Developing Malaysia's National Coastal and Marine Strategy: Harmonising State and Federal Legislation

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Introduction

The Malaysian Government is committed to the development of a comprehensive and integrated coastal zone management policy for Malaysia under the Seventh Malaysia Plan (7MP). The 7MP underlined the need for a review of legal provisions that govern the management of coastal resources and related development activities. It recognises multiple use and conflicts that arise in coastal zones, and supports the implementation of an ICZM Policy "to coordinate and rationalise the activities and efforts of the various Federal, State and Local Authorities responsible for planning and managing resources found in the coastal zone".

To meet this obligation, the Economic Planning Unit has commissioned a study for the formulation of a coastal zone management policy. Central to this study, is an analysis of national legislation and international treaties relevant to the coastal zone. Such legislation and international rules affect both institutional and management arrangements for implementation of an effective coastal zone policy in Malaysia.

A lack of integration across sectoral interests and within all three spheres of government with regard to coastal zone management is a well-documented, principal concern. The number of agencies with sectoral management responsibilities that affect the coast, together with the impact of unclear boundaries of responsibility contribute to a lack of integration. Similarly, there is a reluctance amongst government coastal managers and legislators to support the creation of a 'one-stop' agency responsible for all ocean/coastal matters. A centralised 'oceans' agency is generally viewed as unrealistic and unnecessary due to the legitimate interests and responsibilities of multiple spheres of government. Moreover, such disparate interests and responsibilities are clearly enshrined in the Malaysian Constitution.

Harmonisation of laws at the Federal, State and Local Government levels would facilitate continued development and implementation of coastal initiatives by all spheres of government. Central to these initiatives would be cooperative measures to deal with those coastal zone management issues confronting all jurisdictions.

An important challenge that lies ahead is for Malaysia to acknowledge and provide fully both for the benefits and obligations incumbent in our participation as a State party to the *United Nations Convention on the Law of the Sea* (LOSC) and other instruments. A crucial step in meeting this challenge is to understand what needs to be done, by whom, where and when. In order to answer these questions, it is imperative for decision-makers to consider the subtle interaction of all the legislation that influence the use and management of the coastal zone.

Rational for Harmonising State and Federal Legislation

Government coastal managers have come under increasing pressure to deal effectively with coastal management issues. The difficulties they confront are exacerbated by a plethora of laws and regulations implemented by different bodies in furthering legitimate interests and responsibilities. Good coastal management is not simply a matter of conserving the coastal environment or resources, it entails the achievement of a balance between competing uses. Complications arise because no single sphere of government is solely responsible for the management of the coast. Studies have attested that the task of improving coastal zone management in Malaysia, as elsewhere in the world, is a difficult issue for the government to tackle.

Numerous investigations have concluded that there is a need to harmonise national laws to give effect to more efficient management of Malaysia's coastal and/or maritime zones. The absence of domestic laws to give effect to rights and obligations afforded by international law is an impediment to sound maritime enforcement. Countries often encounter difficulties in attaining complete understanding of obligations and responsibilities, or even rights, created by treaties. Thus, a thorough analysis of applicable international conventions to determine what is required of a State Party is an important exercise to be undertaken by relevant implementing agencies.

Some examples

A few of the conventions to which Malaysia is a party have been incorporated into the Malaysian national legislation. The *International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC)* and the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention)* are two of such examples. Both conventions have been given effect to in the *Merchant Shipping (Oil Pollution) Act, 1995* upon Malaysia's ratification of the conventions on 6 April 1995. On the other hand, conventions like the LOSC, which Malaysia ratified on 14 October 1996 (c.i.f for Malaysia on 14 November 1996) and MARPOL 73/78, which Malaysia acceded to on 31 February 1997, have yet to be implemented as national legislation. Some earlier conventions such as the *Geneva Convention on the Territorial Sea and Contiguous Zone, 1958* and the *Geneva Convention on the Continental Shelf, 1958* have been duly adopted into national laws albeit not in whole. In this instance, only particular elements of the Geneva Conventions have been enacted in the *Emergency (Essential Powers) Ordinance, No. 7, 1969* and the *Continental Shelf Act, 1966*.

Since Malaysia is now a member party to LOSC, obligations arising under the 1958 Law of the Sea Conventions are invalidated by new obligations required by LOSC. In other words, provisions of LOSC supersede those requirements stipulated in the 1958 Law of the Sea Conventions. Accordingly, Malaysian national laws which have made reference to the 1958 Geneva Conventions including others which have been promulgated - prior to Malaysia's ratification of the LOSC - to manage Malaysia's coastal and maritime activities would have to be amended to incorporate relevant provisions of the LOSC.

Under international law, a treaty becomes binding on the State that chooses to enter into it. When this happens, the Party State expresses its consent to be bound by the stipulated provisions of that particular treaty - except when the State declares its reservation with regard to specific aspects of the treaty – as espoused by the international law maxim *pacta sunt servanda*. At the domestic level, the State would be required, most often than not, to implement the treaty at the domestic level according to its domestic procedures to bind itself in order to execute rights and obligations provided by the treaty. Article 27 of the *Vienna Convention on the Law of Treaties* provides that: 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. Internal limitations are recognised as an encumbrance towards full implementation of a treaty but, does not exempt the Party State from being bound by the requirements of the treaty.

