

**MARITIME BOUNDARY AND TERRITORIAL ISSUES WITHIN ASEAN:
HOW CAN MALAYSIA SECURE ITS MORAL AND LEGAL INHERITANCE
WITHOUT AFFECTING THE RELATIONSHIP BETWEEN ASEAN
NATIONS?**

BY

KDR IVAN MARIO ANDREW TLDM

N402304

TIM NUKLEUS PUSPAHANAS

BAHAGIAN OPERASI DAN LATIHAN PERTAHANAN

MARKAS ANGKATAN TENTERA MALAYSIA

INTRODUCTION

1. Malaysia is basically blessed with a stable democratic environment where it enjoys good alliances with members of the Association of Southeast Asian Nations (ASEAN), and with most of the Eastern and Western powers. Nevertheless, it is like any other country faced with internal, regional and global conventional issues ranging from economics to security. Historical unresolved land and maritime border disputes, domestic instability in this region and the will to exercise international rights has placed Malaysia in a time bomb region about to explode and implode (A. Razak, 2001). Furthermore, being in precarious times and in the centre of the most vital waterway linking the east to the west, Straits of Malacca and South China Sea, there are also other non-conventional threats such as piracy, illegal immigrants, human trafficking and terrorism which can impair its moral and legal inheritance and affect its relations with other ASEAN nations.

2. Since independence until the early 1980s, Malaysia's fight was on Communism. Hence, to date its moral and legal inheritance has only been tested on two occasions; the 'Confrontation' with Indonesia in 1963 and most recently the 2013 *Lahat Datu* incursion. Presently, the evolving strategic environment of Malaysia that dominates its security landscape exists in the form of unresolved historical ill-defined territorial and border conflicts, and maritime cross border related illegal activities (Mario, 2014).

AIM

3. This essay will discuss issues with regards to Malaysia's maritime boundary and territorial disputes within Southeast Asia (SEA) and how can Malaysia secure its moral and legal inheritance without affecting its relationship with the other ASEAN nations.

DISCUSSION

PRESENT FACTORS INFLUENCING MALAYSIA'S MORAL AND LEGAL INHERITANCE

4. Maritime boundary and territorial issues have created a profound dilemma of unpredictability and uncertainty for Malaysia and the other SEA country's strategic environment. Although SEA nations have sworn to each other within the framework of ASEAN to not become embroiled militarily with one another, nevertheless the nuances and intricately subjective nature of strategic stability in the region often arouses suspicion within and among ASEAN countries. For this reason, Malaysia which centres her defence

on national interest and territories as its “*fundamentals to sovereignty and independence*”, is affected by the following in order to secure its moral and legal inheritance (NDP, 2010):

a. **National Defence Policy (NDP)**. The NDP dictates that the defence of Malaysia’s geographical interest and territories is divided into 3 areas which stretch from the Andaman Sea, through the Straits of Malacca, Singapore Straits and South China Sea down to the Sulu Sea. However, Malaysia using the guiding principal of Self Reliance and Diplomacy as its primary tool for peace rather than the use of force does not see any threats that can threaten its sovereignty within these 3 areas (Jazlan, 2014). Even if there were to be any, border or maritime disputes, Malaysia is confident that it will not go the full length so as to warrant a full scale war. This is because it believes that all SEA states are committed in resolving disputes in a peaceful manner under the 1976 Treaty of Amity and Cooperation (TAC 1976). Furthermore, being a member of ASEAN, which is a unique organisation that does not have war among its member nations despite certain tense situations, further strengthens its *status quo* approach towards its present military capability in securing its moral and legal inheritance.

b. **Foreign Policy**. Malaysia has attained a very high standard of achievement in its foreign policy since becoming a sovereign country in 1957. It has long practiced non-alignment and has maintained good terms and relations with almost all countries on the basis of equal status and opportunities and the norms of appropriate country to country behaviour. Furthermore, TAC 1976, the ASEAN way of conflict prevention and resolution, and the ASEAN charter that seeks to organise intra-ASEAN relations and cooperation which has also become part of its normative practice and behaviour, has laid a new order for peace and security in the region thus negating its need for military build-up to secure its moral and legal inheritance (Tang, 2014).

c. **Border Disputes**. Malaysia is besieged with 9 maritime demarcation and overlapping EEZ territorial spats with its ASEAN neighbours and more significantly with China (Table 1 and Figure 1). Similarly, the territorial disputes in the waters of South China Sea, through which more than \$5 trillion of maritime trade passes each year, have also roiled relations between China and the other claimants such as the Philippines, Brunei, Vietnam and Taiwan (Xu, 2014). Presently and probably over the next 20 years, the potential exists for the current inter-ASEAN division and

rivalries to evolve into open conflict, particularly if it turns out that vast natural gas and petroleum reserves do exist in the South China Sea (Tangsubkul, 1982).



Figure 1: Topographic location of Disputes in SEA Region.

Source: <https://www.bbc.com/news/world-asia-pacific>.

Ser	Disputes	Brunei	Cambodia	China	Indonesia	Malaysia	Philippines	Singapore	Taiwan	Vietnam
1.	The Nine-dash line area	✓		✓	✓	✓	✓	✓	✓	✓
2.	Vietnamese coast	✓	✓	✓	✓	✓	✓		✓	✓
3.	Sea area north of Borneo	✓		✓	✓	✓	✓		✓	✓
4.	South China Sea Islands	✓		✓		✓	✓		✓	✓
5.	Sea area north of the Natuna Islands		✓	✓	✓	✓			✓	✓
6.	Sea area west of Palawan and Luzon	✓		✓		✓	✓		✓	✓
7.	Sabah area				✓	✓	✓			
8.	Luzon Strait			✓			✓		✓	
9.	Pedra Branca area				✓	✓		✓		
10.	Straits of Malacca				✓	✓		✓		

Table 1. Summary of Disputes in the SEA Region.

