

# The Practical Implications of Unresolved Maritime Boundaries: Special Reference to the Malaysian Position

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## Structured Abstract

Article Type: Research Paper

*Purpose*—Boundary disputes, whether terrestrial or maritime, involve the issue of State sovereignty or territorial integrity, the core interest of the nation. There is a range of consequences if the disputed parties are unable to reach an agreement to settle the claims, such as denial of nations' access to disputed areas, depriving nations' interests over marine resources as well as creating tensions between them and limitations in performing law enforcement activities. This paper argues that the existing unsettled maritime boundary disputes constitute a threat to sustainable maritime security in Malaysia.

*Design, Methodology, Approach*—The existing maritime boundary disputes involving Malaysia are thoroughly identified and the implications of undefined maritime boundaries are examined, including jurisdictional lacunae and maritime security concerns.

*Findings*—Sustaining a nation's maritime security by means of effective law enforcement against various threats is essential. Unsettled maritime boundary disputes create grey areas in claim jurisdiction and eventually lead to the ineffective maritime law enforcement. Realizing practical and existing challenges stemming from the unsettled boundary disputes is essential to stimulate motivation of the countries to beef up negotiation efforts aiming for the peaceful settlements with counter-claimants.

*Practical Implications*—Malaysia is a maritime nation with a lengthy coastline and it has ongoing maritime boundary issues with its neighboring countries although some of them have been settled successfully by means of agreements. Malaysia is sharing actual and perceived maritime boundaries with Brunei, Indonesia, Singapore, Thailand and Vietnam. This

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study encourages Malaysia to actively participate in negotiation processes to reach mutual agreements with any counter-claimants as part of an effort to ensure maritime security in Malaysia.

*Originality, Value*—This study provides the nexus between unsolved maritime boundaries and the sustainable maritime security with reference to the Malaysian position.

Keywords: dispute settlement, law enforcement, Malaysia, maritime boundary, maritime security

## I. Introduction

Malaysia is a maritime nation with a lengthy coastline and there are still ongoing maritime boundary issues with its neighboring countries, although some of them have been settled successfully by means of agreements. Malaysia is sharing actual and perceived maritime boundaries with Brunei, Indonesia, Singapore, Thailand, Vietnam and the Philippines as shown in Figure 1.



Figure 1. Illustration of Malaysia and its bordering states (Source: courtesy of Encyclopædia Britannica, Inc., copyright 2002; used with permission).

## II. Maritime Boundary Agreements Between Malaysia and Its Neighboring Coastal States

Malaysia, a country of Southeast Asia, is formed with a total area of 330,252 square kilometers (sq. km), which includes two land masses: West Malaysia or Peninsula Malaysia and East Malaysia on Borneo Island where the two parts are separated by the South China Sea.<sup>1</sup> The geographic condition of Malaysia encapsulates the most common boundary problems faced by coastal countries throughout Southeast Asia. Malaysia's territorial and maritime disputes are located in "the Gulf of Thailand, the Andaman Sea, the Straits of Melaka, the Straits of Singapore, the South China Sea, the Sulu Sea and the Celebes Sea."<sup>2</sup>

While there are existing maritime boundary disputes which have yet to be resolved, Malaysia could settle some of its claims by means of agreements. The following table summarizes the maritime boundary agreements which were successfully entered into between Malaysia and its neighboring coastal states.

Signatories	Type of boundary	Date signed	Entry into Force	Regional Area
Indonesia-Malaysia	Continental Shelf	27 October 1969	7 November 1969	Straits of Malacca and South China Sea
Indonesia-Malaysia	Territorial Sea	17 March 1970	8 October 1971	Straits of Malacca
Malaysia-Thailand	Territorial Sea and Continental Shelf	24 October 1979	15 July 1982	Gulf of Thailand
Indonesia-Malaysia-Thailand	Continental Shelf	21 December 1971	16 July 1973	Straits of Malacca
Malaysia-Vietnam	Common Area	5 June 1992	5 June 1992	South China Sea
Malaysia-Singapore	Territorial Sea	7 August 1995	7 August 1995	Johor Straits

Summary of Maritime Boundary Agreements between Malaysia and its Neighboring Coastal States. (Source: MIMA)<sup>3</sup>

There are several situations where the coastal states may encounter maritime boundary disputes. One of the major maritime territorial disputes is based on the overlapping offshore claims which first became a significant problem when states started to claim their areas of continental shelf boundaries under national jurisdiction.

The unsettled maritime boundary issues create several loopholes in sustaining maritime security such as denial of nations access to the disputed areas, depriving them of the benefits of the marine resources in the areas as well as creating tension between them. In addition, it is also challenging for the coastal states to assert their sovereignty and exercise their sovereign rights in the disputed maritime areas. Moreover, it is challenging for the authorities to exercise law enforcement actions effectively against various security threats occurring in these areas due to the uncertainty of jurisdictional rights. There can also be the political tensions affecting bilateral relationships of the states if the conflict remains unresolved by means of an agreement.

This article aims to streamline the implications of unresolved maritime boundaries creating grey areas on asserting jurisdiction in exercising maritime law enforcement against various maritime security threats in Malaysia. Ineffective law enforcement undermines the

primary aim of protecting territorial sovereignty as well as national security. Analysis of the existing maritime boundary disputes for Malaysia corroborates existing maritime security threats and the practical law enforcement problems faced by the law enforcement authorities in the disputed areas. This article concludes with the recommendation for Malaysia to further strengthen the efforts in reaching the mutual agreements with its counter claimants. And it is also advised that Malaysia should explore alternative initiatives by peaceful means in cases where it faces challenges in reaching the mutual agreements.

### **III. Ongoing Maritime Boundary Disputes in Malaysia**

Despite the successful settlements of maritime boundary disputes by means of agreements, Malaysia is still required to overcome the challenges emanating from the rest of the pending maritime boundary disputes with its neighboring countries, in particular, Indonesia, Singapore, the Philippines and Brunei. It is also noteworthy that Malaysia is one of the claimants in the South China Sea disputes. This section discusses the issues concerning the ongoing maritime boundary disputes involving Malaysia.

#### *3.1 Malaysia and Indonesia*

Malaysia gained independence on 31 August 1957. It participated in the first UN Conference of the Law of the Sea (UNCLOS-I) and ratified the four 1958 Geneva Conventions.<sup>4</sup> Malaysia adopted its continental shelf Act on July 28, 1966, and proclaimed the extension of its territorial sea from 3 nm to 12 nm on 2 August 1969. Based on its national legislation and in compliance with bilateral agreements with Indonesia, Malaysia could delimit its continental shelf boundary in the Straits of Malacca and South China Sea and territorial sea boundary in the Straits of Malacca, respectively. The terrestrial boundary of Malaysia and Indonesia is limited to the island of Borneo, separating the Indonesian regions of Kalimantan barat and Kalimantan Timur from the Malaysian states of Sabah and Sarawak while remainder of the two countries' borders are separated by the water bodies of the Strait of Malacca, including the Strait of Singapore and the South China Sea. Malaysia has yet to settle their maritime boundaries "in the Strait of Malacca (exclusive economic zone, and territorial sea in the Southern part of the straits), South China Sea (exclusive economic zone), and Sulawesi Sea (territorial sea, exclusive economic zone and continental shelf)."<sup>5</sup>

On December 21, 1979, Malaysia published its new map called "Peta Baru Menunjukkan Sempadan Perairan dan Pelantar Benua Malaysia" (New Map Showing the Territorial Waters and Continental Shelf Boundaries of Malaysia) and officially proclaimed its Exclusive Economic Zone (EEZ) on April 25, 1980. The release of 1979 map created tensions and disputed by its neighboring countries including Indonesia. The new boundaries of Malaysia's territorial waters, exclusive economic zone and continental shelf in the 1979 Map, particularly on the northern part of the Borneo Island had greatly overlapped with those of Indonesia's Kalimantan which is located on the southern part of the same land. Indonesia also made unilateral claim to an EEZ in its official map of 2009 and 2010 which extends well to the

north and east of the agreed continental shelf boundaries established with Malaysia under the 1969 bilateral agreement.<sup>6</sup>

