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The implementation challenge of Nairobi Wreck Removal Convention and the related analysis within the existing Malaysian national law

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THE IMPLEMENTATION CHALLENGE OF NAIROBI WRECK REMOVAL CONVENTION AND THE RELATED ANALYSIS WITHIN THE EXISTING MALAYSIAN NATIONAL LAW

By

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Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature): **.....**

(Date): **.....**

Supervised by: Associate Professor Henning
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Abstract

Title of Dissertation: The Implementation Challenge of Nairobi Wreck Removal Convention and The Related Analysis within the Existing Malaysia National Law.
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This thesis examines the implementation of The Nairobi Wreck Removal Convention (WRC) and its effect on the current Merchant Shipping ordinance 1952 of Malaysia after its enforcement on 14 February 2014.

The study began by looking at how Malaysia adopted international law to the local system since Malaysia is a dualist state. The study also analyses the effectiveness of the Marine Department of Malaysia as the responsible body in implementing the relevant laws to fulfil the obligation of the convention.

From the public law viewpoint, the main purpose of the WRC is to provide a uniform set of rules and ensure the effective removal of wrecks within the EEZ. The current Malaysian law, the Merchant Shipping Ordinance 1952 does not provide the necessary legal provisions, and its use is limited to the territorial water, which is 12Nm from the shoreline. A new Act 1393 Merchant Shipping (Amendment and Extension) Act 2011 was enacted due to the Nairobi Convention. Under this convention, the responsibility for removing a wreck has been placed under the shipowner, but there is also an option available for the Affected State if the shipowner fails to act as directed.

Meanwhile, from the private law point of view, the Nairobi Convention requires a shipowner of a ship of more 300 gross tonnage to have insurance set out to cover the liability under the convention. Offences for not complying with the set terms, may cause the ship to be detained or fined. The convention also enables the Affected State to claim to the insurer directly.

KEYWORDS: Wreck, WRC, Nairobi Convention, Malaysian law, Compulsory insurance, Direct action

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List of Abbreviations

BUNKER	International Convention on Civil Liability for Bunker Oil Pollution Damage
CLC	International Convention on Civil Liability for Oil Pollution Damage
COLREG	Convention on the International Regulations for Preventing Collisions at Sea
EEZ	exclusive economic zone
GT	Gross tonnage
HNS	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea
IMO	International Maritime Organization
LLMC	Convention on Limitation of Liability for Maritime Claims
LOA	Length Overall
MSN	Malaysia Shipping Notice
MSO 1952	Merchant Shipping Ordinance 1952
NTM	Notice to Marines
ROW	Receiver of Wreck
UNCLOS	United Nations Convention of the Law of the Sea
WRC	Nairobi International Convention on the Removal of Wrecks

CHAPTER ONE: INTRODUCTION

1.1 Background

The proper wreck management by the responsible party is one of the essential factors in ensuring the safety of ship navigation. In Malaysia particularly, the increasing number of vessels operating within its waters and the Malacca Straits, in particular, is likely to result in an increased risk of marine accidents where the outcome is wrecked ships. Thus the floating unattended wreck in the middle of the shipping route will jeopardize the safety of other ship that are passing by. In this respect, maintaining the safety of ship navigation is crucial for Malaysia as its economy relies heavily on the shipping industry. Thus, it is necessary to implement readily organized measures, to maintain the safety of navigation through all time.

Due to accidents or natural disasters, the existence of a wreck within port limits and coastal state waters should be taken seriously. If it is poorly managed, reported, marked or salvage, it will become a hazard to navigation (Byoung-Yun, 2017). The uninsured or unknown wreck will then expose the government with a higher cost to remove or salvage. Besides, if the wrecks were not removed, it would also have a potential to pollute the marine environment, either from the wrecked cargo, oil bunkers (fuel) or ship pollution coming from rusty hulls and the government would bear a huge loss in terms of preservation of the marine environment.

There are numbers of untraced or unidentified wrecks in national coastal waters which need to be disposed or marked. The existence of wrecks has also attracted several interest parties because of its high market value. There have been some cases where illegal salvagers or scrap iron operators have stolen valuable wreckage from the bottom of the sea and sold it to metal traders. (“Malaysia firms plunder sunken wrecks”, 2019)

From the legal point of view, there are several questions needed to be answered when a ship is declared a wreck. The first thing that needs to be answered is; who is responsible for the wreck? The second question was; what measures can be taken based on that responsibility? And finally, how is that responsibility being enforced? (Kern JM, 2016). With the availability of international conventions such as the WRC, these questions can be answered clearly.

1.2 Objectives

Malaysia has ratified the Nairobi convention, effective 14 February 2014 (Official Portal Ministry of Transport Malaysia, 2018). This thesis will examine several aspects of the Malaysian acceptance or adoption of the Nairobi Convention including the convention's impact on existing applicable laws, identifying whether there is any difference and the possibility of improvements.

In addition, this thesis will also try to see how the introduction of international law or treaties in particular from IMO into the Malaysian legal system can be carried out. The Nairobi International Convention on the Removal of Wrecks will be viewed in this context.

1.3 Scope of study

This dissertation examines the essence of the Nairobi Conventions and its implementation. First of all, the impact of implementation on the convention to public law will be analysed. Part of this, the Nairobi Convention, will be compared to the existing local laws related to shipwreck management i.e. Merchant Shipping 1952, Merchant Shipping 1960 (Sabah) Merchant Shipping Ordinance, Merchant Shipping Ordinance (Sarawak), National Heritage Act 2005, Baseline Maritime Zone 2006, The 1984 Exclusive Economic Zone, the Essentials of 1969, the Territorial Sea of 2012 and the Maritime Enforcement Act of 2004. The reforms brought on by the conventions to local laws will also be studied

Secondly, studies will also be carried out on the impact of the Nairobi Convention on the matter of private law. The study covers its impact on the maritime industry and how it changes to private laws. The improvement made from the ratification of conventions and its importance will also be studied.

Thirdly, the ratification process of international convention or treaties by Malaysia and enforcement to local law system will be reviewed. The study will look at how the Malaysian Constitution works and the effect of accepting international law to the relevant Standard Operating Procedures by some related department. The department involved is mainly the Malaysian Marine Department which will be reviewed.

