

Melaka as a World Heritage Site: A Study from The Legal Point of View

(Melaka sebagai Tapak Warisan Dunia: Kajian dari Pandangan Perundangan)

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Abstract

This article discusses the prescription of Melaka as a World Heritage Site and its legal dimensions. It elaborates on the international law i.e the World Heritage Convention, of which Malaysia is a State party. Key provisions of the Convention will be discussed. Consequently, it entails that the State party has to enact its own legislations to implement the international law in the domestic setting. Important legislations like the National Heritage Act 2005, Malacca Preservation and Conservation of Cultural Heritage Enactment 1988 and the Town and Country Planning Act 1976 shall be examined. Some aspects of implementation are also discussed by highlighting the involvement of various related agencies. At the end of the research, some areas are identified for further improvements.

Key words *Melaka, Heritage Site, Legal*

Abstrak

Artikel ini membincangkan preskripsi Melaka sebagai Tapak Warisan Dunia dan dimensi undang-undang. Ia menjelaskan secara terperinci mengenai undang-undang antarabangsa, iaitu Konvensyen Warisan Dunia, di mana Malaysia merupakan pihak terlibat. Peruntukan utama Konvensyen ini akan dibincangkan. Oleh itu, ia memerlukan bahawa pihak yang terlibat parti menggubal perundangannya sendiri ke arah melaksanakan undang-undang antarabangsa dalam persekitaran domestik. Perundangan penting seperti Akta Warisan Kebangsaan 2005, Enakmen Pemeliharaan dan Pemuliharaan Warisan Budaya Melaka 1988 dan Akta Perancangan Bandar dan Desa 1976 perlu dikaji. Beberapa aspek pelaksanaan juga dibincangkan dengan menonjolkan penglibatan pelbagai agensi yang berkaitan. Pada akhir kajian, beberapa kawasan dikenal pasti untuk penambahbaikan.

Kata Kunci *Melaka, Tapak Warisan, Perundangan*

INTRODUCTION

Melaka is one of the constituent states of the Federation of Malaysia. It is located on the west coast of the Malay Peninsula, nestled between two states, Negeri Sembilan and Johor. It is a state which is relatively small by Malaysian standard, and whose population is 635,800 (Malaysia Year Book of Statistics, Department of Statistics, 2006). The state capital is exceptionally rich in historical sites, since it used to be the capital of the Sultanate of Melaka in the 15th and 16th centuries, but later taken over by the Portuguese, Dutch and British forces in successive centuries. Most of these historical sites are well-kept and it is for all to see. The various powers that successively controlled Melaka after the downfall of the native rule in 1511, have clearly left their mark in the city's landscape. The Anglo-Dutch Treaty (1824) put Melaka formally under the British control and delineated the British and Dutch sphere of influence in the region. Nevertheless, all these foreign powers have built for their own use numerous fortifications, civil and military buildings, churches, cemeteries and other amenities.

Befitting of Melaka's historical significance, the city has always been a magnet for traders of various races, hence this leads to the city's cosmopolitan character. The residents of Melaka is not only comprised of the Malays, Chinese or Indian communities but also the Peranakan Chinese, the Chitty and the Portuguese communities. The existence of these communities in Melaka, living side by side and practising their diverse religious beliefs in peace and harmony is a testimony to Melaka's distinctiveness from other cities of the world. It is therefore natural that Melaka, together with the city of Georgetown in Penang has been listed as a World Heritage Site under the auspices of UNESCO's World Heritage Convention (1972). These cities have been accepted by the World Heritage Committee as "Historic Cities of the Straits of Malacca".

With Melaka and Georgetown's joint inscription, this is the first site in West Malaysia as well as the first site for the country inscribed under 'Cultural Site' category. Therefore, this research is to look into to what extent the domestic legislations have complied with the requirements that have been laid down by the World Heritage Convention and the conditions that have been imposed by the World Heritage Committee.

MELAKA AS A WORLD HERITAGE SITE

A Ghafar Ahmad (2009), outlined the heritage legislations that have been available under Malaysian laws prior to the passing of National Heritage Act 2005. The features of the new Act, its strength, as well as outlining the tasks entrusted to the Commissioner of Heritage was also explained. Under the new Act a new department i.e Department of National Heritage has been established. However, it does not touch on the international convention and the state law with regard to conservation and preservation. Benjamin W.Porter (2008) argued that tourism has been a powerful force in creating social change especially in places that have been declared heritage sites. The relation between heritage and tourism, identity and conflict were examined. Several case studies were noted in which could be a good lesson to determine how a heritage site could be maintained without compromising the locals' interests. The role of legislation in protecting locals' interests however were not touched.

R.K Arora (2007), provided several measures that can be taken by policymakers or tourist managers in managing heritage sites. Various issues were to be considered by stakeholders to conserve and preserve heritage sites, and in the same time gaining more profits. Badaruddin Mohamed (2005) described the Japanese experience in managing their heritage sites. Managerial approaches taken by the major stakeholders of Japanese heritage were also discussed, including the role of the government and the role of the local community in protecting their heritage. Both authors, among other things, conclude that local community participation is a crucial factor to promote heritage conservation.

