

**Case Concerning Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)**

**Malaysia's Comments on Singapore's Response to  
Judge Keith's Question of 16 November 2007**

Malaysia makes the following comments:

1. Malaysia agrees that the statement of law in the Court of Appeal judgment was not necessary to the disposal of the appeal. It is, therefore, *obiter*.
2. It is not correct, as suggested by Singapore, that the judgments of the Judicial Committee of the Privy Council are significant because they did not seek to disturb the statement of law by the Court of Appeal. The silence of the Privy Council in this respect is not significant one way or another on this question but merely confirms that the mode of acquisition of title was not relevant in the case. For the Privy Council, the status of Pitcairn Island was determined by the unequivocal statement of the British Crown, in accordance with the principle articulated by the Court of Appeal in *The Fagernes* [1927] P 311; 3 ILR 126.
3. Contrary to what Singapore alleges in the second observation of paragraph 4 of its Response, the Court of Appeal does not support Singapore's views regarding British practice and the status of public international law related to

the acquisition of territory. As Malaysia explained, there was a formal taking of possession of Pitcairn on behalf of the British Crown in 1838 (see CR 2007/27, 50-51 (para. 14)) and the Court of Appeal referred to it (CR 2007/30, 50 (para. 5)). Moreover, the second observation by Singapore fails to reflect the crucial second sentence of the Court of Appeal's dictum, namely, that "it is the intention of the Crown gathered from its own acts and surrounding circumstances that determines whether a territory has been acquired for English law purposes." As Malaysia has demonstrated, neither the "acts" nor the "surrounding circumstances" evidence any intention on the part of the Crown to acquire Pulau Batu Puteh.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Noor Farida Ariffin', with a long, sweeping horizontal stroke extending to the right.

**Noor Farida Ariffin**  
**Co-Agent of Malaysia**

7 December 2007