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**Case concerning Land Reclamation by Singapore in and around the Straits of
Johor (Malaysia v. Singapore), decision of 1 September 2005**

1 September 2005

VOLUME XXVII pp.133-145



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PART III

**Case concerning Land Reclamation by
Singapore in and around the Straits of Johor
(Malaysia v. Singapore)**

Decision of 1 September 2005

**Affaire relative à la Réclamation territoriale de
Singapour à l'intérieur et à proximité du détroit de Johor
(Malaisie c. Singapour)**

Décision du 1^{er} septembre 2005

CASE CONCERNING LAND RECLAMATION BY SINGAPORE IN AND
AROUND THE STRAITS OF JOHOR (MALAYSIA V. SINGAPORE),
DECISION OF 1 SEPTEMBER 2005

AFFAIRE RELATIVE À LA RÉCLAMATION TERRITORIALE DE
SINGAPOUR À L'INTÉRIEUR ET À PROXIMITÉ DU DÉTROIT DE
JOHOR (MALAISIE C. SINGAPOUR), DÉCISION DU 1^{ER} SEPTEMBRE
2005

Jurisdiction of the International Tribunal for the Law of the Sea (ITLOS)—jurisdiction to prescribe provisional measures under article 290, paragraph 5 of the United Nations Convention on the Law of the Sea, pending a decision by the Arbitral Tribunal—compliance of the Parties with the order of ITLOS.

Jurisdiction of the Arbitral Tribunal—constitution under annex VII to the United Nations Convention on the Law of the Sea—*prima facie* jurisdiction to settle the dispute between the Parties—examination of the Settlement Agreement agreed by the Parties—adoption of the final award binding upon the Parties in the terms set out in the Settlement Agreement.

Compétence du Tribunal international du droit de la mer (TIDM)—compétence pour prescrire des mesures conservatoires en vertu de l'article 290, paragraphe 5 de la Convention des Nations Unies sur le droit de la mer, dans l'attente de la décision du Tribunal arbitral—soumission des Parties à l'ordonnance du TIDM.

Compétence du Tribunal arbitral—constitution en vertu de l'annexe VII de la Convention des Nations Unies sur le droit de la mer—compétence *prima facie* pour régler le différend entre les Parties—examen de l'Accord de règlement accepté par les Parties—adoption d'une sentence finale contraignante pour les Parties, conforme aux termes établis dans l'Accord de règlement.

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PERMANENT COURT OF ARBITRATION

CASE CONCERNING LAND RECLAMATION BY SINGAPORE

IN AND AROUND THE STRAITS OF JOHOR

(MALAYSIA v. SINGAPORE)

Award on Agreed Terms

The Arbitral Tribunal

Mr. M.C.W. Pinto, President

Dr. Kamal Hossain

Professor Bernard H. Oxman

Professor Ivan Shearer

Sir Arthur Watts, KCMG QC

The Hague, 1 September 2005

1. Whereas Malaysia and Singapore are, and at all relevant times were, Parties to the United Nations Convention on the Law of the Sea (the Convention), Part XV of which obligates them to settle any dispute between them concerning the interpretation or application of the Convention by peaceful means as specified therein;

2. *Whereas* neither Malaysia nor Singapore has made a written declaration pursuant to article 287, paragraph 1 of the Convention, with the result that, pursuant to article 287, paragraph 3, they are deemed to have accepted arbitration in accordance with Annex VII to the Convention as the means of settling their disputes;

3. *Whereas* neither Malaysia nor Singapore has made a written declaration pursuant to article 298 of the Convention;

4. *Whereas* on 4 July 2003 Malaysia transmitted to Singapore the Notification and Statement of Claim instituting arbitral proceedings as provided for in Annex VII to the Convention in a dispute concerning land reclamation by Singapore in and around the Straits of Johor,* and a Request for provisional measures in that dispute pending constitution of an arbitral tribunal under Annex VII to the Convention;