It is interesting to note that Malaysia indicates its intention to use the single line approach for the continental shelf and exclusive economic zones based on its declaration in particular, paragraph 7, upon the ratification of the UNCLOS 1982. The declaration of Malaysia can be read as follows:

Malaysian Government interprets article 74 and article 83 to the effect that in the absence of agreement on the delimitation of the exclusive economic zone or continental shelf or other maritime zones, for an equitable solution to be achieved, the boundary shall be the median line, .... Malaysia is also of the view that in accordance with the provisions of the Convention, namely article 56 and article 76, if the maritime area is less or to a distance of 200 nautical miles from the baselines, the boundary for continental shelf and exclusive economic zone shall be on the same line (identical).<sup>7</sup>

It should be noted that the delimitation of EEZ became a matter of concern only after the UN Convention on the Law of the Sea 1982 came into force as a result of the Third United Nations Conference on Law of the Sea (UNCLOS III) while the previous bilateral agreements of delimiting continental shelf (1969 Agreement) and territorial sea (1971 Agreement) boundaries between Malaysia and Indonesia were based on the 1958 Geneva Conventions. Regarding delimitation of EEZ boundaries in the Malacca Strait, it is not viable for both Malaysia and Indonesia to claim the maximum EEZ boundary of 200 nautical miles as prescribed in the UNCLOS 1982 as the Strait is too narrow that the width at opening of the Straits near the northern tip of the Sumatra Island is less than 400-nm width. Based on the Malaysia's declaration upon ratification of UNLOS 1982, it is clear that Malaysia intends to use the single boundary line for both EEZ and continental shelf, which is also reflected in its new map, Peta Baru, published in 1979. In addition, Malaysia intends to maintain the status quo as agreed in 1969 continental shelf agreement as it claims that the "EEZ boundary limits for both countries are based on the outer boundary lines of continental shelf stipulated in the 1969 Agreement."<sup>8</sup>

On the other hand, the Indonesian government claims that the "common boundary limits of EEZ between the two countries have yet to be determined as they are not based on the previous 1969 Continental Shelf Boundary Agreement." The disagreement over the boundary lines of EEZ between the two countries is illustrated in their respective national map. Based on the map issued by the Unitary State of the Republic of Indonesia (NKRI) and published by the Geospatial Information Board (BIG), Indonesia's EEZ claim in the Straits is different from that of Malaysia.<sup>9</sup> Currently, both Malaysia and Indonesia have made unilateral claims regarding the EEZ boundaries as shown in Figure 2.

Therefore, a question could be raised whether to follow the single boundary line approach as agreed in 1969 Continental Shelf Agreement or to re-negotiate for the new and separate EEZ boundaries for Malaysia and Indonesia. Article 83 (4) of the UNCLOS 1982 states that the States are required to follow the agreement in force between the States concerned on questions relating to the delimitation of the continental shelf.<sup>10</sup> In cases where both countries opt for renegotiation of EEZ boundary lines, the only option is to terminate the 1969 agreement by consent of both parties<sup>11</sup> which might not be prudent to do so since it will also affect the previously agreed boundary line for continental shelf in



Figure 2. The unilateral claims of EEZ Boundaries by Malaysia and Indonesia (Source: Arsana, 2013).

the Strait of Malacca. Furthermore, the border treaties are sacred documents once they are signed and difficult to terminate even for a good reason.<sup>12</sup> It should be noted that 1969 Agreement addresses the continental shelf boundary only in the Strait of Malacca and much of the complex boundary issues for the delimitation of (territorial sea, exclusive economic zone and continental shelf) in the Celebes Sea between Malaysia and Indonesia remain unsolved. As far as Indonesia is concerned, it would prefer and keen for renegotiation of maritime boundaries with its neighbors and the countries across the Malacca Strait including Malaysia since there may be changes of boundary lines after it acquired the full international recognition as an archipelagic state in 1982.<sup>13</sup> In addition, Indonesia believes that there should be separate boundary lines for continental shelf and exclusive economic zones since they are both under the different legal regimes under the UNCLOS 1982.

### 3.2 *Malaysia and Singapore*

Malaysia and Singapore, littoral States to the Straits of Malacca, share maritime boundaries and not all of the maritime territorial disputes have been resolved. The boundary dispute between the two States is nothing new since Singapore's separation from Federation of Malaysia in 1965. With regard to the maritime boundary delimitation between Malaysia and Singapore, the landmark decision of the International Court of Justice on the issue of sovereignty over the Pedra Branca, Middle Rocks, and South Ledge plays an important role in determining clear-cut maritime boundaries between the countries.

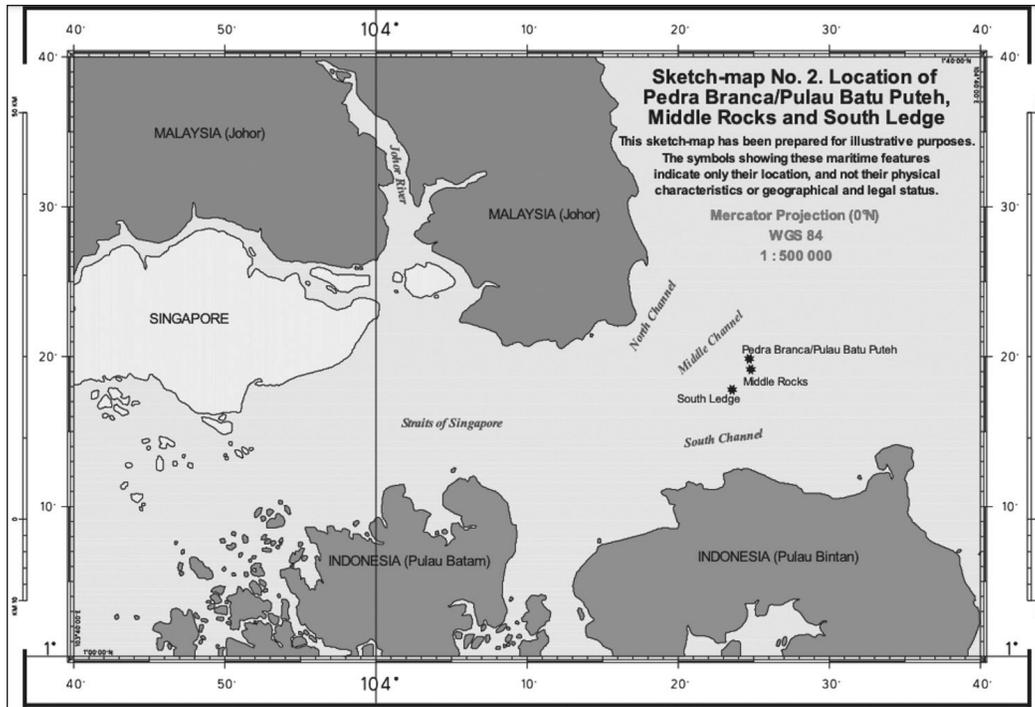
The settlement of maritime boundary disputes takes several years of negotiations to reach the mutual agreement between the states concerned. In addition, even in cases where the states opt for the third-party dispute resolution, such as bringing the case to the World Court, the execution and implementation of the decision of the Court is not an easy task without the mutual understanding and keen efforts to execute the judgement of the court by the state parties to the dispute. The ICJ's landmark decision of the sovereignty issue over Pedra Branca/Pulau Batu Puteh is one of the most relevant case studies as the illustration of the challenging task of delimitation of maritime boundaries.

*3.2.1 Issue of Sovereignty Over Pedra Branca/Pulau Batu Puteh.* In 1979, Malaysia published a map entitled "Territorial Waters and Continental Shelf Boundaries of Malaysia" (published by the Director of National Mapping, Malaysia) (hereinafter "the 1979 map"), which showed the outer limits and co-ordinates of the territorial sea and continental shelf claimed by Malaysia. The Map illustrates the island of Pedra Branca/Pulau Batu Puteh as lying within Malaysia's territorial waters. On February 14, 1980, Singapore lodged a diplomatic protest indicating its objection against Malaysia's claim over Pedra Branca and requested that the 1979 map be corrected.

