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CR 2007/30

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2007

Public sitting

held on Thursday 22 November 2007, at 3 p.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 22 novembre 2007, à 15 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	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. 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

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comme conseillers.

The VICE-PRESIDENT, Acting President: Please be seated. The sitting is open. For the same reasons duly communicated to me and announced by me on Tuesday, Judge Ranjeva will not be able to sit this afternoon.

The Court meets today to hear the second round of oral argument of Malaysia. Malaysia will be heard this afternoon from 3 p.m. to 6 p.m. and tomorrow afternoon from 3 p.m. to 6 p.m. I shall now give the floor to His Excellency Tan Sri Abdul Gani Patail, the Attorney-General of Malaysia. You have the floor, Sir.

Mr. GANI:

INTRODUCTION

1. Mr. President, distinguished Members of the Court, it is a privilege for me to appear before you once again today. By way of introduction to Malaysia's reply, my task for today is to respond briefly on issues of Singapore's assertions of lawful possession of Pulau Batu Puteh as well as the critical date. In addition, I will provide a summary of the institutional legal framework of the State of Johor applicable in 1953 to appreciate the context in which the alleged disclaimer letter of 1953 was written. I will be followed by Professor Crawford who will identify the legal issues as they now stand following Singapore's reply this week. Following Professor Crawford, Professor Schrijver will discuss the original title of the Sultanate of Johor over the three features, having regard to Singapore's latest remarks. Professor Kohen will then respond to Singapore's argument on the consent of Johor to the construction and operation of the lighthouse. He will be followed by Sir Elihu Lauterpacht who will address you on Singapore's theory of lawful taking of possession, responding to Professors Brownlie and Pellet. He will also provide, orally, Malaysia's answer to the question asked by Judge Sir Kenneth Keith.

Singapore's assertions of lawful possession of Pulau Batu Puteh

2. Mr. President, distinguished Members of the Court, Singapore has repeatedly contended that Malaysia had not proven its original title to Pulau Batu Puteh. As you have heard from Professor Crawford last week, this is certainly not the case. Professor Crawford discussed in great detail and established that Pulau Batu Puteh is without doubt part of Johor Sultanate's territory.

3. Related to this issue, I now respectfully request the Court's consideration to the following unproven assertions made by Singapore:

First, Singapore claimed that it had taken possession of Pulau Batu Puteh in 1847-1851. Singapore claimed that the taking of possession of Pulau Batu Puteh was possible because Pulau Batu Puteh was *terra nullius* at the relevant time. Singapore however had not produced *any* evidence that Pulau Batu Puteh was *terra nullius*. Rather, as I submitted last week and Singapore did not refute, Singapore's case simply rests on the "inference"[1] that Pulau Batu Puteh was *terra nullius*.

Second, Singapore remained silent or failed to produce the "incontrovertible legal evidence" in the form of documents claimed in 1978 to be in the possession of Singapore[2]. Malaysia however has demonstrated that Johor consented to the construction of the Horsburgh lighthouse, as evidenced by the permission letters of 25 November 1844 from the Sultan and Temenggong of Johor.

4. Singapore's silence on this matter should not be ignored. To cite your Judgment in the *Temple of Preah Vihear* case:

> "Both Cambodia and Thailand base their respective claims on a series of facts and contentions which are asserted or put forward by one Party or the other. The burden of proof in respect of these will of course lie on the Party asserting or putting them forward." (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 16.)

Mr. President, while Malaysia has proven its case, Singapore has not.

Critical date of the dispute

5. On 19 November 2007, the learned Attorney-General of Singapore and a good friend of mine commented that the date as submitted by me to be the critical date for Middle Rocks and South Ledge was, in reality, the date of Singapore's response to Malaysia's statement made a day earlier during the bilateral consultations where Malaysia described Middle Rocks and South Ledge as "two Malaysian islands"[3]. With respect, if Singapore had intended to claim Middle Rocks and

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[1]CR2007/24, p. 30, para. 8.

[2]CR 2007/24, p. 28, para. 2, p. 29, para. 8 and p. 30, para. 9.

[3]CR 2007/28, p. 21, para. 12.

South Ledge in its Protest Note dated 14 February 1980, it should have specified the two features by name in that Protest Note. The two features have been known by their present names for a very long time — not later than the fourteenth century for Pulau Batu Puteh, the nineteenth century for the other two features. The fact that Singapore had raised the matter only as a response to what Malaysia had said is irrelevant as there was no dispute regarding Malaysia's sovereignty over the two features prior to 6 February 1993.

6. Subsequently, on 20 November 2007, Mr. Bundy asserted that I had merely dismissed Singapore's conduct after the critical date as irrelevant without offering any argument whatsoever to back up this assertion[4]. This is far from the truth. In fact, I made it clear that Singapore's conduct after the critical date is irrelevant for the purpose of assessing *effectivités* as it is not a normal continuation of Singapore's prior acts of administration of the lighthouse but are acts to strengthen its legal position in the present dispute carried out especially in the 1990s[5].

Institutional legal framework of the State of Johor after 1948

7. Mr. President, distinguished Members of the Court, counsel for Singapore has interchangeably used terms such as "disclaimer" and "confirmation of title" to describe the effects of the letter of 1953. Professor Koh, the Agent of Singapore said on 20 November 2007:

> "in 1953, when Johor was a sovereign State under international law, the State Secretary of Johor, writing in an official capacity, informed the Singapore Government that 'the Johor Government does not claim ownership of Pedra Branca'"[6].

Professor Pellet also asserted that the Johor State Secretary was, by virtue of Johor's constitution then in force, the highest civil servant in charge of the State's administrative matters[7].

8. I will now address "the official capacity" of the Acting State Secretary. The question is whether he was duly authorized and had the legal capacity to renounce, disclaim or confirm title to any part of the territory of Johor.

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[4]CR2007/29, p.22, para. 58.

[5]CR2007/24, p. 30, para. 11 and p. 31, para. 13 .

[6]CR 2007/29, p. 58, para. 6.

[7]CR 2007/29, p. 46, para. 14.

9. In addressing the "official capacity" of the Acting State Secretary, two important Agreements applicable to the State of Johor in 1953 need to be highlighted. These are the Johor Agreement of 1948 and the Federation of Malaya Agreement, also of 1948. Both these treaties were entered into between Johor and His Britannic Majesty where Johor, a sovereign State, transferred to Great Britain all of its rights, powers and jurisdiction on matters pertaining to defence and external affairs. At that time Johor was a protected State, with much less formal independence than it had possessed under the Treaty of Alliance of 1824 (the Crawfurd Treaty), or prior to the appointment of a British Adviser in 1914.

The Johor Agreement of 21 January 1948[8]

10. Mr. President, distinguished Members of the Court, I will begin with the Johor Agreement dated 21 January 1948, which I will later on refer to simply as the "Johor Agreement": this Agreement is contained in tab 162 of the judges' folder. This was one of the nine almost identical State agreements signed between the Rulers of the Malay States and the British Crown. These State agreements addressed, amongst other things, the division of power and jurisdiction between the British Crown and the Rulers of the Malay States.

11. In respect of external affairs, Clause 3 (1) of the Johor Agreement provides that His Majesty

> "*shall have complete control of the defence and of all the external affairs of the State of Johore* and His Majesty undertakes to protect the Government and State of Johore and all its dependencies from external hostile attacks and for this and other similar purposes His Majesty's Forces and persons authorised by or on behalf of His Majesty's Government shall at all times be allowed free access to the State of Johore and to employ all necessary means of opposing such attacks".

12. In addition, the Sultan of Johor, pursuant to Clause 3 (2) of the Johor Agreement "undertakes that, *without the knowledge and consent of His Majesty's Government, he will not make any treaty, enter into any engagement, deal in or correspond on political matters* with, or send envoys to, any foreign State".

13. On the matter of the sovereignty of the Sultan of Johor within Johor, Clause 15 of the Johor Agreement provides that

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[8]CMS Ann. 29; see judges' folder, tab 162.

> "The prerogatives, power and jurisdiction of His Highness within the State of Johore shall be those which His Highness the Sultan of Johore possessed on the first day of December, 1941, subject nevertheless to the provisions of the Federation Agreement and this Agreement."

That is, subject, among other things, to Clause 3.

The Federation of Malaya Agreement 1948[9]

14. Apart from the Johor Agreement, the Federation of Malaya Agreement of 1948, referred to under Clause 15 of the Johor Agreement as "the Federation Agreement", is also of relevance. This Agreement is found at tab 163 of your folder.

15. As shown on the screen, in terms of the authority over Johor's external affairs, *Clause 4 of the Federation Agreement* states that

> "*His Majesty shall have complete control of the defence and of all the external affairs of the Federation* and undertakes to protect the Malay States from external hostile attacks and, for this and other similar purposes, His Majesty's Forces and persons authorized by or on behalf of His Majesty's Government shall at all times be allowed free access to the Malay States and to employ all necessary means of opposing such attacks."

16. Clause 16 of the Federation Agreement, in providing for the executive authority of the Federation states that such authority shall extend to all matters set out in the first column of the Second Schedule to the Federation Agreement. The first column of the Second Schedule, amongst other things, provides that the Federal Legislature has the power to make laws on all external affairs, *including* "the implementing of treaties, conventions and agreements with other countries or international organizations" and for the "*obligations of the Federation in relation to the British Empire and any part thereof*". By virtue of the word "including" which is non-exhaustive, this confirms that all external affairs of the Federation will be under the complete control of His Britannic Majesty referred to under Clause 4 of the Federation Agreement — including, in the definition of external affairs, the relations of Johor with the British Empire or any part thereof.

17. The Federation Agreement was subsequently revoked by virtue of the Federation of Malaya Independence Act of 1957 on 31 August 1957.

18. Mr. President, distinguished Members of the Court, for these reasons the Agreements applicable in 1953 to the State of Johor were the Federation Agreement and the Johor Agreement.

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[9]Tab 96 of the complete documents of certain annexes as contained in the Malaysian Memorial; See judges' folder, tab 163.

Both provided for all external affairs of Johor to be transferred to the Crown and executed through the High Commissioner of the Federation. The High Commissioner was appointed by the Commission of the Crown. Both Agreements continued to be in force until 1957 upon the coming into force of the Federation of Malaya Independence Act of 1957.

19. Both Agreements clearly provided that all external affairs of the State of Johor are transferred to His Britannic Majesty and executed through the High Commissioner of the Federation. In the discharge of this function, Clause 17 of the Federation Agreement provided that

> "The executive authority of the Federation shall be exercised by the High Commissioner either directly or through officers subordinate to him, but nothing in this clause shall prevent the Legislative Council from conferring functions upon persons or authorities other than the High Commissioner within the powers given to it by this Agreement."

20. The Legislative Council, established under Clause 36 of the Federation Agreement, consisted of the High Commissioner as President, three ex officio members, 11 State and Settlement members, 11 official members and 50 unofficial members. The general power to make laws on matters pertaining to external affairs and defence rested only with the High Commissioner, with the advice and consent of the Legislative Council and *not* with the State Secretary of Johor.

21. In addition, Clause 48 of the Federation Agreement made it abundantly clear that no power or authority exercised by the High Commissioner of the Federation could be exercised by a State Secretary. Clause 48 provides that:

> "Subject to the provisions of this Agreement, it shall be lawful for the High Commissioner and Their Highnesses The Rulers, with the advice and consent of the Legislative Council, to make laws for the peace, order and good government of the Federation with respect to the matters set out in the Second Schedule to this Agreement and subject *to any qualifications therein*."

Mr. President, it is significant to note that paragraph 2 of the second column of the Second Schedule to the Federation Agreement *does not provide* for the conferral of executive authority to any State or Settlement. I must apologize for the image, it is not very clear, but what is very clear is that in the second column there is a total blank on the conferral of powers. This can be found, of course, in tab 163 at page 59 of the judges' folder, which is much clearer. Mr. President, Johor therefore had no power, no competence to deal with matters pertaining to external affairs or to promulgate such laws.

Conclusion

22. To conclude on this matter, the Johor Acting State Secretary M. Seth Bin Saaid was merely a civil servant of the State of Johor. He was definitely not authorized or had the legal capacity to write the 1953 letter, or to renounce, disclaim, or confirm title of any part of the territories of Johor — if that is what the 1953 letter purported to do, which Malaysia denies and which, of course, Professor Kohen will show was not the case. In contrast, I refer to the *Eastern Greenland* case where the Court had considered that the response by

> "the Minister of Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs".

