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SARAWAK ALTERATION OF BOUNDARIES OF 1954: REVISITING SARAWAK'S CLAIM ON PETROLEUM DEPOSITS ON THE CONTINENTAL SHELF

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ABSTRACT

This article discusses the issue surrounding the government of Sarawak's claim of jurisdiction over the continental shelf adjacent to the state's coast. The ulterior aim is to claim state ownership and rights over oil and gas deposits in the area. The legal premise of their claim is rooted in the state territory that was established before Malaysia was formed in 1963. It refers to the Sarawak Alteration of Boundaries of 1954 (SAB 1954), which proclaimed the extension of the state's borders to include the continental shelf adjacent to its coast, thereby ensuring the state's rights to oil and natural gas in the area. However, based on historical and legal contexts, this law is no longer relevant because the 1954 law had been overruled by the ratification of the 1958 Geneva Convention of the Continental Shelf (CCS1958) under the sanction of the United Nations for governing the continental shelf located in the territorial sea between 3 and 12 nautical miles from the coastal line of coastal states under a nation. It is also important to note that the claim to extend the jurisdiction over the offshore territorial sea between 12 and 200 nautical miles from the coastal line of the state, known as the exclusive economic zone (EEZ), cannot be based on the pre-Malaysia status quo. In actuality, the EEZ had only come into existence in 1982 with the ratification of the United Nations Convention on the Law of the Sea.

Keywords: continental shelf, petroleum deposits, Sarawak Alteration of Boundaries of 1954, Sarawak's claim, territorial sea

INTRODUCTION

One of the contentious issues in the state-federal relations in Malaysian politics surrounds the government of Sarawak's claim to its jurisdiction over petroleum deposits on the continental shelf. It is interesting to observe this

issue, considering the legitimacy of this claim is purely based on a legal premise entirely derived from historical legacy, with particular reference to the pre-Malaysia status quo. The main historical document utilised to define the state territory as a legal premise of Sarawak's claim is the Sarawak (Alteration of Boundaries) Order in Council of 1954 (SAB 1954). This law, in particular, stipulated that the extension of the borders of the state included the area of the continental shelf adjoining the state's coast. The proclamation was to safeguard the state's rights to all the existing natural resources, exclusively for oil and natural gas in the state's continental shelf. As stated in the law, the area would include the territorial sea beyond 3 nautical miles from the state coastal line.

The main claim made by Sarawak is that the state's territory that included the continental shelf exactly adjacent to the state's coast was definitely established before Sarawak became a state within the Federation of Malaysia in 1963. Furthermore, this claim is used as a means to define the special rights and constitutional safeguards of Sarawak as purportedly stipulated in the 1963 Inter-Governmental Committee (IGC) Report and Malaysia Agreement of 1963 (MA63). From this point, the claim is also extended to include the offshore territorial sea known as exclusive economic zones (EEZ), which is between 12 and 200 nautical miles from the state's coastal line.

However, from historical context, this claim is open to dispute. In the 1950s, the International Laws of the Sea was still in the formative stage and the inclusion of the territorial seas into nations was far from being finalised. In fact, these international laws came into existence in 1958 through the ratification of the United Nations. These laws serve as the legitimate means that signify each signatory nation's territorial seas. By that very fact, the extended territorial sea of a signatory nation, better known as the continental shelf, is assuredly subjected to the international rather than the internal laws. The legal standing of this SAB 1954 can even be considered null and void the moment the Laws of the Sea were eventually enforced under the 1958 Geneva Convention of the Continental Shelf (CCS1958) and United Nations Convention on the Law of the Sea 1982 (UNCLOS1982). The territorial sea stipulated by the former was up to 12 nautical miles and decades later, the latter had extended it in the form of EEZ of up to 200 nautical miles. Since the Federal Government of Malaysia, as a nation, has the authority to be the signatory, it certainly has the ultimate jurisdiction over the extended territorial seas adjacent to its coasts. Despite the EEZ having only come into existence with the ratification of UNCLOS in 1982, Sarawak remains committed to upholding the status quo that existed before Malaysia to legitimise its claim. Thus, this article will concisely discuss the extent of the legal premise of Sarawak's jurisdiction claim. Hence, a careful examination of its legal acceptability and admissibility in historical and legal contexts will be presented.

