

CHAPTER III
PEDRA BRANCA/PULAU BATU PUTEH DISPUTE BETWEEN
MALAYSIA AND SINGAPORE

The conflict between neighboring states is commonly happened in this world, not only between developed-developed states, but also happened between developed-developing states. In this chapter, the writer would like to describe the *Pedra Branca/Pulau Batu Puteh* dispute. As explained before, the *Pedra Branca/Pulau Batu Puteh* dispute between Malaysia and Singapore is territorial dispute, which is both states claimed over the island named *Pedra Branca* and two others rock surrounding the island: *Middle Rock* and *South Ledge*.

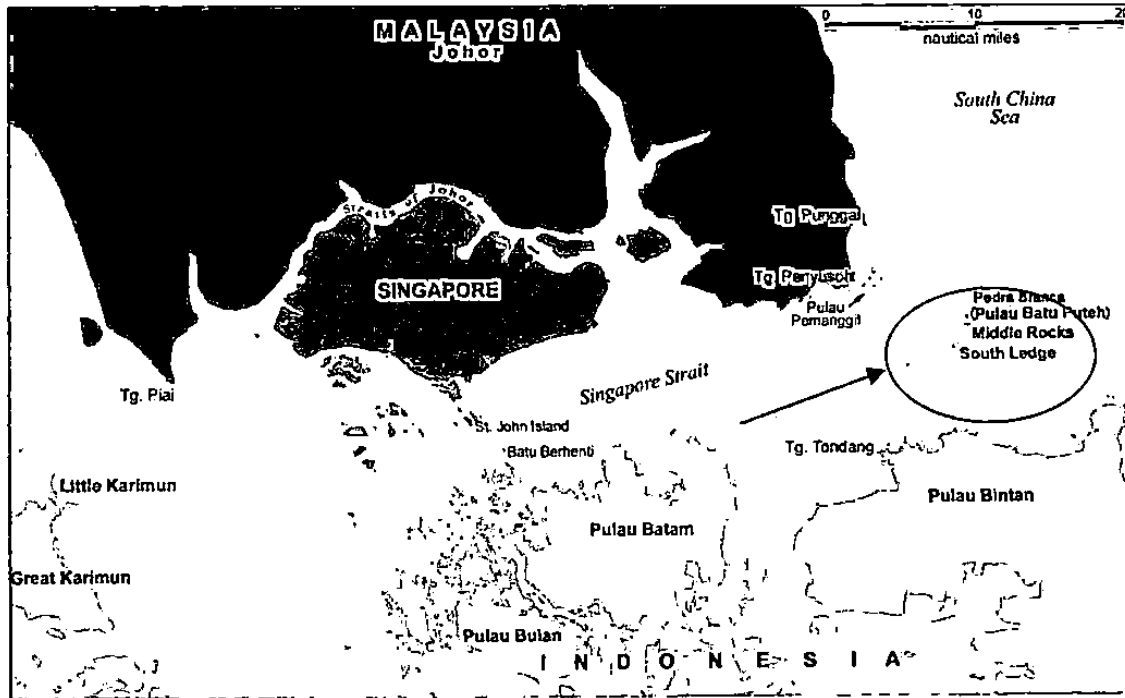
A. Geographical Situation of *Pedra Branca/Pulau Batu Puteh*

Pedra Branca or *Pulau Batu Puteh* is a small rock islets (a granite island), measuring 137m long, with an average width of 60m and covering area of about 8,560 sq m at low tide. It is situated at the eastern part (entrance) of Singapore Strait, at the point where Straits open up into the South China Sea. *Pedra Branca/Pulau Batu Pute* is located at 1° 19' 48" N and 104° 24' 27" E. It lies approximately 24 nautical miles (46 km; 29 mi) east of Singapore and 7.7 nautical miles (14.3 km; 8.9 mi) south of Johor, Malaysia, and 7.6 nautical miles (14.1 km; 8.7 mi) to the north of Indonesian island of *Bintan*.⁴¹ Its name means "white rock" in Portuguese and Malay language. It refers to whitish guano (bird droppings)

⁴¹ *Pedra Branca case. op. cit. para. 16*

deposited on the rock. On the island, Horsburgh lighthouse stand and it was erected in the middle of the nineteenth century.

