INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

2003

Public sitting

held on Friday, 26 September 2003, at 10.00 a.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President L. Dolliver M. Nelson presiding

Case concerning Land Reclamation by Singapore in and around the Straits of Johor

(Request for provisional measures)

(Malaysia v. *Singapore)*

Verbatim Record

Uncorrected
Non-corrigé

Present:	President	L. Dolliver M. Nelson
	Vice-President	Budislav Vukas
	Judges	Hugo Caminos
		Vicente Marotta Rangel
		Alexander Yankov
		Soji Yamamoto
		Anatoli Lazarevich Kolodkin
		Choon-Ho Park
		Paul Bamela Engo
		Thomas A. Mensah
		P. Chandrasekhara Rao
		Joseph Akl
		David Anderson
		Rüdiger Wolfrum
		Tullio Treves
		Mohamed Mouldi Marsit
		Tafsir Malick Ndiaye
		José Luis Jesus
		Guangjian Xu
		Jean-Pierre Cot
		Anthony Amos Lucky
	Judges *ad hoc*	Kamal Hossain
		Bernard H. Oxman
	Registrar	Philippe Gautier

Malaysia represented by:

Mr Ahmad Fuzi Haji Abdul Razak, Secretary General, Ministry of Foreign Affairs,

as Agent;

Mr Kamal Ismaun, Ambassador, Embassy of Malaysia, Berlin, Germany,

as Co-Agent;

and

Mr Abdul Gani Patail, Attorney General,
Mr Elihu Lauterpacht, C.B.E., Q.C., Honorary Professor of International Law, University of Cambridge, Cambridge, United Kingdom,
Mr James Crawford S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, Cambridge, United Kingdom,
Mr Nico Schrijver, Professor of International Law, Free University Amsterdam and Institute of Social Studies, The Hague, Netherlands,

as Counsel and Advocates;

Mr Christian J. Tams, LL.M (Cantab), Gonville & Caius College, Cambridge, United Kingdom,

as Counsel;

Ms Wan Napsiah Salleh, Under-Secretary, Territorial and Maritime Affairs Division, Ministry of Foreign Affairs,
Mr Jaafar Ismail, Director-General, National Security Division, Prime Minister's Department,
Mr Hamid Ali, Director General of Survey and Mapping, Department of Survey and Mapping,
Mrs Azailiza Mohd Ahad, Deputy Head of International Affairs Division, Attorney General's Chamber,
Mr Haji Mohamad Razali Mahusin, Secretary State of Johor,
Mr Abdul Aziz Abdul Rasol, Assessment Division Director, Department of Environment,
Ms Khadijah Mahmud, Senior Federal Council, Ministry of Foreign Affairs,
Mr Raja Aznam Nazrin, Principal Assistant Secretary, Territorial and Maritime Affairs Division, Ministry of Foreign Affairs,
Mr Hasan Jamil, Director of Survey, Boundary Affairs, Department of Survey and Mapping,
Mr Ahmad Aznan Zakaria, Principal Assistant Director of Survey (Boundary Affairs), Ministry of Foreign Affairs,
Mrs Almalena Shamila Johan Thambu, Senior Federal Counsel, International Affairs Division, Attorney General's Chambers,
Mr Yacob Ismail, Director General, Hydrography Department, Royal Malaysian Navy,

Ms Haznah Md. Hashim, Assistant Secretary, Territorial and Maritime Affairs Division, Ministry of Foreign Affairs,
Mr Nur Azman Abd Rahim, Assistant Secretary, Territorial and Maritime Affairs Division, Ministry of Foreign Affairs,
Mr Mohd Riduan Md. Ali, Assistant Director, Economic Planning Unit Johor,
Mrs Rus Shazila Osman, Assistant Director, National Security Division, Prime Minister's Department,
Mr Hasnan Hussin, Senior Technical Assistant, Boundary Affairs, Department of Survey and Mapping,

as Advisers;

Mrs Sharifah Mastura Syed Abdullah, Professor in Geomorphology, Phd., Southampton University, United Kingdom, Professor at Universiti Kebangsaan Malaysia,
Mr Saw Hin Seang, Director, Coastal Engineering Division, Department of Irrigation and Drainage,
Mr Ziauddin Abdul Latif, Deputy Director, Coastal Engineering Division, Department of Irrigation and Drainage,
Mrs Siti Aishah Hashim, Engineer, Coastal Engineering Division, Department of Irrigation and Drainage,
Mr M. Marzuki Mustafa, Associate Professor, Universiti Kebangsaan Malaysia,
Mr Othman A Karim, Associate Professor, Universiti Kebangsaan Malaysia,
Mr Othman Jaafar, Universiti Kebangsaan Malaysia,

as Technical Advisers.

Singapore represented by:

Mr Tommy Koh, Ambassador-At-Large, Ministry of Foreign Affairs,

as Agent:

Mr A. Selverajah, Ambassador, Embassy of the Republic of Singapore, Berlin, Germany,

as Co-Agent;

and

Mr Sek Keong Chan, Attorney-General,
Mr Vaughan Lowe, Chichele Professor of Public International Law, University of Oxford, Oxford, United Kingdom,
Mr Michael Reisman, Myres S. McDougal Professor of Law, Yale Law School, New Haven, Connecticut, United States of America,

as Counsel and Advocates;

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

as Advocate;

Mr Sivakant Tiwari, Principal Senior State Counsel, International Affairs Division, Attorney-General's Chambers,
Mr Lionel Yee, Senior State Counsel, International Affairs Division, Attorney-General's Chambers,
Ms Danielle Yeow, State Counsel, International Affairs Division, Attorney-General's Chambers,
Mr Ken Hwee Tan, State Counsel, International Affairs Division, Attorney-General's Chambers,
Mr Marcus Song, State Counsel, International Affairs Division, Attorney-General's Chambers,
Ms Pei Feng Cheng, State Counsel, International Affairs Division, Attorney-General's Chambers,
Mr Peter Chan, Permanent Secretary, Ministry of National Development,
Ms Adele Tan, Assistant Director, Strategic Planning, Ministry of National Development,
Mr Albert Chua, Deputy Secretary (Policy), Ministry of Foreign Affairs,
Mr Hong Huai Lim, Deputy Director, PPA Directorate I (Southeast Asia), Ministry of Foreign Affairs,
Ms Sharon Chan, First Secretary, Embassy of the Republic of Singapore, Berlin, Germany,
Ms Constance See, Assistant Director, PPA Directorate I (Southeast Asia), Ministry of Foreign Affairs,
Mr Kees d'Angremond, Emeritus Professor of Coastal Engineering, Delft University of Technology, Netherlands,
Mr Leo Wee Hin Tan, Professor of Biological Sciences, National Technological University, Singapore,
Mr Michael James Holmes, Research Fellow, Department of Biological Sciences, Tropical Marine Science Institute, National University of Singapore,
Mr Eng Hock Ong, Engineer, Engineering Planning, JTC Corporation, Singapore,
Ms Ah Mui Hee, Vice President, Jurong Consultants Pte Ltd, (Project Manager, Tuas View Extension Reclamation), Singapore,
Ms Say Khim Ong, Deputy Director, Strategic Planning, Housing and Development Board,
Mr Yan Hui Loh, Senior Vice President, Engineering, HDB Corp (Surbana) (Project Manager, P. Tekong Reclamation Works), Singapore,
Mr Way Seng Chia, Vice President, Reclamation, HDB Corp (Surbana), Singapore,
Mr Cheng Wee Lee, Deputy Port Master, Maritime Port Authority of Singapore,
Mr Parry Soe Ling Oei, Deputy Hydrographer, Maritime Port Authority of Singapore,
Mr Chee Leong Foong, Head, Pollution Control Department, National Environment Agency,

as Advisers.

CLERK OF THE TRIBUNAL: All rise.

PRESIDENT: Please be seated.

CLERK OF THE TRIBUNAL: The International Tribunal for the Law of the Sea is now in session.

THE PRESIDENT: Today, we will hear the Respondent. I now give the floor to the Agent of Singapore.

MR KOH: Mr President, Mr Vice-President, distinguished judges, my learned friends who represent Malaysia, ladies and gentlemen, before Singapore presents its response to Malaysia's application, I would like to make a brief statement concerning three points in the statement made yesterday afternoon by counsel for Malaysia, Professor Crawford. I refer to the Provisional Verbatim Record of the meeting contained in document ITLOS/PV.03/02.

First, I refer to page 21, paragraphs 4, 5 and 6 in which Professor Crawford committed a gross violation of confidentiality by revealing a matter which is being discussed between you, Mr President and the two agents.

Second, I refer to page 22, paragraph 3, in which Professor Crawford committed another breach of confidentiality in his ruthless attempt to bolster his case.

Third, I refer to page 31, last paragraph, and page 32, paragraphs 1 and 2, in which Professor Crawford insinuated that Singapore had requested Malaysia not to refer to certain reports. This is outrageous. The truth is that those reports were submitted out of time. Their current status is based upon an understanding arrived at during consultations between the President and the two agents.

THE PRESIDENT: I now give the floor to Mr Chan Sek Keong, Attorney-General of Singapore.

MR CHAN: Mr President, Mr Vice-President, Members of this Tribunal, it is indeed an honour for me, as the Attorney-General of Singapore, to appear before this Tribunal to introduce Singapore's case in these proceedings.

