THE PROPOSED JOHOR-RIAU LINK: A TUNNEL TO NOWHERE?

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Abstract: Peninsular Malaysia and the Indonesian island of Sumatra are separated by a narrow funnel-shaped waterway of the Strait of Malacca. Plans have been made to link Sumatra and Peninsular Malaysia through a bridge or a tunnel, with the objectives of boosting trade and tourism activities in the region. Nevertheless, as the proposed bridge would span across the Strait of Malacca which is now one of the world's busiest maritime chokepoints, this proposed project may face objections from the international maritime community. As an alternative, a suggestion has been made of constructing the Johor-Riau Link by tunneling the Strait instead. This article examines the positive and negative economic, political and legal implications should the Johor Riau Link project is carried out. This article concludes by reiterating that both Malaysia and Indonesia are not prepared for the construction of Johor-Riau Link, at least not at the current point of time.

Keywords: Law of the Sea, Strait of Malacca, Shipping, Economic Sustainability, Legal Implication

Introduction

Plans have been mooted to construct either a bridge or a tunnel to link Malaysia and Indonesia. The proposed bridge may hamper safe shipping through the Strait of Malacca, an important shipping route which accommodates more than 70, 000 vessel movements annually.[5] Consequently, a proposal has been put forward to construct a tunnel, instead of a bridge to connect Kukup in Johor, Malaysia to Pulau Karimun in Riau, Indonesia. The proposed project is named the Johor-Riau Link. Once completed, the Johor-Riau Link will obviously result to any of these two circumstances; linking or breaking the region.

The Proposed Bridge

The groundwork for the project started since 2006 and studies show that the bridge project is technically feasible.[6] If the project is carried out, the bridge is estimated to cost US$12.5 billion. The Import-Export Bank of China has agreed to finance 85% of the total cost of the bridge project.[7] This proposed 127.92km long bridge is said to be

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[5] Mohd Hazmi bin Mohd Rusli, 'Protecting vital sea lines of communication: A study of the proposed designation of the Straits of Malacca and Singapore as a particularly sensitive sea area' (2012) 57 *Ocean & Coastal Management*

[6] The Star Online, 'CM: Bridge Over Strait Good for Trade and Tourism' (2009) *The Star Online* <http://thestar.com.my/news/story.asp?file=/2009/8/19/nation/4548353&sec=nation>

[7] Yong Yen Nie and Wahyudi Soeriaatmadja, 'China EXIM Bank to Fund Most of Malacca-Indonesia Bridge Project', *Jakarta Post* (Singapore), 2013 <http://www.thejakartapost.com/news/2013/10/18/chinas-exim-bank-fund-most-malacca-indonesia-bridge-project.html>

capable of fostering new economic opportunities between the two countries particularly in stimulating trade and the tourism industry.[8] Malaysia will undertake to build 48.68km of the bridge while Indonesia will construct the remaining 79.24km.[9]

Navigation through Straits used for International Navigation

As guaranteed in the United Nations Convention on the Law of the Sea 1982 (LOSC), the transit passage regime is applicable in straits used for international navigation between one part of the high seas or an EEZ and another part of the high seas or an EEZ[10] that have been completely amalgamated into the territorial seas of the bordering States with the result that there is no EEZ or High Seas corridor through them[11], as mentioned in Articles 37(1) & 38 of the LOSC. Examples of straits under this category include the Straits of Malacca and Singapore.[12]

This regime of passage through straits used for international navigation established by Part III of the LOSC applies only to ensure smooth navigation of all ships, vessels and aircraft and does not in any way affect the legal status of the waters forming such straits and the coastal State's exercise of sovereignty over the straits.[13] This regime includes both rights of all types of foreign ships or aircraft to navigate or to fly above straits used for international navigation, even though the straits may form part of the territorial sea of another State.[14]

In exercising the right of transit passage through straits used for international navigation, ships and aircraft must proceed without delay and refrain from activities that may compromise the security of the coastal State.[15] States bordering straits are strictly not permitted to hamper such a passage and as State parties to the LOSC, Malaysia and Indonesia are expected to be bound by this legal requirement.[16]

Disrupting Shipping Traffic

The construction would definitely have the effect of closing down a large portion of the navigable areas within the Strait of Malacca, thus, hampering traffic flow.[17] The construction and presence of the bridge with its many concrete pillars would cause difficulty for large container vessels and oil tankers navigating through this area. Slower movement of shipping traffic would cause congestion in the Strait and this may eventually lead to maritime accidents. Spills of oil, chemical and noxious substances from such accidents could jeopardise the sensitive marine

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[8] R.S.N. Murali, 'Hope for bridge over Malacca Straits', *The Star* (Kuala Lumpur), 2014 <http://www.thestar.com.my/News/Nation/2014/01/12/Hope-for-bridge-over-Malacca-Straits-Denmarks-expertise-raises-enthusiasm-to-revive-48km-link-to-Dum/>

[9] Mohd Hazmi bin Mohd Rusli, 'Straits of Malacca and Singapore: Ensuring Safe Navigation' (2011) (131/2011) *RSIS Commentaries*

[10] See 1982 LOSC Art 37.