M. Seth has been clearly shown not to have any such capacity.

23. Mr. President, distinguished Members of the Court, I would also draw the attention of the Court to certain facts about the letter from J. D. Higham and the letter issued by M. Seth bin Saaid, the Acting Secretary of State. These letters are contained under tab 89 and tab 105 of your folder.

Firstly, the letter of J. D. Higham was addressed to the British Adviser Johor and copied to the Chief Secretary Federation of Malaya[10]. It was not addressed to M. Seth bin Saaid, as clearly shown.

Secondly, the Acting State Secretary undertook himself to issue the letter to J. D. Higham. He wrote directly to a local authority of the British Colony of Singapore. He did not copy his letter to the Chief Secretary of the Federation at all[11]. There is no evidence to show that the Chief Secretary or the High Commissioner was aware of the contents of this letter. The way the correspondence was conducted is procedurally irregular and incorrect.

24. Mr. President, distinguished Members of the Court, this brings me to the end of my submission. I thank you for your kind attention. If I may ask you now to give the floor to Professor James Crawford to continue with Malaysia's presentation. Thank you.

The VICE-PRESIDENT, Acting President: Thank you, Tan Sri Abdul Gani Patail. I give the floor now to Professor Crawford.

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[10]See judges' folder, tab 89.

[11]See judges' folder, tab 105.

Mr. CRAWFORD:

SINGAPORE'S CASE AFTER ITS REPLY

1. Mr. President, Members of the Court, on Friday last — how long ago it seems! — I showed you Malaysia's case in three sets of three propositions. Professor Pellet showed some of them to you again on Monday[12], though he interspersed each of them with a sibilant and incredulous "if" *(si)* and he mostly talked about other hypotheses, notably concerning the Sultan of Lingga whose disappearance from the Straits in 1824 seems to have been much exaggerated[13]. For Singapore, the Sultan of Lingga seems to have been immune from the disease of disappearance, from what I may call Chanism — which is defined in the ethnographic dictionaries as the tendency to lose the support of one's followers and fragment suddenly at the slightest setback. This genetic weakness seems to be distributed unevenly amongst the leadership of the old Sultanate of Johor. The younger brother, the Sultan of Lingga, apparently held on in the Straits at least to 1851, performing the indispensable task of acquiescing in British occupation of the three features — if they were not indeed *terra nullius*, which Professor Brownlie, for his part, is still inclined to believe[14].

2. Anyway, let us look again at my three sets of premises and conclusions, and see what the Parties now say about them. This may be described as a guided tour through the structure of our case — my colleagues and I in due course will act as more specialized commentators at particular stops on the way, but let me show you the overall itinerary.

3. I turn to the first set of premises, which you will recall: (1) PBP was not *terra nullius* in 1847; (2) PBP did not fall within the Dutch sphere under the Anglo-Dutch Agreement; *then* (3) PBP was part of Johor in 1847.

4. What do the Parties say about proposition (1), the *terra nullius* proposition? Nico Schrijver will deal with this in more detail shortly, and I will make only two observations.

5. First, the Court will have noticed the comparison between the confident certitude of Professor Brownlie in week 1 — "The term 'lawful possession' is *synonymous* with the effective

[12]CR 2007/28, p. 37, paras. 1-2 (Pellet).

[13]CR 2007/28, p. 45, paras. 19-20 (Pellet).

[14]CR 2007/28, p. 56, para. 27 (Brownlie).

occupation of *terra nullius* . . ."[15] — and the ifs and buts of Professor Pellet in week 3. It is too much to say of such advocates that they are wracked by doubt — I have never known Professor Pellet to be wracked by doubt on any subject — but nonetheless doubts have set in. Thus, Mr. Pellet says you do not have to decide the issue of original title[16], and he also says that you would still decide in Singapore's favour if PBP was not *terra nullius*, at least if title was "indeterminate"[17]. Singapore's pleadings in this case hitherto have been nothing if not determinate: it is interesting that this note of indeterminacy has crept in. I will return to the issue of indeterminacy in my final remarks tomorrow, in the light of a brief survey of your case law.

6. My second observation on the *terra nullius* proposition concerns Singapore's tab 18. In order to bolster his case, Mr. Pellet quoted from McNair's law officers' opinions, an opinion by Harding on the question whether uninhabited features could be *terra nullius*[18]. We have put it back in tab 164 in our folder today. Sir Elihu — who returns as often as the Pink Panther and with just as much pleasure for others — will analyse Harding's opinion as a matter of international law, for it does not say what Mr. Pellet says it says. But I am more interested in the history. What actually happened to the offshore uninhabited islands which Harding opined might perhaps be *terra nullius*, at least if no one owned them? In fact they were not *terra nullius* at all.

7. Harding's opinion related to the Kuria Muria Islands, which are small mostly uninhabited islands 20 nautical miles offshore of Oman: you can see their location on the screen[19].

8. And here from *Wikipedia* is a closer view of them, using their Arabic names, which the British papers misspelt grotesquely[20]. The correspondence to which the Harding opinion relates is in the 1857 Parliamentary Papers and is available on the internet[21]. Extracts are in tab 167 of today's folder.

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[15]CR 2007/21, p. 43, para. 44 (Brownlie) (emphasis added).

[16]CR 2007/28, p. 38, para. 5 (Pellet).

[17]CR 2007/29, p. 48, para. 21 (Pellet).

[18]A. D. McNair, *International Law Opinions* (CUP, 1956) Vol. I, 312, cited CR 2007/28, pp. 43-44, para. 15 (Pellet).

[19]See judges' folder, tab 165.

[20]See judges' folder, tab 166.

[21]http://parlipapers.chadwyck.co.uk/fulltext/fulltext.do?area=hcpp&id=1857-033662&pagenum=1&resultNum=13&entries=76&queryId=../session/1195637457_10989&backto=FULLREC.

9. It emerges that the British did not rely upon Harding's highly conditional opinion; they did not simply occupy the islands. You can see this from the letter of the Foreign Office dated 14 February 1854, nearly five months after the Harding opinion. The Under-Secretary, Lord Wodehouse[22], conveying the decision of the Foreign Secretary, the Earl of Clarendon, to Captain Fremantle of HMS *Juno*, wrote:

> "If it should turn out that the islands either positively belong to, or are, with a good show or right, claimed by, the Imaum, Captain Fremantle would, in that case . . . have to ascertain whether the Imaum would be disposed to cede them in whole or in part to Great Britain . . .
>
> In the event of the Imaum of Muscat disclaiming any title to the Kooria Mooria Islands, Captain Fremantle should, in Lord Clarendon's opinion, still proceed as above recommended . . . and . . . should by means of an interpreter obtain as accurate information as might be procurable from the inhabitants, or from any other sources within reach, as to the lordship and ownership of them [that is the islands]; and he should then place himself in personal communication with that chief or proprietor, and make with him such terms as might be practicable for their cession to the Crown of Great Britain.
>
> A regular written contract of cession [the letter goes on], and transfer properly signed and sealed ought, however, to be obtained from the Arabian Rajah or Chief, who might be found to be the owner by right or usance of the said islands *[right or usance of the said islands]*."

What then happened is described in Captain Fremantle's despatch of 18 July 1854, which is also in tab 167. This is by way of an Arabian holiday from the Straits of Johor, mostly the holidays were taken in the opposite direction. As he discovered, the local people, although dressed in rags and with hardly any possessions except a few mats, "look[ed] up to and acknowledge[d] the Imaum of Muscat as their chief and sovereign" — just like the Orang Laut who frequented the islands in the Straits did to the Temenggong. Captain Fremantle then obtained a cession from the Imam of Muscat — the text of the session is in tab 167 — and he declared his intention "to return to Helaaneea [that is, Al Halaaneea] and take formal possession of the islands in the name of Her Majesty", using, be it noted, the Union flag — the Union flag: just the flag which has never flown over PBP, just the formal ceremony never concluded there. The island remained British until retroceded to Oman pursuant to the Aden, Perim and Kuria Muria Islands Act 1967.

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[22]Wodehouse was Under-Secretary for Foreign Affairs from 1852-1856: see A Hawkins & J Powell (eds), *The Journal of John Wodehouse First Earl of Kimberley, 1862-1902* (CUP, 1997), p. 47.

10. Mr. President, Members of the Court, such episodes could be multiplied many times. I have taken this one, rather than the many others referred to in our pleadings, because Singapore relied on it — through Professor Pellet — in support of their twin theses, *(a)* that uninhabited islets more than 3 miles offshore may be *terra nullius*, and *(b)* that Great Britain had a practice of informal taking of possession of such islands. The case of the Kuria Muria islands, dating from precisely our period, shows precisely the opposite. Not merely did the British formally take possession even of tiny ceded islets, but there was absolutely no presumption that offshore islets were *terra nullius* — quite the reverse. If the region was inhabited the islands were presumed to belong to someone with whom a treaty would be concluded.

11. Mr. President, Members of the Court, the *second* proposition in Group 1, you will recall, is that PBP did not fall within the Dutch sphere under the Anglo-Dutch Agreement. Again, Nico Schrijver will deal with this in more detail and again I need make only two points.

12. The first point concerns Singapore's continuing effort to present the delimitation between the British and the Dutch spheres, achieved by the Anglo-Dutch Treaty, as being the Straits as a whole. On Monday Mr. Chan tried again[23], this time by reference to a document of 1886 which is (1) inconsistent with the actual terms of the 1824 Treaty, (2) inconsistent with its object and purpose, (3) inconsistent with the intention of the parties as shown in the *travaux* of the 1824 Treaty, and (4) above all, inconsistent with the practice of the parties in giving effect to the Anglo-Dutch Treaty in the years immediately after 1824, especially through the Crawfurd Treaty, whose effects the Dutch expressly recognized. I observe that Singapore said nothing this week in response to Sir Elihu's argument that it was thereby shooting itself in one or both feet. To put the same point less colloquially, in pushing a mythical Dutch claim for islands in the Straits — the Dutch never made such a claim themselves — Singapore is derogating from the grant of its own territory — Singapore is derogating from the grant of its own territory — a position which, expressed anatomically, conjures up images even more painful than shooting in the foot.

13. The second point concerns Singapore's second and more subtle way of dealing with the Anglo-Dutch Treaty, which is to present it, in the words of Mr. Pellet, as a "Treaty on spheres of

[23]CR 2007/28, p. 32, para. 16 (Chan).

influence [which] was, for the Sultanate [of Lingga], *res inter alios acta*"[24]. Hence the so-called donation of Sultan Abdul Rahman, of which Nico Schrijver will say more shortly, now erected to the level of a "constitutional" instrument. For my purposes it is sufficient to note:

— first, the so-called donation refers to the Anglo-Dutch Treaty and should be construed as consistent with it; there is no evidence whatever that the Sultan of Lingga asserted any jurisdiction or exercised any control in the Straits;

— second, the Crawfurd Treaty itself is powerful evidence to the contrary, as is the Dutch admission that the Sultan of Lingga's influence there was "nil";

— third, Singapore cannot at the same time assert through Mr. Chan that the Johor authorities had no jurisdiction over uninhabited islands in the Straits and through Professor Pellet that the Lingga authorities, to whom no allegiance was owed by the followers of the Temenggong, did;

— fourth, the fact is that the British never recognized the Sultan of Lingga; rather, within the British sphere as defined by the Anglo-Dutch Treaty they dealt with the Johor authorities. These individuals — the Sultan and the Temenggong of Johor — were recognized by and were placed in alliance with the British, even before the so-called "donation" letter was issued. It was they who prevailed. If the international law of treaties applied in the Straits, as it certainly did, so did the international law of recognition. Singapore's donation argument has that familiar circular feeling: the acts of the Sultan of Lingga in the Straits were legitimate because he had authority in the Straits. *Quod erat demonstrandum*: Mr. Pellet would say. I would say: *quod non*.

14. On this basis, Singapore's efforts at discrediting my premises (1) and (2) having failed, it follows, as the night the day, that PBP was part of Johor in 1847. There was simply no third entity whose territory it could be part of: if not *terra nullius* it was part of Johor, as the editor of the *Singapore Free Press*, William Napier, editorially affirmed[25].

15. I turn to my second set of premises, which are as follows:

(1) PBP was part of Johor in 1847;

and

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[24]CR 2007/28, p. 45, para. 18 (Pellet).

[25]CR 2007/28, p. 41, para. 11 (Pellet).

(2) Johor's consent to the construction of a lighthouse included PBP;

then

(3) Britain's administration of the lighthouse was not an act *à titre de souverain* — as Britain's own conduct demonstrated.