Picture 1: The Map of Singapore Strait



Source: <http://www.haguejusticeportal.net/index.php?id=9665>.

There are two maritime features near the island; Middle Rocks, 0.6 nautical miles (1.1 km; 0.69 mi) south of Pedra Branca, which consists of two clusters of small rocks about 250 meters (820 ft) apart that are permanently above water and stand 0.6 to 1.2 meters high and South Ledge, 2.2 nautical miles (4.1 km; 2.5 mi) south-south-west of Pedra Branca, which is visible only at low tide.¹ It was well known by sailors for centuries as a landmark and navigational hazard in the eastern part of Singapore Strait, the most important trading route in

... .. and South China Sea. It has posed an

extremely dangerous obstacle in this narrow waterway where several merchant ships have wrecked and stranded after running aground in the vicinity.⁴³

Today, more than 150 years later, the significance of Pedra Branca has not diminished. The Straits of Singapore is one of the busiest international straits in the world. It links the Straits of Malacca (and the Indian Ocean to the West) with the South China Sea (and the Pacific Ocean to the East). These situations signify that most ships going to the Far East from Europe, the Middle East and India, and vice versa, pass through the Straits of Singapore. On average, there are more than 900 ships using the Straits of Singapore every day (i.e., one ship every 1.6 minutes), with more than 80% of these ships arriving and departing from the port of Singapore, making Singapore the busiest port in the world. More than 1,000 ships are within Singapore port limits at any one time.⁴⁴

Consequently, the Straits of Singapore has great and importance position for international shipping community. It plays a crucial part in Singapore's economy as its economic well-being and historical role as an *entrepôt* is heavily dependent on the flow of maritime traffic through the Straits. As Pedra Branca commands the entire eastern approach to the Straits, the continued ability of Singapore to exercise her sovereign territorial rights over Pedra Branca and its surrounding waters is the utmost important thing to Singapore.

⁴³ Tommy Koh and S. Jayakumar. (2009). *Pedra Branca: The Road to the World Court*, NUS Press, Singapore. p. 8.

B. The Historical Background of Pedra Branca/*Pulau Batu Puteh* dispute between Malaysia and Singapore

Following the capture of Malacca by the Portuguese in 1511. The Sultanate of Johor was established. Portugal's dominance in the 1500s as a colonial Power in the East Indies began to wane in the 1600s. By the mid-1600s the Netherlands had wrested the control over various regions in the area from Portugal. In 1795, France occupied the Netherlands which prompted the British to establish rule over several Dutch possessions in the Malay Archipelago. In 1813, the French left the Netherlands. Under the Anglo-Dutch Treaty in 1814 or known as the Convention of London. The United Kingdom agreed to return the former Dutch possessions in the Malay Archipelago to the Netherlands.

In 1819, based on the initiative of Sir Stamford Raffles (Governor-General of Bengkulu), a British "factory" (a term used for trading stations established by the British in India and south-east Asia) was established on Singapore Island (which belonged to Johor) by the East India Company. It acted as an agent of the British Government in various British possessions from the second half of the seventeenth century to the second half of the nineteenth century. Two treaties were establish this "factory". The first treaty dated January 30, 1819, between the East India Company and the *Temenggong* of Johor and the second treaty dated February 6, 1819, between Sir Stamford Raffles and Sultan Hussein of Johor and the *Temenggong* of Johor. These two Treaties further exacerbated the tension between the United Kingdom and the Netherlands arising out of their competing

1820 which culminated in the signing on March 17, 1824 of a treaty between the United Kingdom and the Netherlands (entitled "Treaty between His Britannic Majesty and the King of the Netherlands, Respecting Territory and Commerce in the East Indies" and hereinafter referred to as "the 1824 Anglo-Dutch Treaty"). Under the terms of this Treaty, the Dutch withdrew their opposition to the occupation of Singapore by the United Kingdom and the latter agreed not to establish any trading post on any islands south of the Straits of Singapore. The Treaty had the practical effect of broadly establishing the spheres of influence of the two colonial Powers in the East Indies. As the consequence, one part of the Sultanate of Johor fell within a British sphere of influence. Meanwhile the other fell within a Dutch sphere of influence.