5. *Whereas* Malaysia, in the foregoing Notification, on 4 July 2003, appointed Dr. Kamal Hossain as a member of the Arbitral Tribunal pursuant to article 3, paragraph (b) of Annex VII to the Convention, and Singapore, on 29 July 2003, appointed Professor Bernard H. Oxman as a member of the Arbitral Tribunal pursuant to article 3, paragraph (c) of Annex VII to the Convention;

6. *Whereas* on 5 September 2003 Malaysia transmitted to the International Tribunal for the Law of the Sea (ITLOS) a Request for the prescription of provisional measures in the said dispute by ITLOS in accordance with article 290, paragraph 5 of the Convention;

7. *Whereas* on 5 September 2003 the Registrar of ITLOS was notified of the appointment of H.E. Mr. Ahmad Fuzi Haji Abdul Razak, the Secretary-General of the Ministry of Foreign Affairs, as Agent for Malaysia;

8. *Whereas* on 6 September 2003 the Registrar of ITLOS was notified of the appointment of H.E. Professor Tommy Koh, Ambassador-at-Large in the Ministry of Foreign Affairs, as Agent for Singapore;

9. *Whereas* on 20 September 2003 Singapore filed with the Registry of ITLOS its response to Malaysia, a certified copy of which was transmitted to the Agent for Malaysia on the same day;

10. *Whereas* ITLOS did not include upon the bench judges of the nationalities of the Parties, and pursuant to article 17, paragraph 3 of the

* Secretariat note: See map reproduced as Annex 1.

Statute of ITLOS, Malaysia chose Dr. Kamal Hossain, and Singapore chose Professor Bernard H. Oxman to sit as judges *ad hoc* in the case, and they were duly admitted to sit as such on 24 September 2003;

11. *Whereas* after an exchange of written pleadings, and oral statements at public sittings of ITLOS on 25, 26 and 27 September 2003, ITLOS, in an Order dated 8 October 2003, stated:

THE TRIBUNAL

1. Unanimously,

Prescribes, pending a decision by the Annex VII arbitral tribunal, the following provisional measures under article 290, paragraph 5, of the Convention:

Malaysia and Singapore shall cooperate and shall, for this purpose, enter into consultations forthwith in order to:

- (a) establish promptly a group of independent experts with the mandate
 - (i) to conduct a study, on terms of reference to be agreed by Malaysia and Singapore, to determine, within a period not exceeding one year from the date of this Order, the effects of Singapore's land reclamation and to propose, as appropriate, measures to deal with any adverse effects of such land reclamation;
 - (ii) to prepare, as soon as possible, an interim report on the subject of infilling works in Area D at Pulau Tekong;
- (b) exchange, on a regular basis, information on, and assess risks or effects of, Singapore's land reclamation works;
- (c) implement the commitments noted in this Order and avoid any action incompatible with their effective implementation, and, without prejudice to their positions on any issue before the Annex VII arbitral tribunal, consult with a view to reaching a prompt agreement on such temporary measures with respect to Area D at Pulau Tekong, including suspension or adjustment, as may be found necessary to ensure that the infilling operations pending completion of the study referred to in subparagraph (a)(i) with respect to that area do not prejudice Singapore's ability to implement the commitments referred to in paragraphs 85 to 87.

2. Unanimously,

Directs Singapore not to conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment, taking especially into account the reports of the group of independent experts.

3. Unanimously,

Decides that Malaysia and Singapore shall each submit the initial report referred to in article 95, paragraph 1 of the Rules, not later than 9 January 2004 to this Tribunal and to the Annex VII arbitral tribunal, unless the arbitral tribunal decides otherwise.

4. Unanimously,

Decides that each party shall bear its own costs.

