

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)**

**RESPONSE OF  
THE REPUBLIC OF SINGAPORE  
  
ON THE  
  
COMMENTS BY MALAYSIA  
DATED 15 FEBRUARY 2018**

23 APRIL 2018

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## RESPONSE OF THE REPUBLIC OF SINGAPORE

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**RESPONSE OF  
THE REPUBLIC OF SINGAPORE**

**CHAPTER I**

**INTRODUCTION**

- 1.1 On 30 June 2017, Malaysia filed its request for interpretation (“**the Request for Interpretation**”) of the Judgment delivered by the Court on 23 May 2008 in the Case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (“**the Judgment**”)<sup>1</sup>. On 30 October 2017, Singapore filed its written observations on the Request for Interpretation (“**Singapore’s Written Observations**”).
- 1.2 On 15 November 2017, Malaysia requested the opportunity “to submit written observations on jurisdiction and admissibility in response to Singapore’s written observations”. On 8 December 2017, the Court granted Malaysia’s request, and fixed 8 February 2018 as the time-limit within which Malaysia may submit its comments, and 9 April 2018 as the time-limit within which Singapore may submit its response thereto.
- 1.3 On 29 January 2018, Malaysia requested that the time-limit afforded to submit its written comments be extended to 28 February 2018. On 1 February 2018, the President of the Court decided that the time-limit for submission of Malaysia’s written comments would be extended to 15

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<sup>1</sup> *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008*, p. 12. As in Singapore’s Written Observations, the Case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* is referred to hereafter as “**the original case**”.

February 2018, and the time-limit for submission of Singapore’s response thereto would be extended to 23 April 2018. Malaysia’s written comments were filed on 15 February 2018 (“**Malaysia’s Written Comments**”). In accordance with the President’s decision of 1 February 2018, Singapore now submits its response to Malaysia’s written comments (“**Singapore’s Response**”).

### A. Malaysia’s Written Comments

1.4 At the outset, Singapore recalls that in the Judgment, the Court ruled that:

- (1) sovereignty over Pedra Branca belongs to Singapore;
- (2) sovereignty over Middle Rocks belongs to Malaysia; and
- (3) sovereignty over South Ledge belongs to the State in the territorial waters of which it is located<sup>2</sup>.

1.5 Malaysia now argues that there is a dispute between the Parties over these rulings in the Judgment. Malaysia asserts that the rulings in subparagraphs (1) and (3) require clarification, and should be interpreted to mean 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’.”<sup>3</sup>

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<sup>2</sup> Judgment, pp. 101-102, para. 300.

<sup>3</sup> Request for Interpretation, para. 56; Malaysia’s Written Comments, para. 122.

- 1.6 Malaysia's arguments are without merit. The Judgment is clear and requires no interpretation<sup>4</sup>. The Request for Interpretation is not a genuine request which meets the requirements under Article 60 of the Statute of the Court. Malaysia is instead asking the Court, under the guise of interpretation, to go beyond what it decided in the Judgment, and to rule on issues relating to maritime entitlements and delimitation, which were never before the Court under the Special Agreement signed by the Parties on 6 February 2003, and which it did not rule upon.
- 1.7 To this end, in the Request for Interpretation and its Written Comments, Malaysia has sought to manufacture a dispute based on the fact that the Parties hold different views over the extent of their respective maritime entitlements in the relevant area, and the delimitation of those overlapping entitlements. But this is not a dispute over the meaning or scope of the Judgment, which could not be clearer.
- 1.8 Malaysia has never questioned the Court's finding that sovereignty over Pedra Branca belongs to Singapore. Similarly, there is and can be no dispute over the meaning or scope of the Court's ruling that sovereignty over South Ledge, as a low-tide elevation, belongs to the State in the territorial waters of which it is located. Malaysia's own post-Judgment conduct and statements show that there is no real dispute over these rulings. It follows that the Court has no jurisdiction over the Request for Interpretation.

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<sup>4</sup> As Singapore highlighted in para. 3.21 of its Written Observations, the exact same words which are used in the *dispositif* for Pedra Branca are also used in the *dispositif* for Middle Rocks, but Malaysia has not asserted that the Court's holding in respect of Middle Rocks requires interpretation. The reality is that both rulings are equally clear.

- 1.9 Moreover, the Request for Interpretation is inadmissible because it seeks decisions on questions which were never before the Court in the original case, and which were therefore not decided by it. Pursuant to Article 2 of the Special Agreement, the Court was requested to rule on sovereignty over Pedra Branca, Middle Rocks and South Ledge. That is exactly what the Court did. The Court was not asked to, and did not, decide on the existence or extent of the Parties' respective maritime entitlements. The Court was also not asked to, and did not engage in delimitation with respect to the territorial waters of Malaysia and Singapore in the area in question<sup>5</sup>.
- 1.10 For Pedra Branca, Malaysia's new argument, advanced for the first time in Malaysia's Written Comments, that the island generates no territorial waters of its own is entirely misplaced as a matter of international law<sup>6</sup>. However, this was not a question before the Court, was not argued by the Parties, and was not decided by the Court, in the original case.
- 1.11 For South Ledge, due to the fact that it is a low-tide elevation, the Court ruled as it did and held that sovereignty over South Ledge belongs to the State in the territorial waters of which it is located. The Court expressly refrained from deciding on the question whether South Ledge falls within the territorial waters of Singapore or Malaysia, because that would depend on maritime delimitation – an issue that was not within the Court's jurisdiction and, quite properly, was not decided by it.
- 1.12 The Request for Interpretation is actually an appeal of the Judgment and an attempt to have the Court rule on questions that were, and continue to be, beyond the scope of its jurisdiction. As Singapore has emphasised

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<sup>5</sup> Judgment, p. 101, para. 298.

<sup>6</sup> See para. 3.29 below.

from the beginning, the Judgment is crystal clear in its rulings, and requires no interpretation. The Request for Interpretation is an abuse of process and should be rejected.

- 1.13 Far from remedying the deficiencies in the Request for Interpretation, Malaysia's Written Comments aggravate them and add to the confusion. Malaysia has shifted its case and raised arguments in its Written Comments which contradict its own Request for Interpretation. Whereas it previously asserted that the Court "has discharged its function under the Special Agreement"<sup>7</sup>, Malaysia now attacks the Judgment as being "incomplete"<sup>8</sup>, and the Court's reasoning as "far from unambiguous"<sup>9</sup> and having "introduced a strong element of uncertainty"<sup>10</sup>. It appears that Malaysia has found it expedient to jettison elements of its own case to artificially portray the Judgment as requiring interpretation.
- 1.14 Furthermore, in various parts of Malaysia's Written Comments, in a bid to shore up its case, Malaysia mischaracterises the Judgment and presents a false picture of the Court's reasoning<sup>11</sup>, as well as of Singapore's case. Singapore will only respond briefly to some of Malaysia's mischaracterisations because the points raised in Malaysia's Written Comments are wholly irrelevant to a request for interpretation, and serve only to obfuscate the fact that Malaysia's case has no leg to stand on.

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<sup>7</sup> Request for Interpretation, para. 46.

<sup>8</sup> Malaysia's Written Comments, para. 11.

<sup>9</sup> *Ibid.*, para. 40.

<sup>10</sup> *Ibid.*, para. 44.

<sup>11</sup> See, for example, paras. 2.15, 2.19, 3.22-3.30 and 3.36-3.39 below, which address various mischaracterisations of the Judgment by Malaysia.

1.15 However, two particular misrepresentations require a response at the outset, because they paint an entirely false picture of the character of the present proceedings and the issues which the Court is called upon to rule on. The first misrepresentation concerns the astonishing assertion in Malaysia's Written Comments that:

“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.”<sup>12</sup>

This assertion makes no sense, and is nothing more than a straw man argument that Malaysia has set up<sup>13</sup>. Malaysia has deliberately chosen to overlook the fact that Singapore’s Written Observations repeatedly and clearly set out Singapore’s position on the meaning and scope of the Judgment, namely, that the Judgment is clear and requires no interpretation<sup>14</sup>.

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<sup>12</sup> Malaysia’s Written Comments, para. 5.

<sup>13</sup> This is also apparent in Malaysia’s attempt, in its letters to the Court of 15 November 2017 and 15 February 2018, and in the title given to Malaysia’s Written Comments, to misleadingly recast Singapore’s Written Observations as submissions limited only to “contesting jurisdiction and admissibility”.

<sup>14</sup> See, for example, Singapore’s Written Observations, paras. 1.7, 1.13, 3.2 and 4.3, and para. 6 of the Summary of Singapore’s Reasoning at p. 64 of that pleading.

- 1.16 The second misrepresentation is Malaysia’s claim that “for tactical reasons in these proceedings, [Singapore] has hesitated to crystallise its position as regards maritime and airspace sovereignty around Pedra Branca/Pulau Batu Puteh ...”<sup>15</sup>. This is plainly a red herring. The issue of maritime and airspace entitlements, notwithstanding Malaysia’s deliberate misuse of terminology, has nothing to do with the issue of sovereignty which the Court was asked to decide in the original case. The question of the extent of maritime entitlements around Pedra Branca was outside of the Court’s mandate, and consequently has nothing to do with the meaning or scope of the Judgment.
- 1.17 Additionally, Malaysia’s request in paragraph 4 of its letter to the Court dated 15 February 2018 to be “afforded an opportunity to address any relevant merits issues” in the event that the Court accepts jurisdiction and holds the Request for Interpretation admissible is misguided. Article 60 of the Statute of the Court makes no distinction between jurisdiction and admissibility on the one hand, and the “merits” on the other hand. Both Parties have had a full opportunity to present their respective positions on the Request for Interpretation. Malaysia is hoping for yet another opportunity to argue issues over which the Court had no jurisdiction under the Special Agreement and were not decided by it.

## **B. The Fundamental Defects in Malaysia’s Case**

- 1.18 What Malaysia is trying to put forward is not a proper request for interpretation under Article 60 of the Statute of the Court. In advancing an entirely new case relating to the maritime entitlements of the Parties, and seeking to persuade the Court to go beyond the limits of its mandate,

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<sup>15</sup> Malaysia’s Written Comments, para. 10

Malaysia repeats the same erroneous arguments made by the Applicant (Colombia) which the Court addressed and rejected in the *Asylum Case*. As the Court explained in that case with respect to a question that Colombia had argued required interpretation:

“... The Court can only refer to what it declared in its Judgment in perfectly definite terms: this question was completely left outside the submissions of the Parties. The Judgment in no way decided it, nor could it do so. It was for the Parties to present their respective claims on this point. The Court finds that they did nothing of the kind.

The ‘gaps’ which the Colombian Government claims to have discovered in the Court’s Judgment in reality are new questions, which cannot be decided by means of interpretation. Interpretation can in no way go beyond the limits of the Judgment, fixed in advance by the Parties themselves in their submissions.

In reality, the object of the questions submitted by the Colombian Government is to obtain, by the indirect means of interpretation, a decision on questions which the Court was not called upon by the Parties to answer.