Lastly, the effectiveness of the Nairobi Convention's implementation since it came into force will be examined as well, through the collection of relevant data and statistics.

1.4 Introduction to Legislative System of Malaysia

1.4.1 History of Modern Malaysian law

It is important to know that the establishment of Malaysia was closely linked to Great Britain, which established the earliest colonies on the Malay Peninsula. After the Japanese occupation of Malaya (1942-1945), the British government tried to establish the Malayan Union, which consisted of all Malay States with Penang and Malacca but received opposition from the Malays. The Malayan Union was disbanded in 1948 in exchange for the Federal system. Under this system, the central Federal Government was established through the Federation of Malaya Agreement 1948 while preserving the integrity of the individual states and their Rulers (Dr. Sharifah Suhanah, 2014).

Malaya gained independence on 31 August 1957 following the birth of the Federal Constitution under the Federation of Malaya Agreement 1957. This agreement revokes the first agreement of 1948. After 1957, the law promulgated at Federal Legislation continued to be known as "Ordinances" due to constitutional provision establish in the Federation of Malaya Agreement 1948 to continue functioning until 1959. The Council was dissolved in 1959 by proclamation, resulting future Federal Legislation be called "Acts". The Malaysia Act 1963 was established under the State of Malaysia, comprising 11 states today. In 1965, Singapore left Malaysia and became an independent state (Dr. Sharifah Suhanah, 2014).

1.4.2 The Federal Constitution

The Legal system of Malaysia was based on the English legal system that practices parliamentary democracy. The head of the country is governed by a Constitutional Monarchy, His Majesty the Yang di-Pertuan Agong (the King), elected based on the rotation of nine states Rulers in the Federation for a five-year term.

The Federal Constitution of Malaysia divided the law-making authority into three bodies; legislative authority, judicial authority and executive authority. The division of power applied similarly for both federal and state levels. A federal law enacted in Parliament Malaysia will valid throughout the country while there is also a state law governing local government and Islamic law enacted at in each state.

Malaysia legislation comprises of the following:

1. The Federal Constitution

2. Constitutions of each of the 13 states of Malaysia
3. Federal Acts of Parliament
4. State Enactments
5. Subsidiary Legislation.

The power between the central government and its 13 states governments were divided in accordance with part VI of the Federal Constitution, which addresses the issue of the relation between the Federation and the States. Article 74 of the constitution, notes that "Parliament may make laws with respect to any matters enumerated in the Federal List of the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule) 'and' the Legislature of a state may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List." (Mukhtar, Mustafa, 2012)

The list which includes the power of Federal is the external affairs, defence, internal security, civil and criminal law and procedure, finance, commerce, industry, communication and transport, surveys, education and publications. The list included in the State list is Islamic law, land, agriculture, forestry, local government, and water. While shared, the list involved subjects such as social welfare, public health, drainage and irrigation, and housing (Mukhtar, Mustafa, 2012).

1.4.3 Act of Parliament, State Enactments and Subsidiary Legislation

According to Section 18 of the Interpretation Act 1948 and 1967, the legislation of Malaysia was published in the Gazette and was divided into five parts (Dr. Sharifah Suhanah, 2014):

a) Acts Supplement, containing all acts of Parliament and all Ordinance promulgated by the Yang di Pertuan Agong.
b) Legislative Supplement A, published as and when necessary.
c) Legislative Supplement B contains subsidiary legislation other than required to be published in Legislative Supplement A.
d) Bills Supplement, containing all Bills.
e) Other matters to be published in the Gazette which the Government deems it necessary to publish for general information.

An act shall not take effect as long as it is not published in accordance with Article 66 (5) of the Federal Constitution. The date of a particular law be in force can be known via (Legislation: An Overview, n.d.):

a) Date stated in the Act.
b) On the date appointed by the Minister as stated in The Gazette.
c) On the day after the Gazette date
d) On the Gazette date

While for amendments of any Act, several methods that can be used including:

a) Amendment Acts; New Act which will replace any part or as an addition to existing Act (e.g. 1316-Amendment Act 2019)
b) Issue a new Legislative Supplement A (e.g. PU (A))
c) Issue a new Legislative Supplement B (e.g. PU (B))
d) Issue another New Principal Act

1.5 Procedure of treaty ratification in Malaysia

1.5.1 Application of International Treaties

Malaysia is a dualist state (Gurdial Singh Nijar ,2012). In theory, when Malaysia becomes a party to a treaty as part of the function of the external affairs, national laws should be enacted by a Parliament for it to take effect in the country. Any treaty, although the Government has ratified it, cannot give effect to the rights and obligations of the citizen (Abdul Ghafur Hamid ,2006). In contrast with monism, international law and municipal law was a part of national law. Any customization of the international treaty will automatically incorporate into local law.

There are two main Vienna Conventions governed by international treaties. First is the Vienna Convention on the Law of Treaties in 1969 and second is the Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, 1986 (Abdul Ghafur Hamid,2016-slides). Three steps leading to the creation of a treaty, namely:

1) Negotiation & adoption of the treaty
2) The expression of consent to be bound by the treaty (Signature, Ratification, Accession)
3) Entry into force

The Federal Constitution of Malaysia provides Article 74 (1) as a provision deal with 'treaty-making capacity'. According to Article 74 (1), "Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule)". The Federal List of Ninth Schedule includes:

"1. External affairs, including—

(a) treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with any other country;

(b) implementation of treaties, agreements and conventions with other countries;"

From article 74, we can conclude that the Federal Government has the authority to make laws with respect to parliament on external affairs. As in the United Kingdom, the Executive possesses the treaty-making capacity while parliament's role is to give a legal effect domestically to a treaty that has been signed. Article 39 and 80 (1) of the Federal Constitution gives power to the Executive through:

"Executive authority of the Federation"

"39. The executive authority of the Federation shall be vested in the Yang di- Pertuan Agong and exercisable, subject to the provisions of any federal law and of the Second Schedule, by him or by the Cabinet or any Minister authorized by the Cabinet…"

"80. (1) Subject to the following provisions of this Article the executive authority of the Federation extends to all matters with respect to which Parliament may make laws, and the executive authority of a State to all matters with respect to which the Legislature of that State may make laws."