There was a series of inter-governmental talks over the sovereignty issue of Pedra Branca in 1993–1994 which did not bring resolution of the matter. In 1995, Singapore signed an agreement with Malaysia to "precisely map out territorial water boundaries" according to the Straits Settlements and Johor Territorial Waters Agreement 1927.<sup>14</sup> However, the issue of sovereignty over Pedra Branca was not resolved by this agreement.

During the first round of talks in February 1993 "the question of the appearance of Middle Rocks and South Ledge was also raised." Since the bilateral negotiations were a failure, both parties agreed to submit the dispute to the International Court of Justice. The Special Agreement was signed in February 2003, and notified to the Court in July 2003.<sup>15</sup> In 2008, the Court gave decision which includes: "the sovereignty over the Pedra Branca/Pulau Batu Puteh belongs to Singapore; sovereignty over the Middle Rocks belongs to Malaysia; and sovereignty over South Ledge belongs to the State in the territorial waters of which it is located."<sup>16</sup> Therefore, the ICJ left the question of South Ledge to be settled amicably between the two countries.<sup>17</sup>

*3.2.2 Application for Revision of ICJ's 2008 Judgement.* While the implementation is still pending, in February 2017, Malaysia applied for revision of ICJ's 2008 judgement according to Article 61 of the Statute of the ICJ.<sup>18</sup> Malaysia cited three documents<sup>19</sup> in its application and contented that "the Court would have reached a different conclusion if it had been aware of this new evidence."<sup>20</sup>



**Figure 3: Illustration of the location of Pedra Branca, Middle Rocks and South Ledge (Source: IILSS—International Institute for Law of the Sea Studies).**

Again, on June 30, 2017, Malaysia applied to ICJ for interpretation of its 2008 Judgement according to Article 60 of the Statute of the ICJ. However, on May 28, 2018, Malaysia informed ICJ that “it would discontinue the two applications it filed in 2017 challenging ICJ’s decision to award Pedra Branca to Singapore.”<sup>21</sup> The reasons for this decision of Malaysia were not provided. Singapore also supported Malaysia and informed the ICJ that it agreed with Malaysia’s decision. The ICJ, in letters dated May 29, 2018, informed Malaysia and Singapore that the court had placed on record the discontinuance, by agreement of the parties, of the proceedings instituted on February 2, 2017, and June 30, 2017, by Malaysia against Singapore, and directed that the cases be removed from the Court’s List.<sup>22</sup>

After the closure of the reapplication of Malaysia to the ICJ, things were quiet between Malaysia and Singapore in terms of conversation regarding the implementation of the 2008 Judgement. On October 24, 2018, a situation arose where Malaysia extended its Johor Bahru port limits which led to the tensions between the two countries, and Singapore claimed that such extension of Johor port limits is clearly an encroachment of Singapore’s territorial waters off Tuas.<sup>23</sup>

*3.2.3 Issues on Extension of Port Limits.* The agreement signed in 1995 to delimit precisely territorial waters boundaries in the Johor Strait resolved the Singapore’s rejection to the 1997 Malaysia’s map. In 1987, Malaysia published its Johor Bahru port limits, which follows the territorial sea limits claimed in its 1979 map.<sup>24</sup> It is also noted that Singapore and Malaysia made slight amendments of their port limits in 1997<sup>25</sup> and 1999<sup>26</sup> respectively. For

the next 20 years, those limits remained intact without any protest from both parties. However, on October 25, 2018, Malaysia published changes to Johor Bahru port limits through Malaysia's Federal Gazette in a document published by the Attorney-General Chambers.<sup>27</sup> Singapore claimed that the new extension of port limits was significantly "eastward beyond the territorial sea claims made by Malaysia's 1979 map."<sup>28</sup>

On December 4, 2018, Singapore lodged strong protest against Malaysian Port limit extension requesting that Malaysia to "refrain from any further unilateral action and also to amend the gazette notification." However, Malaysia argued that it did not touch Singapore's territorial waters by the extension of port limit. According to Singapore Transport Minister Khaw Boon Wan, there were 14 intrusions by Malaysian government vessels, from Malaysian Maritime Enforcement Agency and Marine Department Malaysia, into Singapore's territory and therefore, Malaysia's action is "a serious violation of Singapore's sovereignty and international law." As retaliation, Singapore extended its port limit of Tuas on December 6, 2018.<sup>29</sup>

On December 7, 2018, Malaysia proposed that both countries to "cease and desist" from sending assets into "disputed areas." However, Singapore rejected the proposal and it rather required Malaysian government vessels to leave its waters and to revert the status quo that had been placed before October 2018.<sup>30</sup>

3.2.4 *Mutual Agreement to Suspend the Extension of Port Limits.* Despite the maritime tensions that have been festering between the two countries for months after Malaysia's extension of Johor port limit in October 2018, both Malaysia and Singapore could reach

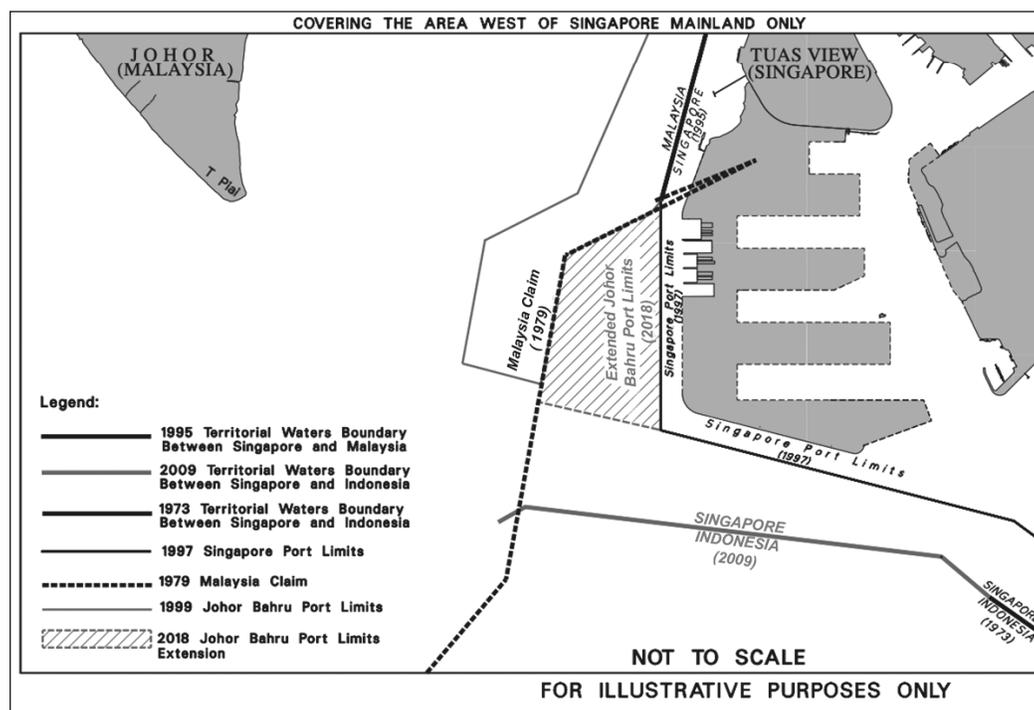


Figure 4: Illustration of the Disputed port limits in the Johor Strait (Source: Singaporean Ministry of Transport).

an agreement to restore the status quo in their disputed maritime border area on March 14, 2019, where both countries' foreign ministers met in Malaysia and a joint statement was released after the meeting that "the two countries have mutually agreed to suspend expansions of their port limits which created the overlapping area that is in question as well as cease all commercial activities and not anchor government vessels in the area."<sup>31</sup>

They have also agreed to set up a committee for maritime boundary delimitation. In the event where the committee is unable to reach an amicable solution on delimitation, both countries are willing to resort to an appropriate international third-part dispute settlement procedure on terms to be mutually agreed by the parties.<sup>32</sup> Although there has been progress for negotiations on delimitation of maritime boundaries between Malaysia and Singapore, the finalized agreement and execution of 2008 Judgement are yet to be implemented. It is noted that territorial and boundary delimitations issues are one of the most sensitive bilateral or international disputes particularly where various national interest including sovereignty and territorial integrity issues are involved.

