Non-Corrigé
Uncorrected

CR 2007/22

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2007

Public sitting

held on Thursday 8 November 2007, at 10 a.m., at the Peace Palace,

Vice-President Al-Khasawneh, Acting President, presiding

***in the case concerning* Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)**

VERBATIM RECORD

ANNÉE 2007

Audience publique

tenue le jeudi 8 novembre 2007, à 10 heures, au Palais de la Paix,

sous la présidence de M. Al-Khasawneh, vice-président, faisant fonction de président

***en l'affaire relative à la* Souveraineté sur Pedra Branca/Pulau Batu Puteh, Middle Rocks et South Ledge (Malaisie/Singapour)**

COMPTE RENDU

Present:	Vice-President	Al-Khasawneh, Acting President
	Judges	Ranjeva
		Shi
		Koroma
		Parra-Aranguren
		Buergenthal
		Owada
		Simma
		Tomka
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Skotnikov
	Judges *ad hoc*	Dugard
		Sreenivasa Rao
	Registrar	Couvreur

Présents : M. Al-Khasawneh, vice-président, faisant fonction de président en l'affaire
MM. Ranjeva
Shi
Koroma
Parra-Aranguren
Buergenthal
Owada
Simma
Tomka
Abraham
Keith
Sepúlveda-Amor
Bennouna
Skotnikov, juges
MM. Dugard
Sreenivasa Rao, juges *ad hoc*

M. Couvreur, greffier

The Government of Malaysia is represented by:

H.E. Tan Sri Abdul Kadir Mohamad, Ambassador-at-Large, Ministry of Foreign Affairs of Malaysia, Adviser for Foreign Affairs to the Prime Minister,

as Agent;

H.E. Dato' Noor Farida Ariffin, Ambassador of Malaysia to the Kingdom of the Netherlands,

as Co-Agent;

H.E. Dato' Seri Syed Hamid Albar, Minister for Foreign Affairs of Malaysia,

Tan Sri Abdul Gani Patail, Attorney-General of Malaysia,

Sir Elihu Lauterpacht, C.B.E., Q.C., Honorary Professor of International Law, University of Cambridge, member of the Institut de droit international, member of the Permanent Court of Arbitration,

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international,

Mr. Nicolaas Jan Schrijver, Professor of Public International Law, Leiden University, associate member of the Institut de droit international,

Mr. Marcelo G. Kohen, Professor of International Law, Graduate Institute of International Studies, Geneva, associate member of the Institut de droit international,

Ms Penelope Nevill, college lecturer, Downing College, University of Cambridge,

as Counsel and Advocates;

Datuk Azailiza Mohd Ahad, Head of International Affairs Division, Chambers of the Attorney-General of Malaysia,

Datin Almalena Sharmila Johan Thambu, Deputy Head 1, International Affairs Division, Chambers of the Attorney-General of Malaysia,

Ms Suraya Harun, Senior Federal Counsel, International Affairs Division, Chambers of the Attorney-General of Malaysia,

Mr. Mohd Normusni Mustapa Albakri, Federal Counsel, International Affairs Division, Chambers of the Attorney-General of Malaysia,

Mr. Faezul Adzra Tan Sri Gani Patail, Federal Counsel, International Affairs Division, Chambers of the Attorney-General of Malaysia,

Ms Michelle Bradfield, Research Fellow, Lauterpacht Centre for International Law, University of Cambridge, Solicitor (Australia),

as Counsel;

Le Gouvernement de la Malaisie est représenté par :

S. Exc. M. Tan Sri Abdul Kadir Mohamad, ambassadeur en mission extraordinaire, ministère des affaires étrangères de la Malaisie, conseiller auprès du premier ministre pour les affaires étrangères,

comme agent ;

S. Exc. Mme Dato' Noor Farida Ariffin, ambassadeur de la Malaisie auprès du Royaume des Pays-Bas,

comme coagent ;

S. Exc. M. Dato' Seri Syed Hamid Albar, ministre des affaires étrangères de la Malaisie,

M. Tan Sri Abdul Gani Patail, *Attorney-General* de la Malaisie,

Sir Elihu Lauterpacht, C.B.E., Q.C., professeur honoraire de droit international à l'Université de Cambridge, membre de l'Institut de droit international, membre de la Cour permanente d'arbitrage,

M. James Crawford, S.C., F.B.A., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre de l'Institut de droit international,

M. Nicolaas Jan Schrijver, professeur de droit international public à l'Université de Leyde, membre associé de l'Institut de droit international, membre de la Cour permanente d'arbitrage,

M. Marcelo G. Kohen, professeur de droit international à l'Institut universitaire de hautes études internationales de Genève, membre associé de l'Institut de droit international,

Mme Penelope Nevill, chargée de cours au Downing College de l'Université de Cambridge,

comme conseils et avocats ;

Datuk Azailiza Mohd Ahad, chef du département des affaires internationales, cabinet de l'*Attorney-General* de la Malaisie,

Mme Datin Almalena Sharmila Johan Thambu, première adjointe au chef du département des affaires internationales, cabinet de l'*Attorney-General* de la Malaisie,

Mme Suraya Harun, conseiller fédéral principal au département des affaires internationales, cabinet de l'*Attorney-General* de la Malaisie,

M. Mohd Normusni Mustapa Albakri, conseiller fédéral au département des affaires internationales, cabinet de l'*Attorney-General* de la Malaisie,

M. Faezul Adzra Tan Sri Gani Patail, conseiller fédéral au département des affaires internationales, cabinet de l'*Attorney-General* de la Malaisie,

Mme Michelle Bradfield, *Research Fellow* au Lauterpacht Research Center for International Law de l'Université de Cambridge, *Solicitor* (Australie),

comme conseils ;

Dato' Haji Abd. Ghaffar bin Abdullah, Deputy State Secretary of Johor (Administration),

Mr. Abd. Rahim Hussin, Under-Secretary, Maritime Security Policy Division, National Security Council, Department of the Prime Minister of Malaysia,

Mr. Raja Aznam Nazrin, Under-Secretary, Adjudication and Arbitration, Ministry of Foreign Affairs of Malaysia,

Capt. Sahak Omar, Director General, Department of Hydrography, Royal Malaysian Navy,

Mr. Tuan Haji Obet bin Tawil, Deputy Director 1, Land and Mines Office of Johor,

Dr. Hajah Samsiah Muhamad, Director of Acquisition, Documentation and Audiovisual Centre, National Archives,

Cdr. Samsuddin Yusoff, State Officer 1, Department of Hydrography, Royal Malaysian Navy,

Mr. Roslee Mat Yusof, Director of Marine, Northern Region, Marine Department Peninsular Malaysia,

Mr. Azmi Zainuddin, Minister-Counsellor, Embassy of Malaysia in the Kingdom of the Netherlands,

Ms Sarah Albakri Devadason, Principal Assistant Secretary, Adjudication and Arbitration Division, Ministry of Foreign Affairs of Malaysia,

Mr. Mohamad Razdan Jamil, Special Officer to the Minister for Foreign Affairs of Malaysia,

Ms Haznah Md. Hashim, Principal Assistant Secretary, Adjudication and Arbitration Division, Ministry of Foreign Affairs of Malaysia,

as Advisers;

Professor Dato' Dr. Shaharil Talib, Head of Special Research Unit, Chambers of the Attorney-General of Malaysia,

as Consultant;

Mr. Tan Ah Bah, Director of Survey (Boundary Affairs Section), Department of Survey and Mapping,

Professor Dr. Sharifah Mastura Syed Abdullah, Dean of the Faculty of Social Sciences and Humanities, National University of Malaysia,

Professor Dr. Nik Anuar Nik Mahmud, Director of the Institute for Malaysian and International Studies, National University of Malaysia,

Mr. Ahmad Aznan bin Zakaria, Principal Assistant Director of Survey (Boundary Affairs Section), Department of Survey and Mapping,

M. Dato'Haji Abd. Ghaffar bin Abdullah, secrétaire d'Etat adjoint du Johor (administration),

M. Abd. Rahim Hussin, sous-secrétaire au département de la politique de sécurité maritime, conseil de la sécurité nationale, services du premier ministre de la Malaisie,

M. Raja Aznam Nazrin, sous-secrétaire au département de la justice et de l'arbitrage, ministère des affaires étrangères de la Malaisie,

Le capitaine Sahak Omar, directeur général du service hydrographique de la marine royale malaisienne,

M. Tuan Haji Obet bin Tawil, premier directeur adjoint du bureau du territoire et des mines du Johor,

M. Hajah Samsiah Muhamad, directeur des acquisitions, centre de documentation audiovisuel des archives nationales,

Le commandant Samsuddin Yusoff, premier officier d'état-major du service hydrographique de la marine royale malaisienne,

M. Roslee Mat Yusof, directeur de la marine pour la région septentrionale, département de la marine de la Malaisie péninsulaire,

M. Azmi Zainuddin, ministre conseiller à l'ambassade de la Malaisie au Royaume des Pays-Bas,

Mme Sarah Albakri Devadason, secrétaire adjointe principale au département de la justice et de l'arbitrage, ministère des affaires étrangères de la Malaisie,

M. Mohamad Razdan Jamil, assistant spécial du ministre des affaires étrangères de la Malaisie,

Mme Haznah Md. Hashim, secrétaire adjointe principale au département de la justice et de l'arbitrage, ministère des affaires étrangères de la Malaisie,

comme conseillers ;

M. Dato' Shaharil Talib, professeur, directeur du service des études spéciales du cabinet de l'*Attorney-General* de la Malaisie,

comme consultant ;

M. Tan Ah Bah, directeur de la topographie, service des frontières, département de la topographie et de la cartographie,

Mme Sharifah Mastura Syed Abdullah, professeur, doyenne de la faculté des sciences sociales et humaines de l'Université nationale de la Malaisie,

M. Nik Anuar Nik Mahmud, professeur, directeur de l'Institut d'études malaisiennes et internationales de l'Université nationale de la Malaisie,

M. Ahmad Aznan bin Zakaria, directeur adjoint principal de la topographie, service des frontières, département de la topographie et de la cartographie,

Mr. Hasnan bin Hussin, Senior Technical Assistant (Boundary Affairs Section), Department of Survey and Mapping,

as Technical Advisers.

The Government of the Republic of Singapore is represented by:

H.E. Mr. Tommy Koh, Ambassador-at-Large, Ministry of Foreign Affairs of the Republic of Singapore, Professor of Law at the National University of Singapore,

as Agent;

H.E. Mr. Anil Kumar s/o N T Nayar, Ambassador of the Republic of Singapore to the Kingdom of the Netherlands,

as Co-Agent;

H.E. Mr. S. Jayakumar, Deputy Prime Minister, Co-ordinating Minister for National Security and Minister for Law, Professor of Law at the National University of Singapore,

Mr. Chan Sek Keong, Chief Justice of the Republic of Singapore,

Mr. Chao Hick Tin, Attorney-General of the Republic of Singapore,

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., member of the English Bar, Chairman of the United Nations International Law Commission, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, Distinguished Fellow, All Souls College, Oxford,

Mr. Alain Pellet, Professor at the University of Paris X-Nanterre, member and former Chairman of the United Nations International Law Commission, associate member of the Institut de droit international,

Mr. Rodman R. Bundy, avocat à la Cour d'appel de Paris, member of the New York Bar, Frere Cholmeley/Eversheds, Paris,

Ms Loretta Malintoppi, avocat à la Cour d'appel de Paris, member of the Rome Bar, Frere Cholmeley/Eversheds, Paris,

as Counsel and Advocates;

Mr. S. Tiwari, Principal Senior State Counsel, Chambers of the Attorney-General of the Republic of Singapore,

Mr. Lionel Yee, Senior State Counsel, Chambers of the Attorney-General of the Republic of Singapore,

Mr. Tan Ken Hwee, Senior Assistant Registrar, Supreme Court of Singapore,

Mr. Pang Khang Chau, Deputy Senior State Counsel, Chambers of the Attorney-General of the Republic of Singapore,

Mr. Daren Tang, State Counsel, Chambers of the Attorney-General of the Republic of Singapore,

M. Hasnan bin Hussin, assistant technique principal du service des frontières, département de la topographie et de la cartographie,

comme conseillers techniques.

Le Gouvernement de la République de Singapour est représenté par :

S. Exc. M. Tommy Koh, ambassadeur en mission extraordinaire (ministère des affaires étrangères de la République de Singapour), professeur de droit à l'Université nationale de Singapour,

comme agent ;

S. Exc. M. Anil Kumar s/o N T Nayar, ambassadeur de la République de Singapour auprès du Royaume des Pays-Bas,

comme coagent ;

S. Exc. M. S. Jayakumar, vice-premier ministre, ministre coordinateur pour la sécurité nationale et ministre de la justice, professeur de droit à l'Université nationale de Singapour,

M. Chan Sek Keong, *Chief Justice* de la République de Singapour,

M. Chao Hick Tin, *Attorney-General* de la République de Singapour,

M. Ian Brownlie, C.B.E., Q.C., F.B.A., membre du barreau d'Angleterre, président de la Commission du droit international des Nations Unies, professeur émérite de droit international public (chaire Chichele) à l'Université d'Oxford, membre de l'Institut de droit international, *Distinguished Fellow* au All Souls College d'Oxford,

M. Alain Pellet, professeur à l'Université de Paris X-Nanterre, membre et ancien président de la Commission du droit international des Nations Unies, membre associé de l'Institut de droit international,

M. Rodman R. Bundy, avocat à la Cour d'appel de Paris, membre du barreau de New York, cabinet Frere Cholmeley/Eversheds, Paris,

Mme Loretta Malintoppi, avocat à la Cour d'appel de Paris, membre du barreau de Rome, cabinet Frere Cholmeley/Eversheds, Paris,

comme conseils et avocats ;

M. S. Tiwari, *Principal Senior State Counsel* au cabinet de l'*Attorney-General* de la République de Singapour,

M. Lionel Yee, *Senior State Counsel* au cabinet de l'*Attorney-General* de la République de Singapour,

M. Tan Ken Hwee, premier greffier adjoint de la Cour suprême de Singapour,

M. Pang Khang Chau, *Deputy Senior State Counsel* au cabinet de l'*Attorney-General* de la République de Singapour,

M. Daren Tang, *State Counsel* au cabinet de l'*Attorney-General* de la République de Singapour,

Mr. Ong Chin Heng, State Counsel, Chambers of the Attorney-General of the Republic of Singapore,

Mr. Daniel Müller, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris X-Nanterre,

as Counsel;

Mr. Parry Oei, Chief Hydrographer, Maritime and Port Authority of Singapore,

Ms Foo Chi Hsia, Deputy Director, Ministry of Foreign Affairs, Republic of Singapore,

Mr. Philip Ong, Assistant Director, Ministry of Foreign Affairs, Republic of Singapore,

Ms Yvonne Elizabeth Chee, Second Secretary (Political), Embassy of the Republic of Singapore in the Netherlands,

Ms Wu Ye-Min, Country Officer, Ministry of Foreign Affairs, Republic of Singapore,

as Advisers.

M. Ong Chin Heng, *State Counsel* au cabinet de l'*Attorney-General* de la République de Singapour,

M. Daniel Müller, chercheur au centre de droit international de Nanterre (CEDIN), Université de Paris X-Nanterre

comme conseils ;

M. Parry Oei, hydrographe en chef de l'autorité maritime et portuaire de Singapour,

Mme Foo Chi Hsia, directeur adjoint au ministère des affaires étrangères de la République de Singapour,

M. Philip Ong, sous-directeur au ministère des affaires étrangères de la République de Singapour,

Mme Yvonne Elizabeth Chee, deuxième secrétaire (affaires politiques) à l'ambassade de la République de Singapour aux Pays-Bas,

Mme Wu Ye-Min, chargée de mission au ministère des affaires étrangères de la République de Singapour,

comme conseillers.

The VICE-PRESIDENT, Acting President: Please be seated. The sitting is open and I give the floor to Mr. Bundy.

Mr. BUNDY: Thank you very much, Mr. President.

THE CONTINUOUS EXERCISE OF STATE AUTHORITY BY SINGAPORE ON PEDRA BRANCA FROM 1851 TO THE PRESENT

Mr. President, Members of the Court. As always, it is a privilege for me to appear before this Court and it is also an honour for me to represent the Republic of Singapore in this important case. May I also take this opportunity, on behalf of myself and my colleagues, to extend our best wishes to all those in the courtroom who celebrate the Hindu Holy Day of Dipabali today.

