

## Should Malaysia Reopen Batu Puteh?

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### Abstract

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The International Court of Justice (ICJ) awarded Batu Puteh (Pedra Branca) to Singapore in 2008. However, the sovereignty over the Middle Rocks, a maritime feature that is located about one kilometre from Batu Puteh was granted to Malaysia. This decision left a huge impact for maritime boundary delimitations in this region and incited mixed feelings among Malaysians, Singaporeans and the global community as a whole. Quite recently, the Sultan of Johor has suggested for a special team to be established in making an appeal against the decision of the ICJ in 2008. This article therefore discusses the potential legal and political implications should both Malaysia and Singapore, agree to revive this case again at the ICJ. This article concludes that while this suggestion may possess merits, it is nevertheless more feasible for Malaysia and Singapore to resolve the related disputes through bilateral negotiations so as to preserve the concept of good neighbourliness and to avoid unnecessary disputes in the future.

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**Keywords:** Maritime Delimitation, Straits of Malacca and Singapore, the International Court of Justice, Dispute Resolution

### Introduction

The Sultanate of Johor is one of the longest existing sultanates in Malaysia (Leonard Y Andaya, 1975). Established in 1528, Johor used to dominate maritime areas in and around the Straits of Malacca and Singapore, stretching from Perak to the north and Lingga Islands to the south (Leonard Y. Andaya, 2008).

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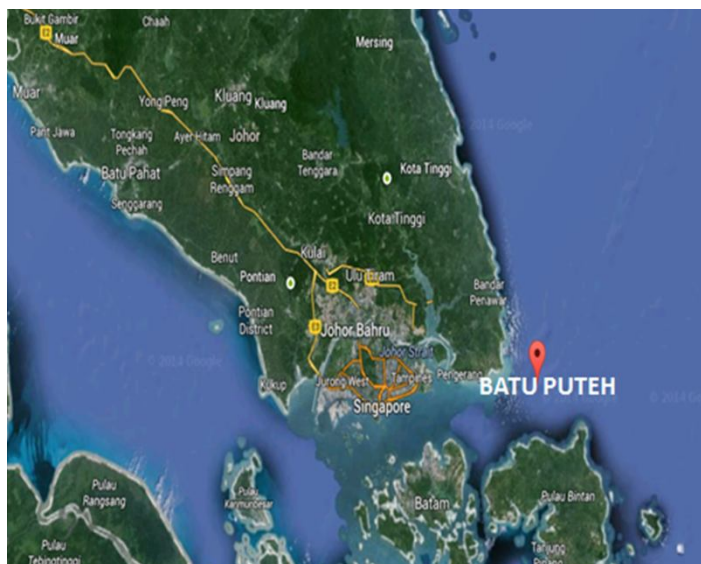
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Unlike other Malay states, Johor's sovereignty was acknowledged by the British Queen herself during the reign of Maharaja Abu Bakar in 1886 (Ramli, 2013). Johor remained an independent sovereign State at least until 1914 when it accepted a British adviser prior to its inclusion into the Federation of Malaya as a British protectorate in 1948 (Harrison, 1966).

Johor then became a member state of the newly independent Malaya in 1957 and in 1963, as part of modern Malaysia (Ryan, 1967). Johor's sovereignty has been internationally recognised when the International Court of Justice (ICJ) in 2008 acknowledged that Batu Puteh was never a *terra nullius* and historically, was part of the Sultanate of Johor (International Court of Justice (ICJ), 2008). Batu Puteh is located approximately 7 nautical miles from the south-eastern point of the Johor coast and about 25 nautical miles from Singapore.



**Map 1. The Location of Batu Puteh**

It has been six years since the ICJ acknowledged the sovereignty over Batu Puteh to Singapore (M. H. b. M. Rusli & Bautista, 2014). Batu Puteh was not awarded to Malaysia as the ICJ was convinced that there was effective occupation by Singapore coupled with a letter issued by the then Acting State Secretary of Johor in 1953 relinquishing Johor's ownership over the island (M. H. b. M. Rusli & Mohamad, 2014). While Middle Rocks (*Batuan Tengah*) remained with Malaysia, the sovereignty over South Ledge has yet to be determined by these two countries.

## **Reopening Batu Puteh**

Recently, the Sultan of Johor, Sultan Ibrahim Ismail has urged the Johor State Government to establish a special team in making an appeal against the decision on Batu Puteh (Gasper, 2014). While this suggestion has its own merits, there are a number of implications to be considered.

Article 94 of the United Nations Charter requires that each member states to comply with the decision of the Court in any case to which it is a party. Article 60 of the Statute of the ICJ clearly states that 'the judgment is final and without appeal'. However, if dispute arises as to the meaning or scope of the judgment, the Court shall construe it upon the request of any State parties. In addition, Article 61(1) of the Statute of the ICJ allows State parties to make an application for revision within ten years if new evidence is adduced.

## **Temple of Preah Vihear Case**

Temple of Preah Vihear is a classic example of a reopened ICJ case. Preah Vihear is an ancient Hindu temple that dates back to the Khmer Empire in the eleventh century AD (Russell & Cohn, 2012). Following a dispute between Cambodia and Thailand on the ownership of the temple, both countries have agreed to have this matter resolved by the ICJ (Chesterman, 2014).