16. The first proposition we have established. This week very little was offered by Singapore against the second: what there was will be dealt with by Marcelo Kohen whose arguments I will not anticipate.

17. But what has to be stressed is that — the argument so far being accepted, which is of course a matter for the Court — the conclusion (3) follows as a matter of law. I will deal with this again briefly tomorrow when I deal with the British period. But we say it is true also as a matter of fact. Great Britain never claimed or represented the three features as part of Singapore.

18. Confronted, I guess subjectively for the first time, with the possibility that Malaysia's case as to British sovereignty over the three features might actually obtain — Malaysia's case as to British non-sovereignty over the three features — Singapore has shifted ground, but only to a limited extent. First, it still does not claim title by prescription: in this at least it is consistent. All it says is that subsequent conduct is relevant in its favour if the legal position is "indeterminate"[26]. As I have said, I will deal with the indeterminacy argument tomorrow in the light of your case law. Second, although the 1953 exchange of correspondence attracts greater attention, Singapore is also consistent in saying that it is not a root of title[27], it is not a cession[28], and — to judge from the complete silence on the other side during these oral hearings — nor is it put forward as the basis for an estoppel — a proposition which is untenable for many reasons, not least the absence of any reliance whatever by Singapore on the correspondence at the relevant time. What, if any, effect should be given to the correspondence will be discussed by Marcelo Kohen tomorrow, drawing on what the Attorney-General of Malaysia has just said about the constitutional position.

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[26]CR2007/29, p. 48, para. 21 (Pellet).

[27]CR2007/29, p. 47, para. 16 (Pellet).

[28]*Ibid.*, para. 17 (Pellet).

19. It follows from my first two groups of propositions that PBP was not "in Singapore" in 1965 and that the waters around PBP were not "Singapore waters". And that is how the Parties behaved.

20. Singapore tries to explain this, or to explain it away, by citing a few internal documents that show that certain people — in particular the Master Attendant, Mr. Rickard — were of the view that "Horsburgh Lighthouse . . . is Colony territory"[29]. That statement is a rather strange one. A lighthouse is "territory", but we will leave that aside for the moment, it was after all an internal letter. The question is one of law, not opinion, and if the actual legal position is as we have argued, the unpublished contrary opinion of the Master Attendant does not change anything. I will return to this point tomorrow in a short examination of the practice up to the late 60s.

21. I turn to my third set of premises, which cover the period from 1966 to the critical date and subsequently. They are essentially points of fact, as follows:

(1) In fact, Singapore never publicly claimed PBP in the period 1965-1978.

(2) The events of 1978-1980, confused and uncertain though they may have been, led up to the crystallization of the dispute and cannot possibly have changed the position.

(3) Conduct since the critical date is irrelevant.

22. In its Reply, Singapore presented no new argument on the first and second of these points. On the third, it continued to insist that — at least as to lighthouse-related conduct, it was entitled to take into account the continuation after the critical date of its administration of the lighthouse. Well one can agree with that — in so far as it concerns the continuation of an activity already engaged in before the relevant date, you can take it into account. But the point is that the administration was consented to by Johor and was therefore not adverse to Malaysia, proposition six, and this is true after 1980 just as much as before.

23. My colleague Penelope Nevill will deal briefly with the third group of issues in her presentation tomorrow.

24. Mr. President, Members of the Court, that concludes this *tour d'horizon*, highlighting the points where Singapore developed its arguments this week. I have not of course mentioned all the

[29] See RS, Ann. 24.

points of detail. Mr. President, Malaysia takes seriously your injunction at the end of the first round that in our second round of reply we only deal with the essentials, and we will try to do that. It will lead to our finishing slightly early on both days — no doubt to the Court's regret! Mr. President, in this regard, could I ask you to call upon my colleague, Mr. Schrijver.

The VICE-PRESIDENT, Acting President: I thank you, Professor Crawford, for your arguments. I now call on Professor Schrijver.

Mr. SCHRIJVER:

THE HISTORY OF THE SULTANATE OF JOHOR AND THE THREE FEATURES

1. Thank you, Mr. President, distinguished Members of the Court. It is my task today to respond to Singapore's arguments relating to the history of the Sultanate of Johor, as well as to the consequences of the 1824 treaties and the so-called letter of "donation" of 1825. I will demonstrate Johor's original title, now vested in Malaysia, to the three features.

The history of the Johor Sultanate

2. For a proper understanding of the history of sovereignty over Pulau Batu Puteh and the other two features, it is important to understand the history of the Sultanate of Johor as a maritime empire. Today I will build of course on the speech of my colleague Professor Crawford in the first round, which Singapore made little or no attempt to rebut this week[30].

3. Initially, in its written pleadings Singapore hardly addressed the history of the Johor Sultanate and conveyed the impression that for Singapore, history starts in 1819, if not 1847. In its oral pleadings Singapore paid more attention to the historical setting. Unfortunately, its historical understanding is extremely deficient and would not be supported — is not supported — by any contemporary historian of the region. I will now respond in particular to Mr. Chan's intervention on this topic.

4. With due respect, Mr. Chan failed once again to acknowledge the long-standing history of Johor, dating back to 1511. The Sultanate of Johor shows a remarkable continuity, as Professor Crawford demonstrated in our first round. This continuity is reflected in the survival of

[30]See CR 2007/24, pp. 57-66; and CR 2007/25, pp. 12-37.

its name, its dynasty, the allegiance of its people and the control of territory. In particular, there is a continuity of treaty relations concerning territory — as shown by the progression from the 1824 Crawfurd Treaty (between the East India Company and Johor), the 1927 Agreement (between Great Britain and Johor) and the 1995 Agreement (between Singapore as the successor of Great Britain and Malaysia as successor of Johor). Again Mr. Chan made no attempt to rebut this compelling demonstration earlier this week.

5. In his intervention, Mr. Chan repeated Singapore's argument that "the Johore Sultanate was indeterminate because it was unstable and its rulers had a conception of sovereignty based on control of people rather than control of territory" and that "the only reliable way to determine whether a particular territory belonged to a ruler is to find out whether the inhabitants pledged allegiance to that ruler"[31]. This statement, however, cannot mean that there was no sense of where this territory was. The territorial extent of the Johor Sultanate was where its subjects were settled or lands productively exploited, either as land for planting crops or for using as a springboard for seafaring activities. As early as 1604, Hugo Grotius had no problem in locating the principality of Johor as a sovereign entity and from the context of his writing it is clear that this included the Straits of Singapore[32].

6. Singapore argues that when the capital of Johor was destroyed the ruler was weakened, he lost territory, he lost people whom he could no longer protect, and had to seek new people. Mr. President, this is not what actually happened. When a capital was destroyed, the ruler and his followers relocated, and the people continued to give allegiance to him. When the ruler of Malacca was forced to flee from his capital as a result of the Portuguese attack in 1511, he was guided to a new site by the Orang Laut, who then informed the people where the ruler had gone.

7. The ability of the ruler to quickly reassemble his court and followers at a new site in the Straits of Malacca meant that there was little problem in retaining the loyalty of his subjects. Malay sources as well as and seventeenth and eighteenth century Dutch documents both emphasize that it was not external destruction of a capital but cruelty and injustice that were the causes of

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[31]CR 2007/28, p. 27, para. 2.

[32]CR 2007/27, p. 19, para. 30.

abandonment of a ruler[33]: one could call this a standard of — or perhaps even a cry for — good governance *avant la lettre*.

8. Singapore's interpretation of the Orang Laut is way off the mark. There was a distinct difference between the Orang Laut, the inhabitants of the waters and the islands at the southern end of the Straits of Malacca, and the sea people elsewhere. These Orang Laut were definitely under the control of the Sultanate of Johor[34], as shown by Ambassador Noor Farida in her opening speech[35] and by Professor Crawford in his first speech[36].

9. Mr. Chan[37] stresses that there is no proof that Pulau Batu Puteh was inhabited. Of course, it was not inhabited — it is just a clump of rocks! Indeed, it is not inhabited today; the lighthouse keepers go there for fixed periods of time and, of course, there is no community of PBP. But as we have shown, it was regularly used by the local people — subjects of Johor. Their lands and waters included a particular trajectory of movement within a territory as part of their subsistence activities.

10. As the seventeenth century documents indicate, the Orang Laut were always in the vicinity because PBP was an important landmark for shippers and therefore a place which the Orang Laut frequented for purposes of conducting their business. In this regard, PBP and the adjoining straits that form the main shipping lanes can be said to belong to the ruler of Johor since his subjects used these waters and islands, including PBP, as part of their duties to their ruler: and these duties included encouraging or, if necessary, forcing ships to go to Johor's ports to trade.

11. Mr. Chan raised again, in Singapore's second round, the issue of the 1655 and 1662 Dutch letters relating to diverting Chinese junks from trading in the Johor River[38]. Singapore focuses only on the translation of one particular phrase by Professor Andaya. Professor Crawford already provided a response in the first round[39]. But what matters, Mr. President, is the fact that the Dutch ships were stationed around the area of PBP, precisely where the Chinese ships passed

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[33]L. Y. Andaya, *Kingdom of Johor, 1641-1728*, Kuala Lumpur: Oxford University Press (1975), p. 21.

[34]Reference to be provided.

[35]CR 2007/24, p. 19-27.

[36]*Ibid.*, p. 60, para. 10.

[37]CR 2007/28, p. 28, para. 4.

[38]CR 2007/28, p. 29, para. 9.

[39]CR 2007/24, p. 62, para. 15.

on their way to the Straits of Malacca. The Orang Laut were also stationed there for the same reasons as the Dutch, namely, to attract traders. Whereas the Dutch wanted to divert them *away* from the Johor River, the Orang Laut were expected to divert them *to* the Johor River. Both groups were engaged in principle in the same activity — yet for Singapore the Dutch colonialists' activity was legitimate or "sovereign", while the indigenous rulers' activity was not. This only illustrates Singapore's extraordinary Eurocentrism. And the vital point for our present purposes is that the *location* of Johor's activities in protecting that trade was, expressly, PBP.

12. The PBP area was therefore very much an important part of the areas used by the Orang Laut to perform their duties to the ruler and, of course, also for their own personal enrichment. When Singapore argues that this small island was "uninhabited"[40], it is ignoring the idea of use and the nature of exploitation by the local population, who — as Thomson recorded in the 1840s — were masters of the area, with a capacity to outsail European vessels of a similar type. The difference in understanding is a reflection of different ways of perceiving the land and the seas. Currently, the Orang Laut still live within the domains of Johor. I have been informed that they form part of the constituency of Malaysia's Minister for Foreign Affairs, who is from Johor and who is honouring us, once again, with his presence during the second round.

Singapore's *terra nullius* theory

13. Singapore advanced its *terra nullius* proposition at a very late stage, namely in its Reply. Earlier it only argued its case on the basis of "the lawful taking of possession" of the island in the mid-nineteenth century. The Court will have noted that, during the oral pleadings this week, Singapore betrayed some uncertainty as to the validity of its *terra nullius* theory. Apart from the words of Professor Pellet[41], to which, Professor Crawford, you just referred, Professor Koh conceded: "should the Court find that the title to Pedra Branca was indeterminate at that time [that is the period 1847-1851] . . . Singapore has clearly shown that it has sovereignty"[42]. Now, this lack of conviction has apparently led Singapore to back two horses in the same race.

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[40]CR 2007/28, p. 28, para. 4 (Chan).

[41]CR 2007/28, pp. 39, para. 6 (Pellet).

[42]CR 2007/29, p. 59, para. 10 (Koh).

14. This *terra nullius* claim is untenable. At all relevant times, PBP was *not terra nullius*. The island was featured by name on the earliest maps, as a seamark as well as a point of danger. The native population used the island as referred to in Portuguese books as early as 1562. In 1822, nearly 300 years later, Crawfurd reported that the "men of the sea" living in that area were subjects of the Sultanate of Johor[43], a fact confirmed by articles in the *Singapore Free Press* around the time of the construction of the lighthouse. And, by the way, again Professor Pellet made no attempt to disprove our demonstration that William Napier, the founder and editor of the *Singapore Free Press*, knew what he was talking about. Dutch diplomatic exchanges with the sovereign of Johor regarding piracy control and the conduct of trade also made reference to Pulau Batu Puteh[44].