[11] Naoya Okuwaki, 'Improving Navigational Safety Governance in Straits of Malacca and Singapore' (Paper presented at the International Symposium on Safety and Protection of the Marine Environment of the Straits of Malacca and Singapore, Kuala Lumpur, 2007), 17-19; Sam Bateman, 'The Regime of Straits Transit Passage in the Asia Pacific: Political and Strategic Issues' in Donald R. Rothwell and Sam Bateman (eds), *Navigational Rights and Freedoms and the New Law of the Sea* (Kluwer Law International, 2000) , 94-98.

[12] Jon M. Van Dyke, 'Transit Passage Through International Straits' in Aldo Chircop, Ted L. McDorman and Susan J. Rolston (eds), *The Future of Ocean Regime-Building: Essays in Tribute to Douglas M. Johnston* (Martinus Nijhoff Publishers, 2009) , 177-232.

[13] See 1982 LOSC Art 34(1); Markus J. Kachel, *Particularly Sensitive Sea Areas: The IMO's Role in Protecting Vulnerable Marine Areas* (Springer, 2008), 75-78.

[14] See 1982 LOSC Art 38(1)

[15] See 1982 LOSC Art 39(1) (a) & (b).

[16] See 1982 LOSC Art 44.

[17] Mohd Hazmi bin Mohd Rusli, 'Bridges Across Critical International Shipping Ways: A Study of the Proposed Strait of Malacca Bridge' (2012) 2012(1) *China Ocean Law Review* .

environment of the Straits of Malacca and Singapore.[18] It would also mean that shipping transits would take longer time, translating into higher shipping costs resulting in the increase of prices for products sold in markets worldwide[19].

This was the fear expressed by the maritime community when Denmark and Sweden were contemplating to build the Oresund Bridge over the Oresund Strait in 1995. Denmark and Sweden are parties to the LOSC and are obliged to ensure ships may navigate safely through their territorial seas, as explained earlier in Articles 37, 38 and 44 of the LOSC. Germany submitted a proposal to the International Maritime Organization (IMO) to suspend the construction of the said bridge. As a compromise, Sweden suggested that the bridge should be designed in two features; half a bridge and half a tunnel which eventually resulted in the increase of the construction expenditure of the bridge to three times more than the cost that was budgeted for in the original plan. This would most probably be the fate of the proposed Strait of Malacca Bridge should this project takes off.

The Proposed Johor-Riau Link

As an alternative to this bridge, a tunnel plan has also been mooted as a more viable option to link Malaysia and Indonesia without disrupting shipping traffic in the Strait of Malacca. This project is said to be more cost-effective and viable at a cost of about RM15bil.[20] The northern entrance of the tunnel is planned for construction in Kukup, Johor while the southern end will be erected in areas near Tanjung Balai in Pulau Karimun, Indonesia.

The tunnel is not a stand-alone infrastructure in the Johor-Riau link project as it will be complemented by a number of bridges to be built connecting Pulau Karimun and the islands in the Riau province all the way towards Kuala Kampar, Pelalawan, a district on the island of Sumatra. This combined tunnel-bridge infrastructure from Kukup to Pelalawan is said to reach 40kms in length, 17.5kms of which being the tunnel.

Map 1. The Proposed Johor-Riau Link
(Source: Modified from GoogleMaps)

The construction of this 17.5km tunnel would take up to five years to complete and will be the first undersea link connecting two countries in this region without disrupting the busy navigational traffic through the Strait of Malacca. Being located in the joint-co-operation triangle of Singapore-Johor-Riau (SIJORI), this project would facilitate economic growth of both Malaysia and Indonesia as the Riau province does not only possess considerable

[18] Mohd Nizam Basiron, 'Anatomy of an Oil Spill' (2010) 17(3) *MIMA Bulletin*

[19] Shigeki Sakamoto, 'Non-State Actors' Role in the Co-operative Mechanism for the Straits of Malacca and Singapore- Seeking to Substantiate UNCLOS Article 43' (Paper presented at the International Symposium on Safety and Protection of the Marine Environment in the Straits of Malacca and Singapore, Kuala Lumpur, 2008)

[20] 'Johor-Riau Link on the Cards', *The Star* (Kuala Lumpur), 2014

oil and natural gas reserves, it is also home to the biggest palm oil plantation in Indonesia, some of which are owned by Malaysian companies.[21]

At the moment, this proposed plan is still at the stage of infancy with further research being made to further examine the economic and engineering viability of such a mega project.