LITERATURE REVIEW

There is an increasing number of writings on the legal aspects concerning the special position of Sabah and Sarawak, which are provided with special rights and constitutional safeguards for their admission into the Federation of Malaysia. All those special rights and constitutional safeguards are listed in Schedule 9 (II) in the Federal Constitution of Malaysia. However, there is a tendency to suggest that the autonomy of Sabah and Sarawak is secured by the supremacy of pre-Malaysia laws. On that account, one of the contentious aspects in state-federal relations, notably Sarawak's claim, is the jurisdiction over the continental shelf that is associated with the rights to explore and exploit the petroleum deposits in the area. It is interesting to observe that the claim is based on the interpretation of the pre-independent (pre-*merdeka*: pre-*merdeka* refers to pre-1963 for Sabah and Sarawak and pre-1957 for Peninsular Malaysia) law as the source of legitimacy. This idea can be found in the writing of Tan Sri Datuk Amar Hj. Mohamad Jemuri bin Serjan, former Federal Court Judge and former State Attorney-General of Sarawak. He argued that, based on Article 3 of the Constitution, the territories of the States of Malaysia are those that came into existence before Malaysia Day on 16 September 1963. Therefore, the territory of the state of Sarawak included the continental shelf area as stipulated in the municipal law of SAB 1954. He claimed that in the constitutional context, the continental shelf was regarded as land, albeit it is covered by the sea that does not "detract from its identity as land (Jemuri 1986, 126).

This view is concurred by Tan Sri J.C. Fong, the former Attorney-General and then former Legal Adviser of Sarawak, who stated that the boundaries of Sabah and Sarawak that had come into existence before Malaysia Day are maintained by virtue of Article 1(3) of the Federal Constitution. This is a 'constitutional basis' for the two states to continue to exercise rights over petroleum found within their territories, including those found offshore (Fong 2008, 98). Furthermore, he cited Article 2(b), which stipulates that "no law may be passed by Parliament to alter the boundaries of a State (and consequently its territory) unless the Legislature of an affected State gives its consent via a law passed by that Legislature" (Fong 2008, 50).

Then, the subject of special rights and constitutional safeguards for Sabah and Sarawak was discussed extensively by Vanugopal (2013). He presented a detailed comparative analysis of the matters contained in the Cobbold Report, IGC Report, and the Federal Constitution. However, he still argued that the pre-*merdeka* status quo is still supreme in any case that comes into contradiction with the Federal Constitution and laws. He believed that in such situations, federal laws are ultra vires and will become null and void in relation to the Laws of Sabah and Sarawak. This view is utilised by Zainnal (2015), who argued that MA63, together with the IGC Report and even the Cobbold Report, is

superior to the Federal Constitution. For that reason, he further argued that the states' jurisdictions over the natural products, notably petroleum, enjoyed by Sabah and Sarawak during the pre-*merdeka* status quo still prevailed, and any constitutional provisions, notably Petroleum Development Act of 1974, against those states' rights are null and void as they are ultra vires against the state law.

Nevertheless, it is a general understanding that those arguments contradict the legal standing in reference to the supremacy of the Federal Constitution and laws. It is pointed out by Faruqi (2012, 72; 2019, 26) who refers to the constitutional provisions, which state that according to Article 162(6) and (7), any pre-*merdeka* law that is inconsistent with the Constitution may be amended, adapted, or repealed by the courts to make it fall in line with the Constitution.

Since 2015, it has become glaringly apparent that Sarawak's claim has given rise to contentions in federal-state relations. Harding (2017) pointed out that to resolve such political tension, the Federal Government could opt for the 'devolution of powers' as demanded by Sarawak. Instead of engaging in the existing legal or historical facts, he chose to propose a new deal that could be struck through political expediency. Although this may have the appearance of ending the contention, an amicable solution can still be elusive. The demands in increasing the state autonomy could escalate and jeopardise the federal system with the possibility of a redesignation of territorial governance. Furthermore, Chin (2019) has highlighted historical grievances among the peoples of Sabah and Sarawak and argued that, should Putrajaya not take heed of the unhappiness, over the long term, there is a real risk of secession or a breakdown in federal-state relations. In this regard, he refers to all relevant concessions allegedly enshrined in the MA63 but are still not fully implemented through executive actions by the Federal Government.