Article 60 of the Statute provides, moreover, that interpretation may be asked only if there is a ‘dispute as to the meaning or scope of the judgment’. Obviously, one cannot treat as a dispute, in the sense of that provision, the mere fact that one Party finds the judgment obscure when the other considers it to be perfectly clear. A dispute requires a divergence of views between the parties on definite points; Article 79, paragraph 2 [now Article 98, paragraph 2], of the Rules confirms this condition by stating that the application for interpretation “shall specify the precise point or points in dispute”.<sup>16</sup>

- 1.19 The above quotation aptly summarises the fundamental defects in Malaysia’s case. First, there is no dispute within the meaning of Article 60 of the Statute of the Court. One cannot treat as a dispute the mere fact

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<sup>16</sup> *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru), Judgment, I.C.J. Reports 1950*, p. 403.

that Malaysia now claims the Judgment is obscure when Singapore considers it to be perfectly clear. Nor does a dispute that concerns matters that were not within the Court’s mandate to decide constitute a dispute over the meaning and scope of the Judgment. There is in fact no divergence of views between the Parties on the meaning or scope of the Judgment. Second, Malaysia is trying to obtain, by the indirect means of interpretation, a decision on questions which the Court was not called upon by the Parties to answer and did not answer. Singapore will elaborate on these defects in the following Chapters.

### **C. Structure of Singapore’s Response**

- 1.20 Singapore’s Response is divided into three Chapters including this introductory chapter. The remaining Chapters are organised as follows:
- (a) Chapter II reiterates that, contrary to Malaysia’s assertions and the attack which Malaysia has now levelled on the Judgment, the Court fully carried out the task assigned to it by the Special Agreement, in a clear, final and binding Judgment, and that in so doing, the Court decided the dispute submitted to it by the Parties within the limits of its mandate.
  - (b) Chapter III explains why Malaysia’s Written Comments, just like the Request for Interpretation, fail to demonstrate that the conditions for a request for interpretation under Article 60 of the Statute of the Court are satisfied. As Singapore will show again, there is no dispute over the meaning or scope of the Judgment between the Parties. Moreover, Malaysia seeks rulings from the Court in respect of Pedra Branca and South Ledge that were not before the Court in the original case. This is an abuse of process.

1.21 A Summary of Singapore's Reasoning and Singapore's Submission are set out at the end of Singapore's Response together with two documentary Annexes.

## **CHAPTER II**

### **THE COURT CARRIED OUT THE TASK ASSIGNED TO IT IN A CLEAR, FINAL AND BINDING JUDGMENT**

- 2.1 The Court’s jurisdiction in the original case was based on the Special Agreement. By that instrument, the Parties requested the Court to determine whether sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge belongs to Malaysia or Singapore. In contrast, the Special Agreement did not request the Court to determine the existence or extent of the Parties’ maritime entitlements generated by any of the three named features or to effectuate a maritime delimitation. The Parties did not argue those issues or make submissions on them, and the Court quite properly did not address them.
- 2.2 In this Chapter, Singapore will show that the Court respected the limits of its jurisdictional mandate and fully carried out the task assigned to it by the Special Agreement in the Judgment. The Court decided the precise dispute submitted to it – nothing more, and nothing less. With respect to Pedra Branca, the Court ruled that sovereignty belongs to Singapore. With respect to Middle Rocks, the Court ruled that sovereignty belongs to Malaysia. With respect to South Ledge, given its status as a low-tide elevation, the Court ruled that sovereignty belongs to the State in the territorial waters of which it is located. The Judgment in all three respects is perfectly clear and requires no interpretation.

#### **A. The Scope of the Original Case: The Special Agreement and the Limits of the Court’s Jurisdiction**

- 2.3 The Court has frequently emphasised that there exists “a well-established principle of international law embodied in the Court’s Statute, namely, that the Court can only exercise jurisdiction over a State with its

consent”<sup>17</sup>. This is equally relevant in interpretation cases, as the Court noted in its 1985 judgment in the *Tunisia-Libya* revision and interpretation case where it stated that: “It is of course a fundamental principle that ‘The consent of States, parties to a dispute, is the basis of the Court’s jurisdiction in contentious cases’”<sup>18</sup>. As noted above, Singapore and Malaysia expressed their consent to the Court’s jurisdiction in the Special Agreement. However, that consent, and by necessity the scope of the Court’s jurisdiction, only extended to the request for the Court to determine the question of sovereignty over Pedra Branca, Middle Rocks and South Ledge. The Court had no jurisdiction to decide any other issues, including the existence and extent of the maritime entitlements of these features. As the Court noted in its judgment in the *Libya/Malta* case:

“Since the jurisdiction of the Court derives from the Special Agreement between the Parties, the definition of the task so conferred upon it is primarily a matter of ascertainment of the intention of the Parties by interpretation of the Special Agreement. The Court must not exceed the jurisdiction conferred

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<sup>17</sup> *Monetary Gold Removed from Rome*, Judgment I.C.J. Reports 1954, p. 32; *Aerial Incident of 27 July 1955 (Israel v. Bulgaria)*, Judgment, I.C.J. Reports 1959, p. 142; and *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 105, para. 34. See also *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion of 30 March 1950 (first phase), I.C.J. Reports 1950, p. 71; *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections*, Judgment, I.C.J. Reports 1998, p. 312, para. 79; and *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Judgment, I.C.J. Reports 2006, p. 32, para. 64.

<sup>18</sup> *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, I.C.J. Reports 1985, p. 216, para. 43, citing the *Asylum Case*, Judgment, I.C.J. Reports 1950, p. 71.

upon it by the Parties, but it must also exercise that jurisdiction to its full extent.”<sup>19</sup>

- 2.4 Malaysia now says that “[t]he Special Agreement was very clear”<sup>20</sup>. Indeed it was. The Special Agreement requested the Court to determine sovereignty over certain features and nothing else. Malaysia was fully aware that the only issue before the Court was the question of territorial sovereignty over Pedra Branca, Middle Rocks and South Ledge. Its pleadings in the original case, as well as those of Singapore, were devoted to this issue, not the new arguments now advanced by Malaysia in its Written Comments to the effect that the notion of “sovereignty” also “imports sovereignty over the adjacent waters”<sup>21</sup>, and that the Judgment is unclear as to whether Pedra Branca generates any territorial waters<sup>22</sup> and, if so, to what breadth<sup>23</sup>. As Singapore will show in Chapter III, by this convoluted line of argument, Malaysia is seeking to have the Court answer questions that were not part of its mandate under the Special Agreement. This is not a proper or valid basis on which to request the interpretation of the Judgment.
- 2.5 Singapore’s Written Observations referred to a number of specific statements made by Malaysia during the original case that stressed the limited scope of the dispute submitted to the Court as one only concerning

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<sup>19</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 23, para. 19, cited with approval in *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 671, para. 136.

<sup>20</sup> Malaysia’s Written Comments, para. 19.

<sup>21</sup> *Ibid.*, para. 24.

<sup>22</sup> *Ibid.*, para. 27.

<sup>23</sup> *Ibid.*, para. 33.

sovereignty over these features<sup>24</sup>. Given that Malaysia's Written Comments have remained silent on the point, it is appropriate to recall one of those statements here:

“To avoid any risk of confusion in the light of these statements, it should be emphasised what this case is and is not about. This case concerns sovereignty – over PBP [i.e., Pulau Batu Puteh/Pedra Branca], Middle Rocks and South Ledge – and that alone.”<sup>25</sup>

- 2.6 Singapore also pointed out that the Parties' final submissions in the original case show that they sought rulings from the Court solely on the issue of sovereignty, not on the Parties' maritime entitlements<sup>26</sup>. Malaysia has not responded to this point either, even though it is a critical one for the purposes of assessing the admissibility of the Request for Interpretation. To recall the words of the Court in the *Asylum Case*:

“To decide whether the first requirement stated above [i.e. admissibility] is fulfilled, one must bear in mind the principle that it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions.”<sup>27</sup>

- 2.7 Quite apart from these statements that expose the artificiality of the Request for Interpretation, Malaysia also knew that the original case solely concerned the question of territorial sovereignty because it had been a party to another dispute involving sovereignty over islands just a few years earlier. This was the case between Indonesia and Malaysia

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<sup>24</sup> See Singapore's Written Observations, paras. 3.26-3.28.

<sup>25</sup> Counter-Memorial of Malaysia, para. 183.

<sup>26</sup> Singapore's Written Observations, paras. 3.28-3.29.

<sup>27</sup> *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru), Judgment, I.C.J. Reports 1950*, p. 402.

concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan*<sup>28</sup>, submitted to the Court by a Special Agreement between those two States<sup>29</sup>.

- 2.8 The *Indonesia/Malaysia* Special Agreement is drafted in virtually the same terms as the *Singapore/Malaysia* Special Agreement. Article 2 of the *Indonesia/Malaysia* Special Agreement dealing with the “Subject of the Litigation” reads as follows:

“The Court is requested to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia”.<sup>30</sup>

The corresponding article in the *Singapore/Malaysia* Special Agreement is also Article 2, similarly entitled “Subject of the Litigation”. It provides as follows:

“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”.<sup>31</sup>

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<sup>28</sup> *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 625.

<sup>29</sup> During the original case, Malaysia’s then Attorney General noted that the Parties agreed to defer the *Singapore/Malaysia* case until after the *Indonesia/Malaysia* case was concluded (CR 2007/24, p. 28, para. 3).

<sup>30</sup> *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 630, para. 2.

<sup>31</sup> Judgment, p. 18, para. 2. The Applicable Law, Procedure, Judgment of the Court, Entry into Force and Notification provisions of both Special Agreements are also, in all material respects, the same.

- 2.9 In the *Indonesia/Malaysia* case, just as in the present case, the parties directed their arguments and submissions exclusively to the question of sovereignty over the islands at issue. They did not seek to interject into the dispute any questions about the maritime entitlements of those islands – questions that did not appear in their Special Agreement and over which the Court had no jurisdiction.
- 2.10 For its part, the Court decided the dispute that the parties submitted to it in that case – whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Indonesia or Malaysia – without venturing into the question of the maritime entitlements of the islands. Not surprisingly, the Court’s *dispositif* in that case is cast in a similar way to its *dispositif* in the Judgment (bearing in mind that, unlike South Ledge, neither Pulau Ligitan nor Pulau Sipadan is a low-tide elevation). The Court simply ruled that sovereignty over the islands belonged to one or the other of the parties. In both instances, the Court was not called upon to make any other determinations and it did not do so<sup>32</sup>.
- 2.11 Returning to the original case, in the Judgment, the Court was also clear that it was dealing solely with a question of territorial sovereignty. At paragraph 32 of the Judgment, the Court referred to the case as one concerning “a dispute related to sovereignty over land”<sup>33</sup>. In other words,

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<sup>32</sup> Even in cases where the Court has jurisdiction to determine a sovereignty dispute over islands *and* maritime delimitation, the Court has dealt with the question of sovereignty separately from the question of the maritime entitlements of islands. For example, in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, the Court first determined the question of sovereignty over the islands in Part II of the Judgment entitled “Sovereignty” (*I.C.J. Reports 2012*, p. 662, para. 103). The question of entitlements generated by maritime features was dealt with in Part V of the Judgment entitled “Maritime Boundary” (*I.C.J. Reports 2012*, pp. 686-693, paras. 167-183).

