

BOUNDARY DISPUTES: RESEARCHING ARCHIVES

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‘.....The effective use of archival evidence is the key to success in boundary negotiations and third-party adjudication’

(Dr. Vivian Louis Forbes)

Introduction

Archives have come to be highly regarded in contemporary times by national governments all over the world. The records of old make peaceful resolution of conflicts a possibility by providing for negotiated settlements to boundary disputes. They are desperately being consulted for the purpose of asserting national sovereignty, as well as settling potential wars and costly battles that could claim the lives of millions of innocent people. As a repository of evidence, these archives which used to have only secondary value for the national agenda, ranks high today as a prime determinant of a nation's international prestige and power. Given the present scenario of international conflicts, nations of the world, especially in the developing world are increasingly expected to become more conscious of the value of archives for their relevance and bearing on national sovereignty and rights. The National Archives of Malaysia has discovered the value of archives for the government of Malaysia, and this paper is an attempt to touch on the role of the National Archives of Malaysia in handling the issues related to researching archival documents on boundary matters.

Overview on Malaysia's Boundary Matters

Before the advent of the British, the Malays had their own system of demarcating boundaries. The old concept of Malay boundaries, before British intervention, was based on territorial jurisdictions of Malay aristocrats and chieftains. Boundaries also determined the rights to administer provinces within a particular state and also for claiming authority over certain land. The basic unit of maritime Malay political structure is usually the *negri*, which was the seat of a chief, or Sultan or raja or *penghulu*. Between one *negri* and another, there was often a vast expanse of forest, swamp and sea. The very concept of borders, seen as lines dividing one state from another, did not really exist. The Malays were known to have led a very simple life. They used simple methods of measuring distance and time. They tended to use only the natural and existing markers to define the boundaries between *kampungs*, *dusuns*, districts, territories and states.

This concept of boundaries began to change with the coming of the European powers, starting with the Portuguese, and later the Dutch and then the British. In year 1786, the original boundary of Kedah, the northern state of Malay Peninsula, was changed when Penang Island was ceded to the British East India Company (EIC) by the Sultan of Kedah in return for protection against the Siamese.

The 1824 Anglo Dutch Treaty effectively divided the Malay Archipelago into two spheres of influence. It gave Sumatra and the islands to the south of the Straits of Singapore to the Dutch, while the Malay Peninsula and Singapore Island came within the influence of the British. It is said to be the beginning of rationalized borders in the Malay world. According to Carl Trocki, “ the division was enough to abrogate the indigenous political dynamic that had operated in the region for centuries”. The border had

arbitrarily divided bodies of water and groups of islands which had heretofore been borderless and in fact, which had formerly been the united political territories, including the ancient kingdom of Johor-Riau and Melaka.

The Pangkor Treaty of 1874 marked the beginning of British intervention in the administration of the Malay states leading to the eventual formation of the Federated Malay States in 1895. The Anglo-Siamese Treaty of 1909 that led to the formation of the Unfederated Malay States had again changed the state boundaries, especially the northern states of the Malay Peninsula.

Boundary demarcation in the northern Malay states went on until 1913. It reflected the beginning of a new and foreign approach in determining the international boundary lines. Earlier, the northern Malay states had two separate spheres of influence, that are of British Malaya and the Siamese. The same approach was adopted in 1927 to separate the Straits Settlements and those under the Johore Kingdom (southern part of the Malay Peninsula). The international boundary line is an entirely new concept to the Malay world which had normally adopted demarcation lines based on agreeable territorial rights, for which there were neither written nor documented agreement.

The British introduced a more detailed survey and boundary demarcating system that was recorded. The boundary lines determined by the British were based on straight lines that crossed rivers, hills and mountains, marking a complete departure from the old method which used river flow, the mountain range or other existing landmarks as the basis for marking boundary limits.

In 1963, Malaysia emerged as a new nation with new boundaries covering those of Sabah, Sarawak and Singapore. The merger was in place for a few years before Singapore became independent in 1965. Although a major boundary disputes has been resolved there is no guarantee that further disputes may not surface.

Malaysia's geographical location as a peninsula surrounded by few countries that lay claims on surrounding seas presents the backdrop to many potential boundary disputes. Malaysia has until now been involved in inland and maritime boundary disputes with neighbouring countries such as Indonesia, Thailand, Singapore, Brunei, China and Vietnam.