Source: www.wikipedia.org/wiki/Territorial_disputes_in_the_South_China_Sea.

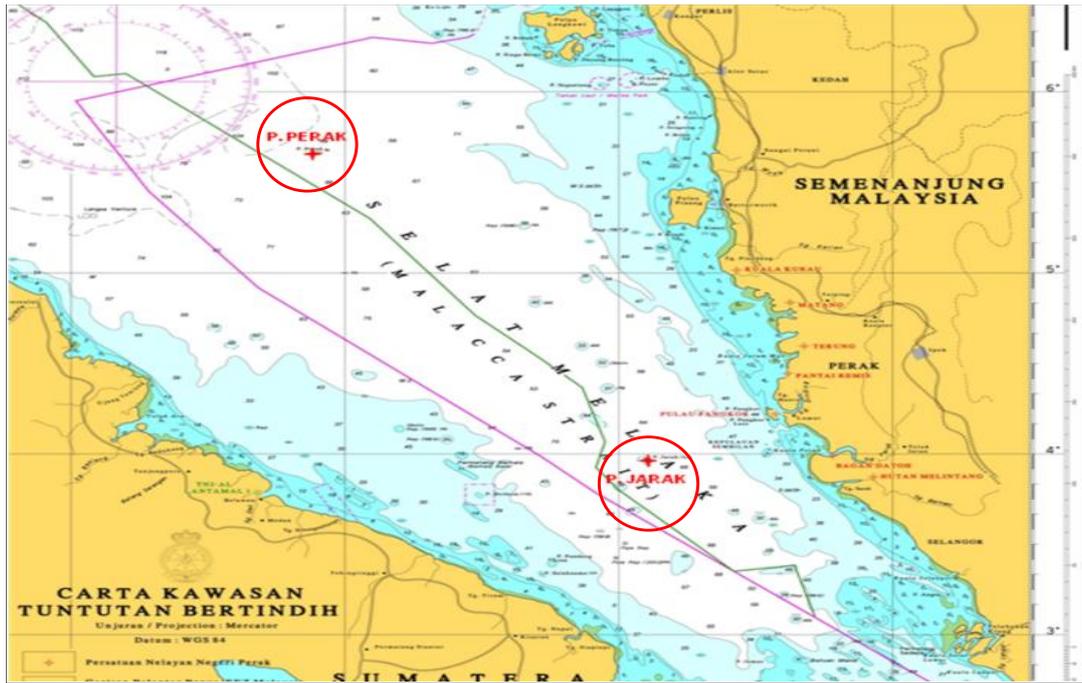


Figure 2. Perak and Jarak Island Dispute in the Straits of Malacca.
Source: www.google.com.my



Figure 3. Ambalat Block Dispute.
Source: www.google.com.my

(1) **Malaysia-Indonesia**. After the Sipadan/Ligitan dispute, Malaysia and Indonesia are presently inundated with two onerous border delineation issues; the ownership of *PERAK* and *JARAK* islands in the Straits of Malacca and the *AMBALAT* Block in the Celebes Sea (Figure 2 & 3). In order to preserve the

nation's moral and legal inheritance, the islands in dispute are militarily occupied by Malaysian Army personnel; with the Royal Malaysian Navy (RMN) maintaining 24/7 presence within the waters surrounding the islands and AMBALAT Block aided by periodical surveillance from the Royal Malaysian Air Force (RMAF). However, this low-level military pressure technique has resulted in sporadic naval skirmishes in response to each other's claims and raises the stakes for a potential armed conflict which will make political compromise over the dispute more problematic.



Figure 4. Malaysia-Singapore - Pedra Branca in South China Sea territorial dispute. Source: Directorate of Mapping Malaysia, Kuala Lumpur

(2) **Malaysia-Singapore**. The 28 year old dispute for sovereignty over Pedra Branca and its outcrops was settled when the International Court of Justice (ICJ) awarded Pedra Branca to Singapore, and the Middle Rocks to Malaysia. While the ICJ ruling settled the sovereignty issue, however, the decision did not demarcate the maritime boundaries in the Straits as Pedra Branca lies north of Middle Rock by a mere 0.6 nm and is situated just about 7.7 nm from mainland Malaysia as compared to 24 nm from the eastern most point of Singapore (Figure 4). Therefore, fractiously as it may seem, it is inevitable that both nations have to assert its moral and legal inheritance by conducting acts of a sovereign nature over the entire islands and its surroundings. This, however, has witnessed maritime forces from both sides encroaching into each other's undesignated area and has caused unwarranted challenges and diplomatic protest over each other's actions.

(3) **Malaysia-Philippines**. Emphatically, Malaysia rejects the Philippines quiescent claim to eastern Sabah, on the basis that the 1878 agreement¹ was a treaty of cession. The agreement, which compels a yearly cession payment of RM 5,300, and the self determination of Sabah to join Malaysian Federation in 1963 (Campbell, 2013) justifies Malaysia's moral and legal inheritance over Sabah. However, the Philippines and more precisely the claimants to the throne of the defunct-Sultanate of Sulu interpret Malaysia's cession as 'lease' and the yearly payment as "rent". Alas, the 2013 *Lahat Datu* incursion by the Suluk terrorist violated the nation's sovereignty, breached the 1878 agreement and hurt bilateral relations. Furthermore, this incursion clearly showed the indifferent priority placed on defence wherein an occasion had to arise and cause lives to be lost for the authorities to place extra resources on defence. This contentious diplomatic issue and the incursion evidently demonstrate the complexity of securing the moral and legal inheritance of Sabah.

