

CONFLICT RESOLUTION

YULONG DAI

STRATEGIES ON TERRITORIAL ACQUISITION- A CASE STUDY ON THE PEDRA BRANCA DISPUTE

Abstract: In May 2008, the International Court of Justice announced the decision of the case concerning disputes over the sovereignty of Pedra Branca, Middle Rocks and South Ledge. The two disputed islands, Pedra Branca and South Ledge, were respectively awarded to Singapore and Malaysia while South Ledge remained undecided. Singapore's size is comparatively tinier than Malaysia. Its winning of sovereignty over Pedra Branca has manifested a possibility of how a smaller and weaker country could peacefully acquire a disputed territory from its stronger opponent while maintaining amicable relations with it. Singapore has reached the maximization of its interest though it was not awarded all the disputed islets by the Court. This article aims to examine these four strategies adopted by Singapore and the dynamics of how they helped promote Singapore's success.

Keywords: *Strategy, Territorial Acquisition, Pedra Branca Dispute*

Background

In contemporary international society, it is generally more acceptable and necessary that territorial disputes be resolved in a comparatively peaceful way rather than settled with violence. As a rational decision maker who is willing to maximize its interests, any claimant in a territorial dispute should carefully balance its interest in the disputed territory as well as its relations with the opponent. In many cases, claimants are deeply interdependent, sharing common interests in fields such as economic development, security cooperation, common foreign policies, etc. It is especially necessary that claimants whose power is significantly weaker than its opponent in a territorial dispute should act in a peaceful way.

Similar to territorial disputes in other developing regions, the dispute of Pedra Branca, Middle Rocks and South Ledge between Singapore and Malaysia was caused by obscure territorial divisions implemented by European colonial powers. Due to the lack of advanced technologies in exploring unknown lands and managing islets, Great Britain failed to carry out the division of these three maritime features in the region of the Malacca

Strait. However, as a new case, Singapore fully manifested how a comparatively weaker claimant could acquire the disputed territory while maintaining its amicable relationship with Malaysia in a legal and peaceful way. Singapore's success in winning sovereignty over Pedra Branca benefited from the strategies it has adopted.

There is little existing research on the Pedra Branca case illustrating the details of the dispute with its historical context and legal basis. Haller-Trost's research examined the sovereignty status of Pedra Branca 15 years before the 2008 judgment of the Pedra Branca case, based on the detailed evidence and geographical features of this island.¹ Wang probed into the effectiveness of evidence adoption for Singapore during the proceedings of the Pedra Branca case, in terms of balancing Singapore's relationship with Malaysia and the acquisition of interests from the disputed islets.² Beckman and Schofield further analyzed the difficulties and possibilities of maritime demarcation relating to the disputed islands regarding this case in accordance with the result of the 2008 judgment.³ Hamid later discussed the difficulties and challenges involving the implementation of the Pedra Branca judgment from the perspective of the Malaysian government.⁴

Using the previous studies as a basis, this article aims to analyze how Singapore, as a comparatively weaker claimant, successfully and peacefully acquired sovereignty over the disputed island of Pedra Branca from its stronger neighbor—Malaysia. There were four main strategies adopted by Singapore that facilitated its territorial acquisition to a great extent, including peaceful contact and negotiation, claim expansion, gradual resolution, and skillful advocacy. Although Singapore was not awarded all the disputed islets by the Court, it has won the most significant one—Pedra Branca and also gained potential sovereignty over this island's territorial waters. In this case, Singapore's successful winning of sovereignty over Pedra Branca manifests the probability of acquiring disputed territories in a peaceful way for weaker and smaller claimants.

¹ See R. Haller-Trost, *Historical Legal Claim: A Study of Disputed Sovereignty over Pulau Batu Puteh (Pedra Branca)*, *Maritime Briefing*, International Boundaries Research Unit, University of Durham, Vol. 1, No. 1, 1993.

