

Why the ICJ, And What the Judgment Means
By
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Malaysians are rightly disappointed by the judgment of the International Court of Justice (ICJ), which found that sovereignty over Batu Puteh belonged to Singapore. It should surprise no one that the verdict has elicited such an emotive response from the general public. The instinct to protect and defend one's own territory is a primordial one. Every inch of the nation's territory – even a rock no bigger than a football field – deserves to be treated as no less than sacred ground.

All the attention given to Batu Puteh, however, has distracted us from the full impact of last Friday's judgement. Admittedly, Singapore can now claim sovereignty over what it calls Pedra Branca, the largest of the three maritime features that had been contested by the two countries. But the court also found in Malaysia's favour its claim to Middle Rocks and puts the country in a favourable position to eventually claim South Ledge. They may appear to be nothing more than insignificant rocky outcrops, but the implications of sovereignty over Middle Rocks and South Ledge are far from negligible.

So, was the Government ill advised in referring the case to the ICJ, as certain individuals have suggested? Should Malaysia only resort to the ICJ when it is assured of nothing less than absolute victory? Should Malaysia have stuck with the status quo and delayed resolution to the overlapping claims over Batu Puteh, Middle Rocks and South Ledge?

The dispute over Batu Puteh first arose in February 1980, when Singapore objected to a map that had been published by Malaysia in 1979. The map, among others, showed Batu Puteh to be a part of Malaysian territory. The decision by Malaysia and Singapore in 1993 to refer the dispute to the ICJ was only made after it was clear that, after years of negotiations and exchanging correspondences, the two countries could not solve their overlapping claims over Batu Puteh, Middle Rocks and South Ledge through bilateral discussions.

Finding peaceful a solution is the way that nations should conduct themselves, especially when all options have been exhausted through diplomatic means. By referring the case to the ICJ, Malaysia and Singapore have demonstrated the sort of maturity that is rare in the international community, even among its oldest members.

Instead of resorting to an arms race or the use of force, the two countries opted to use only the most peaceful and civilised means of resolving a territorial dispute. Allowing it to fester was not an option, as that would only have poisoned bilateral relations, to the detriment of both countries. Quite clearly, the Governments of both countries have opted to refer the dispute to the ICJ not merely through a narrow legal perspective. The decision would have been made after a careful weighing of each nation's interests, including in setting a pattern of interaction that favours the peaceful resolution of disputes.

Indeed, the ICJ's decision has advanced Malaysia's interests in no small measure. In 1986, in an area it knew full well was contested, Singapore began what amounted to a naval blockade around Batu Puteh, creating unnecessary bilateral tensions. Johor fishermen were denied the right to fish in their traditional fishing waters and use sheltering spots in the vicinity. With the ICJ judgement, our fishermen will soon be able to access the waters in the area without intimidation, once the joint technical committee established by Malaysia and Singapore have sorted out related matters. This might not seem to matter a great deal for most Malaysians, but it is a matter of livelihood for the estimated 1,500 fishermen in the area.

The judgement has also strengthened Malaysia's claim to the waters surrounding the three maritime features. Singapore went to the ICJ with the argument that Batu Puteh, Middle Rocks and South Ledge all belonged to them. The ICJ's decision has effectively restricted Singapore's claim only to the waters of Batu Puteh. Last Friday's judgement at The Hague has therefore advanced Malaysia's interests, far beyond what it would have, or more accurately what it did not have, if the original status quo had remained.

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