



INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING SOVEREIGNTY OVER
PEDRA BRANCA/PULAU BATU PUTEH,
MIDDLE ROCKS AND SOUTH LEDGE**

MALAYSIA/SINGAPORE

MEMORIAL OF MALAYSIA

VOLUME 1

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TABLE OF CONTENTS

		<u>Paragraphs</u>
Chapter 1	The Special Agreement	1-4
Chapter 2	The Dispute between the Parties	5-24
	A. Overview of the dispute	5-12
	B. The history of the dispute	13-15
	C. Structure of Malaysia's Memorial	16-24
Chapter 3	The Geographical Setting	25-35
	A. The general setting	27-31
	B. Pulau Batu Puteh	32-33
	C. Middle Rocks and South Ledge	34-35
Chapter 4	The Historical Setting	36-72
	A. The Sultanate of Johor before 1824	37-47
	B. The Events of 1824	48-56
	(i) The 1824 Anglo-Dutch Treaty	49-53
	(ii) The 1824 Crawford Treaty	54-56
	C. Post-1824 developments: Singapore and the Straits Settlements	57-60
	D. British recognition of the Sultanate of Johor	61-67
	E. Post-1945 constitutional developments	68-71
	F. Conclusions	72
Chapter 5	The Territorial Extent and Insular Dominions of Johor	73-103
	A. The territorial extent of Johor prior to 1824	77-84
	B. Post-1824 conflict over the extent of the Sultanate of Johor	85-93
	C. Pulau Batu Puteh was not <i>terra nullius</i>	94-98
	D. Subsequent developments confirming the territorial limits of Singapore	99-102
	E. Summary and conclusions	103

Chapter 6	Horsburgh Lighthouse was Constructed with the Permission of Johor	104-177
	A. Plans for the construction of a lighthouse at the entrance of the Strait of Singapore	107-117
	B. The permission of Johor in 1844 and its scope	118-137
	C. The role of the Temenggong of Johor	138-150
	D. The inauguration of the lighthouse did not involve a cession or claim of sovereignty	151-164
	(i) The ceremony of the laying of the first stone and the inauguration of the lighthouse	152-156
	(ii) Consistent British practice of taking possession and incorporation of territory and its absence in Pulau Batu Puteh	157-164
	E. Distinction between ownership of lighthouses and sovereignty over territory	165-176
	F. Conclusions	177
Chapter 7	The Conduct of the Parties supports Malaysia's Title	178-285
	A. The legal framework for considering the conduct of the Parties	185-188
	B. Constitutional developments and official descriptions of Singapore and Malaysia	189-218
	(i) The Straits Settlements and Johore Territorial Waters Agreement, 1927	190-192
	(ii) Establishment of the Colony of Singapore, 27 March 1946	193
	(iii) The Curfew Order of 1948	194-197
	(iv) Establishment of the Malayan Union and the Federation of Malaya	198-200
	(v) Establishment of the State of Singapore, 1 August 1958	201-204
	(vi) Malaysia and Singapore, 1963-1965	205-206
	(vii) The phrase "islands... administered as part of the Colony of Singapore"	207-218

C.	Bilateral conduct confirmatory of Malaysian title	219-244
	(i) The 1927 Agreement	220-221
	(ii) The Straits Lights system	222-234
	(iii) The 1953 correspondence	235-243
	(iv) Conclusions on the bilateral conduct of the Parties	244
D.	Unilateral conduct by Singapore confirmatory of Malaysia's title	245-267
	(i) Singapore's Light Dues legislation confirms that Horsburgh Lighthouse did not fall within Singapore's territorial waters	246-256
	(ii) J.A.L. Pavitt's appreciation that the Horsburgh Lighthouse did not fall within Singapore's territorial waters	257-263
	(iii) Indonesia-Singapore Territorial Sea Agreement, 1973	264-266
	(iv) Conclusions on the unilateral conduct of Singapore	267
E.	Malaysia's Conduct	268-282
	(i) Malaysian naval charts showing Malaysian territorial waters, including around Pulau Batu Puteh	270-273
	(ii) The 1968 Petroleum Agreement between the Government of Malaysia and the Continental Oil Company of Malaysia	274-278
	(iii) The delimitation of Malaysia's territorial sea in the area around Pulau Batu Puteh	279
	(iv) The Indonesia-Malaysia Continental Shelf Agreement, 1969	280-281
	(v) Conclusions as to Malaysia's conduct	282
F.	Conclusions	283-285

Chapter 8	The Position of Middle Rocks and South Ledge	286-300
A.	The relation of the two features to Pulau Batu Puteh	288-293
B.	Basis for Malaysian title over the two features	294-295
C.	Absence of any claim by Singapore: Singapore's recognition of Malaysia's sovereignty	296-299
D.	Conclusion	300

Chapter 9	The Map Evidence	301-327
	A. General principles	301-304
	B. Review of the map evidence	305-326
	(i) The early maps	306-309
	(ii) Mapping of the region after 1824 (including the period of the establishment of Horsburgh Lighthouse)	310-326
	C. Conclusions in relation to the map evidence	327
Summary		328
Submissions		
List of Annexes		

Chapter 1

THE SPECIAL AGREEMENT

1. This is the Memorial of the Government of Malaysia (“Malaysia”) filed pursuant to the Order of the Court made on 1 September 2003.

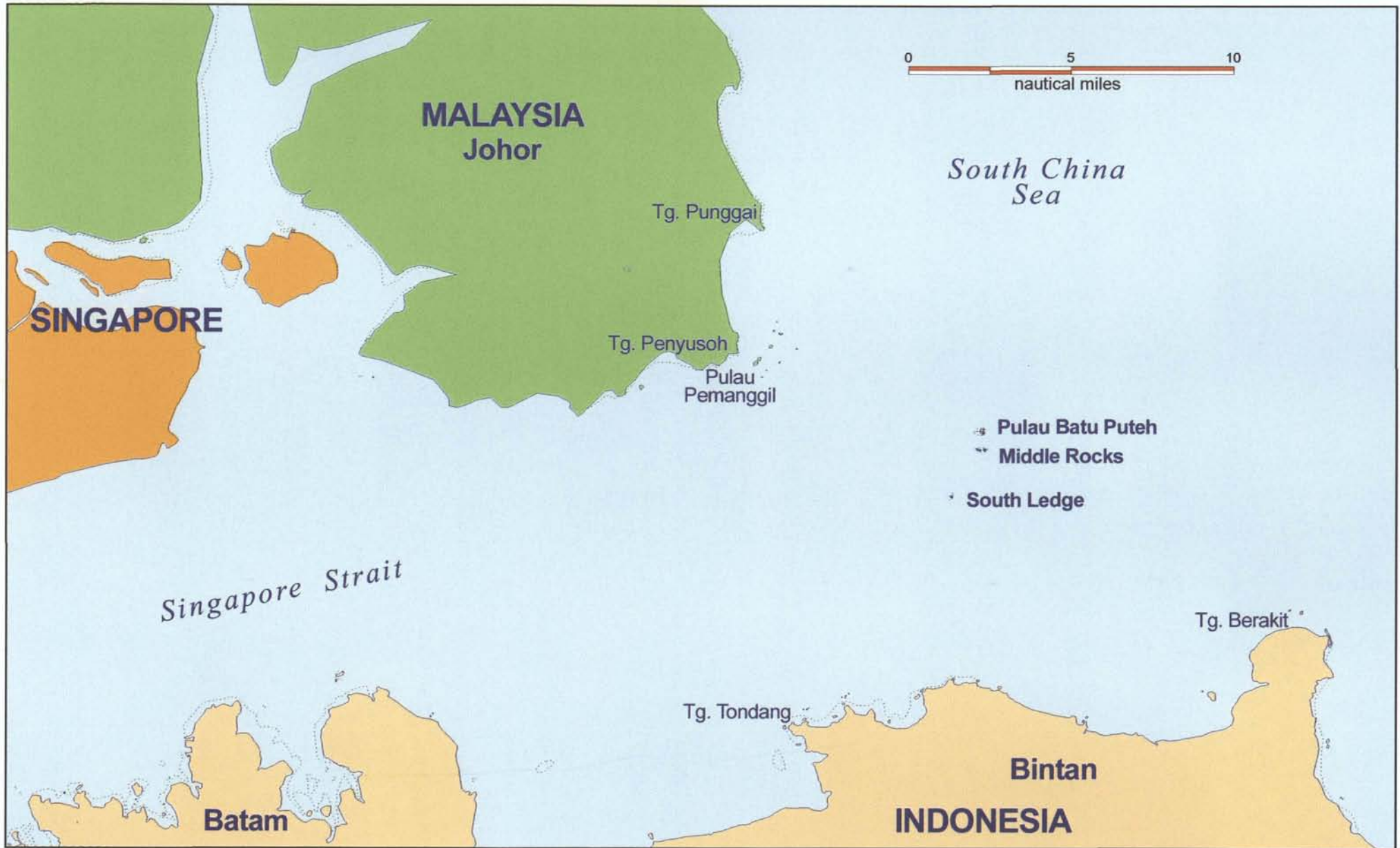
2. The case comes before the Court by virtue of a Special Agreement concluded between Malaysia and Singapore on 6 February 2003.¹ Instruments of ratification were exchanged and the Agreement entered into force on 9 May 2003. The Agreement was jointly notified to the Registrar of the Court on 24 July 2003.

3. The Special Agreement places before the Court a dispute between the Parties relating to sovereignty over an island at the entrance to the South China Sea, Pulau Batu Puteh (Pedra Branca), as well as two other features, Middle Rocks and South Ledge (hereinafter collectively referred to as the “three features”). Specifically the Court is asked “to determine whether sovereignty over (a) Pedra Branca/Pulau Batu Puteh; (b) Middle Rocks; (c) South Ledge, belongs to Malaysia or to the Republic of Singapore”.

4. Article 4(2) of the Special Agreement envisages three simultaneous exchanges of pleadings (Memorial, Counter-Memorial and Reply), with a Rejoinder if so agreed or decided.

¹ Annexes, vol. 2, Annex 20.

THE THREE FEATURES SUBJECT OF THE PRESENT DISPUTE



For illustrative purposes only

Insert 1

Chapter 2

THE DISPUTE BETWEEN THE PARTIES

A. Overview of the Dispute

5. The question put to the Court refers to sovereignty over three features, Pulau Batu Puteh, Middle Rocks and South Ledge. The location of these features is shown in **Insert 1**, opposite, together with other localities in the region, shown with their current names. Where relevant, names given to particular features at earlier dates will be indicated. For example, Tanjung Penyusoh was earlier referred to as Point Romania. In some cases orthography has always been variable. For example, “Johor” was variously spelt with or without a final “e”: the modern spelling “Johor” will be used here except in quotations. Different names for the same feature may have simply involved expressing the same idea in relevant languages: thus the Malay “Pulau Batu Puteh” (“White Rock Island”) is rendered “Pedra Branca” in Portuguese, “Pierre Blanche” in French, “*Pia Chiao*” in Chinese. All these names have exactly the same meaning, and refer to the white deposits left by seabirds. It has been known by this designation, in whatever language, for centuries.²

6. This case is relatively simple. As regards Pulau Batu Puteh itself, it pits Malaysia’s original title to the island against Singapore’s much later claim, which dates from 1980. The island lies 7.7 nautical miles (nm) from the Malaysian mainland but 25.5 nm over the sea from Singapore. Singapore’s claim is based on the construction of a lighthouse on the island in the mid-19th century, with Johor’s permission, and on the subsequent operation and management of the lighthouse. As regards South Ledge and Middle Rocks, Singapore’s even later claim, dating from 1993, is not based on any form

² Pulau Batu Puteh is variously referred to as an “island” or a “rock”. In this Memorial it will be referred to by the generic term “island”.

of governmental activity but on the relative proximity of these features to Pulau Batu Puteh. If Singapore's 1980 claim to the island fails, so does its 1993 claim to the other two features. Accordingly, the focus of this Memorial will be principally on Pulau Batu Puteh. Issues concerning South Ledge and Middle Rocks are discussed in Chapter 8.

7. The key to the case lies in an appreciation of four elements.

8. The first is that in 1844, at the time when consideration was given to the construction of the lighthouse on Pulau Batu Puteh, that island was certainly part of the territories subject to the sovereignty of the Sultanate of Johor. This certainty regarding Johor's title in 1844 derives from the fact that, from the early 16th century, the territories of the Sultanate of Johor had extended to the islands south of and around Singapore Strait. Except as to areas south of the Strait, this title was confirmed when the Anglo-Dutch Treaty of 1824 distinguished between the British and Dutch spheres of influence in the Malay region.³ Pulau Batu Puteh clearly did not lie within the Dutch sphere of influence. The fact that Pulau Batu Puteh lay in the British sphere of influence did not bring the island under British sovereignty any more than it did mainland Johor, which was equally within the British sphere. Britain's own claim to sovereignty over Singapore rested on a treaty concluded with Johor, later in 1824 (the Crawford Treaty),⁴ by which Johor expressly ceded to Britain "in full sovereignty and property" the island of Singapore and the islands lying within "ten geographical miles" of its coast.⁵ That cession clearly did not include Pulau Batu Puteh.

9. The second important element is that Britain acknowledged the title of the Sultanate of Johor when, in 1844, it sought the permission both of the Sultan and of his principal official, the Temenggong, for construction of the lighthouse. The British letter

³ Treaty between His Britannick Majesty and the King of the Netherlands, Respecting Territory and Commerce in the East Indies, London, 17 March 1824, 11 *British and Foreign State Papers* 194 (English text); 74 *Consolidated Treaty Series* 88 (English and Dutch texts): Annexes, vol. 2, Annex 5.

⁴ Treaty of Friendship and Alliance between the Honourable East India Company and the Sultan and the Temenggong of Johore, 2 August 1824, 74 *CTS* 380 (English text): Annexes, vol. 2, Annex 6.

⁵ A "geographical mile" is equivalent for practical purposes to a nautical mile.

of request has not been found, so it is impossible now to ascertain its terms. But even if it did request a cession (which would have been unusual having regard to Britain's practice in comparable circumstances elsewhere), the two replies from the Sultan and the Temenggong contain nothing to suggest that they were agreeing to part with sovereignty. The express words appropriate to so far reaching an act as a cession of territory do not appear in the letters, in contrast with the wording of the grant to Britain of title over Singapore by the Crawford Treaty of 1824. All that the authorities of Johor granted was the permission to build a lighthouse.

10. Third, it is well established in international law that the mere construction and operation of a lighthouse does not establish the sovereignty of the lighthouse operator. *A fortiori* is this true when the lighthouse is built and operated with the permission of the territorial sovereign. The fact that the state of affairs established in 1844 has persisted for some 160 years does not make any difference. Neither Britain nor Singapore ever requested a change in the legal position. Neither Johor nor Malaysia had occasion to question or to seek confirmation of the original legal position. Johor consented to the construction and operation of a lighthouse on one of its islands. That is all Singapore has ever done.

11. Fourth, reference should be made to the conduct of Singapore itself. One would have expected that if Singapore had regarded itself as sovereign over Pulau Batu Puteh this would have been reflected in its official conduct. But it has not been. Singapore did not refer to Pulau Batu Puteh as a feature relevant to the determination of its territorial waters boundary with Johor in 1927⁶ or with Indonesia in 1973.⁷ It did not list the island in any lists of Singapore islands before the critical date. Before the mid-1990s, Singapore produced no map showing Pulau Batu Puteh as part of Singapore. By contrast, maps produced by Malaysia long before the crystallisation of the dispute show Pulau Batu Puteh as being part of Johor.

⁶ Straits Settlements and Johore Territorial Waters Agreement, 19 October 1927: Annexes, vol. 2, Annex 12.

⁷ Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Strait of Singapore, 25 May 1973: Annexes, vol. 2, Annex 18.

12. In short, the position is that Malaysia has an original title to Pulau Batu Puteh of long standing. Pulau Batu Puteh is, and has always been, part of the Malaysian State of Johor. Nothing has happened to displace Malaysia's sovereignty over it. Singapore's presence on the island for the sole purpose of constructing and maintaining a lighthouse there – with the permission of the territorial sovereign – is insufficient to vest sovereignty in it.

B. The History of the Dispute

13. The first indication that there was a dispute over title to Pulau Batu Puteh occurred on 14 February 1980. On that date Singapore protested a Malaysian map of its maritime boundaries, published in the previous year, which showed Pulau Batu Puteh as belonging to Malaysia.⁸ Singapore's Note of 14 February 1980 led to an exchange of correspondence and subsequently to a series of intergovernmental talks in 1993-1994 at which the respective positions of the two Parties were developed, but without any result. Subsequently it was agreed that the matter should be resolved by reference to this Court.

14. It is not necessary to burden the Court at this stage with the details of the negotiations between the Parties after the dispute had arisen. The substance of the Parties' positions then taken will no doubt be set out, in more detail, in the pleadings of both Parties. One point however does require to be noted. During the first round of talks, held in Kuala Lumpur on 5 February 1993, Singapore made it clear for the first time that the dispute was not limited to Pulau Batu Puteh (to which it had referred exclusively up to that point) but extended to Middle Rocks and South Ledge. This was despite the fact that up to that date Singapore had never exercised the slightest form of jurisdiction or administration over these features, nor made any public claim to them.

15. In disputes concerning territorial title, the Court attaches significance to the critical date, i.e., the date on which the dispute between the parties crystallised. This is evident, for example, from the Court's handling of post-1969 effectivities in the *Ligitan*

⁸ Map Atlas, Map 44. For Singapore's Note of 14 February 1980 see Annexes, vol. 3, Annex 80.

and Sipadan case.⁹ In the present case, the dispute over Pulau Batu Puteh crystallised on 14 February 1980; that concerning the other two features on 6 February 1993.

C. Structure of Malaysia's Memorial

16. Malaysia's Memorial is organised as follows. In **Chapter 3**, the geographical setting is outlined; this is an essential basis to an understanding of the dispute.

17. Likewise essential is the historical setting, which is canvassed in **Chapter 4**, tracing thereby Malaysia's title over the offshore islands as it derives from that of the Sultanate of Johor.

18. **Chapter 5** shows that all the offshore islands which were neither included in the original grant of Singapore and surrounding islands to Great Britain in 1824, nor recognised as lying south of Singapore Strait and therefore belonging to the Dutch East Indies, were regarded as belonging to the Sultanate of Johor. The territorial extent of Johor and its extension to the offshore islands was repeatedly recognised by Great Britain.

19. **Chapter 6** recounts the process by which Johor's permission was sought and obtained for the building of a lighthouse on Pulau Batu Puteh or any other convenient spot within the Sultanate; it demonstrates further that this permission did not involve any cession of territory. After its inauguration on 15 October 1851, Horsburgh Lighthouse was operated by the relevant administrative agency based in Singapore, but this fact did not involve any claim to sovereignty over the island.

20. **Chapter 7** shows that Singapore at no stage before the dispute arose in 1980 claimed sovereignty over Pulau Batu Puteh, and that its conduct throughout, both internally and in its dealings with its neighbours, was consistent with the original limited purpose for its presence on the island. By contrast, Malaysia did exercise sovereignty

⁹ *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia and Malaysia)*, Decision on Merits, 17 December 2002, *ICJ Reports 2002*.

over offshore areas including the island during this period, and did regard it as one among the large number of offshore islands of Johor.

21. **Chapter 8** discusses the position of Middle Rocks and South Ledge. It shows their configuration as features which are distinct from Pulau Batu Puteh and which have always been considered as part of Malaysia. Singapore's late claim to them in 1993 is not grounded in either title or conduct.

22. Finally **Chapter 9** discusses the map evidence concerning the three features. Although these have been shown on maps for centuries, Singapore has not produced any map showing the features as belonging to Singapore before 1994. By contrast the Malaysian maps show the features as part of Johor, not Singapore. The map evidence thus supports Malaysia's case to sovereignty over the three features.

23. The Memorial concludes with a short summary of Malaysia's reasoning (cf. Practice Direction II, para. 2), followed by its submissions.

24. Appended to the Memorial are 113 documentary annexes, and a Map Atlas consisting of 48 maps. Having regard to the Court's Practice Direction III, Malaysia has appended only essential documents, and where the document in question is lengthy, only the most relevant passages. A certified copy of each original document referred to in this Memorial but not annexed in full has been provided to the Registrar.

Chapter 3

THE GEOGRAPHICAL SETTING

Introduction

25. In order to understand the present case, it is necessary to appreciate the confined geographical setting within which Pulau Batu Puteh and the other two features are located. The distance between Pulau Batu Puteh and the coast of the Malay Peninsula is small; other Malaysian islands are even closer. Moreover the location and name of Pulau Batu Puteh ("White Rock Island") have been known for centuries. This is no remote and intermittently unknown island, but one readily accessible by local craft from the mainland and nearby islands. Given its strategic position at the entrance of the Singapore Strait and its potential danger for navigation, Pulau Batu Puteh was considered as an important maritime feature by Europeans since their first visits to the region, as the map evidence shows.

26. The position can be seen from **Insert 2**, on the following page, which shows the environs of Pulau Batu Puteh and names the various geographical features referred to in this Chapter.

A. The General Setting

27. The region within which Pulau Batu Puteh is set is a coastal region, including Singapore Strait and parts of the South China Sea. 18,000 years ago, at the height of the last ice-age, this region consisted of broad river valleys and wide coastal plains. As the ice melted, sea levels rose and reached close to their present levels about 6,000 years ago, creating this major strait.

ENVIRONS OF PULAU BATU PUTEH



For illustrative purposes only

Insert 2

28. The northern coast of Singapore Strait, from Tanjung Piai to Tanjung Penyusoh,¹⁰ consists of the coast of the Malay Peninsula and the south coast of Singapore and its islands, which fit into the mainland along the Straits of Johor like pieces of a jigsaw.¹¹ The south coast of Singapore Strait, from Little Karimun Island in the west to Tanjung Tondang in the east, is formed by the northern coast of the Indonesian archipelago, including the major islands of Great Karimun, Pulau Batam and Pulau Bintan. Pulau Bintan is less than 10 nm from Pulau Batu Puteh.

29. Singapore Strait measures about 53 nm in length. It is about 10 nm wide at its western entrance and 11.5 nm at its eastern entrance. Near the middle of the Straits, between Saint John Island and Batu Berhenti, the channel is only 2.5 nm wide. In short, the area is a confined one, and in normal conditions all the islands are visible from the nearest coastlines.

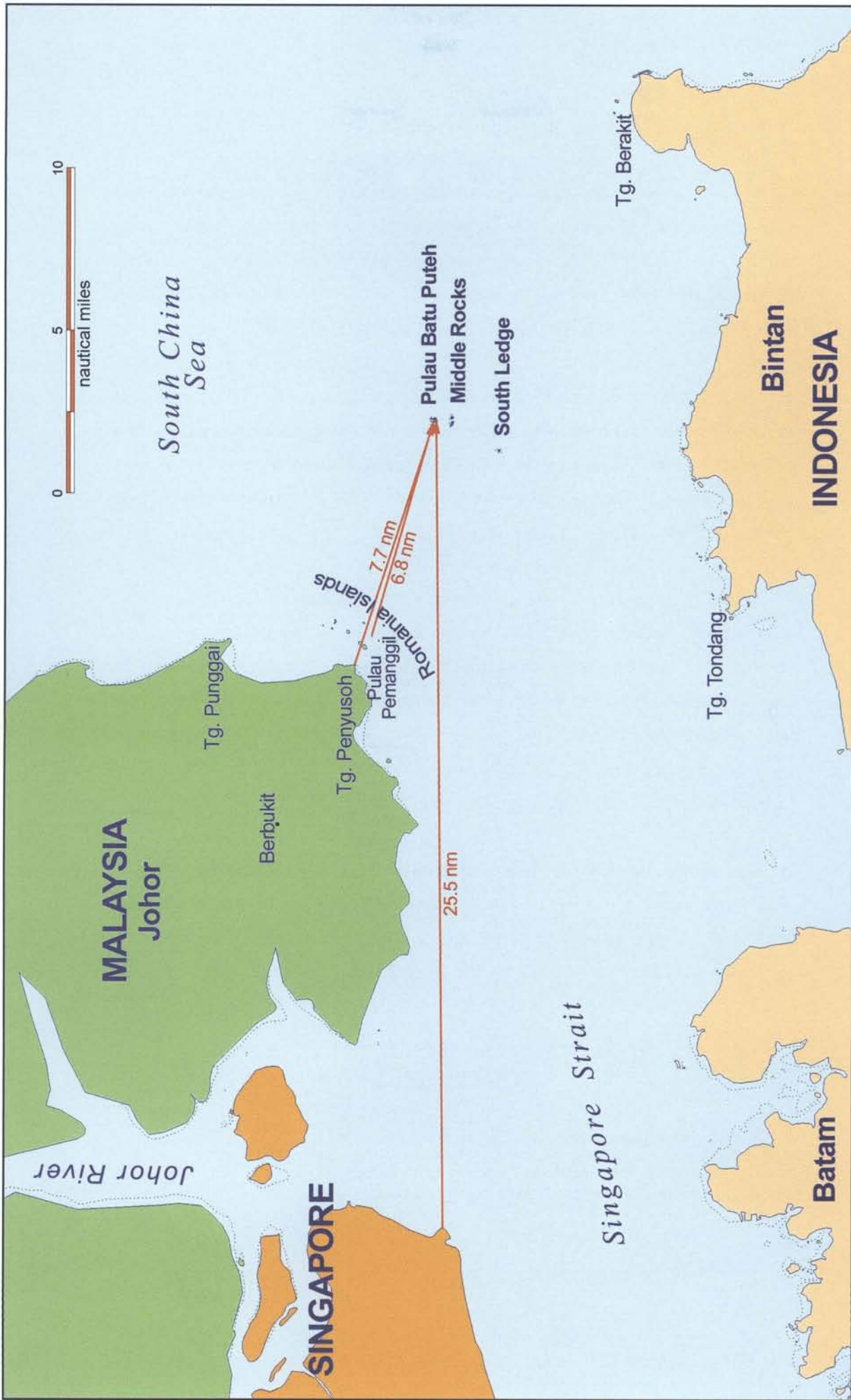
30. Malaysia is a continental and insular state with numerous off-shore islands. Indonesia has claimed archipelagic status and surrounded its islands with archipelagic baselines, some of which border the south coast of Singapore Strait. As a result of the Crawford Treaty (between the English East India Company and the Sultan and Temenggong of Johor in 1824), the territory of Singapore consists of only the Island of Singapore together with the adjacent seas, straits, and islets, to the extent of 10 geographical miles, from the coast of the said main Island of Singapore.

31. The depths in Singapore Strait vary from 20 metres to 95 metres but are mainly in the 30-40 metre range. There is no sudden deepening of sea depths east of Pulau Batu Puteh as the continental shelf follows a gently downward gradient to the top of the continental slope north of Sarawak, in latitude 5°30' N, where water depths are in the order of 200 metres.

¹⁰ "Tanjung" (often abbreviated "Tg." on maps) is Malay for "point" or "promontory".

¹¹ The narrow waterway between Singapore and mainland Johor is known as the Straits of Johor, in earlier times also shown as the "Old Straits" or the "Straits of Tebrau".

RELATIVE DISTANCES BETWEEN KEY POINTS



For illustrative purposes only

Insert 3

B. Pulau Batu Puteh

32. Pulau Batu Puteh is located at $1^{\circ}19'48''\text{N}$ and $104^{\circ}24'27''\text{E}$. As can be seen from **Insert 3**, opposite, the island lies 7.7 nm from Tanjung Penyusoh (Point Romania) on the Malaysian mainland and 25.5 nm from the nearest point on Singapore's coast. The next Malaysian island is Pulau Pemanggil, 6.8 nm away. Pulau Batu Puteh stands 7.3 metres high and is permanently uncovered by water even at the highest tides.

33. The first written record of Pulau Batu Puteh (*Pia Chiao*) was given by the Chinese navigator Cheng Ho sometime before 1433.¹² It appeared on many maps long before 1800, identified under a variety of names. On Horsburgh's 1812 chart there were unnamed symbols for rocks southeast of "Pedro Branca", i.e., Middle Rocks, and the three-pointed reef (now known as South Ledge) is shown to the southwest.

C. Middle Rocks and South Ledge

34. The two features closest to Pulau Batu Puteh are Middle Rocks, located 0.6 nm to the southeast, and South Ledge 2.2 nm to the southwest. Middle Rocks consist of some whitish rocks that are permanently uncovered and stand 0.6 to 1.2 metres high. South Ledge is formed of three rocks which are all covered at high tide. The northernmost rock dries at 2.1 metres at low-tide.

35. Further information about Middle Rocks and South Ledge is given in Chapter 8.

¹² J.V.G. Mills, *Ma Huan Ying-Yai Sheng-lan: The overall sway of the ocean's shores*, Cambridge University Press for the Hakluyt Society, Cambridge, 1970, p.210.

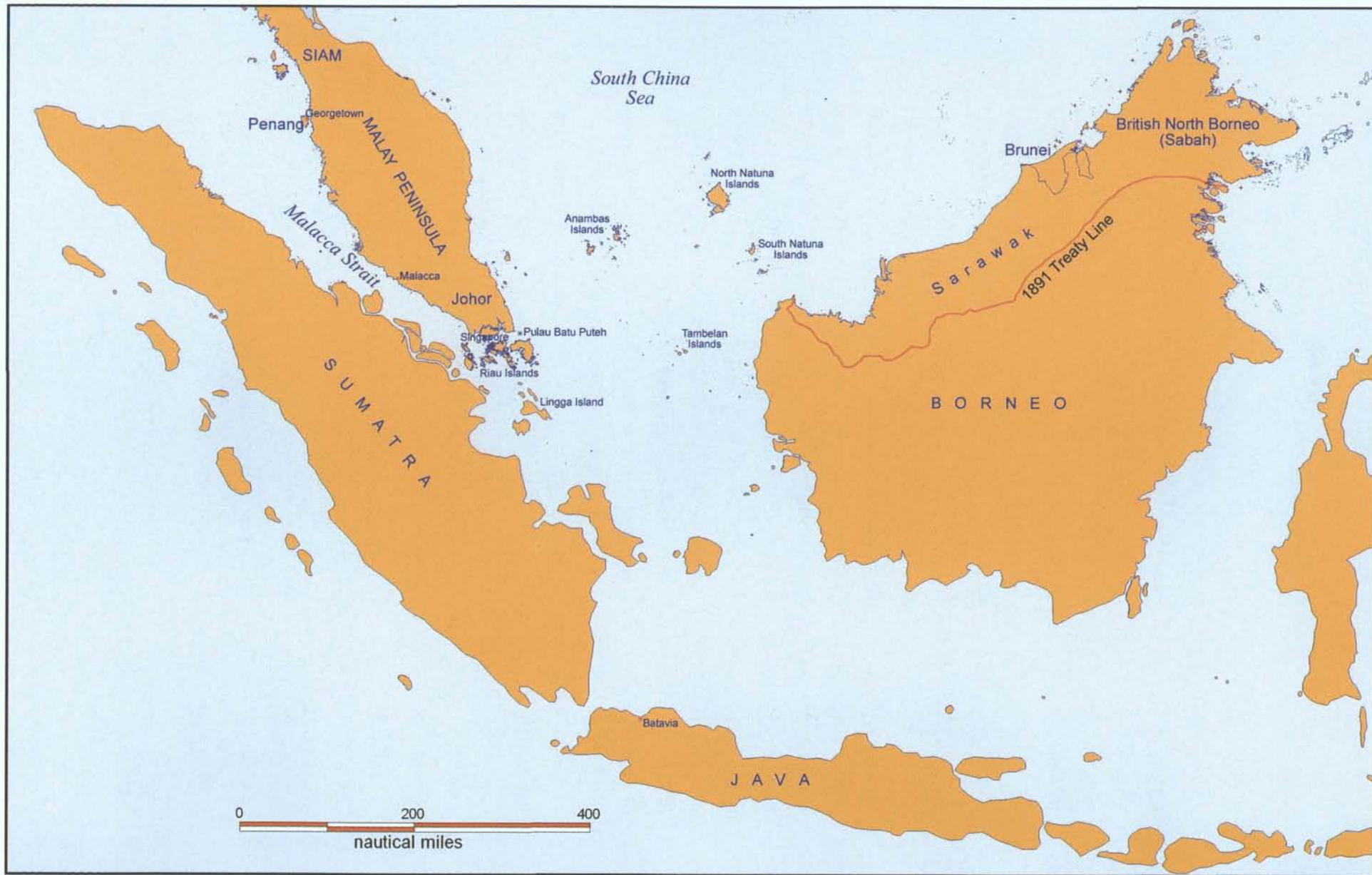
Chapter 4

THE HISTORICAL SETTING

Introduction

36. As was noted in Chapter 2, the basis of Malaysia's claim is the original and uninterrupted title of the Sultanate of Johor to Pulau Batu Puteh as one of the islands off the coast of the Malay Peninsula. This Chapter outlines the history of the region, focusing in particular on the evolution of the Sultanate of Johor, the establishment of the Straits Settlements and their administration, and post-1945 constitutional developments relating to Malaysia and Singapore. It shows that prior to 1824, the Sultanate of Johor extended north and south of Singapore Strait and included many islands in and around the Strait (**Section A**). By the Anglo-Dutch Treaty of 1824, the British and the Dutch divided their spheres of influence in the region. The Dutch sphere was to the south of Singapore Strait. Pulau Batu Puteh fell within the British sphere and continued to belong to the Sultanate of Johor (**Section B**). Pulau Batu Puteh was not included in the Johor grant of 1824 for the Settlement of Singapore, limited as it was to islands within ten geographical miles from the Island of Singapore (**Section C**). The British recognition of Johor as an independent State can be inferred from various legal instruments as well as official British acts (**Section D**). None of the various constitutional developments leading to the independence of Malaysia and Singapore had any effect on the status of Pulau Batu Puteh, which remains an island within the territorial limits of Johor, now a component State of Malaysia (**Section E**).

THE MALAY REGION IN THE 19TH CENTURY



A. The Sultanate of Johor before 1824

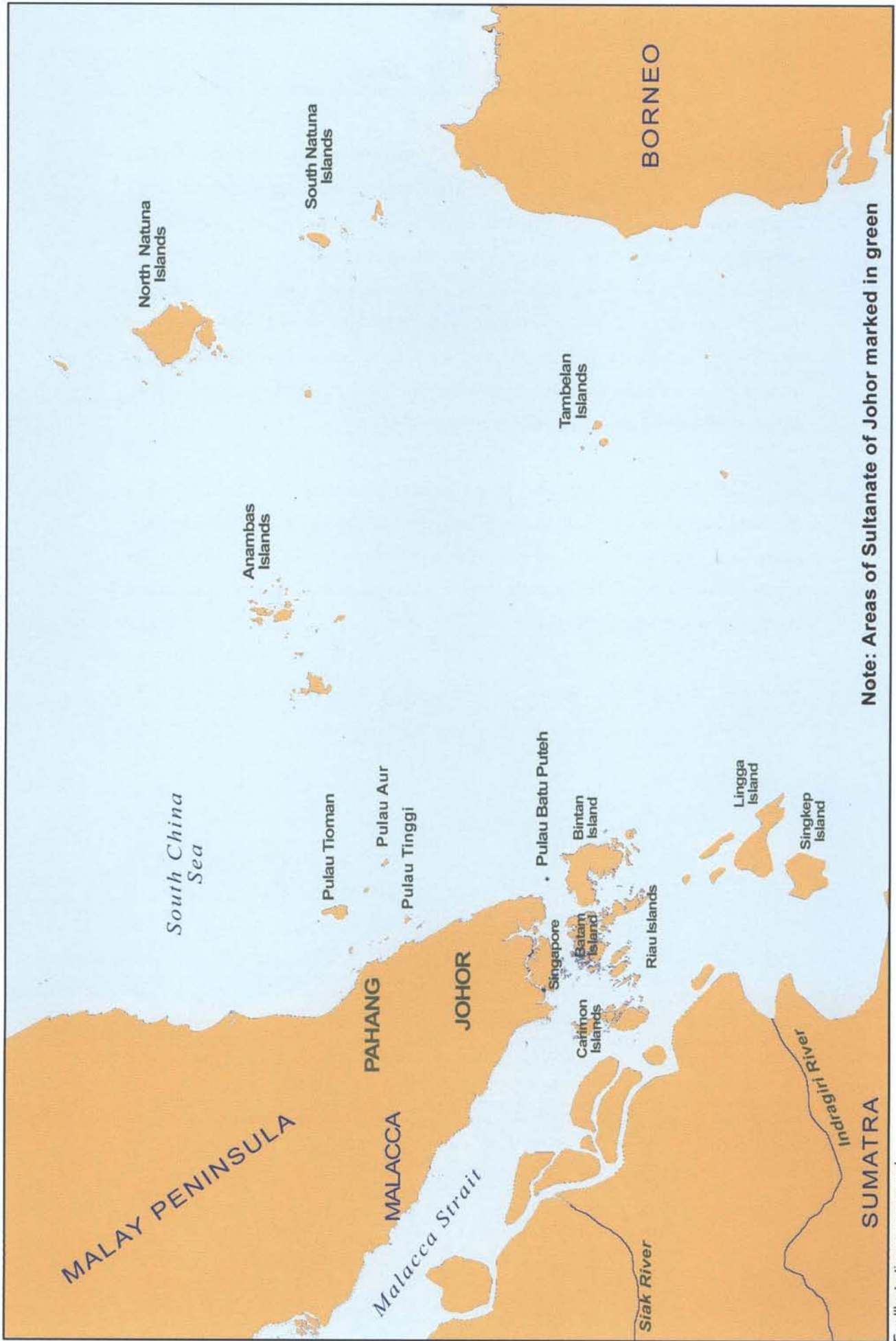
37. **Insert 4**, opposite, shows the Malay region, with significant locations marked. During the 15th century, the Sultanate of Malacca was the dominant force over this region. The town of Malacca served as the main port and became the chief political centre as well. However, with the onset of European colonialism, Malacca fell in 1511 to the Portuguese. Shortly afterwards, in 1512, Sultan Mahmud established what became the Sultanate of Johor.¹³ Despite frequent incursions by the Portuguese and subsequently, the Dutch, the Siamese and the British, and notwithstanding frequent internal power struggles, the Sultanate of Johor was able to remain a major power in the Malay region and to survive into the modern period.

38. As early as 1604, no less than Hugo Grotius recorded Johor as a Sultanate which “has long been considered a sovereign principality”. According to Grotius, Johor thus possessed “the authority necessary to conduct a public war” against the Portuguese and to ask the Dutch for assistance in the war.¹⁴ As allies of the Sultanate of Johor, the Dutch were entitled to capture the Portuguese vessel *Catarina* loaded with a valuable cargo from the East Indies. In doing so, the Dutch East India Company (VOC) also challenged the monopolist pretensions of Portugal to navigation and commerce in the East Indies.

¹³ See R.O. Winstedt, *A History of Johore (1365-1941)*, Kuala Lumpur, Malaysian Branch of the Royal Asiatic Society, repr. 1992, 14.

¹⁴ Hugo Grotius, *De iure praedae commentarius*, 1604; translated by G.L. Williams et al., *Commentary on the Law of Prize and Booty by Hugo Grotius*, Willam S. Hein: Buffalo, N.Y., 1995, 314-15, paras. 141-2. See also P. Borschberg, “The seizure of the Sta. Catarina revisited: the Portuguese empire in Asia, VOC politics and the origins of the Dutch-Johore alliance (1602-c. 1616)”, (2002) 33 *Journal of Southeast Asian Studies* 31.