² Wang Zichang, "The Judgement of International Court of Justice on Territorial Disputes between Singapore and Malaysia and Its Inspirations", *Southeast Asian Studies*, 1 (2009): 13-18, 25.

³ Robert Beckman and Clive Schofield, "Moving Beyond Disputes Over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait", *Ocean Development & International Law*, 40, no. 1 (2009): 1-35.

⁴ Abdul Ghafur Hamid, "Pedra Branca Judgment and Beyond: Issues and Challenges in its Implementation by Malaysia and Singapore", *The International Journal of Marine and Coastal Law* 26 (2011): 335-342.

Summary of the Pedra Branca Case

Pedra Branca, Middle Rocks and South Ledge are three granite islets located at the east entrance of the Singapore Strait, facing the Southern-most part of the South China Sea.⁵ These three maritime features lie approximately 25 nautical miles to the east of the island of Singapore, 7.7 nautical miles to the southeast of Malaysian Johor State, and 7.6 nautical miles to the north of Indonesian Bintan Island. All these islets belong to one geographical entity, sharing the same underwater base. Pedra Branca and Middle Rocks, which respectively are the largest and the second largest islets involved in this case, are defined as islands while South Ledge is only a rock formation visible at low-tide.

Pedra Branca attracted the most attention from both parties in this dispute because Singapore has managed this island and has maintained a lighthouse on it for a long period. In 1851, the British Colony of Singapore, which was part of the British Straits Settlements, set up a lighthouse named Horsburgh on Pedra Branca. This act was consented by the Johor Sultanate, which was one of the predecessor states of modern Malaysia. Thenceforth Singapore began to manage the lighthouse as well as the island of Pedra Branca. Its control and management lasted about 130 years. During this period, Johor and Malaysia not only remained silent on Singapore's conduct, but also admitted the latter's ownership over Pedra Branca in an official letter regarding the legal status of this island in 1953.⁶ It was on December 21, 1979, that Malaysia first marked Pedra Branca as one of its territories on an official map. This act received protest from Singapore soon after on February 14, 1980. Then the dispute of sovereignty over Pedra Branca was crystallized. Later in 1993, the dispute over Middle Rocks and South Ledge was added in a bilateral meeting held by the officials of both parties.

Negotiations over the Pedra Branca dispute lasted more than 20 years. They can be divided into two stages. The first stage started from the critical date, when this dispute was crystallized, in 1992. During this period, it was Singapore that unilaterally tried to contact Malaysia and called for the exchange of documents while the latter remained silent. The second stage began when premiers of both parties initiated the first meeting regarding the dispute in January 1992. After several meetings, they both failed to reach a compromise and then finally agreed that the legal status of the three disputed islets should rest in the hands of the International Court of Justice. Later, a special agreement was signed in 2003, binding on the parties that they should comply with the Court's judgment on the dispute.

⁵ The Singapore Strait is the east part of the Malacca Strait.

⁶ Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/ Singapore), Judgment, I.C.J. Reports 2008, p. 73, para. 192. [hereinafter Pedra Branca Judgment]

The 2008 judgment on the Pedra Branca dispute is de facto unfinished, leaving a more challenging and complicated result for the two claimants to deal with. According to the Court, Pedra Branca and Middle Rocks were respectively awarded to Singapore and Malaysia, while the legal status of South Ledge remains undecided because it falls within overlapping territorial waters of Pedra Branca and Middle Rocks. The Court only provided that South Ledge's sovereignty should be decided when the territorial waters in this area are determined.⁷

The final settlement of this dispute is still ongoing. Singapore and Malaysia established a joint technical committee to delimit the maritime boundary of Pedra Branca and Middle Rocks. In June 2017, Malaysia applied to the Court for the revision and interpretation on the 2008 Judgement, based on three new pieces of evidence it had acquired in 2016 and 2017. According to Malaysia, the documents decoded by the National Archives of the United Kingdom in 2013 indicated that the British and Singaporean administration previously considered Pedra Branca not a part of Singapore.⁸ Singapore officially questioned and protested Malaysia's application while the Court responded to this and initiated the public hearing process soon after. However, Malaysia withdrew this application later without disclosing any reason, leaving its right to challenge Singapore's sovereignty over Pedra Branca abandoned permanently.⁹