1.5.2 Procedure for Ratification

State ratification of any international instrument requires a policy decision of the Government whether to implement a particular obligation. While international legal law often seeks to govern an international issue, the commitment required must be calculated in advance to ensure effective compliance.

Among the procedure for ratification, which is taken by the government, can be categorized into two-steps (Nazery Khalid & Cheryl Rita Kaur, n.d.):

a) First step: Signing and sealing of the ratification instrument by the Head of State and/or Federal Minister

b) Second step: When involving the Bilateral treaty, the exchange of instrument of ratification will take place. Whereas for the Multilateral treaty; an instrument of ratification will be deposited with the depositary

However, before any ratification of international convention taken by the Government, some steps have been taken to ensure the implementation can be carried out swiftly. These include:

a) Raising awareness among the stakeholders. In this case, it was the shipping industry if the treaty was from IMO.
b) Addressing the gap between local and international law to accommodate the convention.
c) Prepare to implement the requirements and fulfil the obligation of the convention.
d) Provide an appropriate timeline for the implementation process.

CHAPTER TWO: RATIFICATION AND IMPLEMENTATION OF THE INTERNATIONAL TREATY INTO NATIONAL LEGISLATION

2.1 Implementation of the Nairobi Convention in Malaysia

2.1.1 Responsible Ministry and Department

At the federal level, the minister holds the highest administrative position at the ministries body with a specified portfolio. It is the responsibility of the Ministry of Transport Malaysia to formulate and implement the strategies or programs related to the maritime sector (Official Portal Ministry of Transport Malaysia). Among the functions of the Ministry of Transport Malaysia are:

a) To formulate and implement land transport, logistic, maritime and aviation policies
b) To enforce laws related to land transport, logistic, maritime and aviation
c) To spearhead regional and international cooperation programs in the field of transport

Among the ministry, in the case of non-law-making ministries, law drafting arrangements for the implementation of new treaties will be made by the Attorney General Chambers.

Under the Ministry of Transport, 15 Department or Agencies carry different functions and policies. For the maritime sector, the Marine Department of Malaysia was the body that was responsible for the enforcement of the policies, planning and coordination.

2.1.2 Statistics of a reported wrecks in Malaysia

According to the data issued by the Marine Department of Malaysia in the year 2019, there are over 62 shipwrecks that have been identified and are under the supervision of the department, stranded in Peninsular of Malaysia. Out of that, five wrecks have been categorized as critical wrecks as their location at the main shipping lane at the Strait of Malacca and endanger a hazard to navigation. Wreck distribution to gross tonnage can be seen in the table below

Table 1: Gross tonnage of a shipwrecks at Peninsular Malaysia (2019)

Gross Tonnage	Number of wrecks	Percentage
Less than 300	0	0
300 to 1000	2	3.2%
1000 to 3000	8	12.9%
3000 to 10000	7	11.3%

More than 10000	10	16.1%
Unknown	35	56.4%

From the table, it can be seen that almost all shipwrecks are a big size ship (more than 1000 gross tonnage). Data also shows that all the wreck was from the year 2013 and earlier, before enforcement of the Nairobi Convention. While old wrecks are charted on a map using wreck a symbol, not a lot of information can be obtained in addition to the depth and location of the wreck. The critical wrecks are also monitored from time to time to ensure no movement involving the wrecks has occurred and marked using suitable methods such as buoys are still in place (Standard Operation Procedure SOP, Wreck Management).

2.1.3 Ratification and law amendments

Malaysia had deposited for the accession of the Nairobi convention on 28 November 2013 and enforced the convention on 14 April 2015 (Official Portal Ministry of Transport Malaysia, 2018). The domestication process of international law has been done to the Merchant Shipping Ordinance 1952; a primary law governs the maritime sector in Malaysia.

Due to the difficulties to enact the overall new act despite the Merchant Shipping Ordinance 1952 being an old act, an easy method has been used to reflect the new conventions by drafting an Amendment Acts; to replace any part or to add a new section to principal act. The new act; Act A1393- Merchant Shipping (Amendment and Extension) Act 2011 was passed. Changes were made to section 306 and new section 381A been added. The new amendment in force on 1 Mac 2014 through an announcement by the Federal Government Gazette - PU (B) 65/2014 dated 28 February 2014 which was issued by the Attorney General Chambers of Malaysia and was signed by the Minister of Transport. However, the date in force had been postponed to 14 April 2015 due to unpreparedness of industry to comply with the new regulation during that time. Shipping notice MSN 04/2014 dated 3 June 2014 was also issued by the Marine Department to make a similar notification.

2.2 Local Enforcement

Promulgation the implementation of the Nairobi Convention in Malaysia was done through the issuance of Malaysian Shipping Notice; MSN 5/2015 by the Marine Department of Malaysia. Shipping Notice is one method being used by the Marine Department Malaysia as an authority to inform the Ship-owners, Ship Operators, Managers, Masters, Owners' Representatives,

Seafarers and Recognized Organizations about a new regulation or law made by the department.

Through the shipping notice, ships measuring 300 gross tonnages and above shall maintain an insurance or other financial security. Then, the compulsory insurance certificate for the ship will be issued based on financial security. Some of the documents required to apply for a Wreck Removal Certificate (WRC) are as follows:

a) A copy of the Certificate of Registration of the Ship;
b) A copy of the Certificate of Insurance (Blue Card) or Financial Securities from a Bank or other Financial Institution approved by the Marine Department of Malaysia; and
c) A duly signed Letter of Application.

Meanwhile, the list of Insurance Company and Financial Institutions approved by the Marine Department of Malaysia can be found through the Malaysia Shipping Notice MSN 09/2014 issued. MSN 09/2014 shipping notice, listed all of the Insurance Companies and Financial Institutions approved by the Marine Department that were also applicable for the issuing of Insurance Certificates (Blue Card) (to comply with CLC 1992) and the Bunker certificate. In the list, 13 companies under the International Group (IG) and 13 companies under Non-International Group (Non-IG), will be accepted.

Besides issuing WRC for Malaysian ships, the Marine Department also issued a certificate for foreign ships, as can be seen in the table below.

