INTERNATIONAL COURT OF JUSTICE

REQUEST FOR INTERPRETATION OF THE JUDGMENT OF 23 MAY 2008 IN THE CASE CONCERNING *SOVEREIGNTY OVER PEDRA BRANCA/PULAU BATU PUTEH, MIDDLE ROCKS AND SOUTH LEDGE (MALAYSIA/SINGAPORE)*

(MALAYSIA v. SINGAPORE)

WRITTEN OBSERVATIONS BY MALAYSIA IN RESPONSE TO SINGAPORE'S WRITTEN OBSERVATIONS CONTESTING JURISDICTION AND ADMISSIBILITY

15 February 2018

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I. INTRODUCTION[1]

1. On 30 June 2017, the Government of Malaysia ("Malaysia") submitted to the Court an Application for Interpretation of the Judgment of 23 May 2008 in the Case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* ("Interpretation Application" and "2008 Judgment"). In its Written Observations on the Interpretation Application of 30 October 2017, the Republic of Singapore ("Singapore") contested the jurisdiction of the Court in respect of the Interpretation Application and the admissibility of the Application ("Singapore's Written Observations").[2]

2. By letter to the Court dated 15 November 2017, Malaysia, noting Singapore's objections to jurisdiction and admissibility, requested that it be permitted to submit written observations in response to Singapore's objections. Having afforded an opportunity to Singapore to respond to Malaysia's request,[3] the Court, by letter dated 8 December 2017,[4] granted Malaysia's request to submit written observations, setting the date of 8 February 2018 as the date by which such observations were to be submitted. Following an application for an extension of time by Malaysia by letter dated 29 January 2018, the filing date was extended to 15 February 2018.[5]

3. These written observations of Malaysia ("Malaysia's Written Observations") are submitted pursuant to the aforementioned instructions of the Court and in response to Singapore's Written Observations.

[1] All of the documents referred to in these Written Observations have already been provided to the Court as annexes to Malaysia's Interpretation Application and Singapore's Written Observations. References to the existing Annexes are provided throughout.
[2] See, *inter alia*, Singapore's Written Observations, paras 1.13, Summary of Singapore's Reasoning (pp. 63–64; paras 2–5), and Submissions (p. 65).
[3] Singapore supplied its views by letter dated 24 November 2017.
[4] Letter from the Registrar dated 8 December 2017 (149485).
[5] Letter from the Registrar dated 8 December 2017 (149959).

(i) The issues at the heart of these proceedings

4. In its Interpretation Application, under the heading *Interpretation Requested from the Court*, Malaysia asked the Court to adjudge and declare that (a) the waters surrounding Pedra Branca/Pulau Batu Puteh remain within the territorial waters of Malaysia, and (b) South Ledge is located in the territorial waters of Malaysia, and consequently sovereignty over South Ledge belongs to Malaysia.[6]

5. Singapore contests the jurisdiction of the Court and the admissibility of the Interpretation Application. It might not have done so. It might have said that the Judgment of the Court is clear, and that it admits of no reasonable and proper dispute on the points of scope and meaning raised by Malaysia. It did not do so, however, for the inescapable reason that such a contention would be unsustainable by reference to what the Court's 2008 Judgment concluded. That Singapore has contested jurisdiction and admissibility, rather than choosing to stand on the meaning and scope of the 2008 Judgment, is a pointer to the dispute between the Parties, within Article 60 of the Court's Statute and Article 98 of the Rules of Court, concerning the meaning and scope of precise points in the Operative Clause of the 2008 Judgment.

6. Other than addressing the Court's jurisdiction in respect of requests for the interpretation of a judgment and the modalities of commencing such proceedings, the Statute and Rules of Court do not lay down any given procedure applicable to such requests. The sparse jurisprudence of the Court on requests for interpretation, in which only one such request of the five that have been submitted to the present Court was held to come within the jurisdiction of the Court and to be admissible, suggests that the Court, if it affirms jurisdiction and admissibility, will address the interpretation of the judgment in question in the same proceedings. In other words, jurisdiction and admissibility, in interpretation cases, are not preliminary matters. If a request comes within the jurisdiction of the Court, as laid down in Article 60 of the Court's Statute and

[6] Interpretation Application, para. 56.

Article 98(2) of the Rules of Court, and is otherwise admissible, it follows that there is properly a precise point of uncertain construction in the judgment in question and the Court will be moved to clarify the issue.

7. This point is small but not inconsequential in the present case. Singapore, in its Written Observations, all but acknowledges that there is a subsisting and simmering dispute between Malaysia and Singapore around the issues engaged by the Interpretation Application. It describes that dispute, however, as concerning "the extent of the maritime entitlements of each Party, and not the meaning or scope of the Judgment, which dealt only with sovereignty."[7] In a similar vein, elsewhere in its Written Observations, Singapore says as follows:

> Whatever dispute exists, as attested to by the annexes filed with the Request for Interpretation, concerns the extent of each Party's maritime and airspace entitlements, not the finding that sovereignty over [Pedra Branca/Pulau Batu Puteh] belongs to Singapore.[8]

8. Malaysia acknowledges that there is indeed a dispute between Malaysia and Singapore about maritime and airspace entitlements. That dispute, however, arises directly, fundamentally and unavoidably from the uncertain meaning and scope of subparagraphs (1) and (3) of the Operative Clause of the 2008 Judgment, i.e., that (1) sovereignty over Pedra Branca/Pulau Batu Puteh belongs to the Republic of Singapore, and (3) sovereignty over South Ledge belongs to the State in the territorial waters of which it is located.[9]

9. Sovereignty over maritime and air spaces arises from sovereignty over land. But, maritime and airspace sovereignty do not follow as a matter of course from sovereignty over land. It does not follow inexorably as a matter of law that an island which lies wholly and uncontroversially within the historic waters and subsequently territorial sea of one State, the sovereignty of which is later contested, and is ultimately held by the Court to have passed from one State to

[7] Singapore's Written Observations, para. 1.10.
[8] Singapore's Written Observations, para. 3.2.
[9] 2008 Judgment, p. 101, para. 300.

another by a "convergent evolution" of practice in respect of the island alone, will generate its own maritime zones. It is both tenable and reasonable that the only space addressed by the Court's judgment on sovereignty is that of the island itself, given the unusual circumstances of the contestation over territorial sovereignty.

10. This is Malaysia's position as regards Pedra Branca/Pulau Batu Puteh. Malaysia understands that Singapore takes a different position, although, for tactical reasons in these proceedings, it has hesitated to crystallise its position as regards maritime and airspace sovereignty around Pedra Branca/Pulau Batu Puteh for the very precise and unavoidable reason that, were it to do so, the legal predicate of its case would have to be that Pedra Branca/Pulau Batu Puteh generates its own maritime zones and airspace, notwithstanding that this does not follow necessarily from the Court's 2008 Judgment.

11. As regards South Ledge, the operative part of the Court's 2008 Judgment is incomplete, and thus uncertain in its meaning and scope, in the face of the Parties' Special Agreement which requested the Court "to determine whether sovereignty over … South Ledge belongs to Malaysia or the Republic of Singapore."[10] The expectation of the Parties in concluding the Special Agreement and affording jurisdiction to the Court was that sovereignty over South Ledge would be determined.

12. Sovereignty over South Ledge may have been determined, by implication, by the Court's 2008 Judgment. Indeed, this is Malaysia's position, given that South Ledge was found to be a low-tide elevation and is appurtenant, in geographic terms, to Middle Rocks (over which Malaysia has sovereignty), lying in waters that were historically and remain today uncontroversially Malaysian waters, but for, only, any contested claim that Singapore may assert on the basis of its uncrystallised claim to maritime zones generated by Pedra Branca/Pulau Batu Puteh. Malaysia understands that this is in fact Singapore's position. Once

[10] 2008 Judgment, pp. 17–19, para. 2.

again, however, Singapore, for necessary tactical reasons in these proceedings, has held back from crystallising its position in respect of South Ledge for the very precise and unavoidable reason that, were it to do so, the legal predicate of its case would have to be that Pedra Branca/Pulau Batu Puteh generated its own maritime zones and airspace, notwithstanding that this does not follow necessarily from the Court's 2008 Judgment, and that the maritime zones thus generated encompassed South Ledge, notwithstanding that South Ledge, in geographic terms, is appurtenant to Middle Rocks, not Pedra Branca/Pulau Batu Puteh.

13. When cast in this light, the dispute between Malaysia and Singapore that Malaysia requests the Court to address by way of an interpretation of its 2008 Judgment is quite clearly a dispute about the meaning and scope of precise points in the Operative Clause of the 2008 Judgment. There is no escaping the reality of this appreciation. Singapore's objections to jurisdiction and admissibility are a smoke screen to mask the dispute between the Parties as to the meaning and scope of the 2008 Judgment as regards the status of the waters surrounding Pedra Branca/Pulau Batu Puteh and sovereignty over South Ledge.

14. Singapore is similarly engaged in distraction when it contends that Malaysia's Interpretation Application is an "attempt to appeal the [2008] Judgment."[11] It is not, and cannot be such, as, in the face of the dispute between Malaysia and Singapore over the meaning and scope of the 2008 Judgment, there is no point to appeal. Malaysia takes the view that the waters around Pedra Branca/Pulau Batu Puteh are Malaysian territorial waters, unaffected by the Court's determination that sovereignty over Pedra Branca/Pulau Batu Puteh belongs to Singapore. Similarly, Malaysia takes the view that sovereignty over South Ledge belongs to Malaysia given, *inter alia*, the finding of the Court that sovereignty over Middle Rocks belongs to Malaysia, and the fact that South Ledge is appurtenant to Middle Rocks, rather than Pedra Branca/Pulau Batu Puteh, in geographic terms. Singapore evidently takes a different view, as it acknowledges

[11] Singapore's Written Observations, *inter alia*, para. 1.31.

that there is a dispute between Malaysia and Singapore over maritime and airspace entitlements around Pedra Branca/Pulau Batu Puteh and South Ledge.

15. The dispute that Malaysia has brought to the Court with its Interpretation Application is in every respect properly a dispute about the meaning and scope of precise points in the operative part of the Court's 2008 Judgment.

(ii) The scheme of these Written Observations

16. Against the preceding background, Malaysia turns to address Singapore's objections to the jurisdiction of the Court and the admissibility of the Interpretation Application under the following headings. First, in **Section II**, Malaysia will address the Court's 2008 Judgment insofar as is relevant to the question of the status of the waters around Pedra Branca/Pulau Batu Puteh and sovereignty over South Ledge. Second, in **Section III**, Malaysia will address directly Singapore's objections to jurisdiction and admissibility, elaborating on what has been said above by way of strategic overview that there is a dispute between Malaysia and Singapore about the meaning and scope of the Court's 2008 Judgment on the issue of the status of the waters around Pedra Branca/Pulau Batu Puteh and sovereignty over South Ledge.

II. THE JUDGMENT OF THE COURT OF 23 MAY 2008

A. Preliminary Observations

17. Singapore has thoroughly mischaracterised the Interpretation Application made under Article 60 of the Statute and Article 98 of the Rules of Court. First, it has claimed that the request for interpretation was "a second attempt by Malaysia to appeal the Judgment"[12] and, second, that "Malaysia seeks a decision of the Court on issues that were not the subject of the proceedings in the original case".[13] As Singapore well knows, there is no appeal mechanism from decisions of the Court. The Interpretation Application is a request to the Court to construe its Judgment in the light of the "dispute as to the meaning or scope of the judgment" as per Article 60, and it falls wholly within the terms of that provision. The Interpretation Application is not an attempt to re-open the case but rather simply to seek clarification from the Court upon two points that Malaysia considers are unclear, are fundamental, and are the subject of dispute between the Parties.