SULTANATE OF JOHOR PRIOR TO 1824



For illustrative purposes only

Note: Areas of Sultanate of Johor marked in green

Insert 5

39. In 1606, the Sultanate of Johor concluded an alliance with the Dutch. In 1641, their combined forces jointly conquered Malacca after a fierce battle with the Portuguese. It was agreed that the Dutch would have the town of Malacca, while the Sultanate of Johor would acquire the territory around the town. No vessels of other European powers would be allowed to trade without permission of the Dutch. Various further treaties were concluded between the Sultanate of Johor and the Dutch East India Company.¹⁵ Throughout the 17th and 18th century, close co-operation between this Sultanate and the Dutch prevailed. Johor acquired extensive commercial privileges from the Dutch and became a leading maritime power in the Malay region.¹⁶ As can be seen from **Insert 5**, opposite, the Sultanate was located both north and south of the Straits, and included Johor, Riau, Lingga and neighbouring islands.

40. It was only from the late 18th century that the English East India Company sought to establish itself in the Malay region. In 1786, the Company took control of Penang and founded the settlement of Georgetown. During the Napoleonic wars (1793-1815) the British took temporary control of strategic Dutch possessions including Malacca (1795), the Moluccas (1796) and Java (1811).

41. In 1814, at the end of the French occupation of the Netherlands (1795-1814), Great Britain and the Netherlands signed a Convention relating to the Dutch colonies. This entailed the restoration of Dutch sovereignty over "the Colonies, Factories and Establishments which were possessed by Holland at the commencement of the late War, viz. on the 1st of January, 1803, in the Seas and on the Continent of America, Africa and Asia".¹⁷ Soon the Dutch restored their position on Java and Riau (sometimes spelt Rhio) and also in Malacca. They established a hold on the island of Batam, just south of

¹⁵ See E. Netscher, *De Nederlanders in Djohor en Siak, 1602 tot 1865* [The Dutch in Johor and Siak, 1602 to 1865], Batavia: Bruining & Wijt, 1870.

¹⁶ See A.L. Andaya, *The Kingdom of Johore 1641-1728*, Kuala Lumpur: Oxford University Press, 1975; R. Vos, *Gentle Janus, Merchant Prince. The VOC and the Tightrope of Diplomacy in the Malay World, 1740-1800*, Leiden: KITLV Press, 1993.

¹⁷ Convention between Great Britain and the Netherlands Relative to the Dutch Colonies, London, 13 August 1814, 63 CTS 322, Art. I: Annexes, vol. 2, Annex 1.

Singapore Strait. The restoration and consolidation of the Dutch possessions in the East Indies caused some concern to the British.¹⁸

42. It was very much the individual initiative of Sir Thomas Stamford Raffles, who served as Governor of Java during the period 1811-1816, to set up a British post at the southern end of the Straits of Malacca. After having inspected the Carimon (now spelled Karimun) Islands, Raffles went on to Singapore and decided to establish a trading post there. This led to the first in a series of agreements between the British and the rulers of Johor.

43. Before turning to these agreements, the role of the Temenggong needs to be briefly explained. Both the Sultan and the Temenggong exercised hereditary authority within the Sultanate of Johor. Historically the latter office was of lesser status, but by the end of the 18th century *de facto* control over certain areas (including Singapore and surrounding islands) lay with the Temenggong rather than with the Sultan.¹⁹ As Presgrave, the then Head of the Import and Export Office in Singapore, observed in 1828:

“Under the regular Malay Government the Tumunggong is the second officer of the state, and has very extensive authority committed to him by his Sovereign who troubles himself very little in the executive part of the administration tho’ for forms sake, all affairs of importance are referred to him for his decision.”²⁰

44. The internal rivalry between the two lineages meant that third States wishing to deal with Johor would have been well advised to obtain the consent of both the Sultan and the Temenggong to any important transaction. This internal division was not resolved until later in the 19th century.²¹

¹⁸ G. Irwin, *Nineteenth-Century Borneo. A Study in Diplomatic Rivalry*, The Hague: Martinus Nijhoff, 1955, ch 3; N. Tarling, *Anglo-Dutch Rivalry in the Malay World, 1780-1824*, Cambridge, Cambridge University Press, 1962.

¹⁹ See C.A. Trocki, *Prince of Pirates. The Temenggongs and the Development of Johor and Singapore*, Singapore: Singapore University Press, 1979, 5-7.

²⁰ E. Presgrave to Resident Councillor, 5 December 1828, *Straits Settlements Factory Records*, Series W.159: Annexes, vol. 3, Annex 27.

²¹ See paragraph 63 below.

45. By an agreement of 30 January 1819 concluded with the Temenggong of Johor, the English East India Company obtained parts of Singapore for building a factory.²² One week later, on 6 February 1819, a further Treaty of Friendship and Alliance was concluded with both the Sultan and the Temenggong. Article VIII of this Treaty provided that: "The Port of Singapore is to be considered under the immediate protection and subject to the regulations of the British authorities."²³

46. Four months later, a supplementary Arrangement was concluded with the Sultan and Temenggong of Johor, detailing the boundaries of the area on the island of Singapore which would be under the control of the English East India Company for purposes of establishing the factory.²⁴ Article 1 provided that:

"The boundaries of the lands under the control of the English are as follows: from Tanjong Malang on the west, to Tanjong Katang on the east, and on the land side, as far as the range of cannon shot, all round the factory."

47. At that stage these agreements gave the Company a license to use the land for the purposes of establishing the English factory but did not amount to a cession of sovereignty. Nonetheless, the Dutch were far from pleased by these developments.

B. The Events of 1824

48. The 1819 agreements referred to above were a prelude to major political changes in the Sultanate of Johor. These resulted in particular from two treaties concluded in the same year, 1824: first, a Treaty between Great Britain and the Netherlands delimiting their spheres of influence in the East Indies (hereinafter, "the Anglo-Dutch Treaty"), and secondly, an Agreement between Johor and the English East India Company ceding the

²² Agreement between the Honourable East India Company and the Temenggong of Johore, 30 January 1819, 69 *CTS* 480 (English text): Annexes, vol. 2, Annex 2.

²³ Treaty of Friendship and Alliance between Sir Stamford Raffles and Sultan Hussain Mahummad Shah, Sultan of Johore and Dato Temenggong Sri Maharajah Abdul-Rahman, 6 February 1819, 69 *CTS* 481 (English text): Annexes, vol. 2, Annex 3.

²⁴ Arrangements Made for the Government of Singapore, Singapore, 26 June 1819, 70 *CTS* 202: Annexes, vol. 2, Annex 4.

Island of Singapore and certain surrounding islands to the Company (hereinafter, “the Crawfurd Treaty”).

(i) *The 1824 Anglo-Dutch Treaty*

49. Following extensive negotiations, Great Britain and the Netherlands concluded a Treaty of 17 March 1824 determining their spheres of influence in the Malay region.²⁵ The Treaty required the Netherlands to withdraw its objection to the British occupation of Singapore, to cede Malacca to the English East India Company and not to make any arrangements in the Malay region north of the islands within the Dutch sphere of influence. Article X provided:

“The Town and Fort of Malacca, and its Dependencies, are hereby ceded to His Britannick Majesty; and His Netherlands Majesty engages, for Himself and His Subjects, never to form any Establishment on any part of the Peninsula of Malacca, or to conclude any Treaty with any Native Prince, Chief, or State therein.”

Under Article XII of the Anglo-Dutch Treaty it was agreed that:

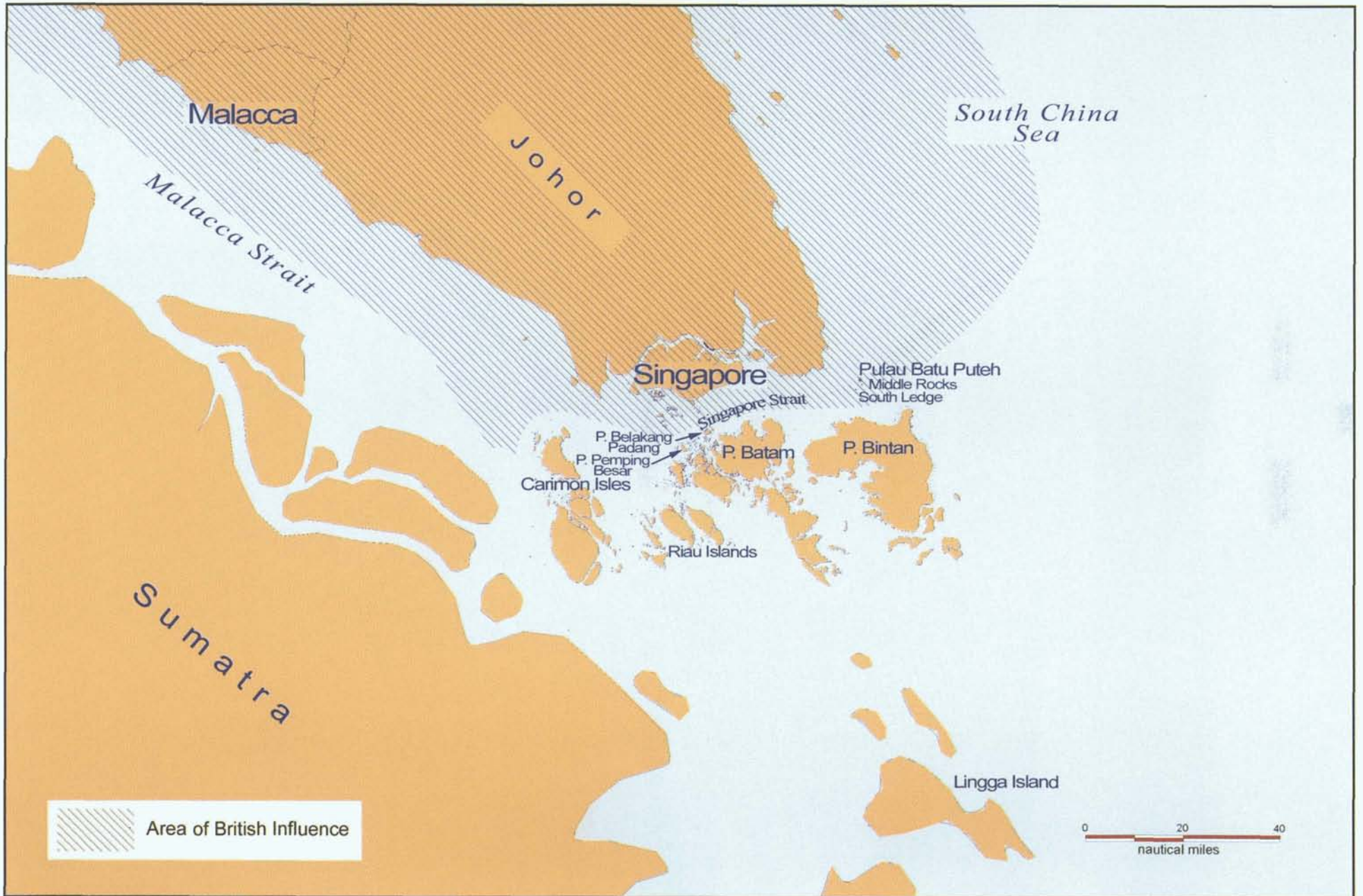
“His Netherlands Majesty withdraws the objections which have been made to the occupation of the Island of Singapore, by the Subjects of His Britannick Majesty.

His Britannick Majesty, however, engages, that no British Establishment shall be made on the Carimon Isles, or on the Islands of Battam, Bintang, Lingin, or on any of the other Islands South of the Straights [*sic*] of Singapore, nor [shall] any Treaty [be] conclude[d] by British Authority with the Chiefs of those Islands.”

50. The Anglo-Dutch Treaty thus embodied an agreement that European influence over this part of the East Indies would be divided amongst the two powers. In particular, any “Islands south of the Straights of Singapore” (Article XII) would be left to the Dutch. In return, the Dutch would no longer seek territory within or to the north of the Strait, and would accept British “occupation” of Singapore itself.

²⁵ Treaty between His Britannick Majesty and the King of the Netherlands, Respecting Territory and Commerce in the East Indies, London, 17 March 1824, 11 *British and Foreign State Papers* 194 (English text); 74 *CTS* 88 (English and Dutch texts): Annexes, vol. 2, Annex 5.

BRITISH SPHERE AFTER THE ANGLO-DUTCH TREATY 1824



23

For illustrative purposes only

Insert 6

51. In the course of the drafting process, the phrase “any of the other Islands South of the Straights of Singapore” came to replace the initial wording “any of the remaining islands belonging to the ancient kingdom of Johore”.²⁶ But despite the change in wording the outcome was the same. For the effect of the Anglo-Dutch Treaty was to split “the ancient kingdom of Johore” into two parts. One, the Sultanate of Johor, remained based in the southern part of Malay Peninsula and came within the British sphere. The other, the Sultanate of Riau-Lingga, was within the Dutch sphere of influence and was to the south of Singapore Strait.

52. The two spheres of influence followed the line from P. Carimon, P. Pemping Besar, P. Belaking Padang, P. Batam to P. Bintan, forming in effect the southern “shore” of the Strait of Singapore. These locations are shown on **Insert 6**, on the preceding page. Thereafter the Dutch would confine themselves to Sumatra and other islands south of Singapore Strait.

53. There is no doubt that Pulau Batu Puteh is not an island to the “South of the Straights of Singapore”, situated as it is 7.5 nm north of Pulau Bintan.²⁷ That Pulau Batu Puteh lay within the British sphere of influence can also be seen clearly from Dutch maps at the time, as will be shown in Chapter 9.

(ii) *The 1824 Crawford Treaty*

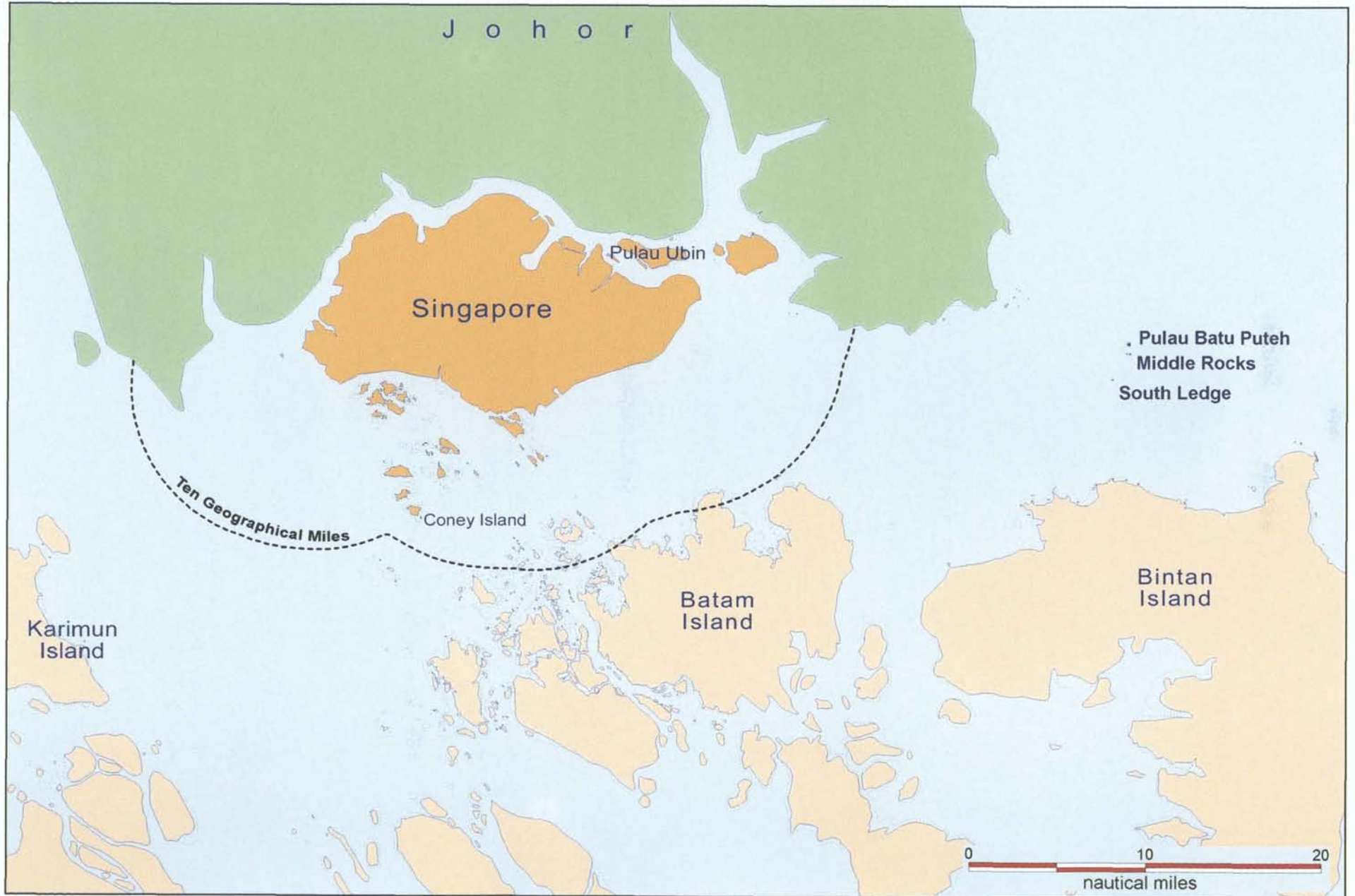
54. Soon after the conclusion of the 1824 Anglo-Dutch Treaty, the English East India Company and the Sultan and Temenggong of Johor concluded a new Treaty of Friendship and Alliance on 2 August 1824.²⁸ By this treaty, also known as the Crawford Treaty after the then British Resident of Singapore, the rulers of Johor ceded the Island of Singapore to the English East India Company.

²⁶ See Irwin, 1955, 62-66.

²⁷ Similarly Middle Rocks and South Ledge are respectively 7.2 and 5.8 nm north of P. Bintan.

²⁸ Treaty of Friendship and Alliance between the Honourable East India Company and the Sultan and the Temenggong of Johore, 2 August 1824, 74 CTS 380 (English text): Annexes, vol. 2, Annex 6.

THE CRAWFURD TREATY, 1824



25

For illustrative purposes only

Insert 7

55. The Treaty specified the geographical scope of the cession of the Island of Singapore, together with adjacent seas, straits and islets, to the extent of ten geographical miles from the coast of Singapore.

56. Specifically, Article II of the Crawfurd Treaty provided as follows:

“Their Highnesses the Sultan Hussain Mahomed Shah and Datu Tumungong Abdul Rahman Sri Maharajah hereby cede in full sovereignty and property to the Honourable the English East India Company, their heirs and successors for ever, the Island of Singapore, situated in the Straits of Malacca, together with the adjacent seas, straits, and islets, to the extent of ten geographical miles, from the coast of the said main Island of Singapore.”

A notional ten-mile radius drawn in accordance with Article II can be seen from **Insert 7**, on the preceding page. The Crawfurd Treaty thus carried with it British recognition of the prior authority of the Sultan and Temenggong of Johor over islands in the Strait of Singapore, including islands within 10 nm of Singapore itself.

C. Post-1824 developments: Singapore and the Straits Settlements

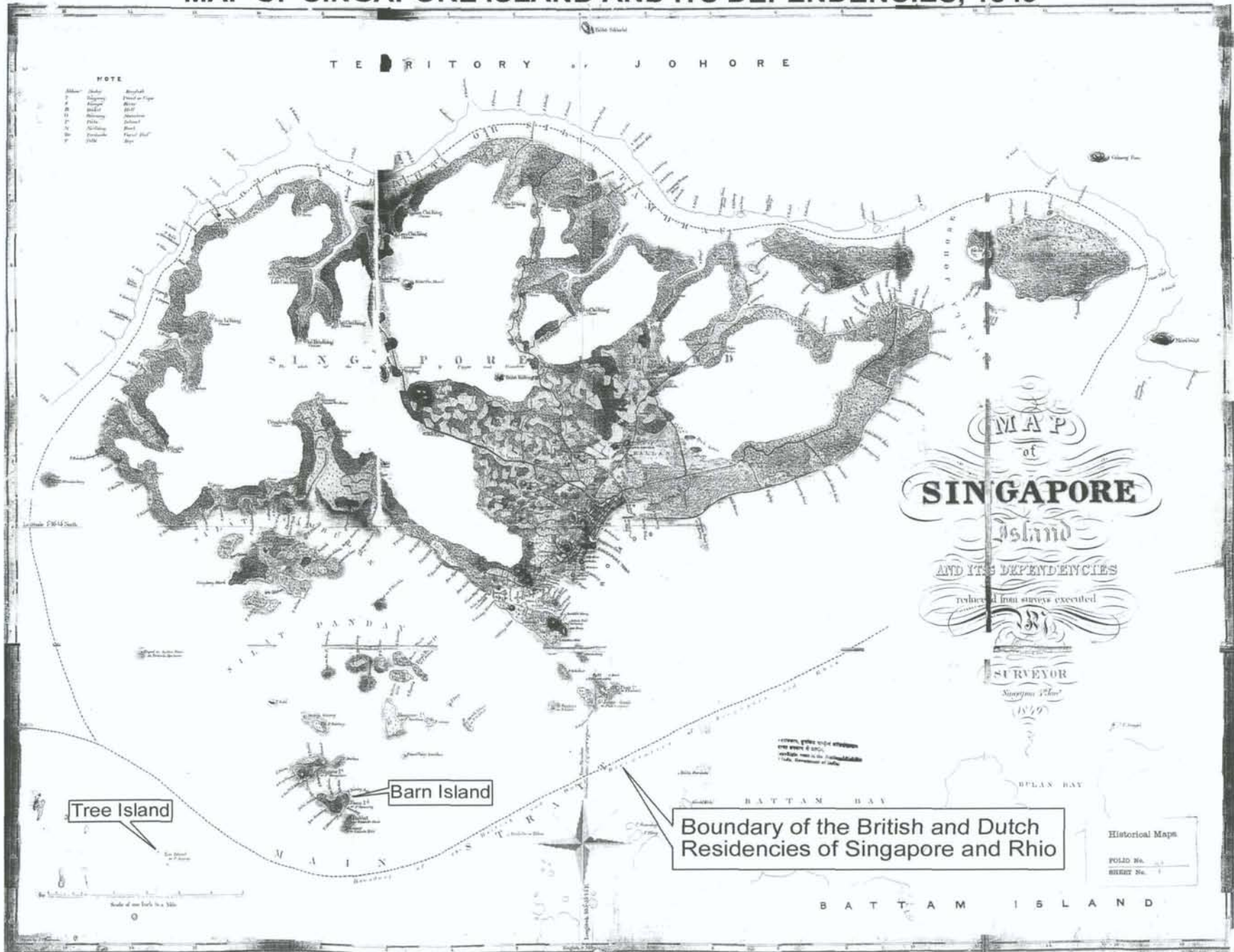
57. In 1825, the British Resident, John Crawfurd, was instructed to take formal possession of the Island of Singapore and its dependencies. For this purpose he sailed around the Island of Singapore, during which he established its easternmost point. His acts included the planting of the Union Jack and the firing of a 21 gun salute on Pulau Ubin in the Straits of Johor. Subsequently, on 9 August 1825 Crawfurd landed on Rabbit and Coney Islands and took possession of them under a salute of 21 guns.²⁹ He reported.³⁰

“These two islets...form the limit of British possession to the South West and this possession in all, now embraces a circumference of one full hundred geographical miles.”

²⁹ These islands are now known as Pulau Biola and Pulau Satumu, respectively.

³⁰ See J.H. Moor, *Notices of the Indian Archipelago and Adjacent Countries*, Singapore, 1837, pp. 269-273.

MAP OF SINGAPORE ISLAND AND ITS DEPENDENCIES, 1849



Singapore and its dependencies, as determined by the 10-mile limit, were shown on numerous maps of the time, beginning with the 1849 map, **Insert 8**, shown on the preceding page.³¹

58. Pulau Batu Puteh fell clearly outside of the area of the 1824 grant. It is situated 25.5 nm to the east of the Island of Singapore, well beyond the ten-mile limit laid down in that Treaty. Similarly, Middle Rocks and South Ledge are far beyond the ten-mile limit.

59. In 1826, the English East India Company united Penang, Province Wellesley, Malacca and Singapore under the name of the Straits Settlements, with its headquarters in Penang.³² The Straits Settlements are depicted in red on **Insert 9**, shown opposite. This map was originally published in Singapore in 1887. After the abolition of the East India Company in 1858, the Straits Settlements came formally under the Government of British India, based in Calcutta. In 1867, the Straits Settlements became a separate Crown Colony whose administration was transferred from the India Office to the Colonial Office in London.³³

60. Whenever changes were made to the territorial extent of the British settlements, care was taken to formalise them. For example, on two occasions other islands were incorporated into the Straits Settlements: in 1886 the Cocos (Keeling) Islands,³⁴ and in 1900 Christmas Island.³⁵ Pulau Batu Puteh was never so dealt with.

³¹ See Map Atlas, Maps 12, 13, 14.

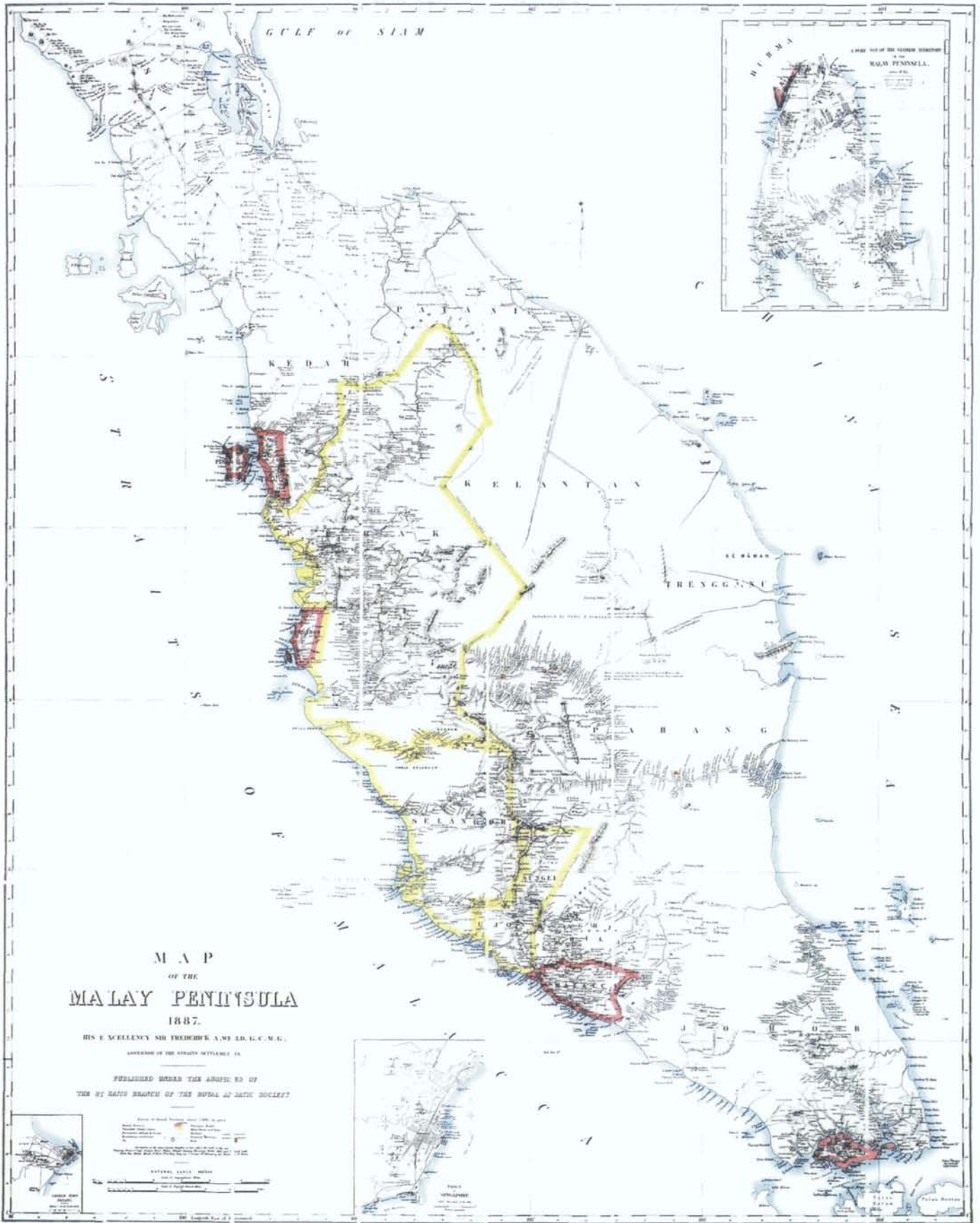
³² See C.M. Turnbull, *The Straits Settlements 1826-67. Indian Presidency to Crown Colony*, London: Athlone Press, 1972. In 1832 the government of the Straits Settlement was moved to Singapore.

³³ See Act of British Parliament to Provide for the Government of the Straits Settlements, 10 August 1866: 70 *BFSP* 314.

³⁴ Letters Patent, 1 February 1886, Appointing the Governor of the Straits Settlements and their Dependencies to be Governor of the Cocos or Keeling Islands, and Authorising the Annexation of those Islands to the Straits Settlements, 21 *SR & O and SI Revised to December 31, 1948*, 512.

³⁵ Letters Patent, 8 January 1889, Appointing the Governor of the Straits Settlements and their Dependencies to be Governor of Christmas Island, and Authorising the Annexation of that Island to the Straits Settlements, 21 *SR & O and SI Revised to December 31, 1948*, 514.

MAP OF THE MALAY PENINSULA, 1887



Insert 9

D. British Recognition of the Sultanate of Johor

61. As noted in paragraph 38 above, the Sultanate of Johor was a recognised political entity from the 16th century onwards. As one French text put it:

“Si Singapour est récent comme établissement européen, le lieu est ancien comme place indigène... La place... était la résidence des sultans de Djohor, dont la domination s’étendait sur la moitié de la presqu’île Malaise, et dont la suzeraineté était reconnue par beaucoup de radjahs de l’Archipel Indien.”³⁶

62. The continued recognition of the Sultanate of Johor as an independent State by the British can be seen from a number of legal instruments as well as from a series of official British acts. Examples include the series of agreements in 1819 between the English East India Company and the rulers of the Sultanate of Johor on the establishment of a factory in Singapore.³⁷ Even more important is the Crawfurd Treaty, by which the British Crown plainly recognised the right of the Johor rulers to exercise sovereignty within their dominions, including off-shore islands. In 1846, Governor Butterworth presented a sword to the Temenggong of Johor as “a testimony of the high estimation” of the Government of India for his services in the suppression of piracy.³⁸ In an Agreement as to the Temenggong’s Property in the Island of Singapore of 19 December 1862, the British addressed the Temenggong of Johor, with whom by then full control over Johor lay, as the “Sovereign Ruler of Johore”.³⁹

63. Reference has already been made above (paragraph 44) to the internal divisions within Johor between the Sultan and the Temenggong. In March 1855, the then Sultan and the Temenggong concluded an agreement in order to put an end to their

³⁶ V de Saint Martin/L Rousselet, *Géographie Universelle*, Paris, Librairie Hachette, 1892, V, 954.

³⁷ See paragraphs 45-47 above.

³⁸ The text of the speech by Governor Butterworth was published in *Straits Times*, 5 September 1846. See Annexes, vol. 3, Annex 52.

³⁹ Text in W.G. Maxwell and W.S. Gibson (eds.), *Treaties and Engagements Affecting the Malay States and Borneo*, London: Jas Truscott & Son, 1924, p. 129; Annexes, vol. 2, Annex 9.

differences.⁴⁰ This amounted to a transfer of full authority to the Temenggong over the whole of the territory of Johor, with the exception of the small Kassang territory which remained reserved for the Sultan. Abu Bakar, the powerful Temenggong of Johor from 1862-1885, became Sultan from 1885 until his death in 1895.⁴¹

64. During Sultan Abu Bakar's tenure, the British Government and the State of Johor concluded what is commonly referred to as the Johor Treaty of 1885.⁴² In this Treaty, explicit reference was made to "the Independent State of Johore". In an amendment to it in 1914, reference was made to "the State and territory of Johore".⁴³ These instruments provided for overland trade and transit rights for Britain through the Straits of Johor, but allowed only limited British intervention in the internal affairs of Johor. In essence, these treaties were co-operative arrangements without eliminating the sovereignty of Johor or changing its territorial extent. For example, Article V of the 1885 Johor Treaty provided that the Governor of the Straits Settlements would at all times protect to the utmost of his power the Government and State of Johor from external hostile attacks. For that purpose British officers were given free access to Johor's territorial waters which, according to the Treaty, extended to 3 nm. The British also used this facility for purposes of piracy control.⁴⁴

⁴⁰ Treaty of Friendship and Alliance between His Highness Sultan Alli Iskander Shah bin Sultan Hussain Mohamed Shah and His Highness Datu Tumungong Daing Ibrahim bin Abdul Rahman Sri Maharajah, 10 March 1855: text in Maxwell & Gibson, 1924, 127: Annexes, vol. 2, Annex 7.

⁴¹ For the role of Abu Bakar in maintaining the independence of Johor during this period see E. Thio, "British Policy Towards Johore: From Advice to Control", (1967) 40 *Journal of the Malayan Branch of the Royal Asiatic Society* 1.

⁴² Agreement on Certain Points Touching the Relations of Her Majesty's Government of the Straits Settlements with the Government of the Independent State of Johore, London, 11 December 1885, 167 *CTS* 82 (English text): Annexes, vol. 2, Annex 10.

⁴³ Agreement between his Britannic Majesty's Government and the State of Johore making provision for the Appointment of a British General Adviser at the Court of Johore, Singapore, 12 May 1914, 107 *BFSP* 519: Annexes, vol. 2, Annex 11.

⁴⁴ See R. Braddell, *The Legal Status of the Malay States*, Singapore: Malaya Publishing House, 1931, 22.

65. The sovereignty of the Johor Sultanate was emphasised in the 1895 Johor Constitution.⁴⁵ Article XV provided:

“...the Sovereign may not in any manner surrender or make any agreement or plan to surrender the country or any part of the country and State of Johore to any European State or Power, or to any other State or nation...”

The Constitution provided for a Council of Ministers and a State Council. The Sultan was answerable to his own State Council rather than to the British.

66. The Sultan's sovereign status was an issue in a court case in England. When Miss Mighell sued a certain Albert Baker (in reality Abu Bakar, the Sultan of Johor, travelling *incognito* in the United Kingdom) for breach of promise of marriage, the Court granted the Sultan as an “independent sovereign” immunity from jurisdiction.⁴⁶ The decision was based on a letter from the Secretary of State for the Colonies stating that “generally speaking, [the Sultan] exercises without question the usual attributes of a sovereign ruler.” This further demonstrates the British recognition of the Sultanate of Johor as an independent State.

67. Both Johor and the Straits Settlements remained separate from the Federated Malay States when the latter was established in 1896. This group consisted of Selangor, Pahang, Perak and the newly united Negri Sembilan. The Straits Settlements remained a Crown Colony in its own name, while Johor maintained its separate sovereign status. Together with Kedah, Perlis, Kelantan and Trengganu, Johor was part of a group referred to as the Unfederated Malay States. From 1914, British influence in Johor increased through the appointment of a British Adviser with powers not unlike those of the British Residents in the Federated Malay States.⁴⁷ But none of these changes had any effect on the territorial extent of the various units.

⁴⁵ Constitution of Johore, 14 April 1895: text in J. de V. Allen, A.J. Stockwell and L.R. Wright (eds., *A Collection of Treaties and Other Documents Affecting the States of Malaysia, 1761-1963*, New York: Oceana, 1981, vol. I, 77 (Johore Document of 14 September 1895): Annexes, vol. 3, Annex 88.

⁴⁶ *Mighell v. Sultan of Johore*, [1894] 1 QB 149, 153.

⁴⁷ See E. Thio, “British Policy Towards Johore: From Advice to Control”, (1967) 40 *Journal of the Malayan Branch of the Royal Asiatic Society* 1, 35.

FEDERATION OF MALAYA, 1948



For illustrative purposes only

Insert 10

E. Post-1945 Constitutional Developments

68. In 1946, after World War II, the Colony of the Straits Settlements was divided into separate entities.⁴⁸ From 1946, Singapore was administered as a Crown Colony in its own right before becoming a self-governing colony in 1958.⁴⁹ A new Federation of Malaya, including Johor, was formed in 1948. **Insert 10**, on the preceding page, shows the Federation as it gained independence from Britain in 1957.⁵⁰

69. On 9 July 1963, Singapore, Sabah and Sarawak joined the Federation of Malaya to become the independent State of the Federation of Malaysia.⁵¹ This Malaysia Agreement, which was also signed by the United Kingdom, came into effect on 16 September 1963.⁵² Both Johor and Singapore became States within Malaysia.

70. On 7 August 1965, Singapore separated from the Federation and became an independent Republic in its own right.⁵³

71. Again, none of these changes had any effect on the extent of the territory belonging to either Malaysia or Singapore, as will be described in more detail in Chapter 7.⁵⁴

⁴⁸ These new Crown Colonies included the Settlement of Singapore; Cocos (Keeling) Islands; Christmas Islands; the Settlements of Penang (including the Province Wellesley, Malacca, Labuan, and the Dependencies of these Settlements). The Settlements of Penang and Malacca were incorporated into the Malayan Union in 1946 and later into the Federation of Malaya in 1948.

⁴⁹ See the State of Singapore Act, 1958: Annexes, vol. 3, Annex 103.

⁵⁰ Agreement for the Establishment of the Federation of Malaya as an Independent Sovereign Country within the Commonwealth, Kuala Lumpur, 5 August 1957, 163 *BFSP* 46: Annexes, vol. 2, Annex 13.

⁵¹ Agreement between the United Kingdom, the Federation of Malaya, North Borneo, Sarawak and Singapore Concerning the Establishment of the Federation of Malaysia, London, 9 July 1963, 167 *BFSP* 49: Annexes, vol. 2, Annex 14.

⁵² Malaysia Act No. 26 of 1963 (Federation of Malaya) (extract): Annexes, vol. 3, Annex 106, proclaimed on 16 September 1963.

⁵³ Agreement between the Governments of Malaysia and Singapore Relating to the Separation of Singapore from Malaysia as a Separate and Sovereign State, 7 August 1965, 563 *UNTS* 89: Annexes, vol. 2, Annex 15; Proclamation of Singapore, Federal Government (Malaysia) Gazette No. 16 of 9 August 1965: Annexes, vol. 3, Annex 108. Legislative definitions of the term "Singapore" are analysed in paragraphs 190-206 below.

⁵⁴ See below, paragraphs 193-218.

F. Conclusions

72. From this recital of the history the following conclusions emerge:
- (a) Prior to 1824, the domains of the Sultanate of Johor extended north and south of Singapore Strait and included all the islands in the vicinity of the Strait.
 - (b) By the Anglo-Dutch Treaty of 1824, the British and the Dutch divided their spheres of influence in the region.
 - (c) Pulau Batu Puteh remained a territory belonging to the Sultanate of Johor and fell within the British sphere of influence.
 - (d) Pulau Batu Puteh, which is more than ten geographical miles from the Island of Singapore, was not included in the Johor rulers' grant of 1824 to the British for the Settlement of Singapore.
 - (e) The various constitutional developments relating to the Straits Settlements as a Crown Colony, to Johor and to the independence of Malaysia and Singapore had no effect on the respective territorial limits of Johor and Singapore. Hence, they did not alter the status of Pulau Batu Puteh as an island belonging to Johor, now part of Malaysia.