Table 2: Yearly WRC Approved to Ship-owners or Shipping Agents

Year	Malaysian ship	Foreign ship
2016	917	306
2017	1104	418
2018	1189	363
2019 (until August)	1090	243
Grand Total	4300	1330

2.3 Extension of Compulsory Insurance to 300 gross tonnages and below

The shipping Notice MSN 07/2016 dated 22 August 2016 by the Marine Department informed that the compulsory manner of the insurance will be widening and applied to all ships and boats licensed under 300 gross tonnage. The expansion was carried out after seeing that

there were several cases of small wrecks that are not covered by insurance and problems were arising for the authority in salvaging work.

The insurance cover was specially issued by the Protection and Indemnity Malaysia Sdn Bhd, better known as P&I Malaysia with the cooperation of the Ministry of Transport. The protection offered include crew and passenger liability, property damage, wreck removal and obstruction and pollution liability. Exceptions given include collision with ships and passenger liability subjected to terms and conditions.

CHAPTER THREE: PUBLIC LAW ASPECTS OF WRC 2007 AND MALAYSIAN LAWS

3.1 Definition of Wreck

3.1.1 The Legal Definition of a "Wreck" under the Nairobi Wreck Removal Convention

The Nairobi Convention defines a wreck as a sunken or stranded ship; or any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken (Article 1).

From the interpretation of the convention itself, the wreck can be divided into two types (Kern JM ,2016). Public aware that adrift wrecks will provide navigation hazards. Consequently, the convention focuses on two situations. The first is a wreck that provides a hazard to navigation. An example of a wreck classified in this type is a ship sinking in the middle of a busy shipping lane or a narrow strait between two countries. This will endanger other ships that use the same route for navigation. Second, besides becoming a danger to navigation, the same situation might also lead to other catastrophies like an oil spill that occurs from a ship collision itself. Oil pollution from a causality involving two tanker ships can result in a major disaster if not handled properly and promptly.

Also, the Nairobi convention defines the Ship as "... a seagoing vessel of any type ...". The definitions given are not clear in terms of the location of the vessel operations. Seagoing vessels can mean vessels that are only using the sea as the primary place to operate and do not involve vessels using rivers. The definition of a ship here excludes other offshore structures such as "… except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources…". In this way, most structures or vessels involved in the offshore industry will not be included in this Convention.

3.1.2 The Legal Definition of a "Wreck" under Malaysian Law

In Malaysia, shipwrecks can be categorized into three categories (Kapal karam di perairan Malaysia, Heritage Malaysia website). The first category was the historic shipwreck. Historic shipwrecks were classified as shipwrecks of more than 100 years old. Based on references

and written source information, a total of 66 historic shipwrecks were recorded in Malaysian waters sunk from the colonial era and during the rapid trades period around the archipelago.

The second category is the second world warships. The Second World War broke out on September 1, 1939, and lasted until September 2, 1945. For nearly six years' the allied forces and the axis forces cause the most damage in modern world history costing around 50 million lives. The battle between Japan and the British along the country's coast, especially in the South China Sea, became a major burial ground for world warships. According to the records, a total of 33-second world warships still lay on the at a seabed of Malaysian waters.

The third category of shipwrecks that are less than 100 years old, can be classified here as a new shipwrecks. For this reason, the applicable laws for the management of these shipwrecks were stipulated under the Malaysia Shipping Ordinance 1952 (MSO 1952) while the previous two categories are mostly under the subject of the National Heritage Act 2005.

MSO 1952, Section 366 defines shipwreck as "… to include jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water ...". This definition was also similar to the wreck interpretation found in the UK Merchant Shipping Act 1995. (Mahmud Zuhdi, n.d.). The Derelict interpretation included in this interpretation also links to the historic wrecks as salvable property or the effect of abandonment from a ship to be addressed as wrecks. Section 368 MSO 1952 also states that the duties of the receiver when a vessel in distress makes it possible for the wreck interpretation to apply to the same situation.

3.1.3 Implementation of the WRC under Malaysian Law

Following the ratification of the Nairobi Convention by Malaysia, an amendment was made to the existing MSO 1952 Act. The new act; Act 1393- Merchant Shipping (Amendment and Extension) Act 2011 was approved. In the bill, the substitution of section 381 had then been enacted;

> "381. (1) Where any ship is sunk, stranded or abandoned in any port, navigable river, tidal waters or in any place within Malaysian waters in such manner as, in the opinion of the receiver is a wreck that is or is likely to become a hazard to navigation or a public nuisance, or causes or is likely to cause inconvenience,"

by adding at the end of the paragraph "… or causes or is likely to cause harmful consequences to the marine environment, the owner shall, upon the direction of the receiver, locate, mark and remove the wreck and take measures to prevent pollution from the wreck..."

Here, the second element of the Nairobi Convention had been introduced into local law, causing harm to the marine environment. The first element of the wreck that gives a hazard to navigation was still preserved, which is a sunk, stranded or abandoned ship.
The Malaysian wreck interpretation also covers wrecks stranded on the navigable river and not limited to seagoing vessels as interpreted by the Nairobi Convention.

3.2 Scope of application

3.2.1 Scope of application of the Nairobi Convention

The scope of application of the Nairobi Convention covers the exclusive economic zone (EEZ) of a State party (Article 1). According to Article 57 UNCLOS, the EEZ "… shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured...". However, according to the Nairobi Convention Article 3.2, the territorial seas of the coastal state is not a subject to the convention. The State Party has the option to extend the application of this convention to wrecks located within its territory, including the territorial sea subject to article 4.4.

3.2.3 Scope of application of Malaysian Law

According to MSO 1952, Section 368 - Duty of receiver where a vessel is in distress; "… Where a British, Malayan or foreign vessel is wrecked, stranded or in distress at any place on or near the coasts of the Federation or any tidal water within the limits of the Federation ...". The initial scope of Malaysian law in this paragraph here was only the coast of the Federation which was also the territorial water (Khairil Azmin Mukhtar, Maizatun Mustafa ,2012). The definition of territorial waters provided under the Territorial Sea Act 2012, was the waters of 12 nautical miles from the baseline. The baseline here, which has a breadth of that territorial sea was per section 5 of the Maritime Zones Act 2006.