*3.2.5 International Disputes Settlement Mechanisms.* Both Malaysia and Singapore possess the favorable record of settling disputes at international forum in accordance with international law. Apart from the Pulau Batu Puteh case, in July 2003, Malaysia instituted a statement of claim at the Permanent Court of Arbitration (PCA) against Singapore regarding the dispute concerning land reclamation by Singapore in and around the Straits of Johor by invoking the provisions of the 1982 UN Convention on the Law of the Sea and referring the dispute to arbitration, under Annex VII of the Convention. Subsequently, Malaysia applied to the International Tribunal for the Law of the Sea (ITLOS) for provisional measures to stop Singapore's land reclamation works pending the outcome of the arbitration. Malaysia alleged that land reclamation works by Singapore in Pulau Tekong and Tuas View Extension impinged on Malaysia's territorial waters, caused pollution and other adverse harm to the marine environment in the Straits of Johor.<sup>33</sup> Finally, both countries could reach the Settlement Agreement, which had been signed on April 26, 2005, and the Tribunal awarded upon the agreed terms of the agreement at the request of the parties.

The said Settlement Agreement provides:

This Agreement is in full and definitive settlement of the dispute with respect to the land reclamation and all other issues related thereto. The Parties agree that the issue pertaining to the maritime boundaries be resolved through amicable negotiations, without prejudice to the existing rights of the Parties under international law to resort to other pacific means of settlement.<sup>34</sup>

According to Singapore's Minister of Foreign Affairs, Dr. Vivian Balakrishnan, "Singapore believes that maritime boundary delimitation is best resolved through negotiations, to reach an amicable settlement acceptable to all parties."<sup>35</sup> In cases where negotiations are unsuccessful, Singapore is prepared to resort to an appropriate international dispute settlement procedure, on terms mutually agreed by the parties in compliance with the Singapore's declaration under Article 298 (1) (a) of the UNCLOS 1982.<sup>36</sup> As far as Malaysia is concerned, it has a significant record of respecting international law from its resort to international dispute resolution procedure in the cases of Pulau Batu Puteh, Pulau Sipadan and Ligitan as well as Singapore's land reclamation case. It is just a matter of time that both countries will be able to resolve all the maritime boundary disputes by amicable means.

### 3.3 Malaysia and the Philippines

Malaysia and the Philippines have to negotiate their “maritime boundaries in South China Sea (territorial sea, exclusive economic zone and continental shelf boundaries of adjacent states), Sulu Sea (territorial waters), and Sulawesi Sea (territorial sea, exclusive economic zone and continental shelf boundaries).” The maritime boundaries between these two countries in the South China Sea could be complicated by the overlapping claims of other states.

Maritime boundary delimitation in the Sulu Sea is even more contentious because of the Philippines’ claim of sovereignty over North Borneo (Sabah).<sup>37</sup> Therefore, it is not an easy task unless both countries bilaterally reach a peaceful agreement on the issue of the Philippines’s territorial claim over North Borneo (Sabah). The Philippines have been enduring territorial claim over Sabah and it officially proposes that North Borneo (Sabah) forms part of the Philippine territory based on historic right or title. Currently, Sabah is under the sovereignty of Malaysia, where it was incorporated into the Federation of Malaysia in 1963.<sup>38</sup> The question of sovereignty claims over Sabah by the Philippines comes into light because of the proposed shift to a federal system of government by Philippines President Rodrigo Duterte’s administration. In drawing up proposals for this new model of government, a member of the Philippines consultative committee included Sabah as part of the Philippines’ territory. The proposal includes 12 States and he suggested Sabah is to be added as 13th State of



Figure 5: Map of Sabah, Malaysia (<https://www.sabah.gov.my/cms/?q=ms/content/pengenalan> [Sabah State Government]).

the Philippines.<sup>39</sup> On the other hand, Malaysia contends that it clearly objects the Philippines' claim and Sabah has been recognized by the UN and by other countries worldwide as a Malaysian territory and therefore, there should be no further attempt by the Philippines claiming that Sabah is their territory.<sup>40</sup>

However, Malaysian Prime Minister's recent visit to Manila in March 2019 signifies the peaceful bilateral relations between the two countries. According to the Prime Minister Tun Dr Mahathir Mohamad, there is no claim over Sabah by the Philippines.<sup>41</sup> Both leaders Tun Dr Mahathir and President Duterte expressed their desire to "further strengthen the existing harmonious bilateral relationships between the two neighbors."<sup>42</sup>

### 3.4 *Malaysia and Brunei*

Malaysia has unsettled maritime territorial disputes with Brunei Darussalam due to overlapping claims over continental shelf and EEZ areas in South China Sea region. Brunei also claims Louisa Reef which is under Malaysia control.<sup>43</sup> However, "on 16 March 2009 Brunei Darussalam and Malaysia issued a Joint Statement announcing among others the signing of Exchange of Letter between the Prime Minister of Malaysia and Sultan of Brunei which aims to end a longstanding boundary dispute between the two states." This agreement legally ends the maritime boundary disputes that caused tensions between the two States. It is noted that they were even near armed conflict in the past.<sup>44</sup>

At the 21st Annual Leaders' Consultation between Brunei Darussalam and Malaysia which was held in Bandar Seri Begawan, Brunei Darussalam, on 23 November 2017, both leaders agreed to further strengthen bilateral relations for the "significant growth in political, economic and strategic issues of mutual interest, based on the firm foundation of common values and traditions between the two countries."<sup>45</sup> The negotiations based on the provision of the Exchange of Letters relating to maritime access is still underway. In the recent meeting of leaders from both Malaysia and Brunei in March 2019, they "encouraged their officials to explore innovative ways to develop maritime cooperation between the two countries. In this regard, the two leaders welcomed the ongoing discussions between their officials in this field with a view to having a Memorandum of Understanding (MoU) on Maritime Cooperation."<sup>46</sup>

### 3.5 *Malaysia's Claims Over Spratly Islands in the South China Sea*

Malaysia is also involved as one of the claimants in the *South China Sea disputes*, the most contentious problem in the region. There are six claimants to be the owner of the Spratly Islands in the South China Sea, namely China, the Philippines, Malaysia, Vietnam and Brunei Darussalam, and Taiwan. Except China and Taiwan, the other four claimants are ASEAN countries. The claims over the Spratly Islands remain unsettled until today.<sup>47</sup> Among the six claimants, China and Vietnam are the only States which claim sovereignty over the entire island group while the Philippines, Malaysia and Brunei only claim the title to a portion.<sup>48</sup> In addition, all the claimants are parties to the United Nations Convention on Law of the Sea 1982.

Although one may argue that Spratly Islands dispute is not a matter of maritime boundary delimitation dispute but a dispute over the title of islands, the ICJ in its judgment on

the *Nicaragua v. Honduras* case (see para 114 of the Judgment)<sup>49</sup> clearly stated that delimitation and sovereignty issues are interrelated. In the Spratly Islands dispute, only after the determination of title over the islands, the maritime boundary can be delimited among the countries.