Strategies Adopted by Singapore

Peaceful contact and negotiation

Singapore persisted in its contact and negotiation strategy for about 20 years before both parties agreed to submit the Pedra Branca dispute to the Court. By adopting this strategy, Singapore manifested long-term patience and proactivity in a peaceful manner during this period. During the first stage of the process of the Pedra Branca dispute, Singapore unilaterally tried several times to contact Malaysia and requested the exchange of documents while the latter remained silent. When the second stage began in early 1992,

⁷ Ibid., 101, paras. 298-299.

⁸ See Channel Newsasia, "Malaysia files new application to ICJ on Pedra Branca ruling; Singapore says it's 'without merit'", CNA, July 1, 2017, <https://www.channelnewsasia.com/news/singapore/malaysia-files-new-application-to-icj-on-pedra-branca-ruling-8995044>; and "3 UK documents cited for Malaysia's application to revise Pedra Branca decision", CNA, Feb. 4, 2017, <https://www.channelnewsasia.com/news/singapore/3-uk-documents-cited-for-malaysia-s-application-to-revise-pedra--7615510>.

⁹ The Straits Times, "Malaysia withdraws Pedra Branca case; Singapore 'happy to agree', says Vivian Balakrishnan", *The Straits Times*, May 30, 2018, <https://www.straitstimes.com/politics/malaysia-withdraws-pedra-branca-case-singapore-happy-to-agree-says-vivian-balakrishnan>.

premiers of both countries agreed and initiated formal meetings on the dispute. Singapore and Malaysia held several negotiations on the disputed islets. However, they could not reach a final agreement after years of efforts. Then a special agreement regarding submitting the dispute to the Court was made and the arbitration process was initiated in 2003.

Malaysia mainly remained silent during the first stage. The only mutual contact between Malaysia and Singapore took place in 1981, when the prime ministers of both countries agreed on resolving the dispute bilaterally.¹⁰ Thereafter Singapore kept contacting Malaysia and calling for the latter's response unilaterally for about 10 years. In fact, lacking strong evidence limited Malaysia's reaction to Singapore's request after the Pedra Branca dispute was crystallized. Compared to its obvious long-term peaceful control of the disputed islands in the Sipadan and Ligitan case, Malaysia could not provide strong evidence of showing similarly effective conduct on Pedra Branca.¹¹ On the other hand, Malaysia's request of the Court for revision on the Pedra Branca judgment in 2017 indicates that it lacks sufficient proof while even relying on its opponent's newly decoded archives regarding this disputed island.¹² As a result, it is rational that Malaysia remained silent and waited patiently for new evidence.

However, there were two factors that forced Malaysia to respond to Singapore's request for bilateral negotiations on this dispute. The first factor was that Pedra Branca was officially marked as Singaporean territory, which immediately pushed the Malaysian central government to respond. Singapore introduced Pedra Branca as one of its territories in its official publication "Singapore Facts and Pictures" in January 1992.¹³ Then the dispute was revived to some extent by Malaysia's protest. The second factor was that two indirect events drew the Malaysian central government's attention to the dispute. The first event was Singapore's first unilateral proposal in 1989 suggesting that the dispute should be submitted to the Court. The second event was that in a public statement, a United Malays

¹⁰ Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Memorial of Singapore, International Court of Justice, 2004, 25. [hereinafter Memorial of Singapore]

¹¹ See Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgement, I.C.J. reports 2002.

¹² In fact, Malaysia's premier Tun Hussein Onn admitted "Malaysia is not clear about the sovereignty over Pedra Branca" in a mutual meeting between premiers of Singapore and Malaysia. This news was firstly reported by Singapore's Channel Newsasia in November 2007, but it was withdrawn later. However, the article was reprinted by another media, see Property Highlights of Singapore, "S'pore Says Malaysia Has No Evidence To Show It Owns Pedra Branca", Nov. 7, 2007, <http://propertyhighlights.blogspot.com/2007/11/spore-says-malaysia-has-no-evidence-to.html>.

