



American Model United Nations

International Court of Justice

Concurring opinion of Justice Coronel, concerning the case involving Malaysia/Singapore

1. Considering that Malaysia and Singapore did not obtain a title to the islands by succession, since the “Independence Treaty”, signed in 1965, between the Federation of Malaysia and Singapore, which established the boundaries, rights, obligations and territories of the newly created Republic of Singapore made no reference to the islands of Pedra Branca, Middle Rocks or South Ledge, I begin observing that there is no treaty to be used as legal source in the present case, and it implies that we must consider others sources of international law, as outlined in article 38 of the Statute of the International Court of Justice. After examining the historical facts presented for both sides, I found that the “Pedra Branca Island” cannot be considered as *terra nullius* during the period in question in the present case, because there was state control over it, though it was only theoretical, when the Sultan of Johor allowed the British to construct the Horsburgh Lighthouse on the island, in 1844. Thus, considering this island was not *terra nullius*, and that the cartographic material submitted by the Parties in the case does not contradict that conclusion, the Singapore’s allegation that they “occupied” the territory, in my opinion cannot be accepted by this honorable Court.

2. Furthermore, there were no substantial proofs that the activities of the lighthouse, have been made by the government of Singapore, as a private or public character, in this context we must observe the opinion of this Court, in the case concerning the “Sovereignty over Pulau Ligitan and Pulau Sipadan”, between Indonesia and Malaysia, which states that: "activities by private persons cannot be seen as effectivités if they do not take place on the basis of official regulations or under governmental authority".

3. In addition, based on the Sovereignty Principle, the State has the exclusively right to use its territory, including its territorial sea. In 1982, with the United Nations Convention on the Law of the Sea, some 140 nations adopted a twelve-mile limit as territorial sea, and considering that nowadays this Convention can be characterized as customary international law, based on the Three- step theory, the island of Pedra Branca, which is about 25 nautical miles from Singapore and 8 from Malaysia, must be, in theory, included in the Malaysian territory. Even though, it must be analyzed the acts of possession and it's effectiveness, since it is possible for a State to claim to territory if it's original occupant, does not exercise it's sovereignty over this territory and if that the original ownership does not protest the illegal occupation. In this regard, the Court in the case concerning the "Sovereignty over Pulau Ligitan and Pulau Sipadan", between Indonesia and Malaysia, determines that the "parties' claims to sovereignty must be based on activities evidencing an actual, continued exercise of authority over the islands, i.e., the intention and will to act as sovereign".

4. I conclude, on the basis of these elements referred to above, that sovereignty over "Pedra Branca" island belongs to Malaysia.

Justice Coronel

Uruguay