

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
YEAR 2003**

8 October 2003

<p>List of Cases: No. 12</p>

**CASE CONCERNING LAND RECLAMATION BY SINGAPORE
IN AND AROUND THE STRAITS OF JOHOR**

(MALAYSIA *v.* SINGAPORE)

Request for provisional measures

ORDER

Present: *President* NELSON; *Vice-President* VUKAS; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, CHANDRASEKHARA RAO, AKL, ANDERSON, WOLFRUM, TREVES, MARSIT, NDIAYE, JESUS, XU, COT, LUCKY; *Judges ad hoc* HOSSAIN, OXMAN; *Registrar* GAUTIER.

THE TRIBUNAL,

composed as above,

after deliberation,

Having regard to article 290 of the United Nations Convention on the Law of the Sea (hereinafter "the Convention") and articles 21, 25 and 27 of the Statute of the Tribunal (hereinafter "the Statute"),

Having regard to articles 89 and 90 of the Rules of the Tribunal (hereinafter "the Rules"),

Having regard to the fact that Malaysia and Singapore have not made written declarations in accordance with article 287 of the Convention and are therefore deemed to have accepted arbitration in accordance with Annex VII to the Convention,

Having regard to the Notification and Statement of Claim submitted by Malaysia to Singapore on 4 July 2003 instituting arbitral proceedings as provided for in Annex VII to the Convention in a dispute concerning land reclamation by Singapore in and around the Straits of Johor,

Having regard to the Request for provisional measures submitted by Malaysia to Singapore on 4 July 2003 pending the constitution of an arbitral tribunal under Annex VII to the Convention,

Having regard to the Request submitted by Malaysia to the Tribunal on 5 September 2003 for the prescription of provisional measures by the Tribunal in accordance with article 290, paragraph 5, of the Convention,

Makes the following Order:

1. *Whereas* Malaysia and Singapore are States Parties to the Convention;
2. *Whereas*, on 5 September 2003, Malaysia filed with the Registry of the Tribunal a Request for the prescription of provisional measures under article 290, paragraph 5, of the Convention in a dispute concerning land reclamation by Singapore in and around the Straits of Johor;
3. *Whereas* a certified copy of the Request was sent the same day by the Registrar of the Tribunal to the Minister for Law and Foreign Affairs of Singapore, and also in care of the Ambassador of Singapore to Germany on that same day;
4. *Whereas*, on 5 September 2003, the Registrar was notified of the appointment of Mr Ahmad Fuzi Haji Abdul Razak, Secretary General of the Ministry of Foreign Affairs, as Agent for Malaysia, and Mr Kamal Ismaun, Ambassador of Malaysia to Germany, as Co-Agent for Malaysia;
5. *Whereas*, on 6 September 2003, the Registrar was notified of the appointment of Mr Tommy Koh, Ambassador-At-Large, Ministry of Foreign Affairs, as Agent for Singapore, and Mr A. Selverajah, Ambassador of Singapore to Germany, as Co-Agent for Singapore;
6. *Whereas*, pursuant to article 90, paragraph 2, of the Rules, the Tribunal, by Order dated 10 September 2003, fixed 25 September 2003 as the date for the opening of the hearing, notice of which was communicated forthwith to the parties;
7. *Whereas* the Tribunal does not include upon the bench a judge of the nationality of the parties and, pursuant to article 17, paragraph 3, of the Statute, Malaysia has chosen Mr Kamal Hossain and Singapore has chosen Mr Bernard H. Oxman to sit as judges *ad hoc* in this case;

8. *Whereas*, since no objection to the choice of Mr Hossain as judge *ad hoc* was raised by Singapore, and no objection to the choice of Mr Oxman as judge *ad hoc* was raised by Malaysia, and no objections appeared to the Tribunal itself, Mr Hossain and Mr Oxman were admitted to participate in the proceedings as judges *ad hoc* after having made the solemn declaration required under article 9 of the Rules at a public sitting of the Tribunal held on 24 September 2003;

9. *Whereas*, pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was notified by the Registrar on 5 September 2003 of the Request, and States Parties to the Convention were notified, in accordance with article 24, paragraph 3, of the Statute, by a note verbale from the Registrar dated 11 September 2003;

10. *Whereas*, on 16 September 2003, the President, by teleconference with the Agents of the parties, ascertained the views of the parties regarding the procedure for the hearing in accordance with article 73 of the Rules;