Both Malaysia and Brunei made claims to “the Southern portion of the Spratly Islands based on their geographic proximity to the islands.”<sup>50</sup> Among other claimants, China being the superpower in the region, it has been doing various unilateral activities in the disputed areas despite the protest from the other claimants such as building artificial islands, encroaching into the EEZ of other claimants, conducting military trainings in the disputed areas etc. Moreover, China is not likely to honor any decision made by international courts, PCA or ICJ since it had already challenged and rejected the jurisdiction of the PCA’s decision on South China Sea Arbitration (*The Republic of the Philippines v. People’s Republic of China*) in 2016.<sup>51</sup>

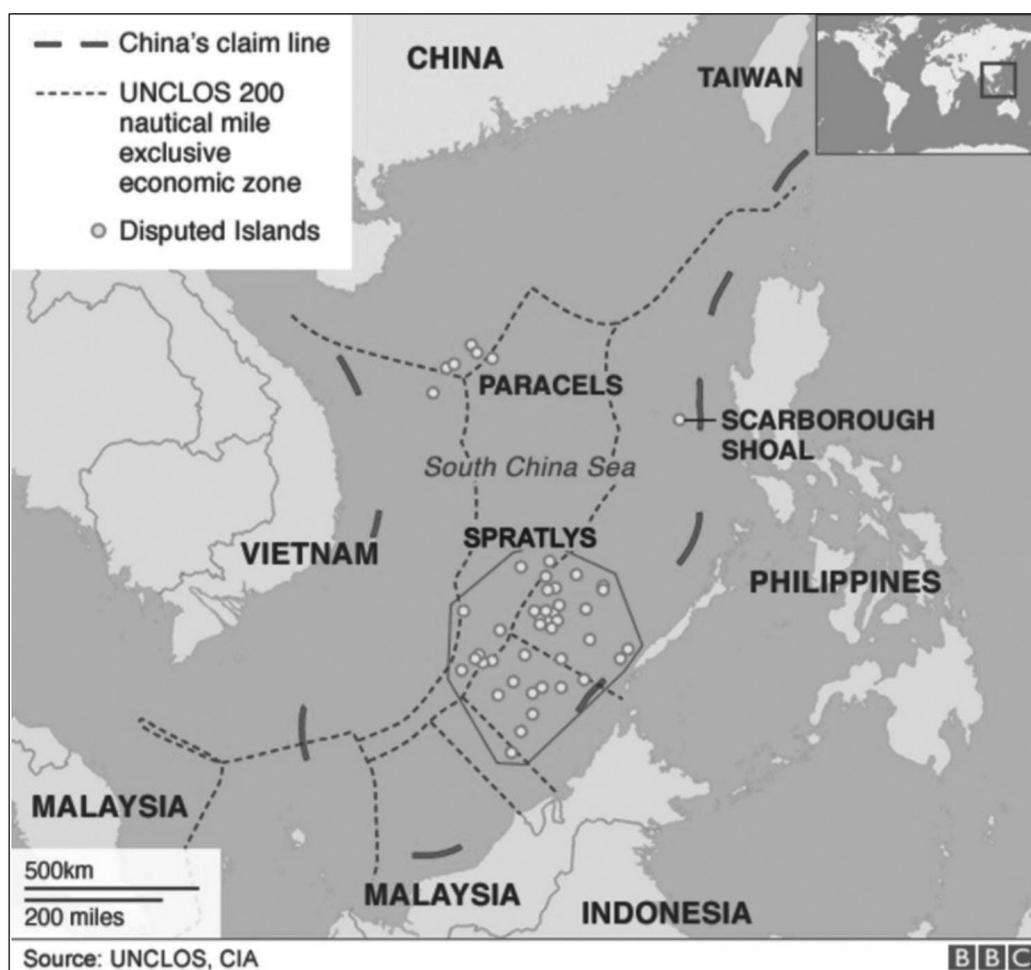


Figure 6: Illustration of claimants in the South China Sea Dispute (Source: David Lai, *The United States and China in Power Transition* [Carlisle, PA: Strategic Studies Institute, U.S. Army War College], December 2011).

## IV. Maritime Boundary Disputes and Malaysian Maritime Security: The Nexus

As discussed in the previous section, Malaysia still has unsettled maritime boundaries with Indonesia, Singapore, Brunei and the Philippines. Moreover, being one of the claimants in the long-standing South China Sea disputes, the national maritime security and other economic interests of Malaysia are at stake. There can be numerous challenges for a country with undefined and disputed maritime boundaries. One of the significant implications is that the existence of such disputes creates grey area in exercising state jurisdiction, and it eventually led to the situations where national maritime security and ocean governance is compromised.

Malaysia is one of the littoral states to the Strait of Malacca, one of the busiest trade routes where nearly 100,000 vessels pass through each year, accounting for about one-quarter of the world's traded goods.<sup>52</sup> In addition, Malaysia is a maritime nation where sea area is 4 times its land mass, possessing a long tradition of maritime activities and various maritime interests. The maritime industry is the major contributor to Malaysian economy since 95% of Malaysian trade by volume is seaborne. Nowadays, maritime interests in Malaysia are not only limited to trade and shipping activities but also extend to very crucial matter of security and defense.<sup>53</sup> There are various security threats endangering Malaysian maritime security including piracy and armed robbery at sea, maritime terrorism, marine environmental pollution and Illegal Unreported and Unregulated (IUU) Fishing, human and drugs trafficking and other maritime crimes. In order to suppress those crimes by the Malaysian authorities and the law enforcement agencies, the jurisdictional clarity for exercising their territorial jurisdiction is of paramount importance.

Currently, there are few examples where Malaysian maritime security is compromised as a result of undefined maritime boundaries. As discussed earlier, the EEZ boundary issue is yet to be resolved between Malaysia and Indonesia in the northern part of the Straits of Malacca which create lacuna in exercising law enforcement actions such as apprehending hundreds of fishermen of either country in the "grey area" for allegedly committing illegal fishing, an offence under the law of both nations.<sup>54</sup> Negotiations are still ongoing and both countries 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."<sup>55</sup> Despite the challenges, they could enter into a Special Agreement on overlapping areas. Regarding this, an officer of the Royal Malaysian Navy commented as follows:

We have the Special Agreement with Indonesia in the overlapping area. They do not arrest our boats and neither do we. We see that their boats are fishing but we just drive them away. Last time the Minister said that every time we catch them, we sent them to jail and their family got nothing to eat. They are very poor people. Therefore, rather than putting them in the jail, we send them back. I think that this is the better solution so far.<sup>56</sup>

It is also noted that many of arrested fishermen claimed innocent as they were allegedly arrested in their own national waters. In the past, the alleged detention of fishermen or confiscation of vessel has occasionally triggered diplomatic protests and frictions, undermining the cordial relations of both countries.<sup>57</sup> Despite having mutual understanding of not to arrest the fishermen in the grey area as an ad hoc solution to the existing jurisdictional

challenge, it is still an imperative for both Malaysia and Indonesia to resolve the boundary issue by means of finalized bilateral Agreement on the delimitation of EEZ boundary line between the two countries.

The same situation occurs in Sulu and Celebes Sea where there is no defined maritime territory between Malaysia and the Philippines, creating a “grey area” in asserting jurisdiction, to perform law enforcement activities against rampant security threats, such as piracy, armed robberies, illegal immigration, and kidnapping for ransoms (KfR) by the non-state actors. The Lahat Datu Intrusion by the Sulu militants in 2013 was the most significant security threat to the Malaysian sovereignty and territorial integrity. Despite several efforts taken by the Malaysian government to thwart security threats in the area including the improvement of enforcement capabilities such as the establishment of Eastern Sabah Security Zone (ESSZONE)<sup>58</sup> and Eastern Sabah Security Command (ESSCOM),<sup>59</sup> it is still a challenge to avert cross-border kidnappings or Kidnapping for Ransom (KfR),<sup>60</sup> particularly by the Islamic separatist groups from Southern Philippines such as Abu Sayyaf Group (ASG). The most recent incident took place on Jan 16, 2020 where “five Indonesian fishermen were abducted from the eastern edge of Sabah waters off Lahad Datu by a kidnap-for-ransom group linked to the notorious Abu Sayyaf from southern Philippines.”<sup>61</sup>

For the time being, while the maritime boundaries of the states concerned are yet to be defined by agreements, cooperative mechanisms are the only solutions to suppress the maritime security threats in the eastern coast of Sabah. Sustaining maritime security is the integral part of national security and protection of territorial sovereignty. Therefore, the issues or threats undermining sustainable nation’s maritime security are required serious attention. In order to curb the criminal activities particularly KfR incidents in the eastern coast of Sabah, the three countries of Malaysia, Indonesia and the Philippines could reach an agreement in 2016, namely, “Standard Operating Procedures” which allows “joint operations in all three nations’ territorial waters—including the right to chase suspected pirates across boundary lines in ‘hot pursuit’ enforcement actions.”<sup>62</sup> This joint-patrol agreement is an attempt to thwart the occurrence of security threats in the Sulu Sea such as piracy and kidnapping for ransoms (KfR) cases perpetrated by terrorist organization Abu Sayyaf, which is associated with ISIS and Al Qaeda.<sup>63</sup>

In addition, the most recent dispute between Singapore and Malaysia over extension of port limits underlines the significance of defined maritime boundary demarcation between neighboring countries. The presence of government vessels in disputed waters may lead to the political tensions between the disputed countries and create more difficult situations for the countries to settle the dispute by amicable means. Such a situation occurred in October 2018, where Singapore claimed that the presence of Malaysian law enforcement vessels in the disputed territorial waters were clearly an encroachment of Singapore’s sovereignty and a violation of international law. Currently, although both countries maintain the status quo of their port limits prior to 25 October 2018 incident, the dilemma for jurisdictional clarity is still significant particularly that the disputed area is part of the territorial waters of both countries where they can exercise territorial sovereignty.