<sup>33</sup> Judgment, p. 27, para. 32. Similarly, in para. 122 of the Judgment (p. 51), the Court made it clear that, critical for its assessment of the conduct of the Parties “is the central importance in international law and relations of State sovereignty”

consistent with the task conferred upon it, the Court was not addressing a dispute over the existence or extent of any maritime entitlements.

- 2.12 Had the Court done so, it would have decided *ultra petita*. In this connection, it is useful to recall the observations made by the Court in its 2013 judgment on the Request for Interpretation in the *Temple* case since the same principles are apposite to the present case:

“The principle of *non ultra petita* is well established in the jurisprudence of the Court (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru), Judgment, I.C.J. Reports 1950*, p. 402; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002*, pp. 18-19, para. 43) and is one reason why the claims contained in the final submissions of the Parties in the original case are of relevance in interpreting the 1962 Judgment. Nevertheless, that principle cannot justify an interpretation which runs counter to the terms of the 1962 Judgment. The Court in 1962 necessarily made an assessment of the scope of the *petitum* before it; Article 60 of the Statute does not give the Court the power today to substitute a different assessment for that made at the time of the Judgment.”<sup>34</sup>

## **B. The Court Clearly Settled the Case Within Its Jurisdictional Mandate**

- 2.13 The Judgment is perfectly clear and there is no need for interpretation. With respect to Pedra Branca, the Court was asked to determine which Party has sovereignty over it. The Court answered that question in the operative clause of the Judgment: “sovereignty over Pedra Branca/Pulau

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*over territory and of the stability and certainty of that sovereignty*” (emphasis added).

<sup>34</sup> *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, I.C.J. Reports 2013*, p. 307, para. 71.

Batu Puteh belongs to the Republic of Singapore”<sup>35</sup>. This was clearly a ruling on sovereignty over land<sup>36</sup>.

- 2.14 It is impossible to see how the Court’s decision with respect to sovereignty over Pedra Branca could require any interpretation. Indeed, Malaysia acknowledges this fact. In Malaysia’s Written Comments, Malaysia quite plainly states: “The finding of sovereignty over the territory of Pedra Branca/Pulau Batu Puteh is unambiguous as such”<sup>37</sup>. That is correct, and it is the end of the matter with respect to Malaysia’s first submission. But notwithstanding the Court’s ruling on sovereignty, which was equally clear with respect to sovereignty over Middle Rocks, Malaysia then goes on to say in its Written Comments that “it is not clear how far this extends or what exactly it means”<sup>38</sup>.
- 2.15 That assertion raises a different question and is wholly misconceived. Malaysia attempts to conflate the question of sovereignty over Pedra Branca, which was the issue put to the Court in the Special Agreement and which the Court decided, with the question whether an island such as Pedra Branca generates a territorial sea and, if so, how far that entitlement extends<sup>39</sup>, which was not put to the Court. As explained above, in the original case, the Parties did not request the Court to address those questions in the Special Agreement, they did not argue the points in their written and oral pleadings, and the Court made no determination on them.

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<sup>35</sup> Judgment, p. 101, para. 300(1).

<sup>36</sup> In fact, Malaysia concedes this fact, when it states at para. 19 of its Written Comments that “the Court was asked to come to a decision on sovereignty and accepted that the “dispute related to sovereignty over land””.

<sup>37</sup> Malaysia’s Written Comments, para. 23.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, paras. 27 and 33.

As the next Chapter will show, there is no jurisdiction to entertain Malaysia’s attempt to recast the scope of the original case under the guise of a request for interpretation because there is no dispute over the Court’s finding on sovereignty over Pedra Branca. Moreover, the request is inadmissible because it asks the Court to answer questions that were not before it in the original case and that it did not decide in the Judgment.

- 2.16 With respect to South Ledge, the Judgment is also clear. As the Court explained, South Ledge presented “special problems” that needed to be considered, “inasmuch as South Ledge, as distinct from Middle Rocks, presents a special geographical feature as a low-tide elevation”<sup>40</sup>. In this connection, the Court noted that the issue of whether a low-tide elevation is susceptible of appropriation or not had come up in its jurisprudence<sup>41</sup>. Drawing on its treatment of low-tide elevations situated within a coastal State’s territorial sea in the *Qatar v. Bahrain* case<sup>42</sup>, the Court indicated that it:

“... will proceed on the basis of whether South Ledge lies within the territorial waters generated by Pedra Branca/Pulau Batu Puteh, which belongs to Singapore, or within those generated by Middle Rocks, which belongs to Malaysia. In this regard the Court notes that South Ledge falls within the apparently overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca/Pulau Batu Puteh and Middle Rocks.”<sup>43</sup>

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<sup>40</sup> Judgment, p. 99, para. 291.

<sup>41</sup> *Ibid.*, p. 100, para. 295.

<sup>42</sup> *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001*, pp. 101-102, paras. 204-206.

<sup>43</sup> Judgment, p. 101, para. 297.

2.17 In adopting this approach, the Court was fully aware that in the Special Agreement and the Parties' final submissions in the original case, it had been "specifically asked to decide the matter of sovereignty separately for each of the three maritime features"<sup>44</sup>. At the same time, it was also conscious of the fact that it had *not* been mandated by the Parties "to draw the line of delimitation with respect to the territorial waters of Malaysia and Singapore in the area in question"<sup>45</sup>. Similarly, the Court was not mandated to rule on the extent of the respective maritime entitlements of the Parties in the area, or whether South Ledge fell within the territorial sea of one or the other party, since that would have trespassed onto delimitation questions for which the Court had no jurisdiction.

2.18 It was these factors that underlay the Court's precisely crafted decision with respect to sovereignty over South Ledge. The *dispositif* was tailored to the legal considerations applicable to South Ledge. As the Court stated:

"In these circumstances, the Court concludes that for the reasons explained above sovereignty over South Ledge, as a low-tide elevation, belongs to the State in the territorial waters of which it is located."<sup>46</sup>

2.19 That decision is clear. Contrary to Malaysia's contention, the Court's reasoning on South Ledge is not "far from unambiguous"<sup>47</sup>. Nor is there any merit to Malaysia's criticism of the Court when Malaysia alleges that the operative part of the Judgment is "incomplete"<sup>48</sup>. The Court

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<sup>44</sup> Judgment, p. 101, para. 298.

<sup>45</sup> *Ibid.*

<sup>46</sup> Judgment, p. 101, para. 299. *See also* Judgment, p. 102, para. 300(3).

<sup>47</sup> Malaysia's Written Comments, para. 40.

<sup>48</sup> *Ibid.*, para. 11.

recognised that there were “special problems”<sup>49</sup> associated with South Ledge due to the fact that, unlike Pedra Branca and Middle Rocks, South Ledge is a low-tide elevation. The Court’s reasoning that led to its decision on South Ledge is clearly explained at paragraphs 291 to 299 of the Judgment and is logical. In short, just as the first sub-paragraph of the *dispositif* (concerning Pedra Branca) requires no interpretation, so also is the third sub-paragraph (concerning South Ledge) equally clear; it requires no interpretation.

### C. Conclusions

- 2.20 From the foregoing, it is evident that in the Special Agreement the Parties limited their request to the Court to determining sovereignty over the three named features without asking the Court to decide any other issues such as the existence or extent of the maritime entitlements generated by those features. The Court respected the limits of its jurisdiction by ruling solely on the question of sovereignty. The determinations on sovereignty that the Court reached in fulfilling its jurisdictional mandate were perfectly clear and require no interpretation.

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<sup>49</sup> Judgment, p. 99, para. 291.

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## CHAPTER III

### MALAYSIA’S REQUEST DOES NOT MEET THE CONDITIONS FOR INTERPRETATION

- 3.1 Malaysia’s Request for Interpretation fails to demonstrate that the conditions for a request for interpretation under Article 60 of the Statute of the Court are satisfied, and its Written Comments do nothing to remedy these deficiencies.
- 3.2 There is no dispute between the Parties within the meaning of Article 60 of the Statute of the Court. If anything, the Parties disagreed on the existence and the extent of their respective maritime entitlements, a question that could not be and was not addressed by the Court. The attempt in Malaysia’s Written Comments to construct *ex post facto* a dispute that never existed cannot cure this elementary defect.
- 3.3 Furthermore, Malaysia’s Request for Interpretation is inadmissible. It does not seek “clarification of the meaning and the scope of what the Court has decided with binding force”<sup>50</sup>. As confirmed by Malaysia’s submissions, the Request for Interpretation seeks a decision of the Court, close to ten years after the Judgment was rendered in the original case, on issues and questions that the Court could not and did not decide in the Judgment.

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<sup>50</sup> *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case, I.C.J. Reports 1950*, p. 402. See also, *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, I.C.J. Reports 2013*, p. 303, para. 55.

## A. There Is No Dispute as to the Meaning or Scope of the Judgment

3.4 Nothing in the Request for Interpretation or Malaysia's Written Comments discloses the existence of a dispute between the Parties on the meaning or scope of the Judgment. Even if, as Malaysia asserts, the concept of "dispute" in Article 60 is considered to be "more flexible in scope" and "less stringent in its requirements" than that under Article 36<sup>51</sup>, there still needs to be a dispute (*contestation*) as to the meaning or scope of the Judgment. For a dispute to exist under Article 60, it is not sufficient for Malaysia to simply affirm that it disagrees with Singapore as to the existence or extent of maritime entitlements of Pedra Branca and on the question whether South Ledge is situated in the territorial waters of Malaysia or Singapore. It is also not sufficient for Malaysia to deny Singapore's position that the Judgment is clear<sup>52</sup>. As the Court explained in the *Asylum Case*:

"…one cannot treat as a dispute, in the sense of that provision [*i.e.* Article 60], the mere fact that one Party finds the judgment obscure when the other considers it to be perfectly clear. A dispute requires a divergence of views between the parties on definite points; Article 79, paragraph 2 [now Article 98, paragraph 2], of the Rules confirms this condition by stating that the application for interpretation 'shall specify the precise point or points in dispute'."<sup>53</sup>

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<sup>51</sup> Malaysia's Written Comments, para. 77, citing *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*, I.C.J. Reports 2008, p. 325, para. 53.

<sup>52</sup> *Ibid.*, para. 72.

<sup>53</sup> *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru), Judgment*, I.C.J. Reports 1950, p. 403.

Malaysia has to demonstrate a divergence of views between the Parties on definite points concerning *the meaning or scope* of the Judgment<sup>54</sup>. In other words, Malaysia has to demonstrate that its allegations concerning the meaning or scope of the Judgment “are of a sufficiently plausible character to warrant a conclusion” that the divergence falls under Article 60 of the Statute<sup>55</sup>.