Introduction

1. Yesterday Mr. Brownlie explained the roots of Singapore's title over Pedra Branca — a title which resulted from the lawful occupation and possession of the island by Great Britain, Singapore's predecessor in interest, during the period from 1847 to 1851. My task this morning is to address the subsequent exercise of State authority carried out by Singapore after 1851 by which Singapore confirmed and maintained the title that it had previously acquired.

2. By any standard, Singapore has produced with its written pleadings an impressive quantity of contemporary documentary evidence demonstrating the wide range of sovereign activities it performed on Pedra Branca. These activities represent a pattern of conduct that was undertaken *à titre de souverain* and which has been carried out on a continuous basis for over 150 years right up to the present. For almost all of this period — in fact, for 130 years, from 1847 until 1979 when Malaysia first raised a claim to Pedra Branca — Singapore's conduct on the island went completely unopposed by Malaysia. Not only did Malaysia not once protest any of Singapore's activities carried out on Pedra Branca during this extended period, it never carried out any competing activities on the island of its own.

3. Malaysia's complete inactivity with respect to Pedra Branca is simply the reverse side of the coin of Singapore's constant exercise of sovereign authority on and over the island. The two elements are entirely consistent. Singapore carried out a steady stream of activities on

Pedra Branca, starting in 1847, while Malaysia did absolutely nothing. Professor Pellet and Ms Malintoppi later this morning will be addressing Malaysia's conduct, and tomorrow Professor Pellet will discuss Malaysia's express disclaimer of ownership over Pedra Branca in 1953. My purpose this morning is to review the factual and legal significance of Singapore's long-standing pattern of conduct over Pedra Branca and within its territorial waters, starting in 1851.

4. In taking up this task, I cannot fail to recall what Malaysia had to say on the subject of State conduct relating to disputed territory during the oral hearings held in this courtroom five years ago in the *Indonesia/Malaysia* case, which also concerned two other small islands in the region, the islands of Pulau Ligitan and Pulau Sipadan. During those oral hearings, in the words of Malaysia's counsel:

[slide]

> "first I must stress again a basic and inescapable historical fact. These islands are now in the possession of Malaysia, subject to its control and administration, and they have been so at all material times for more than a century and a half. There is not a glimmer of actual display of Indonesian State authority on the islands. Indonesia is effectively a claimant attempting to oust the State in possession from its long-possessed territory." (CR 2002/30, Sir Elihu Lauterpacht, p. 30, para. 12.)

5. If anything, this statement applies with even greater force in the present case where Singapore has shown both a prior legal title stemming from the activities of Great Britain in the period 1847 to 1851, discussed by Mr. Brownlie yesterday, and sovereign acts in confirmation of that title that are far more intensive than the scattered examples of *effectivités* that Malaysia adduced during the *Ligitan/Sipadan* case. Thus, if we change the language of Malaysia's argument in the *Ligitan/Sipadan* case to fit the present case, Malaysia's observation is an apt description of the situation in which the Parties now come before you in these proceedings. If I can borrow the relevant language, I would say as follows. First, I must stress again a basic and inescapable historic fact. These islands, Pedra Branca, Middle Rocks, South Ledge, are now in the possession of Singapore, subject to its control and administration and they have been so at all material times for more than a century and a half. There is not a glimmer of actual display of Malaysian State activity on the islands. Malaysia is effectively a claimant attempting to oust the State in possession from its long-possessed territory. That is what we have in this case.

[On slide, now replace "Malaysia" with "Singapore" and replace "Indonesian" and Indonesia" with "Malaysian" and "Malaysia".]

1. The wide range of Singapore's administration and control and the long period during which such conduct was carried out

6. I mentioned earlier that Singapore's administration and control of Pedra Branca has a long and unopposed pedigree. In addition to the activities described by Mr. Brownlie, the story continues in 1851 after the British had taken possession of the island and constructed the Horsburgh lighthouse.

(a) ***Notices to mariners issued from Singapore starting in 1851***

7. In September of that year, the Governor of the Straits Settlements, the most senior British official based in Singapore, issued a Notice to Mariners announcing that the lighthouse had been erected on Pedra Branca (MS, Ann. 56). And other such Notices to Mariners were issued from Singapore in the years following and have been documented in the written pleadings. It was also in 1851 that a complement of staff from Singapore took up residence on the island.

8. Malaysia contends that Notices to Mariners are irrelevant for questions of sovereignty. Well, that may be Malaysia's position now, but it was not the view that it expressed when it appeared before this Court in the *Indonesia/Malaysia* case five year's ago. There, Malaysia expressly relied on the construction and notification by means of Notices to Mariners of unmanned lights it had built on the two islands in dispute in that case, and Malaysia further argued that those actions were a straightforward reflection of Malaysia's sovereignty which had never been challenged by Indonesia (RM, p. 75). Consistency appears to have its limits for Malaysia when territorial questions are at issue.

(b) ***The flying of the Singapore marine ensign on Pedra Branca***

9. It was also during this same period from 1851 that the British marine ensign began to be flown on the lighthouse. Subsequently, the British ensign was replaced by the Singapore ensign, but the flag has been displayed continually for over 150 years in an open and notorious manner and as a clear manifestation of sovereignty.

10. Malaysia is sensitive to this fact, and rightly so, given the important implications that such actions give rise to as evidence of sovereignty, as has been held in cases such as the *Island of Palmas* arbitration and in the *Temple of Preah Vihear* case (2 *RIAA* 829, p. 870; *I.C.J. Reports 1962*, p. 30). Consequently, Malaysia is forced to complain that the flag was small and difficult to identify, and that it was therefore not displayed in an open and notorious manner calling for any reaction.

11. Now these are highly defensive arguments which are singularly unpersuasive when other aspects of Malaysia's conduct are taken into consideration. How, how, for example, can Malaysia suggest that it was unaware of the presence of the Singapore ensign on Pedra Branca and at the same time try and impress upon this Court that Malaysia regularly patrolled the waters around the island and that one of its naval officials even landed on the island, scampered up the rocks according to his affidavit in 1962? If Malaysia failed to notice the flag or appreciate its significance, then this simply underscores Malaysia's complete lack of interest in Pedra Branca. Conversely, if Malaysia was aware of the flag, then it should have reacted if it genuinely considered that it possessed sovereignty over the island.

12. Let me pause on this issue for a moment. As the evidence on the record in the written pleadings demonstrates, Malaysia certainly knew how to protest the flying of the Singapore marine ensign when Malaysia considered that the emblem was being displayed on Malaysian territory. Here, I am speaking about an incident that occurred with respect to another island in the area where a lighthouse was located, Pulau Pisang.

[Place map on screen showing Pedra Branca and Pulau Pisang]

13. Pulau Pisang, which the Court will see from the map on the screen, is a small island which unquestionably belongs to Malaysia. Nonetheless, pursuant to an agreement dating from 1885, which was subsequently confirmed by a written indenture in 1900 — and that indenture has been filed with the pleadings (MM, Ann. 89 and CMS, Ann. 24) —, the Ruler of mainland Johor granted to Singapore the right to operate and maintain a lighthouse on Pulau Pisang. Until 1968, Singapore flew its marine ensign over the lighthouse on Pulau Pisang.

14. In 1968, however, Malaysia made a diplomatic protest to Singapore about this ensign and requested that Singapore issue instructions to bring the flag down as soon as possible. Malaysia's

actions were the result of a complaint that the Malaysian Ministry of Foreign Affairs had received from an internal Malaysian political constituency that the Singapore flag was being flown over Malaysian territory.

15. Singapore respected Malaysia's request and lowered the flag on Pulau Pisang. What is significant however is that Malaysia made absolutely no similar request concerning the identical flag that Singapore flew at Pedra Branca. There was not even a hint of a suggestion from Malaysia at the time that Singapore should lower the flag at Pedra Branca as well because the island belonged to Malaysia.

16. I shall be returning in a later presentation to discuss other key differences in the way in which Malaysia acted with respect to islands on which lighthouses were located where Malaysia possessed sovereignty, such as Pulau Pisang, and islands where sovereignty rested with Singapore, such as Pedra Branca. For present purposes, I would simply note that the only explanation for Malaysia's inconsistent attitude is that it did not regard itself as possessing sovereignty over Pedra Branca. Had it thought differently, it undoubtedly would have and should have made a similar diplomatic démarche about the Singapore flag being flown on Pedra Branca. Of course, as Professor Pellet will explain a little later, Malaysia's inaction was entirely consistent with its earlier confirmation in 1953 that Malaysia did not claim ownership over Pedra Branca.

(c) ***Legislative activities relating to Pedra Branca***

17. Let me now turn to the legislative measures that Great Britain enacted dealing with Pedra Branca. Evidence of such activities relating to the specific territory in dispute is unquestionably of prime importance as an indication of administration and control. As the Permanent Court stated in the *Eastern Greenland* case, "Legislation is one of the most obvious forms of the exercise of sovereign power" (*Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 48).

18. In 1852, just after Great Britain had acquired sovereignty over Pedra Branca, the Government of India enacted Act No. VI of 1852, which specifically related to Pedra Branca. The relevant part of this legislative measure, which the judges will also find in tab 31 of their folders, provided as follows:

[slide]

"Section I

> The Light-House on Pedra Branca aforesaid shall be called 'The Horsburgh Light-House' and the said Light-House, and the appurtenances thereunder belonging or occupied for the purposes thereof, and all the fixtures, apparatus, and furniture belonging thereto, shall become the property of, and absolutely vest in, the East India Company and their successors."

The Act went on in Section IV to state:

[slide]

> "The management and control of the said 'Horsburgh Light-House', and of the keeper thereof, and of everything relating thereto, is hereby vested in the Governor of the Straits Settlements." (MS, Ann. 59.)

19. There are a number of important points which deserve to be mentioned in connection with this legislation.

20. First, as the Act makes clear, it dealt expressly with Pedra Branca and the lighthouse on the island. In other words, the legislation was specific to the territory in dispute.

21. Second, the 1852 Act was clearly a sovereign act. It was adopted by the Government of India and vested in the East India Company and its successors the lighthouse and all appurtenances occupied for the purposes thereof as well as the management and control of everything related thereto. As Singapore has shown, the extensive public works it carried out on the island effectively covered the entire island just as did the activities of the British Crown undertaken from 1847 to 1851 discussed by Mr. Brownlie yesterday.

22. Third, although Malaysia makes a thin attempt to argue that the 1852 Act was only a matter of private law, this is clearly not the case. The Act was a public act taken by the Government of India, which had no power to legislate extraterritorially. Moreover, the acts of the British East India Company, just as Judge Huber held in the *Island of Palmas* case with respect to the East India Company's counterpart, the Dutch East India Company, were entirely assimilated to the acts of the State itself (2 *RIAA*, p. 858).

23. Fourth, the 1852 Act made no mention of any indenture or permission that Malaysia alleges had been granted by the Ruler of Johor for the establishment of the Horsburgh lighthouse. Had such a document existed — and Singapore has shown that it did not — it inevitably would have been referred to. By the same token, neither Johor nor Malaysia ever reacted to the 1852 Act or protested it.

24. All of these considerations underscore the fact that the 1852 Act was a classic example of State activity carried out *à titre de souverain* on the very territory now in dispute.

25. Later in 1852, a second light, a new floating light was established by the East India Company on a submerged sandbank known as the 2½ fathom bank. This light was subsequently replaced by a permanent fixture on a nearby feature known as the "One Fathom Bank", and you can see its location on the screen.

[slide]

[Map showing location of 2½ fathom bank light]

26. Malaysia asserted in its Counter-Memorial that this light was established with the permission of the local Malay Ruler (CMM, p. 155), but Malaysia produced no evidence to support that contention and the contention is incorrect. There was no Malay permission for the East India Company to erect the light — a fact which actually is perfectly understandable when it is recalled that the light was situated some 15 miles off the mainland coast in the high seas on a submerged sandbank not susceptible to appropriation.

27. Two years later, Act No. XIII of 1854 was enacted replacing the 1852 Act (MS, Ann. 62). The 1854 Act continued to provide that the lighthouse on Pedra Branca and all of its appurtenances belonging thereto or occupied for that purpose were vested in the East India Company and its successors.

28. In contrast, there was no language in the 1854 Act vesting the 2½ fathom light in the East India Company in trust for the British Crown as there was for the lighthouse on Pedra Branca where sovereignty had been established. With respect to the 2½ fathom Light, the 1854 Act simply provided that its "management and control" — nothing else — vested in the Governor of the Straits Settlements, because the sandbank on which the light was situated was not capable of appropriation or under British sovereignty. And this, once again, illustrates the sovereign nature of both the 1852 and 1854 Acts with respect to Pedra Branca.

(d) *Singapore's continuous staffing, maintenance and improvement of the lighthouse on Pedra Branca and its construction of other facilities on the island*

29. During the entire period from 1851 to the present, Singapore has been the sole party to staff, maintain and improve the lighthouse on Pedra Branca, and it has similarly been the only party

to erect other installations on the island and to use the island for public works. All of this has been fully documented in Singapore's written pleadings, and Malaysia, in contrast, has remained totally inactive with respect to the island.

30. Permit me to give the Court a flavour of the kinds of activities that Singapore carried out on Pedra Branca from 1851 all the way up to the present.

31. In 1853, and again in 1902, the authorities in Singapore commissioned the expansion of the jetty on Pedra Branca and constructed a landing stage on the island (MS, Anns. 70, 74 and 75). This work was carried out pursuant to an open tendering process that was publicized at the time in the Straits Settlements *Government Gazette* with tenders for the works to be submitted to the Colonial Secretary's Office in Singapore. Those actions were clearly of a sovereign character administered by Singapore government officials. Despite their public nature, Singapore's actions did not elicit the slightest reaction from Malaysia.

32. Nor did Malaysia react when Singapore built radar reflectors on the island, and radio beacons, and a new alternator room, enlarged crew quarters, boat davits, solar panes and other facilities on the island, or when Singapore installed military communications equipment on Pedra Branca in 1977. These were all quintessentially acts of a sovereign nature on the ground, which took place on a steady basis both before and after 1953 when Malaysia disclaimed ownership over Pedra Branca.

33. Throughout this period — in other words, for over 150 years — the lighthouse was staffed and provisioned from Singapore. The original staffing plans for Pedra Branca dated from 1851 and were approved by Governor Butterworth, who also approved the expenses relating to the salaries of the personnel stationed on the island and, as the need arose, the staff on Pedra Branca was supplemented periodically by maintenance and repair crews. On the other hand, and in sharp contrast, no one from Malaysia, or its predecessors, was ever stationed on Pedra Branca whether before 1851 or afterwards — never.

(e) ***Singapore's exercise of jurisdiction and control over Pedra Branca***

34. A State naturally regulates visits by foreigners to its territory, and Singapore was no exception when it came to Pedra Branca. This also has been amply documented in Singapore's

written pleadings in which Singapore has produced, amongst other evidence, copies of the logbooks that were kept by Singapore personnel on the island documenting the many visits and other activities that Singapore regulated with respect to Pedra Branca (MS, Ann. 87).

35. What is particularly significant is that Singapore's control of access to Pedra Branca extended to Malaysian nationals as well as to nationals of third States. Two incidents in particular stand out which evidence not only Singapore's exercise of administration and control over the island, but also Malaysia's recognition of that fact.

36. The first took place in March 1974 when a number of Malaysian officials sought permission from Singapore to visit Pedra Branca as part of an international team to carry out tidal surveys. In order to obtain the necessary approval from Singapore government ministries, Singapore requested Malaysia to furnish the names and passport numbers of the individuals concerned and to indicate their proposed length of stay on the island (MS, Ann. 120). Once again, that attests to Singapore acting in a sovereign capacity with respect to the island. Malaysia duly complied with Singapore's request. Indeed, it was an officer of the Malaysian navy who provided the relevant details and who also confirmed that the Malaysian personnel landing on the island would be escorted by a representative of Singapore (MS, Ann. 122) and, accordingly, the survey team was allowed to land and stay at Pedra Branca. At no point did Malaysia ever intimate that Pedra Branca belonged to Malaysia or that Malaysian officials therefore had the right to visit the island without obtaining permission from Singapore.