JOHOR NORTH AND SOUTH OF THE STRAIT : PRE-1824



Note: Areas of Sultanate of Johor marked in green

For illustrative purposes only

Insert 11

Chapter 5

THE TERRITORIAL EXTENT AND INSULAR DOMINIONS OF JOHOR

Introduction

73. This Chapter shows that at the time of the permission for the construction of a lighthouse in 1844, Pulau Batu Puteh had always been under the sovereignty of Johor, which as an established political entity had sovereignty over all the islands in its vicinity.

74. In particular, at a time when the Johor Sultanate extended north and south of Singapore Strait, its territory included all the islands within and adjacent to the Strait. At no time was it suggested that its territory was limited, for example, to islands within 3 nm of its mainland coast. None of these islands was considered to be *terra nullius*. When Britain sought to acquire additional territory or influence in this region, it did so by entering into treaties with local rulers and not by way of mere occupation. After 1824, Johor was always anxious to maintain its territorial integrity, as the settlement of various boundary disputes shows.

75. Thus Johor held sovereignty over Pulau Batu Puteh in the context of its title to a wider range of islands, which the local people, subjects of the Sultan, used as part of the coastal economy. By contrast, under the 1824 Crawford Treaty, the territory of Singapore extended only to the main island and islets within the specified distance of 10 geographical miles from its coast.

76. This Chapter addresses the territorial extent of the Sultanate of Johor prior to 1824 (**Section A**). After 1824 Johor was always anxious to maintain its territorial integrity, as the settlement of various boundary disputes shows (**Section B**). At no time was Pulau Batu Puteh *terra nullius* (**Section C**). The territory of Singapore extended

only to the main island and islets within the specified distance of 10 geographical miles from its coast (**Section D**).

A. The Territorial Extent of Johor prior to 1824

77. As noted in the preceding chapter, prior to 1824 Johor had been for centuries an extensive Sultanate, stretching both north and south of Singapore Strait. It covered substantial territories, including parts of the mainland of the Malay Peninsula, parts of the island of Sumatra, all islands within and at the entrance of Singapore Strait and numerous other islands in the open China Sea including the Natunas, Anambas and the Tambelans.⁵⁵ These can be seen from **Insert 11**, on page 36 above.

78. This situation was of long standing. The earliest Dutch treaty with Johor was concluded on 17 March 1606, and the Dutch conducted international relations with Johor as an independent State. In 1655, the Dutch Governor in Malacca, having been informed of Chinese junks trading with Johor, proposed that the Dutch East India Company send two boats to cruise in the Strait in order to prevent Chinese traders from entering the Johor River:

“...in the future at least two yachts must cruise to the south of Singapore Strait under the Hook of Barbukit and in the vicinity of Pedra Branca (in order that they [the Chinese junks] do not enter [the Johor River] and therefore make certain that they are brought here [Melaka] or to Batavia. As we have seen often, unless the Johor ruler is greatly attracted to this idea, without his command we dare not put this into effect. We therefore faithfully await your order and command as to how far we should pursue this...”⁵⁶

⁵⁵ See also L.Y. Andaya, *The Kingdom of Johor 1641-1728*, Kuala Lumpur: Oxford University Press, 1975; E. Netscher, *De Nederlanders in Djohor en Siak, 1602 tot 1865* [The Dutch in Johor and Siak, 1602 to 1865], Batavia: Bruining & Wijt, 1870; C.A. Trocki, *Prince of Pirates. The Temenggongs and the Development of Johor and Singapore*, Singapore: Singapore University Press, 1979.

⁵⁶ Missive from Governor Thijssen of Melaka to Governor-General and Council of the Dutch East India Company in Batavia, 1 April 1655, VOC 1209: Annexes, vol. 3, Annex 22 (translation by Professor L.Y. Andaya).

Apparently the idea was pursued; two junks were taken in the Strait and diverted to Malacca, leading to a protest from the Sultan. The Governor-General reported to Amsterdam that...

“The appearance of these junks at Melaka has already brought a little trade but it is unfortunate that we had none or very little pepper in the warehouse, since this is much desired by them. The king of Johor has sent an envoy to the governor of Melaka to indicate his great displeasure regarding the seizure of the above-mentioned two junks, not without using offensive and threatening terms in the event that the same thing occurs in the future...”⁵⁷

79. Thus the Sultan of Johor protested at a Dutch scheme involving, if not a blockade at least a form of trade diversion from his dominions, in correspondence specifically mentioning Pedra Branca; and there is some indication that his protest carried weight.

80. The general extent of the Sultanate of Johor was much the same at the beginning of the 19th century. In a report to the British Government dated 10 January 1824, the British Resident in Singapore, John Crawford, stated:

“I beg for a moment to bring to the recollection of the Right Hon’ble the Governor-General the situation of this island [i.e., Singapore] and of the other countries in its neighbourhood constituting the nominal principality of Johore, when we formed our settlement in the year 1819. This principality extends on the continent from Malacca to the extremity of the peninsula on both coasts. It had several settlements on the island of Sumatra, and embraced all the islands in the mouth of the Straits of Malacca with all those in China seas, as far as the Natunas in the latitude of 4° N and the longitude 109° E. These countries are all sterile, thinly inhabited here and there on the coast only...”⁵⁸

81. Thus in 1819, an informed British source clearly considered *all* islands of the Straits of Malacca, through Singapore Strait and up to a specified distance into the China

⁵⁷ General Missive from the Governor-General and Council of the Dutch East India Company in Batavia to the Seventeen Directors of the Dutch East India Company in Amsterdam, 26 December 1662, VOC 1238: Annexes, vol. 3, Annex 21 (translation by Professor L.Y. Andaya).

⁵⁸ C.B. Buckley, *An Anecdotal History of Old Times in Singapore*, Singapore: Fraser & Neave, 1902, 161.

Seas to belong to the Sultanate of Johor. Certainly none of these islands, whether or not lying more than 3 nm off the coast of the Malay Peninsula, were regarded as being *terra nullius*. Moreover, as John Crawford noted, Johor was essentially a maritime power, its control not extending far inland but confined to the coast, rivers and islands. The extension of the actual control of the Sultanate inland on the Malay Peninsula was a process initiated by the Temenggong in the 1830s.⁵⁹

82. Crawford's description of the territorial extent of the Sultanate of Johor is confirmed in the Presgrave report of 1828. Presgrave observed that the Johor Sultanate appeared to embrace...

“the Southern part of the Malayan peninsula till joined by the Malacca territory and principality of Pahang, a small portion of the eastern coast of Sumatra, laying between the Jambi and Siak Countries, *all* the Islands lying between the Karimons to the South- Pulau Aor to the East, at the entrance of the China Sea- and Linggin and the numerous Islands adjacent thereto, extending nearly to the Islands of Banka and Billiton.”⁶⁰

These locations are shown in green on **Insert 11** on page 36.

83. Many of the inhabitants along the coasts of the Johor Sultanate were seafarers; they were termed Orang Laut (“men of the sea”).⁶¹ They earned their living through fishing and collecting other marine products such as sea-slugs (trepang), tortoise shells and seaweed, as well as by what the Europeans at least considered as piracy. The seafarers were highly mobile and according to the season they moved across vast spans of sea. The Sultan of Johor and his chief officials possessed rights of collecting taxes and raising labour forces from numerous islands for construction works on the mainland.

⁵⁹ See, e.g., Trocki, *Prince of Pirates*, chs 3-4.

⁶⁰ Report by Edward Presgrave to Resident Councillor, 5 December 1829, *Straits Settlements Factory Records*, Series W 159 (emphasis added): Annexes, vol. 3, Annex 27.

⁶¹ See L.Y. Andaya, *The Kingdom of Johor 1641-1728*, Kuala Lumpur: Oxford University Press, 1975.

84. Thus the practice of the concerned states during the period after 1824 treated all the nearby islands, whether within or beyond 3 nm from the coast, as belonging to the relevant Sultan, i.e. to the Sultan of Riau-Lingga south of Singapore Strait, otherwise to the Sultan of Johor. There was no suggestion that any of the islands in the region, small or large, was *terra nullius* or open to acquisition by third States by mere occupation. This was the basis for the British acquisition of sovereignty over Singapore and its dependencies. Under the Crawford Treaty of 1824, all islets within 10 geographical miles from the main Island of Singapore were included in the cession.

B. Post-1824 conflict over the extent of the Sultanate of Johor

85. As demonstrated above, in 1824 the extent of the Sultanate of Johor was generally well-known and was not limited to islands within 3 nm of the coast. But the impact of the Anglo-Dutch Treaty of 1824 on the Sultanate gave rise to disputes. In particular, Johor continued to claim sovereignty over the Carimon Islands just south of the Straits of Malacca. In 1827, the Johor rulers had to agree that pursuant to the Anglo-Dutch Treaty, the Carimon Islands were now under Dutch influence and should be considered as under the sway of the Sultan's younger brother, Sultan Abdul Rahman of Riau-Lingga.⁶²

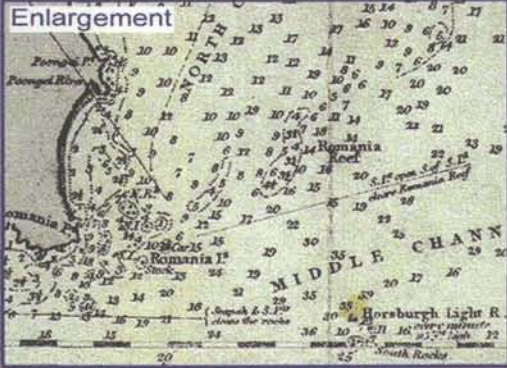
86. These particular disputes may have been resolved, but Johor continued to press its claims to territory along the east coast and in the South China Sea. In 1862, Johor and its northern neighbour Pahang concluded a Treaty of Friendship, Alliance and Mutual Support.⁶³ But not all boundary issues had been resolved. The Kingdom of Pahang claimed the islands of Tioman, Tinggi and Aur; Johor disputed the claim. The 1862 Treaty included a dispute settlement clause, Article 7, which read as follows:

⁶² Letter from Resident of Rhio to Resident Councillor, Singapore, 18 August 1827, extract reprinted in A.C. Baker, "Some Account of the Anglo Dutch Relations in the East at the Beginning of the 19th Century Based on the Records Preserved in the Colonial Secretary's Office in Singapore, and, in the Resident's Office Malacca", (1913) 64 *Jour. Straits Branch R.A. Soc.* 1, 40; Resident Councillor, Singapore, to Secretary to Government, Prince of Wales Island, Singapore and Malacca, 8 September 1827, *ibid.*, 45; see Annexes, vol. 3, Annexes 25, 26.

⁶³ Johore-Pahang, First Boundary and Friendship Treaty, 17 June 1862, in J. Allen, A.J. Stockwell and L.R. Wright (eds.), *A Collection of Treaties and Other Documents Affecting the States of Malaysia, 1761-1963*, New York: Oceana, 1981, vol. I, 343; Annexes, vol. 2, Annex 8.

MAP ATTACHED TO THE ORD AWARD, 1868

Boundary line between the Islands belonging to Pahang and Johore as awarded and decided by His Excellency The Governor of the Straits Settlements under the Treaty between Johore and Pahang dated 17th June 1862



See Enlargement

Horsburgh Light R.

MALAY PENINSULA

EASTERN COAST
SINGAPORE TO SIMOL

1868
By J. H. COLEMAN, Hydrographer
Under the authority of the Admiralty
Published by the Hydrographic Office, Admiralty, London
SINGAPORE
Printed by the Government Printer

"The parties hereto agree and declare for themselves and their respective successors that should any dispute or difference arise between them or their successors at any time hereafter, either with regard to this Treaty or the matters contained in it, or with regard to any other matter or thing whatever, whether national, political, or private, the same shall be and is hereby referred to the friendly mediation and settlement of the British Government, whose award or decision shall be final and binding on both parties."

87. Sir Harry Ord, the British Governor of the Straits Settlements, was called upon as arbitrator to settle the boundary dispute. In 1868, he ruled that "the Endau River should be taken as the starting point and latitude for the demarcation line into the South China Sea":

"...the River Indow shall be the boundary on the Mainland between the territories of His Highness the Maharajah of Johore and His Highness the Bendahara of Pahang, and that the Islands of Tioman, Aor, Pulo Tingy, Siribuat and others lying off the East Coast of the Malayan Peninsula shall be divided by a direct line from the centre of the mouth of the River Indow to the southern extreme of Pulo Raban and thence due east along the north parallel of latitude 2° 59' 20" and all the islands to the north of this line shall belong to Pahang and all to the south of this line to Johore as laid down on the chart annexed to this award."⁶⁴

88. As can be seen from the map attached to the Award, reproduced opposite (**Insert 12**), also as Map 10 in Map Atlas, all islands to the north of the line belonged to Pahang; all those to the south belonged to Johor.⁶⁵ Furthermore, the islands included on this chart were both within and beyond the 3 nm line. All these islands remain respectively part of the Malaysian States of Pahang and Johor to this day. On this chart which Ord attached to his Award, the islets with "Horsburgh Light R" and "South Rocks" are included and are depicted as islands belonging to Johor.

89. While on a visit to London, the Sultan of Johor raised the issue of sovereignty over certain islands in the open seas and straits belonging to the State of Johor. He did

⁶⁴ See Award of 1 September 1868 made by Governor Sir H. St George Ord: Annexes, vol. 3, Annex 86. See also Allen, Stockwell & Wright, vol. 1, 345; and Trocki, 151-2.

⁶⁵ For a larger version of the map attached to the Award see Map Atlas, Map 10.

so pursuant to the 1885 Johor Treaty which provided for British protection of the territorial integrity of the Sultanate.⁶⁶

90. In an official letter of 20 March 1886 addressed to the British Colonial Office, the Sultan explained:

“The Islands in question range themselves around the Coast of Johore: all those on the Western side, and a large number on the Eastern side, being in the immediate vicinity of Johore; but of the latter a large proportion also extends farther out, stretching to even as far as the neighbourhood of Borneo.”⁶⁷

Thus the Sultan made the significant distinction between islands in the immediate vicinity of the mainland of Johor and those in the open sea. It is evident that Pulau Batu Puteh was included in the phrase “a large number on the Eastern side, being in the immediate vicinity of Johore”. There is no suggestion that any particular island was exempt from the general position so described.

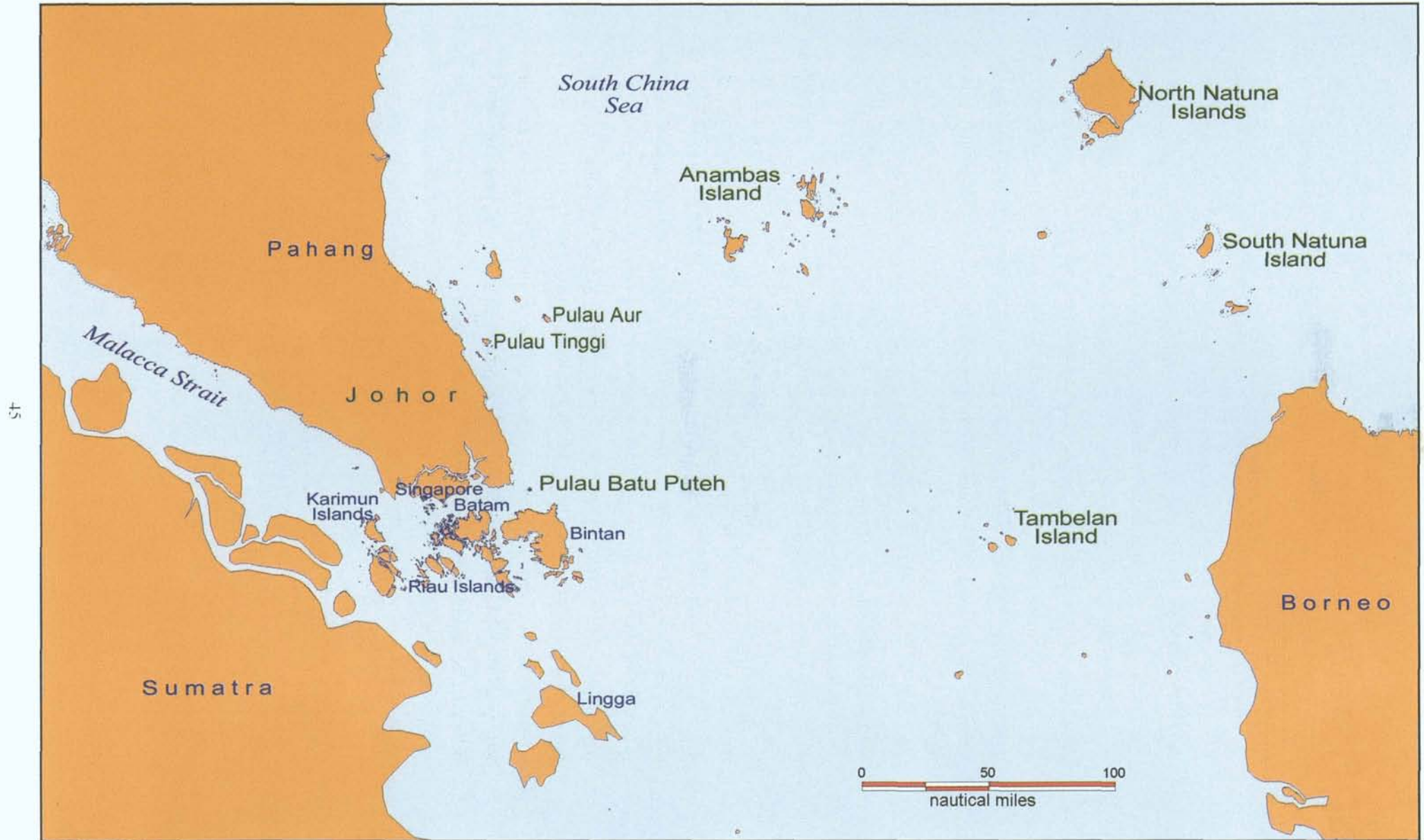
91. As regards the islands in the open sea, the Sultan referred to the Pulau Tujoh (the “Seven Islands”), i.e. the Natunas, the Anambas and the Tambelans: these and other relevant features are shown on **Insert 13**, shown opposite. At the same time the Sultan’s Secretary, Abdul Rahman, submitted a Memorandum to the Colonial Office under the title “Charts of the Islands belonging to Johore” (20 March 1886). He drew a distinction between General Charts and Charts of Groups of Islands (the “Seven Islands”). As regards the former, he tabled among other charts Admiralty Chart 2041, entitled “Eastern Coast of Johor (immediate vicinity)”, the same chart as used in the Ord Award of 1868, reproduced on page 42.⁶⁸ This provides further evidence that at the time, i.e. more than forty years after the permission to construct a lighthouse, Pulau Batu Puteh was firmly believed to be under the sovereignty of the State of Johor.

⁶⁶ For the Johor Treaty, 1885, see Annexes, vol. 2, Annex 10, and paragraph 64 above.

⁶⁷ Letter from Sultan of Johore to the Rt. Honourable Earl Granville, Principal Secretary of State to the Colonies, 20 March 1886, in CO 4962: Annexes, vol. 3, Annex 63.

⁶⁸ Ibid.

ISLANDS IN THE OPEN SEAS & STRAITS BELONGING TO JOHOR, 1886



For illustrative purposes only

Insert 13

92. After subsequent discussion between the Colonial Office and the Foreign Office, the Sultan was informed that Britain could not intervene as regards the Sultan's claims to the islands in the South China Sea as Britain had earlier acknowledged Dutch presence in this area. Again the British authorities appear to have proceeded on the basis that Johor extended to all islands in its vicinity except (a) those that were part of the Settlement of Singapore as defined by the Crawford Treaty of 2 August 1824 or (b) those belonging to Pahang pursuant to the Ord Award of 1868, as depicted on Admiralty Chart 2041. "Horsburgh Light R.", "South Rocks" and other features at the entrance of Singapore Strait were indicated on this Chart. These islands were to the north of the Dutch sphere of influence under the 1824 Anglo-Dutch Treaty. They were clearly outside of the islands, straits and seas ceded by the Crawford Treaty of 1824.

93. In 1896, the Sultan of Pahang again raised the question of over Pulau Aur. The matter was settled in 1898 by a Boundary Commission which reconfirmed the delimitation of islands between Pahang and Johore fixed by the Ord Award, thus placing Pulau Aur firmly within Johor.⁶⁹

C. Pulau Batu Puteh was not *terra nullius*

94. As already demonstrated, Pulau Batu Puteh was a well-known feature in Singapore Strait, being shown on the earliest maps. Not only navigators but also the relevant administrators were well aware of its existence. For the local people, used to the sea, it was a source of food where fish and seaweed were collected.

95. Pulau Batu Puteh was not only a dangerous point in terms of navigation in the Strait; it was also considered a hot spot for piracy. The Johor rulers co-operated with the Dutch and later with the British in piracy control. In 1843, Pulau Batu Puteh was recorded in the *Singapore Free Press* as one of the islands and places where "pirates go

⁶⁹ Report of the Johore Boundaries Commission, 18 February 1898: Annexes, vol. 3, Annex 87. The Commission was asked to settle any outstanding disputes as to Johor's boundaries with adjacent states. In respect of the Johor-Pahang boundary, the Commissioners held that the 1862 Treaty and 1868 Award constituted a settlement which they could not allow to be re-opened: *ibid.*, para. 7.

for shelter and concealment” and those were all said to be “within the territories... of Johore”. According to this report:

“The places and Islands near which these piracies are most frequently committed and where the pirates go for shelter and concealment, such as Pulo Tinghie, Batu Puteh, Point Romania &c, are all within the territories of our well beloved ally and pensionary, the Sultan of Johore, or rather of the Tomungong of Johore, for he is the real Sovereign.”⁷⁰

This article, published at the time that the Sultan and Temenggong of Johor granted to the British the permission for the construction of a lighthouse, makes it clear that Pulau Batu Puteh belonged to Johor.

96. The sovereignty of Johor over Pulau Batu Puteh was public knowledge. The island, and occasionally Middle Rocks and South Ledge as well, was depicted on maps of the Sultanate of Johor, for example on the extensive 8-sheet Map of the Netherlands East Indies (1842) and Admiralty Chart 2041 which was attached to the 1868 Ord Award.⁷¹ The British request in 1844 to build a lighthouse on islands or rocks within the proximity of mainland Johor provides further evidence of contemporary awareness of Johor’s sovereignty over adjacent islands. This is discussed in Chapter 6 of this Memorial.

97. To use the Court’s words in the *Qatar v. Bahrain* case (2001) with respect to “very small islands”, the activities of Johor with respect to Pulau Batu Puteh are sufficient to support Malaysia’s claim to sovereignty.⁷² In particular, as the Court noted in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan*, a State can exercise State functions “in the context of the administration of a wider range of islands”.⁷³

⁷⁰ *Singapore Free Press*, 25 May 1843; Annexes, vol. 3, Annex 40.

⁷¹ The 8-sheet Map of the Netherlands East Indies (1842) and Admiralty Chart 2041 are in the Map Atlas, Maps 7 and 10 respectively. The map attached to the Ord Award (which was drawn on Admiralty Chart 2041) is reproduced on page 42; a larger version is in the Map Atlas, Map 10.

⁷² See *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, ICJ Reports 2001, para. 197.

⁷³ See *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Decision on Merits, 17 December 2002, ICJ Reports 2002, para. 148.

98. It follows that in the mid-nineteenth century Pulau Batu Puteh could certainly not be considered as *terra nullius* and as susceptible to occupation. As the Court noted in its Advisory Opinion with respect to the *Western Sahara*, it is “a cardinal condition of a valid ‘occupation’ that the territory should be *terra nullius* – a territory belonging to no-one – at the time of the act alleged to constitute the ‘occupation’.”⁷⁴ The established links between the Johor rulers and Pulau Batu Puteh and the fact that Singapore Strait with its islands were the object of territorial regulation in the 1824 Anglo-Dutch Treaty and the 1824 Crawford Treaty, exclude the possibility that any of these well-known islands could have been considered as territory which “belonged to no-one in the sense that it was then open to acquisition through the legal process of ‘occupation’.”⁷⁵ Pulau Batu Puteh was not *terra nullius*.

D. Subsequent developments confirming the territorial limits of Singapore

99. In 1927, the Sultan of Johor concluded an Agreement with the Governor of the Colony of the Straits Settlement for the delimitation of their respective territorial waters in the Straits of Johor.⁷⁶ The agreed delimitation is shown on **Insert 14**, opposite.

100. The 1927 Agreement involved a retrocession to Johor of certain areas within the Straits of Johor, but in all other respects it confirmed the Crawford Treaty of 2 August 1824 and the territorial situation resulting therefrom. The 1927 Agreement line was substantially confirmed in 1995,⁷⁷ after the present dispute had broken out.

⁷⁴ *Western Sahara, Advisory Opinion, ICJ Reports 1975*, p. 6, at 39, para. 79. See also *Legal Status of Eastern Greenland, PCIJ, Series A/B, No. 53*, at 44, 63.

⁷⁵ *ICJ Reports 1975*, p. 6, at 39, para. 79.

⁷⁶ Straits Settlements and Johore Territorial Waters Agreement, 19 October 1927: Annexes, vol. 2, Annex 12.

⁷⁷ Agreement Between the Government of Malaysia and the Government of the Republic of Singapore to Delimit Precisely the Territorial Waters Boundary in Accordance with the Straits Settlements and Johore Territorial Waters Agreement 1927, 7 August 1995: Annexes, vol. 2, Annex 19.

TERRITORIAL SEA AGREEMENTS AFFECTING SINGAPORE



For illustrative purposes only

Insert 14

101. In 1973, Singapore and Indonesia signed a Territorial Sea Agreement delimiting their respective territorial sea boundaries in Singapore Strait.⁷⁸ The line so drawn is shown on **Insert 14**. Again no reference whatsoever was made to Pulau Batu Puteh, even though – if it or Middle Rocks or South Ledge had belonged to Singapore – this must have had some impact on the territorial maritime boundaries between the two States. If the Parties had not intended to deal with maritime boundaries in any other locality, at least some reference or reservation should have been made to the undelimited maritime boundary between the two States to the south of Pulau Batu Puteh.⁷⁹

102. The absence of any claim on the part of Singapore and its predecessors after 1824 is consistent with and is confirmed by a multitude of maps depicting Singapore's territorial limits, as well as of published lists of islands, islets and rocks situated within Singapore. This practice is surveyed later in this Memorial.⁸⁰

E. Summary and Conclusions

103. To summarise, the following conclusions may be drawn from this review of the evidence:

- (a) Prior to 1824, the domains of the Sultanate of Johor extended north and south of Singapore Strait and included all islands in the vicinity. All seas, straits and islands in the region were known and named.
- (b) By the Anglo-Dutch Treaty of 1824, the British and the Dutch determined their spheres of influence in the region. Pulau Batu Puteh was within the British sphere. It remained with the territory of Johor.
- (c) Pulau Batu Puteh was not included in the Johor cession to the British of the Settlement of Singapore in 1824, a grant which extended only to islands within ten geographical miles from the main island of Singapore.

⁷⁸ Agreement Stipulating the Territorial Sea Boundary Lines between Indonesia and the Republic of Singapore in the Strait of Singapore, 25 May 1973: Annexes, vol. 2, Annex 18.

⁷⁹ See further paragraphs 264-266.

⁸⁰ For the conduct of Singapore see below, Chapter 7. For the map evidence see below, Chapter 9.

- (d) Pulau Batu Puteh was not *terra nullius*. The close links between the Johor rulers and the area in question exclude any possibility that in the mid-19th century it could have been considered susceptible to acquisition through the legal process of occupation.
- (e) On a number of occasions the territorial limits of Johor were confirmed. These included the Ord Award of 1868, the Report of the Johor Boundary Commission, 18 February 1898 and the Johor Territorial Waters Agreement of 1927. None of these instruments changed the status of Pulau Batu Puteh as an island within the dominions of Johor. Rather they confirmed the long-standing *status quo*.

Chapter 6

HORSBURGH LIGHTHOUSE WAS CONSTRUCTED WITH THE PERMISSION OF JOHOR

Introduction

104. This Chapter analyses the circumstances leading to the construction of the Horsburgh Lighthouse on Pulau Batu Puteh. It traces the plans for the lighthouse, intended not as an extension of territory but as a tribute to James Horsburgh, hydrographer of the East India Company. The Lighthouse was due to a private initiative, based upon the collection of funds from different countries. Pulau Batu Puteh was from the very beginning the leading candidate, as well as the final choice, for the location of the lighthouse (see **Section A**).

105. A fundamental point of this case is the request made by W.J. Butterworth, Governor of the Straits Settlements, to the Sultan and Temenggong of Johor, seeking permission for the construction of the lighthouse. The permission given by the Johor authorities, for the sole purpose of erecting a lighthouse, extended to Pulau Batu Puteh, which was from the first singled out as a likely location (see **Sections B-C**).

106. The inauguration of the Horsburgh Lighthouse in 1850 did not involve any cession or claim of sovereignty. What the English East India Company acquired was ownership and the right to operate the lighthouse; the sovereignty of Pulau Batu Puteh remained with Johor (see **Section D-E**).

A. Plans for the Construction of a Lighthouse at the Entrance of the Strait of Singapore

107. In 1836 the hydrographer James Horsburgh died. A group of merchants and mariners, wishing to pay tribute to his memory, decided to raise funds for the erection of a lighthouse at the entrance of the South China Sea. The first public meeting was held in Canton on 22 November 1836. A suggestion to create a scholarship or professorship of navigation was discarded, for “as subscriptions were to be invited from all parts of the world, a merely national institution was not to the purpose”.⁸¹ “[T]he erection of some work of public utility, as a lighthouse on Pedra Branca, in the Straits of Singapore” was thus preferred.⁸² A further initiative to pay tribute to James Horsburgh through a monument to be erected in St. Paul’s Cathedral or Westminster Abbey in London was discarded for similar reasons. The members of the Committee created in Canton explained that “[w]e have already invited all nations to join us in our undertaking, and we look to America, Holland, and France with the most sanguine hopes”. They explained that there would be no greater testimony of gratitude than the construction of one or more lighthouses, and went on to say that “[t]he spot we propose for the first is Pedra Branca”.⁸³

108. The initiative to pay a tribute to James Horsburgh through the construction of a lighthouse was widely publicised.⁸⁴ It led to an exchange of views from readers of the newspapers with regard to the best locations. One of them, signed “A Traveller”, advised constructing it on the remote island of Pulau Supata in the China Seas and perhaps also on some of the islets of the Paracels shoals. The author was aware that the idea of constructing a light on Pulau Supata “would involve the necessity of taking

⁸¹ *The Canton Press*, 26 November 1836. Annexes, vol. 3, Annex 30.

⁸² *Ibid.*

⁸³ “The Horsburgh Memorial”, *Singapore Free Press*, 5 April 1838, Annexes, vol. 3, Annex 34.

⁸⁴ Cf. *The Canton Press*, 10 December 1836; *The Canton Register*, 10 January 1837, in which is found the original list of subscribers in Canton: Annexes, vol. 3, Annexes 31, 32.

possession of the island and placing an establishment there”.⁸⁵ Subsequently the *Singapore Free Press* commented:

“Respecting *Pedra Branca*, which has been proposed or rather fixed upon for one, there is not likely to be any difference of opinion – and we think the next step ought to be to settle the other points on which it would most conduce to the security of navigation in the Straits to have lights established.”⁸⁶

109. The Treasurer of the *China Fund for a Testimonial to the Memorial of the Late James Horsburgh Esqre*, in a letter of 1 March 1842 to S.G. Bonham, Governor of the Straits Settlements, considered that the building of a lighthouse “on *Pedra Branca*, at the entrance of the China Sea”, could “only be carried into effect and maintained under the immediate auspices of the British Government”. He then informed the Governor about the sum of money collected and the readiness to hand over this money for a lighthouse “to be erected either on *Pedra Branca*, or on such other locality as the Government of the Hon’ble East India Company may deem preferable”.⁸⁷

110. Different options as to the location had been discussed for years. In his response to the Treasurer of the China Fund, Governor Bonham made it known that he recommended that the lighthouse “be erected on Tree Island or on some other adjacent spot which may be deemed by Mariners more desirable”.⁸⁸ Explaining why he preferred Tree Island to Pulau Batu Puteh, Governor Bonham expressed the view that the former could “be maintained with greater certainty and at a smaller expense – advantages which will I hope be admitted as fully counterbalancing the more prominent locality afforded by *Pedra Branca*.”⁸⁹ Both Tree Island and Pulau Batu Puteh fell outside the territory of Singapore. The former was situated within the Dutch sphere of influence, the latter

⁸⁵ “Missing Vessels – Navigation to China”, *Singapore Free Press*, 13 October 1836 (extract): Annexes, vol. 3, Annex 29.

⁸⁶ *Singapore Free Press*, 9 February 1837: Annexes, vol. 3, Annex 33.

⁸⁷ Letter of 1 March 1842 from Jardine Matheson & Co., Treasurer to the China Fund for a testimonial to the memory of the late James Horsburgh Esqre, care of Messrs. John Purvis & Co., Singapore, to the Hon’ble S.G. Bonham Esqre, Governor of Prince of Wales Island, Singapore and Malacca: Annexes, vol. 3, Annex 35.

⁸⁸ Letter of 4 April 1842 by S.G. Bonham in reply to Messrs Jardine Matheson & Co letter of 1 March 1842: Annexes, vol. 3, Annex 36.

⁸⁹ *Ibid.*

within Johor.⁹⁰ The idea of locating the lighthouse on Tree Island was quickly abandoned.

111. Initially J.T. Thomson, Government Surveyor of the Straits Settlements, who was to be the architect of the lighthouse, proposed Barn Island (Pulau Senang) in 1842. Thomson's choice rested upon the short distance of Barn Island from Singapore. He also made suggestions with regard to the colours of the light, "[i]n order to distinguish the light from the many fires that are kept burning *on the adjacent Islands by Malays*".⁹¹ This proposal was forwarded by Governor Bonham to G.A. Bushby, Secretary to Government of the East India Company, on 23 July 1842.⁹² However, it was rejected by the Court of Directors of the Company, on the ground that the levying of harbour and anchorage duties would be in contradiction with the preservation of the freedom of trade at Singapore.⁹³ This was the only proposal for the construction of the lighthouse on an island belonging to Singapore.

112. It was only when the Chamber of Commerce of Singapore took the matter into its hands that the project materialised. The *Bombay Times & Journal of Commerce* published a report of the Committee of that Chamber regarding the erection of the lighthouse, and commented:

"We are glad to see the Chamber take up the matter with so much earnestness, as we may anticipate from it the speedy accomplishment of the project. As long as the matter was left in the hands of the Indian Government we confess we saw little chance of its being carried through."⁹⁴

⁹⁰ See Government Secretary to Resident Councillor, Fort Cornwallis, 22 December 1829, Straits Settlements Factory Records (K.14, f. 197): Annexes, vol. 3, Annex 28.

⁹¹ Letter from J.T. Thomson to Governor S.G. Bonham of 1 May 1842: Annexes, vol. 3, Annex 37 (emphasis added).

⁹² Letter from Governor S.G. Bonham to G.A. Bushby, Esqre, 23 July 1842: Annexes, vol. 3, Annex 38.

⁹³ Letter from G.A. Bushby to S.G. Bonham of 31 August 1842: Annexes, vol. 3, Annex 39.

⁹⁴ "Erection of a Light-House on Romania Island", *Bombay Times and Journal of Commerce*, 10 January 1846: Annexes, vol. 3, Annex 48. See also "Lighthouse at Singapore", *The Times*, 22 January 1846: Annexes, vol. 3, Annex 49.

113. In the final planning stages for the construction of the lighthouse, the determination of a site was narrowed down to two possible choices: Peak Rock and Pulau Batu Puteh. Captain Sir Edward Belcher, after a survey of the region, considered "the Romania outer island" (that is, Peak Rock) as the most eligible site.⁹⁵ Governor Butterworth then instructed J.T. Thomson to examine "Peak Rock Romania" in order to ascertain the probable cost of building the lighthouse there and to evaluate this place with reference to the Romania Islands, the coast of Johor and the Island of Singapore.⁹⁶ In a letter addressed to Under-Secretary C. Beadon of 22 August 1845, Governor Butterworth insisted that the number of vessels wrecked in the vicinity of Pulau Batu Puteh and Point Romania (today known as Tanjung Penyusoh) would "imperatively rule for a Light House in that neighbourhood." He expressed the opinion that the former would be the best possible position for a lighthouse, but preferred Peak Rock for the reason that "it is so remote from Singapore and so great a distance from the Main Land and so inaccessible at certain seasons of the year..."⁹⁷

114. In 1846, the British Admiralty expressed its preference for Pulau Batu Puteh as the best place for the lighthouse from the navigational point of view.⁹⁸ After further surveys by J.T. Thomson and Captain Congalton, Governor Butterworth finally decided that the best site for the lighthouse would indeed be Pulau Batu Puteh. The East India Company gave its final approval on 3 October 1846.⁹⁹

⁹⁵ Letter from Edward Belcher, Captain of HMS Samarang to W.J. Butterworth, Governor of Prince of Wales Island, Singapore and Malacca, of 1 October 1844: Annexes, vol. 3, Annex 41.

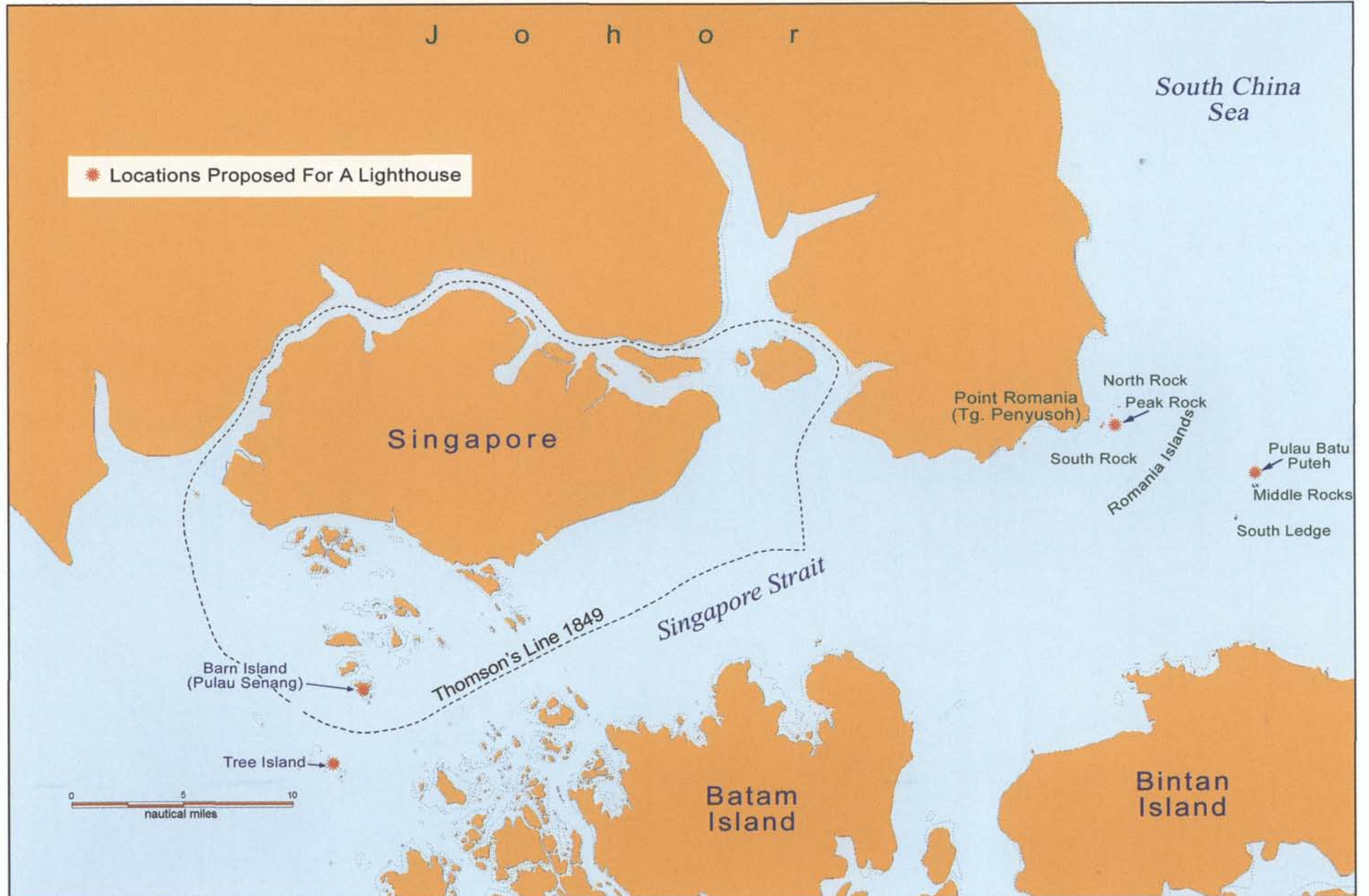
⁹⁶ See Report of J.T. Thomson to W.J. Butterworth, 20 November 1844: Annexes, vol. 3, Annex 43.