RESEARCH METHODOLOGY

The research method employed in this article is based on qualitative observation. This involves a thorough interpretive process based on textual analysis of the historical and legal governmental documents. For all intents and purposes, a close examination of the SAB 1954 is pivotal in determining the validity of the consciously constructed legal premise that appeared to be substantive as a claim over the jurisdiction of Sarawak's continental shelf and its petroleum deposits. Accordingly, this article relies on extensive primary sources, mostly historical and legal documents. In this regard, the primary source that reflects the official view of the government of Sarawak is derived from the State Assembly Hansard of 9 December 2017, which is used as a basis for state-federal negotiation on the Sarawak Rights as allegedly enshrined in MA63. This is followed by an in-depth analysis of the Geneva Convention and the 1958 Law of the Sea, as derived

from the United Nations Treaties Collection. The interpretation of the subject matter is also complemented by the utilisation of relevant historical documents from the National Archive of the United Kingdom, as shown in the citations and references. Additionally, books, journals, and newspapers are utilised to gather secondary data related to the subject matter.

FINDINGS AND DISCUSSIONS

It is found that the interpretation of the question of state territories, which includes the continental shelf and state jurisdiction over the ownership of oil and gas in the areas, has been based on the pre-independent status quo. However, the key finding here is that the legal premise of the Sarawak claim has been subject to discrepancies since the SAB 1954 cannot be used as a means to legitimise state jurisdiction over the continental shelf and oil and gas resources in the areas. This is because the SAB 1954 cannot simply be used as a legality to define the state boundary before 1963, since this law is not purely an internal law. Instead, it has been subjected to the changing development resulting from the ratification of the 1958 Convention on the Continental Shelf and the 1982 Convention on the Law of the Sea by the United Nations. This means that the continental shelf and high seas are subject to international laws that legitimise the incorporation of the continental shelf into the territories of nations.

In reference to the legalist view proposed by Tan Sri Datuk Amar Hj. Mohamad Jemuri bin Serjan's interpretation of the clause "the territories that come into existence before Malaysia Day" in Article 3 of the Federal Constitution of Malaysia should include the continental shelf as state territories, in accordance with SAB 1954. His interpretation that the continental shelf should also be regarded as land in the constitutional context is entirely misguided, as the continental shelf is distinct from land and constitutes a separate entity. This is because the continental shelf itself is subject to the law of the sea.

Another legalist view, proposed by Tan Sri J.C. Fong, also stated that the boundaries of Sabah and Sarawak, which came into existence before Malaysia Day, are defined by Article 1(3) of the Federal Constitution. His view is simply a general statement, as he did not justify it by referring to any additional legal facts related to the status quo of the state boundary before Malaysia Day. In fact, his statement that Article 2(b), which prohibits the federal parliamentary law from altering the state boundary without the consent of the state legislature, does not apply to the continental shelf since the incorporation of the continental shelf is subject to international laws and falls into the federal jurisdiction, not state jurisdiction. Hence, his view that the petroleum resources found in the continental shelf should fall into state jurisdiction is not legally sound.

Legal Premise of Sarawak's Claim

The official source containing the legal premise of the claim by Sarawak can be found in the motion in the State Legislative Assembly concerning the safeguard for Sarawak tabled by Datuk Amar Douglas Uggah Embas, Deputy Chief Minister and Minister for Modernisation of Agriculture, Native Land and Regional Development of Sarawak on 9 November 2017. The legal premise presented in this motion is primarily based on the interpretation derived from historical documents regarding the formation of Malaysia and the pre-Malaysia status quo. He firstly referred to the motion passed by the State Legislative Assembly on 7 December 2015 that empowered the state government to explore all practical measures under Article VIII of MA63 to pursue complete implementation of the recommendations in accordance with the IGC Report, with the intention to safeguard the special interests of Sarawak (Sarawak State Legislative Assembly 2017, 44).

Accordingly, the state government was given the mandate to establish a specific high-level task force to spearhead negotiations with the Federal Government to realise the demands brought forward by the state government. These demands included all outstanding issues related to the compliance and upholding of the Constitutional safeguards and special rights accorded to the state of Sarawak, in accordance with the explicit terms, intent, and spirit of the MA63 (Ling 2017). Douglas Uggah Embas also stated that the IGC Report on the safeguards for Sarawak and Sabah is part of the Malaysia Agreement and has been incorporated into the Federal Constitution. He argued that for those safeguards that have not been included in the Constitution, Article VIII of the Malaysia Agreement provides that these are to be implemented through executive, legislative and other actions by the Federal and the state governments of Sabah and Sarawak:

> The governments of the Federation of Malaya, North Borneo and Sarawak will take such legislative, executive or other action as may be required to implement the assurances, undertakings and recommendations contained in Chapter 3 of, and Annexes A and B to, the IGC Report signed on 27 February, 1963, in so far as they are not implemented by express provision of the Constitution of Malaysia. (Sarawak State Legislative Assembly 2017, 44–45)

The IGC Report actually refers to the Constitutional Committee to propose all special rights and constitutional safeguards for Sabah and Sarawak to be incorporated into the Federal Constitution of Malaysia of 1963 as the process of amendments to the Federal Constitution of Malaya of 1957 (Inter-Governmental Committee 1963). Accordingly, all the constitutional amendments contained in the IGC Report had been incorporated into Malaysia Bill as Annex A in MA63 (United Nations 1970, 12–88). This bill was then ratified as the Federal Constitution of Malaysia of 1963 on 26 August 1963 (Federation of Malaya 1963). This means that the ratification of this bill took place before the Federation

of Malaysia's inauguration on 16 September 1963. This also means that Article VIII in MA63 had become purely academic since all the provisions in the IGC Report had been incorporated into Malaysia Bill and the Federal Constitution of Malaysia 1963. Article VIII would have become relevant if such assurances, undertakings and recommendations had not yet been incorporated into the Federal Constitution of Malaysia at that time.

However, Douglas Uggah Embas still raised concerns about some important constitutional and financial issues that had yet to be satisfactorily resolved. He further clarified that, in order to reinforce the state's position on these unresolved issues, the state government felt it was incumbent to gather as much documentary evidence as possible to ensure that the state has a strong legal position to facilitate negotiations with the Federal Government. In this respect, he emphasised that it was important to have sight of the original copies of these documents, which are only available in the British National Archives. He informed the House that copies of these important documents had been procured, certified and authenticated. Accordingly, he claimed that there is no doubt that the state is now in a stronger negotiating position following the retrieval and confirmation of the availability of relevant documents (Sarawak State Legislative Assembly 2017, 45). In fact, in July 2017, these documents were obtained when a team of lawmakers led by the State Assistant Minister of Law, State-Federal Relations, and Project Monitoring, Sharifah Hasidah Sayeed Aman Ghazali, was sent to London for this purpose (*The Star* 2017).

Douglas Uggah Embas emphasised the significance of those historical documents in the legal and constitutional context of Sarawak's boundaries prior to it joining the Federation of Malaysia in 1963. He referred to SAB 1954, which he allegedly claimed included the area of the continental shelf with the extension of the state's boundaries. This extension would have included the seabed and subsoil that distinctly lie beneath the high seas connecting to the territorial sea of Sarawak. Accordingly, he argued that this particular law had incorporated the continental shelf as the boundaries of Sarawak before Malaysia Day. He further claimed that the extended boundaries and territorial integrity of Sarawak are protected by Articles 1(3) and 2(b) of the Federal Constitution. He also stated that Britain had purposely defined the boundaries to safeguard the rights of its states to all natural resources, notably petroleum deposits in the continental shelf. He referred to the British official proclamation that states:

> The right of a littoral state to claim sovereignty over the seabed and subsoil adjacent to its coasts in order to control the exploitation of the natural resources therein has become established recently in international practice. Accordingly, the boundaries of North Borneo, Sarawak and Brunei have been extended under the provisions of the North Borneo (Alteration of Boundaries) Order in Council, 1954; the Sarawak (Alteration of Boundaries) Order in Council, 1954 and the Brunei Proclamation to permit the government of these territories

> to exercise jurisdiction over the exploitation of the natural resources of the continental shelf adjacent to their coasts. The status of the High Seas of the waters above the continental shelf is not affected. (Sarawak State Legislative Assembly 2017, 45–46)

In fact, the Sarawak Legislature had gazetted the boundaries of Sarawak since 2005 as follows:

> Territory of the state' means all areas within the boundaries of the state that comprised the territory of Sarawak immediately before Malaysia Day, and includes, by virtue of the Sarawak (Alteration of Boundaries) Order in Council, 1954..., the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial sea of Sarawak. (Laws of Sarawak 2010, 16)

Hence, Douglas Uggah Embas reiterated that the boundaries and territories of the state cannot be altered, by virtue of Article 2(b) of the Federal Constitution, without the consent of the state, which must be expressed through a law passed by the state legislature. He brought up the connection with state's oil mining rights in the continental shelf directly adjacent to Sarawak coast. He stated that the Sarawak government had been granting oil concessions and mining leases for petroleum since the days of the Brooke dynasty. He claimed that evidence from maps found in the UK National Archives in the 1930s showed that the state government had been exercising its jurisdiction over the seabed and subsoil by granting mining leases for the exploration and exploitation of oil in the areas. These areas were later identified as continental shelf and also known as offshore of the state (Sarawak State Legislative Assembly 2017, 46).