- 3.5 In the present case, there is simply no basis for requesting an interpretation under Article 60. The operative paragraphs of the Judgment are clear. They say what they mean and mean what they say. Malaysia’s argument that this fact is immaterial<sup>56</sup> is erroneous. The Court declared Nigeria’s Request for Interpretation concerning its judgment on preliminary objections in the *Land and Maritime Boundary between Cameroon and Nigeria* case inadmissible precisely because the judgment was clear<sup>57</sup>. It noted that entertaining a request for interpretation in such circumstances would call “into question the effect of the Judgment concerned as *res*

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<sup>54</sup> *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*, Judgment, I.C.J. Reports 1950, p. 403. See also Written Observations of Singapore, paras. 3.20 and 4.30, where Singapore pointed out that Malaysia has not satisfied the requirements of Article 60 of the Statute of the Court or Article 98, paragraph 2, of the Rules of Court, the latter of which obliges a party seeking interpretation to indicate the “precise point or points in dispute as to the meaning or scope of the judgment”.

<sup>55</sup> *Ambatielos (Greece v. United Kingdom)*, Merits, Judgment, I.C.J. Reports 1953, p. 18. See also *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), p. 810, para. 16 and Separate Opinion of Judge Higgins, *ibid.*, pp. 856-857, paras. 32-35; and *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures, Order of 13 July 2006, Separate Opinion of Judge Abraham, I.C.J. Reports 2006, pp. 140-141, paras. 10-11.

<sup>56</sup> Malaysia’s Written Comments, para. 103.

<sup>57</sup> *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, I.C.J. Reports 1999, pp. 38-39, para. 16.

*judicata*”<sup>58</sup>. Yet this is exactly what Malaysia attempts to do in the present case.

- 3.6 Moreover, no genuine dispute as to the meaning or scope of the Judgment exists between the Parties, nor is the Request for Interpretation capable of giving rise to a new dispute on this matter.
- 3.7 In Malaysia’s Written Comments, Malaysia seeks to sweep aside Singapore’s account of the statements made by the Malaysian government and the work of the Malaysia-Singapore Joint Technical Committee on the Implementation of the International Court of Justice Judgment on Pedra Branca, Middle Rocks and South Ledge (“MSJTC”), and downplay the fact that these all conclusively show the lack of a dispute under Article 60 of the Statute of the Court.
- 3.8 Malaysia concedes that the statements of its officials and the work of the MSJTC “clearly demonstrate Malaysia’s willingness to work together with Singapore towards a bilateral delimitation of the Parties’ maritime entitlements”<sup>59</sup>. However, Malaysia now belatedly tries to explain its conduct away by making a claim which defies logic: in its Written Comments, Malaysia asserts that 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

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<sup>58</sup> *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, I.C.J. Reports 1999*, p. 39, para. 16.

<sup>59</sup> Malaysia’s Written Comments, para. 85. See also Malaysia’s Written Comments, para. 92.

Court decided with binding effect”<sup>60</sup>. Malaysia’s assertion makes no sense and is contradicted by the clear weight of the evidence before the Court. Malaysia cannot escape the fact that the statements of its officials and the work of the MSJTC demonstrate that both Parties understood perfectly well the meaning and the scope of the Judgment, and that the next step following the Judgment was for the Parties to delimit their overlapping maritime entitlements. These were not mere statements and indications of “goodwill and co-operation with Singapore”<sup>61</sup>, as Malaysia now disingenuously claims.

- 3.9 As Malaysia itself acknowledges<sup>62</sup>, Malaysia’s Foreign Minister accepted in 2008 that after the MSJTC completed its work, “the territorial waters of Batu Puteh [*i.e.* Pedra Branca] will be determined, similarly also [the waters of] Middle Rocks and also South Ledge – whether it overlaps with the waters of Middle Rocks or not, will be determined”<sup>63</sup>. In other words, the Malaysian authorities were well aware that the Court did not – and could not – determine the issue of the Parties’ maritime and airspace entitlements or the delimitation of the waters around Pedra Branca in the original case. These were questions left for the Parties to agree upon. The statement of Malaysia’s then Prime Minister concerning South Ledge is to the same effect. Rather than confirming that the Court decided that South Ledge is in Malaysian waters, the Prime Minister considered that “[w]e need to determine the demarcation line to show that South Ledge is

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<sup>60</sup> Malaysia’s Written Comments, para. 85. *See also* Malaysia’s Written Comments, para 92.

<sup>61</sup> *Ibid.*, para. 85.

<sup>62</sup> *See* Malaysia’s Written Comments, para. 86.

<sup>63</sup> Singapore’s Written Observations, para. 1.16, and Annex 16 to Singapore’s Written Observations.

in our waters”<sup>64</sup>. If, as Malaysia now claims, it was of the opinion that the Court had ruled that South Ledge was in Malaysian waters, it would not have been necessary for the Parties to determine the “demarcation line”. Instead, Malaysia’s repeated acknowledgments that maritime delimitation is necessary<sup>65</sup> are clear evidence that Malaysia considers South Ledge to be located in an area in which the Parties have overlapping maritime entitlements in the light of the Judgment.

- 3.10 In its Written Comments, Malaysia also tries to play down the significance of the maritime chart published by the Malaysian Chief of Navy on 21 August 2017 via social media, which Singapore highlighted in its Written Observations. Malaysia describes this chart as merely “marking out the extent of Singapore’s most ambitious claims to maritime entitlements”<sup>66</sup>. This *post-hoc* characterisation is unconvincing when measured against the clear words and context of the chart published by Malaysia. It remains illogical for Malaysia to assert that it has consistently disagreed with Singapore over whether the Judgment means that Pedra Branca is entitled to territorial waters on one hand, but on the other hand publish a chart setting out the “potential territorial sea” generated by Pedra Branca. Malaysia’s Written Comments do nothing to address the point

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<sup>64</sup> See Malaysia’s Written Comments, para. 87; Singapore’s Written Observations, para. 4.11, and Annex 7 to Singapore’s Written Observations.

<sup>65</sup> For instance, at para. 85 of Malaysia’s Written Comments, Malaysia refers to “Malaysia’s willingness to work together with Singapore towards a bilateral delimitation of the Parties’ maritime entitlements”; and at para. 86 of Malaysia’s Written Comments, Malaysia notes that “[i]t should not be surprising, therefore, that Malaysia considered it necessary for the delimitation to occur as soon as possible”.

<sup>66</sup> Malaysia’s Written Comments, para. 117.

that the chart demonstrates the lack of any dispute over the meaning or scope of the Judgment concerning sovereignty over Pedra Branca<sup>67</sup>.

- 3.11 The Parties' common understanding of the meaning and scope of the Judgment is further demonstrated by the establishment of, and the work carried out within, the MSJTC. Its task was always aimed at the delimitation of the Parties' respective entitlements around Pedra Branca and Middle Rocks in the light of the Court's rulings. The Parties considered that these were questions left for the Parties to agree upon. Rather than showing merely "goodwill and co-operation with Singapore", the existence, the mandate and the work of the MSJTC conclusively demonstrate that, in the Parties' understanding, the Judgment did not determine the territorial sea entitlements of Pedra Branca or Middle Rocks, did not rule that the waters surrounding Pedra Branca belong solely to Malaysia, and did not rule that South Ledge fell within the territorial sea of Malaysia. Otherwise, the entire exercise would have been a waste of time and resources for both sides<sup>68</sup>. It defies logic for Malaysia to have engaged in such a long process aimed at maritime delimitation if, as it only now claims, it was of the opinion that all the waters in the area were Malaysian waters.
- 3.12 This is confirmed by the fact that there is no mention anywhere in the records of the numerous meetings of the MSJTC and its sub-committees – which run into hundreds of pages – that Malaysia's interpretation of the Judgment is that which it now seeks from the Court.
- 3.13 Malaysia's only response is to argue unconvincingly that the Parties had participated in the work of the MSJTC "on the express proviso that all

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<sup>67</sup> Singapore's Written Observations, para. 3.17.

<sup>68</sup> *Ibid.*, para. 3.11.

discussions held and all actions taken would be ‘without prejudice to issues of sovereignty and eventual delimitation of maritime boundaries’”<sup>69</sup>. However, contrary to the spin which Malaysia is trying to put on it, this demonstrates precisely that the Parties were in agreement that such delimitation was still to be undertaken and would take place, even if both sides wanted to preserve their respective positions as to *how* the delimitation would be effectuated.

- 3.14 Moreover, Malaysia’s assertions in the Written Comments contrast sharply with the clear statements made by its own Agent in the original case, Tan Sri Kadir Mohamad. In a book published by the Malaysian Ministry of Foreign Affairs in 2009, he noted that:

“The Court subsequently ruled in favour of Malaysia regarding the status of Middle Rocks. *However, the Court refrained from taking a position on the status of SL [i.e. South Ledge] as it noted that SL fell within the apparently overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca and Middle Rocks and as such, left the status of SL to be subsequently determined by negotiation between Malaysia and Singapore.*”

...

“As for South Ledge, the Court reached the conclusion that sovereignty over SL would belong to the State in the territorial waters of which it is located as this low-tide elevation fell within the apparently overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca/BP and MR [i.e. Middle Rocks], and *as the Parties had not mandated the Court to draw the line of delimitation with respect to their territorial waters in the area.*

*The Court’s ruling means that the remaining question of establishing the sovereign ownership over South Ledge does not involve the issue of proving title but merely its geographical location in the context of maritime boundaries. ...”*

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<sup>69</sup> Malaysia’s Written Comments, para. 93.

...

*“As such, what the Court has conferred upon Singapore, in addition to the “white rock”, is a certain amount of territorial waters around Pedra Branca.”*

...

*“All three features — Middle Rocks, South Ledge as well as Pedra Branca — will generate their respective maritime areas.”*

...

*“All the three features are therefore only entitled to a 12 nautical mile territorial sea. ...”<sup>70</sup>*

[Emphasis added; original footnotes omitted]

- 3.15 The above statements were made in 2009. The former Agent of Malaysia repeated the same points in yet another book published in 2015:

*“In accordance with the Law of the Sea, Middle Rocks would now have its own entitlements to territorial sea around it. Pedra Branca is surrounded by the Johor coast as well as by Middle Rocks. This further means that Pedra Branca's territorial sea westwards, northwards and southwards will be less than 12 nautical miles. ...”*

...

*“The ownership of South Ledge will be determined only after a delimitation of the territorial sea in the area surrounding Batu Puteh, Middle Rocks and South Ledge. That task of establishing the maritime boundaries in the area has fallen on Malaysia and Singapore to undertake as a bilateral undertaking.”*

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<sup>70</sup> Kadir Mohamad, “Malaysia’s Territorial Disputes – Two Cases at the ICJ”, Institute of Diplomacy and Foreign Relations, Ministry of Foreign Affairs, Malaysia, 2009, pp. 18-19, 21-22 and 24, attached as **Annex 1 to this Response**.

...

“The Court’s decision concerning South Ledge also means that the remaining question of establishing the sovereign ownership of South Ledge no longer involves any necessity of proving title. *What remains to be established is its geographical location within the context of maritime boundaries.*”

...

“There was mutual agreement [by the MJSTC] to proceed step-by-step, the first being to undertake a joint survey of the area between Pedra Branca and Middle Rocks. *The purpose was to gather data for the delimitation process. ...*”

...