Malaysia claims that Singapore, in carrying out its reclamation works, has disregarded Malaysia's rights under international law. This is simply not true. Malaysia is Singapore's closest neighbour. Both countries share a common history going back more than 500 years. Singapore was a component state of Malaysia from 1963 to 1965. Singapore values good relations with Malaysia. State and people relations remain strong. Kinship ties among many Singaporean and Malaysian families remain inseparable. Singapore hosts many thousands of Malaysian workers. Malaysia is Singapore's largest trading partner, while Singapore is Malaysia's second largest trading partner. These strong trading ties are crucial to each country's economic development, even as they find it necessary to compete with each other in some sectors, such as maritime transportation.

Singapore is therefore disappointed that Malaysia has brought these proceedings

against Singapore and has brought them in the manner it did. Malaysia filed its Statement of Claim suddenly without first having given Singapore the opportunity to understand and address its specific concerns. Singapore was also given an ultimatum to stop its reclamation works or face an application for provisional measures. When Malaysia was brought to the negotiating table, Malaysia broke off negotiations abruptly after only one meeting, and applied for provisional measures.

Mr President and Members of this Tribunal, let me quickly summarise the three key points in Singapore's response to Malaysia's request for provisional measures.

Firstly, Malaysia's application is neither admissible nor within the jurisdiction of this Tribunal on the ground that Malaysia has failed to fulfil the pre-conditions required by the Law of the Sea Convention for commencement of arbitration.

Secondly, Malaysia has failed to produce sufficient evidence of a real risk of harm to Malaysia or the marine environment if Singapore's reclamation works are not stopped immediately. The burden of proof on the state requesting provisional measures is very high, especially when such measures would cause great harm to the state against which they are directed, as is the case here. This burden is entirely appropriate and Malaysia has not discharged it.

Thirdly, Malaysia cannot demonstrate the urgency for provisional measures. Malaysia has delayed its own case far too long to make its claim of urgency credible. Singapore's reclamation works are at a very advanced stage. In any case, the Annex VII Tribunal will be constituted by 9 October 2003 at the latest, less than two weeks form now. No irreparable prejudice to Malaysia's rights can result from any additional work scheduled to take place in the short time before the Annex VII tribunal takes over. In fact, no works are scheduled to take place in the Point 20 "sliver" during this period.

Mr President, the application before you today is only the third time that this Tribunal has been seized of a case under paragraph 5 Article 290. It is an important proceeding both for this Tribunal and for states' parties in that it provides this Tribunal another opportunity to reaffirm the established principles governing this exceptional remedy. The remedy is exceptional, not least because it is also a remedy which could be devastating to a state that is subjected to it. From Singapore's perspective, I can say that Malaysia's application, if granted, would have far-reaching, serious and immediate consequences and implications on Singapore's right to development as a nation.

Let me explain. Land is scarce in Singapore. Singapore's total land area is about 680 square kilometres, slightly smaller than the City of Hamburg. In comparison, Malaysia is about 500 times the size of Singapore but has a population only about eight times that of Singapore. Malaysia's land area is larger than Italy's and only slightly smaller than that of Germany. Since this case involves land reclamation, I might also add that Malaysia's coastline (about 4600 kilometres) is almost 25 times longer than Singapore's (about 193 kilometres), but only 2 per cent of Malaysia's coastline abuts the Straits of Johor, in sharp contrast to nearly 50 per cent of Singapore's coastline. Malaysia's claims are substantially concerned with the marine environment in this small and narrow body of shared waters.

Four million people are squeezed tightly into Singapore's 680 square kilometres. Singapore has a population density of more than 6,000 persons per square kilometre, making it one of the most densely populated countries in the world. Land reclamation to create more living and working space has been and continues to be critical to Singapore's needs for housing, social development and economic growth.

Mr President, let me emphasise that Singapore's position is not that the right to development trumps the protection of the environment, as suggested by Professor Schrijver yesterday. Far from it, Singapore has always sought to balance its developmental rights with the need to protect the environment. All our reclamation works, including the two projects in this case, have to go through an elaborate planning process. Mrs Cheong Koon Hean will explain the process shortly. Singapore's record on environmental protection and conservation of whatever little nature resources it has is exemplary. Despite its need for land for housing and industry, Singapore has preserved a significant number of nature areas, both inland as well as coastal. In fact, the land area devoted to nature reserves, parks and greenery accounts for about 9 per cent of Singapore's total land area. We have even preserved two areas of primary forests on the main island that are more than a million years old.

But Malaysia says that Singapore is only looking after its own environmental interests but not those of Malaysia. This is also not true. We have sewered up the whole island to ensure that no sewage, treated or untreated, flows into Singapore's adjacent waters, in contrast to the amount of untreated waste coming down from Malaysia's coasts and rivers.

Mr President, yesterday this Tribunal had the benefit of reading a passage from one of Professor Sharifah's articles (written in 1992) lamenting the environmental damage done by Malaysia's own developmental works to its coastal regions that included coastal erosion, depletion of mangrove forest, decline in fish landings, and various types of pollution. So, it is astonishing that Malaysia has come to this Tribunal and alleged that Singapore's reclamation works have damaged the marine environment when Malaysia's own evidence suggests a real likelihood of Malaysia having caused the environmental effects for which it had faulted Singapore. I refer this Tribunal to Malaysia's UKM Report, which has attributed some of these impacts to Malaysia's own developmental works.

Malaysia's presentation yesterday made much of Singapore's alleged refusal to co-operate and consult with Malaysia. We reject this accusation. In April 2002, the Prime Minister of Singapore, after learning about Malaysia's unhappiness with Singapore's reclamation works at Tuas, made this public statement:

> "If a note comes from them [Malaysia] spelling specifically the areas which they have been hurt by our land reclamation, we surely must look into that seriously and look at the evidence. And if they're right, we have to rectify what we have done because what we do must not have adverse, negative effects on our neighbours."

This has been Singapore's consistent position and remains so. I refer this Tribunal to Singapore's diplomatic note of 2 September 2003. In this note Singapore gave the following assurance to Malaysia:

> "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, to deal with any adverse effects."

Despite this assurance, Malaysia, after asking for and receiving substantial information from Singapore, unilaterally and abruptly broke off negotiations three days later, and filed the present application. Yesterday Professor Crawford chose to ignore this assurance when he accused Singapore of refusing to even consider suspending its works under any circumstances. That is one of the careless statements made in Malaysia's presentation.

Another instance of a careless assertion against Singapore is that Singapore has been accelerating its reclamation works to ensure a fait acompli. There is actually no factual basis for this assertion. Yesterday in Professor Crawford's presentation, a photograph of Singapore's ongoing works was shown. It purported to show dredgers working at the east of Pulau Tekong, an area, he says of significant impact. In fact, the dredgers were working at the west of Pulau Tekong, far from the Malaysian coast. If the Tribunal would look at the photograph, you will see an antenna on the right. From the antenna you can calculate the position of the dredgers, and we show that in the next slide. That is where the dredgers are. Furthermore, Singapore had in fact given a categorical assurance on 2 September 2003 that "it has not accelerated the reclamation works around Pulau Tekong."

Mr President, Malaysia's allegation of Singapore's refusal to co-operate and consult rings hollow when you consider Malaysia's attitude in relation to its territorial claim to so-called Point 20. This claim was made in 1979 through the unilateral publication of a map. Singapore objected to it on the ground that it had no legal basis. Malaysia failed to clarify its claim, but continued to assert it without providing any clarification. Twenty-four years later, at the 13-14 August 2003 meeting, Singapore again sought to understand this claim, but Malaysia simply referred to the Geneva Convention on the Continental Shelf 1958, without providing details. There was no basis on which Singapore could start any talks with Malaysia on its claim to Point 20 unless we were told the specifics of the claim. In fact, it was only yesterday that we were presented with a detailed explanation of how this claim was constructed in 1979.

I might also add that Professor Crawford took advantage of this 24-year lapse in co-operation to advance to this Tribunal the absurd proposition that if country A makes a territorial claim against country B, however ill-founded that claim may be, country B is for ever denied the right to develop that territory until country A takes steps to have the claim adjudicated. Perhaps Professor Crawford has forgotten that in the case of *Sipadan and Ligitan*, Malaysia, whom he also represented as counsel, did not stop developing Sipadan as a diving resort, despite Indonesia's many protests. Indeed, Malaysia claimed that it had the right to do so. It is also worth remembering that Malaysia's 1979 map also claimed sovereignty to Pedra Branca, which has been in Singapore's possession since about 1847. This claim was referred to the International Court of Justice in 2002 at the suggestion of Singapore,

first made in 1989. We may ask why Malaysia did not suggest that its claim to Point 20 be referred to third party adjudication for more than 20 years. Instead, it is now taking advantage of this neglect as a basis for asking for provisional measures in this case. This Tribunal will not miss the point that, without reviving its claim to Point 20, Malaysia has absolutely no case for provisional measures in respect of Singapore's reclamation works at Tuas.

I come back to Malaysia's arguments on co-operation and consultation. The record shows that Singapore has consistently sought to understand and address Malaysia's concerns. It had repeatedly sought particulars of Malaysia's complaints and Malaysia had repeatedly stated that it would provide Singapore with the details of its complaints. However, Malaysia did not do so for more than a year. When it did so, how did Malaysia do it? By serving on Singapore a Statement of Claim invoking arbitration under Annex VII, accompanied by a note threatening Singapore with provisional measures unless Singapore stopped its reclamation works immediately. Singapore responded to the belated provision of details by immediately inviting Malaysia to discuss its concerns and sending substantial reports and documents on the matters Malaysia had raised. After Malaysia met with Singapore for this purpose on 13-14 August 2003, Malaysia unilaterally and abruptly abandoned further consultations, despite having given Singapore the clear impression, both during that meeting and in Malaysia's letter of 15 August 2003, that the discussions would continue. Yesterday Professor Schrijver claimed that Singapore lacks the quality of neighbourliness. Singapore could say the same about Malaysia.

