the Indian Ocean and the South China Sea. Commercial traffic from Europe and the Arabian Gulf passes through the straits on the way to Northeast Asia; and maritime trade from the western Pacific Rim reciprocates, destined for South and West Asia as well as for Europe. Tankers and bulk carriers move vast quantities of coal, iron ore, and minerals to manufacturing centers in Southeast and Northeast Asia, while container ships laden with consumer goods flow in the opposite direction. This trade constitutes more than half of the world's merchant fleet tonnage. Because of shallow reefs and many small islands, and with over 70,000 ships passing through every year, maritime traffic in the straits must transit at greatly reduced speeds, making it vulnerable to maritime crime and piracy, a hazard that has plagued the Malacca Straits for centuries. Ho (2009) stated that between 1999 and 2008, traffic in the strait increased by 74%. Japan's Ministry of Land, Infrastructure, Transport and Tourism estimates that 114,000 ships will use the strait by 2020.

The geopolitical and legal complexities of the Malacca Straits may be found in the disputes that encompass the strait's internal waters, territorial seas, contiguous zones and EEZ, all under the 1982 UN Law of the Sea. Overlapping jurisdictions have led to complaints by countries in the straits against one another. For example, Jakarta has protested Malaysia's use of straight baselines to measure its territorial seas because of alleged encroachment into Indonesian waters (Bateman, Raymond & Ho, 2006).

Pulau Pisang is a small island situated off the western coast of the Malaysian state of Johor at the southern end of the Straits of Malacca. The island is about 12 kilometres from Pontian Kechil and 5 kilometres from the town of Benut and is the site of the Pulau Pisang Light, a lighthouse guiding ships into the western entrance of the busy Singapore Strait. From colonial times, the Pulau Pisang Light has always been recognised as within the territory of the independent Sultanate of Johor. The Sultanate of Johor became a British protectorate in the twentieth century and upon independence, Johor became one of the states within Malaysia. Currently, the lighthouse is managed and operated by the Maritime and Port Authority (MPA) of Singapore and the lighthouse precinct is off limits to Malaysians.

The lighthouse is located on the highest point of the island. Built in 1914, the lighthouse was constructed as a white 16 meters (52 feet) high circular cast iron tower with one support structure and a single storey keeper's house at the base. It has remained functional as an aid for maritime navigation into the western entrance of the Singapore Strait, as of 2008. Due to its isolated location, the lighthouse is only reachable via boat and an access road (Rowlett, 2008). The map shown below illustrates the location of Pulau Pisang.

Photo 1. Pulau Pisang Map



Source: Google Maps, 2017

While located within the borders of Malaysia, the lighthouse is operated by the Maritime and Port Authority of Singapore. This is as the result of an agreement signed in 1900 whereby Sultan Ibrahim of Johor granted the British government of Singapore (part of the Straits Settlements), rights in perpetuity to the plot of

land on which the lighthouse stands and to the roadway leading to it, so long as the Straits Settlements operated the lighthouse. The lighthouse's status has thus been contentious in recent years due to access of Singaporean workers to the lighthouse.

Photo 2: Photo of Pulau Pisang Lighthouse



Source: The Straits Times, 2014

There are now 51 beacons such as lighthouses, light beacons and light buoys in the Straits of Malacca and Singapore. They are managed by the coastal states. While the coastal states bear the expenses for the beacons in principle, Japan has shouldered the expenses for establishing 30 out of these 51. If ships cannot navigate through the Straits of Malacca and Singapore because a vessel had an accident, they will use either the Sunda Strait between Java and Sumatra (Indonesia) or the Lombok Strait east of Bali (Indonesia) as an alternative route. Navigation control systems, however, have not yet been established in these two straits, and ships have to sail much further when using these two straits than when using the Straits of Malacca and Singapore, which inevitably increases costs. In the case of a big tanker in the 200,000-ton class, it takes an additional three days to sail via the Lombok Strait. So the importance of the Straits of Malacca and Singapore is obvious from the viewpoints of both safety and economy. Furthermore, neither the Sunda Strait nor the Lombok Strait of Indonesia, which are considered alternate routes when the Straits of Malacca and Singapore are closed, is sufficient in terms of route-maintenance and navigation control: no safe alternative route has been completed.

5. ARGUMENT FOR PULAU PISANG LIGHTHOUSE TO BE ADMINISTERED BY MALAYSIA

Jayakumar (2008) once said 'Let me say up front, Pulau Pisang belongs to Malaysia. We have never disputed Malaysia's sovereignty over Pulau Pisang but our MPA however has a right to operate the lighthouse there and the plot of land as well as the road leading to lighthouse has been granted in perpetuity so long as Singapore operates that lighthouse. It is in an indenture between the Johor Sultanate and the Straits Settlements in 1900; so we never contested the sovereignty (National Archives of Singapore, 2003).

The Marine Department of Malaysia does not list the Pulau Pisang lighthouse as one of the 14 lighthouses managed by the government. Data from the University of North Carolina states that the lighthouse is owned and managed by Singapore. The Lighthouse Depot website recognizes Singapore's authority in managing the island, so long as the lighthouse is in operation, even though the island is located in Malaysian territory. MPA has indicated that Singapore is still managing the lighthouse. Active engagement via bilateral talks should be held to enable Malaysia to take over management of the lighthouse, at the same time, show force and omnipresence management activities should be established to mark Malaysian authority over the island. In addition, the government should ascertain that no agreement was ever made to hand the island over to Singapore.