3.2.3 Implementation of the WRC under Malaysian Law

The amendment made to accommodate the Nairobi convention; Act 1393 is reflected by adding a new section, 381A into MSO 1952. Section 381A which states "… The owner of any ship

of 300 tons and above that enters or leaves a port in Malaysia or any part of Malaysian waters shall maintain in respect of that ship a contract of insurance ...". Here, the scope of enforcement was still only in the territorial waters of Malaysia and does not cover the EEZ.

The increase in scope can only be seen through amendment A1393 of section 306B, MSO 1952 where the phrase "or the exclusive economic zone" had been added after the words "Malaysia waters". However, the application of section 306 only applies during the action to be taken in cases of maritime casualty and the existence of a threat to pollution. So, the use of this section only applied for the wreck that had an element of ship casualty or hazard to the environment.

Therefore, the implementation of the MSO 1952 and amendment of Act 1393 was seen as incomplete and only applied up to 12 nautical miles from the baseline. In contrast, there was another law that had been enacted to meet Malaysia's implementation of the Civil Liability Convention, the Merchant Shipping (Oil Pollution) Act 1994, which enshrines its jurisdiction to the EEZ of Malaysia through its section 3;

> For the purposes of this Act—
> *(a)* references to any area of Malaysia include the territorial sea of Malaysia and exclusive economic zone of Malaysia and references to any area of any other Liability Convention country include the territorial sea and the exclusive economic zone of that Liability Convention country;

3.3 Reporting wreck

3.3.1 Obligation for reporting a wreck under the Nairobi Convention

The Nairobi convention requires the Master, and the operator of a ship flying its flag to report to the Affected State without delay if the ship is in trouble (Article 5). The meaning of the operator of the ship can be found in Article 1.9 of the convention, which was the owner of the ship, managers, or bareboat charterer. The report must be accompanied by the location of the wreck; type, size and construction of the wreck; condition of the wreck, cargo crying by the ship and whether it is hazardous or not; and the amount and type of bunker and lubricating oil on board.

3.3.2 Obligation for reporting a wreck under Malaysian law

In Malaysia, reporting a wreck can be divided into two categories. The first category was the new wreck arising from cases of maritime casualty, and the second was the responsibility to report on the findings of the old wreck. For the first category, section 306J of the MSO 1952 provides:

> "The Master of a ship in Malaysian waters or the exclusive economic zone which experience a maritime casualty as defined in section 306I or which has discharged any oil or harmful substance shall report such incident to…"

According to section 306I MSO 1952, the term "maritime casualty" means abandoned or is not in command, receive any material damage, has been stranded or has experienced any occurrence on board which results in the escape of oil or harmful substance. From the above paragraph, it is clear that the report should be made immediately by the Master. Amendment -Act 1393 added the words "or the exclusive economic zone" to broaden the scope of existing law. The meaning of maritime casualty had also been expanded and not only applies to vessels which involved in accidents and at risk of causing oil pollution, but also included abandoned or stranded vessels.

The second category is related to reporting responsibility for anyone who finds a wreck. The wreck in this case meaning the discovery of an unknown or known wreck by its owner or any person whether the wreck was a ship or classified as jetsam, flotsam, lagan or derelict found at sea or seashores. Section 374, MSO 1952, provides that where any person finds or takes possession of any wreck, it should give notice to the receiver of the wreck. Any person who fails to comply with this rule without reasonable cause may be fined up to one thousand ringgits.

3.3.3 Implementation of the WRC under Malaysian Law

Therefore, the reporting obligations at the Nairobi Convention and Malaysia law are similar if a ship was involved in an accident. It is the Master's responsibility to make initial reports by writing or by telex or other means of radio communication. Provided that where a report is produced by verbal radio communication, it shall be followed in writing or by telex as soon as possible (Section 306J (2), MSO 1952)

3.4 Determination of hazard

3.4.1 Definition of hazard under Nairobi Convention

The Nairobi Convention sets several criteria for a wreck that poses a hazard regardless of the safety of navigation or marine environment. Article 6 of the convention explains in detail the criteria to be considered including the type of ship, the location of the collision where it was located on the busy shipping route or at sensitive area, the type and amount of cargo involved in the accident, and any other circumstances affecting the works to remove the wreck.

3.4.2 Definition of hazard under Malaysian Law

Malaysian law sets the determination of the hazard of the wreck based on the opinion of the receiver, which is an important factor in determining the danger of the shipwreck. Section 381 of the MSO 1952, prescribe the hazard of the wreck to be defined by its potentially cause to become an obstruction to the safety of navigation, risk of marine pollution and public nuisance in such a manner, in the opinion of the receiver.

3.4.3 Implementation of the WRC under Malaysian Law

The improvement of amendment A1393 made to the new section of 381 MSO 1952 is an extension of the marine environment element to the original section by the addition of the words "... or is likely to cause harmful consequences to the marine environments ...".

Here, it was seen that the definition of the hazard of a wreck by Malaysian law was broader and subject to the opinion of the receiver although Section 381 of MSO 1952 had already provided basic guidelines to it.

3.5 Marking of wrecks

3.5.1 Obligation to mark wrecks under Nairobi Convention

Once the affected state has determined that the wreck involved constitutes a hazard under the international convention or law of a country, the next action to be taken is marking the wreck according to Article 8 of the Nairobi Convention.

The method of marking the wreck is based on the internationally accepted system of buoyage in the casualty area. The Affected State is also responsible for propagating information regarding the existence of a wreck with some nautical publication approaches such as Navtex or Notice to Marines.

3.5.2 Implementation of the WRC under Malaysian Law

MSO 1952, section 381 provides that it was the responsibility of the shipowner to locate and mark the wreck upon receiving directions from the receiver of the wreck. Amendment A1393 to section 381 MSO 1952 also adds that, section 381(3) it was the responsibility of the receiver of the Affected State to locate and mark the wreck if the owner fails to comply with subsection (1) in which the owner himself fails to mark the wreck. This empowers the Affected State to act if the shipowner fails to perform the task of effectively removing the wreck for ensuring the safety of navigation at the scene and to prevent further accidents involving the particular wreck.