However, trading accusations will not help this Tribunal to address the substance of Malaysia's application for provisional measures. Let us look at the facts. Malaysia initiated Annex VII arbitration on the ground that the time for talking had passed when in fact no talks had started at all. When talks started, Malaysia decided to abandon them. In my submission, Malaysia was wrong on both occasions. Its actions were unjustified, and in regard to the unilateral termination of the talks, wholly inexplicable. We had proposed a joint study, and Professor Falconer confirmed that a long-term study was necessary to determine the long-term effects of Singapore's reclamation works.

But, Mr President and Members of the Tribunal, the proceedings before the Tribunal are for provisional measures. I wish to ask, and this Tribunal may wish to ponder, the following questions:

- If Malaysia genuinely believes that provisional measures are needed urgently, why did not Malaysia give Singapore the particulars of its concerns earlier? Singapore had repeatedly asked for them for more than a year and Malaysia had repeatedly said it would do so.

- If Malaysia genuinely believes that provisional measures are needed urgently, why did Malaysia wait almost a year after receiving the first set of scientific reports it is relying on before forwarding them to Singapore?

- Why did Malaysia suddenly rush to this Tribunal for provisional measures almost two years after it had full knowledge of the progress of Singapore's

reclamation works? Why now and not two years ago? What is the urgency now that was not urgent before?

- If Malaysia genuinely believes that provisional measures are needed urgently with respect to Point 20, why did Malaysia wait until almost two years after Singapore had reclaimed Point 20 in full view of Malaysia?

Malaysia's application is even more perplexing when seen in the light of its own reclamation works at Tanjung Pelepas. This is a massive reclamation project located directly opposite to Singapore's coast. Its pursuit of provisional measures against Singapore may be described as an audacious attempt to prevent Singapore from doing what Malaysia has also been doing close to Singapore waters, and without notifying or consulting Singapore. This point bears repeating as Professor Schrijver spent a lot of time on this issue yesterday.

Mr President, the Law of the Sea Convention is a carefully crafted and calibrated instrument that took more than 10 years to negotiate. The rights and obligations set out in the Convention represent a very sensible and practical balance of the navigational, environmental, economic and developmental interests of all nations. The Convention provides a practical adjudicative process to resolve disputes between states with respect to such interests in two phases: the merits phase and the provisional phase. Malaysia's substantive case is that Singapore's reclamation works have caused and will cause significant harm to itself and to the marine environment. Singapore denies these allegations, but they are for the merits phase. The question for this Tribunal – and it is the only question that the Tribunal has to consider – is whether any reclamation works that Singapore may do in the very short time before the Annex VII tribunal takes over will cause irreparable prejudice to Malaysia's rights, or irreversible harm to the marine environment. The only logical answer is that it will not.

The principles governing the prescription of the exceptional remedy of provisional measures are well established. These principles tell us that Malaysia's application for provisional measures cannot succeed. Singapore urges this Tribunal to apply these principles rigorously and make the appropriate order.

Mr President, Members of the Tribunal, that concludes my introductory statement. I thank you for your attention and request that you call upon Mrs Cheong to continue Singapore's presentation.

MRS CHEONG: Mr President and Members of the Tribunal, I am honoured to be given the opportunity to present before the Tribunal a brief overview of Singapore as well as to describe the manner in which the reclamation projects have been carried out at Pulau Tekong and Tuas.

My presentation will be in two segments. For the first segment, I will screen a short six minute video clip which provides an introduction to Singapore's land constraints and will explain why Singapore needs to reclaim land. The video also explains Singapore's systematic and integrated approach to land development and environmental protection. May I now invite Members of the Tribunal to view the video?

Video shown

MRS CHEONG: Mr President and Members of the Tribunal, segment two of my presentation essentially summarises the detailed briefing that was given to our Malaysia counterparts at our meeting on 13/14 August this year as recorded in Annex 5 of Singapore's response. I will be explaining the planning and approval process in Singapore and how the reclamation works have been carefully planned and executed.

As mentioned, Singapore is a small city State with one of the highest population densities in the world. In view of its limited land resources, detailed and continuous planning is critical in ensuring that there is sufficient land to meet our needs.

Planning is done at two levels; the Concept Plan and the Master Plan level. The Concept Plan, prepared once in ten years, is a long-term land use and transportation plan which guides the physical development of Singapore. The Concept Plan was first prepared in 1971. It is reviewed every ten years. The Concept Plan indicates land that may need to be reclaimed to meet our future land needs. All reclamation areas are within Singapore's territorial waters. The Pulau Tekong and Tuas reclamation areas are shown in the 2001 Concept Plan and, in fact, the Pulau Tekong reclamation has been shown since the 1991 Concept Plan.

The Master Plan translates the visions of the Concept Plan into detailed land users and intensity controls and the approval of any application for development must be guided by the Master Plan. In the preparation of the Concept Plan and the Master Plan much effort is made by planners to balance urbanisation with the protection of nature areas.

Land use planning in Singapore is an open and consultative process. The Concept and Master Plans are made and appear in publications, exhibitions and the internet. Extensive public consultations are done to gather feedback and we did get thousands of responses which we will consider before we finalise the plan.

At a more detailed level, each large development project, such as a reclamation project is subject to a stringent approval process. The Reclamation Agency must first undertake a number of studies before preparing a reclamation proposal. Many technical Government agencies are consulted to obtain their comments and requirements. The reclamation proposal is then refined to address the requirements of the agencies. It is then submitted to a multi-agency committee for evaluation and planning approval. The project is evaluated carefully by each of the agencies before planning approval is granted and the approval may be given, subject to certain conditions to be complied with or additional studies to be done. This process ensures that all reclamation projects have considered comprehensively the potential effects.

Relevant agencies are consulted on land use, navigation safety, pollution, water quality, protection of parks, nature and marine areas and so on. The final step is Parliamentary approval.

Let me now brief you on the details of the reclamation at Pulau Tekong. To the north of Singapore is Johor, the southern most state of West Malaysia. Both Singapore and Malaysia share a common waterway called the Straits of Johor. Note that the catchment area of the Johor river, also known as Sungai Johor, and its tributaries are easily more than double the size of Singapore. Developments and activities on both sides of the Straits would have effects on the environment of the Straits of Johor.

I would like to show you some satellite photographs taken before reclamation commenced at Pulau Tekong. These photographs would show that land-based activities have long affected the quality of the water in Sungai Johor, the Straits of Johor, and the areas around Pulau Tekong. Let me just explain the colours shown on this image. The red colour depicts the land mass. The white colour depicts puffs of clouds. The blue water denotes the cleaner waters and the cloudy water denotes silty or muddy waters.

This slide is a close up shot of the estuarine environment near Pulau Tekong taken in October 1998, before reclamation. Notice the silty waters discharging from Sungai Johor and its tributaries towards Pulau Tekong and the Straits of Johor. The area in white shows land clearance activities such as those at Tanjung Langset in Malaysia.

This next slide is another close up shot of land clearance activities at the eastern end of Tanjung Langset in Malaysia. We see silty waters being discharged into Sungai Johor. Land clearance activities in Malaysia appear to contribute to discharge of silt in the Straits of Johor. In addition, Malaysia's own report by Delft Hydraulics called 'The Hydraulic and Impact Assessment for the Straits of Johor' highlighted that untreated waste water is being discharged by Malaysia into the rivers and the Straits of Johor. This slide shows a perturbed environment in the waters in Sungai Johor and around Pulau Tekong in April 2000 before reclamation took place.

Hence, it can be seen that the waters around Pulau Tekong and the rivers in Malaysia are generally turbid all year round. This was the situation even before reclamation at Pulau Tekong started in early 2001.

The proposal for Pulau Tekong was first publicised, as I mentioned, more than ten years ago in the 1991 Singapore Concept Plan. The reclamation profile then underwent a few revisions before the final profile was granted approval in 1999. The project was subject to stringent approval procedures, which I mentioned earlier on, with all conditions imposed by Government agencies taken into consideration and incorporated into the final scheme.

Extensive studies were carried out before reclamation commenced. Hydrodynamic studies were done to study the changes in current flow and the resultant impacts on navigation and flooding. The erosion and sedimentation patterns were also studied.

Ecology studies and water quality studies were also carried out. The reclamation commenced only after the studies concluded that there would be no significant impacts. Studies and monitoring of effects continue to be carried out.

The Pulau Tekong project calls for some 3,300 hectares of land to be reclaimed and to be carried out in three phases. Phase 1 is planned to be completed by around 2005. The offshore containment site which you see on the plan is an area where dredging materials are placed.

The reclamation was deliberately planned to be carried out in three phases, so as to allow us to monitor the hydrodynamic regime at each phase. Critical areas, such as the channel between Pulau Ubin and Pulau Tekong, Kuala Johor and Calder Harbour, are closely monitored. In the event that the monitoring programme shows up any negative effects, prompt action will be taken to mitigate the impacts. If necessary, we will modify the profile of the reclamation area.

To illustrate, a significant modification was made to phase 1 in early 2002 when we received new information on the rich biodiversity at Chek Jawa in the vicinity of Area Y. We decided to defer the reclamation in this area to preserve the mud flats there. This is the biodiversity at Chek Jawa, which we have decided to safeguard.

Phase 2 comprises the reclamation of Area C and the last phase would comprise the completion of Area D.

Presently, there is a sheet pile in place at Area D. This is to stop the dredged materials from silting the surrounding water. It will eventually be replaced by a sloping stone revetment wall but this will be done only at around 2008, in the last phase, and not immediately.