The state's legislature had passed the Oil Mining Ordinance 1958 to regulate oil mining that also covered the continental shelf of Sarawak (Sarawak Government Printing Office 1958, 55–56). Douglas Uggah Embas stated that this Ordinance has never been repealed and still stand even after 1963 with specific reference to the period when Emergency Laws were in operation. He stated that after the proclamation of Emergency in 1969, Emergencies (Essential Powers) Ordinances No.7 and 10 were promulgated under Article 150(2) of the Federal Constitution, which have the effect of respectively reducing the limits of the state's territorial sea and the state's boundaries to only 3 nautical miles from its coastline, and extended the Continental Shelf Act 1966 and the Petroleum Mining Act, 1966 to Sarawak. He viewed that these Federal Acts enabled the Federal Government to exercise jurisdiction over the continental shelf of the state and to regulate and control the exploitation of petroleum in the continental shelf. Then, he further explained that the proclamation of Emergency in 1969 was annulled by both Houses of Parliament in December 2011 and by virtue of Article 150(7) of the Federal Constitution, the said Emergency Ordinances had ceased to have effect and the extension of the said Acts to Sarawak affected by the Emergency (Essential Powers) Ordinance, No.10, 1969 also ceased to have effect. However,

he claimed that the Constitutional authority over the issuance of oil exploration or prospecting licenses and mining leases continued to be vested in the state government under Item 2(c) of the state list in the Ninth Schedule of the Constitution of Malaysia and the Oil Mining Ordinance, 1958 (Sarawak State Legislative Assembly 2017, 46).

Ultimately, Douglas Uggah Embas questioned the validity of all relevant Federal Acts concerning the federal jurisdiction over the continental shelf and petroleum resources. These included the Petroleum Development Act of 1974 that gave Petronas the monopoly on oil mining in the continental shelf of Sarawak and Territorial Sea Act, 2012, which reduced the state boundaries from 12 to 3 nautical miles. With exclusive reference to the Territorial Sea Act 2012, he argued that it was passed, without consultation with or approval from the state government, under Article 2(b) of the Federal Constitution. He claimed that the maps and other documents in the British National Archives had proven that while Sarawak was a colony, its territorial sea was already 12 nautical miles. That limit should not be reduced after Sarawak became independent. Following the grant of independence to Sarawak on Malaysia Day by Britain, and the transfer of sovereignty over the then-colony of Sarawak to the Federation of Malaysia by the British Crown, all lands belonging to the Crown became vested in the state, not the Federation. This is expressly provided by Article 47 of the State Constitution (Sarawak State Legislative Assembly 2017, 47–48).

The SAB 1954 and the Inclusion of the Continental Shelf into Sarawak's Territorial Waters

Based on the legal premise presented by Douglas Uggah, it is apparent that the main argument is based mainly on SAB 1954. There are two main provisions in this law. Firstly, paragraph 2 states:

> The boundaries of the Colony of Sarawak are hereby extended to include the area of the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of Sarawak. Secondly, paragraph 3 states: "Nothing in this Order shall be deemed to affect the character as high seas of any waters above the said area of the continental shelf." In addition, its explanatory note states: "This Order in Council extends the boundaries of Sarawak so as to include the continental shelf beneath the high seas contiguous to the territorial waters of the Colony." (UK Legislation 1954)

