

Why Malaysia is fighting Singapore over a rock

February 11, 2017

Against the backdrop of the high-stakes, multi-nation territorial row in the oil and gas-rich South China Sea, a freshly reopened dispute between Singapore and Malaysia over a rocky outcrop may seem insignificant.

But political observers say Kuala Lumpur's latest bid to win control of the isle of Pedra Branca puts on full display how even the most benign contests over territory are underpinned by complex domestic factors.

Malaysia's latest legal bid, the experts say, could be an attempt by the current government to stir up nationalist fervour against convenient smaller neighbour Singapore ahead of a key general election.

A powerful regional monarch's keen interest in the isle could also be behind the move.

Malaysia on February 3 informed the International Court of Justice (ICJ) that it had uncovered three British archive documents that it believed would overturn the top UN court's decision in 2008 that the isle belongs to Singapore.

The ruling at the time put an end to a protracted dispute between the two countries that began in 1979 when Malaysia, which refers to the outcrop as Pulau Batu Puteh, published a map depicting it as within its territorial waters.

A significant part of the court's original decision was premised upon the fact that sovereignty over the isle, on which the 19th century Horsburgh Lighthouse is located, tacitly passed onto Singapore as a result of its longstanding control of the outcrop and the waters around it without such actions being challenged by Malaysia. The lighthouse is still manned by Singaporean personnel.



Singapore Navy small crafts at the scene of the collision between RSS Courageous and the freighter ANL Indonesia, near Pedra Branca, in 2003. Pedra Branca is strategically located in the eastern approach to Singapore from the South China Sea. Photo: AFP

Another key consideration was a 1953 letter from a top official in the southern Malaysian state of Johor informing British officials in Singapore that “the Johor government does not claim ownership of Pedra Branca”.

Malaysia’s position, which the court rejected, was that the Johor sultanate that dates back to the 16th century owned the isle “from time immemorial”.

It also said Singapore’s actions in Pedra Branca did not elicit reaction from Malaysian authorities as they were viewed as part of its role as a lighthouse operator, not as the sovereign over the territory. It said the 1953 letter was unauthorised.

The case was brought before the court in 2003 and the verdict was delivered five years later in May 2008 after multiple rounds of written pleadings and public hearings.

Pedra Branca’s location – 24 nautical miles east of Singapore and eight nautical miles south of Johor – is seen as strategic as it lies in the eastern approach to a key sea channel leading to the island nation from the South China Sea.

Both names for the isle mean “white rock”, a reference to its physical appearance as a result of accumulated bird droppings.

In the filing to the court, Malaysia’s attorney general said the three British archive documents it uncovered in the last six months would have compelled the court to “reach a different conclusion” about the sovereignty of the isle.

Evidence ‘neither here nor there’

Observers who spoke to *This Week in Asia* were divided on the merits of the fresh legal challenge.

Eugene Tan, a law professor at the Singapore Management University, said the ICJ would “have to decide whether the new facts that Malaysia is relying on are indeed ‘fact of such a nature as to be a decisive factor’.

He was citing from the court’s statutes, which specifies strict criteria for a “revision” of judgments. Its rulings cannot be appealed.

Among the “new evidence” was a 1958 telegram by the then Governor of Singapore to London suggesting the need for a special high sea channel close to Pedra Branca. Malaysia said this indicated that the top colonial official did not regard waters around the isle as within Singaporean territorial waters.

This, Kuala Lumpur claimed, directly contradicted the 1953 official correspondence relied upon in the 2008 ruling.

The second document was a naval report from the same year that suggested a British naval vessel assigned for Singapore’s protection regarded Pedra Branca as Malaysian territory. And the third was a map from 1962, but with handwritten notes from 1966 – a year after Singapore attained independence – that depicted Pedra Branca as outside the island nation’s territorial waters.

Tan, the Singaporean constitutional law expert, said “based on Malaysia’s submission, it would appear that the three documents are neither here nor there”.

He added: “On the face of it, they do not negate the evidence that the ICJ had relied on in its 2008 ruling in ruling that Pedra Branca belonged to Singapore.”

But Shahrman Lockman, a senior analyst at Malaysia’s Institute of Strategic and International Studies, said two of the three new documents were particularly “compelling” in diminishing the importance of the 1953 letter tendered in the original proceedings.

“But Malaysia understands – and that’s made pretty clear in the application – that revision proceedings are exceptional,” Shahrman said.