12. *Whereas* ITLOS, for the reasons stated in its Order dated 8 October 2003, in determining its jurisdiction to prescribe provisional measures under article 290, paragraph 5 of the Convention pending a decision by this Tribunal, found *inter alia* that there was no controversy between the Parties as to the existence of a dispute, and that this Tribunal would *prima facie* have jurisdiction over the dispute;

13. *Whereas*, for the reasons indicated in its Order of 8 October 2003, ITLOS stated in paragraph 73 of that Order that it did not consider it appropriate in the circumstances to prescribe provisional measures with respect to the land reclamation by Singapore in the sector of Tuas;

14. *Whereas* the President of ITLOS had by his letter dated 10 October 2003 addressed to the President of the Tribunal notified the appointment, pursuant to article 3(e) of Annex VII to the Convention, of the following three members of that Tribunal:

Mr. Christopher Pinto (President)
Professor Ivan Shearer
Sir Arthur Watts, KCMG QC;

15. *Whereas* the President of ITLOS by the same letter noted the appointment for the Annex VII arbitration, of H.E. Mr. Tan Sri Ahmad Fuzi Haji Abdul Razak as Agent for Malaysia, and H.E. Professor Tommy Koh as Agent for Singapore;

16. *Whereas* this Tribunal, having been thus validly constituted, and having consulted extensively with the Parties, by its Order dated 19 July 2004, established its Rules of Procedure, article 2 of which designates the International Bureau of the Permanent Court of Arbitration (PCA) as the Registry for the arbitration;

17. *Whereas* the Secretary-General of the PCA, having consulted the Tribunal and the Parties, designated Ms. Anne Joyce, a member of the International Bureau, as the Registrar of the Tribunal;

18. *Whereas* by letters dated 24 September 2004, the Parties notified ITLOS and this Tribunal that the Group of Experts established by them pursuant to paragraph 106(l)(a) of the Order of 8 October 2003, had completed its work on the Interim Report on infilling works required by paragraph 106(l)(a)(ii) of the Order, and transmitted copies thereof both to ITLOS and this Tribunal;

19. *Whereas* the Tribunal, at the request of the Parties, by Order dated 19 October 2004 extended until 8 November 2004 the due date for completion of the Final Report on the study to be carried out by the Group of Experts referred to; and *whereas* the Parties, by their letter dated 8 November 2004, transmitted a copy of the Final Report to the Tribunal, requesting also that arrangements be made for a conference at which the Parties could present to the Tribunal an overview of the Joint Study, and apprise the Tribunal of the progress of consultations that had taken place between them;

20. *Whereas* at the conference referred to in paragraph 19 of this preamble, which took place at The Hague on 10 January 2005, the Parties informed the Tribunal *inter alia* that they had agreed *ad referendum* on the draft of a Settlement Agreement to which it was expected that the Government of Malaysia would give its approval within one month of the conference;

21. *Whereas* the Parties by their letter dated 18 May 2005, notified the Tribunal that the said Settlement Agreement had been signed on 26 April 2005; and *whereas* the Settlement Agreement entered into force in accordance with its terms;

22. *Whereas* the Parties transmitted to the Tribunal duly certified copies of the said Settlement Agreement, as well as the Joint Records of their meetings on 22-23 December 2004, 7-8 January 2005 and 7-8 February 2005 which resulted in that Agreement;

23. *Whereas*, with respect to the dispute submitted by Malaysia to the Arbitral Tribunal on 4 July 2003, the said Settlement Agreement provides:

13. This Agreement is in full and definitive settlement of the dispute with respect to the land reclamation and all other issues related thereto. The Parties agree that the issue pertaining to the maritime boundaries be resolved through amicable negotiations, without prejudice to the existing rights of the Parties under international law to resort to other pacific means of settlement.

14. This Agreement accordingly terminates the *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore)* upon the agreed terms.

15. The Parties shall forthwith jointly request that the Arbitral Tribunal in the *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore)* adopt the terms of this Agreement in the form of an agreed Award which is final and binding upon the Parties.

24. *Whereas* the Parties, by their letter dated 18 May 2005, jointly requested the Arbitral Tribunal to deliver a final Award binding upon the Parties in the terms set out in the said Settlement Agreement;

25. *Whereas* the Tribunal has examined the documentation submitted to it by the Parties including the said Settlement Agreement and has concluded that no further proceedings are necessary;

NOW THEREFORE the Tribunal

1. *Decides* in light of the joint request by the Parties referred to in preambular paragraph 24, that it has jurisdiction to render this Award in the *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore)*;

2. *Decides* to accede to the said joint request by the Parties and deliver a final Award binding upon the Parties in the terms set out in the Settlement

Agreement, and does so by attaching the text of the said Settlement Agreement as the Annex to this Award which is issued pursuant to article 18 of the Rules of Procedure;

3. *Decides*, pursuant to article 19 of the Rules of Procedure, that each Party shall bear its own costs in presenting their respective cases;

4. *Decides* in accordance with article 20 of the Rules of Procedure that the expenses of this Tribunal shall be borne by the Parties in equal shares;

5. *Decides* that these proceedings are terminated.