To compensate on the lack of literature with regard to heritage sites and its related legislation, resort has been taken to consider newspaper reports or articles. Quite a number of them has been obtained from the local dailies such as *The Star*, *New Straits Times* and *Utusan Malaysia*. *The Star* made the listing of Melaka and Georgetown as World Heritage Site as its headline on 9th of July 2008 entitled "A Tale of Two Cities". The newspaper reported that Culture, Arts & Heritage Minister Dato' Seri Shafie Apdal expected that with the listing in the World Heritage List the hotel, transport, and food industries in both cities would thrive. In another article Malaysia Heritage Trust President Tun Ahmad Sarji was reported to say it would bring worldwide recognition of Malaysia's conservation efforts and achievements.

The following day 10th of July 2008 *The Star* in an article entitled "A Blessing for State and Nation" reported that with the inscription in the World Heritage List property prices especially in the conservation area would appreciate considerably. However, some quarters voiced caution saying that the inscription could be retracted by Unesco if the authorities did not maintain a strict code to ensure continued preservation and conservation of the city. Melaka Heritage Trust Vice President Michael Benerji said the city council must employ more officers trained in conservation to ensure the building guidelines and regulations were implemented and enforced. An article of *New Straits Times* on 11th of July 2008 whose title "Conservation and Preservation" stressed that prescription on the World Heritage List does not necessarily mean an immediate protection and the conservation of the heritage sites. Tourism can in fact be a tool for preservation since locals can gain profit especially by reviving traditional trades that exist in Melaka and Penang. *Utusan Malaysia* on 24th of July 2009 reminded its readers that once the two cities of Melaka and Georgetown are prescribed in the World Heritage List the tasks have not ended but it has just started. The article also stated that the National Heritage Department would draw specific management plans, tourism and traffic planning and conservation guidelines.

There are not many literatures which touch on the current topic. Even if they are available, it does not cover about the legal position of Melaka being prescribed as a World Heritage Site. Hence the resort to articles and write ups published in the local dailies. Nevertheless, the common thread found in these books and articles is that most of them stress the importance of conservation and preservation. These aspects are always found in these articles and serve as a tool to educate Malaysians on how such prescription in the World Heritage List would not take place if these factors are not counted. The involvement of local community is emphasised to ensure that all stakeholders would get the benefit. Important lessons could also be taken by the local authorities.

RESEARCH METHODOLOGY

Imam Barnadib (1982), defined methodology is a science of method of conducting experiments or observation in a particular knowledge or field. Etymologically, the word comes from Greek i.e “methods” which means ways or technique and “logos” which means knowledge. Therefore, methodology that is meant here is the science on conducting the research.

In this research paper both primary and secondary sources are referred to. The texts of the World Heritage Convention, as well as the statutory provisions in Federal and State levels are quoted and analysed. References to the writings to contemporary writers, especially with regard to the explanations of how these laws are applied are also discussed. Interviews were also held with selected respondents. They are comprised of mainly officials that are involved directly with the application and enforcement of the heritage related legislation in Melaka.

THE LEGAL POSITION: WORLD HERITAGE CONVENTION AND THE DOMESTIC LEGISLATIONS

The World Heritage Convention

The Convention for the Protection of the World Heritage¹ is one of the most complete international instruments in the field of conservation. Its provisions, as well as its conceptual approach, deserve close inspection.

The concept of preservation of cultural heritage was born as a result of the destruction following the two world wars. The Convention for the Protection of Cultural Property in the Event of Armed Conflict, also known as The Hague Convention and adopted in 1954, was a precursor to the World Heritage Convention. The treaty has given United Nation’s Education, Social and Culture Organization (UNESCO) the authority to intervene on moral grounds or repairing damage caused by conflict, and of undertaking restoration of threatened sites and endangered ecosystems.

In its preamble, the World Heritage Convention states that cultural and natural heritage are increasingly threatened with destruction, not only by traditional causes of decay, but also by changing social and economic conditions. The protection of this heritage at the national level remains incomplete because of the insufficient economic, scientific and technical resources of the country where the property is situated. However, parts of the natural and cultural heritage are of outstanding interest and need to be preserved as part of the world heritage of mankind as a whole. Given the magnitude and gravity of the dangers, Alexandre Kiss and Dinah Shelton (1991) pointed out that it is incumbent on the international community to participate in the protection of the cultural and natural heritage of outstanding universal value, by granting collective assistance which, without replacing individual state action, will serve as a useful complement to it. As a result it is necessary to establish an effective system of collective protection of this heritage, organized on a permanent basis and according to modern scientific methods.

¹ Hereinafter to be referred as “the Convention”.