15. In another burst of Eurocentrism Mr. Chan stated that "the nature of traditional Malay sovereignty militates against the ruler showing any interest in small, uninhabited islands, especially an isolated one like Pedra Branca"[45]. Mr. President, Members of the Court, with due respect, this is an untenable statement. Not merely were all local features named — there were songs about them, including the song about PBP that Ambassador Noor Farida regrettably declined to sing, at least until now!

16. The argument that the ruler of Johor was "disinterested" in the small islands is simply not correct. For example, there is a statement in the *Sejarah Melayu* — the Malay annals — where the ruler of Malacca states that he does not care if a territory is "only the size of a coconut shell"[46]! The relevant quotation is under tab 168 of your folder.

17. As this Court observed in its *Western Sahara* Opinion (1975):

> "Whatever differences of opinion there may have been among jurists, the State practice of the relevant period indicates that territories inhabited by tribes or peoples having a social and political organization were not regarded as *terrae nullius.* It shows that in the case of such territories the acquisition of sovereignty was not generally considered as effected unilaterally through 'occupation' of *terra nullius* by original title but through agreements concluded with local rulers." (*Western Sahara*, *Advisory Opinion, I.C.J. Reports 1975*, p. 39, para. 80.)

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[43]RM, p. 29, para. 63.

[44]Professor Houben's report, see CR 2007/24, p. 21, para. 8.

[45]CR 2007/28, p. 31, para. 13.

[46]See *Sejarah Melayu or Malay Annals, an annotated translation by C. C. Brown*, Oxford University Press (1970), p. 57.

As in the *Western Sahara* case, this particular region of Johor was — and I quote from paragraph 81 of the Opinion, which is also under tab 169 of your folder — "inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them".

18. Contrary to what Professor Pellet stated, this observation is certainly pertinent to maritime areas and to the islands and rocks thereof as used by local people, which form part of the Sultanate of Johor as one of the world's oldest political organizations. Why would your Advisory Opinion on the *Western Sahara* only apply to land territories, as Professor Pellet seems to suggest? Why would your Advisory Opinion only apply to inhabited lands, whether on the mainland or on islands? Has your Opinion ever been interpreted to mean that uninhabited lands are susceptible to appropriation? The "State practice of the relevant period" to which the Court referred in the *Western Sahara* Opinion applied equally to offshore islands as to hinterlands — as Professor Crawford demonstrated today by references to Singapore's chosen example, the Kuria Muria islands of Oman. It is a fact that the maritime Sultanate of Johor included many islands, islets and rocks, as was also demonstrated by the 1824 cession of Singapore itself. Mr. President, Professor Pellet has only succeeded in building a sandcastle — certainly also my childhood wish — from your *Western Sahara* Advisory Opinion, a sandcastle which immediately collapses on the first exposure to the wind of logical argument.

The extent and continuity of the Sultanate of Johor

19. The international status of the Johor Sultanate prior to the Anglo-Dutch Treaty of 1824 was well known and generally accepted. Its domain covered parts of the mainland of the Malay Peninsula, parts of the island of Sumatra, all islands within and at the entrance of the Straits of Singapore and numerous other islands in the open China Sea, including the Natunas, Anambas and the Tambelans. PBP, Middle Rocks and South Ledge were clearly included in this domain.

20. Mr. Chan claimed that "the territorial limits of the Sultanate were not known"[47]. Moreover, citing Trocki, he asserted "that the Malaysian State of Johore dates from the

[47] See CR 2007/ 28, p. 30, para. 11.

mid-nineteenth century"[48] — the mid-nineteenth century. Throughout its pleadings, Malaysia relied extensively on the research and observations of authoritative historians of the region, such as Andaya, who provided the Court with an expert opinion, Windstedt, Netscher, Irwin and the Andaya couple[49]. This particular statement by Singapore can be easily challenged, even with a quotation from Trocki himself on the very same page. While Singapore selectively quotes just once sentence at the end of the first paragraph, we have highlighted two others on the same page — as you can see now on the screen — reading: "It began in 1512, when the defeated Sultan of Malacca established a capital on the Johor River . . ."; and then, in the next paragraph, Trocki concludes: "In many respects, the present state of Johor is a successor of the earlier empire." These passages can be found at tab 170 of the judges' folder.

21. During the first round Professor Crawford provided you with seven quotations, which demonstrated that Pulau Batu Puteh appertains to Johor[50]. With the exception of the *Singapore Free Press* articles, all these documents were dismissed by Professor Pellet on the basis that the words "Pedra Branca" or "Pulau Batu Puteh" could not be found in them. But it is Singapore's strategy not to reply to the fact that each of these contemporary documents refers to "all the islands and islets", or "the whole of the smaller islets", "all the islands", "all the small islands on the eastern side", etc., all taken from these seven quotations. Hardly any island is mentioned by name, so how could there be a specific reference to PBP only, in this small patch of rocks? Yet again Singapore is silent in face of this simple logic.

22. The Sultanate of Johor has, as a matter of fact, a remarkable continuity. What sometimes occurred was, of course, a change of dynastic rulers from one family to another — much the same as in European dynastic conflicts, such as the succession issue in Spain. For example, as to Johor in 1699, the last ruler of the Malacca dynasty was assassinated, and the plotters placed the Bendahara family on the throne of Johor. The Bendahara family therefore continued the Sultanate, in the same way that the Temenggong family of Johor continued, several times, the Sultanate in the

[48]See CR 2007/ 28, p. 27, para. 1.

[49]See, e.g., RM, Vol. 1, p 5, para. 11.

[50]See CR 2007/25, p. 30, para. 24.

mid-nineteenth century[51]. In other words, the rulers tended to come from the most important families in Johor, but the changes in dynasty did not signal the end of the Sultanate. The continuity of the Sultanate was maintained despite the imposition of a new political superstructure, first under the British and then under the independent Malaysian Government. The Sultanate may be administratively now called a "state" of federated Malaysia, but it is still ruled by a Sultan and is hence a "kerajaan" or "kingdom". Thus, the Sultanate of Johor still exists today.

The two treaties of 1824 and their consequences

23. Mr. President, I now proceed to my section on the two treaties of 1824 and their consequences. I would first of all like to put on record that once again Singapore has opted to remain virtually silent on the Crawfurd Treaty. During the entire second round, the Treaty was mentioned only once. For example, Ms Malintoppi did not include this important treaty in her list of treaties pertaining to "boundaries in and around the Singapore Strait"[52]. Professor Pellet only mentioned it in passing[53]. One may wonder why Singapore feels so uneasy about the Crawfurd Treaty? Is it because it so clearly defines any claims to seas, straits, and islands beyond 10 geographical miles outside the area to which the Crawfurd Treaty makes the cession? Is it because the Crawfurd Treaty has been incorporated in the 1927 and 1995 Territorial Waters agreements?

24. In contrast, both Mr. Chan and Professor Pellet made more extensive responses on the 1824 Anglo-Dutch Treaty. The issue, Mr. President, that divides us is whether the treaty included the Straits of Singapore — that is, Malaysia's view — or whether the entire Straits remained open and undivided — that is, Singapore's view. By reference to Article 31 of the Vienna Convention on the Law of Treaties, Malaysia emphasized the wording and the object and purpose of the Treaty. Singapore did not respond. Instead, it preferred to stick to its untenable theory that the whole of the Straits remained open and served as a dividing area, notwithstanding the actual words of Article 12 -- let me quote them once again: "other Islands south of the Straights of Singapore"[54].

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[51]See the list of Temenggongs and Sultans of Johor from 1762 in RM, p. 50, fig. 4.

[52]See tab 31 of Singapore's second round, day 1.

[53]CR 2007/28, p. 43, para. 13.

[54]See MM, Vol. 2, Ann. 6.

25. Professor Pellet argued that the 1824 Anglo-Dutch Treaty could not result in any attribution of territory, since "influence" was to be exercised over political entities[55]. Mr. President, let me respond to Professor Pellet in the words of a very learned author, whose scholarly works as a professor have contributed so much to my own understanding of international law. It is Mr. Brownlie who, writing on African boundaries, observed — he was writing on agreements concerning delimitation of spheres of influence:

> "Whilst the purpose was political and the arrangement had a certain provisionality, there were certain defined results. In a situation in which two of the parties to the agreement were the only states involved in the area, and in due course both took control of the areas respectively reserved, the delimitation would both in fact and in law attain the status of a boundary description. A proportion of spheres of influence delimitations evolved into demarcated alignments in much the same way as other divisions described in principle were confirmed by later arrangements."[56]

You can find the text of Professor Brownlie under tab 171 in your folder.

26. Malaysia demonstrated in its analysis of the post-1824 practice of the Dutch and British that the two Powers carefully observed their spheres of influence. For example, the Temenggong's people inhabited the Karimons which are located south of the Straits. They were evicted from those islands, which were within the Dutch sphere under the 1824 Treaty, and could get no support from the British. This happened in 1827[57]. In practice, the 1824 dividing line evolved within a few years — in any case, well before the 1840s — into the delimitation of Johor and subsequently Malaysia on the one side, and the Netherlands East Indies and subsequently Indonesia on the other.

The status and the legal effect of the 1825 donation letter

27. I will now address, Mr. President, Singapore's arguments concerning the contents and legal effects of the so-called letter of donation of 25 June 1825. Singapore appears to be embarrassingly short of the mark in qualifying the "Your Brother" letter as a "constitutional act of the highest order" (Chan)[58] and "*cet instrument*, la donation, qui a réalisé le partage juridiquement parlant" ("this instrument . . .which brought about the division in legal terms") (Pellet)[59].

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[55]CR 2007/28, pp. 44-45, para. 17.

[56]I. Brownlie, *African Boundaries: A Legal and Diplomatic Encyclopaedia*, London, C. Hurst & Co. (1979), pp. 8-9.

[57]RM, Vol. 1, p. 214, and Ann. 1 (Houben opinion).

[58]CR 2007/28, p. 33, para. 19 (Chan).

[59]CR 2007/28, p. 45, para. 18 (Pellet).

28. Is it correct, Mr. President, for Singapore to attach so much significance to this letter? For five reasons it is not:

— First, this letter is nothing more, but also nothing less than a follow-up to the Anglo-Dutch Treaty of 17 March 1824, the Crawfurd Treaty of 2 August 1824, the Van Angelbeek mission to Resident Crawfurd in Singapore on 10 April 1825 and the visit to the Viceroy in Riau on 23 April 1825. You can see this chain of events reflected on the graphic which is also at tab 172 of your folder. The full text of the letter is at the same tab.

— My second argument: there is a fundamental problem for Singapore in that the benefactor, Sultan Abdul Rahman, had no sovereignty over and no authority in the areas in question. He was not recognized by the British. And in the words of his protector, the Netherlands Minister of Colonies Elout, his authority in this area was "already nil"[60].

— Third, such a transfer of sovereignty over territory of one ruler to another ruler could just not simply take place by a "your brother" letter, a letter of donation. Singapore here introduces rather suddenly, and at a very late stage, Malay *adat* or customary law, but fails to present any evidence of either its existence and its contents or its applicability. The consequences of the 1824 Treaty were governed by international law, and not by *adat* law: if Singapore wants to introduce the latter, the onus is on Singapore to prove it.

— Fourth, a proper reading of the letter makes it abundantly clear that the letter referred to islands south of the Straits of Singapore only. This follows, first, from the heading of the letter, which makes reference to the "Sultan of the Islands Lingga, Bintan and all obedient dependencies Abdul Rahman Shah, to the Sultan of Singapore and all obedient dependencies"; and, second, it also follows from the following key paragraph: "The territory of your brother extends out over the islands of Lingga, Bintan, Galang, Bulan, Karimon and all other islands. Whatsoever may be in the sea, this is the territory of Your Brother, and whatever is situated on the mainland is yours." Mr. President, you can now see these islands on the screen, and also available at tab 173 of your folder; you can see these islands on the 1842 Dutch map with which all of us are now quite familiar. Out of these five specified islands, three — three —

[60] RM, p. 39, para 84.

were mentioned in Article 12 of the Anglo-Dutch Treaty of 1824, namely, the Carimon Islands, Bintang and Lingga, while the remaining two, Galang and Bulan, are islands clearly lying south of the Straits of Singapore. Hence, the phrase "all other islands" refers, of course, also here to all other islands lying within the Dutch sphere of influence and not named explicitly in the "Your Brother" letter, e.g., Batam and Singkep.