37. That event of 1974 may be contrasted with a second episode that occurred four years later in 1978, when two officers from the Malaysian Survey Department arrived unannounced on Pedra Branca ostensibly to carry out further surveys. They were told in no uncertain terms by the Singapore lightkeeper that they could not be allowed to stay without prior permission from the Port of Singapore Authority and the Malaysian officials therefore left the island (MS, Ann. 136; RS, Ann. 51).

38. These incidents reflect two basic realities. The first is that Singapore acted *à titre de souverain* in controlling access to Pedra Branca, and the second, which was made particularly clear by Malaysia's acceptance of the need for it to obtain Singapore's permission to visit the island in 1974, is that Malaysia recognized Singapore's right to exercise such regulatory control. Malaysia's

actions at the time were diametrically at odds with the position it adopts in these proceedings — namely, the proposition that Malaysia somehow enjoyed an historic title over the island.

39. Of course, Singapore did not discriminate when it came to vetting applications to visit Pedra Branca. Singapore, in its written pleadings, has also documented the fact that when nationals of third States wished to visit the island, whether for scientific research projects or otherwise, they needed to obtain, and did obtain, Singapore's prior permission to do so. I would respectfully refer the Court in this connection to the evidence Singapore has produced at Annex 117 and Annexes 151 to 154 of its Memorial, where this is documented.

40. At the same time, a number of high-ranking Singapore public officials have made official visits to Pedra Branca in addition to Singapore's naval personnel who frequently carried out operations there. These officials included the Minister of Communications, the Minister of Home Affairs, a Member of the Singapore Parliament, and police and military officials — and all of these are documented and can be found in the logbook that Singapore has filed (MS, Ann. 87). These visits were of a character normally carried out by a sovereign on its territory, and no permission was ever sought from Malaysia, which never protested. As such, the activities in question once again reflect the fact that Singapore consistently regarded itself as possessing sovereignty over the island and acted accordingly.

(f) ***Singapore's use of Pedra Branca for the collection of meteorological data***

41. Another governmental use to which Singapore has constantly put Pedra Branca is for the collection of meteorological data. Malaysia may label this a routine activity carried out at many lighthouses, but this hardly detracts from the sovereign nature of such activities carried out on Singapore territory. As Singapore has shown, it collected meteorological readings from Pedra Branca ever since 1851, up to the present.

42. But that is not all: there is a further important aspect of this element of conduct to which I would like to draw the Court's attention, and that is the way in which Malaysia itself referred to such activities in its own official government publications.

43. The Court will recall from the written pleadings that, even during the period when meteorological observations were carried out on a pan-Malayan basis, the Malayan Meteorological

Service was divided into a Singapore branch and a Federation of Malaya branch. Significantly, this Meteorological Service collected data on a territorial basis.

44. Let me place on the screen a number of extracts — which can also be found in tab 32 of your folders — these are a number of extracts, first, from the 1959 *Summary of Meteorological Observations* from the Malayan Meteorological Service (RS, Ann. 28). The Court will first note that the Malayan Service referred to 29 rainfall stations said to be situated "in Singapore", in addition to 43 auxiliary stations located in the Federation of Malaya. In other words, the location of the rainfall stations was referred to in Malayan official reports by reference to the territory in which they were located.

[slide]

[Place introductory paragraph from p. 190 of RS, Ann. 28 on screen]

45. The 29 stations "in Singapore" are all listed in this report, and the relevant page now appears on the screen. [Slide of p. 189 of RS, Ann. 28 "Singapore Rainfall Stations" on screen with Horsburgh lighthouse highlighted.] The Horsburgh lighthouse is expressly listed as one of the 29 stations *in Singapore*, just as the other 28 stations included on the list are also all unquestionably on Singapore territory.

46. As the Court knows, Singapore merged with the Federation of Malaya in 1963, and Singapore became independent two years later, in 1965. In 1966, consequently, the *Summary of Meteorological Observations* was published *jointly* by the Meteorological Services of Malaysia and Singapore. The 1966 *Summary*, as you can see on the screen [slide, RS, Ann. 35] and which is also in your folders to examine at your leisure, continued to list the station at Horsburgh lighthouse on Pedra Branca as one of the stations "in Singapore". One year later, in 1967, when Singapore and Malaysia began reporting meteorological information separately, Malaysia no longer listed any reporting stations in Singapore, including the station at Pedra Branca (RS, Ann. 36).

47. Let me emphasize again that this was an official Malaysian governmental publication which listed the meteorological station at Horsburgh lighthouse on Pedra Branca as being "in Singapore". The recognition by Malaysia of Pedra Branca's sovereign status is highly relevant, and it is also entirely consistent with the contemporaneous maps that were prepared by Malaysia's official mapping agency at the time: these will be discussed by Ms Malintoppi tomorrow. In short,

the record concerning the collection of meteorological data fits comfortably — fits perfectly — within the overall pattern of conduct that so clearly emerges demonstrating Singapore's sovereign authority over Pedra Branca, and Malaysia's recognition of that sovereignty.

(g) ***Singapore's continued exercise of administration and control after the so-called "critical date"***

48. Up to this point, I have focused on official acts of a governmental nature that Singapore carried out on Pedra Branca itself, and have shown that the acts performed by Singapore were striking, really quite remarkable, for their breadth and scope, encompassing both lighthouse and non-lighthouse public works carried out as a natural consequence of Singapore's sovereignty over the island. I have also purposely discussed events that transpired well before Malaysia first indirectly raised a claim to the island in 1979-1980 with the publication of its 1979 map. In other words, I have intentionally ignored, up to this point, discussing any of Singapore's *effectivités* carried out on Pedra Branca after the so-called "critical date", when Malaysia first advanced its claim, in order to reduce the scope for any controversy. As I hope I have shown, Singapore carried out an impressive array of State activities on a constant basis from 1851 to 1979.

49. Yet this in no way diminishes the legal effect of Singapore's continued administration and control of Pedra Branca after 1979 — administration and control that has endured right up to the present. As the Court so clearly articulated in the *Indonesia/Malaysia* case, acts which take place after a dispute has crystallized between the parties will be taken into consideration provided that they are "a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them" (*I.C.J. Reports 2002*, p. 682, para. 135, citing the *Palena* case).

50. With respect to Pedra Branca, it is apparent that Singapore continued to administer the island *after* Malaysia's belated claim emerged in 1979 in the same way Singapore had administered the island *before* that date. The nature of Singapore's conduct did not change one bit, and none of Singapore's post-1979 activities on Pedra Branca were in the least self-serving. They were — to borrow the Court's words — a "normal continuation of prior acts" carried out by Singapore.

51. For example, as discussed in Chapter 4 of Singapore's Reply, Singapore continued to staff, maintain and improve the facilities on Pedra Branca, as it had done before. It upgraded

communications and lighting equipment, all of which had existed before, and it improved access to the island by constructing a helicopter landing pad to supplement the pier and the jetty, which had been in existence for over 100 years. It carried out a detailed topographical survey of Pedra Branca and a bathymetric survey of the surrounding waters, including Middle Rocks. Singapore also continued to investigate shipping incidents in the vicinity of Pedra Branca and continued to exercise jurisdiction over accidents occurring on Pedra Branca and within its territorial waters.

52. Singapore also continued to perform regulatory activities pertaining to the island, and issued legislation. For example, in 1991, Singapore issued the Protected Places (No. 10) Order of 1991, which provided that a number of places in Singapore, including Pedra Branca — which is named in the Order — were protected places and that all visits to such places required a permit from the Port of Singapore Authority (MS, Ann. 178). That legislation was entirely consistent — a normal continuation of prior acts — with the previous control of access to Pedra Branca that I discussed and that Singapore has always maintained.

53. Singapore also continued to explore the possibility of reclaiming areas around the island to enlarge its facilities, and open tenders were published for a reclamation project in 1978. Although that project was ultimately shelved, it represented yet another example of Singapore conducting itself as sovereign over the island to which Malaysia did not react.

54. Malaysia complains that these actions — post 1979 — were self-serving and undertaken after Singapore had begun to prepare its claim to Pedra Branca. But Singapore engaged in no such "preparation" of a claim. By 1979, Singapore's title over Pedra Branca, and its exercise of administration and control over the island, had been in existence for well over 100 years. It was Malaysia which was the Party that belatedly began to hatch a claim to Pedra Branca at the end of the 1970s. Moreover, as Singapore has documented and showed in its Reply, Singapore had already actively considered reclamation projects around the island as early as 1972, well before Malaysia first articulated its claim by issuing its 1979 map (RS, Ann. 42).

55. In short, Singapore scarcely needed to manufacture more *effectivités* on Pedra Branca after 1979. Prior to the emergence of Malaysia's claim, the British had taken lawful possession over the island during the period of 1847 to 1851, accompanied by the extensive public works discussed by Mr. Brownlie yesterday. The Dutch had recognized British sovereignty over Pedra

Branca in 1850, and Singapore had carried out *an unopposed* stream of State activities on the islands for 130 years leading up to 1979. Singapore's administration and control over Pedra Branca simply continued thereafter, as it does today.

(h) ***Singapore's naval patrols around Pedra Branca and its investigation of shipping incidents within Pedra Branca's territorial waters***

56. Not surprisingly perhaps, Singapore also exercised jurisdiction over its territorial waters surrounding Pedra Branca. Permit me to recall briefly the kinds of activities that Singapore performed in this connection.

57. First, Singapore has shown that it routinely carried out naval patrols in pre-designated areas just off Pedra Branca. [Place map showing Patrol Sector F5 on screen] The Court will see from the map on the screen, which is also at tab 33 of your folders, Singapore, unlike Malaysia, specifically delineated a naval patrol area — the F5 area — which lay just to the north of Pedra Branca in the Middle Channel. That area was designated and identified in 1975, well before Malaysia first raised a claim to Pedra Branca, yet Malaysia never protested Singapore's naval activities in this area until 2003 — a mere four years ago and 28 years after Singapore's patrol sector had been established.

58. Second, Singapore has documented the fact that when high-ranking Singapore officials visited Pedra Branca, such as the Minister of State for Communication who went to the island in 1974 and again in 1976, these officials were accompanied by Singapore naval vessels without any reaction from Malaysia. Similarly, Singapore used its navy to evacuate stranded Singapore fishermen who had sought refuge on Pedra Branca, to rescue a contractor who had been injured on the island while installing new equipment in 1975, and to carry out search and rescue activities in connection with the accidental drowning in 1980 of Singapore naval personnel who were on a mission to maintain military communications equipment on Pedra Branca. In 1977, the Singapore Marine Police apprehended an Indonesian craft which had been involved in the robbery of Singapore fishing vessels operating just a few miles off of Pedra Branca in its territorial waters (RS, Anns. 45, 48, 50 and 55). All of these — the references will be in the transcript — are fully documented in the pleadings.

59. Third, unlike Malaysia, Singapore took responsibility to investigate ship wrecks that occurred within Pedra Branca's territorial waters pursuant to powers granted by Singapore legislation which applied precisely because Pedra Branca was Singapore territory. Singapore's written pleadings documented many such instances spanning a period from 1920, when a Dutch ship ran aground about 1.5 miles north of Pedra Branca, to 1963, when an incident involving a British cargo vessel was similarly investigated by Singapore, to more recent examples in 1979, 1985, 1986, 1992, 1996, 2003 and 2005. The location of these incidents is depicted on the map that now appears on the screen, a copy of which is at tab 34 of the folders [slide: insert 10 facing p. 160 of RS]. Singapore exercised jurisdiction over these incidents because they occurred off its coast — in other words, in the waters off Pedra Branca. It was only after the incident in 2003 that Malaysia evidently realized the obvious implications of these actions for its belated claim to Pedra Branca, and began to react — only in 2003.

60. I could go on in the same vein, but it is hardly necessary. The Court has all of the relevant documents attesting to Singapore's activities on Pedra Branca in the written pleadings. Suffice it to recall that the activities that I have discussed were long-standing and they were continuous, and they were undertaken on an open and notorious basis, they were acts of an official nature not private acts, and they went totally unopposed by Malaysia at least until well after Malaysia raised a claim to the island in 1979 with the publication of its map.

2. The legal context within which conduct is to be assessed

61. Mr. President, having discussed the substance of the *effectivités* — and I've given a *tour d'horizon*; obviously I haven't walked the Court, or imposed on the Court all of the documents attesting to the activities Singapore carried out — but having discussed the substance of the *effectivités* that Singapore carried out on Pedra Branca and within its territorial waters, it may now be useful to place the question of Singapore's conduct in its proper legal context. The matter, I would submit, is really quite straightforward despite certain attempts by Malaysia to muddy the waters in its written pleadings. There are five basic principles which I would respectfully invite the Court to bear in mind in considering the significance of Singapore's *effectivités*.

(a) ***The requirement for both the intention and will to act as sovereign and an actual display of such authority***

62. The first principle, indeed the fundamental starting-point is the well-established principle articulated by the Permanent Court in the *Eastern Greenland* case, and cited with approval in the Court's more recent judgments in the *Indonesia/Malaysia* and last month in *Nicaragua* v. *Honduras*, that:

[slide]

> "a claim to sovereignty based not upon some particular act or title such as a treaty of cession but merely upon continued display of authority, involves two elements each of which must be shown to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority" (*Legal Status of Eastern Greenland, Judgment, 1933 P.C.I.J., Series A/B, No. 53*, pp. 45-46).

63. In other words, the Court is well aware, a State claiming title to a particular territory must demonstrate both the *animus occupandi* and the *corpus* as well. And as the Court noted at paragraph 72 of its Judgment handed down last month in the *Nicaragua* v. *Honduras* case: "A sovereign title may be inferred from the exercise of powers appertaining to the authority of the State over a given territory." (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, Judgment of 8 October 2007, para. 172.)

64. Singapore's conduct fits perfectly within these legal criteria. As Mr. Brownlie explained, Singapore's predecessor — Great Britain — manifested the intention to acquire sovereignty over Pedra Branca by its actions from 1847 to 1851, and this, by itself was sufficient to establish Singapore's territorial title at that time. Thereafter, as I have shown, Singapore carried out a considerable array of State activities on the island and within its territorial waters in the maintenance and confirmation of its title. Malaysia, in contrast, has not even begun to satisfy either criteria. Not only is there no evidence of any Malaysian intention or will to act as sovereign over Pedra Branca, whether before 1847 or afterwards, there is similarly not a shred of evidence that Malaysia ever engaged in any display of such authority on the island, on the ground, on the disputed territory, at any time.

(b) ***Singapore's activities confirming and maintaining its prior legal title***

65. This leads me to the second principle that supports the legal underpinnings to Singapore's case. As the Chamber of the Court observed in its oft-cited passage from the *Frontier Dispute* case:

[slide]

> "Where the act corresponds exactly to law, where effective administration is additional to the *uti possidetis juris*, the only role of *effectivité* is to confirm the exercise of the right derived from a legal title." (*Frontier Dispute, Judgment, I.C.J. Reports 1986*, pp. 586-587, para. 63.)

66. In the present case, we have a pre-existing title derived from the actions of Great Britain on Pedra Branca during the period 1847-1851. We also have thereafter the extensive and continuous exercise of sovereign authority carried out by Singapore on the island. Singapore relies on its conduct after 1851 not for purposes of establishing a legal title to the territory in dispute — that title was already established by 1851 — but rather to demonstrate that that title was maintained and confirmed by a series of concrete activities on the ground which have lasted for over 150 years.

67. Yet even if title to Pedra Branca was somehow indeterminate as of 1851 — which Mr. Brownlie has shown was not the case — even if that situation existed, title today would still vest in Singapore by virtue of its subsequent State conduct on the island. As the Chamber also noted in the *Frontier Dispute* case: "In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration." (*Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 587, para. 63.)

68. In such a case, the Court would be faced with the same kind of situation it confronted in the *Minquiers and Ecrehos* case, the *Indonesia/Malaysia* case, the recent *Nicaragua* v. *Honduras* case — and as the Arbitral Tribunal in *Eritrea/Yemen* was confronted in the sovereignty phase of that case — where the issue of sovereignty was decided on the basis of which party could show the better title based on sovereign acts undertaken on the disputed territory *à titre de souverain*. Here, and ignoring for a moment Singapore's pre-existing title established by the British Crown from 1847 to 1851, here not only did Singapore carry out the overwhelming preponderance of administrative activities on Pedra Branca, it performed *all* such activities. Indeed, neither Malaysia nor its predecessor, Johor, has ever acted on Pedra Branca in any sovereign capacity.