¹³ Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Memorial of Malaysia. International Court of Justice, 2004, pp. 102-103. [hereinafter Memorial of Malaysia]

National Organization (UMNO) political leader who was also an officer of Johor State claimed that Pedra Branca belongs to Malaysia.¹⁴

It is obvious that Singapore's persistence in adopting the strategy of peaceful contact and negotiation changed Malaysia's attitude eventually. However, it is possible that Malaysia would not have responded actively or initiated a peaceful resolution to the dispute with Singapore if the latter took action during this period that was recognized as unfriendly by the former. Furthermore, the process of bilateral negotiation would not be taken so seriously with the interference of violent events such as conflicts if any of the claimants, especially Singapore that de facto controlled Pedra Branca adopted radical policies towards the dispute. In fact, both Singapore and Malaysia remained restrained and behaved peacefully even during the process of settling maritime demarcation in this region after the 2008 judgment.

It is of great importance that Singapore proactively adopted a peaceful way of settling the dispute. This behavior is rooted in Singapore's deep dependence on Malaysia. For Singapore, this is a well-calculated strategy to successfully prevent Malaysia's potential unfriendly actions against it. Specifically, there are three reasons quoad hoc. Firstly, Singapore's prosperity benefited from a peaceful regional environment. As a small city-state, Singapore was unwilling to face threats from an unfriendly Malaysia that has more population, land and resources. Territorial disputes might generate conflicts, which would lead to an economic recession that Singapore would not be able to bear. In order to ensure its security, Singapore had to prudently consider its policies relating to Malaysia and the latter's possible reactions regarding the dispute. Secondly, Singapore relies on Malaysia's support in many economic sectors. The latter provides resources such as fresh water, electricity, construction soil, as well as human labor to Singapore. Besides, there is a considerable amount of Singaporean citizens' relatives living in Malaysia. These economic and social links limited Singapore's policy options against Malaysia. Thirdly, as the de facto sovereign of Pedra Branca, Singapore was in favor of long-term peaceful conduct on this island without Malaysia's protest. Moreover, the key evidence that Johor recognized Singapore's ownership over Pedra Branca in 1953 strongly supported Singapore's claim. Based on the evidence, Singapore was confident in competing for sovereignty over Pedra Branca through either bilateral negotiations or international arbitration.

Claim expansion

Singapore's attempt of expanding its claim to Middle Rocks and

¹⁴ See *Memorial of Singapore*, Singapore Online Archive, "MFA Press Statement Regarding the Important UMNO Political Leaders in Johor Claiming that Pedra Branca Belongs to the State of Johor", 36, <http://www.nas.gov.sg/archivesonline/data/pdfdoc/552-1991-09-16.pdf>

South Ledge was smart and ambitious, though it eventually failed on the surface. Both Singapore and Malaysia's claims of these two deserted islets are based on insufficient evidence. Singapore's claim failed because it could provide no proof of effective control over them. Nevertheless, it could be inferred that Singapore had de facto predicted this possibility when it first questioned Middle Rocks and South Ledge's sovereignty status, for the reason above.

At the beginning of the case, the legal status of these three islets in the era before the establishment of Horsburgh Lighthouse was uncertain. Moreover, the result of Middle Rocks' judgment was comparatively more difficult to predict compared to Pedra Branca, which was effectively controlled and managed for more than a century. Middle Rocks is too small for human habitation. This islet attracted little attention from any governments in its long history. Singapore's claim to this islet was only based on the principle of contiguity that all the disputed islets actually belong to the same underwater maritime entity so that they were geologically the same. It was rejected by the Court because geographical contiguity is not a valid reason to claim sovereignty over adjacent territory, as judge Max Huber explained in the *Island of Palmas* case one century ago.¹⁵ As it can be seen from the proceeding of this case, Malaysia's winning of sovereignty over Middle Rocks was supported by the previous judgement of *Johor* having the original title to islands that lie north of the southern bank of Singapore Strait in this region, which was evaluated by the Court from only two indirect and vague pieces of evidence.¹⁶