On August 2, 1824, a Treaty of Friendship and Alliance was signed by the East India Company and the Sultan of Johor and *Temenggong* of Johor (hereinafter "the Crawford Treaty", named after the British Resident of Singapore). This treaty provides the full cession of Singapore to the East India Company, along with all islands within 10 geographical miles of Singapore. Since the death of Sultan Mahmud III in 1812, his two sons, Hussein and Abdul Rahman had held competing claims to own the Johor Sultanate. The United Kingdom had recognized the elder son Hussein (who was based in Singapore) as the heir, whereas the Netherlands had recognized the younger son Abdul Rahman (who was based in Riau, present day *Pulau Bintan* in Indonesia) as the heir. Following the signing of the 1824 Anglo-Dutch Treaty, Sultan Abdul Rahman

and his brother, Sultan Hussein, signed a treaty on June 25, 1825, to his brother, in which "in complete agreement

with the spirit and the content of the treaty concluded between their Majesties, the Kings of the Netherlands and Great Britain” whereby “the division of the lands of Johor, Pahang, Riau and Lingga was stipulated”, he donated to Sultan Hussein “the part of the lands assigned to the latter”. Sultan Abdul Rahman wrote to his brother that:

“Your territory, thus, extends over Johor and Pahang on the mainland or on the Malay Peninsula. The territory of Your Brother (Abdul Rahman) extends out over the islands of Lingga, Bintan, Galang, Bulan, Karimon and all other islands. Whatsoever may be in the sea, this is the territory of Your Brother, and whatever is situated on the mainland is yours.”⁴⁵

In 1826, the East India Company established the Straits Settlements, a grouping of the company’s territories consisting, *inter alia*, of Penang, Singapore and Malacca. Between March 1850 and October 1851, a lighthouse was constructed on Pedra Branca/*Pulau Batu Puteh*. The circumstances of its construction will be considered later in this Judgment. In 1867, the Straits Settlements became a British crown colony, making the Settlements answerable directly to the Colonial Office in London. In 1885, the British Government and the State of Johor concluded the Johor Treaty which gave the United Kingdom overland trade and transit rights through the State of Johor and responsibility for its foreign relations, as well as providing for British protection of its territorial integrity. In 1895, the British Government established the Federated Malay States, a federation of four protectorates (Selangor, Perak, Negeri Sembilan and Pahang) on the Malay Peninsula. Johor formed part of the “Un-federated Malay States”, an expression used not to denote a single entity but rather to describe those States

⁴⁵ Pedra Branca case. Op. cit. para. 23.

which were not comprised within the Federated Malay States or the Straits Settlements.

In 1914, British influence in Johor was formalized and increased through the appointment of a British Adviser. On October 19, 1927 the Governor of the Straits Settlements and the Sultan of Johor signed the "Straits Settlement and Johor Territorial Waters Agreement" (hereinafter "the 1927 Agreement"). This Agreement provided for the retrocession of certain "seas, straits and islets" that had originally been ceded by Johor to the East India Company under the Crawford Treaty.

The Straits Settlements were dissolved in 1946, that same year the Malayan Union was created, comprising part of the former Straits Settlements (excluding Singapore), the Federated Malay States and five Un-federated Malay States (including Johor). From 1946, Singapore was administered as a British Crown Colony in its own right. In 1948, the Malayan Union became the Federation of Malaya, a grouping of British colonies and Malay States under the protection of the British. The Federation of Malaya gained independence from Britain in 1957, with Johor as a constituent state of the Federation. In 1958, Singapore became a self-governing colony. In 1963, the Federation of Malaysia was established. It was formed by the merger of the Federation of Malaya with the former British colonies of Singapore, Sabah (then North Borneo) and Sarawak. In

On December 21, 1979, Malaysia published a map entitled “Territorial Waters and Continental Shelf Boundaries of Malaysia” (published by the Director of National Mapping, Malaysia). Now, this map is known as “the 1979 map”. It showed the outer limits and co-ordinates of the territorial sea and continental shelf claimed by Malaysia. The map depicted the island of Pedra Branca/*Pulau Batu Puteh* located within Malaysia’s territorial waters. By a diplomatic Note dated February 14, 1980, Singapore as an independent country rejected Malaysia’s “claim” to Pedra Branca/*Pulau Batu Puteh* and requested that the 1979 map be corrected.⁴⁶