Role of the National Archives of Malaysia (NAM) in Boundary Research

The main responsibility of the NAM is to preserve and make available public records as source of evidence. Public records that have historical values or are of national importance are transferred to the NAM for permanent retention, and preserved for future reference thereby making the National Archives a prime repository for selected documents of historical and national significance. The term of reference are encapsulated in the Archives' Act of 629/2003. Referencing facilities and research are provided for government institutions and the public, with the aim to nurture nationalism and assist in the formation of national unity.

Since 1980's, NAM has been assisting the government by providing access to documents pertaining to boundary matters. Initially, this was done on the basis of requests. A few years later, the NAM was requested to be involved directly in the research. The research has been carried out on an ad hoc basis involving one or two officers only. In-depth research could not be carried out as the project was

accorded low priority, with no proper planning, and insufficient funding. The research efforts were therefore unsatisfactory and very few concrete evidences were found.

One has to bear in mind that research work on boundary disputes needs specialization, planning, expertise, resources and also time. Realizing this fact, NAM decided to establish a special division to conduct the research on a full-time basis. Following this, in 2003, a new division was set up by the NAM known as the Special Research Branch. The new division addresses issues relating to national and international boundaries, international treaties and also matters relating to national sovereignty. The NAM has since then been playing a more active role by conducting preliminary and thorough research at both local and foreign institutions. The archivists normally search through all records available and travel to places that are believed to hold records of evidence. In between, the archivists also involve themselves in discussions with affected parties, and eventually participated in the arbitration sessions of the International Court of Justice in The Hague.

To date, the NAM has been involved directly in two disputed boundary cases i.e. Pulau Sipadan and Ligitan (Malaysia/Indonesia) as well as Batu Puteh (Pedra Branca), Middle Rocks and South Ledge (Malaysia/Singapore).

Working in Archives

Importance of Historical Archives

Other than having a wealth of information, most historical archives are also known to have administrative and evidential values. Maps, for example, have an importance for international law. They are frequently invoked as evidence in international judicial proceedings, and as proof of alleged territorial title. As valued documents, historical in content and nature, they are generally attached to government files, as attachment to memoranda of understanding and treaties. Indeed, they form integral part of treaty instruments.

Clues may be sought from early correspondences with colonial authorities abroad, which may have been filed together with enclosures, drafts of outgoing dispatches, minutes, domestic correspondences with foreign representatives in this country and with other branches of the government and also with private bodies and individuals, including local Malay rulers.

Treaties are also important as they reflect the terms of agreement reached between two or more parties. Following the signing and sealing of the protocol, ratifications are drawn up, signed and sealed by the heads of state of each party and exchanged, or sometimes deposited in an agreed place if several parties are involved.

What Are Archivists Looking For?

The first and most important thing that archivists look for are historical or original titles or documents that can be accepted as the basis for title. These sorts of documents may constitute strong evidence to substantiate one's claims in relation to certain disputed issues such as an inland territory, island, maritime jurisdiction, boundary lines and others. These documents may exist in the form of treaties, agreements, conventions, official gazettes and maps. There are also supporting documents such as old journals, explorations and voyagers' notes, related correspondences, etc. An 1868 treaty between Pahang and Johore with an attaching map had clearly marked the border line between the two states.

Other documents that need to be looked into are those that show evidence of effective administration and legislative control or what we called *effectivite*. Acts of *effectivite* are such as issuance of licences or permits, authority letters, ordinances, gazettes, and so on. One of the *effectivite* cited by Malaysia during the Sipadan and Ligitan case (Malaysia/Indonesia) was the control and regulation on the collection of turtle eggs on Sipadan Island.

Another example of *effectivite* was the establishment of a Bird Sanctuary by the Government of North Borneo on Sipadan Island on 1 February 1933.

The existence of official protests either in the form of letters or a government notices are also important as evidence of action taken to protect and defend sovereignty and rights. Other documents that we may need to consider are those relating to third party recognition. There are cases where a disputed area close to another international frontier, may appear on the map of a third country. There might also be correspondences or notes or reports written by various parties that could give clear indications as to the party that holds the sovereignty.

Researching Archives & Locating Evidence

Archives are the richest primary source material relating to international boundaries. Yet, one cannot deny the role of other institutions such as libraries that hold not only books and other forms of publications but also most of the old manuscripts, maps, charts, old chronicles, files and correspondences. Some of them may have transferred their dusty collections to the archives for proper keeping and there would be others that could be even more advanced than the archives in restoring and keeping their valuable collection intact. One also need to bear in mind that relevant material may also reside in private archives that are not in the public domain and which might be difficult to access.