Based on the analysis above, the motivation of Singapore's putting forward the dispute of Middle Rocks and South Ledge was aimed at changing the game result and enhance its success rate of winning Pedra Branca. Both claimants faced a zero-sum game when Pedra Branca was the only target to compete for. The game then evolved into a more complicated one with three more results after the dispute of Middle Rocks and South Ledge were crystallized. The four possible results were:

1. All islets belong to Singapore;
2. All islets belong to Malaysia;
3. Pedra Branca to Singapore, Middle Rocks to Malaysia, South Ledge remains unknown;
4. Pedra Branca to Malaysia, Middle Rocks to Singapore, South Ledge remains unknown.

¹⁵ *Pedra Branca Judgement*, 99, para. 289.

¹⁶ The first piece of evidence is the 1824 Anglo-Dutch Treaty, which divided British and Dutch colonies in this region. The second piece of evidence is British reports on *Johor's* rule over the people of *Orang Laut* who mainly inhabited in the region of the east entrance of Singapore Strait (including the disputed islets in the *Pedra Branca* case). See *Memorial of Malaysia*, 68-70.

The fourth result should be impossible because Singapore only effectively controls Pedra Branca. According to all the evidence provided by both parties later in the proceeding of the dispute, the rank of probabilities from higher to lower should be Result 3> Result 1> Result 2> Result 4=0. In other words, Singapore was more likely to win Pedra Branca at the beginning of this case.

Results	Islets	Pedra Branca	Middle Rocks	South Ledge
Singapore/Malaysia		1, -1	1, -1	1, -1
Singapore/Malaysia		-1, 1	-1, 1	-1, 1
Singapore/Malaysia		1, -1	-1, 1	N/A
Singapore/Malaysia		-1, 1	1, -1	N/A

For Singapore, Middle Rocks, as well as South Ledge, are not as important as Pedra Branca because the latter is more valuable, though it would be more favorable that Singapore acquires all these three islets. These maritime features are located at the center line of the north navigation channel of the Singapore Strait. It is because Pedra Branca is geographically larger and more exploitable than Middle Rocks that it was chosen as the ideal location for the Horsburgh Lighthouse. However, it is quite obvious that Singapore attempted to call for more interests by putting the dispute of Middle Rocks and South Ledge forward. If this proposal was accepted Malaysia, Singapore then would have the right to claim more disputed islets as well as the territorial waters around them, rather than just claim Pedra Branca while acquiescing to Malaysia's sovereignty over Middle Rocks. If the Court did not recognize Malaysia's indirect evidence regarding Johor's original title to the islets in this region, it would then be possible for Singapore to be awarded all the disputed islets after the evaluation of the vague evidence that it investigated and managed shipwrecks in the area of their territorial waters.¹⁷

On the other hand, the result of Middle Rocks being awarded to Malaysia might be more acceptable for it, compared to Singapore's winning all the islets. This result means minimizing loss of interests, from Malaysia's point of view. Singapore might have predicted this more probable result ahead of the arbitration, considering that it should have been well acquainted with the evidence relating to these islets. Therefore it is tactful that Singapore proactively put the dispute of Middle Rocks and South Ledge forward to expand the potential interests it could claim. If Singapore failed to win the sovereignty over these extra two islets, the result should be

¹⁷ About Singapore's records of investigation and management on shipwrecks, see Memorial of Singapore, 118-122.

acceptable because of its chance of acquiring sovereignty over Pedra Branca was comparatively certain.