69. Now that leads me to a related argument raised by Malaysia in its written pleadings. Malaysia seeks to reverse the order of things by asserting that Singapore must show, by its actions on Pedra Branca, that this conduct somehow displaced a prior Malaysian title. Now that is an argument essentially predicated on the notion of prescription which has no role to play in the present case. The plain fact, as my colleague Professor Pellet has shown, is that Malaysia has not produced a scintilla of evidence that it possessed an historic title over Pedra Branca, the specific territory, prior to 1847 or, indeed, at any time thereafter. Consequently, there was no pre-existing title which Singapore's conduct displaced.

70. Nonetheless, it is instructive, once again, to recall how Malaysia's arguments have mutated since it appeared before this Court five years ago in the *Indonesia/Malaysia* case. There, counsel for Malaysia argued during the oral proceedings with respect to its — that is Malaysia's — own conduct in *Indonesia/Malaysia*:

> "A title based on a peaceful and continuous display of State authority would in international law prevail over a title of acquisition of sovereignty not followed by an actual display of State authority." (CR 2002/30, pp. 35-36, para. 22).

That was Malaysia's argument five years ago.

71. Thus, even on Malaysia's thesis, and accepting purely for purposes of argument that Malaysia could somehow show an historic title over the island, Singapore would still possess sovereignty over Pedra Branca since Singapore has exercised continuous sovereignty over the island while Malaysia has done nothing, even on Malaysia's thesis advanced in the *Indonesia/Malaysia* case. Fortunately, however, the Court does not need to engage in such speculative reasoning or to enter into the controversial realm of prescriptive title. Singapore has shown a title derived from the activities of the British Crown from 1847-1851, and Singapore has also shown that it maintained that title on the ground ever since. Malaysia, in contrast, has shown nothing.

(c) *The extent of State conduct on its territory is a function of the nature of the territory in question*

72. The third legal principle deserving mention at this stage is the principle that the degree of State authority on the ground to establish or maintain a legal title is a function of, and must be adapted to, the nature of the territory in question. This principle has been endorsed both by this

Court and its predecessor, and by arbitral tribunals such as in the *Island of Palmas* and *Eritrea/Yemen* arbitrations.

73. Pedra Branca is an important island — at least for Singapore, it is a very important island — and the island has been the focus of a significant and well-documented series of administrative activities emanating from Singapore ever since 1851.

74. As I have said, these activities obviously include the staffing, maintenance and improvement right up to the present of the lighthouse which Great Britain constructed between 1847 and 1851. However, as Singapore has also documented in its written pleadings, its exercise of sovereignty on Pedra Branca has not been limited to lighthouse activities alone. The island has also hosted many other non-lighthouse activities of an official character, which I have discussed and which are documented, and it supports a number of facilities which have effectively made full use of the island, as I think the Court will appreciate from the photograph appearing on the screen. [slide] When the entire body of evidence of Singapore's administration is considered, what is, I would suggest, truly remarkable is the breadth and the scope — the consistent pattern — of Singapore's public works that it carried out on this parcel of territory. Thus, not simply has Singapore's sovereign conduct on Pedra Branca been commensurate with the nature of the territory in question, that conduct far exceeds what might be expected given the characteristics of the territory in question.

(d) ***Singapore relies exclusively on official conduct, not the activities of individuals in their private capacity***

75. The fourth legal element which characterizes Singapore's conduct is that Singapore, as I have said, relies exclusively on acts of an official nature performed by it on Pedra Branca. As the Court has many times stated in the past, including in *Qatar* v. *Bahrain*, *Indonesia/Malaysia*, what is legally relevant to questions of disputed sovereignty are official actions undertaken in a governmental capacity, not actions of private individuals. Unlike Malaysia, which has been forced to rely on statements by private fishermen who allegedly fished in the waters around Pedra Branca, all of the conduct that Singapore has adduced in its pleadings is of an official, governmental character and that underscores the sovereign nature of that conduct — conduct constituting the

exercise and display of administration and control on Pedra Branca, and within its territorial waters, *à titre de souverain*.

(e) ***Singapore's official conduct was specific to Pedra Branca***

76. The fifth legal principle upon which Singapore's conduct is founded is that, in order to be legally relevant, the conduct in question must relate to the specific territory in dispute. Again, as the Court stated in the *Indonesia/Malaysia* case, and in fact reiterated at paragraph 174 of its recent Judgment in the *Nicaragua* v. *Honduras* case**:**

[slide]

> "The Court finally observes that it can only consider those acts as constituting a relevant display of authority which leave no doubt as to their specific reference to the islands in dispute as such." (*I.C.J. Reports 2002*, pp. 682-683, para. 136.)

Specific reference to the islands.

77. In contrast to Malaysia, which cannot point to a single example of State authority it carried out on Pedra Branca itself, the official acts on which Singapore relies are unambiguous in their reference to the actual territory at issue in this case. Permit me to expand very briefly on this point.

78. Take the legislation of the Parties — on the one hand you have legislation such as Malaysia's 1969 Emergency Ordinance, which essentially set the breadth of Malaysia's territorial waters, as compared to legislation enacted by Singapore and its predecessor Great Britain. While the Malaysian 1969 Ordinance makes no reference whatsoever to Pedra Branca and thus begs the question as to what territory it relates, the relevant legislation of Great Britain and Singapore, including both the 1852 and 1854 Acts and the 1991 Protected Places Order, expressly refers to Pedra Branca. Then there is the evidence relating to the staffing, maintenance and improvement of both lighthouse and other facilities introduced by Singapore which also relates to Pedra Branca and which is named — the island is named — in the relevant documentation. Next, there is Singapore's exercise of jurisdictional control over individuals visiting the island, including Malaysian officials, which was also specific to Pedra Branca. Turning to other elements, the Singapore marine ensign has been flown for 150 years on the island itself without eliciting any reaction from Malaysia despite their vigorous reaction to the exact same emblem flown on Pulau

Pisang. And when Singapore military, government and civilian personnel travelled to the island, the destination of their visit was clearly stated to be Pedra Branca. Applications for permission to undertake scientific research and other activities submitted to Singapore by third parties similarly concerned the island itself and its territorial waters. Investigation of accidental deaths and shipping incidents once again were either on Pedra Branca or within its territorial waters. And the collection of meteorological information was documented as having originated from Pedra Branca which was described by official Malaysian publications as being located "in Singapore".

79. In short, there is no question that the evidence of Singapore's administration and control has related specifically to the territory in dispute — Pedra Branca. The evidence on the record relates to concrete activities on the ground, not woolly and generalized assertions of alleged jurisdiction over undefined areas asserted by Malaysia. These actions leave no doubt as to which Party considered itself to be sovereign over Pedra Branca and acted as such.

3. Malaysia's arguments on conduct placed in perspective

80. Having set out the factual and legal framework underlying Singapore's conduct on Pedra Branca, I would now like to turn to the arguments Malaysia has raised in its written pleadings in an effort to explain away that conduct. Malaysia obviously faces quite an uphill battle in this respect given the existence of Singapore's constant administration of Pedra Branca as compared with Malaysia's total inactivity on the island. Indeed, as Ms Malintoppi will discuss later this morning, one of the striking aspects of this case is that there are absolutely no competing Malaysian activities on the island at all — none.

81. Notwithstanding this, Malaysia has asserted in its Reply that Singapore's conduct is "peripheral" to the question of title and that Singapore relies on what Malaysia terms "isolated acts of conduct leaving out of account any assessment of whether the conduct referred to was part of a pattern of routine acts of administration of the Horsburgh Lighthouse or whether it amounted to manifestations of sovereign activity" (RM, p. 148).

82. In responding to these arguments, it is first necessary to recall once again the legal context.

83. As I have explained, the acts that Great Britain and Singapore carried out on Pedra Branca and within its territorial waters after 1851 were performed clearly in a sovereign capacity. They were clearly actions that were premised on the fact that title to Pedra Branca rested with Singapore as a result of the lawful possession of the island from 1847 to 1851 discussed by Mr. Brownlie. In other words, they represented a continuous display of State authority on the territory at issue and, as such, represented the confirmation and maintenance of Singapore's pre-existing title.

84. In these circumstances, there is nothing "peripheral" about the significance of Singapore's conduct as Malaysia would have the Court believe. That conduct shows Singapore consistently and actively maintaining and exercising its pre-existing title. Yet even in cases where there is no pre-existing title, in contrast to the situation we have here where Singapore has shown such a title, even in those cases, the question as to which party to a territorial dispute can show that it performed *effectivités* on the territory in question has been treated by this Court, and by arbitral tribunals, as a critical element in deciding issues of disputed title. One need only refer to the Court's recent cases involving questions of disputed sovereignty over small islands to appreciate the point — the *Qatar* v. *Bahrain* case where sovereignty over the small island of Qit'at Jaradah was at issue, the *Indonesia/Malaysia* case which concerned the two small islands of Ligitan and Sipadan and the recent *Nicaragua* v. *Honduras* case concerning a series of small islands lying off the mainland coast. In none of those cases was there a pre-existing title of the nature we have here with respect to the British activities from 1847 to 1851. And nor, in none of those cases — *Qatar* v. *Bahrain*, *Indonesia/Malaysia*, *Nicaragua* v. *Honduras*, and in fact one can go back to *Minquiers and Ecrehos* as well — in none of those cases, was there the wide array of State activities performed on the territory at issue in any way comparable to the activities that Singapore has carried out on Pedra Branca. Nonetheless, in all of these cases, the Court determined sovereignty on the basis of which party could show that it had carried out administrative acts on the disputed territory. Indeed, in the *Qatar* v. *Bahrain* and *Indonesia/Malaysia* cases, the Court also held that, "The construction of navigational aids . . . can be legally relevant in the case of very small islands." (*I.C.J. Reports 2001*, p. 100, para. 197.)

85. In the present case, we are not dealing merely with the construction of navigational aids on Pedra Branca. Both during the period 1847 to 1851, when Great Britain took possession of the island, and afterwards when that title was maintained and confirmed, the acts on Pedra Branca, as I have shown, were wide-ranging in nature and covered effectively the whole island and including its territorial waters. These were not, to use Malaysia's term, mere lighthouse activities.

86. But lighthouse related or not, Singapore's conduct was precisely the kind of sovereign conduct that any State would carry out on territory to which it held title having the characteristics of Pedra Branca. Malaysia's labelling of those activities as "routine lighthouse activities" is not only wrong, it in no way establishes that such activities were not part of the normal exercise of sovereign prerogatives that coastal States, including Singapore, perform on their territory where lighthouses are situated. In fact, Malaysia acknowledged as much in its own Counter-Memorial when it stated [slide]: "The construction and administration of lighthouses was usually a matter for the State on whose territory the lighthouse was to be located." (CMM, p. 103.)

87. In short, Singapore's administration of the lighthouse, as well as the non-lighthouse activities that Singapore carried out on Pedra Branca, was a normal exercise of the sovereignty it had acquired as of 1851. Contrary to Malaysia's assertion, Singapore's conduct and its activities were anything but isolated. Given the nature of the territory concerned they were, in fact, a strikingly consistent pattern of State conduct encompassing a broad spectrum of administration and control spanning a long period of time. Throughout this period, once again, I would emphasize the fact that Malaysia never disputed Singapore's right to exercise authority over the island, never advanced a claim of its own, and never carried out any competing acts.

88. What are isolated, on the other hand, are the miscellaneous and wholly unimpressive examples of Singapore conduct that Malaysia has tried to seize upon to bolster its contention that somehow Singapore did not consider that it had sovereignty over the island.

89. Malaysia first refers to the 1927 Straits Settlements and Johor Territorial Waters Agreement, which was discussed on Tuesday. That agreement, when you read it carefully, concerned the retrocession of certain small islands lying in the immediate vicinity of the main island of Singapore to Johor. The agreement did not purport to deal with Pedra Branca, did not deal with Pedra Branca, and is irrelevant to this case.

90. Next, Malaysia seeks refuge in the 1946 Singapore Order in Council pursuant to which the Settlement of Singapore was defined as including the Island of Singapore and its dependencies, as well as all other islands and places then known and administered by Singapore and its territorial waters. At the time that that was issued, in 1946, Pedra Branca was clearly a "dependency" of Singapore. In fact, as Mr. Brownlie noted yesterday, Pedra Branca was expressly described as such during the ceremony for the laying of the foundation stone for the Horsburgh lighthouse as early as 1850. And Pedra Branca was also unquestionably an island being administered by Singapore, as I have discussed. So, far from strengthening Malaysia's case, the 1946 Order in Council is entirely consistent with Singapore's position, as are the other constitutional instruments concerning Singapore that Malaysia has cited, in its written pleadings, dating from 1951, 1952, 1960 and 1965. *All*, all of them referred to Singapore "and its dependencies" — and areas that Singapore administered and controlled — a description which included Pedra Branca.

91. Malaysia also grasps at straws when it refers to two publications issued in Singapore which are said by Malaysia to be telling in that they did not include Pedra Branca as one of the islands appertaining to Singapore. The first such publication is a booklet — it is really essentially no more than a tourist publication — called *Singapore Facts and Pictures*. It was published by the Singapore Ministry of Culture and had nothing to do with a legal definition of Singapore's territory. Nor did it concern Pedra Branca for the obvious reason that Pedra Branca had no tourist facilities.

92. The second set of publications comprise two editions of the *Annual Report of the Rural Board of Singapore* taken from 1953 — that was the year that Johor expressly disclaimed ownership of Pedra Branca — and 1956. These, too, had nothing to do with Pedra Branca. Singapore fully explained, in its written pleadings, that the impetus behind these publications lay in the Rural Board's revision of electoral boundaries in Singapore, which obviously did not concern Pedra Branca. Even Malaysia is forced to concede as much when it acknowledges that the Rural Board was not responsible for any management of lighthouses.

93. Equally unavailing is Malaysia's reliance on a passage from J.A.L. Pavitt's book, *First Pharos of the Eastern Seas: Horsburgh Lighthouse*, published in 1966. Pavitt says nothing to suggest that Pedra Branca did not belong to Singapore. The only passage which Malaysia has tried

to hang its argument on is a single sentence where Pavitt described the lighthouse on Pedra Branca as an "outlying station" in the South China Sea, which geographically it was. But by no account does this mean that Singapore did not possess or exercise sovereignty over the island. And I would suggest that what is more directly relevant is the written note prepared by one of Pavitt's assistants on Pavitt's behalf one year later, in 1967 — which is also at tab 35 and the relevant part is on the screen — in which the author, Pavitt's assistant, states:

[slide]

> "I have nothing to add . . . except to state that in addition to the waters immediately surrounding Singapore, I have been advised that the waters within 3 miles of Horsburgh Lighthouse (at the eastern entrance to the Singapore Strait) may be considered to be Singapore waters." (CMS, Ann. 42).

94. Obviously, if the waters around Pedra Branca were considered to be Singapore waters, that necessarily implied that the island itself belonged to Singapore. Equally obviously, none of the sparse pickings referred to by Malaysia even remotely begins to counteract the long and unimpeded pattern of State conduct that Singapore carried out on Pedra Branca. And none of them bears any resemblance to Malaysia's own conduct — or, more accurately, its lack of conduct — relating to Pedra Branca which, as my colleagues will show, included the famous express disclaimer of ownership over Pedra Branca and a series of official Malaysian maps specifically attributing Pedra Branca to Singapore.

Conclusions

95. Mr. President, Members of the Court, I have taken the Court through the factual and legal elements which demonstrate that Singapore has actively and continuously maintained up to the present the sovereignty it acquired over Pedra Branca during the period 1847-1851. It has done so by concrete actions undertaken *à titre de souverain* on the ground. I would suggest that the evidence is compelling, it is consistent, and the facts stand unrebutted. It also comports with the standard articulated recently in the *Nicaragua* v. *Honduras* Judgment at paragraph 175, that what is relevant is evidence of sovereign activities which "cover a considerable period of time and show a pattern revealing an intention to exercise State functions" (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras),* Judgment of 8 October 2007). And that is what Singapore's conduct does.