Regarding this law, five key points require specific attention. Firstly, in reference to all provisions of the law as a whole, it is understood that the boundaries of Sarawak were extended to include the territorial sea identified as the continental shelf. The continental shelf specifically covers the seabed and its subsoil that spreads below the high seas, connecting to the existing

territorial waters and does not include the high seas above them. This implies that the continental shelf and the sea above it in the designated areas were two separate entities and possessed different legal statuses, i.e., the continental shelf had become Sarawak's internal waters while the sea above it remained as international sea. This is on account of the fact that before the proclamation of the SAB 1954, both the continental shelf and the sea above it in the designated area were recognised as international waters. In those days, the territorial sea for a nation was limited to only 3 nautical miles from the coastal line of a coastal nation. In fact, this norm was still in practice in the 1950s (Anderson 2008, 6, 19, 134, 164; Symmons 2008, 27, 51–52). However, although the SAB 1954 did not specify the designated area, it was generally understood that the continental areas referred to were for the territorial sea beyond 3 nautical miles from the state's coastline. Nevertheless, with the absence of a designated area, this claim is obscure and cannot be used as proof of the non-limitation of the distance of the continental shelf.

Secondly, SAB 1954 did not specify the delimitation of the continental shelf beneath the high seas. Indeed, there was a general understanding that the delimitation of the territorial sea to be incorporated into internal waters was 12 nautical miles from the state coastal line (United Nations 1958c, Article 24 para 2). However, there was also a guiding principle for the United Kingdom to adopt the territorial sea delimitation only to 10 nautical miles from the coastal baseline (UK Legislation 1957).

Thirdly, it can be understood that the promulgation of SAB 1954 was regarded as a unilateral proclamation by Great Britain to annex the continental shelf. This signified the proclamation of sovereignty over the continental shelf by Great Britain (Allen, Stockwell and Wright 1981, 672). In other words, Sarawak, being a colony, was subject to this law under the sovereignty of Great Britain and was bound to conform to the law as defined by Great Britain as the central authority. Furthermore, since it is a unilateral proclamation, it cannot be considered internationally legally binding at that time.

Fourthly, the term 'Order in Council' as the source of legislature for the law indicates that the law is actually municipal law (Marston 1996, 22–24). The legal application of the term Order in Council indicates that Sarawak, as a colony, was merely a local government within the British Empire. This means that although the law was intended to define the boundaries of Sarawak, the sovereignty of the continental shelf belonged to Great Britain. It also means that although the SAB 1954 and other similar laws were promulgated to define the territory of the colonies, the sovereignty of the continental shelf under this law belonged to the central government (Lynn 2001, 574).

Lastly, with reference to the legal definition of the term 'High Seas', it distinctively pointed to all parts of the sea that were excluded from the state's territorial sea or the internal waters (United Nations 1958b, Article 1). This means that there was an overlapping legal status quo in the designated areas, of which only the continental shelf was included as internal waters of Sarawak, while the sea above it was not.

The validity and relevance of this law cannot be understood or applied as the internal law of Sarawak or the Federation of Malaysia per se. In fact, it can be seen that this law underwent a changing status quo due to the historical development of international Laws of the Sea, particularly in relation to the incorporation of the continental shelf as a territorial sea into a nation from the 1950s to the 1980s. In this regard, two relevant international laws regulate the incorporation of the continental shelf into a nation's territorial sea, namely the 1958 Geneva Convention on the Law of the Sea and UNCLOS of 1982.

Bearing in mind, the validity and relevance of the SAB 1954 is subject to changing circumstances in the historical development of the law of the sea in relation to the 1958 Geneva Convention on the Law of the Sea. This 1958 Geneva Convention was intended to regulate the law for the extension of the boundaries of the coastal states covering the territorial sea between 3 and 12 nautical miles from their coastal line. The whole convention was actually comprised of four conventions, i.e., the CCS1958, Convention on the High Seas (CHS1958), Convention on the Territorial Sea and the Contiguous Zone (CTSCZ1958) and Convention on Fishing and Conservation of the Living Resources of the High Seas. These four conventions of 1958 should be read together in the context of the High Seas, although the main concern here is the Convention of the Continental Shelf. This is because the continental shelf is also related to the territorial sea and contiguous zone within 3 and 12 nautical miles from the coastal line of the nation-state.

First of all, the CCS1958 does not give the general idea of the distance of the delimitation of the territorial sea from the state's coastal line. Article 1 of the CCS1958 defines the areas as follows:

> For the purpose of these articles, the term 'continental shelf' is used as (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

The definition above essentially identifies the scope of the continental shelf in relation to the coastal nations' rights to exercise their sovereignty over the exploration and exploitation of its natural resources. Furthermore, the signing of the CCS1958 is explicitly for the nations registered as members of the United Nations or otherwise, with special invitation extended to become a Party to the Convention (United Nations 1958a).