18. Malaysia and Singapore signed a Special Agreement at Putrajaya on 6 February 2003 which entered into force on 9 May 2003. Under the Special Agreement, the Parties agreed to submit to the Court under the terms of Article 36(1) the following request:

> *Article 2 The Subject of the Litigation*
> The Court is requested to determine whether sovereignty over:
> a) Pedra Branca/Pulau Batu Puteh;
> b) Middle Rocks;
> c) South Ledge,
> belongs to Malaysia or the Republic of Singapore.[14]

19. The Special Agreement was very clear. The Court is asked to decide as between Malaysia and Singapore where sovereignty lies with regard to Pedra

[12] Singapore's Written Observations, para. 1.5.
[13] Ibid.
[14] 2008 Judgment, pp. 17–19, para. 2.

Branca/Pulau Batu Puteh, Middle Rocks and South Ledge. No more and no less. The Court was not asked to engage in a maritime delimitation dispute nor tackle questions as to the exclusive economic zone or navigational rights or fisheries issues. However, and it is an important "however", the Court was asked to come to a decision on sovereignty and accepted that the "dispute related to sovereignty over land".[15]

20. Judge Huber famously observed that "sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State".[16] Sovereignty thus endows a geographical space with the jurisdiction of a State to the exclusion of the competence of another State. It is a core doctrine of international law. From it flows a range of consequential norms and principles. Territorial sovereignty is at the heart of international law, both classical and modern. Despite the rise of globalisation and extraterritorial claims to jurisdiction, sovereignty is the starting point of any discussion as to title.

21. The Court in its Operative Clause in the 2008 Judgment:

> (1) By twelve votes to four,
> *Finds* that sovereignty over Pedra Branca/Pulau Batu Puteh belongs to the Republic of Singapore [...]
>
> (2) By fifteen votes to one,
> *Finds* that sovereignty over Middle Rocks belongs to Malaysia [...]
>
> (3) By fifteen votes to one,
> *Finds* that sovereignty over South Ledge belongs to the State in the territorial waters of which it is located.[17]

22. The following sub-sections will deal with the two specific matters brought to the attention of the Court in this Application for Interpretation; first, the issue of the

[15] Ibid., pp. 27–8, para. 32.
[16] *Island of Palmas,* 2 RIAA, pp. 829, 838 (1928).
[17] 2008 Judgment, pp. 101–2, para. 300.

status of the waters around Pedra Branca/Pulau Batu Puteh; second, the issue of sovereignty over South Ledge.

B. The Status of the Waters Around Pedra Branca/Pulau Batu Puteh

23. The finding of sovereignty over the territory of Pedra Branca/Pulau Batu Puteh is unambiguous as such, but it is not clear how far this extends or what exactly it means. There is a clear dispute between the Parties as to the "meaning or the scope" of the Judgment in this respect. It is to be underlined that the phrase is disjunctive and not cumulative. The dispute may be one concerning the meaning of part of the judgment or one concerning the scope or extent of the judgment.

24. As in the case of coastal States, territorial sovereignty over islands as a general rule necessarily imports sovereignty over the adjacent waters. While in the case of the contiguous zone and the exclusive economic zone, a formal declaration is required so that sovereignty over the land does not inescapably extend into those areas, as far as the territorial sea is concerned, this is an automatic appurtenance of jurisdiction over the adjoining land in normal cases.[18] However, the norm of sovereignty over the territorial sea is not absolute but subject to, for example, the principle of innocent passage.[19] Further, as Article 2(3) of the UN Convention on the Law of the Sea provides, the principle is subject to the Convention and the rules of international law. Accordingly, it is possible for the relevant parties and international law to accept and adopt a different principle with regard to coastal or island States and the territorial sea.

25. The norm that the land dominates the sea is the usual starting point.[20] The Court has underlined this in noting that:

> [T]he Court has made clear that maritime rights derive from the coastal State's sovereignty over the land, a principle which can be summarized as "the land

[18] See Articles 2 and 121 of the UN Convention on the Law of the Sea, 1982.
[19] Ibid., Article 17.
[20] *North Sea Continental Shelf* cases, ICJ Reports, 1969, pp. 3, 51, para. 96.

> dominates the sea" […]. It is thus the terrestrial territorial situation that must be taken as starting point for the determination of the maritime rights of a coastal State. In accordance with Article 121, paragraph 2, of the 1982 Convention on the Law of the Sea, which reflects customary international law, islands, regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory.[21]

26. However, while this is a general rule, it is neither inevitable nor absolute. Much depends upon the particular complex of facts in any given situation. The comments made below apply equally to airspace rights. However, at this point, it can be underscored that from at least as early as 6 February 2009, Malaysia has emphasised to Singapore that the airspace over the waters around Pedra Branca/Pulau Batu Puteh is part of Malaysia's airspace in accordance with the principles of international law as well as the 2008 Judgment. Malaysia has also consistently underlined that all activities undertaken by Malaysia in its territory, including activities pertaining to and surrounding Pedra Branca/Pulau Batu Puteh's airspace and its maritime areas are legitimate exercise of its sovereignty and jurisdiction.[22] This is controverted by Singapore.

27. It is apparent that there are two possibilities that require exploration or clarification. The first argument is that, as an exception to the general rule that islands have a territorial sea, Pedra Branca/Pulau Batu Puteh in the particular circumstances does not. The reason in brief is the following. Until sometime in the period 1953–80, it has been accepted by both Parties and by the Court that all of the relevant area[23] was subject to Malaysian sovereignty and this included Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge. Accordingly, all of the relevant waters were Malaysian. This is indisputable. In effect, what the Court did in its 2008 Judgment was to excise the land territory of Pedra Branca/Pulau Batu Puteh from Malaysian sovereignty, leaving by necessary

[21] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),* ICJ Reports, 2001, p. 97, para. 185.
[22] Diplomatic Notes from Malaysia to Singapore, EC 07/2009, dated 6 February 2009. Annex 29 to Singapore's Written Observations.
[23] What is meant, for these purposes, by the *relevant area*, is addressed as an Appendix to this Section, at paragraphs 61 to 70 below.

implication all of the remainder within Malaysian sovereignty. It is thus both tenable and reasonable to conclude that the Court's determination of sovereignty over Pedra Branca/Pulau Batu Puteh had no implications for the otherwise clear status of the waters around the island. The Court, in its Judgment, made no determination of pertinence. Support for this may be found additionally in the Court's comment that "South Ledge falls within the *apparently* overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca/Pulau Batu Puteh and Middle Rocks".[24] At the very least, the Court was leaving open the possibility of an absence of territorial waters pertaining to Pedra Branca/Pulau Batu Puteh in the circumstances in question by the use of the significant term "apparently". This at the least requires clarification under the provisions of Article 60.

28. That an island may in particular circumstances not have a territorial sea is apparent from an analogy with coastal areas. For example, the boundary of Quebec in Hudson's Bay and Hudson Strait is described as being along the shore line and no waters are included in that definition.[25] A further example would be the Tanzania–Malawi boundary in Lake Nyasa/Malawi, where the key document and the legal basis of the boundary is the Anglo–German Treaty of 1 July 1890, which provided that the boundary of the German sphere of influence followed the eastern, northern and western shores of the lake to the northern bank of the mouth of the River Songwe.[26] Recently, the International Court has affirmed that the boundary between Costa Rica and Nicaragua runs along the right bank of the Lower San Juan River.[27] In other words, what counts is the particular situation pertaining to the matter at hand. There is no absolute rule. Thus, a coast,

[24] 2008 Judgment, p. 101, para. 297 (emphasis added).
[25] See J.I. Charney, 'Maritime Jurisdiction and the Secession of States: The Case of Quebec', 25 *Vanderbilt Journal of Transnational Law*, 1992, pp. 343, 350–2 and footnote 22.
[26] See E. Hertslet, *The Map of Africa by Treaty,* reprint of the third edition, 1967, vol. III, p. 899. See e.g. C. Mahoney et al, 'Where Politics Borders Law: The Malawi–Tanzania Boundary Dispute', New Zealand Human Rights Law, Policy and Practice, Working Paper 21, February 2014: https://cdn.auckland.ac.nz/assets/humanrights/Research/MalawiTanzania-NZCHRLPP-final.pdf
[27] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 703, para. 92.

whether of an island or not, may not have a territorial sea where the particular factual and legal circumstances so warrant. It depends upon any relevant treaty, practice or other binding determination. Furthermore, many have observed that under customary international law small islands, rocks and islets were not generally accorded territorial seas of their own.[28]

29. It is therefore entirely tenable, as is Malaysia's position, given the special circumstances at the heart of the 2008 Judgment, that a similar situation pertains to Pedra Branca/Pulau Batu Puteh. It is, of course, an issue disputed between the Parties, as Singapore appears to have claimed an extensive territorial sea around the island.[29]

30. For example, in a diplomatic note dated 29 October 2008, Malaysia rejected Singapore's claim that the waters surrounding Pedra Branca/Pulau Batu Puteh were part of Singapore's territorial waters:

> The Government of Malaysia also strongly rejects the assertions by the Republic of Singapore that Malaysia's alleged activities infringed upon Singapore's rights over the waters of Batu Puteh. The waters around Batu Puteh are part of the territorial waters and maritime areas of Malaysia as depicted in the Map Defining the Boundaries of the Continental Shelf of Malaysia of 1979. In light of the above, the Government of Malaysia strongly affirms that the maritime areas surrounding Batu Puteh is located within the territorial waters of Malaysia in accordance with the principles of international law as well as the Judgment of the ICJ.

31. Malaysia has consistently restated its rejection of Singapore's contention that the waters surrounding Pedra Branca/Pulau Batu Puteh are part of Singapore's territorial waters.[30]

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[28] See, e.g., L.F.E. Goldie, 'The International Court of Justice's "Natural Prolongation" and the Continental Shelf Problem of Islands' (1973) 4 *Netherlands Yearbook of International Law* 237, pp. 238–50.

[29] See Interpretation Application, para. 30 and following.

[30] Notes Verbales from the Ministry of Foreign Affairs, Malaysia to the High Commission of the Republic of Singapore in Kuala Lumpur (all references are to Annexes to the Interpretation Application): EC72/2009, dated 3 July 2009 (Annex 71); EC161/2010, dated 1 November 2010 (Annex 72); EC164/2010,

32. In this scenario, the issue in dispute is clearly not that of maritime delimitation at all, but rather whether the attribution of sovereignty to Singapore over Pedra Branca/Pulau Batu Puteh imports as a consequence in the particular circumstances sovereignty over territorial waters or not. The Court took no view on whether the sovereignty over the waters surrounding Pedra Branca/Pulau Batu Puteh which had belonged to Johor also passed to Singapore. This requires clarification.

33. The second possibility (which is an alternate to the first) requiring consideration under the framework of Article 60 is that the Court accepted that Singapore's territorial sovereignty over Pedra Branca/Pulau Batu Puteh did indeed extend into the sea but to an uncertain breadth. Singapore regards this as a simple matter of maritime delimitation.[31] This is an over-simplification, however, since Singapore's extensive claims to a territorial sea jut deeply into the Malaysian territorial sea and an ascription of sovereignty cannot be indeterminate. This would certainly fall within either the "meaning" or the "scope" of the Judgment. It is also integral to the concept of sovereignty.

