

# 'Dr M may have acted unilaterally'

## Decision not to review ICJ ruling made before Cabinet informed, RCI finds

**PETALING JAYA:** The Royal Commission of Inquiry (RCI) found that Tun Dr Mahathir Mohamad may have acted unilaterally in deciding not to file applications to review and interpret the 2008 International Court of Justice (ICJ) decision on the Batu Puteh, Middle Rocks, and South Ledge territorial claim.

According to the RCI report tabled in the Dewan Rakyat yesterday, the former prime minister had a briefing with international consultant Dr Brendan Plant on May 17, 2018.

It added that Plant was part of the team of international and local consultants on the issue, and no other members were present at the briefing.

Following that, Dr Mahathir informed then-solicitor-general Datuk Engku Nor Faizah Engku Atek in a letter dated May 21, 2018, of the decision not to proceed with a move to review and interpret the ICJ decision.

"He had ordered for plans to be made to redeem the maritime area around Batu Puteh that is owned by Malaysia. Through the letter, he also wanted to know the cost incurred to engage local and



**Under scrutiny:** Dr Mahathir seen at the Kuala Lumpur Courts Complex. - MUHAMAD SHAHRIL ROSLI/The Star

international consultants and their payment receipts," the report said.

Dr Mahathir subsequently informed the Cabinet of the decision in its May 23 meeting that year and it took note of the matter, according to the report.

"On the morning of May 23, before the Cabinet met, Engku Nor Faizah had acted on the prime minister's letter... and written to the Attorney-General of Singapore informing of the Malaysian government's intention not to proceed with the application for review and interpreta-

tion," the report said

In his witness statement to the RCI, Dr Mahathir said he did not decide in his May 21 letter to the solicitor-general but only voiced his opinion.

He had also claimed that the decision not to proceed with the applications was made by the Cabinet at its May 23 meeting, the RCI found, but it determined that the Cabinet "simply confirmed" Dr Mahathir's view.

The report also said Dr Mahathir decided not to proceed with the application because of the Special Agreement between Malaysia and

Singapore to abide by the ICJ's decision and not file an appeal.

Dr Mahathir also said Malaysia had a weak case in convincing ICJ to review its decision based on three facts.

He said the conclusion that Malaysia had a weak case was based on legal opinions from international consultants furnished by the Attorney General's Chambers and the meeting and briefing with Plant.

The RCI report concluded that based on the witness statements, no such legal opinions were given either by the local or international consultants appointed by the government.

"There were (also) no legal opinions from the AGC that Malaysia had a weak case in both applications," it read.

"The commission is of the view that (what) Dr Mahathir (told) the Cabinet... (that) the basis to convince the ICJ to review its decision was weak, was his personal opinion," it said.

The RCI added that the Cabinet was not furnished with the consultants' legal views or any related documents to the appeal.

Witnesses, including Dr

Mahathir, said Plant mentioned that Malaysia lacked the "silver bullet" to be successful in its applications.

Plant, however, said that the "silver bullet" in this context meant that there was no guarantee of a win for Malaysia at the ICJ, the RCI found.

The report considered Malaysia to have an "arguable case" and not extremely weak, as Dr Mahathir stated.

"The decision to stop pursuing the case at the final stages is very regrettable.

"Based on statements given by Malaysia's legal team, they were ready to argue on this at the ICJ," it said, adding that all pleading papers and written submissions had been filed.

It added that the only matter to be handled before the hearing was to elect a new Agent as the then Attorney-General Tan Sri Mohamed Apandi Ali was ordered by Dr to go on garden leave.

The RCI, chaired by Tun Md Raus Sharif, was tasked with reviewing the handling of matters related to the sovereignty of Batu Puteh, Middle Rocks and South Ledge.