

The Straits of Malacca and Singapore

The Straits of Malacca and Singapore (the Straits) have long played an important role in international navigation. They form one continuous channel that connects the Indian Ocean with the South China Sea and provide the shortest routes between the Middle East and Far East Asia. The channel spans approximately 435 nautical miles which makes it the longest strait used for international navigation in the world.

Three States border the Straits: Indonesia, Malaysia and Singapore, with Thailand in the north bordering the Indian Ocean entrance to the Straits. The narrowest part of the Straits is only 1.5 nautical miles in the Phillip Channel near Singapore.

More than 90 percent of crude oil volumes flowing through the South China Sea in 2016 were transported through the Straits, reaching almost 15 million barrels of oil per day. The Straits are also rich fishing grounds and home to extensive mangrove ecosystems along their coasts. There are maritime boundary agreements covering most, but not all, parts of the Straits. For the most part, littoral States have been able to use bilateral negotiations to create boundaries across most of the Straits. There are, however, some unresolved issues, including the lack of a water column boundary between Indonesia and Malaysia in the Strait of Malacca, and complex overlapping claims that have yet to be resolved around previously contested land features.

Boundaries between Indonesia and Malaysia in the Strait of Malacca

In the Strait of Malacca, Malaysia and Indonesia agreed on a continental shelf boundary in 1969 and a territorial sea boundary in the southeast part of the Malacca Strait in 1990. From the continental shelf boundary agreement, it can be inferred that both countries used a system of straight baselines to enclose all of the islands off their respective coasts to generate the continental shelf boundary. When the continental shelf boundary agreement was negotiated, Indonesia's use of the straight archipelagic baseline system was not recognised by international law. During negotiations of the 1958 United Nations Conference of the Law of the Sea, Indonesia had unsuccessfully argued for the use of 'archipelagic baselines' to

enclose mid-ocean archipelagos (which are States that consist entirely of island archipelagos, such as Indonesia and the Philippines).

Malaysia's use of straight baselines was also criticised as being excessive, joining its coast with two of its outermost islands in the north Malacca Strait: Perak Island, which is approximately 55 nautical miles from the nearest point of Malaysian land, and Jarak Island, which lies approximately 25 nautical miles from the nearest of Malaysian land—claiming all the waters inside the baselines as internal waters. This use of straight baselines was Malaysia's way of achieving an equal footing in the division of the continental shelf with Indonesia, since the latter had drawn archipelagic straight baselines around its archipelago. If both systems of baselines were ignored and equidistance was measured from the coasts of both countries, Indonesia should have gained more continental shelf than agreed in the continental shelf boundary agreement.

Following the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982, a new exclusive economic zone (EEZ) regime was established, which gives coastal States jurisdiction over resources in the water column and seabed up to 200 nautical miles from the baselines. This means Indonesia and Malaysia will need to delimit the boundary for the water column in the Strait of Malacca above their already delimited continental shelf.

During the negotiations of UNCLOS, Indonesia successfully gained recognition for its proposed archipelagic water regime, legitimising the use of its system of archipelagic baselines that was used as the basis for continental shelf boundary with Malaysia. However, Malaysia's straight baselines system, which Malaysia confirmed on 22 July 2022, is still seen by the international community as excessive and in variance with the requirements of straight baselines under Article 7 of UNCLOS.

In 1996, Malaysia unilaterally declared that it considers the continental shelf boundaries in the north Malacca Strait concluded between Indonesia and Malaysia to represent the boundary for the water column as well. The continental shelf boundary agreement signed in 1969, however, does not extend to the body of water above it, and Indonesia has not conceded to Malaysia's claim. Although Indonesia has accepted Malaysia's use of straight baselines as a basis for the delimitation of the continental shelf in the north Malacca Strait back in 1969, Indonesia does not recognise Malaysia's use of straight baselines to delimit the water column in the area. Thus, the boundary for the water column between Indonesia and Malaysia in the Strait of Malacca is still not decided.

The lack of water column boundary in the north Malacca Strait had been a sensitive issue concerning fishing activities in this area. The arrest and treatment of fishermen who are nationals of one country by the authorities of the other had been a source of tension. Subsequently, in 2012, Indonesia and Malaysia signed a Memorandum of Understanding (MOU) establishing 'Common Guidelines Concerning Treatment of Fishermen by Maritime Law Enforcement Agencies of Malaysia and the Republic of Indonesia' in the disputed area. The MOU operates without prejudice to ongoing negotiations on the maritime boundaries and applies in all 'unresolved maritime boundary areas' between the parties. Under the MOU, the parties agreed that upon encroachment incidents, the parties would inspect the encroaching fishing vessels and request them to leave the area without making any arrests.

Boundaries between Singapore and Malaysia

Singapore and Malaysia concluded the territorial sea boundaries between them in the Strait of Johor in 1995. With the exception of a dispute over port limits in 2018-2019, which was quickly resolved, both countries have mainly respected this boundary.

The maritime boundary between the two countries in the Strait of Singapore, however, has always been a complicated issue. Both Singapore and Malaysia disputed three small features located in the Strait of Singapore: Pedra Branca, Middle Rocks and South Ledge. This dispute was brought in front of the International Court of Justice (ICJ), and the court delivered its decision in 2008. The ICJ awarded the sovereignty of Pedra Branca, a small island with a lighthouse operating on it, to Singapore, whilst awarding Middle Rocks, two uninhabited rocks, to Malaysia. The sovereignty over South Ledge, a low-tide elevation, to the State in the territorial waters of which it is located as per Article 13 of UNCLOS.