— Fifth, as in its written pleadings, Singapore deliberately omitted the following reference to the 1824 Anglo-Dutch Treaty from its quotation of this 1825 letter, which expressly states that the division of the territories

> "is in complete agreement with the spirit and the content of the treaty concluded between their Majesties, the Kings of the Netherlands and Great Britain. For this reason, My Brother, heed the advice of Your Brother as much as possible and do not act contrary thereto. For who can answer for the consequences?"[61]

29. In sum, the letter of 25 June 1825 from Sultan Abdul Rahman to his brother was not at all "the constitutional act of the highest order" or the "donation", as Singapore claims. Rather, it was just a formal recognition of the situation imposed by the British and the Dutch that Sultan Abdul Rahman would stay below the Straits and not claim sovereignty over any part of Johor and its territory in and to the north of the Straits, including of course the islands and the rocks. And this is what actually happened. The Sultan of Lingga made no protest at the Crawfurd Treaty, which included all islands and rocks within 10 geographical miles of the main island of Singapore. No one in 183 years ever suggested — before Professor Pellet suggested it to your Court the other day[62] — that when Crawfurd raised the Union Jack and proclaimed British sovereignty over Rabbit and Coney islands[63] — the most southerly islands of the cession of Singapore — that he was taking territory belonging to the Sultan of Lingga. It is, with all the respect due to *mon ami* Professor Pellet, an extraordinary suggestion. As the Ord Award showed, the territory of Johor included offshore islands and rocks, inhabited or uninhabited, well beyond the 3-nautical-mile limit — and *no one*, *no one* paid the slightest attention to the so-called donation letter as concerning territory or islands within the British sphere. That donation letter was

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[61]CMS, Anns. 5 and 6.

[62]Singapore judges' folder, Vol. 2, tab 17.

[63]MM, Vol. 1, para. 57.

exclusively focused on islands south of the Straits — consistent with the Anglo-Dutch Treaty to which it referred and which it sought to implement. The pieces of the puzzles fit very well together.

30. Mr. President, Members of the Court, *if, if* — which is not the case — the so-called donation letter had purported to have any relevance in the British sphere under the Anglo-Dutch agreement, it would have been ignored. In fact it *was* ignored. The British *had* already concluded the Crawfurd Treaty of 1824 with the Sultan and Temenggong of Johor — a Treaty which, as Singapore refuses to acknowledge, affirms Johor's sovereignty over all islands and rocks within 10 geographical miles of the main island of Singapore and therefore, by necessary implication, also over all islands and rocks within the British sphere. The British had already proclaimed their sovereignty over the islands within the scope of the Johor cession without any regard to the Sultan of Lingga, whose authority in these regions they never recognized and which, as a matter of fact, was already in the words of the Dutch Minister Elout "nil". For all these reasons, Singapore's interpretation of the donation letter is untenable.

The status of the 1842 Dutch map

31. As to the 1842 Dutch map, Mr. President, Malaysia was gratified to note that in its second round Singapore no longer questioned the status and the significance of the 1842 Official Map of the Netherlands East Indies made by order of and submitted to the King of the Netherlands around the same time that the British were seeking to construct a lighthouse near Point Romania in Johor. Singapore no longer argues that the three features are below the dividing line, that is to say that they would fall under the sovereignty of the Riau-Lingga Sultanate[64]. Hence, it is, I must say, somewhat odd that both Mr. Chan and Professor Pellet speculated that the three features at the time belonged to Sultan Abdul Rahman[65]. This is simply incorrect, as the map clearly shows. It is also odd because it is very inconsistent with Mr. Chan's main thesis. If Malay sovereignty, Mr. President, comes and goes twice daily with the tide, how could the Sultan of Lingga retain such authority over a region which the Dutch readily accepted he did not actually

[64]CR 2007/29, pp. 30-31, para. 20.

[65]CR 2007/28, p. 34, para. 24 (Chan); CR 2007/29, p. 46, para. 21 (Pellet).

control? His authority was "nil", according to the Dutch in that particular region. Is the disease of the disappearing Sultanate one which strikes only north of the Straits?

32. Mr. President, Members of the Court, you have heard Singapore repeatedly call for specific evidence. Well, here on the screen we have evidence to satisfy the most confirmed Pedrabrancist. The 1842 map shows *Pedra Branca* within the British sphere. The suggestion that there was any Dutch claim north of the Riau residency — the northernmost Dutch residency — is fanciful. This is a specific political attribution of the very islands in dispute to the British sphere. It is contained in an authoritative and carefully prepared official Dutch map illustrating the effect given to a treaty commitment of the Netherlands. It shows that the three features were not *terra nullius* and that they were within the *British*, and not the *Dutch* sphere. There is no disclaimer. It was produced immediately *before* the transactions which are in dispute in this case. It is an official, and may I say, fine indication of the result of the Anglo-Dutch Treaty as achieved by 1842. Incidentally, it also shows the continued existence of Johor as having land and island territories. Mr. President, in so many respects, it is a refutation of Singapore's case on the so-called donation, and much else besides.

33. This interpretation is confirmed by the 1886 Count de Byland map of the Dutch East Indies prepared to accompany the 1882 and 1883 Conventions with Native Princes[66]. PBP is also here to the north of the Dutch sphere of influence — on a map prepared 35 years after the construction of the lighthouse.

The 1868 Ord Award

34. Mr. Chan also took issue with Malaysia's reference to the Award of 1868, by which Governor Ord — acting as arbitrator in the boundary dispute between Johor and Pahang, two Malay states — delineated their territories. The map annexed to the Award is shown on the screen. Contrary to what Singapore states, Malaysia has never attempted — I quote from Singapore — "to construe the Ord Award to include Pedra Branca"[67]. That is a misunderstanding. There was no dispute between Pahang and Johor over the three features, obviously enough. All we have been

[66]MM, Vol. IV, map 11.

[67]CR 2007/28, pp. 34-35, para. 26 (Chan).

stating throughout the written and oral pleadings is that the Ord map annexed to the Award shows the three features as belonging to Johor. This Award and its map were published after the construction of the lighthouse on PBP. No doubt, Ord, as the Governor of the Straits Settlements, would have depicted Pulau Batu Puteh as British territory had Great Britain taken possession of the island by 1851. However, as it stands, the Ord Award and its map now reflect what was well stated in an article, which was so often quoted during our oral proceedings, namely the editorial of 25 May 1843 in the authoritative *Singapore Free Press*. This article reports that Batu Puteh — yes, there we have the name again, in 1843 — that "Batu Puteh" is "within the territories of our well beloved ally and pensionary, the Sultan of Johor, or rather of the Tomungong of Johore, for he is the real Sovereign"[68].

The 1886 memorandum

35. Finally, Mr. President, Mr. Chan referred to a memorandum of the Secretary to Sultan Abu Bakar, entitled "The Natunas, the Anambas and the Tambilan Islands" and dated 5 May 1886. Contrary to what Singapore concludes, the memorandum does not identify at all the whole of the Straits of Singapore as the dividing line. Furthermore, what matters is, of course, the very text of Article XII of the Anglo-Dutch Treaty" and this states in clear terms that "islands south of the Straights of Singapore" do not fall within the British sphere of influence.

Conclusion

36. Mr. President, Members of the Court, in conclusion: from time immemorial, the Sultanate of Johor has had an original title to the three features. PBP was never *terra nullius*.

37. The events in the nineteenth century did not change this. The Anglo-Dutch Treaty of 1824 did not alter the status quo for the three features. Similarly, they were not part of the cession of Singapore through the Crawfurd Treaty. The 1825 letter of donation by Sultan Abdul Rahman was of no legal import, and anyway it did not extend to islands within the Straits, including those which were already part of the colony of Singapore in 1825. The 1844 permission of the Sultan

[68]MM, para. 95, and Ann. 40. See also RM, paras. 99-102.

and the Temenggong of Johor to the British to construct a lighthouse on PBP did not involve the transfer of sovereignty over the island.

38. Consequently, Mr. President, Members of the Court, the original title to the three features passed over to its successor State: and that is Malaysia.

39. Mr. President, distinguished Members of the Court, I thank you for your kind attention. Mr. President, this may be an appropriate moment to take a break and, with your kind permission, I would like to invite you to call upon my colleague, Professor Kohen, to continue after the break with Malaysia's presentation. Thank you.

The VICE-PRESIDENT, Acting President: Thank you, Professor Schrijver, for your arguments. I will call on Professor Kohen after the break.

The Court adjourned from 4.35 to 4.50 p.m.

The VICE-PRESIDENT, Acting President: Please be seated. I call on Professor Kohen. You have the floor.

M. KOHEN : Thank you very much, Mr. President.

LE CONSENTEMENT DE JOHORE À LA CONSTRUCTION DU PHARE HORSBURGH

A. La *diabolica probatio* de Singapour

1. Monsieur le président, Messieurs les juges, dans sa première plaidoirie lors du premier tour, mon ami le professeur Alain Pellet avait parlé d'une *diabolica probatio*[69]. C'est ainsi qu'il avait qualifié sa tâche de démontrer que Pulau Batu Puteh était une *terra nullius* et que l'autorisation de la construction du phare ne s'étendait pas à cette île. La tâche de Singapour s'avérait en effet très difficile, voire impossible, mais pas pour les raisons qu'il a indiquées. Le second tour vient de le confirmer.

2. Mon ami Nico Schrijver vient de réfuter le dernier argumentaire de nos contradicteurs en ce qui touche la question de la souveraineté de PBP, Middle Rocks et South Ledge au moment de la construction du phare. Je vais maintenant entreprendre de réfuter les ultimes et vaines

[69] CR 2007/20, p. 52, par. 1 (Pellet).

prétentions de Singapour visant à nier que l'autorisation de Johore à construire le phare Horsburgh comprenait Pulau Batu Puteh. Ma tâche se voit par ailleurs facilitée par le fait que Singapour a laissé sans réponse l'essentiel de l'argumentation malaisienne relative à la construction du phare et notamment à la permission de Johore.

3. Face aux difficultés, mon ami le conseil de Singapour s'est cru en droit de nous imposer à son tour une sorte de *diabolica probatio*, sans aucun appui, bien entendu, sur une quelconque règle relative au fardeau de la preuve. A lui d'insister : cela ne servirait à rien de prouver que le phare Horsburgh a été construit à PBP avec l'autorisation de Johore car Johore n'était pas souverain de PBP. Voilà une véritable *diabolica probatio*. Il aurait pu dire : même si la Malaisie prouve l'existence de sa souveraineté sur PBP, elle n'a pas la souveraineté sur PBP. C'est tout de même curieux, Monsieur le président. A en croire nos contradicteurs, si Singapour donne la permission à une personne passionnée par les poissons, résidant aux Etats-Unis et visitant ses parents à Singapour, de rester au phare Horsburgh, cela constitue une preuve éclatante de la souveraineté singapourienne[70]. Une belle «effectivité» nous dira-t-on. Mais si les deux plus hautes autorités de Johore, répondant à la demande du gouverneur Butterworth, donnent leur consentement à la construction du phare Horsburgh et que ce consentement comprend PBP, alors cela ne vaut rien car PBP ne serait pas un territoire de Johore, mais — je cite Alain Pellet — «soit [une] *terra nullius*, soit, peut-être, [une] *terra sultanatis Riau*»[71].

4. Cet effort de Singapour est doublement voué à l'échec. *Primo*, parce que ce que nous demande Singapour, nous l'avons prouvé : à l'époque, Johore possédait la souveraineté sur PBP. *Secundo*, parce qu'autoriser un Etat étranger à construire un phare sur un territoire donné constitue une manifestation indéniable d'exercice de la souveraineté.

B. Les échanges de 1844

5. Au lieu de répondre concrètement à notre analyse de la correspondance réellement existante, mon ami et contradicteur s'est livré à des spéculations à propos du contenu des demandes d'autorisation de Butterworth. Il nous dit que «si Butterworth avait mentionné Pedra Branca, le

[70] MS, par. 6.59.

[71] CR 2007/28, p. 47, par. 23 (Pellet).

temenggong n'eût pas manqué de reprendre l'expression, comme il a parlé de Peak Rock»[72]. Mais, Monsieur le président, qui a parlé de Peak Rock ? En tout cas, ni le sultan, ni le temenggong. On le sait : le dernier se réfère à *une zone* («near Point Romania») qui comprend aussi bien Peak Rock que PBP, les deux emplacements envisagés à l'époque. Pour cette même raison, la proposition du professeur Pellet à propos de la deuxième phrase du temenggong perd sa substance. Pour lui, «or any spot deemed eligible» «ne voulait pas dire à l'avance que l'emplacement finalement retenu «tomberait» du même coup sous la souveraineté de Johor»[73]. Le problème de Singapour c'est que seuls deux emplacements étaient envisagés à l'époque, et les deux tombaient sous la souveraineté de Johore. Et le phare Horsburgh, pour lequel on avait demandé la permission, a été construit sur l'un des deux : Pulau Batu Puteh.