34. Malaysia clarifies its position as follows. In the 2008 Judgment, the Court accepted that Pedra Branca/Pulau Batu Puteh fell historically within Johor's waters. In 1969, before any dispute over sovereignty was manifest, Malaysia extended the breadth of its territorial waters from three nautical miles to 12

dated 1 November 2010 (Annex 73); EC167/2010, dated 1 November 2010 (Annex 74); EC168/2010, dated 1 November 2010 (Annex 75); EC60/2011, dated 19 April 2011 (Annex 76); EC61/2011, dated 19 April 2011 (Annex 77); EC107/2011, dated 8 July 2011 (Annex 78); EC122/2011, dated 22 August 2011 (Annex 79); EC124/2011, dated 22 August 2011 (Annex 80); EC145/2011, dated 30 September 2011 (Annex 81); EC146/2011, dated 30 September 2011 (Annex 82); EC18/2012, dated 14 February 2012 (Annex 83); EC30/2012, dated 17 February 2012 (Annex 84); EC31/2012, dated 17 February 2012 (Annex 85); EC69/2012, dated 24 April 2012 (Annex 86); EC70/2012, dated 9 May 2012 (Annex 87); EC81/2012, dated 9 May 2012 (Annex 88); EC88/2012, dated 1 June 2012 (Annex 89); EC90/2012, dated 6 June 2012 (Annex 90); EC7/2014, dated 27 January 2014 (Annex 91); EC9/2014, dated 28 January 2014 (Annex 92); EC11/2014, dated 29 January 2014 (Annex 93); EC14/2014, dated 30 January 2014 (Annex 94); EC17/2014, dated 4 February 2014 (Annex 95); EC18/2014, dated 5 February 2014 (Annex 96); EC22/2014, dated 7 February 2014 (Annex 97); EC144/16, dated 24 November 2016 (Annex 98).

[31] See e.g. Singapore's Written Observations Chapter III, p. 25.

nautical miles following the enactment of the Emergency (Essential Powers) Ordinance No. 7 1969.[32] This Ordinance came into force on 10 August 1969.

35. Pedra Branca/Pulau Batu Puteh is situated 7.7 nautical miles from the coast of Johor. The territorial waters surrounding the island are Malaysian territorial waters from 1969, if not earlier. On this point, it is important to note that it was not until after the 2008 Judgment that Singapore only officially notified that it was exercising its rights to extend its territorial sea limit up to a maximum of 12 nautical miles via Government Gazette No. 1485–Singapore Maritime Zones dated 30 May 2008.[33] However, it is observed that Singapore had indicated its 12-mile claim as early as 1980, as noted in a Singapore Government Press Release that was issued soon after the sovereignty dispute with Malaysia crystallised.[34] This position was repeated in another press statement following the 2008 Judgment of the ICJ which reads as follows:

> As indicated in the Ministry of Foreign Affairs Press Statement dated 15 September 1980, Singapore has a territorial sea limit that extends up to a maximum of 12 nautical miles and an Exclusive Economic Zone. This is consistent with the United Nations Convention on the Law of the Sea of 10 December 1982; which Singapore is a State Party to.
>
> The precise coordinates of Singapore's territorial sea and Exclusive Economic Zone will be announced at an appropriate time. Should the limits of its territorial sea or Exclusive Economic Zone overlap with claims of neighbouring countries, Singapore will negotiate with those countries with a view to arriving at agreed delimitations in accordance with international law. Singapore reserves its position on international agreements it is not a party to.[35]

36. Accordingly, the question of sovereignty over Pedra Branca/Pulau Batu Puteh has to include issues as to the existence of a territorial sea and/or the breadth of any such sea should it be shown to exist. Clarification is thus required of the

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[32] P.U.(A) 307A/1969 (Annex A).
[33] http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/SGP.htm
[34] Singapore Government Press Release 09-0/80/09/15, 15 September 1980 (Annex B).
[35] Ministry of Foreign Affairs Press Statement, 'International Court of Justice Awards Sovereignty of [*sic*] Pedra Branca to Singapore', 23 May 2008, Annex 2 to Singapore's Written Observations, p. A14.

Court as to what it had intended in order that the Parties may proceed successfully to resolve the dispute.

C. Sovereignty Over South Ledge

37. The second issue placed before the Court in this Application relates to the answer given by the Court in its 2008 Judgment to the explicit question as to whether sovereignty over South Ledge belongs to Malaysia or Singapore. The Court did not address this issue in a manner that resolved the dispute between the Parties of which it was seised. It stated that "sovereignty over South Ledge belongs to the State in the territorial waters of which it is located".[36]

38. Thus, the Court simply provided guidance by which sovereignty could be ascertained by the Parties subsequently. It did not otherwise address the issue of sovereign entitlement over the feature. Malaysia took from the Judgment, and has always taken the view, that the Court's *dispositif* on this aspect was an implicit recognition of Malaysia's sovereignty over South Ledge.

39. Malaysia takes the view that South Ledge, a low-tide elevation, falls within its territorial sea for two alternate reasons. First, it is Malaysia's position that South Ledge falls within Malaysian territorial waters since Middle Rocks, the nearest land mass, is Malaysian. The Court itself noted that South Ledge was 1.7 nautical miles from Middle Rocks and 2.2 miles from Pedra Branca/Pulau Batu Puteh and is thus indisputably closer to Malaysian territory.[37] It will also be noted from the map of the area (for example the sketch map reproduced on p. 24 of the 2008 Judgment) that Middle Rocks is directly south of Pedra Branca/Pulau Batu Puteh, while South Ledge is south-west of Middle Rocks. Accordingly, it is difficult to see how South Ledge could fall within the territorial sea of Pedra Branca/Pulau Batu Puteh (assuming it has one) without a rather strange diversion and digression away from Middle Rocks. Second, as already noted, it is Malaysia's position that Pedra Branca/Pulau Batu Puteh has no territorial sea. If this is

[36] 2008 Judgment, p. 102, para. 300(3).
[37] Ibid., pp. 99–100, para. 293.

correct, there can be no question of South Ledge falling within a claimed territorial sea pertaining to Pedra Branca/Pulau Batu Puteh.

40. The reasoning of the Court on the question of sovereignty over South Ledge is far from unambiguous. The 2008 Judgment referred to Article 13 of the UN Convention on the Law of the Sea, which defines low-tide elevations and provides that where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as a baseline for measuring the breadth of the territorial sea. Conversely, where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island it has no territorial sea of its own.

41. The Court emphasised the difference in international law between islands and low-tide elevations, quoting from its judgment in the *Qatar v. Bahrain* case to the effect that a coastal State has sovereignty over low-tide elevations situated within its territorial sea, since it has sovereignty over the territorial sea itself. [38] The Court further underlined that the few existing rules did not justify an assumption that low-tide elevations constituted territory in the same sense as islands.[39] This position was underlined essentially in the South China Sea arbitration award between the Philippines and China. The UNCLOS Annex VII Tribunal stated that:

> With respect to the status of low-tide elevations, the Tribunal considers that notwithstanding the use of the term "land" in the physical description of a low-tide elevation, such low-tide elevations do not form part of the land territory of a State in the legal sense. Rather they form part of the submerged landmass of the State and fall within the legal regimes for the territorial sea or continental shelf, as the case may be.[40]

[38] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),* Judgment, ICJ Reports, 2001, pp. 40, 101–2, paras 204–6.
[39] 2008 Judgment, p. 100, paras 293–6.
[40] *South China Sea Arbitration*, Award, 12 July 2016, p. 132, para. 309.

42. The Tribunal quoted the International Court's judgment in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*,[41] noting that as distinct from land territory low-tide elevations cannot be appropriated, although "a coastal State has sovereignty over low-tide elevations which are situated within its territorial sea, since it has sovereignty over the territorial sea itself".[42]

43. It is thus clear that low-tide elevations are not as such part of the territory of the coastal State. Nevertheless, they have a role in the attribution of sovereignty, not least in that, as Article 13 (1) of the UN Convention on the Law of Sea declares:

> Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on the elevation may be used as the baseline for measuring the breadth of the territorial sea.

44. The Court concluded that "South Ledge falls within the apparently overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca/Pulau Batu Puteh and Middle Rocks".[43] However, the formulation is not clear in two respects. First, by referring specifically and explicitly to "apparently" overlapping territorial waters, the Court introduced a strong element of uncertainty into the question of whether in fact the said territorial waters do overlap and the only reason why they may not would be because Pedra Branca/Pulau Batu Puteh does not generate a territorial sea. If this is indeed the case, then South Ledge must necessarily fall within Malaysia's waters. Second, if the territorial seas actually do overlap, then it is unclear which factors may apply to determine sovereignty, which was indeed the very question put to the Court. Accordingly, the Court's decision here clearly requires clarification.

45. It is Malaysia's position that the terms of the Special Agreement required the Court to determine the question of sovereignty as to, *inter alia,* South Ledge. To

[41] ICJ Reports, 2012, p. 641, para. 26.
[42] *South China Sea Arbitration,* Award, 12 July 2016, p. 132, para. 309.
[43] Ibid., p. 101, para. 297.

this extent, clarification of the meaning and scope of the 2008 Judgment is necessary.

46. Leaving aside the argument that Pedra Branca/Pulau Batu Puteh does not generate a territorial sea of its own, Malaysia, as noted above, takes the view that South Ledge falls under its sovereignty since South Ledge is clearly closer geographically to Malaysian territory (i.e., Middle Rocks) than it is to Pedra Branca/Pulau Batu Puteh. This is an important consideration, which in the circumstances constitutes the primary factor as to attribution, particularly when combined with considerations of geographical configuration with Pedra Branca/Pulau Batu Puteh being essentially "blocked" from a direct line to South Ledge by the interposition of Middle Rocks.

47. This geographical element was commented upon by several judges in the case.

48. Judge Parra-Aranguren in his Separate Opinion appeared to accept this argument, noting that:

> I agree that Middle Rocks is under the sovereignty of Malaysia, as found in paragraph 300 (2) of the Judgment. *Therefore*, I consider South Ledge to be located within the territorial waters of Malaysia and for this reason to belong to Malaysia.[44]

49. The use of the causative word "therefore" in the context shows that he believed that the fact that Middle Rocks belonged to Malaysia necessarily led to the conclusion that South Ledge fell within Malaysia's territorial sea and thus was subject to its sovereignty.

50. Judge *ad hoc* Dugard took the same position and declared that:

> [B]oth Middle Rocks and South Ledge fall within the sovereignty of Malaysia. Malaysia's title to Middle Rocks is based on the original title. South Ledge, a

[44] 2008 Judgment, Separate Opinion of Judge Parra-Aranguren, pp. 114–5, para. 28 (emphasis added).

> low-tide elevation falling within the territorial sea of Middle Rocks, belongs to Malaysia.[45]

51. Interestingly, Judge *ad hoc* Sreenivasa Rao also agreed with this approach as the correct legal one in stating that:

> I hold the view that, if Middle Rocks is also held to be under the sovereignty of Singapore, South Ledge would also belong to Singapore.[46]

52. Accordingly, the three judges who directly addressed this issue accepted that as a matter of principle whichever State was sovereign over Middle Rocks would thus be sovereign over South Ledge.

53. Since Singapore disputes the position of Malaysia that South Ledge falls within the latter's territorial sea and thus is part of its sovereign extent, a dispute under the terms of Article 60 has arisen as between the two States. These States take a different view of the necessary and logical consequence of the formulation used by the Court in paragraph 300(3) of its Judgment and interpretation is accordingly required.