⁹⁷ Annexes, vol. 3, Annex 47.

⁹⁸ Letter from N.B. Hamilton, Secretary to the Admiralty to the Secretary to the East India Company of 18 April 1846: Annexes, vol. 3, Annex 50.

⁹⁹ See the Internal Minute of Governor Butterworth of 30 September 1846: Annexes, vol. 3, Annex 53; Minute No. 14 of 3 October 1846: Annexes, vol. 3, Annex 55; and the letter from the Government of India to the Court of Directors, 3 October 1846: Annexes, vol. 3, Annex 54.

LOCATIONS PROPOSED FOR A LIGHTHOUSE



58

For illustrative purposes only

Insert 15

115. **Insert 15**, opposite, shows the location of the various sites considered for the lighthouse, and their relation to the coast of Johor, in particular Point Romania (Tanjung Penyusoh) as well as the 10 mile limit around Singapore.

116. These documents demonstrate three things. First, the construction of the lighthouse was a private initiative. Second, the location of the lighthouse was an open question until 1846. Third, from the very beginning and during the entire decision-making process the site of Pulau Batu Puteh was envisaged as one of the main options for the construction of Horsburgh Lighthouse.

117. It is also clear that the choice depended mainly upon the identification of the best location from a navigational point of view. In considering the advantages and drawbacks of each site, the question of sovereignty over them was not an issue. There is not a single reference in the correspondence to the effect that the lighthouse should be built on *terra nullius* or that Pulau Batu Puteh was finally chosen because it was *terra nullius*. The lighthouse was a project in the general interest and not a matter of purely national concern. It might be built within Singapore itself (Barn Island), or on some island beyond the well-known territorial limits of Singapore (Tree Island, Peak Rock or Pedra Branca). In the latter case (at least as far as concerned islands in the British sphere) no difficulty was anticipated in obtaining the consent of the relevant territorial sovereign, given the general beneficial nature of the enterprise.

B. The Permission of Johor in 1844 and its Scope

118. The British authorities were of course well aware that the entrance of Singapore Strait in the China Sea fell outside Singapore's territorial scope, as established by the Crawford Treaty of 1824. Hence, they needed authorisation from the authorities of Johor for the construction of the lighthouse on that site, since the locations envisaged were part of their territory, as demonstrated in Chapter 5.

119. The relations between Britain and Johor were international in character: Britain did not claim or exercise sovereignty over Johor.¹⁰⁰ Hence the British approach of seeking permission for the construction of the lighthouse. Indeed, there was a consistent pattern: whenever the British authorities wanted to construct a lighthouse outside the territory of the Straits Settlements, they sought the permission of the relevant Malay rulers. This was not only true for the construction of Horsburgh Lighthouse, but also for the lighthouses constructed at Cape Rachado (Tanjung Tuan)¹⁰¹ and Pulau Pisang¹⁰² and for the proposed Pulau Aor Lighthouse.¹⁰³

120. On 25 November 1844, both the Sultan and the Temenggong of Johor granted permission to Governor Butterworth to build the lighthouse, following a request by the latter. Unfortunately, despite extensive research by Malaysia, Butterworth's letters to the Sultan and the Temenggong have not been located. But there is no doubt the letters were written, since both the Sultan's and the Temenggong's letters clearly acknowledged their receipt. Both replies describe Butterworth's letters as involving a request for permission for the construction of a lighthouse, not as a request for a cession of territory.

121. The letter of permission from Sultan Allie reads as follows:

"I have received my friend's letter, and in reply desire to acquaint my friend, that I perfectly understand his wishes, and I am exceedingly pleased at the intention expressed therein, as it (a Light House) will enable Traders and others to enter and leave this Port with greater confidence".¹⁰⁴

¹⁰⁰ See above, paragraphs 61-67.

¹⁰¹ See the exchange of letters dated 7 October 1860, 27 October 1860 and 26 November 1860 between the Sultan of Selangor and the Governor of the Straits Settlements: Annexes, vol. 3, Annex 62.

¹⁰² See the preamble of the Indenture of 6 October 1900 between Ibrahim, Sultan of Johore, and Sir James Alexander Swettenham, the Officer Administering the Government of the Colony of the Straits Settlements: Annexes, vol. 3, Annex 89, see also Colony of Singapore, *Annual Report of the Marine Department 1952*, Singapore: 1953, 59-60.

¹⁰³ Annexes, vol. 3, Annex 64.

¹⁰⁴ Letter of 25 November 1844, translated by T. Church, Resident Councillor: Annexes, vol. 3, Annex 44.

122. The letter of permission from the Temenggong to Governor Butterworth is more explicit and reads as follows:

“I have duly received my friend’s communication and understand the Contents. My friend is desirous of erecting a Light House *near Point Romania*; I can have no possible objection to such a measure; indeed I am much pleased that such an undertaking is in contemplation. I wish to be guided in all matters by the Govt., so much so, that *the Company are at full liberty to put up a Light House there, or any spot deemed eligible*. Myself and family for many years have derived support from Singapore, our dependence is wholly on the English Government and we hope to merit the protection of and be favoured by the Company on all occasions consistent with propriety.”¹⁰⁵

123. As shown in Chapter 4, over the first half of the 19th century, the office of Temenggong came to be more important than that of Sultan. This explains why Governor Butterworth sought consent from both authorities of Johor.¹⁰⁶ The ordinary meaning of their answers is clear: the East India Company was free to choose between erecting the lighthouse near Point Romania, or anywhere else in the territory of Johor considered suitable for the purpose of providing guidance to shipping going to or leaving Singapore. The authorisation did not concern only Peak Rock. Moreover, the geographic area for the construction of Horsburgh Lighthouse had also been clearly established at that time: the entrance of Singapore Strait in the South China Sea. The territory in that region was under Johor’s sovereignty, as explained in Chapter 5.

124. Pulau Batu Puteh is undoubtedly covered by the authorisation given by the Sultan and Temenggong. The reasons for this are twofold.

125. First, Pulau Batu Puteh is a place “near Point Romania”. It is located only 7.7 nm from Point Romania, which is the nearest mainland coast to Pulau Batu Puteh. This fact was specifically acknowledged by two of those most involved at that time: John Crawford and J.T. Thomson. Crawford, first British Resident of the Straits Settlements, wrote in his diary on board the survey ship *Investigator* on 7 December 1818:

¹⁰⁵ Letter of 25 November 1844, translated by T. Church, Resident Councillor (emphasis added): Annexes, vol. 3, Annex 45.

¹⁰⁶ See above, paragraphs 43, 63.

“Romania is the Eastern part of Singapore Straits, the entrance is divided into two channels by a cluster of rocks, the largest is 20 feet above the level of the sea named by the Portuguese Pedro Branca.”¹⁰⁷

Thomson, the architect of Horsburgh Lighthouse, referred in the following unequivocal terms to “Point Romania the nearest land to Pedra Branca.”¹⁰⁸

126. This is also evident from the *Chart of the Vicinity of the Horsburgh Lighthouse and Adjacent Malayan Coast* drawn by the same J.T. Thomson in 1851, which appears on the opposite page as **Insert 16**. From the very beginning, the cartography was consistent in showing Pedra Branca and Point Romania as the two most important geographic features, close together at the entrance of Singapore Strait.¹⁰⁹

127. Secondly, even if Pulau Batu Puteh were not considered a place “near Point Romania”, it would be covered by the extension of the consent to another “spot deemed eligible”. As stressed above, Pulau Batu Puteh was at all times one of the spots eligible for the construction of the lighthouse. The Sultan and the Temenggong, who were both resident in Singapore, would have been aware of this.

128. It is important to emphasise the year in which these letters were written. In 1844, for the first time, the British authorities had taken concrete measures towards the construction of the lighthouse. The first survey was carried out by Captain Belcher. In his letter of 1 October 1844, he recommended “outer Romania island” (that is, Peak Rock), as reported above. In particular, as demonstrated above, when the British authorities sought consent from Johor to build the lighthouse, a final decision as to its location had not yet been made. They had in mind other possible locations within the territory of Johor besides Peak Rock.

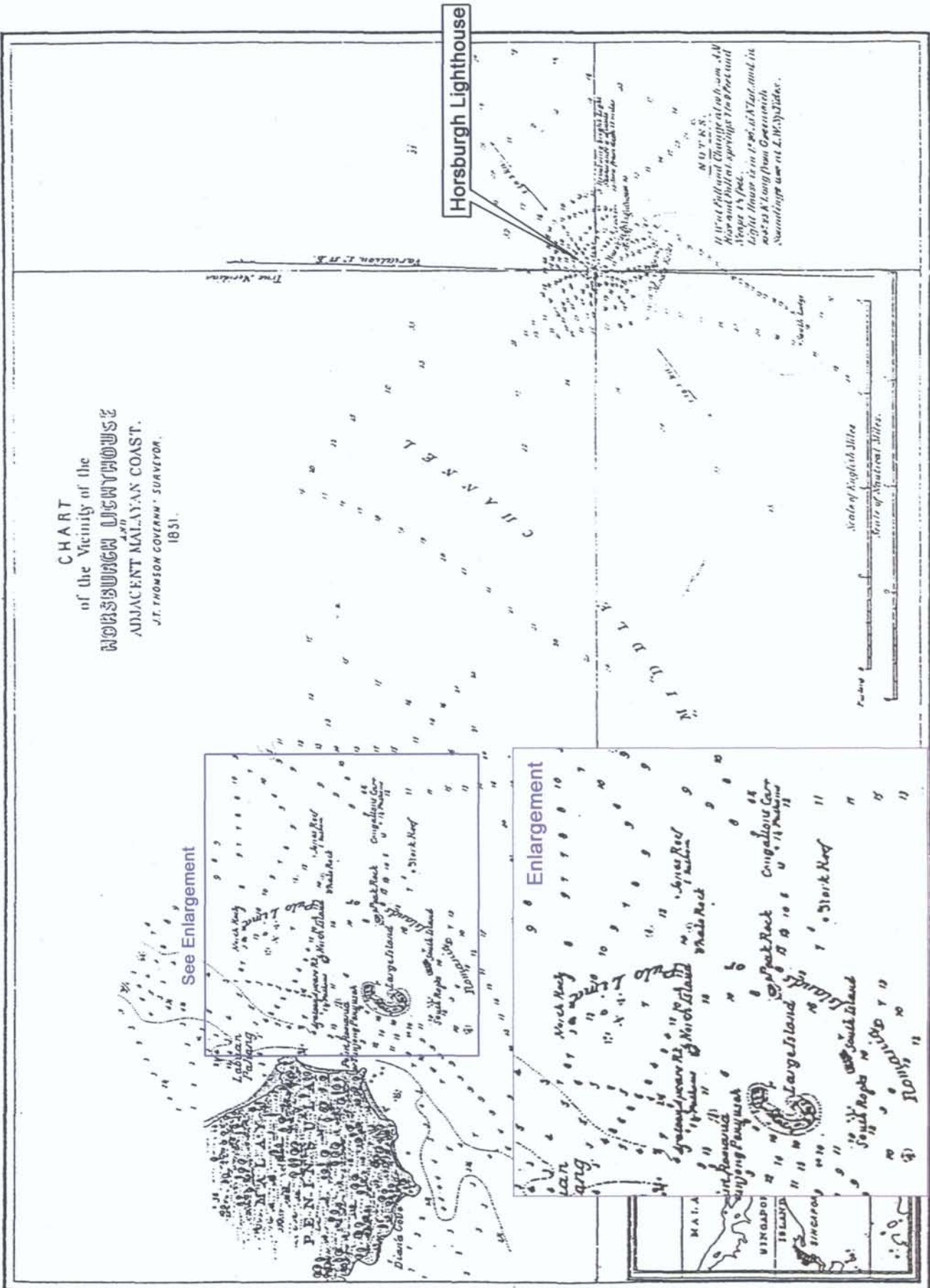
¹⁰⁷ Document MS 353, Manuscript Collection, National Library of Australia: Annexes, vol. 3, Annex 23.

¹⁰⁸ Letter from J.T. Thomson to Resident Councillor, Singapore, 2 November 1850: Annexes, vol. 3, Annex 58.

¹⁰⁹ See below, paragraphs 306-309; Map Atlas, Maps 4, 5, 6.

CHART BY J.T. THOMSON, 1851

CHART
of the Vicinity of the
WORSBURGH LIGHTHOUSE
ADJACENT MALAYAN COAST.
J.T. THOMSON SURVEYOR.
1851.



See Enlargement

Enlargement

129. From the very beginning, Pulau Batu Puteh was envisaged as a possible – and probably the best – location for the lighthouse. Once the decision in principle to construct a lighthouse was taken, various locations were under consideration, including Pedra Branca (Pulau Batu Puteh). This was a matter of public knowledge in the region, as reported by the press. It is a striking fact that the terminology employed by all relevant actors (subscribers, the Governor of the Straits Settlements, the authorities of the East India Company, the Temenggong, etc) is always concordant, by referring both to one place or another (Pedra Branca, Tree Island, Peak Rock, Point Romania) “or on such other locality as the Government of the Hon’ble East India Company may deem preferable”, “or on some other adjacent spot which may be deemed by Mariners more desirable”, “or any spot deemed eligible”. This shows clearly that every measure or every decision taken by the different actors with regard to the erection of Horsburgh Lighthouse always had in mind the possibility of at least two different places, and Pulau Batu Puteh was always one of them.

130. Even at the time when Peak Rock was the lead contender as the site for the construction of the lighthouse, Governor Butterworth continued to refer to the plan as “the erection of a Light House in the vicinity of Pedra Branca”.¹¹⁰ Thus, the construction on Pulau Batu Puteh of the Horsburgh Lighthouse was envisaged at all stages of the decision-making process, both before and after the permission of the Temenggong and the Sultan of Johor.

131. The letter addressed by Governor Butterworth to F. Curie, Secretary to the Government of India, of 28 November 1844 – only three days after the consent given by the Sultan and the Temenggong – enclosed both their letters. As mentioned before, the site then envisaged by Captain Belcher was Peak Rock. Governor Butterworth wrote:

“The report of that Scientific Officer [Captain Belcher] I desire to lay before the Right Hon’ble the Governor General of India with the Plan and Section of the Rock therein alluded to, prepared by Mr. Thomson the Surveyor, together with an outline chart, shewing its position with

¹¹⁰ See the letter from John Purvis & Co. to W.J. Butterworth of 31 October 1844: Annexes, vol. 3, Annex 42.

reference to Pedra Branca, the main land of Johore, and Island of Romania, situated about 32 miles in an E by N direction from Singapore - This Rock is part of the Territories of the Rajah of Johore, who with the Tamongong have willingly consented to cede it gratuitously to the East India Company.”¹¹¹

132. It is worth comparing this letter with the Temenggong’s reference to the building of the lighthouse “near Point Romania... or any spot deemed eligible”. Butterworth refers to *mainland* Johor. He was of course aware that Johor extended also to the islands. He mentions other insular locations envisaged for the construction of the lighthouse: one of the Romania Islands (Peak Rock) or Pedra Branca. He goes on to stress that Peak Rock is “part of the territories of the Rajah of Johore”. He does so because what was at issue was Captain Belcher’s survey for the erection of the lighthouse choosing Peak Rock as the best location. The letter concludes by stating that the Sultan and the Temenggong of Johor “consented to cede it gratuitously” to the East India Company. Similarly, the report of the *Bombay Times and Journal of Commerce* of 10 January 1846 quoted above explains:

“The Malayan Authorities of Johore, in whose territory the Romania Island is situated, not only offer the Island for a lighthouse, but express satisfaction at the prospect of its erection”.¹¹²

133. It is thus beyond doubt that permission was given by Johor and acknowledged by Britain. In its context the cession Governor Butterworth referred to did not involve transfer of sovereignty. It was simply a permission to construct a lighthouse.

134. The British authorities in Singapore understood the extent of the consent given by the Sultan and the Temenggong as being applicable to Pulau Batu Puteh. This can be seen from the letter from Governor Butterworth to Mr. G.A. Bushby, the Secretary of the Government of India, dated 26 August 1846. Writing about Pedra Branca as the final site chosen instead of Peak Rock, the Governor stated that:

“the whole of the details for the case of Light Houses as set forth in my letter under date the 28th November 1844, with reference to its being

¹¹¹ Annexes, vol. 3, Annex 46.

¹¹² “Erection of a Light-House on Romania Island”: Annexes, vol. 3, Annex 48.

erected on Peak Rock will be equally applicable to the new Position [Pedra Branca].”¹¹³

135. Amongst the “details” of the letter of 28 November 1844 can be found the consent given by the Sultan and the Temenggong of Johor to the construction of the lighthouse. Governor Butterworth clearly explained to the Government of India that “*the whole of the details*” related to Peak Rock are “*equally applicable*” to Pulau Batu Puteh.

136. The British authorities in India were also aware that the consent given by the Sultan and the Temenggong included Pulau Batu Puteh, as emerges from the exchange of letters between the Government of India and the Marine Department in 1846 with regard to the request to send an iron lighthouse from England. This exchange includes the reports that Pedra Branca has been approved as the position for erecting Horsburgh Lighthouse and contains the letters of the Sultan and the Temenggong referred to above.¹¹⁴

137. The material referred to above confirms that the permission of Johor included different locations envisaged for the construction of the Horsburgh Lighthouse, amongst them Pulau Batu Puteh. There is nothing in it to show that the Sultan and the Temenggong did more than approve the building of a lighthouse on Johor’s territory.

C. The role of the Temenggong of Johor

138. As has been mentioned, the Temenggong played a decisive role in Johor. Indeed, he was vested with the real authority over his territory. This no doubt explains the more elaborate answer given by him to the British request for the construction of the lighthouse.

139. The relations between the British authorities of Singapore and the Temenggong were based on the Crawford Treaty of 1824. They were characterised by mutual respect

¹¹³ Annexes, vol. 3, Annex 51.

¹¹⁴ Letter from the Government of India, 3 October 1846 and attachments. British Library, India, Marine Department Collection, F/4/2166: Annexes, vol. 3, Annex 54.

and by the cooperative attitude of the Temenggong with regard to British interests. Explaining the results of the negotiation of the 1824 Treaty to the Government of India, Resident J. Crawford pointed out that the conduct of the Temenggong “has been highly respectable and steady throughout the whole of the present negotiation, and I owe in a great measure to his support such success as I may venture to anticipate as the result of my own efforts”.¹¹⁵

140. In particular, the Temenggong’s contribution to combating piracy in the region in the areas under his jurisdiction was much appreciated by the British authorities. By the Crawford Treaty, the parties stipulated that:

“The contracting parties hereby engage to use every means within their power respectively, for the suppression of robbery and piracy within the Straits of Malacca, as well as the other narrow seas, straits, and rivers bordering upon, or within their respective territories, in as far as the same shall be connected with the dominions and immediate interests of their said Highnesses.”¹¹⁶

141. As stated in the 1843 article of the *Singapore Free Press* quoted in Chapter 5,¹¹⁷ the islands which pirates used as bases for their activities or in order to seek shelter – including Pulau Batu Puteh – were under Johor’s sovereignty. Moreover, most of the pirates were considered to be subjects of Johor, in particular those who were “Orang Laut” or “Orang Selat” by origin.

142. Just one year before the laying of the foundation stone of the Horsburgh Lighthouse, it was reported that a Cochin Chinese *prahu* leaving Singapore requested for a gunboat to escort it “beyond Pedra Branca”. Mr. Church, the Resident Councillor, “stated that one of the gunboats had already gone to that quarter with four boats belonging to the Tumonggong”.¹¹⁸

¹¹⁵ Letter of 18 November 1823 from J. Crawford to G. Swindon, Esq., Secretary to the Government, in (1853) 7 *Journal of The Indian Archipelago and Eastern Asia* 352.

¹¹⁶ Article XI of the Treaty of Friendship and Alliance between the Honourable East India Company and the Sultan and Temenggong of Johor of 2 August 1824, 74 *CTS* 380, 383: Annexes, vol. 2, Annex 6.

¹¹⁷ *Singapore Free Press*, 25 May 1843, Annexes, vol. 3, Annex 40: see paragraph 95.

¹¹⁸ C.B. Buckley, *An Anecdotal History of Old Times in Singapore*, Singapore: Fraser & Neave, 1902, vol. II, 505.

143. The Temenggong's activities against piracy constitute a manifestation of Johor's exercise of sovereignty in the region under consideration. As testimony to the Temenggong's contribution to the suppression of piracy in the region, the British Government conferred him a sword, at a time when the construction of the lighthouse in Pulau Batu Puteh had already been firmly decided.¹¹⁹ It is not surprising that J.T. Thomson, on arrival at Pulau Batu Puteh for the construction of the lighthouse, warned against the visit of the Orang Laut, subjects of Johor, to the island. In particular, he drew a distinction between their frequent visits to the island and their potential admission into the building:

“... I hardly need suggest that strict rules should be carried out against those half fishing half piratical sect called the Orang Ryot or Laut, being allowed to obtain admittance into the building - they frequently visit the rock so their visits should never be encouraged nor any trust be put in them as they would be sure to pillage the building if they found themselves strong enough.”¹²⁰

144. Accordingly, the Rules for Light-keepers provided that “No natives of the Orang laut tribe should on any account be admitted into the house. Their character is piratical and they might take advantage of the opportunity to pillage the building.”¹²¹

145. Evidently the Orang Laut, subjects of Johor, frequently visited the island. But their visits to the island were not to be encouraged and their entrance into the building was not allowed. If the island were under British rule (or if the purpose of the construction had been to establish it), it would have been logical to deny them the possibility of visiting the island itself, not only the lighthouse. This is further evidence that a clear distinction existed, in the minds of those involved, between sovereignty over the island and the ownership of the lighthouse.

¹¹⁹ *Straits Times*, 5 September 1846: Annexes, vol. 3, Annex 52.

¹²⁰ Letter from J.T. Thomson to Resident Councillor, Singapore, 2 November 1850: Annexes, vol. 3, Annex 58.

¹²¹ Rules for Light-keepers, Rule No. 17, in J.T. Thomson, “Account of the Horsburgh Lighthouse”, (1852) 6 *Journal of the Indian Archipelago and Eastern Asia*, Appendix V: Annexes, vol. 3, Annex 61.

146. Worried about the piratical activities in the region, J.T. Thomson also proposed the establishment of a station or a military presence near Point Romania, for the purpose of offering assistance to the lighthouse keepers. The Resident Councillor of Singapore, commenting on this proposal to Governor Butterworth, wrote:

“I doubt whether such is absolutely necessary, or commensurate with the permanent expense which such an Establishment must necessarily occasion, Romania moreover belongs to the Sovereign of Johore, where the British possess no legal jurisdiction, it will, of course be necessary for the Steamer or Gun boats to visit Pedro Branca weekly, some benefit would also accrue by requesting His Highness the Tamoongong to form a village at Romania under the control of a respectable Panghooloo to render assistance to the inmates of the Light House in a case of emergency.”¹²²

147. Thus for the British authorities in the Settlement of Singapore, the establishment of a naval force in the vicinity of Point Romania would have required the Temenggong's authorisation. The other alternative envisaged for the accomplishment of acts of undisputable public character, such as maintaining or restoring order at Horsburgh Lighthouse “in a case of emergency”, was the request to the Temenggong to form a village in that region and to put it under the authority of a reliable village chief.

148. J.T. Thomson, after the laying of the foundation stone of the lighthouse on 24 May 1850, returned to Pulau Batu Puteh on 2 June 1850, meeting the Temenggong there. He relates:

“On the same day his highness the Tumungong of Johore visited the rock, accompanied by 30 of his followers. He is the most powerful native chief in these parts, allied to British interests. He remained at my house for two days, employing his leisure in fishing, to which sport he is greatly devoted; he and his followers were very successful with the hook and line. He would have made a longer stay had not the mosquitoes been so numerous, a singular circumstance, seeing that the rock is so exposed to all winds... [The mosquitoes] infested every nook and corner of the houses and chinks of the rock, neither night nor day brought any relief from them, it was almost impossible to sit, and the only refuge, if rest were required, was under the mosquito curtains. These his highness had not brought, so he did not stop to experience the

¹²² Letter from T. Church, Resident Councillor of Singapore, to Governor Butterworth of 7 November 1850: Annexes, vol. 3, Annex 59.

tortures of another night... On the evening of the 3rd of June, the Tomungong took his departure. He came in a beautiful fast sailing sampan... rigged with graceful latteen sails. About ten other small sampans composed his fleet, which with their mat sails as they stretched over the coast of Bintang, produced rather a picturesque effect. The Singapore sampan is famed over the world for its fleetness in either pulling or sailing; manned with the orang laut (men of the sea) they have successfully competed with the fastest gigs or wherries from England, brought out on purpose for the contest."¹²³

149. The visit of the Temenggong with 30 of his subjects to Pulau Batu Puteh, the fact that it took place only nine days after the laying of the foundation stone of the lighthouse, and his initial intention to stay for an indeterminate period of time are all of significance. His stay on an island of such a small surface with such a numerous troop, spending most of his time fishing, suggests that he considered himself as being on his own territory. Thomson's attitude also illustrates the British perception of the situation. The Temenggong stayed in Thomson's house. No objection was raised either to his presence with his followers or to their activities on Pulau Batu Puteh. It would be easy to understand that such a presence could constitute an obstacle to the construction work. Thomson did not appear surprised by this visit. No reference is made to any permission being sought or given for the Temenggong's presence.

150. Both the activities of the Temenggong against piracy in the region – including Pulau Batu Puteh – and his visit to the island soon after the beginning of the construction of the Horsburgh Lighthouse confirm that Pulau Batu Puteh was under Johor's sovereignty before and after the permission was given for the building of the lighthouse. They also show that his consent to the building of a lighthouse extended to Pulau Batu Puteh and that this consent only related to its construction and operation.

¹²³ J.T. Thomson, "Account of the Horsburgh Lighthouse", (1852) 6 *Journal of the Indian Archipelago and Eastern Asia* 375, 430: Annexes, vol. 3, Annex 60. The original report was submitted to the Resident Councillor and was published by permission. See also J.A.L. Pavitt, *First Pharos of the Eastern Seas. Horsburgh Lighthouse*, Singapore, Singapore Light Dues Board, D. Moore Press, 1966, 32. Copies of this work have been lodged with the Court.

D. The Inauguration of the Lighthouse did not involve a Cession or Claim of Sovereignty

151. Further evidence that the British authorities in Singapore did not consider that it had acquired sovereignty over Pulau Batu Puteh can be derived from the form of the ceremonies that took place for the construction and operation of the Horsburgh Lighthouse. This section will demonstrate that the ceremonies that took place for the construction and operation of the Horsburgh Lighthouse were of a completely different kind from those which involved the assumption of sovereignty in British practice. Moreover, no attempt was made to incorporate Pulau Batu Puteh into the Colony of the Straits Settlements at any time.

(i) *The ceremony of the laying of the first stone and the inauguration of the lighthouse*

152. The only ceremony that took place on Pulau Batu Puteh was the laying of the first stone of Horsburgh Lighthouse. It took place on 24 May 1850, the date of Queen Victoria's birthday. It was a Masonic ceremony.¹²⁴ Governor Butterworth asked the Lodge "Zetland in the East" to lay the foundation stone. In his speech requesting M.F. Davidson, Worshipful Master of the Lodge, to open the ceremony, Governor Butterworth stressed that the lighthouse will "be erected on this spot for the safety of the Mariner". Explaining the reasons why the Lodge was requested to carry out the ceremony, he went on by saying: "The philanthropic object of the building appears especially to call for the exercise of that craft which has charity and goodwill to all mankind as its ground work".¹²⁵ The same explanations can be found in the letter sent by Governor Butterworth to the Worshipful Master of the Lodge "Zetland in the East" of 23 April 1850.¹²⁶ Clearly, this ceremony was not at all concerned with sovereignty. On the contrary, Governor Butterworth expressly pointed out that the construction of the

¹²⁴ Freemasonry is a universal initiation association based on ideals of fraternity and philanthropy. It appeared in Britain during the 17th century and was much in vogue in the British Settlements in Asia. A group of Freemasons constitutes a lodge. Its symbols include T-squares, compasses, trowels and other building tools.

¹²⁵ *Straits Times*, 28 May 1850: Annexes, vol. 3, Annex 57, also reproduced in Pavitt, 23-25, who quotes the *Singapore Free Press*.

¹²⁶ Annexes, vol. 3, Annex 56.

building had the only purpose – putting aside the celebration of Captain James Horsburgh – of helping navigation and characterised it as a *philanthropic* enterprise.

153. The limited object of the activity on Pulau Batu Puteh was reiterated at the time of the inauguration of the lighthouse on 15 October 1851. The 1851 inscription plate set into the wall reads as follows:

“A.D. 1851. THE HORSBURGH LIGHTHOUSE is raised by the enterprise of British Merchants and by the liberal aid of the East India Company, to lessen the dangers of Navigation and likewise to hand down so long as it shall last in the scene of his useful labours The Memory of the great Hydrographer whose name it bears. Col. W.J. BUTTERWORTH. C.B. Governor in the Straits of Malacca. J.T. Thomson Architect”.¹²⁷

Again, not a single reference to sovereignty was made. Rather, the private origin of the endeavour was highlighted, together with the “liberal aid” of the East India Company and the reiterated purpose of assisting navigation.

154. Something similar can be said about the copper plate placed in the cavity of the foundation stone. It bore the following inscription:

“In the year of our Lord 1850 and in the 13th year of the reign of Victoria Queen of Great Britain and Ireland; The Most Noble James Andrew Marquess of Dalhousie K.T., being Governor General of British India; The Foundation Stone of the Light-house to be erected on Pedro Branca and dedicated to the memory of the celebrated Hydrographer James Horsburgh F.M.S. was laid on the 24th day of May, the anniversary of the Birth day of Her Most Gracious Majesty, by the Worshipful Master M.F. Davidson Esq. and the Brethren of the Lodge Zetland in the East No. 748, in the presence of the Governor of the Straits Settlements, and many of the British and Foreign Residents of Singapore. J.T. Thomson, Architect”.¹²⁸

155. It is true that the ceremony was carried out by the Worshipful Master of the Lodge “Zetland in the East” in the presence of the Governor. But there is no indication

¹²⁷ See the photograph in Pavitt, 47.

¹²⁸ *Straits Times*, 28 May 1850: Annexes, vol. 3, Annex 57.

that the latter had any particular role to perform. A Masonic ceremony does not constitute an official act, even if public agents attend or even if they actively participate.

156. It may be noted that an identical Masonic ceremony took place in the course of building the Raffles Lighthouse on Coney Island (Pulau Satumu) in 1854.¹²⁹ This uninhabited island had undoubtedly been ceded by Johor to the East India Company in 1824. It is located more than three miles further south from the main Island of Singapore, but within the ten-mile radius. On that occasion, a ceremony which was in all essentials the same as that conducted for the Horsburgh Lighthouse was celebrated, and this was done on an island already under British sovereignty.¹³⁰ This is a further indication that the Masonic ceremony on Pulau Batu Puteh in 1850 was not conducted with the intention of either establishing or confirming British sovereignty.

(ii) *Consistent British practice of taking possession and incorporation of territory and its absence in Pulau Batu Puteh*

157. This conduct with regard to Pulau Batu Puteh may be contrasted with the traditional and consistent British practice of formally taking possession of territories under its sovereignty.

158. British practice of taking possession of territory as an act of establishing sovereignty was formal and rather standardised. The principal reference work in this field covers the period between 1400 and 1800. Keller, Lissitzyn & Mann state:

“THE CEREMONIES which were performed by explorers in the service of the English Crown in taking formal possession of *terra nullius* displayed no great variation in either content or effect over a considerable period of time, i.e., from the reign of Queen Elizabeth until at least the last quarter of the eighteenth century.

Such ceremonies or acts, furthermore, partook very little of the simplicity so characteristic of Portuguese and French practice in performing symbolic acts and resembled rather those of the Spanish in regard to ceremoniousness and formality of procedure.”¹³¹

¹²⁹ Pavitt, 23.

¹³⁰ Buckley, 520-6.

¹³¹ Keller, A.S., Lissitzyn, O.J. and Mann, F.J., *Creation of Rights of Sovereignty through Symbolic Acts 1400-1800*, New York, Columbia University Press, 1938, p. 49.

159. This practice also extended beyond the period covered by Keller, Lissitzyn & Mann. During the 19th century British sailors, whether officially in the Crown's service or acting simply as British subjects, continued to perform formal acts of taking of possession of the territories they claimed for the British Crown. Some examples follow.

160. The British applications instituting proceedings in the *Antarctica cases* mentioned several "acts of annexation by British Nationals" in the contested territories between 1775 and 1843. All of them were formal takings of possession in the name of the Crown.¹³² Between 4 and 8 August 1825, John Crawfurd, British Resident of Singapore, took formal possession of the Island of Singapore and its dependencies, planting the Union Jack and firing a 21 gun salute in different parts of the new settlement.¹³³ On 3 January 1833, Captain Onslow took possession of the Falkland/Malvinas Islands, hoisting the Union Jack and requesting the Argentine officials to withdraw, hauling down their flag.¹³⁴ On 24 May 1842, Lieutenant Lapidge took possession of the island of Bulama, through a military parade, the reading of the official declaration of taking of possession and the hoisting of the British flag.¹³⁵ On 16 October 1849, the British Consul General in Central America, Mr. Frederick Chatfield, took formal possession of the island of El Tigre in the name of the Queen.¹³⁶

161. The contrast with the approach of the British authorities responsible for the construction of Horsburgh Lighthouse is clear. In all the cases in which Britain's intention was the establishment or the assertion of British sovereignty, i.e. on territory ceded by the previous sovereign (as was the case of Singapore), on a territory deemed *terra nullius* (Antarctica) or even considered to be British but occupied by another power (Bulama, Falklands/Malvinas), that act was accomplished in a formal manner, involving

¹³² *ICJ Pleadings, Antarctica Cases (United Kingdom v. Argentina; United Kingdom v. Chile)*, 4 May 1955, paras. 11-13, 51-3.

¹³³ J.H. Moor, *Notices of the Indian Archipelago and Adjacent Countries*, Singapore, 1837, 269-73.

¹³⁴ See correspondence printed in 20 *BFSP* 1197-8.

¹³⁵ See the complete description of the ceremony in 31 *BFSP* 457-8.

¹³⁶ See *Case Concerning Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, *ICJ Reports 1992*, p. 351 at 567, para. 351.

a formal claim of sovereignty, the hoisting of the Union Jack and other manifestations of that intention,¹³⁷ followed by some official proclamation of annexation.

162. Of particular interest are the cases of the Cocos (Keeling) Islands and the Christmas Island. In 1857, Captain Fremantle in command of *HMS Juno* took possession of the Cocos Islands on behalf of the British Crown. In 1878, the British Government authorised its colonial authorities in Ceylon to exercise administrative control over the Cocos (Keeling) Islands. On 1 February 1886, Letters Patent appointed the Governor of the Straits Settlements to be Governor of the Cocos (Keeling) Islands and authorised the transfer of those islands to the Colony of the Straits Settlements.¹³⁸ Ordinance XVIII of 18 September 1903 provided that “for administrative purposes [the Cocos Islands] be incorporated with and form part of the Settlement of Singapore”, quoting the Proclamation of 15 July 1903, by which “the boundaries of the Colony of the Straits Settlements should be extended so as to include the Cocos Islands.”¹³⁹

163. Christmas Island was taken in possession for Great Britain by Captain W.H. May, Commander of *HMS Imperieuse* in 1888. Pursuant to a Proclamation dated 23 May 1900, the island was “annexed” to the Colony of the Straits Settlements on 10 June 1900. By Ordinance No. 14 of 3 August 1900 “Christmas Island shall for administrative purposes be incorporated with and form part of the Settlement of Singapore”.¹⁴⁰

¹³⁷ Such as the deposit of a cylinder in which there was a document taking possession of the territory: see *ICJ Pleadings, Antarctica cases*, 12, 52.

¹³⁸ *Acts and Ordinances of the Legislative Council of the Straits Settlements, from the 1st April 1867 to the 1st June 1886*, compiled by J.A. Harwood, Eyre and Spottiswood, London, 1886, vol. I, 71.

¹³⁹ *Ordinances Enacted by the Governor of the Straits Settlements with the Advice and Consent of the Legislative Council thereof during the Year 1903*, Singapore: Government Printing Office, 1904, 68-9.

¹⁴⁰ *Ordinances Enacted by the Governor of the Straits Settlements with the Advice and Consent of the Legislative Council thereof during the Year 1900*, Singapore: Government Printing Office, 1901, 59-60.

164. Nothing of this sort occurred on Pulau Batu Puteh. The absence of a British act taking possession of Pulau Batu Puteh testifies to the fact that at no time did Britain have the intention of establishing sovereignty over it. Unlike Cocos (Keeling) Islands and Christmas Island, no further incorporation of Pulau Batu Puteh into the Colony of the Straits Settlements by way of Letters Patent, Order in Council, Proclamation or otherwise occurred. At no time did Pulau Batu Puteh become part of the territory of Singapore.

E. Distinction between Ownership of Lighthouses and Sovereignty over Territory

165. The distinction between sovereignty and ownership was well known during the 19th century, and indeed, even before then. The former indicates the *suprema potestas* of the State (*imperium*), the latter a proprietary relationship with regard to land or real estate (*dominium*). While the former is by definition an attribute of the State, the latter can be vested both in private individuals and in governments: in other words, ownership may be public as well as private. Leading authors who were writing around the time of the building of the lighthouse explicitly refer to this possibility. A.W. Heffter wrote in 1855 that:

“the State and the Sovereign may possess or acquire private property both within the State and abroad, in a foreign territory. In this last case, the property cannot detract from the foreign jurisdiction and legislation, unless it has acquired the quality of a State servitude.”¹⁴¹

166. Professor John Westlake, who published between 1853 and 1913, distinguished territorial sovereignty from property, stating that they:

¹⁴¹ A.W. Heffter, *Das europäische Völkerrecht der Gegenwart*, 3rd. ed., Berlin, Schroeder, 1855, 123 (translation by Malaysia); (French version: A.G. Heffter, *Le droit international public de l'Europe*, transl. by J. Bergson, Berlin, Schroeder, Paris, Cotillon, 1857, 141). In the same sense, J.L. Klüber, *Europäisches Völkerrecht*, 2nd ed., Schaffhausen, Furter, 1851, 100, French version: *Droit des gens moderne de l'Europe*, 2nd ed., transl. by M.A.Ott, Paris, Guillaumin, 1874, 132, J.C. Bluntschli, *Das moderne Völkerrecht der civilisirten Staten als Rechtsbuch dargestellt*, Nördlingen, Beck, 1868, “article 277”, 163, French translation: *Le droit international codifié*, transl. by M.C.Lardy, 3rd ed., Paris, Guillaumin, 1881, 175, Rivier, Alphonse, *Principes du droit des gens*, Paris, A. Rousseau, 1896, vol. I, 138.