6. Alain Pellet répète encore une fois — toujours sans apporter la moindre preuve — que «lorsque Butterworth écrit au sultan et au temenggong, le balancier est fixé à Peak Rock»[74]. Comment le sait-il si ces lettres font justement défaut ? Ce qu'il mentionne tout de suite après est plus intéressant. Il affirme que «d'autres emplacements «near Point Romania» (à proximité de Point Romania) ne sont pas complètement abandonnés — d'où sans doute l'expression «ou en tout autre lieu qu'elle jugera approprié»». Le conseil de Singapour a tout à fait raison, Monsieur le président, l'autre emplacement — à vrai dire, le *seul* autre emplacement à l'époque — «pas complètement abandonn[é]» est celui qui a été présent depuis le début et jusqu'à la fin de cette histoire : Pulau Batu Puteh.

7. Monsieur le président, le silence de Singapour sur le contenu de la dernière lettre de Butterworth écrite avant la réception des lettres du sultan et du temenggong est assourdissant[75]. Le gouverneur britannique parle de la construction du phare «in the vicinity of Pedra Branca». Et c'était à l'époque où selon Alain Pellet «le balancier est fixé à Peak Rock» ! Où est passé le «Pedra Branca centrisme» de Singapour ? On me dira peut-être que l'expression «in the vicinity of Pedra Branca» ne pouvait désigner Pedra Branca elle-même ? Je vais me servir de quelqu'un qui y

[72] CR 2007/28, p. 48, par. 25 (Pellet).

[73] CR 2007/28, p. 48, par. 26 (Pellet).

[74] CR 2007/28, p. 48, par. 27 (Pellet).

[75] CR 2007/25, p. 44, par. 27 (Pellet).

connaissait quelque chose. Voilà comment Thomson décrit «the vicinity of the Horsburgh Lighthouse and Adjacent Malay Coast» dans sa carte de 1851 que les Parties vous ont projetée des dizaines de fois. Que montre la carte des *alentours du phare Horsburgh* ? Elle *comprend le phare lui-même et donc son emplacement — PBP —*, les sondes dans toute la région, les îles Romanie et «la côte malaise adjacente». Donc «the vicinity of the Horsburgh Lighthouse» comprend le phare lui-même et donc l'endroit où celui-ci est situé. Butterworth et Thomson : les deux personnalités qui ont joué le rôle le plus important du côté britannique. Comme ils le disent eux-mêmes : «In the vicinity of Pedra Branca», Monsieur le président.

C. PBP continue d'être «near Point Romania»

8. Il y a plus, Messieurs les juges. Je suis autorisé à vous dire qu'après le second tour de plaidoiries et malgré les efforts de M. Chao, la situation géographique n'a pas changé : PBP continue d'être «near Point Romania». L'*Attorney-General* de Singapour a une nouvelle fois répété la même rengaine : Peak Rock est plus près de la Pointe Romanie que PBP, donc, cette dernière n'est pas près de la Pointe Romanie[76]. Je me suis déjà référé à cette question. Inutile d'y revenir car il n'y a eu aucune réfutation singapourienne.

9. Singapour croit trouver un appui dans la lettre que Butterworth a écrite à Bushby le 26 août 1846. Le gouverneur y expliquait pourquoi il avait donné sa préférence à Peak Rock au lieu de PBP en 1844[77]. Butterworth disait, en citant sa lettre du 22 août 1845, que PBP «is so remote from Singapore, at so a great distance from the Main Land and so inaccessible at certain seasons of the year»[78]. Singapour nous dit que les questions de distance et de proximité sont relatives[79]. La Partie adverse a oublié d'appliquer à sa lecture de ce paragraphe de la lettre du 26 août 1846 ce qu'elle a prêché par ailleurs. Car il est évident que PBP se trouve à une plus grande distance de la Pointe Romanie que Peak Rock et que le but du paragraphe en question était pour Butterworth d'expliquer pourquoi il avait choisi Peak Rock et non PBP pour y construire le phare.

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[76] CR 2007/28, p. 19, par. 3 (Chao).

[77] CR 2007/28, p. 19, par. 3 (Chao).

[78] MM vol. 3, annexe 51 ; MS vol. 2, annexe 16.

[79] CR 2007/28, p. 19, par. 3 (Chao).

10. Monsieur le président, je me suis demandé pourquoi Singapour n'a pas cité la lettre originale, mais elle a préféré la citation de Butterworth dans la lettre d'un an plus tard. Pourquoi ? C'est très simple. Parce que dans la lettre du 22 août 1845[80] quelques lignes plus haut de la citation en question, Butterworth qualifiait de «neighbourhood» «the vicinity of Pedra Branca and Point Romania at the opening of the China Sea»[81]. Les deux références géographiques (Pedra Branca et Pointe Romanie) y sont explicitement citées. Butterworth les qualifie comme étant un voisinage. Où est passé le «Pedra Branca centrisme» de Singapour, Monsieur le président ?

11. M. Chao a rompu le silence singapourien sur la définition que John Crawfurd a donnée de Romania et que vous pouvez voir à l'écran. Dommage qu'il ait déformé quelque peu le propos du signataire du traité de 1824 avec Johore, limitant l'étendue de «Romania» à la Pointe Romanie et aux îles Romanie, ce que l'auteur ne fait pas. Il s'agit d'une seule phrase, et elle inclut dans la définition tout ce qui s'y trouve.

12. L'*Attorney-General* de Singapour a préféré employer son temps à un tour de prestidigitation photographique, accusant la Malaisie de manipulation[82]. Tout est question de perspective. Une photographie prise depuis une petite embarcation et une autre prise depuis le pont d'un gros pétrolier, prises au même endroit et visant la même direction, mais donc à des hauteurs différentes, n'offriront pas la même vue. Je ne pense pas qu'il vaille la peine de s'attarder sur la question. Singapour ne nie pas que la Pointe Romanie soit à portée de vue de PBP. Il aurait mieux valu que Singapour analyse, par exemple, la définition de Thomson («Point Romania, the nearest land to Pedra Branca»), le titre de la carte du même Thomson de 1851 — que vous venez de voir et que vous connaissez très bien — et le lien concret et étroit entre PBP et la Pointe Romanie durant la construction du phare décrit également par Thomson[83]. La Partie adverse a cependant choisi de garder le silence comme toute réponse sur ces questions fondamentales pour déterminer ce qu'est «near Point Romania».

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[80] Dossier de pladoiries, onglet 174 ; MS vol. 2, annexe 14 ; MM, vol. 3, annexe 47.

[81] MM, vol. 3, annexe 51, MS, vol. 2, annexe 16.

[82] CR 2007/28, p. 20-21, par. 5-10 (Chao).

[83] CR 2007/25, p. 49-51, par. 43-53 (Kohen).

D. La correspondance ultérieure confirme que l'autorisation comprend PBP

13. Nous avons déjà vu que nos contradicteurs ont d'autres problèmes avec la lettre de Butterworth du 26 août 1846. Je reviens donc à mon débat avec mon ami Pellet au sujet du mot questionné par Singapour, «case» (et non «care»). Il est compréhensible que Singapour ait finalement essayé de minimiser l'importance de la question. Mais je dois relever toutefois un lapsus révélateur fait par mon ami Alain Pellet. Il se dit troublé, puis seulement à moitié troublé car «la Malaisie s'est soigneusement bornée à juxtaposer le mot litigieux *avec les autres «case»* figurant dans le rapport»[84]. Le conseil de Singapour a tout à fait raison, Monsieur le président ! C'est bien avec les quatre «*autres* «case»» qui apparaissent dans le même document que nous avons juxtaposé le mot devenu litigieux, c'est-à-dire «case». Car l'auteur de la lettre a employé cinq fois dans sa lettre et ses annexes le mot «case», mais pas une seule fois le mot «care». Une nouvelle fois, pas un mot sur l'analyse du contexte. Certes, je dois saluer l'efficacité de mon contradicteur, qui a dû aller chercher une référence relative à un phare écossais pour trouver un seul exemple de l'emploi de la formule «care of the Light»[85]. Ce qui est frappant, cependant, c'est que dans l'abondante correspondance relative au phare Horsburgh, il n'y ait pas un seul exemple de l'emploi du mot «care» allant dans cette direction. Pas un seul. Pire encore pour la Partie singapourienne : chaque fois qu'elle-même s'est référée à la question du maintien ou de l'entretien du phare durant cette affaire, ce n'est pas du «care» dont il est question, mais systématiquement de l'«upkeep» de celui-ci[86]. Il en va de même de la description faite par le directeur de la marine de Singapour, M. Pavitt, dans le paragraphe de son œuvre publiée par le *Singapour Light Dues Board*, qui crispe autant nos amis de l'autre côté de la barre : «The Board, formed by Statute in 1957, is responsible for the provision and *upkeep* of all ship navigational aids in Singapore waters, and for the outlying stations at Pedra Branca (Horsburgh) in the South China Sea and Pulau Pisang in the Malacca Strait.»[87]

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[84] CR 2007/28, p. 49, par. 28 (Pellet) ; les italiques sont de nous.

[85] CR 2007/28, p. 50, par. 28 (Pellet).

[86] MS, par. 6.22-6.23, 6.34 ; RS, par. 4.24 et p. 278, par. 11 *b)* ; CR 2007/23, p. 17 par. 31 et 33 (Bundy) ; CR 2007/22, par. 1 et 4 (Bundy).

[87] *First Pharos of the Eastern Seas: Horsburgh Lighthouse*, A Chronicle Compiled by J. A. L. Pavitt, 1966, p. 51. MM, p. 114, par. 259 ; les italiques sont de nous.

14. Messieurs les juges, vous avez cette importante lettre du gouverneur à l'onglet 173 A). Sa lecture permettra de déterminer quel terme fait plus de sens, ainsi que la portée exacte de la lettre et ses implications pour ce qui est de l'applicabilité de l'autorisation de Johore au site finalement retenu : PBP. Tout comme la pratique subséquente que nous avons citée et que Singapour n'a pas contestée, et qui démontre l'application de l'ensemble des «détails» relatifs au phare — et pas seulement «le soin» à lui donner — prévus en 1844 à l'emplacement finalement retenu : Pulau Batu Puteh[88].

15. Lors du second tour, Singapour est également restée silencieuse sur la dépêche du gouvernement de l'Inde à la Cour des directeurs de la Compagnie des Indes orientales du 3 octobre 1846 se référant à l'approbation de PBP comme emplacement du phare Horsburgh et contenant la lettre du gouverneur Butterworth du 28 novembre 1844 ainsi que les lettres de permission du sultan et du temenggong.

16. Quant au «Rapport complet» du même gouverneur au gouvernement de Bengale du 12 juin 1848, Singapour a décidé de jeter l'éponge du point de vue de ses argumentations juridiques. Son explication se borne finalement au soin «presque maniaque» de tout garder des fonctionnaires britanniques, «d'y inclure tous les documents y relatifs». Voilà tout ce que nos adversaires ont trouvé pour expliquer que Butterworth lui-même, pas l'imagination des conseils de la Malaisie, Monsieur le président, Butterworth lui-même, a qualifié sa lettre du 28 novembre 1844 — dans laquelle, comme on le sait, il parle de l'autorisation de Johore et qui contient en annexe les lettres de permission du sultan et du temenggong —, comme «regarding the construction of a Light House on Pedra Branco»[89]. Messieurs de la Cour, que reste-t-il du «Pedra Branca centrisme» ? Car ce sont des références concrètes et explicites à «Pedra Branca» dont il est question.

17. Fini donc «*un* phare et *non* du phare»[90]. Non, maintenant il s'agit «d'y inclure tous les documents y relatifs». D'accord. Je constate que «les documents y relatifs» ne commencent pas à l'époque où l'on envisageait Tree Island (c'est-à-dire une île se trouvant dans la zone d'influence néerlandaise) ou Barn Island (se trouvant en territoire cédé par Johore à la Grande-Bretagne

[88] CR 2007/25, p. 57, par. 69 et p. 58, par. 72 (Kohen).

[89] MS, vol. 2, annexe 27.