54. To clarify, Malaysia's argument is not at all about how the maritime boundary between the Parties should be drawn. It is not about any requisite method or formula that may be relevant for a delimitation exercise in the area. Malaysia's argument, as expressed by the Court in its 2008 judgment, is that:

> Middle Rocks and South Ledge have always been considered as features falling within Johor/Malaysian jurisdiction … they were under Johor sovereignty at the time of the 1824 Anglo–Dutch Treaty and fell within the British sphere of influence under that Treaty.[47]

55. In its Interpretation Application, Malaysia emphasised that the application of this formula used by the Court naturally led to the conclusion that Malaysia has sovereignty over South Ledge because South Ledge falls within the territorial

[45] 2008 Judgment, Dissenting Opinion of Judge ad hoc Dugard, pp. 151–2, para. 44.
[46] 2008 Judgment, Separate Opinion of Judge ad hoc Sreenivasa Rao, p. 153, para 1.
[47] 2008 Judgment, p. 98, para. 285.

waters of Malaysia. Malaysia has undisputed sovereignty over the nearest feature to South Ledge (Middle Rocks, 1.7 nautical miles' distance) and over the nearest mainland landmass (Johor, 7.9 nautical miles' distance). Pedra Branca/Pulau Batu Puteh is some 2.2 nautical miles away and the island of Singapore lies some 22 nautical miles away.[48]

56. Singapore takes the view that the question of sovereign appurtenance is simply one of maritime delimitation[49] and that Malaysia has "artificially manufactured a dispute where none exists".[50] It also claims that Malaysia has changed its views on the sovereignty question in so far as South Ledge is concerned.[51] These contentions are rejected. There is a genuine dispute within the terms of Article 60 of the Statute and Article 98 of the Rules of Court. That dispute focuses upon the plain terms of the Parties' Special Agreement referring the original dispute to the Court and the consequent responsibility of the Court to determine whether it is Malaysia or Singapore that has sovereignty over South Ledge. The Court did not do this directly. It is evident, though, that the Parties have different views about what the 2008 Judgment did implicitly. There can be no avoiding the clear understanding that the Parties take different views on the "meaning or scope" of subparagraph 3 of the Operative Clause of the 2008 Judgment. Singapore avoids the question by repeating the formula used by the Court. Malaysia draws from the Court's language the logical conclusion that it is sovereign over South Ledge in view of the fact that it clearly falls within its territorial sea in view of geographical proximity and configuration. This matter requires clarification.

57. Singapore claims that Malaysia has changed its position. It says that it was only from its diplomatic note of 20 April 2017 that Malaysia actually stated that South Ledge was within its territorial waters and thus subject to its sovereignty.[52] Singapore's assertions are incorrect. Malaysia's practice has been consistent.

[48] Application for Interpretation, para. 46.
[49] Singapore's Written Observations, para. 4.23.
[50] Ibid., para. 4.10.
[51] Ibid., para. 4.26.
[52] Ibid.

Malaysia's conduct was first manifested some three months after the Judgment. Malaysia engaged in sovereign activity with regard to South Ledge to which Singapore protested. Malaysia immediately responded by asserting that it "naturally follows" from the Court's Judgment that "sovereignty over Tubir Selatan/South Ledge belongs to Malaysia".[53] This statement was repeated consistently and unswervingly for decades. This is detailed in the Interpretation Application.[54] Singapore's view that the 20 April 2017 note "was simply a contrived attempt by Malaysia to create a dispute over the third paragraph of the Operative Clause of the judgment where none actually existed"[55] is patently wrong. On the contrary, it is Singapore that is contriving to spirit away a dispute where one has clearly existed for some considerable period.

D. Conclusion

58. It is Malaysia's contention that its Interpretation Application is fully justified in view of Singapore's approach to the decision and the dispute to which this has given rise between Malaysia and Singapore.

59. In so far as the waters around Pedra Branca/Pulau Batu Puteh are concerned, the Court did not refer at all to this key component of sovereignty. Malaysia takes the view that bearing in mind that the Court accepted that the relevant area including the waters were subject to Johor/Malaya/Malaysia's sovereignty as a matter of original title, the failure of the Court to address the issue of the waters around Pedra Branca/Pulau Batu Puteh could only mean that such waters remained, as they had been prior to the 1953–80 period, sovereign waters of Malaysia. In the alternative, Malaysia contends that to the extent that Pedra Branca/Pulau Batu Puteh has a territorial sea, the sovereign allocations as between Singapore and Malaysia must be determined. Since Singapore strongly

[53] Application for Interpretation, para. 39 and following.
[54] Ibid.
[55] Singapore's Written Observations, para. 4.29.

disagrees with Malaysia's approach, a dispute clearly exists and one that concerns the "meaning or scope" of the Judgment.

60. In so far as sovereignty over South Ledge is concerned, the Court in its Judgment left open a space for disagreement that requires clarification under the terms of Article 60 of the Statute and Article 98 of the Rules of Court. Malaysia contends, first, that South Ledge, as a low-tide elevation, is within the territorial sea of Malaysia on grounds of proximity to Middle Rocks and general configuration and is thus subject to Malaysian sovereignty. Second, Malaysia's position is that Pedra Branca/Pulau Batu Puteh has no territorial sea, so that South Ledge could only fall within the territorial waters of Malaysia. Since Singapore disputes this conclusion, a dispute exists as to the "meaning or scope" of the 2008 Judgment, which is rightly the subject of Malaysia's Interpretation Application.

APPENDIX: THE CONSTITUTIONAL STATUS OF THE RELEVANT AREA

61. As noted in paragraph 27 above, until sometime in the period 1953–80, it was accepted by both Parties and by the Court that all of the relevant area was subject to Malaysian sovereignty, including Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, and that in consequence all of the relevant waters were Malaysian. This is indisputable.

62. By the "relevant area", Malaysia means the area from the coast of Johor southwards and eastwards, including Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge. It is important to underline the evolving legal status of this area in the light of the subsequent sovereignty dispute and in order to understand the context and consequences of the 2008 Judgment.

63. Commencing with the early 19th century, the Anglo–Dutch Treaty of 17 March 1824 marked the establishment of spheres of influence as between the two European powers and the Dutch recognition of Britain's occupation of Singapore. The Crawfurd Treaty of 2 August 1824 provided for the full cession of Singapore from the Sultan and Temenggong of Johor to the East India Company, including all islands within 10 geographical miles of Singapore. Pedra

Branca/Pulau Batu Puteh is well over 20 nautical miles from Singapore, as are Middle Rocks and South Ledge, and thus these features did not fall within the designated territory of Singapore. It thus remained with the Sultanate of Johor.[56]

64. In 1826 the East India Company established the Straits Settlement, grouping together *inter alia* Penang, Malacca and Singapore. In 1867, the Straits Settlement became a British Crown Colony. In 1895 the British Government established the Federated Malay States. Johor constituted part of the Unfederated Malay States.

65. On 19 October 1927 the Governor of the Straits Settlement and the Sultan of Johor signed the Straits Settlement and Johor Territorial Waters Agreement ("the 1927 Agreement") which marked the maritime boundary between Singapore and Johor. It also provided for a retrocession to the Sultan of Johor of some territory originally ceded to the East India Company in 1824. This may be seen on the map annexed to the Agreement, which has been reproduced as Insert 17 in Malaysia's Memorial of 25 March 2004, at page 89. It is quite clear that the relevant area is not within Singapore's boundaries. Malaysia concluded that:

> The 1927 Agreement, with its link back to that of 1824, is evidence of the continuing appreciation that Pedra Branca/Pulau Batu Puteh and its surrounding waters were not part of the territory of Singapore.[57]

66. Singapore was established as a separate colony in 1946, while the other Straits Settlement territories joined to form the Malayan Union then Malayan Federation in 1948. This territory became independent in 1957. In 1963 Singapore became part of the newly formed Federation of Malaysia, but withdrew therefrom in 1965.[58]

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[56] See Malaysia's Memorial of 25 March 2004, Chapter IV. See also 2008 Judgment, p. 25, para. 21 and following, and p. 45, para. 102 and following. See also the oral hearings on 13 November 2007, CR 2007/24, p. 24 and following.

[57] 2008 Judgment, p. 71, para. 182. However, the Court noted that as Pedra Branca/ Pulau Batu Puteh was not within 10 geographic miles from Singapore, it was outwith the 1927 Agreement, ibid., p. 72, para. 188.

[58] Ibid., p. 71, para. 183 and following.

67. In its 2008 Judgment, the Court concluded that as of 1844 the island of Pedra Branca/Pulau Batu Puteh was under the sovereignty of the Sultan of Johor.[59] The question before the Court at that point was whether this assertion of original title had been modified by subsequent practice. The Court was unable to draw any conclusions as to sovereignty based on the construction and commissioning of the lighthouse.[60] Further, the Court did not find that a variety of enactments (in 1852, 1854 and 1912) demonstrated British sovereignty,[61] while the various constitutional changes that took place in the area (in 1927, 1946, 1957, 1959, 1963 and 1965) in the Court's view "do not help resolve the question of sovereignty".[62] Again, no assistance as to the sovereignty question could be obtained from a consideration of the joint regulation of fisheries in the 1860s.[63] One may conclude at this point by saying that the Court apparently found no applicable legal activity up to 1953 that constituted or could constitute a clear and effective modification of Malaysia's original title. In brief, the Court found that Johor and thus its successor Malaysia had original title to Pedra Branca/Pulau Batu Puteh in the 1840s and that nothing had happened during the period of some one hundred years to displace that title, still less to transfer it to another sovereign.

68. The Court considered the 1953 correspondence and practice of the parties and concluded that:

> The Court is of the opinion that the relevant facts, including the conduct of the Parties … reflect a convergent evolution of the positions of the Parties regarding title to Pedra Branca/Pulau Batu Puteh. The Court concludes, especially by reference to the conduct of Singapore and its predecessors *à titre de souverain,* taken together with the conduct of Malaysia and its predecessors including their

[59] Ibid., p. 49, para. 117. See also ibid., p. 35, para. 59 and p. 39, para. 75.
[60] Ibid.,p. 65, para. 162.
[61] Ibid., p. 67, para. 172.
[62] Ibid., p. 71, para. 186.
[63] Ibid., p. 72, para. 191.See also the Joint Dissenting Opinion of Judges Simma and Abraham, underlining that in none of the 1852–1952 practice did the Court "discern a clear manifestation of a British claim to sovereignty", Ibid., p. 123, para. 22.

> failure to respond to the conduct of Singapore and its predecessors, that by 1980 sovereignty over Pedra Branca/Pulau Batu Puteh had passed to Singapore.[64]

69. In its conclusion as to the legal status of Middle Rocks, the Court explained that:

> Since Middle Rocks should be understood to have had the same legal status as Pedra Branca/Pulau Batu Puteh as far as the ancient original title held by the Sultan of Johor was concerned, and since the particular circumstances which have come to effect the passing of title to Pedra Branca/Pulau Batu Puteh to Singapore do not apply to this maritime feature, original title to Middle Rocks should remain with Malaysia as the successor to the Sultan of Johor, unless proven otherwise, which the Court finds Singapore has not done.[65]

70. In other words, the original title to the relevant area which Malaysia had possessed was displaced in the circumstances found by the Court but only with regard to Pedra Branca/Pulau Batu Puteh. Accordingly, the original title as found by the Court persisted with regard to the rest of the relevant area with the exception only of Pedra Branca/Pulau Batu Puteh. To put it another way, Pedra Branca/Pulau Batu Puteh was simply excised or cut out from the relevant area which was under Malaysian sovereignty and stated to be Singaporean territory.

[64] Ibid., p. 96, para. 276.
[65] Ibid., p. 99, para. 290.