In July 2021, Singapore announced that its land reclamation works around Pedra Branca shall be started by end of the year in order to improve existing facilities such as berthing for vessels and additional logistics, administrative support and communications facilities. According to the Singapore’s Ministry of National Development (MND), the development

works aim for the “greater awareness over the waters around Pedra Branca, and to respond more quickly to maritime safety and security threats.”<sup>64</sup> This announcement could be a concern for Malaysia since the delimitation of territorial waters between Malaysia and Singapore is yet to be finalized according to the ICJ’s 2008 Judgement. According to the ICJ’s ruling, Pedra Branca was awarded to Singapore, Middle Rocks to Malaysia, and the sovereignty over the South Ledge belongs to the State in whose territorial waters is located. Therefore, the question of sovereignty over the South Ledge is left to be resolved by the disputed parties through bilateral negotiations. Recently on 23 November 2021, The Malaysia-Singapore Joint Technical Committee (MSJTC) met virtually to “continue discussions on the implementation of the International Court of Justice (ICJ) Judgment on Pedra Branca, Middle Rocks and South Ledge.”<sup>65</sup> It is suggested that finalizing the negotiations for delimitation of precise territorial waters boundary should be the priority for both countries rather than to commence the reclamation works while the boundary dispute remain unresolved. In cases where should any disputes arise due to the Singapore’s reclamation works, it will further delay the bilateral negotiations, trigger diplomatic tensions and both countries “will remain lost in borderless waters.”<sup>66</sup>

Similarly, the alarming situations to the Malaysian maritime security are also present in the disputed areas in the South China Sea. In recent years, the waters off Sabah within Malaysia’s EEZ (in South China Sea) have been the area with apparent territorial challenges. According to the Minister from Prime Minister’s Department of Malaysia, People’s Liberation Army Navy (PLAN) vessels had encroached into Malaysia’s maritime zone<sup>67</sup> in the South China Sea nearly once a year since 2011.<sup>68</sup> In addition, the reports confirmed that the foreign fishermen who encroached into the Malaysian EEZ had received military training. However, Malaysia maintains its bilateral relation with China. Since 2012, Malaysia has started military trainings and exercises with China despite its territorial dispute with the country in the South China Sea.<sup>69</sup> In 2015, China conducted the first joint military drill with Malaysia where more than 1,000 Chinese troops involved, the largest ever between Beijing and an ASEAN country.<sup>70</sup> According to the officer from the Royal Malaysian Navy, “Malaysia and Myanmar can be identified as the ASEAN countries with close relations to China. Moreover, Malaysia stays neutral regarding the disputes between Super Powers, for example, between China and the United States. It welcomes military vessels from both countries to Malaysian Ports. Malaysia believes that there must be a peaceful solution to settle boundary claims in the South China Sea.”<sup>71</sup> Despite being the country with unsettled maritime boundary disputes, Malaysia deals with its counter claimant in very diplomatic ways and its efforts in term of keeping peace and understanding with its neighboring countries is to be appreciated.

## V. The Way Forward

The delimitation of maritime boundaries is easier said than done. Basically, the disputes exist before the boundary line is drawn and generally disappear after the line or a series of lines is determined and agreed upon.<sup>72</sup> It is not a straightforward task particularly when the dispute arises concerning sovereignty over islands and rocks, one of the major causes of pending maritime delimitation. One of the examples is the long-standing sovereignty

dispute between Malaysia and Singapore concerning the ownership of islands/rocks of Pedra Branca, Middle Rocks, and South Ledge, which has been settled by the International Court of Justice (ICJ).<sup>73</sup>

Disputes over islands<sup>74</sup> can be identified as the most difficult problems to be solved in maritime boundary delimitation by means of negotiation. This is because the UNCLOS gives privilege to the coastal states having sovereignty over the offshore island to claim extended maritime territories since the islands can possess their own territorial sea, exclusive economic zone and the continental shelf of their own.<sup>75</sup> Article 121 (2) of the UNCLOS 1982 differentiates between islands and “rocks which cannot sustain human habitation or economic life” are not entitled to exclusive economic zone or continental shelf. It is found that most maritime disputes over offshore islands have not been resolved. In addition, many of the disputes over offshore islands involve more than two States with claims, for example, the South China Sea disputes which involve six countries with claims over some or all of the islands in the Spratly archipelago.<sup>76</sup> When the defined maritime delimitation is absent, it creates various problems regarding asserting sovereignty in the case of territorial sea. In other maritime zones beyond the 12 nautical miles territorial sea, the disputes arise concerning the sovereign rights over natural resources, including fisheries, oil and natural gas.

Although the legal framework is clear with the delimitation of the territorial sea in general,<sup>77</sup> it is necessary to enter into an agreement or bilateral treaty to delimit the territorial seas with neighboring countries. In addition, it is more challenging for the delimitation of EEZ boundaries since the UNCLOS 1982 does not specifically mention the method used for EEZ delimitation where Article 74 only mentions that delimitation is carried out to achieve an equitable solution. The method and approach to be used to achieve the equitable solution is left to be negotiated by the States concerned. To date, Malaysia has entered into delimitation agreements such as the agreements with Indonesia and Thailand with regard to the delimitation of territorial seas in 1970<sup>78</sup> and 1979<sup>79</sup> respectively. Moreover, the Exchange of Letters signed between Malaysia and Brunei in 2009 which established the final delimitation of maritime boundaries, territorial sea, continental shelf and exclusive economic zone of the two Countries has resolved the outstanding bilateral issues by means of amicable settlement after 20 years of tough negotiations between the two Countries.<sup>80</sup>

It is noteworthy that maritime boundary negotiations do not start at the negotiation table. Before negotiations commence, it is essential to establish the clear and solid national position since such delimitation process is “a complex, multi-dimension, and multi factored processed.”<sup>81</sup> In Malaysia, there are various agencies overseeing the national maritime interest and security, including the National Security Council, Fisheries Department, Marine Department of Malaysia, Department of Environment, Malaysian Maritime Enforcement Agency, the Royal Malaysian Navy and the Marine Police. Therefore, all the relevant departments and stakeholders are required to come out with the national position reflecting all of its interest in a particular segment of maritime borders which will be used as the fundamental national approach to be used throughout the negotiation process. In addition, there are several issues involved in negotiating maritime boundary delimitation such as advanced legal knowledge, technical expertise, and most importantly the political will of the parties. In addition, geographical situation and types of national interest involved are varied depending on the country to which Malaysia is dealing with. Moreover,

compliance with international law and norms require the strong political will of the countries involved. As far as Malaysia is concerned, it has a favorable record of trusting the international adjudication process and respecting international rule of law. It could just be in a matter of time that Malaysia can settle its pending maritime boundary dispute with its neighboring countries by peaceful means as enshrined in the Article 33 of the Charter of the United Nations. Nevertheless, negotiating maritime boundaries can be a decade long process and thus Malaysia must have a clear and sustained policy in handling maritime boundaries delimitation. In terms of national policy, Malaysia deals boundary disputes with its neighbors by means of friendly and diplomatic approach instead of using an aggressive and hostile manner.