Although it is stated here that it was the responsibility of the shipowner for marking the wreck, usually the government will deploy it available assets to take early steps in carrying out the marking of the wreck. Examples can be seen in the case of Cai Jun 3[1], wreck on the coast of Johor, South of Peninsular Malay on March 13, 2017. On March 14, 2017, two (2) Marine Department of Malaysia assets, Oil Spill Response Boat Al Nilam and MV Pemancar were on site for the purpose of setting up oil spill control, traffic monitoring and security. A Notice to Mariners was issued; NTM 17 (T) / 2017 and the marker buoy was placed on May 1, 2017.

[1] Cai Jun 3 was a Panama flag general cargo ship with 132.6 meter LOA and 9994 GRT sunk due technical problem.

3.6 Measures to facilitate the removal of a wreck

3.6.1 Responsibility of the shipowner under the Nairobi Convention

In the event of an accident, and the affected state determines that the wreck was a hazard to navigation or a risk to the environment, Article 9 Nairobi Convention requires the affected state immediately to notify the state of the ships registry and the registered owner.

The responsibility for removing the wreck rests with the registered owner per Article 9.2. Registered owner as defined in Article 1.8 of the convention was "...the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty ...". Whereas removal means "...any form of prevention, mitigation or elimination of the hazard created by a wreck ...".

Since the original purpose of the introduction of the Nairobi Convention was to facilitate the wreck management by requiring insurance for certain vessels (Article 12), so it was the ship owner's responsibility to appoint a salvor who would carry out salvor work on behalf of the shipowner in cooperation with the insurer.

3.6.2 Responsibility of the Affected State under the Convention

The responsibility of the affected state was to oversee and establish the conditions (Article 9.4) that it deems necessary to safeguard the safety and protection of the marine environment. Affected States also had the power to take over the job if the registered owner was considered to have failed to keep the dateline or perform the salvage work properly until the hazard becomes particularly severe. The job done by the Affected State will be at the registered ship owner's expense (Article 9.6b).

3.6.3 Implementation of the WRC under Malaysian Law

Pursuant to Section 381 of the MSO 1952, when a wreck becomes a hazard, the Receiver of Wreck (ROW), shall issue a notice to the shipowner to carry out the work of detecting, marking and removing or take any precautionary measures against pollution or hazard to the safety of navigation pursuant to Section 381 (1) and submit a financial security under Section 381 (2). Financial security accounts for 5% of the total price of the contract for the removal of the wreck based on the Malaysian Treasury Circular 4.2.

If the owner fails to take appropriate or adequate action in the view of the receiver, the shipowner can be penalized and if found guilty, could be subject to a fine of not less than Five Hundred Thousand Ringgit (RM 500,000.00) but not exceeding One Million Ringgit (RM1,000,000.00) under Section 381 (5) of the MSO 1952.

Then, the receiver could dispose of the wreck under Section 381 (3) MSO 1952. All costs incurred by the government shall be recorded and reimburse by selling off the wreck. If the cost of upkeep and disposal of the wreck, more than the wreck value itself, ROW may file a claim through a legal process against the shipowner under Section 381 (4) MSO 1952.

The dissimilarity between the Nairobi convention and the Malaysia Law was that an element of financial security presents in MSO 1952 as an assurance to the government. This requirement was in line with other governmental circular and procurement procedure. MSO 1952 also justify the receiver to sell the wreck under section 381 (3c) MSO 1952 where "...receiver may- c) sell, in such manner as he thinks fit, the whole or any part of the wreck so raised or removed and also any other property recovered in the exercise of his power under this section, and out of the proceeds of the sale- (i) reimburse himself for the expense incurred by him in relation ...". The sale of the wreck was made to cover the cost incurred by the government to remove the wreck.

There are a number of cases that can be referred to where the shipowner fails to remove the wreck as been ordered to by the government, such as the MV Banga Biraj[1] (Banga Biraj, 20011, June 7) case which was left stranded at Port Klang Deep Water Point Anchorage (North) waters. The wreck was defined as becoming a public nuisance and caused inconvenience. The failure of the shipowner to locate, mark and remove the ship caused the ship to be disposed of in 2014 under section 381 (3) (c) of the MSO 1952 by auction and the proceeds of the sale to the trust account.

The same section was used to dispose of the Fajar Samudera[2] ship at Port Klang in 2014 for the same reason.

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[1] MV Banga Biraj has been detained at Port Klang due to the case with Northport.

[2] Fajar Samudera has been left abandoned by its owner.

CHAPTER FOUR: PRIVATE LAW RELATED ANALYSES

4.1 The ship-owner liability

4.1.1 Ship-owner liability under the Nairobi Convention

The Nairobi convention state was the responsibility of the registered owner to bear the costs involved for locating, marking and removing the wreck (Byoung-Yun, 2007). Like the other convention involving liability and compensation (CLC, HNS and BUNKER), the ship-owner will not be liable under this convention if he/she can provide that the wreck:

a) Resulted from an act of war or hostilities
b) Resulted from a natural phenomenon
c) Was caused by a third party with an intent to do damage
d) Was caused by the negligence or other wrongful act by the government such ass failure of navigational aids (Article 10)

This is a standard exception usually given to the international convention. However, the responsibility of the registered owner also shall be subject to a limitation of liability under applicable national or international regimes implemented by the state party, such as:

a) International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC PROT 1992)
b) International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS 1996)
c) Convention on third party liability in the Field of Nuclear Energy, 1960 (NUCLEAR)
d) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001)

Under the above conventions, no claim for compensation for damage under the convention may be made against any person performing salvage operations with the consent of the owner or under the direction of public authority if the occurrence of the oil spill or damage during the process.

The owner is also entitled to limit the liability under the same list convention in respect to an aggregate amount calculated under their respective convention.

4.1.2 Ship-owner liability under Malaysian law

Under the early MSO 1952, Section 381 in the event of a wreck, it was the responsibility of the receiver or maritime administration of the Affected State for taking possession and removing of the wreck if such situation happens. Proceeds from the sale of the wreck, Section 381(c) will be used to reimburse the costs incurred by the government. The receiver is also responsible for all necessary measures to prevent pollution from the ship. It is not the liability of the shipowner and the option was only given to them to remove the wreck on its own.