III. THE JURISDICTION OF THE COURT AND THE ADMISSIBILITY OF THE APPLICATION

71. In its most recent judgment on a request for interpretation, which is the only interpretation case before the Court to have proceeded beyond jurisdiction and admissibility, the Court, in the *Preah Vihear Interpretation Request*, clarified the conditions for its jurisdiction to interpret a judgment under Article 60 in the following terms:

> [B]y virtue of Article 60 of the Statute, [the Court] may entertain a request for interpretation provided that there is a 'dispute as to the meaning or scope' of any judgment rendered by it.[66]

Thus, under Article 60 a request for interpretation must fulfil two requirements: (a) that a dispute exists between the parties which (b) relates to the meaning or scope of the judgment.

72. Singapore appears to suggest that the Court's jurisdiction to deliver an authentic interpretation is circumscribed by a third requirement when it asserts that "if the judgment of the Court is clear … the Court lacks jurisdiction to decide on the request for interpretation".[67] Such a requirement does not find any support in the terms of Article 60 of the Statute, Article 98 of the Rules of Court, or in the Court's case law. It may very well be the case that the two parties bound by a judgment may each consider its meaning to be impeccably clear while deriving entirely contradictory meanings from the text. Consequently, the fact that one party is convinced that the judgment's meaning is clear cannot alone suffice to deny the Court jurisdiction to decide a request for interpretation submitted by the other party. Rather, if a party can demonstrate that the two conditions stated in Article 60 are satisfied, the Court may decide to respond to the request by

[66] *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)*, Judgment, ICJ Reports 2013, p. 295, para. 32 and Provisional Measures, Order of 18 July 2011, ICJ Reports 2011 (II), p. 542, para. 21; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico v. United States of America)*(Mexico v. United States of America),* Judgment, ICJ Reports 2009, p. 9, paras 15–6 and Provisional Measures, Order of 16 July 2008, ICJ Reports 2008, p. 323, paras 44–6.
[67] Singapore's Written Observations, paras 2.2–2.3.

providing an authoritative construction of what it ruled with binding effect in the judgment.

73. In this section, Malaysia will show that its Interpretation Application satisfies the only jurisdictional requirements that are required by Article 60 of the Statute, namely, that a dispute exists between the Parties and that the dispute concerns the meaning and scope of the 2008 Judgment.

A. The Existence of a Dispute between the Parties

74. According to the settled jurisprudence of the Court, "a dispute within the meaning of Article 60 of the Statute must be understood as a difference of opinion or views between the parties as to the meaning or scope of a judgment rendered by the Court".[68] As a result, a party requesting interpretation need only demonstrate that the parties to a judgment have adopted differing views as to what the Court decided with binding effect in order to satisfy this requirement.

75. Singapore denies that such a dispute over the meaning or scope of the Judgment exists between the Parties and contends that Malaysia's Interpretation Application does not comply with the first requirement of Article 60 of the Statute.[69] In order to justify its denial of the existence of such a dispute, Singapore asserts that:

> [N]othing in the Parties' conduct, interactions or correspondence in the years following the delivery of the Judgment shows the existence of a dispute over the meaning or scope of what the Court decided in the … operative clause of the Judgment.[70]

76. According to Singapore, the actions and statements of Malaysia and Singapore in the post-Judgment period show that the Parties share a common understanding as to the content of the Judgment. Singapore maintains that the

[68] *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)*, Judgment, ICJ Reports 2013, p. 295, para. 33
[69] Singapore's Written Observations, para. 1.12. See also paras. 1.28–1.30, 3.2, 3.8.
[70] Singapore's Written Observations, para. 3.8.

Parties are in agreement that, as a result of the Judgment delivered by the Court, Singapore has acquired sovereignty over the waters surrounding Pedra Branca/Pulau Batu Puteh,[71] and that sovereignty over South Ledge can only be determined by a process of maritime delimitation.[72]

77. From the outset, Malaysia observes that the Court has consistently affirmed that the term 'dispute' under Article 60 is more flexible in scope than it is under Article 36, paragraph 2 of the Statute, and less stringent in its requirements. In the *Avena Interpretation Request* case, the Court explained this difference by clarifying that, in the French text of the Statute, the term used in Article 60, 'contestation', is "wider in scope" than the term 'différend' used in Article 36 and "does not require the same degree of opposition". Moreover, when compared to 'différend', 'contestation' in Article 60 "is more flexible in its application to a particular situation; and… therefore does not need to satisfy the same criteria as would a dispute ('différend' in the French text) as referred to in Article 36, paragraph 2, of the Statute".[73] Consequently, the threshold for establishing the existence of a dispute in the context of Article 60 is lower than that applicable under Article 36, paragraph 2 of the Statute: it merely requires the requesting party to demonstrate that there is a "divergence of views" between the parties over the meaning and scope of the judgment.[74]

78. Moreover, in keeping with the Court's acknowledgement that a flexible approach is appropriate when determining the existence of a dispute under Article 60,

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[71] Singapore's Written Observations, para. 3.17.
[72] Singapore's Written Observations, paras 4.4, 4.9.
[73] *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico v. United States of America)*(Mexico v. United States of America),* Provisional Measures, Order of 16 July 2008, ICJ Reports 2008, p. 325, para. 53; cited in *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico v. United States of America)*(Mexico v. United States of America),* Judgment, ICJ Reports 2009, p. 9, para. 17 and *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)*, Judgment, ICJ Reports 2013, p. 295, para. 33.
[74] See, for example, *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case*, Judgment, I.C.J. Reports 1950, p. 403; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico v. United States of America)*(Mexico v. United States of America),* Judgment, ICJ Reports 2009, p. 12, para. 25; and *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)*, Judgment, ICJ Reports 2013, p. 299, para. 43.

there are no specific requirements for the parties to express their disagreement in a certain way of for their difference of views to appear in a particular form. The Court has repeatedly recalled the observation made by the PCIJ in the *Interpretation of the Chorzów Factory Judgments* that:

> [I]t cannot require that the dispute should have manifested itself in a formal way; according to the Court's view, it should be sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court.[75]

79. Observing the conduct of the Parties in the years since the 2008 Judgment was delivered, there can be no doubt that there is a difference of opinion between the Parties as to the meaning and scope of the Judgment. As detailed at length in Malaysia's Interpretation Application, it has become increasingly obvious—both through the continuation of diplomatic protests, and the stagnation of implementation efforts in the Malaysia–Singapore Joint Technical Committee (MSJTC)—that the Parties are at odds as to what precisely was decided by the Court with binding effect.

80. The most significant evidence of the obvious divergence in the Parties' views concerning the meaning and scope of the Judgment is provided by the lengthy stream of Notes Verbales exchanged by the Parties from 2008 through to the present. In these Notes, Malaysia has stated consistently its understanding that, according to the terms of the Operative Clause of the Judgment, the waters and airspace around Pedra Branca/Pulau Batu Puteh belong to Malaysia and that sovereignty over South Ledge also belongs to Malaysia. Singapore, on the other hand, has indicated in its diplomatic notes that it considers that it has rights over the territorial waters and airspace appertaining to Pedra Branca/Pulau Batu Puteh, and that the status of South Ledge can only be determined by the delimitation of the maritime boundary between the Parties. These Notes Verbales indicate clearly that the Parties disagree as to what the terms of the

[75] *Interpretation of Judgments Nos 7 and 8 concerning the Case of the Factory at Chorzów*, Judgment No. 11, 1927, PCIJ, Series A, No. 13, p. 11.

Judgment require of each of them. Furthermore, these notes show the difficulties which both Malaysia and Singapore have encountered in their efforts to implement the Judgment. Without a clear and authentic interpretation from the Court as to the exact implications of the terms of the Judgment for the Parties, their endeavours to implement the Judgment fully and to maintain smooth and orderly relations in the region will be hindered.

81. Singapore denies that there is any difference of opinion between the Parties regarding the meaning and scope of the 2008 Judgment. It asserts that:

> [N]othing in the Parties' conduct, interactions or correspondence in the years following the delivery of the Judgment shows the existence of a dispute over the meaning or scope of what the Court decided in the first paragraph of the operative clause of the Judgment – namely, that sovereignty over Pedra Branca belongs to Singapore.[76]

82. Elsewhere, Singapore maintains that:

> [T]he facts establish that, in reality, there is no dispute concerning whether the third paragraph of the operative clause of the Judgment has decided the question of sovereignty over South Ledge.[77]

83. Rather than disagreement, Singapore contends that the Parties actually shared a "common understanding of the Court's ruling" in the post-Judgment period. Singapore seeks support for this assertion by pointing to two elements of the Parties' post-Judgment conduct: (1) certain remarks made by Malaysian officials regarding the delimitation of the parties' maritime entitlements; and (2) the creation and operation of the Malaysia–Singapore Joint Technical Committee ("MSJTC"). However, as the following paragraphs demonstrate, Singapore misconceives, no doubt intentionally, the nature and significance of these developments. Upon closer examination, it is clear that the Parties were not in agreement as to what the Court decided, and the disparity of their views as to

[76] Singapore's Written Observations, para. 3.8.
[77] Singapore's Written Observations, para. 4.9.

the meaning and scope of the Judgment became more apparent as steps were taken towards the implementation of the Judgment.

(i) Statements concerning maritime delimitation

84. Singapore refers to a number of statements in which certain members of the Malaysian Government indicate Malaysia's readiness to initiate a process for the delimitation of the maritime boundary between the Parties.[78] For example, the Malaysian Prime Minister remarked on the day after the 2008 Judgment was handed down that "the next step was for officials from both sides to meet to decide on the maritime demarcation line as soon as possible".[79] Singapore argues that these statements sg that the Parties were in agreement as to the meaning and scope of the Judgment in so far as they both understood that maritime delimitation was required. According to Singapore, these statements show Malaysia's understanding that, under the terms of the Judgment, Singapore had acquired territorial waters appertaining to Pedra Branca/Pulau Batu Puteh, since there would be no need to delimit the waters around Pedra Branca/Pulau Batu Puteh if Singapore did not possess an entitlement which overlapped with Malaysia's. Furthermore, Singapore argues that Malaysia understood that the issue of sovereignty over South Ledge could only be settled by a maritime delimitation which would determine in which State's territorial waters the feature was located.

85. Malaysia offers three observations concerning these statements and the conclusions Singapore seeks to draw from them. First, while these statements clearly demonstrate Malaysia's willingness to work together with Singapore towards a bilateral delimitation of the Parties' maritime entitlements, they say nothing about the existence of a shared understanding between the Parties as to the meaning or scope of the Judgment. Malaysia has at all times been mindful of the importance of achieving a final settlement of the Parties' maritime boundary for the maintenance of friendly regional relations, and so has always

[78] Singapore's Written Observations, paras 1.15–1.17 and 4.11–4.12.
[79] Singapore's Written Observations, 1.16.

been willing to work towards the achievement of that aim in a spirit of goodwill and co-operation with Singapore. The statements and acts cited by Singapore confirm that fact. But these acts and statements provide no basis for claiming that the Parties' shared intention to initiate a process of maritime delimitation entails a shared understanding of what exactly the Court decided with binding effect. It is one thing to conclude from the Parties' activity after the Judgment was delivered that they shared a common resolve to implement the terms of the Judgment, but it is another thing altogether to suggest that these actions prove that the Parties understood the content and implications of the Court's decision in identical fashion. A common purpose does not presuppose a concurrent understanding.