The maritime boundary negotiations between Malaysia and Indonesia were resumed on 15–19 November 2018 in Melaka, Malaysia. These negotiations have entered the 34th Technical Meeting on the Determination of the Maritime Boundary between Indonesia and Malaysia. According to the Ministry of Maritime Affairs and Fisheries (KKP), the negotiations continued the 33rd technical meeting that took place in Bandung, West Java in March 2018.<sup>82</sup> Negotiations with Singapore were also continued since January 2020.<sup>83</sup> As for the negotiations with the Philippines, Malaysia first needs to overcome the Philippines' claim of sovereignty over North Borneo (Sabah) before reaching the peaceful mutual agreement between two countries for delimitations of maritime boundaries in the Sulu and Celebes Sea.

Malaysia is encouraged to beef up its efforts to end jurisdictional dilemma and to reach mutual agreement for clear-cut maritime delimitations with its neighboring countries. In cases where there is an existing competing claim with grey area for exercising law enforcement activities, it is suggested that countries concerned are required to “make every effort ... not to jeopardize or hamper the reaching of the final agreement” in accordance with the article 74 (3) and 83 (3) of the UNCLOS 1982 while following general international law not to aggravate the disputes and escalate tensions among the competing claimants.<sup>84</sup>

## VI. Conclusion

Malaysia's negotiations concerning maritime boundary delimitation are still ongoing, however, the process is complex and time consuming. Malaysia is a nation which resorts to amicable means when it comes to dispute resolution with its counter claimants. To date, it has involved in various cooperative mechanisms in sustaining nations' maritime security such as Malacca Straits Patrol (MSS),<sup>85</sup> Eyes in the Sky (EiS)<sup>86</sup> in the Straits of Malacca and Trilateral Maritime Patrol (TMP)<sup>87</sup> and the Trilateral Air Patrols (TAP) and Eastern Sabah Security Command (ESSCOM) to secure the Sabah eastern seaboard. The efforts of various cooperation and collaborations among the interested countries in the disputed maritime territories as well as in the areas with rampant maritime security threats such as piracy have to be acknowledged particularly for the decrease of piracy incidents to some extent in the Straits of Malacca in recent years. Currently, the immediate attention is required for the delimitation of maritime boundaries in the eastern coast of Sabah, in the Sulu and the Celebes Sea since the area is prone to various security threats including Kidnapping for Ransoms (KfR) by non-state actors coming from the southern Philippines. Since ensuring national security by

protecting territorial integrity and sovereignty of the nation is of paramount concern, Malaysia is encouraged to actively participate in negotiation processes to reach the mutual agreements with every counter-claimant for settling unresolved maritime boundary disputes.

### Notes

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2. Asri Salleh, "Dispute Resolution Through Third Party Mediation: Malaysia and Indonesia," *Intellectual Discourse* 15(2) (2007), 147–165.

3. Vivian L Forbes and Mohd Nizam Basiron, "Unresolved Maritime Boundaries and Implications for Maritime Security in Southeast Asia," *MIMA Bulletin*, vol. 17 (1) 2010, 3.

4. Mary George, "Implementation of the United Nations Law of the Sea Convention in Malaysia," in Seokwoo Lee and Warwick Gullett (eds.), *Asia-Pacific and the Implementation of the Law of the Sea* (Leiden: BRILL-Nijhoff, 2016), pp. 78–103, [https://doi.org/10.1163/9789004310711\\_006](https://doi.org/10.1163/9789004310711_006).

5. Amrih Jinangkung, "Maritime Boundary Disputes Among ASEAN Member Countries: Could ASEAN Do Something?" *Opinio Juris: Jurnal Hukum Dan Perjanjian Internasional* 17 (2012). See also Jeffrey J. Smith, "Brunei and Malaysia Resolve Outstanding Maritime Boundary Issues," *American Society of International Law, Law of the Sea Report* 1 (2010).

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9. *Ibid.*

10. UNCLOS 1982, article 83 (4).

11. VCLT, 1969, Article 54—"Termination of or withdrawal from a treaty under its provisions or by consent of the parties: The termination of a treaty or the withdrawal of a party may take place: (a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States."

12. Article 62 (2) of the Vienna Convention on Law of Treaties 1969 states that "a fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty if the treaty establishes a boundary."

13. John G. Butcher and R.E. Elson, *Sovereignty and the Sea: How Indonesia Became an Archipelagic State* (National University of Singapore Press, 2017), <https://doi.org/10.2307/j.ctv1xz0cq>.

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15. <https://www.icj-cij.org/files/case-related/130/130-20080523-JUD-01-00-EN.pdf>, accessed September 7, 2021.

16. *Ibid.*

17. The International Court of Justice, "Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)," May 23, 2008, <https://www.icj-cij.org/en/case/130>, accessed January 30, 2021.

18. Article 61 of the Statute of the ICJ provides that "revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence."

19. The first document is “a confidential telegram sent from Singapore’s top colonial official to the British Secretary of State for the Colonies in 1958 in which the Governor proposed establishing ‘a corridor of international waters’ passing only one mile from Pedra Branca.” According to Malaysia, the telegram signifies that Governor “did not consider the island of Pedra Branca to be part of Singaporean territory.” The second document was a report about a naval incident near Pedra Branca: a British Navy ship could not go to the aid of a Malaysian vessel being followed by an Indonesian gunboat because it was “still inside Johor territorial waters.” Malaysia’s argument was that “military authorities responsible for Singapore’s defense at that time did not view the waters around Pedra Branca as belonging to Singapore.” The third document is a map of naval operations in the Malacca and Singapore straits from 1962 which showed Singapore’s territorial waters as Malaysia argued that “it did not extend to the vicinity of Pedra Branca.”

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21. *Ibid.*

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23. “Singapore, Malaysia Maritime Dispute: A Timeline,” *Channel News Asia*, December 6, 2018, <https://www.channelnewsasia.com/news/singapore/singapore-malaysia-maritime-dispute-port-limits-timeline-11006762>, accessed May 7, 2021.

24. *Ibid.*

25. In 1997, “Singapore’s port limits to the west of Raffles Lighthouse are extended slightly for better regulation of shipping traffic in the vicinity. Until 2018, this was the last time Singapore amended its port limits.” *Ibid.*

26. In 1999, “Malaysia publishes its amended Johor Bahru port limits, which still tracks the territorial sea limits claimed in its 1979 map.” *Ibid.*

27. Federal Government Gazette P.U. (B) 587 “Declaration of Alteration of Port Limits for Johore Bahru Port” dated October 25, 2018 (the “Gazette Notification”), Port Circular No. 88/2018 dated November 11, 2018 (“PC 88/2018”), and Notice to Mariners No. 164/2018 dated November 22, 2018 (“NtM 164/2018”).

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29. *Ibid.*

30. *Ibid.*

31. Kentaro Iwamoto, “Malaysia in Transition, Singapore and Malaysia Make Major Breakthrough in Maritime Dispute,” *Nikkei Asia*, March 14, 2019, <https://asia.nikkei.com/Politics/Malaysia-in-transition/Singapore-and-Malaysia-make-major-breakthrough-in-maritime-dispute>, accessed October 9, 2021.

32. *Ibid.*

33. Tommy Koh and Jolene Lin, “The Land Reclamation Case: Thoughts and Reflections,” *Singapore Year Book of International Law and Contributors* 1(7) (2006).

34. *Case Concerning Land Reclamation by Singapore in and Around the Straits of Johor* (Malaysia v. Singapore), Award on Agreed Terms, September 1, 2005, para. 23.

35. “Transcript of Minister for Foreign Affairs Dr. Vivian Balakrishnan’s Ministerial Statement on Singapore-Malaysia Relations and Supplementary Questions and Answers During Parliament Sitting,” January 14, 2019, [https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2019/01/Ministerial\\_Statement\\_Transcript](https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2019/01/Ministerial_Statement_Transcript), accessed October 9, 2021.

36. Singapore filed declaration on December 12, 2018. This declaration means that other States Parties to UNCLOS cannot unilaterally commence third party arbitration or adjudication against Singapore in respect of maritime boundary disputes. Singapore likewise cannot unilaterally commence third-party arbitration or adjudication against other UNCLOS States Parties for such disputes. It must be by mutual agreement: both sides have to agree to the terms of third-party arbitration or adjudication in the event that bilateral negotiations are unsuccessful. See United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI6&chapter=21&Temp=mtdsg3&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI6&chapter=21&Temp=mtdsg3&clang=_en#EndDec), accessed October 9, 2021.