(4) **Spratly Islands Issue**. Five of the six claimant nations militarily occupy different islands in the Spratly dispute which further complicates and increases the tension in the disputed area (DuPont, 1998) (Figure 5). In the last two years, China has been constructing islands on top of the reefs to strengthen its claims, extend its territorial seas to gain fishing and resource rights, and probably use it for future military purposes. Separately, the US who takes no position on the disputed claims, demands and vows to continue manoeuvres to protect the Freedom of Navigation and Over-flight for obvious strategic and economic reasons. Beijing however, insist that the building of 'islands' are justified within International Law and has no hostile intent that can constitute a threat to stability and freedom of navigation. Nevertheless, the lure of rich hydrocarbon reserves in the area capped with rising regional energy security concerns and China's intentions to control access to the region has prompt all stakeholders to heighten their claims and military presence on and around their military enforced islands. Compellingly, Malaysia, with enervated

¹ The 1878 Agreement. On 22 January 1878, the Sultanate of Sulu and a British commercial syndicate signed an agreement, which, stipulated that North Borneo was ceded/leased to the British syndicate in return for a payment of 5000 Malayan Dollars per year. On 22 April 1903, Sultan Jamalul Kiram signed a document known as "Confirmation of cession of certain islands", under which he grant and ceded additional islands in the neighbourhood of the mainland of North Borneo from Banggi Island to Sibuku Bay to British North Borneo Company. Additional cession money was set at 300 dollars a year with arrears due for past occupation of 3,200 dollars. The originally agreed 5,000 dollars increased to 5,300 dollars per year payable annually.

strategic options and military capability, has to protect its moral and legal inheritance with a non-confrontational manner in response to China's creeping assertiveness (Tang S.M, 2014).



Figure 5: Topographic location of the Spratly Islands Dispute.
Source: <https://www.bbc.com/news/world-asia-pacific>.

d. **Terrorism**. Concurrently, the following Separatist Movement scenarios has also an influence on Malaysia's strategic environment which dictates its defence requirements, impinge on its relationship with its ASEAN neighbours and subsequently influences its moral and legal inheritance along its border areas:

(1) **Southern Thailand**. The ongoing separatist insurgency in southern Thailand has destabilised the northern border areas of Malaysia because it has been reported that these militants retreat and take refuge in the Malaysian side of the border (Figure 6). Hence, this conflict has caused rift between both nations because the Thai authorities have accused Malaysia in assisting this group. Deniably, Malaysia therefore, has to be cautious about safeguarding the peace between both states and the retreating militants (Mario, 2014).

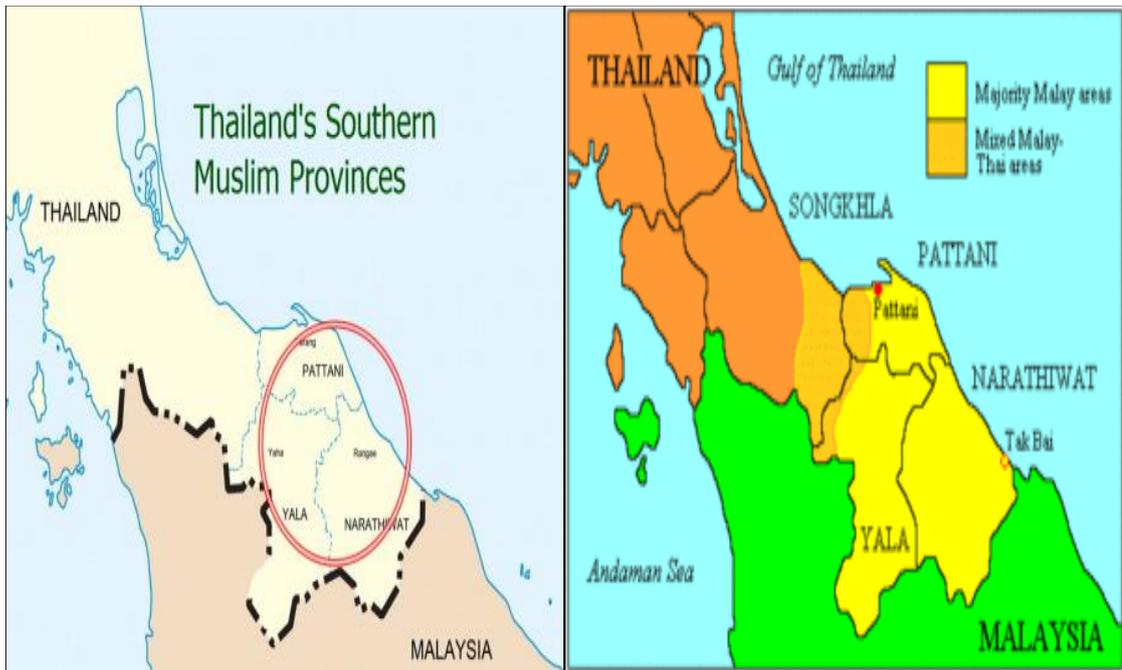


Figure 6. Southern Thailand Separatist dispute location.
 Source: <http://www.expatsforum.com>

(2) **Southern Philippines**. The last 4 decades of lawlessness in southern Philippines have bred an armed generation creating havoc on land and sea. The rebellious Abu Sayyaf group has opted to piracy and kidnapping within the waters off Sabah as its mainstay of their struggle besides claiming autonomy in Mindanao. Furthermore, the Moro Islamic Liberation Front (MILF) who leads the autonomy struggle for the Bangsamoro People has brought bloodshed, unrest and an exodus of illegal immigrants and other cross border crimes into Eastern Sabah. Although the final peace agreement, the Comprehensive Agreement of the Bangsamoro (CAB), between the Philippines government and MILF on 27 March 2014 was intended to end the insurgency, nevertheless, many eventualities have broken out due the interim authority secessionist rift and have affected Malaysia's moral and legal inheritance. Significantly, the 2013 Lahat Datu armed incursion by the southern Philippines Suluk terrorist has further demonstrated the importance of maritime surveillance and effective maritime security along the east coast of Sabah (Figure 7). This therefore undeniably creates the need for Malaysia to step up security and bolster its defence systems in order to insulate the state's borders against these terrorist and thereby maintain its moral and legal inheritance (Campbell, 2013).