The World Heritage Convention was finally adopted by UNESCO in 1972. Considering the difficult negotiations that took place during the drafting process, the subsequent success of the Convention as the most effective international legal instrument for the protection of cultural and natural heritage could hardly have been foreseen. A primary factor in the Convention's popularity as noted by Peter Strasser (2002) is the World Heritage List which records immovable cultural and natural sites of "outstanding natural value". The List is updated every year by the World Heritage Committee. A key benefit of ratification, particularly for developing countries, is access to the World Heritage Fund. It can be disbursed to least developed countries to finance technical assistance and training projects, as well as for assistance to States Parties requesting help to prepare their nomination proposals or to develop conservation projects. Emergency assistance may also be made available for urgent action to repair damage caused by human made or natural disasters.

Objectives of the Convention

The following are the main objectives of the Convention:

- i. To encourage countries to sign the Convention and to ensure the protection of their national and cultural heritage;
- ii. To encourage State Parties to the Convention to nominate sites within their national territory for inclusion on the World Heritage List;
- iii. To encourage State Parties to set up reporting system on the state of conservation or World Heritage Sites;
- iv. To help State Parties safeguard World Heritage Sites by providing technical assistance and professional training;
- v. To provide emergency assistance for World Heritage Sites in immediate danger;

Definition of Cultural and Natural Heritage in the Convention

Before further examining the provisions of the Convention, it is necessary to outline its most important elements. The Convention refers only to the immovable and tangible heritage, whether "cultural" or "natural". The Convention's provisions are an example of a balance between national sovereignty and international intervention. The Convention also states that the individual State Party is responsible for implementing the obligations towards its own heritage. On the other hand, the Convention in Articles 6 and 7 stipulates the duty "of the international community as a whole to cooperate", which should be achieved through the establishment of an international "system of cooperation and assistance."

For the purpose of the Convention, Article 1 defines "cultural heritage" to include:

- i. **Monuments:** architectural works, works of monumental sculpture and painting, and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

- ii. **Groups of buildings:** groups of separate or connected buildings which, because of the architecture, their homogeneity of their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- iii. **Sites:** works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the point of view of historical, aesthetic, ethnological or anthropological point of view.

Article 2 of the Convention further defines natural heritage to include:

- i. Natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- ii. Geological or physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of science and conservation;
- iii. Natural sites or precisely delineated natural areas of outstanding universal value from the point of science and conservation or natural beauty.

The cultural and natural heritage as defined in the above articles form the World Heritage List under Article 11 of the Convention. The properties must be regarded as having *outstanding universal value* in terms of the criteria that the World Heritage Committee² has established. This crucial term was introduced into the Convention to limit its application to the protection of a selected list of most important places of cultural and natural heritage in the world. The term outstanding universal value is left undefined in the Convention. The Committee created these criteria in 1977 by drafting the “Operational Guidelines for the Implementation of the World Heritage Convention”.

Operational Guidelines for the Implementation of the World Heritage Convention³

In relation to cultural properties, the Operational Guidelines specify that a monument, group of buildings or a site nominated for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more criteria as set out below, as well as the test of authenticity. It states that each property nominated should:

- A. i. represent a unique artistic achievement, a masterpiece of the creative genius; or
- ii. have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscape design or; or
- iii. bear a unique or at least exceptional testimony to a civilisation or cultural tradition which has disappeared; or

² Hereinafter to be referred as “the Committee”.

³ Hereinafter to be referred as “the Operational Guidelines”.

- iv. be an outstanding example of a type of building or architectural ensemble or landscape which illustrates (a) significant(s) in human history; or
- v. be an outstanding example of traditional human settlement or land use which is representative of a culture (or cultures) , especially when it has become vulnerable under the impact of irreversible change; or
- vi. be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance (the Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria);

and

- B. i. meet the test of authenticity in design, material, workmanship or setting and in the case of cultural landscapes their distinctive character and components (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture).
- ii. have adequate legal and/or traditional protection and management mechanisms to ensure the conservation of the nominated cultural property or cultural landscapes. The existence of protective legislation at national, provincial or municipal level or well-established traditional protection and/or adequate management mechanism is therefore essential and must be stated clearly on the nomination form. Assurances of the effective implementation of these laws and/or management mechanism are also expected. Furthermore, in order to preserve the integrity of cultural sites, particularly those open to large number of visitors, the state party concerned should be able to provide evidence of suitable administrative arrangements to cover the management of the property, its conservation and its accessibility to the public.