Gradual resolution

The strategy of gradually resolving the dispute adopted by Singapore was *de facto* not clearly mentioned in either stage of the procedure of contacts and negotiations between the two claimants. However, as seen from the content of the 2003 special agreement, Singapore and Malaysia consented to submit the dispute regarding sovereignty over these three islets to the International Court of Justice (ICJ) while laying the dispute of territorial waters aside. Apparently, according to the practices of the parties, the resolution procedure of the Pedra Branca dispute was divided into two chronological parts: the islets and then the related territorial waters. Moreover, technically speaking, the first stage of this dispute has not concluded yet because the legal status of the South Ledge remains undecided. The joint technical committee, which was set up by Singapore and Malaysia according to the 2008 Judgement, has been operating the maritime delimitation of this region for about 10 years.

There was not enough reports or archives that helped explain the reason why they decided to gradually resolve the Pedra Branca dispute. It can only be inferred from the result of these two claimants' compromise after years of negotiations that no matter which party first mentioned the idea of gradual resolution, both of them seemed to agree on this approach without hesitation. For Singapore, the Pedra Branca dispute is so complicated that it could not be resolved completely, considering the evidence that each party could provide. Apparently, the advantage of a gradual resolution to the Pedra Branca dispute is that a preliminary outcome of the dispute could help prevent potential conflict generated after the probable consequence of both parties not being able to reach a final plan of integrated division regarding these territories, no matter what the final result would be. In this case, the preliminary outcome means the attribution of the two islands. A preliminary outcome of this dispute also limited further acts of either party because both Singapore and Malaysia could not bear the accusation of not complying with the international law if either of them adopted violent methods to deal with the remaining disputes, once they were bound by the 2003 special agreement and the 2008 judgment.

The second reason why the parties in this case, especially Singapore, adopted the plan of gradual resolution, is that they intended maintain favorable bilateral relations. Singapore is geographically the smallest country in this region. It has to rely on its neighbors such as Malaysia for cooperation on regional economics and security. This limited Singapore's choice of policy when facing the Pedra Branca dispute. Singapore was able to manifest its friendly posture to the most extent by revealing its will to

gradually and peacefully resolve the dispute. On the other hand, it was able to lead Malaysia to at least remain restrained at all stages of the resolution procedure, so that the dispute would be settled in a comparatively easier way.

The third reason for the adoption of gradual resolution in the Pedra Branca dispute was influenced by the geographical situation of these three islets. They are not only close to the mainland of each party, especially Malaysia, but also to their neighbor—Indonesia. There were no clear historical boundaries in this region. The negotiations held in 1969 between Indonesia and Malaysia on their maritime borders in the east Malacca Strait region had avoided the territorial waters around Pedra Branca.¹⁸ If Singapore and Malaysia intended to resolve the dispute regarding the islets together with the territorial waters, they would have been faced with the possibility that Indonesia might intervene, which would lead to a much more complicated tripartite dispute. In other words, no matter what the result of the attribution of these three islets would be, it is inevitable that Indonesia would be involved in the maritime demarcation of this region, considering these islets also lie no further than 8 nautical miles away from Indonesia's Bintan Island. The result of the 2008 Judgment then has *de facto* brought a new variable to the maritime demarcation of this region, which is Pedra Branca being awarded to Singapore. Therefore, considering the complicated geographical situation and the possible results, it is wise for these parties to divide the disputed islets apart from the demarcation of territorial waters and implement gradual resolution.

The Court had left a more complicated situation for the rest of the dispute by only providing an explanatory statement regarding the legal status of South Ledge. In fact, a low-tide elevation like South Ledge is valid to provide a base point for determining a baseline of territorial sea. However, the current situation has now been reversed, which means Singapore and Malaysia should delimit the territorial waters first, and then the dispute of South Ledge would be settled together with that. Hence it could be predicted that, in order to reach a final solution to the maritime demarcation as well as the legal status of South Ledge, both parties, especially Singapore would continue to seek gradual resolution to the rest of the dispute if it is necessary.