Today, ships travel to Malaysia's Pasir Gudang Port and the Langsat Jetty, as well as to Singapore's Sembawang Shipyard through Kuala Johor and Serangoon Harbour. A very limited number of boats go through Calder Harbour, in view of its shallower depth.

Note that even when the reclamation is fully completed, the existing widths of the navigation channels will remain unchanged and fully accessible to ships and small boats.

The width and design of the navigation channels used by ships conform to and even exceed internationally accepted standards. The width of the shipping channels in Kuala Johor, at about 715m, in fact exceeds the existing width of 600m at Serangood Harbour, and this 600m is naturally determined by the distance between the island of Pulau Ubin and mainland Singapore. In addition, there are two 100m channels on either side of the main navigational channel set aside for small boats.

This is a picture of the channel to Teufelsbrueck, along the Elbe River, that you will see when you drive from where we are here now towards the centre of Hamburg. It has a width of about 570m and clearly large vessels can pass through. In comparison, the channel widths all around Pulau Tekong are far wider than this.

This slide shows the channel width between Pularek Jetty and the sheet pile at Pulau Tekong, a point which was raised by Malaysia yesterday.

Contrary to concerns expressed yesterday, the channel width is very wide, as you can see, at 900m, more than ample for large ships to sail through, even though shipping traffic here is actually very low at the moment.

This is a slide of the cruise ship, Megastar Aries, a Malaysian ship, which recently started to sail up and down this channel.

On approval, international public tenders were called for the reclamation project and it was award to international joint venture companies.

Reclamation works are now at an advanced stage. Allow me to explain the colours shown on the plan. It is quite a busy looking plan.

The yellow colour refers to areas where sand is already filled above water.

The red areas are the sand bunds which form the outline of the reclamation profile. These are all almost above water.

The blue areas are areas where dredging of soft marine clay is being carried out in preparation for the construction of the sand bunds.

The orange area is where sand or clay is being deposited.

The pink line is where a sheet pile has been constructed, as I have mentioned, as part of the offshore containment site, to keep the dredged materials within Area D.

Note that the full extent of the final profile has practically been delineated. Any additional work to be done in the next few months should not increase the effects observed now.

I think we have already seen this slide. Yesterday, Malaysia's counsel referred to this picture and said that it showed reclamation work under way east of Pulau Tekong. As the Attorney-General has pointed out, this is incorrect, and no works have actually been carried out east of Pulau Tekong.

Let me take a few minutes to walk you through how we reclaim land. I will highlight the careful precautions and mitigating measures taken during the execution of the works to minimise any adverse impact on the surrounding waters.

First, before works commence, we do a pre-survey of the seabed level. Tide gauge, silt and current meters are then installed for monitoring purposes.

A sand key needs to be formed to prepare a firm foundation for the construction of the shore protection stone wall. The stone wall would form the outermost boundary of the reclamation area.

Stage 1: in this stage a sand mat is first laid. Containment bunds are formed on either side. The grab dredgers would dredge the softer seabed material to form a "sandkey trench", which will later be filled with sand for greater stability.

The dredged material is placed between the containment bunds within the reclamation area. This reduces any siltation from the softer dredged soil material moving beyond the reclamation area.

Stage 2: large hopper barges would then fill the sand key trench with sand to form a firmer foundation. Sand is filled to 8m below the water level.

As the water depth is reduced, small hopper barges are now used to fill in sand to 2m below the water level. Subsequently, a special type of dredger would pump in sand. Sand continues to be delivered until the final level is reached. At the same time, shore protection works are carried out.

Finally, shore protection works and sand filing works are completed. This slide shows the shore protection stone wall. It is intended to stop any sand from being washed away to the surrounding waters.

In the course of construction, several good construction practices have been adopted. The contractor is required to minimise and control any siltation, pollution and colouration of the sea. Silt barricades are installed for the Pulau Tekong project to mitigate siltation of the surrounding waters and navigation channels.

This slide shows a silt barricade being lowered into the sea. The silt barricade comprises a fine mesh placed underwater, which essentially acts as a filter to minimise silt particles leaving the reclamation site.

The silt barricade is placed around the perimeter of the work site. This slide shows dredgers working behind the silt barricade.

An additional mitigating measure is to use a box frame silt screen during dredging work is the more sensitive areas, such as when we are working very close to nature areas or mangroves. Silt particles are kept within the box frame, even as dredging progresses.

Another mitigating measure is to build an 8.2km perimeter bund around the Offshore Containment Site, as shown in this slide. In this way, the dredged materials will be prevented from dispersing into the surrounding waters. The perimeter bund at the moment is constructed out of sheet piles, which we saw yesterday, but it will eventually be removed and replaced by a sloping stone revetment wall, which we have seen, and this is planned to be carried out only around 2008.

Audits are also carried out to ensure that: the reclamation work areas are properly marked out to ensure navigation safety and that sand with very low silt content is used. The silt content in the sand is tested to ensure that it does not exceed permissible levels.

This shows samples of sand being taken aboard a vessel. The samples will be sent to a laboratory to check the silt content. The silt content used for the Palau Tekong project is less than 1 per cent. This level of silt is very low and, together with the silt barricade, will minimise the silt flowing out of the reclamation area into the surrounding water.

Contractors are also required to comply fully with the requirements of various agencies, such as: the National Environment Agency, which may require measures to be taken to control water pollution and to monitor water quality; the Maritime Port Authority, which may specify requirements to ensure navigation safety, proper monitoring of currents, as well as to prevent any siltation and pollution in the port waters.

The works are carefully monitored. Contractors take regular photographic records; they conduct hydrographic surveys before, during and after completion of reclamation works. Sample materials ensure that there is compliance with specifications. Contractors carry out regular silt, current, wave and water quality measurements. The contractors are also required to ensure that they nearby mangroves are surveyed regularly by independent experts to check on their health.

A very comprehensive water quality and current measurement programme has been implemented. These stretch from the west of Pulau Ubin towards the Straits of Singapore. Current, silt, water quality and waves are all monitored.

The changes in the hydrodynamic regime and the water quality aspects are closely tracked as the land configuration changes. Any adverse impact would be easily detected and mitigating measures taken, if necessary.

At the meeting with Malaysia on 13 and 14 August, Singapore had offered to carry out additional monitoring in Malaysian waters to allay Malaysia's concerns, even though we are confident that there is no reason for concern. Unfortunately, Malaysia has yet to respond to this offer.

Vast quantities of monitoring data have been collected. They correlate well with predicted values and show there is no major effect on the environment.

The current velocities measured so far indicate that they will pose no difficulty for navigation, and silt levels measured meet water quality guidelines.

If you will allow me, I will go into some technical specifics. Let us look in greater detail at the current and silt monitoring data near Tanjung Pengelih, since Malaysia has expressed particular concern over this area.

Here you have a lot of squiggly lines, but this slide shows the recent current velocity near Tg Pangelih, as measured by the real-time current meter placed there. These measurements are taken over a typical, regular, two-week period. The horizontal axis shows the dates of the readings, from 12 June to 28 June this year. The veridical axis shows the current speeds in meters per second.

It can be seen that the highest velocities occur for only three out of 14 days, during the spring tide, and for only a few hours each day. Even then, the maximum recorded current velocity of 1m/s will not affect safe navigation at all.

Quoting any percentage increases in the velocity of currents is, in itself, meaningless. It is the absolute figure which is critical and so a 1 m/s current velocity will not affect safe navigation.

The next chart shows the recent monthly silt concentrations, and again it will be seen that silt concentrations are far below what is an acceptable level by the Malaysian-Singapore Joint Committee on the Environment.

We have done a lot of other monitoring and that shows now significant adverse impacts. There is no major change in fish use from nearby fish farms and mangroves adjacent to reclamation works are thriving, as we can see in this slide.

As we can see in the presentation, Singapore has followed an exemplary planning and supervisory procedure in the execution of works at Pulau Tekong.

Let me now move on to reclamation at Tuas. Tuas is located at the western end of Singapore. This is the western end of Singapore. This is the Western Johor Straits to the north is Malaysia's Port of Tanjung Pelepas, where reclamation works are being carried out for the Phase 2 extension of the port.

The Tuas project in Pulau Tekong complied with stringent approval procedures with all conditions of government agencies incorporated in the final scheme. Planning approval was granted in 1999. As in Pulau Tekong, extensive studies have been conducted to assess the impact of the reclamation works.

The findings of the studies do not indicate any adverse impact to navigation or any major impact on the environment. Again, international public tenders were called. The contract was to be carried out in two parts by two groups of international joint venture companies

What is the status of the reclamation works at Tuas now? The yellow areas indicate areas where sand has been filled above sea level. The orange areas have been filled with some 15-20 metres of sand.

Reclamation is at an advanced stage, with most areas already substantially filled. Almost the full geographic extent of the final profile has been delineated, and again, any additional work to be done in the next few months should not increase the effects observed now.

As in the Pulau Tekong reclamation project, the Tuas reclamation project had adopted good international construction practices. The contractor must comply with all regulatory controls and put in place a monitoring programme and audit checks.

As you can see on the slide, various monitoring points have been placed all around the reclamation area. With this, we will be alerted if there are negative impacts which require prompt mitigating actions to be taken. Water quality, silt, currents and waves are all monitored. The ongoing monitoring shows that the current changes pose no problems for navigation. Siltation effects are not significant, and there is no adverse impact on water quality.

Audit checks are carried out, and very good quality sand is used. The average silt content here is only 0.45 per cent, which is very clean. There will be very little pollution of the surrounding waters from the sand filling works.

