

All the pieces in Singapore's case 'fit perfectly together'

Tommy Koh

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Ambassador-at-large Tommy Koh summed up Singapore's case yesterday by highlighting the 10 key points of its arguments. He said these were pieces of a puzzle that fit perfectly together to show Singapore has sovereignty over Pedra Branca. Here is Ambassador Koh's summing-up of Singapore's case

FIRST, Singapore has shown that in 1847, Pedra Branca was terra nullius. Malaysia disputes this and argues that it was not terra nullius but was part of the Sultanate of Johor.

Malaysia has, however, failed to produce any evidence that this particular island, Pedra Branca, was subject to the sovereignty of Johor. Malaysia has failed to prove her only argument, that she has a historic title to Pedra Branca.

She has failed to show that: (a) Pedra Branca was part of the Johor Sultanate; and (b) that any original title had been transmitted to the State of Johor.

Second, Singapore had shown that from 1847 to 1851, Britain was in possession of Pedra Branca without the consent of any native ruler.

Malaysia argues that she had given permission to Britain for the construction of the lighthouse on Pedra Branca.

Again, she has not provided any evidence of such permission. All that Malaysia relies on are indirect inferences from letters which do not even mention Pedra Branca.

Third, Singapore has shown that in the period, 1847 to 1851, the British acquired sovereignty over Pedra Branca by satisfying the two

requisite criteria: animus or intention, and corpus or activities undertaken $\frac{1}{2}$ titre de souverain.

Malaysia has repeated ad nauseam her argument that the British lacked the animus and the corpus and that all the activities undertaken by them were merely concerned with the construction of a lighthouse.

The Malaysian argument is flawed and remains so no matter how many times it is repeated.

Fourth, from 1847 to 1979, a period of over 130 years, Singapore's sovereignty over Pedra Branca was open, continuous and notorious. It was acknowledged by all concerned and challenged by none.

It was only in 1979, when, like a bolt out of the blue, Malaysia published her infamous map which claimed, for the very first time, that Pedra Branca belonged to her.

Fifth, in 1953, when Johor was a sovereign State under international law, the State Secretary of Johor, writing in an official capacity, informed the Singapore Government that, 'the Johore Government does not claim ownership of Pedra Branca'.

This disclaimer is binding on Malaysia under international law. Malaysia is clearly embarrassed by this disclaimer.

Discarding her earlier argument that the disclaimer 'is not a model of clarity', Malaysia has invented a new argument, which is that Singapore is seeking to use the letter as the root of her title.

But this has never been Singapore's case. Singapore's case is that the disclaimer confirms Singapore's title and is further evidence that Johor has no prior title.

Sixth, in 1968, three years after Singapore separated from Malaysia, the Malaysian government demanded that Singapore should lower its marine ensign from its lighthouse in Pulau Pisang. Since Pulau Pisang

was under Malaysian sovereignty, Singapore promptly complied with Malaysia's request.

However, Malaysia failed to make the same demand with respect to the flying of the Singapore marine ensign on Pedra Branca. Malaysia's conduct is recognition of Singapore's sovereignty over Pedra Branca.

Seventh, between 1962 and 1975, Malaysia published six maps which attributed Pedra Branca to Singapore. Singapore never published a single map, not one, attributing the island to Malaysia.

Eighth, Malaysia has argued that Pedra Branca, Middle Rocks and South Ledge should not be treated as a group but as three separate and distinct maritime features. This is an untenable argument.

The truth is that for reasons of proximity, geology, history and law, the three features are inseparable and must be treated together. Pedra Branca and Middle Rocks constitute a group.

South Ledge is a low-tide elevation within the territorial sea of Pedra Branca and Middle Rocks and its fate must necessarily follow that of Pedra Branca and Middle Rocks.

Ninth, Malaysia has repeatedly argued that this case is about title and not about competing effectivities. This is not correct.

Singapore's case is that Pedra Branca was terra nullius in 1847 and that we had acquired sovereignty over the island between 1847 and 1851 and have maintained it ever since.

However, should the Court find that the title to Pedra Branca were indeterminate at that time, and were to examine the competing effectivities of the two parties, Singapore has clearly shown that it has sovereignty.

I can understand why Malaysia would be concerned if the Court were to decide to walk down this path. The reason is that Malaysia has zero effectivities.

Tenth, Malaysia has, in the first round, said that Singapore may continue to own and operate the Horsburgh Lighthouse should sovereignty over Pedra Branca be awarded to her. This may sound magnanimous, but make no mistake, it is really an attempt by Malaysia to change a legal order which has existed for 160 years.

Mr President and Members of the Court, the evidence in this case presents a remarkably consistent picture. All of Singapore's actions are entirely consistent with that of a country that has sovereignty over Pedra Branca.

In contrast, all of Malaysia's actions (and inactions) are entirely consistent with that of a country which has no title over Pedra Branca.

In fact, all the pieces of the puzzle fit neatly together. The picture that emerges is that Singapore has sovereignty over Pedra Branca.

The British activities from 1847 to 1851, in taking lawful possession of the island, are simply the other side of the coin of the complete absence of Johor's original title or of any sovereign acts by Johor on the island.

Singapore's continuous stream of sovereign activities on Pedra Branca and within its territorial waters, from 1851 to the present, is the reverse side of the coin of the complete absence of any Malaysian activities on the island at all relevant time.

Singapore's actions were open and public and are the counterpart to Malaysia's silence in the face of these activities over a period of 130 years.

Malaysia's official disclaimer in 1953 and its series of official maps attributing the island to Singapore are further confirmation of this picture. The whole story fits perfectly together.

There can therefore be no doubt that Pedra Branca, Middle Rocks and South Ledge belong to Singapore.