37. Anna Malindog-Uy, “Sabah: Malaysia’s or Philippines’?” *The Asean Post*, October 8, 2020, <https://theaseanpost.com/article/sabah-malaysias-or-philippines>, accessed October 9, 2021.

38. See *Agreement Relating to Malaysia: United Kingdom of Great Britain and Northern Ireland and Federation of Malaya, North Borneo, Sarawak and Singapore 1963*. <https://treaties.un.org/doc/publication/unts/volume%20750/volume-750-i-10760-english.pdf>, accessed on 2 December 2021.

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49. *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. 2007.
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54. M. Mohd Rusli, A. Khin Maung Sein, W. Wan Talaat and M. Mustafa, "Erecting Malaysia's Maritime Fence Over the Straits of Malacca and Singapore," *AALCO Journal of International Law*, 3(1) (2014), pp. 111-120.
55. *Ibid.*
56. Excerpted from "Interview with the Rear Admiral Dato' Pahlawan Mior Rosdi Bin Dato' Mior Mohd Jaafar at the Royal Malaysian Navy Base, Kuala Lumpur," April 8, 2015. The original recording of the interview is with the author.
57. Angkasari et al. 2020.
58. "ESSCOM was established under the Preservation of Public Security Regulations 2013. It is headed by Sabah Chief Minister and assisted by a chief executive officer, who will be a member of the public and be responsible for coordinating and safeguarding the functions and activities of the security forces and government departments and agencies in implementing all initiatives in ESSZONE."
59. Eastern Sabah Security Zone (ESSZONE) (Malay: Zone Selamat Sabah Timur) was launched on March 25, 2013, by the Prime Minister, Datuk Seri Najib Tun Razak. ESSZONE covers 10 districts of the east coast of Sabah, namely Kudat, Kota Marudu, Pitas, BCS, Sandakan, Kinabatangan, Lahad Datu, Kunak, Semporna and Tawau.
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66. Mohd Hazmi Bin Mohd Rusli, “Pedra Branca: Lost in Borderless Waters,” *The Jakarta Post*, July 13, 2020, <https://www.thejakartapost.com/paper/2021/07/12/pedra-branca-lost-in-borderless-waters.html>.

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71. Excerpted from “Interview with the Rear Admiral Dato’ Pahlawan Mior Rosdi Bin Dato’ Mior Mohd Jaafar” at the Royal Malaysian Navy Base, Kuala Lumpur, on April 8, 2015. The original recording of the interview is with the Author.

72. Vivian L. Forbes and Mohd Nizam Basiron, “Unresolved Maritime Boundaries and Implications for Maritime Security in Southeast Asia,” *MIMA Bulletin* (17)(1) (2010), p. 3.

73. On May 23, 2008, the International Court of Justice (ICJ) determined that sovereignty over Pedra Branca, the largest feature, rests with Singapore whilst Malaysia holds sovereignty over Middle Rocks. Interestingly, the Court did not specifically determine ownership of South Ledge, which is a Low Tide Elevation. This settlement by the ICJ is an important decision that is likely to affect the delimitation of maritime boundaries in the Singapore Strait involving Indonesia, Malaysia, and Singapore. See “Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore),” ICJ Judgment Summary, May 23, 2008, [https://www.kln.gov.my/pbp-icj/images/icj\\_judgment/14506.pdf](https://www.kln.gov.my/pbp-icj/images/icj_judgment/14506.pdf), accessed January 30, 2021.

74. Article 121 (1) of the UNCLOS: “An island is a naturally formed area of land, surrounded by water, which is above water at high tide.”

75. Article 121 (2) of the UNCLOS: “Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.”

76. M. Taylor Fravel, “Territorial and Maritime Boundary Disputes in Asia,” in Saadia M. Pekkanen, John Ravenhill, and Rosemary Foot (eds.), *Oxford Handbook of the International Relations in Asia* (New York: Oxford University Press, 2014).

77. Article 15, the UNCLOS 1982 provision on “delimitation of the territorial sea between States with opposite or adjacent coasts.”

78. “Treaty between the Republic of Indonesia and Malaysia relating to the Delimitation of the Territorial Seas of the Two Countries in the Straits of Malacca,” made on March 17, 1970, in order to delimit the territorial seas of both countries in the Straits of Malacca. See also Mohd Hazmi Mohd Rusli and Lowell B. Bautista, “Drawing Malaysia’s Line Over the Straits,” *Research Online, University of Wollongong*, 2014; Vivian L. Forbes, *Indonesia’s Maritime Boundaries* (Malaysian Institute of Maritime Affairs: 1995), p. 22, <https://doi.org/10.1080/07266472.1995.10878436>.

79. “Treaty Between the Kingdom of Thailand and Malaysia Relating to the Delimitation of the Territorial Seas of the Two Countries,” made on October 24, 1979, to strengthen the existing historical bonds

of friendship between the two countries. The coasts of two countries are adjacent to each other in the northern part of the Straits of Malacca as well as in the Gulf of Thailand. See Also 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.), *International Maritime Boundaries, Malaysia-Thailand (Territorial Sea)* Vol. 1 (Martinus Nijhoff, 1993), 1096–1098.

80. "Border Issues Between Malaysia, Brunei Solved: Official," *People's Daily Online*, November 5, 2015, <http://en.people.cn/90001/90777/90851/6971863.html>, accessed May 4, 2021. See also Salma Yusof, *The Law of Maritime Delimitation and the Malaysian Practice* (Ph.D. Thesis, International Islamic University Malaysia, 2014), p. 241.

81. Eddy Pratomo, "Negotiating Maritime Boundaries," *Journal of Legal, Ethical and Regulatory Issues* (21)(3) (2018).

82. Angkasari et al. 2020.

83. "Singapore, Malaysia Continue Discussions on Implementation of International Court Ruling on Pedra Branca," <https://www.channelnewsasia.com/singapore/singapore-malaysia-continue-discussions-implementation-international-court-ruling-pedra-branca-786206>, accessed on 2 December 2021.

84. Clive Schofield, "Options for Overcoming Overlapping Maritime Claims," *The Journal of Territorial and Maritime Studies* (8)(2) (2021), pp. 21–41.

85. Malacca Strait Patrol (MSP) involves Indonesia, Malaysia, Singapore and Thailand, which "conduct coordinated naval and air patrols while facilitating the sharing of information between ships and the Monitoring and Action Agency (MAA)." The Republic of Singapore Navy (RSN) is hosted the 14th MSP Joint Coordinating Committee (JCC) Meeting from January 15 to 16, 2020, attended by representatives from Indonesia, Malaysia, Singapore, and Thailand. "Singapore Hosts the 14th Malacca Straits Patrol Joint Coordinating Committee Meeting," *MINDEF Singapore*, January 15, 2020, [https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2020/January/15jan20\\_nr2](https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2020/January/15jan20_nr2), accessed January 30, 2021.

86. The Eyes-in-the-Sky (EiS) initiative between Malaysia, Indonesia, Singapore and Thailand provides "coordinated aerial surveillance of the Singapore and Malacca Straits." "Launch of Eyes in the Sky Initiative (EiS)," *National Archive of Singapore*, [https://www.nas.gov.sg/archivesonline/data/pdfdoc/MINDEF\\_20050913001.pdf](https://www.nas.gov.sg/archivesonline/data/pdfdoc/MINDEF_20050913001.pdf), accessed January 30, 2021.

87. The Trilateral Maritime Patrol (TMP) arrangement between Indonesia, Malaysia and the Philippines is to ensure that militant threats such as the Islamic State (IS) do not use the Sulu Sea to gain entry into the countries. TMP also includes joint air and sea patrols by the three nations. TMP also allows the right of hot pursuit within the territorial waters of the three countries. Justin Zack, "Malaysia, Indonesia and the Philippines launch Trilateral Maritime Patrol," *The Star*, June 19, 2017, <https://www.thestar.com.my/news/nation/2017/06/19/malaysia-indonesia-and-the-philippines-launch-trilateral-maritime-patrol/#k2rcjWj1W725s3Pb.99> accessed January 31, 2021.

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