



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

Press Release

ORDER IN THE CASE CONCERNING LAND RECLAMATION BY SINGAPORE IN AND AROUND THE STRAITS OF JOHOR (MALAYSIA V. SINGAPORE)

Judge Dolliver Nelson, President of the Tribunal, today read the Order of the International Tribunal for the Law of the Sea in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures*.

THE DISPUTE

On 5 September 2003, Malaysia submitted a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention.

The dispute concerns land reclamation activities carried out by Singapore which allegedly impinge upon Malaysia's rights in and around the Straits of Johor, which separate the island of Singapore from Malaysia.

Pursuant to article 290 of the Convention, the Tribunal, pending the constitution of the arbitral tribunal, may prescribe provisional measures if it considers provisional measures appropriate to "preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment" and if it considers that *prima facie* the arbitral tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires.

THE ORDER OF 8 OCTOBER 2003

In its Order, the Tribunal first addresses the issue of whether the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute. With respect to the obligation to exchange views set out in article 283 of the Convention, the Tribunal considers that Malaysia was not obliged to continue with an exchange of views when it concluded that this exchange could not yield a positive result. Turning to Singapore's contention that the parties by agreeing to meet on 13 and 14 August had embarked on a negotiation process, the Tribunal noted that the meeting took place after the institution of arbitral proceedings and that Malaysia had expressly stated that such meetings would be without prejudice to

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its right to proceed with the arbitration pursuant to Annex VII to the Convention or to request this Tribunal to prescribe provisional measures. Therefore, the Tribunal finds that the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute. The Tribunal also finds that the case is admissible.

The Tribunal then proceeds to analyse the contention of Singapore that, as the Annex VII arbitral tribunal is to be constituted not later than 9 October 2003, there is no need to prescribe provisional measures given the short period of time remaining before that date.

The Tribunal notes that, under article 290, paragraph 5, of the Convention, the Tribunal is competent to prescribe provisional measures prior to the constitution of the Annex VII arbitral tribunal, and that there is nothing in article 290 of the Convention to suggest that the measures prescribed by the Tribunal must be confined to that period.

With respect to the land reclamation works in the sector of Tuas, the Tribunal finds that Malaysia has not shown that there is a situation of urgency or that there is a risk that its rights with respect to an area of its territorial sea would suffer irreversible damage pending consideration of the merits of the case by the arbitral tribunal. Therefore, the Tribunal does not consider it appropriate to prescribe provisional measures with respect to the land reclamation by Singapore in the sector of Tuas.

The Tribunal notes that during the oral proceedings Singapore, in response to the measures requested by Malaysia, reiterated its offer to share the information requested by Malaysia with respect to the reclamation works, stated that it would provide Malaysia with a full opportunity to comment on the reclamation works and their potential impacts, and declared that it was ready and willing to enter into negotiations. The Tribunal places on record these assurances given by Singapore.

With respect to the infilling work in Area D at Pulau Tekong, which is of primary concern to Malaysia, the Tribunal notes the commitment made by Singapore at the hearing not to undertake any irreversible action to construct the stone revetment around Area D pending the completion of a study, jointly sponsored and funded by both States, to be undertaken by independent experts.

The Tribunal considers that, in the particular circumstances of this case, the land reclamation works may have adverse effects on the marine environment in and around the Straits of Johor. For that reason, the Tribunal considers that prudence and caution require Malaysia and Singapore to establish mechanisms for exchanging information on and assessing the effects of the land reclamation work.

For these reasons, the Tribunal, unanimously, prescribes the following provisional measures, pending a decision by the Annex VII arbitral tribunal:

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

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- (a) establish promptly a group of independent experts with the mandate
 - (i) to conduct a study, on terms of reference to be agreed by Malaysia and Singapore, to determine, within a period not exceeding one year from the date of this Order, the effects of Singapore's land reclamation and to propose, as appropriate, measures to deal with any adverse effects of such land reclamation;
 - (ii) to prepare, as soon as possible, an interim report on the subject of infilling works in Area D at Pulau Tekong;
- (b) exchange, on a regular basis, information on, and assess risks or effects of, Singapore's land reclamation works;
- (c) implement the commitments noted in this Order and avoid any action incompatible with their effective implementation, and, without prejudice to their positions on any issue before the Annex VII arbitral tribunal, consult with a view to reaching a prompt agreement on such temporary measures with respect to Area D at Pulau Tekong, including suspension or adjustment, as may be found necessary to ensure that the infilling operations pending completion of the study referred to in subparagraph (a)(i) with respect to that area do not prejudice Singapore's ability to implement the commitments referred to in paragraphs 85 to 87.

2. Unanimously,

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

3. Unanimously,

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

4. Unanimously,

Decides that each party shall bear its own costs."

President Nelson and Judge Anderson appended a declaration to the Order.

Judges *ad hoc* Hossain and Oxman appended a joint declaration to the Order.

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Judges Chandrasekhara Rao, Ndiaye, Jesus, Cot and Lucky appended separate opinions to the Order.

The text of the Order and the opinions appended thereto is available on the website of the Tribunal at www.itlos.org and www.tidm.org.

The Press Releases of the Tribunal, documents and other information are available on the Tribunal's websites: <http://www.itlos.org> and <http://www.tidm.org> and from the Registry of the Tribunal. Please contact Ms. Julia Pope at Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany, Tel.: +49 (40) 35607-227, Fax: +49 (40) 35607-245;
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