Road Transportation Tunnels

Malaysia has the experience of building tunnels for road transportation. The largest tunnel construction project in Malaysia's history was the Stormwater Management and Road Tunnel (SMART) project that was opened for traffic in 2007 after four years of construction. SMART Tunnel is Malaysia's pride as it is the longest multi-purpose tunnel in the world, both for channeling storm water and reducing traffic problems in Kuala Lumpur. With a construction cost of RM1.93 bil, the SMART tunnel has the length of 9.7km, with only 4km opened for traffic.[22]

Being an undersea tunnel, the proposed Johor-Riau link may not resemble SMART but may echo the Tokyo Bay Aqua-Line in Tokyo, Japan. Known as the Trans-Tokyo Bay Highway, this bridge-tunnel combination connects the city of Kawasaki and Kisarazu in the Greater Tokyo area with a population of more than 32 million, more than the whole population of Malaysia itself. The overall length of the Tokyo Bay Aqua-Line is 14km, with 9.6km being undersea tunnel, making it the fourth longest underwater tunnel in the world.[23] It was opened on 18 December 1997, subsequent to 23 years of planning.[24] It took Japan 9 years to build this infrastructure with a construction cost amounting to RM37.2 billion. If built, the proposed Johor-Riau link will be 7.9km longer than the Tokyo Bay Aqua-Line.[25]

Is the Tunnel Feasible?

The construction of this tunnel may spark a number of issues that could be controversial. Would the tunnel foster economic benefits for both countries? Would the level of cost involved in constructing the tunnel be justified by subsequent usage? The cost of constructing the tunnel would result in high debt liabilities for both Malaysia and Indonesia which would be passed on to tunnel users in higher tolls. In contrast to the Tokyo Bay Aqua-Line in Japan, both Malaysia and Indonesia are developing States and do not enjoy the relatively high standards of living of Japan. If the toll imposed on the tunnel is too expensive, the public at large may refrain from using it and may revert to using ferries and boats to cross the Strait of Malacca.

Kukup is a strategic location for the tunnel as a number of major cities in Malaysia including Johor Bahru, Melaka, Kuala Lumpur and neighbouring Singapore are not too far away from this fishing town. These cities are inter-connected with world-class highways and quality roads that link them to Kukup. However, Pulau Karimun, with Tanjung Balai as its largest town, is not a similarly strategic site on the Indonesian side as it only has a relatively small population of around 174, 784 in 2013.[26]
Tanjung Balai is neither a major town nor a key tourist destination in Indonesia and is distant from other main Indonesian cities like Jakarta, Surabaya, Medan, Pekanbaru, Palembang and Padang. Tanjung Balai is not served with a good network of highways connecting it with these other cities and these roads are usually not well maintained. Jakarta, Indonesia's largest city is more than 1000kms away from Tanjung Balai while Medan, Sumatra's largest, is situated approximately 700kms away from Pulau Karimun.

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[21] Mohd Hazmi bin Mohd Rusli, 'Indonesia and Malaysia's Tunnel to Nowhere', *Asia Sentinel* (Kuala Lumpur), 2014

[22] 'Terowong SMART diguna 7 April', *Utusan Malaysia* (Kuala Lumpur), 2007

[23] Peter Samuel, *Japan Big New Crossings Can Use Much More Traffic* (1998) Toll RoadNews.com <http://tollroadsnews.com/news/japan-big-new-crossings-can-use-much-more-traffic>

[24] *From the Laerdal Tunnel to the Tokyo Bay Aqua-Line, here are nine of the world's greatest tunnels* (2014) News.com.au <http://www.news.com.au/travel/travel-ideas/from-the-laerdal-tunnel-to-the-tokyo-bay-aqualine-here-are-nine-of-the-worlds-greatest-tunnels/story-fnjpj945-1226989510429>

[25] Mohd Hazmi bin Mohd Rusli, 'The Proposed Johor-Riau Link: A Tunnel to Nowhere', *The Malaysian Insider* (Kuala Lumpur), 2014