The mitigating measures selected for individual projects must be appropriate to the site conditions. While the construction method at Tuas is similar to that of Pulau Tekong, the Tuas project has adopted the use of sand bunds shaped in a special profile to control both the dispersion of fine silt as well as dredged materials.

Allow me to elaborate a little on this. The slide shows the current velocities around the Tuas area. The red and yellow colours show the faster currents while the blue and green colours show slower and moderate current velocities.

We can see that when the currents flow from the east to the west, the faster currents are confined largely within Singapore waters to the south (the colours red and yellow). Similarly, when currents flow from the west to the east, the faster currents remain to the south of Singapore, away from the Tuas area.

The area south of Tuas View is a moderately low current velocity zone. North-south currents hug the west coast. Any spread of silt from the sand fill will be confined to the west coast of Singapore and the waters to the east. To minimise any dispersion of silt, a sand bund is first constructed from the north to the south.

The Tuas bund will serve to cut off the dispersive effect of currents. It will contain the dredged materials within the reclamation areas, and will prevent the dispersion of any pollutants between the waters to the east and west of the reclamation. Bays are then created on both sides of the Tuas bund using sand fill, as indicated in yellow. The bays serve to provide sheltered waters for reclamation by cutting off the dispersive effects of currents. It will also contain, keeping the dredged materials.

The predominantly north-south current which hugs the west coast of Tuas would further restrict the movement of fine particles away from the west coast of Tuas.

Let us look at the satellite image taken on 24 May 2003. It shows the current moving from the west to the east. This is Malaysia's port of Tanjong Pelepas at the mouth of Sungai Pulai. Reclamation is now being carried out for its Phase 2 extension.

We understand from Malaysia's UKM report that the port of Tanjong Pelepas will eventually be expanded from 75 to 90 berths.

This (indicating slide) is an enlargement of the same image. Please note that any siltation from the Tuas reclamation is confined within Singapore waters. The slight siltation just south of the bund for the Tuas reclamation will disappear once the stone shore protection wall is built. Interestingly, note that the currents would carry any siltation and pollution from the north into Singapore waters. This is the silt plume coming down from the north into Singapore waters.

This slide shows the currents moving from the east to the west. We can see that the bays which have been formed have been successful in keeping the silt within the

reclamation area and preventing it from dispersing. The north-south currents here have also kept the siltation close to the western shore of the reclamation area.

Mr President, Members of the Tribunal, this presentation has demonstrated that for both the Pulau Tekong and the Tuas reclamation projects, Singapore has carried out a careful planning and supervisory process at every stage which conforms to international standards. Extensive studies were done before carrying out reclamation works. These studies showed that there would be no significant adverse effects. There is ongoing monitoring of the works and the monitoring also indicates no significant adverse impacts. Monitoring will continue during and after the completion of these projects and, if necessary, any adjustments or mitigating actions will be taken.

That ends my presentation. Thank you for your time.

THE PRESIDENT: Thank you very much. I now give the floor to Professor Koh.

MR KOH: It is now 11.30. I would like to respectfully suggest to the Tribunal that we take a recess, and I will speak immediately after the recess.

(Short adjournment)

THE PRESIDENT: Before beginning this session, I would like to take this opportunity of noting the presence of the Minister for Law and the Minister for Foreign Affairs of Singapore, His Excellency Professor Jayakumar.

This morning a statement was made by the agent for Singapore at the beginning of the hearing. Further to consultations with the agents of both parties, which occurred earlier this morning, it has been agreed that the verbatim record to be found in ITLOS/PV/03-02 of the hearing of yesterday afternoon will be modified accordingly.

MR KOH: Mr President, Mr Vice President, distinguished Judges, my learned friends, I would like to accompany the Tribunal through the diplomat history of the present dispute. I will show that Malaysia's conduct has been inconsistent, dilatory and unreasonable. I will also show that Malaysia was never interested in finding an amicable solution to its concerns through consultation and negotiation. Instead, Malaysia's objective was adjudication. This is why Malaysia aborted the negotiating process after only one meeting.

I will then demonstrate to the Court why there is no basis for Malaysia's claim to Point 20.

I turn to the diplomatic history. First, as my colleague and friend Mrs Cheong has just explained, Singapore's reclamation works are not a secret but have been in the public domain for a long time. Therefore, they would not have come as a surprise to Malaysia. Second, it was in January 2002, roughly 20 months after the reclamation works had started, that Malaysia raised for the first time questions about our reclamation activities.

May I request Members of the Tribunal to refer to folio 1 in your folder. When Malaysia did so, what it did was not to raise issues concerning navigation and the environment, but to revive a long-standing territorial claim to what Malaysia calls Point 20. It was only three months later, in April 2002, that Malaysia for the first time officially made allegations about the alleged adverse impact of Singapore's reclamation works on Malaysia's environment and navigation. This was also the first time that Malaysia protested Singapore's reclamation works at Pulau Tekong.

Third, I want to comment in some detail on Malaysia's Note of 30 April 2002, because in her oral presentation yesterday Malaysia made great play of Singapore's refusal to consult in the face of our knowledge about the specific nature of the alleged harm that our reclamation works had caused to Malaysia.

I now invite Members of the Tribunal to turn to folio 2 in your folder. I ask you to look in particular at paragraphs 2 and 3. There, Malaysia makes unspecified allegations ranging from sedimentation to flood flow to degradation of flora and fauna to navigation, without saying what exactly the problem was, where it was taking place, and how Singapore's reclamation had caused these problems. Faced with this laundry list of vague allegations, covering virtually everything under the sun, Singapore naturally had no choice but to ask for details. How else was Singapore to respond? Statements by Malaysian leaders and senior officials did not shed any light on Malaysia's concerns, as they were also vague, often confusing and sometimes even contradictory.

Fourth, Mr President, contrary to what we heard yesterday, Singapore has always been prepared to address Malaysia's concerns seriously. As early as 21 April 2002, the Prime Minister of Singapore, Mr Goh Chok Tong, said:

> "If a note comes from them [Malaysia] spelling specifically the areas which they have been hurt by our land reclamation, we surely must look into that seriously and look at the evidence.
>
> And if they are right, we have to rectify what we have done because what we "do must not have adverse negative effects on our neighbours."

We repeatedly asked Malaysia to provide us with information about its complaints. I refer you to Folios 3 and 4 in your folder. During an official visit to Malaysia in March 2002, Singapore's Prime Minister Mr Lee Hsien Loong said that if Malaysia had concerns, it could send us a note which should include specific facts and details to help Singapore understand Malaysia's concerns. On his part, the Deputy Prime Minister of Malaysia, Datuk Seri Abdullah Ahmad Badawi said:

"It is their [*Singapore's]* right to continue with the reclamation works as they had been doing all this while….what is important is that between them and us *[us meaning Malaysia]* between Deputy Prime Minister Lee and myself, there is an understanding."

What is this understanding? According to Deputy Prime Minister Badawi the understanding was that Singapore was willing to accept a report from Malaysia.

Fifth, despite this political understanding by our leaders and although Malaysia had promised to provide detailed reports and studies relating to its concerns as early as March 2002 they did not do so until more than one year later, on 4 July this year. Over the course of last year, the Malaysia Government had taken the stand that the studies and reports were still being prepared and would be submitted to Singapore on 2 April 2002, the Prime Minister of Malaysia said, and I quote his exact words, "Malaysia would submit a memorandum to Singapore to explain matters pertaining" reclamation. On 16th November 2002 the Foreign Minister Datuk Seri Syed Hamid Albar said and I quote him, "The findings are yet to be submitted to the Cabinet for review, let alone to the Singapore Government". On 29 June 2003, just five days before Malaysia's Note of 4 July, the Foreign Minister of Malaysia said, and I quote him again:

"Malaysia would engage the services of international maritime experts to study the impact of sea reclamation in Pulau Tekong, Singapore, before coming up with a concrete report. The appropriate thing to do now is to submit a concrete report to Singapore."

In other words, Malaysia had, from the highest level of its Government, repeatedly assured Singapore that as soon as it had completed its studies it would provide Singapore with a report. Singapore waited for over a year and we are very disappointed that all this time Malaysia had in its possession some of the reports of its technical studies. On 4 July when the reports were finally given to Singapore, it was accompanied by a summons to court.

Sixth, Singapore has never ruled out negotiations with Malaysia. Contrary to what the distinguish Attorney-General of Malaysia said yesterday, Singapore has never informed Malaysia or taken the position that for a meeting of senior officials of both countries to take place, Malaysia must first prove its contentions to the satisfaction of the Republic of Singapore. These allegations are fiction. Singapore never said them. What Singapore had repeatedly requested was information and details relating to Malaysia's concerns. Without such details, there would not be a basis for constructive consultation and negotiation.

Seventh, when Malaysia finally handed over its reports on 4 July this year, Malaysia also gave notice that it was initiating arbitration under Annex 7 of UNCLOS. Instead of negotiations, Malaysia gave Singapore a 14 day ultimatum that, unless Singapore complied with a list of its demands, including the immediate suspension of works, it would apply to ITLOS for the prescription of provisional measures.

Eighth, Singapore replied to Malaysia on 17 July 2003 stating that Malaysia's initiation of arbitration proceedings was premature because the two Governments should first attempt to find an amicable resolution of their differences through negotiation. We do not understand how Malaysia had come to the conclusion in its Note of 4 July 2003, and I quote, "the dispute cannot be settled by negotiation and that there is no basis for a further exchange of views" when there had been no negotiations prior to 4 July 2003.