Before starting the actual research work, one may need to conduct the preliminary work of locating the relevant archives. As for Malaysia, when archivists first attempted to trace the historical background of boundary determination in the country, we were more surprised to know that most of our archival sources on international boundaries are very limited. This is due to some were brought back by the British during the colonial period. Some were destroyed during the war and due to negligence. Only small amount were left intact as legacy of the British administration. This is quite unfortunate for us as archivists because the government need to now spend a lot of money to trace the old records. Most of the records that are link to Malaysia history are kept at the British Library which keeps records of territories administered from India and the Public Records Office or the National Archives of United Kingdom.

Apart from these institutions, the State Archive in Calcutta, India houses a vast collection of records of the Straits Settlements as well as the other states in Malaya. This is because the headquarters of the East India Company was located in Calcutta from the late 18th century until 1867. Eventually, most records of the Straits Settlements were removed from Penang to the new headquarters in Singapore which later became an independent country. The Singapore National Archives and State Library hold numerous records pertaining to the Straits Settlements administrative matters. Portugal and Netherlands, two colonial powers that occupied Melaka from 15th to 17th century also hold a number of records relating to the Malay states. Apart from these countries, Malaysia was also under the control of Thailand and as well Japan.

A knowledge of the historical and administrative background will also help us to locate the succeeding agencies which inherited the records. One may need to browse through all the guides, catalogues and indexes in order to get to know the relevant record groups. The National Archives of the United Kingdom which hold the records of the British Empire constitutes an invaluable source for the study of British policy in individual territories. Among the important record groups that would normally be referred to are treaties, maps and plans, general correspondences, confidential prints, private papers, embassy and consular archives.

Treaties are important documents as they make reference to the title or sovereign rights of each party involved. Ratifications of Treaties, signed and sealed by foreign heads of states pertaining to Malaysia may be found in the Foreign Office records at the National Archives of the United Kingdom. In the National Archives of Malaysia, all treaties are gathered under Treaties and Agreements.

Maps are deposited largely at the National Archives of UK, the British Library, the Royal Geographic Society, U.S. Library of Congress, Italian-African Institute in Rome and the National Archives of Netherlands. One must bear in mind that in International Law, not all maps may be accepted in a court of law for maps on their own are not enough to establish a title. Maps annexed to treaties or international conventions or used in negotiations by a State to state a claim against some other State may be required to support a territorial claim. Other than to interpret treaties, maps may also be used as evidence of a pattern of administrative activities, or evidence of acquiescence / admission against interest or also as evidence of repute.

General correspondence is important as record of decisions made by certain authorities on the handing over of sovereignty rights over some lands, areas or buildings, granting of permission for collecting dues or rents, administrative matters, any permission sought by third parties, proof of transactions, deliverance of objection or protest and many others. Most correspondence may be found in files, private papers and collection of manuscripts.

Private paper collection is also one of the most significant groups of records. Many foreign secretaries, diplomats and officials have taken away as their own property, unregistered papers relating to official business. Some of these officials even took back to their home country papers which were later donated to the local archives and which were subsequently transferred to the national archives. These papers are normally grouped under private papers since they originated from the individual donor. Some of the papers are important as record of decisions made by officials concerned.

General Problems

As we all know, boundary issues is a difficult process that involve a great length of time. It is not just a matter of balancing the bilateral or multilateral relationship between two or more countries, but also a matter of finding, researching and analyzing documents, some of which may be hundreds years old. Some of the documents are in foreign languages or in old scripts. Coupled with that is the problem of having to analyze and interpret maps, survey sheets and treaties. Added to that, they may be kept in overseas institutions, either in public or even non-governmental archives or libraries. This could at times lead to the problem of accessing the archives and completing the research work well on time. These records may not have organic link, and there could even be gaps.

Some of the records may be partially unreadable. This could have arise from improper reproduction, mishandling or bad record keeping practices. Some institutions did not provide comprehensive lists or guides to records in their custody. Some records may not be available for research due to security

classification or embargo. There are even cases where records are not found. They could have been misplaced or hidden or may not have been transferred to the archives at all. The worst part of it is when official government records are physically in the hands of another state. Even private records created by the state are now residing outside the state. These are the main hindrances for archivists or researchers with limited resources and time.

The Way Forward

The NAM foresees the need to enhance its role in the handling of boundary research. Research pertaining to boundary disputes has become a new dimension in the archives world today. Besides high expectation from the stake holder, boundary disputes have also become important national issues. The first and foremost task at hand is the building-up of our collection and complete existing gaps. This may be done through intensified acquisition of records either by pursuing an active policy of purchasing the archives, creating an awareness program, conducting field research and sending archivists to carefully selected institutions abroad for either short or long term studies, and to consult records on boundary issues.