Both states initially tended to resolve the dispute by negotiations and bilateral consultations to create peace and stability in the region. Singapore’s Note of February 14, 1980, led to an exchange of correspondence and subsequently to a series of intergovernmental talks in 1993-1994 which did not bring a resolution of the matter. During the first round of talks in February 1993 the question of the appurtenance of Middle Rocks and South Ledge was also raised. Because of the lack of progress in the bilateral negotiations, the Parties agreed to submit the dispute for resolution by the third party (International Court of Justice). The suggestion was made by Singapore in 1989 and Malaysia accepted in 1994.⁴⁷ The Special Agreement should be settled by both states before referring the case to the ICJ so it could be vested with jurisdiction over the dispute with specified and

⁴⁶ Julian Davidson. (2009). “*Between Rock and Hard Place*”. The Expat Magazine. Singapore. p. 18.

⁴⁷ Kadir Mohamad. (2009). *Malaysia Territorial Disputes: two cases at the ICJ: Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Ligitan and Sipadan (and the Sabah Claim)*

precise question. Hence, it was difficult to reach conformity on the text of that agreement. The main issue also whether Middle Rocks and South Ledge should be involved in the dispute or not.⁴⁸ The issue was resolved in 1998 when both states agreed the formulation of the text with the question to the ICJ as: “... *whether the sovereignty over Pedra Branca; Middle Rocks; and South Ledge; belongs to Malaysia or the Republic of Singapore.*”⁴⁹ It took five years for the agreement to be signed since Malaysia was still focusing on Sipadan/Ligitan case against Indonesia at that time. Finally the agreement was signed in February 2003 and notified or submitted to the ICJ registrar on July 24, 2003. It needs almost 9 years since both parties agreed to bring the case to the third party until its submission.⁵⁰

The Court recalls that, in the context of a dispute related to sovereignty over land such as the present one, the date upon which the dispute crystallized is of significance. Its significance lies in distinguishing between those acts which should be taken into consideration for the purpose of establishing or ascertaining sovereignty and those acts occurring after such date, “which are in general meaningless for that purpose, having been carried out by a State which, already having claims to assert in a legal dispute, could have taken those actions strictly with the aim of buttressing those claims”.⁵¹ As the Court explained in the *Indonesia/Malaysia* case, “it cannot take into consideration acts having taken

⁴⁸ Tomy Koh and S Jayakumar. Op.cit. pp. 35-37

⁴⁹ Kadir Mohamad. Op.cit. p. 4.

⁵⁰ Tomy Koh and S Jayakumar. Op.cit. pp. 41-43.

⁵¹ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*

place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them”.⁵²

The Parties are agreed that, with regard to *Pedra Branca/Pulau Batu Puteh*, the dispute crystallized in 1980, when Singapore and Malaysia formally opposed each other's claims to the island. According to Malaysia, “the Protest Note of February 14, 1980, crystallized the dispute. On this basis the critical date for the dispute over *Pulau Batu Puteh* is February 14, 1980.” For its part, Singapore claims that “it was only in 1979 that Malaysia made a formal claim to the island through the publication of its map”, which Singapore protested against through its diplomatic Note of February 14, 1980. Singapore thus refers to “the 1979-1980 critical date”.

In the view of the Court, it was on February 14, 1980, the time of Singapore's protest in responding to Malaysia's publication of the 1979 map that the dispute as to sovereignty over *Pedra Branca/Pulau Batu Puteh* crystallized. Regarding to Middle Rocks and South Ledge, the Court noted that the Parties disagreed about the date when the dispute crystallized. According to Malaysia, it was on February 6, 1993, when Singapore allegedly “for the first time during the first round of bilateral discussions between the Parties included Middle Rocks and South Ledge in addition to its claim to *Pulau Batu Puteh*”. Singapore did not deny that it asserted a claim to Middle Rocks and South Ledge on February 6, 1993, but

⁵² *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J.

explains that this “claim” was made in “response to *Malaysia’s* statement made a day earlier describing Middle Rocks and South Ledge as two Malaysian islands” (emphasis in the original). Singapore stressed that its long held position is that Middle Rocks and South Ledge cannot be considered as distinct from Pedra Branca/*Pulau Batu Puteh* and thus “It follows that the critical date for all three features must naturally be the same”.