11. *Whereas*, on 20 September 2003, Singapore filed with the Registry by bearer its Response, a certified copy of which was transmitted by bearer to the Agent of Malaysia on the same day;

12. *Whereas*, on 12 September 2003, the Registrar sent a letter to the Agent of Malaysia requesting the completion of documentation and Malaysia submitted the requested documents on 22 September 2003;

13. *Whereas*, on 23 September 2003, Malaysia submitted information regarding an expert to be called by it before the Tribunal pursuant to article 72 of the Rules;

14. *Whereas*, in accordance with article 68 of the Rules, the Tribunal held initial deliberations on 24 September 2003 concerning the written pleadings and the conduct of the case;

15. *Whereas*, on 24 September 2003, the parties submitted documents pursuant to paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal;

16. *Whereas*, on 24 and 25 September 2003, the President held consultations with the Agents of the parties regarding the procedure for the hearing in accordance with article 45 of the Rules;

17. *Whereas*, pursuant to article 67, paragraph 2, of the Rules, copies of the Request and the Response and the documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings;

18. *Whereas* oral statements were presented at five public sittings held on 25, 26 and 27 September 2003 by the following:

On behalf of Malaysia: Mr Ahmad Fuzi Haji Abdul Razak, Secretary General of the Ministry of Foreign Affairs,
as Agent,

Mr Abdul Gani Patail, Attorney General,

Sir Elihu Lauterpacht, C.B.E., Q.C., Honorary Professor of International Law, University of Cambridge, United Kingdom,

Mr James Crawford S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, United Kingdom,

Mr Nico Schrijver, Professor of International Law, Free University Amsterdam and Institute of Social Studies, Netherlands,

as Counsel and Advocates,

Ms Sharifah Mastura Syed Abdullah, Professor in Geomorphology, Universiti Kebangsaan Malaysia,

as Technical Expert;

On behalf of Singapore: Mr Tommy Koh, Ambassador-At-Large, Ministry of Foreign Affairs,

as Agent,

Mr Sek Keong Chan, Attorney-General,

Mr Vaughan Lowe, Chichele Professor of Public International Law, University of Oxford, United Kingdom,

Mr Michael Reisman, Myres S. McDougal Professor of Law, Yale Law School, United States of America,

as Counsel and Advocates,

Ms Koon Hean Cheong, Second Deputy Secretary, Ministry of National Development,

as Advocate;

19. *Whereas*, in the course of the oral proceedings, a number of documents, including maps, tables, graphs, photographs, a digital video and extracts from documents, were displayed on video monitors;

20. *Whereas*, on 25 September 2003, pursuant to consultations held on that day between the President and the Agents of the parties, Ms Sharifah Mastura Syed Abdullah, Professor in Geomorphology at Universiti Kebangsaan Malaysia, made a statement as a member of the delegation of Malaysia, and then, after having made the solemn declaration under article 79, subparagraph (b), of the Rules, was examined as an expert by Mr Reisman;

21. *Whereas*, on 25 September 2003, Mr Roger A. Falconer, Professor of Water Management at Cardiff University, United Kingdom, was called as an expert by Malaysia, and, after having made the solemn declaration under article 79, subparagraph (b), of the Rules, was examined by Mr Crawford, cross-examined by Mr Lowe, and re-examined by Mr Crawford;

22. *Whereas*, in the Notification and Statement of Claim of 4 July 2003, Malaysia requested the arbitral tribunal to be constituted under Annex VII (hereinafter “the Annex VII arbitral tribunal”):

- (1) to delimit the boundary between the territorial waters of the two States in the area beyond Points W25 and E47 of the 1995 Agreement;
- (2) to declare that Singapore has breached its obligations under the 1982 Convention and under general international law by the initiation and continuation of its land reclamation activities without due notification and full consultation with Malaysia;
- (3) to decide that, as a consequence of the aforesaid breaches, Singapore shall:
 - (a) cease its current land reclamation activities in any area forming part of Malaysian waters, and restore those areas to the situation they were in before the works were commenced;
 - (b) suspend its current land reclamation activities until it has conducted and published an adequate assessment of their potential effects on the environment and on the affected coastal areas, taking into account representations made by affected parties;
 - (c) as an aspect of this assessment process:
 - (i) provide Malaysia with full information as to the current and projected works, including in particular their proposed extent, their method of construction, the origin and kind of materials used, and designs for coastal protection and remediation (if any);
 - (ii) afford Malaysia a full opportunity to comment upon the works and their potential impacts having regard, *inter alia*, to the information provided, and
 - (iii) negotiate with Malaysia concerning any remaining unresolved issues;
 - (d) in the light of the assessment and of the required processes of consultation and negotiation with Malaysia, revise its reclamation plans so as to minimise or avoid the risks or effects of pollution or of other significant effects of those works on the marine environment (including excessive sedimentation, bed level changes and coastal erosion);

