

Comment - Declassified British documents throw more light on Pulau Batu Puteh
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ON Feb 2, Malaysia filed an application to revise the 2008 judgment of the International Court of Justice, where the court decided that Singapore has sovereignty over Pulau Batu Puteh or Pedra Branca. The present application is based on the discovery of new facts, which came to light through the declassification of three British documents from the National Archives of the United Kingdom. According to Malaysia, these documents show that the British colonial and Singapore administrations between 1958 and 1960 accepted that Pulau Batu Puteh was not within Singapore's sovereignty. Accordingly, Malaysia contends that sovereignty over Pulau Batu Puteh lies with Malaysia.

Background to the 2003-2008 ICJ proceedings

The dispute relates to the question of sovereignty over Pulau Batu Puteh, an island about 24 nautical miles to the east of Singapore and 7.7 nautical miles to the south of Johor. On it is the lighthouse known to mariners as the Horsburgh Lighthouse. Aside from Pulau Batu Puteh, the court was also tasked to determine which country had sovereignty over two maritime features, Middle Rocks and South Ledge.

The genesis of this dispute can be traced back to 1979 when Malaysia published a map indicating Pulau Batu Puteh within Malaysian territorial waters. This was objected to by Singapore in 1980, leading to many unsuccessful years of negotiations. Finally, in 2003, both Malaysia and Singapore, in the spirit of good neighbourliness agreed to submit the dispute to the International Court of Justice for a final and binding determination.

Malaysia's position has always been that it has original title to Pulau Batu Puteh. On the other hand, Singapore argues that the British took lawful possession over Pulau Batu Puteh when it built the Horsburgh Lighthouse on the island in 1850. Subsequently, the British passed this on to Singapore.

Ultimately, on May 23, 2008, the court decided that it agreed with Malaysia that it had sovereignty over Pulau Batu Puteh. However, after examining the conduct of Malaysia and Singapore, particularly after 1953, the court decided that sovereignty over the island had passed from Malaysia to Singapore.

Chief among the conduct was, in 1953, then acting state secretary of Johor expressly wrote to Singapore informing them that "the Johor Government does not claim

ownership over Pedra Branca". Also, between 1962 and 1975, Malaysia published maps attributing Pulau Batu Puteh to Singapore. Further, in 1974 and 1978, Singapore required Malaysian visitors and those on official missions to request permission to enter the territorial waters of Pulau Batu Puteh – an act by Singapore that was not objected by Malaysia. The court also considered other instances which affirm this finding.

On the other hand, the court decided that Malaysia had sovereignty over Middle Rocks. On South Ledge, the court decided that given that it lies in an area of overlapping territorial sea between Malaysia and Singapore, sovereignty over it belongs to the country in which waters it lies. This continues to be the subject of negotiation between Malaysia and Singapore.

Application for revision

We should note from the outset that this revision application is not an appeal of the earlier judgment, but rather an application to introduce new facts that Malaysia asserts are decisive factors to the outcome of the case. This application for a revision of a judgment is not entirely unusual and had in the history of the court been made in at least three previous cases. In a nutshell, the present application for revision involves a two-stage process.

First, Malaysia has to convince the court that it has met all the requirements under Article 61 of the Statute of the Court. These requirements include having Malaysia to show the court that these newly discovered facts were discovered within six months from the present application, that these facts were not known in 2008, and that this was not due to the negligence of Malaysia.

If the court agrees that these conditions have been met, the second step is for Malaysia to convince the court that the newly discovered facts, which are established through the three documents, namely the internal correspondence of the Singapore colonial authorities in 1958, the incident report filed in 1958 by a British naval officer, and an annotated map of naval operations from the 1960s, show that the British and Singapore had accepted that Singapore did not have sovereignty over Pulau Batu Puteh. By this fact, Malaysia will attempt to make its case that it maintained sovereignty over Pulau Batu Puteh.

Moving forward

In the coming days, it is expected that Singapore would file written observations in response to this application. Consistent with the court's rules, both Malaysia and Singapore would also be able to each appoint a judge. At a later date, the court would hold oral proceedings to determine the admissibility of the new fact and if admissible, the merits of it.

A difference between the previous hearing and the present revision hearing is the composition of the court. Many of the judges who decided the case in 2008 have been replaced by new judges. Would the new judges have a different approach or inclination towards the case, and if so what effect would this have on the present application? Also, would this finally resolve the dispute over the sovereignty of Pulau Batu Puteh and put the matter to rest? Even if the court accepts the new facts, would it be sufficient to convince it that Malaysia did not lose sovereignty over Pulau Batu Puteh, in favour of Singapore? More broadly, how would this affect the bilateral relationship between the two countries? As it is still early days in the application, many of these remain an open question.

What is clear and should be applauded is that both Malaysia and Singapore had opted for the high road – upholding the international rule of law, by resolving their bilateral disputes not with force, but rather, in a peaceful manner before the International Court of Justice. Through this revision application, Malaysia's and Singapore's participation reflects their continued commitment and belief in the international legal process and in the peaceful settlement of disputes.

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