The Court observes that Singapore’s Note of February 14, 1980 refers explicitly only to Pedra Branca/*Pulau Batu Puteh*. Moreover, Singapore had not provided any contemporaneous evidence intended to include Middle Rocks and South Ledge within the scope of this Note. In that circumstance, the Court concluded that the sovereignty dispute over Middle Rocks and South Ledge crystallized on February 6, 1993.

C. The Arguments and Positions of Malaysia and Singapore in Claiming Pedra Branca/*Pulau Batu Puteh*

In order to maintain their interest to the Court over Pedra Branca, Middle Rock and South Ledge claim before the ICJ decision, both Malaysia and Singapore parties have their own arguments in this case. While Malaysia stated Pedra Branca/*Pulau Batu Puteh* was originally the territory of the old Sultanate of Johor and remained under the new Johor Sultanate, even though it was divided into two spheres of influence by Anglo-Dutch Treaty of 1824. They added that Pedra Branca/*Pulau Batu Puteh* fell within the British territory and northern part of the Sultanate. By this fact, Malaysia should have the original title of Pedra

Pedra Branca/*Pulau Batu Puteh* as it had always been part of the Sultanate of Johor and

these people."⁵⁵ Malaysia rejected Singapore's argument that the traditional Malay concept of sovereignty was based mainly on control over people and not over territory. It stated that authority in states throughout the world is based on a combination of control over people and territory, and that this applies to the Malay States as it does to any other state. Since the Johor Sultanate was established in the 16th century, it always had rulers who were recognized as such and who thus commanded people's allegiance and therefore controlled the territory where those people lived.⁵⁶ Moreover, about the reply letter by the Acting State Secretary of Johor that stated "... *the Johor Government does not claim ownership of Pedra Branca*", it is did not have the capacity to provide a disclaimer or to renounce title under the Johor Agreement 1948 as it involved foreign affairs, a subject matter which had been delegated by the States to the Federal Government.

The Acting State Secretary of Johor "undertook himself" to write directly to Singapore in 1953, without the consent of the High Commissioner of the Federation or his Chief Secretary, so, the correspondence was "procedurally irregular and incorrect". He was not definitely authorized nor had the legal capacity to write the 1953 letter, or to renounce, disclaim or confirm title of any part of Johor territories.⁵⁷

On the other hand, to against the Malaysia arguments Singapore argued that Pedra Branca was uninhabited and belonged to no one (*terra nullius*) as it had

sovereign entity when the British built a lighthouse in 1847.⁵⁸ That point denied Malaysia's claim over Pedra Branca/*Pulau Batu Puteh* had been under Johor's sovereignty, because there was no evidence that the Johore Sultanate had claimed the authority over the island between 1512 and 1641.⁵⁹ While that period began with the fall of the Malacca Sultanate to the Portuguese in 1512, who continued to tease the Johor Sultanate during this time. Moreover in 1641 and 1699, when Johor's power and influence were at their height, between 1699 and 1784 when the death of Sultan Mahmud Shah II in 1699 without a clear heir led to instability, during which many vassals broke away from the Sultanate and between 1784 and 1824 when, according to a 1949 annual report of the Johor government, the Sultanate was in a "state of dissolution" by the beginning of the 19th century.⁶⁰

To support its assertion that the Sultan of Johor did not have sovereignty over Pedra Branca, Singapore contended that the traditional Malay concept of sovereignty was based mainly on control over people and not over territory. Thus, the only reliable way to determine whether a particular territory belonged to a ruler or the inhabitants pledged allegiance to that ruler. This was difficult to do with respect to Pedra Branca since it was isolated and uninhabited, and Malaysia had not provided clear evidence of a direct claim to or actual exercise of sovereign authority over the island.⁶¹

⁵⁸ Reply of Singapore. (25 November 2005). *Case Concerning Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* pp. 36-37

⁵⁹ Pedra Branca case. op.cit. paras. 49-51.

⁶⁰ May Wong. (8 November 2007), *Singapore says Malaysia has no original title of Pedra Branca*, Channel NewsAsia, <http://www.channelnewsasia.com>, retrived September 29, 2012.