Skillful advocacy

There are two important principles of international law regarding the strategy of territorial acquisition adopted by Singapore during the proceedings of the Pedra Branca case. Singapore skillfully strengthened its claim and influenced the Court's judgment by taking advantage of them. The first principle is effectivités. Singapore *de facto* did not directly mention this

¹⁸ Pedra Branca Judgement, 90-91, paras. 257-258.

principle in its written or oral statements, instead, it just emphasized that it has implemented long-term peaceful control and administration over Horsburgh Lighthouse as well as Pedra Branca. During the stage when the Court was examining the legal status of Pedra Branca before the establishment of the lighthouse, Singapore attempted to claim that this island was *terra nullius*.¹⁹ However, it lacked strong evidence to support this claim. In fact, there was evidence from the former British Singaporean official records and reports indirectly showing that Johor ruled the region where these three disputed islets are located. Although this evidence had time discontinuity, the Court recognized their effects on proving Johor's original title to the islets in this region.²⁰ As can be seen from the Court's opinion, the result of Singapore's claim of *terra nullius* regarding these three islets was uncertain at the beginning of this stage. It can be further inferred that Singapore was actually aware of the uncertainty of this claim, according to the evidence regarding Pedra Branca known to it.

Singapore then began to emphasize its conduct in Pedra Branca as well as the surrounding waters after the Court confirmed Johor's original title to this island. There are four pieces of evidence regarding Singapore's effective control over Pedra Branca:

1. Singaporean authority's management of shipwrecks in this island's surrounding waters;
2. The Port Authority of Singapore approved foreign oceanic investigators' landing on Pedra Branca, including several Malaysian officials;
3. Singaporean navy installed military communication facilities on Pedra Branca, which manifested contents of its control and became diversified;
4. Singapore has disclosed its plan of land reclamation on Pedra Branca, though it was not implemented.²¹

On the contrary, Johor and Malaysia failed to protest any of Singapore's conduct for more than one hundred years, which implied Singapore's control was peaceful in this period.

The advocacy regarding effective control of Pedra Branca adopted by Singapore skillfully avoided a logical fallacy which might appear to be adverse to Singapore's claim, due to its failure of providing strong evidence to support its respective claims during the two stages. In fact, the content of this advocacy is similar to the characteristics of the principle of prescription. However, Singapore did not put forward its claim based on the principle of prescription, and it simply focused on emphasizing its long-term effective control.

¹⁹ Pedra Branca Judgment, 29-30, paras. 39-42.

²⁰ See Johor's ruling over the maritime nomad Orang Laut who mainly inhabited in the region where Pedra Branca lies, *Ibid.*, 37, 49, 99, paras. 68-69, 117, 288-290.

²¹ See Memorial of Singapore, 109-113, 116-118, 123-124, 107-109.

There are two advantages for Singapore not adopting the principle of prescription to support its claim. Firstly, during the beginning stage when the Court was deciding the original title to Pedra Branca, Singapore was able to claim it, or at least claim this island was *terra nullius*, rather than passively admitting that it originally belonged to Johor. As a matter of fact, the indirect evidence which benefits Malaysia's claim of Johor's original title to Pedra Branca was not strong enough. There would be a chance that the Court might consider this island *terra nullius* for both claimants and lacked sufficient evidence of sovereignty. If this result took place, it would contradict the situation that Singapore adopted the principle of prescription to support its claim at the beginning. This is because the claim in this way requires a precondition that the opponent claimant, in reality, initially owned the disputed territory. On the other hand, if the Court confirmed this island was *terra nullius*, it then might be easier for Singapore to win the title to Pedra Branca, because the amount of evidence that it acquired would help prove that it gained the title through its effective control. Meanwhile, since the Middle Rocks shared the same legal status as Pedra Branca, according to the Court, it should also be *terra nullius* in this case.

