

CHAPTER 1

THE GEOGRAPHICAL SITUATION, HISTORICAL BACKGROUND AND STATUS OF THE STRAITS OF MALACCA

One of the waterways² connecting the Pacific and Indian Oceans, the Malacca Straits lie between the South-western part of the South China Sea and the South-eastern part of the Andaman Sea. It stretches approximately 500 miles from north to south and is by general standards, narrow. At its northern entrance it is roughly 200 nautical miles in width but this narrows southwards to almost 8 miles off Kukup in South Johore, as it enters into the Strait of Singapore.³ The Straits, as can be seen, have a double entrance and function as an inter-oceanic canal.

As the shortest sea-route between the two oceans, the "Straits have always been recognized as an important waterway serving as a channel of commerce and trade between East and West."⁴ It is not surprising therefore that the Straits has an illustrious historical background. It

²the other being the Sunda Straits.

³C.V. Das and V.P. Pradhan, South International Law Problems Regarding the Straits of Malacca, Oil Discovery and Technical Change in Southeast Asia, Field Report Series No. 5, April 1973, p. 2.

⁴The late Tun Dr. Ismail, then Deputy Prime Minister of Malaysia at the 5th ASEAN Ministerial Meeting, Singapore, on 13th April 1972. The Straits Times, April 14th, 1972.

has been the scene of major historic movements of early Hindu colonists, of Arab merchants trading oriental produce to classical and medieval Europe, and of Portuguese, Dutch and British navigators and traders.⁵ Used therefore by all nations since time immemorial, the Straits since its discovery as a vital sea route, has been the object of a constant power struggle among states. The Portuguese jealously guarded this solitary route to ancient Cathay and the Spice Islands for 130 years.

Then came the Dutch who dominated Malacca from 1641 and exercised de facto sovereignty over the Straits during their period of control. The Dutch Government habitually obstructed navigation in the Straits and this brought about vehement protests from the British who were anxious that trade between the Malays and the Prince of Wales Island should continue uninterrupted.⁶

In 1795, as a result of war between Holland and Britain, the British took over all Dutch possessions in Asia including Malacca which was then the centre controlling the Straits. However, towards the end of the war in 1813, Britain considered it safe for her to restore her overseas conquests and consolidate friendship with the Dutch.⁷ The Anglo-Dutch Convention was signed in 1814, and by that year, all Dutch colonies and possessions captured earlier by the British were returned to Holland.⁸ The Dutch however did not return until 1818 when

⁵ Encyclopaedia Britannica, 1970 Edition, Vol.14, p.658.

⁶ Tarling, Anglo-Dutch Rivalry in the Malay World 1780 - 1824. University of Queensland Press, 1962, p.63.

⁷ Ibid, p.71.

⁸ Tregonning, The British in Malaya, The University of Arizona Press, Tucson, 1965 p.146.

they re-asserted their control over Malacca and thus over the Straits. However, despite warnings by the British against abusing the British Government's "generosity" by maintaining free and unmolested passage through the Straits, the Dutch when they returned, still constituted a threat to British trade in the east.

By 1820 however, the Dutch began to feel that Malacca was a commitment it had to dispose of. The British, realising the dangers and disadvantages of the fact that all military and naval bases of the Straits of Malacca were exclusively in the hands of the Dutch Government, began negotiations with the Dutch. These negotiations culminated in the Anglo-Dutch Treaty of 1824. This Treaty besides fixing the respective spheres of influence of the two powers also adopted the principle of freedom of trade and navigation of the nationals of the two states and of the natives in the area. However, no mention was made of the extent of territorial seas and areas of territorial sovereignty or of the right of passage of vessels of third states. Provisions regarding the use of the Straits were made only in relation to the nationals of the two powers and the natives of the region. Because the Treaty cannot be regarded as establishing the status of the Straits,⁹ and by virtue of the fact that the Dutch and British were (and still are) protagonists of the

⁸Tregonning, The British in Malaya, The University of Arizona Press, Tucson, 1965, p.146.

⁹The main purpose of the Treaty had been to settle the differences existing between the representatives of the two countries, and to plan for the future in such a way that there would be little risk of further trouble between them. The provisions were not exhaustive and were insufficient to establish the status of the Straits in international law.

canon shot rule and the principle of freedom of the oceans, the status of the Straits would fall to be governed by the customary international law before 1824 which recognised the freedom of passage through the Straits.¹⁰

¹⁰ Shaw, K.E., "The Juridical Status of the Malacca Straits and its relation to Indonesia and Malaysia," in The Straits of Malacca : in relation to the Problems of the Indian and Pacific Oceans. University Education Press, Singapore, 1973, p.15.