Ratification and the eventual adoption of these conventions into the national legislation will facilitate and legalise the administration, control and enforcement of maritime activities. At the national level, laws are implemented by several different agencies at the Federal, State and Local

levels. This may lead, and has led, to different interpretation of the laws by implementing agencies. A common interpretation of the provisions of particular laws which require collaboration of different agencies for their implementation may be necessary for effective enforcement of the laws.

A peculiar situation would be the control and prevention of marine pollution offences through the *Environmental Quality Act, 1974* and the *Exclusive Economic Zone Act, 1984*. Enforcement measures are inadequate, if not haphazardly carried out, because there are far too many enforcement agencies operating in the two maritime zones - the 12 nautical mile of territorial waters and the Exclusive Economic Zone (EEZ). Some enforcement agencies have found it difficult to operate in grey areas i.e. in areas where the territorial waters and the EEZ "meet" at which the demarcation of the boundaries are not distinguishable.

The harmonisation of the national merchant shipping laws is another pressing instance. As many of us know, Malaysia administers merchant shipping through three different laws, viz. the *Merchant Shipping Ordinance of 1952* for Peninsular Malaysia, the *Merchant Shipping Ordinance, No. 2 of 1969* for Sarawak and the *Merchant Shipping Ordinance No. 11 of 1960* for Sabah. It is acknowledged that efforts are currently being undertaken to integrate the merchant shipping laws into one Act for application throughout Malaysia.

Agenda 21 in confirming and recognising the rights and obligations of States set forth in the LOSC, recommends "new approaches to marine and coastal area management and development, at the national, sub-regional, regional and global levels…that are integrated in content and are precautionary and anticipatory in ambit." Marine-related treaties often require State Parties to take implementation measures and to harmonise their policies towards the general goal of protecting the marine environment.

It would be reasonable that harmonisation of national coastal or marine-related laws in Malaysia, particularly with regard to the adoption of international conventions into the domestic environment take cognisance of the following:

- identification of significant issues which lack legal measures for implementation;
- identification of current principal legislation providing enabling powers which has yet to make the necessary subsidiary legislation;
- identification of implementing agencies;

- rationalisation of enforcement powers through the national laws;

- thorough analysis of rights, obligations, responsibilities, duties and, liabilities of Malaysia as a Contracting Party to international conventions;

- promulgation of national legislation adopting provisions of the treaties Malaysia is party to, reflecting the rights, obligations etc. required thereof.

We have been often reminded that the current state of implementation of international conventions on marine-related matters in the East Asian countries is far from satisfactory. It is well and good to document a list of 'implementing national laws' but if enforcement of the laws is slack because we do not understand what needs to be done, where we can do it, how do we do it and who amongst us can do it – the objective of achieving a common goal: i.e. to protect and preserve the marine environment whilst simultaneously harmonising the policies therewith - would be futile. We might do well to recognise that implementation of domestic laws and treaties at the national level may be influenced by problems in assessing the implications of the instruments and in effecting implementation. Unclear terms and imprecise definition exacerbate such difficulties.

One other important observation is that many treaties have only come into force within the last ten years or so. Countries in this region which began to define their coastal and ocean policy have to grapple with many newly-emerging principles which might not be translated properly into their own language.

The lack or absence of municipal laws implementing particular treaties pointed to the common failure of implementing agencies to grasp fully the obligations, responsibilities or even rights created by the treaties.[1] The issue becomes more problematic when more than one implementing agency is responsible for the enforcement of the law. Often, implementing agencies and other significant actors interpret the laws to suit and meet their *raison d'être*. This can result in ineffective and inefficient implementation of the law. Thus, a common interpretation of

[1] Other factors include lack of scientific research; lack of dedicated personnel to attend to specific matters which often results in the poor coordination among agencies to resolve problems requiring immediate attention.

terminology and general provisions of a law and/or treaty requires the collaboration of the different concerned actors.

Conclusion

Improvements in implementation of laws affecting coastal use and resources and related institutional strengthening require a coastal zone management policy that has precise aims and objectives. Consideration of significant issues which might assist policy-makers to develop a comprehensive policy that would necessarily take cognisance of other policies and programs, will support sustainable development and management of Malaysia's coastal resources.

Malaysia's impending public policy on ICZM would provide guidance on the question of national goals and principles governing coastal zone activities. An ICZM policy would assist with the challenge of maintaining consistency in law and financial allocations in pursuit of the defined goals. To achieve these goals, relevant existing laws and institutional arrangements will have to be harmonised in consideration of their cumulative impact on coastal zone management. In essence, our national laws will have to achieve *integration* to ensure their combined effectiveness in making certain that both current and future generations of Malaysians derive maximum benefit from the coastal zone.