“There’s very little precedent for revisions to ICJ judgments: only three cases, all of which were found to be inadmissible,” he said.

He added: “That makes it difficult to say how the ICJ would rule on this application.”

Malaysia ‘within its rights’

Oh Ei Sun, a former top aide to Malaysia’s Prime Minister Najib Razak, said the country was well within its rights to launch the legal bid.

“Any country would of course like to claim whichever territory that it thinks should legally and properly belong to it,” said Oh, a researcher at Singapore’s S. Rajaratnam School of International Studies.

Oh said the timing of the fresh legal challenge reflected Malaysia’s adherence to the ICJ’s rules. An application for a revision to a judgment must be made within ten years of the original ruling, and within six months of the discovery of new facts.

Malaysia said it uncovered the new evidence after conducting research at the British National Archives between August last year and January this year.

Still, some Malaysian politics experts raised questions about the timing of the application.

“Najib is grasping for support ... Johor is of concern electorally for Najib and the island serves as a useful tool,” said Bridget Welsh, a visiting professor at John Cabot University in Rome.

Mustafa Izzuddin, a Southeast Asian politics researcher at Singapore’s ISEAS-Yusof Ishak Institute, said Kuala Lumpur’s legal bid was “made at a time when elections are round the corner, either this year or latest by next year before August 2018”.

Najib’s ruling Barisan Nasional coalition is under some pressure over the longrunning corruption scandal at state investment fund 1MDB, in which investigators claim to have traced some US\$700 million wired into Najib’s bank accounts. Both the fund and the premier have denied wrongdoing, but the attorney general has launched an investigation.

The coalition was likely to use the renewed legal fight over Pedra Branca as a means to show it was “best placed to display strong leadership in the country’s foreign policy so as to safeguard Malaysia’s sovereignty,” Mustafa said.

He added: “Such a stance will likely resonate with the Malay voter base, particularly the more nationalistic segment, which will be key to Prime Minister Najib and his Barisan Nasional coalition winning the election and returning to government.”

The reopened dispute comes amid a relatively long season of warm ties between the Southeast Asian neighbours after decades of a relationship punctuated by periods of unease following Singapore’s acrimonious expulsion from Malaysia in 1965.

The two countries in December signed a multibillion dollar deal to jointly develop a high speed rail line between Singapore and Kuala Lumpur.

Leaders from both sides this week emphasised that the latest developments would not affect bilateral ties.

Sultans stake claim

One possible reason for Malaysia’s decision to challenge the sovereignty of Pedra Branca despite the risk to bilateral relations, some observers say, could be the powerful Johor monarchy’s repeated insistence that the isle belongs to it.

The state’s ruler, Sultan Ibrahim Ismail, was quoted as staking a claim on the isle as recently as 2014. His late father Sultan Iskandar said soon after the 2008 ruling that “Pulau Batu Puteh is not Singapore’s, but it belongs to Johor”.

“It does not matter how long it may take, I will find the way to get back the island,” he was quoted as saying.

The sultanate is one of nine provincial monarchies in Malaysia whose heads take turns as the country’s king.

A spokesman for Sultan Ibrahim told *This Week in Asia* “it would be inappropriate for HRH Sultan to comment” on the latest ICJ filing.

“The ICJ action is being initiated by the Malaysian Attorney General’s Chambers. Hence, any response to your query will have to come from the Attorney General himself,” the spokesman said.

Azmi Sharom, a law professor at the University of Malaya, said “the constitutional powers of the monarchy in Malaysia are very limited and do not include decision-making in foreign affairs”.

“This does not mean that they can’t say what they want, just that there is no legal compulsion for the government to heed them on such matters,” he said.

Singapore-based researchers Vandana Prakash Nair and Francis Hutchinson, who last year published a rare academic paper on the Johor sultanate, said the monarchs viewed Pedra

Branca with importance as “the ability to secure and maintain control over a defined territory was intrinsic to the growth of the modern Johor sultanate”.

“As the longevity of the modern Johor sultanate is related to its control over land resources, ceding control over any part of Johor’s territory would be viewed as an attempt to strike at the foundation of its power,” the two researchers told *This Week in Asia*.

“Having said that, it is unclear if Pedra Branca factored into the rulers’ geographical considerations in the early 20th century,” they said.

No timeline has been set yet for the court process. It will include an initial phase for the court to judge whether the new evidence is admissible.