Key Articles of the Convention

Although it falls upon each state party to identify and delineate the different natural areas situated on its territory, an international system of protection is nonetheless provided. It consists of three parts :

First, as to property rights, cultural and natural property which forms part of the world heritage remains subject to the legislation of the state where it is located. These resources can continue to belong to public or private establishments or even to individuals as the national laws provides. Thus, territorial sovereignty over elements of the world natural heritage is respected. Second, the jurisdiction of the territorial state includes both rights and obligations in regard to determining the different parts of the world natural heritage. In fact, Article 4 of the Convention recognizes the duty of each state party to ensure the identification, protection, conservation, presentation and transmission to future generations of the natural heritage situated in its territory. Article 5 of the Convention provides that the state shall also endeavour, as appropriate to adopt a general policy to give the heritage a function in the life of community and to integrate

the protection of that heritage into comprehensive planning programmes. Other legal, scientific, technical, administrative and financial measures must be taken, including the creation of special services for the protection, conservation, and presentation of this heritage, research and training. State parties periodically submit reports to a specially created committee on the measures which they have taken to implement the Convention.

The final level of protection is international assistance. Article 6 of the Convention provides that the entire international community has a duty to cooperate in the protection of the world cultural and natural heritage. This duty includes the obligation not to take any deliberate measures which might damage directly or indirectly the cultural or natural heritage. The broad prohibition or indirect harm could apply to a development assistance programmes which affect the environment or to local activities causing transboundary pollution that results in harm to a site. A state party may have recourse to international assistance and cooperation to preserve part of the world cultural and natural heritage where appropriate.⁴ In short, it can be said that Articles 4-6 are the key articles of the Convention.

For their part, other state parties undertake to support the requesting state in identification, protection, conservation, and the preservation of cultural and natural heritage, recognizing that it constitutes a universal heritage. Thus, Article 7 of the Convention establishes the concept of international protection of the world cultural and natural heritage, including the establishment of a system of cooperation and international assistance supporting state parties in their conservation and identification efforts.

The World Heritage Committee

An intergovernmental committee known as the World Heritage Committee was established through Article 8 of the Convention. Its members are elected by the General Assembly or the State Parties. The Committee is the final decision-making body, whose responsibilities include the establishing, keeping up to date and publishing both the "World Heritage List"; the "List of World Heritage in Danger"; administering the World Heritage Fund; and deciding on granting financial assistance. A Secretariat (since 1992 called the World Heritage Centre located at UNESCO's Headquarters in Paris), appointed by the Director General of UNESCO, assists the Committee in its tasks.

One of the principal tasks of the Committee is the establishment, publication and dissemination of the "World Heritage List". For this purpose every state party to the Convention must submit an inventory including documentation on the location and significance of property forming part of the cultural and natural heritage situated on its territory that it considers of outstanding natural value. If the listed property is claimed by more than one state, the competing rights to the property are deemed not to be prejudiced by inclusion on the list. The Committee can also create a "List of World Heritage in Danger". The Committee applies its own criteria based on Article 11(4) of the Convention. The latter provides that the list may include only such property that is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason

⁴ Article 4

whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves. Nonetheless, the inscription on the endangered list normally is subject to a request for assistance by the state party. In case of urgent need, the Committee may make a new entry in the List of World Heritage in Danger and publicize such entry immediately. The agreement of the state concerned is necessary for the Committee to coordinate and encourage the studies and research needed to draw up the two Lists as mentioned above.

The second principal function of the Committee as provided by Article 13 of the Convention is to receive and study requests by state parties for international assistance for the protection, conservation, or rehabilitation of any part of the world cultural or natural heritage i.e property included or potentially suitable for inclusion on one of the lists. The Committee decides on action to be taken in response to the requests and determines an order of priorities for its operations, taking into account both the intrinsic value of the property to be protected and the ability of the state concerned to safeguard such property by its own means.

The World Heritage Fund

The financial means to carry out assistance is provided by Article 15 of the Convention through an international trust fund for the protection of the world cultural and natural heritage of outstanding value, called the World Heritage Fund. The resources of the fund are derived from various sources. State parties have mandatory contributions, the amount of which is decided by the General Assembly of the state parties to the Convention according to a uniform percentage applicable to all states, but which cannot exceed 1 percent of their contribution to the regular budget of UNESCO. Besides these sums, state parties can make voluntary contributions or gifts to the Fund, as well as other international, intergovernmental bodies, NGOs, public or private bodies, and individuals.

DOMESTIC LEGISLATIONS

National Heritage Act 2005

Prior to March 2006, the management and the protection of heritage sites in Malaysia are under the purview of various acts and legislations such as the Town and Country Planning Act 1976, the Antiquities Act 1976 and the Treasure Trove Act 1957. There are also state legislations looking after the preservation of heritage sites like the Malacca Enactment and the Johor Enactment.

A. Ghafar Ahmad (2009) stated that with the promulgation of the National Heritage Act 2006, Malaysia has reorganised its heritage and antiquities management. Formerly, it was under the Department of Museum and Antiquities, however with the passing of the new Act it is now to be placed under a new body called the Department of National Heritage. The department is under the purview of the Ministry of Information, Communications and Culture. The Act places the responsibility on the Minister, who is

authorised to issue policies, statements or directives with regard to heritage protection and activities, mainly in the Federal Territories. However, should the heritage sites or properties are located in the states, the Minister must consult and obtain the agreements from the relevant authorities. This is to ensure that both Federal and State authorities are in agreement on any decisions made on heritage matters.