- (e) provide adequate and timely information to Malaysia of projected bridges or other works tending to restrict maritime access to coastal areas and port facilities in the Straits of Johor, and take into account any representations of Malaysia so as to ensure that rights of maritime transit and access under international law are not impeded;
- (f) to the extent that – notwithstanding the above measures – Malaysia, or persons or entities in Malaysia, are injuriously affected by the reclamation activities, provide full compensation for such injury, the amount of such compensation (if not previously agreed between the parties) to be determined by the Tribunal in the course of the proceedings;

23. *Whereas* the provisional measures requested by Malaysia in the Request to the Tribunal filed on 5 September 2003, and maintained in the final submissions read by the Agent of Malaysia at the public sitting held on 27 September 2003, are as follows:

- (a) that Singapore shall, pending the decision of the Arbitral Tribunal, suspend all current land reclamation activities in the vicinity of the maritime boundary between the two States or of areas claimed as territorial waters by Malaysia (and specifically around Pulau Tekong and Tuas);
- (b) to the extent it has not already done so, provide Malaysia with full information as to the current and projected works, including in particular their proposed extent, their method of construction, the origin and kind of materials used, and designs for coastal protection and remediation (if any);
- (c) afford Malaysia a full opportunity to comment upon the works and their potential impacts having regard, *inter alia*, to the information provided; and
- (d) agree to negotiate with Malaysia concerning any remaining unresolved issues;

24. *Whereas* the submissions presented by Singapore in its Response, and maintained in the final submissions read by the Agent of Singapore at the public sitting held on 27 September 2003, are as follows:

Singapore requests the International Tribunal for the Law of the Sea to:

- (a) dismiss Malaysia's Request for provisional measures; and
- (b) order Malaysia to bear the costs incurred by Singapore in these proceedings;

25. *Considering* that, in accordance with article 287 of the Convention, Malaysia has, on 4 July 2003, instituted proceedings under Annex VII to the Convention against Singapore in the dispute concerning land reclamation by Singapore in and around the Straits of Johor;

26. *Considering* that Malaysia sent the notification instituting proceedings under Annex VII to the Convention to Singapore on 4 July 2003, together with a Request for provisional measures;

27. *Considering* that, on 5 September 2003, after the expiry of the time-limit of two weeks provided for in article 290, paragraph 5, of the Convention, and pending the constitution of the Annex VII arbitral tribunal, Malaysia submitted to the Tribunal a Request for the prescription of provisional measures;

28. *Considering* that neither Malaysia nor Singapore has made a written declaration in accordance with article 298 of the Convention that it does not accept any of the procedures provided for in Part XV, section 2, of the Convention with respect to the disputes specified in that article;

29. *Considering* that article 290, paragraph 5, of the Convention provides in the relevant part that:

Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea ... may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires;

30. *Considering* that, before prescribing provisional measures under article 290, paragraph 5, of the Convention, the Tribunal must satisfy itself that *prima facie* the Annex VII arbitral tribunal would have jurisdiction;

31. *Considering* that Malaysia maintains that the dispute with Singapore concerns the interpretation and application of certain provisions of the Convention, including, in particular, articles 2, 15, 123, 192, 194, 198, 200, 204, 205, 206, 210 and, in relation thereto, article 300 of the Convention;

32. *Considering* that Malaysia has invoked as the basis of jurisdiction of the Annex VII arbitral tribunal article 288, paragraph 1, of the Convention, which reads as follows:

A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part;

33. *Considering* that Singapore contends that the requirements of article 283 of the Convention have not been satisfied since, in its view, there has been no exchange of views regarding the settlement of the dispute by negotiation or other peaceful means;

34. *Considering* that Singapore maintains further that negotiations between the parties, which article 283 of the Convention makes a precondition to the activation of Part XV compulsory dispute settlement procedures, have not taken place;