86. Second, a close reading of the words used in the small selection of statements quoted by Singapore reveals that, contrary to Singapore's characterisation, they do not support the conclusion that Malaysia understood the Judgment in the same way as Singapore. Some of these statements show Malaysia's appreciation that the waters around Pedra Branca/Pulau Batu Puteh remained undelimited. For example, Malaysia's Foreign Minister, Dr Rais Yatim, noted in an interview with the media in 2008 that "the waters around [Pedra Branca/Pulau Batu Puteh] have not been determined yet" and, furthermore, that, "*whether it overlaps* with the waters of Middle Rocks *or not*, will be determined."[80] As this statement shows, far from agreeing with Singapore's claim to certain territorial waters around Pedra Branca/Pulau Batu Puteh, there was uncertainty as to the exact meaning and scope of the Court's decision in this respect from the very start of the post-Judgment period. It should not be surprising, therefore, that Malaysia considered it necessary for the delimitation to occur as soon as possible.[81]

87. In respect of South Ledge, Malaysian officials stated their understanding in the period immediately following delivery of the Judgment that South Ledge lies in Malaysia's waters. The Prime Minister of Malaysia, Abdullah Badawi, remarked,

[80] Annex 16 to Singapore's Written Observations, p. A71 (emphasis added).
[81] See Statement of Prime Minister of Malaysia, Abdullah Badawi, quoted in Singapore's Written Observations, para. 1.17.

in a statement quoted by Singapore in its Observations, that "[w]e need to determine the demarcation line to show that South Ledge *is in our waters*".[82] On this view, the delimitation process would simply confirm the already existing fact that South Ledge is under Malaysia's sovereignty because it is located in Malaysian territorial waters. This conviction was also expressed by the Government of Malaysia in its press statement following release of the Judgment: "Since South Ledge is within the territorial waters of Middle Rocks, Malaysia appears to be the sovereign holder."[83] Similarly, remarks by the Chief Director of Research in the Treaty and International division of Malaysia's Ministry of Foreign Affairs were reported in the press in the following terms:

> [E]ven though geographical fact shows that South Ledge is situated in the national waters and is nearest to Middle Rocks, nevertheless Kuala Lumpur would continue with negotiations based on the spirit of neighbourliness and friendship with Singapore. Negotiations are needed *to prove that Malaysia has sovereignty* over South Ledge.[84]

88. As this last quote shows, the Government of Malaysia was committed from the outset to co-operating with Singapore in collaborative endeavours aimed towards the implementation of the Judgment, but its understanding of the meaning and scope of what the Court decided in the Judgment was evidently different from Singapore's. In Malaysia's view, the bilateral implementation process initiated with Singapore was required only to confirm the fact that South Ledge *was already* subject to Malaysia's sovereignty. Contrary to Singapore's suggestion, the view expressed in these statements is consistent with the position maintained by Malaysia in its diplomatic correspondence with Singapore regarding South Ledge.[85]

89. Third, Malaysia observes that the statements and acts invoked by Singapore could only serve to establish that the Parties had a shared understanding of the

[82] Singapore's Written Observations, para. 4.11 (emphasis added).
[83] Annex 3 to Singapore's Written Observations, quoted in para. 4.15.
[84] Annex 50 to Singapore's Written Observations, quoted in para. 4.17 (emphasis added).
[85] See, for example, Singapore's Written Observations, para. 4.20.

meaning of the Judgment if one were to ignore altogether the evidence of the diplomatic protests exchanged between the Parties in respect of alleged incursions into the territorial waters and airspace in the area in question. It is unusual that Singapore appears ready to accord such importance to a small handful of relatively informal remarks—most of them extemporaneous comments reported by the press—while downplaying the significance of the Parties' lengthy and vigorous diplomatic correspondence on the matter. Even if the remarks quoted by Singapore bear out the meaning which Singapore seeks to attach to them, itself an arguable proposition, passing remarks made during a doorstop interview at the United Nations–ASEAN International Pledging Conference on Cyclone Nargis[86] or during a roundtable discussion with several journalists[87] cannot properly be afforded less weight than the opposing positions expressed by the highest levels of Government through regular diplomatic channels. In that formal diplomatic correspondence, both Parties state positions which they consider to be in accordance with the binding decision of the Court, and yet, as described in detail in the Interpretation Application, these positions are utterly different, even contradictory. Taken together, there is little room for doubt that the Parties' views as to what is required of them under the Judgment differ in many significant respects.

(ii) Malaysia–Singapore Joint Technical Committee

90. Singapore also points to the creation and activity of the MSJTC in an effort to substantiate its claim that the Parties shared an understanding of the meaning and scope of the Judgment. Singapore states:

> [The MSJTC's] work was based on the Parties' common understanding of the Court's rulings. Both Parties accepted that the Court's rulings on sovereignty over Pedra Branca and Middle Rocks meant that the next step for the Parties was to focus on the extent of each sides' [*sic*] maritime and airspace entitlements. The Parties were also in agreement that the issue of sovereignty over South

[86] Annex 10 to Singapore's Written Observations.
[87] Annex 16 to Singapore's Written Observations.

> Ledge, as decided in the Judgment, depends on the delimitation of the Parties' respective maritime entitlements. The existence and the work of the MSJTC are therefore entirely inconsistent with Malaysia's contention that the Parties are in "deadlock" over the meaning or scope of the Judgment.[88]

91. Elsewhere, Singapore asserts:

> All the discussions between the Parties at the meetings of the MSJTC and its sub-committees were predicated on the common position that the Judgment had made clear in the operative clause that sovereignty over Pedra Branca belongs to Singapore, sovereignty over Middle Rocks belongs to Malaysia, and sovereignty over South Ledge "belongs to the State in the territorial waters of which it is located". The Parties proceeded on the basis that, as a consequence of the Judgment, they had maritime entitlements generated by Pedra Branca and Middle Rocks, and that sovereignty over South Ledge flows from maritime boundary delimitation. The function of the MSJTC was to work out how the Parties could move forward in the light of this common position.[89]

92. Singapore paints a misleading picture when it asserts that the Parties' agreement to establish the MSJTC and its sub-committees, and their participation in meetings and works aimed at the implementation of the Judgment, are proof that the Parties possessed a "common understanding of the Court's rulings" after the Judgment was delivered. While this activity demonstrates that the Parties had a common purpose—to work together towards the full implementation of the Judgment—it does not attest to the existence of a "common understanding" between the Parties as to what the Court decided with binding effect.

93. In fact, rather than working upon a "common understanding" within the MSJTC, the Parties participated in the activity of that body on the express proviso that all discussions held and all actions taken would be "without prejudice to issues of sovereignty and eventual delimitation of maritime boundaries".[90] Contrary to

[88] Singapore's Written Observations, para. 1.14.
[89] Singapore's Written Observations, para. 1.19.
[90] This formula was used repeatedly in the records of the meetings of the MSJTC and its sub-committees. See, for example, the following Annexes to Singapore's Written Observations: Annex 18, p. A128; Annex 21, pp. A141–2, A152; Annex 26, p. A226.

Singapore's assertion, the discussions between the Parties were not predicated on a common position regarding sovereignty over the features; rather, they were conducted on the explicit basis that the Parties' competing positions on issues of sovereignty and maritime delimitation would be preserved. Thus, when the Parties agreed "that current traditional fishing activities by both countries will be allowed to continue around Pedra Branca, Middle Rocks and South Ledge", they emphasised that "[t]hese arrangements are without prejudice to issues of sovereignty and eventual delimitation of maritime boundaries."[91] Again, when the Parties agreed that humanitarian assistance would be provided by either side to any vessels affected by an incident occurring in the waters in and around Pedra Branca/Pulau Batu Puteh, they did so "on the understanding that actions taken would be without prejudice to issues of sovereignty and eventual delimitation of maritime boundaries". Finally, when Malaysia and Singapore eventually agreed the Memorandum of Understanding with regard to the Joint Hydrographic Survey, following two-and-a-half years of negotiations concerning the scope, methodology and costs of the survey works, they again stated clearly that this work was undertaken without prejudice to issues of sovereignty and maritime delimitation:

> Article 2 – Matters Not to Be Prejudiced:
>
> The Joint Survey or any action or omission undertaken pursuant to the provisions of this MOU or the Scope of Works are without prejudice to issues of sovereignty including positions taken in relation to the interpretation and application of international law, maritime or territorial claims whether in written form or otherwise and eventual delimitation of maritime boundaries.[92]

94. Far from demonstrating the existence of a "common understanding of the Court's rulings", as Singapore contends, the activities of the MSJTC and its sub-committees show not only that Malaysia and Singapore entered into this process with separate and competing understandings of their specific entitlements in the area under the Judgment, but that they consistently took careful steps

[91] See Record of First MSJTC Meeting, Annex 18 to Singapore's Written Observations, p. A128.
See also the Record of Second MSJTC Meeting, Annex 21 to Singapore's Written Observations, p. A198.
[92] Annex 66 to Singapore's Written Observations, pp. A1043–4.

throughout their participation in this bilateral process to protect their competing positions and to ensure that nothing done in the context of the MSJTC would be detrimental to their entitlements. Contrary to Singapore's assertion, no common position as to the meaning and scope of the Judgment is discernible in the activity of the MSJTC.

(iii) Conclusion on the existence of a dispute

95. Singapore has identified a small selection of acts and statements by Malaysian officials in an effort to construct a claim that the Parties have shared a "common understanding of the Court's ruling" throughout the post-Judgment period. Singapore is quite right to observe that these statements and actions show an important point of commonality between the parties: both Malaysia and Singapore are agreed that the Judgment must be fully implemented and they share a willingness to initiate steps towards the achievement of that goal. The Parties' creation of the MSJTC and the completion of preliminary works by the MSJTC and its subcommittees attests to Malaysia and Singapore's shared resolve to uphold and implement the rulings of the Court.

96. However, while the Parties are united by a common undertaking to respect the Judgment, they do not share a common understanding as to what the Judgment requires of them. While Singapore appears to attach little significance to the long sequence of diplomatic protests made by the Governments of Malaysia and Singapore, the persistence of these protests, and the simmering and unresolved dispute that they evidence, is fundamentally rooted in the divergent views of the Parties of the meaning and scope of key elements of the 2008 Judgment. The stalled activity of the MSJTC provides further evidence: as more steps are taken by this bilateral body, the more obvious it becomes that the Parties' perceptions as to what the Judgment requires are incongruous.

97. Moreover, in these protests, Malaysia and Singapore have each articulated entirely different views as to their obligations and entitlements are under the terms of the Judgment. As such, and as the next section will show more fully,

the difference of opinion manifested by the parties concerns the meaning and scope of the Judgment.

B. The "Meaning or Scope of the Judgment"

98. As the PCIJ explained in the *Chorzów Factory Interpretation* case, jurisdiction to interpret a judgment is intended to "enable the Court to make quite clear the points which had been settled with binding force in a judgment."[93] Accordingly, for a dispute between the Parties to comply with Article 60, "there must therefore exist a difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force".[94] In other words, Article 60 of the Statute requires that the difference of opinion must relate to the "meaning or scope" of the operative clause of the judgment. The Court has endorsed this as a general rule in interpretation proceedings in a number of cases.[95]

99. Although the Court has not had occasion to explain more fully what the "meaning or scope" of a judgment denotes within the terms of Article 60, it appears from the case law that this requirement in Article 60 will be satisfied if the dispute between the parties relates to the specific content of the determination made by the Court in the operative clause of the judgment in question. Equally, a dispute "whether a particular point has or has not been decided with binding force"[96] will satisfy this requirement, as will a difference of opinion over the nature or precise extent of the obligations and entitlements determined with binding effect by the Court in its judgment. Thus, in the *Avena*

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[93] *Interpretation of Judgments Nos 7 and 8 concerning the Case of the Factory at Chorzów*, Judgment No. 11, 1927, PCIJ, Series A, No. 13 p. 11.
[94] Ibid., p. 11.
[95] *Request for Interpretation of the Judgment of 15 June 1962 in the* Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)*, Provisional Measures, Order of 18 July 2011, ICJ Reports 2011 (II), pp. 542–4, paras 20-32; *Request for Interpretation of the Judgment of 31 March 2004 in the* Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*(Mexico v. United States of America)*, Judgment, ICJ Reports 2009, p. 3; *Request for Interpretation of the Judgment of 20 November 1950 in the* Asylum Case (Colombia/Peru)*(Colombia v. Peru)*, Judgment, ICJ Reports 1950, p. 402.
[96] *Interpretation of Judgments Nos 7 and 8 concerning the Case of the Factory at Chorzów*, Judgment No. 11, 1927, PCIJ, Series A, No. 13, pp. 11–12.