The preamble to the Act states that it is “an Act to provide for the conservation and preservation of national heritage, natural heritage, tangible and intangible cultural heritage, underwater cultural heritage, treasure trove and for related matters”. The Act contains 17 Parts and 126 sections. It also defines concepts or matters that have not been covered adequately in the previous legislations such as cultural and natural heritage, intangible cultural heritage and underwater cultural heritage.

Under the Act, new mechanisms in managing heritage sites in Malaysia have been established. They are as follows:

- i. Commissioner of Heritage;
- ii. National Heritage Council;
- iii. Heritage Fund;
- iv. National Heritage Register.

Section 4 of the Act provides for the appointment of a Commissioner of Heritage. The said position is appointed by the Minister for the purpose of carrying out the powers and functions assigned to anyone who holds the post under the Act. The functions of the Commissioner are stated in section 6 of the Act and they include *inter alia* :

- i. to determine the designation of sites, registration of objects and underwater cultural heritage;
- ii. to establish and maintain the Register and to determine and specify the categories of heritage to be listed in the Register;
- iii. to supervise and oversee the conservation, preservation, restoration, maintenance, promotion, exhibition and accessibility of heritage;
- iv. to establish and maintain liaison and co-operation with the State Authority in respect of conservation and preservation of heritage matters;

In addition to the powers given to the Commissioner of Heritage, both the Commissioner and the Minister shall be advised by the National Heritage Council. The Council shall advise the Minister and the Commissioner on all matters relating to heritage, and the due administration and enforcement relating to heritage, as provided by section 9 of the Act. There shall be 12 members of the Council that are appointed by the Minister, which consists of a Chairman, four ex-officio officers from related Ministries and a maximum of six other members. However, the advice of the Council is not binding upon the Minister.

Another important mechanism which has been created under the new Act is the provision for establishment of a Heritage Fund. Section 20(2) of the Act states that the Fund is controlled and maintained by the Commissioner. The Commissioner may use the Fund for the conservation and preservation of any heritage and conservation

areas; organizing campaigns, research and study as well as disbursement of grant or loan. In addition, Part VI of the Act provides for the setting up of a National Heritage Register. Section 23(2) of the Act states that the Register shall be made available to public inspection subject to any condition that the Commissioner thinks fit.

Part VII and Part VIII of the Act deal with Heritage Sites and Heritage Objects respectively. Part VII spells out how a place can be designated as heritage site, dealings involving heritage site, conservation and preservation of heritage site as well as conservation management plan. Section 24 of the Act states that the Commissioner may designate any site which has natural heritage or cultural heritage significance to be heritage site. If however the site is located in the state, consent of the State Authority shall be obtained. Notices to the owner and the local planning authority would also be issued informing them the intention of the Commissioner. Should there be any objection by the owner or any other persons, a hearing can be held by the Commissioner. Once the hearing has been held, and it is to the satisfaction of the Commissioner that the site is of cultural heritage significance, the site shall be designated as a Heritage Site.

Part VIII provides for the procedures once a heritage object is discovered. Section 47 provides that the person who discovers any object which he has reason to believe it has cultural heritage significance shall immediately notify the Commissioner or any authorized officer or the District Officer of the district where the object was discovered. The proprietary rights of such object shall be the absolute property of the Federal Government provided that where the object is discovered on an alienated land, compensation may be paid to the owner of the land. The Commissioner may declare in the Gazette any object which has cultural significance and list it in the National Heritage Register.

Part X of the Act, in particular section 67 outlines the power of the Minister to declare any heritage site, heritage object, underwater cultural heritage listed in the Register or any living person as a National Heritage. In doing this the Minister may consider several factors which include *inter alia* the historical importance, the social or cultural associations or the importance in exhibiting the richness and diversity of features or its rarity. Any person may nominate to the Minister any natural heritage, tangible or intangible cultural heritage, living person or underwater cultural heritage to be declared as National Heritage. If the site, object or underwater cultural heritage is situated on State land, the State Authority shall be consulted by the Minister.

The National Heritage Act 2005 also contains powers relating to enforcement, seizure and arrests, as well as penal provisions. These matters are covered under Parts XIV and XV respectively. The Minister may appoint enforcement officers, who are given power to investigate any offences under the Act. This also includes the power to conduct searches and seizures (with warrants or without warrants). With regard to offences, there are three main sections (sections 112-114 of the Act) which describe offences in respect of heritage site; offences in respect of heritage object; and offences in respect of National Heritage.