Done at The Hague, this 1st day of September 2005,

(Signed) Mr. M.C.W. Pinto
President

(Signed) Dr. Kamal Hossain (Signed) Professor Bernard H. Oxman

(Signed) Professor Ivan Shearer (Signed) Sir Arthur Watts KCMG QC

(Signed) Ms. Anne Joyce
Registrar

Annex

CASE CONCERNING LAND RECLAMATION BY SINGAPORE IN AND AROUND THE STRAITS OF JOHOR (MALAYSIA v. SINGAPORE)

SETTLEMENT AGREEMENT

WHEREAS paragraph 106(1)(a)(i) of the Order of the International Tribunal for the Law of the Sea in the *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v Singapore)*, *Request for Provisional Measures*, dated 8 October 2003, prescribes that the Governments of Malaysia and Singapore (hereafter “the Parties”) shall cooperate and shall, for this purpose, enter into consultations forthwith in order to establish promptly a group of independent experts with the mandate to conduct a study, on terms of reference to be agreed by the Parties, to determine, within a period not exceeding one year from the date of the Order, the effects of Singapore’s land reclamation at Pulau Tekong and Tuas View

Extension (hereafter “the reclamation works”) and to propose, as appropriate, measures to deal with any adverse effects of such land reclamation;

AND WHEREAS the Parties jointly established the Group of Experts (hereafter “the GOE”) to conduct the study on terms of reference agreed by the Parties;

AND WHEREAS the Parties jointly appointed DHI Water and Environment (hereafter “DHI”) to carry out detailed studies in order to assist the GOE;

AND WHEREAS the GOE completed the study and submitted its Final Report to the Parties on 5 November 2004;

AND WHEREAS the Parties have considered and reviewed the GOE’s Final Report and accepted its recommendations;

AND WHEREAS the Parties are desirous of reaching an amicable, full and final settlement of the dispute submitted by Malaysia to the arbitral procedure provided for in Annex VII to the United Nations Convention on the Law of the Sea by a written notification to Singapore, accompanied by a Statement of Claim and Grounds on Which it is Based, on 4 July 2003;

AND WHEREAS the issue of maritime boundaries is to be dealt with in accordance with paragraph 21 of the Joint Record of the Meeting between Senior Officials of the Parties at The Hague on 7-9 January 2005;

AND WHEREAS the Parties agree that the recommendations of the GOE provide the basis for an amicable, full and final settlement of the said dispute;

THE PARTIES HAVE AGREED AS FOLLOWS:

**A. Implementation of the recommendations
of the GOE’s report**

(i) Design of the Final Shoreline of Area D at Pulau Tekong

1. Singapore shall modify the final design of the shoreline of its land reclamation at Area D at Pulau Tekong to incorporate a “bite” and a “nose” as recommended by the GOE’s Final Report as reflected and finalised in the chart at Annex 1.

(ii) Maintenance Dredging of the “Bite”

2. Singapore shall carry out maintenance dredging as is necessary to ensure that the depth of the dredged area of the “bite” is kept at minus 12 metres Chart Datum.

(iii) Streamlining of Changi Finger

3. Singapore shall streamline Changi Finger in line with the recommendations of the GOE either by a temporary or permanent structure

(which may include a submerged structure) prior to the completion of the reclamation of the south-western bank of Area D of Pulau Tekong. In the event that this is not feasible or practical, or results in significantly increased costs, the rounding off of Changi Finger shall be completed within 12 months of the completion of the south-western reclamation of Area D.