[90] CR 2007/21, p. 28, par. 53 (Pellet).

en 1824). Non, Monsieur le président. Ils ne commencent, ni plus ni moins, qu'avec la lettre de Butterworth du 28 novembre 1844. Monsieur le président, difficile de voir ici que «tout s'enchaîne» dans la logique singapourienne[91]. Encore moins que «toutes les pièces du puzzle» de Singapour s'intègrent harmonieusement[92]. Non. On nous disait que le phare à Peak Rock n'avait rien à voir avec le phare à PBP et on finit par nous dire que, au fond, il s'agit d'un seul et même dossier. On a vanté «le soin, presque maniaque» des fonctionnaires britanniques lorsqu'il était question de la documentation. Je veux bien le croire. Butterworth savait mieux que quiconque ce qu'il devait inclure ou pas dans ce dossier. Eh bien, Monsieur le président, s'il en est ainsi, la question est vraiment close : Johore a donné son consentement pour la construction du phare Horsburgh et la Compagnie des Indes orientales l'a construit. Oui, «near Point Romania or any spot deemed eligible», à Pulau Batu Puteh.

E. La déformation par Singapour de la lettre de Thomas Church du 7 novembre 1850

18. Monsieur le président, pour conclure sa plaidoirie de mardi dernier sous une note prétendument percutante, le conseil de Singapour a procédé à une dénaturation de la lettre que Thomas Church a écrite au gouverneur Butterworth le 7 novembre 1850. Il a affirmé que Church «a, très clairement, expliqué que l'une des raisons militant en faveur du choix de Pedra Branca sur «a Station near Point Romania» was that Romania «belongs to the Sovereign of Johore, where the British possess no legal authority». II s'en déduit bien sûr, *a contrario,* que la situation était différente à Pedra Branca, sur laquelle les Britanniques pouvaient se réclamer d'une autorité pleine et entière — et cela s'appelle la souveraineté»[93].

19. Messieurs de la Cour, vous avez le texte de cette lettre dans vos dossiers, à l'onglet 175. De quoi s'agit-il ? Nous sommes fin 1850. Il n'est plus question du choix de l'emplacement du phare. Du tout. Thomson informa de l'avancement des travaux et proposa l'établissement d'une *station* avec une présence armée britannique pour protéger le phare. Où, Monsieur le président ? On le sait déjà. A «Point Romania the nearest land to Pedra Branca»[94]. C'est l'architecte du phare

[91] CR 2007/22, p. 51, par. 3 (Pellet) et 2007/29, p. 47, par. 39 (Malintoppi).

[92] CR 2007/29, p. 39, par. 47 et p. 40, par. 48 (Malintoppi) et p. 59, par. 13 (Koh).

[93] CR 2007/28, p. 50, par. 29 (Pellet).

[94] Letter from Thomson to Church, 2 November 1850 (MM, vol. 3, annexe 58 ; SM, vol 3, annexe 47).

Horsburgh qui le dit dans sa lettre. Et quelle est l'analyse de Church ? Il affirme qu'une telle station serait bien sûr d'utilité, mais doute qu'il soit absolument nécessaire ou proportionné à la dépense qu'un tel établissement occasionnerait. Et il ajoute ceci :

> «Romania moreover belongs to the Sovereign of Johore, where the British possess no legal jurisdiction, it will, of course be necessary for the Steamer or Gun boats to visit Pedro Branca weekly, some benefit would also accrue by requesting His Highness the Tamoongong to form a village at Romania under the control of a respectable Panghooloo to render assistance to the inmates of the Light House in case of emergency.»[95]

20. A aucun moment Church ne compare le statut de PBP à celui de la Pointe Romanie. Il n'est nullement question de décider de l'emplacement d'une *station armée* à PBP. L'alternative était soit d'établir une station armée britannique à la Pointe Romanie, auquel cas il aurait fallu une autorisation de Johore, soit de demander au temenggong d'y créer un village sous l'autorité d'un pangaloo — un chef local — pour prêter assistance aux gardiens du phare en cas de besoin[96].

21. Messieurs les juges, cette lettre non seulement ne conforte pas la lecture *a contrario* singapourienne selon laquelle Church considérait PBP comme relevant de la souveraineté britannique (1850), mais encore fournit-elle un exemple formidable qui suggère plutôt le contraire. Church envisage, ni plus ni moins, de demander à Johore de s'occuper de la sécurité du phare. Où, Monsieur le président ? A Pulau Batu Puteh.

Conclusion

22. Monsieur le président, Messieurs les juges, la question est finalement simple, malgré tous les efforts de Singapour pour la rendre compliquée : on voulait construire un phare sur la Pierre Blanche pour rendre hommage à James Horsburgh, les autorités de Johore ont donné l'autorisation pour construire ce phare et la Compagnie des Indes orientales a construit le phare. La preuve ne fait pas défaut. Elle est plutôt surabondante : les lettres de Butterworth juste avant et juste après les autorisations des autorités de Johore, le contenu de ces dernières, les lettres ultérieures y compris le rapport complet de Butterworth, la pratique subséquente confirmant que ce qui était prévu pour l'emplacement du phare au moment où le site envisagé était Peak Rock fut également appliquée à

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[95] Letter from T. Church, Resident Councillor, to W.J. Butterworth, Governor of Prince of Wales Island, Singapore and Malacca, 7 November 1850 : MM annexe 59 ; MS annexe 48, dossier de plaidoiries 2 de la Malaisie, onglet 74).

[96] RM, par. 239-246.

PBP — et que Singapour n'a pas contestée. Et en plus, l'on trouve des références explicites à «Pedra Branca», l'idée fixe de nos contradicteurs.

23. L'essentiel de l'histoire se résume à cela. Les conséquences qui en découlent aussi. La permission de Johore de construire le phare fait s'effondrer irrémédiablement le fragile et alambiqué cas singapourien, aussi bien en amont de la prétendue «prise de possession licite» d'une *terra nullius*, qu'en aval de celle-ci, car rendant toutes les prétendues «effectivités» singapouriennes dépourvues de valeur aux fins de l'établissement de la souveraineté territoriale.

24. Je vous remercie, Monsieur le président et vous prie de donner la parole à mon distingué collègue et ami sir Elihu.

The VICE-PRESIDENT, Acting President: Thank you, Professor Kohen, for your speech. I now give the floor to Sir Elihu Lauterpacht. You have the floor, Sir.

Sir Elihu LAUTERPACHT:

"SINGAPORE'S 'LAWFUL OCCUPATION' THEORY"

1. Mr. President and Members of the Court, the speech that I will now make covers three matters.

I

2. The first is a response to the question put by Judge Keith on 16 November 2007. Judge Keith asked whether there is anything in the judgments of the Privy Council in the *Pitcairn Island* case that is of significance for the present case. The short answer is "No", as I shall now elaborate.

3. References were made to the history of Pitcairn Island in the Singapore Reply (paras. 3.102-3.104), and in Mr. Brownlie's first speech on 7 November 2007[97]. These references were made in support of the proposition that there is "no evidence that British State practice requires the performance of formalities as a positive rule"[98].

4. An extract from the Pitcairn Island Court of Appeal was cited, and I quote again:

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[97] CR 2007/21, p. 47, para. 60.

[98] *Ibid*., p. 46, para. 58.

> "[A] formal act of acquisition is not required. It is the intention of the Crown, gathered from its own acts and surrounding circumstances, that determines whether a territory has been acquired for English law purposes. The same principle applies in the resolution of international disputes as to sovereignty."[99]

5. This observation of the Court of Appeal was *obiter* and not necessary to its decision. It formed part of a paragraph that began, and I quote again: "It is not necessary to define with accuracy the time at which Pitcairn Island did become a British possession."[100] Nonetheless, in the paragraph following, the Court said, and once more I quote:

> "The available material establishes acquisition as a British possession, probably as far back as 1838. The provision and acceptance then of the Union Jack and the establishment of a Chief Magistrate required to take an oath of loyalty and to be accountable to the Queen, are significant factors. Traditionally, this date has long been regarded as the time when Pitcairn Island had its definite origin as a British possession."[101]

I emphasize the points about the Union Jack and the establishment of the Chief Magistrate.

6. It will thus be observed that the origin of British title to the island is dated back to certain specific acts — the appearance of the Union Jack and the establishment of the Chief Magistrate in 1838.

7. When the case came to the Privy Council, Lord Hoffman did not find it necessary to examine the circumstances in which Pitcairn Island was occupied and settled. He said: "In 1898 the Secretary of State directed that the Order [that is the Pacific Order in Council] should apply to Pitcairn. The direction was therefore a statement by the Crown that Pitcairn was a British settlement."[102] He said later:

> "it appears to them [their Lordships] that the legal status of the island as a British possession is concluded by successive statements of the executive, starting with the directions of the Secretary of State in 1898 and ending with the making of the 1970 Order in Council."[103]

He then referred to a case called *The Fagernes*[104] as authority for the proposition that a statement of the executive as to the extent of the territory of the British Crown would be accepted by the

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[99] *Ibid*., p. 47, para. 60.

[100] 127 *ILR*, p. 294, para. 46.

[101] *Ibid*., p. 295, para. 47.

[102] [2006] UKPC 47, para. 4.

[103] [2006] UKPC, p. 4, para. 9.

[104] [1927] , pp. 311, 324.

Court as conclusive[105]. Lord Hoffman's lead was followed by Lord Woolf[106]. Lord Hope of Craighead stated that "the evidence shows that Pitcairn was established by settlement"[107].

8. There is nothing else in the judgment in the Privy Council that bears upon the present matter. That is why the short answer to Judge Keith's question is "No". It needs only to be noted that the Privy Council declined to consider the method of acquisition and so had nothing to say about the general dictum of the Court of Appeal or upon its application in this case by reference to the specific acts in 1838 of raising of the Union Jack and the appointment of a Chief Magistrate. Now that is the end of our reply to Judge Keith.

II

9. I now go to the second main part of my short contribution. I now turn to an important item in the speech of Professor Pellet. He dismissed rather abruptly in paragraph 15 of his speech on 19 November 2007 my reference[108] to the work of Professor Alexandrowicz. Please recall that this reference was not to Professor Alexandrowicz alone, but also to Grotius, who none of us would deny is an pre-eminent authority. The passages that I cited deserved more in the way of response. The reference was an important one because it so directly contradicts Singapore's contention that Pulau Batu Puteh was *terra nullius* and, more comprehensively, that there were any number of *terrae nullius* scattered through the East Indies. The fact is that both Grotius, and Professor Alexandrowicz following him, clearly did not consider that there were territories in the East Indies that could be treated as *terra nullius* and that could be occupied at will by European States. And their comprehensive assessment of the situation in the East Indies manifestly did not exclude the area of Johor and of Pulau Batu Puteh.

10. Professor Pellet quotes a passage from an opinion by Sir John Harding, who was one of the Law Officers of the Crown, in 1853, as if supportive of Singapore's position. Professor Crawford has already spoken in detail of this item, but I should just add a few supplementary lines. Harding's opinion, when properly read, does not support Singapore's

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[105][2006] UKPC, p. 47 para. 30.

[106]*Ibid*., para. 33.

[107]*Ibid*., para. 47.

[108]CR 2007/24, pp. 34-35, paras. 11-14.

position at all, but entirely supports Malaysia's case[109]. You will now see on the screen an extract from Sir John Harding's opinion. As I say, Harding's opinion when properly read does not support Singapore's position at all, but entirely supports Malaysia's case. So much so that I must ask you to forgive me for taking you through it phrase by phrase. I start:

> "[A]lthough the circumstance of the Island in question being uninhabited is not in my opinion by any means decisive, . . ."

Now, pausing there, evidently Harding is here saying that the fact that the island in question is uninhabited does not mean that it is for that reason alone open to occupation. He then goes on:

> "yet, . . . on the assumption that it does not in fact belong to any nation, and that no acts of ownership have been hitherto exercised over it by any recognized authority . . ."

Now, pausing again, it is once more evident that Harding is making an assumption — that the island does not in fact belong to any nation — that is, that the island is *terra nullius*. So we come to Harding's conclusion which I introduce with the words "in these circumstances", since what he says is qualified by what came before:

> "I conceive [he says] that the British Crown may lawfully take possession of and appropriate to its own use the Island in question."

In other words, it is on the assumption of *terra nullius* that possession can be taken of the island.

11. What could be more supportive of Malaysia's position? On the assumption that the island belongs to no one and that no acts of ownership have hitherto been exercised over it, the Crown may claim it as British territory. How this opinion helps Singapore I cannot understand, but I do thank Professor Pellet for bringing it to the Court's attention.