The Malacca Preservation and Conservation of Cultural Heritage Enactment 1988

The Malacca State Legislature passed the Malacca Preservation and Conservation of Cultural Heritage Enactment⁵ which makes for the preservation and conservation of its cultural heritage in 1988. The passing of this enactment, was indeed a giant step since it shows the commitment of the state legislature in preserving historical and cultural sites in the state. The enactment contains 21 sections that provides for powers to the State Authority and the Local Authorities. Section 3 of the Enactment provides for the establishment by the State Authority a committee to be known as the Preservation and Conservation Committee whose responsibility shall be to advise the State Authority on matters of policy, administration and management of cultural heritage and conservation areas. This State Committee consists of:

- i. the Malacca Chief Minister who holds the position of the chairman;
- ii. a Deputy Chairman;
- iii. the State Secretary;
- iv. the State Legal Adviser;
- v. the State Financial Officer;
- vi. a representative of the Director-General of Museums;
- vii. a representative of the Director of State Public Works Department;
- viii. not more than five other persons who in the opinion of the State Authority have wide experience and expertise in the field of preservation and conservation of cultural heritage.

Section 4 of the Enactment states that the State Authority may declare any cultural heritage to be subject to preservation and conservation on the recommendation of Local Authority. It may also designate the area within which such heritage is located as conservation area. It is to be noted that the jurisdiction for the control, enforcement, development, preservation and conservation of every cultural heritage and conservation area shall be vested in the Local Authority as stated by section 5 of the Enactment. Apart from that, other duties of Local Authority is to formulate proposals and programmes for the preservation and conservation of cultural heritage or conservation area within its locality.

Section 9 (1) and (2) of the Enactment further gives the power to the Local Authority to restrict any alterations, additions, changes, demolition or repair of the cultural heritage and conservation area unless consent has been obtained from the Local Authority. The Local Authority has also the power to impose conditions with respect to:

- i. preserving or conserving particular features of the cultural heritage and conservation area or part of it;
- ii. making good after the works are completed of any damage caused to the cultural heritage by the works;

⁵ Hereinafter to be referred as “the Enactment”.

- iii. in the case of building, the reconstruction of it or any part of it following the execution of works with the original material so far as practicable and that such alteration to the building may be specified in the permission.

Section 12 of the Enactment also gives the power to the Local Authority to make any arrangements with the owner or the occupier of the building, if it is found that such building has been subject to preservation and conservation. Even if the building itself is not a subject to be preserved, but is located in a conservation area, the Local Authority may make arrangements with the owner or the occupier of the building for the repair to be carried out and may for such purpose make contribution towards the cost. Nevertheless, if any cultural heritage or conservation area which in the opinion of the State Authority is of exceptional importance to the State is situated on a private property, it may direct the Local Authority to purchase or lease the land, or remove the whole or any part of the building. This is provided by section 13 of the Enactment.

The Enactment also provides for the establishment of a fund by the State Authority known as the Preservation and Conservation Fund. It consists of the sums as may be provided annually by the State and grants from the Federal Government. It shall be used for the purpose of maintenance, preservation, conservation, acquiring any cultural area or conservation area of exceptional importance to the State as well as carrying out any other projects or activities sponsored by the State or Local Authority. Any person who has in his ownership or possession a cultural heritage or conservation area that has been declared to be subject of preservation and conservation may apply for financial assistance from the State Authority. To deter potential owners, occupiers or any other persons that might hinder the enforcement of the Enactment, a penal provision is also included. Any person who contravenes any provisions of the Enactment shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM10,000 or to a term of imprisonment not exceeding 5 years or to both.

Town and Country Planning Act 1976

Another piece of legislation that is used in ensuring conservation and preservation steps can be smoothly taken is the Town and Country Planning Act 1976. The Act contains 9 Parts with 59 sections. As stated in its preamble, it is an Act “for the proper control and the regulation of town and country planning in Peninsular Malaysia”.

Section 2 of the Act defines planning permission as ‘the permission granted, with or without conditions to carry out development’. The same section defines development ‘.the carrying out of any building, engineering, mining, industrial, or other similar operation in, on, over, or under land, the making of any material change in the use of any land or building or any part thereof, or the subdivision or amalgamation of lands’. It is to be noted that Section 19 of the Act provides that no person other than the local authority, shall commence, undertake or carry out any development unless the planning permission in respect of the development has been granted to him under section 22 or extended under section 24(3) of the Act. It can be concluded here that obtaining approval from the local authorities in respect of any development is compulsory. Should there be any failure in adhering to the requirement stipulated under section 19 or other relevant

sections of the Act with regard to development, one may be charged under section 26 of the Act. Upon conviction, the owner or developer shall be fined not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both. In short, apart from the National Heritage Act 2005 and the Malacca Enactment 1988, the Town and Country Planning Act 1976 can also be used by the authorities in ensuring conservation and preservation steps to be taken, monitored and controlled.