96. In the final analysis, Malaysia would have the Court find that a party that can show no basis of title to the territory in dispute — whether a so-called "historic title" or otherwise —, which has not carried out a single act, a single sovereign act on the territory at any time, which has let 130 years of unimpeded administration by its neighbour go unprotested and unopposed, which disclaimed any ownership of the territory in question in official correspondence, and which published a series of official maps showing the island as belonging to its neighbour, Malaysia would have this Court believe that that party has a better title than the party which established sovereignty over the territory by official government acts on the territory in question, and then maintained that title through a constant stream of administration and control on the actual territory in dispute for over a century and a half thereafter. And to put it mildly, that proposition is manifestly unsound.

97. Mr. President, that concludes my presentation. I am grateful to the Court for its attention and patience. Perhaps this would be a good time for the coffee break, after which I would be grateful if you would call upon Ms Malintoppi to continue Singapore's presentation. Thank you.

The VICE-PRESIDENT, Acting President: I thank you for your arguments, Mr. Bundy.

We will now take our customary break and in ten minutes' time when we resume I shall call on Ms Malintopppi.

The Court adjourned from 11.25 to 11.40 a.m.

The VICE-PRESIDENT, Acting President: Please be seated. Ms Malintoppi, you have the floor.

Ms MALINTOPPI: Thank you, Mr. President, Members of the Court. It is an honour and a privilege to appear before you again and to represent Singapore in these proceedings.

THE ABSENCE OF MALAYSIAN *EFFECTIVITÉS*

1. In his first speech, my friend and colleague Professor Pellet demonstrated that Malaysia has been unable to produce any evidence of an original title held by Johor over Pedra Branca, or any evidence of sovereign acts carried out on the island prior to 1847. For my part, I will show

how Malaysia *never* conducted any acts of administration and control — or *effectivités* — on Pedra Branca at any time after Great Britain had acquired title over the island in the period 1847 to 1851.

2. The fact that Malaysia cannot point to a single act of administration and control over the disputed territory, Pedra Branca, represents a fundamental defect in its case. The absence of any Malaysian *effectivités* on Pedra Branca also stands in stark contrast to the acts of the British Crown in taking possession of the island discussed by Mr. Brownlie yesterday, and the evidence reviewed earlier today by Mr. Bundy demonstrating the manner in which Great Britain and Singapore thereafter confirmed and maintained that title by conduct undertaken *à titre de souverain* on the ground.

3. In trying to overcome this problem, Malaysia has been faced with a dilemma which resulted in an inconsistent and equivocal approach in its written pleadings.

The VICE-PRESIDENT, Acting President: Madam, may I ask you to slow down a little bit for the sake of the interpreters.

Ms MALINTOPPI: I shall.

4. On the one hand, Malaysia asserted in its Memorial that it "had no need actively to assert its title" to Pedra Branca because it possessed an alleged "original title" (MM, p. 117, para. 269). In its Counter-Memorial, Malaysia expanded on this reasoning by citing the *Meerauge* arbitration as authority for the proposition that its possession of Pedra Branca had lasted for so long that it is impossible to provide evidence of a different situation (CMM, p. 13, para. 21).

5. On the other hand, Malaysia clearly realizes the extent of its predicament, and the fact that the Court has always required evidence of an actual display of sovereignty on the ground to support a claim of title, because it still feels it necessary to invoke what it terms "assertions of sovereignty" which are said to constitute proof of Malaysia's view that Pedra Branca was regarded as Malaysian territory, and which are alleged to be confirmatory of its historic title. As I shall show, in actual fact, the acts in question — which are enthusiastically referred to as "numerous examples" by Malaysia — are nothing more than a handful of episodes, all irrelevant, as they concern matters having nothing to do with conduct carried out *à titre de souverain* on the actual territory in dispute.

6. Malaysia's Memorial identified four examples of Malaysian conduct which Malaysia contends confirm its claim. These were: (i) an internal 1968 letter of the Malaysian navy attaching two naval charts showing Malaysian territorial waters; (ii) a 1968 Petroleum Agreement between the Government of Malaysia and Continental Oil Company of Malaysia; (iii) the establishment of the breadth of Malaysia's territorial sea, and, (iv) the 1969 Indonesia-Malaysia Continental Shelf Agreement (MM, p. 117, para. 269). In its Counter-Memorial, Malaysia grouped these items together under the rubric of a so-called practice in the "maritime context" (CMM, pp. 262-263, paras. 555-556). In addition, it ventured to add two more examples to those already mentioned: First, the use of the waters around Pedra Branca by Johor fishermen, and second, the alleged patrolling of the waters around Pedra Branca by the Royal Malaysian Navy (CMM, pp. 240-260, paras. 515-549).

7. With your permission, Mr. President, I shall focus on each of the elements relied on by Malaysia in order to show that none of them individually, or taken together, are capable of confirming an original title over Pedra Branca, even assuming *arguendo* that such title existed in the first place, which — as Singapore has shown — is not the case.

1. The 1968 letter by Commodore K. Thanabalasingham and attached naval charts

8. Let me start with the so-called "Letter of Promulgation" of 16 July 1968 by Commodore K. Thanabalasingham of the Royal Malaysian Navy. This document was submitted by Malaysia as Annex 76 to its Memorial, while the charts attached to it were not reproduced in the same annex, but as maps 20 and 25 of Malaysia's Memorial Atlas. This internal and confidential letter — which is now on the screen — read as follows:

> "1. The attached chartlets showing the outer limits of Malaysian Territorial Waters and foreign claimed waters in West Malaysia are promulgated for the information of Senior and Commanding Officers.
>
> 2. As can be seen, there are certain areas in which these limits have never been properly determined or negotiated and those promulgated are basically a determination with strict regard to the 1958 Geneva Convention.
>
> 3. Strict attention is to be paid to the Notes on certain chartlets which are also reproduced after the Index."

9. This document and its attachments call for a number of comments. First, the title of the letter is a misnomer: when something is "promulgated", it is ordinarily made known publicly and officially, but this was — by Malaysia's own admission — an internal and confidential letter, intended only "for the information of Senior and Commanding Officers". Singapore never saw it, something particularly striking in light of the fact that there was no shortage of opportunities during the negotiations between the Parties to raise this point. Therefore, the position raised in this letter and the charts were never advanced by Malaysia as a formal claim and Singapore never had an opportunity to challenge the contents of this letter and its attachments.

10. Malaysia contends that the fact that these were internal documents adds to their "weight and veracity". However, this argument misses the point. The point worth emphasizing is that Commodore Thanabalasingham's letter is an internal letter from the Chief of the Malaysian navy to his own officers. In other words, these were documents produced for internal Malaysian consumption and were never made known to Singapore. As such, they represent, at most, the view of just one department, a view which is also inconsistent with the conduct of the Malaysian Government as a whole. As the Court will recall, the same year when the letter was written, 1968, Malaysia demanded that Singapore stop flying the Singapore ensign at the Pulau Pisang lighthouse. However, no similar request was made in relation to Pedra Branca. As also discussed by Singapore in its written pleadings, well after 1968, Malaysia continued to recognize Singapore's sovereignty over Pedra Branca through the actions of its mapping agency and other official conduct.

11. Moreover, the so-called "Letter of Promulgation" specifies that the limits shown on the charts "are basically a determination with strict regard to the 1958 Geneva Convention". Therefore, at most, this document represented an interpretation of that Convention by the then Chief of the Malaysian navy for internal use, nothing more. As stated by the Arbitral Tribunal in the *Eritrea/Yemen* arbitration

> "internal memoranda do not necessarily represent the view or policy of any government, and may be no more than the personal view that one civil servant felt moved to express to another particular civil servant at that moment" (Award, Phase One, 9 October 1998, p. 28, para. 94).

12. This is more than enough to show that these documents lack any probative value with respect to Malaysia's putative claim of title.

13. As for the author of the letter — Rear-Admiral Thanabalasingham, as he now is — he makes the following observation in his affidavit which was filed as Annex 4 of Malaysia's Counter-Memorial:

> "As I examine this chart today [map 25 in Malaysia's atlas] and read the accompanying notes, 36 years after I issued the Letter of Promulgation, I am quite clear that, in 1968, we had no doubt that Pulau Batu Puteh (as well as Middle Rocks and South Ledge) were Malaysian territory."

14. In its Reply, Singapore responded to this statement, and recalled the similarity between this situation and the Court's ruling on a similar matter in the *Nicaragua* case. As in *Nicaragua*, the testimony of Rear-Admiral Thanabalasingham is simply the expression of an opinion, or, to borrow the words of the Court, the "mere personal and subjective evaluation of a possibility, which has yet to be shown to correspond to a fact". In other words, it is "not proof in itself", and — I would add — cannot replace contemporary evidence (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 42, para. 68). As held by the Court in the *Congo* v. *Uganda* case: "The Court will treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source." (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 201, para. 61.)

15. This statement was also cited with approval by the Court in the *Genocide* case (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia)*, Judgment of 26 February 2007, para. 213).

16. In the present instance, the Rear-Admiral's statement is not only not contemporaneous, for it is rendered 36 years after the facts on which he testifies, it is also not supported by the contemporaneous factual context. As Singapore has shown, there is no evidence on the record that Malaysia ever expressed the intent to act as sovereign over Pedra Branca or that it ever carried out any acts of sovereignty on the island itself. Neither the 1968 Letter of Promulgation and its attached chartlets, nor Rear-Admiral Thanabalasingham's affidavit changes this picture.

2. The 1968 Petroleum Agreement between the Government of Malaysia and Continental Oil Company of Malaysia

17. Malaysia also relies on the grant of an offshore petroleum agreement on 16 April 1968 to the Continental Oil Company of Malaysia ("Continental") as evidence of Malaysia's so-called appreciation that the concession area encompassed Pedra Branca and, as such, constituted State conduct on the part of Malaysia which was made public and not protested by Singapore. I will respond to these allegations in turn. For ease of reference, the Members of the Court will find a copy of the agreement at tab 36 of the judges' folder.

18. The map which is now on the screen is a reproduction of map 37 of Malaysia's map atlas depicting the Continental licence area. This is also at tab 36 of the judges' folder. The first thing to note about this map is that it does not show Pedra Branca. This is not surprising, given that the Petroleum Agreement expressly excluded from the concession area islands and international boundaries "wherever they may be established" (MM, Ann. 110, p. 31; see, also, MM, p. 119, para. 274) [place relevant quote on screen]. As Singapore pointed out in its Counter-Memorial, it is obvious that this petroleum agreement was without prejudice to the question of boundaries and the sovereignty of islands located where no boundaries had been agreed.

19. In its Reply, Malaysia accuses Singapore of failing to address the fact that the "area of uncertainty" south of the concession was "precisely defined" by one of the charts attached to the Letter of Promulgation I discussed earlier (RM, p. 168, para. 356). In other words, Malaysia is blaming Singapore for failing to interpret the 1968 Petroleum Agreement through a chart attached to a totally unrelated, and unpublished, internal Malaysian letter. However, there is no relation between the concession and the letter and there is no attempt on the part of Malaysia to show any other than through an artificial connection with the so-called "contemporaneous conduct of Malaysia" which is said to evidence Malaysia's "appreciation of sovereignty over this area". However, a claim to title requires more than vague presumptions. At the very minimum, Malaysia must show some actual exercise or display of State authority over Pedra Branca itself, and this it has not done.

20. It should also be noted that the co-ordinates of the concession were never made public, as Malaysia itself admits (RM, p. 169, para. 359), and no exploration was ever carried out on Pedra Branca or within its territorial waters. It is also significant that Malaysia's written pleadings

ignored the fact, which was documented in Singapore's Counter-Memorial, that, only a few years after the agreement was signed, Continental relinquished a large portion of its concession including the whole area in the vicinity of Pedra Branca (CMS, Ann. 47). The result can be seen on the map appearing on the screen, which was produced by Singapore as Annex 47 of its Counter-Memorial and is also included at tab 36 of the judges' folder. In these circumstances, what was there for Singapore to protest?

21. As recalled by Singapore in its Counter-Memorial (pp. 169-170, para. 6.86), in the *Indonesia/Malaysia* case — *Sovereignty over Pulau Ligitan and Pulau Sipadan* — Malaysia's position on similar issues relating to oil concession activities was very different from the stance it adopts in this case. In the former case, Malaysia stressed the fact that the concessions in question did not encompass the disputed islands and were thus irrelevant for questions of sovereignty, had no bearing on sovereignty. The Court's Judgment summarized Malaysia's position in the following terms:

> "For its part, Malaysia notes that the oil concessions in the 1960s did not concern territorial delimitation and that the islands of Ligitan and Sipadan were never included in the concession perimeters. It adds that '[n]o activity pursuant to the Indonesian concessions had any relation to the islands'." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 664, para. 78.)

Consequently, the Court held that it could not "draw any conclusion . . . from the practice of the Parties in awarding oil concessions" (*ibid.*, p. 664, para. 79).

22. In the light of the facts in this case, the same reasoning applies here with regard to the Continental oil concession: no conclusions can be drawn from the granting of the concession for purposes of determining sovereignty over Pedra Branca since the concession did not include the island. The concession agreement recognized that boundaries remained to be determined, and a large part of the concession area, including the area in the vicinity of Pedra Branca, was relinquished shortly after it was granted.

3. Malaysia's arguments based on the breadth of its territorial sea

23. Let me now turn to Malaysia's arguments based on the breadth of its territorial sea in the vicinity of Pedra Branca. In this connection, Malaysia relies on the Emergency (Essential Powers)

Ordinance of 1969 — recalled by Mr. Bundy earlier — which it enacted in order to extend its territorial waters from three to 12 nautical miles. This Ordinance is mentioned by Malaysia in an attempt to show that it thereby extended its territorial waters "to and beyond" Pedra Branca (MM, p. 123, para. 279; RM, p. 169, para. 360). However, the legislation in question does nothing of the sort.

24. The Ordinance does no more than indicate the methodology which Malaysia intended to adopt in subsequently negotiating the delimitation of its territorial sea. As can be seen from the text of Section 12, paragraph 1, of the Ordinance — which is Annex 114 of Singapore's Memorial and Annex 111 of Malaysia's Memorial — the language essentially repeats the provisions of the Geneva Convention on the Territorial Sea and Contiguous Zone of 1958. There is no reference at all to Pedra Branca or to questions of sovereignty, and no public map was ever issued showing Malaysia's territorial waters as encompassing the waters around Pedra Branca until, arguably, Malaysia's continental shelf map was produced in 1979.

25. In its Reply, Malaysia accuses Singapore of failing to mention that Section 3 of the Ordinance made an express *renvoi* to certain Articles of the 1958 Geneva Convention including in particular Article 12 (RM, pp. 170-171, paras. 362-364). As the Court will be aware, this provision provides that — in the absence of agreement — States with opposite or adjacent coasts are not entitled to extend their territorial seas beyond the median line. Malaysia further notes that Section 6 of the Ordinance constitutes a variation from Article 12 to the extent that it stipulates that — in the event of an agreement with another coastal State — Malaysia may modify by order the areas of its territorial waters. With a remarkable leap of logic, Malaysia then claims that this legislation provides support for its contention that Pedra Branca fell within Malaysia's territorial waters.

26. Frankly, it is difficult to follow Malaysia's reasoning. Even when reference is made to Section 3 of the Ordinance and to the 1958 Geneva Convention, Malaysia's case is not furthered. The drawing of a median line clearly depends on the base points used for that purpose. Malaysia's Ordinance did not suggest that any such base points were situated on Pedra Branca or that Malaysia possessed a territorial sea around the island. There is nothing in the 1969 Ordinance relating to sovereignty and no reference to Pedra Branca and its related features. The Ordinance might have

represented the expression of Malaysia's *intention* with regard to how it would approach future territorial sea delimitations. However, the fact of the matter is that the Ordinance does not provide for any delimitation, nor does it make any mention of Pedra Branca. In short, the Ordinance contains nothing that Singapore might have found objectionable or that might have given rise to a need to protest. What is significant on the other hand is that when *there was* cause to object, in other words when Malaysia finally did publish a map in 1979 depicting the outer limits of its territorial waters and continental shelf and its intentions became clear, then Singapore promptly protested.

4. The 1969 Indonesia-Malaysia Continental Shelf Agreement

27. Likewise, the Indonesia-Malaysia Continental Shelf Agreement of 1969 called for no reaction on the part of Singapore. As a bilateral agreement, the 1969 Agreement was without prejudice to the rights of third States. Moreover, as can be seen from the enlargement of the relevant area of the sketch-map now on the screen, and under tab 37 of the folders, the agreed delimitation line stayed well clear of Pedra Branca as confirmed by the co-ordinates listed in Article I, Section B, and depicted on the map.