⁶¹ Lydia Lim (2 November 2007), "*Malaysia has no evidence to back up claim: Quoting from*

Moreover, Singapore took the position that Pedra Branca, Middle Rocks and South Ledge should be considered a single group of maritime features as Middle Rocks and South Ledge were dependencies of Pedra Branca. It relied, among others, on the *Island of Palmas Case* (1932): "As regards a group of islands, it is possible that a group may under certain circumstances be regarded as in law a unit, and that the fate of the principal part may involve the rest."⁶² It argued that the three maritime features were geomorphologic ally the same, as rock samples showed that they were all composed of a light, coarse-grained biotite granite. Additionally, Malaysia had not shown any exercise of sovereignty over the uninhabited reefs of Middle Rocks and South Ledge while Singapore had consistently exercised sovereign authority in the surrounding waters. Since sovereignty over Pedra Branca belonged to Singapore, so did sovereignty over Middle Rocks and South Ledge as they were within Pedra Branca's territorial waters.⁶³

Singapore added, they constructed a lighthouse in 1847 there without informing the Johor authority or seeking consent for its erection because the territorial water of coastal states only covers 3 NM (nautical miles) from the coastline based on "canon-shoot rule". Therefore, the British did not consider the island belonged to Malay rules since Pedra Branca fell outside territorial sea limit of Johor.⁶⁴ Moreover, unfortunately the Johor Sultanate did not have any clear defined boundaries, so it was difficult to determine the territorial extent of the

⁶² *Reports of International Arbitral Awards*, vol. II (1949), p.855. Retrived September 30, 2012, from [http://www. Un.org/law/riaa/](http://www.Un.org/law/riaa/)

⁶³ *Pedra Branca case*. op.cit. para. 283.

Sultanate of Johor itself. Furthermore Malaysia failed to prove that Pedra Branca belongs to Johor Sultanate at history point and referred to the Anglo-Dutch Treaty which is established an international boundary, Pedra Branca also was not a part of the new Johor after 1824, and it was never became part of Malaysia.⁶⁵

After took possession of Pedra Branca and built a lighthouse, the Singapore argued that the British government had acquired sovereignty over the island. Singapore insisted that Governor Butterworth was present at the foundation stone ceremony on May 24, 1850 which means that the island was considered as British territory and Singapore claimed that Pedra Branca was described as a “dependency of Singapore” in the presence of the Governor of the Straits Settlements, the most senior British official in Singapore and other British and foreign officials.⁶⁶ The attribution of sovereignty was widely reported in local newspapers, but drew no response from the Johor authorities. Furthermore the British (and Singapore) have demonstrated acts of sovereignty and jurisdiction on the island and its waters such as:

- a) Publication of notice to mariners (NTM),
- b) Constant maintenance and expansion of the facilities (construction of jetties, helicopter pad, radar and communications facilities) , such as the Port of Singapore Authority (PSA) allowed the Republic of Singapore Navy to install a military rebroadcast station on the island,
- c) Metrological data collection,

- e) Control of access of foreigners, including requiring Malaysian officials wishing to visit the island for the surveys to obtain permits.
- f) The issuance of permits to third party, salvage operations and the jurisdiction to investigate shipping incidents/shipwrecks.

Another significant fact was that Malaysia had published six official maps from 1962 to 1975 which obviously attributing Pedra Branca to Singapore by depicting it with the notes "Singapore".⁶⁷

The last argument of Singapore was Johor's express disclaimer of the title to Pedra Branca. On September 21, 1953, the Acting State Secretary of Johor responded to a doubt from the Colonial Secretary of Singapore about the status of the island and he stated in his letter that "... *the Johor Government does not claim ownership of Pedra Branca*". It was perceived as a declaration that Johor and its successor state (Malaysia) would not assert any claims on it in the future as occurred now.⁶⁸

As a final case, on May 23, 2008 the Court ruled that Pedra Branca is under Singapore's sovereignty, while Middle Rocks belongs to Malaysia. Regarding South Ledge, the Court noted that it falls within the apparently overlapping territorial waters generated by mainland Malaysia, Pedra Branca and Middle Rocks. As it is a maritime feature visible only at low tide, it belongs to the state in the territorial waters of which it is located. Malaysia and Singapore have established what they have named the Joint Technical Committee to delimit

⁶⁷ Coalter G Lathrop. (2008). *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge*. *Journal of Energy & Environmental Law*, 21(1), 1-10. <http://www.geographic.org> pp. 822-823

the maritime boundary in the area around Pedra Branca and Middle Rocks, and to

determine the ownership of South Ledge