4.1.3 Implementation of the WRC under Malaysian Law

After the amendment, section 381 MSO 1952 provides the obligation to locate, mark and remove the wreck shift to the ship-owner. The dissimilarity between the WRC was that the owner would act according to the Receiver's instructions through "… wreck that is or is likely to become a hazard to navigation or a public nuisance, or causes or is likely to cause inconvenience, or causes or is likely to cause harmful consequences to the marine environment, the owner shall, upon the direction of the receiver, locate, mark and remove the wreck and take measures to prevent pollution from the wreck…"

Only, if in the opinion of the Receiver, the owner fails to carry out the tasks which are directed successfully, can the Receiver carry out the task of moving the wreck with his/her own effort and reimburse himself/herself, with the proceeds of the sale together with financial security furnished. If it is still not sufficient to cover the cost of which is used by the Public Authority, he/she may recover the difference from the owner of the ship concerned (381 (4) MSO 1952)

Limitation of liability of the ship-owner implemented in Malaysia was based on the Convention which has been ratified including CLC PROT 1992, BUNKERS 2001 and the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC PROT 1996). Malaysia has not ratified the NUCLEAR Convention, the HNS 1996 Convention or the Salvage Convention.

Limitation to the liability can be found in Part IX- Liability of Owners and Others and Compulsory Insurance, MSO 1952. However here, like the part taken from the LLMC Prot 1996, the claim in respect of removal sunk or abandoned wreck shall not be subject of liability to the

extent that they relate to remuneration under a contract with the liable person. (Article 2 (2), Sixteenth Schedule, MSO 1952)

4.2 Compulsory insurance or other financial security

4.2.1 Financial Security by the Nairobi Convention

The Nairobi Convention contains provisions of compulsory insurance. Registered owners of ships exceeding 300 gross tonnages and flying the flag of the State Party under Article 12 of the convention, require insurance. Another financial security, such as a bank guarantee, is also allowed. The insurance or the security shall cover the liability of the ship-owner under the convention to the extent of liability of applicable international conventions. Normally the limit is not exceeding the amount which was calculated in accordance with article 6 (1) (b) of the Convention on Limitation of Liability for Maritime Claims, 1976.

4.2.2 Obligation to obtain a certificate under the Nairobi Convention

Furthermore, a certificate that confirms the financial security which is owned by a ship-owner will be issued by the appropriate authority of the State of the ship's registry. In addition, for the ship register to a non-State Party, a certificate can be issued by authority of any state party. This allows the State which is not a party to the convention, to apply for a certificate being issued at the location of a ship operate if the State is a party to the convention. Any ship in respect of 300 gross tonnage and above, entering or leaving a port or offshore facility of a territory of the State Party, must comply with the requirement and possess a compulsory certificate. (Article 12:12 WRC)

4.2.3 Implementation of the WRC under Malaysian Law

In Malaysia, requirements to comply with the Nairobi Convention insurance was done under Act A1393. The amendment had been made with the insertion of section 381A MSO 1952, where every ship that enters or leaves a port in Malaysia or any part of Malaysian water must have a contract of insurance or other financial security equal to the amount calculated in accordance with Article 6, paragraph (1) (b) of part 1 of the Sixteenth Schedule to cover liability may be incurred under section 381 MSO 1952. Exceptions are granted to any warships or government ships (Section 381 A (2)). Offences for not complying with the regulations, causing the ship can be detained, and if the owner is guilty of an offence, a fine of not less than two hundred thousand ringgits and not more than five hundred thousand ringgits might apply.

Each ship-owner must also ensure that any contract of insurance or security is carried on the ship, and if she/he fails to produce this by the master of the ship, shall be liable on conviction to a fine not less than one hundred dollars and not more than twenty thousand ringgits.

The implementation of prescribing insurance for vessels that enter into or leave a port in Malaysia or any part of Malaysian waters may be in conflict with international customary laws. Any part of Malaysia's waters means the territorial waters of Malaysia, and would reasonably conflict with the right of innocent passage in another State's exclusive economic zones according to article 58.1 and article 87 UNCLOS as well of the right of innocent passage through other State's territorial sea to article 17 UNCLOS. The argument is that it may infringe on another State that is not a member of the convention. Comparing to the original terms of the Nairobi Convention Article 12:12, insurance is only obligated to the ship entering or leaving a port in its territory, or arriving at, or leaving from an offshore facility in its territorial sea.

The effectiveness of the WRC in dealing with wreck removal works can be seen in the wreckage of the Cai Jun 3, Notice under section 306D MSO 1952 has been issued, directing the owners to take the necessary steps to remove the wreck, determine the appropriate salvage method and prevent the occurrence of oil spill / hazardous substances. Notice under Section 381 was also issued to ship owners to take immediate action to remove the wrecks and its components. The shipowner has appointed an insurance company Hanseatic P&I to carry out the salvage work immediately under the supervision of the Marine Department of Malaysia. Some of the conditions imposed by the Malaysian government on contractors include the salvager demands to produce a Bank Guarantee of an amount of not less than 5 percent of the salvage costs within 14 days of the award to salvage work and the insurance company also requires to appoint Malaysian or a local company to take charge of the salvage operation.

4.2.4 The direct action and actual cost recovery procedure of the state against the compulsory insurer

The early salvage method in which it was paid by the government and has always been associated with the principle of "no cure, no pay, in layman terms (Mahmud Zuhdi, nd), was a widely used method especially for historic wreck salvage and was not suitable for commercial shipwreck operation that involved a higher cost.

Therefore, as with point 3.6.3 earlier, it was the responsibility of Receiver of Wreck's to direct the shipowner to remove the wreck in cooperation with the involved insurer. However, if the

shipowner fails to perform the duties as directed or the government need to perform emergency wreck removal operation for a specific reason (Standard Operation Procedure (SOP), Wreck Management- Removal wreck during emergency), there was an option for state to recover the actual cost involved through Article 12.10 Nairobi Convention.

Article 12.10 states that any claim arising under the convention may be brought directly against the insurer or person providing the financial security. On the other hand, the insurer can also limit the liability of insurance applied. In fact, the insurer could furthermore revoke the indemnity in the defence the maritime casualty was caused by the wilful misconduct of the ship-owner.