28. Had Pedra Branca played any role in this delimitation as falling under Malaysia's jurisdiction, it would presumably have had some effect on the delimitation. However, there is no evidence whatsoever that Pedra Branca was taken into account. In such circumstances, what was there for Singapore to object to?

5. The use of the waters around Pedra Branca by Johor fishermen

29. Malaysia also contends that the waters around Pedra Branca were traditional fishing grounds of Johor fishermen. In its Counter-Memorial, it provided the affidavits of two local fishermen to that effect (CMM, Anns. 5 and 6) and in its Reply Malaysia added that the Oräng-laut also fished in Pedra Branca's waters (p. 132, para. 262).

30. The first comment to make in this respect is that these two statements only represent subjective, personal opinions regarding a certain state of things. Moreover, they are drafted in vague and general terms: only one of them specifically refers to isolated landings on Pedra Branca (CMM, Affidavit of Saban Bin Ahmad, Ann. 6), while the other merely mentions, without any

details, that the lighthouse keepers were known to provide occasional shelter to fishermen (CMM, Affidavit of Idris Bin Yusof, Ann. 5, p. 4).

31. In any event, the views expressed in these affidavits as to the fishing practices of Johor fishermen do not support Malaysia's case since, even admitting that such practices were of the kind described in the affidavits, the fact that Johor fishermen may have occasionally used the waters around Pedra Branca as fishing grounds, as did fishermen from Singapore and other countries, is not capable in itself of establishing or confirming sovereign title. Malaysia recognizes as much when it concedes at paragraph 530 of its Counter-Memorial that "these are private acts" and not evidence of "conduct *à titre de souverain* by Malaysia".

32. What is striking, on the other hand, is the total absence of any evidence of Malaysian State activity relating to Pedra Branca, such as fishing legislation referring to Pedra Branca or any regulation of fisheries or enforcement activities in Pedra Branca's waters. Indeed, there is nothing in this case resembling any form of administrative or legislative control, not even the kind of licensing of activities related to fishing in the disputed islands that were carried out by Honduras in the recent *Nicaragua* v. *Honduras* case (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, Judgment of 8 October 2007, paras. 190-198) and which was held by this Court to represent "a display, albeit modest, of the exercise of authority" (*ibid*., para. 196). In short, there is no evidence on the record of any exercise of authority undertaken by the Malaysian Government with respect to the actual territory in dispute.

33. In this connection, the observation of the Court in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* relied on again by this Court in the *Nicaragua* v. *Honduras* Judgment of last month (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, Judgment of 8 October 2007, para. 194) is very relevant. As the Court stated: "activities by private persons, . . . 'cannot be seen as *effectivités* if they do not take place on the basis of official regulations or under governmental authority' (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 683, para. 140)".

34. Likewise, in the present case, the recent and limited private activities to which the witness statements produced by Malaysia refer, even if taken at face value, cannot even begin to prove the existence of Johor or Malaysian title.

6. The alleged patrols of the waters around Pedra Branca by the Royal Malaysian Navy

35. Finally, with respect to Malaysia's arguments concerning the alleged patrolling of the waters around Pedra Branca by Malaysian vessels, they also do not assist Malaysia in advancing its case, particularly since these arguments are entirely based on Rear-Admiral Thanabalasingham's affidavit (CMM, Ann. 4), representing his own personal evaluation, and nothing else.

36. As Malaysia acknowledges, Singapore did not formally establish its own navy until 1975 and was therefore not in a position to patrol the waters off Pedra Branca independently until then (RM, p. 250, para. 537). Malaysia also recognizes that it continued to "have some responsibility for the defence of Singapore under the Separation Agreement of 1965". The fact of the matter is that for a number of years the Parties continued to co-operate very closely on coastal defence, so much so that their activities were referred to as being "indivisible" in a joint communiqué of June 1968 (RS, Anns. 37, 38 and 39).

37. As recalled in Malaysia's Counter-Memorial (CMM, p. 249, para. 536) and in the affidavit (CMM, Ann. 4, paras. 11-15), vessels of the Malayan Naval Force, then the Royal Malayan Navy, and subsequently of the Royal Malaysian Navy, were based in Singapore for almost 50 years, until 1997. Given this situation, there is nothing extraordinary in the fact that Malaysian vessels may have transited in the vicinity of Pedra Branca on their way to or from the base in Singapore, and nothing in the documents produced by Malaysia shows that these transits could be appropriately termed as formal "patrols", or that they had any direct relationship with Pedra Branca and related features. In short, Malaysia's alleged "patrols" do not provide any evidence of Malaysian sovereignty over Pedra Branca itself. By contrast, as recalled by Mr. Bundy, for 28 years the Singapore navy routinely undertook specific enforcement actions in pre-designated areas just off Pedra Branca (RS, Ann. 50), and such official activities raised no protest from Malaysia until 2003.

38. It is also in this context that Rear-Admiral Thanabalasingham's affidavit in his recollection of his landing at Pedra Branca in 1962 must be viewed. Five years prior to that date, the Federation of Malaya had concluded a security agreement with Great Britain — the Anglo-Malayan Defence Agreement of 12 October 1957 — which provided for the protection of British territories in the Far East, including Singapore. Even admitting that the episode recounted by Rear-Admiral Thanabalasingham could amount to "patrolling" around Pedra Branca's waters, which is difficult to accept, at the time of these events the Royal Malayan Navy had an obligation to protect Singapore's waters under the Anglo-Malayan Defence Agreement. There was therefore nothing particularly noteworthy about this episode, which would have called the attention of the lighthouse keeper at the time and which could have triggered a protest from Singapore. In contrast, what is significant is that Rear-Admiral Thanabalasingham never protested the flying of Singapore's ensign on Pedra Branca. This could not have escaped his attention any more than the exact same ensign that flew over the lighthouse on Pulau Pisang, which Malaysia protested, as Mr. Bundy recalled earlier.

39. A pertinent example of the lack of specificity of the evidence filed by Malaysia is provided by two documents relating to a survey carried out by a ship of the British Royal Navy, HMS *Dampier*, in 1967. These documents consist of a letter of request for the survey together with an attachment, which is entitled "Details of Surveys in West Malaysia: March to May 1967" and a survey fair sheet (attachments 6 and 7 to Rear-Admiral Thanabalasingham's affidavit).

40. In the details of the survey provided in the attachment to the letter, there is no reference whatsoever to areas in the vicinity of Pedra Branca. In fact, the points mentioned in this document are situated along the Malaysian coast and do not concern any area of sea near Pedra Branca. Clearly, this is not a request for permission to survey the area around the island, and the fact that a vessel of the British Royal Navy, HMS *Dampier*, subsequently surveyed the waters around Pedra Branca, is no proof whatsoever that permission to conduct the survey was sought and obtained, and shows nothing regarding Malaysia's current claim to sovereignty over the island. At the time, as the Court will recall, vessels of the British fleet which were based in Singapore were frequently transiting and monitoring Singapore's waters, as part of their mission.

Conclusions

41. In conclusion, none of the activities adduced by Malaysia as confirmatory of a presumed original title amounts to an act undertaken *à titre de souverain* on the actual territory in dispute — Pedra Branca and related features.

— Not the undisclosed 1968 letter by the then Commodore Thanabalasingham and its attached naval charts, for they were internal and confidential and they lack the necessary legal force to establish title or displace Singapore's sovereign title.

— Not the 1968 Petroleum Agreement between Malaysia and Continental, for no legal conclusions can be drawn from the granting of an oil concession that expressly excluded all islands in the area, recognized that boundaries still had to be determined, and with respect to which no exploration was ever carried out and which was relinquished shortly after the agreement was signed.

— Not the 1969 Ordinance concerning the extension of Malaysia's territorial sea because the Ordinance did nothing more than enunciate the methodology for future delimitations without identifying the areas which Malaysia considered to comprise its territorial sea, and did not mention Pedra Branca at all.

— Not the 1969 Indonesia-Malaysia Continental Shelf Agreement because it was *res inter alios* as far as Singapore was concerned and because in any event it avoided the area around Pedra Branca.

— Not the sporadic and non-exclusive fishing by Johor fishermen, for these activities are entirely of a private nature and have not been carried out on the basis of official regulations or legislation which might represent a display of authority over Pedra Branca.

— And finally, not the alleged patrols of the waters around Pedra Branca by Malaysian vessels, for there is no evidence of actual patrolling demonstrating that Malaysia considered that Pedra Branca and related features were under its sovereignty.

42. At the end of the day, Mr. President, Members of the Court, Malaysia's conduct is fundamentally different from that of Singapore. Singapore has shown that its sovereignty over Pedra Branca was established by the taking of possession of the island in 1847-1851, and that Singapore's title was confirmed and maintained thereafter throughout formal acts of a sovereign

nature, consistently carried out on the ground, and which have been expressly and implicitly recognized by Malaysia's own conduct.

43. In contrast, there are no competing activities of a similar nature on the part of Malaysia. The fragmented and vague activities that Malaysia adduces to support its claim are so remarkably thin and unpersuasive that they do not rise to the level of *effectivités* on Pedra Branca, and cannot, *a fortiori*, be confirmatory of any title to the island.

44. When all is said and done, the question as to which Party possesses sovereignty over Pedra Branca hinges on an assessment of the evidence showing the acquisition of sovereignty and the exercise of State functions on the ground. In the light of the facts of this case, the conclusion must be that Pedra Branca is, and has been, at all relevant times, subject to the territorial sovereignty of Singapore.

Mr. President, Members of the Court, this concludes my presentation. I thank you for your attention and I would be grateful if you could give the floor to Professor Pellet.

The VICE-PRESIDENT, Acting President: Thank you very much, Ms Malintoppi. I now give the floor to Professor Pellet.

M. PELLET : Thank you very much Mr. President.

LA RECONNAISSANCE PAR LA MALAISIE DE LA SOUVERAINETÉ DE SINGAPOUR SUR PEDRA BRANCA

1. Monsieur le président, Messieurs les juges, la deuxième — je le crains pour vous pas la dernière — plaidoirie que j'ai l'honneur de présenter au nom de Singapour va me conduire à revenir sur les différentes circonstances dans lesquelles la Malaisie a reconnu la souveraineté de Singapour sur Pedra Branca, à la fois par des conduites positives et par son silence. Il va s'agir d'un tour d'horizon général, mais je précise d'emblée que je n'évoquerai ce matin, ni les cartes qui témoignent aussi de cette reconnaissance comme le montrera Loretta Malintoppi, ni le *Straits Lights System*, dont Rodman Bundy établira la signification juridique, ni la si importante déclaration par laquelle Johor a expressément renoncé, en 1953, à toute prétention sur Pedra Branca. Nous reviendrons sur ces aspects particuliers demain matin. Mais il est important de garder à l'esprit que tout ceci forme un tout — une *pattern* pour emprunter un mot anglais qui

montre particulièrement bien ce dont il s'agit — une *pattern* de conduites cohérentes, qui se confortent mutuellement, et établissent sans contestation possible que ni la Malaisie, ni son prédécesseur Johor, n'ont jamais éprouvé le moindre doute quant à la souveraineté de Singapour sur l'île que revendique aujourd'hui la Partie malaisienne, en contraste flagrant avec sa conduite passée.

2. Ceci étant, Monsieur le président, je dois avouer mon embarras : nous avons, dans toutes nos plaidoiries écrites, longuement insisté sur cette reconnaissance par la Malaisie, par action ou par omission, de la souveraineté de Singapour sur Pedra Branca[1]. A la brève exception de quelques paragraphes de son contre-mémoire[2], la Partie malaisienne s'est constamment bien gardée de réfuter cette argumentation, pourtant précise et claire. Sans doute faut-il voir dans ce «refus d'obstacle» une nouvelle forme de reconnaissance par la Malaisie, «procédurale» cette fois, de la souveraineté de Singapour.

3. Dans ces conditions, il pourrait suffire, Messieurs de la Cour, de vous renvoyer à ce que Singapour a dit sur ce point dans ses écritures. Malheureusement, il nous a semblé impossible de vous épargner complètement cette plaidoirie : passer sous silence les reconnaissances expresses ou tacites de la souveraineté singapourienne sur Pedra Branca par la Malaisie conduirait à donner une image incomplète et tronquée de l'affaire — car tout s'enchaîne, Monsieur le président :

— Singapour a pris possession de l'île (auparavant *terra nullius*) durant la période 1847-1851 ;

— depuis lors, elle l'a constamment occupée et y a exercé de nombreuses activités diversifiées, à titre de souverain ;

— ces effectivités contrastent, de manière frappante, avec l'absence totale de toute présence malaisienne officielle, comme Loretta Malintoppi vient de le montrer ;

— mais cette «ineffectivité» est parfaitement consistante avec, et la renonciation expresse de Johor *(disclaimer)* à tout titre sur Pedra Branca en 1953, et toute la série de reconnaissances expresses ou implicites de la souveraineté de Singapour, sur lesquelles la Malaisie refuse obstinément de s'exprimer.

---

[1] Voir notamment, MS, p. 139-154 et p. 160 ; CMS, p. 156-163 ou 172-173 ; ou RS, p. 187-213 et p. 218-219.

[2] CMM, p. 92, par 185, et p. 227-234, par. 485-500.

I. Les reconnaissances implicites

4. Monsieur le président, à plusieurs reprises, la Malaisie — pour reprendre le passage célèbre de la Cour dans l'affaire du *Temple* — «n'a pas réagi à une circonstance qui appelait une réaction tendant à affirmer ou à conserver un titre de souveraineté en face d'une prétention contraire évidente» (*Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 31). Ce faisant, elle a acquiescé à l'exercice par Singapour des prérogatives découlant de sa souveraineté sur Pedra Branca. Or, selon les termes de la Chambre de la Cour dans l'affaire du *Golfe du Maine*, «l'acquiescement équiv[aut] à une reconnaissance tacite manifestée par un comportement unilatéral que l'autre partie peut interpréter comme un consentement» (*Délimitation de la frontière maritime dans la région du golfe du Maine (Canada/Etats-Unis d'Amérique), arrêt, C.I.J. Recueil 1984*, p. 305, par 130).

5. En réalité, comme Rodman Bundy l'a montré, les activités de Singapour «à titre de souverain» ont été constantes et continues ; le silence gardé par la Malaisie (et son prédécesseur) face à ces activités l'a été tout autant : ni Johor, ni la Malaisie n'ont protesté contre elles avant la naissance du différend, ni même, à vrai dire, durant les dix années qui ont suivi la publication de la carte de 1979.

6. Ce n'est en effet qu'en 1989 que, pour la première fois, la Malaisie a adressé à Singapour une note formelle de protestation contre une activité de celui-ci : il s'agissait de l'implantation à Pedra Branca d'un radar venant compléter le système de régulation du trafic maritime déjà établi sur l'île[3]. Auparavant : rien, si ce n'est une remarque faite en passant au sujet du refoulement de deux fonctionnaires du service géographique de Malaisie occidentale se présentant à Pedra Branca pour procéder à des mesures de triangulation[4]. Cette remarque fut faite au cours d'un entretien qui eut lieu en 1978 à la demande d'un conseiller du haut Commissariat de Singapour à Kuala-Lumpur[5].

7. Aucune réaction de Johor, par exemple, suite à l'adoption de l'acte n° VI de 1852 du gouvernement de l'Inde[6], qui consacra l'intégration du phare Horsburgh dans le système juridique

---

[3] MS, annexe 164, note EC 60/89 du 14 juillet 1989.

[4] MS, p. 112, par 6.63 ; CMM, p. 204-205, par. 424-425 ; RS, p. 154-155, par 4.146.

[5] Voir CMM, annexe 45 ; RS, annexe 51.

[6] Voir MS, annexe 59.

colonial britannique[7], ou à celle, en 1854, de l'acte n° XIII[8], qui renforça la compétence du gouvernement de l'Inde à cet égard[9], M. Bundy en a parlé tout à l'heure. Rien non plus, en 1883, lorsque que la jetée fut renforcée et un petit embarcadère construit[10] ; ni en 1902, lorsque les équipements portuaires furent réaménagés[11]. Pas davantage de réaction de la Malaisie lorsque, en 1977, Singapour a installé sur l'île un équipement lourd de communications militaires. Pourtant, cette activité, de puissance publique par excellence, a nécessité l'intervention, qui ne pouvait passer inaperçue, d'un hélicoptère militaire, non seulement au moment de la construction elle-même, mais aussi après l'installation de la station-relais, en vue de sa maintenance[12]. Et ce silence est d'autant plus parlant que la construction de la station a été faite deux ans avant la publication de la carte de 1979 et qu'il a persisté dans les années qui ont suivi.