“play widely different parts in the system of acts and purposes which makes up civilised life, and sometimes they are contrasted with one another in circumstances which would make it very inconvenient to say that a state has the property in its territory.”¹⁴²

He went on to say:

“A government may assume the power to cede land to a foreign state in property as well as in sovereignty, taking on itself the burden of expropriating the private owners”.¹⁴³

167. An important element showing that the distinction between sovereignty and property was envisaged by the parties is their own conventional practice. As depicted in Chapter 4, the first agreements concluded between the East India Company and Johor in 1819 were related to the obtaining by the Company of certain land in Singapore for the establishment of a factory.¹⁴⁴ It was only by the Crawford Treaty of 1824 that Johor transferred sovereignty over the Island of Singapore and its dependencies to the East India Company. It is significant that by this Treaty Johor...

“cede[s] in full sovereignty *and* property to the Honourable the English East India Company, their heirs and successors for ever, the Island of Singapore, situated in the straits of Malacca, together with the adjacent seas, straits, and islets, to the extent of ten geographical miles, from the coast of the said main Island of Singapore.”¹⁴⁵

168. The use of the conjunction “and” shows that the terms “sovereignty” and “property” were not considered synonyms. The ordinary meaning of this phrase is that the cession comprised both sovereignty *and* property of Singapore. The Treaty also dealt specifically with the property of the Sultan and Temenggong, who, it was contemplated, would continue to reside in Singapore. Article VII stipulated that in case they decided to move permanently to their own State, they relinquished to the East India Company “all right and title to every description of immovable property, whether in

¹⁴² Oppenheim, L., ed., *The Collected Papers of John Westlake on Public International Law*, Cambridge, University Press, 1914, 131-2.

¹⁴³ *Ibid.*, 132, fn 1. See also: J. Westlake, *International Law, Part I Peace*, Cambridge, University Press, 1910, 88.

¹⁴⁴ See above, paragraphs 45-47.

¹⁴⁵ Article II, emphasis added. See Annexes, vol. 2, Annex 6.

lands, houses, gardens, orchards or timber trees, of which their said Highnesses may be possessed within the Island of Singapore or its dependencies”.¹⁴⁶

169. Once the construction of the Horsburgh Lighthouse was finished, the conduct of the British authorities was consistent with the distinction between property and sovereignty. What the East India Company claimed was property, not sovereignty. Thus, the Indian Act No. VI of 1852 proclaims:

“The Light-House on Pedra Branca aforesaid shall be called ‘The Horsburgh Light-House,’ and the said Light-House, and the appurtenances thereunto belonging or occupied for the purposes thereof, and all the fixtures, apparatus and furniture belonging thereto, shall become the property of, and absolutely vest in, the East India Company and their successors.”¹⁴⁷

170. This Act does not proclaim sovereignty over Pulau Batu Puteh. Rather it concerns the declaration of property in the lighthouse and its appurtenances. Again, there was no British *animus occupandi* or intention to acquire sovereignty.

171. The practice of Great Britain as well as other States – and the jurisprudence of the Court – testify that the construction and maintenance of lighthouses or other aids to navigation are not *per se* considered manifestations of sovereignty.

172. In the *Minquiers and Ecrehos Case*, the French Government argued that, since 1861 and for more than 75 years, it had assumed the charge of the lighting and buoys of the Minquiers, without having encountered any objection from the United Kingdom. Some of these buoys fell within 3 nm from the Minquiers. The British Government explained its conduct as follows:

“His Majesty’s Government have not objected to the establishment of these buoys, being unwilling, unless in case of absolute necessity and in rebuttal of a direct claim of right, to assert British sovereignty in

¹⁴⁶ Article VII, Crawford Treaty 1824.

¹⁴⁷ See Annexes, vol. 3, Annex 84.

opposition to a work of public utility which *per se* prejudiced in no way British interests.”¹⁴⁸

The Court said:

“such acts can hardly be considered as sufficient evidence of the intention of that Government to act as a sovereign over the islets; nor are those acts of such a character that they can be considered as involving a manifestation of State authority in respect of the islets.”¹⁴⁹

Indeed, the main purpose of those French constructions was to assist navigation to the French ports of the mainland.

173. The *Eritrea/Yemen* arbitration is a striking case on the impact of the establishment or maintenance of lighthouses on sovereignty. The Arbitral Tribunal presided over by Sir Robert Jennings rejected the assertions that the establishment or maintenance of lighthouses constituted acts of sovereignty. As the arbitral award affirms:

“The operation or maintenance of lighthouses and navigational aids is normally connected to the preservation of safe navigation, and not normally taken as a test of sovereignty. Maintenance on these islands of lighthouses by British and Italian companies and authorities gave rise to no sovereign claim or conclusions.”¹⁵⁰

174. This case is also relevant to show that Britain did not hesitate to propose the construction and the maintenance of lighthouses in territories under other States’ sovereignty during the 19th century and even at the beginning of the 20th century. The sole purpose of this practice was to assist navigation in areas of the seas of particular interest for British trade.¹⁵¹ The acquisition of sovereignty was not at issue. Nor did Britain try later to invoke the existence and maintenance of these lighthouses as a means of establishing sovereignty.

¹⁴⁸ Extract from Foreign Office Memorandum of 17 August 1905 to the French Government cited by the United Kingdom in its Reply, 3 November 1952. *ICJ Pleadings, The Minquiers and Ecrehos Case, United Kingdom/France*, vol. 1, 555.

¹⁴⁹ *Minquiers and Ecrehos Case, ICJ Reports 1957*, p. 47 at 71.

¹⁵⁰ *Yemen-Eritrea Arbitration, Phase One: Territorial Sovereignty and the Scope of the Dispute*, 9 October 1998, 114 ILR 1, 88, para. 328.

¹⁵¹ *Ibid.*, 61-6, paras. 203-224.

175. This jurisprudence has been confirmed by the judgment of the Court in the *Ligitan and Sipadan* case, in which this Court observed that “the construction and operation of lighthouses and navigational aids are not normally considered manifestations of State authority”.¹⁵² Recalling its previous decision in the *Qatar v. Bahrain* case, the Court affirmed that “[t]he construction of navigational aids... can be legally relevant in the case of very small islands”.¹⁵³ The Court decided in favour of Malaysia not merely on account of the construction of the lighthouses. It included this fact amongst other activities including legislative, administrative and quasi-judicial acts, showing “a pattern revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands.”¹⁵⁴ But the impact of the Horsburgh Lighthouse with regard to sovereignty over Pulau Batu Puteh is completely different from that of the lighthouses operated on Pulau Ligitan and Pulau Sipadan. On Ligitan and Sipadan, Malaysia and their predecessors constructed and operated the lighthouses because they considered they were performing acts on territories they regarded as falling under their sovereignty. In respect of Pulau Batu Puteh, by contrast, an authorisation to erect the lighthouse was requested from the sovereign of the territory. On Ligitan and Sipadan, the maintenance of the lighthouses was coupled with the public display of state activity on other fronts, in particular, control over natural resources. On Pulau Batu Puteh, no evident exercise of sovereignty accompanied the construction and maintenance of Horsburgh Lighthouse.

176. As was demonstrated in Chapter 5, Pulau Batu Puteh was not *terra nullius*, but part of Johor’s territory. There is not a single piece of evidence in the history of the construction of the Horsburgh Lighthouse that this edifice was considered or perceived either as being constructed on British territory or as a further acquisition of sovereignty over territory. The only goal pursued was to facilitate navigation. Upon constructing the lighthouse, all that the East India Company acquired was the property therein.

¹⁵² *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan, Indonesia/Malaysia*, Judgment, Merits, 17 December 2002, para. 147.

¹⁵³ *Ibid.*, citing *Qatar v. Bahrain*, para. 197.

¹⁵⁴ *Ibid.*, para 148.

F. Conclusions

177. The material presented above demonstrates that:
- (a) The initiative to erect the Horsburgh Lighthouse was a private one, without any link whatsoever to matters of sovereignty, in order to honour the hydrographer and to aid navigation.
 - (b) Pulau Batu Puteh was envisaged as the most likely location of the lighthouse from the very beginning and at every stage of the decision-making process.
 - (c) The British authorities sought and obtained consent from the Temenggong and the Sultan of Johor for the construction of the lighthouse at the entrance of the China Sea in the Strait of Singapore, because Johor was sovereign in that region.
 - (d) That authorisation included Pulau Batu Puteh.
 - (e) The construction of the lighthouse was neither accompanied nor followed by a taking of possession of the island on behalf of the British Crown.
 - (f) No other claim of sovereignty was advanced on behalf of the British Crown.
 - (g) The mere construction and maintenance of the lighthouse does not constitute an act of, nor display of, sovereignty; nor does it imply *animus occupandi*.
 - (h) The East India Company acquired ownership of the Horsburgh Lighthouse, but not sovereignty over Pulau Batu Puteh.
 - (i) Consequently, Johor retained its sovereignty over Pulau Batu Puteh after the construction of Horsburgh Lighthouse.

Chapter 7

THE CONDUCT OF THE PARTIES SUPPORTS MALAYSIA'S TITLE

Introduction

178. In Chapters 4 – 6 of this Memorial, Malaysia addressed the basis of its claim to title over Pulau Batu Puteh. This rests on Johor's original title to the island and Malaysia's succession thereto. At no time did Johor, either by act or by omission, alienate its sovereignty over the island, including in the course of the exchanges leading to the construction of the Horsburgh Lighthouse. On the contrary, the granting by Johor of permission for the construction of the lighthouse was itself a sovereign act.

179. Nor was any claim to sovereignty over Pulau Batu Puteh made by Singapore in the period following the granting of permission for the construction of the lighthouse. Indeed, no suggestion was made at any time that title to the island rested anywhere other than with Johor. Thus, at the point at which Johor joined the Malayan Union in 1946 it had neither alienated sovereignty over Pulau Batu Puteh nor been faced with a competing claim to title.

180. The salient point is that, in the period following the granting of permission for the construction of the lighthouse in 1844 right up to the point of the crystallisation of the dispute in 1980, Singapore neither claimed sovereignty over Pulau Batu Puteh nor, in its management of the lighthouse, acted in any way outside the scope of the permission. Malaysia's original title was never questioned. As this chapter will show, Singapore's conduct prior to 1980 is fully consistent with, and in no way overrides, Malaysia's title over the island. Malaysia's conduct, too, confirms this appreciation.

181. On 21 December 1979, Malaysia published a map indicating the extent of its territorial waters and continental shelf. As earlier maps had done, this map showed Pulau Batu Puteh as part of Malaysia.¹⁵⁵ Singapore objected to this map by a Diplomatic Note dated 14 February 1980.¹⁵⁶ This was the first time that Singapore asserted a claim of title of its own. Since this date – which, as noted in Chapter 2, constitutes the point of crystallisation of the dispute between the Parties and hence the critical date for purposes of these proceedings – Singapore has assiduously objected to Malaysian conduct relative to Pulau Batu Puteh on grounds that the island belongs to Singapore. The multiple Diplomatic Notes sent by Singapore to Malaysia on this issue in the period February 1980 - January 2004 are listed in Annex 82.¹⁵⁷ Throughout Malaysia has firmly rejected Singapore's claims to sovereignty.

182. Given the recent character of Singapore's claim to Pulau Batu Puteh, it is not surprising that it has publicly objected to Malaysia's conduct relative to the island in the period since the dispute crystallised. What is striking, however, is that in the 136 years between the 1844 granting of permission by Johor to the British authorities in Singapore to build a lighthouse on Pulau Batu Puteh and Singapore's Note of 1980, Malaysia has been unable to discover even a single protest by Singapore (or its antecedent authorities) concerning Malaysian conduct relative to Pulau Batu Puteh or any claim by Singapore itself to title. This absence of protest or claim is evidence of Singapore's understanding during this 136 year period that title to Pulau Batu Puteh remained in Johor and, by succession, in Malaysia.

183. The present Chapter examines developments since the late 19th century, including constitutional developments and official descriptions of Singapore, and Singapore's practice relevant thereto, as well as examples of Malaysian conduct relative to Pulau Batu Puteh. As will be shown, this is all confirmatory of Malaysia's claim to title.

¹⁵⁵ Map Atlas, Map 44.

¹⁵⁶ Annexes, vol. 3, Annex 80.

¹⁵⁷ Annexes, vol. 3, Annex 82.

184. Although aspects of Singapore's conduct will be addressed in this Chapter, Malaysia will not attempt to anticipate arguments that Singapore may advance in its Memorial. Such as they may be, they will be addressed in due course in Malaysia's Counter-Memorial.

A. The Legal Framework for Considering the Conduct of the Parties

185. A preliminary observation is necessary to frame the subsequent discussion. The context for this observation is the close, often intertwined, relationship between Malaysia and Singapore over two centuries.

186. International law will be slow to presume either the abandonment of title or the displacement of the sovereignty of the original titleholder in the absence of clear evidence to this effect. The principle is illustrated by the *Case Concerning Sovereignty Over Certain Frontier Land (Belgium/Netherlands)*, where the Court rejected the contention that Belgian sovereignty derived from a treaty of 1843 had been displaced by subsequent conduct by the Netherlands on the following grounds:

“The weight to be attached to the acts relied upon by the Netherlands must be determined against the background of the complex system of intermingled enclaves which existed. The difficulties confronting Belgium in detecting encroachments upon, and in exercising, its sovereignty over these two plots, surrounded as they were by Netherlands territory, are manifest. The acts relied upon are largely of a routine and administrative character performed by local officials and a consequence of the inclusion by the Netherlands of the disputed plots in its Survey, contrary to the Boundary Convention. *They are insufficient to displace Belgian sovereignty established by that Convention.*”¹⁵⁸

187. Two propositions of general application emerge from this analysis. First, there is a presumption against the easy abandonment or displacement of title to territory. A claim based on the abandonment of sovereignty requires proof of an intent to abandon on

¹⁵⁸ *Case Concerning Sovereignty Over Certain Frontier Land*, ICJ Reports 1959, p. 209 at 229, emphasis added. See also the *Clipperton Island* case in which the Arbitrator upheld France's claim to title notwithstanding the absence of conduct since France had “never had the *animus* of abandoning the island”. *Arbitral Award on the Subject of the Difference Relative to the Sovereignty over Clipperton Island*, (1932) 26 AJIL 390, 394.

the part of the original titleholder. A claim based on the displacement of sovereignty requires evidence of conduct on the part of the putative successor that is manifest, extensive and official, and is, in all the circumstances of the case, opposable to the original titleholder. Second, the nature of the relationship between the parties and the character of the territory in question will be material to an assessment of the weight to be attributed to conduct that is claimed to be *à titre de souverain*. Conduct “of a routine and administrative character” will not be sufficient to found title particularly in (a) circumstances in which such conduct may be explained by reference to the intertwined nature of the relationship between the parties and the character of the territory in contention, or (b) where such conduct is undertaken pursuant to permission granted by the territorial sovereign. Conduct performed in such circumstances cannot provide any basis for a claim to title.

188. Johor’s title to the neighbouring islands, including Pulau Batu Puteh, was confirmed by the 1824 Anglo-Dutch Treaty and by the 1824 Crawford Treaty which specified the boundary limits of the Island of Singapore. Pulau Batu Puteh fell well outside the area constituting the territory of Singapore under these treaties and remained with the Sultanate of Johor. There is no evidence of any *animus* to abandon that title by Johor or Malaysia. Nor is there evidence of conduct by Singapore sufficient to displace that title. On the contrary, Singapore’s practice prior to 1980 acknowledges Malaysian sovereignty.

B. Constitutional Developments and Official Descriptions of Singapore and Malaysia

189. Chapter 4 described the historical background of the Sultanate of Johor, the emergence of the Island of Singapore as a separate administrative entity during the early decades of the 19th century and the creation of the Straits Settlements (including Singapore), initially by the English East India Company in 1826 and subsequently, in 1866, as a Crown Colony administered by the Colonial Office in London. The Straits Settlements remained a separate Crown Colony throughout the latter part of the 19th

century and into the first half of the 20th century. Throughout this period, Johor retained its sovereign status:

(i) *The Straits Settlements and Johore Territorial Waters Agreement, 1927*

190. The boundary between the territorial waters of the "Settlement of Singapore" and those of Johor was described in detail in the Straits Settlements and Johore Territorial Waters Agreement, 19 October 1927 ("the 1927 Agreement").¹⁵⁹ The object of the 1927 Agreement, which in its preambular paragraphs referred expressly to the 1824 Crawford Treaty, was to retrocede back to Johor "certain of the said seas, straits and islets" that had originally been ceded by Johor to the English East India Company. This was achieved by Articles II and III of the 1927 Agreement. The retrocession arrangements did not concern Pulau Batu Puteh as the island was never part of the territory of Singapore.

191. Article I of the 1927 Agreement defined the boundary between the territorial waters of the Settlement of Singapore and those of the State and Territory of Johor in the following terms:

"The boundary between the territorial waters of the Settlement of Singapore and those of the State and Territory of Johore shall, except as hereafter specified in this Article, be an imaginary line following the centre of the deep-water channel in Johore Strait, between the mainland of the State and Territory of Johore on the one side and the Northern Shores of the Islands of Singapore, Pulau Ubin, Pulau Tekong Kechil, and Pulau Tekong Besar on the other side. Where, if at all, the channel divides into two portions of equal depth running side by side, the boundary shall run midway between these two portions. At the Western entrance of Johore Strait, the boundary, after passing through the centre of the deep-water channel Eastward of Pulau Merambong, shall proceed seaward, in the general direction of the axis of this channel produced, until it intersects the 3-mile limit drawn from the low water mark of the South Coast of Pulau Merambong. At the Eastern entrance of Johore Strait, the boundary shall be held to pass through the centre of the deep-water channel between the mainland of Johore, Westward of Johore Hill, and Pulau Tekong Besar, next through the centre of the deep-water channel between Johore Shoal and the mainland of Johore, Southward of Johore Hill, and finally turning Southward, to intersect the 3-mile limit

¹⁵⁹

Annexes, vol. 2, Annex 12.

drawn from the low water mark of the mainland of Johore in a position bearing 192 degrees from Tanjong Sitapa.”¹⁶⁰

A version of the map attached to the 1927 Agreement showing the arc of the boundary definition is reproduced opposite as **Insert 17**.

192. Pulau Batu Puteh lies some 25.5 nm from the nearest point on Singapore’s coast. It was not included within the territorial waters of the Settlement of Singapore pursuant to the 1927 Agreement. If there had been any understanding at that time that Pulau Batu Puteh was part of the territory of the Settlement of Singapore, this could have been easily reflected in the terms of the Agreement. The 1927 Agreement, with its link back to the 1824 territorial arrangements of the Crawford Treaty, is evidence of the continuing appreciation that Pulau Batu Puteh and its surrounding waters were not part of the territory of Singapore.

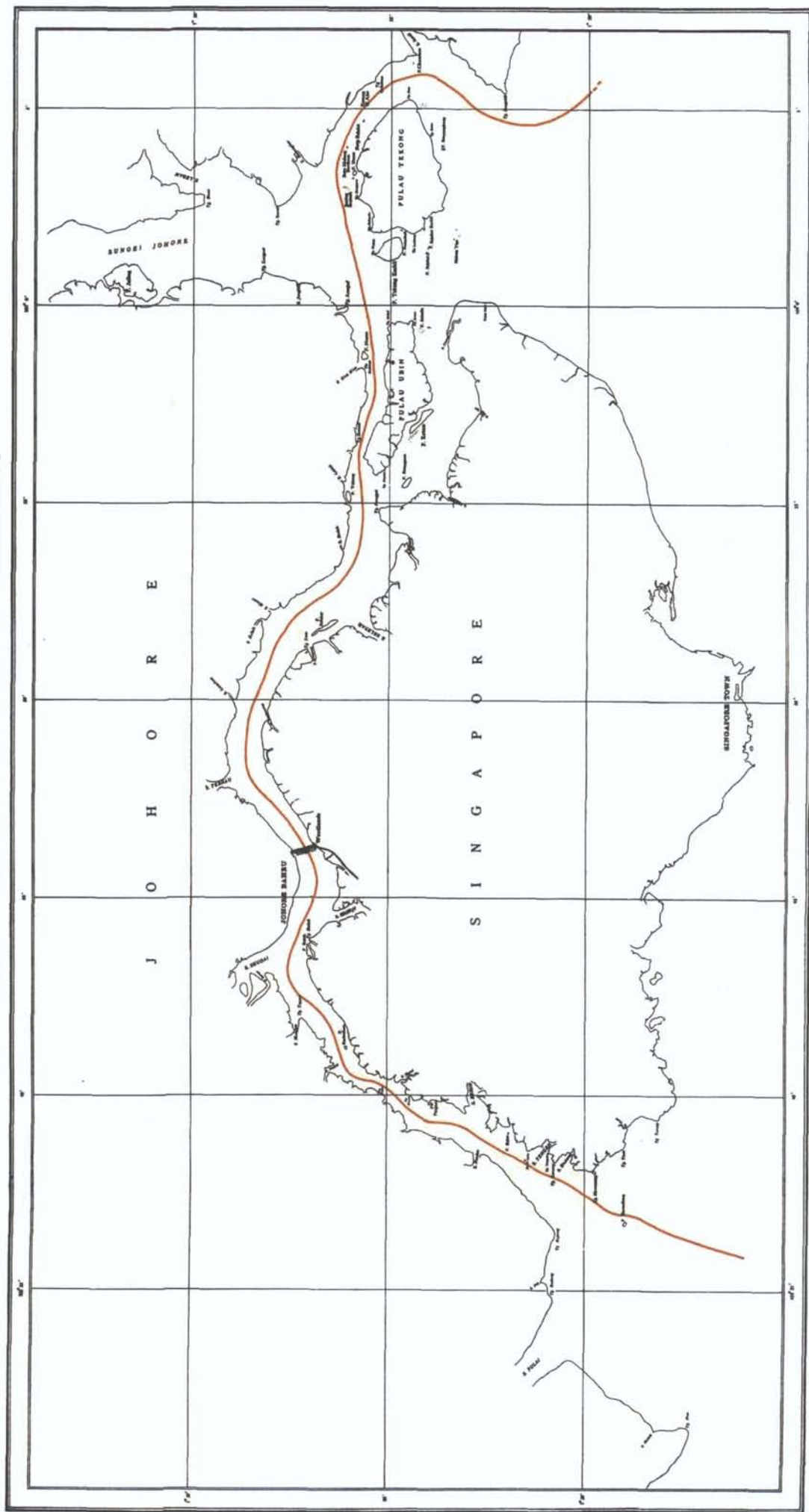
(ii) *Establishment of the Colony of Singapore, 27 March 1946*

193. After the Second World War, the Colony of the Straits Settlements (including the Island of Singapore, Penang and Malacca) was dissolved. Singapore was established as a separate entity, becoming the Crown Colony of Singapore. The Singapore Colony Order in Council 1946 defined “the Settlement of Singapore” as “the Island of Singapore and its dependencies, Christmas Island, the Cocos or Keeling Islands, and all islands and places which, on the fifteenth day of February, 1942, were known and administered as part of such Settlement, and the territorial waters adjacent thereto”.¹⁶¹ This definition may be contrasted with that given for the “Settlement of Singapore” in section 2 of the Transfer of Powers and Interpretation Ordinance 1946, as including...

¹⁶⁰ Straits Settlements and Johore Territorial Waters Agreement, 19 October 1927, Article I: Annexes, vol. 2, Annex 12.

¹⁶¹ Singapore Colony Order in Council, 1946 (UK), *SR & O and SI revised to December 31, 1948*, vol. XXI, s. 2(1): Annexes, vol. 3, Annex 92.

MAP ANNEXED TO THE 1927 AGREEMENT



“the town and island of Singapore, all other islands heretofore administered as part of the Settlement of Singapore, and all British waters adjacent thereto, but does not include the Cocos Islands and North Keeling Island.”¹⁶²

By section 4 of the Transfer of Powers and Interpretation Amendment Ordinance 1948, the definition of the “Colony” of Singapore was amended to read:

“‘Colony’ includes the Island of Singapore and its dependencies, the Cocos or Keeling Islands, Christmas Island, and all British and territorial waters adjacent thereto”.¹⁶³

There is no suggestion in these descriptions that the territorial limits of Singapore were any different from those described in Article I of the 1927 Agreement. Pulau Batu Puteh was not in any way part of this Settlement.

(iii) *The Curfew Order of 1948*

194. The territorial limits of Singapore falling within the boundary arc of the 1927 Agreement were explicitly reflected in later developments contemporaneous with the establishment of the Colony of Singapore. For example, on 21 July 1948, in response to civil unrest in the Colony, the Singapore Commissioner of Police made the Curfew (Johore Straits) (Singapore) Order 1948 which imposed a curfew “within the boundary of the territorial waters of the Island of Singapore”. Paragraph 2 of the Order provided that:

“No person shall be within the area specified in the Schedule hereto between the hours of 6.30 P.M. and 6.30 A.M. unless in possession of a written permit in that behalf issued by a police officer of or above the rank of Inspector.”¹⁶⁴

195. The evident intention was to restrict movement anywhere on Singapore territory – including within its territorial waters – during the hours of darkness for purposes of combating civil unrest.

¹⁶² Annexes, vol. 3, Annex 93.

¹⁶³ Annexes, vol. 3, Annex 94.

¹⁶⁴ The Curfew (Johore Straits) (Singapore) Order, 1948, para. 2: Annexes, vol. 3, Annex 95.

196. The Schedule to the Order went on to describe the “area lying within the boundary of the territorial waters of the Island of Singapore” by reference to virtually the precise language of the 1927 Agreement as follows:

“All that area lying within the boundary of the territorial waters of the Island of Singapore, that is, within an imaginary line following the centre of the deep-water channel in Johore Strait between the mainland of the State and territory of Johore on the one side and the northern shores of the Islands of Singapore, Pulau Ubin, Pulau Tekong Kechil and Pulau Tekong Besar on the other side. Where, if at all, the channel divides into two portions of equal depth running side by side, the boundary shall run midway between these two portions. At the western entrance of Johore Strait, the boundary, after passing through the centre of the deep-water channel eastward of Pulau Merambong, shall proceed seaward in the general direction of the axis of this channel produced, until it intersects the three-mile limit drawn from the low-water mark of the south coast of Pulau Merambong.

At the Eastern entrance of Johore Strait, the boundary shall be held to pass through the centre of the deep-water channel between the mainland of Johore, westward of Johore Hill, and Pulau Tekong Besar, next through the centre of the deep-water channel between Johore Shoal and the mainland of Johore, southward of Johore Hill, and finally turning southward to intersect the three-mile limit drawn from the low-water mark of the mainland of Johore in a position bearing 192° from Tanjong Sitapa.”

197. The scope of the Curfew Order expressly covered the land territory and territorial waters of Singapore and was evidently drafted with care. Pulau Batu Puteh and its surrounding waters did not come within the scope of the Order. The appreciation of 1927, that Pulau Batu Puteh was not part of the territory of Singapore, thus remained in 1948. Indeed, insofar as Malaysia has been able to discover, there is nothing in the considerable number of British and Singapore legislative measures which contain detailed geographic descriptions and definitions of Singapore that includes Pulau Batu Puteh within the territorial scope of Singapore.

(iv) *Establishment of the Malayan Union and the Federation of Malaya*

198. On the same date as the Colony of Singapore was established on 27 March 1946, the Malayan Union was established by the Malayan Union Order in Council 1946. By this Order, the Malayan Union was described as “comprising the Malay States and the

Settlement of Malacca and the Settlement of Penang”.¹⁶⁵ The Malay States, for this purpose, comprised both the Federated Malay States, of Perak, Selangor, Negri Sembilan and Pahang, and the Unfederated Malay States, of Kedah, Perlis, Kelantan, Trengganu and Johore.¹⁶⁶ By operation of this Order, the territory of the Sultanate of Johor, which included Pulau Batu Puteh, became part of the Malayan Union.

199. By the Federation of Malaya Agreement of 21 January 1948, the Malayan Union was replaced by the Federation of Malaya.¹⁶⁷ This comprised the “Malay States”, defined in the Agreement as “the States of Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan and Trengganu and all dependencies, islands and places which, on the first day of December, 1941, were administered as part thereof, and the territorial waters adjacent thereto”.¹⁶⁸ By this Agreement, Johor (including Pulau Batu Puteh) became part of the Federation of Malaya.

200. By the Federation of Malaya Agreement of 5 August 1957, Article 3 provided that “As from the thirty-first day of August, nineteen hundred and fifty-seven, the Malay States and the Settlements shall be formed into a new Federation of States by the name of Persekutuan Tanah Melayu, or in English, the Federation of Malaya.....”.¹⁶⁹ For purposes of the reformed Federation, “the Malay States” were defined in Article 2 of the Agreement as “the States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and all dependencies, islands and places which, immediately before the thirty-first day of August, nineteen hundred and fifty-seven, are administered as part thereof, and the territorial waters adjacent thereto”. By this Agreement, Johor (including Pulau Batu Puteh) remained part of the Federation of Malaya.

¹⁶⁵ Malayan Union Order in Council, 1946, No. 463 of 1946, section 3: Annexes, vol. 3, Annex 91, see also S R & O 1946, vol. I, 543.

¹⁶⁶ Malayan Union Order in Council 1946, recital 2: Annexes, vol. 3, Annex 91.

¹⁶⁷ Federation of Malaya Agreement 1948, recitals 1 & 4: Annexes, vol. 3, Annex 96.

¹⁶⁸ Federation of Malaya Agreement 1948, Article 2(1): Annexes, vol. 3, Annex 96.

¹⁶⁹ Federation of Malaya Agreement 1957, Article 3: Annexes, vol. 3, Annex 100.

(v) *Establishment of the State of Singapore, 1 August 1958*

201. The definition of “Colony of Singapore” was first given in section 2 of the Interpretation and General Clauses Ordinance 1951:

“the Island of Singapore and its dependencies, the Cocos or Keeling Islands, Christmas Island, and all British and territorial waters adjacent thereto”.¹⁷⁰

202. This definition was amended by section 2(1)(d) of the Interpretation and General Clauses (Amendment) Ordinance 1952 to read:

“the Island of Singapore and its dependencies, the Cocos or Keeling Islands, Christmas Island, and all British waters adjacent thereto, and shall be deemed to include territorial waters.”¹⁷¹

In fact maps published by the Surveyor General’s Office in Singapore and entitled “Island of Singapore and its Dependencies” consistently showed only the immediately surrounding islands and not Pulau Batu Puteh.¹⁷²

203. On 1 August 1958, by the State of Singapore Act, provision was made for the establishment of the State of Singapore. Section 1(1) of the Act describes the “State of Singapore” as comprising “the territories included immediately before the passing of this Act in the Colony of Singapore”.¹⁷³

204. By the Interpretation and General Clauses (Amendment) Ordinance 1960, the definitions of “Colony” and “Colony of Singapore” in the principal Ordinance were deleted and the following definitions of “Singapore” and “State of Singapore” substituted: “the State of Singapore established under the State of Singapore Act, 1958, and shall be deemed to include the Island of Singapore and all islands and places which on the 2nd day of June, 1959, were administered as part of the Colony of Singapore and

¹⁷⁰ Interpretation and General Clauses Ordinance 1951, s. 1: Annexes, vol. 3, Annex 97.

¹⁷¹ Interpretation and General Clauses (Amendment) Ordinance 1952, s. 2(1)(d): Annexes, vol. 3, Annex 98.

¹⁷² See, e.g., the map of 1898: Map Atlas, Map 13, and see also Maps 8, 12, 14.

¹⁷³ State of Singapore Act, 1958, s. 1(1): Annexes, vol. 3, Annex 103.

all territorial waters adjacent thereto”.¹⁷⁴ This definition of Singapore was repeated in section 2(1) of the Interpretation Act 1965.¹⁷⁵

(vi) *Malaysia and Singapore, 1963–1965*

205. By an Agreement Relating to Malaysia dated 9 July 1963 between the Federation of Malaya, the United Kingdom, North Borneo, Sarawak and Singapore, the Federation of Malaysia was established.¹⁷⁶ This was given effect by Malaysia Acts of 1963 by both the Malaya and United Kingdom Parliaments.¹⁷⁷ Section 4 of the Malaysia Act 1963 of the Federation of Malaya addressed the States and territories of the Federation in the following terms:

- “(1) The Federation shall be known, in Malay and in English, by the name Malaysia.
- (2) The States of the Federation shall be –
 - (a) the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu; and
 - (b) the Borneo States, namely, Sabah and Sarawak; and
 - (c) the State of Singapore.
- (3) The territories of each of the States mentioned in Clause (2) are the territories comprised therein immediately before Malaysia Day.”

206. The State of Singapore, which had become part of the Federation of Malaysia on 16 September 1963, left the Federation on 9 August 1965 to become an independent Republic. These events did not affect the territorial extent of Singapore, or the property rights of Singapore in Malaysian territory.

¹⁷⁴ Interpretation and General Clauses (Amendment) Ordinance 1960, s. 2(1)(b): Annexes, vol. 3, Annex 104.

¹⁷⁵ Interpretation Act 1965 (Singapore): Annexes, vol. 3, Annex 109.

¹⁷⁶ Agreement Relating to Malaysia, 9 July 1963: Annexes, vol. 2, Annex 14.

¹⁷⁷ Malaysia Act 1963 (Federation of Malaya): Annexes, vol. 3, Annex 106; Malaysia Act 1963 (UK): Annexes, vol. 3, Annex 107.

(vii) The phrase “islands... administered as part of the Colony of Singapore”

207. It might be argued that the reference to “islands... administered as part of the Colony of Singapore” in the various instruments cited must be read to include Pulau Batu Puteh as Singapore operated the Horsburgh Lighthouse. Any such argument would be flawed for a number of reasons.

208. First, Singapore did not administer the island: it managed and controlled the lighthouse. As already noted, the construction and operation of a lighthouse is not determinative of sovereignty.¹⁷⁸

209. Second, even if Singapore might be said to have administered the island, it did not administer it as part of its territory but simply in consequence of its management and control of the Horsburgh lighthouse.

210. Third, there is no suggestion, prior to the crystallisation of this dispute, that Singapore itself took the view that Pulau Batu Puteh formed part of Singapore on the ground of its management of the Horsburgh Lighthouse. On the contrary, official publications of the Government of Singapore which describe the territory of Singapore are notable for the absence of any reference to Pulau Batu Puteh amongst the approximately 60 islands that are included in descriptions of the territory of Singapore.

211. One such publication is the official series entitled *Singapore Facts and Pictures* published by the Singapore Ministry of Culture. Its 1972 edition opens by noting that “Singapore consists of the Island of Singapore and some 54 small islands within its territorial waters.”¹⁷⁹ A footnote to this sentence refers the reader to Appendix I of the publication, entitled “Islands Within Territorial Waters”. This in turn lists the small islands in question, noting that they “are under the administration” of a “District Officer (Islands)” or of the “Commissioner of Lands” depending on whether they are “Southern

¹⁷⁸ See paragraphs 171-176 above.

¹⁷⁹ *Singapore Facts and Pictures, 1972*, Singapore Ministry of Culture, Singapore, 148: Annexes, vol. 3, Annex 79.

Islands” or “Northern and other islands”. The list of islands, which also includes details of their area in acres and in square metres, is as follows:

“Pulau Brani	Pulau Satumu
Sentosa	Pulau Salu
Pulau Selegu (Sarong Island)	Pulau Berkas
Pulau Hantu	Pulau Senang
Pulau Sekijang Pelepah	Pulau Seraya
Pulau Sekijang Bendera (St. John’s Island)	Pulau Seburus Dalam
Pulau Kusu (Peak Island)	Pulau Seburus Luar
Pulau Tekukor	Pulau Mesemut Laut
Pulau Bukom Besar	Pulau Mesemut Darat
Pulau Bukom Kechil	Pulau Ayer Merlimau
Pulau Ular	Pulau Pesek
Pulau Busing	Pulau Meskol
Pulau Hantu Besar	Pulau Buaya
Pulau Hantu Kechil	Pulau Ayer Merbau
Pulau Semakau	Pulau Ayer Chawan
Pulau Sekeng	Pulau Sakra
Pulau Jong	Pulau Bakau
Pulau Sebarok	Pulau Semulon
Pulau Sudong	Pulau Damar Laut
Pulau Pawai	Sisters’ Islands (2)
Pulau Biola	

Northern and Other Islands

Pulau Tekong Kechil
Pulau Tekong Besar
Pulau Pergam
Pulau Merawang
Pulau Seletar
Pulau Serangoon
Pulau Ketam
Pulau Sanyonkong
Pulau Sajahat
Pulau Ubin”¹⁸⁰

Reef Islands

Sajahat Kechil
Sekudu
Unum (formerly Umin)
Bajau (formerly Bajan)
Malang Panpan
Batu Belalai
Malang Saijar (formerly
Melang Saijao)

212. It is notable that this list of islands forming part of Singapore includes islands which are even smaller than Pulau Batu Puteh, islands that are uninhabited and islands on which lighthouses are constructed. Notable by its absence from this list, however, given Singapore’s present claim to title, is Pulau Batu Puteh (or Pedra Branca). It continued to be absent from the list of Singapore islands published in successive editions

¹⁸⁰ *Singapore Facts and Pictures, 1972, Appendix I, 149-150: Annexes, vol. 3, Annex 79.*

of this book. It was only in 1992, long after the present dispute had arisen, that Pedra Branca was first referred to.¹⁸¹ Both its absence from the earlier lists and its inclusion in lists from 1992 attest to an absence of any belief on the part of Singapore, before 1992, that Pulau Batu Puteh was part of Singapore.

213. This series listing the islands which form part of the territory of Singapore is not the only official publication of Singapore which fails to make any reference to Pulau Batu Puteh/Pedra Branca. In 1953, the *Annual Report of the Rural Board of Singapore*, published by the Colony of Singapore, opened with a General Review which noted that:

“THE AREA controlled by the Board was enlarged during the year, vide *Gazette Notification No. S 188* published on 19th June, 1953, to include all the other small neighbouring islands whether inhabited or not, falling within the territorial waters of the Colony of Singapore.”¹⁸²

214. The Report went on to list in detail all the islands which came within the area controlled by the Board. Those added in 1953 were listed in italics in the Report, which read as follows:

“The Rural Board area at the end of the year comprised the following, the additional islands brought into the Rural Board area during the year being shown in italics: that portion of Singapore Island outside Municipal Limits and also the outlying islands of Pulau Ubin, Pulau Tekong, Pulau Brani, Pulau Sebarok, Pulau Blakang Mati, Pulau Sudong, Pulau Pesek, Pulau Merlimau, Pulau Ayer Chawan, Pulau Sakra, Pulau Seraya, Pulau Seburus Luar, Pulau Seburus Dalam, Pulau Mesemut Darat, Pulau Mesemut Laut, Pulau Bukom Kechil, Pulau Bukom Besar, *Pulau Hantu, Pulau Batu Berduan, Pulau Chichir, Pulau Damar Laut, Pulau Peropok, Pulau Semulun, Pulau Merawang, Pulau Pergam, Pulau Sarimbun, Pulau Seletar, Pulau Serangoon, Pulau Kitam, Pulau Sekudu, Pulau Tekong Kechil, Pulau Sajahat, Pulau Sunjungkong, Pulau Unum, Pulau Semecheck, Pulau Batu Belalai, Pulau Selegu, Pulau Tekukor, Pulau Sakijang Bendera, Pulau Sakijang Pelepah, Pulau Tembaku, Pulau Subar Laut, Pulau Subar Darat, Pulau Busing, Pulau Ular, Pulau Jong, Pulau Sakeng, Pulau Semakau, Pulau Salu, Pulau Berkas, Pulau Pawai, Pulau Senang, Pulau Biola and Pulau Satumu* including the foreshore contiguous to the said portion and to the said islands, the whole subject to specified sections of the Municipal

¹⁸¹ *Singapore Facts and Pictures*, 1992, 1, 178: Annexes, vol. 3, Annex 83.