In addition, Singapore provided to Malaysia tender documents for the reclamation works at Both Pulau Tekong and Tuas and a summary report for each of those two

reclamation works. These summary reports are found in Annexes 3 and 4 to our Response. They were commissioned by Singapore to provide an overview of the many studies which had been undertaken and of the controls which had been put in place by Singapore for the reclamation projects. Singapore also undertook to make available additional material to Malaysia and to afford Malaysia a full opportunity to comment on the works in question. Singapore noted that Malaysia's reports had provided, for the first time, a basis for the two sides to discuss Malaysia's concerns and we invited Malaysia to meet us as soon as possible. Finally, Singapore respectfully pointed out to Malaysia that both countries are obliged, under Article 283 of UNCLOS to, "proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means".

Ninth, Malaysia accepted Singapore's offer to meet. The two countries had a good meeting in Singapore on the 13 and 14 August this year. Singapore gave three very detailed technical presentations on how we planned and implemented our reclamation works, including the precautions we took and the ongoing monitoring studies. The materials contained in the records of that meeting are contained in Annex 5.

On the first day of the Singapore meeting, the two sides sought clarifications on each other's reports. Singapore provided, on the second day, responses to such clarifications as it could. It indicated that other clarifications will be offered in additional reports which it would and did provide shortly thereafter. In response to a complaint by Malaysia that the continuous monitoring was carried out only on the Singapore side of the Straits of Johor. Singapore offered to carry out monitoring in Malaysian waters and while I agree with Professor Shrijver that the sovereignty of a coastal State within its territorial water, the territorial sea is not absolute, I am confident he will agree with me that Singapore cannot carry out monitoring in Malaysia's territorial sea without her consent. Malaysia never responded to our offer and I wish today, in this Tribunal, to repeat this offer, to monitor in Malaysia waters.

The Singapore meeting made a promising start in identifying the issues of concern to Malaysia and the areas of disagreement between them. Singapore proposed that the two countries should meet again soon, this time in Malaysia, in order to enter into substantive negotiations. Singapore also proposed that further information be shared expeditiously and that technical working groups be established to narrow the gaps between our technical experts. Pursuant to the requests that both sides made at the Singapore meeting for additional information, Singapore and Malaysia did, in fact, exchange such additional information after the Singapore meeting.

At the Singapore meeting, Malaysia reiterated its demand that Singapore suspend its reclamation works. We explained carefully to Malaysia that the suspension of works was a very serious matter for Singapore and that it would be justified only if there is clear evidence of serious and imminent damage. Singapore had hoped that after Malaysia has had an opportunity to study the reports provided by us, Malaysia would share our view that no purpose would be served by suspending the works at this stage.

Mr President, the two countries are in agreement that the Straits of Johor is a shared water body and because it is a shared water body, each country has a part to play in

preserving the health of this common waterway. Just as Singapore is obliged to protect the marine environment of the Straits of Johor, Malaysia too has an equal obligation to ensure that the manner in which it conducts its activities at Tanjung Langsat (where forest had been cleared for an industrial estate) at Pasir Gudang (or sometimes called the Port of Johor), at the Port of Tanjung Pelepas, the discharge of untreated domestic and industrial waste into the Straits and the opening of the causeway (a land link joining Singapore and Malaysia) do not adversely impact the Straits.

Tenth, Singapore was glad that Malaysia appeared to be willing to work with Singapore to find a negotiated settlement. A day after the Singapore meeting, I received a kind letter from the Head of the Malaysian Delegation, my good friend, Mr Ahmad Fuzi, dated 15 August 2003. I wish to quote one paragraph from that letter:

"I am sure that you would agree that the complexities of the issues that we have to deal with at Singapore were not easy to resolve. Regardless, it is encouraging that we had agreed to seek an amicable solution to this issue. Hopefully, the end result would be one that is mutually acceptable to both Malaysia and Singapore…"

I was overjoyed when I received this letter from my good friend and replied to him on 21 August 2003 stating that:

"Singapore was pleased that we had the opportunity…at the talks to exchange views and begin the process of negotiation…It was a good start to the process."

I also reiterated in my letter Singapore's willingness to have her experts, "clarify or explain our reports at our next meeting", which I had proposed that Malaysia could host in its new beautiful of Putrajaya. Everything, Mr President, had pointed towards a commitment by both parties to resolve this matter amicably through negotiations.

Eleventh, however, Malaysia suddenly shifted its position and closed the door to further negotiation. One day after sending Singapore's technical reports to Malaysia, we received a Note from Malaysia dated 22 August 2003 which repeated the demand, among other things, that Singapore immediately suspend its reclamation works, failing which Malaysia would call off the negotiations and apply to have provisional measures prescribed against her. Surprisingly, Malaysia's Note made no mention of the technical reports which Singapore had sent to Malaysia just one day before. Singapore replied on 2 September 2003 that it was disappointed that Malaysia had claimed, and I quote, "that the absence of a co-operative approach up to this time arises from the unilateral conduct of Singapore". Singapore urged Malaysia to carefully consider the material that we had provided her with and we stated, and I think this is a very important paragraph from our Note:

"If, having considered the material, 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, to deal with the adverse effect in question."

Singapore reminded Malaysia that both countries shared the Straits of Johor, and that while Singapore had conducted its reclamation works in a scrupulous manner, Malaysia's own reclamation and other activities have already observed transboundary impacts.

I draw the Tribunal's attention to a satellite photograph which Mrs Cheong earlier showed to you, showing a plume of silt stretching from the Malaysian port of Tanjung Pelepas into Singapore's territorial waters. Singapore sought an assurance from Malaysia that its activities would not cause any significant harm to the environment of the Straits or to Singapore's legitimate interests. I regret to say that to date Singapore has not yet responded to our request.

The purpose of the Singapore meeting was to help Malaysia inform Singapore of the substance of her complaints so that we would be able to asses them and to respond to them appropriately. Accordingly, Singapore asked for information with respect to some of Malaysia's complaints; for example, alleged navigational and berthing difficulties at Malaysia's naval base at Pularek, and the conditions of her mangrove, seagrass, corals and other flora and fauna. We did all this in order to enable us to determine whether our activities had contributed to the problems and, if so, to take the appropriate steps to mitigate them. Malaysia did not respond, notwithstanding the fact that it had relevant experts in its delegation at the meeting, and Malaysia has not responded since.

It is clear from the facts I have recited them that Malaysia was only interested in seeking provisional measures, and had no intention to carry out good faith negotiations. Singapore has come to the regrettable conclusion that Malaysia agreed to meet Singapore on 13 and 14 August in order to go through the motions of complying with Article 284 of UNCLOS. This impression is reinforced by Malaysia's abrupt decision to abort the negotiations. These are not the actions of a party that has a genuine interest in seeking an amicable solution through consultation and negotiation.

Mr President, I now ask the Tribunal's permission to address a different issue, and that is Malaysia's territorial claim to a sliver formed by Points 19, 20 and 21. Singapore's position on this claim is simple. Point 20 is within our territorial waters. It is within our territorial waters, not because Singapore says so but because it lies within Singapore's side of the sea boundary as defined by two international treaties binding on Malaysia.

As the tribunal can see from the diagram, Point 20 and Points 19 and 21 are three geographical coordinates and form a sliver that intrudes into Singapore's territorial sea. These geographical coordinates were contained in a map published unilaterally by Malaysia in 1979 purporting to define Malaysia's territorial waters and continental shelf.

Singapore has prepared a chronology of the key events regarding Point 20. I request the Tribunal to look at Folio 12 in your folders. I would like to highlight four points.

First, this is a long-standing dispute between Malaysia and Singapore dating back to 1979. Singapore has consistently rejected Malaysia's unilateral claims contained in that map.

Second, in 1927, the Straits Settlements and the south end of Johore concluded a territorial waters agreement that defined an agreed boundary in the Straits of Johore. This treaty is binding on Malaysia and Singapore, as successor states of the Straits Settlements in the case of Singapore, and of Johore, in the case of Malaysia. Point 20 in the 1979 map is clearly within Singapore's territorial waters under this 1927 treaty.

Third, even if there were some basis for Malaysia's claim to Point 20, which we submit there is not, Malaysia's claim was superseded by a new boundary agreement which was signed and ratified by the two countries in 1995. The 1995 agreement was intended to replace the 1927 agreement. The two countries held a total of seven meetings over a period of 14 years before they concluded this agreement. Throughout this long period of negotiations, Malaysia never raised its claim to Point 20.

Fourth, the diagram on your screens shows the 1995 agreed boundary in the Straits of Johor. Points 19, 20 and 21 have been superimposed on this map. As you can see, the area around Point 20 is well to the north and east of the western end-point of the 1995 agreement; in other words, inside Singapore's territorial waters under this agreement, which is binding on Malaysia.

In conclusion, Singapore's response to Malaysia on her claim to Point 20 is very simple. First, Malaysia's claim is a claim to territory. It is a claim that raises an issue which is irrelevant to an application for provisional measures. Second, Malaysia's claim is inconsistent with the agreed sea boundaries between Malaysia and Singapore contained not just in one but in two binding treaties, the treaties of 1927 and 1995. Third, nothing in UNCLOS, certainly not Articles 15, 74 and 83, can confer any rights on Malaysia's spurious claim. There is nothing in UNCLOS which requires a coastal state to stop its development on the basis of any and every spurious claim. The case of *Nigeria v Cameroon* is based upon its particular facts and has no relevance here.

Yesterday, Malaysia's counsel described Singapore's land reclamation around Point 20 as a "land grab" by Singapore. I beg to disagree. I would say, on the contrary, Malaysia's claim to the sliver formed by Points 19, 20 and 21 is an attempt by Malaysia to steal a part of Singapore.

THE PRESIDENT: Thank you. I now give the floor to Professor Reisman.