“At the time this book went to the printers, the Joint Technical Committee had taken a decision to commence the process of delimitation. *This exercise should also determine the ownership of South Ledge. This responsibility falls on the Joint Technical Committee.*

*The task of delimiting the maritime boundaries around Pedra Branca, Middle Rocks and South Ledge is an urgent matter. It is not only necessary to determine the sovereign status of South Ledge, but also vital for resolving the long outstanding competing claims over airspace in the same area.*<sup>71</sup>

[Emphasis added; original footnotes omitted.]

- 3.16 These unequivocal statements, across a six-year span by no less than the Agent of Malaysia in the original case, completely contradict Malaysia’s mischaracterisation of the Parties’ post-Judgment conduct. They demonstrate exactly how hollow Malaysia’s assertions of a dispute between the Parties over the meaning or scope of the Judgment are.

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<sup>71</sup> Kadir Mohamad, “Malaysia / Singapore – Fifty Years of Contentions”, The Other Press Sdn. Bhd., 2015, pp. 123-127, attached as **Annex 2 to this Response**.

- 3.17 In Malaysia’s Written Comments, Malaysia claims that “the Parties’ lengthy and vigorous diplomatic correspondence on the matter”<sup>72</sup> is “the most significant evidence of the obvious divergence in the Parties’ views”<sup>73</sup>. But the diplomatic protests that were exchanged between the Parties in respect of the status of the waters around Pedra Branca and in respect of South Ledge do not establish a dispute over the meaning or scope of the Judgment.
- 3.18 These protests show something entirely different: that there was a difference of views concerning the extent of the maritime entitlements of Pedra Branca and Middle Rocks and the Malaysian mainland. This difference of views did not arise because the Judgment is unclear; on the contrary, it only arose because it was crystal clear, from the Judgment, that these issues were not matters which could be decided by the Court. These were matters left to the Parties. The question of the extent of the respective maritime entitlements of the Parties in the area around Pedra Branca and Middle Rocks was obviously not decided by the Court and could not have been decided by it<sup>74</sup>. In short, the fact that the Parties may have a dispute over issues that the Court was not mandated to decide does not transform that dispute into one concerning the meaning and scope of the Judgment. Therefore, the questions whether Pedra Branca is entitled to any territorial waters and whether South Ledge falls within the territorial waters of Malaysia or Singapore “cannot be submitted to it [i.e. the Court] for interpretation under Article 60 of the Statute”<sup>75</sup>.

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<sup>72</sup> Malaysia’s Written Comments, para. 89.

<sup>73</sup> *Ibid.*, para. 80.

<sup>74</sup> See paras. 2.3-2.6, 2.11-2.12 and 2.15-2.19 above.

<sup>75</sup> *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, I.C.J. Reports 2009*,

3.19 For all of the above reasons, Malaysia’s Request for Interpretation falls outside the scope of Article 60 because it does not concern a dispute over the meaning or scope of what the Court decided with binding force in the Judgment<sup>76</sup>.

### **B. Malaysia’s Submissions Relating to Pedra Branca and South Ledge Concern Matters Outside the Scope of the Judgment and Are Misconceived**

3.20 Malaysia makes great efforts in its Written Comments to build up a position that is designed to give the appearance of being contrary to Singapore’s understanding of the Judgment. In fact, Malaysia invents a dispute that, it claims, concerns the meaning or scope of the Judgment on the basis of Singapore’s Written Observations. This artificially-constructed dispute cannot fall under Article 60 of the Statute.

3.21 Malaysia’s “dispute” remains outside the scope of the Judgment and is misconceived. All the issues raised by Malaysia are questions which the Court was not called upon to answer. The Request for Interpretation does not attempt to seek a genuine interpretation of the Judgment (and what the Court decided), but seeks a decision of the Court on new issues that were and remain outside its jurisdiction.

#### **1. Malaysia’s Request Regarding Pedra Branca Is Inadmissible**

3.22 As noted in Chapter II above, Malaysia acknowledges that the Court’s ruling that sovereignty over the territory of Pedra Branca belongs to

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p. 17, paras. 44-45, citing with approval *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*, Judgment, I.C.J. Reports 1950, p. 402.

<sup>76</sup> *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*, Judgment, I.C.J. Reports 1950, p. 402.

Singapore is “unambiguous”<sup>77</sup>. However, Malaysia now contends that the notion of “sovereignty” requires clarification because it is “not clear how far this extends or what exactly it means”<sup>78</sup>.

- 3.23 More specifically, Malaysia argues that “the norm of sovereignty over the territorial sea is not absolute”<sup>79</sup>, and that “in the particular circumstances” the island of Pedra Branca is not entitled to any territorial sea<sup>80</sup>. Malaysia then adds – inconsistently with its own submission – that, even if the Court accepted that Singapore’s territorial sovereignty over Pedra Branca extended into the sea, it did so “to an uncertain breadth”<sup>81</sup>. On this basis, Malaysia asserts that:

“... 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 Court as to what it had intended in order that the Parties may proceed successfully to resolve the dispute”<sup>82</sup> .

- 3.24 This line of argument is wholly untenable.

- (a) *First*, as shown in Chapter II, the Court’s determination on sovereignty was perfectly clear and requires no interpretation. In the Special Agreement, the Parties did not ask the Court to rule on the existence or breadth of the maritime entitlements of Pedra

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<sup>77</sup> Malaysia’s Written Comments, para. 23.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, para. 24.

<sup>80</sup> *Ibid.*, para. 27.

<sup>81</sup> *Ibid.*, para. 33.

<sup>82</sup> *Ibid.*, para. 36.

Branca (or of Middle Rocks or South Ledge); in the proceedings for the original case, they did not argue these points in their pleadings or make submissions on them; and the Court did not decide such issues in the Judgment. As the Permanent Court has clearly stated, under Article 60 of the Statute, an interpretation “cannot go beyond the limits of [the] judgment itself, which are fixed by the special agreement”<sup>83</sup>.

- (b) *Second*, as has been explained in the previous Section, while the Parties do disagree over the extent of their respective maritime entitlements in the area, this is not a dispute which arises from the words of the Judgment and is therefore not a dispute over the meaning or scope of the Judgment. In the absence of a genuine dispute over what the Court decided, the Request for Interpretation lacks a basis of jurisdiction.
- (c) *Third*, given that the Request for Interpretation seeks answers to questions that were not before the Court in the original case and that the Court did not decide in the Judgment, it goes beyond the permissible scope of a request for interpretation under Article 60 of the Statute of the Court, and is inadmissible.

3.25 In this sub-section, Singapore will address this third point: the inadmissibility of Malaysia’s first submission that the Court should adjudge and declare, by means of interpretation, that: “The waters surrounding Pedra Branca/Pulau Batu Puteh remain within the territorial waters of Malaysia”<sup>84</sup>. Merely juxtaposing this request with the actual

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<sup>83</sup> *Interpretation of Judgment No. 3 (Treaty of Neuilly), Judgment, 1925, P.C.I.J. Series A, No. 4*, p.7.

<sup>84</sup> Malaysia’s Written Comments, para. 122, citing para. 56(a) of the Request for Interpretation.

wording of the Court’s *dispositif* – “sovereignty over Pedra Branca/Pulau Batu Puteh belongs to the Republic of Singapore” – already makes it apparent that Malaysia is seeking to have the Court rewrite the Judgment by asking it to now make a ruling that the Court was not asked to, and did not, make.

- 3.26 Before taking up this defect in Malaysia’s request, it is necessary to make some brief remarks on the new thesis, never once mentioned by Malaysia in all of the years since the Judgment was rendered, that Malaysia now advances in its Written Comments – namely, that Pedra Branca has no territorial waters<sup>85</sup>. This is completely at odds with basic principles of the law of the sea, the Court’s jurisprudence and statements made by the Court in the Judgment.
- 3.27 Malaysia has sought to read words into the Judgment which are simply not there, by asserting in its Written Comments that what the Court did in the Judgment was effectively “to excise the land territory of Pedra Branca/Pulau Batu Puteh from Malaysian sovereignty, leaving by necessary implication all of the remainder within Malaysian sovereignty”<sup>86</sup>. Malaysia then introduces as an Appendix to its Written Comments a note on the constitutional status of the relevant area which is designed to buttress its argument that all the maritime areas around Pedra Branca are Malaysian<sup>87</sup>.
- 3.28 The Appendix is completely irrelevant. The documents cited by Malaysia in that portion of its Written Comments were all discussed in the original case, and they had no bearing on the Court’s ruling that sovereignty over

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<sup>85</sup> See, for example, paras. 27 and 39 of Malaysia’s Written Comments, where Malaysia makes this assertion for the first time in the present proceedings.

<sup>86</sup> Malaysia’s Written Comments, para. 27.

<sup>87</sup> *Ibid.*, paras. 61-70.

Pedra Branca belongs to Singapore. Moreover, Malaysia's claim that the Court simply "excised" Pedra Branca from what were otherwise Malaysian areas bears no relation to what the Court actually said. The relevant part of the Court's reasoning in the Judgment leading to its decision that sovereignty over Pedra Branca belongs to Singapore reads as follows:

"The Court is of the opinion that the relevant facts, including the conduct of the Parties, previously reviewed and summarized in the two preceding paragraphs, 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 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."<sup>88</sup>

- 3.29 That statement, together with the operative clause of the Judgment, in no way suggests that "all of the remainder" of the maritime zones around Pedra Branca are under Malaysia's sovereignty. On the contrary, under basic principles of international law, the island of Pedra Branca generates its maritime zones. This is crystal clear from Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS), to which Singapore and Malaysia are parties, which provides that islands, whatever their size or character, are entitled to have *inter alia* a territorial sea. This is also well settled in the Court's jurisprudence<sup>89</sup>. Malaysia's submission

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<sup>88</sup> Judgment, p. 96, para. 276.

<sup>89</sup> As the Court noted in its judgment in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case, "even an island which falls within the exception stated in Article 121, paragraph 3, of UNCLOS is entitled to a territorial sea". And the Court added: "that entitlement to a territorial sea is the same as that of any other land territory. Whatever the position may have been in the past, international law today sets the breadth of the territorial sea which the coastal States has the right to establish at 12 nautical miles", *I.C.J. Reports 2012*, p. 690, paras. 176 and 177. The same principle was confirmed by the tribunal in

is moreover inconsistent with several statements made by the Court in the Judgment, all of which imply that Pedra Branca has a territorial sea<sup>90</sup>. And it cannot be squared with the Parties' establishment of the MSJTC after the Judgment was delivered. That body was engaged in significant preparatory work for, and later began work on, maritime boundary delimitation in the area<sup>91</sup>. The MSJTC also successfully reached agreement on practical arrangements, such as the continuation of traditional fishing activities by the fishermen of both countries, and on the

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the *Dubai-Sharjah Border Arbitration*, where the tribunal stated, at p. 673: "every island, no matter how small, has its belt of territorial sea", *I.L.R.*, Vol. 91, p. 543.

<sup>90</sup> For example, the Court found relevant for its decision on sovereignty over Pedra Branca various examples where Singapore or its predecessors investigated "shipwrecks in the waters around Pedra Branca/Pulau Batu Puteh" – conduct that the Court noted "gives significant support to the Singapore case" (Judgment, pp. 82-83, Section 5.4.6. (a) and para. 234). Similarly, the Court attached relevance for sovereignty purposes to the fact that, in the 1970s, Singapore's permission was required for Malaysian officials to carry out surveys "of the waters surrounding the island [i.e. Pedra Branca]", further conduct that supported Singapore's case (Judgment, pp. 84-85, paras. 238-239).