¹⁸² *Annual Report of the Rural Board Singapore*, 1953, p. 1, emphasis added: Annexes, vol. 3, Annex 71.

Ordinance (Chapter 133) and the whole of the main Island outside City Limits together with the Islands of Pulau Tekong and Pulau Ubin – the Building Control area – to additional sections.”¹⁸³

215. The same list of islands was repeated in subsequent Annual Reports of the Rural Board at least up to 1956.¹⁸⁴ No reference is made to Pulau Batu Puteh in any of these lists.

216. The Rural Board of Singapore was not responsible for the management of lighthouses within the Colony of Singapore.¹⁸⁵ It is striking, however, that the above list includes islands with lighthouses, such as Pulau Satumu; it also includes islands which were uninhabited. The language of the 1953 Report is plain. The intention behind the enlarged geographical competence of the Rural Board in 1953 was to include all the islands falling within the territorial waters of the Colony of Singapore. Pulau Batu Puteh was not included amongst them. There is no trace of any belief on the part of Singapore, throughout this period, that Pulau Batu Puteh was an island belonging to Singapore .

217. The list of islands produced by the Rural Board assumes greater significance when it is placed alongside the antecedent territorial descriptions of Singapore in the 1927 Agreement¹⁸⁶ and the Curfew (Johore Straits) (Singapore) Order 1948,¹⁸⁷ and the subsequent lists of islands in *Singapore Facts and Pictures* in 1972 and following.¹⁸⁸ All were official texts carrying the imprimatur of the Government of Singapore. In none of these cases was there even any hint of a suggestion that Pulau Batu Puteh formed part of the territory of Singapore.

¹⁸³ Ibid.

¹⁸⁴ See, e.g., *Annual Report of the Rural Board of Singapore, 1956*, p. 1: Annexes, vol. 3, Annex 72.

¹⁸⁵ The *Colony of Singapore Annual Report 1954*, 216 describes the Rural Board as follows: “The Rural Board ... is the local authority outside the city area ... The Board carries out in its area some of the local government functions which are performed by the City Council in the city area. It also has powers similar to the City Council for the levying of rates and the making of by-laws and is subject to the same control by the Governor in Council.”

¹⁸⁶ See paragraphs 190-192 above.

¹⁸⁷ See paragraphs 194-197 above.

¹⁸⁸ See paragraph 211 above.

218. As this account shows, Singapore has had a consistent and highly detailed appreciation of the extent of its territory. The four documents noted in the preceding paragraph span a 53 year period straddling the crucial developments in the transition of Singapore from (a) the Settlement of Singapore, part of the Straits Settlements, prior to 1946, to (b) the Colony of Singapore from 1946 to 1958, to (c) the State of Singapore, from 1958 to 1963, through (d) the period of Singapore's participation as part of the Federation of Malaysia between 1963–1965, to (e) the Republic of Singapore, from the point of Singapore's exit from the Federation of Malaysia in 1965 to the period immediately prior to Singapore's objection to Malaysia's map on 14 February 1980. Throughout this 53 year period, in which the authorities in Singapore have evidently paid very close attention to the extent of their territory, there was never any indication that Pulau Batu Puteh was part of Singapore.

C. Bilateral Conduct Confirmatory of Malaysian Title

219. Three examples of the conduct of the Parties in a bilateral context warrant mention. The first, the 1927 Agreement, has already been mentioned but requires further brief comment. The second concerns the management of the system of Straits Lights. The third is an exchange of correspondence of 1953. The bilateral nature of the conduct is material and it shows that the absence of any perception on Singapore's part that it had title to Pulau Batu Puteh was not simply a matter of private appreciation but was manifest in its relations with Malaysia. Until 1980, Malaysia's title to Pulau Batu Puteh was not simply unchallenged by Singapore, but Singapore failed to assert any claim notwithstanding that there was bilateral interaction in which, had Singapore been of the view that it was sovereign over the island, that view should and would have been expressed.

(i) *The 1927 Agreement*

220. The 1927 Agreement has already been referred to above. The material feature of the Agreement for present purposes is the detailed definition in Article I of the boundary between the territorial waters of the Settlement of Singapore and those of the State and Territory of Johor. As the map annexed to the Agreement shows (see page 89), the Article defines an arc within which falls the land territory and territorial waters of Singapore and outside of which falls the land territory and territorial waters of Johor or of third States. Given the geography of the area, the way in which the delimitation is achieved is by a detailed description of the territory and waters of Singapore rather than by the plotting of a line of geographic coordinates. Its definition thus constitutes strong evidence of the limits of the land territory and territorial waters of Singapore, not simply of the curve of the line of delimitation.

221. Pulau Batu Puteh and its surrounding waters did not form part of Singapore under the 1927 Agreement. Had there been any understanding at all at this time that title to the island vested in Singapore it would have been a simple matter to reflect this in the Agreement, but no such indication was given. This suggests that neither Party considered Pulau Batu Puteh to be part of the territory of Singapore.¹⁸⁹

(ii) *The Straits Lights System*

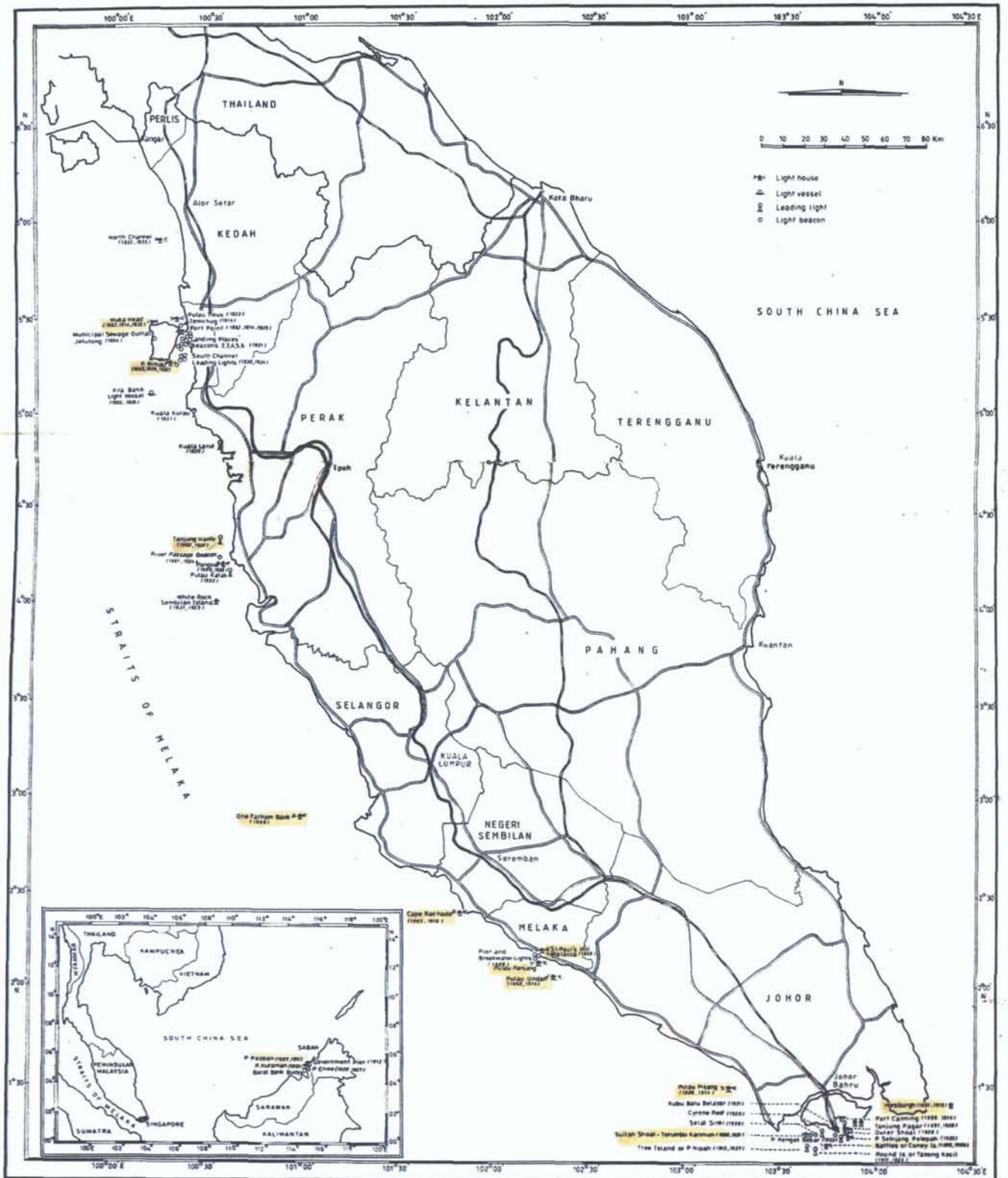
222. The collection of Light Dues in respect of the Horsburgh Lighthouse dates back to 1852.¹⁹⁰ By the Indian Act No. XIII of 1854, Britain established a system of Lights in the Straits of Malacca and Singapore known as "The Straits' Lights" and vested their management in the Governor of the Straits Settlements.¹⁹¹ These Lights included the Horsburgh, Pulau Pisang, Raffles and Sultan Shoal lighthouses. **Insert 18**, opposite, shows the location of these lighthouses. Although administered from

¹⁸⁹ On 7 August 1995, after the crystallisation of this dispute, Malaysia and Singapore concluded an Agreement Between the Government of Malaysia and the Government of the Republic of Singapore to Delimit Precisely the Territorial Waters Boundary in Accordance with the Straits Settlements and Johore Territorial Waters Agreement, 19 October 1927. This Agreement very largely tracks the arc of the 1927 Agreement. See Annexes, vol. 2, Annex 19.

¹⁹⁰ Act No. VI, 1852 (India): Annexes, vol. 3, Annex 84.

¹⁹¹ Act No. XIII, 1854 (India), Article VIII: Annexes, vol. 3, Annex 85.

LIGHTHOUSES OFF THE COAST OF THE MALAY PENINSULA



Insert 18

Singapore, the lighthouses comprising the Straits Lights system did not all fall within the territory of the Straits Settlements, still less of Singapore itself. For example, in addition to the Horsburgh Lighthouse which was situated on Johor territory, the Cape Rachado Lighthouse was situated on the territory of Malacca, the Pulau Pisang Lighthouse was situated on Johor territory, and the Screw Pile Lighthouse, later known as One Fathom Bank Lighthouse, was situated on a bank in the Straits of Malacca then in the high seas but now, pursuant to a subsequent delimitation agreement with Indonesia, in Malaysia's territorial sea. The fact that a lighthouse was managed by the Governor of the Straits Settlements as part of the Straits Lights system thus had no bearing on the sovereignty over the territory on which the lighthouse was situated. Nor were such lighthouses "administered as part of the territory" of Singapore.

223. The point is confirmed by an examination of the arrangements relating to the management and control of the Straits Lights. This was addressed by Ordinance No. XVII of 1912 ("The Light-Houses Ordinance 1912")¹⁹² following arrangements agreed upon between the Governments of Colony of the Straits Settlements and the Federated Malay States. The key provisions of this Ordinance are as follows:

"WHEREAS with the view of abolishing the tolls leviable under the provisions of the Indian Act No. XIII of 1854 upon ships departing from or entering the ports harbours or roadsteads of the Colony an arrangement has been made between the Governments of the Federated Malay States and the Colony whereby the Government of the Federated Malay States has agreed to contribute to the cost of maintaining the Straits lights. And whereas it is expedient to abolish the said tolls.

...

3. The light-house known as the Horsburgh Light-house situate on the Island rock called Pedra Branca at the eastern entrance of the Straits of Singapore and all such other light-houses as are now established in or near to the Straits of Malacca or Singapore together with the appurtenances thereof and all the fixtures apparatus and furniture belonging thereto shall remain the property of and be absolutely vested in the Government.

4. The light maintained at the Horsburgh Light-house and all such other lights or beacons as are now or shall hereafter be maintained by

¹⁹² Ordinance No. XVII of 1912 of the Colony of Singapore to repeal in part Indian Act No. XIII of 1854 and make new provision for the maintenance of the Light-houses in the Straits of Malacca: Annexes, vol. 3, Annex 90.

the Government in or near to the Straits of Malacca or Singapore shall as heretofore be called 'The Straits Lights'.

5. (1) The management and control of the Horsburgh Lighthouse and other light-houses established in or near to the Straits of Malacca or Singapore as aforesaid and of the Straits Lights shall remain vested in and be maintained by the Government.

(2) No tolls shall be paid for any of the Straits Lights in respect of any vessel entering or departing from any port harbour or roadstead of the Colony whether such vessel has passed or would pass any of the said lights or not but all necessary sums of money required to pay the cost of the maintenance shall after taking into account the amount of any contribution paid towards such cost by the Government of the Federated Malay States be provided for out of the revenues of the Colony."

224. As both the preambular paragraph and section 5(2) of the Ordinance indicate, the Straits Lights system involved cooperative arrangements between the Straits Settlements and the Federated Malay States, including the payment of a monetary contribution from the Federated Malay States towards the management of the Straits Lights. For example in 1914, the Federated Malay States contributed \$20,000 to the total cost of maintenance of the Straits Lights system, which in that year was \$41,020.52.¹⁹³

225. More significantly, the formulation in section 3 of the Ordinance, in which explicit reference is made only to the Horsburgh Lighthouse, is such as to leave little doubt that the proprietary interest of the Straits Settlements in Horsburgh was limited to the "light-house... together with the appurtenances thereof and all the fixtures apparatus and furniture belonging thereto" and not to sovereignty over the island as such.

¹⁹³ *Blue Book for the Colony of the Straits Settlements, 1914*, Singapore, Government Printing Office, 1915, V3: Annexes, vol. 3, Annex 66. Although the Federated Malay States specifically mentioned two lighthouses, One Fathom Bank and Cape Rachado, the amount contributed was considerably more than these two lighthouses cost to maintain and was in effect a contribution to the Straits Lights as a whole. See Federated Malay States, Proceedings of the Federal Council, 8 July 1913, B8: Annexes, vol. 3, Annex 65.

226. This understanding of the limited nature of the interest of the Straits Settlements in the Horsburgh Lighthouse receives further support from the language of section 5(1) of the Ordinance which refers to “[t]he management and control of the Horsburgh Lighthouse”, again singling out Horsburgh for explicit reference. The evident object of this reference appears to have been to guard against the risk of the new arrangements in respect of Straits Lights being taken to have affected a transfer of the *management and control* of the lighthouse back to Johor as the territorial sovereign.

227. That the management and control of the Horsburgh Lighthouse was at no point considered to be conduct *à titre de souverain* on which Singapore can now base a claim to title is illustrated by correspondence between the Director of Marine, Malaya and the Director of Marine, Singapore of May 1964.

228. On 1 May 1964, the Director of Marine, Malaya, R.E. Gee, addressed an enquiry to his counterpart, the Director of Marine, Singapore. The enquiry was brief and to the point:

“Television for Lighthouses

I would be grateful if you could supply me with particulars of your sets, and whether purchase outright or rented, in order that I may take action for the 1965 Light Dues Estimates.”¹⁹⁴

229. A response followed on 13 May 1964 on letterhead of the “Government of the State of Singapore”, signed by J.A.L. Pavitt, the Director of Marine, Singapore.¹⁹⁵ It stated as follows:

¹⁹⁴ Letter from the Director of Marine, Malaya, to the Director of Marine, Singapore, 1 May 1964, and reply, 13 May 1964: Annexes, vol. 3, Annex 73.

¹⁹⁵ In addition to his official position, Pavitt is notable as the author of the chronicle *First Pharos of the Eastern Seas: Horsburgh Lighthouse*, published by the Singapore Light Dues Board in 1966. This addresses the history of the planning, construction and operation of the Horsburgh Lighthouse, which is treated throughout as extraterritorial to Singapore. See paragraphs 257-263.

“Television for Lighthouses

1. I refer to your letter reference (145) dlm. Mar.181/57 dated 1st May, 1964.

2. When we decided to put Television sets at the lighthouses, we made a number of inquiries to rent these sets, but were unable to arrive at any satisfactory agreement with rental companies. We therefore decided to purchase the sets and the details of these and approximate costs are as follows:-

Horsburgh Lighthouse

Hitachi Mains T.V. set 14". Cost \$398.00, plus 12 element Channel Master Aerial (wiring etc.) at \$200.00.

Pulau Pisang, Raffles & Sultan Shoal lighthouses

Fitted with 8" Sony battery T.V. sets. Net cost was \$420.00 each set, plus \$150/- for 12 element Channel Master Aerial for Po. Pisang, and 10 and 5 element aerials for Raffles and Sultan Shoal at a cost of \$60/- and \$35/- respectively.”

230. The significance of this correspondence lies not in its reference to the Horsburgh Lighthouse or any suggestion that might be derived from it as to sovereignty over the lighthouse. The correspondence does not go to questions of sovereignty over Pulau Batu Puteh directly. It does, however, attest to the fact that the management of the Horsburgh Lighthouse, as with other lighthouses within the Straits Lights system, was not a sovereign act from which Singapore can now somehow derive title. This conclusion follows from two considerations.

231. First, as the correspondence indicates, the enquiry from the Director of Marine, Malaya, was concerned to elicit information necessary for purposes of the 1965 Light Dues Estimates. This referred to the statutory responsibility of the Light Dues Board, chaired by the Director of Marine, to expend the moneys of the Light Dues Fund on “the

establishment, maintenance and improvement of lighthouses, buoys, beacons and other navigational aids in the waters of the Federation and for purposes ancillary thereto".¹⁹⁶ The Light Dues Estimates were financial projections relating to the income and expenditure of the Fund. As the preceding review indicates, the collection and expenditure of Light Dues, including in respect of the Horsburgh Lighthouse, rested on long-standing cooperative arrangements between Singapore and Malaya which had no bearing on the sovereignty of the territory on which the lighthouses were situated.

232. Second, the reference to Pulau Pisang in Pavitt's reply of 13 May 1964 shows that the management of these lighthouses was not then and cannot now be regarded as a sovereign act from which Singapore can derive title.

233. Pulau Pisang is a Malaysian island located about 7 nm off the west coast of Johor in the Straits of Malacca. It was originally part of the Sultanate of Johor. Malaysia's sovereignty over Pulau Pisang is not disputed by Singapore. The lighthouse on Pulau Pisang is, however, managed and controlled by the Port of Singapore Authority on the basis of a grant of a plot of land by Johor to the Government of the Straits Settlements for the construction and maintenance of a lighthouse in 1885. This grant was confirmed by an Indenture of 6 October 1900.¹⁹⁷

234. The reference to the Pulau Pisang lighthouse in Pavitt's response, alongside reference to the Raffles and Sultan Shoal lighthouses, both situated on Singapore territory, attests that the management of these lighthouses had no bearing on the sovereignty of the territory on which they were located.

¹⁹⁶ Malayan Federation Light Dues Ordinance 1953, s. 6(3), as amended by Malayan Federation Light Dues (Amendment) Act 1961, s. 4: Annexes, vol. 3, Annexes 99, 105. The establishment of a Light Dues Board and a Light Dues Fund by Malaya in 1953 was followed by the establishment of a parallel Board and Fund by Singapore by the Light Dues Ordinance 1957: Annexes, vol. 3, Annex 101. The terms of this Ordinance, as subsequently amended, evidences an appreciation by Singapore that Pulau Batu Puteh was not part of Singapore.

¹⁹⁷ Indenture of 6 October 1900 between Ibrahim, Sultan of Johore and Sir James Alexander Swettenham, the Officer Administering the Government of the Colony of the Straits Settlements: Annexes, vol. 3, Annex 89.

(iii) *The 1953 Correspondence*

235. On 12 June 1953, the Colonial Secretary, Singapore wrote to the British Adviser to the Sultan of Johor on the subject of Pulau Batu Puteh. The operative part of the correspondence read as follows:

"I am directed to ask for information about the rock some 40 miles from Singapore known as Pedra Branca on which the Horsburgh Lighthouse stands. The matter is relevant to the determination of the boundaries of the Colony's territorial waters. It appears this rock is outside the limits ceded by Sultan Hussain and the Dato Tumunggong to the East India Company with the island of Singapore in the Treaty of 1824 (extract at 'A'). It was however mentioned in a despatch from the Governor of Singapore on 28th November 1844 (extract at 'B'). The lighthouse was built in 1850 by the Colony Government who have maintained it ever since. This by international usage no doubt confers some rights and obligations on the Colony.

In the case of Pulau Pisang which is also outside the Treaty limits of the Colony it has been possible to trace an indenture in the Johore Registry of Deeds dated 6th October, 1900. This shows that a part of Pulau Pisang was granted to the Crown for the purposes of building a lighthouse. Certain conditions were attached and it is clear that there was no abrogation of the sovereignty of Johore. The status of Pisang is quite clear.

It is now desired to clarify the status of Pedra Branca. I would therefore be most grateful to know whether there is any document showing a lease or grant of the rock or whether it has been ceded by the Government of the State of Johore or in any other way disposed of.

A copy of this letter is being sent to the Chief Secretary, Kuala Lumpur."¹⁹⁸

236. The Acting State Secretary, Johor, replied to this letter on 21 September 1953 saying only that "the Johor Government does not claim ownership of Pedra Branca".¹⁹⁹ There followed internal correspondence in Singapore in which the view was taken that, on the basis of the letter from the Acting State Secretary, Johor, "we can claim Pedra

¹⁹⁸ Letter dated 12 June 1953 from the Colonial Secretary, Singapore, to the British Adviser, Johor, and appendices: Annexes, vol. 3, Annex 67.

¹⁹⁹ Letter dated 21 September 1953 from the Acting State Secretary, Johor to the Colonial Secretary, Singapore: Annexes, vol. 3, Annex 69.

Branca as Singapore territory”.²⁰⁰ The Singapore Attorney General agreed with this view.

237. A number of observations on this correspondence may be made. First, it is evident from the letter from the Singapore Colonial Secretary of 12 June 1953 that Singapore did not then hold the view that Pulau Batu Puteh was part of the territory of Singapore. On the contrary, the enquiry indicates the absence of any such conviction and a desire to clarify Singapore’s rights and obligations as regards the management and control of the Horsburgh Lighthouse. The correspondence clearly references the Crawford Treaty of 1824 as determining the relevant territorial limits of Singapore, and the 1844 permission of Johor to the building of the lighthouse. The correspondence thus stands as evidence of Singapore’s recognition of Johor’s original title to Pulau Batu Puteh.

238. Second, the Singapore Colonial Secretary understood very clearly that the extent of Singapore’s sovereignty over nearby islands was determined by the Anglo-Dutch and Crawford treaties of 1824 and the 1927 Agreement. This is apparent from virtually contemporaneous correspondence from the Colonial Secretary that has nothing to do with Pulau Batu Puteh. The context was the Court’s 1952 Judgment in the *Anglo-Norwegian Fisheries Case*²⁰¹ and the effect that this would have on the delimitation of Singapore’s territorial waters. Addressing this issue, the Office of the Colonial Secretary, Singapore wrote to the Deputy Commissioner General for Colonial Affairs, Singapore in July 1953 in the following terms:

“In general the new methods of defining the limits of territorial waters can have little effect on the Colony whose coasts are mainly within six miles of the coasts of neighbouring States. In the first place the extent of the sovereignty of Singapore over nearby islets is set out in Article 12 of the Treaty of Holland, 1824 [the Anglo-Dutch Treaty], and in John Crawford’s [*sic*] treaty of 1824 with Johore (Attachments A & B). The greater part of the southward boundary of the Colony’s territorial waters is therefore the mid-channel line between the most southerly of these islets and the most northerly Indonesian islets. A mid-channel line has

²⁰⁰ Internal Memorandum dated 1[2 sic] October 1953 from the Colonial Secretary, Singapore to the Attorney-General, Singapore and reply: Annexes, vol. 3, Annex 70.

²⁰¹ *Fisheries Case, United Kingdom v. Norway, ICJ Reports 1951, p. 116.*

similarly to be drawn between the most northerly coasts of the Colony and the coast of the State of Johore. The latter mid-channel line was precisely defined by an Agreement of 1927 (Attachment C). There remain only two short stretches of the boundary of the Colony's territorial waters which can extend to three miles from the coast. The position is illustrated in the chart attached 'D'.²⁰²

239. In the light of this correspondence there can be no doubt that (a) the Singapore authorities had a very precise understanding of the extent of the Colony's sovereignty, (b) that this flowed from the Anglo-Dutch and Crawford treaties, and (c) that it did not extend to Pulau Batu Puteh.

240. Third, the reference in the letter from the Singapore Colonial Secretary to the position of Pulau Pisang indicates an understanding on the part of the Colonial Secretary that the management of a lighthouse was distinct from and was not determinative of the sovereign status of the territory on which the lighthouse was constructed.

241. Fourth, the internal Singapore correspondence in response to the reply from the Acting State Secretary, Johor, expresses the view that Singapore "can claim Pedra Branca". It does not state that the reply of the Acting Secretary of State, Johor, confirms that Pedra Branca was *already* part of the territory of Singapore. The language of this correspondence thus clearly implies that Singapore had not previously made a claim to, or had any sense that it was sovereign over, Pedra Branca.

242. Fifth, notwithstanding the Singapore Attorney-General's observation, Singapore at no time subsequent to this correspondence took any steps to claim Pulau Batu Puteh. Nor, evidently, did this affect Singapore's perception that the island was not in its territory. This is clear from the detailed lists of islands falling within the territorial waters of Singapore published by the Singapore Rural Board in its Annual Reports of 1953 to 1956, i.e., contemporaneously with the enquiry by the Singapore Colonial Secretary which was directed at "the determination of the boundaries of the Colony's

²⁰² Letter and attachments from A.G.B. Colton, for the Colonial Secretary, Singapore, to the Deputy Commissioner General for Colonial Affairs, Singapore, July 1953, para. 2: Annexes, vol. 3, Annex 68.

territorial waters”. As the review, above, of the islands listed in the 1972 *Singapore Facts and Pictures* publication attests, Singapore at no time prior to 1980 expressed any conviction that Pulau Batu Puteh was part of its territory.

243. Sixth, while the letter from the Acting State Secretary, Johor, of 21 September 1953 is not a model of clarity, it does not refer to sovereignty over Pulau Batu Puteh but to ownership.

(iv) *Conclusions on the Bilateral Conduct of the Parties*

244. The preceding review demonstrates that at no time in the course of the bilateral relations between the Parties did Singapore manifest any appreciation that it had sovereignty over Pulau Batu Puteh. On the contrary, the conduct in question indicates, to put it at its lowest, that Singapore was not clear about the extent of its rights and obligations over the island. The 1927 Agreement confirms that Pulau Batu Puteh did not fall within the territorial limits of Singapore and that Singapore expressed no view to the contrary. The arrangements in respect of the Straits Lights system confirms that the management of the lighthouses which were part of that system had no bearing on the sovereignty over the territory on which the lighthouses were constructed. Singapore cannot rely on the fact of its management of the Horsburgh Lighthouse to found a claim to title. Most significantly, the 1953 correspondence evidences the absence of any appreciation by Singapore at that time that it had title to the island. There is nothing in Singapore’s subsequent practice that shows a different understanding.

D. Unilateral Conduct by Singapore Confirmatory of Malaysia’s Title

245. To this conduct by Singapore in a bilateral context can also be added further practice by Singapore which is confirmatory of Malaysia’s title. Three examples warrant comment at this stage: (i) the appreciation, running through Singapore’s Light Dues legislation, that the Horsburgh Lighthouse did not fall within Singapore territorial waters, (ii) a corresponding understanding of this position by J.A.L. Pavitt, the Director of Marine, Singapore, and (iii) the absence of any representation of Singapore

sovereignty over Pulau Batu Puteh in the Singapore-Indonesia Territorial Sea Delimitation Agreement of 1973.

- (i) *Singapore's Light Dues legislation confirms that the Horsburgh Lighthouse did not fall within Singapore's territorial waters*

246. By the Light Dues Ordinance 1957, Singapore legislated to establish a Light Dues Board.²⁰³ It also established a Light Dues Fund, to be administered by the Board, into which all light dues collected under the Ordinance were to be paid. Section 6(4) of the 1957 Ordinance provided that:

“It shall be the duty of the Board to expend the moneys of the Fund on the maintenance and improvement of navigational aids in the waters of the Colony and for purposes ancillary thereto.”

247. The term “waters of the Colony” was defined in section 2(1) of the Ordinance to mean “those parts of the territorial waters of the Colony which lie outside the limits of any port”.²⁰⁴

248. By the Light Dues (Amendment) Ordinance 1958, the 1957 Ordinance, referred to as the “principal Ordinance”, was amended.²⁰⁵ Section 2(a) of the 1958 Ordinance deleted the definition of “waters of the Colony” appearing in section 2(1) of the 1957 Ordinance. Section 4 of the 1958 Ordinance then went on to amend section 6(4) of the 1957 Ordinance in the following terms:

“Subsection (4) of section 6 of the principal Ordinance is hereby amended by deleting the words ‘navigational aids in the waters of the Colony’ appearing in the third line thereof and substituting therefore the following:—

‘lighthouses, buoys, beacons and other navigational aids in Singapore including those at Pedra Branca (Horsburgh) and at Pulau Pisang’.”

²⁰³ Light Dues Ordinance 1957: Annexes, vol. 3, Annex 101.

²⁰⁴ The various proclamations of Singapore relating to port limits have never included Pulau Batu Puteh.

²⁰⁵ Light Dues (Amendment) Ordinance 1958: Annexes, vol. 3, Annex 102.

249. These amendments amount to an unambiguous statement that Pedra Branca (Pulau Batu Puteh) was not part of the territory of the Colony of Singapore. This follows from two factors. First, the disaggregation of the references to “the Colony”, on the one hand, and to “Pedra Branca (Horsburgh)” and “Pulau Pisang”, on the other, implies that Pedra Branca and Pulau Pisang were not considered to be part of “the Colony”. Were this not to have been the understanding underlying the amendments, revision of the 1957 Ordinance could simply have proceeded by way of the addition of the words “lighthouses, buoys, beacons and other” into section 6(4) of the 1957 Ordinance prior to the words “navigational aids”.

250. Second, there is no dispute about Malaysia’s title to Pulau Pisang, despite the fact of Singapore’s management of the lighthouse. The evident implication to be drawn from the reference to both the Horsburgh and Pulau Pisang Lighthouses in the revision of section 6(4) of the Light Dues Ordinance is that the drafters were of the view that Pedra Branca (Pulau Batu Puteh) and Pulau Pisang had a common status, namely, that both islands fell outside of the territory of Singapore notwithstanding Singapore’s management and control of the lighthouses situated thereon.

251. This reading of the revisions to the 1957 Ordinance is confirmed by the Singapore Light Dues Act 1969, which repealed and re-enacted with amendments the Light Dues Ordinance 1957.²⁰⁶ This 1969 Act, significant both because of its focus on the arrangements concerning lighthouses and because it was adopted by the recently independent Republic of Singapore, established the “Singapore Light Dues Board” and defined its duties.

252. Section 2 of the Act defined “Singapore” to mean

“the Republic of Singapore and shall be deemed to include the Island of Singapore and all the islands and places which on the 2nd day of June 1959, were administered as part of Singapore and all territorial waters adjacent thereto”.

²⁰⁶ Light Dues Act 1969: Annexes, vol. 3, Annex 112.

253. By section 7 of the Act, the duties of the newly constituted Singapore Light Dues Board were set out in the following terms:

“It shall be the duty of the Board to aid the safe navigation of ships by providing and maintaining, as the Board considers necessary, lighthouses, buoys, beacons and other navigational aids in Singapore and the approaches thereto, at Pedra Branca (Horsburgh), at Pulau Pisang and at such other places as the Board may think fit.”

254. The formulation employed in the Act puts beyond doubt the understanding of the drafters of the legislation that the Horsburgh and Pulau Pisang Lighthouses did not come within “Singapore”. The references to “Pedra Branca (Horsburgh) and Pulau Pisang” are clearly additional to the references to lighthouses and other navigational aids “in Singapore and the approaches thereto”. The revised formulation of the provision, coupled with the definition of Singapore in the Act and the uncontested status of Pulau Pisang as an island of Malaysian sovereignty, thus attest clearly to the understanding on the part of Singapore that Pulau Batu Puteh was not part of the territory of Singapore.

255. Singapore’s Light Dues legislation is all the more significant for present purposes in that it is special legislation which addresses the administration of the lighthouses in the Straits of Malacca and Singapore and in the approaches to and waters of Singapore. It is not general legislation which only addresses such matters *en passant* or by inference.

256. The legislation also straddles an important transitional period which saw Singapore move from colonial status to participation in the Federation of Malaysia to independence as the Republic of Singapore. Yet throughout this transition, the appreciation of the status of Pulau Batu Puteh informing Singapore’s legislation on light dues remained the same.

(ii) *J.A.L. Pavitt's Appreciation that the Horsburgh Lighthouse Did Not Fall Within Singapore Territorial Waters*

257. The view that the Horsburgh Lighthouse did not fall within Singapore's territorial waters running through Singapore's Light Dues legislation was matched by a similar appreciation on the part of Singapore's Director of Marine, J.A.L. Pavitt.

258. As previously noted, J.A.L. Pavitt was for many years the Director of Marine, Singapore. He was also a noted authority on the Horsburgh Lighthouse, having produced the only monograph on the subject, under the title *First Pharos of the Eastern Seas: Horsburgh Lighthouse*, published by The Singapore Light Dues Board in 1966. Pavitt was thus a particularly knowledgeable commentator on the subject of the Horsburgh Lighthouse and its territorial status.

259. Addressing the subject of the Singapore Light Dues Board, Pavitt noted as follows:

"Horsburgh is one of the group of 5 lighthouses operated by the Singapore Light Dues Board.

The Board, formed by statute in 1957, is responsible for the provision and upkeep of all ship navigational aids in Singapore waters, *and for the outlying stations at Pedra Branca (Horsburgh) in the South China Sea and Pulau Pisang in the Malacca Strait. Within Singapore waters, the Board maintains Raffles, Sultan Shoal and Fullerton Lighthouses, 33 light beacons, 29 unlit beacons, 15 light buoys, and 8 unlit buoys. Operational expenditure is met from the income derived by way of Light Dues paid by ships calling at Singapore; these dues being one cent (Malayan) per net registered ton for ships calling for bunkers, stores and water and two cents (Malayan) per net registered tons for vessels calling to load/discharge cargo or embark/disembark passengers. During 1965, the Board derived an income of M\$701,565.10 from dues and interest on reserves and expended M\$644,152.81 on the provision and upkeep of navigational aids.*²⁰⁷

260. There are three mutually supporting elements in these observations that require comment. First, Pavitt distinguishes between the ship navigational aids "in Singapore waters" and those at the outlying stations of Horsburgh and Pulau Pisang. The

²⁰⁷ Pavitt, 51, emphasis added: Annexes, vol. 3, Annex 74.

unavoidable implication is that Horsburgh and Pulau Pisang do not fall within Singapore waters.

261. Second, is the reference to both the Horsburgh and Pulau Pisang lighthouses as “outlying stations”. As has already been observed, it is not contested that Malaysia has title to Pulau Pisang notwithstanding that the lighthouse on the island is managed by Singapore. The linkage of the Horsburgh and Pulau Pisang lighthouses in Pavitt’s analysis suggests that he considered that they had a common status.

262. Third, Pavitt goes on to note: “Within Singapore waters, the Board maintain Raffles, Sultan Shoal and Fullerton Lighthouses ...” This puts beyond doubt Pavitt’s understanding that the Horsburgh Lighthouse did not fall within Singapore’s waters.

263. This reading of Pavitt’s observations is also consistent with the arrangements, described in paragraphs 222-234 above, between the Governments of the Straits Settlements and the Federated Malay States for the management and control of the Straits Lights system. As reflected in the 1912 Straits Lights Ordinance, the Federated Malay States contributed financially to the administration of the Straits Lights. While management and control of the Lights remained with the Straits Settlements, this had no bearing on sovereignty over the territory on which the Lights were situated. There were a number of notable examples of Straits Lights located on territory which did not lie within the territory of the Straits Settlements.

(iii) *Indonesia – Singapore Territorial Sea Agreement, 1973*

264. On 25 May 1973, Indonesia and Singapore signed an agreement stipulating the territorial sea boundary lines between them in the Strait of Singapore.²⁰⁸ The Agreement entered into force on 29 August 1974.

²⁰⁸ Agreement Stipulating the Territorial Sea Boundary Lines Between Indonesia and the Republic of Singapore in the Strait of Singapore, 25 May 1973: Annexes, vol. 2, Annex 18.

265. The Agreement delimits the boundary of the territorial sea between Indonesia and Singapore in Singapore Strait by reference to a series of geographical coordinates. The line connecting the points is indicated on a chart annexed to the Agreement.

266. If Singapore had considered at this time that it had sovereignty over Pulau Batu Puteh, it might have been expected that some reference would have been made in the Agreement to the waters around the island, in particular given the proximity of Pulau Batu Puteh to the Indonesian island of Pulau Bintan, which lies 7.5 nm to its south. The 1973 Agreement neither refers to Pulau Batu Puteh nor purports to delimit the territorial sea between Pulau Batu Puteh and Pulau Bintan. Further, Malaysia can find no public statement anywhere associated with the negotiation and conclusion of this Agreement to the effect that Singapore sought to reserve its rights in respect of Pulau Batu Puteh in the face of a different view of the sovereignty of the island by Indonesia. The Agreement supports the conclusion that in 1973 Singapore did not consider it had sovereignty over Pulau Batu Puteh.

(iv) *Conclusions on the Unilateral Conduct of Singapore*

267. As with Singapore's conduct in its bilateral relations with Malaysia, Singapore's unilateral conduct over the crucial period of its constitutional evolution also confirms that Singapore did not any time prior to 1980 have any sense that it had title to Pulau Batu Puteh. The conduct noted above is particularly material as it was specifically concerned with the management and control of the lighthouses which formed part of the Straits Lights system. As such, it would have proceeded on the basis of a considered understanding of the status of these Lights. The Indonesia-Singapore Territorial Sea Agreement of 1973 shows that, even in the context of a maritime delimitation proximate to Pulau Batu Puteh, Singapore never considered it necessary even to reserve its rights in respect of the island.