In 1962, the ICJ ruled that only the temple building belonged to Cambodia while the direct way to access the temple is from the Kantharalak district of Sisaket Province in Thailand (Posner & Figueiredo, 2005). Following this decision, Thailand reacted angrily and announced that it would boycott all meetings of the then Southeast Asia Treaty Organization (SEATO) having its headquarters in Bangkok (Barlow, 2001). Mass demonstrations were staged in Thailand protesting the ruling.

After months of objections, the Thai government slowly backed down and decided to hand over Preah Vihear to Cambodia (M. H. b. M. Rusli & Mohamad, 2014). The Phnom Penh government officially took possession of the temple in 1963 in a ceremony attended by 1, 000 people ("Thailand's Relations With Cambodia," 1968).

As a gesture of good-neighbourliness, Cambodia allowed all Thais to visit the temple without visas and will not demand the return of any antiquities that may have been taken away from the site. On 7 July 2008, Preah Vihear was enlisted as a UNESCO World Heritage Site ("Temple of Preah Vihear," 1992-2014).

The 1962 decision of the ICJ left a loophole as only the temple belongs to Cambodia but not the land adjoining the site (Fawthrop, 2011). This subsequently led to periodic outbreaks of violence and military clashes started to erupt in 2008 and continued up to 2010 ("UN Court Awards Cambodia Sovereignty in Border Dispute," 2013). The worst attacks occurred in 2011 when officials of both governments were negotiating the dispute, resulting in injuries and deaths on both sides ("Thai-Cambodia Clashes 'damage Preah Vihear temple'," 2011).

Subsequent to a request made by Cambodia to remove Thai forces from that area, the ICJ, by a vote of 11-5 ordered the immediate withdrawal of their military forces (Ciorciari, 2014). Ultimately, the ICJ, on 11 November 2013, ruled that the area around and below the temple belongs to Cambodia and requested the removal of Thai forces from the temple area (Fuller, 2013).

The Preah Vihear case is a good point of reference on whether or not Malaysia should reopen Batu Puteh. Article 60 of the Statute of the ICJ has clearly stated that decisions made by the ICJ are final and without appeal. Unless new evidence could be adduced, the question of whether or not Malaysia could reclaim Batu Puteh is undeniably out of the picture. When Preah Vihear was reopened, there was no questioning on the Cambodian ownership of the said temple.

### **Political and Legal Implications**

In 2008, the ICJ only awarded Batu Puteh to Singapore and the Middle Rocks to Malaysia without clarifying the ownership over South Ledge (M. H. b. M. Rusli & Bautista, 2014). This situation could be likened to Preah Vihear where the ICJ declared only the sovereignty over the temple to Cambodia, not the land adjacent to it. The 1962 decision resulted in a severed Thai-Cambodia diplomatic relations and this matter was only resolved much later in 2013.

The Malaysian-Indonesian dispute on Sipadan and Ligitan was decided in favour of Malaysia by the ICJ in 2002 (*Case Concerning Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia-Malaysia)*, 2002). This adversely affected the cordial Malaysia-Indonesia *serumpun* relationships, straining bilateral ties between these two countries resulting in trust deficit (M. H. M. Rusli & Mustafa, 2013). The Indonesian public in general, has, through its mass media showed suspicion and resentment against Malaysia being a good neighbour within the Association of Southeast Asian Nation (ASEAN). Malaysia was alleged to have unwarrantedly 'stolen' Indonesian islands (Weiss, 2009). The same scenario was displayed by Malaysia's media against Singapore when Putrajaya lost Batu Puteh in 2002 (Clark & Pietsch, 2014).

### **Bilateral Negotiations**

Be that as it may, it is possible for Batu Puteh to be reopened but not on the question of the ownership of the island. The ICJ may deliberate matters left unresolved in the 2008 judgment particularly on the Malaysia-Singapore maritime boundaries between Batu Puteh and the Middle Rocks as well as the question of sovereignty over South Ledge. However, considering the negative aftermath portrayed in Preah Vihear, Sipadan-Ligitan and Batu Puteh, it is a better option for Malaysia and Singapore to resort to bilateral negotiations to review these unresolved issues.

While the ICJ may settle disputes between these two countries, it may not be a mechanism to stop future disputes. As Malaysia and Singapore are members of solidarity within ASEAN, it is therefore vital for these two States to uphold the spirit of good neighbourliness. Bilateral negotiations would undoubtedly consume more time, eventually creating a win-win solution for the States involved. Apart from that, the ICJ mechanism would only operate if consent from Malaysia and Singapore is obtained. Thus far, it is not entirely clear if both nations would want to go through the ICJ again.

### **Conclusion**

It is beyond doubt that Johor possesses historical ownership over Batu Puteh, a reason that may have influenced the Sultan of Johor to suggest for an appeal to be made against the earlier decision on Batu Puteh. The decision made by the ICJ in 2008 was final and Batu Puteh is now within the sovereignty of Singapore.

Nevertheless, Malaysia and Singapore could reopen this case just to allow the ICJ to decide on the unresolved matters and not on the sovereignty over Batu Puteh, particularly on sovereignty over South Ledge as well as the maritime boundary delimitations between these two States in that maritime area.

As third party resolution of dispute through the ICJ may entail 'trust deficit syndrome' among State parties to the dispute as reflected in the aftermath of the ICJ cases of Sipadan-Ligitan and Batu Puteh, it is ultimately more favourable for Malaysia and Singapore to resort to bilateral negotiations that may eventually benefit both countries in the long run. Unless Malaysia could provide new evidence to allow application for revision of the case to be made, a question that Malaysia should carefully consider - should Malaysia reopen Batu Puteh?

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