Figure 7. Sabah and Philippines borders.
 Source: <https://www.google.com.my/search>

e. **Legal Implications.** There is a positive bilateralism between Malaysia and its ASEAN neighbours due to their common membership in ASEAN and being obligatory to the TAC 1976. However, the thaw in relations which still leaves the boundary disputes largely unresolved will require states to adopt peaceful means of finding an optimal bilateral solution to the border disputes. It is therefore important for all parties to adhere to International Law, UNCLOS 1982 and the 2002 DOC to avoid aggravating tensions beyond the current state.

(1) Via UNCLOS, the EEZ's 200 nm gives coastal states sovereign *rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil* (UNCLOS III, 1982). Unfortunately, defining what the Spratly Islands actually are has been problematic due to the fact that effects of tides and shifting sands in the shallower areas of the Spratlys makes the group consist of anywhere between dozens to hundreds of geographic features. This factor significantly impacts upon the inability of the International Tribunal for the Law of the Sea and, bilateral and multilateral diplomatic efforts to resolve much of anything since the simple definition of what the Spratlys actually are, cannot be established.

(2) Furthermore, the treaty, conversely, does not cover matters of sovereignty, but outlines a system of territory and economic zones that can be claimed from features such as islands, rocks and reefs. Fittingly, because the Convention is beset with generalities which leaves much to be debated with regards to interpretations, the EEZ disputes has to be heard by the International Tribunal for the Law of the Sea - an independent judicial body established by the Convention to sit in judgment over disputes arising out of the interpretation and application of the Convention. Although the Convention and Tribunal have both international and judicial support with regards to the adjudication of disputes, this obviously does not settle all matters because of its inability to influence perceived and real national security interests of the involved states. Therefore, it becomes tantamount for the respective states to resolve conflict through proactive and pragmatic diplomacy where evidently the success in such matters has often been time illusive.

(3) Disappointingly, China refuses to participate and therefore discards this court's jurisdiction, although it has also ratified UNCLOS. Therefore, even if any ruling against China is legally binding, unfortunately it would be unenforceable beyond political pressure because there is no body to enforce such rulings. Similarly, US also holds that nothing in UNCLOS or state practice that negates the right of military forces of any nation to conduct military activities in EEZs without coastal state notice or consent (Bonnie, 2015). Hence, these various and growing strategic legal concerns have put Malaysia's moral and legal inheritances under undue pressure and uncertainty.

SECURING ITS MORAL AND LEGAL INHERITANCE

5. It is obvious that territorial disputes within the Straits of Malacca and South China Sea have created a strategic uncertainty for Malaysia in efforts to secure its moral and legal inheritance. Low-intensity conflict arising from tensions over navigation rights and over-flight rights around the Spratly Islands are creating a palette of potential security concerns in the SEA region for diplomats and leaders the world over. In fact, most of the issues, such as territorial claims, China's assertiveness over the Spratly Islands, the terrorism threats posed by the al-Qaeda linked Abu Sayyaf group in the Philippines, the Southern Thailand unrest, and the latest China-US uproar on the issue of 'Freedom of

navigation' in the South China Sea, are no more seen as national issues, rather transcend boundaries. Malaysia, being at the heart of the region, has to be able to counteract these internal and external strategic and environment adversaries in order to secure its moral and legal inheritance without affecting the relationship with its ASEAN members.

a. **NDP and Foreign Policy**. The NDP which is regarded as an extension to its Foreign Policy underscores Deterrence as its key element in military strategy. However, deterrence has to be credible i.e. able to deter a potential enemy when provoked and prevail when attacked. Therefore, the military strategy, *si vis pacem, para bellum* (if you want peace, prepare for war), has to be the ultimate approach for the development of Malaysia's future towards the defence and protection of its moral and legal inheritance, whilst taking into consideration the budget which patents its priorities. Although the NDP is a capability driven policy, nevertheless external threats which surrounds Malaysia has to be used to gauge the degree of influence it can depict on its future defence and foreign policies, and military capability in securing its moral and legal inheritance (Faudzi, 2014).

b. **Border Insecurity**. Malaysia's moral and legal inheritance is severely affected and dependent on the following issues

(1) **Malaysia-Thailand**. The feasibility of violence escalating and its spill-over affect from Thailand's restive south demands the MAF to beef up its defensive military capability along the Malaysia-Thai border in order to stabilise the apprehension. Then again being members of ASEAN and obligatory to TAC 1976, Malaysia and Thailand should work together for a peaceful bilateral solution to this border exasperation. Meanwhile, Malaysia must endeavour to avoid being accused of aiding these militants while the Thai authorities take radical actions against them.

(2) **Malaysia-Philippines**. The dispute over Sabah still is and will remain a contentious diplomatic issue. Additionally, the Suluk terrorist incursion into Lahat Datu further demonstrates the intricacy of the issue and Sabah's security vulnerability. Consequently, the establishment of the Eastern Sabah Security Command (ESSCOM) to safeguard Sabah's 10 vulnerable coastal districts (Figure 8) sadly has not fully accomplished its strategic requirement as kidnappings are still prevalent. Hence, in order for ESSCOM to accomplish

its mission to insulate subsequent unprecedented acts of terrorism, it has to further enhance its preparedness programmes, deployment of assets, intelligence gathering, and generally the overall security and military capability.