Following the decision of the ICJ, both countries established a Joint Technical Committee to resolve the issue of delimitation of maritime boundaries between the territorial waters and the sovereignty over South Ledge. However, the Committee has not been successful in establishing a boundary due to the complicated overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca (Singapore) and Middle Rocks (Malaysia). In 2017, Malaysia was looking to revise

the ICJ's decision on Pedra Branca and later that year, Malaysia submitted a 'separate and autonomous' request for a reinterpretation of the decision. Malaysia asked the ICJ to declare that waters around Pedra Branca, including South Ledge, as the territorial waters of Malaysia, which means that Malaysia should have sovereignty over South Ledge.

However, it was never the mandate of the ICJ to determine the boundaries of the territorial waters of Malaysia and Singapore, and Singapore considered Malaysia's reinterpretation request as 'puzzling', 'unnecessary' and 'without merit'. On 28 May 2018, Malaysia decided to withdraw its application requesting reinterpretation of the 2008 judgment. In a recent visit to Singapore, Malaysia's Prime Minister Anwar Ibrahim acknowledged that the sovereignty issue has been settled by the ICJ, but there are still other issues to be negotiated, including the issue of territorial sea boundary around Pedra Branca, Middle Rocks and South Ledge (see Bec Strating and Troy Lee-Brown, this series)

Boundaries between Indonesia and Singapore in the Strait of Singapore

The maritime boundaries between Indonesia and Singapore in the Strait of Singapore consist of three segments: the western segment, the central segment and the eastern segment. All three concern the delimitation of territorial seas, as the distance between the two States at any point is less than 24 nautical miles. The boundaries of the central segment were the first to be agreed upon in 1973. This boundary extends for 24.55 nautical miles between the south-western and the south-eastern parts of the Strait of Singapore. The boundaries of the western segment were completed in 2009 and followed a median line between Indonesia's Nipah Island and Singapore's Sultan Shoal Island.

The boundaries for the eastern segment are yet to be completed. The eastern segment is divided into parts, the first part is the Changi/Batam segment, and the second part is the Pedra Branca/Bintan segment. The boundary for the Changi/Batam segment, which spans 5.1 nautical miles between Singapore's Changi and Indonesia's Batam Island, was concluded in 2014. However, the negotiations for the Pedra Branca/Bintan segment were complicated. The presence of Malaysia's Middle Rocks between Singapore's Pedra Branca and Indonesia's Bintan means that a tripartite agreement involving Malaysia is required rather than a bilateral

agreement between Indonesia and Singapore.

Boundaries between Indonesia and Thailand

Indonesia and Thailand concluded two maritime boundary agreements in the northern part of the Malacca Strait. The first was a continental shelf boundary agreement concluded in 1971, while a second 1975 agreement extended the continental shelf boundary by an additional 75 nautical miles into the Andaman Sea. The Andaman Sea has always held potential for natural gas and other hydrocarbon exploitation, and the 1975 Agreement included a clause requiring both parties to cooperate 'if any single geological petroleum or natural gas structure extends across the boundary line'. Additionally, both countries are in talks to delimit the water column boundaries in the Andaman Sea and North Malacca Strait.

Conclusion

The littoral States of the Straits of Malacca and Singapore—Indonesia, Malaysia, Singapore and Thailand—have successfully used bilateral negotiations to agree upon maritime boundaries across a large part of the Malacca Straits and Singapore.

However, there are some outstanding issues. Indonesia and Malaysia in the northern part of the Strait of Malacca, for example, have yet to negotiate a water column boundary, and there seems to be disagreement on whether it should align with the existing continental shelf boundary. Negotiating maritime boundaries in the Straits, especially in the Strait of Singapore, was also complicated by the issue around ownership of certain small maritime features. These sovereignty disputes have been resolved through international dispute resolution processes. However, the complex geographical location of these features has proven to be a challenge in completing the maritime boundaries in the Strait.

Finally, the Straits of Malacca and Singapore are extremely busy waterways that are vital for international trade. The heavy traffic in the Straits and the high poverty level of the coastal communities have also made the Straits a lucrative target for armed robbery against ships and other maritime crimes. Thus, establishing order in the Straits is not just about boundary negotiations between the littoral States. It is also important to secure the Straits and ensure the safe transit for all ships as

provided in UNCLOS.

To this end, Indonesia, Malaysia and Singapore have established a cooperative mechanism (Mechanism) that enables user States and other stakeholders to cooperate with the littoral States in enhancing navigational safety and environmental protection in the Straits of Malacca and Singapore. The Mechanism, based on Article 43 of UNCLOS, expressly recognises the role of the International Maritime Organization and welcomes participation from user States, as well as private parties and other stakeholders. Most importantly, the Mechanism addresses the challenges in managing the Straits by involving user States and other stakeholders whilst still respecting the sovereignty of the littoral States.

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Image: Aerial view over the Singapore Strait, east of Singapore. Credit: Bjoertvedt/WikimediaCommons.Fstat