In addition, the Judgment quotes the Colonial Secretary of Singapore's letter of 12 June 1953 that gave rise to the reply from Johor that "the Johore Government does not claim ownership of Pedra Branca", which sought information "relevant to the determination of the Colony's territorial waters" (Judgment, p. 73, para. 192 and p.75, para 204). And the Court further noted that the reply of Johor "does not challenge in any way whatever action the Colony might have been contemplating to propose in relation to the determination of its territorial waters around Pedra Branca/Pulau Batu Puteh" (Judgment, p. 79, para. 221).

Finally, the Court's ruling on South Ledge was predicated on the basis of "whether South Ledge lies within the territorial waters generated by Pedra Branca/Pulau Batu Puteh, which belongs to Singapore, or within those generated by Middle Rocks, which belongs to Malaysia" (Judgment, p. 101, para. 297). The Court further observed that South Ledge "falls within the apparently overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca/Pulau Batu Puteh and Middle Rocks". *See also* paras. 3.35-3.44 below.

<sup>91</sup> *See* Singapore's Written Observations, paras. 1.19-1.26.

rendering of assistance in the event of an incident at sea<sup>92</sup>. Obviously, all this was predicated on the premise that Pedra Branca, like Middle Rocks, generated maritime entitlements, the extent of which needed to be delimited between the Parties.

- 3.30 While Malaysia attempts to argue the contrary in its Written Comments, it does not cite a single example where an island has been denied a territorial sea. The extent of any coastal State's maritime entitlements may be subject to delimitation with a neighbouring State. But that is not the issue in the present proceedings, any more than it was in the original case. As the Court made clear in the Judgment:

“... the Court has not been mandated by the Parties to draw the line of delimitation with respect to the territorial waters of Malaysia and Singapore in the area in question.”<sup>93</sup>

- 3.31 Singapore mentions these points not to join issue with Malaysia on the question of an island's maritime entitlements, but rather to show that Malaysia is arguing a matter that was not before the Court in the original case and over which the Court had no jurisdiction. In other words, Malaysia is seeking by means of interpretation to invite the Court to answer questions that were neither addressed by the Parties, nor decided in the Judgment.
- 3.32 In Singapore's Written Observations, Singapore referred to the Court's *jurisprudence constante* to the effect that:

“... the Court must keep strictly within the limits of the original judgment and cannot question matters that were settled therein

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<sup>92</sup> See Singapore's Written Observations, paras. 1.23-1.24.

<sup>93</sup> Judgment, p. 101, para. 298.

with binding force, nor can it provide answers to questions the Court did not decide in the original judgment.”<sup>94</sup>

3.33 Malaysia initially purports to accept these principles. It states: “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”<sup>95</sup>. But it becomes apparent that this is mere lip service. Malaysia flouts the rules on admissibility by asking the Court to declare that, in ruling that sovereignty over Pedra Branca belongs to Singapore, the Judgment should be interpreted to mean that Pedra Branca “does not generate any maritime zone”<sup>96</sup>, and that accordingly, “the waters surrounding Pedra Branca/Pulau Batu Puteh remain within the territorial waters of Malaysia”<sup>97</sup>. In the alternative, Malaysia argues that the breadth of any maritime zone is uncertain<sup>98</sup>. Yet it is abundantly clear that these are questions that the Court did not decide in the Judgment because it had no jurisdiction to do so. Malaysia’s propositions reveal that what it is seeking in these proceedings is not an interpretation of the Judgment, but rather an opportunity to argue and have the Court determine issues that did not form part of the original case.

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<sup>94</sup> *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, I.C.J. Reports 2013*, p. 306, para. 66. See also, *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Columbia v. Peru)*, I.C.J. Reports 1950, p. 402; *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, I.C.J. Reports 1985*, p. 223, para. 56.

<sup>95</sup> Malaysia’s Written Comments, para. 112.

<sup>96</sup> *Ibid.*, para. 120 d.

<sup>97</sup> *Ibid.*, para. 122, citing para. 56(a) of the Request for Interpretation.

<sup>98</sup> *Ibid.*, para. 33.

3.34 In short, Malaysia is attempting to utilise interpretation proceedings in order to graft onto the original case a different dispute concerning a different subject-matter that had never seen the light of day before the Request for Interpretation and Malaysia's Written Comments. Malaysia's submission regarding Pedra Branca is therefore inadmissible and should be rejected.

## **2. Malaysia's Request Regarding South Ledge Is Inadmissible**

3.35 In the third paragraph of the operative clause, the Court held “that sovereignty over South Ledge belongs to the State in the territorial waters of which it is located”<sup>99</sup>. This is what the Court decided. Nothing more, and nothing less. Indeed, considering the fact that sovereignty over South Ledge as a low-tide elevation<sup>100</sup> depends on the territorial sea in which it falls<sup>101</sup>, and that the Court had not been “mandated by the Parties to draw the line of delimitation with respect to the territorial waters of Malaysia and Singapore in the area in question”<sup>102</sup>, the Court could not have decided anything else<sup>103</sup>. In particular, it could not, and did not, decide whether South Ledge is located within the territorial waters of Malaysia or Singapore. Rather, the Court noted that “South Ledge falls within the apparently overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca/Pulau Batu Puteh and Middle Rocks”<sup>104</sup>, and properly refrained from dealing with the question any further.

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<sup>99</sup> Judgment, p. 102, para. 300(3).

<sup>100</sup> *Ibid.*, p. 99, para. 291.

<sup>101</sup> *Ibid.*, pp. 100-101, paras. 295-297.

<sup>102</sup> *Ibid.*, p. 101, para. 298.

<sup>103</sup> See paras. 2.16-2.19 above.

<sup>104</sup> Judgment, p. 101, para. 297. The French text of this paragraph of the Judgment reads: “*South Ledge relève des eaux territoriales générées par la Malaisie*

- 3.36 In Malaysia’s Written Comments, Malaysia has substantially changed its position in respect of the alleged dispute with Singapore concerning South Ledge. In the Request for Interpretation, it alleged that Singapore’s position was that the Court did not decide the question of sovereignty over South Ledge<sup>105</sup>, whereas Malaysia considered that the Court “has discharged its function under the Special Agreement” and attributed sovereignty to Malaysia<sup>106</sup>.
- 3.37 Having had sight of Singapore’s Written Observations, which categorically rejected these unfounded allegations<sup>107</sup>, Malaysia has done an about-turn and now claims that the Judgment is “far from unambiguous”<sup>108</sup>, “incomplete, and thus uncertain in its meaning and scope”<sup>109</sup>, and “introduced a strong element of uncertainty”<sup>110</sup>. It even suggests that the Judgment did not determine the issue of sovereignty, because, it claims, “it is unclear which factors may apply to determine sovereignty, which was indeed the very question put to the Court”<sup>111</sup>.
- 3.38 Such a blunt criticism of the Judgment is unfounded, ill-conceived and does not advance Malaysia’s case any further. Even if these accusations

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*continentale, par Pedra Branca/Pulau Batu Puteh et par Middle Rocks, eaux territoriales qui semblent se chevaucher”.*

<sup>105</sup> Request for Interpretation, para. 45.

<sup>106</sup> *Ibid.*, para. 46.

<sup>107</sup> Singapore’s Written Observations, paras. 4.2-4.3.

<sup>108</sup> Malaysia’s Written Comments, para. 40.

<sup>109</sup> Malaysia’s Written Comments, para. 11. See also Malaysia’s Written Comments, para. 44.

<sup>110</sup> *Ibid.*, para. 44.

<sup>111</sup> *Ibid.*, para. 44. See also Malaysia’s Written Comments, para. 45.

were well-founded (*quod non*), the Court would not be in a position to remedy the alleged *infra petita* ruling by way of an interpretation. As recalled above<sup>112</sup> and accepted by Malaysia, Article 60 of the Statute of the Court exclusively empowers the Court to entertain requests for interpretation, but not requests that seek answers to questions that were not decided (rightly or wrongly) by the Court. The Court's duty is to interpret the Judgment, not revise it<sup>113</sup>.

- 3.39 Notwithstanding Malaysia's assertion that the Court left the question of sovereignty over South Ledge undecided, Malaysia maintains that the Court "by implication" decided that Malaysia has sovereignty over South Ledge<sup>114</sup>. But Malaysia cannot have it both ways: the Court cannot have failed to decide upon the issue of sovereignty over South Ledge, and still have decided the issue with *res judicata* effect for the Parties.
- 3.40 As explained in Chapter II above, the Court fully discharged its task under the Special Agreement and did so within the limits set by the Parties in the Special Agreement. Its decision concerning sovereignty over South Ledge is entirely clear. It did not decide, and could not have decided, that South Ledge falls within the territorial waters of Malaysia any more than that it falls within the territorial waters of Singapore. Malaysia twists the Court's ruling – and introduces issues that were not decided by the Court – in order to suit its own interest and to effectively appeal the Judgment.
- 3.41 Malaysia also contends that, because of its proximity to Middle Rocks and the general geographic configuration of the area, South Ledge is

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<sup>112</sup> See para. 3.32 above.

<sup>113</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second phase, Advisory Opinion, I.C.J. Reports 1950*, p. 229.

<sup>114</sup> Malaysia's Written Comments, paras. 12 and 56.

subject to Malaysia's sovereignty<sup>115</sup>. This is simply not what the Court decided. As the Court recalled in the Judgment, "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"<sup>116</sup>. Therefore, the only question is whether the low-tide elevation is situated in the territorial waters of the State. This cannot be decided solely on the basis of proximity. On the contrary, the matter involves a question of delimitation, concerning which proximity can be one element – among others – to be taken into consideration, but by no means the only one. However, for present purposes the key point is that this is a question over which the Court had no jurisdiction under the Special Agreement<sup>117</sup>, and which it cannot now decide upon under Article 60.

- 3.42 In any event, Malaysia made the same argument of proximity before the Court in the original case<sup>118</sup>. The Court was aware of Malaysia's argument and recalled it in the Judgment<sup>119</sup>. Yet, it did not rule that, because of its proximity to Middle Rocks, South Ledge was under Malaysia's sovereignty. This is the end of the question.
- 3.43 Malaysia now contends in its Written Comments that South Ledge belongs to Malaysia because Pedra Branca does not generate a territorial sea of its own and, therefore, South Ledge must lie within Malaysia's

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<sup>115</sup> Malaysia's Written Comments, paras. 46, 56 and 60.

<sup>116</sup> Judgment, p. 100, para. 295, citing *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 101, para. 204.

<sup>117</sup> *Ibid.*, p. 101, para. 298.

<sup>118</sup> Counter-Memorial of Malaysia, para. 162; Reply of Malaysia, para. 418; CR 2007/26, 15 November 2007, pp. 33-34, para. 38 (Professor Schrijver).