[26] Mohd Hazmi bin Mohd Rusli, 'Indonesia and Malaysia's Tunnel to Nowhere', *Asia Sentinel* (Kuala Lumpur), 2014

The Tokyo Bay Aqua-Line is located in a metropolitan area with a population of more than 36 million.[27] The SMART Tunnel in Kuala Lumpur is a road transportation tunnel in the heart of the Klang Valley area that has a population of 7.2 million.[28] It is true that Indonesia's Pulau Karimun having a relatively very small population which may not justify the construction of the Proposed Johor-Riau Link. Nevertheless, with a combined population of more than 8 million, both Johor and Singapore possess a huge population to warrant this project to carry on.[29] The construction of the Johor-Riau Link would further expedite the economic growth in the SIJORI region, ultimately fostering economic growth of Malaysia, Indonesia and Singapore.

Regulating the Construction of the Tunnel

The Proposed Johor-Riau Link route alignment, particularly the undersea tunnel segment falls within the maritime territories of Malaysia and Indonesia. Therefore, the construction of this megaproject would definitely bring about a number of legal issues. Malaysia and Indonesia have defined their territorial sea boundaries in the Strait of Malacca by virtue of a treaty signed on 17 March 1970. This treaty divides the territorial seas of both countries in the Strait of Malacca.[30] A treaty was signed between both nations to delineate continental shelf boundaries in the Strait of Malacca a year earlier in 1969.[31] The seabed boundary line between the two nations coincides with the territorial sea boundary line in most sections of the waterway.[32] Consequently, it is unlikely that issues on maritime boundary limits in areas of the proposed construction may arise between Malaysia and Indonesia.

The construction of the Proposed Johor-Riau link could be likened to the Channel Tunnel Project. Unlike the Tokyo Bay Aqua-Line that was built solely within Japan, the 50.5 km Channel Tunnel spans across the Strait of Dover, connecting Folkestone in Britain and Coquelles, Calais in France.[33] There was no issue of overlapping maritime boundary claims in the Channel Tunnel project as both France and Britain have concluded their maritime boundary delimitation issues in the Strait of Dover in 1988.[34] Construction of the Channel Tunnel began in the same year in 1988 from both sides of Britain and France.

Two years before construction started, the French and the British governments entered into the Channel Tunnel Treaty 1986 (the Treaty). Under Article 10 of the Treaty, Britain and France agreed to establish an intergovernmental commission to supervise the Channel Tunnel project.[35] Should dispute arises, the Treaty allows

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[27] 'China's mega city: the world's largest cities', *The Telegraph* (London), 2011 <http://www.telegraph.co.uk/news/worldnews/asia/china/8278448/Chinas-mega-city-the-worlds-largest-cities.html>

[28] *The Klang Valley has finally arrived to be in a top spot in world business* (2013) The Star <http://www.thestar.com.my/News/Nation/2013/01/02/The-Klang-Valley-has-finally-arrived-to-be-in-a-top-spot-in-world-business.aspx/>

[29] Singapore Department of Statistics, *Statistics: Time Series on Population (Mid-Year Estimates)* (2010) Singapore Government <http://www.singstat.gov.sg/stats/themes/people/hist/popn.html>

[30] Choon-Ho Park, 'Indonesia-Malaysia (Territorial Sea)' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff Publishers, 1993) vol 1, 1029-1038.

[31] Choon-Ho Park, 'Indonesia-Malaysia (Continental Shelf)' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries : The American Society of International Law* (Martinus Nijhoff Publishers, 1993) vol 1, 1019-1028.

[32] Choon-Ho Park, 'Agreement Between the Government of Malaysia and the Government of Indonesia on the Delimitation of the Continental Shelves Between the Two Countries.' in Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries: The American Society of International Law* (Martinus Nijhoff Publishers, 1993) vol 1, 1025-1027.

[33] G Anderson and B Roskrow, *The Channel Tunnel Story* (CRC Press, 2003).

[34] David Anderson, *Modern Law of the Sea: Selected Essays* (Martinus Nijhoff Publishers, 2008), 169.

[35] Eve Darian-Smith, *Bridging Divides: The Channel Tunnel and English Legal Identity in the New Europe* (University of California Press, 1999), 216.

the application of English law or French law to resolve the matter depending in which territories the dispute occurred.[36]

The British government passed an Act namely the Channel Tunnel Act 1987 (the Act) to regulate the construction of the said tunnel.[37] The Act confirms the status of the land and sub-soil up to the frontier of Britain, being affected by the said construction to fall under the administration of the District of Kent where the Law of England applies.[38] As the construction of the said tunnel requires co-operation from the French authorities, Section 11(1) of the Act provides the legal provision for the implementation of any future international arrangements with regards to the Channel Tunnel.[39] The Act also provides for the specific scheduled works for the said project as well as provisions on land acquisition.[40] With proper laws regulating the Channel Tunnel Project coupled with endless commitments displayed by both the governments of Britain and France, the tunnel was finally operational in 1994.