To conclude, the World Heritage Convention and its provisions has opened a new era in conserving and preserving man's heritage either tangible or intangible heritage. It has outlined steps that could be taken by the State Party to nominate any sites in its country which can be considered as a World Heritage Site. The Convention facilitates the process by having its own committee overseeing all the prerequisites of the subscription to the World Heritage List are followed. If any sites or potential sites are in danger for any reasons, the World Committee would come to the rescue either by sending its technical experts or the availability of utilising the World Heritage Fund at its disposal. The provisions of the Convention is indeed beneficial to the State Party as has have been outlined above.

Three domestic legislations have been covered and its provisions with regard to conservation and preservation have been observed. It can be said that they contain mechanisms and elements that are important to protect the country's heritage. The National Heritage Act 2005 created the post of Commissioner of Heritage, as well as paved the way for the establishment of the National Heritage Department. The Malacca 1988 State Enactment gives the power to the State and the Local Authorities in conserving and preserving the State's heritage sites which are vital to the state's coffers. The Town and Country Planning Act 1976 provides the opportunity to the Local Authorities in controlling and monitoring any development that takes place within their area.

MALAYSIA AND THE HERITAGE LAWS

Implementation Of International Law

Abdul Ghafur Hamid @ Khin Maung Sein (2005) argued that with regard to the implementation of International Law in the local context, it is clear that the Malaysian courts apply international treaties as part of Malaysian law so long that they have been transformed into domestic law by means of an Act of Parliament. From the observations that have been made into the local legislations as enumerated in the previous chapter, it is submitted that Malaysia has enacted several laws that deal with heritage, conservation and preservation. The National Heritage Act 2005 has been enacted in view to address all these matters under one piece of legislation, as compared previously where the laws are scattered in different legislations, namely Town and Country Planning Act 1976, Antiquities Act 1976 and the Treasure Trove Act 1957. In addition to that, the Melaka State Legislature in 1988, enacted its own laws with regard to conservation and preservation. This is much earlier as compared to its federal counterpart and can be said a very far sighted step taken by the State Government.

It should be noted that Article 4 of the World Heritage Convention provides that the State Party recognizes the duty of ensuring the protection and conservation to future generations the cultural and natural heritage sites that have been prescribed in the World Heritage List. The State Party also *endeavours to set up within its territories, services for the protection, conservation and presentation of the cultural and natural heritage, as well as taking appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, and rehabilitation of such heritage*⁶. It is clear that the international law requires that the State Party have specific agencies or governmental departments dealing with conservation and preservation in ensuring the objectives of the conventions are fulfilled.

Malaysia has responded to such requirements provided under Article 4 of the Convention by having the tasks of conservation and preservation under the purview of the Museum and Antiquities Department . The country takes the issue more seriously later on and that culminated with the enactment of the National Heritage Act by the Parliament in 2005. Consequently, this leads to the establishment of the National Heritage Department in 2006. Its functions *inter alia* is to preserve, conserve and protect the cultural and natural heritage of the country through research, documentation and enforcement of the National Heritage Act 2005. Part VII, Part VIII, Part X and Part XII of the Act (which deal about Heritage Site, Heritage Object, Declaration of National Heritage and Powers of giving license) authorise the National Heritage Department to take the appropriate steps. To give the Act more teeth, Part XIV and Part XV of the Act (which cover on powers relating to enforcement, seizure, arrest and offences) can be used by the National Heritage Department when the need to act arise. It can be said that with the existence of the Act, the task of protecting, conserving and preserving the country's heritage would be much easier and can be done in a more efficient manner. It certainly would meet the international standard expected from a State Party according to the World Heritage Convention.

In the State level, several agencies work together in applying the law. They are viz. Melaka Museum Corporation (PERZIM) and Melaka Historic City Council (MBMB). Looking to the provisions of the Enactment, adequate powers have been given to these State authorities in ensuring the objectives of the Enactment can be fulfilled. This can be seen in sections 4, 5 and 9 of the Enactment (Declaration of Conservation Area, Powers of the State Authority & Restrictions in Conservation Area). Apart from that, section 10 and 12 of the Enactment also authorise these State authorities to acquire and carry out conservation work of any buildings or sites within the conservation area. According to Haji Khamis Haji Abas (Acting Director of PERZIM, as he then was), PERZIM has been entrusted by the State Government in administering the Enactment since 1995. For that purpose, the post of Conservation Architect was created to facilitate PERZIM's tasks. He also stated that PERZIM works closely with the Melaka Historic City Council Conservation Unit. With Melaka's prescription to the World Heritage Site, it has been noted that there has been a 30% increase in the number of visitors coming to Melaka. The Acting Director is of the opinion that the 2005 National Heritage Act, as well as the 1988 Malacca State Enactment are adequate in protecting and conserving the State's heritage. Nevertheless, there are still rooms for improvement such as in

⁶ Articles 5 (a)-(e) of the Convention.

terms of budget. Currently, the State manages on its own but he fervently hopes of getting bigger chunk of allocation in future to ensure PERZIM'S tasks can be conducted efficiently. The first respondent also added that a new rule has been introduced by the authorities that is effective from 7th July 2008, a Heritage Impact Assessment (HIA) must be conducted for any new development or conservation work to be carried out in the core area or the buffer zone of the World Heritage Site. He is also of the view that there is a pressing need for an integrated tourism plan of the core area and the buffer zone to be formulated.