The word 'states' identified as members of the United Nations used in the convention actually means 'nation-states' (Hillgrube 1998). In principle, any political entity that possesses international personality or legal identity as a state in international law is eligible for membership in the United Nations (Office of Legal Affairs 1963, 161). In fact, it is clearly stated in this particular United Nations document that Malaysia is recognised as a nation, while Sarawak, together with Sabah (formerly known as North Borneo) and Singapore, are states within the Federation of Malaysia. In other words, it means that those three states are subordinate entities within the nation of Malaysia.

Moreover, the word state in the entire convention refers to the states attributed to nationality. The word nationality can be found in the CHS1958 (United Nations 1958b, Articles 5(1), 6(2), 8(2), 18, 20, and 22(2(C)). This means that all conventions of the Geneva Convention on the Law of the Sea of 1958 can only be signed by a nation, not a subordinate entity within a nation commonly referred to as a state, province, or territory.

Thus, considering the changing circumstances of the historical development in the Law of Sea in 1958, it could be construed that the legality of SAB 1954 had been invalidated by the ratification of the 1958 Geneva Convention of the Law of the Sea. The term High Seas was no longer applicable to the territorial sea between 3 and 12 nautical miles from the coastal states' baselines. Although the main signatory states had not yet recognised the area as internal water at that time, the whole convention in the 1958 Geneva Convention of the Law of the Sea recognised that the territorial sea between 3 and 12 nautical miles was no longer defined as High Seas. This is by virtue of Article 1(1) in the CTSCZ1958 that states "the sovereignty of a state extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast," also known as the territorial sea. In addition to this provision, it is further stipulated in Article 24(2) that the distance of up to 12 miles from the baseline of which the breadth of the territorial sea is measured cannot be extended. This area is known as the contiguous zone (United Nations 1958c, Articles 2, p. 24).

Under these circumstances, both the continental shelf and the sea above it within 3 and 12 nautical miles from the state's coastal line had become internal waters known as 'territorial sea' and the 'contiguous zone' of the state. In contrast, the SAB 1954 only proclaimed Britain's sovereignty over the continental

shelf but not the high seas above it. In short, the 1958 Geneva Convention of the Law of the Sea applies both the continental shelf and the sea above it as a single entity, while the SAB 1954 law stipulates that both components are separate entities.

Furthermore, the government of the United Kingdom had signed the Geneva CCS1958 together with other conventions on the 1958 Law of the Sea on 29 April 1958 (Marston 1996, 13). This means that the United Kingdom had recognised the legal principles of the 1958 Geneva Convention. The 1958 Geneva Convention of the Law of the Sea as a whole was then ratified by the UK Parliament on 14 March 1962 and was enforced by the United Nations on 30 September 1963 (UK Legislation 1963). It is understood that this Parliament Act was limited only to the UK but did not apply to its overseas colonies, including Sarawak. Before the ratification of the Parliament Act, the UK Government had actually maintained a territorial sea limit of only 3 nautical miles (Anderson 2008, 164). This means that from 1954 to 1962, the limit of the territorial sea of 3 nautical miles was still applied to Sarawak despite the proclamation of annexation on the continental shelf by the UK through the SAB 1954. Therefore, since the above-mentioned Parliament Act was limited to UK only, it is evident that the status quo of the limitation of 3 nautical miles for internal waters still stood until the admission of Sarawak into Malaysia in 1963. In fact, despite the promulgation of the SAB 1954, the Cobbold Report of 1962 did not even incorporate the continental shelf in the high seas as part of the state boundaries in the map of North Borneo and Sarawak (Commission of Enquiry, North Borneo and Sarawak 1962, Appendix E).

Consequently, the matter relating to the continental shelf was not included in the IGC Report as the basis for the constitutional amendments to the Federal Constitution of Malaya. This means that the extended territorial sea and all aspects in relation to the continental shelf, including the oil and gas deposits in the extended territorial sea, are not included in the state's autonomy. Therefore, the incorporation of the amendments proposed in the IGC Report, which resulted in the ratification of the Malaysia Bill in the MA63, does not mention the above claim.