Malaysia and Indonesia may emulate the British and French approach in establishing an inter-governmental commission through a bilateral treaty between the two nations. At the moment, there has neither been any memorandum of understanding (MOU) entered into by Malaysia or Indonesia nor an intergovernmental commission established for the purpose of construction of the proposed tunnel. However, an MOU has been signed earlier in January 2014 between Universiti Teknologi Malaysia (UTM) and Yayasan Amanah Pelalawan (YAP) on behalf of the government of the Indonesian province of Riau to undertake a feasibility study of this megaproject.[41]

Malaysia and Indonesia have yet to decide on the status of this project. However, if this project does take off, both nations should consider enacting laws that resemble the Channel Tunnel Treaty 1986 and the Channel Tunnel Act 1987. This is to allow Malaysia and Indonesia to effectively govern and monitor this project once construction of the tunnel begins from both sides of the Strait of Malacca.

In addition, as Southeast Asia is currently a region affected by human trafficking, it is not entirely unforeseen for the proposed tunnel to be potentially used as a conduit to smuggle human beings, a scenario that took place along the Channel Tunnel in the past. The Channel Tunnel was used by illegal immigrants and would-be asylums to enter Britain illegally.[42] Malaysia is currently battling human traffickers that is using this country as an illegal transit point.[43] Therefore, it is best for Malaysia and Indonesia to consider enacting penal laws to curb the potential usage of the proposed Johor-Riau tunnel for this criminal activity.

Conclusion

The proposed Johor-Riau Link, once completed, may be the first undersea link in South East Asia, generating economic growth particularly in the SIJORI region, a symbol of modern and progressive Southeast Asia. Unlike the proposed Strait of Malacca Bridge, this proposed tunnel would not in any way hamper navigational traffic going

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[36] Ibid.; See Article 19(6) of the Channel Tunnel Treaty 1986.

[37] *Channel Tunnel Act 1987* <http://www.legislation.gov.uk/ukpga/1987/53/contents>.; As stated in Section 1 of the Channel Tunnel Act 1987, this Act is to provide for the construction and operation of a tunnel rail link (together with associated works, facilities and installations) under the English Channel between the United Kingdom and France.

[38] See Article 10 (1) of the Channel Treaty Act 1987.

[39] Section 11 (1) (a) of the Act reads 'The appropriate Minister may by order make such provision as appears to him to be necessary or expedient – for the purpose of implementing the international arrangements, or enabling those arrangements to be implemented'.

[40] *Channel Tunnel Act 1987* <http://www.legislation.gov.uk/ukpga/1987/53/contents>.

[41] Zazali Musa, 'University and Riau Province Further Strengthen Collaboration', *The Star* (Kuala Lumpur), 2014 <http://www.thestar.com.my/News/Community/2014/01/24/Pact-for-development-University-and-Riau-province-further-strengthen-collaboration/>

[42] 'Immigrants Caught in Channel Tunnel', *BBC News* (London), 2001 <http://news.bbc.co.uk/2/hi/europe/1517050.stm>

[43] 'Malaysia an illegal transit point for foreigners', *The Star* (Kuala Lumpur), 2014 <http://www.thestar.com.my/News/Nation/2013/12/11/Msia-an-illegal-transit-point-for-foreigners-Trafficking-victims-arrive-in-KLIA-before-going-to-Aust/>

through the Strait of Malacca, and its construction would be less controversial as it would not violate the provisions of international law of the sea embedded in the LOSC.

Nevertheless, being a megaproject involving two major countries in Southeast Asia, Malaysia and Indonesia have to undergo a number of feasibility studies before moving on to constructing the Johor-Riau Link. Should this project does take off, Malaysia and Indonesia may have to consider enacting laws to regulate the construction and to facilitate the smooth operation of this mega project effectively, learning from the Channel Tunnel experience.

In addition, unless road systems in Sumatra are being upgraded providing a comprehensive bridge link between Sumatra and Pulau Karimun, the planned Johor-Riau Link may not be a feasible gateway as a connector of two major countries in Southeast Asia. The tunnel connecting Kukup to Pulau Karimun may end up linking nowhere. For this reason, it is concluded that Malaysia and Indonesia are not prepared to construct this megaproject, not just yet.

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