Apart from PERZIM, the Melaka Historic City Municipal Council (MBMB) is another arm of the State Authorities that oversee the state heritage sites to be maintained properly. It should be noted that MBMB has established its own Conservation Committee under the purview of its Planning Department⁷. According to Erne Hamsah, an architect with MBMB, the Conservation Unit focuses on the buildings and monuments in the core area and the buffer zone of the World Heritage Site which is located in the MBMB area. She also stated that prior to Melaka's prescription on the World Heritage List, MBMB has formulated its own "*Garis Panduan: Pelan Tindakan Kawasan Pemeliharaan Majlis Perbandaran Melaka Bandaraya Bersejarah*"⁸. The Guideline is very extensive and covers the area which has been identified as the core zone and the buffer zone. In these designated areas, any development that is to be carried out must meet the requirements that has been laid out in the Guideline.

There are three main guidelines to be followed i.e (i) Planning Guideline; (ii) Conservation Guideline and (iii) Specific Guideline. The second respondent stressed that MBMB is operating and maintaining the sites in light of all the relevant Acts, the 1988 State Enactment as well as its own Guideline. That does not only cover the physical aspect of the monument or buildings, but also touch on a host of other factors like landscaping, lighting, traffic control etc.

Similar to the Acting Director of PERZIM, the second respondent is of the view that the current legislations are sufficient in administering, protecting, conserving and preserving the State's heritage sites. However, there are areas that can be improved especially in the field of enforcement. With regard to the Guideline, UNESCO has suggested that it be upgraded as a regulation, which in her view a prudent step to be taken, since this would involve the Federal Government. Indirectly, the requirements of the Conventions' Operational Guidelines would also be met. Nevertheless, the respondent listed several issues which could be a hindrance to better monitoring the heritage area. Some of them include breach of conditions set up by the local authority in renovating buildings or place of residence. This would constitute a non-compliance with the Town & Country Planning Act 1976 that is used mainly by the local authorities. Those who are found out flouting the local authorities' terms and conditions would be taken into action according to the provisions of the Act. Another issue which could be a challenge is the fact that some state officials do not understand the need in balancing conservation and development especially in the conservation area. As an illustration, the state authorities are eager in increasing the number of visitors, hence the planning of new development like adding shoplots, shopping malls, or other tourist attractions

⁷ <http://www.mbmb.gov.my/jabperancangbdr>

⁸ Hereinafter to be referred as "the Guideline".

within or nearby to the conservation area. These new developments could be a threat to the visual impact of the core area, thus would affect the periodic reporting that is done by the State Party as required by the Convention. To prevent such occurrences, the second respondent is of the view that a Master Plan in managing the conservation area is highly needed.

CONCLUSION

Before 1972, the awareness of protecting monuments or buildings which can be considered man's heritage was rather spasmodic. The world only acts when such monument's or building's existence is threatened either by natural disasters or man-made disasters e.g wars. At the same time, the need was felt to establish a universally accepted ethical-legal foundation to safeguard world heritage. The United Nations through UNESCO initiated the World Heritage Convention in 1972. Definitions on what constitute natural and cultural sites have been laid out in the Convention. It is observed that it has specific mechanisms through its World Heritage Committee and World Heritage Fund. If there are sites that are in danger, financial and technical assistance would be extended. State parties to the Convention realise with the inscription to the World Heritage List, tremendous benefits especially to the local economy would entail. No wonder that each year more sites are added to the World Heritage List. To ensure the efficacy of the Convention, periodic reportings are to be submitted by the State parties. This monitoring system has, to some extent managed to control the steps taken by them. State parties, in their eagerness to develop the sites, could have acted in planning developments that can affect the sites negatively. In short, proper maintenance and control is to be exercised by the State parties.

It can be said from the above discussion that the current Malaysian legislations are sufficient enough in protecting, conserving and preserving the heritage area in the country in general, and in Melaka particularly. In short, Malaysia as a State party has met the requirement posed by the Convention by enacting these laws. Through these laws, several departments and agencies have been created. Nevertheless, as pointed out by the respondents, rooms of improvement are still there especially in the area of enforcing these laws and regulations. Budget is also another constraint that can be 'push' factor for both the local authorities and the local residents. Perhaps the government should have fiscal incentives either through the legal provisions or other ways in the bid to inculcate awareness and the sense of importance of protecting heritage among Malaysians. The people also need to be educated on the importance of protecting their heritage. It can harness economic potential since the Malaysian society is not a homogenous society, but a society of diverse religions and culture, living side by side together. Moreover, no other place in Malaysia can reflect that precisely except in Melaka where by virtue of its history, different communities have been living together in peace and harmony.

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