Interpretation Request case, the Court declined Mexico's request for interpretation because the Parties' divergence of views did not concern the specific binding effect of the Judgment for Mexico and the United States but merely involved a general question regarding the general effects of a decision of the Court in the domestic legal order of a party to that case.[97]

100. While the general rule requires that a request for interpretation relates to the operative clause of a judgment, the Court's jurisprudence confirms that under Article 60 the Court may also provide clarification of the reasons upon which the Court based its binding decision "in so far as these are inseparable from the operative part".[98] Thus, the Court's jurisdiction under Article 60 extends to include the ability to clarify the incidental findings made in the course of the Court's reasoning where that reasoning is essential for understanding the meaning or scope of the operative clause of the judgment.

101. Singapore accepts that there are differences of opinion and points of disagreement between the Parties concerning Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, although not a "dispute". But Singapore contends that these differences of opinion do not concern the "meaning or scope" of the Judgment, with the result that Malaysia's Request is inadmissible for its failure to comply with this second requirement of Article 60.

102. Singapore makes two arguments in relation to this contention. First, Singapore argues that the meaning of the Judgment is so clear that any disagreement between the Parties could not concern the meaning or scope of the terms used in the Operative Clause. Second, Singapore argues that in so far as the disagreement between the Parties concerns the delimitation of the Parties' territorial waters, it does not relate to the "meaning or scope" of the Judgment

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[97] *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico v. United States of America)*(Mexico v. United States of America),* Judgment, ICJ Reports 2009, pp. 42–3, para. 37.

[98] *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections *(Nigeria v. Cameroon),* Judgment, ICJ Reports 1999 (I), p. 35, para. 10; see also *Avena Interpretation,* Declaration of Judge Koroma, p. 24, para. 6, and Dissenting Opinion of Judge Sepúlveda-Amor, pp. 41–2, paras. 34–5.

since the Court was not asked by the Special Agreement of the Parties to consider matters of maritime delimitation. Singapore contends that the "true purpose" of Malaysia's Request is "to have the Court decide a question that it could not, and did not, decide in the Judgment."[99]

103. Malaysia observes that the degree to which Singapore considers the terms of the Judgment to be clear is immaterial. While Singapore may well consider the Judgment to be "crystal clear", and while it may well have formed a firm view as to what precisely the Judgment requires of each of the Parties, the pertinent issue for the purposes of Article 60 is whether Singapore's appreciation of the meaning and scope of what the Court decided with binding effect matches that of Malaysia.

104. As the previous section has demonstrated, it is evident that the Parties have different understandings of their obligations and entitlements under the Judgment. This divergence of opinion appears to relate, at least to some extent, to the differing significance attached by the Parties to the reasoning employed by the Court to arrive at its binding decision.

105. Malaysia observes that the Operative Clause can only be understood in the light of three important incidental findings made by the Court in the 2008 Judgment: first, the Court's determination that Johor, Malaysia's predecessor, possessed until at least 1953 an ancient original title of sovereignty which encompassed all three features in dispute; second, the Court's finding that the manner in which sovereignty over Pedra Branca/Pulau Batu Puteh passed from Malaysia to Singapore was by a gradual process in which the Parties came to share an implicit understanding regarding title to Pedra Branca/Pulau Batu Puteh; and, third, the Court's ruling that this convergence of the Parties' positions concerned only Pedra Branca/Pulau Batu Puteh and left unchanged the situation with regard to Middle Rocks and South Ledge.[100] Considered in light of these findings, Malaysia queries, as detailed in Section II above, whether the acquisition of an

[99] Singapore's Written Observations, para. 4.4.
[100] 2008 Judgment, p. 99, paras. 289–90.

uninhabited island outside the territorial waters of a coastal State by way of a tacit agreement arising from the conduct of the Parties[101] automatically or necessarily entails the acquisition also of any territorial waters, and so it remains uncertain about the precise meaning and scope of the Court's ruling that "sovereignty over Pedra Branca/Pulau Batu Puteh belongs to the Republic of Singapore". Singapore, on the other hand, seems to ignore these incidental findings as it takes the first paragraph of the Operative Clause at face value: "Singapore has sovereignty over Pedra Branca; no more and no less."[102] If by this statement Singapore means that it has only acquired sovereignty over the island of Pedra Branca/Pulau Batu Puteh and "no more", the Parties may well have arrived at a common understanding on this point.

106. As for the subparagraph in the Operative Clause of the 2008 Judgment concerning South Ledge, Malaysia observes that, in view of the Court's determination that Johor's original title covered the entire area in dispute, the only possible meaning of the ruling that "sovereignty over South Ledge belongs to the State in the territorial waters of which it is located" is that Malaysia remains sovereign over the feature. Singapore again ignores the Court's finding concerning Johor's original title when it claims that the Court left it for the Parties to determine sovereignty over South Ledge by a bilateral process of maritime delimitation.

107. Furthermore, Malaysia observes that, as a result of the three incidental findings made by the Court, the two disputed paragraphs of the Operative Clause of the Judgment are interlinked. Singapore's Observations distort the nature of the Parties' dispute over the meaning or scope of the Judgment by consistently separating the issues concerning the ruling on Pedra Branca/Pulau Batu Puteh from those related to South Ledge. The meaning and scope of the Court's ruling on South Ledge is closely related to its ruling on Pedra Branca/Pulau Batu Puteh to the extent that there can be no doubts as to the status of South Ledge if, as

[101] 2008 Judgment, p. 50, para. 120.
[102] Singapore's Written Observations, para. 3.21.

Malaysia seeks to clarify, Singapore only acquired rights of territorial sovereignty over the island of Pedra Branca/Pulau Batu Puteh. And both of these decisions are closely related to the Court's earlier finding that Malaysia, as successor to Johor, held sovereignty over the entire area in dispute by virtue of original title.

108. Turning to Singapore's second argument that the difference of opinions which exists between the Parties concerns the extent of their respective maritime entitlements and is therefore outside the scope of the Judgment, Malaysia observes that Singapore has mischaracterised the point on which the Parties' views have diverged. The Parties' opinions differ on the implications for each of them of the Judgment as it has been delivered, and the findings of sovereignty that it has made. The disagreement between the Parties does not involve issues of maritime delimitation, nor concern the process of maritime delimitation as such. Malaysia has not requested the Court to determine the maritime boundary between the Parties, and so it has not asked the Court to resolve a question which was not put to the Court by Special Agreement in the original proceedings. Malaysia simply seeks clarification of what precisely the Court meant when—having decided that Malaysia held an original title of sovereignty over all three features in dispute, together with their surrounding waters, as recently as 1953—it concluded that "sovereignty" over Pedra Branca/Pulau Batu Puteh belonged to Singapore, and that sovereignty over South Ledge belonged to whichever state in the territorial waters of which South Ledge was located. To claim, as Singapore does, that this dispute is merely about the "extent" of maritime entitlements and therefore about delimitation, is to misconstrue the points on which the Parties are at odds.

109. Finally, Malaysia observes that there is an inconsistency in Singapore's argument concerning maritime delimitation. Singapore states that the steps taken by the Governments of Malaysia and Singapore towards the delimitation of their maritime entitlements is evidence that a shared understanding existed between them as to the meaning and scope of the Judgment, while at the same time it says that the delimitation of the extent of the Parties' maritime rights is outside the scope of the Judgment, given that it was not specifically included in the

Special Agreement. It is difficult to envisage how the Parties can show that they have a common understanding of the meaning and scope of a Judgment by doing something which, in Singapore's view, has nothing whatsoever to do with that Judgment. If anything, this contradiction exemplifies the difficulty that the Parties have encountered when attempting to understand the operative part of the Judgment. The existing uncertainty surrounding the Judgment evidently complicates the process of implementation.

110. Having demonstrated the existence of a difference of opinion between the parties concerning the meaning or scope of the operative part of the Judgment, Malaysia will now show that its Interpretation Application is admissible.

C. Admissibility

111. The Court set out the conditions for the admissibility of a request for interpretation in the *Asylum Case Interpretation Request* as follows:

> The real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgment is final and without appeal.[103]

112. The Court has repeatedly affirmed these conditions, and it has declined to examine any elements of a request for interpretation which do not seek clarification of the meaning and scope of what the Court has decided. Thus, in the *Revision and Interpretation of the Tunisia/Libya Case*, the Court proceeded to examine Tunisia's request for interpretation under Article 60 only in so far as it related to the meaning and scope of the judgment in question.[104]

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[103] *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case*, Judgment, I.C.J. Reports 1950, p. 402. Followed in T/L, p. 217, para. 44, CvN, pp. 36–7, para. 12, PV, p. 303, para. 55.
[104] *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia v. Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1985, p. 223, para. 56.

113. Singapore contends that Malaysia's Interpretation Application is inadmissible because it asks the Court to decide upon a matter—namely, delimitation of the respective maritime entitlements of the Parties—which was not decided with binding force in the Judgment, on account of the fact that the Parties' Special Agreement did not seek a ruling on this matter from the Court.[105] Singapore alleges that:

> Malaysia's real purpose in submitting the Request for Interpretation is not to seek an interpretation of matters which the Court has decided with binding force, but to seek answers to questions not so decided.[106]

114. Elsewhere, Singapore asserts:

> What Malaysia is in fact doing is, under the guise of interpretation of the Judgment, appealing against, or seeking to revise, the Judgment.[107]

115. As Malaysia has explained consistently and repeatedly, it has submitted the Interpretation Application in order to obtain the Court's assistance in clarifying precisely what is meant by the Operative Clause of the 2008 Judgment. In particular, it is necessary for the Parties to understand what exactly the Court decided when it found that "sovereignty over Pedra Branca belongs to Singapore" and "sovereignty over South Ledge belongs to the State in the territorial waters of which it is located", given that the Court had ruled earlier in the Judgment that Malaysia held sovereignty over all three features by virtue of an original title, and that Singapore had acquired sovereignty by way of "a convergent evolution of the positions of the Parties regarding title to Pedra Branca/Pulau Batu Puteh".[108]

116. It is unmistakably clear from the long sequence of diplomatic protests relating to activities in the airspace and waters over and around Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, and from the recent inaction of the

[105] Singapore's Written Observations, para. 2.11. See also paras 3.24, 3.31, 4.31, 4.34 and 4.38.
[106] Singapore's Written Observations, Summary para. 5.
[107] Singapore's Written Observations, para. 4.38.
[108] 2008 Judgment, p. 96, para. 276.

MSJTC, that Malaysia and Singapore hold different views as to the meaning and scope of these two paragraphs in the Judgment's Operative Clause. Moreover, it appears from the stalled efforts of the Parties to carry out a maritime delimitation in the setting of the MSJTC that, without a bilateral maritime delimitation agreement, this difference of opinion concerning the meaning and scope of the Judgment may continue to be a source of tension and instability between the Parties, and may cause complications in the maintenance of safety and security in this heavily-navigated area.