Since the CCS1958 can only be signed by a nation, Malaya signed the convention on 21 December 1960 (United Nations 1958a, article 8). Malaya was then succeeded by Malaysia as a member of the United Nations in 1963. With the admission of Sarawak as a state into the Federation of Malaysia, the sovereignty over its continental shelf was directly under the Federal Government of Malaysia. This implies that Sarawak is bound under the constitution and the Laws of Malaysia. This also implies that the SAB 1954 is no longer valid under the Laws of Malaysia, as per the Federal Constitution of Malaysia, which was

enacted in 1963. According to the Federal Constitution, Part IV, Chapter 1, Article 75, "If any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void."

The matter can only be brought into disrepute should it be proven that the jurisdiction in question were to fall under the Borneo State List II of the 9th schedule in the Federal Constitution.

The above historical development shows that the extension of a nation's territorial sea was only up to 12 nautical miles, while sea areas beyond 12 nautical miles were still recognised as international waters. This means that no nation was able to extend its internal waters beyond 12 nautical miles as stipulated in Article 24(2) in the CTSCZ1958. Eventually, the incorporation of the territorial sea into the boundaries of the coastal states beyond 12 nautical miles and the establishment of the EEZ within the territorial sea up to 200 nautical miles is sanctioned under the signing of the UNCLOS of 1982 by Malaysia (Harrison 2011, 27–61; Vidas 2018, 33–61; Shaw 2021, 475–554). This territorial sea is now known as offshore. Hence, it is irrefutable that the existence of the offshore areas and EEZ has no connection whatsoever with the SAB 1954 and pre-Malaysia status quo.

CONCLUSION

In conclusion, the historical legitimacy employed in the issue surrounding the government of Sarawak's claim to the jurisdiction on the continental shelf adjacent to the state's coast is primarily a misinterpretation. This is considered so since the incorporation of the continental shelf adjacent to the state's coast is derived from the 1958 Geneva Convention on the Law of the Sea. This must only be signed by a nation and in this case, it was signed by Malaya, which later became Malaysia. The state of Sarawak has no legal standing regarding the signing of any international laws, as it was then a colony and remains so even as a state within a nation.

Considering the historical and legal contexts, the legal premise based on MA63 and SAB 1954 has been misconstrued. This is simply because SAB 1954 has no connection at all with MA63 since the matter of the continental shelf does not exist either in the IGC report or any part of the MA63.

It is categorically certain that the SAB 1954 was subjected to obscurity due to the changes in the International Law on the Continental Shelf and High Seas in 1958. The SAB 1954 did not conform to the whole Geneva Convention on the Law of the Sea 1958, and the current legal standing is governed by UNCLOS

1982. These two laws and SAB 1954 cannot be read together. In principle, SAB 1954 has been superseded by the 1958 Geneva Convention on the Law of the Sea.

Moreover, it is doubtful that the UK Government still viewed the SAB 1954 as legally applicable after they themselves had agreed to sign the CCS1958. Although the SAB 1954 and other similar laws were not repealed or revoked, it does not cement the fact that it is still valid. Since the SAB 1954 is a unilateral proclamation by Great Britain for its annexation of the continental shelf, it does not mean that it was recognised as part of international law at the time. In fact, similar situations had caused so many obscurities in the legal status of the sea. Hence, numerous discussions on such matters have led to the 1958 Geneva Convention on the Law of the Sea, which sets international boundaries for all nations in the interest of global peace and justice.

The claim that the current state territories, which include the continental shelf, had been established before Malaysia Day is clearly an axiom. It has been widely claimed or supposedly understood that the continental shelf of a state should belong to the state. However, such understanding is false since the continental shelf of any nation belongs to the Federal Government based on international laws. These laws apply to all countries worldwide, without exception. In Borneo, only Brunei has the rights to its continental shelf because Brunei is a nation, unlike Sabah and Sarawak, which are two states within the country of Malaysia. Since the inclusion of the continental shelf and the sea above it exceeding 3 nautical miles can only be realised by a nation under international laws, the sovereignty of the designated sea areas belongs to the central government, which completely and definitively becomes a federal territory.

This means that Sarawak's claim on the state's jurisdiction over the continental shelf and oil and gas in the area is a new demand and cannot be attributed to historical legacy. All negotiations between the Federal Government and Sarawak on this matter should be dealt with as a new deal, which could grant Sarawak a larger proportion of the royalty than the current 5%. In fact, the same provisions should also be extended to other oil and gas producing states in Peninsular Malaysia, notably Terengganu and Kelantan, since all states are also subject to the Petroleum Act of 1974.

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