<sup>119</sup> Judgment, pp. 99-100, para. 293.

territorial sea<sup>120</sup>. As discussed in the previous sub-section<sup>121</sup>, this is an entirely new argument that was not pleaded by the Parties or decided by the Court in the original case, nor presented in the Request for Interpretation. Moreover, during the oral hearing in November 2007 for the original case, Malaysia took a different view. It explained that “the sovereignty over PBP [*i.e.* Pulau Batu Puteh/Pedra Branca], Middle Rocks and South Ledge is “plainly at issue”. Therefore, Singapore cannot rely on the extension of its territorial waters from PBP [to claim Middle Rocks and South Ledge], if its sovereignty over PBP is not established”<sup>122</sup>. Malaysia therefore itself suggested in the original case that Pedra Branca has territorial waters.

- 3.44 The extent of the Parties’ respective maritime entitlements arising from the Judgment is a matter that has been left to the Parties. During the interactions between both Parties after the Judgment, including their discussions at the MSJTC<sup>123</sup>, Malaysia accepted that it was incumbent on the Parties to engage in maritime delimitation, given their overlapping entitlements in the area. Officials from the highest levels of the Malaysian Government, including the Agent of Malaysia in the original case<sup>124</sup>, acknowledged that the next step, following the rendering of the Judgment, was the delimitation of the Parties’ respective maritime and airspace entitlements. No such delimitation negotiations would have been

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<sup>120</sup> Malaysia’s Written Comments, para. 60.

<sup>121</sup> See paras. 3.24 (a) and 3.26 above.

<sup>122</sup> CR 2007/31, 23 November 2007, p. 27, para. 22 (Professor Schrijver).

<sup>123</sup> See paras. 3.7-3.8, 3.11-3.13 and 3.29 above.

<sup>124</sup> See paras. 3.14-3.16 above. See also Singapore’s Written Observations, paras. 1.15-1.17, 3.10, 4.11-4.18 and Appendix 2 to Singapore’s Written Observations.

necessary if the Judgment could be read as denying Pedra Branca any maritime entitlements.

### **C. Conclusions**

3.45 Malaysia has not met the conditions set out in Article 60 of the Statute of the Court for a request for interpretation. No dispute exists between the Parties concerning the meaning and scope of the Judgment. If anything, it has become even more apparent, in Malaysia's Written Comments, that Malaysia has sought to manufacture a "dispute". This does not cure the fundamental defects in Malaysia's case and the Request for Interpretation. All of the issues that Malaysia now asks the Court to decide upon by way of interpretation concern "questions which the Court was not called upon by the Parties to answer"<sup>125</sup> in the original case. Malaysia's request does not seek a genuine interpretation, but a new decision on new questions. For these reasons, the Court has no jurisdiction over the Request for Interpretation, which is in any event, inadmissible.

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<sup>125</sup> *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru), Judgment, I.C.J. Reports 1950*, p. 403.

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## **SUMMARY OF SINGAPORE'S REASONING**

1. In accordance with the Court's Practice Direction II, Singapore presents a short summary of the reasoning developed in this Response.
2. Malaysia's pleadings demonstrate that the Request for Interpretation is not a genuine request under Article 60 of the Statute of the Court. Malaysia is asking the Court, under the guise of interpretation, to go beyond what it decided in the Judgment, and to rule on issues relating to maritime entitlements and delimitation, which were never within the Court's mandate pursuant to the Special Agreement and which it did not rule upon. This is an abuse of the Court's process and should be rejected.
3. The Court fully carried out the task assigned to it by the Special Agreement and clearly settled the case within its jurisdictional mandate:
  - (a) The Court's decision that sovereignty over Pedra Branca belongs to Singapore is clear. Malaysia's attempt to conflate sovereignty over Pedra Branca with the question of its maritime entitlements is misguided and untenable.
  - (b) The Court's decision on sovereignty over South Ledge is also clear in view of South Ledge's status as a low-tide elevation and the Court's lack of mandate to draw the line of delimitation with respect to the territorial waters of Malaysia and Singapore in the area in question.
4. Malaysia does not come anywhere close to meeting the jurisdictional and admissibility requirements for a request for interpretation of the Judgment under Article 60 of the Statute of the Court and Article 98, paragraph 2 of the Rules of Court.
5. The Request for Interpretation lacks jurisdictional basis as there is no genuine dispute as to the meaning or scope of the Judgment:

- (a) No such dispute existed between the Parties prior to the Request for Interpretation. It is not sufficient for Malaysia to simply claim in its written pleadings that it disagrees with Singapore. It must also demonstrate that such dispute concerns the meaning or scope of the Judgment. Malaysia has not done so.
  - (b) On the contrary, Malaysia's assertions are contradicted by numerous statements by the Malaysian Government, as well as the extensive work and discussions of the MSJTC. These demonstrate the common understanding between the Parties over the meaning and scope of the Judgment, and that the next step was for the Parties to focus on the extent of each sides' maritime and airspace entitlements.
  - (c) The diplomatic protests that were exchanged between the Parties in respect of (i) the status of the waters around Pedra Branca and (ii) South Ledge merely reflect a difference of views concerning the different question of the Parties' respective maritime and airspace entitlements, not a dispute as to the meaning or scope of the Judgment.
6. The Request for Interpretation is also inadmissible as Malaysia's submissions relating to Pedra Branca and South Ledge are outside the scope of the Judgment, in addition to being misconceived:
- (a) Malaysia's new argument that Pedra Branca is not entitled to any territorial sea is patently wrong as a matter of international law and misrepresents the Judgment. However, this is not the issue for the present proceedings. The Court was not mandated by the Special Agreement to rule on the maritime entitlements of the features in question, and those matters were consequently not decided by the Court in the Judgment, properly so.

- (b) On sovereignty over South Ledge, Malaysia's attacks on the Judgment and the Court's reasoning are unfounded and betray its true intention to seek an appeal of the Judgment. Malaysia's contention that the Judgment has determined that South Ledge is subject to Malaysia's sovereignty in view of geographical proximity and configuration is untenable. These involve arguments about how to draw a line of delimitation, which the Court expressly recognised it had no jurisdiction to engage in. Malaysia's alternative argument that South Ledge is located in Malaysia's territorial waters because Pedra Branca generates no territorial sea, quite apart from being wrong in law, also asks the Court to address a question which it could not and did not determine.
7. In short, the Judgment is perfectly clear and requires no interpretation.

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## **SUBMISSION**

For the reasons set out in Singapore's Written Observations and in this Response, and reserving the right to amend or add to this submission, the Republic of Singapore requests the Court to adjudge and declare that Malaysia's submissions, and the Request for Interpretation, are rejected.

Attorney-General Lucien Wong  
Agent for the Government of the Republic of Singapore

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## **CERTIFICATION**

I have the honour to certify that the documents annexed to this Response are true copies and conform to the original documents.

Attorney-General Lucien Wong  
Agent for the Government of the Republic of Singapore

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## **Annex 1**

Extracts from Kadir Mohamad, “Malaysia’s Territorial Disputes – Two Cases at the ICJ”, Institute of Diplomacy and Foreign Relations, Ministry of Foreign Affairs, Malaysia, 2009<sup>i</sup>

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<sup>i</sup> The web-link to an electronic copy of the above-mentioned publication can be found on the official website of the Institute of Diplomacy and Foreign Relations, Ministry of Foreign Affairs, Malaysia, at <https://www.idfr.gov.my/index.php/publication-2009> (last accessed: 10 April 2018). A write-up on the background and history of the Institute of Diplomacy and Foreign Relations can be found at <https://www.idfr.gov.my/index.php/about-us/corporate-information/background> (last accessed: 10 April 2018).

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# MALAYSIA'S TERRITORIAL DISPUTES – TWO CASES AT THE ICJ

Batu Puteh, Middle Rocks and South Ledge  
(Malaysia/Singapore) and Ligitan and Sipadan  
[and the Sabah Claim] (Malaysia/Indonesia/Philippines)



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The Court thereby concluded, 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 failure to respond to the conduct of Singapore and its predecessors, that by 1980 sovereignty over Pedra Branca/BP had passed to Singapore.<sup>17</sup>

The year 1980 was the date when the dispute crystallized as a result of the protest made by Singapore, in that year, against the Malaysian Map of 1979.

Therefore, as it turned out, Malaysia did not succeed in retaining sovereignty over BP not because Malaysia had weaker arguments or insufficient evidence to support its case, but because the Court held the view that certain non-erasable facts of history — particularly those events which took place between 1953 and 1980 — had destroyed Malaysia's sovereign position on BP, Johor's original title notwithstanding.

In relation to MR and SL, the Court accepted Malaysia's argument that MR, SL and BP did not constitute an identifiable group of islands in historical or geomorphologic terms<sup>18</sup> although Singapore had advocated that the three features formed one single group. Neither did the Court contend Malaysia's stand that MR and SL were always considered part of Johor and thus, now, part of Malaysia.<sup>19</sup>

The Court subsequently ruled in favour of Malaysia regarding the status of Middle Rocks. However, the Court refrained from taking a position on the status of SL as it noted that SL fell within the apparently overlapping territorial waters generated by the mainland of Malaysia, Pedra Branca and Middle Rocks<sup>20</sup> and as

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<sup>17</sup> ICJ Press Release, 23 May 2008, eleventh paragraph.

<sup>18</sup> Memorial of Malaysia, Volume 1, paragraph 287.

<sup>19</sup> Memorial of Malaysia, Volume 1, paragraph 300.

<sup>20</sup> Judgment, paragraph 297.

such, left the status of SL to be subsequently determined by negotiation between Malaysia and Singapore.

## RESERVATIONS ON THE COURT'S REASONING

Indeed, Malaysia had agreed, under Article 6 of the Special Agreement, to accept the Judgment of the Court as final and binding.<sup>21</sup> Nevertheless, certain questions have been raised regarding the Court's reasoning for its decisions.

Four Judges who voted against the Judgment recorded their reservations separately as follows:

In his Dissenting Opinion, Judge ad hoc Dugard recorded his view that "the Court fails to explain how sovereignty over Pedra Branca/Pulau Batu Puteh passed from Johor/Malaysia to Singapore in terms of traditional or accepted rules governing the acquisition of territorial title".<sup>22</sup>

It was indeed unprecedented for the Court not to state the exact mode by which Johor lost sovereignty over BP and the exact date on which Singapore acquired sovereignty over BP. It simply said that by 1980, sovereignty over Pedra Branca had passed to Singapore. In past cases, the Court had always specified how and when a state lost or acquired sovereignty.

In his Separate Opinion, Judge Parra-Aranguren said that the effectivités cited by Court as favouring Singapore case "concern a period far too short and for this reason are not sufficient to undermine Johor's historical title to Pedra Branca/Pulau Batu Puteh".<sup>23</sup>

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<sup>21</sup> Special Agreement for Submission to the ICJ of the Dispute Between Malaysia and Singapore Concerning Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge.

<sup>22</sup> Dissenting Opinion of Judge ad hoc Dugard., page 9, paragraph 30.

<sup>23</sup> Separate Opinion of Judge Parra-Aranguren, page 6, paragraph 25.

writing, which was final, binding and without appeal, the Court:<sup>26</sup>

- found by twelve votes to four that sovereignty over Pedra Branca/Pulau Batu Puteh belongs to the Republic of Singapore;
- found by fifteen votes to one that sovereignty over Middle Rocks belongs to Malaysia;
- found by fifteen votes to one that sovereignty over South Ledge belongs to the State in the territorial waters of which it is located.

