BEYONDPEDRA BRANCA: TIME TO ERECT MARITIME FENCE IN THE STRAIT OF SINGAPORE

[1]MOHD HAZMI MOHD RUSLI, [2]ROMAN DREMLIUGA, [3]WAN IZATUL ASMA WAN TALAAT

[1]Senior Lecturer, Faculty of Syariah and Law, Universiti Sains Islam Malaysia
[2]Associate Professor, School of Law, Far Eastern Federal University, Vladivostok, Russia
[3]Professor, Institute of Oceanography and Environment, Universiti Malaysia Terengganu, Malaysia
E-mail: [1]hazmirusli@usim.edu.my, [2]dreamluck@yandex.ru, [3]wia@umt.edu.my

Abstract - In February 2017, Malaysia announced that it is making an application to revise the decision of International Court of Justice (ICJ) made in 2008 on the sovereignty over Batu Puteh or Pedra Branca, as it is known in Singapore.This island is now part of Singapore. PedraBranca is an outlying rock located 7.7 nautical miles off the Johor coast and about 24 nautical miles off the eastern coast of Singapore towards the opening to the South China Sea. When delivering its judgments in 2008, the ICJ acknowledged that PedraBranca was never terra nullius as it was within the sovereignty of Johor.The ICJ also rejected Singapore's contention that PedraBranca is made up collectively with Middle Rocks and South Ledge. Middle Rocks is now with Malaysia and the ICJ did not make a clear decision on South Ledge. This article discusses the importance of both Malaysia and Singapore to properly define their maritime territories around Pedra Branca and Middle Rocks. As Malaysia is no longer revising Pedra Branca, it is important for both countries to resume negotiations and to finally decide to whom South Ledge belongs to. This article concludes that both nations have to finish off what they started ten years ago – to finally erect maritime fence between the two nations in the Strait of Singapore.

Keywords - Pedra Branca, Sovereignty, International Court of Justice, Law of the Sea

I. INTRODUCTION

In 2008, the International Court of Justice (ICJ) has awarded Pedra Branca, also known as Batu Puteh, a maritime rock located in the South China Sea to Singapore(Tan, 2013). Middle Rocks, located 1 kilometer away from Pedra Branca were placed under Malaysian sovereignty(M. H. bin M. Rusli, Mohamad, & Bautista, 2014). The ICJ however, did not make any clear decision on South Ledge(M. H. M. Rusli, 2018).

The world court rejected Singapore's contention that Pedra Branca, Middle Rocks and South Ledge, collectively should be with Singapore. Recently, the Malaysian government has decided to withdraw its application for revision on Pedra Branca(Ali, 2018). What's next for Malaysia, Singapore and Indonesia in unraveling one of Southeast Asia's most intricate maritime jigsaw puzzle?

II. ONGOING DISPUTE

Pedra Branca, Middle Rocks and South Ledge are maritime features located not too far away from the southeastern coast of the Malaysian state of Johor and the northern shores of Bintan Island, Indonesia. The 1824 Treaty Between United Kingdom and the Netherlands have effectively placed these maritime rocks under British influence during colonial times – later became a subject matter of dispute between two of its former territories, British Malaya (now Malaysia) and Singapore(Perry, 1969).

The ICJ has effectively ended the dispute between Malaysia and Singapore on sovereignty over Pedra Branca(Rothwell, 2012). Before 2008, Singapore could not make any territorial claims in the South China Sea as its main island is totally surrounded by the Malaysian state of Johor on both east and west sides. To the south, Singapore shares its maritime borders with Batam and Bintan islands of Indonesia.

These are the ensuing disputes as a result of the 2008 ICJ decision:
(a) The sovereignty over maritime areas around Pedra Branca;
(b) The question of sovereignty over South Ledge.

These ensuing disputes should be resolved according to the provisions of the United Nations Convention on the Law of the Sea 1982 (LOSC). Both Malaysia and Singapore are State-parties to the LOSC.

Singapore's sovereignty over Pedra Branca also includes maritime areas around the rock. Singapore has rights to claim up to 12 nautical miles of territorial sea from the baseline measured from Pedra Branca as clearly spelt out in Article 121 (3) LOSC. As shown in Figure 2, this would overlap with both territorial seas claimed by Malaysia and Indonesia creating a maritime jigsaw puzzle in that area. Be that as it may, Singapore would not be able to make claims for exclusive economic zone (EEZ) and continental shelf as Pedra Branca is not an island as defined in the LOSC, but a rock that could not sustain human habitation or economic life of its own. Article 121(3) of the United Nations Convention on the Law of the Sea 1982 (LOSC) clearly stipulates that maritime rocks would only generate 12-nautical miles territorial sea for the coastal State to which it belongs to.



Figure 1. Pedra Branca (Singapore) and Middle Rocks (Malaysia)
(Source: Rusli, 2014)

In 2008, the ICJ did not make any clear remarks on sovereignty over South Ledge, a low tide elevation (LTE) maritime feature located not too far away from Middle Rocks as shown in Figure 2.

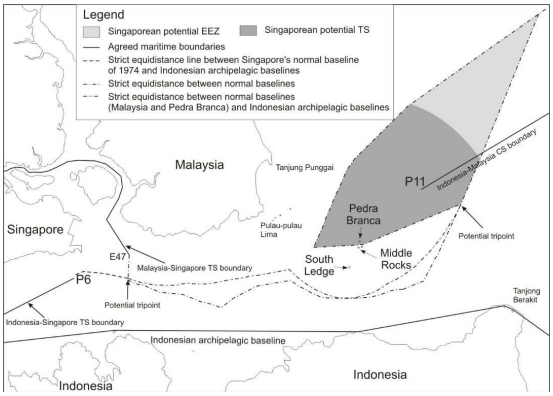


Figure 2: The Location of PedraBranca, Middle Rocks and South Ledge with Singapore's Potential Territorial Sea and EEZ in the South China Sea
(Source: Arsana, 2017)
(Legend- TS: Territorial Sea, CS: Continental Shelf)

However, unlike rocks, the LOSC provides that an LTE may not generate its own territorial sea but could only be used as a baseline to measure territorial sea of the coastal State it belongs to(Llanos, 2002). Till today, South Ledge is still up for grabs. Both Malaysia and Singapore should come up with a way to equitably delineate maritime boundary lines around Pedra Branca and Middle Rocksso as to avoid future disputes between these two nations. In addition, both has to decide on the question of sovereignty over South Ledge. Once this is done, Malaysia and Singapore would subsequently be able to fix maritime boundaries with Indonesia, located not too far down south.

Recently, the Malaysian government has announced a proposed plan to build an artificial island on Middle Rocks to fortify Malaysia's sovereignty in that maritime area, which is part of an important sea lines of communication of the Straits of Malacca and Singapore. However, is there a need for Malaysia to 'fortify its sovereignty' in areas clearly under its rule? As the current government claims itself to be burdened with great financial liabilities, focus should be on reducing government expenditure through sustainable spending(Sidhu, 2018). Instead of constructing an artificial island on Middle Rocks that would obviously cost millions of Ringgit, it would be more viable for Malaysia to utilise its resources to resolve overlapping maritime boundary dispute in that area with Singapore and Indonesia. Malaysia and Singapore should also work together in resolving the question of sovereignty over South Ledge. Now that the Malaysian government has withdrawn its application for revision, PedraBrancaforever remains with Singapore. It is time for Malaysia, Indonesia and Singapore to move forward in resolving boundary disputes in one of the most important chokepoints in the Straits of Malacca and Singapore shipping route. One way or another, this maritime jigsaw puzzle needs to be disentangled.

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