4.3 Time limits

4.3.1 Time limits under the Nairobi Convention

A claim for the cost incurred in action to be taken pursuant to Article 13 of the Nairobi convention was within three years from when the hazard happened determined by the convention. This is after the Affected State has identified that a maritime casualty had changed the vessel to a hazard or wreck. There is, furthermore, the general period of time over six years starting from the date of the maritime casualty that resulted in the wreck for the Affected State to recover the cost. Placing a period of time to make a claim will exempt the existing wreck or old wreck. The convention merely focuses on the occurrence risk of a wreck in the future.

4.3.2 Time limits under Malaysian law

Malaysia legislation did not require any time limit for the shipowner or the affected state the right to recover the costs from the removal of the wreck. This means that the claiming process can be carried out whenever it occurs in Malaysian waters. However, often, the claim will be carried quickly by the parties involved after all the salvage work or contract has been successfully fulfilled.

CHAPTER FIVE: SUMMARY AND CONCLUSIONS

5.1 Summary

This thesis analyses the effectiveness of the implementation of an international treaty of Malaysian law in this case, the Nairobi International Convention on the Removal of Wrecks. The thesis also reviews the procedure for ratifying the international treaty of Malaysia as a dualists state. As such a state, international law does not take effect in the country until a local law is enacted.

From the viewpoint of public law, the primary purpose of the Nairobi Convention was to establish the rules that are uniform and ensure the effective removal of the wreck is a hazard to navigation and is located in the EEZ. This convention gives power to the coastal state to remove a wreck in its EEZ without involving sovereignty implications. When a ship is classified as a wreck, it becomes following upon a maritime casualty and may result in a hazard to navigation in the EEZ of the coastal state. The first step to be taken by the master or operator of the ship is to report the problem to the Affected State as soon as possible. Significant details such as the location of the ship, type of ship and cargo should be notified immediately to the local authority for the act be taken promptly. If the Affected State determines that the wrecks constitute a hazard, early measures can be started, such as marking the casualty and wreck location with an accepted buoyage system and promulgated the incident to a nearby ship. Usually, Navtex or Notice to Mariners will be issued immediately by the local authority. The convention also holds the ship-owner to move the wreck as soon as possible. If the affected state feels the owner has failed to perform the duty and the wreck is at a higher risk of giving threats to the shipping lane, the Affected State can itself get permission to move the wreck on its own. The costs involved can then be claimed back to the ship-owner.

Malaysia has enacted a law to enforce the provision required to achieve the objectives of the Nairobi Convention. The existing act of Part X Wreck and Salvage MSO 1952 only covers an area up to the territorial water of Malaysia involving the wreck or action to be taken in cases of maritime casualty. The new act, Act 1393 Merchant Shipping (Amendment and Extension) Act 2011, made some changes in MSO 1952. The enforcement area was expanded to the EEZ. The procedure for action in the case of maritime casualties or the existence of a wreck was similar to the international convention referred to.

However, the dissimilarity between MSO 1952 with the Nairobi Convention can be seen in several aspects such as interpretation of a wreck alone, the need of implementation guarantees or bonds before any salvage work commences, and fines that can be imposed if the ship-owner fail to carry out the task of moving the wreck. In Malaysia a wreck can be classified into three categories, although the interpretation in MSO 1952 only describes the concept of wreck similar to the Nairobi Convention. Financial security also applies accounts for 5% of the total price of the contract for the removal of the wreck based on the Malaysian Treasury Circular 4.2. Furthermore, if the owner fails to take appropriate or adequate action in the view of the receiver, the ship-owner can be penalized and, if found guilty, could be subject to a fine of not less than Five Hundred Thousand Ringgit (RM 500,000.00) but not exceeding One Million Ringgit (RM1,000,000.00) under Section 381 (5) of the MSO 1952.

On the other hand, from private law, the Nairobi Convention requires that each ship over 300 gross tonnages and above to has to have an insurance to cover the liability under the convention. However, liability born by the ship-owner also restricts the existing Civil Liability Convention. A period of not more than three years from the occurrence of hazard determination, or a maximum of 6 years from the date of casualty is also required to claim the insurer. Whereas, for Malaysia, the new Section 381A requires every ship of 300 gross tonnages leaving or entering port in Malaysia, or any part of Malaysian water, must have a contract of insurance or other financial security. Offences for not complying with the set terms, or causing the ship to be detained, and if the owner is guilty of an offence, might have to pay a fine of not less than two hundred thousand ringgits and not more than five hundred thousand ringgits. Failure to carry a certificate of insurance on the ship can also be subject to a fine of not less than twenty thousand ringgits and not more than one hundred ringgits. No time limit is put in place by the Malaysian government to claim an insurance even if the contract of insurance that is signed by the ship-owner with representatives of insurance says otherwise.

Improvement can be made in section 381 (A) where the implementation of insurance for the ship that enters or leaves a port in Malaysia or any part of Malaysian waters may conflict with international customary laws. Any part of Malaysian waters means the territorial waters of Malaysia would reasonably conflict with the right of innocent passage in other State territorial sea to article 17 UNCLOS by a non-party State. Exceptional clauses can be inserted as a remedy such as in section 361 (2) MSO 1952:

> (2) This section shall not apply to—
>
> (a) a foreign ship while it is exercising –
>
> (i) the right of innocent passage; or

(ii) the right of transit passage through straits used for international navigation;

In terms of ratifying an international treaty, the Executive proven to have power in the Federal Constitution for treaty-making have the power to submit draft Bills (drat statues) to Parliament. After ratifying any treaty, efforts should be made by the Executive to submit a draft enabling statue so that the law can give effects to Malaysian. This clearly shows a dualist approach. A further step will be carried out by the department to implement policies that have been designed and accepted.

As the conclusion, from the analysis, Malaysia has successfully implemented the Nairobi Convention at the national level. Extra measures of administration such as fines and bonds were needed to establish a government-level stance so the law can be implemented more effectively. Malaysia's commitment was enhanced when it also requires licensed boats and ships below 300 gross tonnages to have the same requirements as the Nairobi Convention.

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