117. For example, the planning of search and rescue operations by Malaysia's naval forces is complicated considerably by the additional allowances which must be made to prepare for the *potential* reach of Singapore's claims to maritime rights. Singapore referred in its Written Observations to naval charts employed by Malaysia's Chief of Navy in relation to an incident involving the US naval vessel *USS John McCain* which occurred on 21 August 2017, after Malaysia had submitted its Interpretation Application. Singapore suggested that this map showed Malaysia's recognition that Singapore is entitled to some territorial waters. In fact, by marking out the extent of Singapore's most ambitious claims to maritime entitlements, this chart serves as evidence of the uncertainty and instability within which the naval forces of Malaysia must strive to operate so long as the Parties' disparity of opinion as to what the Court decided continues, and so long as this disagreement impedes progress towards the conclusion of a maritime delimitation between the Parties.

118. While Malaysia and Singapore have affirmed their commitment to mutual communication repeatedly in MSJTC discussions in the past, it would assist the Parties greatly to have clarity as to what the Court decided with binding effect in the Judgment, as this would enable them to co-ordinate their response to emergencies or other incidents, as well as permitting them to plan for mitigating risks in the area with more precision and assurance.

119. For this reason, the Parties require the assistance of the Court to clarify what exactly it meant when it decided that "sovereignty over Pedra Branca/Pulau Batu

Puteh belongs to Singapore" and that "sovereignty over South Ledge belongs to the State in the territorial waters of which it is located". For this reason, Malaysia has submitted the present Interpretation Application.

IV. SUMMARY OF REASONING

120. In accordance with Practice Direction II, the following is a short summary of the reasoning set out in these Observations:

a. The meaning and scope of subparagraphs (1) and (3) of the Operative Clause of the 2008 Judgment are unclear and are the subject of dispute between the Parties concerning the status of the waters around Pedra Branca/Pulau Batu Puteh and sovereignty over South Ledge.

b. Singapore acknowledges that a dispute exists between the Parties but contends that it is a dispute over maritime and airspace entitlements, not about the meaning and scope of the 2008 Judgment.

c. Malaysia acknowledges that there is indeed a dispute between the Parties about maritime and airspace entitlements. What Singapore fails to acknowledge, is that this dispute arises directly, fundamentally and unavoidably from the uncertain meaning and scope of subparagraphs (1) and (3) of the Operative Clause of the 2008 Judgment.

d. As regards the waters around Pedra Branca/Pulau Batu Puteh, it does not follow inexorably as a matter of law that, because the Court determined that sovereignty over Pedra Branca/Pulau Batu Puteh belonged to Singapore, Pedra Branca/Pulau Batu Puteh generates its own maritime zones. On the contrary, it is a tenable and reasonable view, based on the 2008 Judgment, that Pedra Branca/Pulau Batu Puteh does not generate any maritime zone. This is Malaysia's interpretation of the 2008 Judgment.

e. As regards sovereignty over South Ledge, it is Malaysia's interpretation of the 2008 Judgment that, by necessary implication, sovereignty over South Ledge

belongs to Malaysia on the basis that it is a low-tide elevation and is appurtenant, in geographic terms, to Middle Rocks (over which Malaysia has sovereignty), rather than Pedra Branca/Pulau Batu Puteh, and that it lies in waters that were historically and remain today uncontroversially Malaysian waters.

f. Singapore takes a different view on the meaning and scope of the 2008 Judgment on these issues.

g. This dispute between Malaysia and Singapore is a precise dispute concerning the meaning and scope of subparagraphs (1) and (3) of the Operative Clause of the 2008 Judgment.

h. Accordingly, the Court has jurisdiction to interpret its 2008 Judgment in response to Malaysia's Interpretation Application. The Interpretation Application is also admissible.

V. SUBMISSIONS

121. Having regard to Singapore's objections to jurisdiction and admissibility, Malaysia requests the Court to adjudge and declare that:

a. there is a dispute between Malaysia and Singapore over the interpretation of the Judgment of 23 May 2008 within the meaning of Article 60 of the Court's Statute; and

b. the Court has jurisdiction over Malaysia's Interpretation Application and that the Interpretation Application is admissible.

122. In its Interpretation Application, Malaysia set out the *Interpretation Requested from the Court* in the following terms (at paragraph 56):

> Malaysia respectfully asks the Court to adjudge and declare that:

(a) "The waters surrounding Pedra Branca/Pulau Batu Puteh remain within the territorial waters of Malaysia"; and

(b) "South Ledge is located in the territorial waters of Malaysia, and consequently sovereignty over South Ledge belongs to Malaysia".

123. Malaysia maintains this request to the Court.

124. In the event that the Court considers that further written and/or oral submissions of the Parties on the issues engaged by the Interpretation Application would be appropriate, Malaysia requests the Court order such further submissions of the Parties as would be appropriate to facilitate the Court's interpretation of its 2008 Judgment.

I have the honour to submit to the Court the Written Observations by Malaysia in Response to Singapore's Written Observations Contesting Jurisdiction and Admissibility in the *Request for Interpretation of the Judgment of 23 May 2008 in the* Case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) (*Malaysia v. Singapore)* as well as the annexes attached hereto.

The Written Observations are submitted pursuant to the letter of the Registrar dated 9 October 2017 transmitting the decision of the Court to permit such submissions. In accordance with the respective Rules and Practice of the Court, I submit a duly signed copy of the Written Observations.

I am pleased to certify that the copies of the annexed documents are true copies of the originals.

Dated the 15th day of February 2018

Dato' Ahmad Nazri Yusof

Ambassador of Malaysia to the Kingdom of the Netherlands

Co-Agent of Malaysia

VI. LIST OF ANNEXES

Annex A	Malaysia's Emergency (Essential Powers) Ordinance No. 7 1969, P.U.(A) 307A/1969.
Annex B	Singapore Government Press Release 09-0/80/09/15, dated 15 September 1980.

Annex A

Malaysia's Emergency (Essential Powers) Ordinance No. 7 1969,

P.U.(A) 307A/1969.

LAWS OF MALAYSIA

Ordinance 7

EMERGENCY (ESSENTIAL POWERS) ORDINANCE, No. 7 1969

An Ordinance promulgated by the Yang di-Pertuan Agong under Article 150 (2) of the Constitution.

[ ]

WHEREAS by reason of the existence of a grave emergency threatening the security of Malaysia, a Proclamation of Emergency has been issued by the Yang di-Pertuan Agong under Article 150 of the Constitution;

P.U. (A) 145/69.

AND WHEREAS Parliament was dissolved on the twentieth day of March, 1969, and elections to the new Dewan Ra'ayat have not been completed;

P.U. (A) 94/69.

AND WHEREAS the Yang di-Pertuan Agong is satisfied that immediate action is required for an Ordinance to be promulgated for the delimitation of the territorial waters of Malaysia;

IT IS HEREBY ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong pursuant to Clause (2) of Article 150 of the Constitution as follows:

Citation. **1.** This Ordinance may be cited as the Emergency (Essential Powers) Ordinance, No. 7 1969.

Application. **2.** This Ordinance shall apply throughout Malaysia.

Breadth of territorial waters. **3.** (1) It is hereby declared that the breadth of the territorial waters of Malaysia shall be twelve nautical miles and such breadth shall be measured in accordance with Articles 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958), which Articles are set out in the Schedule hereto.

(2) In applying the aforesaid Articles, the expression "territorial sea" occurring therein shall be construed as "territorial waters".

Modification of laws. **4.** (1) Except as provided in sub-section (2), any reference occurring in any written law to territorial waters shall in so far as such reference affects federal law be construed subject to the provisions of this Ordinance.

(2) For the purposes of the Continental Shelf Act, 1966, Petroleum Mining Act, 1966, and the National Land Code Act, 1965, any reference to territorial waters appearing in any of these Acts shall be construed without reference to the provisions of this Ordinance. *Act. No. 57 of 1966. Act. No. 58 of 1966. Act. No. 56 of 1965.*

Publication of large-scale map.

5. (1) So soon hereafter as may be possible or thereafter from time to time as he may consider necessary the Yang di-Pertuan Agong shall cause to be published a large-scale map indicating the low water marks, the baselines, the outer limits and the areas of the territorial waters of Malaysia.

(2) A copy of such map shall be published in the *Gazette* for general information.

Modification of territorial waters.

6. The Yang di-Pertuan Agong shall, pursuant to any agreement entered into between Malaysia and another coastal State, by order modify the areas of the territorial waters of Malaysia; and any modification so made shall be indicated in a large-scale map and a copy thereof shall be published in the *Gazette* for general information.

Evidence.

7. In any proceedings before any court in Malaysia if question arises as to whether an act or omission has taken place within or without the territorial waters of Malaysia, a certificate to that effect purported to be signed by or on behalf of the Minister charged with the responsibility for external affairs shall be received in evidence and shall be prima facie proof of the facts stated therein.

SCHEDULE

(Section 3)

GENEVA CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE (1958)

ARTICLE 3

Except where otherwise provided in these Articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State.

ARTICLE 4

1. In localities where the coast line is deeply indented and cut into, or if there is a fringe of island along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

ARTICLE 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

ARTICLE 7

1. This Article relates only to bays the coast of which belong to a single State.

2. For the purposes of these Articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in Article 4 is applied.

ARTICLE 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

ARTICLE 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

ARTICLE 10

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.

2. The territorial sea of an island is measured in accordance with the provisions of these Articles.

ARTICLE 11

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high-tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has not territorial sea of its own.

ARTICLE 12

1. Where the coast of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognised by the coastal States.

ARTICLE 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

Promulgated at Istana Negara, Kuala Lumpur, on the Second day of August, 1969.

TUANKU ISMAIL NASIRUDDIN SHAH,
Yang di-Pertuan Agong

Annex B

Singapore Government Press Release 09-0/80/09/15, dated 15 September 1980.

Singapore Government

PRESS RELEASE

Information Division, Ministry of Culture, City Hall, Singapore 0617 • tel: 328191 ext.352,353,354 / 362207 / 362271.

09-0/80/09/15.

EXCLUSIVE ECONOMIC ZONE

The Resumed Ninth Session of the Third United Nations Conference on the Law of the Sea has just ended at Geneva. From the results of the Session, it would appear that the Conference is now drawing to a close and a new Convention on the Law of the Sea is likely to be concluded soon.

One of the trends emerging from the Conference is the endorsement of a 12-nautical mile limit for the territorial sea, with assurances of unimpeded transit passage through straits, and for a 200-nautical mile Exclusive Economic Zone beyond the territorial sea where coastal States will have jurisdiction and rights over resources. The practice of States in recent years has also been consistent with this trend. Among others, Malaysia and Indonesia have already declared a 12-nautical mile territorial sea and a 200-nautical mile Exclusive Economic Zone.

Since 1878, Singapore has adhered to the concept of a three-nautical mile territorial sea. In certain areas, Singapore can extend its territorial sea beyond three nautical miles and can also claim an Exclusive Economic Zone. In the light of the said international developments, Singapore will exercise its rights to extend its territorial sea limit up to a maximum of 12 nautical miles. Likewise, Singapore will also establish an Exclusive Economic Zone.

The precise coordinates of any extensions of the territorial sea and the establishment of any Exclusive Economic Zone will be announced at an appropriate time. Should such extensions and the establishment of an Exclusive Economic Zone overlap with claims of neighbouring countries, Singapore will negotiate with these countries with a view to arriving at an agreed delimitation in accordance with international law.

MINISTRY OF FOREIGN AFFAIRS

15 SEPTEMBER 1980