35. *Considering* that article 283, paragraph 1, of the Convention reads as follows:

When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means;

36. *Considering* that article 283 of the Convention applies “when a dispute arises” and that there is no controversy between the parties that a dispute exists;

37. *Considering* that article 283 of the Convention only requires an expeditious exchange of views regarding the settlement of the dispute “by negotiation or other peaceful means”;

38. *Considering* that the obligation to “proceed expeditiously to an exchange of views” applies equally to both parties to the dispute;

39. *Considering* that Malaysia states that, on several occasions prior to the institution of proceedings under Annex VII to the Convention by Malaysia on 4 July 2003, it had in diplomatic notes informed Singapore of its concerns about Singapore’s land reclamation in the Straits of Johor and had requested that a meeting of senior officials of the two countries be held on an urgent basis to discuss these concerns with a view to amicably resolving the dispute;

40. *Considering* that Malaysia maintains that Singapore had categorically rejected its claims and had stated that a meeting of senior officials as requested by Malaysia would only be useful if the Government of Malaysia could provide new facts or arguments to prove its contentions;

41. *Considering* that Singapore maintains that it had consistently informed Malaysia that it was prepared to negotiate as soon as Malaysia’s concerns had been specified and that Malaysia had undertaken to supply reports and studies detailing its specific concerns but did not do so prior to 4 July 2003;

42. *Considering* that Singapore states that, after receiving the Notification and Statement of Claim submitted by Malaysia on 4 July 2003 instituting arbitral proceedings in accordance with Annex VII to the Convention, Malaysia and Singapore agreed to meet in Singapore on 13 and 14 August 2003 to discuss the issues with a view to resolving them amicably;

43. *Considering* that Singapore maintains that Malaysia abruptly broke off the negotiation process of 13 and 14 August 2003 by insisting on the immediate suspension of the reclamation works as a precondition for further talks;

44. *Considering* that Malaysia stated that a further exchange of views could not be expected while the reclamation works were continuing;
45. *Considering* that Malaysia stated further that a party is not obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted;
46. *Considering* that in fact the parties were not able to settle the dispute or agree on a means to settle it;
47. *Considering* that the Tribunal has held that "a State Party is not obliged to pursue procedures under Part XV, section 1, of the Convention when it concludes that the possibilities of settlement have been exhausted" (*Southern Bluefin Tuna Cases*, Order of 27 August 1999, paragraph 60), and that "a State Party is not obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted " (*The MOX Plant Case*, Order of 3 December 2001, paragraph 60);
48. *Considering* that, in the view of the Tribunal, in the circumstances of the present case Malaysia was not obliged to continue with an exchange of views when it concluded that this exchange could not yield a positive result;
49. *Considering* that the discussions held between the parties on 13 and 14 August 2003 were conducted, by agreement of the two parties, without prejudice to Malaysia's right to proceed with the arbitration pursuant to Annex VII to the Convention or to request the Tribunal to prescribe provisional measures in connection with the dispute;
50. *Considering* that these discussions were held after Malaysia had instituted proceedings before the Annex VII arbitral tribunal on 4 July 2003 and, accordingly, the decision of Malaysia to discontinue the discussions does not have a bearing on the applicability of article 283 of the Convention;

51. *Considering* that, in the view of the Tribunal, the requirement of article 283 is satisfied;

52. *Considering* that, as stated by the International Court of Justice, “[n]either in the Charter nor otherwise in international law is any general rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court” (*Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 303);

53. *Considering* that Singapore maintains that, after its invitation to Malaysia to resolve the differences between them was accepted by Malaysia and meetings took place in Singapore on 13 and 14 August 2003, a consensual process of negotiation had commenced and, as a legal consequence, both States had embarked upon a course of negotiation under article 281 of the Convention in an effort to arrive at an amicable solution of the dispute between them;

54. *Considering* that article 281 of the Convention reads as follows:

1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.