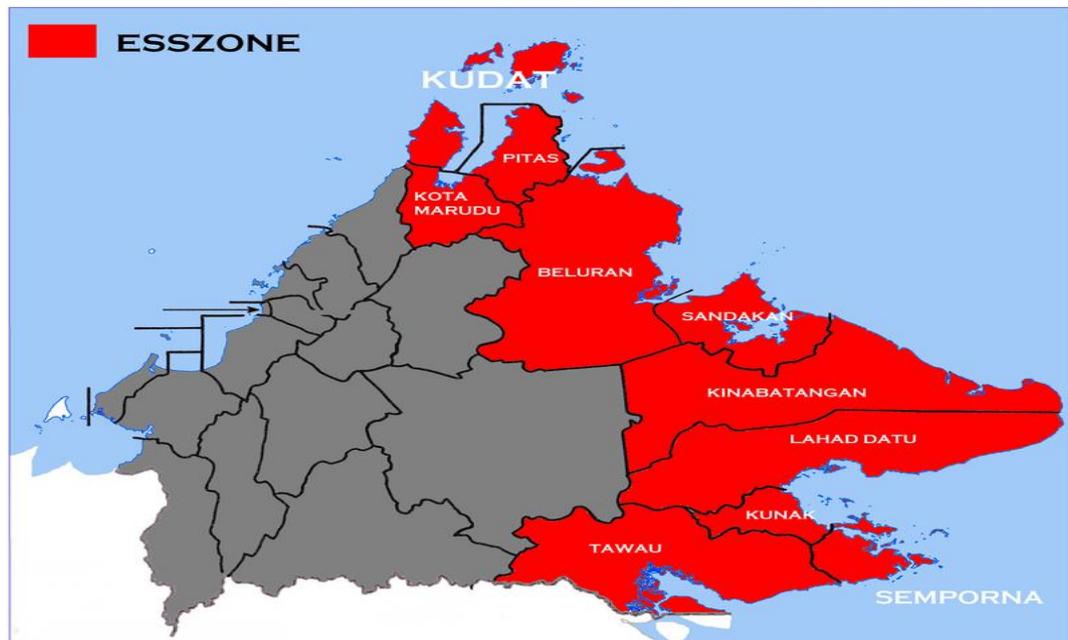


Figure 8. Eastern Sabah Security Command
Source: www.wikipedia.org/wiki/Eastern_Sabah_Security_Zone

c. **EEZ Territorial Disputes.** Predominantly, the security and strategic challenges of SEA is profoundly threatened and growing by the overlapping EEZ conflicts in the South China Sea. The combination of competing national claims, nationalism, advances in seabed extraction technology and recent interpretations of EEZ under UNCLOS all make for a combustible environment that severely affects Malaysia's moral and legal inheritance:

(1) **Malaysia-Indonesia.** Administratively Perak and Jarak islands have to be continuously occupied whilst a defensive posture has to be erected in the vicinity of the Ambalat Block, in order to strengthen Malaysia's moral and legal inheritance over it. In doing so, military antagonism can be the pre-eminent threat to peace in the region as it could potentially escalate into a conflict. Dreadfully, this discordance would involve outside powers as a result of current treaty commitments and other promissory obligations, thus affecting the normalisation of bilateral relations and the pursuance of peaceful cooperation and partnership. Hence, if there cannot be any peaceful settlement to the maritime territorial limits, then Ambalat block suggestively

should be jointly developed, whereas the ownership of the two islands should be determined via bilateral negotiation or arbitration by the ICJ.

(2) Malaysia-Singapore. Although the sovereignty issue was settled amicably, nonetheless the moral and legal inheritance of the maritime boundary off the waters of Middle Rocks and Pedra Branca will still remain an issue as long as the territorial delimitation lines are not finalised (Figure 9). In the mean time, both maritime forces have to maintain presence in the undesignated waters. Therefore, a diplomatic management of navigation rights and delimitation of territorial waters have to be established because the slightest miscalculation can trigger or escalate a rapid unravelling of relations that can have disproportionately larger and unintended consequences in the straits and beyond.



Figure 9. Aerial view of Pedra Branca and Middle Rocks Location.
Source: www.haguejusticeportal.net

(3) Spratly Islands. China's actions of building artificial islands and structures on reefs more than 200 nm south of China, is gaining a foothold and increasing its military capability, capacity and aggressive influence in the South China Sea (Figure 10). These compounded actions are further exacerbated by rising anxiousness about the expansion of China's military might and its regional intent. On the other hand, the US who has no jurisdiction or position on the issues of ownership has to continue its freedom

of navigation operations in the South China Sea in order to show that China's artificial island-buildings are not acceptable as a basis for territorial claims. However, the US interest in the freedom of navigation in order to have an open access to Asia's maritime commons in the South China Sea, with due regards to the respect for international law, increases the vulnerabilities of conflicts. Nonetheless, the "2002 Declaration on the Conduct of Parties in South China Sea (DOC) between ASEAN and China" has placed the risk of conflict in abeyance momentarily (Bateman & Emmers, 2009). Equally, Beijing's firmness on resolving these disputes via diplomacy on a bilateral basis rather than the mechanism for arbitration provided by the UN will be the largest impasse in resolving the issue. Significantly now, all claimants will have to establish military superiority on their territorial and jurisdictional limits in the South China Sea in order to secure future rights to exploit its boundaries plausible oil and gas reserves and abnegate the Chinese expansionism.