Secondly, Singapore's claim of effective control implied part of the features of the principle of prescription. If Johor had the original title to Pedra Branca, then Singapore's conducts accords to acts *à titre de souverain* and would shift this title to itself. On the contrary, it can be deduced that Singapore gained the original title to this island due to its conduct even though it did not claim this during the early stages of the arbitration. Some of the judges of this case have noticed Singapore's skillful claim. Two of them admitted that Singapore might fail by adopting the principle of prescription, according to the four preconditions of this principle.²² Therefore, Singapore had to reject the principle of prescription in its claim and keep emphasizing its long-term peaceful control over Pedra Branca.

The second principle Singapore used to support its claim is acquiescence. In written statements, Singapore cited several past cases of territorial disputes to explain that the concept of "tacit agreement" is equal to the principle of acquiescence in the Pedra Branca case. As can be seen from the evidence provided by both claimants, there were insufficient treaties that helped precisely define the legal status of these three disputed islets throughout their entire history, especially regarding the complicated title shift of Pedra Branca. The original legal status of these disputed islets is *de facto* assessed by two indirect pieces of evidence. As a consequence, the existing cases in international law are critical supplementary explanations to the conduct of the parties.

From Singapore's point of view, there are two factors that contributed to the shift of the title to Pedra Branca, one is Singapore's long-term

²² Judges Simma and Abraham, Joint dissenting opinion of Judges Simma and Abraham, International Court of Justice, 2008, 122.

effective control over this island, the other is Johor and Malaysia's long-term acquiescence to such acts. According to Singapore, this shift of title was guided by a so-called "tacit agreement". As it can be seen from Singapore's statement, there are several cases cited to support this claim, including the Island of Palmas case, the British—Norway Fishery Case, the Gulf of Maine case, the Temple of Preah Vihear case, etc.²³ Singapore argued that the

sovereignty over a specific territory could be shifted by a formal written agreement, or by a "tacit agreement" generated by the conduct of the parties.

The Court accepted Singapore's explanation by directly citing the Temple of Preah Vihear case. According to the Court, one party should remain silent to the other party's conducts to generate the "tacit agreement". The court also emphasized this concept by citing the Island of Palmas case as well as the Gulf of Maine case. The concept of acquiescence is

"equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent".²⁴ According to this explanation, Malaysia's acquiescence means abandoning its title to Pedra Branca and consenting to the result that this title was gradually shifted to Singapore over a period of time. Apparently, Singapore's adoption of the principle of acquiescence is affirmed by the Court in this way.

Conclusion

For any claimant who is involved in a territorial dispute, it should be a comparatively better solution that it strives to resolve the dispute by means of negotiations or international arbitration when a compromise cannot be reached, rather than violent actions. In order to maximize its own interests, every party should behave rationally, because the interests may not only include potential resources usable from the disputed territories, but also relations with the opponent, especially when both parties benefit from their interdependence. Fully taking advantages of customary international law and international treaties is an ideal choice, especially for a claimant whose power is comparatively weaker. If all parties fail to reach a final solution through negotiations, then resorting the dispute with international arbitration and complying with the result are also reasonable moves.

The Pedra Branca case has shown a comparatively new approach of territorial acquisition. As a new case, it fully manifested how a small country could peacefully and legally acquire disputed territories from a stronger neighbor without damaging their bilateral relations. The artful strategies adopted by Singapore has promoted its success in winning sovereignty of Pedra Branca from Malaysia in an amicable way. For claimants whose powers are comparatively weaker in any territorial dispute (for example, in the South China Sea disputes), it is possible that they might win sovereignty

²³ See Memorial of Singapore, 158-188.

²⁴ Pedra Branca Judgement, 50-51, paras. 120-122.

over disputed territories, as long as they devote all their efforts to persist in finding peaceful resolutions such as bilateral contacts and negotiations, and provide enough strong evidences to prove their sovereignty manifestations, including long-term effective control over the disputed territories. It can be further predicted that the remaining part of the Pedra Branca dispute could be resolved in the same peaceful and amicable way as before. No matter the final result, this case is significant for any other territorial dispute which remains to be settled.