**(iv) Replacement of the Sheetpile Silt Curtain at Area D
by the Final Revetment Protection**

4. Singapore intends to replace the existing sheetpile silt curtain on the eastern side of Area D in Pulau Tekong with the final revetment protection as soon as is practicable and, in any case, within not more than 70 months, subject to the availability of resources for this purpose. Singapore shall endeavour to give priority to the replacement of the sheetpile silt curtain with the final revetment protection at the “bite” of Area D which the GOE has concluded shall lead to the widening of Calder Harbour Channel, reducing the local velocities across the Channel and secondarily the current velocities in Kuala Johor.

(v) Scour Protection

5. Singapore undertakes to pay the full cost of scour protection works at Tanjung Belungkor jetty, which the Parties have agreed amounts to Three Hundred Thousand Singapore Dollars (SGD 300,000).

6. Malaysia shall be responsible for the full cost of scour protection works at Pularek jetty.

(vi) Compensation for Fishermen

7. A lump sum of Three Hundred and Seventy-Four Thousand and Four Hundred Malaysian Ringgit (RM 374,400), which is based on a sum of RM 5,200 per fisherman, shall be paid by Singapore to Malaysia to be distributed by Malaysia to its fishermen as full compensation for losses as a result of the reclamation works.

B. Navigation

8. Singapore reassures Malaysia that even after the Pulau Tekong reclamation, the safe and smooth passage of ships through Kuala Johor and Catder Harbour will not be adversely affected by the said reclamation.

C. Joint Mechanisms

9. The Parties agree to expand the terms of reference of the Malaysia-Singapore Joint Committee on the Environment (MSJCE) to include the following:

- a. To exchange information on and discuss matters affecting their respective environments in the Straits of Johor.

b. To undertake monitoring activities in relation to their respective environments in the Straits of Johor and address any adverse impacts, if necessary. These monitoring activities shall include:

- (i) monitoring water quality to protect the marine and estuarine environment; and
- (ii) monitoring ecology and morphology.

10. The Parties agree that for the purposes of matters affecting navigation in the Straits of Johor under paragraph 8 of this Agreement, a representative of the Marine Department, Peninsular Malaysia shall be designated to co-chair the Maritime and Port Authority of Singapore-Johor Port Authority Operational Meeting (MPA-JPA Operational Meeting) on behalf of the Government of Malaysia.

11. Each Party will keep the other informed, on a regular basis, of the progress of its implementation, pursuant to this Agreement, of the GOE's recommendations through the MSJCE and/or the MPA-JPA Operational Meeting, which shall be the forum for discussions.

12. Each Party undertakes to observe the confidentiality and secrecy of documents, information and other data received or supplied by the other Party through the MSJCE or the MPA-JPA Operational Meeting pursuant to this Agreement.

D. Settlement of the Dispute submitted to the Arbitral Procedure provided for in Annex VII to the United Nations Convention on The Law of the Sea pursuant to the written notification by Malaysia to Singapore accompanied by the statement of claim and grounds on which it is based dated 4 July 2003

13. This Agreement is in full and definitive settlement of the dispute with respect to the land reclamation and all other issues related thereto. The Parties agree that the issue pertaining to the maritime boundaries be resolved through amicable negotiations, without prejudice to the existing rights of the Parties under international law to resort to other pacific means of settlement.

14. This Agreement accordingly terminates the *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore)* upon the agreed terms.

15. The Parties shall forthwith jointly request that the Arbitral Tribunal in the *Case Concerning Land Reclamation by Singapore In and Around the Straits of Johor (Malaysia v. Singapore)* adopt the terms of this Agreement in the form of an agreed Award which is final and binding upon the Parties.

E. ENTRY INTO FORCE

16. This Agreement shall enter into force on the date of its signature.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at Singapore, this 26th day of April, two thousand and five, both texts being equally authentic.

(Signed) TAN SRI AHMAD FUZI HJ ABDUL RAZAK
Secretary-General
Ministry of Foreign Affairs
Agent for the Government of Malaysia

(Signed) PROFESSOR TOMMY KOH
Ambassador-at-Large
Agent for the Government of Singapore