## THE QUESTION OF MIDDLE ROCKS

Malaysia consistently maintained its position that Middle Rocks and South Ledge, like Batu Puteh, were maritime features which remained undisturbed under Johor/Malaysian sovereignty.

With respect to Middle Rocks, the Court observed that the particular circumstances which led it to find that sovereignty over Pedra Branca/BP rested with Singapore clearly did not apply to Middle Rocks. The Court therefore found that the original title to Middle Rocks should remain with Malaysia as the successor to the Sultanate of Johor.<sup>27</sup>

## THE FUTURE OF SOUTH LEDGE

As for South Ledge, the Court reached the conclusion that sovereignty over SL would belong to the State in the territorial waters of which it is located as this low-tide elevation fell within the apparently overlapping territorial waters generated by the

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<sup>26</sup> ICJ Press Release, 23 May 2008, first paragraph.

<sup>27</sup> ICJ Press Release, 23 May 2008, thirteenth paragraph.

mainland of Malaysia, Pedra Branca/BP and MR, and as the Parties had not mandated the Court to draw the line of delimitation with respect to their territorial waters in the area.<sup>28</sup>

The Court's ruling means that the remaining question of establishing the sovereign ownership over South Ledge does not involve the issue of proving title but merely its geographical location in the context of maritime boundaries. On this question, certain geographical facts should predominate, such as the fact that SL is closer to MR than to BP. Furthermore SL is only 7.9 nautical miles from the Malaysian mainland while Singapore's nearest coast is 25.0 nautical miles from SL.<sup>29</sup>

#### BP WAS THE MAIN ISSUE NOT THE ONLY ISSUE

There was much emotive talk that Malaysia gained mere rocks while the main prize — the island — went to Singapore. This incomplete perception existed because Malaysians generally had little knowledge or awareness of Middle Rocks and South Ledge until the media gave extensive coverage of the proceedings in The Hague, including a live telecast by Television Malaysia of the Court's Judgment on 23 May 2008. But it would be incorrect to view the Judgment only in terms of BP because the Judgment also conferred benefits to Malaysia. After all, the case concerned not only one but three separate maritime features.

In reality, Pedra Branca is not an island but simply another rock formation in the sea although in the Malay language, that feature is known as Pulau Batu Puteh (White Rock Island). As such, what the Court has conferred upon Singapore, in addition to the "white rock", is a certain amount of territorial waters around Pedra Branca. Similarly, Malaysia can now claim territorial waters around Middle

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<sup>28</sup> ICJ Press Release, 23 May 2008, fourteenth paragraph.

<sup>29</sup> Memorial of Malaysia, Volume 1, paragraph 288.

Rocks and has excellent prospects of acquiring more of the same around South Ledge as well. The prospects are good because it can be proven that South Ledge lies within Malaysian territorial waters and should therefore belong to Malaysia.

All three features — Middle Rocks, South Ledge as well as Pedra Branca — will generate their respective maritime areas. But none of these three features qualify as an island which would entitle them to a 200 nautical mile Exclusive Economic Zone (EEZ). That is why any unilateral declaration by Singapore that Pedra Branca is entitled to an EEZ cannot be accepted because paragraph 121 (3) of the United Nations Convention on the Law of the Sea stipulates that rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. And the ICJ has in fact pronounced Pedra Branca "a granite island"<sup>30</sup> and described it as "a tiny uninhabited and uninhabitable island".<sup>31</sup>

All the three features are therefore only entitled to a 12 nautical-mile territorial sea. And as Pedra Branca is surrounded by both the Johor coast as well as Middle Rocks, its territorial sea westwards, northwards and southwards will be much less than 12 nautical miles.

It has also been said that Singapore had been most keen to secure ownership not only over Pedra Branca but also Middle Rocks and South Ledge because Singapore had planned to reclaim land and join together all the three features to form a maritime domain in that area. Since Middle Rocks belongs to Malaysia, and that it lies in between BP and South Ledge, it is clear that any grand design that Singapore might have had about joining together all the three features has now been forestalled.

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<sup>30</sup> Judgment, paragraph 16.

<sup>31</sup> Judgment, paragraph 66.

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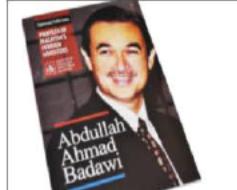
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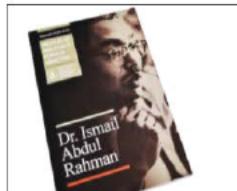
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## **Annex 2**

Extracts from Kadir Mohamad, “Malaysia / Singapore – Fifty Years of Contentions”, The Other Press Sdn. Bhd., 2015

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# MALAYSIA SINGAPORE

## FIFTY YEARS OF CONTENTIONS 1965-2015

**KADIR MOHAMAD**

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#### ABOUT THE AUTHOR

Tan Sri Ab. Kadir Mohamad was born in Kampung Pagar, Pahang on 3 July 1943. He attended Malay School Penjom (1950-52), Clifford School Kuala Lipis (1953-60), Malay College Kuala Kangsar (1961-62) and the University of New South Wales, Sydney Australia (1964-67). He graduated with B.A Hons. in Political Science in 1968 and later conferred with the degree of Doctor of Letters *Honoris Causa* by the University in 1999.

He joined the Malaysia Foreign Service in 1968. He served in various capacities in Malaysian diplomatic missions overseas in New York, Saigon, Brussels, Washington and Islamabad as well as at home in the Ministry of Foreign Affairs. He was promoted to Secretary General of the Ministry (1996-2001); appointed Ambassador-at-Large MFA (2001-2003); Senior Advisor MFA East Timor (2001-2003); Advisor for Foreign Affairs to the Prime Minister of Malaysia (2003-2009); Advisor at the National Security Council Secretariat Prime Minister's Department (2010-2013).

He was also the Leader of the Malaysian Team / Agent of Malaysia at the International Court of Justice in the Case Concerning Sovereignty Over Pulau Ligitan and Pulau Sipadan (Malaysia/ Indonesia) 2001; and in the Case Concerning Sovereignty Over Pedra Branca / Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) 2008.

He has written a book entitled *Malaysia's Territorial Disputes - Two Cases at the ICI*, published by the Institute of Diplomacy and Foreign Relations, Malaysia, in 2009.

# MALAYSIA SINGAPORE

## FIFTY YEARS OF CONTENTIONS

### 1965-2015

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for the same reasons that Batu Puteh was part of Johor territory since ancient times.

Singapore had argued that whichever country owned Batu Puteh would also own Middle Rocks and South Ledge, since all three were in close proximity, and that they together formed a group.

With respect to Middle Rocks, the Court observed that the particular circumstances that led the Court to find sovereignty over Pedra Branca rested with Singapore clearly did not apply to Middle Rocks. The Court therefore decided that the original title to Middle Rocks should remain with Malaysia as the successor to the Sultanate of Johor. The Court voted 15 to 1 that sovereignty over Middle Rocks belonged to Malaysia.<sup>26</sup>

The decision of the Court pertaining to Middle Rocks is significant because the reconfirmation of Malaysia's ownership of Middle Rocks gives the country an equal standing with Singapore in that part of the Singapore Straits near Pedra Branca. The decisions of the Court brought benefits to Malaysia as well, not just to Singapore.

In accordance with the Law of the Sea, Middle Rocks would now have its own entitlements to territorial sea around it. Pedra Branca is surrounded by the Johor coast as well as by Middle Rocks. This further means that Pedra Branca's territorial sea westwards, northwards and southwards will be less than 12 nautical miles. In fact Singapore vessels sailing from the main island towards Pedra Branca will have

to traverse Malaysian territorial waters before they can get there.

The Court's decision also implied that Singapore must lift the naval blockade that they mounted in the area in 1986. Singapore has in fact lifted the blockade. Fishermen from Johor can now return to fish in their old traditional fishing grounds.

Middle Rocks consists of two separate rock formations in the sea about 300 meters apart, and they both lie about 0.6 nautical miles south of Pedra Branca. To symbolize the equality of status between Middle Rocks and Pedra Branca, and to display a continuous presence on the rock in the future, Malaysia has taken steps to construct a permanent structure on Middle Rocks. The place will house, among others, an environmental monitoring and research station. The Malaysian national flag will fly on the structure (as illustrated on the following page) at all times.<sup>27</sup>

With respect to South Ledge, the Court voted 15 to 1 to adopt a decision stating that sovereignty over South Ledge belongs to the State in the territorial waters of which it is located. South Ledge is a low-tide elevation in the sea. This means it is a maritime feature which appears above the surface of the water only at low tide but which becomes completely submerged at high tide.

The ownership of South Ledge will be determined only after a delimitation of the territorial sea in the area surrounding

*The Unending Story of the White Rock*

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*Artist Impression of Middle Rocks in the Future* <sup>28</sup>

Batu Puteh, Middle Rocks and South Ledge. That task of establishing the maritime boundaries in the area has fallen on Malaysia and Singapore to undertake as a bilateral undertaking.

Under the Law of the Sea, a low tide elevation does not have a stand-alone status. If a low tide elevation exists within the territorial sea limits of the host State, it can be used as the baseline for measuring the breadth of the territorial sea of the host State. If it is situated outside of the territorial sea boundaries of the host State, the low tide elevation has no territorial sea of its own.

The Court's decision concerning South Ledge also means that the remaining question of establishing the sovereign ownership of South Ledge no longer involves any necessity of proving title. What remains to be established is its geographical location within the context of maritime boundaries.

On this question, certain geographical facts should be allowed to predominate, such as the fact that South Ledge is closer to Middle Rocks than Pedra Branca. South Ledge is also merely 7.9 nautical miles from the Malaysian mainland, while the distance from South Ledge to the nearest Singapore coast is 25 nautical miles. South Ledge is located in the territorial sea of Middle Rocks as well as within the territorial sea limits of mainland Malaysia. In this sense, the country that should have sovereignty over South Ledge is obviously Malaysia.

The government of Malaysia and the government of Singapore agreed in early 2008 to establish a Joint Technical Committee to implement the decisions of the International Court of Justice concerning Pedra Branca, Middle Rocks and South Ledge. The first meeting of the Joint Technical Committee took place on 3 June 2008. That was within one week of the ICJ's delivering its decisions.

However, the Joint Technical Committee took a very long time to make progress in its work. There was mutual agreement to proceed step-by-step, the first being to undertake a joint survey of the area between Pedra Branca and Middle Rocks. The purpose was to gather data for the delimitation process. The joint survey took nearly four years, and fourteen meetings, before completing its work in February 2012.

At the time this book went to the printers, the Joint Technical Committee had taken a decision to commence the process of delimitation. This exercise should also determine the ownership of South Ledge. This responsibility falls on the Joint Technical Committee.

The task of delimiting the maritime boundaries around Pedra Branca, Middle Rocks and South Ledge is an urgent matter. It is not only necessary to determine the sovereign status of South Ledge, but also vital for resolving the long outstanding competing claims over airspace in the same area.

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