2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit;

55. *Considering* that Malaysia accepted the invitation to the meetings of 13 and 14 August 2003 after it had already instituted proceedings under Annex VII to the Convention;

56. *Considering* that both Malaysia and Singapore agreed that this meeting and subsequent meetings would be without prejudice to Malaysia’s right to proceed with

the arbitration pursuant to Annex VII to the Convention or to request this Tribunal to prescribe provisional measures;

57. *Considering*, therefore, that, in the view of the Tribunal, article 281 of the Convention is not applicable in the circumstances of this case;

58. *Considering* that no other objection to jurisdiction has been raised by Singapore;

59. *Considering* that, for the above reasons, the Tribunal finds that the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute;

60. *Considering* that Singapore contends that Malaysia's Request (for the prescription of provisional measures) is inadmissible because it "does not 'specify ... the possible consequences ... for the preservation of the respective rights of the parties or for the [prevention] of serious harm to the marine environment', as required by Article 89(3) of the ITLOS Rules"; and further that the Request does not identify " 'the urgency of the situation' as required by Article 89(4) of the ITLOS Rules";

61. *Considering* that, in its Request for provisional measures of 5 September 2003, Malaysia stated that the rights which it seeks to preserve by the grant of provisional measures are those relating to the preservation of the marine and coastal environment and the preservation of its rights to maritime access to its coastline, in particular via the eastern entrance of the Straits of Johor, and claimed that these rights are guaranteed by the provisions of the Convention which it specified in the Request;

62. *Considering* that Malaysia states that in the context of the diplomatic correspondence and during the bilateral consultations it has time and again specified which of its rights are at stake and what is their basis in law;

63. *Considering* that, in the view of the Tribunal, the Request of Malaysia has fulfilled the requirements of article 89, paragraphs 3 and 4, of the Rules and therefore the Request is admissible;
64. *Considering* that, in accordance with article 290, paragraph 1, of the Convention, the Tribunal may prescribe measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment;
65. *Considering* that, according to article 290, paragraph 5, of the Convention, provisional measures may be prescribed pending the constitution of the Annex VII arbitral tribunal if the Tribunal considers that the urgency of the situation so requires;
66. *Considering* that Singapore contends that, as the Annex VII arbitral tribunal is to be constituted not later than 9 October 2003, there is no need to prescribe provisional measures given the short period of time remaining before that date;
67. *Considering* that, under article 290, paragraph 5, of the Convention, the Tribunal is competent to prescribe provisional measures prior to the constitution of the Annex VII arbitral tribunal, and that there is nothing in article 290 of the Convention to suggest that the measures prescribed by the Tribunal must be confined to that period;
68. *Considering* that the said period is not necessarily determinative for the assessment of the urgency of the situation or the period during which the prescribed measures are applicable and that the urgency of the situation must be assessed taking into account the period during which the Annex VII arbitral tribunal is not yet in a position to “modify, revoke or affirm those provisional measures”;
69. *Considering* further that the provisional measures prescribed by the Tribunal may remain applicable beyond that period;
70. *Considering* that Malaysia alleges that, contrary to articles 2 and 15 of the Convention, Singapore has impinged on areas of Malaysia’s territorial sea by its land reclamation works in the sector of Tuas, in the vicinity of Point 20, and that, for that

reason, the Tribunal should prescribe the suspension of the said land reclamation works in that sector;

71. *Considering* that the existence of a claim to an area of territorial sea is not, *per se*, a sufficient basis for the prescription of provisional measures under article 290, paragraph 5, of the Convention;

72. *Considering* that, in the view of the Tribunal, the evidence presented by Malaysia does not show that there is a situation of urgency or that there is a risk that the rights it claims with respect to an area of territorial sea would suffer irreversible damage pending consideration of the merits of the case by the Annex VII arbitral tribunal;

73. *Considering* that the Tribunal, therefore, does not consider it appropriate in the circumstances to prescribe provisional measures with respect to the land reclamation by Singapore in the sector of Tuas;

74. *Considering* that Malaysia has further argued that Singapore has placed itself in breach of its obligations under international law, specifically under articles 123, 192, 194, 198, 200, 204, 205, 206 and 210 of the Convention, and in relation thereto, article 300 of the Convention and the precautionary principle, which under international law must direct any party in the application and implementation of those obligations;

75. *Considering* that Singapore submits that in the present situation there is no room for applying the precautionary principle for the prescription of provisional measures;

76. *Considering* that, at a public sitting held on 26 September 2003, Singapore, in response to Malaysia's second requested measure, cited in paragraph 23(b) above, stated that it had already given an explicit offer to share the information that Malaysia requested in reliance on its rights under the Convention and that this offer had been made in Singapore's Note dated 17 July 2003 and its letter of 21 August 2003;