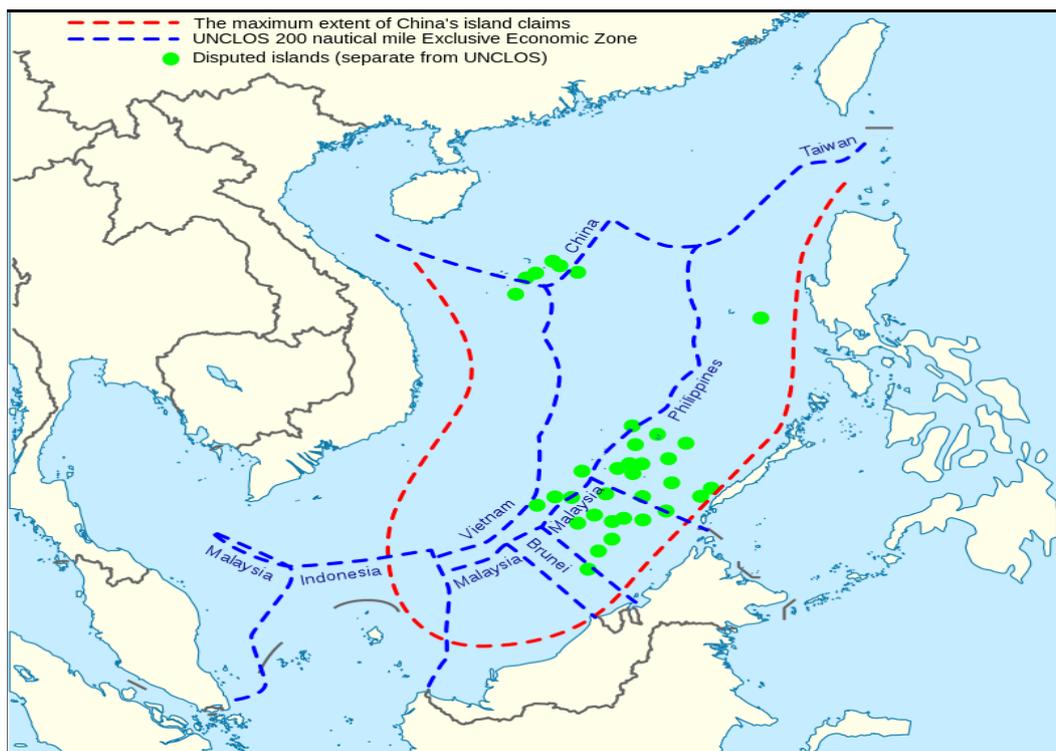


Figure 10: Topographic location of the Spratly Islands Dispute.
 Source: <https://www.bbc.com/news/world-asia-pacific>.

d. **Deterrence**. To support Malaysia's territorial claims, the MAF will need to exert maritime deterrence by maintaining continuous presence around the disputed waters. Although the US has assured to "help safeguard ASEAN maritime asset in the South China Sea" (NST, 2014), nonetheless MAF generally and the RMN

specifically, will have to yet perform its primary duty as a credible deterrent force in its disputed areas. Presently, with an aging fleet of 44 ships and a handful of aircrafts to support the numerous operations in the vast maritime boundary, the MAF's credibility as a deterrent force, to the likes of China, is questionable. Though the submarines are a sub-surface force multiplier, the MAF significantly require additional sophisticated offensive surface and air capabilities to deter any imminent threat. Furthermore, the disputed islands and coast have also to be equally equipped appropriately in order to be able to defend its moral and legal inheritance effectively.

e. **Defence Spending.** Through the NDP, the deterrence posture which amplifies "*shifting from a threat focus to the defence of national interest*" (Mak, 1997) reflects the significance of protecting offshore resources in the EEZ and the coastline. Presently, Malaysia's defence allocation which is based on affordability has to be revised to enable defence procurements to be more comprehensively important also. Evidently, SEA precautionary strategic environment and with maritime base threats becoming more prevalent, the government's adherence to MAF's plans for future capabilities should dictate the precedence for the RMN (as the first line of defence). Additionally, the evolving strategic environment, after the 9/11 tragedy and with the present ISIS threat, primes the importance for all 3 services to be synergised and prudently 'Joint' in defending the country. At the moment, Malaysia's benign environment and comfortable economic growth enables her to focus on developing the socio-economic sector (Chong, 2014). However, the existing border and territorial claims, and the recent deadly incursion should remind the government that enhancing the country's military capability is equally important in order to secure its moral and legal inheritance of its territories.

f. **Confidence Building Measures (CBM).** MAF's EEZ enforcement dimension and its pivotal role in securing the moral and legal inheritance of Malaysia's are paramount and fundamental to its existence. Conducting innumerable weapon practices, countless internal and external bilateral/multilateral war-games and mobilisation exercises, intelligence gathering and show of presence at disputed areas are real time business of preparing for war which entails the MAF to train continuously. Hence, the ongoing Five Power Defence Agreement (FPDA), bilateral exercises with US (CARAT series), Australia, China and other ASEAN members serves as good platforms to enhance this objective and also it's CBM. Accordingly,

efforts at the regional level, especially under ASEAN, should also continue so that the South China Sea and SEA would remain peaceful and enable Malaysia to secure its moral and legal inheritance.

g. **US Military Presence in SEA.** The onset of US involvement in the SEA region was prevalent only in the aftermath of World War II. The strategic fears stirred by early Japanese military success, together with the socio-economic wreckage and destabilizing power vacuums that followed their eventual defeat, impelled the US to assume a much more active posture in the post-war Pacific (McMahan, 1999). Today the US main interests at stake in South China Sea includes maintaining global power, stabilizing the US markets and economic interactions, and securing SLOC and ALOC for a safer future for itself and its allies. Accordingly, its new strategic policy embodied in its Defence Strategic Guidance, places greater prominence on military presence in Asia-Pacific with a leaner military strategy in order to ensure freedom of navigation under international law (Ching, 2012). By exercising the freedom of navigation it directly challenges China's maritime assertive claims, prevents rivalries and hegemonies, promotes stability, encourages prosperity, ensures its access to the region and most importantly balances the role of a modernized China (NDU, 1999). Though Malaysia has strong bilateral ties with the US, the security hedging of China's claims increases the strain of Malaysia's non-confrontational approach which advertently strengthens the leverage of the MAF's and its bargaining tool to augment its military capabilities in securing Malaysia's moral and legal inheritance over islands within its EEZ (Mario, 2014).