E. Malaysia's Conduct

268. The preceding review of conduct has focused on that by Singapore, confirming that Singapore at no time prior to 1980 manifested any sense that it had sovereignty over Pulau Batu Puteh. Given Malaysia's original title to the island, Singapore's claim of sovereignty can only rest on the contention that, by its conduct *à titre de souverain* in respect of the island, Malaysian title was displaced by that of Singapore. Yet there is no evidence of Singapore conduct to this end. Everything points in the other direction; that is, to a well-developed understanding on the part of Singapore that title to the island vested in Malaysia. Significantly, this conduct by Singapore was manifested both internally and in Singapore's bilateral relations with Johor and Malaysia. Malaysia thus had good grounds for believing that its title to Pulau Batu Puteh was not contested. Singapore's conduct in respect of the island remained firmly within the scope of the permission granted to it by Johor for the construction and operation of the lighthouse.

269. For its part, Malaysia had no need actively to assert its title to Pulau Batu Puteh as such. There are nonetheless a number of examples of Malaysian conduct which evidence Malaysia's view that Pulau Batu Puteh was Malaysian territory. Given the tiny surface of the island and the permission given for its use as the location of the Horsburgh lighthouse, the main relevant activity that can be expected from Malaysia lies in the field of the determination of its maritime spaces. Four items may be mentioned briefly: (i) internal Malaysian naval charts showing Malaysian territorial waters, including those around Pulau Batu Puteh; (ii) the conclusion of commercial concessions with private contractors relating to the continental shelf in the area around Pulau Batu Puteh; (iii) Malaysian legislation delimiting the territorial sea in the area around the island; and (iv) the Indonesia-Malaysia Continental Shelf Agreement of 27 October 1969.

- (i) *Malaysian naval charts showing Malaysian territorial waters, including around Pulau Batu Puteh*

270. On 16 July 1968, Commodore K. Thanabalasingham of the Royal Malaysian Navy addressed a confidential "Letter of Promulgation" to the Naval Staff Division of the Ministry of Defence in Kuala Lumpur. This reads as follows:

1. The attached chartlets showing the outer limits of Malaysian Territorial Waters and foreign claimed waters in West Malaysia are promulgated for the information of Senior and Commanding Officers.

2. As can be seen, there are certain areas in which these limits have never been properly determined or negotiated and those promulgated are basically a determination with strict regard to the 1958 Geneva Convention.

3. Strict attention is to be paid to the Notes on certain chartlets which are also reproduced after the Index."²⁰⁹

271. The Index to the chartlets attached to this Letter of Promulgation refers *inter alia* to Chart No.2403, "Singapore Strait", and Chart No.3839, "Horsburgh Light to Jason Bay". A note to the entry for Chart No.2403 reads as follows:

"The pecked line south of the Horsburgh Light represents the outer limit of Malaysian Territorial Waters [*drawn*] as authorised by the 1958 Geneva Convention i.e. a three mile circle around South Ledge flattened at the southern end by the true median line between South Ledge and the isolated rock close north of Tanjong Sading. R.M.N. vessels are to comply with S.O.A.I. 107 in regard to this area."²¹⁰

272. The attached Charts Nos. 2403 and 3839 show Pulau Batu Puteh (as well as South Ledge and Middle Rocks) as falling clearly within Malaysian territorial waters.

273. Although this is internal practice, it is evidence of a clear understanding on the part of Malaysia that Pulau Batu Puteh was Malaysian territory. In the light of Singapore's practice throughout this period which fails to manifest any claim to

²⁰⁹ Letter of Promulgation dated 16 July 1968 from Commodore K. Thanabalasingham to Naval Staff Division, Ministry of Defence, Kuala Lumpur: Annexes, vol. 3, Annex 76.

²¹⁰ Letter of Promulgation dated 16 July 1968 from Commodore K. Thanabalasingham to Naval Staff Division, Ministry of Defence, Kuala Lumpur, 2 Notes, "Chart 2403 – Singapore Strait", Note 2: Annexes, vol. 3, Annex 76.

sovereignty over the island, the internal Malaysian conduct demonstrates a continuing *animus occupandi*.

(ii) *The 1968 Petroleum Agreement Between the Government of Malaysia and Continental Oil Company of Malaysia*

274. On 16 April 1968, Malaysia concluded a Petroleum Agreement with the Continental Oil Company of Malaysia in respect of off-shore lands comprising approximately 24,000 square miles of the continental shelf adjacent to the east coast of West Malaysia.²¹¹ The Agreement entitled the Company to explore and exploit a defined area of the continental shelf – referred to as Scheduled Lands – for petroleum. The area covered by the Agreement was described by reference to geographical coordinates set out in the First Schedule to the Agreement and indicated on the Map of Concession Area attached as Appendix B to the Agreement (see **Insert 19** on the following page). The concession area extended along the South Eastern Coast of West Malaysia following a line three miles from the baselines from which the territorial waters of the States of Johor, Pahang and Trengganu were measured. On the seaward side, the concession area extended to and beyond Pulau Batu Puteh, enclosing within it Pulau Batu Puteh and other islands of Johor, Pahang and Trengganu, although the territory and territorial waters of all these islands were expressly excluded from the concession area. The Agreement evidences a clear understanding on the part of Malaysia that it had sovereign authority over the entire area covered by the Agreement.

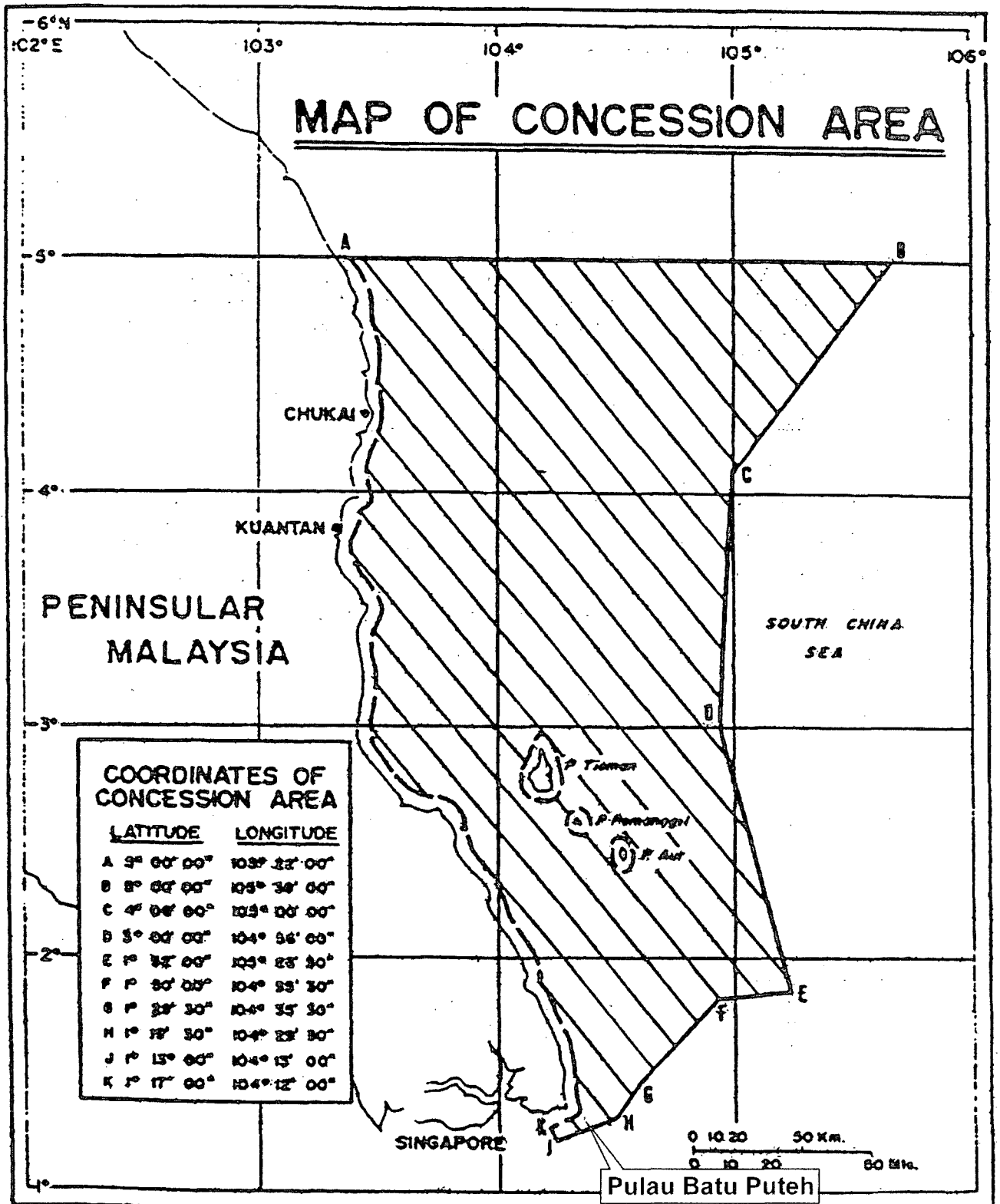
275. A similar agreement was signed on the same day between Malaysia and Esso Exploration Malaysia Inc. covering a further area of continental shelf along the north eastern coast of West Malaysia, i.e., an area to the north of the Continental Oil Company concession but along the same coastline.²¹²

²¹¹ Petroleum Agreement Under Section 9 of the Petroleum Mining Act, 1966 in Respect of Off-shore Lands between the Government of Malaysia and Continental Oil Company of Malaysia Concerning 24,000 (Approximate) Square Miles of the Continental Shelf Adjacent to the East Coast of West Malaysia, 16 April 1968: Annexes, vol. 3, Annex 110.

²¹² Petroleum Agreement Under Section 9 of the Petroleum Mining Act, 1966 in Respect of Off-shore Lands between the Government of Malaysia and Esso Exploration Malaysia Inc. Concerning 28,000 (Approximate) Square Miles of the Continental Shelf Adjacent to the East Coast of West Malaysia, 16 April 1968.

1968 CONTINENTAL OIL CO. CONCESSION AREA

'Appendix B'



CONCESSION AREA REFERRED TO IN THIS AGREEMENT

Insert 19

276. On 17 April 1968, the day following the conclusion of the Agreement, the *Straits Times* carried an article on the Agreement headed "Oil prospecting pact is signed by US firms". This read in part as follows:

"Malaysia today granted rights for the prospecting of oil over the entire continental shelf of the east coast of West Malaysia to two American companies..."²¹³

277. The Continental Oil Company concession, covering the area of Pulau Batu Puteh, was also noted in the *Bulletin of the American Association of Petroleum Geologists* of August 1969 in the following terms:

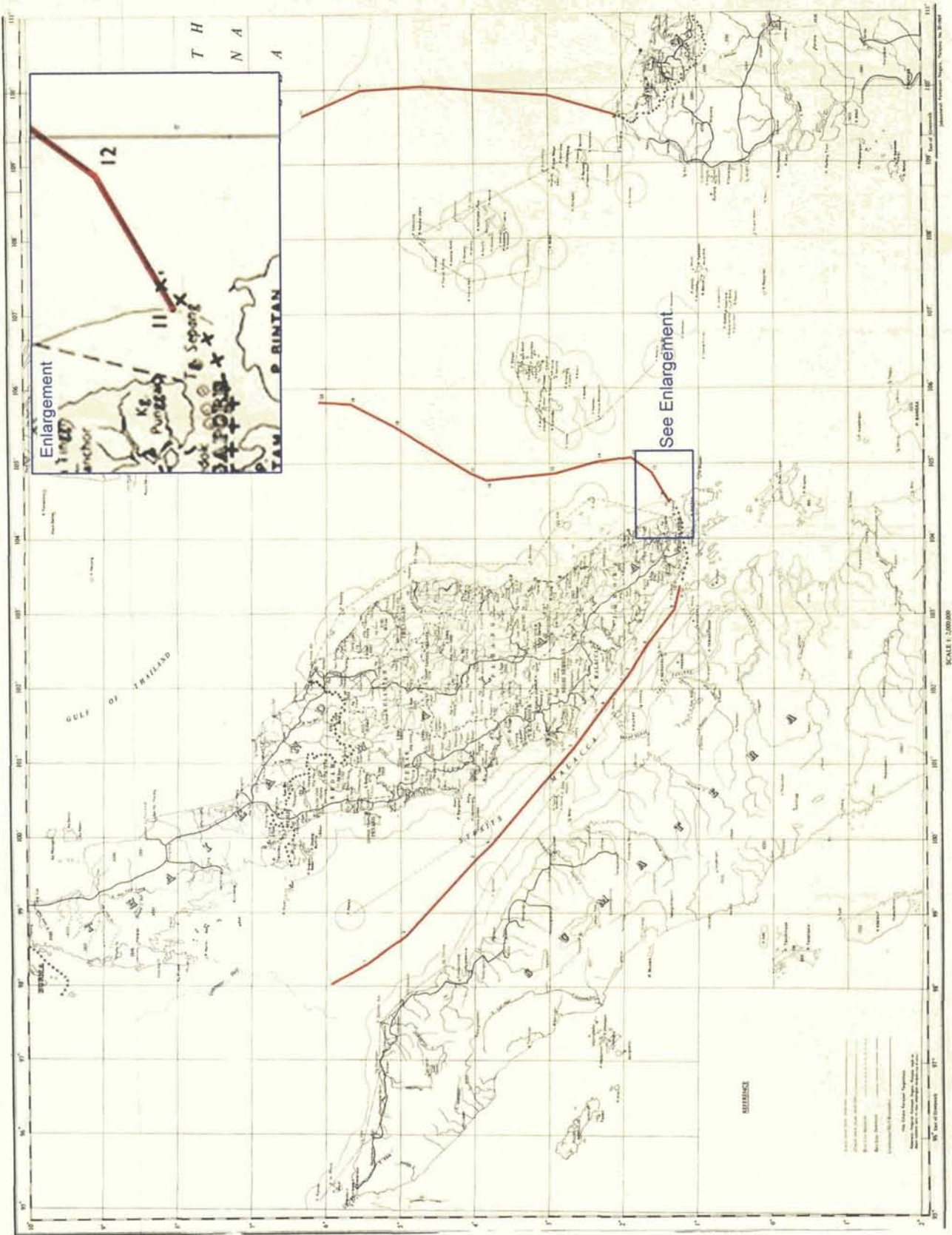
"In April 1968 Continental Oil Co. obtained exploration rights to 24,000 mi² off the east coast of West Malaysia. A marine seismic program, sparker and vibroseis, of more than 1,000 line-mi was completed by year end. No exploratory drilling was done."²¹⁴

278. These continental shelf agreements were concluded openly. They were widely publicised. Singapore was in a position to know of the agreements. It not only made no protest against the agreements but did not even enquire as to their territorial extent. The unavoidable explanation for this silence is that Singapore was content in the knowledge that it had no territorial interests in the area off the east coast of Malaysia along the Johor, Pahang and Trengganu coastlines and the waters thereof. The conclusion of these Agreements thus supports Malaysia's view of its own sovereignty in respect of this area, and demonstrates the absence of any appreciation on the part of Singapore that it had sovereignty.

²¹³ *Straits Times*, 17 April 1968: Annexes, vol. 3, Annex 75.

²¹⁴ (1969) 53 *Bulletin of the American Association of Petroleum Geologists* 1792: Annexes, vol. 3, Annex 77.

INDONESIA-MALAYSIA MARITIME BOUNDARY AGREEMENTS, 1969 / 1970



— Agreed delimitation line coloured red

Insert 20

(iii) *The Delimitation of Malaysia's Territorial Sea in the Area Around Pulau Batu Puteh*

279. Until 1969, Malaysia had claimed territorial waters of 3 nautical miles. By the Emergency (Essential Powers) Ordinance 1969,²¹⁵ Malaysia extended its territorial waters to a distance of 12 nm, although it reserved the application of the new limit in the Straits of Malacca, the Sulu Sea and the Celebes Sea pending the delimitation of maritime boundaries.²¹⁶ This legislation extended Malaysian territorial waters to and beyond Pulau Batu Puteh. There was no sense at the time that Pulau Batu Puteh and its surrounding waters were anything other than Malaysian territory. The legislation drew no protest from Singapore. As with the Petroleum Agreements noted in the preceding section, the legislation demonstrates two things. First, it shows Malaysia's conviction, at a time when there was no dispute between the Parties over title to Pulau Batu Puteh, that there was no impediment limiting its right to legislate in respect of this area. Second, it attests to an absence of any appreciation by Singapore that Malaysia's conduct in any way touched upon Singapore's territorial interests.

(iv) *The Indonesia–Malaysia Continental Shelf Agreement, 1969*

280. Singapore's silence in the face of the 1969 legislation is matched by its silence in the face of the continental shelf delimitation negotiations, the fact of which was well-known, between Indonesia and Malaysia which culminated in the Indonesia–Malaysia Continental Shelf Agreement of 27 October 1969.²¹⁷ The line established by the 1969 Agreement is shown in red on **Insert 20** opposite. Point 11 of this boundary was only 6.4 nm from Pulau Batu Puteh. The negotiations for this Agreement were the subject of a joint Press Statement by Indonesia and Malaysia on 22 September 1969. This noted in part that the parties "had reached agreement on the delimitation of the continental shelf boundaries between the two countries in the Straits of Malacca, off the East Coast of

²¹⁵ Emergency (Essential Powers) Ordinance 1969: Annexes, vol. 3, Annex 111.

²¹⁶ Emergency (Essential Powers) Ordinance 1969, s. 2 & Schedule.

²¹⁷ Indonesia-Malaysia: Agreement between the Government of the Republic of Indonesia and the Government of Malaysia Relating to the Delimitation of the Continental Shelf Between the Two Countries, 27 October 1969: Annexes, vol. 2, Annex 16. The 1969 Agreement was followed in 1970 by a Treaty Between Malaysia and the Republic of Indonesia Relating to the Delimitation of the Territorial Seas of the Two Countries in the Straits of Malacca, 17 March 1970: Annexes, vol. 2, Annex 17.

West Malaysia and off the Coast of Sarawak.” It went on to state that the delegations of the parties “also recognised the need for their Governments to discuss related problems of territorial sea boundaries and the use of the seas between their two countries.”²¹⁸

281. Singapore did not at any point assert any interest or raise any objection regarding this maritime delimitation. Singapore’s silence on a matter suggests that it did not consider it had any territorial interest in the area affected by the delimitation. Of course Singapore was not a party to the negotiations. But since their outcome was public, it might have been expected to register some form of public objection or expression of interest.

(v) *Conclusions as to Malaysia’s Conduct*

282. The preceding examples of Malaysian conduct demonstrate Malaysia’s consistently held position regarding its title to Pulau Batu Puteh and surrounding waters. This conduct, and the corresponding absence of protest by Singapore, also serves to confirm that Singapore’s management of the Horsburgh Lighthouse was not considered – either by Singapore or by Malaysia – as in any way relevant to the question of sovereignty over the island on which the lighthouse was located.

F. Conclusions

283. At no time following the 1844 grant of permission by Johor for the construction of a lighthouse on Pulau Batu Puteh did Singapore or its antecedent authorities claim sovereignty over the island. Singapore’s conduct in the management of the lighthouse has at all times remained squarely within the scope of this licence, i.e., management and control of the lighthouse. Singapore’s conduct, including its participation in bilateral dealings with Malaysia, never manifested a conviction that Pulau Batu Puteh was anything other than Malaysian. This conduct spans the whole of the 20th century, including the period of Singapore’s constitutional evolution from 1946 through to 1965

²¹⁸ Press Statement by the Indonesian and Malaysian Delegations to the Talks on the Delimitation of the Continental Shelves Between Malaysia and the Republic of Indonesia, Kuala Lumpur, 22 September 1969: Annexes, vol. 3, Annex 78.

and beyond during which the authorities in Singapore showed a highly developed sense of Singapore's territorial extent.

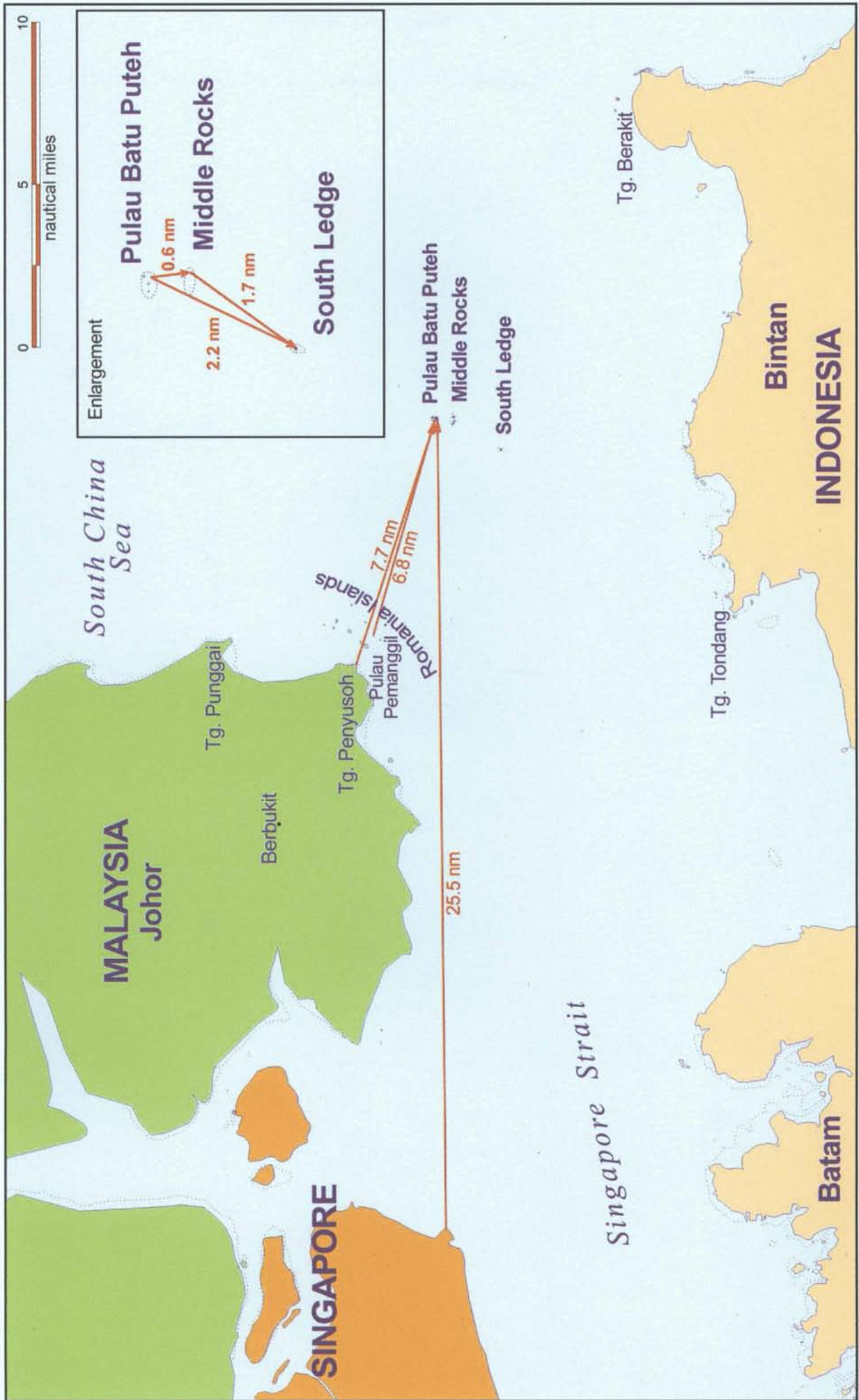
284. Important chronological points along this continuum set out in this Chapter include the following. All of these support Malaysia's contention that the Parties treated Pulau Batu Puteh as Malaysian, or at any rate as not subject to Singapore's sovereignty.

- **1854:** the creation by Britain of the Straits Lights system by Indian Act No. XIII of 1854;
- **1912:** the amendment, by the Straits Lights Ordinance, of the arrangements concerning management of the Straits Lights system consequent upon agreement between the Colony of the Straits Settlement and the Federated Malay States concerning the funding of the system;
- **1927:** the definition of the boundary between Singapore and Johor which proceeded by way of a detailed statement of the territorial extent of Singapore;
- **1948:** The Curfew (Johore Straits) (Singapore) Order, 1948 which defined the area falling "within the boundary of the territorial waters of the Island of Singapore";
- **1952:** internal Singapore correspondence showing a clear understanding that the territorial extent of Singapore was defined by the Anglo-Dutch and Crawfurd Treaties of 1824 and the 1927 Agreement;
- **1953:** the correspondence between the Singapore Colonial Secretary and the Acting State Secretary of Johor;
- **1953–56:** the publication, by the Rural Board of Singapore, of successive lists of islands purporting to list all the small islands whether inhabited or not, falling within the territorial waters of the Colony of Singapore;
- **1958/1969:** revisions of Singapore's Light Dues legislation;
- **1964:** correspondence between the Director of Marine, Malaya and the Director of Marine, Singapore, concerning television sets at the Horsburgh and other lighthouses;

- **1966:** publication of Pavitt's monograph on the Horsburgh Lighthouse;
- **1968:** grant of concession to Continental Oil Co. of Malaysia covering waters *inter alia* in the vicinity of Pulau Batu Puteh, without protest from Singapore;
- **1969:** conclusion of the Indonesia-Malaysia Agreement relating to the Delimitation of the Continental Shelf, *inter alia* in the vicinity of Pulau Batu Puteh, without protest from Singapore;
- **1972–1980:** publication by Singapore of the series *Singapore Facts and Pictures* which contain detailed lists of the islands of Singapore;
- **1973:** signature of the Indonesia–Singapore Territorial Sea Agreement.

285. Just as Singapore's conduct is consistent in reflecting its belief that Malaysia has title to Pulau Batu Puteh, so also has Malaysia's conduct been consistent with its view that it is the territorial sovereign. By reference both to Singapore's conduct and that of Malaysia, there is no basis for questioning Malaysia's original title to Pulau Batu Puteh.

DISTANCE OF THREE FEATURES FROM RELEVANT COASTS



For illustrative purposes only

Insert 21

Chapter 8

THE POSITION OF MIDDLE ROCKS AND SOUTH LEDGE

Introduction

286. On 6 February 1993, during earlier Malaysia-Singapore Consultations over Pulau Batu Puteh, Singapore made clear for the first time that its claim to sovereignty over Pulau Batu Puteh extends also to the two features of Middle Rocks and South Ledge. It was for this reason that they are specifically and separately listed in Article 2 of the Special Agreement of 6 February 2003.²¹⁹

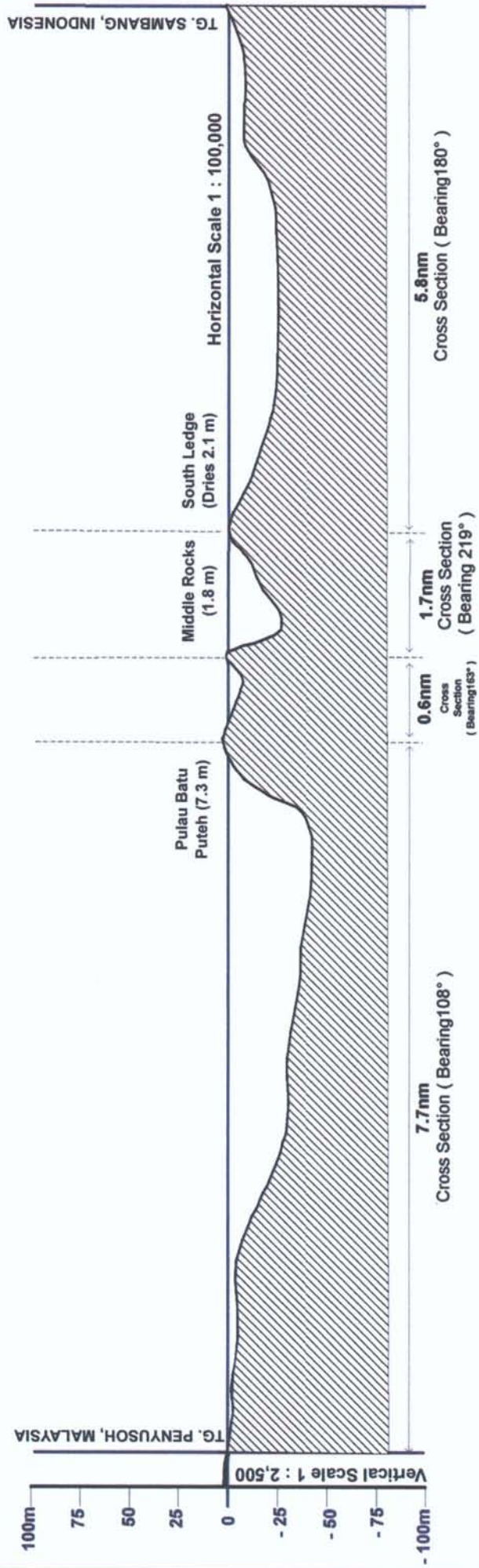
287. This Chapter shows that the three features do not constitute an identifiable group of islands in historical or geomorphological terms (**Section A**). It sets out the basis for Malaysian title over the three features (**Section B**). It shows that Singapore had never, prior to 1993, made any claim to the two features, nor has it ever acted as sovereign with respect to them (**Section C**).

A. The relation of the two features to Pulau Batu Puteh

288. As stated in Chapter 3, Middle Rocks and South Ledge are maritime features located respectively at 0.6 and 2.2 nm from Pulau Batu Puteh and 8.0 and 7.9 nm from the Malaysian mainland (Tanjung Penyusoh, formerly known as Point Romania). Singapore's nearest coast is at 25.6 nm from Middle Rocks and 25.0 nm from South Ledge. The geographical situation is depicted in **Insert 21**, opposite.

²¹⁹ See above, paragraph 2.

CROSS-SECTION OF THE THREE FEATURES



CROSS SECTION BETWEEN PULAU BATU PUTEH, MIDDLE ROCKS AND SOUTH LEDGE

For illustrative purposes only

289. Middle Rocks consist of some rocks that are permanently uncovered and stand 0.6 to 1.2 metres high. South Ledge is a low-tide elevation formed by three features. The northernmost one dries 2.1 metres at low tide. The others do not dry. They are wholly situated within Malaysian territorial waters.

290. The cross-section between the three features can be seen from **Insert 22**, opposite. As this shows, Pulau Batu Puteh, Middle Rocks and South Ledge are separated by navigational channels, do not have similar structures and are not standing on a single raised section of the seabed. J.T. Thomson's Chart of 1851 (above, p. 63) corroborates this by showing for the first time accurate soundings for the three features.

291. No evidence has been found on charts or in texts that the three features have ever been referred to as a group or have been given a collective name such as the "Pedra Branca Rocks" or the "Horsburgh Rocks". Often closely adjacent islands are given a collective name: for example the Lima Islands off the coast of southeast Johor were formerly called the Romania Islands.²²⁰ The fact that this was not done in the present case testifies to the consistent view of mariners and others that the features were separate and distinct. Neither Middle Rocks nor South Ledge have been considered as dependencies or appurtenances of Pulau Batu Puteh.

292. Indeed the three features were specifically named at different times. In some early charts South Ledge was called "Galloway's Rock" (after the name of the first European that reported the location of South Ledge), while Middle Rocks were called "Low Rocks". It seems likely that the name South Ledge was introduced between 1826 and 1830.

²²⁰ *The Hydrographer*, 1971, 201; Findlay, 1889, 298

293. To summarise, the historical record shows that these three features were never formally described as a group or as an island and its appurtenant rocks, nor were they ever given a collective title. But the three features were well known and were identified as a danger to shipping which should be avoided by sailing well to the north or south. By 1870, Findlay was advising navigators of a channel 1.5 nm wide and with depths of 15 to 20 fathoms between South Ledge and Middle Rocks. As the geographical evidence is considered, it becomes apparent that with the production of accurate large-scale charts and the introduction of steam powered vessels after the 1880s, this dangerous locality for sailing vessels becomes dissected by safe routes for modern traffic.

B. Basis for Malaysian Title over the two Features

294. Middle Rocks and South Ledge have always been considered as features falling within Johor/Malaysian jurisdiction. They were under Johor sovereignty at the time of the Anglo-Dutch Treaty of 1824 and fell within the British sphere of influence arising from that Treaty. Nor were the two features included in Johor's cession of Singapore to the East India Company of the same year. It is true that as minor features not much separate attention was paid to them. But this was because they were considered as belonging to a wider range of islands within Johor. Traditional fishermen from Johor had been fishing the inshore waters around these features for as long as records show.²²¹

295. Malaysia also exercised consistent acts of sovereignty over them, within the limits of their character. Evidence of the exercise of Malaysia's sovereignty includes the following:

- (i) In the Letter of Promulgation dated 16 July 1968, Chief of Navy, Commodore K. Thanabalasingam attached chartlets showing Malaysian territorial waters, and instructed naval officers to act accordingly. In the

²²¹ See, e.g., above, paragraphs 142, 143, 148.

relevant chartlet South Ledge was taken as a base point in defining the outer limit of Malaysian territorial waters in Chart 2403.²²²

- (ii) The granting of oil concessions, such as the petroleum agreement between the Government of Malaysia and the Continental Oil Company of Malaysia signed on 16 April 1968, which extended down to the area of South Ledge and Middle Rocks.²²³
- (iii) The features were included within Malaysian fisheries waters under the 1985 Fisheries Act.²²⁴

Singapore did not protest against any of these manifestations of Malaysian sovereignty.

C. Absence of any claim by Singapore: Singapore's recognition of Malaysia's sovereignty

296. Not only did Singapore fail to protest against Malaysia's manifestations of sovereignty; it did not advance any claim of its own to Middle Rocks and South Ledge either, even after it began to assert that Pulau Batu Puteh was Singaporean. On 14 February 1980, when Singapore claimed sovereignty over Pulau Batu Puteh for the first time, no reference was made to South Ledge and Middle Rocks, although both features clearly appeared within Malaysian territorial waters in the map published by Malaysia on 21 December 1979.²²⁵ The same situation was reproduced later, when Malaysia issued a reprint of the same map in 1984. Singapore protested against it only in 1989, and once again the protest was exclusively limited to Pulau Batu Puteh.²²⁶

297. Everything stated in Chapter 7 with regard to the various maritime delimitation agreements between Singapore, Malaysia and Indonesia, is also applicable to Middle Rocks and South Ledge.²²⁷

²²² See above, paragraphs 270-273; Annexes, vol. 3, Annex 76.

²²³ See above, paragraphs 274-278; Annexes, vol. 3, Annex 110.

²²⁴ Act 317, gazetted on 30 May 1985; Annexes, vol. 3, Annex 113.

²²⁵ See the Third Party Note of 14 February 1980; Annexes, vol. 3, Annex 80.

²²⁶ See the Third Party Note of 28 February 1989; Annexes, vol. 3, Annex 81.

²²⁷ See paragraphs 264-266, 280-281.

298. Similarly, the map evidence reviewed in Chapter 9 shows that Singapore and its predecessor have never advanced any claim of sovereignty over Middle Rocks and South Ledge.

299. It was not until 6 February 1993, during consultations between Malaysia and Singapore over Pulau Batu Puteh, that Singapore claimed sovereignty over Middle Rocks and South Ledge for the first time. This extension of its claim was made on the basis of the argument that they constitute, together with Pedra Branca, a “group”. But, as shown above, they had never before been treated or referred to as a group, in the way that the nearby “Lima Group” or “Romania Group” has been. This enlargement of Singapore’s claim met with firm rejection on the part of Malaysia.

D. Conclusion

300. The record demonstrates that Middle Rocks and South Ledge were always considered as part of Johor and thus, now, of Malaysia. Malaysian conduct is coherent with its sovereignty over Middle Rocks and South Ledge. By contrast Singapore’s late claim with respect to these features only aims at supporting its claim to Pulau Batu Puteh. The absence of any protest against Malaysian acts of sovereignty demonstrates Singapore’s acquiescence to Malaysia’s sovereignty over both features and the novelty of the claim made by Singapore in 1993.

Chapter 9

THE MAP EVIDENCE

A. General Principles

301. In this Chapter, Malaysia will outline the cartographic history of the region, showing how this provides general support for Malaysia's claim to the three features.

302. The authority of maps as evidence in boundary cases has been discussed by the Court on a number of occasions. In particular in the *Frontier Dispute Case (Burkina Faso/Mali)* the Chamber said:

“...maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts.”²²⁸

303. This passage was cited and applied by the Court in both the *Kasikili/Sedudu* case²²⁹ and in the *Ligitan and Sipadan* case.²³⁰

²²⁸ *ICJ Reports 1986*, p. 554, at 582, para. 54.

²²⁹ *ICJ Reports 1999, II*, at 1098, para. 84.

²³⁰ *ICJ Reports 2002*, at para. 88.

HESSEL GERRITZ, MAP OF SUMATRA, 1620 (EXTRACT)



Insert 23

304. In the present case there is no map having legal force as such, but there is a substantial record of depictions of the three features on maps from the 17th century onwards. This record will be briefly described before any conclusions are drawn.

B. Review of the Map Evidence

305. Malaysia's Map Atlas contains a selection of 48 maps of the region. It is useful to review, first, the pre-1824 maps, which show how the political geography of the region was viewed prior to the two Treaties of that year; and second, the later maps, which show that neither the establishment of Horsburgh Lighthouse nor its subsequent operation by Singapore was regarded as changing the territorial extent of Singapore.

(i) *The early maps*

306. The earliest relevant map Malaysia has been able to locate is a Dutch map of Sumatra dating from 1620, produced by Hessel Gerritz, cartographer of the Hydrographic Service of the Dutch East India Company (Map Atlas, Map 1). It shows "Pedrablanca" off the coast of "Johor", both coloured pink; P. Bintan (called "Bintam") is to the south and is coloured green. An enlargement of the relevant sector is shown opposite (**Insert 23**).

307. An early British map shows the close connection in contemporary eyes between the Johor coast, the islands in the Romania group and Pulau Batu Puteh. This map (Map Atlas, Map 2) is taken from Alexander Hamilton's *A New Account of the East Indies: Being the Observations and Remarks of Capt. Alexander Hamilton, Who Spent his Time there From the Year 1688 to 1723. Trading and Travelling, by Sea and Land, to most of the Countries and Islands of Commerce and Navigation, between the Cape of Good Hope and the Island of Japon* (1727).²³¹ The map, entitled "A Map of the Dominions of Johore and of the Island of Sumatra with the Adjacent Islands" shows the "Romano" islands and "Pedrobranco" close up to the Johor coastline and north of the "Straits of

²³¹ 2 volumes, Edinburgh, 1727, vol. 2, p. 94.