77. *Considering* that at the same sitting, in response to Malaysia's third requested measure, cited in paragraph 23(c) above, Singapore expressly stated that it would give Malaysia a full opportunity to comment on the reclamation works and their potential impacts, and that it would notify and consult Malaysia before it proceeded to construct any transport links between Pulau Tekong, Pulau Ubin and the main island of Singapore if such links could affect Malaysia's rights of passage;

78. *Considering* that, at the same sitting, in response to Malaysia's fourth requested measure, cited in paragraph 23(d) above, Singapore declared that it had expressly stated its readiness and willingness to enter into negotiations and that it remained ready and willing to do so;

79. *Considering* that, at the public sitting held on 27 September 2003, Malaysia stated that during the hearing, Singapore had provided some further clarifications on the three requested measures, cited in paragraph 23(b), (c) and (d) above, and that, in the light of this new information, Malaysia would be prepared to accept these assurances if the Tribunal made them a matter of formal judicial record;

80. *Considering* that Malaysia stated that there had been an acceleration of work around Pulau Tekong and that Singapore had solemnly assured the Tribunal that it had not been and was not accelerating its works;

81. *Considering* that the Tribunal places on record the assurances given by Singapore as specified in paragraphs 76 to 80;

82. *Considering* that Malaysia, in the first measure cited in paragraph 23(a) above, requests that Singapore shall, pending the decision of the Annex VII arbitral tribunal, suspend all current land reclamation activities in the vicinity of the maritime boundary between the two States or of areas claimed as territorial sea by Malaysia (and specifically around Pulau Tekong and Tuas);

83. *Considering* that, at the public sitting held on 27 September 2003, Malaysia stated that it accepts the importance of land reclamation and does not claim a veto over Singapore's activities;

84. *Considering* that, at the same public sitting, Malaysia stressed, however, that infilling works in Area D at Pulau Tekong was of primary concern and that if Singapore were to give clear undertakings to the Tribunal that no effort would be made to infill Area D pending the decision of the Annex VII arbitral tribunal, and if these undertakings were likewise made a matter of formal judicial record, Malaysia's concerns would be significantly reduced;

85. *Considering* that, in response to Malaysia's first requested measure, as cited in paragraph 23(a) above, the Agent of Singapore, at the public sitting on 27 September 2003, read out a "commitment" that the Government of Singapore had already made in its Note of 2 September 2003, as follows:

If, after having considered the material [*that is to say the material we have provided Malaysia with*] Malaysia believes that Singapore had missed some point or misinterpreted some data and can point to a specific and unlawful adverse effect that would be avoided by suspending some part of the present works, Singapore would carefully study Malaysia's evidence. If the evidence were to prove compelling, Singapore would seriously re-examine its works and consider taking such steps as are necessary and proper, including a suspension, [*and I emphasize that*] to deal with the adverse effect in question;

86. *Considering* that Singapore accepted the proposal that Malaysia and Singapore jointly sponsor and fund a scientific study by independent experts on terms of reference to be agreed by the two sides;

87. *Considering* that, when presenting its final submissions during the public sitting held on 27 September 2003, the Agent of Singapore stated:

Concerning Malaysia's first [requested measure] for Singapore to stop its reclamation works immediately, which was modified by the Malaysian Agent this morning, ... Singapore is pleased to inform the Tribunal that regarding Area D, no irreversible action will be taken by Singapore to construct the stone revetment around Area D pending the completion of the joint study, which should be completed within a year;

88. *Considering* that the Tribunal places on record the commitments referred to in paragraphs 85 to 87;

89. *Considering* that the Agent of Singapore stated that:

none of the above agreements affect[s] the rights of both Malaysia and Singapore to continue our reclamation works, which, however, must be conducted in accordance with international best practice and the rights and obligations of both parties under international law;

90. *Considering* that, having regard to the obligation of the parties not to aggravate the dispute pending its settlement, the parties have the obligation not to create an irremediable situation and in particular not to frustrate the purpose of the study to be undertaken by a group of independent experts;

91. *Considering* that Malaysia and Singapore share the same marine environment in and around the Straits of Johor;

92. *Considering* that, as this Tribunal has stated:

the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law and that rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention (*The MOX Plant Case*, Order of 3 December 2001, paragraph 82);

93. *Considering* that Malaysia claims that Singapore, by initiating and carrying on major reclamation works in the areas concerned, has affected Malaysia's rights to the natural resources within its territorial sea and violated its rights to the integrity of the marine environment in those areas;