PROFESSOR REISMAN: Mr President, members of the Tribunal, it is a privilege to address this distinguished Tribunal on behalf of Singapore in a case of such importance to international law.

If I speak to you today without great emotion, I hope you will appreciate that it is because of respect for this Tribunal and the importance and seriousness of the issue and it does not reflect in any way a lack of conviction on my part,

My first assignment today is to address issues of jurisdiction and admissibility. Yesterday, you were urged to ignore the limitations which UNCLOS established as part of your regime, for reasons familiar to anyone who has ever sat on an arbitration tribunal, and for some rather innovative reasons as well, like the contention that you should not make this Tribunal subordinate or a cub reporter or, in the curious words of the Agent for Malaysia, a back-stop to an Annex VII tribunal.

We all know that it is not a question of being subordinate or superordinate. Each international tribunal is created by states and has its own competence and jurisdiction. Those who are elected to the tribunals have a legal duty and a debt of personal honour to respect the limits that have been set on their jurisdiction. Singapore has every confidence that ITLOS, as the guardian of the integrity of the disputes settlements procedures of the Law of the Sea Convention, will itself be deeply concerned about jurisdiction and admissibility, issues that go to the essential legitimacy and the future of international adjudication.

Singapore believes that, on the merits, Malaysia's request for provisional measures should be dismissed, but I hope to show that ITLOS should not reach that question but should, instead, reject at the very threshold of the dispute Malaysia's request for provisional measures on the grounds of lack of jurisdiction and inadmissibility as well as because of exploitation and violation by Malaysia of fundamental prescribed procedures.

Pending the constitution of the tribunal selected by the parties, ITLOS "may prescribe… provisional measures, if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction…" That is Article 290(5).

There is no question that Singapore and Malaysia have, by virtue of adhering to UNCLOS, consented to the jurisdiction of an Annex VII tribunal, but under the Convention, the maturation of that jurisdiction is contingent upon the fulfilment of certain legal requirements. Until those requirements, those prerequisites, have been fulfilled, the latent jurisdiction of an Annex VII tribunal, and derivatively of ITLOS in this procedure, has not matured. If those prerequisites have not been fulfilled, then the Annex VII tribunal cannot be considered to have *prima facie* jurisdiction and accordingly ITLOS cannot issue provisional measures.

May I turn to two of the most important of those prescribed prerequisites with which Malaysia has not complied?

Article 283, whose title is "Obligation to exchange views", provides in its first paragraph that, "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". This is, as the title says, an obligation, which is confirmed by the imperative verb the drafters selected - "the parties shall".

Our colleagues from Malaysia have dealt with this provision rather lightly. Analytically, the provision contemplates four stages: first, a dispute must arise; second, the parties must proceed expeditiously to an exchange of views; third, at a certain point, a party is entitled to determine, subject to review by ITLOS, that the possibilities for reaching agreement have been exhausted; and fourth, ITLOS determines whether the requirements of Article 283 have been met. If it determines that they have not, it orders the parties to fulfil their obligations under the provision. The proceedings are terminated pending demonstration that the obligation of exchange of views has been fulfilled. This is simply a textual deconstruction, or unpacking if you will, of Article 283.

In making this last determination, a tribunal would address three critical questions: first, whether a real effort has been mounted by the party seeking to initiate a third-party decision to exchange views and reach a settlement; second, whether the defendant has been responsive to the initiatives; and third, whether there is a plausible chance of a successful settlement of some or all of the differences.

When does the obligation under Article 283 begin? The Article says that is "when a dispute arises", which unfortunately does not tell us anything particularly meaningful. If the obligation to exchange views comes into operation when a party has started an arbitration or adjudication, the Article would add nothing and would not have been included in the Convention. If the obligation to exchange views is to mean anything, it must come into operation some time before then.

Yesterday, it became clear that a key jurisdictional question is precisely when it does. Some enlightenment as to the moment when this occurs may be gained from looking at other sections of UNCLOS that impose a duty to provide certain information to other stages: Article 198, for example, dealing with "Notification of imminent or actual damage", or Article 206.

Here, as elsewhere in the Convention, the obligation to share information only commences when a state in whose territory an activity is being planned has "reasonable grounds" for believing that the activity is going to harm the marine environment of another state.

The normative system is that as long as a state has taken appropriate steps to establish that planned activities within its jurisdiction or control will not be injurious to other states or the marine environment, it has no obligation *vis-à-vis* other states to provide information, unless another state itself provides credible information that the planned activities could be injurious.

The burden on the party seeking suspension of a lawful activity in another state is great. In the Convention on the Non-Navigational Uses of International Watercourses, which many members of this Bench participated in negotiating and seeing through the diplomatic conference, Article 18 deals with a situation in which a watercourse state is aware that measures are being planned by another state and believes that they may have a significant adverse impact upon it, and it provides for the application of the protective regime of Article 12 – a very stringent regime, which includes suspension. In your folder at tab 14, you will find the critical paragraph in

the International Law Commission's commentary. With your permission, I would like to take you to it.

The commentary says:

> "The words 'apply the provisions of Article 12' should not be taken as suggesting that the State planning the measures has necessarily failed to comply with its obliges under Article 12. in other words, that State may have made an assessment of the potential of the planned measures for causing significant adverse effects upon other watercourse states and concluded in good faith that no such effects would result therefrom. Paragraph 1 allows a watercourse State to request that the State planning measures take a 'second look' at its assessment and conclusion, and does not prejudge the question whether the planning State initially complied with its obliges under Article 12."

This is critical:

> "In order for the first State to be entitled to make such a request, however, two conditions must be satisfied. The first is that the requesting State must have 'serious reason to believe' that measures are being planned which may have a significant adverse effect upon it. The second is that the requesting State must provide a 'documented explanation setting forth its reasons.' These conditions are intended to require that the requesting State have more than a vague and unsubstantiated apprehension. A serious and substantiated belief is necessary, particularly in view of the possibility that the planning State may be required to suspend implementation of its plans under paragraph 3 of Article 18."

The burden here, as in our case, is very heavy.

Any departure from the regime that was established in UNCLOS and other regimes would create a situation of international gridlock, in which third states, on the basis of no more than the flimsiest assertions and unsubstantiated apprehensions, could simply require a state to open its archives and even stop or suspend an activity within its jurisdiction or control which that state had responsibly assessed and concluded would not harm others, just on the basis of an unsubstantiated apprehension. Governments would not be able to function.

The obligation of Article 283 commences for a state when a third state provides sufficient information, which is specific, which it has collected and analysed, that substantiates its apprehension that activities within the other state may precipitate harm to it.

I turn now to the third stage of Article 283, and that is when a state may lawfully conclude that the exchange of views can no longer reasonably lead to settlement. Here again, treaty interpretation, no less than respect for those who drafted those words, requires us to attribute some meaning to this.

The provision would be meaningless if all that was required was a pharisaical and formalistic single exchange of views, after which the state that believed that its

interests would be better served by third party decision could then proceed directly to arbitration or adjudication. Similarly, the provision would be frustrated, indeed, rendered entirely meaningless, if one state could surreptitiously use the obligation of exchange of views as a way of rigidly holding to its own position while securing the surrender of information by the other state, all the time intending to go directly to third party decision as soon as the inconvenient obligation in Article 283 could be disposed of. This would constitute bad faith and abuse of rights, and would certainly violate Article 300 of UNCLOS. If such a gambit were permitted, it would deter states in the future from participating in good faith in the procedures contemplated by Article 283.

Obviously, this process can also be conducted in bad faith by an obdurate party which wished simply to delay and drag things on. So a legal regime requires that there be a moment of termination. A point may come beyond which no purpose is served by further exchange of views. In *Southern Bluefin Tuna* you held that "a State Party is not obliged to pursue procedures under Part XV…… when it concludes that the possibilities of settlement have been exhausted." This is, by its nature, a determination ultimately made by ITLOS.

Ambassador Koh has recited the history of this case up to this point. The reclamation plans, as Mrs Cheong has explained, have long been matters of public notice and there was, by any standard, a rigorous internal review. Sir Eli contended that the environmental assessment which a state must make must be public, but that is not a requirement, nor is there any implication that an assessment that is conducted rigorously, and certainly not secretly, violates UNCLOS. The Sellafield case, within the United Kingdom, which he cited, does not help Malaysia, for that was not a procedure designed for Ireland; Ireland simply took advantage of it and sent a 50-page memorandum, something which Malaysia could have done during this period but did not.

The actual works commenced in 2000, and could hardly have been more public. Our colleagues from Malaysia have dwelt at length on how geographically close the states are in this area. Only beginning on 28 January 2002 did Malaysia begin to issue a series of Third Party Notes invoking initially the Point 20 issue, and then, as they warmed to the task, that in the most general terms, the reclamation works breached international law, were not preceded by environmental impact assessments and that the activities "were likely to cause injury, if not already injurious to Malaysia." On 30 April 2002, what Ambassador Koh has called a "laundry list" of allegations at Pulau Tekong was sent.

Mr President, Members of the Tribunal, I regret that some very misleading statements were made yesterday about the degree of substantiation of Malaysia's various communications during this period. I have reviewed all the notes which ITLOS has in documents submitted by Singapore, and I can state that there was absolutely nothing other than the allegations I have just referred to. Nothing.

As for the claim about Point 20, I cannot say that I have seen every note since 1979, but I have seen quite a few, and it was only yesterday, when we all listened in fascination to Professor Crawford's ingenious explanation of why, treaties notwithstanding, Malaysia has a reasonable claim to that tiny sliver, piercing deeply

into Singapore's territorial waters, that we heard any effort at substantiation of a claim that, with respect, I still view as quite absurd.

None of the notes provided any substantiation whatsoever.