8. La même remarque s'impose au sujet du silence gardé par Kuala-Lumpur lorsque Singapour a lancé, en 1978, un appel d'offres en vue de la récupération ou de la poldérisation (après tout, nous sommes aux Pays-Bas…) de zones marines autour de Pedra Branca[13] : cela aussi a été fait ouvertement ; ceci aussi concerne, à l'évidence, l'île elle-même et les eaux adjacentes, et non le phare ; et ceci s'est produit peu avant la première revendication de la Malaisie sur Pedra Branca — c'est-à-dire à un moment où l'on aurait pu s'attendre à ce qu'elle soit particulièrement attentive à faire valoir ses prétendus droits.

9. Il en va de même, par exemple, s'agissant du silence observé par la Malaisie à l'occasion de l'adoption du communiqué tripartite du 16 novembre 1971 sur le régime des détroits de Malacca et de Singapour[14] ou de la résolution 375 (X) de l'OMCI du 14 novembre 1977 qui établissait un nouveau schéma de navigation dans ces mêmes détroits et, en particulier, dans la région du phare Horsburgh[15]. Quoiqu'en ait écrit la Malaisie[16], on aurait pu légitimement s'attendre à ce qu'un

---

[7] Voir MS, p. 94-96, par. 6.11-6.19 ; RS, p. 47-48, par. 3.34, ou p. 132-134, par. 4.88-4.91.

[8] MS, annexe 62.

[9] Voir MS, p. 96-98, par. 6.20-6.22 ; RS, p. 136, par. 4.97, ou p. 196, par. 6.20-6.21.

[10] Voir MS, p. 99, par. 6.28.

[11] Voir MS, p. 100, par. 6.28.

[12] Voir MS, p. 116-118, par. 6.72-6.75 ; RS, p. 204-205, par. 6.47-6.49.

[13] Voir MS, p. 123-124, par. 6.88-6.90 ; RS, p. 208-210, par. 6.56-6.60.

[14] MS, annexe 116.

[15] MS, annexe 134, voir l'annexe III.

Etat soucieux de préserver ses droits sur une zone maritime sur laquelle il avait des revendications, contredites par la pratique, profitât de ces occasions pour les formuler. Il n'en a rien été.

10. Plus généralement, il est révélateur que, à la seule exception de l'incident de 1978, que j'ai mentionné à l'instant, suite à l'expulsion de deux géomètres malaisiens de Pedra Branca, *en aucune autre circonstance*, la Malaisie n'a, avant 1989, protesté contre *aucune* des très nombreuses manifestations de souveraineté de Singapour sur Pedra Branca et les eaux et îlots environnants, que M. Bundy a décrites tout à l'heure. Le mutisme est total, qu'il s'agisse :

— des nombreux aménagements apportés non seulement au phare Horsburgh, mais à l'île elle-même[17] ;

— de la réglementation (tout ce qu'il y a de plus publique) relative à l'accès à Pedra Branca et à l'administration de l'île[18] ;

— des patrouilles navales singapouriennes dans les eaux adjacentes[19] ;

— des notices aux marins et des nombreuses mesures prises par Singapour au sujet de la sécurité dans la zone[20] ; ou

— des secours suite à des naufrages et autres incidents de navigation et des enquêtes qui ont suivi, ou de la protection des épaves[21] ; ou encore

— de la collecte des données météorologiques[22].

11. Sur tous ces points, la seule chose que la Partie malaisienne trouve à dire est ceci : «It was not conduct *à titre de souverain.* It did not, in the language of the Court in the *Temple* Case, demand a reaction from Malaysia.»[23] But it did, Mr. President! Ne fût-ce que parce que ce sont bien des actes de puissance publique — d'activités «à titre de souverain» — qu'il s'agit, comme mon collègue et ami Rodman Bundy l'a excellemment montré. (Je note d'ailleurs en passant que

---

[16] CMM, p. 233-234, par. 499-500.

[17] MS, p. 99-102, par. 6.27-6.34 ; RS, p. 139-142, par. 4.107-4.114.

[18] MS, p. 93-99, par. 6.10-6.25, p. 103-104, par. 6.35-6.40, p. 109-113, par. 6.54-6.64 ; RS, p. 132-138, par. 4.87-4.103, p. 151-156, par. 4.138-4.148.

[19] MS, p. 115-116, par. 6.69-6.71, p. 156-158, par. 4.149-4.154.

[20] MS, p. 116-118, par. 6.72-6.75 ; RS, p. 138-139, par. 4.104-4.106, p. 159-160, par. 4.155-4.158.

[21] MS, p. 118-124, par. 6.76-6.90 ; RS, p. 160-168, par. 4.159-4.178.

[22] MS, p. 105-107, par. 6.42-6.46 ; RS, p. 142-145, par. 4.115-4.120.

[23] CMM, p. 226-227, par 485.

lorsque la Partie malaisienne a, bien plus récemment, tenté d'«étayer son dossier», elle a protesté précisément contre le même type d'actes que ceux dont elle conteste qu'ils eussent été, auparavant, effectués «à titre de souverain» : par exemple, contre la construction d'une station radar[24] ou au sujet d'activités liées à des incidents maritimes autour de Pedra Branca[25] et des patrouilles navales effectuées par la marine singapourienne autour de l'île[26].) Toutes ces activités de Singapour étaient menées au grand jour et ne pouvaient être ignorées de la Malaisie ; il s'agit d'un ensemble d'actes cohérents qui se sont produits sur une période de plus de cent trente années. Je ne peux que le répéter, il n'est tout simplement pas pensable qu'un Etat soucieux de préserver ses droits se fût montré à ce point négligent, et ceci d'autant moins que la Malaisie a prouvé — en d'autres circonstances, mais s'agissant de droits lui appartenant réellement — qu'elle ne l'était nullement.

12. Le contraste est, en effet, frappant entre sa négligence totale, constante, à l'égard de ses prétendus droits sur Pedra Branca, d'une part, et l'affirmation sourcilleuse de ses droits (bien réels ceux-ci) sur Pulau Pisang, d'autre part.

13. Une précision s'impose d'emblée à cet égard : dans leurs écritures, les deux Parties ont comparé le régime et la pratique relatifs aux deux situations ; la Malaisie a fait grand cas des similitudes existant à cet égard[27] ; Singapour a mis l'accent sur ce qui distingue[28] ces deux situations. Malgré ce que veut faire croire la Partie malaisienne, il n'y a aucune symétrie entre les deux démonstrations : d'une part, celle de Singapour concerne non seulement les phares en question, mais aussi et surtout, les îles sur lesquelles ces phares sont situés, alors que la Malaisie tente de polariser exclusivement l'attention sur les phares ; d'autre part, autant il est tout à fait évident que les activités de gestion et de maintenance des deux phares sont comparables, autant, ce qui importe ce sont les différences d'attitude des Parties à l'égard des îles sur lesquelles ils sont implantés — et ces différences sont extrêmement significatives.

14. Il y a d'abord celles, qui sont flagrantes, dans le mode d'établissement des deux phares, — l'un (Pisang) a fait l'objet d'une autorisation de Johor, l'autre (Pedra Branca) n'a pas l'objet

---

[24] MS, annexe 164.

[25] MS, annexes 202 et 204 ; CMS, annexes 57 et 63.

[26] MS, annexe 203.

[27] MM, p. 106, par. 232-234, p. 112, par 250 ; MCM, p. 145-146, par. 304-305 ; RS, p. 155-156, par. 319-323.

[28] MS, p. 143-145, par. 7.12-7.17 ; CMS, p. 156-158, par. 6.63-6.66 ; RS, p. 200-203, par. 6.32-6.43.

d'une telle permission comme je l'ai montré hier. Il y a aussi l'affirmation claire de sa souveraineté par la Malaisie sur Pulau Pisang, qui contraste, de manière frappante, avec la renonciation expresse de Johor à toute revendication sur Pedra Branca comme je le montrerai demain. Mais ces différences concernent aussi, comme Singapour l'a montré[29] :

— le financement de la maintenance des deux phares ;

— le contrôle de l'accès à l'île ;

— y compris celui des personnes chargées de l'entretien des phares ;

— les activités singapouriennes qui ne sont pas liées à ceux-ci, nombreuses sur Pedra Branca et dans les eaux environnantes, inexistantes sur Pulau Pisang et dans la mer territoriale adjacente ; et,

— *last but not least*, le pavillon qui flotte sur l'un et l'autre phares[30].

15. A ce propos, M^e^ Bundy a rappelé tout à l'heure que la Malaisie avait exigé, en 1968, que Singapour cesse de hisser son propre pavillon sur Pisang ; elle n'a jamais objecté à ce qu'il flotte sur Pedra Branca — ce qui est le cas pour le pavillon britannique depuis la construction du phare, pour celui de Singapour depuis son accession à l'indépendance. C'est que, Monsieur le président, Pulau Pisang appartient à la Malaisie, Pedra Branca, sur laquelle Singapour a constamment agi en qualité de souverain sans objection de la part de la Malaisie, ne lui appartient pas ! Bien entendu, le fait que le phare établi sur l'une et l'autre îles fût, dans les deux cas, opéré par Singapour ne change rien à l'affaire.

16. En vain la Malaisie fait-elle valoir qu'elle ignorait tout des activités de Singapour sur Pedra Branca et dans ses environs immédiats, ou qu'elle souhaitait éviter une improbable confrontation violente avec Singapour. Outre que ces deux «défenses», présentées en passant dans le contre-mémoire malaisien[31], sont parfaitement incompatibles l'une avec l'autre, il ne peut pas être exact que la Malaisie ait ignoré toutes ces activités, menées tout à fait ouvertement, sur une très longue période, et alors que nos contradicteurs se prévalent par ailleurs d'une intense activité à titre de souverain dans la mer territoriale de Pedra Branca et même sur l'île elle-même et, en

---

[29] Voir *ibid.*

[30] Voir MM, p. 142-144, par. 7.10-7.14, voir aussi p. 73-74, par 5.89 ; RS, p. 205-208, par. 6.50-6.55, voir aussi p. 145-150, par. 4.121-4.137.

[31] CMM, p. 92, note 247.

particulier, d'une présence navale constante dans les eaux adjacentes[32]. Mais, comme l'a montré Mme Malintoppi, il s'agit là de présence imaginaire.

17. On peut, je crois, Monsieur le président, transposer sans hésitation, la jurisprudence abondante, constante et claire, que la Cour arbitrale a magistralement recensée dans sa sentence du 19 octobre 1981 dans l'affaire de la *Frontière entre Dubaï et Sharjah*[33]. Il ne me paraît pas utile de vous en infliger à nouveau la lecture, Messieurs les juges : le passage et les références pertinents se trouvent dans notre mémoire[34] (*Différend frontalier terrestre, insulaire et maritime (El Salvador/Honduras ; Nicaragua (intervenant), arrêt, C.I.J. Recueil 1992*, p. 577, par 364 ; *Différend territorial (Jamahiriya arabe libyenne/Tchad), arrêt, C.I.J. Recueil 1994*, p. 35, par 66 ; *Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), arrêt, C.I.J. Recueil 2002*, p. 685, par 148). Mais, la conclusion s'impose : «It emerges from this analysis that a State must react, although using peaceful means, when it considers that one of its rights is threatened by the action of another State.» La Malaisie n'a jamais réagi à aucun des actes de souveraineté, nombreux et consistants, accomplis par Singapour sur l'île et dans les eaux qui la baignent, et force est de constater en paraphrasant l'arrêt de la Cour de 1951 dans l'affaire des *Pêcheries(Royaume-Uni c. Norvège)* «qu'à l'égard d'une situation qui ne pouvait manquer de se fortifier d'année en année, le Gouvernement [de la Malaisie] s'est abstenu de formuler des réserves» (*arrêt, C.I.J. Recueil 1951*, p. 139). Je note d'ailleurs que la Partie malaisienne aurait mauvaise grâce à contester cette conclusion, au moins sur le terrain du droit : elle se prévaut elle-même du silence de Singapour face à ses prétendus actes de souveraineté sur l'île et dans les eaux environnantes[35]. La différence est que les actes en question sont le fruit de l'imagination de ses conseils, imagination fertile à laquelle je me plais à rendre hommage comme M[e] Bundy l'a montré, alors que ceux dont Singapour peut faire état sont bien réels…

---

[32] Cf. CMM, p. 234-235, par. 501-502, et p. 248-260, par. 533-549.

[33] *ILR*, 1993, p. 622-624.

[34] MS, p. 148-150, par 7.24. Voir aussi la sentence rendue le 9 octobre 1998 par le tribunal arbitral au terme de la première phase de la procédure entre l'Erythrée et la République du Yémen *(Souveraineté territoriale et portée du différend)*, *RSANU*, vol. XXII, p. 282, par 306.

[35] Cf. MM, p. 121, par 278; p. 133, par 280 ; p. 124, par 282 ; RM, p. 169, par 359 ; p. 171, par. 364 et 366-367, ou p. 175, par 372.

II. Les reconnaissances expresses

18. Mais ceci va plus loin, Monsieur le président. La Malaisie ne s'est pas contentée de ne pas réagir lorsqu'elle l'aurait dû face aux manifestations de souveraineté de Singapour sur l'île ; elle a aussi reconnu cette souveraineté, par des actes ou des abstentions d'agir dénués d'ambiguïté.

Projection n° 1 — Croquis illustrant la délimitation du plateau continental conformément à l'accord de 1969 entre l'Indonésie et la Malaisie (dossier des plaidoiries, onglet n° 37)

19. Parmi ces dernières, j'attire votre attention, Messieurs les juges, sur l'accord que la Malaisie a conclu avec l'Indonésie en 1969 en vue de la délimitation du plateau continental. Il est révélateur que les Parties à cet instrument se soient accordées sur la délimitation de leurs plateaux continentaux respectifs, mais en s'abstenant soigneusement de prolonger cette limite à l'approche de Pedra Branca[36], ce qui manifestait de la part de l'Indonésie et de la Malaisie une conscience claire que ces eaux ne pouvaient pas être délimitées entre eux. Cette abstention, à l'évidence soigneusement délibérée, n'est bien sûr pas dépourvue de signification juridique, comme ma collègue et amie Loretta Malintoppi vient de le montrer. Le croquis illustratif figurant à l'onglet n° 37 est à nouveau projeté derrière moi.

[Fin de la projection 1.]

20. Il en va à fortiori ainsi s'agissant des actes, positifs, par lesquels la Malaisie a clairement manifesté sa conviction selon laquelle Singapour exerçait sa pleine souveraineté sur l'île. Tel est le cas, en particulier, des demandes d'autorisation que les autorités officielles malaisiennes ont, à plusieurs reprises, adressées à Singapour pour pouvoir se livrer à diverses activités sur Pedra Branca ou dans les eaux environnantes.

21. Tel est le cas, par exemple, d'une mission d'étude des marées de 1974 qui souhaitait effectuer des observations depuis Pedra Branca[37]. Comme l'a montré la réplique singapourienne[38], la demande d'autorisation émanant d'un officier de la marine malaisienne concernait bien l'île elle-même et non le phare : une demande limitée au phare n'aurait pas grand sens dès lors qu'il s'agissait

[36] MS, vol. 6, annexe 114 (ou MM, vol. 3, annexe 111).

[37] Voir MS, p. 111-112, par 6.61 ; CMM, p. 202-203, par. 417-418 ; RS, p. 188-190, par. 6.5-6.9.

[38] Voir *ibid.*

«a) *To replenish Tide Camp with food and water.*

b) *To provide emergency repair for the Responder.*

c) *To carry out Triangulation*»[39].

Et il ne peut y avoir de doute non plus sur le fait que c'est bien au souverain territorial sur l'île que le commandant du navire s'était adressé et que c'est en cette qualité que la Port Authority de Singapour a agi. Une précision contenue dans la réponse du commandant à la demande de renseignements formulée par Singapour ne trompe pas à cet égard : «It is proposed that list of personnel carrying out on and off landing at Horsburgh Lighthouse be exempted and each landing will be escorted by your representative as the landing will normally be a few hours.» L'anglais n'est peut-être pas parfait, mais c'est bien d'actes de puissance publique qu'il s'agit.