Ruhas (2009) touched on border safety and security issues between Malaysia and its neighbouring countries. This is because our country has land borders and maritime areas with Singapore. This caused a lot of problems not only in terms of the safety of border areas but also in terms of relations between the two countries. The possibility of Singapore claiming sovereignty over Pulau Pisang is based on the principle of prescription and delivery (Aust, 2005). A government can acquire sovereignty over a particular territory if sovereignty is transferred or assigned by another sovereign state (Rush & Mazlan, 2013). The Sultan of Johor, through the Treaty of 1900, submitted forever a part of its territory (where the lighthouse, the road leading to the lighthouse and pier lighthouse is located) to the British government of Singapore (Rush & Mohamad, 2013). This is the reason why the lighthouse is still managed by the MPA despite Pulau Pisang being under Malaysian sovereignty.

In addition, under international law, prescription refers to the acquisition of sovereignty by means of real sovereignty, maintained for a reasonable period of time and be implemented without protest from any state (Kaczorowska, 2010). Singapore's management of Pulau Pisang dates back to 1900 and it continues until now without any sustained objection from the Malaysian authorities (Rush & Mohamad, 2013).

The best example in this case is explained by the case of Sipadan and Ligitan. In deciding the dispute between Malaysia and Indonesia over Sipadan and Ligitan, the International Court of Justice (ICJ)'s view of the case was based on the concept of 'effective occupation' (International Court of Justice (ICJ), 2004). As early as 1914, the Government of Great Britain had taken steps to regulate and control the collecting of turtle eggs on Ligitan and Sipadan without any clear objection from the Dutch East Indies (International Court of Justice (ICJ), 2008).

These activities were continued by the State freed from the former British North Borneo (Sabah), when it joined Malaysia in 1963, once again, without objection sustained by Indonesia (Hsien-Li, 2010). As a result, the ICJ awarded the two islands to Malaysia on the grounds of administrative effectiveness displayed by the leaders of Malaysia (British) and the absence of any objection from Indonesia. (Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia / Malaysia, 2002)

Singapore installed military communications equipment and other non-lighthouse facilities on Pedra Branca, made full use of the island and undertook various public works on the island. It undertook no similar activities on Pulau Pisang. Singapore also designated a specific naval patrol area in the vicinity of Pedra Branca, while it undertook no such action around Pulau Pisang because Pulau Pisang is appertained to Malaysia.

Under the Convention, littoral states exercise sovereignty over their territorial seas which they have a right to establish up to a limit not exceeding 12 nautical miles measured from baselines determined in accordance with the Convention (United Nations Oceans and Law of the Sea, 2017). Therefore, under international law, Malaysia and Indonesia (and Thailand in part) can claim sovereignty rights over the Malacca Strait, and with Singapore, over the Singapore Strait, although maritime boundaries are not yet agreed to (Bateman, 2009). Under Article 38 of the Convention, "all ships and aircraft enjoy the right of transit passage, which shall not be impeded".

These disputes, alongside the varying capabilities of the littoral states to maintain good order in the straits, have led user states to regard the Malacca Straits as an area of instability, lurking threats and ineffective law enforcement. Littoral states have seen the situation differently: as demonstrated in their 2004 reaction to the U.S. proposed Regional Maritime Security Initiative (RMSI), Malaysia and Indonesia, though not Singapore, have opposed any effort to "internationalize" management of the straits that could compromise their sovereign rights. Whereas piracy and terrorism are priority challenges

for Singapore, Malaysia and Indonesia, they are much more concerned with fishing interests in the area, environmental threats from ship-sourced pollution, and human, arms and drug trafficking across the Malacca Straits (Simon, 2011).

6. THE WAY FORWARD

Malaysia must have the defensive capability to ensure that its primary areas premised on national interests are defended by all possible means. It also needs to defend and enhance its ability to defend its sovereignty over its terrestrial and maritime realms including the EEZ, continental shelf and all strategic sea lines of communication and airspace. Thus the MAF's development has to be based on the defence of these three areas. National defence however extends beyond preparing for an eventual conflict but is a guarantor of sovereignty and independence which provides a catalyst for national development programmes.

It is fair to say that the response to security threats can only be effective and successful through international cooperation, given that the threats to maritime safety are core national interests which do not respect the concept of national boundaries. For those countries which are not bound physically by maritime boundaries, the setting up of checkpoints and separation walls along the land border already demand a multilateral approach to security and close cooperation with the adjacent neighbor. For those with maritime boundaries, the reaction and measures taken by any country on its own cannot effectively cripple trans-boundary maritime threats. Regional diplomatic relations could also be affected by other maritime territorial disputes among ASEAN members in the Straits of Malacca. Diplomacy should be the preferred means of resolving Malaysia's overlapping claims with its neighbours in the above areas. Malaysia remains committed to the 1982 United Nations Convention on the Law of the Sea and to its maritime boundaries as contained in the "Peta Baru 1979."

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