h. **China's Policy for the Region.** China has conceded concern about the US presence in East Asia according to its white paper "China's National Defence" released in July 1997. It viewed the extension and corroboration of military alliances as added "factors of instability" to international security (Scobell & Wortzel, 2000). This was in view of the then strengthening alliance between the US and Japanese via the 1996 Joint Security Declaration and the 1997 US-Japan Defence Cooperation. The expanded security cooperation and military access in SEA, and the recent affirmation of US security alliance with Australia (the rotation of US Marines and Air Assets in the northern bases in Australia) and the deploying of a P-8 Spy plane to Singapore, has further strengthen China's concerns that this development gives Washington a useful foothold close to the South China Sea.

Fittingly, China's emergence as a regional power has the potential to challenge the regions state actors and also the US security and economy, in a variety of ways. Though clearly unhappy with US's renewed defence strategy, China claims to abide by International Law and refutes any military agenda in the South China Sea (Ching, 2012).

i. Accordingly, China's preserved blanket claims to sovereignty across the region and strong resistance in handling disputes in an international arena, mires attempts at resolving the crises and intensifies nationalist postures in all countries involved. Although committed in observing UNCLOS III 1982, China's persistence in rejecting any UN mechanisms for arbitration increases the difficulty to resolve the disputes due to dwindling of trust and confidence. Even though, it signed the 1997 China-ASEAN Declaration on the South China Sea, which commits China to settling the dispute over the Spratly Islands in a peaceful manner, nonetheless this commitment does not spell out China's desire to gain control of the islands nor prevent its use of military forces in defending their sovereignty claims on the islands (NDU, 1999). Nevertheless, the 2000 South China Sea "code of conduct" - a non-legally binding CBM (USCIA, 2011) proves insignificantly its commitment in dealing with these issues amicably and enables Malaysia to maintain its moral and legal inheritance over the islands for the time being.

CONCLUSION

6. Malaysia and virtually all the other ASEAN nations ultimate goal is economic prosperity and political stability. Furthermore, economic development and modernization contributes to greater stability and lays the foundation for more peaceful relations with one another. However, territorial disputes and looming flashpoints envisage its strategic environment and national interest which in turn affects its moral and legal inheritance. For now the situation in the South East Asia is somewhat stable, but it must be viewed from a guarded perspective relative to the long term.

7. Accordingly, in order for Malaysia's economy to flourish it has to extend its moral and legal inheritance by defending and strengthening its territorial claims. Therefore, the MAF has to maintain continuous presence around the disputed areas and administratively occupy the islands. Considering the vast maritime area to cover with a diminutive force as compared to China, undoubtedly there must be a considerable military build-up to be a

deterrent force. Fittingly, if nations become increasingly tempted to use military force to settle territorial spats instead of international law then a possible arms race could engulf the disputed region and risk placing South China Sea territorial claimants at each other's throats.

8. Unwittingly, a conflict in the South China Sea would directly affect all ASEAN members and threaten the region's vital SLOC and ALOC. Furthermore, should a crisis occur, the diversion of cargo ships to other routes would harm regional economies as a result of an increase in insurance rates and longer transits. Conflict of any scale in the South China Sea would hamper ASEAN states from benefiting from the South China Sea's unproven potential riches. Evidently, China's growing controversial 9-Dash Line demarcation assertiveness, extensive land reclamation and transforming it into islands, and US "pivot" of focus to the region and its freedom of navigation operations have all further complicated an already complex multi-claimant territorial dispute (Blair & Huntsman, 2015). Overtly, China's *"recent military development and innocent passage into other claimants territorial waters of late is by far basically reaffirming its interest and keeping alive its claims of sovereignty in the area"* (NST, 2014).

9. If conflict is to occur, then it is inevitable that the US would become involved in limited operations to keep the SLOC and ALOC open. However, the US and other claimants are losing confidence in China although it claims to abide by International Law and refute claims of any possible military agenda in the strategic waterways of SEA. Accordingly, China's via its Defence White paper contends that US presence in the region, its enlargement of military blocs and the strengthening of its military alliances in the Asia Pacific region adds "factors of instability" to the continuum of long standing issues (Defencelink, 1998).

10. Conclusively, there is simply too strong a potential for events to spiral beyond the point of manageability. Therefore, positive engagement by all players is essential to ensure long-term regional stability. It also requires light trading on behalf of the immediate actors within the region and close scrutiny by major powers both inside and outside of the region. Multilaterally, though existing mechanisms and procedures already exist to promote operational safety among regional armed forces, however, a new arrangement is necessary. Lastly, Malaysia will need to use all its efforts strategically and balance its relations pragmatically to resolve its disputes over territorial sovereignty, South China Sea's land features, rightful jurisdiction over the waters and seabed, and the legality

of conducting military operations within the EEZ, to suit its evolving national interest and in order to secure its moral and legal inheritance without affecting the relationship between ASEAN nations.