NAM also appreciates the need to prepare finding aids or guides to almost every collection it holds so as to enable users to retrieve the most unexpected groups of records from every possible source available. A good retrieval system may also be needed to accommodate faster and more economical retrieval of records.

As a means of overcoming the difficulty of accessing classified records, the NAM could seek to establish mutual arrangements between heads of department of creating agencies from whom archivists are required to seek permission before making the records available for research. Another option is to find alternative sources of information, by seeking records from any other archives or institutions that might be keeping a copy of the record. This can be made easier through co-operation between archives institutions all over the world in searching for documents that have historical link with Malaysia. With legally backed enforcement, this might be able to ascertain that most of the records and documents are transferred to the archives. The same records could well be sought from any other department that could have also been involved in handling the same transaction.

With all the relevant records in our hands, archivists must be able to manage the records well for future retrieval. In other words, whenever records are required, we must be able to get it well on time. Towards this end, the NAM is now in the midst of building a data base on all records relating to boundary matters and issues that have already been settled. This data base will later be made available for future reference by any interested researchers, thereby enhancing the role of the NAM as the National Research and Resource Centre.

Both translation and transliteration services may need to be given emphasis so as to overcome problem of records in foreign languages and old scripts. Since Malaysia has numerous records in Portuguese, Dutch, French, Chinese, Arabic and Tamil, language experts should be employed to assist in the research work.

Upgrading the existing division has also become our priority. Realizing the shortage of manpower needed to carry out the research, effort is now being made to increase the number of officers in areas of specialization such as geography and law. Officers with foreign language capability would be given

priority in the recruitment process. We are also considering providing better research facilities and changes in working procedures.

Lessons Learnt

An experience in looking for historical evidences relating to boundary matters has given us an understanding of the following:

- Effective record keeping must be enforced at all levels of government with the cooperation of staff and officers at all levels - The dearth of evidence points to poor records management practices in government department. The NAM have come to realize that records, especially those that have legal significance, should be well preserved in all government departments even while they are current, through a legally enforced administrative system that is answerable to the National Archives.
- That there should be a culture of record keeping - A culture is something ingrained in the habits and way of life of the people. This culture could be started right from the formative years of a child through the school curricula. Every institution and even families should be expected to document its own history through the family archives. For a child, the habit could well start from keeping diaries or calendars of events.
- That all documents on potential disputes should be obtained and secured before the disputes develop into deeper levels of animosity – One should not wait for a conflict to begin, before looking for documents. Records relating to the territorial integrity of a nation should not only be identified and acquired well in advance of a conflict, but also well preserved and protected. All attempts must be made to acquire maps, gazettes, treaties and laws, as well as judicial records, among others.
- That should preliminary evidence not be available, archivists should not give up the challenge prematurely but persevere in following up all possible leads. The guiding principle should be “to seek, to strive, to find and not to yield” – This means that the search for documentary evidence relating to territorial integrity must be institutionalized as a division within the Archives, the Foreign Ministry, Mapping and Survey Department as well as the Armed Forces. A researcher with a legal mind, who is not just an administrative officer, must be entrusted to lead the particular research division in these institutions.

One thing that all must also bear in mind is that whatever consequences that may arise from any arbitration decision or of conflicting interests, as an archivist from archival institutions, we should always establish a good relationship and networking among ourselves. Archivists have to remain professionals, as they are obligated by professional ethics. Archivists also have a professional responsibility to recognize the need for cooperative efforts and support the development and dissemination of professional standards and practices. There is clearly a conflict of interest between strict adherence to the archival code of ethics and the national considerations.

Conclusion

The National Archives of Malaysia believes that the future will bring more challenges in the sense that more and more boundary issues are expected to arise in the near future even as we notice that many Asian countries beginning to be more conscious of the strategic importance of boundaries. It is our concern that archivists need to start from now to make all the necessary preparations. As an archives institution, we need to establish better networking and cooperative effort, better research facilities and adopt a principle and wisdom of freedom of information. Let us make the Archives a pleasant place to engage the past in the resolution of present and future problems pertaining to boundary matters in line with the theme of the ICA Congress 2008, "Archives, Governance and Development : Mapping Future Society".

Abstract

This paper deals with the use of archival materials in the settlement of sovereignty and boundary disputes. It is based on the National Archives of Malaysia's (NAM) own experience. The paper mentions some of the subject areas that may require research. In searching for evidence, one needs to evaluate archival materials for the evidential, historical and legal values. Problems may be encountered in the course of research, resulting in waste of time and resources. The NAM recognizes the need for improvement in the handling of boundary research.

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