III

12. The third and more substantial part of this speech is a response to some of the points made by Mr. Brownlie in his speech of 19 November on the acquisition of title to Pulau Batu Puteh in the years 1847-1851. Obviously, I cannot reply to all and I will limit myself to those that are most open to exception. And some points will also, to a degree, be covered by my colleagues.

13. But first I must hope that I will be forgiven for repeating what I know the Court must already well appreciate. Malaysia has shown that Pulau Batu Puteh was not *terra nullius* in 1847

[109]See judges' folder, tab 176.

but belonged to Johor. To the extent that Mr. Brownlie's argument assumes otherwise — and it does so to a great extent — it is fundamentally flawed. There was no basis on which Britain could then, or at any other time, acquire title to an island that could only be obtained with the consent of the local sovereign. And the consent given was restricted to the building and operation of a lighthouse. I repeat my concern that the Court is in a sense being waylaid, or sidetracked, by the introduction into the argument of this mass of evidence and discussion relating to events post-1851. In my humble submission, they distort the case. This case is about title in 1847.

14. Can I come now to my comments on Professor Brownlie's speech. My first comment: Mr. Brownlie asserts that I maintained silence on the sources of applicable inter-temporal law. If by that he means that I did not discuss the many learned nineteenth century publicists whom he cites, it was because there is little scope for disagreement with them. What Mr. Brownlie fails to point out is that their views on the acquisition of territory by occupation all assume that the territory in question is available for acquisition, is in fact *terra nullius*. Disregard of this feature of their writings invalidates Singapore's reliance on them.

15. My second comment: Malaysia was next criticized for its silence on the nature of acts *à titre de souverain.* Now, it is not every act carried out by a sovereign that is an act *à titre de souverain*. An act *à titre de souverain* is an act that can only be carried out by a sovereign in the performance of what is uniquely a sovereign act. During the period 1847-1851, the conduct of Britain could not be classified as *à titre de souverain*. It was conduct, as I have already said to the Court, in every respect related to the construction of a lighthouse and nothing more. It did *not* involve an assertion of *governmental* authority. I devoted much time in my opening speech to analysing in detail the process of the construction of the lighthouse. The placing of experimental bricks, the cutting of rain channels and so on could hardly be described as acts *à titre de souverain* unless one assumes, as Mr. Brownlie does, that somehow there was scope in these acts for the attribution to them of that character, which I respectfully suggest could not be so. But once the basic foundation of his presentation is undermined, that is necessarily an end to the classification of acts *à titre de souverain*. Instead, he calls the works "public works". But this does not advance Singapore's case because, beyond the fact that the works were done in public, which is certainly not what Mr. Brownlie had in mind in using that adjective, there is nothing about them that could

not have been done by a private person. He stated that "there is no evidence that the British interest consisted of an intention to create an asset which only represented private property"[110]. So what? Even if the evidence were that the intention was that the lighthouse should be public property, what difference would that have made to the question of sovereignty? That would not by itself convert the act into an act *à titre de souverain*.

16. I come now to my third comment. Mr. Brownlie said: "the British authorities were very conscious of the significance of the attribution of sovereignty as between the Powers in the region". I can't see what this adds to the argument. If the British authorities were as "conscious", as Mr. Brownlie suggests, of the attribution of sovereignty as between the Powers in the region, is it not strange that they never said so, that they never betrayed any indication of this consciousness, that they never took the several opportunities open to them to declare their title to the island? One cannot overlook the fact that in so many cases of acquisition of title by Britain to islands in the region the intention to acquire was always manifested by some formal act: the arrival of a naval vessel, the formal flying of a flag, the salute of 21 guns, and most important of all, the reading of a declaration in which the claim was asserted. Was there perhaps a deliberate policy of restraint on the part of the British authorities? Having obtained a licence from the Sultan and the Temenggong to build a lighthouse at any point deemed eligible, they took a cautious line. They were anxious not to provoke a confrontation with those rulers over a point that had no significance for Britain to whom at that time it mattered not a scrap whether it was sovereign over Pulau Batu Puteh or not. What mattered was the construction and operation of a lighthouse for the benefit of ships plying their trade between Britain and its far eastern commercial links. From an imperial, military or naval perspective it simply was of no importance, whether the island was British or not. There was after all no room on it anyway for any settlement by Britons unrelated to the operation of the light. The fact that the island was not British was obviously not seen as adversely affecting the efficiency of the operation of the lighthouse.

17. My fourth comment: and what does it mean when Professor Brownlie goes on to declare: "The general context was that of co-existing political entities. There was a natural

[110]CR 2007/ 28, p. 53, para. 12.

relation between the exclusive use of territory and the existence of sovereignty over the territory."[111] Sovereignty does not necessarily follow from exclusive use as is shown by the fact — quite incontrovertible — that so many lighthouses are built by one State upon the territory of another, so many leases are enjoyed by one State in the territory of another, so many servitudes all to the exclusion of the local State. Exclusive use does not by itself give rise to sovereignty.

18. Malaysia is then charged with divorcing the question of intention from the process of taking possession — of doing so without legal justification[112]. Of course the two concepts are dealt with separately — but in response to Singapore's own exposition of the elements of intention.

19. So I pass to the fifth comment. Yet another unsustainable proposition is then advanced as if it followed from what came before: "The construction of the lighthouse involved the implementation of the intention of the British Crown as expressed in numerous official documents."[113] I am sorry, I ought to read that again because it may not have come across clearly: "The construction of the lighthouse involved the implementation of the *intention* of the British Crown as expressed in numerous official documents." How can this statement be made at the beginning of the argument when it is precisely the "intention of the British Crown" that has to be proved. Singapore acknowledges this. The establishment of the Crown's intention should be the *conclusion* of the argument. The existence of the intention cannot be asserted as the starting-point. And what are the unspecified "numerous official documents" in which this alleged intention is said to have been "expressed"? I cannot find them.

20. So I come to the sixth comment. Let us pass now to Mr. Brownlie's heading "The Taking of Lawful Possession". He starts by saying that "the decision is taken to build a lighthouse upon an island which does not form part of Johor". But where in the documentation is there any indication that the decision was taken to build on Pulau Batu Puteh because it was not part of Johor[114]? There is no sign of that.

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[111] *Ibid.*, para. 13.

[112] *Ibid.*, para. 14.

[113] *Ibid.*, para. 14.

[114] *Ibid.*, para. 16.

21. And what about the choice that he introduces between making an arrangement with the relevant territorial sovereign or assuming sovereignty on the basis of a peaceful process of taking possession[115]? Where in the documents is there any indication that this kind of choice was made by the British authorities? Always, always, the assumption is that Pulau Batu Puteh did not belong to the Sultan of Johor because it was not Peak Rock, which did so belong. That's the Singapore position. The Court is specifically referred to Governor Butterworth's letter to Currie of 28 November 1844[116] as if that helped Singapore's case. But I have looked at it again and can find nothing in it which does so.

22. So I come to the seventh comment. Then we are taken on to what are called "the basic elements of causation in this case". And what are they? I quote: "The fact is that without a decision of the British Crown to fund the construction of a lighthouse on Pedra Branca, no lighthouse would have come into existence." But the real fact is that the British Government did *not* fund the construction of the light, or take the initiative. We can see the funding details for example, by looking at the last pages of Thomson's report[117]. The basic money came from private subscription, with the balance being, in effect, borrowed from the Government to be repaid out of light dues. This is made perfectly clear by Britain in the preamble to the 1852 Act, from which I quote now:

> "whereas certain sums of money were subscribed by private individuals for that purpose [the building of the light], but the sums were insufficient . . . and whereas the East India Company agreed to build such a lighthouse and to advance certain sums of money to complete the same, on condition that the said sums of money were repaid to them by the levy of a toll on ships seeking the harbour of Singapore".

And I should take this opportunity of drawing the Court's attention to other provisions in the same 1852 Act which reflect the limited role of the Government in the construction of the light. After vesting the property in the lighthouse in the East India Company and making provision for the collection of a toll on ships entering the port of Singapore, the Act then went on in Section IV to vest the management and control of the lighthouse and of everything related thereto in the Governor of the Straits Settlements. Note, please, that in the view of the legislator there was a

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[115] *Ibid.*, para. 16.

[116] MM, Vol. 3, Ann. 46.

[117] MM, Vol. 3, Ann. 43.

clear distinction between title, ownership, of the light and management and control of it. Furthermore, it was clearly thought that the obligations of management and control had not automatically vested in the Government merely by virtue of its involvement in the construction of the light. So much for the notion of *à titre de souverain.*

23. I come to the eighth comment. And where did the initiative, of which Mr. Brownlie spoke, come from? Let us look, for example, at the *Bombay Times and Journal of Commerce* of 10 January 1846[118]. It published the report of a committee of the Chamber of Commerce. The newspaper said:

> "We are glad to see the Committee take up the matter [that is the matter of the lighthouse] with such earnestness . . . As long as the matter was left in the hands of the Indian Government we confess we saw little chance of it being carried through. It appeared to us that the same indifference actuated their conduct in regard to this as to most other matters relating to the Straits Settlements, which they can never bring themselves to regard in any other light than remote and semi-barbarous Settlements upon which it would be beneath their dignity to bestow the trouble of thought."

24. So really, it was the merchants, the members of the Chamber of Commerce, the bankers, and a few generous individuals, who were responsible for getting the Government to move. And then, so Singapore would have us believe, a moment must have come when the Governor suddenly realized the exciting possibility that lay before him. Hey presto! Here was a great chance to expand the British Empire. Acquire a rock and build a lighthouse on it. Just as Clive had become Clive of India, so perhaps Butterworth could become Butterworth of Pulau Batu Puteh! Surely, this was not the thinking that went on in Government House in Singapore, or in Bengal, or in the East India Company or in the Admiralty in London. What they wanted was a light. The addition of so small an item to the vast British Empire never entered their minds.

25. So we come to my ninth comment. The Singapore position, we are told, is that "the process of decision-making and operations in relation to the construction constitutes incontrovertible evidence of the taking of lawful possession. It is unacceptable to divide this network of evidence of title into artificial fragments."[119] What is "incontrovertible" about the evidence? The answer is nothing. What is "unacceptable" about analysing this evidence? The answer is nothing. What is "artificial" about identifying the fragments? The answer is, once more,

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[118]MM, Vol. 3, Ann. 48.

[119]CR 2007/28, p. 57, para. 29.

nothing. The Court is constantly being asked to accept as proven precisely the point that has to be proved. This, if I may venture the remark, is the single limitation and defect in Professor Brownlie's whole approach. The Court is constantly being asked to accept as proven precisely the point that has to be proved. Was Pulau Batu Puteh *terra nullius* so that "lawful possession" could be taken of it? The answer is certainly "No".

26. So, to my tenth comment. My friends on the opposite side have been happy to have caught me out on my arithmetic — well that was always a weak spot. The lobster pot of multiplication, they say, should be discarded in favour of a process of addition. Zero plus one makes one and so on. So, what are we to add together between 1847 and 1851 to produce a title by 1851? A decision to support the construction of a light, a decision regarding the site, advancing part of the funds on the basis that the excess over the subscriptions will be repaid out of light dues, the provision of an architect, some visits to the island by the governor — but never, never a statement of intention or even a gesture towards the assumption or declaration of title.

27. I come to my eleventh comment. I am chided for my failure to acknowledge the value of the writings of Sir Kenneth Roberts-Wray and Sir Humphrey Waldock. I have the greatest respect for both these authorities, but each of them was writing about occupation in a quite different context and on the basis that the territory being occupied was *terra nullius*. Only if the Court rejects the proof of Johor's title to Pulau Batu Puteh in 1847 can the Singapore case achieve lift-off. And even then, it will have a pretty uncertain ride till it reaches the moon, if it does.

With that said, Mr. President and Members of the Court, I reach the end of this small contribution to the case. It has been a great pleasure to appear before you and to enter into contest with such agreeable colleagues as are appearing on behalf of Singapore. I would like to thank you for your patience, understanding and kindness like that of your predecessors over the years. And, who knows, I may yet be fortunate enough to have another opportunity to appear here.

Mr. President, that brings me to the end of what I have to say and I believe it would be convenient to us if you could defer calling on Mr. Crawford till tomorrow afternoon. Thank you, Mr. President.

The VICE-PRESIDENT, Acting President: Thank you so much, Sir Elihu, for your speech. I am sure we all wish you the best of health, happiness and longevity and look forward to seeing you again in this Court.

This brings this sitting to a close. We will meet tomorrow afternoon at 3 o'clock and will adjourn now. Thank you.

The Court rose at 5.50 p.m.