94. *Considering* that Singapore maintains that the land reclamation works have not caused any significant impact on Malaysia and that the necessary steps were taken to examine possible adverse impacts on the surrounding waters;

95. *Considering* that an assessment concerning the impact of the land reclamation works on waters under the jurisdiction of Malaysia has not been undertaken by Singapore;
96. *Considering* that it cannot be excluded that, in the particular circumstances of this case, the land reclamation works may have adverse effects on the marine environment;
97. *Considering* that, in the view of the Tribunal, the record of this case shows that there was insufficient cooperation between the parties up to the submission of the Statement of Claim on 4 July 2003;
98. *Considering* that the last public sitting of the hearing showed a change in the attitude of the parties resulting in the commitments which the Tribunal has put on record, and that it is urgent to build on the commitments made to ensure prompt and effective cooperation of the parties in the implementation of their commitments;
99. *Considering* that, given the possible implications of land reclamation on the marine environment, prudence and caution require that Malaysia and Singapore establish mechanisms for exchanging information and assessing the risks or effects of land reclamation works and devising ways to deal with them in the areas concerned;
100. *Considering* that Malaysia and Singapore shall ensure that no action is taken which might prejudice the carrying out of any decision on the merits which the Annex VII arbitral tribunal may render;
101. *Considering* that, in accordance with article 89, paragraph 5, of the Rules, the Tribunal may prescribe measures different in whole or in part from those requested;
102. *Considering* that Malaysia and Singapore should each ensure that no action is taken which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal;

103. *Considering* that, pursuant to article 95, paragraph 1, of the Rules, each party is requested to submit to the Tribunal a report and information on compliance with any provisional measures prescribed;

104. *Considering* that, in the view of the Tribunal, it is consistent with the purpose of proceedings under article 290, paragraph 5, of the Convention that parties submit reports to the Annex VII arbitral tribunal, unless the arbitral tribunal decides otherwise;

105. *Considering* that, in the present case, the Tribunal sees no reason to depart from the general rule, as set out in article 34 of its Statute, that each party shall bear its own costs;

106. *For these reasons,*

THE TRIBUNAL,

1. Unanimously,

Prescribes, pending a decision by the Annex VII arbitral tribunal, the following provisional measures under article 290, paragraph 5, of the Convention:

Malaysia and Singapore shall cooperate and shall, for this purpose, enter into consultations forthwith in order to:

- (a) establish promptly a group of independent experts with the mandate
 - (i) to conduct a study, on terms of reference to be agreed by Malaysia and Singapore, to determine, within a period not exceeding one year from the date of this Order, the effects of Singapore's land reclamation and to propose, as appropriate, measures to deal with any adverse effects of such land reclamation;

(ii) to prepare, as soon as possible, an interim report on the subject of infilling works in Area D at Pulau Tekong;

- (b) exchange, on a regular basis, information on, and assess risks or effects of, Singapore's land reclamation works;
- (c) implement the commitments noted in this Order and avoid any action incompatible with their effective implementation, and, without prejudice to their positions on any issue before the Annex VII arbitral tribunal, consult with a view to reaching a prompt agreement on such temporary measures with respect to Area D at Pulau Tekong, including suspension or adjustment, as may be found necessary to ensure that the infilling operations pending completion of the study referred to in subparagraph (a)(i) with respect to that area do not prejudice Singapore's ability to implement the commitments referred to in paragraphs 85 to 87.

2. Unanimously,

Directs Singapore not to conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment, taking especially into account the reports of the group of independent experts.

3. Unanimously,

Decides that Malaysia and Singapore shall each submit the initial report referred to in article 95, paragraph 1, of the Rules, not later than 9 January 2004 to this Tribunal and to the Annex VII arbitral tribunal, unless the arbitral tribunal decides otherwise.

4. Unanimously,

Decides that each party shall bear its own costs.

Done in English and in French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this eighth day of October, two thousand and three, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Malaysia and the Government of Singapore, respectively.

(signed)

L. DOLLIVER M. NELSON,
President.

(signed)

PHILIPPE GAUTIER,
Registrar.

President NELSON and Judge ANDERSON append declarations to the Order of the Tribunal.

Judges *ad hoc* HOSSAIN and OXMAN append a joint declaration to the Order of the Tribunal.

Judges CHANDRASEKHARA RAO, NDIAYE, JESUS, COT and LUCKY append separate opinions to the Order of the Tribunal.