On 14 May 2002, Singapore confirmed in a note its understanding that Malaysia would soon send another note, containing details of its concerns over the reclamation activities. As late as 29 June 2003, Malaysia's Foreign Minister was quoted as saying that the appropriate thing to do now was to submit to Singapore a concrete report on such incidents, but none of the notes included or attached a single study or other report or anything substantiating Malaysia's allegations.

Singapore, for its part, responded to each of these notes, asking Malaysia to provide details and stating, in a note of 28 August 2002, that the details that Malaysia had promised "should provide specific facts and details to enable the former [Singapore] to study any such concerns."

Mr President, Members of the Tribunal, words are cheap, and allegations are comprised of words. Anyone can make allegations, and a party repeating its allegations again and again can become more and more convinced of their veracity with each reiteration, and angrier and angrier that the party against whom the allegations are made tells it that it will not treat them until there is some substantiation. It is not difficult to imagine people in the Malaysian Foreign Ministry fuming that Singapore is, as we were told yesterday, behaving arrogantly.

Was Singapore behaving arrogantly? Do entirely unsubstantiated allegations about an activity undertaken within another state's jurisdiction – especially one that has been carefully examined beforehand for its possible effects – create an obligation on the part of that other state to drop everything, provide information, let alone to suspend the works?

Is the threshold so low in international law that the most general and unsubstantiated allegations can activate such an obligation? Malaysia had to submit a concrete report. Mr President Syed Hamid, Malaysia's Foreign Minister, got it entirely right on 29 June 2003. Malaysia had to submit a concrete report. It was, as he said, the appropriate thing to do. His counsel, Professor Crawford, yesterday got it entirely wrong in his attempt to justify Malaysia's demand with respect to Point 20. Since when can a state publish a map claiming an area held by another state, and on the basis of the map – and nothing else – insist that it has a claim that requires the other state to stop using or otherwise developing its territory? I know of no case in which a court took such an argument seriously.

Malaysia itself, as the Attorney General observed, used exactly the opposite argument, with success, in the International Court in *Pulau Sipadan-Pulau Ligatan.*

All during this period Malaysia did not even try to meet the obligation of Article 283. only when Malaysia presented Singapore with an Annex VII Arbitration Statement of Claim did it finally provide what it claimed to be "reports" in which were set out some details upon which its allegations purported to rely. When Malaysia finally provided these reports, it was more than 10 months after Malaysia first received them from its

consultants, and more than 14 months after it first raised its concerns with Singapore. So it is particularly puzzling that Malaysia did not present them to Singapore earlier, or that Malaysia's Foreign Minister, as late as 29 July 2003, did not even know of their existence, and it was only yesterday that Malaysia made an effort to explain its claim to Point 20, which means that on 4 July 2003 the obligation of Article 283 came into effect and jurisdiction could not have matured as of that date. It was only on that date that Malaysia identified its precise concerns and provided the information that finally enabled Singapore to respond under Article 283.

Mr President, Members of the Tribunal, has Malaysia now complied with the obligation of Article 283? Ambassador Koh has just shown that Singapore began the requisite process under Article 283 by sending material to Malaysia responding directly to its concerns and inviting a meeting. That meeting took place on 13-14 August. The record of the meeting has been submitted to you. At that meeting Singapore provided detailed explanations responsive to Malaysia's allegations, and in response to questions that arose at that meeting, additional material was provided.

In terms of the law analysed, Singapore submits that Malaysia's extended failure to provide data substantiating its allegations and its refusal to exchange views, especially after it had solicited more information form Singapore, but then refused to respond to it, constitute a failure to comply with the obliges of Article 283 of the Convention. As a result, the jurisdiction of an Annex VII tribunal still has not matured and derivatively, ITLOS should not prescribe provisional measures.

I would like to turn to Malaysia's failure to comply with Article 281 and its consequence for jurisdiction. There are specific situations in which a customary international law obligation to negotiate is imperative. One of them, which is particularly relevant to the case at bar, concerns situations in which two states both allege different and potentially incompatible rights in the same resource. In *Fisheries Jurisdiction* the International Court found that Iceland had certain “preferential fishing rights” but the United Kingdom had “traditional fishing rights” in the same area. Neither of those rights, according to the Court, was absolute. The Court found the obligation to negotiate “flowing from the very nature of the respective rights of the parties.”

A scholar has synthesized this as a matter of customary international law, and I believe you have it in front of you. I will not read it. I submit it to you as an appropriate synthesis of the reasoning of the Court and the obligation to negotiate in circumstances in which there are two legal rights and it is difficult to determine which one is appropriate in the context. I do not believe that one could find a more appropriate confrontation of alleged incompatible rights than in the case we are considering.

After Singapore’s invitation to Malaysia to resolve the differences which Malaysia had raised in its Statement of Claim was accepted by Malaysia and meetings took place in Singapore on 13 and 14 August, a consensual process of negotiation had commenced. Article 281(1) of the Convention provides:

> “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."

Singapore participated in the process that was commenced in the utmost good faith and provided a substantial amount of information, some of which Malaysia had explicitly requested. After the meetings which representatives of both States acknowledged were promising, as Ambassador Koh told us this morning, Singapore provided substantial additional information which Malaysia had asked for. As a legal consequence, both States had embarked upon a course of negotiation under Article 281 in an effort to arrive at an amicable solution of the dispute between them.

Now, Singapore does not contend that once negotiations are undertaken there is an international legal obligation to agree on a composition of differences. The Permanent Court in *Railway Traffic* said, "an obligation to negotiate does not imply an obligation to reach an agreement". But there is an obligation to pursue negotiations until it is clear that they cannot succeed. As the Permanent Court said in the same case, the parties have a duty, "not only to enter into negotiations but also to pursue them as far as possible with a view to concluding agreements".

Negotiation imports minimal open-mindedness. The commentary to the Law of the Sea Convention, the Virginia commentary, observes very wisely:

"A party should make reasonable proposals for the settlement of a dispute. It should not, however, present ultimatums to the other party, or demand that it unconditionally surrender its point of view."

In *North Sea Continental Shelf*, the International Court stated the customary law as follows:

"The parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it."

In *North Sea Continental Shelf* negotiations had gone on for two years (1965 and 1966) and the Court concluded that the requirement of negotiation had been fulfilled. In *MOX,* Ireland made requests for information from 1994 to June 2001, and in its letter of 30 July 1999 drew the United Kingdom's attention to the dispute under UNCLOS. In the present case, one set of negotiations took place on 13 and 14 August. Malaysia arrived with ultimatums and continued to present them. Singapore indicated its position and after the meeting provided the specific information which Malaysia had requested. Even on the very difficult issue of suspension of reclamation works Singapore in a subsequent Third Party Note, which the Attorney General and Ambassador Koh have read to you, show the maximum flexibility required by international law in stating that if Malaysian data (which was yet to be presented and even now not presented) indicated a necessity for suspension,

Singapore would suspend. Contrast that with *MOX* where ITLOS held that the possibility of settlement were exhausted when, among other things, the UK refused to indicate willingness to suspend authorisation would prevent the operation of the *MOX* plant pending resolution of the dispute.

At the meetings in Singapore, it became clear that much of the dispute turned on complex scientific data and its interpretation and in differences in the scientific advice being given to each of the parties. Singapore proposed that the scientific experts that each party had consulted meet to determine if they could submit a common position or, at least, indicate where they differed but, at the end of the first phase of negotiations, without even studying the material that had been presented, the Head of the Malaysian Delegation in virtually the precise words that he had come into the meeting with:

> "Singapore needs to temporarily suspend its reclamation activities, in particular the activities involving the extension or completion of reclamation in the eastern sector of the Straits of Johor."

This was hardly open-mindedness and flexibility as required by international law. Moreover, Malaysia shortly after receiving the additional information which it had requested abruptly abandoned the negotiations and brought this action.

From a legal standpoint, Malaysia commenced a process of negotiation under Article 281. Singapore, as part of the negotiations, made materials available it would not otherwise have had to. Malaysia took the material and then disrupted the negotiations before there was a sufficient opportunity to explore whether those negotiations, if conducted in good faith, could produce an amicable settlement of differences, including resolving the question of the suspension of works. Having selected a mode of dispute resolution, Malaysia cannot unilaterally terminate it without the consent of Singapore before the negotiation has an opportunity to achieve a settlement.

I want to emphasise negotiations do not necessarily preclude a request for suspension of activities that are the subject of the negotiation while the negotiation is proceeding, but when one party, in this instance Malaysia, has agreed to negotiation and the other party, in this instance Singapore, has agreed that it will suspend the activities if Malaysia data show that the activities in question will cause it injury, the form for making such a determination has been selected and it is negotiation. Malaysia cannot then unilaterally withdraw from the negotiations on, in particular, the issue of suspension until there has been a reasonable opportunity to resolve the issue of whether the facts require a suspension. In *MOX*, as will be recalled, ITLOS held that the possibilities of settlement were exhausted when the United Kingdom refused to do exactly what Singapore was offering.

Singapore submits that Malaysia's actions in violation of Article 281 and the general principles of good faith negotiation mean that the *prima facie* jurisdiction required for the prescription of provisional measures has not matured. Accordingly, ITLOS should reject Malaysia's request for provisional measures and direct Malaysia to resume the negotiations it abruptly aborted.

Mr President, this would be a convenient place for me to stop and I thank you for the extended time.

THE PRESIDENT: Thank you, Professor Reisman, very much. We will now take a break for lunch and we will resume the session at 3 this afternoon. Then we will hear further from the speaker from Singapore. The meeting is adjourned.

(Adjourned at 1.10 pm)