22. L'affaire du *Pedoman*, sur laquelle les Parties se sont assez longuement exprimées[40], va dans le même sens : le *Pedoman* était un navire public malaisien chargé, lui aussi, de mesurer l'intensité des marées dans le détroit de Singapour. Alors qu'il se préparait à pénétrer dans les eaux territoriales de Pedra Branca, le haut Commissariat de la Malaisie à Singapour adressa une note au ministère des affaires étrangères singapourien aux termes de laquelle : «The High Commission would be grateful for the Ministry's assistance in securing clearance for NV *Pedoman* to enter Singapore's territorial waters for the abovementioned purpose.»[41] Compte tenu du contexte, il ne pouvait faire de doute que les eaux territoriales en question étaient celles de Pedra Branca. L'autorisation fut accordée[42].

Projection 2 — Extrait du croquis annexé à la lettre du haut Commissariat de la Malaisie à Singapour en date du 26 mars 1980, annoté (RS, encart 11)

23. Le même scénario se reproduisit après la publication de la carte de 1979. Tel est le cas de l'épisode de 1980 relatif à un projet de câble d'électricité sous-marin entre Sarawak et la péninsule malaise[43]. Dans son contre-mémoire, la Malaisie, qui n'y revient pas dans sa réplique,

---

[39] MS, annexe 122 (Letter from Lieutenant Commander Mak S.W., KD *Perantau*, to Hydrographic Department, Port of Singapore Authority, 22 April 1974) [Lettre du 22 avril 1974 adressée au service hydrographique de l'autorité portuaire de Singapour par le lieutenant-commandant S. W. Mak, commandant du KD *Perantau*].

[40] MS, p. 112, par 6.62 et p. 152-153, par 7.32 ; CMM, p. 203-204, par. 420-422 ; RS, p. 191, par. 6.10-6.11.

[41] MM, annexe 137, note EC 219/78 du 9 mai 1978.

[42] MS, annexe 138, note MFA 115/78 du 12 mai 1978 .

[43] MS, p. 153-154, par 7.34 ; CMM, p. 205-208, par. 426-435 ; RS, p. 155, par 4.147 et p. 192-194, par. 6.12-6.16.

s'est employée à obscurcir autant qu'elle l'a pu les circonstances pertinentes. Celles-ci se limitent à ceci :

— le 28 janvier 1980, le haut Commissariat de la Malaisie à Singapour adressa une note au ministère des affaires étrangères de Singapour requérant l'approbation par le Gouvernement singapourien d'un projet d'implantation d'un câble électrique entre l'Indonésie et la Malaisie : «I would appreciate if early approval could be granted by your Government, since the above project will cover also your territorial waters»[44] ;

— ici encore, il ne pouvait s'agir que des eaux territoriales de Pedra Branca — comme le montre d'ailleurs nettement le croquis projeté en ce moment derrière moi, qui est extrait de celui qui était joint à la lettre du haut Commissariat de la Malaisie à Singapour du 26 mars 1980 donnant des précisions sur le projet. Cette lettre indiquait qu'il s'agissait de «l'endroit probable où cette étude serait effectuée» («the likely point where the said survey would take place»[45]) ; l'intention est claire : il s'agissait d'illustrer le trajet envisagé, à cette époque, pour le câble et, par suite, pour l'étude — la *survey* — elle-même ;

— le ministère des affaires étrangères de Singapour a donné son accord le 7 juin 1980[46] ; et, à ma connaissance, la Malaisie ne s'est pas formalisée de la question posée dans cette même note, par laquelle le ministère s'enquérait du tracé exact envisagé dans les eaux territoriales singapouriennes : «Since the proposed areas for the survey would affect Singapore territorial waters, the Singapore authorities concerned would like to have the co-ordinates of the areas in Singapore territorial waters to be surveyed» ;

— il va de soi que, ni cette demande de précisions, ni le fait qu'en définitive un autre trajet a été retenu, n'enlèvent rien au caractère probant de l'épisode ; pas davantage que le «repentir» tardif de la Malaisie qui, quelques jours après avoir reçu la protestation singapourienne contre la carte de 1979[47], a fait mine de s'aviser que, finalement, les eaux concernées par l'étude (et le

---

[44] MS, annexe 143.

[45] MS, annexe 145.

[46] MS, annexe 147 (Note from the Singapore Ministry of Foreign Affairs to the Malaysian High Commission, 7 June 1980) [Lettre du 7 juin 1980 adressée au haut Commissariat de la Malaisie par le ministère des affaires étrangères de Singapour].

[47] MS, annexe 144 (Singapore's Note MFA 30/80, 14 February 1980) [Note 30/80 du 14 février 1980 adressée au haut Commissariat pour la Malaisie par le ministère des affaires étrangères de Singapour].

câble) seraient exclusivement indonésiennes[48]. Ceci ne saurait rien changer au fait que la Partie malaisienne avait, spontanément, estimé que, puisque la mer voisine de Pedra Branca était concernée, l'autorisation de Singapour était nécessaire, conformément à la pratique antérieure.

[Fin de la projection 2.]

24. Monsieur le président, il ne s'agit là que d'exemples, mais ô combien significatifs : jusqu'en 1989, ni la Malaisie, ni son prédécesseur, Johor, n'ont émis le moindre doute sur la souveraineté de Singapour sur Pedra Branca. L'un comme l'autre ont gardé le silence face à l'exercice, par Singapour, de ses prérogatives de puissance publique sur l'île et la Malaisie n'a jamais manqué de demander à Singapour l'autorisation de mener des études océanographiques ou météorologiques à Pedra Branca ou dans les eaux adjacentes. Ce sont là, sans aucun doute, des manifestations concordantes de la souveraineté de Singapour. Et cela n'est pas sans rappeler l'affaire du *Temple de Préah Vihéar*, dans laquelle le Siam s'est vu opposer un ensemble d'omissions, de silences et d'actes positifs — à mon avis bien moins nets que dans notre affaire — dont la Cour a déduit qu'il semblait clair que

> «le Siam ne pensait pas en réalité posséder de titre de souveraineté — ce qui correspondrait parfaitement à l'attitude qu'il avait toujours observée et qu'il a maintenue à l'égard de la carte de l'annexe I de la frontière qu'elle indique — ou bien qu'il avait décidé de ne pas faire valoir son titre, ce qui signifierait encore une fois qu'il admettait les prétentions françaises ou acceptait la frontière à Préah Vihéar telle qu'elle était tracée sur la carte» (*Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 31 ; voir aussi, p. 32-33 et, par exemple, *Souveraineté sur Pulau Ligitan et Pulau Sipadan (Indonésie/Malaisie), arrêt, C.I.J. Recueil 2002*, p. 685, par 148.)

25. Au demeurant, Monsieur le président, tous les comportements de la Malaisie que j'ai décrits, qu'il s'agisse d'actes «positifs» ou d'omissions d'agir, de silences lorsqu'il aurait fallu parler, ne sont que *certains* des éléments d'un ensemble plus vaste ; il en est d'autres qui, à tous égards, confirment cette conclusion :

— le Straits Lights System que M. Bundy décrira dans sa prochaine intervention,

— les cartes malaisiennes, antérieures à 1979, dont Mme Malintoppi parlera demain,

---

[48] Voir CMM, annexe 47 (Letter from Director General of the Economic Planning Unit, Malaysia, to Secretary General of the Ministry of Foreign Affairs, Malaysia, 26 February 1980) [Lettre du 26 février 1980 adressée au secrétaire général du ministère des affaires étrangères de la Malaisie par le directeur général du service de planification économique de la Malaisie].

— la renonciation de Johor à toute prétention sur Pedra Branca, sur laquelle je reviendrai moi-même brièvement.

Tous ces faits concourent à la même conclusion et la renforcent encore : jusqu'en 1979 (et, en pratique, jusqu'en 1989), la Malaisie s'est constamment comportée avec la claire conscience que la souveraineté sur Pedra Branca appartenait à Singapour — souveraineté qu'elle a du reste expressément reconnu à maintes reprises.

Messieurs de la Cour, je vous remercie vivement de votre attention.

We are ready to stop now or, if you prefer, Mr. Bundy is ready to begin his pleading on the Straits Lights System, on which Malaysia seems to be impatient to have our views.

The VICE-PRESIDENT, Acting President: How long will that take, may I ask?

Mr. PELLET: It can be stopped whenever you like. So it is really in your hands.

The VICE-PRESIDENT, Acting President: I think he could start now. Thank you.

Mr. PELLET: Thank you very much.

Mr. BUNDY: Thank you, Mr. President, Members of the Court.

THE STRAITS LIGHTS SYSTEM

Introduction

1. At this stage of Singapore's first round presentation, my task is to address a further element of Malaysia's case. This is the legal significance of the Straits Lights System that was established over the years for the financing and upkeep of various lighthouses situated in the Straits of Singapore and the Straits of Malacca. My presentation is probably a total of 30 to 35 minutes, but I will find an appropriate stopping place, I hope, close to 1 o'clock, if that meets with the Court's approval.

2. Now, as part of its effort to counter the fact that Singapore has administered and controlled Pedra Branca from 1851 to the present, Malaysia's written pleadings include an extended discussion of the financial arrangements that were put in place for the administration of a number of lighthouses in the relevant area, including the lighthouse on Pedra Branca. Malaysia's

purpose for introducing this material is made tolerably clear in its Counter-Memorial where Malaysia states the following: "The establishment and administration of the Straits' Lights was not regarded as determinative of the sovereignty of the underlying territory" (CMM, para. 298).

3. On one level, Malaysia's contention is unexceptional. Singapore does not suggest that the system that was put in place for the funding of lighthouse operations after 1851, after the lighthouse on Pedra Branca had been commissioned, was, in and of itself, determinative of the issue of sovereignty over Pedra Branca. As Singapore has explained, both in its written pleadings and thus far in its first round presentations, Singapore's title derives from the lawful possession of the island by Great Britain during the period from 1847 to 1851, discussed by Mr. Brownlie, and on Singapore's long-standing and continuous exercise of sovereign authority over the island ever since that date in the confirmation and maintenance of that title. And, as we have heard earlier today, Singapore has also discussed the manner in which Malaysia effectively recognized Singapore's sovereignty and carried out no competing activities on the disputed territory of its own, and how there is no evidence for this extravagant claim of an "historic title" to Pedra Branca.

4. But, nonetheless, the manner in which the Parties addressed issues relating to the establishment and upkeep of various lighthouses in the area does shed important additional light on how the Parties viewed questions of sovereignty. As I shall show in this presentation, the Parties acted very differently with respect to islands, such as Pedra Branca, where Singapore's sovereignty had been established, as opposed to islands, such as Pulau Pisang, which I mentioned earlier, where Malaysia held title. That is the real relevance of the Straits Lights System for purposes of this case: the fundamentally different way in which the Parties, particularly Malaysia, acted with respect to islands where there were lighthouses where Singapore had sovereignty, such as Pedra Branca, as opposed to islands that had lighthouses where Malaysia had sovereignty, such as Pulau Pisang.

*

* *

1. The legal framework concerning lighthouses in the region

5. My starting point for the review of the Straits Lights System is the legal framework within which the lighthouses in question were established. To assist in this discussion, I have had placed on the screen, and in the judges' folder — I believe it will be put in the folders tomorrow morning, at tab 38 — a map depicting the various lighthouses that I shall be addressing. This is the map, you will have it in your folders in the morning.

[Slide: map showing Horsburgh lighthouse on Pedra Branca, the Pulau Pisang light, the Cape Rachado light, the One Fathom Bank light and the location of Pulau Aur]

6. Now, in considering the issue of these lighthouses, the point I would respectfully ask the Court to bear in mind is the following: when the intention of the State actors in the region was to authorize the building and management of a lighthouse by one of the parties on territory belonging to the other, they agreed to such arrangements in an express written document. In contrast, when there was no need to obtain the written permission of a local ruler, either because the lighthouse was located on the high seas or it was located on territory that did not belong to that ruler, then no such agreements and arrangements were concluded. And I will show how this principle operated in practice by addressing each of the lighthouses depicted on the map in the order in which they were established.

7. With respect to Pedra Branca — the first lighthouse constructed in the area — despite Malaysia's assertion that the British built the Horsburgh lighthouse only after receiving the permission of the Ruler of Johor, Professor Pellet has shown that there was no such permission sought or obtained, or needed. None was needed because Pedra Branca did not belong to Johor and what actually took place, as discussed by Mr. Brownlie, were the official actions of the British Crown in taking lawful possession of the island in the period 1847 to 1851, followed by specific legislation, also issued by British authorities — the 1852 and 1854 Acts that I discussed earlier this morning — dealing with Pedra Branca and vesting the lighthouse and its appurtenances in the British Crown, and the unimpeded administration of the island by Singapore afterwards, right up to the present day.

8. Similarly, the second light that the British established in the region and put into operation in 1852 — this was a floating light at a location called One Fathom Bank — which had originally been called the 2½ Fathom Bank, but it was moved — that light, as well — it was not a

lighthouse — was not accompanied by any permission or indenture granted by a ruler of mainland Malaysia. As I noted in my earlier intervention today, the light was situated on a submerged sandbank lying well beyond the territorial waters of the Malaysian mainland in the high seas and thus was not under the sovereignty of any Malay State, and no permission was consequently required for the British to establish the light.

9. But the situation changed dramatically when it came to the next lighthouse that was built by Great Britain in the area — the Cape Rachado lighthouse, constructed in 1860 and located on the coast of mainland Malaysia along the Straits of Malacca at a place also known as Tanjung Tuan. You can see that highlighted on the map. In this instance, since the territory where the lighthouse was situated belonged to the local Malay ruler, the Sultan of Selangore, the Governor of the Straits Settlements in Singapore sought and received written permission from the Sultan for a grant of land on which to establish the light. The relevant documents were attached in Annex 62 to the Malaysian Memorial, and tomorrow, when further judges' folders are circulated, they will be found in tab 39 of your folders. Here was a light on the Malaysian mainland, clearly under the sovereignty of the local Malaysian ruler and it was subject to an express written grant.

10. The same procedure was followed when the lighthouse on the island of Pulau Pisang was later constructed. As the Court will see from the map, Pulau Pisang is an island located off the coast of Malaysia in the Straits of Malacca: and the island, as I said earlier today, has always been regarded as belonging to Johor and, subsequently, to Malaysia.

11. In 1885, an agreement was reached between the Ruler of Johor and the Governor of the Straits Settlements in Singapore pursuant to which the former — the Ruler of Johor — granted to the Government of the Straits Settlements a plot of land on which to build and maintain a lighthouse and a roadway access to the lighthouse. The lighthouse itself was erected on Pulau Pisang in 1886 and, in accordance with the 1885 Agreement, was managed and maintained by the Government of the Straits Settlements and later by Singapore, which continues to do so up to the present. The 1885 grant by the Ruler of Johor was not reduced to writing at the time, but it was subsequently recorded in an express written indenture signed on 6 October 1900 between the Sultan of Johor and the Governor of the Colony of the Straits Settlements after the Sultan of Johor had sent a reminder to this effect to the Governor of the Straits Settlements (CMS, Ann. 24). What

is striking about this event is that the Sultan never referred at the time to the need to execute a similar indenture for the lighthouse on Pedra Branca: only for the light on Pulau Pisang. And that is further striking evidence that Pedra Branca was not regarded by the Sultan as falling under Johor's sovereignty.

12. Tomorrow morning you will be able to find a copy of the 1900 indenture relating to Pulau Pisang in your judges' folders — it will be at tab 40 — and it set out in considerable detail the precise limits of the grant and the conditions under which it was accorded (MM, Ann 89). Thus, while Singapore has always managed the lighthouse on Pulau Pisang pursuant to that indenture, this has taken place on the clear understanding that the underlying territory is Malaysian territory. But there is *no similar indenture* for the lighthouse on Pedra Branca, because it did not appertain to Johor.

Mr. President, I think that would be an appropriate time to stop for lunch. Thank you for according me this time.

The VICE-PRESIDENT, Acting President: Thank you, Mr. Bundy. The sitting is closed for today. We will meet tomorrow at 10 o'clock.

The Court rose at 1.05 p.m.