Governdore". An enlargement of the relevant portion of the map is shown opposite as **Insert 24.**

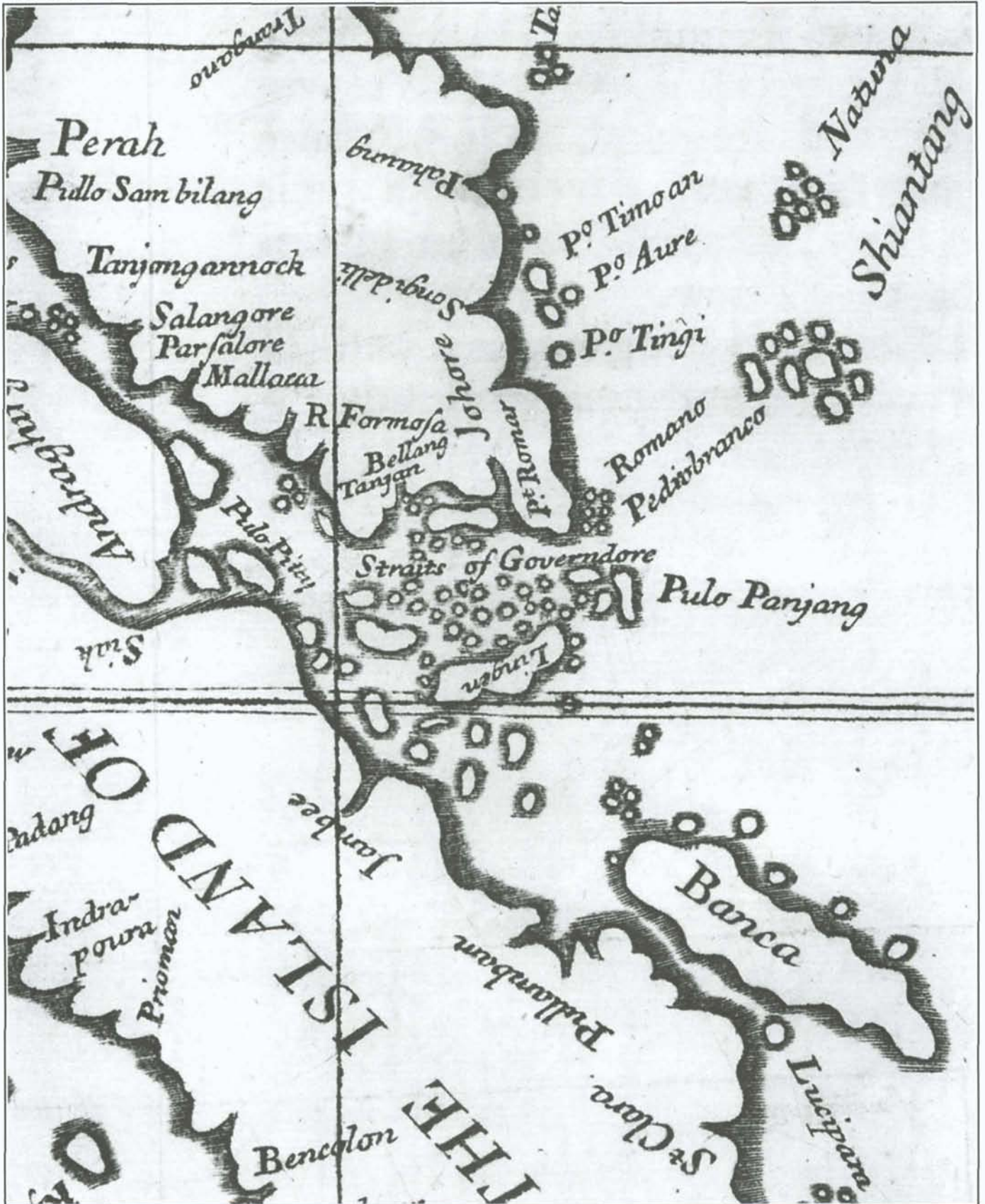
308. A third early map which shows a close connection between Pulau Batu Puteh ("Pierre Blanche") and Point Romania ("Pointe de Romanie") is the "*Carte réduite des détroits de Malacca, Singapour et du Gouverneur*" by the well known French cartographer, Bellin, in 1755 (Map Atlas, Map 3). It contains illustrations of "Vues des Terres dans les Détroits" in which can be seen "la Pointe de Romanie Lorsqu'elle reste au N.E. à 2 50 ½ et Pedra Blanca à l'E.S.S.". Bellin was the first "Ingénieur hydrographe de la Marine" and the Hydrographer of the King of France, commissioned to carry out major surveys all around the world.

309. Early 19th century maps are often the product of soundings and survey work in an effort to work out accurate relationships between various features and safe sailing passages. An 1812 chart (Map Atlas, Map 4) "A Plan of Soundings from Pulo Aor to the Southward and outside of the Reef off Point Romania towards the entrance of Singapour Strait..." takes "Pedro Branco" as its key point and shows and describes, without naming, Middle Rocks and South Ledge. In Horsburgh's chart for the British East India Company in 1813 (Map Atlas, Map 5), "Pedro Branco" is discernible. In a further version of Horsburgh's map published in 1826 (Map Atlas, Map 6), "Pedro Branco" and "South Rock" are discernible.

(ii) *Mapping of the region after 1824 (including the period of the establishment of Horsburgh Lighthouse)*

310. As recounted in Chapter 4 (paragraphs 49-52), in 1824 the Anglo-Dutch Treaty divided the Sultanate of Johor into two spheres of influence, north and south of Singapore Strait. The islands within and at the entrance of Singapore Strait, including Pulau Batu Puteh, were always considered as within the British sphere, and this is shown for example in the *Atlas of the Netherlands East Indies* of 1842, where a dashed line is drawn around the islands (including P. Bintan) south of Singapore Strait (Map Atlas,

ALEXANDER HAMILTON, DOMINIONS OF JOHORE, 1732 (EXTRACT)



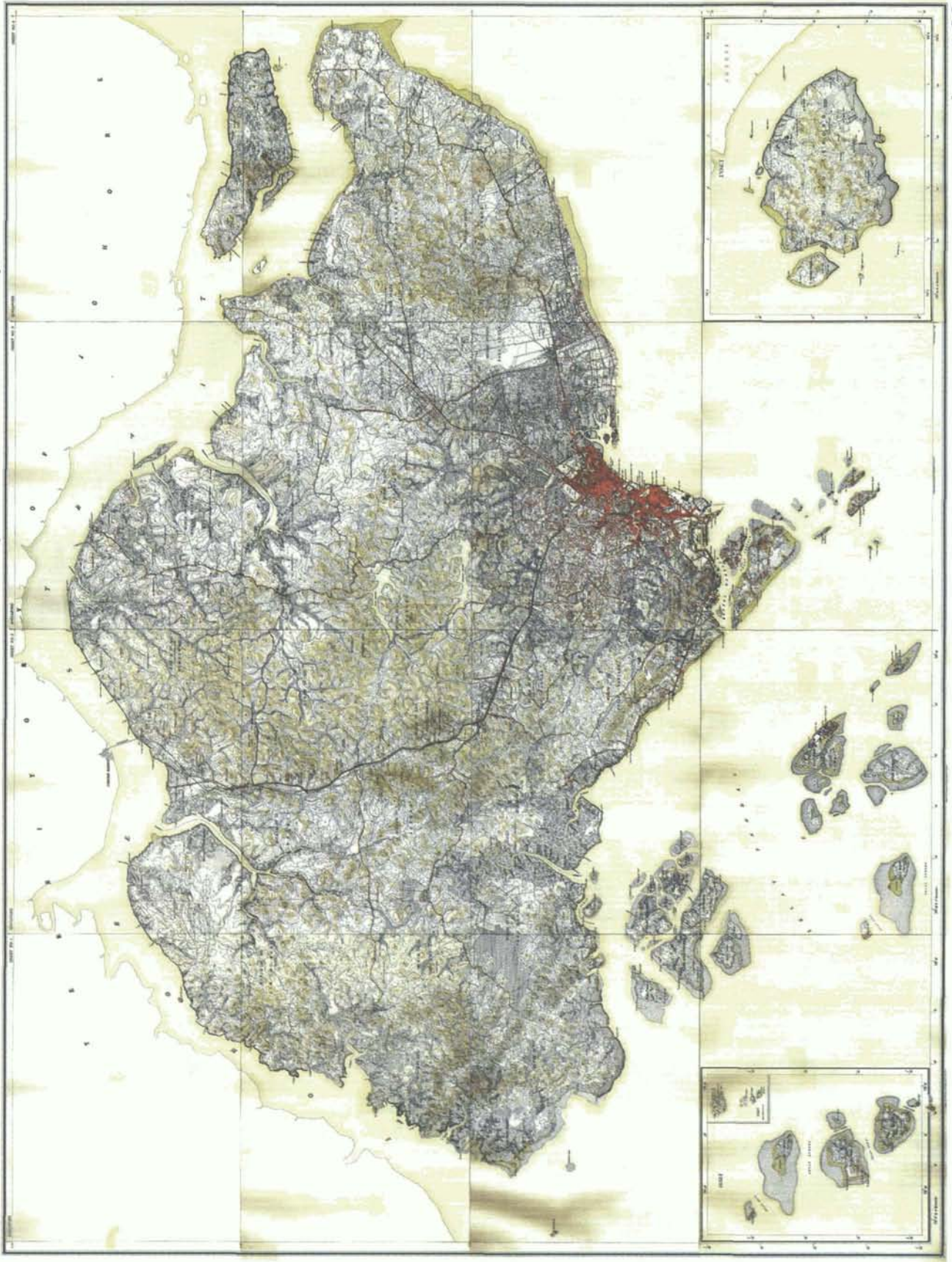
Insert 24

Map 7; see also the Dutch maps of 1929 (Map Atlas, Map 22, an enlargement of which is depicted as **Insert 25**, opposite) and 1934 (Map Atlas, Map 24)). Other examples of the Dutch view as to the effect of the 1824 Anglo-Dutch Treaty can be seen at Map Atlas, Map 11 (1883 map communicated to Great Britain by Count de Bylandt).

311. A German map of 1850, contemporary with the construction of Horsburgh Lighthouse, *Neueste Karte der Hinter Indien*, by Captain Radefeld, shows the political divisions in the region. The British Possessions are coloured red, the Malay Dominions are pink. "Pedro Branco" and "P. Romania" appear in the middle of the Malay Dominions (Map Atlas, Map 9).

312. At the same time a line of a different character was being drawn, defining Singapore Island and its dependencies in accordance with the Agreement with the Sultan and Temenggong of Johor of 1824. This can be seen in the 1849 map, "Map of Singapore Island and its Dependencies Copied by Permission from Government Surveys" produced by the Surveyor, Singapore, dated 4 January 1849 and stated to be based on Thomson's surveys. This is shown as **Insert 8** on page 27 (see also Map Atlas, Map 8). On that map the dashed line representing the islands within 10 miles of Singapore (and therefore constituting its "Dependencies"), is labelled "Boundary of the British and Dutch Residencies of Singapore & Rhio". There is no suggestion (e.g. by way of a map insert) that an additional dependency of Pulau Batu Puteh has been added to the original territory of Singapore. The "Map of the Island of Singapore and its Dependencies" was regularly reissued under official auspices, with or without the dashed line but in no case showing any other islands as belonging to Singapore: see, e.g., the maps signed by the Colonial Engineer and Surveyor-General, Straits Settlements in 1885 (Map Atlas, Map 12), 1898 (Map Atlas, Map 13), and 1911 (Map Atlas, Map 14; the version shown has been annotated and signed by a British Brigadier-General).

MAP OF SINGAPORE WITH ISLANDS (INCLUDING INSETS), 1924



Insert 26

313. In 1923-24, the Surveyor General of the Federated Malay States and the Straits Settlements produced a series of small scale maps of Singapore, covering all of the dependencies. The combined coverage of these 16 separate map sheets is shown at Map Atlas, Map 15), and on the opposite page: see **Insert 26**. It will be seen that a *double* insert has been used to cover islands lying outside the reach of the map, in particular Pulau Tekong and surrounding islets. Further, P. Satumu, on which stands Raffles Light House, is shown extending below the bottom margin of the map: see, in further detail, Map Atlas, Map 16. Yet no attempt has been made to include Pulau Batu Puteh, Middle Rocks or South Ledge. The inevitable conclusion is that these were not considered or thought of in 1924 as dependencies of Singapore.

314. In coloured maps of this period, where the Straits Settlements are shown in red and the Malay States (federated and unfederated) in other colours, commonly no attempt is made to show Pulau Batu Puteh in red: see e.g. the 1925 map of Malaya, again published under the direction of the Surveyor-General. One would judge from this map that Pulau Batu Puteh was not considered part of the Straits Settlements, unlike, for example Pulau Ubin and other islets within 10 miles of the Island of Singapore (Map Atlas, Map 17). The point can be seen even more clearly from the enlargement, shown on the following page as **Insert 27**. The contrast with island dependencies of Singapore is clear. The same is true of the map, "Malaya 1928", published under the direction of the Surveyor General (Map Atlas, Map 21).

315. In 1926, Sultan Ibrahim produced a map of Johor, based upon new surveys. This is Map 19 in the Map Atlas: Pedra Branca Horsburgh is shown. Even more striking is the Sheet No. 4 I-10, "Part of Kota Tinggi District, Johore", published in the same year. This is shown in the Map Atlas, Map 18, and as **Insert 28** on page 145. There is no suggestion from the map that "Pedra Branca Horsburgh" shown in an expanse of sea is not itself part of Johor. Indeed the layout of the map clearly suggests the contrary: it was clearly designed to show the island as part of the Kota Tinggi District. This map was reprinted at intervals, for example in 1932 (Map Atlas, Map 23).

MALAYA, 1925 (EXTRACT)



JOHORE, PART OF KOTA TINGGI DISTRICT, 1926

JOHORE

No. 4 ¹/₁₀

PART OF KOTA TINGGI DISTRICT



Pedra Banca Horsburgh

Particulars of the Survey of the Straits of Johore, 1926

Particulars of the Survey of the Straits of Johore, 1926	1926
1. Name of the Survey	Straits of Johore, 1926
2. Name of the Officer in Charge	Major-General G. G. ...
3. Name of the Officer who conducted the Survey	Major-General G. G. ...
4. Name of the Officer who compiled the Map	Major-General G. G. ...
5. Name of the Officer who checked the Map	Major-General G. G. ...
6. Name of the Officer who approved the Map	Major-General G. G. ...
7. Name of the Officer who issued the Map	Major-General G. G. ...
8. Name of the Officer who distributed the Map	Major-General G. G. ...
9. Name of the Officer who received the Map	Major-General G. G. ...
10. Name of the Officer who stored the Map	Major-General G. G. ...



Particulars of the Survey of the Straits of Johore, 1926

Particulars of the Survey of the Straits of Johore, 1926	1926
1. Name of the Survey	Straits of Johore, 1926
2. Name of the Officer in Charge	Major-General G. G. ...
3. Name of the Officer who conducted the Survey	Major-General G. G. ...
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5. Name of the Officer who checked the Map	Major-General G. G. ...
6. Name of the Officer who approved the Map	Major-General G. G. ...
7. Name of the Officer who issued the Map	Major-General G. G. ...
8. Name of the Officer who distributed the Map	Major-General G. G. ...
9. Name of the Officer who received the Map	Major-General G. G. ...
10. Name of the Officer who stored the Map	Major-General G. G. ...

Copy of map 68030 No. 4 1/10 of 1926
 Reproduced through Special Permission
 27.5 April 1963 MPM, RAJUDA 10 111 10 3 71

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Insert 28

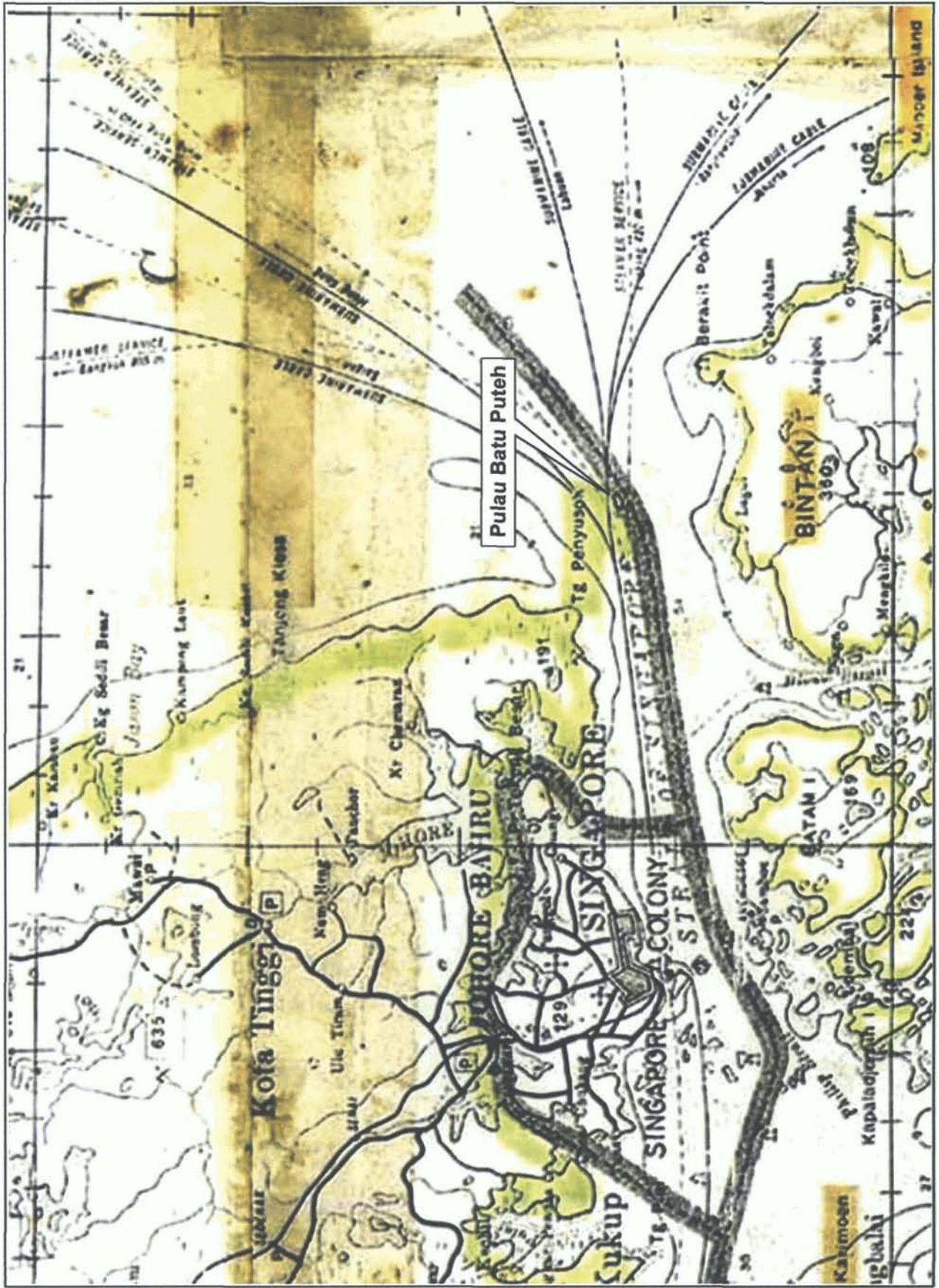
316. On a 1927 Admiralty Chart based on surveys from *HMSS Iroquois*, the map (Map Atlas, Map 20) shows Pedra Branca just below the bottom (southern) border of the map, with no indication of its pertaining to Singapore. Subsequently this map was used by Commodore Thanabalasingham to indicate maritime boundaries, including around Pedra Branca, with the label “Limit of M[alayan] T[erritorial] W[aters]”, as already described in Chapter 7.²³² Evidently Commodore Thanabalasingham believed Pulau Batu Puteh, Middle Rocks and South Ledge to belong to Johor. The same is true of a 1936 map of Singapore Strait which clearly contrasts the Malaysian waters around Pulau Batu Puteh and Singapore waters well to the west (Map Atlas, Map 25).

317. The same remark may be made about the boundary divisions printed and highlighted in hand on the War Office map, “Singapore” of 1941 which is at Map Atlas, Map 26. Lines drawn within and just outside Singapore Strait separate Singapore from Indonesia and from Malaya, and clearly show Pulau Batu Puteh (unnamed but shown on the map) as within the geographical purview of Malaya. This can be more clearly seen from the enlargement, which is **Insert 29** opposite. At least one later version appeared, to similar effect: see the War Office & Air Ministry map, “Bintan Island” (1959) (Map Atlas, Map 31), on which the line is extended to the east of the Straits just beyond the star reflecting the position of Pulau Batu Puteh, which is clearly to be seen as part of Malaya, not Singapore.

318. A similar line appears on the map “Malaya. Sedili Besar Sheet 4 I”, dated 1944 and issued by the Survey of India (Map Atlas, Map 27). Pedra Branca Horsburgh (Middle Rock) is clearly indicated as falling within British Malaya. The line is repeated on a War Office map of 1950, this time with the annotation “Federation of Malaya” (Map Atlas, Map 29). See also the UK War Office map of 1950 (Map Atlas, Map 28), the UK Ministry of Defence map of 1967 (Map Atlas, Map 35), and the UK Ministry of Defence map of 1968 (Map Atlas, Map 36). These are the only maps, of those so far discussed, which contain a disclaimer.

²³² See above, paragraphs 270-273.

SINGAPORE, 1941 (EXTRACT)



Insert 29

319. In 1957, a compilation sheet produced by the Surveyor-General and entitled “Johore” shows Batu Puteh as an inset off the east coast of Johor, with no indication of any attribution to Singapore. The map was evidently carefully drawn and checked (Map Atlas, Map 30).

320. In 1979 the Directorate of National Mapping, Malaysia published two map sheets, Sheets 1 and 2, depicting the limits of Malaysian continental shelf boundaries. Sheet 1, of Peninsula Malaysia, clearly shows that Pulau Batu Puteh is well within Malaysian territorial waters (Map Atlas, Map 44).

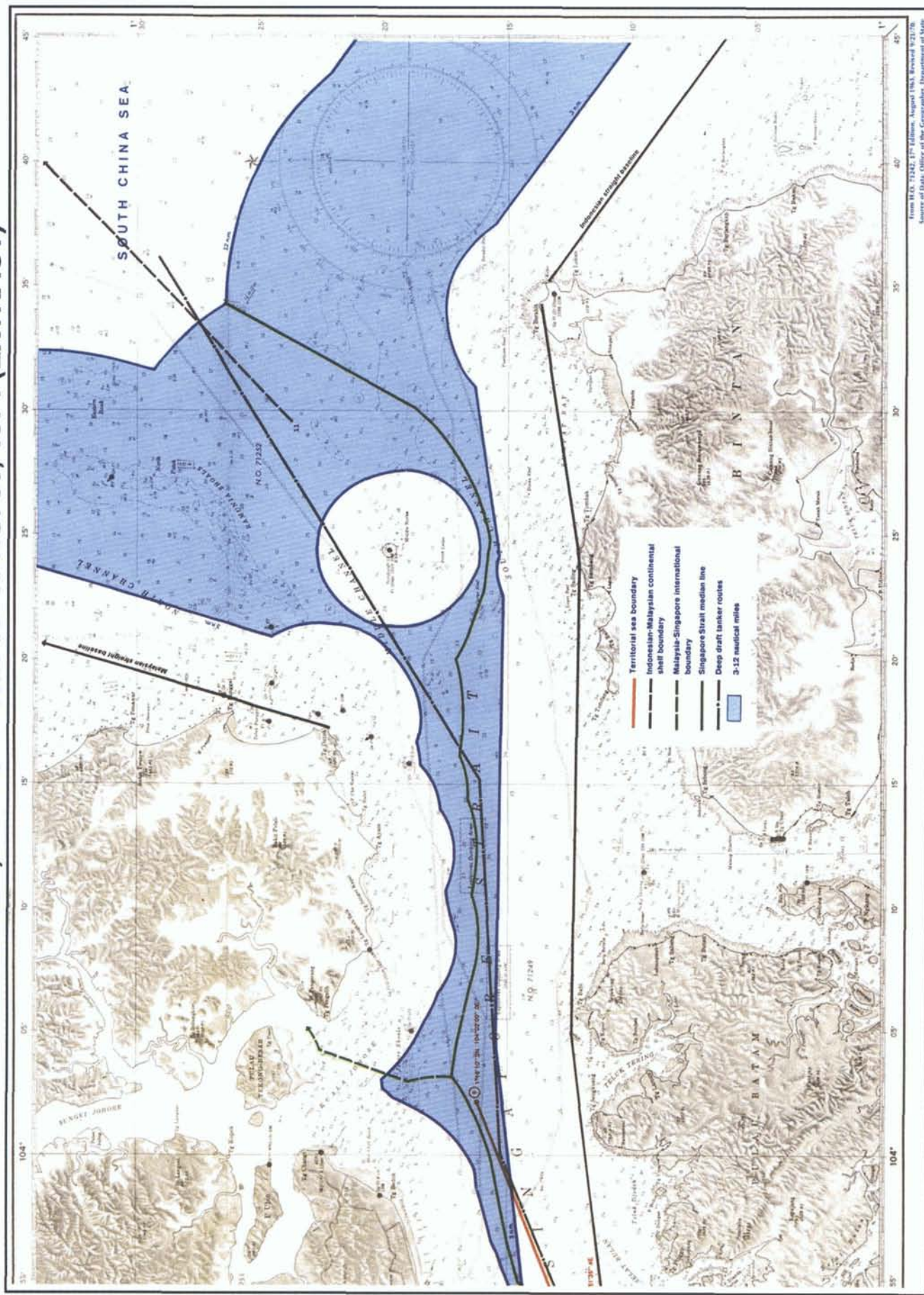
321. Some maps must be referred to which may seem to point the other way. A map produced in 1962 by the Surveyor General, Federation of Malaya, entitled “Pengerang” (Map Atlas, Map 32) has the following caption:

“Lighthouse [symbol] 28
P. Batu Puteh
(Horsburgh)
(SINGAPORE).”

It also shows the (unnamed) features of Middle Rocks and South Ledge without any annotation. The map contains a disclaimer. A second edition of the same map was produced in the same year (Map Atlas, Map 33). The second edition was reprinted in 1965 (Map Atlas, Map 34). The third edition of the same map was produced in 1974 (Map Atlas, Map 39) and the fourth edition in 1975 (Map Atlas, Map 41). However the emphasis here is entirely on the lighthouse rather than the island – the feature shown as a symbol and not an area of land. Quite apart from the disclaimer the entry is at most equivocal, and it does not constitute a representation as to international boundaries or the attribution of territory. Another map with a similar indication was printed by the Director of National Mapping, Malaysia in 1970 (Map Atlas, Map 38).

322. The maritime boundary position as seen by the Geographer, United States Department of State, at this time can be seen from the map attached to *Limits in the Seas*, No. 60 (1974), an extract of which is shown opposite as **Insert 30** (see also Map Atlas, Map 40). The map depicts the agreed Indonesian-Singapore territorial sea boundary of

UNITED STATES, LIMITS IN THE SEAS NO. 60, 1974 (EXTRACT)



From H.O. 7132, 1st Edition, August 1963, Revised 9/23/70
 Source of Data: Office of the Geographer, Department of State

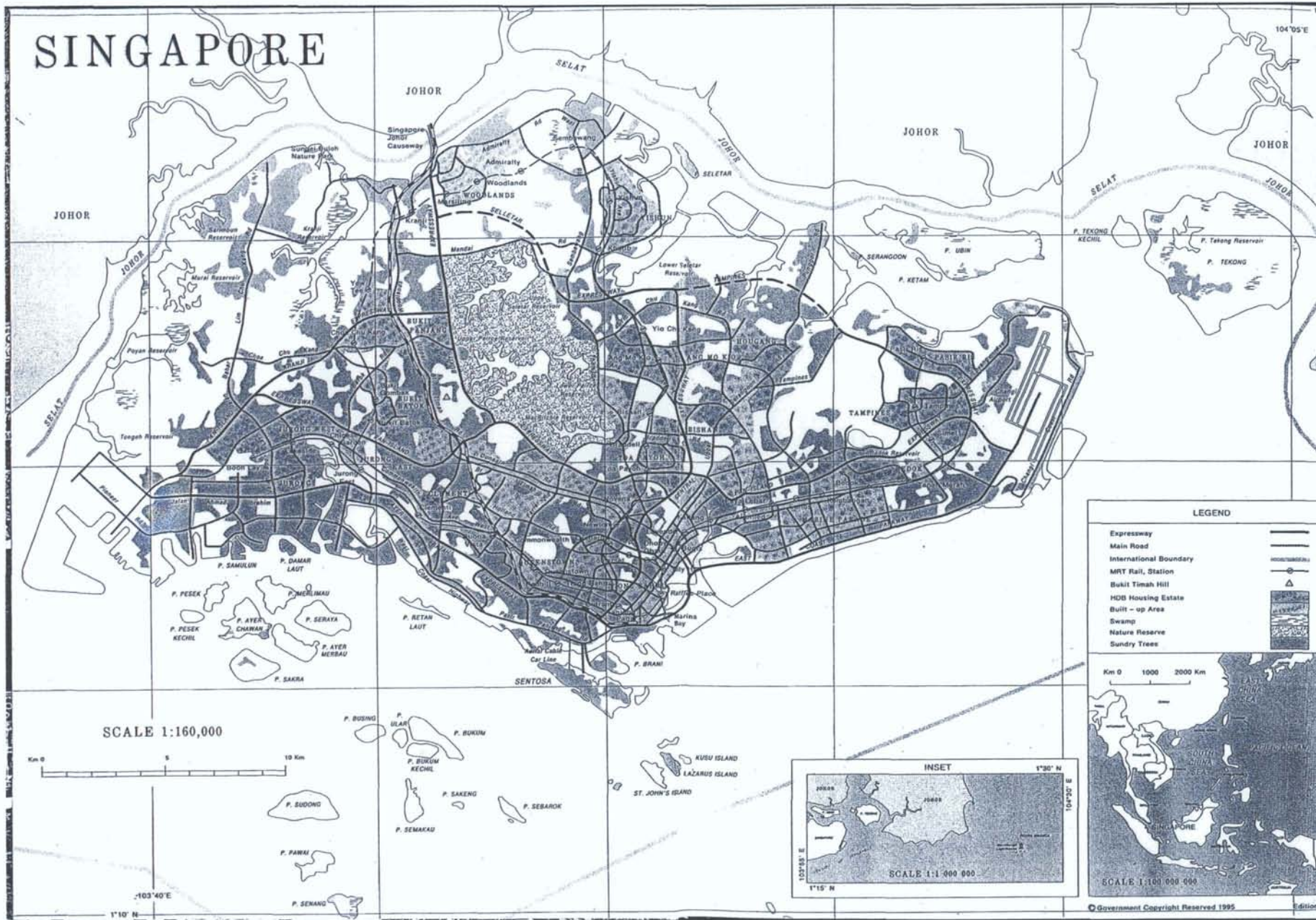
Insert 30

1973, the agreed Malaysian-Indonesian continental shelf boundary of 1969, and what is described as a "Malaysia-Singapore international boundary". The map also shows 3 and 12 nm territorial sea lines. There is no depiction of any actual or putative boundary between Singapore and Malaysia around Pulau Batu Puteh. The median line drawn by the Geographer in the Singapore Strait to the south of Pulau Batu Puteh, Middle Rocks and South Ledge suggests that these features were considered as Malaysian.

323. For its part Singapore never published any map in the whole of this time which showed any of the three features as belonging to Singapore. Rather it repeatedly published maps which showed attribution lines around the territories acquired under the 1824 Agreement with Johor. Representative is the Singapore Locality Map of 1976 published by the Singapore Director of Public Works (Map Atlas, Map 42), which shows the 1927 territorial waters boundary between the Straits Settlement and Johor, as well as the 1973 maritime boundary with Indonesia (unlabelled). There is no indication that Singapore territory lies further to the east as well. Similarly the Singapore Topographical Map of 1993 does label the boundaries respectively as "Malaysia/Singapore" and "Singapore/Indonesia" (Map Atlas, Map 46).

324. So far as Singapore is concerned, the position with maps only changed in the 1990s, well after the present dispute had arisen. It was not until after this round of negotiations between the Parties, that Singapore for the first time published a map which showed Pulau Batu Puteh (as an inset) as part of Singapore. It did not name the other two features. This 1995 map is reproduced as **Insert 31**, opposite, and in Malaysia's Map Atlas as Map 48. It stands in sharp contrast with the position as shown on earlier maps produced by Singapore authorities. If they had wanted to show Pulau Batu Puteh as part of Singapore in 1849, in 1852, in 1923-1924 or at any later time, it was clear enough how to do so. But 1995 was far too late a date to produce any effect on the situation.

SINGAPORE, MAP OF 1995 SHOWING PEDRA BRANCA



151

325. The position that can be confidently derived from the map evidence considered as a whole is usefully summarised in the Joint Operations Graphic published by the United Kingdom Director General of Military Survey in 1994 (Map Atlas, Map 47), an extract of which is shown as **Insert 32**, opposite.

326. The Joint Operations Graphic has the following features:

- (a) Pulau Batu Puteh (Horsburgh) and Middle Rocks are shown in close proximity to a boundary between Malaysia and Indonesia.
- (b) They are evidently attributed to Malaysia.
- (c) Other agreed boundaries and Singapore's proclaimed port limits are shown, not including Pulau Batu Puteh. In other words the Graphic addresses the territorial and boundary situation on the basis of accurate information.
- (d) Despite the disclaimer, no-one would think that the Joint Operations Graphic showed anything else than that Pulau Batu Puteh and Middle Rocks belong to Malaysia.

C. Conclusions in Relation to the Map Evidence

327. Thus the cartography provides broad support for the legal situation put forward in this Memorial. In particular it is legally significant that at no time before negotiations began for the resolution of this dispute in the early 1990s did Singapore ever produce a map showing Pulau Batu Puteh as part of Singapore. Indeed various maps were produced by Singapore officials and agencies showing the contrary. Moreover all the maps showing demarcation or attribution lines in the region of the three features treat them unequivocally as Malaysian. The only possible contrary indications (the Malaysian maps referred to in paragraph 321 above) are equivocal and – quite apart from the disclaimer – do not support Singapore's claim to sovereignty over the three features. It is true that the maps have no more than confirmatory effect. But the preponderance of the map evidence clearly supports Malaysia's claim.

UNITED KINGDOM, JOINT OPERATIONS GRAPHIC (EXTRACT)



153

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SUMMARY

328. Malaysia's claim to sovereignty over the three features, Pulau Batu Puteh, Middle Rocks and South Ledge may be summarised as follows:

- (a) These and other islands in and around Singapore Strait were part of the Sultanate of Johor before 1824. This was unaffected by the Anglo-Dutch Treaty of 1824, which concerned only islands and territory to the south of the Strait.
- (b) The sovereignty of the Sultanate, and its extension to the offshore islands, was repeatedly recognised by Great Britain.
- (c) This situation was confirmed by the Crawford Treaty of 1824, which ceded to Great Britain the Island of Singapore and all islets and rocks within 10 geographical miles of Singapore, but otherwise left the territory of Johor unaffected.
- (d) Pulau Batu Puteh was not *terra nullius*, but was used by the local Malay population, who were subjects of Johor, for fishing and other purposes. Johor exercised sovereignty over the island before and after 1824, for example in the context of piracy control.
- (e) The English East India Company sought and obtained the permission of the Sultan and Temenggong of Johor to build the Horsburgh Lighthouse on their territory. This licence extended to Pulau Batu Puteh, which was the preferred spot for the

lighthouse. It did not involve a cession of territory in sovereignty to the Straits Settlements.

- (f) Great Britain having obtained consent to the construction and operation of the Lighthouse never acted as sovereign over Pulau Batu Puteh, still less the other two features. The ownership, maintenance and operation of a lighthouse do not as such involve an exercise of sovereign rights – *a fortiori* when done with the consent of the territorial sovereign. The period of time involved is irrelevant in this respect.
- (g) Neither Great Britain nor Singapore ever claimed sovereignty over the three features at any time prior to the critical dates in relation to the present dispute (1980 in the case of Pulau Batu Puteh, 1993 in the case of the other two features). On the contrary, Singapore's legislation and treaty practice, its publications and maps, as well as statements by knowledgeable Singapore officials all confirmed that the three features were not territory of Singapore, and were not administered as part of the territory of Singapore.
- (h) By contrast, Johor and its successor, Malaysia, never relinquished sovereignty over the three features; rather, they exercised it in the context of their control over the wider range of islands in the region. Given the tiny surface of Pulau Batu Puteh and the character of the other features, as well as the continuing permission for the operation of Horsburgh Lighthouse, this sovereignty was essentially manifested in the

field of the determination and use of Malaysian maritime areas, *inter alia*, in the grant of oil concessions and in the conclusion of bilateral treaties of delimitation. It is supported by published maps. It has never been abandoned.

SUBMISSIONS

In the light of the considerations set out above, Malaysia respectfully requests the Court to adjudge and declare that sovereignty over

- (a) Pedra Branca/Pulau Batu Puteh;
- (b) Middle Rocks;
- (c) South Ledge,

belongs to Malaysia.

Agent of Malaysia

Kuala Lumpur

25 March 2004

1900

1900

1900

LIST OF ANNEXES

VOLUME 2

Treaties and Agreements

Annex Number (MM)	Title of Agreement
1.	Convention between Great Britain and the Netherlands Relative to the Dutch Colonies, London, 13 August 1814, 63 <i>Consolidated Treaty Series</i> 322
2.	Agreement between the Honourable East India Company and the Temenggong of Johore, 30 January 1819, 69 <i>CTS</i> 480 (English text)
3.	Treaty of Friendship and Alliance between Sir Stamford Raffles and Sultan Hussain Mahummad Shah, Sultan of Johore and Dato Temenggong Sri Maharajah Abdul-Rahman, 6 February 1819, 69 <i>CTS</i> 481
4.	Arrangements Made for the Government of Singapore, Singapore, 26 June 1819, 70 <i>CTS</i> 202
5.	Treaty between His Britannick Majesty and the King of the Netherlands, Respecting Territory and Commerce in the East Indies, London, 17 March 1824, 74 <i>CTS</i> 88
6.	Treaty of Friendship and Alliance between the Honourable East India Company, and the Sultan and the Temenggong of Johore, 2 August 1824, 74 <i>CTS</i> 380
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VOLUME 3

Historical and Legal Documents

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Annex Number (MM)	Title of Document
21.	General Missive from the Governor-General and Council of the Dutch East India Company in Batavia to the Seventeen Directors of the Dutch East India Company in Amsterdam, 26 December 1662, VOC 1238 (translation by Professor L.Y. Andaya)
22.	Missive from Governor Thijssen of Melaka to Governor-General and Council of the Dutch East India Company in Batavia, 1 April 1655, VOC 1209 (translation by Professor L.Y. Andaya)
23.	John Crawford's Diary, extract of 7 December 1818
24.	Letter from Resident Crawford to G. Swindon, Secretary to the Government, 1 October 1824, (1853) 7 <i>Journal of the Indian Archipelago</i> , pp. 356-357
25.	Letter from the Resident of Rhio to the Resident Councillor, Singapore, 18 August 1827 (extract), reprinted in A.C. Baker, "Some Account of the Anglo Dutch Relations in the East at the Beginning of the 19th Century Based on the Records Preserved in the Colonial Secretary's Office in Singapore, and, in the Resident's Office Malacca", (1913) 64 <i>Jour. Straits Branch R.A. Soc.</i> 1, pp. 40-42
26.	Letter from the Resident Councillor, Singapore to the Secretary to Government, Prince of Wales Island, Singapore and Malacca, 8 September 1827, reprinted in A.C. Baker, "Some Account of the Anglo Dutch Relations in the East at the Beginning of the 19th Century Based on the Records Preserved in the Colonial Secretary's Office in Singapore, and, in the Resident's Office Malacca", (1913) 64 <i>Jour. Straits Branch R.A. Soc.</i> 1, pp. 45-46
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28.	Letter from the Government Secretary to the Resident Councillor, Fort Cornwallis, 22 December 1829
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38. Letter from Governor S.G. Bonham, Governor of Prince of Wales Island, Singapore and Malacca to G.A. Bushby, Secretary to Government, Fort William, 23 July 1842
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42. Letter from John Purvis & Co. to Governor W.J. Butterworth, Governor of Prince of Wales Island, Singapore and Malacca, 31 October 1844
43. Report of J.T. Thomson, Government Surveyor to Governor W.J. Butterworth, Governor of Prince of Wales Island, Singapore and Malacca, 20 November 1844
44. Letter from Sultan Allie, Sultan of Johore to Governor W.J. Butterworth, Governor of Prince of Wales Island, Singapore and Malacca, 25 November 1844, translated by T. Church, Resident Councillor
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