References

- A. Razak, Mohamad Najib, (2001). *Defending Malaysia – Facing the 21st Century*, Asean Academic Press Ltd, London.
- Bateman, Sam & Emmers, Ralf (2009). *Security and International Politics in the South China Sea*, (Edited) Routledge, London pg 80 and 85.
- Blair, Dennis & Huntsman, Jon (2015). Commentary: A Strategy for South China Sea. <http://www.defensenews.com/story/defense/commentary/2015/07/13/commentary-strategy-south-china-sea/30084573>. (assessed at 1:17 p.m. July 13, 2015)
- Bonnie, S. Glaser (2015). Armed Clash in the South China Sea. Contingency Planning Memorandum No.14, Center for Strategic and International Studies. www.cfr.org (council on foreign relations press (assessed 2 Jan 16 at 1034H)
- Campbell, Charlie (2013). “Sabah standoff: Diplomatic Drama After Filipino Militants Storm Malaysia”. TIME. Retrieve 6 Jan 2016. <http://world.time.com/2013/02/26/sabah-standoff-diplomatic-drama-after-sulu-militants-storm-malaysia/>
- Ching, Frank (2012). China Pushing Neighbours into Arms of US, NST dated 2 Feb 12, pg 24.
- Chong, Pooi Koon (2014). *Malaysia budget deficit shrinks more than government target*. <http://www.bloomberg.com/news/2014-02-13/malaysia-s-budget-deficit-shrinks-more-than-government-targeted.html> (assessed 21 March, 2014, 10:47 AM)
- Defenselink (1998). Defenselink Publications-East Asia-Pacific Region Security Strategy 1998, p. 18. www.defenselink.mil/pubs/easr98 (assessed on 13 Dec 14 at 1240H)
- Dupont, Alan (1998). *The Environment and Security in Pacific Asia*, p. 31, Oxford University Press, 1998.
- Eaton, K (2014). Lecture on Capability Management in Defence (PowerPoint slide). Cranfield, UK: University of Cranfield.
- Faudzi, M. A (2014). *Malaysian Armed Forces Capability Development*. Lecture from MAF HQ, delivered on 18 Feb 2014 at the MEBM CMID module, NDUM Kuala Lumpur (PowerPoint Slides).
- Hinge, A (2000). Australian Defence Preparedness: Principles, Problems and Prospects: Introducing Repertoire of Missions (ROMINS) a Practical Path to Australian Defence Preparedness. Australian Defence Studies Centre.
- Jazlan, M (2014). *Malaysian Defence Policy and Defence Budgeting*. Notes prepared for MEBM 2014, CMID module, NDUM Kuala Lumpur.
- Mak, J.N (1997). *The Modernization of the Malaysian Armed Forces, Contemporary Southeast Asia*; Jun 1997; Volume 19, Number 1; ABI/INFORM Global.
- Mario, Ivan (2014). Capability Management in Defence. Paper submitted for MSc in Engineering Business Management, University of Warwick, UK.

- Matrade, (2014). *Malaysia's total trade at RM1.36 trillion in 2013 (8 Feb 2014)*. <http://www.matrade.gov.my/en/about-matrade/media/news> (assessed 11 March 2014).
- McMahan, Roberts J (1999). *The Limits of Empire: The United States and Southeast Asia since World War II*, p. 218. Colombia University Press 1999.
- NDP, (2010). Malaysia National Defence Policy. <http://www.globalsecurity.org/military/world/malaysia/policy.htm> (accessed 23 Feb 14 01:22am).
- NDU, (1999). Report on the NDU 1999 Pacific Symposium, p.10 www.ndu.edu/inss/symposim/pacific99/summary.html.
- Noor, Elina (2015). 'Three takeaways from two issues'. New Straits Times dated 12 Jan 15, Pg 16.
- NST, (2014). *US to Protect ASEAN Maritime Assets*. New Straits Times dated 12 Feb 2014, pg 11.
- NST, (2015). 'China's action on Spratlys raises tension'. New Straits Times dated 12 Jan 15, Pg 12.
- RMN Strategic Dept (2014), *RMN Strategic Plan 2013-2020*, Royal Malaysian Navy Head Quarters, Ministry of Defence, Kuala Lumpur.
- Scobell, Andrew & Wortzel Larry M (2000). *The Asia-Pacific in the U.S. National Security Calculus for a New Millenium*. U.S Army War College, 2000.
- TAC, (1976). Treaty of Amity and Cooperation in Southeast Asia; Bali, Indonesia on 24 Feb 1976 (<http://aseansec.org/1217.htm> assessed 26 Feb 14, 10:19AM).
- Tang (2014). Malaysia's Strategic Outlook and Developments in its Defence Policy by Tang Siew Mun, Notes prepared for MEBM 2014 CMID Module, NDUM Kuala Lumpur.
- Tang, S.M, (2014). *A Test of Friendship*. New Straits Times Malaysia, Feb 18, 2014 pg 14.
- Tangsubkul, Phiphat (1982). *ASEAN and the Law of the Sea*. Singapore: Institute of Southeast Asian Studies. 1982. pp. 3-5.
- UNCLOSS III, (1982). Assessed from website at 3 Jan 16 at 1735H. http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- USCIA, (2011). United States Central Intelligence Agency World Factbook. <http://www.cia.gov/cia/publications/factbook/index.html>. 15 Jan, 2011. (assessed on 30 Dec 15 at 1134H)
- Xu, Beina (2014). *South China Sea Tensions*. <http://www.cfr.org/china/south-china-sea-tensions/Updated:May14,2014> (assessed 23 Dec 15 at 1234H)

Figures

<https://www.google.com.my/search?q=konflik+indonesia+malaysia+ambalat+lahat+datu+phillipines>

<https://www.bbc.com/news/world-asia-pacific>.

<http://www.expatform.com/expats/thailand-expat-forum-expats-living-thailand/86834-unrest-deep-south-news.html>

<http://www.tradingeconomics.com>

<http://www.haguejusticeportal.net>

[www.wikipedia.org/wiki/Territorial disputes in the South China Sea.](http://www.wikipedia.org/wiki/Territorial_disputes_in_the_South_China_Sea)

[www.wikipedia.org/wiki/Eastern Sabah Security Zone/ESSZONE_Map.png](http://www.wikipedia.org/wiki/Eastern_Sabah_Security_Zone/ESSZONE_Map.png)